TO: HONORABLE MAYOR, CITY COUNCIL AND SUCCESSOR AGENCY BOARD

FROM: Richard A. Keit
Jacky Morales-Ferrand

DATE: June 1, 2017

SUBJECT: NORTH SAN PEDRO HOUSING PROJECT/AFFORDABLE HOUSING

RECOMMENDATION

It is recommended that the City Council adopt resolutions:

(a) Authorizing the City Manager or his designee to transfer City owned property located on Bassett Street (Assessor Parcel Number 259-51-008) from the City of San Jose to the Successor Agency to the Redevelopment Agency of the City of San Jose, as part of a parcel consolidation for the 135-unit Stand Alone Affordable Housing Project ("Affordable Project"), which consolidated parcel shall be transferred by the Successor Agency to First Community Housing ("FCH") to develop the Affordable Project;

(b) Authorizing the City Manager or his designee to accept certain properties for public use and to transfer certain other properties, all as part of the North San Pedro Housing Project and Infill and Infrastructure Housing Project; and

(c) Allowing an exception to the City’s Policy for the Issuance of Multifamily Housing Revenue Bonds ("Bonds Policy") to permit the California Housing Finance Agency ("CalHFA") to issue private-activity bonds for the Affordable Project.

It is recommended that the Successor Agency Board adopt resolutions:

(a) Approving a Third Amendment to the Amended and Restated Off-Site Improvement and Disbursement Agreement ("Improvement Agreement") among the Successor Agency, North San Pedro Townhomes LLC, San Pedro Life 1 LLC, and First Community Housing ("FCH"), the Affordable Housing Developer for the Project, to amend the Improvement Agreement to add FCH’s right to use up to $1,058,467 of State Prop 1C Infill and Infrastructure Grant Funds towards construction of the North San Pedro Affordable Housing Project;
(b) Providing the Executive Officer or Managing Director the authority to execute other
documents as may be necessary to effectuate and finalize the Successor Agency
obligations related to the North San Pedro Affordable Housing Project; and

(c) Authorizing the Successor Agency to pursue Quiet Title actions to obtain fee title to
certain real property located at (i) the terminus of Terraine Street north of Bassett Street,
and (ii) North San Pedro Street between West Julian Street and Bassett Street, in
conjunction with the vacation of the public right of way by the City.

OUTCOME

Approval of the proposed actions will ensure that:

- The $24,160,400 State Infill and Infrastructure Grant ("Grant") is secured for the
  North San Pedro Housing Project ("NSPHP") and the future development of over
  1,200 housing units;
- The parcel owned by the City and dedicated for the Affordable Project pursuant to the
  Grant and applicable Disposition and Development Agreements is transferred to the
  Successor Agency to be consolidated with adjacent Agency owned parcels, which, in
  turn, will be transferred to First Community Housing for development of the 135-unit
  Affordable Project;
- North San Pedro Street between West Julian Street and Bassett Street is vacated and
  dedicated as a city park;
- A small parcel currently held by City Heights shall be transferred to the City to
  complete the paseo leading to Pellier Park and the remainder transferred to the
  Successor Agency as part of the Block D development site.

BACKGROUND

Infill and Infrastructure Grant and the Affordable Housing Project

The former Redevelopment Agency, First Community Housing (FCH); North San Pedro
Townhomes ("NSPT"), and San Pedro Life 1 (SPL1) applied for and were awarded, in 2011, the
Grant for the North San Pedro Housing Project in the amount of $24,160,400. 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. FCH is the affordable housing developer. The 135-unit affordable housing development
is planned to include 118 studios, 16 one-bedroom units, and a two-bedroom manager's unit.
The affordable units will be available to veterans (including homeless veterans) and special
needs individuals.
In addition to the affordability restrictions required by the Grant from the State Department of Housing and Community Development, the City will record additional affordability restrictions against the affordable housing site.

