City of Culver City, California

Agenda Item Report

Meeting Date: 08/25/2014	Item Number: JPH-1
JOINT CITY COUNCIL-SUCCESSOR AGENCY ITEM - PUBLIC HEARING: Approval of an Implementation Agreement between the City of Culver City, the Successor Agency to the Culver City Redevelopment Agency and Lowe Enterprises Real Estate Group in Order to Convey Real Property Located at 8829, 8831, 8839, 8841, 8843 Exposition Boulevard; 8801, 8803 Washington Boulevard; 8824, 8825, 8828, 8830-8834, 8836, 8838, 8840, 8842, 8846 National Boulevard; 8900-8906, 8910-8912, 8914-8918, 8920, 8926, 8930, 8936 Venice Boulevard to Develop a High Quality Transit Oriented Development.	
Contact Person Sol Blumenfeld/CDD	Phone Number: (310) 253-5700
Fiscal Impact: Yes [X] No []	General Fund: Yes [] No [X]
Public Hearing: [] Action Item: [X]	Attachments: [X]
Commission Action Required: Yes [] No [X]	Date: ________________
Public Notification (E-Mail) Meetings and Agendas – City Council/Successor agency (08/21/14)	
Department Approval: Sol Blumenfeld (08/21/14)	City Attorney/Successor Agency General Counsel Approval: Carol Schwab (by H. Baker) (08/21/14) City/SA Special Counsel Approval: Murray Kane (08/21/14)
Chief Financial Officer Approval: Jeff Muir (08/21/14)	City Manager/Executive Director Approval: John M. Nachbar (08/21/14)

<u>RECOMMENDATION:</u>

Staff recommends the City Council and Successor Agency Board (SA) adopt respective resolutions approving an Implementation Agreement between and among the City, the Successor Agency, and Lowe Enterprises Real Estate Group (Implementation Agreement) in order to convey real property located at 8829, 8831, 8839, 8841 and 8843 Exposition Boulevard, Culver City; 8801, 8803 Washington Boulevard, Culver City; 8824, 8825, 8828, 8830-8834, 8836, 8838, 8840, 8842, 8846 National Boulevard, Culver City; and 8900-8906, 8910-8912, 8914-8918, 8920, 8926, 8930, 8936 Venice Boulevard, Los Angeles (collectively Property) to develop a high quality transit oriented development (Project).

PROCEDURE:

1. The Mayor/Chair seeks a motion from the City Council/Successor Agency Board to receive and file the affidavits of publication and posting of notices and correspondence received in response to the public hearing notices; and,
2. The Mayor/Chair calls for a staff report and the City Council/Board Members may pose questions to staff as desired; and,
3. The Mayor/Chair seeks a motion to open the public hearing; and, (***Note from the City Clerk: The Public Hearing is Open – the City Council may commence tonight's item from this point.***)
4. The Mayor/Chair seeks motion to close the public hearing after all public testimony has been presented; and,
5. The City Council/Successor Agency Board discuss the item and arrives at a decision.

BACKGROUND:

In early 2000 the City and former Culver City Redevelopment Agency (former CCRA) commenced planning for a transit oriented development (TOD) project and began assembling the property known as the "Triangle Site" around the (then) proposed Culver City Expo Station at Venice and Exposition Boulevards. Expo light rail train (LRT) construction commenced in 2006. The Triangle Site is located within both Culver City and Los Angeles.

A conceptual plan was approved by the former CCRA in 2007 that called for a mid-rise, mixed-use TOD surrounding a large central open space with ample subterranean parking for the development and the Expo Station.

In anticipation of advance planning for the Property, the City and former CCRA negotiated a Memorandum of Understanding (MOU) with the Los Angeles County Metropolitan Transportation Authority (LACMTA) to allow use of a portion of the LACMTA right-of-way (Easement Area) for parking and development purposes. The MOU was executed in January 2011. An Option and Perpetual Easement Agreement was subsequently executed in September 2011 to provide an option for a permanent easement to use the Easement Area.

