



REPORT

DATE ISSUED: August 11, 2022

REPORT NO: HCR22-102

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of August 19, 2022

SUBJECT: Settlement of a Lawsuit brought by the San Diego Housing Commission, the Housing Authority of the City of San Diego and the City of San Diego against Jim Neil, Kidder Mathews of California, Inc., Kidder Mathews, Inc., RT San Diego, LLC and Chatham RIMC, LLC; San Diego County Superior Court Case No. 37-2021-00033006-CU-BC-CTL.

COUNCIL DISTRICT: 3 and 7 (Hotel Circle Property), 6 (Kearny Mesa Property)

REQUESTED ACTION

Recommend that the Housing Authority of the City of San Diego (Housing Authority) authorize the San Diego Housing Commission's (Housing Commission) President and Chief Executive Officer to execute the Settlement Agreement on behalf of the Housing Commission in a final form as approved by counsel for the Housing Authority; recommend that the Housing Authority authorize the Executive Director of the Housing Authority to execute the Settlement Agreement on behalf of the Housing Authority in a final form as approved by counsel for the Housing Authority; and recommend that the City Council authorize the Mayor, or designee, to execute the Settlement Agreement on behalf of the City in a final form as approved by counsel for the Housing Authority.

STAFF RECOMMENDATION

That the San Diego Housing Commission (Housing Commission) Board of Commissioners (Board) recommend that the Housing Authority of the City of San Diego (Housing Authority) and the San Diego City Council (City Council) take the following actions:

Housing Authority:

- 1) Authorize the Housing Commission's President and Chief Executive Officer (President & CEO), or designee, to execute the Settlement Agreement attached to this report on behalf of the Housing Commission in a final form as approved by counsel for the Housing Authority.
- 2) Authorize the Executive Director of the Housing Authority, or designee, to execute the Settlement Agreement attached to this report on behalf of the Housing Authority in a final form as approved by counsel for the Housing Authority.
- 3) Authorize the Housing Commission's President & CEO, or designee, on behalf of the Housing Commission, to accept \$845,000.00 from Kidder Mathews, Inc. and Jim Neil.
- 4) Authorize the Housing Commission's President & CEO, or designee, to execute all necessary documents and instruments that are necessary and/or appropriate to implement the Settlement Agreement in a final form as approved by counsel for the Housing Authority. Housing Commission staff will notify the Housing Authority and the City Attorney's Office about any subsequent amendments or modifications to the transaction, and other required documents, including amendments to any documents.

August 11, 2022

Settlement of a Lawsuit - San Diego County Superior Court Case No. 37-2021-00033006-CU-BC-CTL

Page 2

City Council:

- 1) Authorize the Mayor, or designee, to execute the Settlement Agreement attached to this report on behalf of the City of San Diego in a final form as approved by counsel for the Housing Authority.
- 2) Authorize the Mayor, or designee, on behalf of the City of San Diego, to accept \$155,000.00 from Kidder Mathews, Inc. and Jim Neil.
- 3) Authorize the Mayor, or designee, to execute all necessary documents and instruments that are necessary and/or appropriate to implement the Settlement Agreement in a final form as approved by counsel for the Housing Authority.

SUMMARY

The COVID-19 pandemic created an emergency situation as to homelessness in the City of San Diego. As a result of the state of emergency, the Housing Commission entered into the Agreement for Real Estate Broker Services with Kidder Mathews, Inc. (collectively with Kidder Mathews of California, Inc., Kidder) and Jim Neil (Neil) to provide real estate broker services, including identifying hotel properties for potential purchase and negotiating hotel purchase transactions (the Broker Agreement). The Broker Agreement limited commission compensation to Kidder and Neil to no more than \$250,000 per transaction unless additional commission was approved by the Housing Commission Board.

Kidder and Neil identified two properties that the Housing Commission eventually purchased with public funds: (a) the Residence Inn at 5400 Kearny Mesa Road, San Diego, CA 92111 (Kearny Mesa Property) for \$39,500,000; and (b) the Residence Inn at 1865 Hotel Circle South, San Diego, CA 92108 (Hotel Circle Property) for \$67,000,000. For the Kearny Mesa Property, Kidder, Neil and the seller RT San Diego, LLC (RT San Diego) negotiated a commission of \$592,500 to be paid to Kidder and Neil by the seller. For the Hotel Circle Property, Kidder, Neil and the seller Chatham RIMV, LLC (Chatham RIMV) negotiated a commission of \$502,500 to be paid by to Kidder and Neil by the purchaser, the Housing Commission.

After identifying the Hotel Circle Property as a potential purchase option, but before the close of Housing Commission's purchase, Neil purchased 40,000 shares of stock in Chatham Lodging Trust (Chatham). Chatham is the parent company of the Chatham RIMV, the seller of the Hotel Circle Property.

