

## CITY OF ALAMEDA

### Memorandum

To: Honorable Chair and Members of the Alameda Reuse and  
Redevelopment Authority

Honorable Chair and Members of the Community Improvement  
Commission

Honorable Mayor and Members of the City Council

From: Debra Kurita  
Executive Director/City Manager

Date: July 18, 2007

Re: Exclusive Negotiation Agreement for Alameda Point Between the  
Alameda Reuse and Redevelopment Authority, the Community  
Improvement Commission, the City of Alameda, and SCC Alameda  
Point, LLC (SunCal)

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### BACKGROUND

On September 21, 2006, Alameda Point Community Partners (APCP) notified the Alameda Reuse and Redevelopment Authority (ARRA) that it was withdrawing as the Alameda Point Master Developer five years after it was selected. APCP cited a downturn in the residential real estate market that no longer supported the \$108.5 million land purchase price tentatively negotiated with the Navy as its primary reason for not moving forward. Following APCP's withdrawal from the project, the Navy agreed to an ARRA-sponsored process to identify a new master developer. The Navy's agreement was predicated on a timely process and retention of the \$108.5 million purchase price and the previously agreed upon payment schedule contained in the draft conveyance term sheet.

At its October 4, 2006, meeting, the ARRA authorized staff to issue a Request for Qualifications (RFQ) to determine if there were developers interested in becoming the new Alameda Point Master Developer (Master Developer). SunCal responded to the RFQ through initial and subsequent responses. On May 8, 2007, the ARRA selected SunCal as its preferred Master Developer and established a 60-day due diligence and Exclusive Negotiation Agreement (ENA) negotiation period.

The 60-day due diligence period began on May 14 and concluded on July 12. During that period, SunCal established a comprehensive database on Alameda Point built on historic and current documents, studies, ordinances, resolutions, and policies related to

the base. Items provided to SunCal ranged from Navy environmental clean-up documents and ARRA leases to historic preservation studies and wetlands delineation maps. SunCal summarized each document received as part of its due diligence exercise. In addition, SunCal met with staff and ARRA consultants for briefings on affordable housing, historic preservation, fiscal neutrality, the Public Trust, the Biological Opinion, environmental clean-up activities and status, and leasing activity. Staff also facilitated informational meetings between SunCal and the Navy as well as environmental regulators. Simultaneous with this due diligence effort, SunCal worked with staff to negotiate an ENA as discussed below.

### DISCUSSION

The purpose of the ENA is to (1) define the redevelopment and entitlement of the Alameda Point project site; (2) provide a framework for the negotiation of a Disposition and Development Agreement (DDA) for Alameda Point; and (3) establish a process for negotiating and executing various other transaction documents, such as California Environmental Quality Act (CEQA) documents, and third-party agreements like the Finalized Navy Term Sheet. The ENA is attached.

Staff and SunCal met on numerous occasions over the last 60 days to negotiate the provisions of the ENA. The following summarizes the major terms of the agreement:

- 1) **Length of Term.** The term of the ENA, including completion of CEQA review, all entitlements, and a DDA, is 24 months. A "progress extension" is automatically provided if: (i) all mandatory milestones have been achieved; (ii) review of the Project under CEQA is in process; and (iii) a complete Entitlement Application has been submitted and is pending before the City. The extension will continue until Alameda takes action on the Entitlement Application or, if slowed by litigation, until litigation on the project is resolved. A one-year extension may also be considered by mutual agreement of the ARRA Board and SunCal.
- 2) **Schedules of Performance.** The ENA provides Schedules of Performance that include all mandatory and non-mandatory milestones. Mandatory performance milestones consist of specific SunCal submittals, such as Development Concept, Infrastructure Plan, Business Plan, and Entitlement Application. Mandatory milestones must be completed within specified timelines and are subject to administrative extensions within the overall time frame of the ENA. A midpoint Conditional Acquisition Agreement (CAA) is an optional task and can be pursued if desired by SunCal. The CAA is not a required milestone and will not affect the completion of the mandatory milestones.

Third-party agreements are non-mandatory milestones. If any third-party agreement, such as special legislation for Tidelands Trust, is not finalized before

the DDA is approved, then the DDA will outline performance milestones for finalizing any outstanding third-party agreements and any remedies for not meeting those milestones. Exhibit B of the ENA outlines the proposed timelines for both mandatory and non-mandatory milestones. Additionally, the ENA requires that SunCal submit a Project Master Schedule to the ARRA within 30 days of execution of the ENA and on a quarterly basis thereafter.

- 3) **Initial Payment and Cost Recovery.** SunCal paid \$100,000 to the ARRA at the commencement of the ENA negotiations, and within five days of execution of the ENA, will pay an additional \$900,000 to the ARRA for a total of \$1 million. The deposit will be placed in an interest-bearing account and will be applied to the land purchase price, if the project site is conveyed to the Developer. If SunCal defaults under the terms of the ENA or terminates this agreement, it forfeits any right to the \$1 million.