The former CCRA committed approximately $3.1 million in 2010 to strengthen the Expo train platform columns to accommodate subterranean parking and project development. The Expo station was completed on June 20, 2012, and, after significant public input on the Project over the years, in January 2012, the City issued an RFP to solicit project developers and selected Lowe Enterprises Real Estate Group (Developer) to develop the Project featuring residential, office, retail, restaurants and a hotel uses surrounding one-third acre of central open space on the Property.

On January 31, 2012, a letter agreement with the Developer (Letter Agreement) was executed in advance of entering into an Implementation Agreement for the Project. On February 1, 2012, redevelopment agencies throughout the state of California, including the Culver City Redevelopment Agency, were dissolved pursuant to operation of State Law. On December 10, 2012, the Property was rezoned Planned Development (PD). The Developer will be required to submit a Comprehensive Plan for Planning Commission and City Council consideration and approval to effectuate the zoning and develop the Project.

DISCUSSION:

The City owns seven parcels along Venice Boulevard (City Parcels), and the SA owns 11 parcels at Washington, National and Exposition Boulevards (SA Parcels) which collectively substantially comprise the Property. The SA Parcels are approximately 4.15 net acres and the City Parcels are approximately 1.37 net acres.

The Project is included in the Successor Agency's Long Range Property Management Plan (LRPMP) approved on March 18, 2014 by the State's Department of Finance (DOF) in the property disposition category "Properties to be Sold." In accordance with the LRPMP, the Letter Agreement and draft Implementation Agreement, the Property sales price is $23,800,000, which is comprised of the City Parcels with a market value of $15,600,000 and the SA Parcels with a market value of $8,200,000.

Staff initially presented this item to the City Council/Successor Agency Board for consideration on July 14, 2014. However, negotiations up to that time between the Developer and the City/Successor Agency had not concluded. Therefore, staff recommended the City Council/Successor Agency Board continue the Joint Public Hearing to July 28, 2014. On July 28, 2014 (and again on August 11, 2014), for the same reason, staff recommended (and the City Council/Successor Agency Board concurred) to continue the Joint Public Hearing to August 25, 2014. Negotiations have now concluded and a tentative agreement between staff and the Developer has been reached (Tentative Agreement). The Tentative Agreement is presented this evening for the City Council and Successor Agency Board's consideration (with staff's recommendation for approval).

Implementation Agreement

The Implementation Agreement provides for the disposition of the City Parcels and the SA Parcels and the assignment of the Easement Area for development of the Project including a transit plaza, office, retail, restaurants, residential and hotel uses surrounding 1/3 acre of central open space above two subterranean parking levels providing approximately 1,600 parking spaces on the 5.52 acre site. The parking will serve the Project and Expo Transit Station.

The Implementation Agreement is divided into eight sections:

1. Definitions
2. Subject of Implementation Agreement
3. Disposition of the City and Agency Parcels
4. Development of the Site
5. Covenants and Restrictions
6. Defaults, Remedies and Termination
7. General Provisions
8. Attachments

The major terms and conditions of the Implementation Agreement include:

- Scope of Development - Reflects the PD Zoning for the property to be effectuated with the approval of a Comprehensive Plan submitted by the Developer for Planning Commission and City Council approval.

- Schedule of Performance - Identifies all of the milestone tasks and the timing to complete the Project.

- Sales Price – The fair market value of the City Parcels and SA Parcels, payable one business day prior to the Close of Escrow and including the Art in Public Places Fee (if applicable) and Developer's share of escrow fees.

- Letter of Credit – Related to site restoration involving prebuilding permits for grading and to secure reimbursement for relocation costs.

- City Parcels Purchase Price Credits – Credits toward the purchase price for Utility Relocation, Infrastructure and Relocation Costs deducted from the sales price based upon the Construction Contract approved at the Close of Escrow.

- Site Map Identifies the Project location.