The Grant has been used to fund land acquisition, infrastructure improvements including the realignment of Julian Street (removal of the S curve), undergrounding of utilities, new sidewalks, street paving, streetlights, trees and parks. The attached map indicates the project area, location of the new streets and sidewalks, the development sites and the future park sites.

In addition to obtaining the Grant, the grant parties executed, on October 10, 2013, amendments to several project related documents with the former Redevelopment Agency, including the Amended and Restated Disposition and Development Agreements (DDAs) with NSPT and SPL1 and an Amended and Restated Disbursement and Improvement Agreement (“Improvement Agreement”) with the two private developers. At the time the Improvement Agreement was drafted, it was not necessary to include FCH in the Agreement because they were not using the Grant funds.

Pursuant to the DDAs, the former Redevelopment Agency agreed to assist the Affordable Project as follows: provide $2.5 million as a grant (“Affordable Housing Assistance”) and transfer the affordable housing site to the affordable housing developer at no cost. The former Redevelopment Agency purchased two of the three parcels needed for the affordable housing site several years before dissolution. Given the Agency’s existing debt, the full $2.5 million was not available from property tax revenues. The Successor Agency was able to provide $927,213 in existing bond proceeds to FCH for predevelopment work. The funds were used for design development and for construction documents. This left approximately $1.6 million owed to FCH and available in the Grant budget.

**First Amendment to the Off-site Improvement and Disbursement Agreement and Property Acquisition for the Affordable Housing Site**

The First Amendment to the Improvement Agreement, dated December 1, 2014, added First Community Housing to the Amended and Restated Off-Site Improvement Agreement. Adding FCH to the Improvement Agreement allowed them to use up to $1,600,000 in Grant funds. However, due to a unique provision in the terms of the Grant, Grant funds could not be used for predevelopment costs or land acquisition 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 the parking area. Therefore, in order to acquire the remaining portion of the Affordable Housing Site not yet owned by the Successor Agency, on November 4, 2014, the City Council and Successor Agency Board approved the use of $1.6 million of City affordable housing funds to acquire the remaining portion of the affordable housing site. The City successfully acquired the remaining parcel needed to complete the affordable housing site in December 2014 (Block G on attached map).
Second Amendment to the Off-site Improvement and Disbursement Agreement

As a result of timing issues related to the construction of the Affordable Housing Project by FCH and the inability of FCH to obtain reimbursement of predevelopment costs and land acquisition costs under the Grant, the Successor Agency, NSPT, SPL and FCH requested the Successor Agency Board and the Oversight Board to amend the Improvement Agreement for a second time to (i) delete FCH’s right to use up to $1,600,000 of Grant Funds from the Agreement, (ii) allow the Successor Agency or another party to the Improvement Agreement to use up to, or a portion of $1,600,000 of Grant Funds to reimburse itself for costs previously incurred in connection with the development and construction of the Infrastructure Project as defined in the DDAs, and (iii) provide that, upon receipt of such funds, the party receiving such Grant funds shall disburse such funds to FCH to satisfy the remainder of the Successor Agency obligation to provide Affordable Housing Assistance to FCH as defined in the DDAs. The Successor Agency Board approved the Second Amendment on October 6, 2015.

ANALYSIS

Transfer of Successor Agency and City Owned Properties to First Community Housing

Currently, the City owns one parcel and the Successor Agency owns two parcels that together comprise the Affordable Housing Site. The requested recommendation authorizes the City Manager or designee to transfer the City owned parcel to the Successor Agency. The Successor Agency will consolidate all three parcels into one parcel and transfer the entire site to First Community Housing at no cost. This satisfies the Successor Agency’s obligation to provide the Affordable Housing Site.

