

RESOLUTION NUMBER R- 315903DATE OF FINAL PASSAGE NOV 19 2024

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THAT CERTAIN AGREEMENT SATISFYING AND TERMINATING OBLIGATIONS UNDER 2004 TRANSFER AGREEMENT AND AMENDING 2004 CITY OPTION, IN RELATION TO THE MUSEUM SITE AT 1100 KETTNER BOULEVARD IN DOWNTOWN SAN DIEGO, AND AUTHORIZING RELATED ACTIONS.

RECITALS

The Council of the City of San Diego (Council) adopts this Resolution based on the following:

A. The City of San Diego (City), the former Redevelopment Agency of the City of San Diego (Former RDA), the Museum of Contemporary Art, San Diego, a California nonprofit public benefit corporation (Museum), and Catellus Operating Limited Partnership (Catellus) entered into that certain Transfer Agreement and Escrow Instructions dated July 1, 2004 (2004 Transfer Agreement), on file in the Office of the City Clerk as Document No. RR-299406.

B. Under the 2004 Transfer Agreement, (i) Catellus transferred to the Museum (as the City's designated entity) fee title ownership of the real property located at 1100 Kettner Boulevard near the Santa Fe Depot in downtown San Diego, consisting of the "Baggage Building Site" and the "REA Site" as defined in the 2004 Transfer Agreement (collectively, Property); (ii) the Museum constructed and opened a new building featuring a contemporary art museum (New Museum Building) on the REA Site; (iii) with the consent of the City and the Former RDA, the Museum and National Railroad Passenger Corporation, also known as Amtrak, entered into that certain Amtrak Lease dated February 1, 2006, as amended by that certain First Amendment to Amtrak Lease dated September 8, 2006, for Amtrak's occupancy of a portion of the New Museum Building (collectively, Amtrak Lease); (iv) the Museum agreed, for the City's

benefit, to continuously operate a contemporary art museum in the New Museum Building, except for the portion subject to the Amtrak Lease, featuring exhibitions and public programs exploring contemporary art forms and media; and (v) the Museum agreed to pay \$150,000 to the Former RDA to assist in funding certain public pathway and landscaping improvements between Kettner Boulevard and the Transit Courtyard within the vacated B Street right of way (Public Access Improvements), as further described in Section 10.22 of the 2004 Transfer Agreement. The City, in its capacity as the designated successor agency to the Former RDA (Successor Agency), is administering the completion of the Public Access Improvements.

C. The parties to the 2004 Transfer Agreement caused two contracts to be signed in connection with the transfer of Property ownership from Catellus to the Museum: (1) the Grant Deed from Catellus to the Museum, recorded in the Official Records of the San Diego County Recorder's Office (Official Records) as Document No. 2004-0711683 on July 29, 2004 (2004 Grant Deed); and (2) the City Option dated July 20, 2004, between the City and the Museum (2004 City Option).

D. Section 2.1 of the 2004 Grant Deed required the Museum and its successors and assigns to use and manage the Property only as a museum or for other "Cultural or Institutional Uses" (defined in Section 2.1.1 of the 2004 Grant Deed to include "uses by institutions displaying or preserving objects of interest in one or more of the arts and sciences, such as museums, libraries and art galleries") and allowed a portion of the Property to be used for certain ancillary purposes, such as a café, a gift shop, and certain pathway and landscaping improvements (as further described in Sections 2.1 and 2.1.2 of the 2004 Grant Deed).

E. In Section 1.2 of the 2004 City Option, the Museum granted an option to the City to acquire the Property either: (a) in the event the Museum commits a "Default" (defined in

Section 1.3 of the 2004 City Option generally to include the Museum's failure to comply with any substantive covenant or condition under the 2004 Transfer Agreement required to be performed by the Museum); or (b) on or after July 31, 2091. In Section 3 of the 2004 City Option, the Museum agreed to perform all its obligations under the 2004 Transfer Agreement, for the City's benefit. In Resolution R-299406 (June 29, 2004), the Council approved the 2004 Transfer Agreement and confirmed that the City's acquisition of the Property upon the City's exercise of the 2004 City Option would occur at no cost to the City.

