

1 BRIGGS LAW CORPORATION [FILE: 1593.62]
2 Cory J. Briggs (State Bar no. 176284)
3 Anthony N. Kim (State Bar no. 283353)
4 99 East "C" Street, Suite 111
5 Upland, CA 91786
6 Telephone: 909-949-7115

7 Attorneys for Plaintiff and Petitioner San Diegans for
8 Open Government

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/16/2019 at 01:40:00 PM

Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 SAN DIEGO COUNTY – HALL OF JUSTICE

12 SAN DIEGANS FOR OPEN GOVERNMENT,)

13 Plaintiff and Petitioner,)

14 vs.)

15 CITY OF SAN DIEGO; CIVIC SAN DIEGO;)
16 AFFIRMED HOUSING GROUP; HILLTOP)
17 FAMILY HOUSING, L.P.; and ALL PERSONS)
18 INTERESTED IN THE MATTER OF (i) A)
19 RESOLUTION OF THE COUNCIL OF THE CITY)
20 OF SAN DIEGO MAKING CERTAIN FINDINGS)
21 OF BENEFIT RELATING TO THE USE OF)
22 BOND PROCEEDS OF THE CENTRE CITY,)
23 HORTON PLAZA, AND NORTH BAY)
24 REDEVELOPMENT PROJECT AREAS)
25 TOWARD THE HILLTOP & EUCLID)
26 AFFORDABLE HOUSING PROJECT, LOCATED)
27 OUTSIDE OF SUCH REDEVELOPMENT)
28 PROJECT AREAS; and (ii) A RESOLUTION OF)
THE COUNCIL OF THE CITY OF SAN DIEGO)
MAKING CERTAIN FINDINGS AND)
DETERMINATIONS, AND APPROVING A)
DISPOSITION AND DEVELOPMENT)
AGREEMENT AND A PURCHASE AND SALE)
AGREEMENT, RELATED TO THE HILLTOP &)
EUCLID MARKET-RATE AND AFFORDABLE)
HOUSING PROJECTS IN THE SOUTHEASTERN)
SAN DIEGO MERGED REDEVELOPMENT)
PROJECT AREA,)

Defendants and Respondents.)

CASE NO. 37-2018-00040518-CU-MC-CTL

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF UNDER CODE OF CIVIL
PROCEDURE SECTIONS 526a, 860 ET
SEQ., 1060 ET SEQ., AND 1084 ET SEQ.;**
PETITION FOR WRIT OF MANDATE

Action Filed: August 13, 2018

Department: C-67 (Sturgeon)

Plaintiff and Petitioner SAN DIEGANS FOR OPEN GOVERNMENT ("Plaintiff") alleges as follows in this First Amended Complaint for Declaratory and Injunctive Relief etc.:

1 **Parties**

2 1. Plaintiff is a non-profit taxpayer and voter organization formed and operating under the
3 laws of the State of California. At least one of Plaintiff's members resides in and is registered to vote
4 in the City of San Diego, California, and Plaintiff has an interest in ensuring open, accountable,
5 responsive government, and the protection of its members' rights as taxpayers and voters.¹

6 2. Defendant CITY OF SAN DIEGO ("CITY") is a charter city under the laws of the State
7 of California, took at least some of the action that is challenged in this lawsuit, and otherwise has an
8 interest in the subject matter of this lawsuit. Defendant CIVIC SAN DIEGO ("CIVIC") is a non-profit
9 corporation formed and operating under the laws of the State of California; the sole member of CIVIC
10 is CITY. Plaintiff is informed and believes and on that basis alleges (i) that Defendant AFFIRMED
11 HOUSING GROUP ("AFFIRMED") is a corporation of unknown origin; and (ii) that Defendant
12 HILLTOP FAMILY HOUSING, L.P. ("HILLTOP"), is a limited partnership formed and operating
13 under the laws of the State of California. AFFIRMED and HILLTOP are collectively identified in this
14 pleading as "AFFIRMED."

15 **Background Information**

16 3. From July 2015 until at least August 10, 2018, PHIL RATH ("RATH") has been a
17 member of the governing board of CIVIC. CIVIC provides land-use review and approval services to
18 CITY for development proposals located in downtown San Diego and portions of southeastern San
19 Diego.

20 4. Plaintiff is informed and believes and on that basis alleges:

21 A. On or about June 8, 2016, CIVIC's Real Estate and Budget/Finance Joint
22 Committee voted in favor of that certain Hilltop & Euclid Mixed-Income, Mixed-Use Project Terms
23 and Conditions of Proposed Disposition and Development Agreement and Purchase and Sale
24

25 ¹ No matter how any portion of this pleading's allegations or prayer is construed, in no way does
26 Plaintiff intend to assert a claim or seek relief that is inconsistent with the following parameters: (1)
27 Plaintiff does not seek any relief greater than or different from the relief sought for the general public
28 or for a class of which Plaintiff's members residing within CITY's and/or the State of California's
geographical jurisdiction are themselves members. (2) This lawsuit seeks to enforce at least one
important right affecting the public interest and to confer at least one significant benefit, whether
pecuniary or non-pecuniary, on the general public or a large class of persons. (3) Private enforcement
is necessary and places a disproportionate financial burden on Plaintiff in relation to its stake in the
matter.

1 Agreement (“Project”). The developer of the Project was AFFIRMED. RATH was a member of that
2 committee, vocally supported the Project, and voted in favor.

3 B. On or about June 22, 2016, CIVIC’s governing board voted in favor of the
4 Project, which voted included a recommendation that CITY enter into an Exclusive Negotiation
5 Agreement with AFFIRMED (“ENA”) for the disposition of certain real property owned or otherwise
6 controlled by CITY. RATH vocally supported the Project and voted in favor. On or about October 4,
7 2016, CITY passed Resolution no. R-310700 approving the ENA.

8 C. On or about September 27, 2016, and based on CIVIC’s recommendation, CITY
9 passed Resolution no. R-310700, “A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
10 DIEGO APPROVING AN EXCLUSIVE NEGOTIATION AGREEMENT WITH AFFIRMED
11 HOUSING GROUP FOR A PROPOSED MIXED-USE PROJECT AT HILLTOP DRIVE AND
12 EUCLID AVENUE.”

13 5. On or about November 14, 2017:

14 A. CITY’s city council was scheduled to consider the Project under Item S500 on
15 its agenda for that day. A true and correct copy of the agenda is attached to this pleading as Exhibit
16 “A” and incorporated into this pleading by reference.

17 B. The staff report for the Project was prepared by CIVIC and included the
18 following statement: “CIVIC SAN DIEGO RECOMMENDATION: On October 25, 2017, the CivicSD
19 Board voted 8 to 0 in favor of the staff recommendation.” A true and correct copy of the staff report
20 is attached to this pleading as Exhibit “B” and incorporated into this pleading by reference.

21 C. Plaintiff submitted a letter to the city council in connection with the Project.
22 Having received and considered Plaintiff’s letter, the city council took no action on the Project and
23 continued the matter. A true and correct copy of the letter is attached to this pleading as Exhibit “C”
24 and incorporated into this pleading by reference.

25 D. Plaintiff is informed and believes and on that basis alleges that, if CIVIC’s
26 governing board considered the Project on or about October 25, 2017, RATH participated in the
27 consideration and/or voted in favor of the Project.
28

1 6. On or about June 12, 2018:

2 A. CITY passed Resolution no. R-311799, “A RESOLUTION OF THE COUNCIL
3 OF THE CITY OF SAN DIEGO MAKING CERTAIN FINDINGS OF BENEFIT RELATING TO
4 THE USE OF BOND PROCEEDS OF THE CENTRE CITY, HORTON PLAZA, AND NORTH BAY
5 REDEVELOPMENT PROJECT AREAS TOWARD THE HILLTOP & EUCLID AFFORDABLE
6 HOUSING PROJECT, LOCATED OUTSIDE OF SUCH REDEVELOPMENT PROJECT AREAS.”

7 B. CITY passed Resolution no. R-311800, “A RESOLUTION OF THE COUNCIL
8 OF THE CITY OF SAN DIEGO MAKING CERTAIN FINDINGS AND DETERMINATIONS, AND
9 APPROVING A DISPOSITION AND DEVELOPMENT AGREEMENT AND A PURCHASE AND
10 SALE AGREEMENT, RELATED TO THE HILLTOP & EUCLID MARKET-RATE AND
11 AFFORDABLE HOUSING PROJECTS IN THE SOUTHEASTERN SAN DIEGO MERGED
12 REDEVELOPMENT PROJECT AREA.”

13 7. Resolution nos. R-310700, R-311799, and R-311800 (including any and all agreements
14 approved thereby) are collectively identified in this pleading as “CITY Resolutions” or “Resolutions,”
15 and both pertain to the Project.

16 8. On or about August 9, 2018, CITY’s ethics commission approved a stipulation between
17 the commission’s executive director and RATH. With the assistance of legal counsel, RATH stipulated
18 that he had violated CITY’s ethics ordinance “by participating in a decision by the Real Estate and
19 Budget/Finance Joint Committee of the Civic Board that financially benefited [*sic*] Affirmed, one of
20 [RATH’s] sources of income within the previous twelve-month period”; and “by participating in a
21 Civic Board decision that financially benefited [*sic*] Affirmed, one of [RATH’s] sources of income
22 within the previous twelve-month period.” A true and correct copy of the stipulation (without
23 signatures) is attached to this pleading as Exhibit “D” and incorporated into this pleading by reference.

24 9. On or about November 15, 2018, California’s Fair Political Practices Commission
25 (“FPPC”) approved a stipulation, decision, and order between the FPPC’s chief of enforcement and
26 RATH. After consulting with legal counsel, RATH stipulated that he had violated the Political Reform
27 Act (twice) in connection with the Project because he “had a conflict of interest due to this source of
28 income when he participated in the discussion of and then voted for a governmental decision regarding

1 Affirmed.” A true and correct copy of the stipulation, decision, and order (without signatures) is
2 attached to this pleading as Exhibit “E” and incorporated into this pleading by reference.

3 **Jurisdiction, Venue, and Exhaustion of Administrative Remedies**

4 10. Plaintiff is bringing this action and seeks review by and relief from this Court under
5 Code of Civil Procedure Sections 526a, 860 *et seq.*, 1060 *et seq.*, and 1084 *et seq.* However, Plaintiff
6 does not have sufficient information at this time to allege that this lawsuit must be prosecuted as a
7 reverse-validation lawsuit under Section 860 and is doing so solely in an abundance of caution.

8 11. Venue in this Court is proper because the obligations, liabilities, and violations of law
9 alleged in this pleading occurred in the City of San Diego.

10 12. Plaintiff has no plain, speedy, adequate remedy in the ordinary course of law, since its
11 members and other members of the public will suffer irreparable harm as a result of Defendants’
12 violations of the law, as alleged in this pleading. The Resolutions also rest on Defendants’ failure to
13 satisfy a clear, present, ministerial duty to act in accordance with those laws. Even when Defendants
14 are permitted or required by law to exercise their discretion in approving projects under those laws, they
15 remain under a clear, present, ministerial duty to exercise their discretion within the limits of and in a
16 manner consistent with those laws. Defendants have had and continue to have the capacity and ability
17 to pass the Resolutions within the limits of and in a manner consistent with those laws, but Defendants
18 have failed and refuse to do so and have exercised their discretion beyond the limits of and in a manner
19 that is not consistent with those laws.

20 13. Plaintiff and its members also have a beneficial right and interest in Defendants’
21 fulfillment of all their legal and public duties, as alleged in this pleading.

22 **FIRST CAUSE OF ACTION:**
23 ***Resolutions’ Non-Compliance with All Applicable Laws***
(Against All Defendants)

24 14. The preceding paragraphs are incorporated into this paragraph by reference.

25 15. Plaintiff is informed and believes and on that basis alleges that the Resolutions authorize
26 the execution of various written agreements by CITY. In addition:

27 A. After becoming a member of CIVIC’s governing board, but less than 12 months
28 before voting to recommend CITY’s approval of the Resolutions and the Project, RATH received
money from AFFIRMED.

1 B. At no time when RATH voted on the Project did he disclose that he had received
2 money from AFFIRMED or recuse himself from participating in CIVIC's review and recommendation
3 process for the Project.

4 C. RATH participated in the making of the agreements that are the subject of the
5 Resolutions.

6 D. Alternatively and additionally, RATH had a financial interest in the transaction
7 that is contemplated by the Resolutions.

8 16. Thanks to RATH's illegal conduct, the Resolutions do not comply with all applicable
9 laws. By way of example and not limitation (including alternative theories of liability):

10 A. The Resolutions violate Government Code Section 1090.

11 B. The Resolutions violate the common-law prohibition against conflicts of interest.

12 C. The Resolutions violated San Diego City Charter Sections 94, 97, 100, and/or
13 101.

14 17. As a result of RATH's illegal conduct, the Resolutions (including the written agreements
15 that are the subject thereof and/or the transaction that is contemplated thereby) are void and have no
16 legal effect.

17 18. Plaintiff believes that, after a reasonable opportunity to conduct discovery, additional
18 violations of law are likely to become known.

19 19. Plaintiff is informed and believes and on that basis alleges:

20 A. CIVIC has not lawfully and effectively rescinded its recommendation on the
21 Project.

22 B. Alternatively, even if CIVIC lawfully and effectively rescinded its
23 recommendation on the Project (which Plaintiff disputes):

24 i. CITY's decision-makers on the Project and Resolutions were never
25 informed that CIVIC had rescinded its recommendation.

26 ii. None of the written materials or oral testimony provided to CITY's
27 decision-makers when they considered and approved the Project and Resolutions indicated that CIVIC
28 had rescinded its recommendation.

1 A. A judgment determining or declaring that the Resolutions do not comply with all
2 applicable laws in at least some respect, rendering them null and void, invalid, or otherwise without
3 legal effect;

4 B. Injunctive relief prohibiting Defendants from taking any of the action contemplated by
5 the Resolutions unless and until Defendants comply with all applicable legal requirements, as
6 determined by the Court;

7 C. Issuance of a writ of mandate requiring CITY to rescind the Resolutions, unless and until
8 CITY has fully complied with all other applicable laws as determined by this Court;

9 D. A constructive trust in favor of CITY on all monies paid out under the authority of the
10 Resolutions, and an order directing each recipient thereof jointly and severally to make restitution to
11 CITY for all such monies as determined by the Court;

12 E. All legal fees and other expenses incurred in connection with this proceeding, including
13 but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure; and

14 F. Any and all further relief that this Court may deem appropriate.

15 Date: January 15, 2019.

Respectfully submitted,

16 BRIGGS LAW CORPORATION

17 By: Cory J. Briggs
18 Cory J. Briggs

19 Attorneys for Plaintiff and Petitioner San Diegans for
20 Open Government

**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER CODE OF
CIVIL PROCEDURE SECTIONS 526a, 860 *ET SEQ.*, 1060 *ET SEQ.*, AND 1084 *ET SEQ.*;
PETITION FOR WRIT OF MANDATE**

Exhibit "A"

OnBase

a Hyland Software solution.

Agenda

Summary

Minutes

[Switch to Accessible View](#)**REVISED**

CITY OF SAN DIEGO COUNCIL AGENDA



COUNCIL PRESIDENT

Myrtle Cole • Fourth District

COUNCIL PRESIDENT PRO TEM

Mark Kersey • Fifth District

COUNCILMEMBERS

Barbara Bry • First District

Lorie Zapf • Second District

Christopher Ward • Third District

Chris Cate • Sixth District

Scott Sherman • Seventh District

David Alvarez • Eighth District

Georgette Gómez • Ninth District

Andrea Tevlin
Independent
Budget Analyst

Mara W. Elliott
City Attorney

Liz Maland

City Clerk

Council Chambers, 12th Floor, City Administration Building

Tuesday, November 14, 2017

**AGENDA FOR THE
REGULAR COUNCIL MEETING OF
TUESDAY, NOVEMBER 14, 2017, AT 10:00 AM
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

ALTERNATE FORMATS

This information will be made available in alternative formats upon request, as required by the Americans with Disabilities Act (ADA), by contacting the City Clerk at (619) 533-4000 or <mailto:cityclerk@sandiego.gov> (<mailto:cityclerk@sandiego.gov>). Requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services or interpreters, require different lead times. Please keep this in mind and provide as much advance notice as possible in order to ensure availability. Assistive Listening Devices (ALDs) are available in Council Chambers upon request.

SENATE BILL 343 (LATE-ARRIVING MATERIALS)

Pursuant to California Senate Bill 343 (Section 54957.5(b) of the Brown Act), late-arriving documents related to City Council meeting agenda items which are distributed to the legislative body prior to and during the Council meeting are available for public review in the Office of the City Clerk on the second floor of the City Administration Building, 202 C Street, San Diego, CA 92101. This relates to those documents received after the agenda is publicly noticed and during the 72 hours prior to the start of the meeting. Please note: Approximately one hour prior to the start of the Council Meeting, the documents will be available just outside Council Chambers in the lobby of the 12th floor of the City Administration Building in a binder labeled “SB 343.” Late-arriving materials received during the City Council meeting are available for review by making a verbal request of City Clerk staff located in Council Chambers.

NOTE: The City Council will meet in Closed Session this morning at 11:00 a.m. Public comment on Closed Session items will occur toward the end of the 10:00 a.m. session before Council adjourns into Closed Session. Copies of the Closed Session agenda are available in the Office of the City Clerk.

OTHER LEGISLATIVE MEETINGS

The **SAN DIEGO HOUSING AUTHORITY** is scheduled to meet today in the Council Chambers. A separate agenda is published for it, and is available in the Office of the City Clerk. For more information, please contact the Housing Authority Secretary at (619) 578-7550. Internet access to the agenda is available at: <http://www.sdhc.org/Media-Center/SDHC-Meetings/Housing-Authority-Meetings/> (<http://www.sdhc.org/Media-Center/SDHC-Meetings/Housing-Authority-Meetings/>)

ROLL CALL**PLEDGE OF ALLEGIANCE****APPROVAL OF COUNCIL MINUTES**

The Council Minutes of the following meetings will be approved by Unanimous Consent unless pulled for discussion:

10/02/2017

10/03/2017

ADOPTION AGENDA, CONSENT ITEMS

The Consent items listed are considered to be routine, and the environmental documents have been considered. Because these items may be handled quickly, if you wish to be heard submit your Request to Speak form prior to the start of the meeting.

ADOPTION AGENDA**CONSENT, ORDINANCES TO BE INTRODUCED:**

Item 50: City of San Diego Licensing Agreement with Mattel, Inc.

Total Estimated Cost of Proposed Action and Funding Source: N/A

Council District(s) Affected: Citywide.

Proposed Actions:

(O-2018-21)

Introduction of an Ordinance of the Council of the City of San Diego approving a licensing agreement with Mattel, Inc., allowing for the City's name and logo, and the Police and Fire-Rescue Department names and logos to be used in conjunction with the manufacture, marketing, distribution, promotion, and sale of various scaled Matchbox toy replicas.

Committee Actions Taken:

This item was heard at the Budget and Government Efficiency Committee meeting on October 25, 2017.

ACTION: Motion by Councilmember Sherman, second by Councilmember Gómez, to recommend Council approval of the City of San Diego Licensing Agreement with Mattel, Inc.

VOTE: 4-0; Bry-yea, Sherman-yea, Cate-yea, Gómez-yea.

Corporate Partnership: Natasha Collura, (619) 533-3822

City Attorney Contact: Noah J Brazier

Item 51: Seventh Amendment to Agreement with Dokken Engineering for State Route 163 and Friars Road Interchange Project – Phase 1.

Total Estimated Cost of Proposed Action and Funding Source:

This amendment will be funded by Transnet Fund 400169 and 400174. Total cost: \$497,295.

Council District(s) Affected: 7.

