



The City of San Diego

Staff Report

DATE ISSUED: 12/14/2018

TO: Public Facilities Financing Authority

FROM: Office of the City Attorney

SUBJECT: Approval of the form of and authorization of the execution and delivery of a Consent to UCSD Regents' Option Agreement to Purchase City-Owned Real Property, and approving certain other documents and actions in connection therewith

Primary Contact: Bret A. Bartolotta Phone: (619) 533-5894

Council District(s): Citywide

OVERVIEW:

This resolution will authorize the Public Facilities Financing Authority of the City of San Diego (Authority) to execute and deliver its Consent to the Option to Purchase Agreement in favor of Regents.

PROPOSED ACTIONS:

A resolution of the Authority (i) approving the form of and authorizing the execution and delivery of a Consent to the Option to Purchase Agreement in Favor of Regents of City-Owned Property; and (ii) approving certain other documents and actions in connection therewith.

DISCUSSION OF ITEM:

Please see attached Staff Report to City Council dated December November 14, 2018.

Fiscal Considerations:

Please see attached Staff Report to City Council dated December November 14, 2018.

City Strategic Plan Goal(s)/Objective(s):

Please see attached Staff Report to City Council dated December November 14, 2018.

Environmental Impact:

Please see attached Staff Report to City Council dated December November 14, 2018.

Equal Opportunity Contracting Information (if applicable):

Please see attached Staff Report to City Council dated December November 14, 2018.

Previous Council and/or Committee Actions:

On December 5, 2018, the Members of the Public Safety and Livable Neighborhoods Committee unanimously approved the item.

Key Stakeholders and Community Outreach Efforts:

Please see attached Staff Report to City Council dated December November 14, 2018.

Bret A. Bartolotta
Deputy City Attorney

PUBLIC FACILITIES FINANCING AUTHORITY
OF THE CITY OF SAN DIEGO

RESOLUTION NUMBER FA-2019-1

ADOPTED ON JANUARY 8, 2019

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE PUBLIC FACILITIES FINANCING AUTHORITY OF THE CITY OF SAN DIEGO (I) APPROVING THE FORM AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE CONSENT TO THE OPTION TO PURCHASE AGREEMENT IN FAVOR OF REGENTS OF CITY-OWNED PROPERTY AND (II) APPROVING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of San Diego, California (City), the City solely in its capacity as the designated successor agency Successor Agency to the former Redevelopment Agency of the City of San Diego, and the Housing Authority of the City of San Diego, are parties to a Joint Exercise of Powers Agreement establishing the Public Facilities Financing Authority of the City of San Diego (Authority), a California joint exercise of powers authority duly organized and established to finance, acquire, construct, maintain, repair, operate, and control certain capital facilities improvements for the City; and

WHEREAS, Article 1 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorizes and empowers local agencies to form a joint powers authority, separate and apart from the contracting parties, and Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California authorizes and empowers such an authority to issue bonds for the purpose of financing public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefit to local agencies; and

WHEREAS, the Authority previously issued its Lease Revenue Bonds, Series 2012A (Capital Improvement Projects) and Lease Revenue Refunding Bonds, Series 2012B (Fire and Life Safety Facilities Refunding) (together, the Series 2012 Bonds); and

WHEREAS, concurrent with the issuance of the Series 2012 Bonds, the Authority and the City entered into that certain Facilities Lease (Facilities Lease) dated July 1, 2012, which Facilities Lease encumbers the City's fee interest in certain real property commonly known as Torrey Pines Center South (TPCS), located at 10280 Torrey Pines Road, San Diego, California, which the Regents of the University of California, a California public corporation (Regents) currently lease from the City; and

WHEREAS, the City and Regents have worked together to reach agreement on three separate transactions (Transactions), which are all dependent upon the other, such that if Council chooses not to authorize the Mayor to execute one of the agreements, the City will not exercise any of the agreements and the none of the Transactions will be completed; and