- Assignable Agreements - LACMTA Option and Perpetual Easement Agreements and Temporary Parking License and Reciprocal Easement, LACMTA Parcel Private Use Lease Agreement, Construction License Agreement, City Parking License for Shared Expo Parking during off-peak hours. City agrees to consult with Developer and carefully consider any recommendations and objections raised by Developer on the final forms of the Perpetual Easement Agreement, Reciprocal Easement Agreement and other Agreements with the City of Los Angeles and LACMTA, necessary to facilitate development of the Project.

- Restrictions on Transfers – Limits the transfer of the Project subject to City approval for 5 years.

- Restrictions on Control - Limits ownership to the current Developer unless otherwise approved by the City and limiting the use of the site for collateral for any financial transaction.

- Representations - The City and SA are empowered to act to deliver the Property and that the Developer is a duly organized and valid, existing corporation empowered to act to deliver the Project.

- Relocation – Developer to fund, indemnify, and arrange for relocation of City Parcels' tenant(s) or reimburse the City for same, prior to Close of Escrow and the City reserves the right to exercise the power of eminent domain to effectuate tenant relocation in the event it is necessary to do so. Relocation costs include any costs of acquisition of any interest in real property necessary to relocate tenants. City shall have the right to draw on the Letter of Credit for relocation cost recovery.

- City Participation Payment – City shall confirm the following: the Developer will pay to the City 20% profit sharing above 25% of net return to the Project equity investment following completion and stabilization as noted in the Participation Agreement.

- Close of Escrow – City Conditions Precedent – Participation Agreement, Construction Contract, Assignment of Reports and Plans, LACMTA Lease Assignment, deposit of funds for the sales price of the Property and related disposition costs, evidence of financing, insurance, no pending litigation, construction loan, evidence of City of Los Angeles and City of Culver City approvals, exercise of the LACMTA Option Agreement.

- Close of Escrow - Developer Conditions Precedent - No defaults in Agreement, execution of documents, execution of the Participation Agreement, LACMTA Lease Assignment, Assignment of Transfer of Easement Area Documents for development rights of LACMTA easement area, City Parking License, City and SA Grant Deeds, Reciprocal Easement Agreements with LACMTA for Perpetual Easement Agreement, Approval of the Conditions of Title, Title Company payment, City Delivery of Exercise of Option of LACMTA Option Agreement, Credits established per Section 301.2 of the Implementation Agreement.

- Condition of Title – No liens, encumbrances, easements or exceptions to title.

- Title Insurance – Title insurance on the conveyance of title to the City Parcels and SA Parcels.

- Insurance and Indemnities – For Duration of Project until the Release of Construction Covenants.

- Right of Property Entry – For environmental testing.

- Evidence of Financing - Pursuant to the Schedule of Performance demonstrating to the satisfaction of the City, Developer has obtained sufficient capital and commitments for financing the Project acquisition and development.

- Parking Encroachments – Developer to obtain such necessary encroachments from Culver City, the City of Los Angeles and Caltrans prior to Close of Escrow in accordance with the Comprehensive Plan as that plan may be approved by Culver City.

- Disclosure of Site Remediation – Developer to advise City if hazardous material is discovered or released during environmental testing after Developer takes title of City Parcels and SA Parcels.

- Issuance of Grading and Excavation Permits – Prior to issuance of building permits, Developer may request and City may grant, grading and excavation permits as permissible under the Culver City Municipal Code.

- Prevailing Wage - Developer agrees to pay prevailing wage to the extent required by law in order to carry out the Project.

- Compliance with Laws – Developer agrees to design and construct the Project pursuant to all applicable laws.

- Release of Construction Covenants – Within 15 days of Developer notice that the Project has been completed pursuant to approved plans, the City shall furnish a Release of Construction Covenants document in a form to be recorded against the site and shall not unreasonably withhold and shall furnish the Release within 10 days of such Developer notice.

- Defaults – Developer fails to comply with provisions of Implementation Agreement; defaults under the Construction Loan, fails to timely perform under the Schedule of Performance; halts construction for more than 3 months or fails to comply with the completion dates for any time allocated in the Schedule of Performance, halts construction for more than 30 consecutive days for any cause not exempted in the Schedule of Performance, fails to obtain required approvals, licenses or permits or permits are withdrawn or suspended for more than 30 consecutive days, or Developer fails to pay debts when due. If the default is not cured within 30 days after notice, or monetary default after 90 consecutive days, the Developer is liable for damages.

