



CITY COUNCIL STAFF REPORT

DATE: November 19, 2014

CONSENT CALENDAR

SUBJECT: APPROVE FIRST AMENDMENT TO PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS WITH AND ASSIGNMENT WITH O & M HR, LLC, A DELAWARE LIMITED LIABILITY COMPANY ("ASSIGNOR") and NEXUS DEVELOPMENT CORPORATION/CENTRAL DIVISION, a CALIFORNIA CORPORATION ("ASSIGNEE" OR "BUYER") FOR THE PROPERTY LOCATED AT THE SOUTHEAST CORNER OF EAST ANDREAS ROAD AND NORTH CALLE EL SEGUNDO, (APNs 508-055-007, 508-055-008 and 508-055-009), IN THE AMOUNT OF \$1,500,000

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

SUMMARY

This action amends a Purchase and Sale Agreement between the City and O & M HR, LLC, dated October 25, 2011 (the "Original Agreement"), for property located at the southeast corner of E. Andreas Road and N. Calle El Segundo, Palm Springs, California (APNs 508-055-007, 508-055-008 and 508-055-009), known as the Prairie Schooner Parcel. It amends one of the provisions in the original agreement that required the construction of a hotel on the property, and assigns the agreement from the single-purpose LLC that was originally created to develop a hotel to the master development company undertaking the new project. The principals in the project have not changed.

The City and the Oversight Board for the Successor Agency to the Palm Springs Community Redevelopment Agency have recently completed the process mandated by the State of California applicable to the disposition and use of the Property. Having completed the process, the City is now capable of conveying the Property in accordance with the Original Agreement, as now amended.

RECOMMENDATION:

1. Approve First Amendment to Purchase and Sale Agreement and Assignment with O & M HR, LLC, a Delaware limited liability company ("Assignor") and Nexus Development Corporation/Central Division, a California corporation ("Assignee" or "Buyer");
2. Authorize the City Manager to execute all documents to effectuate the Amendment.

STAFF ANALYSIS:

This is an amendment to the Purchase and Sale Agreement between the City and O & M HR, LLC, a Delaware limited liability company ("Assignor") and Nexus Development Corporation/Central Division, a California corporation ("Assignee" or "Buyer"). The Amendment includes an assignment provision.

The City and the Assignor entered a Purchase Agreement and Escrow Instructions, dated October 25, 2011 (the "Original Agreement"), under which City agreed to sell a 6.2 acre property located at the southeast corner of E. Andreas Road and N. Calle El Segundo, Palm Springs, California (APNs 508-055-007, 508-055-008 and 508-055-009), known as the Prairie Schooner parcel, subject to certain terms and conditions. The sale amount was \$1,500,000.

The Property had been a former Community Redevelopment Agency ("Agency" or "Dissolved RDA") parcel, but the Agency conveyed it and all the other Agency parcels to the City by resolution on March 16, 2011, making findings under California Health & Safety Code Section 33430 and 33432, which allowed the Agency to transfer properties to the City or any other public agency without competitive bidding. This action was taken three months prior to the State of California's changes in the California Community Redevelopment Law effectuated by AB X1 26 and AB X1 27 (the "Dissolution Act"). The City entered the Original Agreement in the belief it was the legal Owner of the parcel.

The transfer of the Property in 2011 was also subject to the terms of the Repayment Agreement with the Agua Caliente Band of Cahuilla Indians for the construction of a parking lot, and a Disposition and Development Agreement with O & M HR, LLC for the development of a 500-room hotel, and was conditioned on the redevelopment and use of the property in conformity with the Merged Project Area No. 2 Redevelopment Plan. Since 2011, the term of the Repayment Agreement has expired and no funds are due to the Tribe under that Agreement.

Asset Transfer Report

The Dissolution Act called for the Successor Agency, under the direction of the Oversight Board, to dispose of real property it received from the Dissolved RDA either for limited public uses, or for disposition into the private market expeditiously and with a view toward maximizing value, with the disposition proceeds ultimately made available for distribution to the affected taxing entities.

One of the requirements under the Dissolution Act was the preparation and submittal to the State Controller's Office of an Asset Transfer Assessment prepared by the Successor Agency, showing the assets that were owned by the Agency and transferred to the Successor Agency upon the dissolution on February 1, 2012. The State

Controller also ordered any transfers of properties undertaken after January 1, 2011 to be "unwound" and the properties returned to the Successor Agency. However, a number of legal challenges to the retroactivity of the Dissolution Act were made by several cities, and the issue remained unclear. As a result, it was the City's position and the Successor Agency's position that all of the properties described in the Asset Transfer Form were in the hands of the City, not the Successor Agency.