WHEREAS, as part of the Transactions, the City has agreed to grant the Regents the option to purchase TPCS from the City on certain conditions delineated in that certain Option to Purchase Agreement in Favor of Regents of City-owned Property (Option Agreement); and

WHEREAS, if executed by the City, the Option Agreement would, upon fulfillment by Regents of certain conditions, grant the Regents an irrevocable option to purchase TPCS, exercisable as of October 15, 2042 through October 15, 2044, which period of time occurs after the encumbrance caused by the Facilities Lease related to the Series 2012 Bonds will be lifted, if not sooner; and

WHEREAS, as part of the Transactions, the Regents have required that the Authority consent to the Option Agreement, and the City's execution of the agreements that compose the Transactions is contingent upon the Authority's executing that certain Consent to the Option to Purchase Agreement in Favor of Regents of City-Owned Property (Consent); and

WHEREAS, there has been presented to this meeting a proposed form of the Consent, a copy of which is on file in the Office of the Secretary as Document No. _____; and

WHEREAS, the Authority is authorized to undertake the actions described in this Resolution pursuant to its Joint Exercise of Powers Agreement and the Constitution and applicable laws of the State; NOW, THEREFORE,

BE IT RESOLVED by the Board of Commissioners of the Public Facilities Financing Authority of the City of San Diego (Board of Commissioners), as follows:

Section 1. The Board of Commissioners hereby finds and determines that the statements set forth above in the recitals to this Resolution are true and correct.

Section 2. The form, terms, and provisions of the form of the Consent, a copy of which Consent is on file in the Office of the City Clerk and submitted to this meeting, is hereby approved. The Chair or Vice-Chair of the Board of Commissioners of the Authority or the Treasurer of the Authority (each, an Authorized Officer), is hereby authorized, and any one of the Authorized Officers is hereby directed, for and in the name and on behalf of the Authority, to execute and deliver a form of the Consent in substantially the form presented to this meeting and consistent with this Resolution, with other additions and changes therein as any Authorized Officer shall determine are necessary or desirable as being in the best interests of the Authority, and as approved

as to form by the City Attorney, as counsel to the Authority, or her specified designee, such approval to be conclusively evidenced by the execution and delivery of the Consent.

Section 3. Any Authorized Officer of the Authority, as well as the Mayor, the Chief Financial Officer, and the Chief Operating Officer of the City, is hereby authorized and directed, for and on behalf of the Authority, to do any and all things and take any and all actions, including, without limitation, payment of necessary and appropriate fees and expenses, and execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable to consummate the Transactions in accordance with this Resolution. Any actions heretofore taken by such officers in furtherance of any of the Transactions authorized herein are hereby ratified, confirmed, and approved.

Section 4. This Resolution shall take effect immediately upon its adoption.

[The rest of this page is intentionally left blank. Signature page is the next page.]

ADOPTED, SIGNED AND APPROVED this 8th day of January 2019, by the following vote:

AYES: _____
NAYS: _____
ABSENT: _____
VACANT: _____
ABSTAIN: _____

PUBLIC FACILITIES FINANCING
AUTHORITY OF THE CITY OF
SAN DIEGO

Georgette Gómez, Council President
Chair, Board of Commissioners

Attest:

Secretary to Board of Commissioners

EXHIBIT 6

“FORM OF” PFFA CONSENT

RECORDING REQUESTED BY:)
)
)
WHEN RECORDED MAIL TO:)
)
)
)
)
)

Above Space for Recorder’s Use Only

The Public Facilities Financing Authority of the City of San Diego (“**Authority**”) hereby consents to the OPTION TO PURCHASE AGREEMENT IN FAVOR OF REGENTS OF CITY-OWNED PROPERTY by and between the CITY OF SAN DIEGO, a chartered California municipal corporation (“**CITY**”) and the Regents of the University of California, a California public corporation (“**REGENTS**”) dated _____, 2018 (the “**Option Agreement**”), which pertains to the real property located at 10280 North Torrey Pines Road, San Diego, California (“Option Property”). All capitalized terms in this Consent, not otherwise defined herein, shall have the meaning as defined in the Option Agreement. Specifically:

