



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Consent
October 19, 2010

Honorable Mayor and
Members of the City Council

Title: Amendment – Standard-Form Agreements as Needed to Facilitate Small Business Administration (SBA) Loans

Location/Council District: Citywide

Recommendation: Adopt a Resolution authorizing the City Manager or his designee to execute amendments that exempt the U.S. Small Business Administration (SBA) from any obligations imposed on landowners under the City's standard-form agreements if the City Manager or his designee determines that the amendments are required to facilitate project financing by the SBA.

Contact: Sabrina Tefft, Project Manager, (916)808-3789

Presenters: N/A

Department: Economic Development Department

Division: Citywide

Organization No: 18001021

Description/Analysis

Issue: On December 12, 2006, the City Council adopted Resolution No. 2006-918, thereby approving eleven standard-form agreements for use on development projects subject to the North Natomas Community Plan. These agreements are binding on the landowners' successors and/or assigns and are recorded on the lands being developed.

In addition to requiring landowners to enter into standard-form agreements when development projects occur in North Natomas, the City often requires landowners who seek development entitlements for projects in North Natomas and elsewhere enter into other agreements, such as subdivision-improvement agreements, hold-harmless agreements, and agreements for conveyance of easements.

When a landowner enters into such agreements and then applies for a loan from the SBA, the loan is secured by a deed of trust. As a result, the SBA would be obligated as the landowner's successor to adhere to these agreements upon foreclosure and acquisition of title to the land. The SBA has expressed concern that loans subject to these agreements may violate the federal Anti-deficiency Act (31 U.S.C. §1341), which prohibits federal employees from involving the federal government "in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."

Policy Considerations: If a landowner enters into these standard-form agreements or any other agreements imposed by the City and then applies for a loan from the SBA, the loan is secured by a deed of trust. If a landowner were to default on a loan, the SBA would foreclose and, upon acquiring title to the land, would assume the landowner's obligations under the agreements. The City Council is being asked to take into consideration that the SBA will not underwrite loans to small businesses if the SBA is subject to assuming these obligations. The SBA is concerned that the loans would violate the federal Anti-deficiency Act (31 U.S.C. §1341).

Environmental Considerations:

California Environmental Quality Act (CEQA): This report concerns administrative activities that do not constitute a "project" as defined by CEQA [CEQA Guidelines Sections 15378(b)(2)].

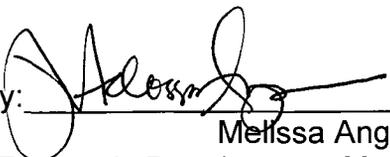
Sustainability Considerations: There are no sustainability considerations applicable to this report.

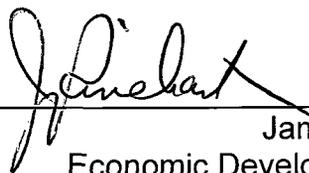
Commission/Committee Action: None

Rationale for Recommendation: Adoption of the recommended resolution is critical in the challenging economy now confronting landowners, developers, and small businesses within the City. The SBA will not award loans to small businesses within the City if, upon foreclosure, the SBA would become subject to the landowner obligations imposed by the City's standard-form agreements. Amending the standard-form agreements will exempt the SBA from the landowner obligations if the SBA acquires title through foreclosure. These amendments remove the SBA's concern that awarding loans to small businesses, subject to City standard-form agreements, violate the Anti-deficiency Act. More importantly, the amendment will apply to the SBA alone. If the SBA later transfers the land, the new owner will be required to perform all obligations under the agreements that have not already been satisfied.

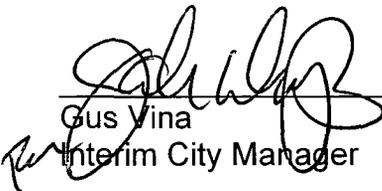
Financial Considerations: The proposed action has no financial impacts.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: 
Melissa Anguiano
Economic Development Manager

Approved by: 
James R. Rinehart
Economic Development Director

Recommendation Approved:


Gus Vina
Interim City Manager

APPROVED AS TO FORM:

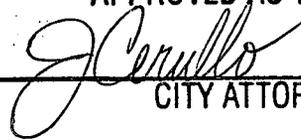

CITY ATTORNEY

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Resolution No. _____

Adopted by the Sacramento City Council

**AUTHORIZING THE CITY MANAGER TO AMEND AGREEMENTS AS
NEEDED TO FACILITATE SMALL BUSINESS ADMINISTRATION LOANS**

BACKGROUND:

- A.** On December 12, 2006, the City Council adopted Resolution No. 2006-918, thereby approving eleven standard-form agreements for use on development projects subject to the North Natomas Community Plan. Section 4 of that resolution authorizes the City Manager to approve non-substantive changes in the agreements but requires the City Council's approval of all major or substantive changes.
- B.** In addition to requiring that landowners enter into the standard-form agreements when development projects are in North Natomas, the City often requires that landowners who seek development entitlements for projects in North Natomas and elsewhere enter into other agreements, such as subdivision-improvement agreements, hold-harmless agreements, and agreements for conveyance of easements.
- C.** Typically, the agreements described in paragraphs A and B are binding on the landowners' successors and assigns, and they are recorded against the lands being developed.
- D.** From time to time, landowners who enter into the agreements described in paragraphs A and B will apply for loans from the U.S. Small Business Administration ("the SBA"). The loans are secured by deeds of trust. Thus, if a landowner were to default on a loan, then the SBA would foreclose and, upon acquiring title to the land, become the landowner's successor under the agreements. As such, the SBA would assume the landowner's obligations.
- E.** The City Council is informed that the SBA will not underwrite loans secured by deeds of trust on lands against which the agreements described above have been recorded. The SBA is concerned that the loans may violate the federal Anti-deficiency Act (31 U.S.C. § 1341), which prohibits federal employees from involving the federal government "in a contract or obligation for the payment of money before an appropriation is made unless authorized by law."
- F.** Continued access to loans from the SBA is critical in the challenging economy now confronting landowners, developers, and small businesses within the City. Accordingly, the City Council desires to address the SBA's concern by authorizing the City Manager to amend each recorded agreement so that the agreement will not require the SBA to perform any of the landowner's obligations if the SBA succeeds

the landowner under the agreement and the SBA's performance would violate the Anti-deficiency Act.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1.** The City Manager or his designee is authorized to execute amendments to any of the agreements described in paragraphs A and B above if the City Manager or his designee determines the amendment is required to facilitate project financing by the U.S. Small Business Administration. Such an amendment must be substantially the same as the form attached to this resolution as **Exhibit A**, and the City Attorney's Office must approve the amendment for legal form.
- Section 2.** This resolution takes effect immediately upon adoption.

Form of Amendment

No fee required, as recording benefits the City of Sacramento, a government entity (Gov. Code, ' ' 6103 & 27383).

Recording requested by, and when recorded return to

City Clerk
City of Sacramento
915 "I" Street (Historic City Hall)
Sacramento, CA 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

Amendment to [Name of Agreement]

This amendatory agreement, dated _____ for purposes of identification, is between the City of Sacramento, a California municipal corporation ("the City"); and [name & type of entity, e.g., a California limited-liability company] ("Owner").

Background*

Owner owns the real property commonly known as [address] and more particularly described in **Exhibit A** to this agreement ("the Property").

The City and Owner are parties to a [describe agreement] that was recorded with the Sacramento County Clerk/Recorder [set forth recordation information] ("the Original Agreement").

Owner intends to obtain a loan of \$_____ from [name], a certified development company licensed by the U.S. Small Business Administration ("the SBA") to provide real-estate loans for small businesses. The loan will be secured by a deed of trust in favor of [name], and the loan and deed of trust will be assigned immediately to the SBA. As a condition precedent to the loan, the SBA requires the City and Owner to amend the Original Agreement so that the SBA will not be required to perform any of Owner's obligations should the SBA obtain title to the Property through foreclosure. The SBA requires this condition for compliance with the federal Anti-deficiency Act (31 U.S.C. § 1341).

With these background facts in mind, the City and Owner agree as follows:

1. **No SBA Obligation.** The Original Agreement is hereby amended so that the following applies: if, in foreclosing on a deed of trust, the SBA takes title to the Property, then, notwithstanding anything to the contrary in the Original Agreement, the SBA will not be required to perform any obligation under the Original Agreement if performance would violate the Anti-deficiency Act set forth at 31 United States Code section 1341. But any person or entity that acquires title to the Property from the SBA will be required to perform all obligations under the Original Agreement that have not already been satisfied.

* The background statements set forth in this exhibit are examples. Each amendment should set forth background statements that adequately describe the relevant facts.

Amendment-Standard-Form Agreements to
Facilitate Small Business Association Loans to Landowners

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2. **All Other Terms Remain in Force.** Except as amended by section 1 above, all terms and conditions of the Original Agreement remain in full force.
3. **Effective Date.** This amendatory agreement becomes effective when all parties have signed it, as indicated by the dates in the signature blocks below.
4. **Recording.** Either party may record this amendatory agreement with the Sacramento County Clerk/Recorder.
5. **Counterparts.** The parties may execute this amendatory agreement in counterparts, each of which will be considered an original, but all of which will constitute the same agreement.
6. **Entire Agreement.** This amendatory agreement sets forth the parties' entire understanding regarding the matters set forth above. It supersedes all prior or contemporaneous agreements, representations, and negotiations regarding those matters (whether written, oral, express, or implied) and may be modified only by another written agreement signed by all parties.

City of Sacramento

[Owner's Name]

By: _____
[name]
Assistant City Manager
Dated: _____

By: _____
[name]
[title]
Dated: _____

Approved as to Form
Sacramento City Attorney

By: _____
Joseph Cerullo Jr.
Senior Deputy City Attorney

Amendment to [Name of Agreement]
City of Sacramento and [Name]

**Exhibit A to Form of Amendment
Description of “the Property”**