Proposed Actions:

(O-2018-46)

Introduction of an Ordinance authorizing the Mayor, or his designee, to execute a Seventh Amendment to the original Consultant Agreement H031387 with Dokken Engineering, Inc., for design services of Capital Improvement Program (CIP) S-00851, SR-163 and Friars Road Interchange Project in an amount not-to-exceed \$497,295;

Authorizing the Chief Financial Officer to expend an amount not-to-exceed \$497,295, of which \$400,000 is from CIP S-00851, State Route 163 and Friars Road Interchange Project, TransNet Extension 70% Cap, Fund 400169 and \$97,295 is from CIP S-00851, SR-163 and Friars Road Interchange Project, Fund 400174, TransNet Extension Regional Transportation Congestion Improvement Program (RTCIP) Fee, for the purpose of executing this amendment to the agreement.

6 votes required pursuant to Section 99 of the City Charter.

Committee Actions Taken:

This item was heard at the Infrastructure Committee meeting on October 25, 2017.

ACTION: Motion by Councilmember Gómez, second by Vice-Chair Ward, to recommend Council approve the ordinance.

VOTE: 4-0; Kersey-yea, Ward-yea, Zapf-yea, Gómez-yea.

Public Works: Abi Palaseyed, (619) 533-4654

City Attorney Contact: Ryan Gerrity

Item 52: Award a Second Amendment to the consultant agreement with Tran Consulting Engineers (TCE) for professional services for the design and construction support of Navajo Pump Station (H115442).

Total Estimated Cost of Proposed Action and Funding Source:

Cost: \$100,090.

Funding Source; CIP A-BJ.00001, Water Pump Station Restoration, (B-11023, Navajo Pump Station - formerly College Ranch Hydro Pump Station) Fund 700010.

Council District(s) Affected: 7.

Proposed Actions:

(O-2018-47)

Introduction of an Ordinance authorizing the Mayor, or his designee, for and on behalf of the City, to execute a Second Amendment to the consultant agreement with TCE that will extend the original duration for a maximum allowable five years to eight years and provide continued civil engineering services support in CIP A-BJ.00001, Water Pump Station Restoration, (B-11023, Navajo Pump Station - formerly College Ranch Hydro Pump Station), in an amount not-to-exceed \$100,090, under the terms and conditions set forth in the Second Amendment to the Agreement;

Authorizing the Chief Financial Officer to expend an amount not-to-exceed \$100,090 from CIP A-BJ.00001, Water Pump Station Restoration, (B-11023, Navajo Pump Station - formerly College Ranch Hydro Pump Station) Fund 700010, Water Utility CIP for the purpose of executing this amendment to the agreement provided that the Chief Financial Officer furnishes one or more certificates demonstrating that the funds for this expenditure are, or will be, on deposit with the City Treasury;

Authorizing the Chief Financial Officer, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves.

6 votes required pursuant to Section 99 of the City Charter.

Committee Actions Taken:

This item was heard at the Infrastructure Committee meeting on October 25, 2017.

ACTION: Motion by Councilmember Gómez, second by Vice-Chair Ward, to recommend Council approve the ordinance.

VOTE: 4-0; Kersey-yea, Ward-yea, Zapf-yea, Gómez-yea.

Public Works: Elif Cetin, (619) 533-3794

City Attorney Contact: Mark M. Mercer

CONSENT, ORDINANCES TO BE ADOPTED:**Item 53: Agreement with Kennedy/Jenks Consultants, Inc., for design and construction support services for Alvarado 2nd Pipeline Extension (H166752).**Total Estimated Cost of Proposed Action and Funding Source:

The total cost of this Agreement is \$6,144,031 from the Water Utility CIP Fund.

Council District(s) Affected: 2, 3, 7.

Proposed Actions:

Adopt the following ordinance which was introduced on 10/31/2017, Item 50. (Council voted 8-0. Councilmember Sherman not present):

(O-2018-35)

Authorizing the Mayor, or his designee, to execute, for and on behalf of the City, a phase funded agreement with Kennedy/Jenks Consultants, Inc. for design and construction support services for an amount not to exceed \$6,144,031, for a term of six years.

6 votes required pursuant to San Diego Charter Section 99.

Committee Actions Taken: N/A

Public Works: Abi Palaseyed, (619) 533-4654

City Attorney Contact: Pedro De Lara, Jr.

Item 54: San Diego Municipal Code Updates to Chapter 2, Article 7, Division 6: Ballots for Candidates.Total Estimated Cost of Proposed Action and Funding Source:

None.

Council District(s) Affected: Citywide.

Proposed Actions:

Adopt the following ordinance which was introduced on 10/31/2017, Item 60, Subitem A. (Council voted 8-0. Councilmember Sherman not present):

(O-2018-36 Rev.)

Amending Chapter 2, Article 7, Division 6 of the San Diego Municipal Code by retitling, amending, and renumbering Section 27.0603 to Section 27.0604; retitling, amending, and renumbering former Section 27.0604 to Section 27.0603; and amending Sections 27.0605, 27.0606, 27.0607, 27.0608, 27.0620, 27.0621 and 27.0624, all relating to ballots for candidates.

Committee Actions Taken: N/A

City Clerk Director: Elizabeth Maland, (619) 533-4080

City Attorney Contact: Sharon Spivak

ADOPTION AGENDA

CONSENT, RESOLUTIONS TO BE ADOPTED:

Item 100: Authorize a Railroad Right-of-Way License Agreement between the City of San Diego and San Diego Metropolitan Transit System for a license to the City for the False Bay Sewer Project in Tecolote Creek.

Total Estimated Cost of Proposed Action and Funding Source: N/A

Council District(s) Affected: 2.

Proposed Actions:

Subitem-A:

(R-2018-174)

Resolution authorizing the Railroad Right-of-Way License between the City of San Diego and the San Diego Metropolitan Transit System for the False Bay Sewer Project in Tecolote Creek.

Subitem-B:

(R-2018-177)

Resolution determining that the authorization of the Railroad Right-of-Way License between the City of San Diego and the San Diego Metropolitan System is statutorily exempt from CEQA pursuant to California Public Resources Code Section 21080.21 and California CEQA Guidelines Section 15282(k).

Committee Actions Taken:

This item was heard at the Smart Growth and Land Use Committee meeting on October 18, 2017.

ACTION: Motion by Councilmember Alvarez, second by Councilmember Cate, to recommend approval to the City Council.

VOTE: 4-0; Sherman-yea, Alvarez-yea, Cate-yea, Gómez-yea.

Real Estate Assets: Brenda Chilvers, (619) 236-6062

City Attorney Contact: Hilda R. Mendoza

Item 101: Ocean Beach Pier Structural Evaluation - First Amendment to Consultant Agreement with Moffatt & Nichol Engineers.

Total Estimated Cost of Proposed Action and Funding Source:

Original Agreement: \$167,162

This Action (First Amendment): \$518,333

Total: \$685,495

Council District(s) Affected: 2.

Proposed Actions:

(R-2018-182)

Resolution authorizing Mayor, or designee, to execute an amendment to the consultant agreement with Moffatt & Nichol Engineers for structural evaluation of the Ocean Beach Pier, in an amount not-to-exceed \$518,333, and authorizing expenditure of funds therefor.

Committee Actions Taken:

This item was heard at the Infrastructure Committee meeting on October 25, 2017.

ACTION: Motion by Councilmember Zapf, second by Councilmember Gómez, to recommend Council authorize the amendment.

VOTE: 4-0; Kersey-yea, Ward-yea, Zapf-yea, Gómez-yea.

Public Works: Kris Shackelford, (619) 533-4121

City Attorney Contact: Jeremy Jung

Item 102: Appropriations of Additional Funding and Budget Revisions to Various CIP Projects.

Total Estimated Cost of Proposed Action and Funding Source:

This Action requests to appropriate and transfer funds to various Capital Improvement Projects.

Council District(s) Affected: 1, 2, 3, 4, 5, 7, 8.

Proposed Actions:

Subitem-A:

(R-2018-171)

A resolution amending the FY 2018 CIP budget by revisions to budgets for various local street and road CIP projects through increases and transfers of appropriations totaling \$2,686,500 and authorizing the Chief Financial Officer to appropriate and expend those amounts.

Subitem-B:

(R-2018-175)

A resolution authorizing the Mayor, or designee, to request SANDAG to amend the City's 2016 program of projects consisting of TransNet-funded local street projects (the Amendment) in accordance with Resolution R-2018-171; authorizing the Mayor, or designee, to approve adjustments to TransNet-funded projects in compliance with SANDAG Board Policy No. 31, Rules 7 and 17; certifying that no more than 30 percent of the City's annual revenues will be spent on local street and road maintenance projects; certifying that all new or changed projects resulting from the Amendment will accommodate pedestrian and bicycle traffic; certifying that the TransNet Ordinance and SANDAG Board Policy No. 31 have been met; and continuing to agree to indemnify SANDAG.

Committee Actions Taken:

This item was heard at the Infrastructure Committee meeting on October 25, 2017.

ACTION: Motion by Councilmember Zapf, second by Councilmember Gómez, to recommend Council adopt the resolutions.

VOTE: 3-0; Kersey-yea, Zapf-yea, Gómez-yea. Ward-recused.

Public Works: Akram Bassyouni, (619) 533-3616

City Attorney Contact: Jeremy Jung

Item 103: Proposition 1 Grant Funding Application for the El Monte Valley Land Acquisition.Total Estimated Cost of Proposed Action and Funding Source:

The project will be funded by the Water Fund 700011. Total Cost: \$975,000.

Council District(s) Affected: Outside of City limits.

Proposed Actions:

(R-2018-185)

Authorizing the Mayor, or his designee, to make applications to the SD River Conservancy Proposition 1 grant program and take all necessary actions to secure funding in an amount not-to-exceed \$975,000, for the Proposition 1 project;

Authorizing the Chief Financial Officer to accept, appropriate and expend an amount not-to-exceed \$975,000, for the purpose of the project, contingent upon receipt of a fully executed Grant Agreement if the Grant funding is secured.

Committee Actions Taken: N/A*Public Utilities: Lan Wiborg, (619) 533-4112**City Attorney Contact: Ray Palmucci***Item 104: Amendments to the 2017 Legislative Calendar.**Total Estimated Cost of Proposed Action and Funding Source:

None.

Council District(s) Affected: Citywide.Proposed Actions:

(R-2018-180)

Adoption of a resolution amending the 2017 Legislative Calendar.

This item is not subject to the Mayor's veto.Committee Actions Taken: N/A*Council President's Office: Erin Demorest, (619) 533-3920**City Attorney Contact: Sharon Spivak***Item 105: Settlement of the pre-litigation claim of Marc Paskin, Risk Claim No. 12581.**Total Estimated Cost of Proposed Action and Funding Source:

Settlement in the amount of \$681,785 will be paid from Public Liability Fund No. 720045.

Council District(s) Affected: Citywide.

Proposed Actions:

(R-2018-106)

Approving the settlement of the Claim of Marc Paskin in the sum of \$ \$681,785.

Committee Actions Taken: N/A*Office of the City Attorney: Catherine Richardson, (619) 533-4713**City Attorney Contact: Catherine Richardson***PROCLAMATIONS/CEREMONIAL ITEMS (PRESENTED IN CHAMBERS)**

NOTE: The following Proclamations will be presented in Council Chambers and approved by Unanimous Consent unless pulled for discussion.

Item 30: 15th Anniversary of the San Diego Family Justice CenterPRESENTED BY COUNCILMEMBER CATE:

Proclaiming November 14, 2017, to be "15th Anniversary of the San Diego Family Justice Center Day" in the City of San Diego.

Item 31: Terry and Annie Shirley DayPRESENTED BY COUNCILMEMBER GÓMEZ:

Proclaiming November 14, 2017, to be "Terry and Annie Shirley Day" in the City of San Diego.

PROCLAMATIONS/CEREMONIAL ITEMS (NOT PRESENTED IN CHAMBERS)

NOTE: The following Proclamations will NOT be presented in Council Chambers. They will be approved by Unanimous Consent unless pulled for discussion.

Item 32: Runaway and Homeless Youth Awareness Month.COUNCILMEMBER WARD'S RECOMMENDATION:

Proclaiming November 2017, to be "Runaway and Homeless Youth Awareness Month" in the City of San Diego.

Item 33: Solar Turbines 90th Anniversary.COUNCILMEMBER WARD'S AND COUNCILMEMBER CATE'S RECOMMENDATION:

Proclaiming November 2017 to celebrate "Solar Turbines 90th Anniversary" in the City of San Diego.

Item 34: Bob McClure Day.

COUNCIL PRESIDENT PRO TEM KERSEY'S RECOMMENDATION:

Proclaiming November 5, 2017, to be "Bob McClure Day" in the City of San Diego.

Item 35: Eduardo Acosta Day.

COUNCILMEMBER ALVAREZ'S RECOMMENDATION:

Proclaiming November 2, 2017, to be "Eduardo Acosta Day" in the City of San Diego.

SPECIAL ORDERS OF BUSINESS

ITEMS PULLED FROM THE CONSENT AGENDA

NON-AGENDA PUBLIC COMMENT

This portion of the agenda provides an opportunity for members of the public to address the Council on items of interest within the jurisdiction of the Council. (Comments relating to items on today's docket are to be taken at the time the item is heard.)

Per Section 22.0101, Rule 2.6.2, of the San Diego Municipal Code, comments are limited to two (2) minutes per speaker. Speakers may not allocate their time to other speakers. If there are eight (8) or more speakers on a single issue, the maximum time allotted for that issue will be sixteen (16) minutes. Non-Agenda Public Comment is limited to 30 minutes during the Tuesday morning Council session. Any remaining speakers will be given an opportunity to speak after Council concludes the remaining agenda items for that day. Speaker order will generally be decided on a first-come, first-served basis. However, in the event that there are more than fifteen (15) Non-Agenda Public Comment speakers on a particular Tuesday, priority may be given

MAYOR, COUNCIL, INDEPENDENT BUDGET ANALYST, CITY ATTORNEY, CITY CLERK COMMENT

UPDATES ON PENDING LEGISLATION (MAYOR'S OFFICE)

REQUESTS FOR CONTINUANCE BY COUNCILMEMBERS

ADOPTION AGENDA, DISCUSSION ITEMS

ADOPTION AGENDA

DISCUSSION, OTHER LEGISLATIVE ITEMS:

Item 330: Fiscal Year 2018 City of San Diego Temporary Bridge Shelter Programs.

This item will be considered in the afternoon session which is scheduled to begin at 2:00 p.m.

Total Estimated Cost of Proposed Action and Funding Source:

The proposed funding sources and uses approved by this action were not approved by the Housing Authority in the FY 2018 Housing Commission Budget. Approving this action will amend the FY 2018 budget and authorize the Housing Commission to spend \$6,530,112 for the purposes outlined in this report. Please refer to staff report for further information.

Council District(s) Affected: 2, 3, 8.

Proposed Actions:

(R-2018-188)

Resolution authorizing signature of a Memorandum of Understanding between the City of San Diego and the San Diego Housing Commission for the Housing Commission to oversee, administer, and manage three temporary bridge shelter programs in Barrio Logan, Midway, and East Village, authorizing the use of specific funds for those programs, and approving related actions.

Committee Actions Taken: N/A

Housing Commission: Jeff Davis, (619) 578-7606

City Attorney Contact: Kevin Reisch (Housing Authority), Keely Halsey (City)

ADOPTION AGENDA

DISCUSSION, NOTICED HEARINGS:

Item S500: Hilltop & Euclid Mixed-Income, Mixed-Use Project Terms and Conditions of Proposed Disposition and Development Agreement and Purchase and Sale Agreement. (Added 11/9/17)

The following item will be considered in the afternoon session which is scheduled to begin at 2:00 p.m.

Total Estimated Cost of Proposed Action and Funding Source:

This action will expend a total of \$5.85 million, or \$51,770 per unit, as a loan for the Project with a combination of excess housing bonds and the LMIHAF. In consultation with City Financial Management, Comptroller and City Attorney’s office, the requested actions will approve the total expenditure of \$5.85 million and allow the City. See Staff Report and Accounting Table for additional information.

Council District(s) Affected: 4.

Proposed Actions:

Subitem-A:

(R-2018-190)

Resolution making certain findings of benefit relating to the use of bond proceeds of the Centre City, Horton Plaza, and North Bay Redevelopment Project areas toward the Hilltop & Euclid affordable housing project, located in the Southeastern San Diego Merged Redevelopment Project Area.

Subitem-B:

(R-2018-172)

Resolution approving a Disposition and Development Agreement and a Purchase and Sale Agreement related to the Hilltop & Euclid market-rate and affordable housing projects in the Southeastern San Diego Merged Redevelopment Project Area, and making related findings and determinations, including a finding under the California Environmental Quality Act that the proposed projects are part of the development program evaluated in a prior certified Program Environmental Impact Report.

Committee Actions Taken: N/A*Civic San Diego: Sherry Brooks, (619) 533-7190**City Attorney Contact: Nate Slegers***NON-AGENDA ITEMS****REPORT OUT FROM CLOSED SESSION****ADJOURNMENT IN HONOR OF APPROPRIATE PARTIES****ADJOURNMENT**

**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER CODE OF
CIVIL PROCEDURE SECTIONS 526a, 860 *ET SEQ.*, 1060 *ET SEQ.*, AND 1084 *ET SEQ.*;
PETITION FOR WRIT OF MANDATE**

Exhibit "B"



REPORT NO. CSD-17-15

DATE ISSUED: November 8, 2017

ATTENTION: Council President and City Council
Docket of November 14, 2017

ORIGINATING DEPT.: Civic San Diego

SUBJECT: Hilltop & Euclid Mixed-Income, Mixed-Use Project (vacant northeast corner of Hilltop Drive and Euclid Avenue) – Terms and Conditions of Proposed Disposition and Development Agreement with Affirmed Housing Group, and of Purchase and Sale Agreement with Ito Girard Associates and Infill Development Company – Chollas View Neighborhood of the Encanto Neighborhoods Community Plan Area

COUNCIL DISTRICT: 4

REFERENCE: None

STAFF CONTACT: Sherry Brooks, Project Manager, 619-533-7190

REQUESTED ACTION: That the City Council (“Council”):

- Makes certain findings, based on the Environmental Consistency Study, to the effect that the proposed project is within the scope of the development program evaluated in previously-certified environmental documents and that no further environmental review is required under the California Environmental Quality Act (CEQA);
- Makes certain findings supporting the City of San Diego’s (“City”) disposition of the site through sales to developers, consistent with California Health and Safety Code Section 33433;
- Approves the proposed Disposition and Development Agreement (DDA) between the City and Hilltop Family Housing, LP (Affirmed Housing Group), (“Affordable Developer”) for the purchase and development of the Hilltop & Euclid affordable family housing project (“Affordable Project”) on the City-owned property located east of and including the arroyo bisecting the project site in the Chollas View Neighborhood of the Encanto Neighborhoods Community Plan Area;
- Authorizes and requests that the Mayor, or designee, executes the DDA, including all attachments and exhibits thereto, administers the Housing Successor’s obligations,

responsibilities, and duties to be performed thereunder, and signs all documents necessary and appropriate to carry out and implement the DDA, including all attachments and exhibits thereto;

- Approves the Terms and Conditions of a proposed Purchase and Sale Agreement (PSA) between the City and Hilltop Encanto, LLC, (Ito-Girard & Associates (Ito-Girard) and Infill Development Company (Infill) (“Market Rate Developer”) for the purchase and development of the Hilltop Market Rate residential project (“Market Rate Project”) to be located west of the arroyo bisecting the site;
- Authorizes and requests that the Mayor, or designee, executes the PSA, including all attachments and exhibits thereto, administers the Housing Successor’s obligations, responsibilities, and duties to be performed thereunder, and signs all documents necessary and appropriate to carry out and implement the PSA, including all attachments and exhibits thereto;
- Authorizes the City’s Chief Financial Officer (CFO) to appropriate and expend a total \$5,850,000 loan to the Affordable Developer for the Affordable Project, contingent upon the CFO furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer; and, authorize the adjustment of bond fund amounts in order to expend all bond funds plus accrued interest, estimated as follows:

City Funding Sources	Amount
Housing Bonds: Central Imperial	\$1,003,154.19
Centre City	\$1,474,343.45
Horton Project	\$135.14
North Bay	\$2,761.14
Subtotal Housing Bonds*	\$2,480,393.92
LMIHAF (approximately)	\$3,369,606.08
TOTAL City Affordable Housing Loan	\$5,850,000.00

*(Approximate, to include all accrued interest)

- Authorizes the City’s CFO, as delegated, to deposit the \$2,201,250 purchase price for the Market Rate Property and developer repayments of the City’s loan into the LMIHAF for creation of additional affordable housing in the future.
- Makes certain findings that the Project is of benefit to the Centre City, Horton Plaza, and North Bay Redevelopment Projects.

