



# Memorandum

**TO:** HONORABLE MAYOR,  
CITY COUNCIL AND  
SUCCESSOR AGENCY BOARD

**FROM:** Richard A. Keit  
Leslye Corsiglia

**SUBJECT: SEE BELOW**

**DATE:** November 4, 2014

Approved

Date

11/7/14

**SUBJECT: NORTH SAN PEDRO HOUSING PROJECT – AMENDMENT TO THE AMENDED AND RESTATED OFF-SITE IMPROVEMENT AND DISBURSEMENT AGREEMENT AND CITY OF SAN JOSE LAND ACQUISITION FOR AN AFFORDABLE HOUSING PROJECT**

## RECOMMENDATION

It is recommended that:

- a) The Successor Agency Board adopt a resolution authorizing the Executive Officer or his designee to negotiate and execute:
  - 1) An Amendment to the Amended and Restated Off-Site Improvement and Disbursement Agreement (“Improvement Agreement”) between the Successor Agency, North San Pedro Townhomes LLC, and San Pedro Life 1 LLC, to add First Community Housing (“FCH”), the Affordable Housing Developer for the Project, to the Improvement Agreement and to allow FCH to obtain Prop 1C Infill and Infrastructure grant funds in the amount of \$1,600,000; and
  - 2) Any other documents as may be necessary to effectuate and finalize the Successor Agency obligations related to the North San Pedro Housing Project.
- b) The City Council adopt a resolution:
  - 1) Approving the acquisition by the City of San Jose of certain real property located at the terminus of Terraine Street north of Bassett Street in San Jose (a portion of Assessors Parcel Number 259-51-066 as detailed in Exhibit A - map and Exhibit B - legal description) using \$1,600,000 in previously appropriated Housing Department funds; and
  - 2) Authorizing the Director of Housing to negotiate and execute any additional documents as may be necessary to effectuate and finalize this transaction.

November 4, 2014

**Subject: North San Pedro Housing Project**

Page 2

## **OUTCOME**

Approval of the proposed actions will ensure that a \$24.16 million State Infill and Infrastructure Grant (Grant) is secured for the North San Pedro Housing (NSPH) project. The Grant provides the funding for the necessary infrastructure and property acquisition needed to develop 900 housing units, including 135 affordable units to be built by First Community Housing, a nonprofit affordable housing developer.

## **BACKGROUND**

The former Redevelopment Agency, North San Pedro Townhomes (NSPT), and San Pedro Life 1 (SPL) applied for and were awarded the Grant for the North San Pedro Housing Project in the amount of \$24.16 million. In applying for the Grant, the parties agreed to provide 135 units of affordable housing at reduced affordability levels. This component of the Project was critical to obtaining the Grant and is a condition of the Grant. First Community Housing (FCH) is the affordable housing developer for the Project and will be developing the 135 unit affordable housing project to satisfy the Grant requirements. The Grant will be used to fund land acquisition costs, infrastructure improvements including the realignment of Julian Street, new sidewalks, street paving, streetlights, and parks.

Working with the State Department of Housing and Community Development (HCD), the parties entered into a Standard Agreement in September, 2011 and a Disbursement Agreement in September, 2012 (collectively, "Grant Documents"). After the Grant Documents were executed, the parties negotiated and executed amendments to several project related documents, including Amended and Restated Disposition and Development Agreements (DDAs) and an Amended and Restated Disbursement and Improvement Agreement (Improvement Agreement) with the two developers. At the time the Improvement Agreement was drafted, it was not necessary to include FCH in the agreement because they were not directly using the grant funds.

The Amended and Restated DDA between the Successor Agency and NSPT and the Amended and Restated DDA between the Successor Agency and SPL were approved by the Successor Agency Board on October 1, 2013 and the Oversight Board on October 10, 2013. The Improvement Agreement among the Successor Agency, NSPT and SPL was provided for under the Amended and Restated DDAs and was executed by the parties concurrently with execution of the Amended and Restated DDAs. The State Department of Finance approved the Amended and Restated DDAs on November 22, 2013.

