



Memorandum

TO: HONORABLE MAYOR,
CITY COUNCIL AND
SUCCESSOR AGENCY BOARD

FROM: Richard A. Keit
Leslye Corsiglia

SUBJECT: NORTH SAN PEDRO
HOUSING PROJECT

DATE: September 12, 2013

Approved

Date

9/17/13

COUNCIL DISTRICT: 3

RECOMMENDATION

It is recommended that the Successor Agency:

- (1) Approve an Amended and Restated Disposition and Development Agreement with North San Pedro Townhomes LLC (“Developer”) amending and restating in its entirety an existing Disposition and Development Agreement dated June 19, 2007, as amended by that certain First Amendment to Amended and Restated Disposition and Development Agreement dated December 14, 2010, between Developer and the Successor Agency to amend, among other things, the Schedule of Performance and to modify the Phases; and
- (2) Approve an Amended and Restated Disposition and Development Agreement with San Pedro Life I, LLC (“SPL”) amending and restating in its entirety an existing Amended and Restated Disposition and Development Agreement dated June 26, 2007, as amended by that certain First Amendment to Amended and Restated Disposition and Development Agreement dated December 14, 2010 to amend, among other things, the Schedule of Performance and to modify the Phases;

It is recommended that the City Council:

- (1) Approve a \$1,600,000 loan (“Loan”), plus capitalization of up to \$100,000 of accrued but unpaid construction period interest, to First Community Housing, or a related legal entity, for construction of an affordable housing project required as a condition to the State Infill Infrastructure Grant for the North San Pedro Housing Project;
- (2) Approve, in substantially final form, the Loan Agreement, Note, and Deed of Trust, and additional documents (collectively, “Loan Documents”) for the Loan; and

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- (3) Adopt a resolution authorizing the Director of Housing to negotiate and execute:
(i) any additional documents as may be necessary to effectuate and finalize this transaction, including any subordination agreements required to subordinate the City's Deed of Trust to a senior lender, and (ii) amendments to the Loan Documents as may be reasonably required to finalize this transaction, provided such amendments do not increase the amount of the Loan, including any capitalized interest.

OUTCOME

Approval of the proposed actions will enable the Successor Agency to secure \$24,160,000 in State Grant Funding, reestablish the Julian Street grid system, widen St. James Street, and develop needed market-rate and affordable housing on the North San Pedro Housing Project Site.

EXECUTIVE SUMMARY

The proposed action will amend and restate the DDAs with North San Pedro Townhomes LLC (NSPT) and San Pedro Life I (SPL) and provide a \$1,600,000 loan to First Community Housing (FCH) to facilitate development and meet the affordable housing requirement of the North San Pedro Housing Project. The North San Pedro Housing Project will develop approximately 900 units in six phases over a 9 acre site consisting of three townhouse developments, two high rise towers, one mid-rise podium project, and one affordable housing development.

The Agency, SPL, NSPT and FCH applied for and were awarded an Infill Infrastructure Grant (Grant) for the North San Pedro Housing Project in the amount of \$24,160,000. The Grant will be used to fund land acquisition costs, infrastructure improvements—including the realignment of Julian Street—and park improvement costs. With the realignment of Julian Street the project creates two (2) additional parcels that can be sold and developed, thereby maximizing the value of the North San Pedro Housing Site.

The Housing Department Loan of \$1,600,000 replaces funds that were committed by the Agency under the original DDAs to FCH, but are not currently available. The loan is necessary in order to support the development of the affordable homes and to retain the Grant.

BACKGROUND

North San Pedro Housing Site

In September 2003, the former Redevelopment Agency of the City of San José (“Agency”) acquired 5.28 acres in Downtown San José in the area generally located in the blocks bounded by Highway 87 to the west, West Saint James Street to the south, North Market Street to the east and a Union Pacific Railroad right of way to the north. This property, combined with existing

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Agency-owned and State-owned surplus property, which was subsequently acquired by the Agency, created a significant development site of approximately 9 acres ("Site"). A map of the North San Pedro Housing Site is attached.

