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October 19, 2016

RECEIVED
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CITY CLERK, FRESNO CA

Mr. Alan Hofmann
Chair
Oversight Board for the Successor Agency to
The Redevelopment Agency of the
City of Fresno
2344 Tulare Street, Suite 200
Fresno, CA 93721

Re: Board Item Concerning Parking Lot 2, 1900 Tuolumne/1911 Merced (APNs 466-206-50% & 466-203-51T)

Dear Mr. Hofmann:

I am writing regarding the letter dated yesterday that you received from attorneys representing the Housing Authority of the City of Fresno.

The sum and substance of that letter is that some of the management at the Housing Authority may want the Housing Authority to make a bid on the parcel. However, based on yesterday's letter from its legal counsel, it is confirmed that the Housing Authority Board has taken no action to support any bid, and those managers therefore have no authorities to make any offer to buy the property.

In addition, those Housing Authority managers believe it would be better if you pursued an action of the property, because some potentially unidentified third party may bid higher than the offer you already have, which is more than 22% above your updated appraised value. That above appraised value offer was initially made by Mr. Tutelian in February, and he is renewing that offer again today.

Regarding public agency managers wanting to make unauthorized offers to purchase this parcel, you have been down that road before regarding this parcel. In February of this year, City Manager Rudd advised your Board that he wanted the City to purchase the property for $520,000.00. However, the City Council, the governing board that must authorize Mr. Rudd's offer, has made it clear that it does not wish to buy the property. It instead supports your Board's consideration of Mr. Tutelian's offer. That is evidenced by the attached Resolution, adopted by the City Council on September 15, 2016. However, it is clear Mr. Rudd's February offer influenced your Board to delay a sale to Mr. Tutelian. As a result, your Board lost 8 months in its efforts to complete an "expeditious" sale of the property.

Regarding the benefits of an auction versus a negotiated sale, it is clear that the law does not require an auction. It is also clear that an auction will not always maximize sales value.

For instance, many programs of the Housing Authority are funded by federal grants. Many federal grants require that any land purchase be at an established Fair Market Value, which must be supported by an appraisal or other appropriate documentation.

If an auction were conducted today between the Housing Authority and Mr. Tutelian, the Housing Authority could be limited to an appraised value, which your Agency currently has determined is $420,000.00. At such an auction, Mr. Tutelian would have no incentive but to offer a few dollars more than the highest bid the Housing Authority is authorized to make. As a result, Mr. Tutelian could purchase the property at significantly less than the $521,000.00 offer he has provided.

In addition, an auction would lose your ability to consider the added value factors respecting adjacent development that item IV-B of your Disposition Guidelines describe and which my client's acquisition will provide. It is also worth noting that a negotiated sale to the Housing Authority would not result in a project that would add any value to the local government property tax rolls.

The Housing Authority's letter refers to a potential unidentified third party bidder that might participate in an auction. This suggestion must be considered in the context of a letter wherein Housing Authority managers express their (presently unauthorized) interest in acquiring the parcel.

We trust that the Housing Authority managers do not intend to cooperate or orchestrate with such a third party bidder, to land bank the parcel for the Housing Authority's later acquisition, or use a delayed escrow closing (possibly permitted under a revised auction sales agreement), to coordinate a double escrow arrangement. Such an arrangement would potentially denigrate many important public policies. My client has great respect for, and desires continued cooperative working arrangement with, the Housing Authority. But a statement that encourages your Board to seek out a potential third party buyer, contained in the same paragraph of the same letter where Housing Authority managers express their desire to acquire and develop the site, justifiably raises potentially cynical concerns.

I encourage you to disregard the overture of the Housing Authority managers. For the reasons stated above, their request will not benefit either an expeditious or maximized value sale of the parcel.

Sincerely,
McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

Jeffrey M. Reid

enc. Resolution City of Fresno
cc: Oversight Board Members
Ms. Marlene Murphey, Executive Director, Successor Agency
Mr. Jerome Behrens, Esq., Counsel, Oversight Board for the Successor Agency to the Redevelopment Agency of the City of Fresno
Laurie Avedisian-Favini, Esq., Counsel, Successor Agency to the Redevelopment Agency of the City of Fresno

RESOLUTION NO. ____

A RESOLUTION OF THE CITY OF FRESNO REGARDING THE DISPOSITION OF PROPERTY OF APPROXIMATELY 1.38 ACRES AT 1911 MERCED AND 1900 TUOLUMNE STREET (APN(s) 466-206-50T AND 466-206-51T)

WHEREAS, pursuant to AB X1 26 (which became effective at the end of June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et. al. v. Matosantos, et. al.* (53 Cal. 4th 231 (2011)), the Redevelopment Agency of the City of Fresno ("Former RDA") was dissolved as of February 1, 2012 and the Successor Agency was constituted; and

WHEREAS, AB 1484 (which became effective at the end of June 2012) amended and supplemented AB X1 26 (AB X1 26 and AB 1484, together, being referred to below as the "Dissolution Act"); and

WHEREAS, SB 107 (which became effective September 22, 2015) amended and supplemented AB 1484; and

WHEREAS, pursuant to the Dissolution Act, all non-housing assets, properties, contracts, leases, books and records, buildings, and equipment of the Former RDA have been transferred to the control of the Successor Agency; and

WHEREAS, pursuant to Section 34191.5(b) of the Dissolution Act, the Successor Agency prepared a long-range property management plan (the "Plan") which addresses the disposition and use of the real properties of the Former RDA, and the Plan was adopted by the Oversight Board on July 7, 2014, and submitted to the State Department of Finance ("DOF") for approval on July 9, 2014, and was approved by DOF December 16, 2015; and

WHEREAS, the Successor Agency and Oversight Board adopted Property Disposition Guidelines; and

WHEREAS, the Property Disposition Guidelines provide the City with a first right of refusal to purchase certain properties including the property located at 1911 Merced and 1900 Tuolumne Street, APNs 466-206-50T and 466-206-51T commonly referred to as Parking Lot 2; and

WHEREAS, such first right of refusal may be exercised by means of the City notifying the Oversight Board of the City's interest to acquire certain property for monetary consideration in an amount not less than appraised value and equal to or greater than offers received through solicitation process; and, obtaining approval of such purchase by the Oversight Board; and,

WHEREAS, the City of Fresno has considered its first right of refusal to purchase 1911 Merced and 1900 Tuolumne Street, APNs 466-206-50T and 466-206-51T commonly referred to as Parking Lot 2; and

WHEREAS, an unsolicited offer to purchase Parking Lot 2 was made to the Oversight Board by Tutelian and Company, however, the Oversight Board chose not to consider the offer and directed staff to utilize the Property Disposition Guideline procedure to sell the property.

NOW THEREFORE BE IT RESOLVED, the City of Fresno has determined it does not wish to purchase nor exercise its right of first refusal for Parking Lot 2; and

NOW THEREFORE BE IT FURTHER RESOLVED, the City of Fresno recommends that the Oversight Board pursuant to its Property Disposition Guidelines consider sale of the property to Tutelian and Company.

* * * * * * * * * * * * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2016.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2016
Mayor Approval/No Return: _____, 2016
Mayor Veto: _____, 2016
Council Override Vote: _____, 2016

YVONNE SPENCE, CMC
City Clerk

By:_____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:_____
Katie Doerr [Date]
Chief Assistant City Attorney