



To: Mayor and City Council

From: Brad Kilger, City Manager
Veronica A. F. Nebb, Sr. Assistant City Attorney

Subject: Consideration and Possible Action to Approve a Negotiating Agreement with Richfield Real Estate Corporation Relating to the Alhambra Highlands Property

Date: July 13, 2016

Recommendation

Motion authorizing the City Manager to execute a Negotiating Agreement with Richfield Real Estate Corporation relating to the Alhambra Highlands Property, 297.5 acres of real property located in the City of Martinez, California, generally bounded by Alhambra Avenue to the north, Alhambra Valley Road and Reliez Road to the west, and Skyline Drive to the south.

Background

On December 8, 2008, Richfield Investment Corporation, submitted a revised application to the City for a revised vesting tentative map to subdivide a 297.5 acre property located in the City of Martinez, California, generally bounded by Alhambra Avenue to the north, Alhambra Valley Road and Reliez Road to the west, and Skyline Drive to the south (“Subject Property”) for the development of 112 detached single-family homes, and open space; modifications to the previously approved Planned Unit Developments; and application for Use Permit for a single water tank, which reflected a reduced scope of development from the original 1990 and 1993 vesting tentative map approvals (the “Alhambra Highlands Project” or “Project”).

On July 20, 2011, the City Council denied appeals and granted final approval of the Alhambra Highlands Project Alternative 1 (Mitigated Access Alternative) and all associated discretionary approvals (VTM 9257, CUPs, PUD amendment, design guidelines, etc.) (“Development Approvals”). At the City Council’s request, at the time of approval, the Developer agreed to defer commencement of grading of the Project until April 1, 2014, in order to allow interested third parties time to explore and secure adequate funding to acquire the Subject Property as open space.

On October 11, 2011, the City and Developer entered into a Grading Moratorium Agreement which deferred any grading on the Subject Property until April 1, 2014. Notwithstanding the Grading Moratorium Agreement, interested members of the public were unable to secure adequate funding to acquire the Subject Property by April 1, 2014 and the Grading Moratorium Agreement expired.

Upon the expiration of the Grading Moratorium Agreement, City and Developer began some initial informal discussions regarding the possibility of the City purchasing the Subject Property. Although the parties commenced the discussions in good faith, changes in City administration hindered resulted in such discussions not progressing beyond the initial stages. The proposed Negotiating Agreement (“NA”) will aid in moving this issue forward to determine if purchase of the Subject Property is feasible.

The essential terms of the NA are as follows:

- The Parties to the NA are the City and Richfield Real Estate Corporation representing the owners of the Subject Property (“Party” or “Parties”).
- The Parties will use their best efforts to successfully negotiate a possible purchase and sale agreement (“PSA”). The Parties acknowledge that the City cannot execute a PSA without funding and approval by a majority of the City Council of City. It is acknowledged that the NA does not impose any binding obligation on the Parties to complete any transaction, but rather represents their agreement to engage in discussions regarding both process and a possible PSA
- Each Party shall pay its own legal fees incurred in connection with the negotiation and preparation of a PSA and related documents. The City agrees to accept lead responsibility for the drafting of such documents. Except as otherwise expressly provided in the PSA, all costs and expenses (including, without limitation, staff, consultant and legal fees and expenses) incurred will be paid by the Party incurring such expense.
- The Term of the NA will be one hundred eighty (180) days from the Effective Date. The City Manager is authorized to extend the Term by up to an additional (180) days upon the mutual written agreement(s) of the Parties without further approval of the City Council, further extensions beyond the of the three hundred sixty (360) days must be agreed upon by all Parties.
- The NA confirms the confidentiality of the negotiation process as permitted by law.
- Based upon the fact that the developer will be focusing the majority of its efforts on the negotiation process and the effect of the previous Grading Moratorium, the Parties agree that for purposes of determining the term and expiration of the Development Approvals, or any of them, the Term of the NA shall be construed as a moratorium under Government Code section 66452.6(b). The result of this is that the expiration of the Development Approvals, including the Tentative Map will be extended by the length of the Term of the NA. Note that the result of the previous Grading Moratorium pursuant to the Grading Moratorium Agreement and any legislative extensions otherwise allowed as a matter of law previously extended the term of the Development Approvals. The NA will further extend this time period.