1. Authority hereby consents to the Option Agreement, and acknowledges that any rights of possession that the Authority may have pursuant to the Site Lease and the Master Facilities Lease, are subordinate to the REGENTS’ rights to possession under the Ground Lease, and REGENTS’ rights contained in the Option Agreement.
2. Authority acknowledges and agrees that REGENTS shall be entitled to exercise its option right to the Option Property without any interference from Authority and, if escrow closes pursuant to the Option Agreement, that REGENTS shall thereafter own fee title to the Option Property and Authority will have no further claim to any right, title, or interest in the Option Property.
3. Nothing herein shall be deemed to make the Authority a party to the Option Agreement.

Authority:

PUBLIC FACILITIES FINANCING AUTHORITY
OF THE CITY OF SAN DIEGO

By: _____
Title: _____



The City of San Diego

Staff Report

DATE ISSUED: November 14, 2018

TO: City Council

FROM: Real Estate Assets

SUBJECT: Approval of a Fire Station Purchase Agreement, an Option to Purchase Agreement for Torrey Pines Center South, and a Third Amendment to the Ground Lease between the City and The Regents of the University of California for the UCSD Fire Station.

Primary Contact: Roswitha Sanchez Phone: (619) 236-6721

Secondary Contact: April McCusker Phone: (619) 236-6987

Council District(s): 1

OVERVIEW:

This action is to request authorization for the Mayor, or his designee, to enter into three agreements between the City of San Diego (City) and the Regents of the University of California (Regents):

1. Fire Station Purchase Agreement (Fire Station Agreement): Regents to convey real property located at the corner of North Torrey Pines Road and Genesee Avenue to City and contribute up to \$20,556,000 for City to design, build and operate an approximately 10,500 square foot, 3 bay fire station.
2. Option to Purchase Agreement for Torrey Pines Center South (TPCS) (Option Agreement): As consideration for the Fire Station Agreement, City to grant Regents an option to purchase the City-owned real property located at 10280 North Torrey Pines Road in San Diego, California, commonly known as TPCS which is currently leased to Regents.
3. Third Amendment to Ground Lease for TPCS which is attached as Exhibit 1 to the Option Agreement.

PROPOSED ACTIONS:

1. Authorize the Mayor to execute three agreements with UCSD: (1) Fire Station Agreement; (2) Option Agreement, and (3) Third Amendment to Ground Lease, and to execute and deliver any additional documents required to complete the transfer of the real property or the City's performance under the Agreements, on terms and conditions deemed reasonable and in the City's best interest by the Mayor or his designee
2. Authorize the City to accept up to \$20,556,000 into fund No. 400871, UCSD Fire Station CONTRIB, for the design and construction costs of the UCSD Fire Station and offsite improvements as outlined in the Fire Station Agreement.

3. Authorize the Chief Financial Officer (CFO) to add CIP S-19003, UCSD Fire Station and ROW Improvements to the Capital Improvement Program.
4. Authorize the CFO to increase the CIP budget in CIP No. S-19003, UCSD Fire Station and ROW Improvements, and to appropriate and expend up to \$20,556,000, within Fund 400871, UCSD Fire Station CONTRIB, on the Project in accordance with the terms of the Fire Station Agreement, contingent upon the CFO first certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.
5. Authorize the CFO to transfer appropriations of \$65,000 from CIP S-00788 Fire Station No. 05 – Hillcrest, to CIP S-19003, UCSD Fire Station and ROW Improvements within Fund 100012, INFRASTRUCTURE FUND.
6. Authorize the CFO to expend an amount not to exceed \$12,000 from CIP No. S-19003, UCSD Fire Station and ROW Improvements for escrow, title and miscellaneous expenses related to the property acquisition for the UCSD Fire Station location, contingent upon the CFO furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.
7. Certifying that the information contained in Final Mitigated Negative Declaration No. 619013/SCH No. 2018061017 has been completed in compliance with the California Environmental Quality Act (CEQA) and State CEQA Guidelines, and that said Mitigated Negative Declaration reflects the independent judgment of the City of San Diego as Lead Agency; Stating for the record that the final Mitigated Negative Declaration No. 619013/SCH No. 2018061017 has been reviewed and considered prior to approving the project; Adopting the final Mitigated Negative Declaration; Adopting the Mitigation, Monitoring and Reporting Program.
8. Directing the City Clerk to file a Notice of Determination

