

RESOLUTION NUMBER R- 309160

DATE OF FINAL PASSAGE JUL 30 2014

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO, ACTING IN ITS CAPACITY AS THE BOARD OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, APPROVING CERTAIN ACTIONS RELATED TO THE REINSTATEMENT OF A LOAN AGREEMENT REGARDING THE NAVAL TRAINING CENTER SITE PURCHASE.

WHEREAS, from its formation in 1958 until its elimination on February 1, 2012, the Redevelopment Agency of the City of San Diego (Former RDA) administered the implementation of various redevelopment projects, programs, and activities within designated redevelopment project areas throughout the City of San Diego (City); and

WHEREAS, the Former RDA dissolved as of February 1, 2012, in accordance with a deadline for elimination of all redevelopment agencies throughout California set forth in Assembly Bill x1 26 (AB 26), as modified by the California Supreme Court in a final opinion issued on December 29, 2011; and

WHEREAS, at the time of the Former RDA's dissolution, the City, in its capacity as the successor agency to the Former RDA (Successor Agency), became vested with all of the Former RDA's authority, rights, powers, duties, and obligations under the California Community Redevelopment Law and, by operation of law, received all assets, properties, contracts, leases, books and records, buildings, and equipment of the Former RDA; and

WHEREAS, the Successor Agency is winding down the Former RDA's affairs in accordance with AB 26, enacted on June 28, 2011, and subsequent legislation (collectively, the Dissolution Laws); and

WHEREAS, the Oversight Board has been formed to oversee certain actions and decisions of the Successor Agency in accordance with the Dissolution Laws; and

WHEREAS, the San Diego County Auditor-Controller (County Auditor), the State Controller, and the State Department of Finance (DOF) also possess certain rights and obligations under the Dissolution Laws with respect to the Successor Agency's administration of the Former RDA's operations; and

WHEREAS, the Dissolution Laws require the Successor Agency to prepare on a forward-looking basis, and to submit for approval by the Oversight Board and the DOF, a Recognized Obligation Payment Schedule (ROPS) identifying payments owed by the Successor Agency to third parties toward enforceable obligations during each upcoming six-month period; and

WHEREAS, under the Dissolution Laws, the County Auditor administers and makes semi-annual distributions of monies from the Redevelopment Property Tax Trust Fund (RPTTF), which is comprised of incremental property taxes generated in the City's redevelopment project areas; and

WHEREAS, California Health and Safety Code (Code) section 34191.4(b) enables the Successor Agency and the City to reinstate, subject to certain conditions and on modified terms, any loan agreements between the Former RDA and the City that the State previously invalidated as a result of the general rule in Code section 34178 that purports to invalidate most agreements, contracts, or arrangements between any redevelopment agency and its sponsoring city; and

WHEREAS, Code section 34191.4(b)(1), as interpreted by the DOF, requires the following conditions to be satisfied before reinstatement of an invalidated loan may occur: (i) the Successor Agency must have obtained the finding of completion from the DOF pursuant to Code section 34179.7 (the Successor Agency obtained this finding on December 2, 2013); (ii) the

Oversight Board must adopt a resolution that both approves the reinstated loan as an enforceable obligation and makes a finding to the effect that the invalidated loan was for legitimate redevelopment purposes; and (iii) the DOF must approve the Oversight Board's pertinent resolution; and

WHEREAS, Code section 34191.4(b)(2), as interpreted by the DOF, imposes several modified terms and limitations on a reinstated loan, such as: (a) an annual "cap" on the maximum repayment amount on all reinstated loans in any given fiscal year, equal to fifty percent (50%) of the increase between the residual balance amount distributed to the local taxing entities in the 2012-13 base fiscal year and the actual residual balance amount distributed to the local taxing entities during any subsequent fiscal year (50% Increase Formula); (b) the retroactive recalculation of accumulated interest on the remaining principal amount of the loan from the date of loan origination at the interest rate applicable to funds deposited into the Local Agency Investment Fund (LAIF Rate); (c) the deduction of twenty percent (20%) of any reinstated loan payment from the loan payment amount and the transfer of this deducted amount to the City's Low and Moderate Income Housing Asset Fund; and (d) the need for repayment of the reinstated loan in accordance with a defined schedule over a reasonable term of years, commencing no earlier than the 2014-15 fiscal year; and

WHEREAS, the City and the Former RDA entered into that certain Cooperation Agreement for the Naval Training Center Redevelopment Project dated June 26, 2000, on file as City Clerk Document No. RR-293410 and Redevelopment Agency Secretary Document No. D-03175b (Original Loan Agreement); and

WHEREAS, the Original Loan Agreement confirms that the City acquired the former Naval Training Center (NTC) site, a closed military base consisting of approximately 429 acres of real property, from the Federal Government; and

WHEREAS, pursuant to the Original Loan Agreement, the City committed to sell to the Former RDA the majority of the NTC site, comprising approximately 259 acres (NTC Redevelopment Site), for the purchase price of \$8,300,000; and

