

RESOLUTION NUMBER 305668

DATE OF FINAL PASSAGE MAR 18 2010

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO REGARDING PAYMENT OF THE REMAINING
JUDGMENT IN *McGUIGAN V. CITY OF SAN DIEGO* AND
AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS
AND THE TAKING OF CERTAIN ACTIONS RELATED THERETO.

WHEREAS, on December 12, 2006, the Superior Court of the State of California for the County of San Diego entered a Judgment Approving Settlement of Class Action [Judgment] in the case of *William J. McGuigan v. City of San Diego, et al.*, Case No. GIC 849883; and

WHEREAS, the Judgment approved the terms of a Settlement Agreement and Release [Settlement] between William J. McGuigan as plaintiff [Plaintiff], individually and on behalf of a class consisting of all past, present and future San Diego City Employees' Retirement System [SDCERS] members and beneficiaries pursuant to which the City of San Diego [City] agreed to pay to SDCERS the sum of \$173,000,000 [Special Additional Contribution]; and

WHEREAS, the Court determined in the Judgment that the payment by the City to SDCERS of the Special Additional Contribution pursuant to the terms of the Settlement was fair, adequate and reasonable; and

WHEREAS, at the time that the Settlement was executed, through the securitization of its tobacco settlement revenues, the City had paid \$100 million to SDCERS in partial satisfaction of the amount to be paid pursuant to the Settlement leaving \$73 million of the Special Additional Contribution to be paid by the City; and

WHEREAS, as a part of the Judgment the Court issued a peremptory writ of mandate directing the City to pay the remaining balance of the Special Additional Contribution of \$73 million to SDCERS no later than June 8, 2011, together with simple interest on that amount at the rate of 7 percent per

annum from the date of entry of judgment until paid (together, the "Remaining Balance") and to execute and deliver to SDCERS a deed of trust on certain land and improvements owned by the City to secure the payment of the Remaining Balance; and

WHEREAS, the City subsequently executed six deeds of trust [Deeds of Trust] which SDCERS caused to be recorded with the County Recorder and which remain in effect; and

WHEREAS, the City has paid a portion of the remaining Special Additional Contribution due under the Settlement and currently \$32,762,082 of the Special Additional Contribution remains unpaid; and

WHEREAS, the City's Fiscal Years 2011-2015 Five-Year Financial Outlook dated October 1, 2009 [Five-Year Outlook] projected a General Fund budget deficit of \$179 million in Fiscal Year 2011, the fiscal year in which the unpaid portion of the Remaining Balance must be paid in full; and

WHEREAS, on December 9, 2009, the City Council amended the Fiscal Year 2010 Budget and adopted a Fiscal Year 2011 Budget which closed the projected \$179 million deficit, approximately \$32 million of which results from an assumed payment in June 2011 of the portion of the Remaining Balance attributable to the General Fund; and

WHEREAS, the Fiscal Year 2011 General Fund Budget included \$172.3 million to pay the City's Annual Required Contribution [ARC] to the pension system based on an estimated City-wide ARC of \$212 million, however, the SDCERS actuary has now released its actuarial valuation for June 30, 2009, which results in a City-wide ARC of \$231.7 million for Fiscal Year 2011 and an increase of \$15.3 million to the City's General Fund portion of the ARC payment, which amount must now be paid through potential further expenditure reductions in the approved Fiscal Year 2011 Budget; and

WHEREAS, in the last three fiscal years, the City has reduced many services and programs to the point that any additional reductions would cut into core municipal services, potentially reducing the amount of available staff hours for fire responses, reducing staffing in the Police Department, increasing police officer response times to emergencies, reducing City street and City facility repairs, reducing maintenance of the City's park system, and necessitating the closure or a reduction in the operational hours of recreation centers and library facilities, resulting in negative impacts to the residents, businesses, visitors and special populations; and

WHEREAS, the City estimates that an additional 429 full-time equivalent [FTE] positions would need to be eliminated if the City is required to pay the Remaining Balance in full in Fiscal Year 2011; and an additional 207 FTE positions may be eliminated to pay the General Fund portion of the increased ARC payment; and

WHEREAS, the Mayor and the City Council have determined that paying the Remaining Balance in full in Fiscal Year 2011 as required by the Judgment would result in an unreasonable hardship to the City and its residents, businesses, visitors and special populations due to the significant layoffs and additional reduction in services that will need to be made to free up revenues sufficient to make such payment; and

