

#101
10/29/19

(R-2020-171)

RESOLUTION NUMBER R- **312726**

DATE OF FINAL PASSAGE **OCT 31 2019**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO RESCINDING A DISPOSITION AND
DEVELOPMENT AGREEMENT RELATED TO THE HILLTOP
AFFORDABLE HOUSING PROJECT IN THE
SOUTHEASTERN SAN DIEGO MERGED REDEVELOPMENT
PROJECT AREA.

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 *California
Redevelopment Assn. v. Matosantos*, 53 Cal.4th 231 (2011); and

WHEREAS, pursuant to Resolution R-307238 adopted by the City Council effective
January 12, 2012, the City, solely in its capacity as the designated successor agency to the
Former RDA (Successor Agency), elected to serve as the successor agency to the Former RDA,
and the City also elected to serve as housing successor to the Former RDA in order to retain
housing assets and assume housing responsibilities; and

WHEREAS, at the time of the Former RDA's dissolution on February 1, 2012, the
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 operations in accordance with AB 26, enacted on June 28, 2011, Assembly Bill 1484, enacted on June 27, 2012, and subsequent related legislation; and

WHEREAS, the Successor Agency transferred the Former RDA's affordable housing assets (Housing Assets) to the City as housing successor on or about January 28, 2013, based on the approval by the Oversight Board and the California Department of Finance (DOF) of the City's comprehensive list of housing assets in accordance with California Health and Safety Code (Code) section 34181(c); and

WHEREAS, one of the Housing Assets in the City's ownership consists of approximately 8.76 acres of real property located on the northwest intersection of Hilltop Drive and Euclid Avenue in the Chollas View neighborhood in the Encanto community in the City of San Diego (Site); and

WHEREAS, on June 12, 2018, the City Council adopted Resolution No. R-311800, which among other things, approved a Disposition and Development Agreement (DDA) with Hilltop Family Housing, L.P., a California limited partnership (Affordable Developer), a copy of which is on file on with the City Clerk as Document No. RR-311800-1; and

WHEREAS, the DDA requires the City to convey fee title ownership of an approximately 4.53-acre portion of the Site located north of Hilltop Drive and east of, and including, the arroyo that bisects the Site (Affordable Project Property) to Affordable Developer for a purchase price of \$1.00, and requires Affordable Developer to develop the Affordable Project Property with 113 residential rental units, commercial space, various site improvements, and parking (Affordable Project); and

WHEREAS, 111 of the 113 residential rental units in the Affordable Project will be restricted as housing that is affordable to extremely low-income, very low-income, or low-income households as specified in 55-year affordability covenants to be recorded against the Affordable Project Property in accordance with the DDA; and

WHEREAS, the DDA provides for a residual receipts loan by the City to Affordable Developer in an amount not to exceed \$5,850,000 (City Loan); and

WHEREAS, the City Loan includes a predevelopment loan in an amount not to exceed \$2,626,626 as set forth in the DDA; and

WHEREAS, Resolution No. R-311800, among other things, also approved a Purchase and Sale Agreement (PSA) with Hilltop Encanto, LLC, a California limited liability company (Market-Rate Developer), a copy of which is on file with the City Clerk as Document No. RR-311800-2; and

WHEREAS, the PSA requires the City to convey fee title ownership of an approximately 4.23-acre portion of the Site located north of Hilltop Drive and west of the arroyo that bisects the Site (Market-Rate Project Property) to Market-Rate Developer in exchange for Market-Rate Developer's payment of the purchase price of \$2,201,250 to the City for deposit into the Housing Asset Fund, and requires Market-Rate Developer to develop the Market-Rate Project Property with 47 for-sale market-rate residential units, including 20 single family homes and 27 townhomes, common areas, various site improvements, and parking (Market-Rate Project); and

WHEREAS, on August 13, 2018, San Diegans For Open Government (SDOG) filed its complaint *San Diegans for Open Government v. City of San Diego, Civic San Diego, Affirmed Housing Group, and Hilltop Family Housing, L.P.*, San Diego Superior Court Case No. 37-2018-

00040518-CU-MC-CTL, challenging the City Council approvals related to the Affordable Project; and