All of the conditions to disbursement of funds under the Grant have been satisfied except that an affordable housing covenant must be recorded against a site owned by one of the co-recipients. The final condition to the Grant must be satisfied and the recipients must draw down on the Grant prior to December 31, 2014, which is a disbursement deadline under the Grant regulations. If the co-recipients are unable to meet the disbursement deadline, the Grant funding expires and the Grant is no longer available for this Project. The Successor Agency currently only owns two

November 4, 2014

**Subject: North San Pedro Housing Project**

Page 3

of the three parcels needed for the affordable housing site. The third parcel is owned by Legacy Partners Bassett, LLC ("Legacy"). The cost of the Legacy parcel was included in the Grant and it was initially intended that Grant funds would be used to acquire the entire parcel. The former Redevelopment Agency had negotiated and executed a prior Purchase and Sale Agreement with Legacy to acquire the remaining parcel, but that agreement terminated in 2010. Successor Agency staff were able to negotiate and execute a new Purchase and Sale Agreement with Legacy on October 24, 2014 to acquire the remaining parcel necessary for the Affordable Housing Site. The acquisition cost is \$2,073,456.

The \$1.6 million Loan from the Housing Department was approved by the City Council and Successor Agency Board on October 1, 2013. The City Loan was to be used by FCH to complete the plans and specifications, and other predevelopment work necessary for FCH to apply for 9% Low Income Housing Tax Credits from the State in 2015.

## **ANALYSIS**

### **Property Purchase**

Under the original DDAs, the former Redevelopment Agency agreed to provide affordable housing assistance to the Project as follows: a \$2.5 million grant and the affordable housing site, which would be transferred to the affordable housing developer at no cost. Given the Agency's existing senior debt, the full \$2.5 million is not currently available from property tax revenues. The Successor Agency has provided \$900,000 in existing Bond proceeds for FCH to use for predevelopment work including construction documents. The \$1.6 million Housing Loan was intended to satisfy the remainder of the affordable housing assistance to be provided by the Successor Agency under the Amended and Restated DDAs.

Although the Grant budget includes the full amount necessary to acquire the Legacy parcel, the Grant has a provision that prohibits grant funds to be used for an affordable housing project if the project is built over parking. The affordable housing project, as designed, includes ground level parking and the residential units are situated entirely over parking. However, the Grant does permit the use of funds for acquisition for the portion of the project that is not over parking. The rear setback and rain garden area (designed to catch water run-off) are eligible for Grant funding. Originally, it was contemplated that FCH would use the loan funds to acquire the remaining portion of the affordable housing site.

However, after discussions with FCH, it was determined that it would be better for the City to acquire the remaining parcel for the affordable housing site using the \$1.6 million, together with Grant funds available for land acquisition costs. Therefore, the Housing Department funds that were originally allocated as a loan to FCH for predevelopment costs will not be loaned to FCH and will be used by the City to acquire the Legacy parcel. The \$1.6 million loan will be terminated and the same funds will be reallocated to acquire the land. The Legacy parcel is being acquired at its previously appraised price although Legacy believes the property to be worth substantially more than the purchase price. As such, the Purchase Agreement has been drafted to acknowledge that Legacy is making a donation to the City for the amount that the fair

November 4, 2014

**Subject: North San Pedro Housing Project**

Page 4

market value exceeds the purchase price. At the close of escrow for the acquisition of the Legacy parcel, the City will take ownership of the Legacy parcel and either enter into a long-term ground lease or sell the property to FCH for the development of the affordable housing project.

### **Affordable Housing Component**

FCH will build the affordable housing component for the 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.

In addition to the affordability restrictions required by the Grant from the Department of Housing and Community Development, the City will record additional affordability restrictions against the affordable housing site at a later date when the property is transferred to FCH. Prior to the disposition of the property, a report containing the findings required under Section 33433 of the Health and Safety Code must be completed and made available for public inspection. The sale or lease of the property to FCH must also be approved by the City Council at a public hearing.

Since FCH has agreed to terminate the City Loan and since there are Grant funds available that are no longer necessary to acquire the Legacy parcel, the parties have agreed to amend the Improvement Agreement to include FCH and to allow FCH to use Grant funds to reimburse FCH for costs related to the affordable housing project in an amount not to exceed \$1.6 million.