WHEREAS, the Former RDA acquired the NTC Redevelopment Site from the City by recorded Quitclaim Deed on April 30, 2002, designated as Document No. 2002-0364464, in order to facilitate the completion of a redevelopment project on the NTC Redevelopment Site in accordance with the NTC Redevelopment Plan adopted May 13, 1997, and the Disposition and Development Agreement dated June 26, 2000 (NTC DDA), between the Former RDA and the Master Developer, McMillin-NTC, LLC; and

WHEREAS, Section 2.4 of the Original Loan Agreement requires the Former RDA to pay the purchase price for the NTC Redevelopment Site to the City on a deferred basis, but no later than June 30, 2050, which is the time limit for the Former RDA's repayment of all indebtedness related to the NTC Redevelopment Project Area (Project Area); and

WHEREAS, this deferred payment obligation is treated as a traditional seller carry-back loan, accruing interest at the rate of 8 percent per annum, computed from April 30, 2002 – the date of the City's conveyance of the NTC Redevelopment Site to the Former RDA; and

WHEREAS, the outstanding balance of the NTC purchase price loan under the Original Loan Agreement, including accrued interest at 8 percent per annum from April 30, 2002, is \$19,610,638.39 as of June 30, 2014; and

WHEREAS, the outstanding principal amount of the NTC purchase price loan remains the same as the original amount – \$8,300,000 – because neither the Former RDA nor the Successor Agency has made any payments to the City toward the loan; and

WHEREAS, in early 2014, the DOF supplied the Successor Agency with an updated ROPS template for ROPS 14-15A that showed the Original Loan Agreement as having been invalidated by the DOF in a prior ROPS; and

WHEREAS, although the Successor Agency had not received any prior communication confirming the DOF's invalidation of the Original Loan Agreement, the City and the Successor Agency are now willing to assume the DOF's prior invalidation of the Original Loan Agreement based on the general rule in Code section 34178 that purports to invalidate most agreements, contracts, or arrangements between any redevelopment agency and its sponsoring city; and

WHEREAS, the Successor Agency and the City now propose to enter into that certain Reinstated Loan Agreement Pertaining to Naval Training Center Site Purchase Loan (Reinstated Loan Agreement), a copy of which is included as Attachment A to Staff Report No. CSD-14-09 / CSD-14-15 dated July 23, 2014 accompanying this Resolution; and

WHEREAS, the Reinstated Loan Agreement contemplates the Successor Agency's repayment of a total amount of \$8,532,169 (Reinstated Loan Amount) to the City utilizing monies available from semi-annual RPTTF distributions corresponding to each six-month ROPS after applying the 50% Increase Formula; and

WHEREAS, the Reinstated Loan Amount equals the current principal balance of the NTC purchase price loan of \$8,300,000, plus accumulated interest of \$232,169 based on the recalculation of interest at the most recently available (June 2014) LAIF Rate of 0.228% from

the date of loan origination (April 30, 2002) through the anticipated date of the Oversight Board meeting for approval of the Reinstated Loan Agreement (August 6, 2014); and

WHEREAS, Recital H and Section 4(f) of the Reinstated Loan Agreement provide that the Reinstated Loan Amount may be adjusted, based on consultation between the Successor Agency and the DOF, to reflect two factors: (i) any discrepancy between the June 2014 LAIF Rate and the prevailing LAIF Rate as of the date on which the Oversight Board has approved the Reinstated Loan Agreement; and (ii) any discrepancy between the anticipated date of the Oversight Board meeting for approval of the Reinstated Loan Agreement (August 6, 2014) and the actual date on which the Oversight Board has approved the Reinstated Loan Agreement; and

WHEREAS, assuming that the Reinstated Loan Agreement is approved by the Oversight Board and the DOF, the Reinstated Loan Amount shall continue to accrue interest at the LAIF Rate, as such rate is adjusted on a quarterly basis, until fully repaid; and

WHEREAS, the Reinstated Loan Agreement requires the Successor Agency to identify the Reinstated Loan Agreement, including the full repayment of the Reinstated Loan Amount plus accrued interest, as an enforceable obligation in the seventh ROPS covering the time period of January through June 2015 (ROPS 14-15B) and to request an allocation of property taxes from the residual balance of the RPTTF for this purpose on a semi-annual basis in ROPS 14-15B and in each ensuing ROPS to the extent that sufficient funds are available in the residual balance under the 50% Increase Formula; and

WHEREAS, the Reinstated Loan Agreement requires the Successor Agency to exercise good faith efforts to repay the Reinstated Loan Amount by the end of the second full fiscal year after the effective date of the Reinstated Loan Agreement, or as soon thereafter as may be practicable; provided, however, that the Successor Agency's actual repayments to the City in any

given fiscal year shall take into account both (i) the available residual balance funds under the 50% Increase Formula in any given fiscal year and (ii) the potential reinstatement of other invalidated loan agreements between the City and the Former RDA and the corresponding need for a funding source for repayment of such other reinstated agreements; and