STAFF RECOMMENDATION: Approve Requested Actions.

SUMMARY:

On October 6, 2016, the City entered into an Exclusive Negotiation Agreement (ENA) with Affirmed Housing Group (AHG) to negotiate diligently and in good faith to prepare a DDA with respect to the sale and proposed development of the approximately 8.5 acre City-owned affordable

housing asset site (Attachment A), located on the vacant northwest corner of Hilltop Drive and Euclid Avenue in Encanto, the Central Imperial Redevelopment Project Area (“Site”) and serving the City’s Promise Zone area (“Promise Zone”).

Approval of the two agreements for the two proposed development projects (Attachment B) will provide the following Project Benefits (Attachment C):

- Revitalize a vacant, blighted site, within walking distance to the Euclid Trolley Station;
- Provide 47 market-rate, for-sale opportunities and 111 affordable homes;
- Provide 1.3 acres open space, restored enhanced arroyo, pedestrian paths and public access;
- Provide 8,485 square feet commercial space with proposed full service restaurant;
- Provide off-site improvements including an enhanced bicycle and pedestrian experience on Euclid Avenue with wider sidewalks, bike lanes, medians and a parkway with trees; and
- Provide fair market value to the City for the Market Rate Property to reduce the City’s expenditure from the LMIHAF to \$1,168,356.

Affordable Project DDA – The DDA (Attachment D) provides for the Affordable Developer to design, develop, finance and construct an approximately 143,800 square-foot mixed-use, residential development in three-and four-story buildings, parking, outdoor and indoor gathering spaces, publicly accessible pedestrian trail system, amenity spaces and enhanced arroyo on the portion of the Site that is east of and includes the arroyo bisecting the Site (“Affordable Site”).

The Affordable Project will include new construction of 111 rental units affordable to households earning from 30% to 60% area median income (AMI), two market-rate manager units, 8,485 square feet of commercial space, arroyo restoration, park areas, and off-site public improvements.

The proposed DDA also provides for the terms and conditions of a City Loan in the amount of \$5,850,000 from excess Central Imperial, North Bay, Horton and Centre City Redevelopment housing bonds (“Bonds”), and the LMIHAF. The DDA also provides for the City’s contribution of the Affordable Site for the Affordable Project (Attachment E).

The Performance Schedule, included in the DDA, provides for the Affordable Developer to obtain all entitlements, approvals and financing necessary for commencement of grading and construction. The Affordable Developer is currently processing entitlements and anticipates that the initial on-and off-site work could begin in the summer/fall of 2018.

Market Rate Project PSA – AHG as the master developer for the ENA, obtained a local developer, the Market Rate Developer, to develop the Market Rate Project. The proposed Market Rate Project is located west of the arroyo bisecting the Site (“Market Rate Parcel”). The proposed PSA (Attachment F) provides for the Market Rate Developer to design, develop, finance and construct, at the Market Rate Developer’s sole cost and expense, an approximately 66,142 square-foot single-family residential development on the portion of the Site that is west of the arroyo bisecting the Site (“Market Rate Site”). The Market Rate Project will include 20 two-story detached homes and 27 two- and three-story attached townhomes to be sold at market-rate prices, with associated parking, private streets and common open space area.

The proposed PSA provides for the terms and conditions of the sale of the Market Rate Property to the Market Rate Developer for a purchase price of \$2,201,250 (“Purchase Price”). The Developer will pay the City not less than fair market value at highest and best use for the Market Rate Parcel as determined by the City’s consultant, Keyser Marston and Associates (KMA), and the proceeds will be deposited to the LMIHAF. All costs of the Market Rate Project are the responsibility of the Market Rate Developer. No credits, discounts, waivers, City assistance, nor contributions of public funds will be provided for development of the Market Rate Project (Attachment G).

The Performance Schedule, included in the PSA, provides that the Market Rate Developer obtain all final entitlements, approvals, and financing for the commencement of construction of the first phase of 21 for-sale homes by November 30, 2018. The first phase is anticipated to be completed during the summer of 2019, at which time construction will commence on the final phase of 26 for-sale homes.

Market Rate Project and Affordable Project Benefits – In addition to the benefits listed earlier, the approval of the proposed DDA and PSA for the two projects will:

- Advance the City and CivicSD’s efforts to benefit the Promise Zone residents;
- Provide gateway iconic signage along Euclid;
- Provide neighborhood pedestrian connections through a new pedestrian bridge over the on-site arroyo, along with pedestrian paths to adjacent streets;
- Engage local artists to incorporate and feature their artwork in public areas;
- Create indoor and outdoor public gathering spaces;
- Provide sustainable features such as solar panels, xeriscape, EV charging and storm water filtration;
- Expend excess Central Imperial, North Bay, Centre City and Horton Housing Bonds; and
- Provide full-time jobs for the apartments and the commercial space/restaurant.

The proposals also are consistent with the Central Imperial component of the Southeastern San Diego Redevelopment Plan and the most recent five-year implementation plan, and comply with the Affordable Housing Master Plan (AHMP) to develop affordable and market rate housing on this City property, and the following AHMP goals:

- Transit-Oriented Developments – the Site is within walking distance of transit and trolley;
- Catalyst for neighborhood investment – the two projects have the potential to spur further development on Euclid Avenue; and
- Sustainability – Minimum LEED Silver.

FISCAL CONSIDERATIONS: This action will expend a total of \$5.85 million, or \$51,770 per unit, as a loan for the Project with a combination of excess housing bonds and the LMIHAF. In consultation with City Financial Management, Comptroller and City Attorney’s office, the requested actions will approve the total expenditure of \$5.85 million and allow the City Comptroller to expend the total remaining balances of the following excess housing bonds, plus all future interest earned on the bond proceeds up to and during disbursement up to the following approximated bond balances all held by the Successor Agency. This action will also expend approximately \$3,369,606 from the LMIHAF. The City will receive land sale proceeds of

\$2,201,250 for not less than the fair market value sale of the Market Rate Parcel. The resulting net expenditure from the LMIHAF is \$1,168,356. The expenditure of the housing bonds for affordable housing development was anticipated in lines 631, 632, 643 and 644 of the Recognized Obligation Payment Schedule (ROPS) 17-18 approved by the DOF in 2017. In accordance with California Redevelopment Law (CRL), bond proceeds proposed for expenditure outside of the project area from which they were derived shall require the City Council to approve findings of benefit documenting that the funds expended outside of the project area would benefit the project area that generated the funds. The proposed Affordable Project, located in the Central Imperial component of the Southeastern Merged project area, will benefit the project areas that are contributing funds (Centre City, Horton Plaza, and North Bay) as described in the draft findings of benefit in Attachment I to this Staff Report. The estimated expenditures include the following:

City Funding Sources	Fund No.	Amount
Housing Bonds*		
Central Imperial LM/T TI 2007A	200553	\$4.94
Central Imperial LM/TE TI 2007B	200557	\$1,003,149.25
Centre City LM/TAB 2004C	200574	\$368,637.66
Centre City LM/TAB 2004D	200573	\$0.08
Centre City LM/TAB 2006B	200571	\$904.70
Centre City LM/TAB 2008	200586	\$1,104,801.01
Horton Plaza LM/TAB 2003C	200572	\$135.14
North Bay LM/TAB 2000	200562	\$2,761.14
Subtotal Housing Bonds (to include accrued interest)		\$2,480,393.92
LMIHAF (approximately)		\$3,369,606.08
TOTAL City Sources		\$5,850,000.00

ECONOMIC IMPACTS: As of December 31, 2016, approximately 81,067 construction jobs and 28,067 permanent jobs have been generated as a result of redevelopment activities.

CIVIC SAN DIEGO RECOMMENDATION: On October 25, 2017, the CivicSD Board voted 8 to 0 in favor of the staff recommendation.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: During the ENA period, the Affordable Developer attended numerous community meetings, met with neighbors, and held its own design charrettes and outreach meetings to gain community input on the proposed development, and to respond to community comments. Over 26 meetings were held, including:

- Developer’s Design Charrette, Tubman Chavez Community Center – February 22, 2017;
- Encanto Neighborhoods Community Planning Group (ENCPG) – February 7, 2017;
- Developer’s Design Charrette , Horton Elementary – December 1, 2016;
- Diamond BID Board Meeting – November 18, 2016;
- Emerald Hills Neighborhood Council – November 8, 2016;

- Diamond BID Economic Development Committee – November 8, 2016;
- Developer’s Pop-up for Walk-ins at Starbucks – October 31, 2016 and November 3, 2016;
- Encanto Lunch Bunch – November 3, 2016; and
- Chollas View Neighborhood Council – October 25, 2016.

Prior to development permit approvals, the Project design and site plans will be reviewed by the ENCPG as the entitlement processes progress for the Affordable and Market Rate Projects.

BACKGROUND

The proposed actions for the Affordable Project will allow the timely expenditure of the remaining housing Bonds for the redevelopment purposes for which the Bonds were issued. The Site’s location in close proximity to the Promise Zone advances the City’s and CivicSD’s collaboration to focus revitalization efforts benefiting the Promise Zone. The creation of affordable housing also advances the goals and objectives of the City’s AHMP.

On March 26, 2015, CivicSD, acting on behalf of the City and in accordance with the AHMP, issued the Hilltop & Euclid Request for Qualifications (RFQ), seeking well qualified development teams to enter into a public/private partnership with the City for the development of the Site for mixed-use commercial and residential uses. On May 26, 2015, the qualified RFQ respondents were issued the Request for Proposals (RFP) for fully developed teams, project concepts, tenants and financial information. The final and complete responses to the RFP were received on January 5, 2016. The City Council approved the ENA with the Developer on September 27, 2016. The Developer has diligently proceeded forward with the development entitlement process for development of the Site in good faith reliance on the ENA.

DEVELOPMENT TEAM

ROLE	FIRM/CONTACT	OWNERSHIP
Affordable Developer	Hilltop Family Housing, LP (Privately Owned) Jimmy Silverwood/Lindsay Quackenbush	Affirmed Housing Group (Privately Owned): Owner: James Silverwood
Architect	Studio E Architects/John Sheehan	Studio E Architects (Privately Owned): Owners: John Sheehan and Eric Nasland
Landscape Design	LandLAB/Neil Hadley	LandLAB, an S Corporation (Privately Owned): Owners: Summer Hadley and Neil Hadley
Business and Community	Civic Link Strategies/Tony Young	Civic Link Strategies (Privately Owned): Owner: Tony Young
Market Rate Developer	Hilltop Encanto, LLC (Privately Owned) Robert Ito/David Weiland	Ito Girard and Associates, Inc. Owners: Robert P. Ito and Roxanne Girard Infill Development Company and Jon-Lee Investment Company, LLC Owner: David L. Weiland La Jolla MJ Management, LLC Owner: Jack McGrory

Ito-Girard is an urban infill, working family home development company. Ito-Girard has developed over 1,200 affordable multi-family units and over 100 single-family homes, many located in Encanto. David Weiland has planned, designed and constructed over 1,100 working family homes, started his own home building firm in 1992, and created Jon-Lee Investment for financing purposes. Jack McGrory is the former City Manager for the City and as the CEO of Price Charities, oversaw the transformation of City Heights into the Urban Village.

EQUAL OPPORTUNITY – This agreement is subject to the City’s Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

DISCUSSION

Affordable Project

Affordable Project Description – The Project Scope, included in the DDA, provides for the development of a 113-unit, 143,800 square-foot, three- and four-story multi-family affordable housing project with at-grade parking, including 8,485 square feet of commercial uses and approximately 146 at-grade parking spaces. One hundred and eleven rental units will be affordable to households earning from 30% to 60% AMI with two market rate manager units. The Affordable Project includes studios, one-, two- and three-bedroom units, along with a residents’ club house, pool facility, residents’ garden, a half basketball court, tot lot, barbeque and picnic areas, indoor and outdoor gathering spaces, publicly accessible pedestrian trail system, enhanced arroyo with a pedestrian bridge, pocket parks, art/mural elements, iconic signage, water efficient fixtures and irrigation, xeriscape landscaping, solar panels, energy efficient appliances and lighting, and water quality facilities. Public improvements along Euclid Avenue and Hilltop Drive include wider sidewalks, parkway with street trees, a Euclid median and bike lanes.

The Affordable Developer is currently processing entitlements to be considered by the City in mid-2018, and will subsequently submit financing applications. The Affordable Project is an ideal candidate for funding from the State Affordable Housing and Sustainable Communities Program (AHSC) due to its close proximity to the Euclid Avenue multi-modal transit station, and its potential to reduce green-house gas emissions by encouraging pedestrian, bicycle and public transportation use, and by providing pedestrian, bicycle and transit improvements in the Project.

Affordable Housing DDA – The DDA contains the standard terms and conditions relating to the sale and development of the Affordable Site and governs the relationship between the City and the Developer for completion of the development. Under the DDA, the City will provide the land for the Affordable Project, and the property must be developed according to the Project Scope, and the future development entitlements.

Affordable Project Financing – The Affordable Developer has requested gap financing from the City in the form of a loan in an amount not to exceed \$5.85 million and contribution of the land. Estimated Project costs shall be reviewed and approved by the City prior to loan closing. Under the terms of the DDA, as long as there is no material change to the Project and no proposed increase to the City loan, the Mayor is authorized to approve a change in the total estimated Project

costs of up to 10%. The direct costs include prevailing wages and are based on amounts provided by Developer’s cost estimator. Affordable housing projects are often asked to carry a larger burden of providing additional community benefits, adding to the total project costs. The Affordable Project costs include the gateway iconic signage along Euclid, local public art, neighborhood pedestrian connections, restoration of the arroyo, and bicycle paths. The table below summarizes the estimated costs that were verified by KMA as within industry standards and in alignment with other affordable projects:

	Affordable Project Total	Per Unit
Direct Costs	\$29,746,511	\$263,243
Indirect Costs	\$9,366,600	\$82,890
Financing Costs	\$2,105,000	\$18,628
Total w/o Property	\$41,218,111	\$364,762
Property Costs	\$6,606,600	\$58,465
Total	\$47,824,711	\$423,228

KMA’s analysis supports the City’s gap financing assistance, representing \$51,700 per unit. Additional financing sources include a permanent loan, tax credit equity, AHSC funds, and a deferred Developer fee. The Affordable Developer plans to apply for other State grants and loan programs to lower the tax credits requested. The City’s contribution of the land for affordable housing allows the Affordable Developer to maximize the land value for tax credit purposes to increase the amount of tax credit financing. The Affordable Developer anticipates utilizing the following funding sources:

Permanent Loan	\$5,899,000
4% LIHTC Equity	\$15,327,000
City Loan (Excess Bonds + LMIHAF)	\$5,850,000
State AHSC Loan	\$11,566,000
State AHSC Grant	\$1,285,000
Deferred Developer Fee	\$1,009,000
Solar Tax Credit Equity	\$282,000
TOTAL	\$41,218,000

Other essential terms and conditions of the proposed DDA reflect typical standard provisions used in previous City-approved affordable housing agreements, as follows:

- City Assistance – The City will provide financial assistance to the Affordable Developer in an amount not to exceed \$5,850,000 from its excess Bonds and the LMIHAF in the form of a Note secured by a Deed of Trust. The City Note shall have a 55-year term and a simple interest rate of 3% with repayment from the Project’s cash flow (“Residual Receipts”). The City’s Deed of Trust will be junior to the senior private debt, Low Income Tax Credit equity and any governmental requirements.
- Residual Receipts Allocation – The Residual Receipts shall be divided in years 1-30 as 50% to the Developer and 50% to the City and the other lenders receiving Residual

Receipts payments, split in proportion to the respective loan amounts. In years 31-55 the division is 30% to Developer, 70% to City and other residual receipts lenders.

- Disbursement of City Loan – In accordance with the Disbursement Agreement, up to \$2,626,626 of the City loan funds shall be disbursed for predevelopment and site improvement costs, and up to 90% of the total City loan disbursed monthly during construction through to completion, on a pari passu basis with the senior lender’s disbursements. The final 10% will be released at permanent loan conversion.
- Predevelopment Work – The DDA provides for the Affordable Developer to process master development entitlements, mass grading and off-site improvements for the entire Site. Developer shall commence construction of the predevelopment improvements by October 31, 2018.
- Developer Fee – Consistent with CivicSD’s transaction guidelines and State tax credit requirements, the total developer fee shall not exceed \$3,600,000, with \$1,009,000 deferred during the construction period and repaid from the Project’s cash flow. If additional funding is secured or there are cost savings, the deferred fee shall be repaid from the additional proceeds and cost savings.
- Performance Schedule – The schedule allows two AHSC application rounds, and if unsuccessful or if other financing sources are found without increasing the City loan, to apply for up to three 9% tax credit rounds within the same AHSC application time period.
- Affordability Restrictions – Covenants recorded against the real property shall restrict 111 units for affordability for 55 years, depending on the final tax credits received, as shown in the table below. The Bonds expenditures and the contribution of the land will be allocated to the manager units and the higher income units, and the LMIHAF expenditures will be allocated to the lowest income units. Should the project receive 4% tax credits, the LMIHAF will fund the 26 units at 30% AMI, and 22 of the 60% AMI units.

Affordability Level	30% AMI	45% AMI	50% AMI	60% AMI	Manager	Total
4% tax credits # of units	26	0	0	85	2	113
9% tax credits # of units	27	18	35	31	2	113

- Project Surplus – If the additional funding sources are obtained and/or the actual total development costs are less than the projected costs (“Project Surplus”), the Project Surplus shall be first applied to any cost overruns, deferred developer fee or reduced funding sources. The balance of Project Surplus shall then be split 25% to the Developer and 75% to the City and the other subordinate lenders. The Project Surplus shall be determined based on the final cost certification prepared within 120 days of Project completion.
- Commercial Rent – Fifty percent of the rental income from the commercial space, minus 10% for operating costs, shall be paid to the City towards repayment of the City Loan.

- Green Building – The Project shall incorporate sustainable features and procedures whenever feasible and achieve LEED Silver certification or equivalent. The Affordable Developer proposes to include solar hot water, xeriscape landscaping, photovoltaic, strategic storm water management and electric vehicle charging devices.

Market Rate Project

Market Rate Project Description – The Project Scope, included in the PSA, provides for the development of an approximately 66,142 square-foot market-rate, for-sale residential development of 47 homes with attached two-car garages. The Market Rate Project includes 20 detached two-story, three- and four-bedroom, single-family homes with front and back yards, and 27 attached three-bedroom townhomes with front yards. The development will include associated private streets, off-street parking, pedestrian pathways, common open space amenity areas, water efficient fixtures and irrigation, drought tolerant/resistant landscaping, energy efficient appliances and lighting, and water quality facilities. Public improvements along Hilltop Drive include sidewalks and parkway with street trees. The Market Rate Developer’s anticipated sales prices are not restricted by the PSA, are based on market comparable sales in the area and estimated to be affordable to households earning in the range of 93% – 110% AMI, for workforce, moderate-income working families.

Market Rate Project Financing – The Market Rate Project’s development costs are to be financed entirely by the Market Rate Developer. The table below summarizes the estimated costs:

Market Rate Project Costs	Total	Per Unit
Direct Costs	\$8,892,600	\$189,204
Indirect Costs	\$2,546,222	\$54,175
Financing Costs	\$1,003,000	\$21,340
Total w/o Property	\$12,442,822	\$264,719
Property Costs	\$2,201,250	\$46,835
Total	\$14,643,072	\$311,554

The direct costs are based on amounts provided by the Developer’s cost estimator. KMA’s analysis of the Proforma supports the proposed costs as within industry standards.

Market Rate Project PSA – The proposed PSA provides for the terms and conditions of the sale of the Market Rate Property and for the schedule of development of the property. All Market Rate Project costs are the responsibility of the Market Rate Developer. No credits, discounts, waivers, City assistance, nor contributions of public funds will be provided for development of the Market Rate Project. The essential terms and conditions of the proposed PSA reflect typical standard provisions used in City-approved, market-rate purchase and sale agreements, as follows:

- Purchase Price – No City Assistance – The City is not providing any financial assistance to the Market Rate Project. The Market Rate Developer is responsible for all project costs and will finance all costs with private financing and Developer equity. The total purchase

price is \$2,201,250, which represents not less than the fair market value at highest and best use for the Market Rate Parcel as determined by KMA. The Purchase Price will be deposited into the City’s LMIHAF for future affordable housing. Payment of the Purchase Price will be phased, corresponding to the number of residential units in each phase, at \$46,835 per unit.

- Schedule of Performance – The Performance Schedule provides that the Market Rate Developer obtain all final entitlements, approvals, and financing before the commencement of construction, and allows extensions of the Closing and Completion dates up to 180 days total. The schedule allows construction of the homes in the following 2 phases:
 - Phase 1 – 21 homes, including all streets and common area improvements. This phase is scheduled to close escrow by November 30, 2018; and
 - Phase 2 – 26 homes, this phase is scheduled to close escrow by September 2019.

- Green Building – The Market Rate Project shall incorporate sustainable features and procedures, including water-efficient fixtures, plumbing and irrigation, draught tolerant/resistant landscaping, energy-efficient appliances and lighting, recycled materials and storm water management facilities.

Proposed Market Rate and Affordable Project Schedules–

Action	Completion Date
Begin Site Improvements construction	Summer/Fall 2018
Market Rate Project Phase 1 close escrow and begin construction	November 2018
Market Rate Project complete construction of all phases	May 2020
Affordable Project AHSC Application	January 2019
Affordable Project begin construction	Fall/Winter 2019
Affordable Project complete construction	Summer/Fall 2021

California Redevelopment Law (CRL) 33433 Findings – The Southeastern Merged Redevelopment Plan, adopted February 28, 2011, identifies goals and objectives for revitalization of the community including the development of a range of housing types available to a mix of incomes in well-planned and well-designed development projects. The Central Imperial Component of the Southeastern Merged Five-Year Implementation Plan, amended on February 15, 2011, includes the Hilltop & Euclid site for development of residential uses with affordable homes.

CRL Section 33433 requires a certain report be prepared before the properties can be sold, and two such Summary Reports have been prepared by KMA in accordance with CRL Section 33433 (Attachments E and G). The findings to be made by the City Council pursuant to CRL 33433 include:

- The consideration to be received by the City for the sale of the Affordable Project Property is not less than fair reuse value at the use and with the covenants, conditions, and development costs required by the DDA.
- The consideration to be received by the City for the sale of the Market-Rate Project Property under the PSA is not less than fair market value at its highest and best use.

- The sale of the Affordable Project Property and the development of the Affordable Project in accordance with the DDA will assist in the elimination of blight in the Southeastern Merged Redevelopment Project Area, and is consistent with the Redevelopment Plan and the most recent five-year implementation plan adopted pursuant to Code section 33490, which designate the Hilltop & Euclid site for development with residential housing including affordable and market rate homes.
- The sale of the Affordable Project Property and the development of the Affordable Project in accordance with the DDA will assist in providing housing for low-income or moderate-income persons.
- The sale of the Market-Rate Project Property and the development of the Market-Rate Project in accordance with the PSA will assist in the elimination of blight in the Southeastern Merged Redevelopment Project Area, and is consistent with the Redevelopment Plan and the most recent five-year implementation plan adopted pursuant to Code section 33490, which designate the Hilltop & Euclid site for development with residential housing including affordable and market rate homes.

Project Benefits – Both Projects advance the goals of the Bonds, the Redevelopment Project, Community Plan, AHMP and Promise Zone by providing mixed-income and affordable units, and:

- A mix of uses, diverse housing types and development intensity supporting transit use;
- A vibrant and connected pedestrian-oriented community with a mix uses;
- Promotion of local economic prosperity, outreach to local construction firms and workers;
- Providing permanent employment opportunities;
- Neighborhood and community-serving commercial destinations;
- Gathering spaces, recreational trails, park space, and open spaces accessible to the public;
- Contribution to the reduction of green-house gas by providing development near transit;
- Providing sustainable building construction; and
- Elimination of blight and revitalization by development of underutilized vacant parcels.

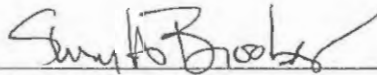
Environmental Impact – Development within the Encanto Community Planning area is covered under the Final Environmental Impact Report (FEIR) for the Southeastern San Diego and Encanto Neighborhoods Community Plan Updates (“Encanto FEIR”), certified by the City Council on November 16, 2015 (Resolution R-31077); The Encanto FEIR is a “Program EIR” prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The information contained in the Encanto FEIR reflects the independent judgement of the City as the Lead Agency. Consistent with best practices suggested by Section 15168, an Encanto FEIR 15168 Consistency Evaluation (“Evaluation”) has been completed to evaluate the project’s consistency with the findings of the Encanto FEIR. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Encanto FEIR, the project is within the scope of the development program described in the Encanto FEIR and is adequately described within the document for the purposes of CEQA; and, that none of the conditions listed in Section 15162 exist. Therefore, no further environmental documentation is required under CEQA.

CONCLUSION

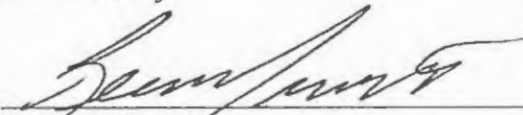
The DDA and PSA are expected to produce a catalytic mixed-use and mixed-income project that would assist CivicSD and the City in meeting a critical need for new housing, including affordable and local recreational amenities. The proposed DDA and PSA will also advance the City's revitalization efforts in Encanto and the Promise Zone by developing this long vacant site, and providing a transit-oriented, mixed-use development with commercial opportunities, along with market-rate for-sale homes, and homes affordable to low- and moderate-income families. Staff recommends approval of the proposed DDA and PSA and related actions.

Respectfully submitted,

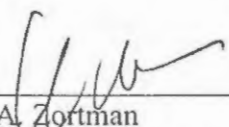
Concurred by:



Sherry A. Brooks
Project Manager



Reese A. Jarrett
President



Kristine A. Zortman
Vice President, Neighborhood Investment

- Attachments:
- A – Site Map
 - B – Site Concept Plan
 - C – Project Summary Table
 - D – DDA
 - E – Affordable Project Summary Report by KMA
 - F – PSA
 - G – Market Rate Project Summary Report by KMA
 - H – Consistency Evaluation
 - I – Draft Findings of Benefit

**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER CODE OF
CIVIL PROCEDURE SECTIONS 526a, 860 *ET SEQ.*, 1060 *ET SEQ.*, AND 1084 *ET SEQ.*;
PETITION FOR WRIT OF MANDATE**

Exhibit "C"

San Diegans For Open Government

4833 Santa Monica Ave., #7878

San Diego, CA 92107

November 14, 2017

San Diego City Council
c/o City Clerk Elizabeth Maland
202 "C" Street, 2nd Floor
San Diego, CA 92101

Re: November 14, 2017 City Council Docket Item S500:

Hilltop & Euclid Mixed-Income, Mixed-Use Project Terms and Conditions of Proposed Disposition and Development Agreement and Purchase and Sale Agreement.

Dear City Council:

I submit this letter on behalf of San Diegans for Open Government ("SDOG"), of which I am a member and as a taxpayer and resident of the City of San Diego. You know that I, as a former City of San Diego Planning Commissioner, am absolutely in favor of affordable-housing projects. However, I am concerned that certain developers are taking advantage of the process and receiving preference and special treatment from the City of San Diego and its consultant, Civic San Diego, to the exclusion and detriment of other well-qualified developers who are not willing to engage in the pay-to-play activities and back-room influence described below.

Utilizing Civic San Diego discourages qualified developers from participating and is detrimental to creating a diverse and extensive supply of affordable housing in the City of San Diego. Civic San Diego's favoritism and corruption in land-use and affordable-housing decisions must be stopped. The City of San Diego needs to immediately sever all ties with Civic San Diego and bring all their functions and decision-making back in-house where it can be performed by career civil servants motivated only by the public good rather than contracted consultants whose personal economic interests and ties to the applicants they supervise undermine the credibility and integrity of the land-use decisions and recommendations they make for the City of San Diego.

Call to Action

By this correspondence I'm informing you that conflicts of interest within Civic San Diego legally preclude the City of San Diego from making any findings, entering into any agreements, and/or providing any funding for the proposed Hilltop & Euclid Mixed-Income, Mixed-Use Project as proposed in November 14, 2017, as Item

S500. The City of San Diego is legally required to reject all of the proposed actions before you today for the Item, disqualify the entire Hilltop & Euclid development team, and start the solicitation and negotiation process for the Hilltop & Euclid development site all over again. If you do not do so, SDOG will petition the San Diego County Superior Court to set aside your actions on the grounds they violate local and state conflict-of-interest laws.

Background

Civic San Diego, by and through its Board of Directors, solicited and selected/recommended the proposed Hilltop & Euclid development team led by Affirmed Housing Group and its principal, James Silverwood. Moreover, Civic San Diego, again by and through its Board of Directors, negotiated/recommended terms, conditions, and funding on behalf of the City of San Diego with Affirmed Housing Group. Finally, Civic San Diego, once more by and through the Board, is now recommending that the City Council and Mayor make the findings, enter into the agreements, and provide the funding referenced in Report No. CSD-17-15 dated November 8, 2017 (attached hereto as Exhibit A, pp. 001-013) and the Memorandum dated October 31, 2017 (attached hereto as Exhibit B, p. 014) for the benefit of Affirmed Housing Group.

Conflict of Interest

The City of San Diego cannot take any of the actions before you today due to a conflict of interest that arises from Civic San Diego's Director Phil Rath concurrently being a registered lobbyist for Affirmed Housing Group. Mr. Rath's lobbyist filings with the County of San Diego show he has been employed by Affirmed Housing Group as a lobbyist in San Diego County from December 9, 2013, to the present. [See attached Exhibit F, pp. 028-031].

At no time during Civic San Diego's solicitation, selection, or recommendation process did Mr. Rath disclose his on-going relationship with Affirmed Housing Group or recuse himself from this matter as required by law. To the contrary, he actively participated in the entire process that brings Affirmed Housing Group before you today.

On June 8, 2016, Mr. Rath voted to approve the selection and recommendation that the City of San Diego enter into an Exclusive Negotiating Agreement (ENA) with Affirmed Housing Group relative to the Hilltop & Euclid site. [See attached Exhibit E, pp. 026-027].

Two weeks later, on June 22, 2016, Mr. Rath voted as follows:

Motion: Director Robinson moved and Director Shaw seconded a motion that CivicSD recommends that the City Council of the City of San Diego approves and enters into an Exclusive Negotiation Agreement (ENA) with the Affirmed Housing Group for the 8.5-acre Hilltop & Euclid Site to negotiate a Disposition and Development Agreement for the purchase and development of City-owned land for a mixed-use residential project that would include residential (market-rate and affordable), retail and public uses with the caveat that the developer conducts multiple workshops with the community during the exclusive negotiation process.

Vote: Secretary Vasquez, Treasurer Jenkins and Directors Rath, Robinson, Shaw, and Kilkenny voted "Aye;" Vice Chair Geisler voted "Nay." The motion passed.

[See attached Exhibit D, pp. 023-024].

Finally, on October 25, 2017 Mr. Rath voted once more to recommend that the City Council take the actions currently before you. [See attached Exhibit C, pp. 017-019].

Conclusion

Because Mr. Rath, as a member of the Board of Directors of Civic San Diego, is a registered lobbyist for and receives income from Affirmed Housing Group, it calls into question whether Civic San Diego's votes and recommendations to the City referenced above were in the best interests of the City, the taxpayers, and the public or whether they were in the best interests of Mr. Rath and his client. This conflict of interest has tainted the selection of and proposed transaction with Affirmed Housing Group. No action short of complete rejection and disqualification of Affirmed Housing Group can cure this actual and/or perceived conflict of interest.

SDOG believes that Mr. Rath's and Civic San Diego's conduct violates Government Code Section 1090, San Diego City Charter Section 94, the common law, and other legal authorities that prohibit public officials and their consultants from acting on matters over which they have or appear to have a conflict of interest. And as you know from the precedent-setting appellate decision the City recently lost against SDOG, members of the public like SDOG have standing to sue to enforce conflict-of-interest laws.

For the reasons stated above, the City of San Diego cannot take any of the action proposed today for Item S500.

Sincerely,

Theresa Quiroz, Member
SDOG Board of Directors

Attachments

Exhibit A



REPORT NO. CSD-17-15

DATE ISSUED: November 8, 2017

ATTENTION: Council President and City Council
Docket of November 14, 2017

ORIGINATING DEPT.: Civic San Diego

SUBJECT: Hilltop & Euclid Mixed-Income, Mixed-Use Project (vacant northeast corner of Hilltop Drive and Euclid Avenue) – Terms and Conditions of Proposed Disposition and Development Agreement with Affirmed Housing Group, and of Purchase and Sale Agreement with Ito Girard Associates and Infill Development Company – Chollas View Neighborhood of the Encanto Neighborhoods Community Plan Area

COUNCIL DISTRICT: 4

REFERENCE: None

STAFF CONTACT: Sherry Brooks, Project Manager, 619-533-7190

REQUESTED ACTION: That the City Council (“Council”):

- Makes certain findings, based on the Environmental Consistency Study, to the effect that the proposed project is within the scope of the development program evaluated in previously-certified environmental documents and that no further environmental review is required under the California Environmental Quality Act (CEQA);
- Makes certain findings supporting the City of San Diego’s (“City”) disposition of the site through sales to developers, consistent with California Health and Safety Code Section 33433;
- Approves the proposed Disposition and Development Agreement (DDA) between the City and Hilltop Family Housing, LP (Affirmed Housing Group), (“Affordable Developer”) for the purchase and development of the Hilltop & Euclid affordable family housing project (“Affordable Project”) on the City-owned property located east of and including the arroyo bisecting the project site in the Chollas View Neighborhood of the Encanto Neighborhoods Community Plan Area;
- Authorizes and requests that the Mayor, or designee, executes the DDA, including all attachments and exhibits thereto, administers the Housing Successor’s obligations,

responsibilities, and duties to be performed thereunder, and signs all documents necessary and appropriate to carry out and implement the DDA, including all attachments and exhibits thereto;

- Approves the Terms and Conditions of a proposed Purchase and Sale Agreement (PSA) between the City and Hilltop Encanto, LLC, (Ito-Girard & Associates (Ito-Girard) and Infill Development Company (Infill) (“Market Rate Developer”) for the purchase and development of the Hilltop Market Rate residential project (“Market Rate Project”) to be located west of the arroyo bisecting the site;
- Authorizes and requests that the Mayor, or designee, executes the PSA, including all attachments and exhibits thereto, administers the Housing Successor’s obligations, responsibilities, and duties to be performed thereunder, and signs all documents necessary and appropriate to carry out and implement the PSA, including all attachments and exhibits thereto;
- Authorizes the City’s Chief Financial Officer (CFO) to appropriate and expend a total \$5,850,000 loan to the Affordable Developer for the Affordable Project, contingent upon the CFO furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer; and, authorize the adjustment of bond fund amounts in order to expend all bond funds plus accrued interest, estimated as follows:

City Funding Sources	Amount
Housing Bonds: Central Imperial	\$1,003,154.19
Centre City	\$1,474,343.45
Horton Project	\$135.14
North Bay	\$2,761.14
Subtotal Housing Bonds*	\$2,480,393.92
LMIHAF (approximately)	\$3,369,606.08
TOTAL City Affordable Housing Loan	\$5,850,000.00

*(Approximate, to include all accrued interest)

- Authorizes the City’s CFO, as delegated, to deposit the \$2,201,250 purchase price for the Market Rate Property and developer repayments of the City’s loan into the LMIHAF for creation of additional affordable housing in the future.
- Makes certain findings that the Project is of benefit to the Centre City, Horton Plaza, and North Bay Redevelopment Projects.

STAFF RECOMMENDATION: Approve Requested Actions.

SUMMARY:

On October 6, 2016, the City entered into an Exclusive Negotiation Agreement (ENA) with Affirmed Housing Group (AHG) to negotiate diligently and in good faith to prepare a DDA with respect to the sale and proposed development of the approximately 8.5 acre City-owned affordable

housing asset site (Attachment A), located on the vacant northwest corner of Hilltop Drive and Euclid Avenue in Encanto, the Central Imperial Redevelopment Project Area (“Site”) and serving the City’s Promise Zone area (“Promise Zone”).

Approval of the two agreements for the two proposed development projects (Attachment B) will provide the following Project Benefits (Attachment C):

- Revitalize a vacant, blighted site, within walking distance to the Euclid Trolley Station;
- Provide 47 market-rate, for-sale opportunities and 111 affordable homes;
- Provide 1.3 acres open space, restored enhanced arroyo, pedestrian paths and public access;
- Provide 8,485 square feet commercial space with proposed full service restaurant;
- Provide off-site improvements including an enhanced bicycle and pedestrian experience on Euclid Avenue with wider sidewalks, bike lanes, medians and a parkway with trees; and
- Provide fair market value to the City for the Market Rate Property to reduce the City’s expenditure from the LMIHAF to \$1,168,356.

Affordable Project DDA – The DDA (Attachment D) provides for the Affordable Developer to design, develop, finance and construct an approximately 143,800 square-foot mixed-use, residential development in three-and four-story buildings, parking, outdoor and indoor gathering spaces, publicly accessible pedestrian trail system, amenity spaces and enhanced arroyo on the portion of the Site that is east of and includes the arroyo bisecting the Site (“Affordable Site”).

The Affordable Project will include new construction of 111 rental units affordable to households earning from 30% to 60% area median income (AMI), two market-rate manager units, 8,485 square feet of commercial space, arroyo restoration, park areas, and off-site public improvements.

The proposed DDA also provides for the terms and conditions of a City Loan in the amount of \$5,850,000 from excess Central Imperial, North Bay, Horton and Centre City Redevelopment housing bonds (“Bonds”), and the LMIHAF. The DDA also provides for the City’s contribution of the Affordable Site for the Affordable Project (Attachment E).

The Performance Schedule, included in the DDA, provides for the Affordable Developer to obtain all entitlements, approvals and financing necessary for commencement of grading and construction. The Affordable Developer is currently processing entitlements and anticipates that the initial on-and off-site work could begin in the summer/fall of 2018.

Market Rate Project PSA – AHG as the master developer for the ENA, obtained a local developer, the Market Rate Developer, to develop the Market Rate Project. The proposed Market Rate Project is located west of the arroyo bisecting the Site (“Market Rate Parcel”). The proposed PSA (Attachment F) provides for the Market Rate Developer to design, develop, finance and construct, at the Market Rate Developer’s sole cost and expense, an approximately 66,142 square-foot single-family residential development on the portion of the Site that is west of the arroyo bisecting the Site (“Market Rate Site”). The Market Rate Project will include 20 two-story detached homes and 27 two- and three-story attached townhomes to be sold at market-rate prices, with associated parking, private streets and common open space area.

The proposed PSA provides for the terms and conditions of the sale of the Market Rate Property to the Market Rate Developer for a purchase price of \$2,201,250 (“Purchase Price”). The Developer will pay the City not less than fair market value at highest and best use for the Market Rate Parcel as determined by the City’s consultant, Keyser Marston and Associates (KMA), and the proceeds will be deposited to the LMIHAF. All costs of the Market Rate Project are the responsibility of the Market Rate Developer. No credits, discounts, waivers, City assistance, nor contributions of public funds will be provided for development of the Market Rate Project (Attachment G).

The Performance Schedule, included in the PSA, provides that the Market Rate Developer obtain all final entitlements, approvals, and financing for the commencement of construction of the first phase of 21 for-sale homes by November 30, 2018. The first phase is anticipated to be completed during the summer of 2019, at which time construction will commence on the final phase of 26 for-sale homes.

Market Rate Project and Affordable Project Benefits – In addition to the benefits listed earlier, the approval of the proposed DDA and PSA for the two projects will:

- Advance the City and CivicSD’s efforts to benefit the Promise Zone residents;
- Provide gateway iconic signage along Euclid;
- Provide neighborhood pedestrian connections through a new pedestrian bridge over the on-site arroyo, along with pedestrian paths to adjacent streets;
- Engage local artists to incorporate and feature their artwork in public areas;
- Create indoor and outdoor public gathering spaces;
- Provide sustainable features such as solar panels, xeriscape, EV charging and storm water filtration;
- Expend excess Central Imperial, North Bay, Centre City and Horton Housing Bonds; and
- Provide full-time jobs for the apartments and the commercial space/restaurant.

The proposals also are consistent with the Central Imperial component of the Southeastern San Diego Redevelopment Plan and the most recent five-year implementation plan, and comply with the Affordable Housing Master Plan (AHMP) to develop affordable and market rate housing on this City property, and the following AHMP goals:

- Transit-Oriented Developments – the Site is within walking distance of transit and trolley;
- Catalyst for neighborhood investment – the two projects have the potential to spur further development on Euclid Avenue; and
- Sustainability – Minimum LEED Silver.

FISCAL CONSIDERATIONS: This action will expend a total of \$5.85 million, or \$51,770 per unit, as a loan for the Project with a combination of excess housing bonds and the LMIHAF. In consultation with City Financial Management, Comptroller and City Attorney’s office, the requested actions will approve the total expenditure of \$5.85 million and allow the City Comptroller to expend the total remaining balances of the following excess housing bonds, plus all future interest earned on the bond proceeds up to and during disbursement up to the following approximated bond balances all held by the Successor Agency. This action will also expend approximately \$3,369,606 from the LMIHAF. The City will receive land sale proceeds of

\$2,201,250 for not less than the fair market value sale of the Market Rate Parcel. The resulting net expenditure from the LMIHAF is \$1,168,356. The expenditure of the housing bonds for affordable housing development was anticipated in lines 631, 632, 643 and 644 of the Recognized Obligation Payment Schedule (ROPS) 17-18 approved by the DOF in 2017. In accordance with California Redevelopment Law (CRL), bond proceeds proposed for expenditure outside of the project area from which they were derived shall require the City Council to approve findings of benefit documenting that the funds expended outside of the project area would benefit the project area that generated the funds. The proposed Affordable Project, located in the Central Imperial component of the Southeastern Merged project area, will benefit the project areas that are contributing funds (Centre City, Horton Plaza, and North Bay) as described in the draft findings of benefit in Attachment I to this Staff Report. The estimated expenditures include the following:

City Funding Sources	Fund No.	Amount
Housing Bonds*		
Central Imperial LM/T TI 2007A	200553	\$4.94
Central Imperial LM/TE TI 2007B	200557	\$1,003,149.25
Centre City LM/TAB 2004C	200574	\$368,637.66
Centre City LM/TAB 2004D	200573	\$0.08
Centre City LM/TAB 2006B	200571	\$904.70
Centre City LM/TAB 2008	200586	\$1,104,801.01
Horton Plaza LM/TAB 2003C	200572	\$135.14
North Bay LM/TAB 2000	200562	\$2,761.14
Subtotal Housing Bonds (to include accrued interest)		\$2,480,393.92
LMIHAF (approximately)		\$3,369,606.08
TOTAL City Sources		\$5,850,000.00

ECONOMIC IMPACTS: As of December 31, 2016, approximately 81,067 construction jobs and 28,067 permanent jobs have been generated as a result of redevelopment activities.

CIVIC SAN DIEGO RECOMMENDATION: On October 25, 2017, the CivicSD Board voted 8 to 0 in favor of the staff recommendation.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: During the ENA period, the Affordable Developer attended numerous community meetings, met with neighbors, and held its own design charrettes and outreach meetings to gain community input on the proposed development, and to respond to community comments. Over 26 meetings were held, including:

- Developer’s Design Charrette, Tubman Chavez Community Center – February 22, 2017;
- Encanto Neighborhoods Community Planning Group (ENCPG) – February 7, 2017;
- Developer’s Design Charrette , Horton Elementary – December 1, 2016;
- Diamond BID Board Meeting – November 18, 2016;
- Emerald Hills Neighborhood Council – November 8, 2016;

- Diamond BID Economic Development Committee – November 8, 2016;
- Developer’s Pop-up for Walk-ins at Starbucks – October 31, 2016 and November 3, 2016;
- Encanto Lunch Bunch – November 3, 2016; and
- Chollas View Neighborhood Council – October 25, 2016.

Prior to development permit approvals, the Project design and site plans will be reviewed by the ENCPG as the entitlement processes progress for the Affordable and Market Rate Projects.

BACKGROUND

The proposed actions for the Affordable Project will allow the timely expenditure of the remaining housing Bonds for the redevelopment purposes for which the Bonds were issued. The Site’s location in close proximity to the Promise Zone advances the City’s and CivicSD’s collaboration to focus revitalization efforts benefiting the Promise Zone. The creation of affordable housing also advances the goals and objectives of the City’s AHMP.

On March 26, 2015, CivicSD, acting on behalf of the City and in accordance with the AHMP, issued the Hilltop & Euclid Request for Qualifications (RFQ), seeking well qualified development teams to enter into a public/private partnership with the City for the development of the Site for mixed-use commercial and residential uses. On May 26, 2015, the qualified RFQ respondents were issued the Request for Proposals (RFP) for fully developed teams, project concepts, tenants and financial information. The final and complete responses to the RFP were received on January 5, 2016. The City Council approved the ENA with the Developer on September 27, 2016. The Developer has diligently proceeded forward with the development entitlement process for development of the Site in good faith reliance on the ENA.

DEVELOPMENT TEAM

ROLE	FIRM/CONTACT	OWNERSHIP
Affordable Developer	Hilltop Family Housing, LP (Privately Owned) Jimmy Silverwood/Lindsay Quackenbush	Affirmed Housing Group (Privately Owned): Owner: James Silverwood
Architect	Studio E Architects/John Sheehan	Studio E Architects (Privately Owned): Owners: John Sheehan and Eric Nasland
Landscape Design	LandLAB/Neil Hadley	LandLAB, an S Corporation (Privately Owned): Owners: Summer Hadley and Neil Hadley
Business and Community	Civic Link Strategies/Tony Young	Civic Link Strategies (Privately Owned): Owner: Tony Young
Market Rate Developer	Hilltop Encanto, LLC (Privately Owned) Robert Ito/David Weiland	Ito Girard and Associates, Inc. Owners: Robert P. Ito and Roxanne Girard Infill Development Company and Jon-Lee Investment Company, LLC Owner: David L. Weiland La Jolla MJ Management, LLC Owner: Jack McGrory

Ito-Girard is an urban infill, working family home development company. Ito-Girard has developed over 1,200 affordable multi-family units and over 100 single-family homes, many located in Encanto. David Weiland has planned, designed and constructed over 1,100 working family homes, started his own home building firm in 1992, and created Jon-Lee Investment for financing purposes. Jack McGrory is the former City Manager for the City and as the CEO of Price Charities, oversaw the transformation of City Heights into the Urban Village.

EQUAL OPPORTUNITY – This agreement is subject to the City’s Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

DISCUSSION

Affordable Project

Affordable Project Description – The Project Scope, included in the DDA, provides for the development of a 113-unit, 143,800 square-foot, three- and four-story multi-family affordable housing project with at-grade parking, including 8,485 square feet of commercial uses and approximately 146 at-grade parking spaces. One hundred and eleven rental units will be affordable to households earning from 30% to 60% AMI with two market rate manager units. The Affordable Project includes studios, one-, two- and three-bedroom units, along with a residents’ club house, pool facility, residents’ garden, a half basketball court, tot lot, barbeque and picnic areas, indoor and outdoor gathering spaces, publicly accessible pedestrian trail system, enhanced arroyo with a pedestrian bridge, pocket parks, art/mural elements, iconic signage, water efficient fixtures and irrigation, xeriscape landscaping, solar panels, energy efficient appliances and lighting, and water quality facilities. Public improvements along Euclid Avenue and Hilltop Drive include wider sidewalks, parkway with street trees, a Euclid median and bike lanes.

The Affordable Developer is currently processing entitlements to be considered by the City in mid-2018, and will subsequently submit financing applications. The Affordable Project is an ideal candidate for funding from the State Affordable Housing and Sustainable Communities Program (AHSC) due to its close proximity to the Euclid Avenue multi-modal transit station, and its potential to reduce green-house gas emissions by encouraging pedestrian, bicycle and public transportation use, and by providing pedestrian, bicycle and transit improvements in the Project.

Affordable Housing DDA – The DDA contains the standard terms and conditions relating to the sale and development of the Affordable Site and governs the relationship between the City and the Developer for completion of the development. Under the DDA, the City will provide the land for the Affordable Project, and the property must be developed according to the Project Scope, and the future development entitlements.

Affordable Project Financing – The Affordable Developer has requested gap financing from the City in the form of a loan in an amount not to exceed \$5.85 million and contribution of the land. Estimated Project costs shall be reviewed and approved by the City prior to loan closing. Under the terms of the DDA, as long as there is no material change to the Project and no proposed increase to the City loan, the Mayor is authorized to approve a change in the total estimated Project

costs of up to 10%. The direct costs include prevailing wages and are based on amounts provided by Developer’s cost estimator. Affordable housing projects are often asked to carry a larger burden of providing additional community benefits, adding to the total project costs. The Affordable Project costs include the gateway iconic signage along Euclid, local public art, neighborhood pedestrian connections, restoration of the arroyo, and bicycle paths. The table below summarizes the estimated costs that were verified by KMA as within industry standards and in alignment with other affordable projects:

	Affordable Project Total	Per Unit
Direct Costs	\$29,746,511	\$263,243
Indirect Costs	\$9,366,600	\$82,890
Financing Costs	\$2,105,000	\$18,628
Total w/o Property	\$41,218,111	\$364,762
Property Costs	\$6,606,600	\$58,465
Total	\$47,824,711	\$423,228

KMA’s analysis supports the City’s gap financing assistance, representing \$51,700 per unit. Additional financing sources include a permanent loan, tax credit equity, AHSC funds, and a deferred Developer fee. The Affordable Developer plans to apply for other State grants and loan programs to lower the tax credits requested. The City’s contribution of the land for affordable housing allows the Affordable Developer to maximize the land value for tax credit purposes to increase the amount of tax credit financing. The Affordable Developer anticipates utilizing the following funding sources:

Permanent Loan	\$5,899,000
4% LIHTC Equity	\$15,327,000
City Loan (Excess Bonds + LMIHAF)	\$5,850,000
State AHSC Loan	\$11,566,000
State AHSC Grant	\$1,285,000
Deferred Developer Fee	\$1,009,000
Solar Tax Credit Equity	\$282,000
TOTAL	\$41,218,000

Other essential terms and conditions of the proposed DDA reflect typical standard provisions used in previous City-approved affordable housing agreements, as follows:

- City Assistance – The City will provide financial assistance to the Affordable Developer in an amount not to exceed \$5,850,000 from its excess Bonds and the LMIHAF in the form of a Note secured by a Deed of Trust. The City Note shall have a 55-year term and a simple interest rate of 3% with repayment from the Project’s cash flow (“Residual Receipts”). The City’s Deed of Trust will be junior to the senior private debt, Low Income Tax Credit equity and any governmental requirements.
- Residual Receipts Allocation – The Residual Receipts shall be divided in years 1-30 as 50% to the Developer and 50% to the City and the other lenders receiving Residual

Receipts payments, split in proportion to the respective loan amounts. In years 31-55 the division is 30% to Developer, 70% to City and other residual receipts lenders.

- Disbursement of City Loan – In accordance with the Disbursement Agreement, up to \$2,626,626 of the City loan funds shall be disbursed for predevelopment and site improvement costs, and up to 90% of the total City loan disbursed monthly during construction through to completion, on a pari passu basis with the senior lender’s disbursements. The final 10% will be released at permanent loan conversion.
- Predevelopment Work – The DDA provides for the Affordable Developer to process master development entitlements, mass grading and off-site improvements for the entire Site. Developer shall commence construction of the predevelopment improvements by October 31, 2018.
- Developer Fee – Consistent with CivicSD’s transaction guidelines and State tax credit requirements, the total developer fee shall not exceed \$3,600,000, with \$1,009,000 deferred during the construction period and repaid from the Project’s cash flow. If additional funding is secured or there are cost savings, the deferred fee shall be repaid from the additional proceeds and cost savings.
- Performance Schedule – The schedule allows two AHSC application rounds, and if unsuccessful or if other financing sources are found without increasing the City loan, to apply for up to three 9% tax credit rounds within the same AHSC application time period.
- Affordability Restrictions – Covenants recorded against the real property shall restrict 111 units for affordability for 55 years, depending on the final tax credits received, as shown in the table below. The Bonds expenditures and the contribution of the land will be allocated to the manager units and the higher income units, and the LMIHAF expenditures will be allocated to the lowest income units. Should the project receive 4% tax credits, the LMIHAF will fund the 26 units at 30% AMI, and 22 of the 60% AMI units.

Affordability Level	30% AMI	45% AMI	50% AMI	60% AMI	Manager	Total
4% tax credits # of units	26	0	0	85	2	113
9% tax credits # of units	27	18	35	31	2	113

- Project Surplus – If the additional funding sources are obtained and/or the actual total development costs are less than the projected costs (“Project Surplus”), the Project Surplus shall be first applied to any cost overruns, deferred developer fee or reduced funding sources. The balance of Project Surplus shall then be split 25% to the Developer and 75% to the City and the other subordinate lenders. The Project Surplus shall be determined based on the final cost certification prepared within 120 days of Project completion.
- Commercial Rent – Fifty percent of the rental income from the commercial space, minus 10% for operating costs, shall be paid to the City towards repayment of the City Loan.

- Green Building – The Project shall incorporate sustainable features and procedures whenever feasible and achieve LEED Silver certification or equivalent. The Affordable Developer proposes to include solar hot water, xeriscape landscaping, photovoltaic, strategic storm water management and electric vehicle charging devices.

Market Rate Project

Market Rate Project Description – The Project Scope, included in the PSA, provides for the development of an approximately 66,142 square-foot market-rate, for-sale residential development of 47 homes with attached two-car garages. The Market Rate Project includes 20 detached two-story, three- and four-bedroom, single-family homes with front and back yards, and 27 attached three-bedroom townhomes with front yards. The development will include associated private streets, off-street parking, pedestrian pathways, common open space amenity areas, water efficient fixtures and irrigation, drought tolerant/resistant landscaping, energy efficient appliances and lighting, and water quality facilities. Public improvements along Hilltop Drive include sidewalks and parkway with street trees. The Market Rate Developer’s anticipated sales prices are not restricted by the PSA, are based on market comparable sales in the area and estimated to be affordable to households earning in the range of 93% – 110% AMI, for workforce, moderate-income working families.

Market Rate Project Financing – The Market Rate Project’s development costs are to be financed entirely by the Market Rate Developer. The table below summarizes the estimated costs:

Market Rate Project Costs	Total	Per Unit
Direct Costs	\$8,892,600	\$189,204
Indirect Costs	\$2,546,222	\$54,175
Financing Costs	\$1,003,000	\$21,340
Total w/o Property	\$12,442,822	\$264,719
Property Costs	\$2,201,250	\$46,835
Total	\$14,643,072	\$311,554

The direct costs are based on amounts provided by the Developer’s cost estimator. KMA’s analysis of the Proforma supports the proposed costs as within industry standards.

Market Rate Project PSA – The proposed PSA provides for the terms and conditions of the sale of the Market Rate Property and for the schedule of development of the property. All Market Rate Project costs are the responsibility of the Market Rate Developer. No credits, discounts, waivers, City assistance, nor contributions of public funds will be provided for development of the Market Rate Project. The essential terms and conditions of the proposed PSA reflect typical standard provisions used in City-approved, market-rate purchase and sale agreements, as follows:

- Purchase Price – No City Assistance – The City is not providing any financial assistance to the Market Rate Project. The Market Rate Developer is responsible for all project costs and will finance all costs with private financing and Developer equity. The total purchase

price is \$2,201,250, which represents not less than the fair market value at highest and best use for the Market Rate Parcel as determined by KMA. The Purchase Price will be deposited into the City’s LMIHAF for future affordable housing. Payment of the Purchase Price will be phased, corresponding to the number of residential units in each phase, at \$46,835 per unit.

- Schedule of Performance – The Performance Schedule provides that the Market Rate Developer obtain all final entitlements, approvals, and financing before the commencement of construction, and allows extensions of the Closing and Completion dates up to 180 days total. The schedule allows construction of the homes in the following 2 phases:
 - Phase 1 – 21 homes, including all streets and common area improvements. This phase is scheduled to close escrow by November 30, 2018; and
 - Phase 2 – 26 homes, this phase is scheduled to close escrow by September 2019.

- Green Building – The Market Rate Project shall incorporate sustainable features and procedures, including water-efficient fixtures, plumbing and irrigation, draught tolerant/resistant landscaping, energy-efficient appliances and lighting, recycled materials and storm water management facilities.

Proposed Market Rate and Affordable Project Schedules–

Action	Completion Date
Begin Site Improvements construction	Summer/Fall 2018
Market Rate Project Phase 1 close escrow and begin construction	November 2018
Market Rate Project complete construction of all phases	May 2020
Affordable Project AHSC Application	January 2019
Affordable Project begin construction	Fall/Winter 2019
Affordable Project complete construction	Summer/Fall 2021

California Redevelopment Law (CRL) 33433 Findings – The Southeastern Merged Redevelopment Plan, adopted February 28, 2011, identifies goals and objectives for revitalization of the community including the development of a range of housing types available to a mix of incomes in well-planned and well-designed development projects. The Central Imperial Component of the Southeastern Merged Five-Year Implementation Plan, amended on February 15, 2011, includes the Hilltop & Euclid site for development of residential uses with affordable homes.

CRL Section 33433 requires a certain report be prepared before the properties can be sold, and two such Summary Reports have been prepared by KMA in accordance with CRL Section 33433 (Attachments E and G). The findings to be made by the City Council pursuant to CRL 33433 include:

- The consideration to be received by the City for the sale of the Affordable Project Property is not less than fair reuse value at the use and with the covenants, conditions, and development costs required by the DDA.
- The consideration to be received by the City for the sale of the Market-Rate Project Property under the PSA is not less than fair market value at its highest and best use.

- The sale of the Affordable Project Property and the development of the Affordable Project in accordance with the DDA will assist in the elimination of blight in the Southeastern Merged Redevelopment Project Area, and is consistent with the Redevelopment Plan and the most recent five-year implementation plan adopted pursuant to Code section 33490, which designate the Hilltop & Euclid site for development with residential housing including affordable and market rate homes.
- The sale of the Affordable Project Property and the development of the Affordable Project in accordance with the DDA will assist in providing housing for low-income or moderate-income persons.
- The sale of the Market-Rate Project Property and the development of the Market-Rate Project in accordance with the PSA will assist in the elimination of blight in the Southeastern Merged Redevelopment Project Area, and is consistent with the Redevelopment Plan and the most recent five-year implementation plan adopted pursuant to Code section 33490, which designate the Hilltop & Euclid site for development with residential housing including affordable and market rate homes.

Project Benefits – Both Projects advance the goals of the Bonds, the Redevelopment Project, Community Plan, AHMP and Promise Zone by providing mixed-income and affordable units, and:

- A mix of uses, diverse housing types and development intensity supporting transit use;
- A vibrant and connected pedestrian-oriented community with a mix uses;
- Promotion of local economic prosperity, outreach to local construction firms and workers;
- Providing permanent employment opportunities;
- Neighborhood and community-serving commercial destinations;
- Gathering spaces, recreational trails, park space, and open spaces accessible to the public;
- Contribution to the reduction of green-house gas by providing development near transit;
- Providing sustainable building construction; and
- Elimination of blight and revitalization by development of underutilized vacant parcels.

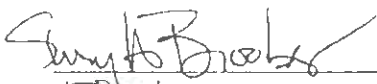
Environmental Impact – Development within the Encanto Community Planning area is covered under the Final Environmental Impact Report (FEIR) for the Southeastern San Diego and Encanto Neighborhoods Community Plan Updates (“Encanto FEIR”), certified by the City Council on November 16, 2015 (Resolution R-31077); The Encanto FEIR is a “Program EIR” prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The information contained in the Encanto FEIR reflects the independent judgement of the City as the Lead Agency. Consistent with best practices suggested by Section 15168, an Encanto FEIR 15168 Consistency Evaluation (“Evaluation”) has been completed to evaluate the project’s consistency with the findings of the Encanto FEIR. The Evaluation concluded that the environmental impacts of the project were adequately addressed in the Encanto FEIR, the project is within the scope of the development program described in the Encanto FEIR and is adequately described within the document for the purposes of CEQA; and, that none of the conditions listed in Section 15162 exist. Therefore, no further environmental documentation is required under CEQA.

CONCLUSION

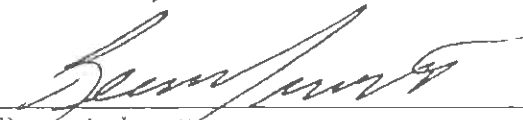
The DDA and PSA are expected to produce a catalytic mixed-use and mixed-income project that would assist CivicSD and the City in meeting a critical need for new housing, including affordable and local recreational amenities. The proposed DDA and PSA will also advance the City's revitalization efforts in Encanto and the Promise Zone by developing this long vacant site, and providing a transit-oriented, mixed-use development with commercial opportunities, along with market-rate for-sale homes, and homes affordable to low- and moderate-income families. Staff recommends approval of the proposed DDA and PSA and related actions.

Respectfully submitted,

Concurred by:



Sherry A. Brooks
Project Manager



Reese A. Jarrett
President



Kristine A. Zortman
Vice President, Neighborhood Investment

- Attachments:
- A – Site Map
 - B - Site Concept Plan
 - C – Project Summary Table
 - D – DDA
 - E – Affordable Project Summary Report by KMA
 - F - PSA
 - G - Market Rate Project Summary Report by KMA
 - H Consistency Evaluation
 - I – Draft Findings of Benefit

Exhibit B

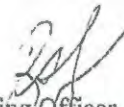



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: October 31, 2017

TO: Honorable Council President Myrtle Cole

FROM: Reese A. Jarrett, President, Civic San Diego 
via David Graham, Deputy Chief Operating Officer 

SUBJECT: Hilltop & Euclid Mixed-Income, Mixed-Use Project (vacant northeast corner of Hilltop Drive and Euclid Avenue) –Proposed Disposition and Development Agreement with Affirmed Housing Group, and Purchase and Sale Agreement with Ito Girard Associates and Infill Development Company – Encanto Neighborhoods

This memorandum shall serve as the formal request to docket the Hilltop & Euclid proposed Disposition and Development Agreement with Affirmed Housing Group, and proposed Purchase and Sale Agreement with Ito Girard Associates and Infill Development as a supplemental item at City Council on Tuesday, November 14, 2017. Due to efforts to advance affordable housing and complete development of this long vacant blighted site, staff requests the item be docketed on November 14, 2017.

The proposed Project contemplates the development of 113 rental units, with 111 affordable, serving individuals and families, 47 for-sale, market-rate townhomes and single family homes, Euclid Avenue street-level retail uses proposed for a sit-down restaurant and other uses, associated surface parking, open space and restored enhanced arroyo, pedestrian paths and public access, iconic signage, art elements, and off-site improvements including completion of Hilltop Drive connecting to Euclid Avenue, wider sidewalks, bicycle lanes, medians, and landscaped parkway. The project site is approximately 8.5 acres, which is owned by the City as an affordable housing asset. The proposed Disposition and Development Agreement (DDA) will facilitate advancing the project timely as an affordable housing project with ground-floor retail, and the proposed Purchase and Sale Agreement (PSA) will provide market-rate home ownership opportunities for the area.

The proposed DDA and PSA contain the standard City provisions for advancing the permitting, (currently in process) disposition and development of the two projects on the site, providing for an affordable housing loan for the 111 affordable rental units, and terms of the sale of the property. The permits and entitlements for the two projects will ultimately come back before the Encanto Neighborhoods Community Planning Group and the City Council for approvals, anticipated for mid-2018.

Thank you for your assistance with docketing this matter.

cc: Aimee Faucett, Chief of Staff, Office of the Mayor
Mike Hansen, Deputy Chief of Staff, Office of the Mayor
Andrea Tevlin, Independent Budget Analyst
Scott Chadwick, Chief Operating Officer
Stacey LoMedico, Assistant Chief Operating Officer
Marshall Anderson, Director of Council Affairs, Office of the Mayor
Erin Demorest, Director of Legislative Affairs, Office of the Council President
Katie Keach, Director, Communications Department
Libby Borg, Docket Liaison, Docket Office

Exhibit C



MINUTES
CIVIC SAN DIEGO
REGULAR BOARD OF DIRECTORS
MEETING OF
WEDNESDAY, OCTOBER 25, 2017

CALL TO ORDER: Interim Chair Richard Geisler called the Regular Meeting of Civic San Diego (“CivicSD”) to order at 1:15 p.m. in the Board Room, CivicSD, 401 B Street, Suite 400, San Diego

PRESENT: Interim Chair Richard Geisler, Treasurer Michael Jenkins, and Directors Paola Avila, Robert Robinson, Theodore Shaw, Phil Rath, Stephen Russell and Maddy Kilkenny

EXCUSED: Secretary Carlos Vasquez

Item #2: Non-Agenda Public Comment

Horton Plaza Theatres Foundation Executive Director Sandra Simmons provided an annual update on the Foundation’s activities and current plan for the use of the Lyceum Theatre.

Item #3: Disclosures – Ex Parte Communications - General

None.

Item #4: Potential Agenda Items – Board Discussion – General

Treasurer Jenkins requested an Informational item be added to the next month’s agenda regarding the former redevelopment properties that are no longer subject to the Request for Proposal (RFP) process, for properties being sold through the general sales process with the City.

Item #5: Corporation Report

In addition to the written report, President Reese A. Jarrett provided an update on corporate activities, community outreach, and staff announcements.

President Reese also welcomed CivicSD’s newest Director Stephen Russell to the Board of Directors.

Interim Chair Geisler announced that Items 8 and 10 would be moved to the Consent Agenda.

CONSENT AGENDA

Item #6: Approval of Minutes from the Regular Board Meeting of September 27, 2017

Item #8: Appointment of Director Stephen Russell to the Budget/Finance Committee and Real Estate Committee – General

Item #10: Authorization to Amend Contract with Devaney Pate Morris & Cameron, LLP to Engage Sub-consultants for Additional Market Analysis for the Smart Growth Fund – Areawide

Motion: Treasurer Jenkins moved and Director Shaw seconded a motion that CivicSD:

Item #6: Approves the Minutes from the Regular Board Meeting of September 27, 2017

Item #8: Appoints Director Stephen Russell to the Budget/Finance Committee and Real Estate Committee for the balance of 2017.

Item #10: Authorizes an amendment to the contract with Devaney Pate Morrie & Cameron, LLP to engage subconsultants for additional market analysis for the Smart Growth Fund.

Vote: Interim Chair Geisler, Treasurer Jenkins and Directors Avila, Kilkenny, Rath, Robinson, Russell and Shaw voted “Aye.” **The motion passed.**

DISCUSSION

Item #7: Commencement of Selection Process for Board Officers, Committee Members and Committee Chairs – General

Interim Chair Geisler reminded Board Members to complete and return the questionnaire for Commencement of Selection Process for Board Officers, Committee Members and Committee Chairs to the Clerk of the Board Michele O’Malia by November 8, 2017.

The Executive Committee will meet on November 15, 2017 to consider the slate of recommendations, and to formalize a recommendation for the Board’s consideration.

The Annual Board of Directors Meeting will be conducted on January 24, 2018 and the selection of Board Officers, Committee Members and Committee Chairs will be announced.

REGULAR AGENDA

Item #9: Hilltop & Euclid Mixed-Income, Mixed-Use Project (vacant northeast corner of Hilltop Drive and Euclid Avenue) – Terms and Conditions of Proposed Disposition and Development Agreement with Affirmed Housing Group, and of Purchase and Sale Agreement with Ito Girard Associates and Infill Development Company – Chollas View Neighborhood of the Encanto Neighborhoods Community Plan Area

Speaker's Slip in support of the item was submitted by:

Ralph Dimarucut, Council President Coles Office, but he did not speak.

Project Manager Sherry Brooks introduced the item and summarized the background information utilizing a PowerPoint presentation. Ms. Brooks explained the RFQ/P process, community outreach and terms of the DDA.

The Board engaged in discussion regarding density of the project and the affordable housing component. Director Russell requested that additional comprehensive project descriptions be provided in the future.

Developers Jimmy Silverwood, Robert Ito and David Weiland provided information on the project and site. In response to questions regarding density, they explained the acreage and challenges of the project, as well as financial aspects, community input, and tax credits.

Motion: Director Robinson moved and Treasurer Jenkins seconded a motion that CivicSD recommends that the City Council of the City of San Diego ("Council"):

- Makes certain findings, based on the Environmental Consistency Study, to the effect that the proposed Project is within the scope of the development program evaluated in previously-certified environmental documents and that no further environmental review is required under the California Environmental Quality Act (CEQA);
- Makes certain findings supporting the City of San Diego's ("City") disposition of the site through sales to Developers, consistent with California Health and Safety Code Section 33433;
- Approves the proposed Disposition and Development Agreement (DDA) between the City and Hilltop Family Housing, LP (Affirmed Housing Group), ("Affordable Developer") for the purchase and development of the Hilltop & Euclid affordable family housing project ("Affordable Project") on the City-owned property located east of the arroyo bisecting the Site in the Chollas View Neighborhood of the Encanto Neighborhoods Community Plan Area ("Encanto");
- Authorizes and requests that the Mayor, or designee, executes the DDA, including all attachments and exhibits thereto,

administers the Housing Successor's obligations, responsibilities, and duties to be performed thereunder, and signs all documents necessary and appropriate to carry out and implement the DDA, including all attachments and exhibits thereto;

- Approves the Terms and Conditions of a proposed Purchase and Sale Agreement (PSA) between the City and Hilltop Encanto, LLC, (Ito-Girard & Associates (Ito-Girard) and Infill Development Company (Infill) ("Market Rate Developer") for the purchase and development of the Hilltop Market Rate residential project ("Market Rate Project") to be located west of the arroyo bisecting the site;
- Authorizes the City's Chief Financial Officer (CFO) to appropriate and expend a total \$5,850,000 loan to the Affordable Developer for the Affordable Project, contingent upon the CFO furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer; and, if necessary due to bond funding restrictions, delays or determinations from the State Department of Finance (DOF), to fund the entire loan from Low and Moderate Income Housing Asset Fund (LMIHAF), or adjust bond fund amounts to expend all bond funds plus accrued interest, as follows:

City Funding Sources	Amount
Housing Bonds: Central Imperial	\$1,003,154.19
Centre City	\$1,474,343.45
Horton Project	\$135.14
North Bay	\$2,761.14
Subtotal Housing Bonds*	\$2,480,393.92
LMIHAF (approximately)	\$3,369,606.08
TOTAL City Affordable Housing Loan	\$5,850,000.00

*(Approximate, to include all accrued interest)

- Authorizes the City's CFO, as delegated, to deposit the \$2,201,250 purchase price for the Market Rate Property and Developer repayments of the City's loan into the LMIHAF for creation of additional affordable housing in the future.

Vote: Interim Chair Geisler, Treasurer Jenkins and Directors Avila, Kilkenny, Rath, Robinson, Russell and Shaw voted "Aye." **The motion passed.**

Item #11: **FY17 Audited Financial Statements Pertaining to the Administrative Operations of Civic San Diego – General**

Chief Financial and Operating Officer Andrew T. Phillips presented the item and provided details of the Audited Financial Statements for the Fiscal Year ended June 30, 2017, referencing a PowerPoint presentation.

The Board commended Mr. Phillips for bringing the audit forward and on schedule.

Motion: Director Shaw moved and Director Kilkenny seconded a motion that CivicSD accepts the Fiscal Year 2017 Audited Financial Statements of CivicSD.

Vote: Interim Chair Geisler, Treasurer Jenkins and Directors Kilkenny, Rath, Robinson, Russell and Shaw voted "Aye." Director Avila was absent and did not vote. **The motion passed.**

Item #12: **Closed Session**

At 2:10 p.m. CivicSD Legal Counsel Shawn Hagerty announced that the Board of Directors would adjourn into Closed Session to discuss the matters listed in Agenda Item #12.

a. CONFERENCE WITH LEGAL COUNSEL-EXISTING LITIGATION
(Gov. Code section 54956.9(d)(1))
Name of Case: Baxamusa v. Civic San Diego, SDSC Case No. 37-2015-00012092-CU-PT-CTL

b. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Gov. Code section 54956.8)
Property: 614 Market Street, San Diego, CA, 92101 (Park it on Market); 289 6th Avenue, San Diego, CA, 92101 (6th & K Parkade) ; 1612 6th Avenue, San Diego, CA, 92101 (Cedar Gateway Parking Facility); 3829 29th Street, San Diego, CA, 92104 (North Park Public Parking Garage).
Civic Negotiator: CEO and CFO/COO.

Negotiating Party: City of San Diego.

Under negotiation: Price and terms of payments.

Item #13: **Announcement of Action Taken in Closed Session**

The Board of Directors met in Closed Session and discussed the two items listed under Items #12a and #12b, but no reportable action was taken.

ADJOURNMENT ~ The meeting was adjourned a 2:45 p.m.

Exhibit D



MINUTES

CIVIC SAN DIEGO
REGULAR BOARD OF DIRECTORS
MEETING OF

WEDNESDAY, JUNE 22, 2016

CALL TO ORDER: Chair Gattas called the Regular Meeting of Civic San Diego (“CivicSD”) to order at 6:04 p.m. at Lincoln High School Auditorium, 4777 Imperial Avenue, San Diego, CA 92113

PRESENT: Chair Jeff Gattas, Vice Chair Richard Geisler, Secretary Carlos Vasquez, Treasurer Michael Jenkins, and Directors Maddy Kilkenny, Phil Rath, Robert Robinson and Theodore Shaw

Chair Gattas announced and welcomed Mayoral Appointment Maddy Kilkenny as Director to the Civic San Diego Board of Directors.

Item #2: Non-Agenda Public Comment

Gigi Gonzalez commented about the need of a downtown San Diego dog park at Children’s Park and inquired about the Development Plan.

Item #3: Approval of the Minutes of the Annual Board Meeting of May 25, 2016

Director Robinson moved and Director Shaw seconded a motion for approval of the minutes of May 25, 2016. Vice Chair Geisler, Secretary Vasquez, Treasurer Jenkins and Directors Rath, Robinson, and Shaw voted “Aye;” Chair Gattas and Director Kilkenny abstained. **The motion passed.**

Item #4: Disclosures – Ex Parte Communications

Director Jenkins announced his prior relationship with Ground Work San Diego, a corporation affiliated with one of the presenters at the meeting. Director Jenkins consulted with Legal Counsel and stated he was not disqualified from voting on the item.

Item #5: Potential Agenda Items – Board Discussion – General

Director Jenkins requested further discussion on the Request for Proposals process.

Item #6: Corporation Report

In addition to the written report, President Reese A. Jarrett provided an update on corporate activities and community outreach and welcomed Project Manager – Parking, Transit and Transportation Benjamin Verdugo, and Intern – Neighborhood Investment Ryan Bubnack to the corporation.

Chair Gattas announced there would not be a presentation for Item #7. Speaker's Slip indicating a neutral position was submitted by Gary Smith.

INFORMATIONAL

Item #7: Report on the Status of Recommendations in the Comprehensive Parking Plan for Downtown San Diego

Chair Gattas announced that Item #9 would be pulled from the Consent Agenda and moved to the Regular Agenda. Item #10 would be pulled from the Consent Agenda and return to CivicSD Committee Meeting.

CONSENT AGENDA

Item #8: North Park Public Parking Garage (3829 29th Street) – Amendment to Calendar Year 2016 Budget for Elevator Modernization and Wayfinding Program

Item #10: Amended 2017 Economic & Community Development Work Plan – Citywide Returned to CivicSD Budget/Finance Committee scheduled for July 13, 2016.

Item #11: 14th Street Promenade Master Plan (11 full blocks of 14th Street bounded by C Street in the North and Commercial Avenue in the South) – East Village Neighborhood of the Downtown Community Plan Area

A Speaker's Slip indicating support received by Gary Smith, but was not heard.

Item #12: Horton Plaza Improvement Project (block bounded by Broadway, Broadway Circle, E Street, and Fourth Avenue) – Construction Contract Change Order No. 6 with Echo Pacific Construction – Horton Plaza Improvement Project

Motion: Vice Chair Geisler moved and Treasurer Jenkins seconded a motion that CivicSD:

- Item #8: Approves an amendment to the North Park Public Parking Garage Budget to allocate up to \$120,000 in reserve funds for modernization of one elevator in the parking garage and for the parking garage wayfinding program.
- Item #11: Approves the 14th Street Promenade Master Plan.
- Item #12: Approves Change Order No. 6 in the amount of \$82,138.96 to the construction contract with Echo Pacific Construction for the Horton Plaza Improvement Project.
- Vote:** Chair Gattas, Vice Chair Geisler, Secretary Vasquez, Treasurer Jenkins and Directors Rath, Robinson, and Kilkenny voted "Aye;" Director Shaw abstained from Item #11. **The motion passed.**

REGULAR AGENDA

Item #9 **Contribution of \$40,000 to City Heights Community Development Corporation to Support FaceLift Event – City Heights**

Investment & Finance Development Manager Michael Lengyel introduced the item and answered questions from the Board.

Motion: Director Robinson moved and Director Shaw seconded a motion that CivicSD approves a contribution of \$40,000 to the City Heights Community Development Corporation to support the FaceLift event in City Heights.

Vote: Chair Gattas, Vice Chair Geisler, Secretary Vasquez, Treasurer Jenkins and Directors Rath, Robinson, Shaw, and Kilkenny voted "Aye." **The motion passed.**

Chair Gattas announced that Item #13 would be rescheduled for a future date. A Speaker's Slip indicating support was submitted by Gary Smith.

Item #13: **7th and Island Hotel (northwest corner of Seventh and Island avenues) – Centre City Development Permit/Centre City Planned Development Permit/Neighborhood Use Permit – Design Review and Associated Permits – East Village Neighborhood of the Downtown Community Plan Area**

Chair Gattas recused from Item #14 and exited the dais.

Vice Chair Geisler announced each presenter would be given 15 minutes to present their item.

Item #14: Hilltop & Euclid (vacant property bounded by Euclid Avenue and the existing single-family neighborhood, Hilltop Drive and San Diego Unified School District property, and the Martin Luther King Jr., Highway SR94 to the north) – Selection Committee Recommendation for an Exclusive Negotiation Agreement with Affirmed Housing Group – RECOMMEND APPROVAL – Chollas View Neighborhood of the Encanto Neighborhoods Community Plan Area

Associate Project Manager Sherry Brooks utilized a PowerPoint presentation to provide the terms and details of the Exclusive Negotiation Agreement with Affirmed Housing Group for the Hilltop & Euclid site.

Proposal presentations were provided by:

- Affirmed Housing Group
- Related
- Red Office

Keyser Marston Associates (KMA) Managing Principal Paul Marra utilized a PowerPoint presentation to explain the economic and financial feasibility analysis of the proposals.

Speaker's Slips indicating a neutral position was submitted by:
Patrice Baker

Speaker's Slip indicating opposition was submitted by:
Tasha Williamson
Ardelle Mathews, Chollas View Neighborhood
Lee Hernandez & Lucas O'Conner, Assemblywoman Shirley Weber and
Assemblywoman Lorena Gonzalez
Khalaeda Palo-Alej
Kathleen Macleod
Elida Chanz
Gloria Cooper

Speaker's Slip indicating support was submitted by:
Barry Pollard, The Urban Collaborative Project
Robert Ito, Ito Girard & Associates
Jennifer Lesar, Lesar Development Consultants
Keryna Johnson, Community Member

Vice Chair Geisler read into record correspondence in support received from Ken Malbrough.

Board Members overall expressed that the process had been followed and explained the difficulty of the task of the Selection Committee. Directors Vasquez and Robinson noted that they had served on the Selection Committee and the proposal that was chosen was a unanimous decision by the selection committee and that the Selection Panel chose the best proposal for the site and community.

Overall, the Board expressed that improvements could be made to the process, but agreed with the decision of the Selection Committee. Vice Chair Geisler stated he liked the proposal from Red Office.

Motion: Director Robinson moved and Director Shaw seconded a motion that CivicSD recommends that the City Council of the City of San Diego approves and enters into an Exclusive Negotiation Agreement (ENA) with the Affirmed Housing Group for the 8.5-acre Hilltop & Euclid Site to negotiate a Disposition and Development Agreement for the purchase and development of City-owned land for a mixed-use residential project that would include residential (market-rate and affordable), retail and public uses with the caveat that the developer conducts multiple workshops with the community during the exclusive negotiation process.

Vote: Secretary Vasquez, Treasurer Jenkins and Directors Rath, Robinson, Shaw, and Kilkenny voted "Aye;" Vice Chair Geisler voted "Nay." **The motion passed.**

ADJOURNMENT ~ The meeting was adjourned at 9:07 p.m.

Exhibit E



MINUTES
CIVIC SAN DIEGO
REAL ESTATE AND BUDGET/FINANCE JOINT COMMITTEE
MEETING OF
WEDNESDAY, JUNE 8, 2016

CALL TO ORDER: The meeting of the Civic San Diego (“CivicSD”) Real Estate and Budget/Finance Joint Committee (“Committee”) was called to order at 9:08 a.m. in the Board Room, CivicSD, 401 B Street, Suite 400, San Diego

PRESENT: Chair Richard Geisler and Directors Jeff Gattas, Carlos Vasquez, Phil Rath, Ted Shaw, Robert Robinson and Murtaza Baxamusa

EXCUSED: Director Michael Jenkins

Item #2 **Non-Agenda Public Comment**

None.

Item #3 **Approval of Minutes from Meeting of May 11, 2016**

Director Rath moved and Director Gattas seconded a motion for approval of the minutes. Chair Geisler and Directors Gattas, Vasquez, Rath, Robinson and Baxamusa voted “Aye;” Directors Shaw and Baxamusa abstained. **The motion passed.**

Item #4 **Potential Agenda Items – Committee Discussion – General**

None.

Item #5 **Disclosures – Ex Parte Communications – General**

None.

Director Gattas recused from Item#6, citing a conflict with UCSD, and exited the dais.

Item #6 **Hilltop & Euclid Site (vacant property bounded by Euclid Avenue and the existing single-family neighborhood, Hilltop Drive and San Diego Unified School District property, and the Martin Luther King Jr. Highway SR94 to the north) – Selection Committee Recommendation for an Exclusive Negotiation Agreement with Affirmed Housing Group – Chollas View Neighborhood of the Encanto Neighborhoods Community Plan Area**

Associate Project Manager Sherry Brooks utilized a PowerPoint presentation to provide the terms and details of the Exclusive Negotiation Agreement with Affirmed for the Hilltop & Euclid site.

James Silverwood, Affirmed, utilized a PowerPoint presentation to explain the components of the proposal.

President Reese A. Jarrett announced that the other respondents would be provided an opportunity to present their proposals.

Proposal presentations were provided by:

- RED Office/UCSD
- Neal Arthur Development/Related

Speaker's Slips indicating opposition submitted by:

Ardelle Matthews, Chollas View neighborhood – Hilltop property
Elida Chavez, resident of 4th District
Anthony Singleton, community representative
Kathleen MacLeod
Gloria Cooper, community representative (also distributed a handout)

Speaker's Slip indicating support submitted by:

Brian Pollard, Urban Collaborative Project

Responding to comments from the community and neighborhood, the Committee members overall expressed that the process had been followed. They explained the difficulty of the task of the selection panel and were dismayed by fairness and integrity comments from the community. They requested to see financial components and commitments for the other proposals.

Directors Vasquez and Robinson noted that they had served on the selection panel, which was unanimous in their decision that the best proposal was chosen for the site and community.

Chair Geisler suggested that in the future there should be a longer timeframe in between meetings for consideration of projects of this magnitude.

Motion: Director Robinson moved and Director Shaw seconded a motion to approve the staff recommendation.

Vote: Chair Geisler and Directors Gattas, Vasquez, Rath, Shaw and Robinson voted "Aye;" Director Baxamusa abstained. **The motion passed.**

Director Gattas returned to the dais.

Director Shaw recused from Item #7 due to a business conflict with his firm being hired by a property owner in the area.

Item #7 **14th Street Promenade Master Plan (11 full blocks of 14th Street bounded by C Street in the north and Commercial Avenue in the south) – East Village Neighborhood of the Downtown Community Plan Area**

Senior Planner/Landscape Architect Kathleen Brand utilized a PowerPoint presentation to summarize the 14th Street Promenade Master Plan.

Motion: Director Baxamusa moved and Director Rath seconded a motion to approve the staff recommendation.

Vote: Chair Geisler and Directors Gattas, Vasquez, Rath, Robinson and Baxamusa voted "Aye." **The motion passed.**

Adjournment – The meeting was adjourned at 11:15 a.m.

Exhibit F

Carles, Cristina

From: Phil Rath [REDACTED]
Sent: Tuesday, December 10, 2013 9:07 AM
To: Carles, Cristina
Subject: Lobbyist registration
Attachments: County lobby reg amendment Affirmed Housing 10-2-13.pdf

Cristina,

Thank you for your call. As we discussed, the amendment form I filed (attached) is intended to add Affirmed Housing to my registration and keep all previously registered clients active. Please do not remove any previously registered clients.

Thank you,

Phil Rath
[REDACTED]

COUNTY OF SAN DIEGO
2013 DEC 10 PM 11 15
CLERK OF THE BOARD
OF SUPERVISORS



COUNTY OF SAN DIEGO
 LEGISLATIVE ADVOCATE REGISTRATION
 (Rev. 10/13)

REG. NO. 868

2013 DEC 9 PM 5 01

INDIVIDUAL REGISTRATION

Check Box if Initial Registration

Check Box if Amendment to Initial Registration

1. Phil Roth
 Name of Registrant (Please print or type name of individual) [REDACTED] Phone (Include Area Code)

[REDACTED] San Diego CA 92104
 Street Address City State Zip Code

[REDACTED]
 Email Address

CLERK OF THE BOARD
 OF SUPERVISORS

2. List names of person(s), firm(s), corporation(s) or organization(s) represented by the Registrant. Attach additional sheet(s) if necessary. Any person, corporation, firm or organization represented by a legislative advocate must file a written statement disclosing individual expenditures of more than \$25.00, or an aggregate total of more than \$100.00 to an individual County officer or employee described in the County Code on a quarterly basis. (Section 23.106)

NAME OF FIRM, CORP. OR ORGANIZATION REPRESENTED	ADDRESS	PHONE NO.
<u>Affirmed Housing Group</u>	<u>13520 Evening Creek Dr. N #160</u> <u>San Diego, CA 92128</u>	<u>(858) 679-2828</u>

3. List name(s) of the elective county offices that the registrant will attempt to influence. If the registrant will attempt to influence any member of the Board of Supervisors, the list shall include the "Board of Supervisors." Attach additional sheet(s) if necessary. Elected officeholders (and candidates for elective office) may not accept campaign contributions from any registered legislative advocate whose registration form names the elective office of that officeholder (or the office to which the candidate is seeking election).

NAME OF COUNTY OFFICE(S)	NAME OF COUNTY OFFICE(S)
<u>All possible County Offices</u>	

I certify under penalty of perjury that the foregoing statements are true and correct. Refer to San Diego County Code of Regulatory Ordinances Section 23.104 *Contents of Registration* for current information on registration.

Date: 10/2/13 Registrant's Signature: Phil P. Roth

PLEASE RETURN FORM TO:

CLERK OF THE BOARD OF SUPERVISORS
 1600 PACIFIC HIGHWAY, ROOM 402
 SAN DIEGO, CA 92101



County of San Diego

DAVID HALL, CCB
EXECUTIVE OFFICER/CLERK

CLERK OF THE BOARD OF SUPERVISORS
1600 PACIFIC HIGHWAY, ROOM 402, SAN DIEGO, CALIFORNIA 92101-2471
PHONE (619) 531-5600 FAX (619) 338-8146
www.sandlegocob.com

ANDREW POTTER
ASSISTANT CLERK OF THE BOARD

October 09, 2017

TO:

Chairwoman Dianne Jacob
Vice-Chairwoman Kristin Gaspar
Supervisor Greg Cox
Supervisor Ron Roberts
Supervisor Bill Horn
Ernest J. Dronenburg Jr., Assessor/Recorder/County Clerk
William Gore, Sheriff
Dan McAllister, Treasurer-Tax Collector
Summer Stephan, District Attorney

FROM:

David Hall
Clerk of the Board of Supervisors

SAN DIEGO COUNTY REGISTERED LOBBYIST LISTING

Attached please find the current lobbyist listings that include updated registration information. These reports provide information regarding lobbyists, the firm represented and the elective offices/officials that the lobbyists will attempt to influence.

- **Attachment A** is an alphabetical listing by the name of the lobbyist and includes the elective offices/officials that the lobbyists will attempt to influence.
- **Attachment B** is an alphabetical listing by the name of the lobbyist and includes the firm represented and the elective offices/officials that the lobbyists will attempt to influence.
- **Attachment C** is an alphabetical listing by name of the firm represented and includes the name of the lobbyist and the elective offices/officials that the lobbyists will attempt to influence.

These reports are updated and distributed on a monthly basis and can be accessed via the Clerk of the Board webpage at <http://www.sandiegocounty.gov/cob/lobbyists/index.html>.

CHANGES FROM PREVIOUS LOBBYIST REPORT:

There is one new registration for Esther Berg, three amendments for Mike Lemyre, Khoa Nguyen and Phil Rath and one termination for Ray Joseph.

If you have any questions, please have your staff contact Alejandro Chavira at (619) 531-5601.

Thank you.

Respectfully,


DAVID HALL

Attachments

cc: Board of Supervisors Communications Received (CR) Agenda

**ATTACHMENT B
REGISTERED LOBBYISTS AND FIRMS REPRESENTED**

List compiled by the Clerk of the Board of Supervisors Monday, October 09, 2017

Lobbyist Name	Reg #	Firm Represented	Elective County Office/Official *
Price, Denise	1039	211 San Diego	BOS, County Assessor/Recorder/Clerk, Sheriff's Dept., TTC, DA, Public Health Officials
	1039	Golden Door Properties, LLC	BOS, County Assessor/Recorder/Clerk, Sheriff's Dept., TTC, DA, Public Health Officials
	1039	Kaiser Permanente	BOS, County Assessor/Recorder/Clerk, Sheriff's Dept., TTC, DA, Public Health Officials
	1039	Maximus	BOS, County Assessor/Recorder/Clerk, Sheriff's Dept., TTC, DA, Public Health Officials
	1039	Microsoft	BOS, County Assessor/Recorder/Clerk, Sheriff's Dept., TTC, DA, Public Health Officials
	1039	Motorola Solutions	BOS, County Assessor/Recorder/Clerk, Sheriff's Dept., TTC, DA, Public Health Officials
	1039	Republic Services	BOS, County Assessor/Recorder/Clerk, Sheriff's Dept., TTC, DA, Public Health Officials
Pringle, Katie	1042	Mobilitie	Board of Supervisors
Pudgil, Darren	1005	Newland Communities	Board of Supervisors
Purczynski, Jennifer R.	865	Enel Green Power	Board of Supervisors, BOS Reps., CAO, DPLU
	941	The Greater San Diego Association of REALTORS	BOS, DA, Assessor/Recorder/Clerk, TTC, Sheriff's Dept.
Ramer, Kai E.	694	Skyline Wesleyan Church	Board of Supervisors, PERB, DPLU, BOS Reps.
Ramos, Isela	1033	Center on Policy Initiatives	Board of Supervisors, BOS Reps., District Atty., Assistant District Atty., CAO, Director of Purchasing & Contracting
	868	Affirmed Housing Group	All Possible County Offices
Rath, Phil	868	American Medical Response	All Possible County Offices
	868	Iberdrola Renewables	All Possible County Offices
	868	Maranatha Chapel	All Possible County Offices
	868	Newland Communities	All Possible County Offices
	868	Xerox Business Services, LLC	All Possible County Offices
	840	The Greater San Diego Association of REALTORS	BOS, Planning Comm., Assessor/Recorder/Clerk, TTC, DPLU, AAB
Riella, Janelle A.	840	The Greater San Diego Association of REALTORS	BOS, Planning Comm., Assessor/Recorder/Clerk, TTC, DPLU, AAB
Rivera, Gabriela	987	American Civil Liberties Union of SD and Imperial Counties	BOS, Sheriff's Department, Office of the District Attorney, CAO
	859	Land Conservation Brokerage Inc.	Board of Supervisors
Rodriguez, Joanne M.	921	Soitec Solar Development, LLC	BOS, Members of Planning Commission, BOS Reps., Director of Planning & Land Use
Rosenbaum, S. Wayne	921	Steel Rives, LLP	BOS, Members of Planning Commission, BOS Reps., Director of Planning & Land Use
	1056	Sempra Energy	Board of Supervisors, Planning Commission

Note: * List of the name(s) of the Elective County Office(s)/Official(s) the Lobbyists will try to influence

Page 13 of 16

**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER CODE OF
CIVIL PROCEDURE SECTIONS 526a, 860 *ET SEQ.*, 1060 *ET SEQ.*, AND 1084 *ET SEQ.*;
PETITION FOR WRIT OF MANDATE**

Exhibit "D"

1 STACEY FULHORST, Executive Director
2 City of San Diego Ethics Commission
3 450 B Street, Suite 780
4 San Diego, CA 92101
5 Telephone: (619) 533-3476

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Petitioner

**BEFORE THE CITY OF SAN DIEGO
ETHICS COMMISSION**

In re the Matter of:) Case No.: 2018-05
)
PHIL RATH,) **STIPULATION, DECISION, AND**
) **ORDER**
Respondent.)
)
)
)

STIPULATION

THE PARTIES STIPULATE AS FOLLOWS:

1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer, implement, and enforce local governmental ethics laws contained in the San Diego Municipal Code [SDMC] relating to, among other things, the provisions of the City of San Diego Ethics Ordinance [Ethics Ordinance], SDMC section 27.3501, *et seq.*

2. At all times mentioned herein, Phil Rath was a member of the Civic San Diego Board of Directors [Civic Board] and held a 49% ownership interest in Rath Miller, LLC. Mr. Rath is referred to herein as "Respondent."

3. This Stipulation will be submitted for consideration by the Ethics Commission at its next scheduled meeting, and the agreements contained herein are contingent upon the approval of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

///

1 4. This Stipulation resolves all factual and legal issues raised in this matter by the
2 Ethics Commission without the necessity of holding an administrative hearing to determine
3 Respondent's liability.

4 5. Respondent understands and knowingly and voluntarily waives any and all
5 procedural rights under the SDMC including, but not limited to, a determination of probable
6 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
7 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
8 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
9 have the Ethics Commission or an impartial hearing officer hear this matter. Respondent agrees
10 that the terms of this Stipulation constitute compliance with the provisions of SDMC section
11 26.0450 in that the Stipulation includes a recitation of facts, a reference to each violation, and an
12 order.

13 6. Respondent agrees to hold the City of San Diego and the Ethics Commission
14 harmless from any and all claims or damages resulting from the Commission's investigation, this
15 stipulated agreement, or any matter reasonably related thereto.

16 7. Respondent acknowledges that this Stipulation is not binding upon any other law
17 enforcement or government agency and does not preclude the Ethics Commission from referring
18 this matter to, cooperating with, or assisting any other law enforcement or government agency
19 with regard to this or any other related matter.

20 8. The parties agree that in the event the Ethics Commission refuses to accept this
21 Stipulation, it shall become null and void. Respondent further agrees that in the event the Ethics
22 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
23 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
24 because of prior consideration of this Stipulation.

25 ///

26 ///

27 ///

28 ///

Summary of Law and Facts

1
2 9. As a member of the Civic Board, Respondent is a “Local Code Filer” as that term is
3 defined by SDMC section 27.3503, and is required to regularly file Form 700 Statements of
4 Economic Interests [SEIs] in the time and manner set forth in SDMC section 27.3510.

5 10. SDMC section 27.3510 requires that all Local Code Filers file an assuming office
6 SEI within 30 days of assuming office covering the previous twelve-month period, and an annual
7 SEI on or before April 1 of each year covering the period from January 1 (or the assuming office
8 date) through December 31 of the previous calendar year, pursuant to the applicable Conflict of
9 Interest Code adopted by the City Council.

10 11. According to SDMC section 27.3510 and California Government Code section
11 82030, a filer’s sources of income include the filer’s pro rata share of income received by any
12 business entity in which the filer has a ten percent or greater ownership interest. In addition,
13 California Government Code section 87207 states that filers must disclose the names of sources
14 of income to a business entity if the filer’s pro rata share of the gross income from a single
15 reportable source was \$10,000 or more during the reporting period.

16 12. On November 8, 2013, Rath Miller entered into an agreement with developer
17 Affirmed Housing Group [Affirmed] to provide public affairs services in connection with
18 Affirmed’s efforts to obtain funding from the County of San Diego for an affordable housing
19 project located in San Marcos. In compensation for the firm’s services, Rath Miller received its
20 first payment from Affirmed for \$22,000 on December 18, 2014. The second payment in the
21 amount of \$100,000 was initially due on March 31, 2015, but the deadline was extended in
22 response to a request from the client and payment was ultimately made on August 8, 2015.

23 13. On July 28, 2015, Respondent assumed office as a member of the Civic Board. On
24 August 28, 2015, he filed an assuming office SEI. In accordance with the Conflict of Interest
25 Code adopted by the City Council for the Board, Respondent was required to disclose income
26 from any entity engaged in land development, construction, and/or land use consulting within the
27 City of San Diego. Affirmed engages in land development and within the City of San Diego.
28 Respondent disclosed his ownership interest of ten percent or greater in Rath Miller, as well as

1 four reportable sources of income of \$10,000 or more received through the firm, but did not
2 disclose his portion of the income received from Affirmed during the reporting period, even
3 though Affirmed was a reportable source of income.