Other Property Transfers

There are several reasons that the transfer and vacation of property is necessary for the development of the North San Pedro Housing Project area:

1. Two Successor Agency owned parcels need to be transferred and combined with the land underlying North San Pedro Street for the creation of the future park between West Julian Street and Bassett Street (between Block B/F and Block A on the map), North San Pedro Street requires vacation as a street but the City will obtain title to the underlying fee through a Quiet Title action;
2. The removal of the Julian Street S curve necessitates the need to vacate the street where it cuts through Blocks D and E, creating two development parcels;
3. The City and Successor Agency will need to accept land transferred from City Heights to square off Block D and add to the paseo north of Pellier Park, respectively; and
4. The vacation of Terraine Street where it terminates into Block G is necessary for the construction of the Affordable Project and since Terraine Street terminates at this point, the property is no longer necessary as a public right of way. The Successor Agency will
acquire title to the underlying fee through a Quiet Title action and the property will be transferred to FCH as part of the Affordable Project.

City Council Policy for the Issuance of Multifamily Housing Revenue Bonds

The City Council’s Bonds Policy requires that the City be the issuer of tax-exempt private-activity bonds for housing developments located within the City of San José. When the City is not the issuer, the Bonds Policy allows the City to authorize another conduit bond issuer (“Issuer”) to issue bonds if the City is not making a loan or grant to the Project. Although it is the City’s practice to require that the City be the issuer of bonds for all projects in San José, on rare occasions, the City Council and/or City staff have approved developers’ use of an alternate issuer pursuant to the Bonds Policy.

FCH selected CalHFA as the proposed Issuer for the Project, and, on March 28, 2017, CalHFA held a Tax Equity and Fiscal Responsibility Act (“TEFRA”) Public Hearing for the issuance of tax-exempt private-activity bonds. This action will require CalHFA to issue bonds for the Project and monitor the Project’s affordability for 55 years, a task that would have fallen to the Housing Department had the City issued bonds for the Project. Due to the facts that 1) CalHFA is providing very attractive financing to the project and requires, as a condition of the financing, CalHFA to be Issuer 2) a TEFRA Public Hearing has already been conducted, and 3) the City’s investment is a relatively nominal component of the Project’s total cost, the Housing Department recommends an exception to the Bonds Policy to allow CalHFA to act as the Issuer for the Project.

Third Amendment to the Off-site Improvement and Disbursement Agreement

Although the former Redevelopment Agency spent over the $1.6 million on Grant eligible costs previously incurred, it was determined that only $514,320 of Agency expenses could be reimbursed from the Grant. Therefore, the prior amendment to the Improvement Agreement was insufficient to allow FCH to obtain the funds necessary to satisfy the Successor Agency’s remaining Affordable Housing Assistance obligation. After carefully reviewing the Successor Agency project invoices only $514,320 was billed after the Grant was awarded and subsequently grant eligible for reimbursement. The Successor Agency has received the $514,320 and will reimburse FCH as invoices for any activity related to the Affordable Project are submitted.

To date, the Successor Agency has provided or made available $1,441,533 ($927,213 in bond proceeds and $514,320 from Grant reimbursements) to FCH as part of the $2.5 million Successor Agency Affordable Housing Assistance under the DDAs. The Successor Agency has an outstanding obligation of $1,058,467 for Affordable Housing Assistance to FCH.

Successor Agency staff is requesting Successor Agency Board approval of a Third Amendment to the Improvement Agreement to reinstate FCH’s eligibility to receive funds directly from the Grant. Since the term of the Grant was extended to December 2018, FCH now can use Grant
funds up to $1,058,467 for construction costs for the Affordable Housing Project. All construction costs are eligible for reimbursement under the Grant. FCH intends to start construction of the Affordable Housing Project in Fall of 2017.

PUBLIC OUTREACH/INTEREST

The Memorandum will be posted for consideration at the City Council/Successor Agency Board meeting on June 13, 2017.

COORDINATION

This item was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation is associated with this action.

FISCAL/POLICY ALIGNMENT

No additional appropriation action is required as a result of actions recommended in this memorandum.

CEQA

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

/s/
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Housing Director

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

Attached