Development of the Site

In December 2003, the Agency issued a Request for Proposals (RFP) for the development of the Site. Barry Swenson Builder and The Olson Company were selected by the Agency Board in August 2005 to develop a planned mixed-use residential project on the Site. As part of the original project, the City and Agency planned to realign Julian Street and make necessary infrastructure improvements, including a park. The project was subsequently delayed while several alternative land uses for the Site were studied by the Agency.

In June 2007, the Agency Board approved separate Disposition and Development Agreements ("DDAs") with Barry Swenson Builder and The Olson Company. Barry Swenson Builder subsequently formed San Pedro Life I, LLC ("SPL") to be the developer under its DDA and The Olsen Company subsequently assigned its DDA to North San Pedro Townhomes ("NSPT"). In December 2010, the DDAs with SPL and NSPT were amended to address various issues, including the use and disbursement of certain grant funds discussed below and additional requirements regarding the affordable housing component of the Project, including the selection of First Community Housing ("FCH") as the affordable housing developer for the Project.

Proposition 1C IIG Grant

On February 2, 2009, the California Department of Housing and Community Development (HCD) issued a Notice of Funding Availability (NOFA) for the Infill Infrastructure Grant (IIG) established under the Housing and Emergency Shelter Trust Fund Act of 2006 (Proposition 1C). The primary objective of the IIG Grant is to promote infill housing development by funding the infrastructure needed for dense infill development to occur, and to promote deeply affordable homes as a key component of large infill projects. The Agency, SPL, NSPT and FCH applied for and were awarded an Infill Infrastructure Grant (Grant) for the North San Pedro Housing Project in the amount of \$24,160,000. In applying for the Grant, the parties agreed to provide 135 affordable apartments restricted at various affordability levels. This component of the Project was critical to obtaining the Grant and is a condition of the Grant. FCH, an experienced affordable housing developer based in San José, will develop 135 restricted affordable apartments to satisfy the Grant requirements. The Grant will be used to fund land acquisition costs, infrastructure improvements—including the realignment of Julian Street—and park improvement costs.

Working with HCD, the parties negotiated and executed several documents necessary to obtain the Grant. During negotiations of the Grant documents, the phasing of the Project was changed in response to HCD concerns that a majority of the units were being constructed in the later phases. Ultimately, as required under the DDAs, the parties entered into the Standard Agreement and the Disbursement Agreement with HCD. After execution of the agreements with

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HCD, the parties commenced to negotiate the amended and restated DDAs to amend the schedules and to incorporate changes to the phasing of the Project.

Allocation of Sales Proceeds

In March, 2011, the Agency and the County of Santa Clara ("County") entered into a settlement agreement ("Settlement Agreement") relating to the payment of certain pass-through payments. As part of the Settlement Agreement, the Agency assigned fifty percent (50%) of the sales proceeds from the sale of the North San Pedro Housing Site to the County and recorded a deed of trust against the North San Pedro Housing Site to secure the obligations under the Settlement Agreement.

Dissolution of Redevelopment

On or about June 28, 2011, the Governor signed into law ABX1 26, as subsequently amended by AB 1484, which provided for the dissolution and wind-down of redevelopment agencies throughout the State of California ("Dissolution Legislation"). On February 1, 2012, pursuant to the Dissolution Legislation, the Agency was dissolved and, upon dissolution, all assets, properties and contracts of the Agency, including the original DDAs, were transferred by operation of law to the Successor Agency and to the City.

ANALYSIS

Given the complexity of the Project, the number of parties involved and the uncertainties surrounding the dissolution of Redevelopment, the negotiation and execution of the documents required for the State grant funding took longer than anticipated. Therefore, the schedules of performance in the DDAs must be updated. In addition, the change in project phasing to address HCD's concerns also requires certain changes to the documents. Therefore, the Disposition and Development Agreements now need to be amended to update the Schedule of Performance and to realign the Phases among the Developers.

PROJECT DESCRIPTION

Since its original approval, the total number of units planned to be developed for the Project has increased to approximately 875-925 units. This represents an increase in density for the project from 95 dwelling units per acre to 135 dwelling units per acre. Below is information about the Project's different components.

