

DATE ISSUED: June 19, 2002

REPORT NO. CMR-02-140  
RA-02-13

ATTENTION: Honorable Mayor and City Council  
Honorable Chair and Members of the Redevelopment Agency  
Docket of June 25, 2002

SUBJECT: First Amendment to the Cooperation Agreement for the Naval  
Training Center (NTC) Redevelopment Project

REFERENCE: Manager's Report No. 00-134, dated June 21, 2000  
Manager's Report No. 02-096, dated April 29, 2002

#### SUMMARY

Issue – Should the City Council and Redevelopment Agency authorize the City Manager and the Executive Director, or their designees, to execute the First Amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San Diego and to carry out all actions necessary to implement the amended Cooperation Agreement?

#### Manager's/Executive Director's Recommendations –

1) That the Redevelopment Agency authorize the Executive Director, or designee, to execute the First Amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San Diego and to carry out all actions necessary to implement the amended Cooperation Agreement.

2) That the City Council authorize the City Manager, or designee, to execute the Amendment to the Cooperation Agreement between the Redevelopment Agency and the City of San Diego and to carry out all actions necessary to implement the amended Cooperation Agreement.

Other Recommendations – None

Fiscal Impact –There is no direct fiscal impact to the City or the Agency. However, approval of the proposed Amendment, which relates to the proposed Community Facilities District pertaining to the Naval Training Center Redevelopment Project (Community Facilities District #3 [Liberty Station]), would result in a more sound financing structure with respect to bonds to be sold in connection with the district, and, ultimately, more favorable bond financing terms.

BACKGROUND

The Redevelopment Agency (“Agency”) and McMillin-NTC, LLC (“Master Developer”), entered into a Disposition and Development Agreement (the “DDA”) in June, 2000. The purposes of the DDA include effectuating the Redevelopment Plan for the Naval Training Center Redevelopment Project, adopted by the City Council in May, 1997, and the Naval Training Center Reuse Plan, adopted by the City Council in October, 1998, by providing for, among other things, the transfer of specific properties within the Redevelopment Project, by sale or long-term ground lease, from the Agency to the Master Developer and the redevelopment of these properties by the Master Developer and/or one or more assignees. The DDA contemplates the development of a mixed-use project involving the construction and installation of public infrastructure improvements, the rehabilitation and reuse of existing buildings and construction of new buildings and improvements, as well as the development of a public waterfront park and recreation area on property to be owned by the City.

At the time of approval of the DDA, the City Council and the Agency approved the Cooperation Agreement between the City and Agency which established the terms of conveyance of NTC from the City to the Agency and the terms of cooperation and mutual assistance between the City and Agency in completing the redevelopment of NTC.

Pursuant to the DDA, the Master Developer has the right to pursue formation of a Community Facilities District (“District”) in order to finance certain public improvement costs, in accordance with all applicable City policies and practices. To carry out this provision of the DDA, the Agency has agreed to cooperate reasonably with the Master Developer to pursue formation of the District. To this end, a Resolution of Intention to Establish Community Facilities District #3 (Liberty Station) was adopted by the City Council on May 7, 2002.

City Manager’s Report No. 00-134, relating to approval of the DDA, contemplated that Agency and City-owned property would be exempt from the payment of special taxes, except for property that might be the subject of future, long-term leases, (e.g., the hotel sites and some areas of the historic core), in which case future leasehold interests could be made subject to the payment of special taxes (special taxes are utilized to pay debt service on bonds). Rate and Method of Apportionment documents for Community

Facilities District #3 (Liberty Station) approved by the City Council last month, were structured such that if the District is formed and Mello-Roos bonds are subsequently sold, leasehold interests would be subject to the payment of future special taxes, and encumbered by the lien of special tax and, therefore, security for the payment of such special taxes. Also, the Agency would not be obligated to pay special taxes, and the Agency's interest in the land and leases would not be security for the payment of special taxes.

## DISCUSSION

The purpose of the First Amendment to the Cooperation Agreement ("Amendment") is to effectuate language modifications to the Cooperation Agreement to facilitate the formation of the proposed District, in which City and Agency owned property would generally be exempt from the payment of special taxes. Specifically, the Amendment is necessary to implement the District financing structure, which allows leasehold interests (not City and Agency fee interests) to be subject to, and security for, the payment of special taxes. The Amendment is intended to ensure a general continuity of taxable leasehold interests, which could help mitigate an interruption in the payment of special taxes with respect to the leaseholds.

Pursuant to the terms of the proposed Amendment, the Agency agrees not to terminate any ground lease encumbered by the lien of special tax ("Secured Lease Parcels") unless: 1) the Agency Board has expressly authorized the termination after the Financing Services Division has received 30 days advance written notice; and 2) the Agency enters into a new ground lease with, or the existing ground lease is assigned to, another entity, and the Secured Lease Parcel remains subject to the same annual special tax as prior to such termination or assignment.

To avoid an interruption in the payment of special taxes, and thereby ensure a more consistent flow of special taxes, the following provisions are also included in the proposed Amendment:

- The Agency has the right, but not the obligation, in its sole discretion, to elect to pay the special tax to the City following the termination of the applicable ground lease until such time as the Agency enters into a new ground lease with another lessee, which will then be responsible for the payment of the special tax. This provision in no way obligates the Agency to pay special taxes, but allows the Agency potential additional flexibility and discretion in administration of its ground leases.
- The Agency agrees to require the Master Developer to include a provision in all of its subleases that the sublessee will remain obligated under the sublease in the event a new ground lease is executed for the applicable Secured Lease Parcel.

This provision is intended to ensure that the ongoing businesses and operations of sublessees are not interrupted by termination of a primary ground lease and execution of a new ground lease, which could diminish the value of Secured Lease

Parcels and interrupt payment and receipt of special taxes, which may have become the obligation of sublessees by virtue of their subleases.

- The Agency agrees that all ground leases relating to the Secured Lease Parcels shall have a minimum term at least as long as the remaining term of any bonds secured by the special taxes levied on the Secured Lease Parcels not to exceed sixty-six (66) years.

This provision generally ensures the existence of leasehold or taxable interests while the bonds are outstanding and is consistent with the DDA, which already provides for sixty-six year ground leases.

- The Agency agrees that within a reasonable time after receiving notice from the City of default in the payment of the special tax by a lessee of a Secured Lease Parcel, the Agency will send written notice to the lessee demanding prompt payment in accordance with the terms of the ground lease.

ALTERNATIVE

Do not approve the First Amendment to the Cooperation Agreement. This alternative is not recommended. If the District is formed, the proposed Amendment facilitates application of a special tax methodology that would result in a more sound financing structure with respect to the issuance of Mello-Roos bonds in connection with Community Facilities District #3 (Liberty Station). A more sound financing structure enhances the marketability of the bonds, and could result in more favorable bond financing terms.

Respectfully submitted,

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Hank Cunningham  
Assistant Executive Director

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Approved: Bruce Herring  
Deputy City Manager

Note: The attachment is not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachment: 1. First Amendment to the Cooperation Agreement (Naval Training Center Redevelopment Project)