



## THE CITY OF SAN DIEGO

DATE ISSUED: February 9, 2011

REPORT NO.: RA-11-04

ATTENTION: Honorable Chair and Members of the Redevelopment Agency  
Docket of February 15, 2011

SUBJECT: NTC Foundation Tax Payment

REQUESTED ACTIONS: That the Redevelopment Agency:

1. Approve the payment of any and all property taxes and assessments, including penalties and interest thereon, that are due and payable in arrears for the NTC Foundation Parcels and the payment of the property taxes and assessments due on the Foundation Parcels through the balance of 2011, in an amount not to exceed \$1,250,000 (Tax Payments).
2. Waive any obligation to reimburse Agency for the Tax Payments through and including 2011, pursuant to Section 2.13 or any other provision of each Lease, including waiver of any interest required by Section 2.13 or any other provision of each Lease.
3. Waive any default under each Lease resulting from failure by NTC Foundation or the Foundation Subsidiaries to make the Tax Payments through and including 2011 as required by Section 2.13 of each Lease.
4. Waive any default under the Grant Agreements resulting from failure by Foundation or the Foundation Subsidiaries to make the Tax Payments through and including 2011 as required by Section 2.13 of each Lease.
5. Authorize the City Chief Financial Officer, or designee, to appropriate and expend an amount not to exceed \$1,250,000 from the NTC Project Area Funds to pay the Tax Payments.
6. Authorize the Executive Director of the Agency, or designee, on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement this action and to administer the Agency's obligations, responsibilities and duties to be performed under this action.

STAFF RECOMMENDATIONS: That the Redevelopment Agency approves the requested actions.

SUMMARY: The NTC Foundation (Foundation), a 501 (c)(3) nonprofit public benefit corporation was created pursuant to the Naval Training Center Disposition and Development Agreement by and between Redevelopment Agency of the City of San Diego, and McMillin-NTC, LLC. (DDA). The sole purpose of the Foundation is to rehabilitate and operate the Civic, Arts and Cultural Center (CACC) of the NTC Historic Core.

In an effort to maximize the funding opportunities for rehabilitation of some of the historic buildings the Foundation formed for-profit wholly-owned subsidiaries, (Foundation Subsidiaries), to seek New Market Tax Credits and Historic Tax Credits (Tax Credits) financing available by federal law. In November 2005 the Foundation's financing program which included the use of Tax Credits, conventional construction and permanent debt was approved by



### Redevelopment Agency

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the Redevelopment Agency Board (Agency). Tax credit transactions require the creation of a legal entity between the tax credit investor and, in this case, NTC Foundation. In order for the Foundation, a non-profit tax exempt organization, to participate in the tax credits markets, it must create wholly-owned for-profit subsidiaries. The Agency owns the property that comprises the CACC and in accordance with the DDA has leased seven buildings to the Foundation, each pursuant to a Ground Lease (the Leases) who in turn assigned or subleased the individual Leases to Foundation Subsidiaries. Because the Agency owns the property, it is the Landlord to the Foundation and Foundation Subsidiaries for Buildings 175, 176, 177, 200, 201, 202 and Barracks 19 (Attachment 1).

The Agency and Foundation have entered into three Rehabilitation Grant Agreements (the Grant Agreements) totaling \$15,850,000 to provide some of the financing necessary to rehabilitate Foundation buildings within the CACC. Agency funds have been leveraged with other funds, including private funds provided by equity partners in Tax Credits transactions, raised by the Foundation to complete the first seven buildings and the eight additional buildings to be completed in Phase Two. The total value of improvements in these 15 buildings will be \$52,000,000.

Although the Foundation is a non-profit entity, due to the for-profit nature of the Foundation Subsidiaries the San Diego County Tax Assessor recently determined that property taxes were payable on the seven improved Foundation parcels. Section 2.13 of the Leases (Attachment 2) describes the payment of taxes by "Tenant" if any are levied. Because of the non-profit nature of the Foundation it did not anticipate payment of property taxes. The Foundation relies heavily on donations for its operations and with the downturn of the economy its ability to secure major donations has been severely impacted. Since property tax payments were not considered in the original business plan it is not able to make these tax payments. The Foundation has requested Agency assistance paying the County property taxes that are currently due, as well as expected taxes through December 2011. The estimated total of this payment including penalties and interest is \$1,250,000 (Attachment 3).

The Foundation has also requested that the Agency waive any obligation of the Foundation to reimburse the Agency for the tax payments, required by Section 2.13 of the Leases, including interest. As mentioned above, due to the difficulty to raise funds at this time, and the current level of debt senior to the Agency, it is highly unlikely that the Foundation would be able to repay this amount over the term of the Leases. If the \$1.25 million was taken from the approved Grant Agreement funding it would reduce the Phase 2 scope by two buildings. The reduced funding available for the planned rehabilitation additionally would reduce Tax Credits and construction loan funding necessary to complete Phase 2. The reduction in rehabilitated buildings also reduces the rental income projected for the Foundation to support its ongoing operations and ability to pay future property taxes.

In addition, the Foundation has requested a waiver of the default provision in the Leases and Grant Agreements which state that failure by the Foundation to pay property taxes when due is a default.

In preparation for future tax responsibilities in 2012 and beyond the Foundation has already requested property reassessments from the County Assessor. The Foundation believes they will be able to pay future property tax payments with projected income from rents and other sources of funds. Future subleases with Foundation subtenants will include property tax obligations as applicable.

FISCAL CONSIDERATIONS: There will be no impact to the City's General Fund. The payment of property taxes will be from available NTC Project Area Funds.

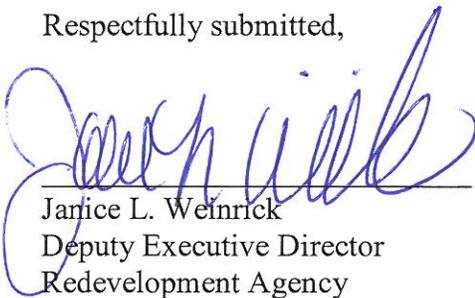
ENVIRONMENTAL REVIEW: This activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(2).

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: On November 22, 2005 the Redevelopment Agency approved the formation of Foundation Subsidiaries for the purpose of seeking New Market Tax Credits and Historic Tax Credits financing.

COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS: None

KEY STAKEHOLDERS AND PROJECT IMPACTS: Key Stakeholders include citizens of the City and County of San Diego, The City of San Diego, and the Redevelopment Agency of the City of San Diego. Failure to pay the taxes would subject the Leasehold Deeds of Trust for the Agency's property to seizure by the County Tax Collector and sale of these assets at public auction. Additionally, the Foundation would not be able to proceed with Phase 2 of the rehabilitation, and further private investment in the NTC Redevelopment Project Area would be doubtful. All of this would delay the renovation and activation of the Agency's historic property further.

Respectfully submitted,

  
Janice L. Weinrick  
Deputy Executive Director  
Redevelopment Agency

  
Approved: Jay M. Goldstone  
Assistant Executive Director  
Redevelopment Agency

- Attachments: 1. Vicinity Map  
2. Lease Section 2.13  
3. Summary of Taxes