



THE CITY OF SAN DIEGO

DATE ISSUED: December 2, 2009

REPORT NO.: RA-09-33
RTC-09-164

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Council President and City Council
Docket of December 7, 2009

SUBJECT: College Community Redevelopment Project Area – Settlement Agreement
with San Diego State University Foundation and the Board of Trustees of the
California State University and Related Actions

REQUESTED ACTIONS:

That the Redevelopment Agency:

- (1) Approve the Settlement Agreement and Mutual Releases (“Settlement Agreement”) effective October 12, 2009 by and among San Diego State University Foundation (“Foundation”), Redevelopment Agency of the City of San Diego (“Agency”), City of San Diego (“City”), and Board of Trustees of the California State University (“CSU”), thereby terminating the Cash Depository Agreement and the 1991 Agreement for Processing a Redevelopment Plan and Land Use Entitlements upon the Agency’s transfer of the property located at 5840-5846 Hardy Avenue, City of San Diego, California, (“Property”) Property to the Foundation;
- (2) Approve the Agency’s transfer of fee title of Property to the Foundation by Grant Deed;
- (3) Approve the Grant Deed and the recordable Assignment of Leases referenced in the Settlement Agreement;
- (4) Authorize the Agency Executive Director or designee to execute the Settlement Agreement, the Grant Deed, and the recordable Assignment of Leases;
- (5) Approve the Agency’s payment and expenditure of one half (1/2) of all costs and fees associated with the closing on the transfer of fee title of the Property to the Foundation;
- (6) Approve the Agency’s payment and expenditure of a total amount of Seven Hundred Fifty Thousand Dollars (\$750,000) to the Foundation as settlement of claims before June 30, 2010, or alternatively the Agency’s payment and expenditure of a total amount of Seven Hundred Fifty Thousand Dollars (\$750,000) plus simple interest as calculated in the Settlement Agreement as settlement of claims from and after June 30, 2010 but before June 30, 2012; and
- (7) Authorize the Agency Executive Director or designee, on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement the Settlement Agreement and to administer the Agency’s obligations, responsibilities and duties to be performed thereunder.



Redevelopment Agency

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City Planning & Community Investment



That the City Council:

- (1) Approve the Settlement Agreement effective October 12, 2009 by and among the Foundation, Agency, City, and CSU, thereby terminating the Cash Depository Agreement and the 1991 Agreement upon the Agency's transfer of Property to the Foundation.
- (2) Authorize the Mayor or designee to execute the Settlement Agreement;
- (3) Authorize the Mayor or designee, on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the Settlement Agreement and to administer the City's obligations, responsibilities and duties to be performed thereunder.

STAFF RECOMMENDATION TO THE REDEVELOPMENT AGENCY AND THE CITY COUNCIL: Approve the requested actions.

SUMMARY: In December 1991, the Agency and the Foundation entered into the Agreement for Processing a Redevelopment Plan and Land Use Entitlements ("1991 Agreement") which represented the Foundation's formal request to the Agency to commence the process of preparing and processing the College Community Redevelopment Plan. Pursuant to the terms of the 1991 Agreement, the Foundation provided funding for the costs incurred by the Agency for the plan adoption. The 1991 Agreement also provided for the Foundation to be reimbursed for those costs from tax increment revenue generated by the College Community Redevelopment Project Area ("Foundation Reimbursement").

Following adoption of the Redevelopment Plan in November 1993, the Agency and the Foundation collaborated on the development of the Paseo Project, a mixed-use urban village redevelopment project which was the centerpiece of the Foundation's Master Plan for the area adjacent to San Diego State University.

In March 2005, the Foundation and the Agency entered into the Cash Depository Agreement ("CDA") for the Sanctuary Suites commercial property ("Property"), located on Hardy Avenue and within the footprint of the Paseo Project, whereby the Foundation provided approximately \$5 million to the Agency for acquisition of the Property. At the time, the Agency and the Foundation were negotiating a disposition and development agreement for the Paseo Project ("Paseo DDA"). Soon after the execution of the CDA, the Foundation ceased negotiating the Paseo DDA with the Agency.

According to the terms of the CDA, in the event the Paseo DDA was not signed by the Foundation and the Agency by January 1, 2006, and the Agency had not disposed of the Property to a third party by September 1, 2007, the Foundation had the right of first offer to purchase the Property at a cost equal to the fair market value of the Property less the amounts advanced to the Agency by Foundation for the purchase of the Property ("Foundation Right of First Offer").

In March 2008, the Foundation provided written notice to the Agency of its exercise of the Foundation Right of First Offer. In July 2008, the Agency provided written notice to the Foundation alleging that the Foundation was in breach of both the 1991 Agreement and the CDA and that, therefore, the Agency had no obligation to the Foundation with respect to the

Foundation Right of First Offer or to pay the Foundation Reimbursement pursuant to the 1991 Agreement.

