



# City of Rialto

## Legislation Details (With Text)

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**File created:** 8/12/2019    **In control:** City Council  
**On agenda:** 9/10/2019    **Final action:**  
**Title:** Request City Council to Approve Amendment #4 to Exclusive Right to Negotiate Agreement with NewMark Merrill for the Development of Approximately 15.5 Acres of Property located west of Riverside Avenue and north of Valley Boulevard, extending the time for performance until December 31, 2019.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - ENA Agreement, 2. Exhibit B - Site Map, 3. Exhibit C - Maps and Plans, 4. Exhibit D - ENA Amendment #4.pdf

Date	Ver.	Action By	Action	Result
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For City Council Meeting [September 10, 2019]

TO: Honorable Mayor and City Council

APPROVAL: Rod Foster, City Administrator

FROM: Sean Grayson, Acting Public Works Director

Request City Council to Approve Amendment #4 to Exclusive Right to Negotiate Agreement with NewMark Merrill for the Development of Approximately 15.5 Acres of Property located west of Riverside Avenue and north of Valley Boulevard, extending the time for performance until December 31, 2019.

### **BACKGROUND**

On June 27, 2017, the City Council approved an Exclusive Right to Negotiate Agreement (ERN) with NewMark Merrill (“Developer”) for the development of approximately 15.5 Acres (“Site”) located west of Riverside Avenue and north of Valley Boulevard. The City selected the Developer through a “Request for Proposals/Qualifications” process.

On January 9, 2018, the City Council approved Amendment #1 extending the termination date until July 31, 2018; on July 10, 2018, the City Council approved Amendment #2 extending the termination date until January 31, 2019; and, on February 12, 2019, the City Council approved Amendment #3 extending the termination date until July 31, 2019. The ERN is attached hereto as **Exhibit A**.

The Successor Agency owns seven (7) parcels totaling 15.5 acres (“SA Parcel”) between the former Wal-Mart property under rehabilitation by Pacifica and the new Wal-Mart Supercenter. The City proposes to develop retail and entertainment uses compatible with the two adjoining projects. See **Exhibit B** for a site map.

The ERN allows the Developer to prepare proposals, conduct feasibility assessments, and market the Site to potential users. The ERN confers no development rights but is simply a good faith statement of the party's intention to negotiate a disposition, development agreement (DDA) on terms acceptable to both parties.

### **ANALYSIS/DISCUSSION**

The ERN expired on July 31, 2019. If warranted, the City Council may extend the term of the ERN. Since July 2017, the Developer and the City have undertaken several tasks to initiate the retail development. The Developer continues to market the site to potential retailers and entertainment uses.

The Developer and staff request an extension until December 31, 2019, to allow the Developer adequate time to obtain retail commitments (Amendment #4).

The ERN directed the following primary tasks for the City and Developer with the completed, ongoing, or future activity noted in bold:

#### **City/SA**

1. Complete title work and ALTA surveys to determine the location of all easements and encroachments upon the Site. **Staff completed title work and obtained ALTA survey. The ALTA survey indicates an active sewer line situated in the center of the Site. The sewer line requires relocation (or accommodation) to allow future development. The City will prepare relocation cost estimates.**
2. Complete second year protocol survey for Delhi Flower Loving Sand Fly (DFLSF) to determine presence of protected species. **In September 2017, Ecological Sciences (consultant retained by the City) completed the second-year protocol survey and did not discover presence of DFLSF. The City engaged a consultant, Rocks Biological Consulting, to perform one final survey in 2019 and secure a release from the Fish & Wildlife Service so that annual surveys will no longer be necessary.**
3. Complete appraisal to determine land value for purposes of acquisition from SA and disposition to Developer. **Staff will retain a consultant to appraise the Site as requested by the Developer when the Developer obtains tenant commitments.**

#### **Developer**

1. Conduct community meeting(s) to receive public input for use of the SA Parcel. **On January 18, 2018, the Developer conducted a community workshop at the Grace Vargas Senior Center.**
2. Identify potential retail, restaurant, and/or entertainment users for the SA Parcel based on community/Council input and market conditions. **The Developer continues to market the site to retailers. The Developer requests an extension of the ERN period to continue marketing efforts and secure retailer commitments.**
3. Prepare site plans, preliminary engineering, and financial pro-forma to determine the economic feasibility of development. **The Developer submitted preliminary site plans**

**(Exhibit C) and preliminary financial pro-forma.**

4. Submit for preliminary development review to establish expected conditions of approval. **Once the Developer obtains retailer commitments and modifies the site plan, if needed, the Developer proposes submitting entitlement application(s) for staff review.**
  
5. Market the Site to potential users approved by the City. **The Developer continues to market the Site to potential retailers with input from staff and the Economic Development Committee.**
  
6. The Developer makes a Good Faith Deposit of \$15,000 to the City (or greater as City and Developer mutually agree for additional costs) to insure the Developer proceeds diligently and paying for legal and consultant costs incurred by the City during negotiations. **In August 2017, the Developer made the Good Faith Deposit of \$15,000.**

**ENVIRONMENTAL IMPACT**

The request is not a “Project” as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(a), a “Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. According to Section 15378(b), a Project does not include: (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

**GENERAL PLAN CONSISTENCY**

The proposed action fulfills the following General Plan Goals and Policies related to Economic Development:

**Goal 3-1: Strengthen and diversify the economic base and employment opportunities and maintain a positive business climate.**

Policy 3-1.2: Encourage a variety of businesses to locate in Rialto, including retail, high technology, professional services, clean industries, logistics-based businesses, and restaurants/entertainment uses to promote the development of a diversified local economy.

Policy 3-1.4: Encourage the consolidation of smaller lots of industrial and commercial areas to attract larger industrial businesses or commercial projects.

The proposed project encourages retail, restaurant, and entertainment uses to locate in Rialto, while consolidating disjointed lots into a suitable development parcel.

**LEGAL REVIEW:**

The City Attorney has reviewed and supports this staff report and Amendment #3 to the Exclusive Right to Negotiate Agreement.

**FINANCIAL IMPACT**

**Operating Budget Impact**

The City’s expenses for other services related to the ERN, including appraisal, during the Exclusive

Negotiation Period are expected to be less than \$15,000. The ERN required the Developer to provide the City a Good Faith Deposit of \$15,000 for these services. The City shall reimburse the Developer 50% of costs incurred and unused funds from the Good Faith Deposit.

In August 2017, the Developer paid Good Faith Deposit of \$15,000 to Account No. 010-400-4255-7760.

Capital Improvement Budget Impact

There is no impact to the Capital Improvement Budget.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment #4 to the Exclusive Right to Negotiate Agreement (**Exhibit D**) by and between the City of Rialto and NewMark Merrill extending the termination date until December 31, 2019.