WHEREAS, SDOG's lawsuit contends Civic Board member Rath had a California Government Code section 1090 conflict of interest when he voted in favor of Civic recommending that the City enter into the DDA and that the DDA is void because of Rath's alleged conflict of interest; and

WHEREAS, on June 25, 2019, the City Council voted in closed session to enter into a tentative settlement agreement with SDOG and the Affordable Developer Co-Defendants in the *SDOG* litigation; and

WHEREAS, to resolve all claims of the *SDOG* lawsuit, the settlement calls for the DDA related to the Affordable Project to be submitted to the City Council for rescission; and

WHEREAS, if the City Council rescinds the DDA, then under the terms of the settlement the Affordable Developer will be allowed to resubmit an application or request for approval of a new Disposition and Development Agreement for the Affordable Project for consideration by the City as soon as reasonably possible; and

WHEREAS, the rescission of the DDA will not affect the development entitlements (which include an easement vacation, Vesting Tentative Map, Site Development Permit and Neighborhood Development Permit) for the Affordable Project which were obtained from the City in November/December 2018; and

WHEREAS, the rescission of the DDA will not affect the PSA between the City and the Market Rate Developer or any entitlements, approvals, findings, or other determinations related to the PSA or the Market Rate Project; NOW, THEREFORE,

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

1. The approval of the DDA, including all attachments and exhibits, between the City and the Affordable Developer for the Affordable Project pursuant to Resolution No. R-311800 is rescinded.

2. The approval sale of the Affordable Project Property to the Affordable Developer pursuant to Resolution No. R-311800 is rescinded.

3. The authority granted and direction provided to the Mayor, or designee, to execute the DDA, including all attachments and exhibits requiring the City's signature, pursuant to Resolution No. R-311800 is rescinded.

4. The authority granted and direction provided to the Mayor, or designee, to sign all documents necessary and appropriate to carry out and implement the DDA and to administer the City's obligations, responsibilities, and duties to be performed under the DDA, including all attachments and exhibits, pursuant to Resolution No. R-311800 is rescinded.

5. The authority granted to the Chief Financial Officer, as delegated, to appropriate and expend an amount not to exceed \$5,850,000 to fund the City Loan under the DDA pursuant to Resolution No. R-311800 is rescinded.

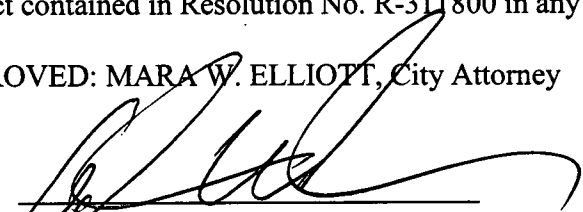
6. Nothing in this resolution shall be construed as to affect any the development entitlements (which include an easement vacation, Vesting Tentative Map, Site Development Permit and Neighborhood Development Permit) for the Affordable Project.

7. Nothing in this resolution shall be construed as to affect the PSA with the Market-Rate Developer (on file with the office of the City Clerk as Document No. RR-311800-2) or the Market-Rate Project in any way.

8. Nothing in this resolution shall be construed as to affect any City Council approval, finding, determination, authorization, or direction relating to the PSA or Market-Rate Project contained in Resolution No. R-311800 in any way.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Adam Wander
Deputy City Attorney

ARW:jdf
10/15/19
Or.Dept:Econ Dev
Doc. No.: 2201200

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 29 2019.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved:

10/31/19
(date)


KEVIN L. FAULCONER, Mayor

Vetoed:

(date)

KEVIN L. FAULCONER, Mayor

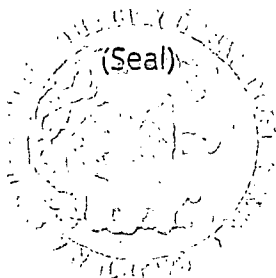
Passed by the Council of The City of San Diego on **OCT 29 2019**, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<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"/>
Chris Cate	<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"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage **OCT 31 2019**

(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.

By Linda Irwin, Deputy

Office of the City Clerk, San Diego, California

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