City of Culver City, California

Agenda Item Report

Meeting Date: 02/25/2013	Item Number: JC-2
JOINT CITY COUNCIL AND SUCCESSOR AGENCY BOARD AGENDA ITEM: Conditional Approval of a Settlement Agreement with Rush Pacifica LLC Relating to Termination of Disposition and Development Agreement Related to Parcel B.	
Contact Person / Department: Joe Susca/CDD Todd Tipton/ CDD	Phone Number: (310) 253-5763 (310) 253-5783
Fiscal Impact: Yes [X] No []	General Fund: Yes [] No [X]
Public Hearing: [] Action Item: [] Attachments: []	
Commission Action Required: Yes [] No [X] Date: ________________	
Public Notification (E-Mail) (E-Mail) Meetings and Agendas – City Council (02/19/13); (E-Mail); Rush Pacifica LLC (02/20/13)	
Department Approval: Sol Blumenfeld (02/19/13)	City Special Counsel Approval: Murray Kane (02/19/13) City Attorney Approval: Carol Schwab (by H. Baker) (02/19/13)
Chief Financial Officer Approval: Jeff Muir (02/19/13)	City Manager/Executive Director Approval: John M. Nachbar (02/19/13)

RECOMMENDATION:

Staff recommends the City Council and Successor Agency (SA) to the Culver City Redevelopment Agency Board (Successor Agency Board) conditionally approve a settlement agreement for a lawsuit brought against the former Culver City Redevelopment Agency (former CCRA) by Rush Pacifica LLC (Developer) claiming breach of contract for the former CCRA's termination of their Disposition and Development Agreement (DDA) related to Parcel B in 2009.

BACKGROUND:

On July 10, 2006 the former CCRA approved a DDA with Developer to sell them Parcel B. Simultaneously, the former CCRA also approved an Infrastructure Improvement Agreement (IIA) with the Developer whereby the Developer agreed to design and then construct the realignment of Washington Boulevard in Downtown at former CCRA expense (now completed) and to subsequently build the Town Plaza expansion on behalf of the former CCRA concurrently with construction of the Parcel B building. Per the DDA, the Developer deposited $100,000 for the land purchase in escrow. Those funds remains in escrow.

On June 1, 2009 the former CCRA Board instructed staff to place the Developer on notice of several defaults of the DDA with a subsequent 30-day right to cure period as stipulated in the DDA for such defaults. The defaults related to the DDA and the

Developer's response to them are outlined in a series of letters dated June 4, 2009, July 6, 2009 and August 18, 2009 that are attached for your reference. The Developer failed to cure any of the defaults within the 30 day period, and on December 14, 2009; the former CCRA issue a Notice of Termination of the DDA and IIA to the Developer.

On July 11, 2011, the Developer filed a breach of contract lawsuit against the former CCRA for $33,889,872.65 in alleged damages stemming from the former CCRA's termination of the DDA.

On October 27, 2011 City Special Counsel/Successor Agency Special Counsel filed a response to the claim and also filed a cross complaint on behalf of the City, claiming damages sustained from the loss of sales, business, and utility users taxes resulting from the Developer's failure to perform under the DDA.[1]

On February 5, 2013, in Closed Session, the City Council and Successor Agency Board authorized staff to negotiate a settlement with Rush Pacifica related to their claims of predevelopment costs regarding the redevelopment of Parcel B, provided the Developer's claim of $33.8 million in damages was dropped.

DISCUSSION:

Staff and City Special Council/Successor Agency Special Counsel reached a negotiated settlement of $400,000 plus release of Rush Pacifica's $100,000 deposit currently held in escrow. The SA's proposed settlement with Rush Pacifica is based upon expected legal cost of defending the lawsuit and actual predevelopment costs associated the proposed development. The settlement is subject to Successor Agency, Oversight Board (OB) and State Department of Finance (DOF) approvals.

FISCAL ANALYSIS:

The Developer originally contended that it had approximately $3.5 million in expenditures related to the Parcel B project. The proposed settlement is based on i) release of the $100,000 deposit that remains in escrow, ii) $289,872.65 expended by Developer to relocate storm drains in preparation of constructing Parcel B's subterranean parking level, and iii) related legal expenses incurred by Developer.

The proposed settlement offer must also be approved by the OB and the DOF. $400,000 would be payable by the SA from former tax increment funds through approval of future Recognized Obligation Payment Schedules (ROPS). No City funds will be used toward payment of the settlement. Upon receipt of such approvals, the $100,000 Developer deposit would be released to the Developer and payment of the remaining $400,000 would be made through the ROPS.

Should the City Council and Successor Agency Board approve the proposed settlement, the Successor Agency Board's approval is conditional upon receipt of the approval of the Oversight Board and the State Department of Finance.

MOTION:

That the City Council and Successor Agency Board:

1. Approve a Settlement Agreement between the City, the Successor Agency, and Rush Pacifica LLC containing the terms and amounts indicated in this staff report (with the Successor Agency's approval being conditional upon approval of the Oversight Board and the State Department of Finance); and,
2. Authorize the City Special Counsel/Successor Agency Special Counsel to review/prepare the necessary documents; and,
3. Authorize the City Manager/Executive Director to execute such documents on behalf of the City and Successor Agency, respectively.

NOTES:

[1]The project's tax impacts are as follows: Former Agency tax increment receipts were projected to be $424,000 in year 1 (with 2% annual growth thereafter), City building permit fees (approx. $1 million), and other City tax revenues totaling approximately $265,000 annually (Sales Tax, Business Tax and UUT).