NSPT –Market-rate Housing Development

The original NSPT proposal included four (4) phases, three of which were townhome developments consisting of a total of approximately 82 units, and one phase of which was a multi-story apartment development of approximately 102 units. To address HCD's concern that a majority of the units were being constructed in the later phases, SPL agreed to assign its first

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phase to NSPT, which together with NSPT's 102 unit apartment development, created a "super-block" of approximately 412 units.

Under the proposed Amended and Restated DDA with NSPT, the NSPT project now consists of the following phases:

- Phase I - a 21-unit townhome project located on Block C,
- Phase II - a 412-unit apartment project on Block B/F,
- Phase III - a 14-unit townhome project on Block D, and
- Phase IV - a 42-unit townhome project on Block A.

The DDA does provide NSPT with flexibility in the ordering of the phases and the number of units in each phase.

SPL—Market-rate Housing Development

SPL's original proposal included three (3) phases, each of which was a high-rise residential tower containing at least 125 units per tower, and totaling no less than 375 units. With the assignment of SPL's first phase to NSPT, SPL will now construct two towers in two phases, totaling approximately 250-300 units. The DDA provides SPL flexibility in the ordering of the phases and the number of units in each phase.

FCH—Affordable Housing Development

FCH will build the affordable housing component for the Project ("Affordable Project") and has obtained a Conditional Use Permit (CP11-034) and FAA approval for the Affordable Project. The 135-unit affordable housing development is planned to include 118 studios, 16 one-bedroom units, and 1 two-bedroom unrestricted manager's unit. The affordable apartments will be available to very low- and extremely low-income households with incomes between approximately \$11,000 and \$42,000. Forty-five (45) of the units will serve special needs populations, likely including people with developmental disabilities.

For the Affordable Project to achieve this deep level of affordability—which was required to obtain the Grant—the Agency originally agreed to provide a \$2,500,000 grant and the affordable housing site, which was to be transferred to FCH at no cost under the original DDAs. Given the Agency's existing senior debts, the full \$2,500,000 is not currently available from property tax revenues. However, it is expected that the Successor Agency could provide \$900,000 within the next 6-12 months. Therefore, this action requests that the difference—\$1,600,000—be made in the form of a long-term, low-interest loan by the Housing Department in order to help satisfy requirements of the Grant.

The immediate use of the City's Loan proceeds will be to complete plans, specifications, and other predevelopment work necessary for FCH to apply for 9% Low Income Housing Tax Credits from the State in 2014. The Loan will be documented also to include construction and permanent phases so that a longer maturity will enable the deeply affordable project to repay

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from a portion of its net operating cash flow, which is typical of City loans for affordable housing.

Development costs for the Affordable Project are expected to be approximately \$30,000,000. Sources include expected 9% tax credit equity, a conventional mortgage loan, the City Loan, \$900,000 in grant funds from the Successor Agency, an Affordable Housing Program grant from the Federal Home Loan Bank, and potentially other sources.

The requested loan amount of \$1,600,000 and the grant expected from the Successor Agency are together expected to enable the Affordable Project to be competitive in the 9% tax credit rounds. However, the supply of 9% tax credits for Santa Clara and San Mateo Counties is far less than the demand and there are several other projects also competing for this funding in our geographic area. To enable some flexibility, FCH has also applied for State Transit Oriented Development funding for the Affordable Project, and may seek additional sources of funding to make the Affordable Project feasible.

The Affordable Project's level of affordability, proximity to amenities, and underwriting parameters are in accordance with the City's priorities for funding commitments. The estimated value of the site to be donated to FCH for the Affordable Project is expected to exceed \$4,000,000; therefore, the City's \$1,600,000 loan will have adequate security once recorded against the site.

The term of the predevelopment period will be up to 24 months with, at the discretion of the City, up to two 6-month extensions if Developer continues to make progress satisfactory to the City towards construction commencement. The construction loan period will be for up to 36 months, and the permanent loan period will be for up to 30 years. Repayments during the permanent loan period will be structured as a portion of residual receipts. The City's interest rate is expected to be 3% simple during predevelopment, 3% simple during construction, and 1% simple during permanent. However, as a junior lender, the City's loan maturity, interest rate, and share of net cash flow are often changed due to requirements from senior lenders and tax credit investors shortly before construction closing. Approval of this action gives the Housing Director authority to make amendments to the Loan's terms due to these requirements.