On January 23, 2013, the City received a letter from the State Controller's Office advising it that, pursuant to Health and Safety Code section 34167.5, the State Controller will conduct a review of the Palm Springs Community Redevelopment Agency to determine whether any asset transfers occurred after January 1, 2011, between the city or any other public agency, and the redevelopment agency. The review would include an assessment of whether each asset transfer is allowable and whether the asset should be turned over to the Successor Agency. The audit concluded on February 21, 2013.

The review applied to all assets, including, but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and any rights to payment of any kind. The auditors also determined whether any non-compliant assets transferred to the City or any other public agency was reversed.

As a result of the audit, the property categories described above are divided into slightly different categories, each with a corresponding action required of the Oversight Board:

1. Property held for resale, typically part of an assemblage for redevelopment purposes, and which shall be returned to the Successor Agency for disposition
2. Property held for resale, which are typically parking lots today, and which now serve a governmental or public purpose function
3. Property held as community assets, typically related to visitor services or the Convention Center, including equipment and physical improvements paid for by the Agency, or parking facilities, and which have been determined by the Auditors to be governmental use properties and appropriate for transfer back to the City
4. Property held as community assets, typically related to visitor services or the Convention Center, which the Auditors have determined are not governmental use properties and which have been directed to be returned to the Successor Agency for disposition
5. Property previously held for resale or as community assets by the former Redevelopment Agency but which was disposed of prior to the January 1, 2011 date.
6. The assets of the Low-and Moderate Income Housing program.

The Auditors advised the City to bring the actions to the Oversight Board to clarify the status of the assets of the former Redevelopment Agency. One of the categories of

assets was Land Held for Resale. Many of the Agency's parking lot properties are included in that category, and are now considered governmental or public use properties as the parking inventory they now represent would be difficult or expensive to replace or recreate.

Land Disposition Process under AB 1484

In 2012, the State approved a redevelopment reform act, AB 1484, which changed a number of the processes related to the disposition of Dissolved RDA assets. AB 1484 provided certain flexibility and local benefits in connection with property disposition. One provision, Section 34181(a), allows the Oversight Board to transfer governmental purpose property to the appropriate public entity. Therefore, the Successor Agency recommended that the Oversight Board ratify the March 16, 2011 transfer of certain city governmental use properties to the City, including the Prairie Schooner.

On March 5, 2013, based on the recommendation of the State Controller's Office, the Oversight Board approved a Resolution determining that a number of Successor Agency properties, including the Prairie Schooner, were "governmental use" properties and should be returned to the City. That action was reviewed by the California Department of Finance ("DOF"), which concurred with some of the actions and disallowed the rest. Accepted as governmental use were properties under the Convention Center; all of the parking facilities owned by the Agency were disallowed.

The Successor Agency holds a total of 12 from the Dissolved RDA. These include sites assembled for future redevelopment, public parking lots and other real property. Disposition of these properties would not be able to occur until the Department of Finance ("DOF") issued a finding of completion and approved a long-range property management plan, which included an inventory of these properties and other pertinent information. Assembly Bill 1X 26 added Health and Safety Code Sections 34191.1-34191.5 requiring that successor agencies send a long-range property management plan to their oversight board and DOF no later than six months following the issuance of the finding of completion.

The Successor Agency received its finding of completion from DOF on January 2, 2014. The Long-Range Property Management Plan ("LRPMP") was reviewed by the Oversight Board at its meeting on December 16, 2013. Prepared in collaboration with a qualified dissolution and real estate consultant, the LRPMP contains detailed information on each property, such as the date and purpose of acquisition, parcel characteristics, estimate of the current value and any lease, rental or other revenues, histories of environmental contamination, and previous development proposals. In most cases, estimates of value were derived from recent comparable sales of like properties in the area since appraisals are not required for the LRPMP. Most importantly, the LRPMP addresses the intended disposition of each property. Permissible uses include retention for governmental use, retention for future development, sale of the property, or use of property to fulfill an enforceable obligation.

**FIRST AMENDMENT TO
PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS
(AND ASSIGNMENT)**

This First Amendment to Purchase Agreement and Escrow Instructions (And Assignment) (this "Amendment"), dated effective as of November __, 2014 (the "Effective Date"), is entered into by and among THE CITY OF PALM SPRINGS, a California charter city ("Seller"), O & M HR, LLC, a Delaware limited liability company ("Assignor") and NEXUS DEVELOPMENT CORPORATION/CENTRAL DIVISION, a California corporation ("Assignee" or "Buyer") with reference to the following:

RECITALS

A. Seller and Assignor are parties to that certain Purchase Agreement and Escrow Instructions, dated October 25, 2011 (the "Original Agreement"), pursuant to which Seller agreed to sell to Assignor, and Assignor agreed to purchase from Seller, certain real property located at the south-east corner of E. Andreas Road and N. Calle El Segundo, Palm Springs, California (APNs 508-055-007, 508-055-008 and 508-055-009), and more particularly described therein (the "Property"), subject to the terms and conditions set forth therein. All capitalized terms not otherwise defined herein shall have the meaning given such terms in the Original Agreement.

