

Item 101, Nov 5 2013
(R-2014-224)
Sub Item 'A'

RESOLUTION NUMBER R- 308556

DATE OF FINAL PASSAGE NOV 21 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE WITH THE SAN DIEGO COMMUNITY LAND TRUST A GROUND LEASE CONTAINING A PURCHASE OPTION FOR CERTAIN CITY-OWNED REAL PROPERTY NEAR LAURISTON AND PAXTON DRIVES, IN SAN DIEGO, CALIFORNIA, FOR THE PURPOSE OF POTENTIAL AFFORDABLE HOUSING DEVELOPMENT.

WHEREAS, the City of San Diego (City) owns fee interest in sixteen (16) lots of real property, amounting to approximately 3.3 acres of land identified as Assessor's Parcel Numbers 630-160-62 and 630-060-24 and located south of Elrose Drive between Lauriston Drive and Paxton Drive in the Otay Mesa-Nestor area (Property); and

WHEREAS, the Property is located in a Federal Emergency Management Act (FEMA) flood zone and a City-designated Special Flood Hazard Area, and is adjacent to a drainage channel and drainage facilities which serve the surrounding area. During a heavy rainstorm in 1988, a major flood occurred at the Property, which at the time was improved with single family residences. A subsequent lawsuit resulted in the City being found liable for the flood. As part of payment of damages from the lawsuit, the City bought the Property from the affected home owners and the homes were then demolished; and

WHEREAS, the Property has for years sat vacant, unused by the City and exposed to unauthorized dumping. The City incurs regular and ongoing maintenance costs to clear debris

and trash from the Property, and the City has received neighborhood complaints regarding the Property. No City department has any current or foreseeable use for the Property;

WHEREAS, the San Diego Community Land Trust, a California nonprofit corporation (Land Trust), has approached the City to potentially purchase the Property. The Land Trust has brought forward a plan to benefit the public by developing sixteen (16) homes on the Property, which would be sold as permanently affordable housing to income-qualified buyers; and

WHEREAS, staff has negotiated a Ground Lease with the Land Trust, which contains an option to buy the Property if the Land Trust satisfies certain conditions within five (5) years. Purchase of the Property would be pursuant to a Purchase and Sale Agreement included in the Ground Lease. If the Land Trust perfects its option to purchase the Property, the Purchase and Sale Agreement and associated quitclaim deed require the Land Trust to then develop the Property within three (3) years. The Property would be developed with up to sixteen (16) single family detached residences which could only be sold to income-qualified buyers (buyers that earn 120 percent (120%) or below of the Area Median Income for the San Diego Metropolitan area), and the homes would be accompanied by long-term ground leases for the individual lot upon which each home is built. The homes and the leases would contain resale restrictions to ensure that the homes and lots would remain affordable in perpetuity. The Ground Lease, the Purchase and Sale Agreement, and the quitclaim deed for the potential sale of the Property all ensure that the Property will be used solely and exclusively for permanent affordable housing and for no other purpose whatsoever; and

WHEREAS, due to the City's experience with flooding at the Property and the priority that any development must result in safe housing conditions for occupants, the agreements for

the lease, purchase, and transfer of the Property all require the Land Trust: 1. To ascertain and resolve all flood and water drainage conditions on and affecting the Property, including accounting for and funding off-site conditions and capital improvements needed to effectively and sufficiently mitigate flood potential and storm water drainage impacts on the Property, in compliance with future comprehensive discretionary review and all applicable laws for any proposed development; and 2. To effectively and permanently indemnify, release, and hold harmless the City and its agents for any claims or liabilities caused by or related to the Land Trust's development and use of the Property, including for all flood and storm water drainage issues; and

WHEREAS, fee ownership in the Property was appraised by an independent MAI appraiser at a market value of Thirty Five Thousand Dollars (\$35,000), and qualified City staff have evaluated the Property and determined there has been no significant change in the market value; and

WHEREAS, Council Policies 700-12 ("Disposition of City Property to Nonprofit Organizations) and 700-10 ("Disposition of City-Owned Real Property) provide that fair market value shall be obtained for leases and sales of City-owned real property to nonprofit organizations; and

WHEREAS, the City persistently suffers from a severe lack of affordable housing and has declared a local emergency due to the severe shortage; and

WHEREAS, leasing and selling the Property to the Land Trust at a nominal rate would be in the public interest by relieving City maintenance and liability obligations for the Property and potentially have the result of sixteen (16) permanently affordable homes being developed.