The ENA also includes cost recovery provisions that require SunCal to reimburse the ARRA for its pre-development costs, including third-party consultant and legal costs and ARRA staff time. The ENA also outlines provisions for amending the budget, as necessary. Exhibit C of the ENA is the proposed cost recovery Annual Budget, which is estimated at \$2.7 million over the 24-month term of the ENA. SunCal estimates that it will expend approximately \$10 million during the ENA period.

- 4) **Project Labor Agreement.** SunCal has agreed to negotiate in good faith to enter into a project labor agreement for the construction trades.
- 5) **Fiscal Neutrality.** The ENA includes provisions for the mitigation of any adverse impacts of the project on the current and future General Fund budget. In addition, the provision in the ENA related to the use of tax increment financing places a priority on the Community Improvement Commission (CIC) and ARRA honoring their debt and operating expense obligations before tax increment funding flows to the project.
- 6) **Project Pro Forma.** The required components of the Project Pro Forma, jointly prepared by Alameda and SunCal, are outlined in the ENA and include provisions related to profit participation and the Internal Rate of Return (IRR). As currently proposed, the IRR shall be based on all appropriate costs, with eligible costs to be negotiated at a later date, and achieve a 20 to 25 percent return to developer, provided, however, that the precise IRR shall be subject to negotiation of the parties as part of the DDA. Additionally, any profit participation by the CIC from the project, if public tax increment financing is used, will occur after SunCal receives the IRR negotiated as part of the DDA.

- 7) **Existing City Leases/Uses.** There are four existing City uses specified in the ENA that will be continued after transfer of the land from the CIC to SunCal. These uses include City Hall West (Building 1), Fire Station #5 (Building 6), Alameda Power & Telecom Headend (Building 2, Wing 3), and the O'Club (Building 60). If SunCal decides to redevelop any of these buildings, it will be responsible for relocating the public use to a comparable facility at its sole expense. Other existing City uses or leases may be included in the final development plan but will be negotiated as part of the DDA.
  
- 8) **Transfers.** As stated in the RFQ process, SunCal does not self-finance development projects, but instead seeks equity funds from third-party partners. While SunCal may invest some equity funds into the project, its primary contribution to the project will be expertise and experience successfully facilitating complex development projects. Given this partnership structure, it is crucial for SunCal that the ENA allow for an automatic transfer to a developer entity that will include SunCal and its third-party equity partner, subject to certain terms and conditions to which all parties can agree. The resulting ENA has terms and conditions that allow automatic transfers while protecting Alameda's long-term interest and investment in Alameda Point.

There are three major components of the agreed upon terms and conditions of the automatic transfer provision:

- (i) **Financial Stake.** It is important that SunCal have sufficient financial stake in the project to create an incentive for it to remain committed to the project. The ENA states SunCal must contribute at least 15 percent of the cash capital required to fund the pre-development phase of the project, and at least five percent of the equity required for funding the full implementation of the project, subject to further negotiation in the DDA.
  
- (ii) **Day-to-Day Management and Control.** The ARRA selected SunCal through a competitive RFQ process and will be assured that the SunCal principals represented to the ARRA as the project leadership and team remain in control of the day-to-day management of the project. The ENA does not allow SunCal to be removed from day-to-day control of the project unless the replacement project management entity is acceptable to the ARRA.
  
- (iii) **Removal of Developer.** The ARRA selected SunCal based on its specific qualifications and expertise. Therefore, the ENA states that the ARRA must consent to the removal of SunCal during the pre-development phase, and that the DDA will specify the terms of a

"qualified developer" for potential replacement of SunCal during project implementation.

Upon execution of the ENA, SunCal will commence its 24-month process to achieve the milestones outlined in the ENA Schedule of Performance.

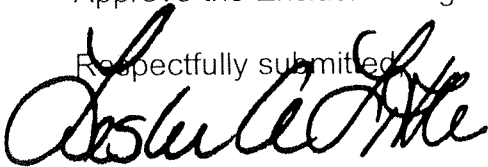
BUDGET CONSIDERATION/FINANCIAL IMPACT

There is no financial impact on the General Fund, CIC, or ARRA budgets. The cost recovery provision in the ENA will ensure that the selected developer pays for staff costs and consultant expenses.

RECOMMENDATION

Approve the Exclusive Negotiation Agreement with SCC Alameda Point, LLC.

Respectfully submitted,



Leslie A. Little  
Development Services Director



By: Debbie Potter  
Manager, Base Reuse & Community Development Division



By: Jennifer Ott  
Redevelopment Manager

LAL/DP/JO:sb

Attachment

1. Alameda Point Exclusive Negotiation Agreement