WHEREAS, the City Council desires to implement a plan to mitigate the hardship that would result from having to pay the full amount of the Remaining Balance in Fiscal Year 2011 by (i) having the Water Utility Fund and Sewer Utility Fund pay in cash to SDCERS an amount equal to the portion of the Remaining Balance attributable to those funds, which payment will be allocated to accrued interest owing on the Judgment, (ii) having the City pay in cash to SDCERS any other accrued interest owing on the Judgment, and (iii) requesting the Court to modify the Judgment to eliminate the Deeds of Trust and to allow the remaining \$32,762,082 of the Special Additional Contribution, together with

post-judgment interest thereon, to be paid in four equal annual installments beginning in Fiscal Year 2012 if the Judgment is purchased by a third party and SDCERS is paid the \$32,762,082 of the remaining Special Additional Contribution in full at the time of the sale of the Judgment; and

WHEREAS, to facilitate the approval of the modified Judgment by the Court and the sale of the modified Judgment to a third party so that the remaining payments on the Judgment can be made by the City in four installments, the City proposes to enter into an agreement with the Plaintiff to modify the existing Settlement Agreement, the Judgment and an agreement with Bank of America, N.A. [Bank] to purchase the modified Judgment by paying to SDCERS the full amount of the unpaid Special Additional Contribution; and

WHEREAS, there is on file with the City Clerk a form of Agreement Regarding Modification of Settlement Agreement [Modification Agreement] to be entered into by and between the City and Plaintiff and the form of an Agreement Regarding Purchase of McGuigan Judgment [Purchase Agreement] to be entered into by and between the City and the Bank setting forth certain provisions regarding the modification of the Judgment and its sale to the Bank; and

WHEREAS, under the terms of the Purchase Agreement, the Bank will agree to reduce the amount of the post-judgment interest to be paid by the City following the Bank's purchase of the modified Judgment, resulting in lower costs for the City; NOW, THEREFORE,

BE IT RESOLVED by the Council of the City of San Diego as follows:

Section 1. The above recitals are all true and correct.

Section 2. It is hereby found and determined that, given (i) the City's overall financial condition and the substantial reduction in expenditures and services implemented over the last three fiscal years, and (ii) the additional expenditure reductions of \$15.3 million that may be needed to rebalance the General Fund to account for the increased ARC payment, paying the Remaining Balance in full by June


8, 2011, as required by the Judgment will result in an unreasonable hardship to the City and its residents, businesses, visitors and special populations. This unreasonable hardship results from the fact that paying the Remaining Balance in full by June 8, 2011, will require the City to reduce other necessary expenditures by approximately \$32 million. Further expenditure reductions to pay the Remaining Balance in full by June 8, 2011, will require additional reductions in the areas of public health and safety of the type described above, thereby creating an unreasonable hardship to the City and its residents, businesses, visitors and special populations. It is further found and determined that this unreasonable hardship can be avoided if the Court were to order the payment of the \$32,762,082 of unpaid Special Additional Contribution together with post-judgment interest thereon to be paid in four equal annual installments starting in Fiscal Year 2012 as permitted by California Government Code section 970.6.

Section 3. The Mayor, the Chief Operating Officer and the Chief Financial Officer of the City and their written designees (together the "Authorized Officers") are each hereby authorized and directed to execute the Agreement Regarding Modification of Settlement Agreement and the Agreement Regarding Purchase of McGuigan Judgment substantially in the forms on file in the Office of the City Clerk, together with such changes thereto as are approved by the Authorized Officer executing such agreements upon the advice of the City Attorney, such approval to be conclusively evidenced by the execution and delivery of such agreements. The Authorized Officers are each hereby authorized and directed to execute such other documents and agreements, to make any applications to the Court and to take any additional actions necessary to apply to the Court for a modification of the Judgment in accordance with California Government Code section 970.6 as described herein; and if granted by the Court, to effectuate the payment of the unpaid Special Additional Contribution plus post-judgment interest thereon in installments as ordered by the Court. The Authorized Officers shall request the Court to modify the Judgment to permit the unpaid Special Additional Contribution plus post-judgment

interest thereon to be paid in four equal annual installments beginning in Fiscal Year 2012 and, upon sale of the Judgment to the Bank, to eliminate the Deeds of Trust as collateral to secure the payment of the Unpaid Remaining Balance.

Section 4. The Council determines that a modification of the Judgment as described herein and in the Agreement Regarding Modification of Settlement Agreement will be beneficial to the City and the participants in SDCERS in that it will result in an earlier payment of the Remaining Balance to SDCERS, will reduce the unreasonable hardship resulting from the current terms of the Judgment by enabling the City to make a portion of the remaining payments on the Judgment over a period of four years and will eliminate the requirement for the City to encumber real property pursuant to the Deeds of Trust as collateral to secure the payment of the Unpaid Remaining Balance.

APPROVED: JAN GOLDSMITH, City Attorney

By:  *for*

Brant C. Will
Deputy City Attorney

BCW:jdf
02/22/10
Or.Dept: Debt Mgmt.
R-2010-584

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 09 2010

ELIZABETH S. MALAND
City Clerk

By *Anna Richards*
Deputy City Clerk

Approved: 3/18/10
(date)

J.S.
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor