

RESOLUTION NO. OB-15-14

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING THE TRANSFER OF SUCCESSOR AGENCY PROPERTY AND RELATED AGREEMENTS FOR SITE #4, APN 488-211-21-00, 201 EAST MAIN STREET, TO THE CITY OF EL CAJON FOR GOVERNMENTAL PURPOSES.

WHEREAS, on January 15, 2014, the Oversight Board approved the Amended Long Range Property Management Plan ("Amended Plan") as Resolution No. OB-07-14; and

WHEREAS, the California Department of Finance ("DOF") approved by the Amended Long Range Property Management Plan on February 21, 2014; and

WHEREAS, at its public meeting of April 16, 2014, the Oversight Board considered the transfer of Successor Agency property and related agreements for Site #4, APN 488-211-21-00, commonly known as 201 East Main Street, to the City of El Cajon for governmental purposes; and

WHEREAS, at least 10 days' notice to the public of the proposed transfer and other actions was provided pursuant to Health & Safety Code Section 34181(f); and

WHEREAS, the disposal strategy for Site #4, APN 488-211-21-00, of the Amended Plan (the "Property"), addressed as 201 East Main Street, authorizes the transfer of the Property to the City of El Cajon for continued use as a municipal park with ancillary commercial uses, identified as a governmental purpose pursuant to California Health & Safety Code Sections 34181(a) and 34191.5(c)(H)(2) at no cost due to the source of funding for acquisition, public improvements paid with Federal and Tax Exempt Bonds; and

WHEREAS, the Amended Plan also authorizes the transfer of the leases with Mangia Bene (assigned to Burner Nicolosi's, Inc. dba Nicolosi's Italian Restaurant) and Clear Channel Outdoor to the City of El Cajon; and

WHEREAS, the Amended Plan also requires the City of El Cajon as Successor Agency to the former El Cajon Redevelopment Agency remain responsible for environmental remediation under the existing enforceable obligation/Settlement Agreement until site closure from the County Department of Environmental Health is obtained;

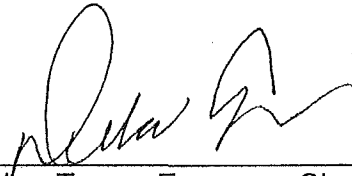
WHEREAS, the proposed transfer would be in the best interests of the Successor Agency, the City of El Cajon, and all taxing entities by disposing of properties under enforceable obligations in an expeditious manner, as approved in the Amended Plan by the DOF.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

- A. The Oversight Board finds that:
 - 1. The recitals above are true and correct and have been incorporated herein by reference; and
 - 2. The proposed transfer is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because it will have no physical effect on the environment; and
 - 3. The proposed Transfer would be in the best interest of the taxing entities because it will dispose of properties under enforceable obligations to the City of El Cajon for governmental purposes in an expeditious manner, as approved in the Amended Plan by the DOF; and
 - 4. At least 10 days' notice to the public of the proposed transfer and other actions was provided pursuant to Health & Safety Code Section 34181(f).
- B. The Oversight Board hereby APPROVES the proposed transfer of Site #4, APN 488-211-21-00, 201 East Main Street and all existing leases, all necessary and related agreements and/or assignments, from the City of El Cajon, as successor agency to the former El Cajon Redevelopment Agency ("Successor Agency"), to the City of El Cajon for governmental purposes, and an Indemnification and Hold Harmless Agreement to retain the Successor Agency's obligation to remain responsible for hazardous materials cleanup, pursuant to the Amended Long Range Property Management Plan.
- C. The Oversight Board hereby approves execution by the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of chief executive officer for the Successor Agency, of all documents, agreements and/or assignments, including an Indemnification and Hold Harmless Agreement, necessary to complete the sale on behalf of the Successor Agency.

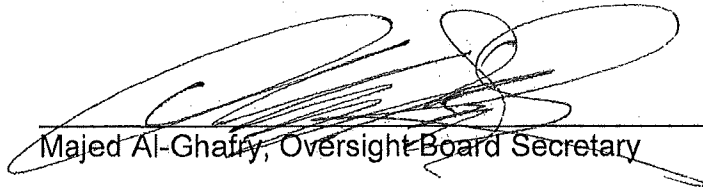
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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 16th day of April 2014, by the following vote to wit:



Debra Turner-Emerson, Chairperson

ATTEST:



Majed Al-Ghafry, Oversight Board Secretary

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

THIS INDEMNIFICATION AND HOLD HARMLESS AGREEMENT (the "Agreement") is made this _____ day of _____, 2014, by and between the CITY OF EL CAJON SOLELY IN ITS CAPACITY OF SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Successor Agency"), and the CITY OF EL CAJON, a California charter city and municipal corporation (the "City").

WHEREAS, the Successor Agency, pursuant to that certain Amended Long Range Property Management Plan (the "Amended Plan") approved by the Oversight Board for the Successor Agency on January 15, 2014, by Resolution No. OB-07-14, and the Department of Finance (the "DOF") on February 21, 2014, has received approval for the transfer of Site 4 of the Amended Plan, (APN 488-211-21-00) (the "Property"), with a site address of 201 East Main Street, to the City for governmental purposes; and

WHEREAS, a condition precedent to the transfer of the Property, is the Successor Agency's obligation to remain responsible for hazardous material cleanup; all pursuant to the Amended Plan; and

WHEREAS, the Successor Agency has not completed removal of all hazardous waste or toxic substances from the Property; and

WHEREAS, the Successor Agency desires to complete transfer of the Property to the City prior to the completion of the removal of all hazardous waste or toxic substances from the Property (the "Remediation Work") while at the same time remaining responsible for the completion of the Remediation Work; and

WHEREAS, the City will agree to accept title to the Property, as long as it does not incur any liability or responsibility for the Remediation Work.

NOW, THEREFORE, in furtherance of this Agreement, and FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. For the promises contained in this Agreement by the parties, City will accept transfer of the Property from Successor Agency pursuant to the terms of the Amended Plans, and subject to the following terms and conditions:

- a. Successor Agency, in coordination with other parties responsible for the Remediation Work, will complete the removal of all hazardous waste or toxic substances from the Property subject to the full terms and conditions of this Agreement.

- b. Successor Agency will provide to City, in a timely manner, all reports, studies, correspondence and memoranda including electronic communication regarding the removal of all hazardous waste or toxic substances from the Property completed by Successor Agency, both prior to, and following, the acquisition of Property by City.
- c. Successor Agency covenants that in completing the removal of all hazardous waste or toxic substances from the Property it shall perform such work in compliance with all state, local and federal laws, rules and regulations related to the removal of all hazardous waste or toxic substances from the Property, including the possession of all contractors' and environmental licenses as may be required by such laws.

2. Successor Agency shall reimburse City for all costs, expenses, claims, indebtedness of every kind and nature relating to the removal of all hazardous waste or toxic substances from the Property after acquisition of the Property by City from the Successor Agency, which it might suffer to incur. If the City does incur any such expenses, it shall submit to the Successor Agency invoices for reimbursement the cost of the removal of all hazardous waste or toxic substances from the Property. The Successor Agency shall pay to City the amount of the invoice submitted within thirty (30) days of receipt of said invoice.

3. The Successor Agency, for itself, and its successors and assigns, agrees, to the extent permitted by law, to indemnify, defend, and hold harmless, City as well as its elected and appointed officers, officials, employees, attorneys, successors and assigns, and all other persons, firms, corporations, associations or partnerships, or any other entity connected therewith harmless from and against any and all liability, loss, cost or expense, including without limitation, attorneys' fees, expenses, costs of litigation and expenses reasonably incurred in investigating or attempting to avoid or oppose the imposition of damages or in enforcing this indemnity, of whatever kind or nature, including the Successor Agency's obligations under that certain Settlement Agreement dated October 4, 1995, in the matter of *Chrisman v. Texaco Refining and Marketing, Inc., et al.*, San Diego Superior Court Case No. 647456 (the "Losses"), which City may sustain by reason of any suits, claims, demand, litigation, proceedings or matters arising out of, or in any manner connected with the removal of all hazardous waste or toxic substances from the Property and any hazardous waste or toxic substances on the Property, provided, however, that the removal of all hazardous waste or toxic substances from the Property is performed in manner consistent with, and in complete accordance with, the plan approved by the County of San Diego Department of Environmental Health, *except* for those Losses arising solely out of the willful misconduct of the City, or its officers, officials, employees, attorneys, agents, contractors, successors or assigns.

4. This Agreement shall be binding upon the Successor Agency's successors and assigns and shall inure to the benefit of the successors and assigns of City.

5. This Agreement may be executed in several counterparts and all so executed shall constitute one agreement which shall be binding on all parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the date and year first above written.

CITY OF EL CAJON, solely in its capacity
as the SUCCESSOR AGENCY OF THE EL
CAJON REDEVELOPMENT AGENCY,
a public body corporate and politic

ATTEST:

Majed Al-Ghafry, Secretary

By: _____
Douglas Williford, Executive Director

CITY OF EL CAJON, a California charter
city and municipal corporation

ATTEST:

Belinda Hawley, CMC, City Clerk

By: _____
Douglas Williford, City Manager

APPROVED AS TO FORM:

Morgan L. Foley, City Attorney

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PROPERTY PROFILE

Site # 4	Municipal Park; Prescott Promenade
Location:	201 E. Main Street, El Cajon, CA 92020
APN:	488-211-21-00
Lot Size (SF):	15,423
Building SF:	Not applicable
General Plan:	SDA # 9 (Also within Specific Plan 182)
Zoning:	C-G, General Commercial
Highest/Best Use:	Municipal Park; 492 sq. ft. encroachment Ground Lease to Mangia Bene for outdoor dining; remaining 450 sq. ft. of Ground Lease is for sidewalk area in the public (City) right of way; an additional 205 sq. ft. of restricted premises is leased for \$1.00.
Date Acquired:	July 12, 1984 (215 E. Main St.) and February 16, 1989 (217 E. Main St.)
Purchase Price:	\$331,090.93
Source of Funds:	Loan obtained from City of El Cajon for acquisition which was subsequently paid with \$2M in taxable and/or \$11M in tax-exempt financing from California Federal Savings & Loan Association (CalFed). CalFed was satisfied with \$35,600,000 in tax exempt bond proceeds of the Tax Allocation Refunding Bonds Issue of 1992. The 1992 bonds were refinanced with \$35,745,000 in tax exempt bond proceeds of the Tax Allocation Refunding Bonds Issue of 1997. The 1997 bonds were satisfied with \$40,000,000 in tax exempt bond proceeds of the Tax Exempt Allocation Refunding Bonds Issue of 2005 and remain an outstanding enforceable obligation.
Purpose of Acquisition:	The property was acquired for redevelopment purposes set forth in the 1971 Redevelopment Plan, and was/continues to be the site of a hydrocarbon contamination case. The Seller, Phyllis Chrisman, the Agency, Texaco Refining and Marketing Inc., Shell Oil Company, Inc., and Union Oil Company of California dba Unocal, are all parties to a Settlement Agreement for the remediation and cleanup of the site.
Status & Revenues:	Land with leasehold improvements; Municipal Park. 492 sq. of the Municipal Park is encumbered by a Ground Lease dated 11/22/2002, with Mangia Bene for outdoor dining. The remaining 450 sq. ft. is leased sidewalk or restricted premises area in the public (City) right-of-way. Lease rate is \$0.84 PSF for total rent of \$792.28, of which \$413.28 is associated with this parcel. An additional 205 sq. ft. of restricted premises is leased for \$1.00. The Lease expires 30-years upon issuance of the certificate of occupancy dated April 16, 2003. The property is also encumbered by a lease dated May 1, 1972, assigned to Clear Channel Outdoor, for installation of a billboard sign. The lease term renews each 15-year period, unless terminated by Lessor with 30-days' notice. The lease now expires on April 30, 2017, and generates revenue of \$480.00 per year.
Environmental issues, Brownfield or other Restrictions:	Environmental: The Agency acquired the property in 1984 and 1989. A portion of the property, originally located at 201-215 E. Main Street, is the subject of an existing Underground Storage Tank (UST) case for hydrocarbon contamination and Corrective Action Plan until site clearance and closure. The Agency also entered into a Settlement Agreement with the seller and three oil companies in 1985, under which the Seller is responsible for 80% of the site cleanup and the Agency is responsible for 20%, until closure. Through close of escrow, a portion of the seller's proceeds were held in trust with a law firm for management and payment of site remediation costs. The Seller is responsible for 80% of remediation costs and the Agency is responsible for 20%, until closure status can be achieved. Brownfield: Not applicable