DISCUSSION OF ITEM:

This project is being implemented to meet the gap in Fire-Rescue coverage in the University Community Planning Area, in and around the UCSD campus as identified in the San Diego Fire-Rescue Department (SDFD) Standards of Response Coverage Review prepared by Citygate Associates, LLC (Citygate) in 2010, and 2017.

Due to the rapid growth of the UCSD campus, the amount of time SDFD spends responding to an increased number of incidents at UCSD has significantly increased. The majority of the UCSD campus lies outside the coverage area of existing fire stations, which increases the time spent responding to these incidents.

With both public entities recognizing the need for a fire station on or near the UCSD Campus, the City and Regents have worked toward an agreement wherein Regents is contributing real property that Regents currently owns and up to \$20,556,000 (“Regents Contribution”) to be used to design and build a fire station and required off-site improvements. The City will be responsible for the ongoing operations and maintenance for the station once built, which will be paid out from the City’s Fire-

Rescue Department operating fund. The new fire station will be located at the corner of North Torrey Pines Road and Genesee Avenue.

Additionally, Regents has been a long-term tenant of TPCS, and would like to purchase TPCS from the City. The City currently uses the TPCS as collateral for lease revenue bonds and anticipates needing TPCS as collateral through 2042. The City and Regents have reached an agreement wherein, upon Regents fulfilling all of the obligations under the Fire Station Agreement, the City will grant Regents an option to purchase the TPCS property which Regents can exercise on or after October 15, 2042, as more fully set forth below. This option to purchase will become irrevocable, even if Regents retakes possession of the property under one of the reversionary rights retained by Regents in the Grant Deed. Because TPCS is currently collateral for the lease revenue bonds, Regents is requiring that the Public Facilities Financing Authority (PFFA) consent to the Option Agreement. The PFFA's consent is being sought at a separate meeting of the PFFA.

Terms of the Fire Station Agreement

The proposed project site is located on the east side of North Torrey Pines Road, south of Genesee Avenue and contiguous with the University of California, San Diego (UCSD) in the University Community Planning Area, in the northwest region of the City of San Diego. The Property is a portion of a larger parcel owned by Regents which will be established by a lot split. Upon execution of the Fire Station Agreement, the City will have a period of 120 days to conduct due diligence to determine if the real property is suitable for the construction of a fire station. During this time, the City will need to expend funds to conduct the due diligence. Available funds have been identified from Fire Station No. 5 (which has been completed). If the City determines that the property is acceptable, the City will be entitled to reimburse these costs from the Regents Contribution. However, if the City determines that the property is not acceptable, the City would not be reimbursed for any costs expended during the due diligence period.

Upon Regents' approval of City's bridging documents, Regents will process the lot split to create a separate legal parcel for the fire station construction which will be conveyed to the City subject to Regents reversionary rights.

City will design and construct a two-story fire station of approximately 10,500 square feet with a 3-bay apparatus floor and accommodations for up to two engines, a crew of up to 10, up to 16 surface parking stalls, and offsite improvements to North Torrey Pines Road as necessary (Project). Regents will provide the land and up to \$20,556,000 million dollars that can be used for design costs, permitting fees, processing fees, inspection fees, environmental review, and construction costs, and other items more specifically set forth in the Fire Station Agreement. City staff time can be reimbursed from these funds, however, the Fire Station Agreement does limit reimbursement for City staff time to twenty (20%) percent of the Project costs. In the event the project costs less than \$20,556,000, the City shall refund any remaining contribution funds to Regents.

