

# OVERSIGHT BOARD

8.

OF THE CITY OF LONG BEACH AS THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF LONG BEACH

333 West Ocean Blvd., 3rd Floor, Long Beach, CA 90802 Phone: 562.570.6615 Fax: 562.570.6215

May 7, 2012

## OVERSIGHT BOARD MEMBERS

### RECOMMENDATION:

Approve business terms and authorize the City Manager to execute a Settlement Agreement in connection with LACSC Case No. BC450112 (5870-5874 Atlantic Avenue; Long Beach Redevelopment Agency vs. Sprint PCS Assets, LLC).

### DISCUSSION

Staff has concluded the negotiation of business terms for the settlement of Los Angeles County Superior Court Case No. BC450112 (Case). The Case is a condemnation action through the use of eminent domain by the former Redevelopment Agency (Agency) against Sprint PCS Assets, LLC (Tenant) to acquire any and all leases or leasehold interests, and any and all lessee fixtures and equipment pertaining to real property located at 5870-5874 Atlantic Avenue (Property), Assessor Parcel Number 7124-032-900 (Exhibit A – Site Map). A settlement agreement is necessary to continue the provisions of an essential service in support of an enforceable third-party obligation as authorized by Health & Safety Code Section 34177 (c) and 34177 (i).

The Property is a key element of the North Long Beach Village Center and Historic Node Implementation Plan (Implementation Plan) developed with community partners and adopted by the Agency in July 2004. The Implementation Plan identified the area along Atlantic Avenue from 56th to 59th Streets as a priority district for development of a Village Center. The goal of the Village Center is to create a mixed-use center for North Long Beach to serve as the focal point for neighborhood identity and activity. Proposed features of the 6.3-acre Village Center are multi-family housing, retail uses, and a public library and community center.

Pursuant to the Implementation Plan, the Agency authorized acquisition of the Property, along with the majority of adjoining parcels, to assemble the Village Center development site. Purchase and Sale Agreements related to these acquisitions, including the Property, were executed over the course of calendar years 2005 and 2006 pursuant to applicable provisions of the California Health & Safety Code. Specifically, the Property was acquired in 2005, and features 23,288 square feet in land area and consists of one single-story and one two-story commercial structure formerly occupied by a storefront church and a furniture store. The improvements also include a cellular communications tower and appurtenant communication equipment owned by the Tenant located on the roof of the commercial buildings (Exhibit B – Site Photos). The Tenant maintains a leasehold interest on the Property through October 28, 2028.

## OVERSIGHT BOARD MEMBERS

May 7, 2012

Page 2 of 3

In December 2009, in accordance with the California Environmental Quality Act, the Agency certified the Final Environmental Impact Report (EIR) for the North Village Center Project (SCH NO. 2008021087), including demolition of the Property, and adopted a Statement of Overriding Considerations and a Mitigation Monitoring Reporting Program.

Staff next retained a qualified advisor to perform a physical condition survey of the Property to evaluate the existing construction and provide information as to the structural feasibility, code implications and estimated costs of converting the building into a branch library facility. The advisor used this data to prepare and submit an Architectural Budget Cost Model in April 2010 (Cost Model). The Cost Model concluded that retrofit of the building would not meet the current building code requirements for new construction, and would have increased vulnerability to structural and non-structural earthquake damage compared to a similar newly constructed building.

Thus, in November 2010, the Agency Board adopted a resolution to determine the public interest and necessity for acquiring and authorizing condemnation of the Tenant leasehold interests in the Property. Following the Board action, the Agency proceeded with filing necessary paperwork with the court and received a trial date for December 11, 2012. In January 2011, the Agency entered into a contract with an architectural firm to design the new North Neighborhood Library to replace the existing library located at 5571 Orange Avenue. Financing for the design work and eventual library construction is through allocation of bond proceeds from the 2010 American Recovery and Reinvestment Act (ARRA).