While this facility is structured as a loan, repayment from the facility is expected to be minimal over time given the Affordable Project's deep affordability; therefore, small changes to the loan terms stated above are not expected to result in significant changes to the City's financial position.

Given the timing requirements for the IIG award, and given that several layers of financing is needed for affordable housing, City staff will plan to close the Loan promptly upon its approval.

HCD Grant Funding

The Grant will pay for street and other infrastructure improvements, including the realignment of Julian Street and the restoration of the grid pattern, from Julian Street south to West Saint James

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Street (collectively, "Infrastructure Project"). The Successor Agency has worked with the City's Departments of Transportation and Public Works to develop an approved set of construction plans to convert West Saint James Street to a two-way thoroughfare. The realignment will improve access to the northern portion of the Downtown Core and minimize through traffic in the neighborhood to be built on the Site.

The Project is subject to the City's Parkland Dedication Ordinance (PDO), which requires that projects either provide park facilities for the project or pay park in-lieu fees. The Infrastructure Project includes the design and construction of a new park of approximately 1 acre north of Julian Street and the expansion of Pellier Park. The costs associated with the design and construction of these parks will be covered by the Grant. The Pellier Park expansion will occur during the initial Infrastructure Project and the new park will be built in the final phases of the Project. If the design and construction of the parks does not satisfy the PDO requirements, any remaining PDO fees may also be reimbursed from the Grant.

SCHEDULE

The realignment of Julian Street and construction of the Infrastructure Project will need to be completed prior to construction of the housing developments. The Infrastructure Project is anticipated to commence in mid-2014 after completion of design and construction documentation. The Infrastructure Project is expected to take approximately 12-14 months. It is anticipated that construction of the first housing phases will begin after completion of the Infrastructure Project and the build out will extend over an approximate six (6) year period. The anticipated commencement date for each phase is shown on the proposed Map attached hereto.

PURCHASE PRICE

NSPT Purchase Price

<u>Phase</u>	<u>Site</u>	<u># of Units</u>	<u>Price</u>	<u>Price per Sq Ft</u>
Phase I	Block C	21	\$1,613,121	\$75.45
Phase II	Block B/F	412	\$9,587,058	\$93.52
Phase III	Block D	14	\$1,095,685	\$75.45
Phase IV	Block A	42	\$4,703,553	\$75.45

The Phase I site, Block C, purchase price shall remain fixed. For the remaining sites, the original per square foot price is subject to an annual adjustment described below. The annual adjustment is to encourage the progressive development of future phases while preserving a fair market price.

The annual adjustment is an amount equal to the change in the Federal Housing Finance Agency All Transactions Index for Metropolitan Statistical Areas and Divisions (Not Seasonally Adjusted) for the San José-Sunnyvale-Santa Clara market statistical area ("Index") calculated as the annual appreciation or depreciation from June 19, 2008 to the close of escrow for each Phase.

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The maximum increase or decrease in the Purchase Price for any Site shall not exceed an annual increase or decrease of three percent (3%) (compounded annually).

The Block B/F site combines the per square foot price of \$75.45 (which is subject to adjustment) for Block B with the fixed price of \$5,840,000 for Block F. The square foot price shown in the table above is the blended per square foot price for both Block B and Block F. The fixed price for Block F is the negotiated price from the DDA with SPL that is being assigned to NSPT.

The purchase prices for NSPT takes into consideration the risk associated with construction of the Infrastructure Project and park improvements prior to commencement of the housing projects. With the purchase price subject to an adjustment tied to the local real estate market conditions, the purchase price will continue to reflect the current fair market value for the properties at the close of escrow for each phase of the Project.

SPL Purchase Price

The purchase price of the SPL sites shall be determined by an appraisal completed within 70 days of the effective date of the DDA. If SPL closes escrow within six (6) months of the date of the appraisal, the purchase price will be the appraised value. After six (6) months from the date of the appraisal, the purchase price will be subject to an annual adjustment described below.