- Termination by Developer - The Developer may terminate the Implementation Agreement prior to Close of Escrow if the City does not deliver clear title to the City Parcels; the SA cannot deliver clear title to the SA Parcels, the City and SA fail to cure default within 30 consecutive days of Notice; one or more conditions precedent to Close of Escrow is not satisfied; the Developer is unable after diligent and good faith efforts to deliver the Project due to one or more reasons beyond its control to obtain construction financing. In such event, both parties share 50% of any escrow cancellation costs.

- Right of Reverter – The City and SA retain their respective rights, at their options, to reenter and take the City Parcels and SA Parcels, as appropriate, if the Developer is in default.

- Enforced Delay – Neither party shall be in default and the Performance Schedule shall be extended due to Force Majeure.

FISCAL ANALYSIS:

The Implementation Agreement reflects the property disposition described in the LRPMP with land sales proceeds from the SA Parcels paid to the taxing entities. The

Implementation Agreement requires the SA to convey the SA Parcels to the Developer for $8.2 million. This is amount is $7.4 million greater than the market value supported by the SA Parcels on an individual basis, and $100,000 less than the estimated fair reuse value of the SA Parcels pursuant to the Health and Safety Code Section 33433 Summary Report (attached).

The Implementation Agreement requires the City to convey the City Parcels to the Developer for $15.6 million less the credits to the land price as defined in the Implementation Agreement and the Health and Safety Code Section 33433 Summary Report.

The Project contemplated by the Implementation Agreement is anticipated to generate revenue for the taxing entities through land sale proceeds and future sales tax and property tax, and revenue to the City through future sales tax, property tax, business tax, user utility tax and transient occupancy tax.

ATTACHMENTS:

1. Implementation Agreement and attachments.
2. Summary report pursuant to California Health and Safety Code Section 33433.
3. Proposed City Council resolution approving the Implementation Agreement with Lowe Enterprises.
4. Proposed Successor Agency resolution approving the Implementation Agreement with Lowe Enterprises.

MOTION:

That the City Council:

1. Adopt a Resolution Approving an Implementation Agreement between and among the City and the Successor Agency and Lowe Enterprises Real Estate Group in order to convey the real property located at 8829, 8831, 8840, 8841, and 8843 Exposition Boulevard; 8801, 8803, 8824, 8825, 8828, 8830-8834, 8836, 8839, 8842, and 8846 National Boulevard; 8900-8906, 8910-8912, 8914-8918, 8920, 8926, 8930, and 8936 Venice Boulevard for the development of a high quality transit oriented development; and (2) related actions; and,

2. Authorize the City Attorney and City Special Counsel to review/prepare the necessary documents; and,

3. Authorize the City Manager to execute such documents on behalf of the City.

AND

That the Successor Agency to the Culver City Redevelopment Agency Board:

1. Adopt a Resolution Approving and recommending to its Oversight Board approval of (1) an Implementation Agreement between and among the City of Culver City and the Successor Agency and Lowe Enterprises Real Estate Group in order to convey the real property located at 8829, 8831, 8840, 8841, and 8843 Exposition Boulevard; 8801, 8803, 8824, 8825, 8828, 8830-8834, 8836, 8839, 8842, and 8846 National Boulevard; 8900-8906, 8910-8912, 8914-8918, 8920, 8926, 8930, and 8936 Venice Boulevard for the development of a high quality transit oriented development; (2) the Successor Agency's use of the net purchase price proceeds received by the Successor Agency after close of escrow in accordance with the Dissolution Act and other applicable law; and (3) related action; and,

2. (Subject to the Approval of the Oversight Board and the State Department of Finance) Authorize the Successor Agency General and Special Counsel to review/prepare the necessary documents; and,

3. (Subject to the Approval of the Oversight Board and the State Department of Finance) Authorize the Executive Director to execute such documents on behalf of the Successor Agency.