B. The Property and Seller's ownership interest therein were directly impacted by the changes in the California Community Redevelopment Law effectuated by ABx1 26 and ABx1 27 (the "Dissolution Act") and, as a result, Seller was not capable of conveying the Property at the time of the Original Agreement.

C. Seller and the Oversight Board for the Successor Agency to the Palm Springs Community Redevelopment Agency have recently completed the process mandated by the Dissolution Act applicable to the disposition and use of the Property (including, in connection therewith, obtaining approval of Seller's acquisition of the Property). Having completed such process, Seller is now capable of conveying the Property in accordance with the Original Agreement (as hereby amended).

D. The parties hereto now hereby desire to enter into this Amendment to (i) ratify the Original Agreement, (ii) memorialize an assignment of the Original Agreement from Assignor to Assignee; and (iii) amend the Original Agreement in certain particulars set forth herein, in each case, subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of parties hereto hereby agree as follows, effective as of the Effective Date:

1. Ratification of Original Agreement. The Original Agreement, as hereby amended, is hereby ratified and reaffirmed.

2. Assignment and Assumption. Assignor hereby transfers, assigns and conveys all of Assignor's rights, title, interests, duties, liabilities and obligations in, to and under the Original Agreement (as hereby amended) to Assignee. Assignee hereby accepts and assumes the same and agrees to perform and to be bound by all of the terms, covenants, conditions, duties, liabilities, and obligations imposed upon or assumed by Assignee with respect to the Original Agreement (as hereby amended).

3. Delivery of Deposit. Section 3(a) of the Original Agreement contemplated that Buyer would deposit the Deposit with Escrow Holder within two (2) business days following the opening of Escrow. Due to the impacts of the Dissolution Act, however, Seller and Buyer agreed to postpone Buyer's delivery of the Deposit. Seller and Buyer now hereby agree that Buyer shall deposit the Deposit with Escrow Holder within ten (10) business days following the later of (a) the full execution of this Amendment and (b) the date Seller delivers to Buyer a recorded copy of the grant deed evidencing Seller's current ownership of the Property.

4. Amended Section 35. Section 35 of the Original Agreement is hereby amended and restated to read in its entirety as follows: "[Intentionally Omitted]".

5. Amended Section 36. The phrase "a First Class Hotel" appearing in clause "(d)" of Section 36 of the Original Agreement is hereby replaced with the phrase "Buyer's contemplated mixed-use residential and commercial project".

6. Effect of this Amendment. Except to the extent modified by this Amendment, the Original Agreement, as hereby amended, shall remain unmodified and in full force and effect. If any provisions of this Amendment contradicts or is inconsistent with any provisions of the Original Agreement, then the provisions of this Amendment shall prevail.

7. Counterparts; Facsimile/Email Signatures. This Amendment may be executed in one or more counterparts, all counterparts shall be valid and binding on the party executing them and all counterparts shall together constitute one and the same document for all purposes. This Amendment may be executed and signature pages delivered by email and/or facsimile on the part of one or more parties hereto.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment, effective as of the date set forth above.

SELLER:

CITY OF PALM SPRINGS,
a California charter city

By: _____
Name: _____
Its: _____

BUYER/ASSIGNEE:

NEXUS DEVELOPMENT
CORPORATION/CENTRAL DIVISION, a
California corporation

By: _____
Name: _____
Its: _____

ASSIGNOR:

O & M HR, LLC, a Delaware limited liability
company

By: _____
Name: _____
Its: _____



May 15, 2014

Mr. John Raymond, Director of Community and Economic Development
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, CA 92262

Dear Mr. Raymond:

Subject: Approval of Oversight Board Action

The City of Palm Springs Successor Agency (Agency) notified the California Department of Finance (Finance) of its May 8, 2014 Oversight Board (OB) resolution on May 8, 2014. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, OB Resolution No. 024 approving the sale of the Prairie Schooner Parking Lot, APNs: 508-055-007, 508-055-008, and 508-055-009, to the City of Palm Springs in the amount of \$1,402,632 pursuant to the approved Long-Range Property Management Plan (LRPMP), is approved.

Pursuant to HSC section 34191.5, the Agency's LRPMP was approved by Finance on May 13, 2014. The disposition of the property, listed as Property 5 in Agency's LRPMP, is consistent with the approved plan.

Please direct inquiries to Beliz Chappuie, Supervisor, or Susana Medina-Jackson, Lead Analyst at (916) 445-1546.

Sincerely,

JUSTYN HOWARD
Assistant Program Budget Manager

cc: Mr. Geoffrey Kiehl, Director of Finance, City of Palm Springs
Ms. Pam Elias, Chief Accountant Property Tax Division, Riverside County
Ms. Elizabeth Gonzalez, Bureau Chief, Local Government Audit Bureau, California State
Controller's Office
California State Controller's Office