- The NA states that the applicable rules, regulations, ordinances and policies in effect when the City deemed the applications for the Project complete and those governing the Development Approvals (including the conditions of approval approved by the City Council on July 20, 2011) will continue to apply, and no further discretionary approvals from any and all City advisory or decision-making bodies shall be required or imposed by the City in order to commence development in the event that the purchase of the Subject Property is not effectuated.

Fiscal Impact

The fiscal impact of the Negotiating Agreement itself involves staff and City Attorney time relating to the drafting of agreements and the negotiation process. Fiscal impacts of property acquisition are unknown at this time, pending negotiation discussions.

Attachment

- Negotiating Agreement

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NEGOTIATING AGREEMENT

by and between

RICHFIELD REAL ESTATE CORPORATION

and

THE CITY OF MARTINEZ

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THIS NEGOTIATING AGREEMENT (this “Agreement”) is entered into effective as of July __, 2016 (“Effective Date”) by and between the City of Martinez, a municipal corporation and California general law city (“City”) and Richfield Real Estate Corporation (d.b.a. “Richfield”), a Delaware corporation (“Developer”). Richfield is entering into this Agreement, on behalf of Waters DHC and Oak Hill Park III, the landowners (each a “Landowner,” and collectively, the “Landowners”) of the Alhambra Highlands property (as further defined below). Richfield certifies that it is fully authorized by the Landowners to enter into this Agreement. City and Developer are hereinafter collectively referred to as the “Parties.”

RECITALS

- A. Developer is the manager, on behalf of Landowners, of a total of approximately 297.5 acres of real property located in the City of Martinez, California, generally bounded by Alhambra Avenue to the north, Alhambra Valley Road and Reliez Road to the west, and Skyline Drive to the south, commonly referred to as the, “Alhambra Highlands Property,” Assessor’s Parcel Nos. _____, _____, _____, and _____ (“the Subject Property”).
- B. Developer is the successor-in-interest to Richfield Investment Corporation, the prior developer and manager of the Subject Property, and is currently responsible for the development and management of the Subject Property. Collectively, Richfield Investment Corporation and Richfield Real Estate Corporation are referred to as, the “Developer.”
- C. In May 1987, the City adopted the Alhambra Hills Specific Plan. The Alhambra Hills Specific Plan envisioned a residential development to be located on the Subject Property.
- D. In July 1990, the City conditionally approved vesting tentative maps on the Subject Property for Tract No. 7245 (“Tract Map 7245”), Planned Unit Development No. 89-5 and Design Review No. 89-42 for Alhambra Highlands Unit I. Concurrently, the City conditionally approved a vesting tentative map for Tract No. 7244 (“Tract Map 7244”), Planned Unit Development No. 89-6 and Design Review No. 89-41 for Alhambra Highlands Unit II, and in September 1993, the City conditionally approved a vesting tentative map for Tract No. 7606 (the “Briar Rose” or “Images” subdivision) (“Tract Map 7606”), Planned Unit Development No. 91-4 and Design Review No. 91-64. These tract maps authorized the subdivision of the Property into 214 lots.
- E. From 1991 through 1999, Developer’s predecessor-in-interest, Richland Development Corporation (“Richland”), applied for and was conditionally granted several extensions of the terms of Tract Maps 7244, 7245, and 7606.
- F. Since 1999, the Developer, or its predecessor-in-interest received the approval of multiple outside agencies which are required for construction of the Alhambra Highlands Project on the Property including a U.S. Army Corps of Engineers (Corps) Section 404 Permit, December 2008; United States Fish and Wildlife Service Biological Opinion (November 2005); and the San Francisco Regional Water Quality Control Board Section 401 water quality certification (amended August 2008).