4 14. On January 25, 2016, Respondent filed his 2015 annual SEI covering the period
5 from July 28, 2015, through December 31, 2015. In accordance with the Conflict of Interest
6 Code adopted by the City Council for the Board, Respondent was required to disclose income
7 from any entity engaged in land development, construction, and/or land use consulting within the
8 City of San Diego. Respondent disclosed his ownership interest of ten percent or greater in Rath
9 Miller, as well as seven reportable sources of income of \$10,000 or more received through the
10 firm, but did not disclose his portion of the income received from Affirmed during the reporting
11 period, even though Affirmed was a reportable source of income.

12 15. SDMC section 27.3561 prohibits City Officials from making or participating in a
13 municipal decision if the decision will impact their financial interests, including sources of
14 income of \$500 or more within the previous twelve-month period.

15 16. On January 5, 2016, in response to a Request for Proposals issued by Civic San
16 Diego, Affirmed submitted one of three bids to develop a 143,800-square foot mixed use project
17 at the northwest corner of Hilltop Drive and Euclid Avenue in the Chollas View neighborhood of
18 the Encanto Neighborhoods Community Planning Area in the City of San Diego [Hilltop &
19 Euclid project].

20 17. On June 8, 2016, the Real Estate and Budget/Finance Joint Committee of the Civic
21 Board voted (6 – 0, 1 abstention) to approve the staff recommendation to enter into an Exclusive
22 Negotiation Agreement with Affirmed to develop the Hilltop & Euclid project. Respondent was
23 a member of the Committee and participated in this matter, despite the fact that he had received
24 more than \$500 in income from Affirmed on August 8, 2015, within the previous twelve-month
25 period. In addition to voting in favor of supporting the staff recommendation, Respondent
26 participated in the discussion concerning procedural issues and the selection of Affirmed,
27 commenting that “I do believe that the Affirmed project is the best option for this organization.”

28 ///

1 26. Respondent agrees to pay a fine in the amount of \$11,000 for violating SDMC
2 sections 27.3510 and 27.3561. This amount must be paid no later than August 3, 2018, by check
3 or money order payable to the City Treasurer and delivered to the Ethics Commission office.
4 The submitted payment will be held pending Commission approval of this Stipulation and
5 execution of the Decision and Order portion set forth below.

6
7
8 DATED: _____ [REDACTED]
9 Stacey Fulhorst, Petitioner
10 SAN DIEGO ETHICS COMMISSION

11 DATED: _____ [REDACTED]
12 Phil Rath, Respondent

13
14
15 **DECISION AND ORDER**

16 The Ethics Commission considered the above Stipulation at its meeting on August 9,
17 2018. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
18 with the Stipulation, Respondent pay a fine in the amount of \$11,000.

19
20 DATED: _____ [REDACTED]
21 Deborah Cochran, Chair
22 SAN DIEGO ETHICS COMMISSION
23
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25
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**FIRST AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER CODE OF
CIVIL PROCEDURE SECTIONS 526a, 860 *ET SEQ.*, 1060 *ET SEQ.*, AND 1084 *ET SEQ.*;
PETITION FOR WRIT OF MANDATE**

Exhibit "E"

1 GALENA WEST
Chief of Enforcement
2 THERESA GILBERTSON
Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3000
4 Sacramento, CA 95811

5 Telephone: (916) 323-6421
6 Facsimile: (916) 322-1932

7 Attorneys for Complainant

8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA
10

11 In the Matter of:

12 PHIL RATH,

13 Respondent.

FPPC Case No. 18/1230

14 STIPULATION, DECISION AND ORDER

15 INTRODUCTION

16 Respondent Phil Rath (“Rath”) is a member of the Civic San Diego Board of Directors, a not-for-profit economic development organization wholly owned by the City of San Diego. Board members of
17 Civic San Diego are designated as public officials and must file periodic statements of economic interest
18 (“SEI”) and adhere to a conflict of interest code. Rath failed to disclose a financial interest on two SEIs
19 and subsequently made decisions as a public official on a matter involving that financial interest, in
20 violation of the City of San Diego Ethics Ordinance¹ (“SD Ethics Code”) and the Political Reform Act²
21 (“Act”).
22

23
24
25
26 ¹ The City of San Diego Ethics Ordinance is contained in the San Diego Municipal Code, specifically, sections
27 27.3501, *et seq.* All references to San Diego’s ordinances are herein referred to as “SD Ethics Code” and can be accessed at
28 the following link: <https://www.sandiego.gov/city-clerk/officialdocs/legisdocs/muni>

² The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission
are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references
are to this source.

1 On August 9, 2018, Rath and the City of San Diego Ethics Commission entered into a Stipulation,
2 Decision, and Order regarding four violations of the SD Ethics Code, in which Rath agreed and paid an
3 \$11,000 fine. In coordination with the City of San Diego Ethics Commission, Rath now agrees to enter
4 into this Stipulation, Decision, and Order to resolve violations of the Act. As such, Rath agrees that there
5 is probable cause to find that there is a violation of the Act and waives his procedural right to a hearing on
6 this determination. Pursuant to Section 91008.5, this Stipulation, Decision, and Order is the final judgment
7 for the violations described herein.

8 SUMMARY OF THE LAW

9 Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

10 When enacting the Political Reform Act, the people of California found and declared that previous
11 laws regulating political practices suffered from inadequate enforcement by state and local authorities.³
12 Thus, it was decreed that the Act “should be liberally construed to accomplish its purposes.”⁴ One purpose
13 of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

14 Statement of Economic Interests

15 An express purpose of the Act is to ensure that the assets and income of public officials, which may
16 be materially affected by their official actions, should be disclosed so that conflicts of interest may be
17 avoided.⁶ In furtherance of this purpose, the Act requires every local agency to adopt and promulgate a
18 conflict of interest code, and any violation of such a code is deemed a violation of the Act.⁷

19 An agency’s conflict of interest code must specifically designate the positions within the agency
20 required to file SEIs and identify what economic interests must be disclosed by officials in those positions.
21 The Civic San Diego’s Board Corporation Policy, Section 2.0, designates Members of the Board (any and
22 all) as a position that is required to file an assuming office, leaving office, and annual SEIs. On those SEIs,
23 board members of Civic San Diego are required to disclose all reportable investments and business
24 positions in, and sources of income and gifts from, any person, firm or entity that has engaged in, or
25 provided any of the following within the boundaries of the City of San Diego during the applicable
26

27 ³ Section 81001, subdivision (h).

⁴ Section 81003.

28 ⁵ Section 81002, subdivision (f).

⁶ Section 81002, subdivision (c).

⁷ Section 87300

1 reporting period: land development; construction; acquisition or sale of real property; engineering;
2 surveying; architecture; appraisals; soils testing, analysis, and/or compaction; office equipment and
3 supplies; newspapers, printing and reproduction services; banks and savings and loan; securities and
4 investment companies; title insurance and escrow; financial audit services; public utilities; insurance,
5 including brokers and agencies; planning, landscaping and/or land use consultants. In addition, board
6 members must report all reportable sources of income and gifts from any person, firm or entity that supplies
7 goods or services to Civic San Diego.

8 A source of income includes the filer's pro rata share of income received by any business entity in
9 which the filer has a ten percent or greater ownership interest.⁸ In addition, filers must disclose the names
10 and sources of income to a business entity if the filer's pro rata share of the gross income from a single
11 reportable source was \$10,000 or more during the reporting period.⁹

12 **Conflict of Interest**

13 A public official may not make, participate in making or attempt to use his official position to
14 influence a governmental decision in which he knows, or has reason to know, he has a financial interest.¹⁰
15 A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will
16 have a material financial effect on any source of income of \$500 or more received by the public official
17 within 12 months prior to the decision.¹¹ A material financial effect is reasonably foreseeable when the
18 financial interest is explicitly involved in the governmental decision, such as being the named party or is
19 the subject of a governmental decision before the official or the official's agency.¹² A financial interest is
20 the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation
21 or any license, permit, or other entitle to, or contract with, the financial interest. When the official receives
22 income in exchange for the sale of goods or services, the financial effect is material if the source is a
23 claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the
24 proceeding.¹³

25
26 ⁸ Section 82030, subdivision (a).

27 ⁹ Regulation 18730(b)(7)(C)(2), incorporated by reference in Civic San Diego's Corporation Policy section 5.1.

28 ¹⁰ Section 87100.

¹¹ Section 87103, subdivision (c).

¹² Regulation 18701, subdivision (a).

¹³ Regulation 18702.3, subdivision (a)(1).

1
2 **SUMMARY OF THE FACTS**

3 Phil Rath ("Rath") is a member of the Civic San Diego Board of Directors. Civic San Diego is a
4 not-for-profit organization wholly owned by the City of San Diego and aims to foster public-private
5 partnerships, economic development, and more. Rath assumed office as a member of the Civic San Diego
6 Board of Directors on July 28, 2015 and is required to periodically file SEIs.

7 Rath holds a 49% ownership interest in Rath Miller, LLC ("Rath Miller"). On November 8, 2013,
8 Rath Miller entered into an agreement with developer Affirmed Housing Group ("Affirmed") to provide
9 public affairs services in connection with Affirmed's efforts to obtain funding from the County of San
10 Diego for an affordable housing project located in San Marcos. In compensation for the firm's services,
11 Rath Miller received its first payment from Affirmed for \$22,000 on December 18, 2014. The second
12 payment in the amount of \$100,000 was initially due on March 31, 2015, but the deadline was extended in
13 response to a request from the client and the payment was ultimately made on August 8, 2015.

14 Affirmed engages in land development within the City of San Diego. Since Rath owns 49% of Rath
15 Miller, he was required to report any source of income to Rath Miller where his pro rata share was \$10,000
16 or more. For these reasons, Rath was required to disclose Affirmed as a source of income to Rath Miller
17 on both his assuming office statement and his annual statement for 2015. Rath did report his ownership of
18 Rath Miller and four reportable sources of income of \$10,000 or more received through the firm, but he
19 failed to report his portion of income received from Affirmed during the reporting periods.

20 Rath had a conflict of interest due to this source of income when he participated in the discussion
21 of and then voted for a governmental decision regarding Affirmed. On January 5, 2016, in response to a
22 Request for Proposals issued by Civic San Diego, Affirmed submitted one of three bids to develop a
23 143,800-square foot mixed use project at the northwest corner of Hilltop Drive and Euclid Avenue in the
24 Chollas View neighborhood of Encanto Neighborhoods Community Planning Area in the City of San
25 Diego ("Hilltop & Euclid project"). On June 8, 2016, the Real Estate and Budget/Finance Joint Committee
26 of the Civic San Diego Board voted (6-0, 1 abstention) to approve the staff recommendation to enter into
27 an Exclusive Negotiation Agreement with Affirmed to develop the Hilltop & Euclid project. Rath was a
28 member of the Committee and participated in this matter. In addition to voting in favor of supporting the

1 staff recommendation, Respondent participated in the discussion concerning the procedural issues and the
2 selection of Affirmed, commenting that, "I do believe that the Affirmed project is the best option for this
3 organization."

4 On June 22, 2016, the entire Civic San Diego Board voted (6-1) to recommend that the City Council
5 enter into an Exclusive Negotiation Agreement with Affirmed to develop the Hilltop & Euclid project.
6 Rath participated in this matter and voted in favor of the motion. Rath stated, "[I]t's clear that this is the
7 winner of this contest... and who I think we should proceed with."

8 VIOLATION

9 Count 1

10 Failure to Timely Report an Economic Interest

11 For his position on the Civic San Diego Board, Rath failed to disclose income from Affirmed on
12 an Assuming Office SEI and an Annual SEI for 2015, in violation of section 87300.

13 Count 2

14 Conflict of Interest

15 By participating in the discussion and voting in favor of Affirmed's bid to develop the Hilltop &
16 Euclid project on June 8, 2016 and June 22, 2016, Rath made a governmental decision he knew or should
17 have known would have a material effect on Affirmed who Rath had a financial interest in because Rath
18 received income of \$500 or more from Affirmed within the prior 12 months, in violation of section
19 87100.

20 PROPOSED PENALTY

21 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
22 count.¹⁴ Thus, the maximum penalty that may be imposed is \$10,000.

23 In determining the appropriate penalty for a particular violation of the Act, the Commission
24 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission
25 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention
26 to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d)
27

28 ¹⁴ See Section 83116, subdivision (c).

1 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were
2 filed to provide full disclosure; and (f) whether the violator has a prior record of violations.¹⁵

3 The Commission considers penalties in prior cases with comparable violations. *In the Matter of*
4 *Simon Lee*, FPPC No. 16/677 (the Commission approved a stipulated decision on September 21, 2017.)
5 Simon Lee was an alternate commissioner on the City of San Marino Planning Commission and prior to
6 that, he was a member of the City of San Marino Design Review Committee. Lee violated the Act by
7 failing to disclose two sources of income on his annual and leaving office SEI and by making decisions as
8 a public official on matters involving those sources. The Commission charged one count for failure to
9 disclose and one count for the conflict of interest for each source for a total of four counts and a total
10 administrative penalty of \$10,000. For the two conflict counts, the Commission charged \$3,500. Lee voted
11 on applications presented by his own clients for whom he had prepared work that was used in the
12 applications presented to his agency. For the SEI violations, the Commission charged \$2,000 and \$1,000.
13 The two SEI violations were charged differently because only one nondisclosure was during the time period
14 and for the office that had the conflict of interest.

15 For count 1, a penalty of \$2,000 is recommended. Rath reported other sources of income received
16 by and through his company, Rath Miller, but he failed to report the income from Affirmed on both an
17 assuming office SEI and the annual SEI for 2015. This is similar to the count charged at \$2,000 in *Lee*,
18 because the income that was not reported was relevant to a vote that took place in that year.

19 For count 2, a penalty of \$3,000 is recommended. Rath participated in and ultimately voted twice
20 on a matter that directly involved a source of income to Rath. However, in mitigation, Rath did not work
21 directly on the project that was before the Board, unlike the case of *Lee*.

22 Based on the foregoing, a total penalty in the amount of \$5,000 is recommended.

23 CONCLUSION

24 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
25 Respondent, Phil Rath, hereby agree as follows:

26 1. Respondent violated the Act as described in the foregoing pages, which are a true and
27 accurate summary of the facts in this matter.

28 _____
¹⁵ Regulation 18361.5, subdivision (d).

1 2. This stipulation will be submitted for consideration by the Fair Political Practices
2 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

3 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
4 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
5 liability of Respondent pursuant to Section 83116.

6 4. Respondent has consulted with his attorneys, Gil Cabrera of the Cabrera Firm and James
7 Harrison of Remcho Johansen & Purcell, and understands, and hereby knowingly and voluntarily waives,
8 all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
9 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing
10 held in this matter, to be represented by an attorney at Respondent's own expense, to confront and cross-
11 examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an
12 impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter
13 judicially reviewed.

14 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
15 Respondent agrees to the Commission imposing against them an administrative penalty in the amount of
16 \$5,000. One or more payments totaling said amount—to be paid to the General Fund of the State of
17 California—is/are submitted with this stipulation as full payment of the administrative penalty described
18 above, and same shall be held by the State of California until the Commission issues its decision and order
19 regarding this matter.

20 6. If the Commission declines to approve this stipulation—then this stipulation shall become
21 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
22 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to
23 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before
24 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
25 shall be disqualified because of prior consideration of this Stipulation.

1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party's executed signature page, including a hardcopy of a signature page transmitted via fax
3 or as a PDF email attachment, is as effective and binding as the original.
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5 Dated: _____

_____ Galena West, Chief of Enforcement
Fair Political Practices Commission

8 Dated: _____

_____ Phil Rath

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1 The foregoing stipulation of the parties "In the Matter of Phil Rath" FPPC Case No. 18/1230 is
2 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon
3 execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

8 Alice T. Germond, Chair
9 Fair Political Practices Commission
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF San Diego

I have read the foregoing First Amended Complaint for Declaratory and Injunctive Relief etc. and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an Officer a partner of San Diegans for Open Government

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on January 15, 20 19, at San Diego, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Pedro Quiroz, Jr. Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of State of California. I am over the age of 18 and not a party to the within action; my business address is,

On, 20, I served the foregoing document described as

on in this action

- by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list;
by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

I deposited such envelope in the mail at California. The envelope was mailed with postage thereon fully prepaid.

As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on, 20, at, California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on, 20, at, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I (Federal) declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

(By MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)
**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

PROOF OF SERVICE

1. My name is Keri Taylor. I am over the age of eighteen. I am employed in the State of California, County of San Bernardino.

2. My business _____ residence address is Briggs Law Corporation, 99 East "C" Street, Suite 111 Upland, California 91786.

3. On January 16, 2019, I served _____ an original copy a true and correct copy of the following documents: First Amended Complaint

4. I served the documents on the person(s) identified on the attached mailing/service list as follows:

_____ *by personal service*. I personally delivered the documents to the person(s) at the address(es) indicated on the list.

by U.S. mail. I sealed the documents in an envelope or package addressed to the person(s) at the address(es) indicated on the list, with first-class postage fully prepaid, and then I

_____ deposited the envelope/package with the U.S. Postal Service

placed the envelope/package in a box for outgoing mail in accordance with my office's ordinary practices for collecting and processing outgoing mail, with which I am readily familiar. On the same day that mail is placed in the box for outgoing mail, it is deposited in the ordinary course of business with the U.S. Postal Service.

I am a resident of or employed in the county where the mailing occurred. The mailing occurred in the city of _____ Upland, California.

_____ *by overnight delivery*. I sealed the documents in an envelope/package provided by an overnight-delivery service and addressed to the person(s) at the address(es) indicated on the list, and then I placed the envelope/package for collection and overnight delivery in the service's box regularly utilized for receiving items for overnight delivery or at the service's office where such items are accepted for overnight delivery.

_____ *by facsimile transmission*. Based on an agreement of the parties or a court order, I sent the documents to the person(s) at the fax number(s) shown on the list. Afterward, the fax machine from which the documents were sent reported that they were sent successfully.

_____ *by e-mail delivery*. Based on the parties' agreement or a court order or rule, I sent the documents to the person(s) at the e-mail address(es) shown on the list. I did not receive, within a reasonable period of time afterward, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws _____ of the United States of the State of California that the foregoing is true and correct.

Date: January 16, 2019

Signature: 

SERVICE LIST

San Diegans For Open Government v. City of San Diego, et al.
San Diego Superior Court Case No. 37-2018-00040518-CU-MC-CTL

Shawn Hagerty, Esq. (SBN 182435)
Matthew L. Green, Esq. (SBN 227904)
BEST BEST & KRIEGER LLP
655 West Broadway, 15th Floor
San Diego, CA 92101
Telephone: 619-525-1327
Facsimile: 619-233-6118
shawn.hagerty@bbklaw.com
matthew.green@bbklaw.com

Attorneys for Defendant Civic San Diego

Elizabeth A. Skane, Esq. (SBN 187752)
Richard D. Seely, Esq. (170528)
SKANE WILCOX LLP
1230 Columbia Street, Suite 800
San Diego, CA 921 01
Telephone: 619-702-1635
Facsimile: 619-702-1645
eskane@skanewilcox.com
rseely@skanewilcox.com

Attorneys for Defendant Civic San Diego

Mara Elliott, George Schaefer, and M. Travis
Phelps
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101-4100

Attorneys for Defendant City of San Diego

Joel L. Incorvaia and G. Ehrich Lenz
Incorvaia & Associates
1947 Camino Vida Roble, Suite 230
Carlsbad, CA 92008-6540

Attorneys for Defendants Hilltop Family
Housing, L.P., and Affirmed Housing
Group, Inc.