On or about August 3, 2021, the Housing Commission, through its Deputy CEO, filed a complaint with the California Department of Real Estate (DRE) against Neil related to the Hotel Circle transaction (DRE Complaint). The DRE Complaint alleged, among other things, that (i) the Housing Commission's General Counsel first became aware of Neil's stock ownership in Chatham on February 23, 2021; and (ii) Neil, without any Housing Commission involvement, negotiated his commission to be paid by the Housing Commission on the Hotel Circle transaction to be \$252,500.00 more than allowed under the Brokerage Agreement.

On August 3 2021, the City Attorney's Office brought an action on behalf of the Housing Commission, the City and the Housing Authority, alleging 13 causes of action for fraud, breach of fiduciary duty, breach of contract and violation of section 1090 against defendants Kidder, Neil, and Chatham RIMV arising from the two transactions (the Action). RT San Diego and Kidder Matthews of California, Inc. were later added as defendants in the Action. The Action seeks a refund of commissions paid and damages from Kidder and Neil. The section 1090 claim seeks to void the transactions and disgorge and return the sale proceeds from RT San Diego and Chatham to the Housing Commission.

August 11, 2022

Settlement of a Lawsuit - San Diego County Superior Court Case No. 37-2021-00033006-CU-BC-CTL

Page 3

The City Attorney's Office recently negotiated a settlement with the five defendants. The Settlement Agreement executed by all defendants is attached. The key terms of the settlement are as follows:

- 1) Neil and Kidder will pay the Housing Commission a total of Eight Hundred Forty-Five Thousand Dollars and No Cents (\$845,000.00);
- 2) Neil and Kidder will pay the City a total of One Hundred Fifty-Five Thousand Dollars and No Cents (\$155,000.00) to compensate the City for City attorney resources used to prosecute the Action;
- 3) Neil stipulates to permanent debarment from entering any agreement to perform brokerage services or from performing brokerage services for the City of San Diego, the Housing Commission, or the Housing Authority;
- 4) Kidder stipulates to debarment from entering any agreement to perform brokerage services or from performing any brokerage services for the City of San Diego, the Housing Commission, or the Housing Authority for a period of two years from the Effective Date;
- 5) Neil will agree to an administrative stipulated settlement with the Fair Political Practices Commission that is approved as to form by the San Diego District Attorney's office;
- 6) Within five (5) days of the Settlement Sum being paid, Plaintiffs shall dismiss the Action with prejudice, including all claims and causes of actions as to all Parties;
- 7) Except as reserved, the Housing Commission, City of San Diego and Housing Authority waive all claims against the defendants based upon or arising out of the Broker Agreement, the Kearny Mesa Property transaction and the Hotel Circle Property transaction.
- 8) Except as reserved, the defendants waive all claims against the Housing Commission, City of San Diego and Housing Authority based upon or arising out of the Broker Agreement, the Kearny Mesa Property transaction and the Hotel Circle Property transaction.
- 9) The releases set forth in (7) and (8) above do not include any rights and obligations between RT San Diego and the Housing Commission set forth in the Kearny Mesa Purchase and Sale Agreement.
- 10) The releases set forth in (7) and (8) above do not include any rights and obligations between Chatham RIMV and the Housing Commission set forth in the Hotel Circle Purchase and Sale Agreement.
- 11) With the exception of (2) above, the Parties shall bear their own attorneys' fees and costs incurred in or arising from the Action and waive any claim to seek costs.

AFFORDABLE HOUSING IMPACT

The settlement will provide funds that the Housing Commission may use to fund affordable housing projects.

PRIOR ACTIONS

On September 18, 2020, the Housing Commission made a recommendation that the Housing Authority take actions to approve and ratify the Kearny Mesa Property and Hotel Circle Property transactions. On October 13, 2020, the Housing Authority adopted Resolution Number HA-1880 ratifying the Housing Commission purchases of the Kearny Mesa Property and the Hotel Circle Property and ratifying the Housing Commission's execution of documents relating to the transactions.

FISCAL CONSIDERATIONS

The proposed action has no negative fiscal impact. The action will cause the Housing Commission to receive a payment of \$845,000.00.

August 11, 2022

Settlement of a Lawsuit - San Diego County Superior Court Case No. 37-2021-00033006-CU-BC-CTL

Page 4

KEY STAKEHOLDERS and PROJECTED IMPACTS

The settlement will have no impact on the current or future residents of the Kearny Mesa Property and the Hotel Circle Property.

ENVIRONMENTAL REVIEW

This activity is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b)(5), as it is an administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c)(3), is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required. Processing under the National Environmental Policy Act is not required as no federal funds are involved in this action.

Respectfully submitted,

Emily S. Jacobs

Emily S. Jacobs
Executive Vice President, Real Estate
San Diego Housing Commission

Approved by,

Jeff Davis

Jeff Davis
Interim President & Chief Executive Officer
San Diego Housing Commission

Attachments: 1) Settlement Agreement

Docket materials are available in the “Governance & Legislative Affairs” section of the San Diego Housing Commission website at www.sdhc.org