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- G. Acquisition of additional land for Alameda whipsnake habitat preservation was integral to the state and federal agencies' approvals, and the Landowners acquired the adjacent site of the un-built Subdivision #7606 ("Briar Rose/Images") and "Monteros" property, increasing the project site from approximately 190 acres to approximately 297.5 acres to include additional on-site open space and habitat preservation.
- H. In 2006, Landowners retained Developer's predecessor-in-interest, Richfield Investment Corporation to manage the general development and management functions for the Alhambra Highlands property.
- I. On December 8, 2008, Developer's predecessor in interest, Richfield Investment Corporation, submitted a revised application to the City for a revised vesting tentative map to subdivide the 297.5 acre Property with 122.4 acres of disturbed area and 173.9 acres of open space for the development of 112 detached single-family homes; modifications to the previously approved Planned Unit Developments; and application for Use Permit for a single water tank, reflecting the reduced scope of development since the original 1990 and 1993 vesting tentative map approvals (the "Alhambra Highlands Project" or "Project").
- J. Pursuant to the California Environmental Quality Act (CEQA) the City conducted an Initial Study to evaluate the Alhambra Highlands Project's potential impacts on the environment associated with the revised applications, and later decided to prepare a Subsequent Environmental Impact Report ("SEIR") in accordance with Public Resource Code Section 21116 and CEQA Guidelines Section 15162.
- K. The SEIR identified the need for further revisions to the Alhambra Highlands Project, and on May 14, 2010, Developer's predecessor-in-interest submitted a revised plan ("Alternative #1" or "Mitigated/ Alternate Access Alternative"), illustrating the design changes called for by the mitigation measures and mitigated alternative, as set forth in the SEIR and reducing the maximum number of units from 112 to 110.
- L. Upon completion of the Draft SEIR and in compliance with CEQA, the City issued a Notice of Availability on October 21, 2010, State Clearinghouse Number 2010022053 and circulated the Draft SEIR for public review and comment until December 6, 2010, after which time, the City prepared a Final SEIR.
- M. Following public hearings on March 22, 2011 and April 12, 2011, the Martinez Planning Commission certified the Final SEIR and approved the Alhambra Highlands Project as revised.
- N. Four appeals were filed with the City of Martinez seeking City Council review of the Planning Commission's decision to approve the Alhambra Highlands Project, and many members of the public expressed an interest in acquiring the Property as open space.
- O. The Martinez City Council conducted a public hearing on July 6, 2011 and accepted public comments regarding the four appeals filed challenging the Planning Commission's approval of the Alhambra Highlands Project, and on July 20, 2011, the City Council conducted another public meeting regarding the appeals.

