

RESOLUTION NO. 4-2003

Adopted February 11, 2003

AUTHORIZING A FIRST AMENDED EXCLUSIVE NEGOTIATIONS AGREEMENT WITH FILLMORE DEVELOPMENT ASSOCIATES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, TO EXTEND THE FIRST BENCHMARK DATE FOR THE APPROVAL OF THE BASIC CONCEPT DESIGN AND CLARIFY CERTAIN TERMS AND CONDITIONS FOR THE PROPOSED MIXED USE PROJECT AT PARCEL 732-A, LOCATED AT THE NORTHEAST CORNER OF FILLMORE AND EDDY STREETS; WESTERN ADDITION AREA A-2 REDEVELOPMENT PROJECT AREA

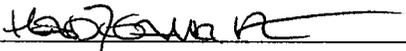
1. By Resolution No. 154-2002, dated September 10, 2002, the Agency authorized Exclusive Negotiations under certain terms and conditions with Fillmore Development Associates, LLC, a California limited liability company (the "FDA"), for the disposition and development of Parcel 732-A, located at the northeast corner of Fillmore and Eddy Streets in the Western Addition A-2 Redevelopment Project Area.
2. Subsequently, the Agency and FDA entered into an Exclusive Negotiation Agreement dated September 10, 2002 (the "ENA"), which requires FDA, among other things, to obtain Commission approval of three sequential performance benchmarks by certain dates in order for the exclusive negotiations to continue toward a disposition and development agreement. The first of the benchmarks is the submission of a modified development proposal by December 8, 2002 and Commission approval of the basic concept design of the modified development proposal by no later than January 14, 2003.
3. On October 29, 2002, the ENA was modified to allow FDA to defer to March 12, 2003 the submission of an independent financial feasibility analysis, which was to be submitted with the modified development proposal by December 8, 2002.
4. The Agency has completed its review and analysis of the modified development proposal along with the basic concept design submitted by FDA. Staff concludes that the modified development proposal and basic concept design are incomplete and inconsistent with the requirements specified in the ENA.
5. In an effort to continue to work with FDA towards a feasible proposal that will meet the Agency's objectives for the Site, the Agency is willing to grant FDA an extension of time to meet the first and second benchmarks, on terms and

conditions set forth in the attached proposed First Amended Exclusive Negotiations Agreement.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco, that the Executive Director is authorized to enter into a First Amended Exclusive Negotiations Agreement with Fillmore Development Associates, LLC, a California limited liability company, for the disposition and development of Parcel 732-A, located at the northeast corner of Fillmore and Eddy Streets, Western Addition Area A-2 Redevelopment Project Area, subject to the terms and conditions attached to this Resolution as Attachment 1.

APPROVED AS TO FORM:



Bertha A. Ontiveros
Agency General Counsel

EXHIBIT 1

CONDITIONS FOR CONTINUING EXCLUSIVE NEGOTIATIONS

I. Satisfaction of First Benchmark Submittal Requirements

a. FDA must re-submit first benchmark items by April 14, 2003. Changes must include:

- i. revising its basic concept design drawings, assuming a development envelope on merged Agency Parcels 725-C and 732-A, within the following parameters:

Union Office	15,000 SF
Union Banquet & Meeting Hall	5,000 SF
Jazz Club/Restaurant	17,000 SF
Restaurant/Lounge	8,000 SF
Music Retail/Lounge	1,000 SF
Jazz Heritage Center (Atrium)	1,750 SF
Housing	350 Agency Rooms
Total Gross SF above ground	149,044
Parking	TBD

- ii. providing updated and complete 10-year pro forma development and operating cash flows showing all projected sources of revenues, including projected sales and rental rates for commercial and parking uses, anticipated cash flow before and after debt service and detail of operating costs for all project components; support for the various tenant improvement costs proposed; detail describing the sources of developer equity during both construction and permanent financing phases and assumptions about loan underwriting requirements;
- iii. revising as necessary the equal opportunity work plan meeting the Agency's policies satisfactory to Agency contract compliance staff; and
- iv. addressing additional architectural concerns to the Agency's satisfaction.

2. Financial Feasibility

- a. Operating costs and reserves during sale and lease up must be supported by documented evidence of industry standard or underwriting requirements.
- b. FDA must specify all sources of equity and provide documentation of equity funding commitments, showing amounts committed and terms and conditions to, and timing of, funding.
- c. FDA must engage a consultant to perform an independent feasibility analysis of its proposed development program for the Second Benchmark, unless otherwise determined to be feasible by staff and the Agency's consultant.
- d. FDA must engage a consultant or work with the Department of Parking and Traffic to arrange for an independent analysis showing projected demand for the proposed garage.