In September 2008, the Foundation filed a claim against the Agency in San Diego County Superior Court, Case No. 37-2008-00091165-CU-BC-CTL ("Complaint") in which the Foundation alleged causes of action against the Agency for specific performance with respect to the Foundation Right of First Offer and declaratory relief ("Action"). In February 2009, the Agency and the City filed a cross-complaint, which, as subsequently amended ("Second Amended Cross-Complaint"), alleged several causes of action against both the Foundation and the CSU.

In June 2009, the Foundation filed an administrative claim against the Agency for the Foundation Reimbursement in an amount currently estimated to be in excess of \$3,200,000 ("Reimbursement Claim"), including principal and interest. In August 2009, the Agency rejected the Reimbursement Claim.

On October 12, 2009, representatives and counsel of the Foundation, Agency, City, and CSU ("Parties") met to resolve all claims relating to the Complaint, Action, and Second Amended Cross-Complaint. At that time, the Parties negotiated and signed a written Memorandum of Principal Terms of Settlement ("Memorandum of Settlement") which, subject to the approval of the Parties' governing bodies, set forth the principal terms of settlement of the Action. The Memorandum of Settlement also contemplated the formal Settlement Agreement and Mutual Releases, which supersedes and replaces the Memorandum of Settlement.

The Requested Actions are the settlement of the three inter-related actions:

- (1) The Complaint by the Foundation against the Agency for the transfer of the Property, to which the Agency holds title under the CDA, and for payment of the difference between the \$5 million paid to the Agency by the Foundation for the Property and its fair market value, which difference is estimated to be up to \$1 million or more;
- (2) The Cross-complaint by the Agency and the City against the Foundation and CSU for breach of the CDA and the 1991 Agreement and for various forms of declaratory relief; and
- (3) The governmental claim by the Foundation against the Agency for the Foundation Reimbursement under the 1991 Agreement, which, as of July 1, 2009, amounted to approximately \$3.2 million including accrued interest.

The Settlement Agreement resolves all of the claims and actions among the Parties as described above. In addition to approval of the Settlement Agreement, the City Council and the Agency are also requested to authorize the following:

- (1) Authorize the Agency Executive Director / Mayor or designee to execute the Settlement Agreement; and,

- (2) Authorize the Agency Executive Director / Mayor or designee to sign all documents necessary and appropriate to carry out and implement the Settlement Agreement and to administer the City's and Agency's obligations, responsibilities and duties to be performed thereunder.

The Agency is also requested to take the following actions:

- (1) Approve the Agency's transfer of fee title of Property to the Foundation by Grant Deed;
- (2) Approve the Grant Deed and the recordable Assignment of Leases referenced in the Settlement Agreement;
- (3) Authorize the Agency Executive Director or designee to execute the Grant Deed, and the recordable Assignment of Leases;
- (4) Approve the Agency's payment and expenditure of one half (1/2) of all costs and fees associated with the closing on the transfer of fee title of the Property to the Foundation;
- (5) Approve the Agency's payment and expenditure of a total amount of Seven Hundred Fifty Thousand Dollars (\$750,000) to the Foundation as settlement of claims before June 30, 2010, or alternatively, the Agency's payment and expenditure of a total amount of \$750,000 plus interest as prescribed per the Settlement Agreement on June 30, 2010 or before June 30, 2012 as settlement of claims.

FISCAL CONSIDERATIONS: Approval of the Settlement Agreement reduces the Agency's debt obligation to the Foundation from approximately \$3.2 million to \$750,000. Funds in the amount of \$750,000 will be paid from the College Community Redevelopment Project Area Debt Service Fund. No impacts to the City of San Diego General Fund would result from this action.

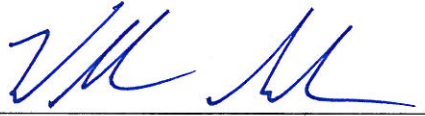
PREVIOUS AGENCY and/or COUNCIL ACTION: The City Council / Redevelopment Agency Board have considered matters related to the pending litigation during closed sessions.

COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS: None with this action.

Respectfully submitted,



Janice L. Weinrick
Deputy Executive Director,
Redevelopment Agency
Assistant Director,
City Planning and Community Investment
Department – City of San Diego



Approved by: William R. Anderson
Assistant Executive Director,
Redevelopment Agency
Director,
City Planning and Community Investment
Department – City of San Diego

- Attachments: 1. Settlement Agreement and Mutual Releases
2. Grant Deed
3. Assignment of Leases