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- P. On July 20, 2011, the City Council denied the appeals and granted final approval of the Alhambra Highlands Project Alternative 1 (Mitigated Access Alternative) and all associated discretionary approvals (VTM 9257, CUPs, PUD amendment, design guidelines, etc.) (the “Project Approvals”). At the City Council’s request, Developer agreed to defer commencement of grading of the Project until April 1, 2014, in order to allow interested third parties time to explore and secure adequate funding to acquire the Subject Property from Developer as open space.
- Q. On October 11, 2011, the City and Developer entered into a Grading Moratorium Agreement which deferred any grading on the Subject Property until April 1, 2014. Notwithstanding the Grading Moratorium Agreement, interested members of the public were unable to secure adequate funding to acquire the Subject Property by April 1, 2014 and the Grading Moratorium Agreement expired.
- R. Upon the expiration of the Grading Moratorium Agreement, City and Developer began some initial informal discussions regarding the possibility of the City purchasing the Subject Property. Although the parties commenced the discussions in good faith, changes in City administration hindered the ability to complete the negotiations in a timely manner. As a result of said discussions, the Parties now wish to enter into this Agreement to memorialize any ongoing further discussions, provide a process for the sharing of confidential information regarding real property negotiations and provide a mechanism whereby any time spent in further discussions between City and Developer regarding the possible purchase and sale of the Subject Property tolls the term of the VTM 9257 and does not place Developer and Landowners in any disadvantageous position relating to the future expiration of the Project Approvals.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Good Faith Efforts to Negotiate. The Parties shall use their best efforts to successfully negotiate a possible purchase and sale agreement (“PSA”) and related documents which shall describe the terms and conditions that would govern the transfer of the Subject Property from the Landowners to City. Developer and Landowners acknowledge that the City cannot execute a PSA without funding and approval by a majority of the City Council of City. In no event shall this Agreement impose any binding obligation on the Landowners or the Developer to convey the Subject Property to City or on City to purchase the Subject Property from Landowners. Without limiting the generality of the foregoing, Parties expressly acknowledge that a PSA and other documents resulting from negotiations contemplated hereby shall become effective only if such documents are approved by the Landowners and by the City following a public meeting as required by applicable law and compliance with all other requirements of law, including, without limitation, the California Environmental Quality Act (“CEQA”).
2. Terms of Purchase. During the Term of this Agreement, the Parties will negotiate regarding the process by which a possible PSA may be negotiated and reached, the necessary steps, and the terms of said potential PSA which terms shall include, but not be limited to:

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(a) *Purchase Price.* The determination of an acceptable purchase price for the Subject Property.

(b) *Due Diligence Period.* The determination of a due diligence period, and the actions to be performed during same.

(c) *Funding.* Provisions for demonstrating the financial feasibility of acquisition by the City.

(d) *Right of Entry.* Provision for the grant of access to the Subject Property, including, but not limited to City indemnification of the Landowner and Developer, for purposes of performing inspections and due diligence activities on the Subject Property.

3. Moratorium Construed. Landowners and Developer have invested substantial time and financial resources in the Project, including but not limited to those associated with the processing of the Development Approvals both before and subsequent to the approval thereof. In addition, as a result of the Grading Moratorium and the informal discussions with the City, Landowners and Developer have been delayed in the actual development of the Subject Property for almost 36 months. Therefore, in consideration of the Landowners and Developer's willingness to continue further discussions with the City and to provide a mechanism whereby any time spent in such discussions does not place Landowners and Developer in any disadvantageous position relating to the future expiration of the Development Approvals, the City agrees that for purposes of determining the term and expiration of the Development Approvals, or any of them, the Term of this Agreement shall be construed as a moratorium under Government Code section 66452.6(b).

(a) The Additional Moratorium (further defined in Section 3(b), below) shall be in addition to the Grading Moratorium pursuant to the Grading Moratorium Agreement and any legislative extensions otherwise allowed as a matter of law which previously extended the term of the Project Approvals to April 1, 2018.

(b) For purposes of this Agreement, the effect of the Grading Moratorium and the moratorium established under this Agreement shall extend the term of the VTM and Project Approvals from April 1, 2018 for an additional term commensurate with the term of this Agreement ("Additional Moratorium").

(c) The applicable rules, regulations, ordinances and policies in effect when the City deemed complete the applications for the Project Approvals and those governing the Development Approvals (including the conditions of approval approved by the City Council on July 20, 2011) shall continue to apply, and no further discretionary approvals from any and all City advisory or decision-making bodies shall be required or imposed by the City in order to commence Grading and Project development as contemplated under the Project Approvals and the Grading Moratorium.

4. Legal Costs. Each Party shall pay its own legal fees incurred in connection with the negotiation and preparation of a PSA and related documents. The City shall take lead responsibility for the drafting of such documents.