Over the ensuing months, staff and the Tenant have worked diligently to resolve issues related to relocation of the Tenant equipment from the Property, both to facilitate efficiency in the design and construction of the proposed new library, and to meet the requirements of the Tenant's cellular communications operations. Accordingly, the following settlement terms have been reached:

- The City and Sprint agree that Sprint's tower will be temporarily relocated to a Cell on Wheels (COW) until such time as the library is built.
- Sprint's permanent tower will be incorporated onto the library site, or an alternate location at Sprint's option.
- The Successor Agency will reimburse Sprint for reasonable costs of relocating onto the new library site, or an alternate location at Sprint's option.
- Total estimated cost of the relocation is \$308,548; however, the Successor Agency is responsible to pay actual relocation costs for the temporary site and up to the amount required to permanently relocate the tower onto the library site. It should be noted that the acquisition of this leasehold is included in the Successor Agency's Recognized Obligation Payment Schedule (ROPS) as an enforceable obligation. If the case is not settled and proceeds to trial, staff estimates the total judgment could exceed \$500,000.

OVERSIGHT BOARD MEMBERS

May 7, 2012

Page 3 of 3

- The settlement is subject to and contingent upon Oversight Board approval, which the Successor Agency will use its best efforts to seek as soon as feasible.
- The trial and all associated dates will be continued for at least six months.

This matter was reviewed by Deputy City Attorney Richard Anthony on March 28, 2012, and subsequently approved by the Successor Agency of the City of Long Beach on April 17, 2012. The settlement agreement was also reviewed by the Successor Agency's independent eminent domain counsel, Hahn & Hahn.

In order to avoid litigation and potential adverse judgment, it is of benefit to the Successor Agency to settle this case expediently as opposed to proceeding to trial.

Respectfully submitted,



PATRICK H. WEST  
CITY MANAGER

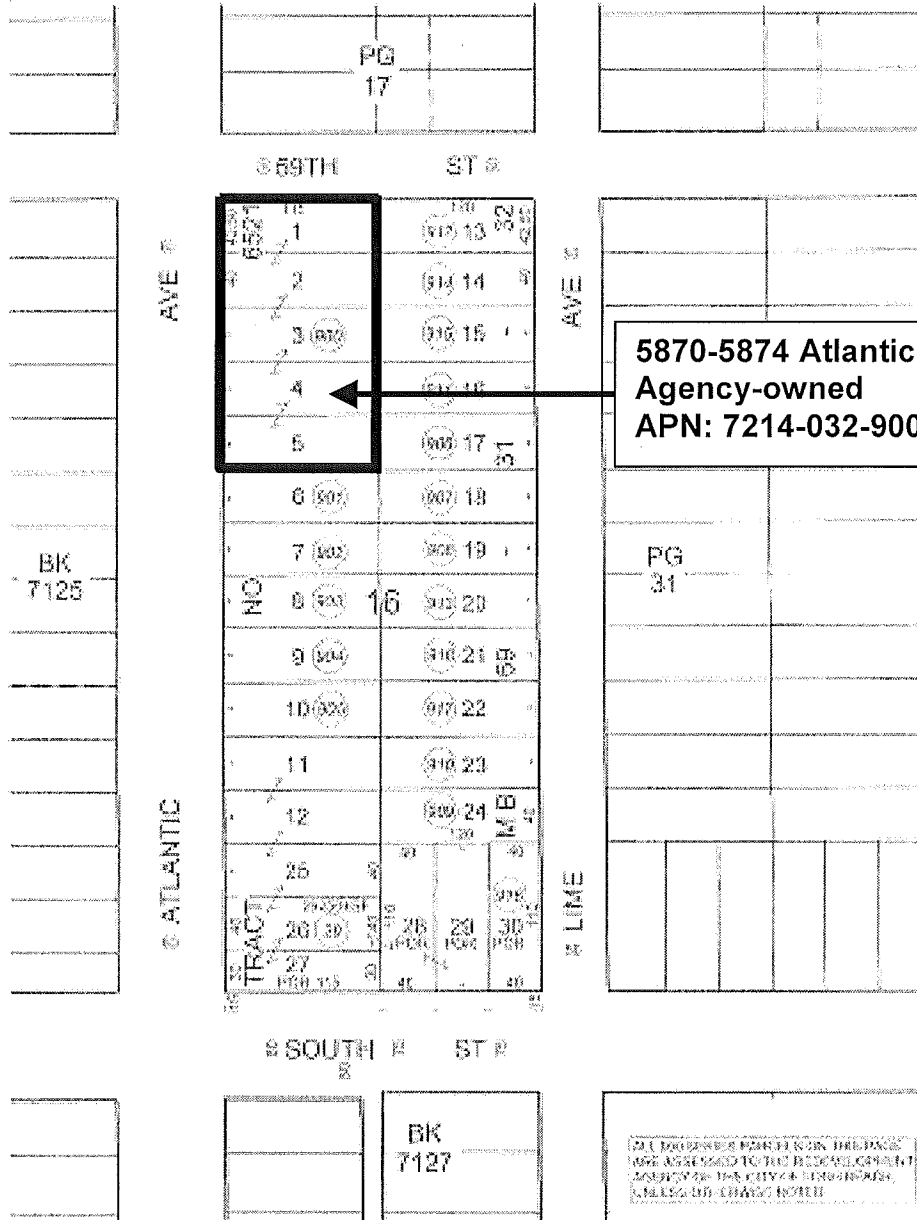
PHW:AJB:RMZ:SJ:bp

R:\Successor Agency\Oversight Board\Staff Reports Oversight Board\2012\May 7\OB\_Sprint\_V3.doc

Attachments: Exhibit A – Site Map  
Exhibit B – Site Photos

# EXHIBIT "A"

## SITE MAP

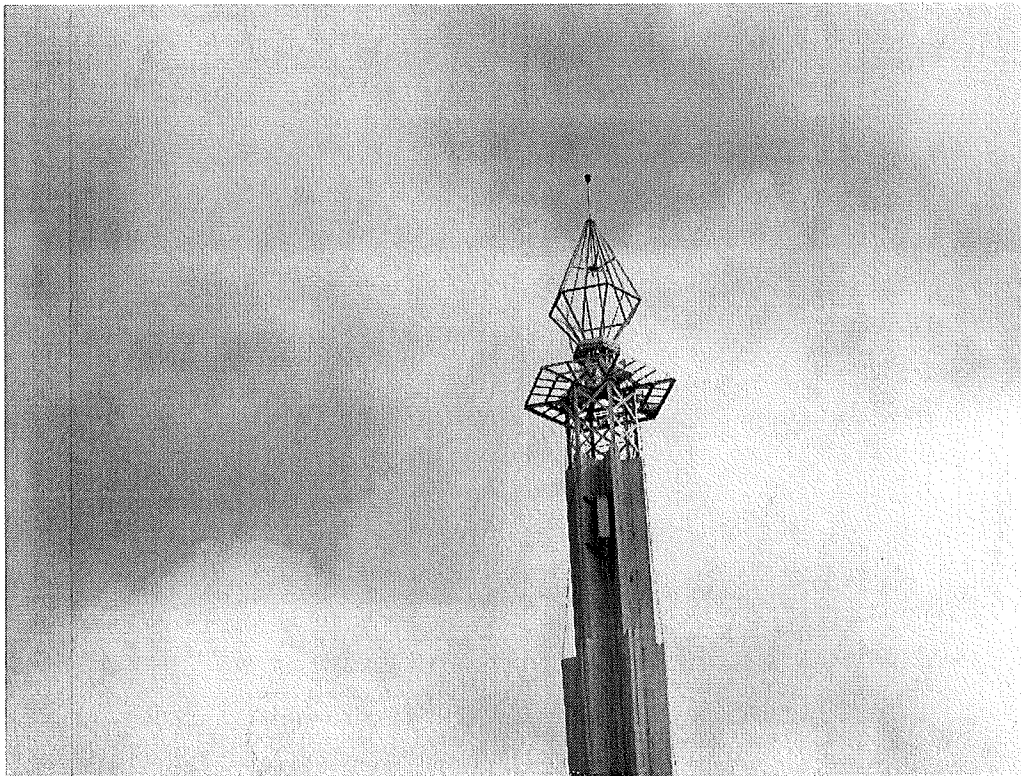


ALL PROPOSED WORKS AND IMPROVEMENTS ARE ASSIGNED TO THE DEVELOPER/CLIENT AND NOT TO THE CITY & COUNTY OF SAN FRANCISCO, UNLESS OTHERWISE NOTED.

**EXHIBIT "B"**  
**SITE PHOTOS**



Subject Property – Cell Tower located on structure at 5870-5874 Atlantic Avenue



Subject Property – Cell Tower (Flat Panel Antenna)