F. The Museum now proposes to sell the Property to The Regents of the University of California, a California corporation (The Regents), which operates various public educational institutions, including the University of California San Diego. To facilitate the Property sale, the City, the Museum, and The Regents (collectively, Parties) negotiated the proposed Agreement Satisfying and Terminating Obligations under 2004 Transfer Agreement and Amending 2004 City Option (Agreement). The Successor Agency is not a party to the Agreement because the Successor Agency administratively transferred to the City all land use plans and functions pertaining to the Property, including the 2004 Transfer Agreement, as permitted by California Health and Safety Code section 34173(i).

G. Under the Agreement, the Parties will agree to the following terms and carry out the following obligations in connection with the closing of the Property sale: (i) the Museum will instruct the escrow agent to disburse \$150,000 to the City from the Museum's gross Property sale proceeds, in satisfaction of the Museum's financial obligation toward the Public Access Improvements and for the Successor Agency's use in completing the Public Access Improvements; (ii) the 2004 City Option will be amended to substitute The Regents in place of the Museum, to grant to the City an exclusive option to acquire fee title ownership of the

Property from The Regents on July 31, 2091, at no cost to the City, and to remove the City's ability to acquire the Property upon a default of the applicable use covenants (collectively, Amended Option); (iii) the Museum and The Regents will sign and record a new grant deed in the Official Records, in the form of Attachment 1 to the Agreement (New Grant Deed), modifying the use covenants on the Property to allow a slightly broader array of cultural, institutional, and educational uses and confirming that those modified covenants will inure to the City's benefit; (iv) the City and The Regents will sign and record a memorandum in the Official Records, in the form of Attachment 2 to the Agreement (New Memorandum), providing notice of the City's rights under the Amended Option; (v) the City will not have the right to regulate The Regents' use of the Property, except to enforce the use covenants set forth in the New Grant Deed; (vi) the City will release all rights it may possess now or in the future in relation to the Amtrak Lease, or to declare a default by The Regents of any unrecorded obligations relating to the Property; and (vii) the City will consent to the Museum's sale of the Property to The Regents.

H. The Office of the City Attorney prepared this Resolution based on the information provided by City staff (including information provided by affected third parties and verified by City staff), with the understanding that this information is complete and accurate.

ACTION ITEMS

Be it resolved by the Council of the City of San Diego:

1. The Council approves the Agreement.
2. The Mayor, or designee, is authorized and directed to sign the Agreement on the City's behalf. When signed by all parties, the Agreement will be placed on file in the Office of the City Clerk as Document No. RR- 315903.

3. The Mayor, or designee, is authorized and directed to take all actions and sign all documents (including the New Memorandum) necessary to implement the Agreement.

4. The Chief Financial Officer is authorized and directed to establish a separate interest-bearing account for the B Street Corridor Fund and, upon the City's receipt of the \$150,000 escrow disbursement from the Museum's sale of the Property, to accept and deposit \$150,000 into this separate account, which will be earmarked and limited for the Successor Agency's completion of the Public Access Improvements as defined in the Agreement.

APPROVED: MARA W. ELLIOTT, City Attorney

By Kevin Reisch
Kevin Reisch
Senior Deputy City Attorney

KJR/jdf
10/23/24
Or. Dept: Econ. Dev.
Doc. No.: 3854587

I certify that the Council of the City of San Diego adopted this Resolution at a meeting held on NOV 19 2024.

DIANA J.S. FUENTES
City Clerk

By Kristell Medina
Deputy City Clerk

Approved: 11/19/24
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on NOV 19 2024, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<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"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Foster III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 19 2024.

(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:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Kristell Medina, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- 315903