WHEREAS, consistent with Code section 34191.4(b), the Reinstated Loan Agreement requires the Successor Agency to deduct twenty percent (20%) of any semi-annual loan repayment from the loan repayment amount and to transfer this deducted amount to the City's Low and Moderate Income Housing Asset Fund to be used by the City, as the housing successor to the Former RDA, for valid affordable housing purposes; and

WHEREAS, the effectiveness of the Reinstated Loan Agreement shall be contingent upon the approval of the Reinstated Loan Agreement as an enforceable obligation by the Oversight Board and the DOF, as well as the continued availability of sufficient RPTTF distributions to make installment payments toward the Reinstated Loan Amount; and

WHEREAS, the City acknowledges in the Reinstated Loan Agreement that, to the extent that sufficient RPTTF distributions are unavailable to the Successor Agency despite its exercise of good faith efforts, the Reinstated Loan Amount may not ultimately be repaid in full; and

WHEREAS, the NTC purchase price loan memorialized in the Original Loan Agreement carried out legitimate redevelopment purposes in that the loan aided the Former RDA's effort to revitalize, and eliminate blight within, the Project Area, a closed military base comprising hundreds of acres of land, and to achieve the objectives of the approved NTC Redevelopment Plan and the NTC DDA; and

WHEREAS, the Former RDA acquired the NTC Redevelopment Site, and incurred the related loan of \$8,300,000, to assist with the formation of the Project Area and to enable the Master Developer to carry out the redevelopment project on the NTC Redevelopment Site; and

WHEREAS, consistent with the NTC Redevelopment Plan and the NTC DDA, the Master Developer has coordinated the construction of a pedestrian-oriented, mixed-use community with residential, office, retail, and civic uses on a substantial portion of the NTC Redevelopment Site, now known as Liberty Station, and the build-out of this community is nearly completed at this time; and

WHEREAS, the transaction described in the Original Loan Agreement, including the NTC purchase price loan, was authorized under the California Community Redevelopment Law, including the following provisions preceding enactment of the Dissolution Laws: (i) Code section 33220, which authorized any public body to take various actions to aid and cooperate in a redevelopment agency's planning, construction, or operation of redevelopment projects; and (ii) Code section 33601, which authorized a redevelopment agency to borrow funds from any public agency for any redevelopment project within its area of operation; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, acting in its capacity as the board of the Successor Agency, as follows:

1. The Council finds and determines that the foregoing recitals are true and correct.
2. The Council received and heard any and all oral and written objections relating to the Reinstated Loan Agreement, and to other matters pertaining to this transaction, and all such oral and written objections are overruled.
3. The Council finds that the NTC purchase price loan memorialized in the Original Loan Agreement was for legitimate redevelopment purposes.



4. The Council approves the Reinstated Loan Agreement, which requires the Successor Agency's repayment to the City of the Reinstated Loan Amount of \$8,532,169, utilizing monies available through the semi-annual RPTTF distributions corresponding to each ROPS, provided that the Reinstated Loan Amount may be adjusted per Recital H and Section 4(f) of the Reinstated Loan Agreement.

5. The Mayor or designee is authorized and directed to execute the Reinstated Loan Agreement, on the Successor Agency's behalf, and to carry out the Successor Agency's obligations under the Reinstated Loan Agreement. A fully-executed copy of the Reinstated Loan Agreement shall be filed in the Office of the City Clerk as Document No. RR- 309159

6. Successor Agency staff is authorized and directed to include the Reinstated Loan Agreement, including the full repayment of the Reinstated Loan Amount plus accrued interest, as an enforceable obligation line item in ROPS 14-15B and to request an allocation of property taxes for this purpose from the residual balance of the RPTTF on a semi-annual basis in ROPS 14-15B and in each ensuing ROPS to the extent that sufficient funds are available in the residual balance under the formula in Code section 34191.4(b)(2) imposing a maximum annual limitation on aggregate repayments toward reinstated loan agreements.

7. The City Comptroller is authorized to cause the Successor Agency's transfer of all semi-annual installment payments of the Reinstated Loan Amount to the City under the Reinstated Loan Agreement until the Reinstated Loan Amount has been fully repaid and to allocate all such installment payments as follows: (a) twenty percent (20%) to the City's Low and Moderate Income Housing Asset Fund (Fund No. 200708), to be used by the City, as housing successor to the Former RDA, for valid affordable housing purposes; and (b) eighty

percent (80%) to the City's Capital Outlay Fund, consistent with the provisions of San Diego Charter section 77.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Kevin Reisch  
Kevin Reisch  
Chief Deputy City Attorney

KJR:nja  
7/22/14  
Or.Dept: Civic San Diego  
Doc. No. 825693  
Comp. R-2015-45

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 28 2014.

ELIZABETH S. MALAND  
City Clerk

By [Signature]  
Deputy City Clerk  
[Signature]  
KEVIN L. FAULCONER, Mayor

Approved: 7/30/14  
(date)

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

JUL 28 2014

Passed by the Council of The City of San Diego on \_\_\_\_\_, 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"/>
Ed Harris	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 JUL 30 2014

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

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

(Seal)

By *Janette Santos*, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- <u>309160</u>