Furthermore, paying fair market value for the Property would be an additional cost burden on the affordable housing project contemplated by the Land Trust, and payment of less than fair market value best contributes to the financial feasibility of the project; and

WHEREAS, if the Land Trust is able to develop the Property with affordable housing, any development will be proposed and described in comprehensive plans submitted through a future application by the Land Trust for all necessary use and development permits, subject to full review and approval by the City Council in its sole discretion at that time. By the Ground Lease and its contemplation of future development, the City has not made nor does presently make any determinations regarding any aspect, sufficiency, or legality of any potential development or aspect thereof, nor has the City represented, warranted, or guaranteed any future approval by the City Council of any development of the Property, nor does it presently do so; and

WHEREAS, all references to the “Mayor” in the actions authorized by this Resolution are intended to refer to the elected Mayor or the Council President (in his capacity under Charter section 265(i) during any period of vacancy in the Office of the Mayor), as may be applicable upon the occurrence of each authorized action; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the sixteen (16) lots of real property, amounting to approximately 3.3 acres of land identified by Assessor’s Parcel Numbers 630-160-62 and 630-060-24, in the Otay Mesa-Nestor area (Property), are surplus City property and may be leased and sold by direct negotiation.

BE IT FURTHER RESOLVED, that, given the public benefit to be derived from the Ground Lease and the significant public benefit potentially resulting from the Purchase and Sale

Agreement, Council Policies 700-12 and 700-10 are hereby waived to the extent the Property is leased and potentially sold for less than fair market value.

BE IT FURTHER RESOLVED, that, given the history of flooding on the Property and the concern that any development result in safe housing conditions for occupants, the City is only willing to lease and potentially sell the Property on strict condition that any development thereon be made safe, in conformity with all applicable laws, in light of the storm water engineering and drainage issues affecting the Property, and further on condition that City be indemnified, released, and held harmless for all claims or liabilities caused by or related to development and use of the Property, including for all flood and storm water drainage issues and impacts.

BE IT FURTHER RESOLVED, that the Mayor, or his or her designee, is authorized and directed to lease the Property to the San Diego Community Land Trust, a California nonprofit corporation (Land Trust), pursuant to the terms and conditions of that certain Ground Lease on file in the Office of the City Clerk as Document No. RR 308556, for the price of One Dollar (\$1).

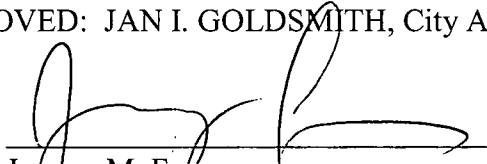
BE IT FURTHER RESOLVED, that the Mayor, or his or her designee, is authorized to sell the Property to the Land Trust pursuant to the terms and conditions of that certain Purchase and Sale Agreement included in the Ground Lease on file in the Office of the City Clerk as Document No. RR-308556, for the price of Sixteen Dollars (\$16).

BE IT FURTHER RESOLVED, that the Mayor, or his or her designee, is authorized to execute and deliver all such agreements and all other instruments to effect and complete the transaction contemplated by this Resolution.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to accept and deposit the proceeds of the lease of the Property into the General Fund 100000, and is authorized to accept and deposit the proceeds of the sale of the Property into the Capital Outlay Water Fund 400004.

APPROVED: JAN I. GOLDSMITH, City Attorney

By


Jeremy M. Fonseca
Deputy City Attorney

JMF:mm

10/14/13

Or.Dept: Real Estate Assets Dept.

Doc. No. 591832_2

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 05 2013.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved pursuant to Charter section 265(i):

(date)

TODD GLORIA, Council President

Passed by the Council of The City of San Diego on NOV 05 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 21 2013.

(Please note: When a resolution is approved by the Council President as interim Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

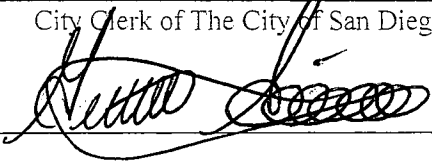
TODD GLORIA, COUNCIL PRESIDENT

as interim Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 308556