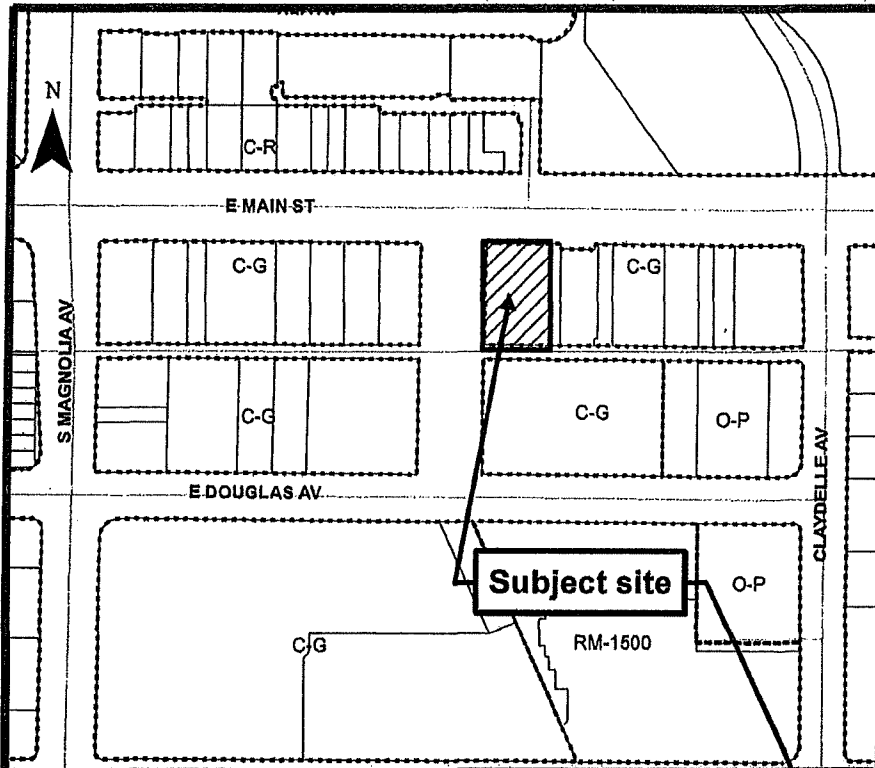
PROPERTY PROFILE

Site # 4	Municipal Park; Prescott Promenade
	Restrictions: Sales proceeds, if any, must be used in accordance with bond covenants.
Transit Oriented Development Site:	Not applicable.
Discussion & History:	<p>The Redevelopment Plan for the adopted El Cajon Central Business District Redevelopment Project dated November, 1971, Section 317, authorizes installation and construction of public improvements, public facilities, including, but not limited to: parks, plazas, and landscaped areas. Section 407 also authorizes the establishment of public or other park and recreational facilities.</p> <p>The Preliminary Report for the adopted El Cajon Redevelopment Project Area dated May, 1987, Table 3, identifies a new City park as a proposed redevelopment project.</p> <p>On July 12, 1984, and February 16, 1989, the Agency acquired the subject properties for a total \$331,090.93 through a loan from the City of El Cajon that was ultimately satisfied with tax exempt bond proceeds.</p> <p>"Prescott Promenade", a municipal park, was subsequently developed and dedicated as a City park in November 1996 with funding through a combination of CDBG and tax increment funds on both Agency and City property.</p> <p>In Fiscal Year 2009-10, Prescott Promenade was completely renovated with approximately \$2M in 2007 Tax Exempt Bond Proceeds to remove and replace impervious concrete with new pavements systems, install energy efficient lighting, electrical and surveillance cameras, high-efficiently irrigation systems, low water usage turf, new landscaping, a new stage with canvas sails, increased seating, park furniture, and wayfinding signage.</p>
Classification:	<p>Enforceable Obligation; Transfer to City – Governmental Purposes</p> <ol style="list-style-type: none"> 1. Site is/has been utilized as a municipal park since 1996. 2. Under Ground Lease that encumbers a portion of the park for outdoor dining; currently utilized as a municipal park known as Prescott Promenade; and a Lease for installation of a billboard sign. 3. Under a Settlement Agreement for site remediation until closure
Use of Broker:	See Disposal Strategy
Value As-Is:	Not applicable at this time
Disposal Strategy:	<p>In accordance with requirements for property acquired/satisfied and developed with tax exempt bond proceeds and Federal funds, authorize the Successor Agency to:</p> <ol style="list-style-type: none"> 1. Transfer the property to the City of El Cajon for Governmental Purposes pursuant to CH&SC Section 34181(a) and 34191.3 at no cost due to the source of funding for acquisition, public improvements paid with Federal and Tax Exempt Bonds; and 2. Transfer the Mangia Bene and Clear Channel Outdoor Leases to the City of El Cajon for application of lease revenues toward maintenance costs and ongoing contamination cleanup costs, along with Redevelopment Property Tax Trust Funds (RPTTF). The Mangia Bene Lease area equals approximately 3.1% of the total lot square footage of the overall parcel; and 3. The Successor Agency to remain responsible for environmental remediation costs under the existing enforceable obligation/Settlement Agreement until site closure from the County Department of Environmental Health is obtained.
Appendices:	1,2,5,6,7,25