### **EVALUATION AND FOLLOW-UP**

Successor Agency staff will periodically advise the City Council and Successor Agency Board regarding the status of the Project and, prior to any transfer of the property to FCH, Housing Department staff shall return to the City Council to satisfy the requirements of the Health and Safety Code. 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/](http://www.sjhousing.org/).

### **PUBLIC OUTREACH/INTEREST**

This memorandum will be posted on the City's Agenda website for the November 18, 2014 City Council Agenda.

November 4, 2014

**Subject: North San Pedro Housing Project**

Page 5

**FISCAL IMPACT**

The City Council approved a \$1.6 million loan plus capitalization of up to \$100,000 of accrued but unpaid construction period interest on October 1, 2013. Approval of the recommendations in this memorandum would terminate the \$1.6 million loan and use this same funding to acquire land instead. No additional appropriation action is required as a result of actions recommended in this memorandum.

**COORDINATION**

This item was coordinated with the Successor Agency, the City Housing Department, and the City Attorney's Office.

**CEQA**

Brandenburg Mixed Use Project/ North San Pedro Housing Sites Project GPT03-03-01a and GP03-03-01b.

/s/  
LESLYE CORSIGLIA  
Director of Housing

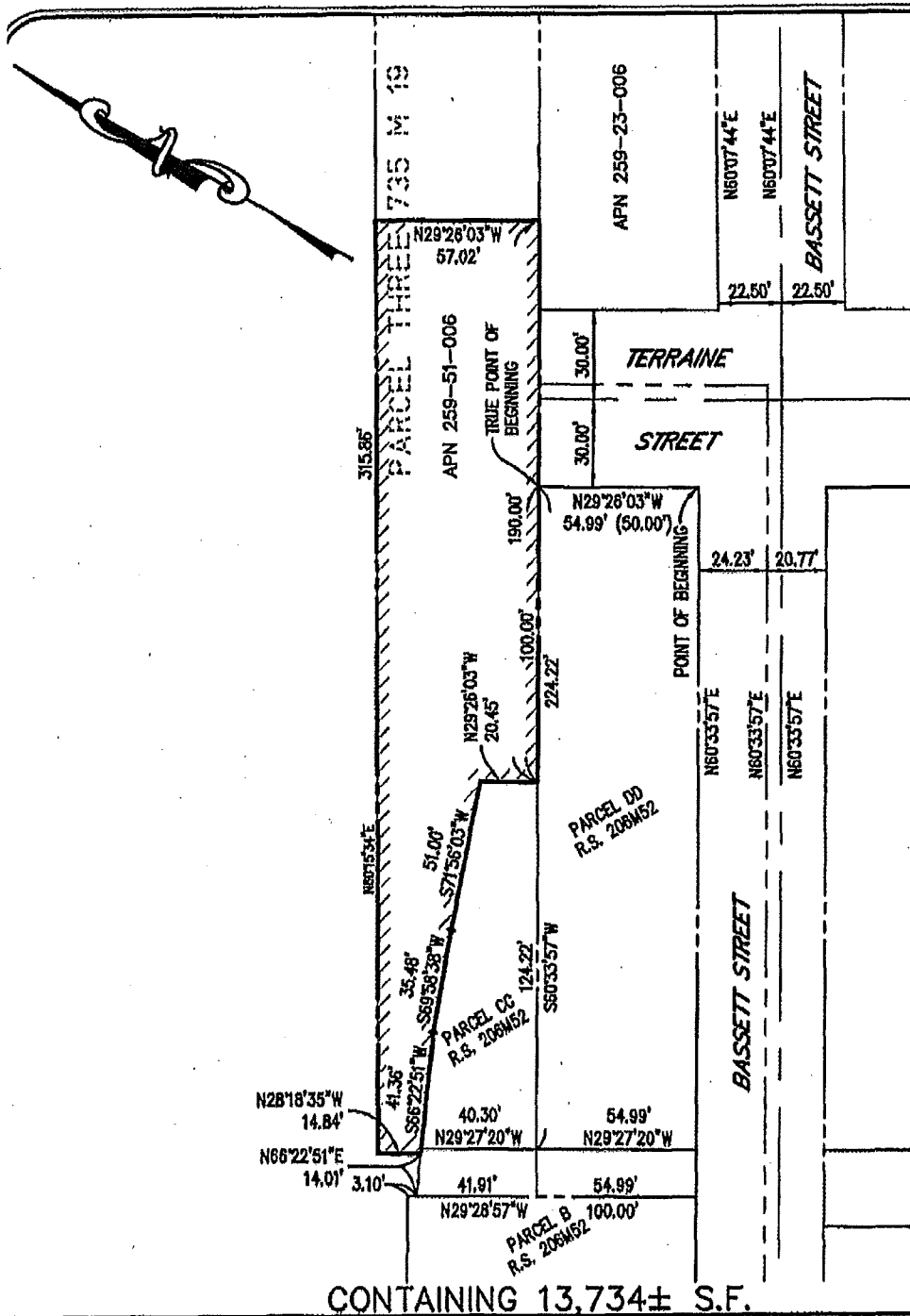
/s/  
RICHARD A. KEIT  
Managing Director

