



REPORT

DATE ISSUED: June 15, 2004 **ITEM 101**

REPORT NO.: HCR04-51
For the Agenda of July 2, 2004

SUBJECT: Actions Implementing Purchase of Housing Commission Office Building (Council District 2)

SUMMARY

Issue No. 1: Should the San Diego Housing Commission (SDHC) approve a request from Lankford and Associates, Inc. (Developer/Seller the terms being synonymous) for assignment of Rights and Obligations under the Purchase and Sale Agreement (PSA), without releasing Lankford and Associates from its obligations under the PSA?

Recommendation No. 1: That the SDHC approve an assignment of Rights and Obligations under the PSA from Lankford and Associates, Inc. to both Smart Corner LLC and CJUF Smart Corner LLC and authorize the Chief Executive Office (CEO) to execute all required documents as approved by General Counsel to effectuate the assignments, including but not limited to Attachment 1, Agreement Regarding Extension of Contingency Dates and Consent to Assignment of Purchase and Sale Agreement (PSA).

Issue No. 2: Should the SDHC approve a request from the Developer/Seller for modification to the project development timeline in accordance with Lankford's written request, Attachment 2?

Recommendation No. 2: That the SDHC approve the requested modification to the project development timeline as set forth in Attachment 2, and as detailed in this report and authorize the CEO to execute any and all required documents to effectuate the requested modification, as approved by General Counsel.

Fiscal Impact: None.

Environmental Review: The actions being recommended in this report implement the prior Housing Authority approved acquisition of the office building and parking structure after its



completion. There is no obligation to purchase the office building and parking garage under the PSA unless all environmental clearances have been obtained to authorize the construction and occupancy of the office building. Approval of a purchase and sale of real property by the SDHC is categorically exempt under the provisions of California Environmental Quality Act (CEQA) as discussed herein. Further, Center City Development Corporation (CCDC) has reviewed environmental reports for the development of the entire block and any approval of the Development and Disposition Agreement would require certification of all environmental documents. These actions implementing the previously approved PSA agreement are ministerial in nature and are also categorically exempt from the provisions of CEQA.

Previous Related Actions: On September 21, 2001 and November 27, 2001, the SDHC and Housing Authority, respectively, authorized the CEO to execute an Exclusive Negotiating Agreement (ENA) with Lankford and Associates, Inc. for potential development of the SDHC facility at the “Smart Corner” at 12th Avenue and “C” Street in San Diego (Report Nos. HCR01-105 and HCR01-105 Supplemental).

On June 7, 2002, the SDHC authorized the CEO to execute up to two 30-day extensions to the ENA with Lankford and Associates, Inc. (Report No. HCR02-053).

On July 18, 2003 and July 29, 2003, the SDHC and Housing Authority, respectively, approved the PSA for SDHC’s proposed office facility (Attachment 4).

Future Related Actions: None.

BACKGROUND

From July of 2000 until early last summer, the SDHC was involved in an analysis of its future office needs. Staff was assisted in this analysis by an Ad-Hoc Committee of Commissioners and by a consultant group headed by Keyser, Marston & Associates. This effort focused primarily on extensive renovation to the current facility at Newton Avenue and on a development opportunity at a site owned by CCDC located at 12th Avenue and “C” Street known as the “Smart Corner.” This work culminated last summer in the Housing Commission and Housing Authority approval and subsequent execution of a PSA (Attachment 4) with Lankford and Associates, Inc. (Developer/Seller). Under the terms of the PSA, the Developer/Seller will construct and deliver to the SDHC a five-story office facility consisting of one floor, the ground floor, for lease to retail establishments; one-floor for office space to be leased to other organizations, and three floors for the SDHC’s offices. The Developer/Seller will construct a parking garage under the building.

These facilities (collectively the “Project”) will be constructed for a fixed fee guaranteed maximum price of \$23,846,160.

During the PSA approval process, authorization to resolve non-cardinal issues related to the acquisition of the proposed office facility was vested in an Ad-Hoc Committee comprised of Chairman Salas, Commissioners Yip, and Adams-Brooks. “Non-cardinal” issues are those

issues not involving changes to the essential elements of the transaction, but including all other types of issues related to the transaction. As always, the Housing Authority delegated administrative matters to the SDHC under the provisions of San Diego Municipal Code Section 98.0301, et. seq.

DISCUSSION

Issue No. 1: Under the terms of the PSA, the Developer/Seller has, with the consent of the Housing Commission, the ability to assign its Rights and Obligations. The PSA allowed the Developer/Seller to request an assignment of rights and obligations (without release of the Seller) under the PSA to entities affiliated with the Developer/Seller. The CEO was granted administrative authority to approve these assignments if requested within 60-days after the execution of the PSA. The PSA was executed on July 29, 2003. The PSA further details that failure by the Developer/Seller to meet the 60-day requirement shall result in these rights being waived. The Developer/Seller did not request any assignment within the 60 day period. Currently, the Seller is requesting that the SDHC approve the assignments of its rights under the PSA, without release of the Seller, as referenced in Attachment 1, to both Smart Corner LLC and CJUF Smart Corner LLC.

CJUF Smart Corner LLC is an entity comprised of a number of members referenced in Attachment 5, which details the ownership structure and in Attachment 6 which includes appropriate participant disclosure statements.

Staff recommends approval of the assignments, without release of the Developer/Seller. Staff believes that the inclusion of the equity partners through the formation of CJUF Smart Corner LLC facilitates financing, thereby strengthening the ability to successfully complete the project.

The Developer/Seller has stated that should the SDHC not approve the assignment, they will go forward with the project as Lankford and Associates, Inc.

Issue No. 2: The PSA creates timelines for the Developer/Seller to perform and reach certain milestones. Due to delays in commencement activities and revisions to the estimated time required for construction activities, the Developer/Seller has requested certain modifications to the PSA timeline. In addition, SDHC staff is requesting modifications to certain related dates. Attachment 3 provides specifics regarding the newly proposed dates.

Staff notes that the Developer/Seller has made substantial progress to date. Financing issues are almost complete, various agreements have been approved, and design/development documents are approximately seventy-five percent (75%) complete. Delays and approvals in commencement activities were not anticipated at the time of execution of the PSA. These delays will have no detrimental impact on the project. The PSA allows for two six month extensions of the project completion date and staff expects that the Developer/Seller will seek one or both of these extensions. The PSA allows, and the CEO is authorized, to approve such extensions.

Alternative No.2: Not approve the Developer/Seller's request and thereby terminate the transaction. This is not recommended. If the Board fails to terminate the transaction within five (5) days of June 30, 2004 (as set forth in the PSA Agreement), the Board will waive the right to terminate the transaction as referenced in the PSA, Section 14.1. The failure to terminate at this time will not set any particular date(s) for acquisition of the property by the Developer/Seller or for the commencement of construction.

Respectfully submitted,

Approved by,

Steve Snyder
Director, Asset Manager

**Signature on File
With Original Document**

Elizabeth C. Morris
Chief Executive Officer

Information: Steve Snyder (619) 578-7545

- Attachments: 1 -Agreement Regarding Extension of Contingency Dates and Consent to Assignment of Purchase and Sale Agreement (PSA)
2 - Lankford and Associates Correspondence dated June 18, 2004
3 - Revisions to PSA Dates
4 - HCR03-053, Approval of Purchase and Sale Agreement for the Housing Commission's Proposed Office Development
5 - Ownership Structure - CJUF Smart Corner LLC
6 - Developer/Seller Disclosure Statements

Attachments are available for review at the Housing Commission office at 1625 Newton Avenue and the office of the City Clerk, 2nd floor, 202 C. Street.