Long Range Property Management Plan

Site No. 4

201 E Main Street & Prescott Promenade



Property Features:

- C-G Zoning
- 0.35 Acres
- APN No. 488-211-21
- Transfer to City - Governmental use and enforceable obligation
- Disposition timing phase 2

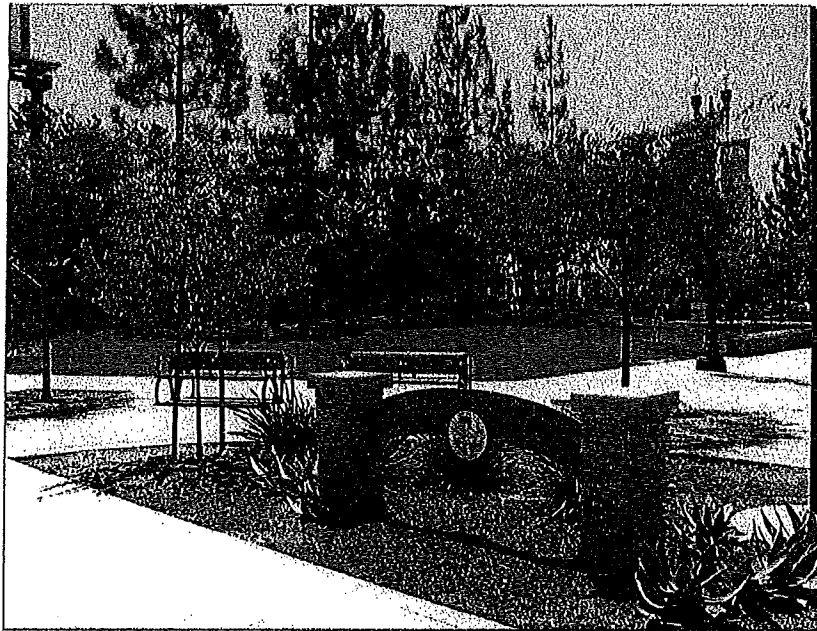
City of El Cajon Successor Agency Oversight Board

200 Civic Center Way
El Cajon, CA 92020
Phone: 619.441.1741
Fax: 619.441.1743
cityofelcajon.us



SUBJECT PHOTOGRAPHS

November 5, 2012



Looking southeasterly toward the park from E. Main St.



Looking easterly toward E. Main Street. View of Mangia Bene patio structure and billboard lease.



Looking southerly toward the park from E. Main St.



Looking northeasterly toward the park from Douglas Ave.

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3. The Successor Agency, for itself, and its successors and assigns, agrees, to the extent permitted by law, to indemnify, defend, and hold harmless, City as well as its elected and appointed officers, officials, employees, attorneys, successors and assigns, and all other persons, firms, corporations, associations or partnerships, or any other entity connected therewith harmless from and against any and all liability, loss, cost or expense, including without limitation, attorneys' fees, expenses, costs of litigation and expenses reasonably incurred in investigating or attempting to avoid or oppose the imposition of damages or in enforcing this indemnity, of whatever kind or nature, including the Successor Agency's obligations under that certain Settlement Agreement dated October 4, 1995, in the matter of *Chrisman v. Texaco Refining and Marketing, Inc., et al.*, San Diego Superior Court Case No. 647456 (the "Losses"), which City may sustain by reason of any suits, claims, demand, litigation, proceedings or matters arising out of, or in any manner connected with the removal of all hazardous waste or toxic substances from the Property and any hazardous waste or toxic substances on the Property, provided, however, that the removal of all hazardous waste or toxic substances from the Property is performed in manner consistent with, and in complete accordance with, the plan approved by the County of San Diego Department of Environmental Health, *except* for those Losses arising solely out of the willful misconduct of the City, or its officers, officials, employees, attorneys, agents, contractors, successors or assigns.

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a public body corporate and politic

ATTEST:

Majed Al-Ghafry, Secretary

By: _____
Douglas Williford, Executive Director

CITY OF EL CAJON, a California charter
city and municipal corporation

ATTEST:

Belinda Hawley, CMC, City Clerk

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APPROVED AS TO FORM:

Morgan L. Foley, City Attorney

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