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5. Term. The Term of this Agreement shall commence on the Effective Date, and shall terminate one hundred and eighty (180) days thereafter, unless extended or earlier terminated as provided herein. The City Manager is authorized to extend the Term by up to an additional one hundred eighty (180) days upon the mutual written agreement(s) of the Parties without further approval of the City Council, further extensions of the Term of this Agreement must be agreed upon by all Parties. Notwithstanding the foregoing, the term of the VTM and Project Approvals shall survive the termination of this Agreement and shall be extended by the Grading Moratorium and the Additional Moratorium pursuant to Section 3 of this Agreement.
6. Relationship of Parties. The Parties agree that nothing in this Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.
7. Expenses. Except as otherwise expressly provided in the PSA, all costs and expenses (including, without limitation, staff, consultant and legal fees and expenses) incurred in connection with this Agreement and the activities contemplated hereby shall be paid by the Party incurring such expense.
8. Confidentiality; Dissemination of Information. During the Term hereof, each Party may share information obtained or prepared relating to the Subject Property in contemplation of the PSA with the other Party. The Parties hereto agree that such sharing of information is in furtherance of confidential real property negotiations and to the extent permitted by law shall be shared only between counsel for the Parties and retained in confidence by the other Party. Notwithstanding the immediately preceding sentence, no Party shall be prohibited from supplying any information, through its counsel, to its representatives, agents, attorneys, advisors, and financing sources to the extent necessary to accomplish only the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, and financing sources are made aware of the terms of this Section and agree to retain any such information as a confidential communication. Nothing contained in this Agreement shall prevent either Party at any time from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations, provided that in the event that the Party disclosing the information is the source of the information which is being disclosed. In the event that the Party disclosing the information is not the source of the information, then such Party shall obtain the prior written consent from the other Party (who is the source of the information) prior to the disclosure of the information to any governmental entity or authority as contemplated in this Section 9.
9. Termination. This Agreement may be terminated at any time by any Party during the Term of this Agreement by providing written notice to the other Party of such termination. In the event of termination, City shall return any documents provided by Developer and provide copies to Developer of all reports, findings, appraisals and any other documentation related to City's Right of Entry within **X** business days.
10. Effect of Termination. Upon termination as provided herein, or upon the expiration of the Term hereof, including any extensions thereof, without the Parties having successfully negotiated a PSA, this Agreement shall forthwith be void, and there shall be no further liability or obligation on the part of any of the Parties or their respective officers, employees, agents or

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other representatives; provided however, the provisions of Section 7, relating to indemnity, Section 9 and Section 16 and any other provisions that expressly so state, shall survive such termination.

11. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: personal delivery, in which case notice is effective upon delivery; certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

City:

City of Martinez
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Fax: 925 229 5012
Phone: 925 372 3505

City of Martinez
Veronica Nebb
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Developer/Landowners:

Richfield Real Estate Corp.
dba Richfield
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Fax: 713 975 1002
Email: dleung@richfieldcorp.com

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Buchalter Nemer
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Email: aguerra@buchalter.com

12. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

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13. Entire Agreement; Amendments In Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

14. Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Landowner, the Parties, and their respective successors and assigns. Notwithstanding the foregoing, neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the Landowners or the other Party, which may be withheld in such Party's sole discretion, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Landowners or the Parties and their permitted successors and assigns.

15. Brokers. Each Party warrants and represents to the other that no brokers have been retained or consulted in connection with this transaction. Each Party agrees to defend, indemnify and hold harmless the other Party from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

16. Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in the County of Contra Costa.

IN WITNESS WHEREOF the parties hereto execute this Agreement on the date written below.

City of Martinez

By: _____
Rob Schroder, Mayor

Dated: _____

By: _____
Brad Kilger, City Manager

Dated: _____

Approved as to form:

By: _____
Veronica Nebb, City Attorney

Dated: _____

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Richfield Real Estate Corporation

By: _____
Dominic Leung, President

Dated: _____

Approved as to form:

By: _____
Alicia Guerra, Attorney for
Developer

Dated: _____

Waters – DHC LLC

a Delaware limited liability company

By: Gramercy Properties, Inc.
Its Sole Member

By: _____
Dominic Leung, Treasurer

Oak Hill Park Company,

a California corporation

By: _____
Dominic Leung, Treasurer