If the Project costs more than \$20,556,000, the City will be responsible for all additional costs incurred by the City in completing the Project. If City staff time chargeable to the Project exceeds twenty (20%) of the Project costs, the City will not be entitled to reimburse itself from the \$20,556,000 and would be solely responsible for the costs associated with that staff time. The City will be the lead agency on the Project, responsible for design, environmental review, permitting and construction. The City is

responsible for the costs of the furniture, fixtures, and equipment, and the ongoing costs of operating and maintaining the fire station.

Regents has retained the right to have the property revert back to Regents ownership if any of the following occur: (a) The City fails to start construction within five (5) years, or fails to substantially complete construction within seven (7) years from the effective date of the Fire Station Agreement, subject to force majeure events; (b) Within the first fifty (50) years after the fire station is placed into service, the City ceases to operate the fire station for a period of more than 12 months, for any reason other than repair or reconstruction, without first obtaining the approval of the Board of Regents; or (3) The City ceases to operate the fire station after 50 years for a period of more than 12 months for any reason other than repair or reconstruction, and the City fails to use the property in a manner that is reasonably beneficial to the UCSD campus without first obtaining the approval of the Regents.

The Fire Station Agreement also prohibits the City from requiring any additional contributions from Regents' for any impacts relating to fire services, and other services typically provided by fire stations and personnel arising from the anticipated future growth of and on the UCSD campus under the Regents' 2018 Long Range Development Plan (2018 LRDP) until the later of December 31, 2035, or substantial completion of the build-out contemplated under the 2018 LRDP, unless (a) Regents amends the 2018 LRDP or engages in a new LRDP planning process; (b) CITY determines, based on a reasonable, evidence-based analysis of the additional development proposed by Regents in comparison to CITY's then-current standard of response coverage review for the SDFD, that such amendment or new LRDP creates the need for additional Fire Services; and (c) CITY determines that Regents' impacts of the amendment or new LRDP, exceed Regents' Contribution in inflation-adjusted dollars.

Terms of the Option Agreement

Scripps (Regents/UCSD) entered into a ground lease with City with an effective lease date of February 23, 1985 for the TPCS property, which is the subject of the Option Agreement, located at 10280 North Torrey Pines Road. The term of the ground Lease is 55 years, expiring on January 31, 2040.

Regents desires to have the right and option to purchase TPCS to assist Regents in providing services and educational facilities required to carry out its mission, pursuant to the University of California's purposes and goals. However, in 2012 the City entered into leases with the Public Facilities Financing Authority, relating to lease revenue bonds issued by the Public Facilities Financing Authority originally set to expire on April 15, 2042. Under the Option Agreement, the City agrees to ensure that Regents can exercise their option to purchase TPCS from October 15, 2042 through October 15, 2044 ("Option Period") subject only to encumbrances approved by Regents. However, Regents desires to purchase TPCS prior to October 15, 2042, if possible. The Option Agreement requires City to provide Regents with notice and the ability to exercise the Option Right earlier, if and only if, City in its sole discretion determines that it no longer desires TPCS for lease revenue bond purposes.

In order to give all parties some certainty, TPCS was appraised by an independent, MAI designated and state-certified appraiser, who determined that the market value of the property was \$35,300,000 as of April 13, 2018. The appraiser then consulted the commercial real estate market, including investors and brokers to arrive at a supported projected annual increase in value through 2042. The appraiser concluded a 2.41% annual increase was supported, and provided a yearly schedule applying that increase from 2019 through 2044. This schedule will determine the price that Regents will pay for

the property based upon the year in which the option is exercised. The price schedule is Exhibit 5 - Purchase Price, to the Option Agreement. This negotiated and agreed upon price schedule was approved by the University of California Board of Regents in May 2018. In addition, City will receive Regents Contribution as consideration for the Option Right itself.

