City of Culver City, California

City Council Agenda Item Report

Meeting Date: 04/21/08	Item Number: A-3
AGENDA ITEM: Approval of the *Amendment to Purchase and Sale Agreement* with Conjunctive Points Warner Development, LLLP Regarding the Sale of 8511 Warner Drive.	
Contact Person/Dept.: John Fisanotti	Phone Number: (310) 253-5767
Fiscal Impact: Yes [X] No []	General Fund: Yes [X] No []
Public Hearing: [] Action Item: [X]	Attachments: [X]
Public Notification: Master Notification List (04/17/08).	
Department Approval: Sol Blumenfeld (04/16/08)	City Attorney Approval: Carol Schwab (by H. Baker) (04/17/08)
Fiscal Impact Review: Jeff Muir (04/17/08)	City Manager Approval: Jerry B. Fulwood (04/17/08)

RECOMMENDATION:

Staff recommends the City Council approve the *Amendment to Purchase and Sale Agreement* by and between the City of Culver City and Conjunctive Points Warner Development LLLP, regarding the City's sale of 8511 Warner Drive.

BACKGROUND:

On March 27, 2006, the City Council: a) authorized the sale of the property at 8511 Warner Drive ("Warner Parking Lot") as surplus City property to Conjunctive Points Warner Development, LLLP ("Conjunctive Points") a company controlled by Mr. Frederick Smith; and b) approved the *Purchase and Sale Agreement* effecting the aforementioned sale. The property was sold for $5,457,600 and escrow closed on June 12, 2006. A copy of the staff report from the March 27, 2006 is enclosed as Attachment No. 1 to this staff report.

Pursuant to the terms of the Purchase and Sale Agreement, the purchase price for the property was paid to the City in the form of a cash payment of fifty percent (50%) at close of escrow (i.e. $2,728,800.00) and the buyer executed a Note secured by a Deed of Trust for the balance. The terms of the Note provide that the buyer shall make a single payment of the balance of the purchase price, plus simple interest accruing at eight percent (8%) by June 12, 2008. Based upon these specified terms, the total payment due on June 12, 2008 is $3,165,408 .

Mr. Smith has requested that the City agree to amend the Note to allow him more time to make the final payment of the purchase price, subject to certain fees and additional interest. The Council is requested to consider the terms and conditions in the *Amendment to Purchase and Sale Agreement* negotiated with Mr. Smith.

DISCUSSION:

Litigation concerning the original sale of the Warner Parking Lot was filed. This case was just adjudicated by the Court of Appeal which affirmed the trial court's ruling allowing the sale to stand. A potential appeal by plaintiff to the California Supreme Court remains possible but improbable according to the City's Special Counsel. Based upon these circumstances, efforts by Conjunctive Points to develop the Warner Parking Lot have slowed. Germane to the question before the Council, is that because of the litigation, which final outcome had the potential to reverse the sale of the Warner Parking Lot, Conjunctive Points has not proceeded to arrange for the necessary financing to make the final payment to the City that will be due on June 12, 2008. Attachment No. 2 to this staff report is a letter from Stephen A. Lewis, representing Conjunctive Points, which makes the case for a time extension.

An *Amendment to Purchase and Sale Agreement*, which includes an *Amended Promissory Note Secured By Deed of Trust* (the "Amendment") was negotiated and is included in the agenda packet as Attachment No. 3. These documents, which have been executed by Conjunctive Points, contain the proposed revised terms for making the final payment on the sale of the Warner Parking Lot, which the Council is asked to consider. The salient points in the Amendment are:

- Payment by Conjunctive Points of a transaction fee equal to 0.75 point of the principal amount of the loan ($20,466.00). A check from Conjunctive Points for that amount was received on April 16, 2008 and will be accepted and deposited should the Council approve the Amendment.

- Conjunctive Points shall make a payment of $436,608.00, which represents two year's worth of interest on the outstanding principal by June 12, 2008.

- Conjunctive Points shall make a final payment of $2,947,104.00 by June 12, 2009. This amount represents the principal ($2,728,800.00) and one additional year's worth of interest ($218,304.00).

For comparison, if the Amendment is not approved, then under the terms of the original Purchase and Sale Agreement, Conjunctive Points will owe a final payment of $3,165,408 representing the principal ($2,728,800.00) and two year's worth of interest ($436,608.00). Such a payment would be due on June 12, 2008.

FISCAL ANALYSIS:

Under the terms of the original Purchase and Sale Agreement, the City would have earned 8 percent on its money for two years and a cash payment of $3,165,408.00 this fiscal year (FY 2007-08.)

Under the terms of the proposed Amendment, the City will have earned 8 percent (approximately $216,000) per year for three years, with receipts of $457,074 (the sum of transaction fee plus interest payments for FY 2006-07 and FY 2007-08) prior to June 30, 2008. The remaining $2,947,104.00 (the sum of principal and interest payment) will be received prior to June 30, 2009. A return of 8 percent interest is more than the City's current investments are earning. When considering whether to defer receipt of the principal payment for one year, the main question is what impact will there be to the City's cash flow. The City's Chief Financial Officer has analyzed the impacts of the proposed Amendment and concluded that the City's cash flow position could absorb the deferment of this revenue into Fiscal Year 2008/2009. It is estimated that without receiving this revenue this fiscal year, the City's reserve would remain slightly above the 30% reserve level. But it is possible that other economic factors will cause certain revenue projections to be reduced and cause the reserve to dip below 30%. Based on current economic conditions, staff does not recommend deferring payment of the remaining principal beyond June 30, 2009. Deferring final payment beyond June 2009 will definitely increase the probability that the reserve level will fall below the 30% mark in Fiscal Year 2008/2009.

ATTACHMENTS:

1. City Council Staff Report dated March 27, 2006
2. Letter from Steven A. Lewis to Todd Tipton, dated April 16, 2008
3. *Amendment to Purchase and Sale Agreement*

MOTION:

That the City Council:

1. Approve the *Amendment to Purchase and Sale Agreement;* and,

2. Authorize the City Attorney to review/prepare the necessary documents and authorize the City Manager to execute the *Amendment to Purchase and Sale Agreement* on behalf of the City; and

3. Authorize the Chief Financial Officer/City Treasurer to accept and deposit the transaction fee payment.