3. Land

- a. Funds equal to the land value allocated to the housing and office/banquet portions of FDA's development program must be paid to the Agency for cross-subsidies.
- b. FDA must provide evidence satisfactory to the Agency that the sale price for the union office/banquet space will cover all actual costs, including allocated land cost and a proportionate amount of soft costs. The cost of meeting the parking requirements for the union office/banquet space must be absorbed by the union through lease payments or by inclusion in its purchase price.
- c. The Agency will determine land value after considering an appraisal to be conducted by an appraisal firm acceptable to FDA and the Agency, based on FDA's development program. Land value will be allocated to each component of FDA's development program on a basis mutually acceptable to the Agency and FDA.
- d. The Agency will assist FDA in a subdivision process that will result in four distinct parcels: housing; office/banquet hall; commercial; and garage. The Agency intends to sell the housing and office/banquet parcels to FDA, enter into a long term lease for the commercial parcel with FDA and either sell or lease the garage parcel to the Department of Parking and Traffic.

4. FDA's Fees, Overhead and Profits

- a. FDA may choose among the following transaction structures for the housing and office/banquet components of its development program.

- i. Following the Agency's customary practice with respect to market rate housing and commercial development, the Agency will sell the housing and office/banquet parcels (which may be air rights parcels) to FDA at the close of FDA's construction financing, for an amount established according to **Section 3.c** above. For either of these components, if the Agency is paid at construction loan closing, then, as is the case in other market rate housing and commercial developments on Agency land, the Agency will have no oversight or restrictions on FDA's developer fees, profits and overhead.
- ii. In order to alleviate the financial burden on FDA at the start of construction, the Agency will allow FDA to defer its payment obligation for the allocated land value on the housing and/or office/banquet components without interest, and FDA will defer its receipt of developer fees and profits. Sales proceeds will be allocated in the following order of priority: (1) repayment of the construction loan; (2) repayment of other third-party sources of construction financing; (3) Agency land payment; and (4) FDA's deferred developer fees and profits. Under this option, the Agency will approve FDA's construction budget, including its overhead, but will have no oversight or restrictions on FDA's developer fees and profits.
- iii. In order to alleviate the financial burden on FDA at the start of construction, the Agency will allow FDA to defer its payment obligation on the housing and/or office components without interest, and FDA will defer its receipt of developer fees and profits. Sales proceeds will be allocated in the following order of priority: (1) repayment of the construction loan; (2) repayment of other third-party sources of construction financing; (3) equal split of 50% to the Agency for land payment and 50% to FDA for FDA's deferred developer fees until the Agency receives the full land payment amount; and (4) remaining FDA developer fees and FDA profits. Under this option, the Agency will approve FDA's construction budget, including its overhead, and FDA's combined overhead and developer fee will be no more than 4% of hard and soft costs, excluding all fees, interest and land. The Agency will have no oversight or restrictions on FDA's profits.
- iv. FDA's combined overhead and developer fees for the commercial and garage components during the construction period must be no more than 5% of hard and soft costs of construction of the commercial shell and garage, including interest but excluding all fees and land.

- b. FDA's combined overhead, developer fees and profits for any tenant improvements financed by the Agency will be established by the Agency according to the Agency's customary practice for other subsidized developments.
- c. FDA's return on equity in the commercial component and internal rate of return on equity in the commercial component must be comparable to industry standards, as determined by mutual agreement, after consultation with the Agency's and FDA's real estate economics consultants.
- d. FDA must invest at least 5% long term equity in the commercial component of its project.
- e. Net cash flow from commercial leases must be split between FDA and the Agency in a manner that recognizes their relative investments in the project, as determined by mutual agreement, after consultation with the Agency's and FDA's real estate economics consultants.
- f. construction management/entitlement and development consultant fees must be consistent with the costs of other Agency mixed-use projects and industry standards, as determined by mutual agreement, after consultation with the Agency's and FDA's real estate economics consultants.

5. Subsidies Must Be Directed Towards Economic Development

- a. FDA may include a housing component with 15% BMR units, which must be provided at FDA's sole cost.
- b. The number of parking spaces in the garage and any at grade parking area must be no more than the number required by the proposed uses, unless additional parking is built without Agency subsidy; *provided, however*, that the Agency has the option, at its sole discretion and without any obligation to do so, to provide construction assistance for parking (except those spaces required for residential use) if necessary to achieve the Agency's economic development objectives, if FDA is unable to secure funding from other sources.
- c. Any negotiations with proposed operators of commercial space that may entail requests for financial assistance or tenant improvement financing must include Agency staff or, if appropriate, take place directly between Agency staff and the proposed tenant. The Agency will consider requests for loans from tenant-operators if necessary to achieve the Agency's economic development objectives and not excessive to meet the objectives, if the tenant-operators are unable to secure funding from other sources.