If SPL does not close escrow by the completion of the infrastructure project, a new appraisal will be required to factor in the improved site conditions as a result of the Infrastructure Project. If SPL closes escrow within six (6) months of the date of the new appraisal, the purchase price will be the new appraised value. After six (6) months from the date of the new appraisal, the purchase price will be subject to an annual adjustment described below.

The annual adjustment is an amount equal to the change in the Index calculated as the annual appreciation or depreciation from the date of the appraisal to the close of escrow for each Phase. The maximum increase or decrease in the Purchase Price for any Site shall not exceed an annual increase or decrease of three percent (3%) (compounded annually).

CONCLUSION

The amendment and restatement of the DDAs is in the best interests of the Successor Agency and the City. First, the \$24,000,000 in Grant funds allows the realignment of Julian Street, which creates two (2) additional parcels that can be sold and developed, thereby maximizing the value of the North San Pedro Housing Site. The loss of two development sites created with the realignment of Julian Street would result in a loss of sales proceeds estimated to be \$9,000,000. The additional sales proceeds will allow the Successor Agency to pay down debt.

Additionally, the amendment and restatement of the DDAs provides for the near-term development of over 400 residential units in two (2) phases, which will increase the tax revenue available for the City and other local taxing entities. NSPT has applied for permits for all of its

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phases and has already held two (2) community meetings soliciting comments from the public. Upon substantial completion of the Infrastructure Project, NSPT is ready to acquire and commence construction of its initial phases.

The City commitment of \$1,600,000 to replace funds that were originally committed by the Agency under the DDAs to FCH, but is not currently available, is necessary in order to support the development of the affordable homes and to retain the Grant.

EVALUATION AND FOLLOW-UP

Successor Agency staff will continue to return to the Successor Agency Board regarding status of the Project. FCH's affordable housing project status will also be reported to the public in the Housing Department's periodic Production Report, posted to its website in the Data and Reports section at www.sjhousing.org/.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1,000,000 or greater. (Required: Website Posting)
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- Criterion 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This action meets Criterion 1 above and will be posted to the City Council Agenda for the October 1, 2013 meeting.

COORDINATION

This item was coordinated with the City Attorney's Office.

FISCAL IMPACT

The recommended actions will enable the Successor Agency to receive \$24,160,000 in grant funding from the State to complete the required land acquisitions and infrastructure development for the proposed project. Additional sources of revenue from Agency land sales to the Developers will result in revenues forecasted in an amount in excess of \$30,000,000 subject to appraisals and future market conditions. Fifty percent (50%) of the sales proceeds will be paid to

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the County pursuant to the assignment described above. The Successor Agency's future revenues and expenditures will be reflected in the applicable future fiscal year budgets.

The City, through its Housing Department, will provide a loan in the amount of \$1,600,000 to FCH for the affordable housing component of the project and the Successor Agency will provide \$900,000 of financial assistance from bond proceeds.

1. ESTIMATED COSTS OF CITY LOAN COMMITMENT:

<u>SOURCES</u>	<u>AMOUNT</u>
City predevelopment/construction/permanent loan	\$1,600,000

<u>USES</u>	<u>AMOUNT</u>
Hard and soft project costs	\$1,600,000

2. SOURCE OF FUNDING: Fund 346, the Low and Moderate Income Housing Asset Fund

3. FISCAL IMPACT: No ongoing fiscal impact.

BUDGET REFERENCE

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. For Contract	2013-2014 Adopted Operating Budget (Page)	Last Budget Action (Date, Ord. No.)
346	0070	Housing Loans & Grants	\$6,000,000	\$1,600,000	XI-58	6/18/13, Ord. 29271

CEQA

Brandenburg Mixed Use Project/ North San Pedro Housing Sites Project, GP03-03-01a and GP03-03-01b.

/s/
RICHARD A. KEIT
Managing Director, Successor Agency

/s/
LESLYE CORSIGLIA
Director of Housing

For more information, contact Richard Keit, Managing Director, Successor Agency at 408-795-1849.

Attachments

ATTACHMENT NO. 1

DEVELOPMENT SITE



ATTACHMENT NO. 2
PROPOSED MAP

Exhibit A