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

Attachments

**EXHIBIT A**

**Plat Maps for Property**



**EXHIBIT B**

**Legal Description of Property**

BEING A PORTION OF APN 259-51-006

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF BASSETT STREET 45.00 FEET IN WIDTH AND THE WESTERLY LINE OF TERRAINE STREET 60.00 FEET IN WIDTH AS SHOWN UPON THAT CERTAIN RECORD OF SURVEY RECORDED IN BOOK 206, PAGE 52 OF RECORDS OF SAID SANTA CLARA COUNTY;

THENCE NORTH 29° 26' 03" WEST ALONG THE WESTERLY LINE OF SAID TERRAINE STREET A DISTANCE OF 54.99 FEET TO A POINT ON THE SOUTHERLY BOUNDARY LINE OF THE LANDS CONVEYED TO THE SOUTHERN PACIFIC RAILROAD COMPANY AS SHOWN ON THAT CERTAIN DEED RECORDED IN BOOK 20, PAGE 636 OF DEEDS OF SAID SANTA CLARA COUNTY ON APRIL 29, 1871, SHOWN HERIN AS THE TRUE POINT OF BEGINNING;

THENCE SOUTH 60° 33' 57" WEST A DISTANCE OF 100.00 FEET ALONG THE SOUTHERLY LINE OF SAID LANDS CONVEYED TO THE SOUTHERN PACIFIC RAILROAD COMPANY TO THE MOST SOUTHEASTERLY CORNER OF PARCEL CC AS SHOWN UPON SAID RECORD OF SURVEY RECORDED IN BOOK 206, PAGE 52;

THENCE NORTHERLY AND WESTERLY ALONG THE BOUNDARY LINES OF SAID PARCEL CC THE FOLLOWING BEARINGS AND DISTANCES;

NORTH 29° 26' 03" WEST A DISTANCE OF 20.45 FEET;

THENCE SOUTH 71° 56' 03" WEST A DISTANCE OF 51.00 FEET;

THENCE SOUTH 69° 58' 38" WEST A DISTANCE OF 35.48 FEET;

THENCE SOUTH 66° 22' 51" WEST A DISTANCE OF 41.36 FEET;

THENCE NORTH 28° 18' 35" WEST A DISTANCE OF 14.84 FEET TO A POINT ON THE SOUTHERLY LINE OF PARCEL TWO AS SHOWN UPON THAT CERTAIN PARCEL MAP RECORDED IN BOOK 735 OF MAPS, PAGES 19-20 OF RECORDS OF SAID SANTA CLARA COUNTY;

THENCE NORTH 60° 15' 34" EAST A DISTANCE OF 315.86 FEET ALONG THE SOUTHERLY LINE OF SAID PARCEL TWO;

THENCE SOUTH 29° 26' 03" EAST A DISTANCE OF 57.02 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID LANDS CONVEYED TO THE SOUTHERN PACIFIC RAILROAD COMPANY;

THENCE SOUTH 60° 33' 57" WEST ALONG SAID SOUTHERLY LINE OF THE LANDS CONVEYED TO THE SOUTHERN PACIFIC RAILROAD COMPANY A DISTANCE OF 90.00 FEET TO THE TRUE POINT OF BEGINNING.