Council Policy 700-10 requires that the minimum sale price be set by an appraisal that is less than six months old. The previous appraisal will be more than six months old at the time this matter is brought to Council. To meet the requirements of 700-10 a current appraisal of the City's existing ownership of the land has been conducted, resulting in an appraised value of \$6,180,000 with an effective date of value of November 1, 2018. This appraisal does not include the building or site improvements, which are not currently owned by the City. This appraisal represents a different interest in the property than the preceding appraisal that was utilized to establish a purchase price for the land and the City's future interest in the building.

Regents will have one hundred twenty (120) days to conduct its due diligence during which time Regents can conduct investigations on TPCS (the Option Property) at its sole costs and expense to determine if it desires to move forward with the purchase of the property. If Regents' due diligence shows that the conditions and assumptions of the appraisal by David F. Davis, MAI, dated April 13, 2018, which was the basis for the agreed upon purchase price are not valid as of the date of exercise, then Regents may request a reduction to the purchase price and City shall present such request to the Council of the City of San Diego. However, City Council shall approve or deny the request in its sole discretion.

Terms of the Third Amendment to Ground Lease

The Third Amendment to the Ground Lease is attached to the Option Agreement as Exhibit 1. The City and Regents wish to amend several provisions of the Ground Lease, specifically provisions relating to the Holdover period, Surrender of Premises, Improvements, and Signs. The Holdover section is being amended to maintain the same rent during the Option Period as was in place at the time that the expiration of the Ground Lease, provided that the Regents remain in possession in a holdover status. The Improvements and Signs sections were amended to add a specific process and time frame for City approvals to be completed within, and the Surrender section was amended to include the holdover period.

City Strategic Plan Goal(s)/Objective(s):

Goal #1: Work in partnership with all communities to achieve safe and livable neighborhoods.

Objective: Improve fire and emergency medical response time.

Goal #2: Provide high quality public service.

Objective: Ensure equipment and technology are in place so that a high quality public service can be achieved.

Fiscal Considerations:

Regents' contribution to the UCSD Fire Station of \$20,556,000 dollars will be deposited in Fund 400871, UCSD Fire Station CONTRIB for CIP S-19003, UCSD Fire Station and ROW Improvements.

The City is responsible for any costs over the contribution of \$20,556,000 and/or staff time over the 20% of project cost limitation as stated in the agreement.

The City is responsible for the cost of \$1,075,000 for furniture, fixtures, and equipment, and the new fire engine, which is anticipated to be paid from CIP Contributions from the General Fund.

The yearly operating cost for the UCSD Fire Station will be approximately \$1,865,000 for personnel and operating expenses.

Regents will have the option to purchase the TPCS during the option period of 2042 through 2044 for the price outlined in the appraisal. The purchase price will be deposited into the City's General Fund.

Environmental Impact:

The City of San Diego, as Lead Agency under CEQA has prepared and completed a Mitigated Negative Declaration Project No. 619013, dated August 31, 2018, and Mitigation, Monitoring and Reporting Program covering this activity.

Equal Opportunity Contracting Information (if applicable):

These Agreements are not 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). However, the anticipated fire station construction contract will be subject to City's Equal Opportunity Contracting Ordinance at a later date.

Previous Council and/or Committee Actions:

This item will be heard at Public Safety and Livable Neighborhoods Committee on December 5, 2018.

Key Stakeholders and Community Outreach Efforts:

Residents who live in the La Jolla community, and students attending the UCSD campus.

Cybele L. Thompson _____

Director, Real Estate Assets Department

Ronald H. Villa _____

Acting Assistant Chief Operating Officer



The City of San Diego
Item Approvals

Item Subject: A resolution of the Authority approving the form of and authorizing the execution and delivery of a Consent to the Option to Purchase Agreement in Favor of Regents of City-Owned Property.

Approving Authority	Approver	Approval Date
OFFICE OF THE CITY ATTORNEY DEPARTMENT APPROVER	SINGER, SANNA	12/14/2018