



# City of Rialto

## Legislation Text

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**File #:** 17-1147, **Version:** 1

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For City Council Meeting [January 9, 2018]

TO: Honorable Mayor and City Council

FROM: Robb R. Steel, Interim City Administrator

Request City Council to Approve Amendment #1 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.

### **(ACTION)**

### **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") of property located west of Riverside Avenue and north of Valley Boulevard. The City selected the Developer through a "Request for Proposals/Qualifications" process. See **(Exhibit A)** for ERN.

The Successor Agency owns seven (7) parcels totaling 18.5 acres ("SA Parcel") between the former Wal-Mart property and the new Wal-Mart Supercenter and Rialto Marketplace. The City proposes to develop a retail center on 15.5 acres and Fire Station 205 and a community center on 3 acres of the SA Parcel. See **Exhibit B** for a site map.

In April 2017, Wal-Mart relocated to the Wal-Mart Supercenter building. In July 2017, Pacifica Companies acquired the Vacant Wal-Mart Property. In November 2017, Pacifica submitted entitlement applications to the Planning Division to develop three satellite buildings and subdivide the existing building for three tenants.

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.

On November 15, 2017, the Economic Development Committee received a presentation from the Developer on current leasing activity and preliminary site plans.

### **ANALYSIS/DISCUSSION:**

The ERN expires on January 23, 2018, if the parties have not completed a DDA for consideration by the City Council. The City Council can extend the ERN period if additional time is warranted.

Since July 2017, the Developer and the City/Successor Agency have conducted several activities to initiate the potential retail development. The Developer and staff request a six-month extension to

July 31, 2018, to allow Developer to obtain retail commitments and submit updated site plans and development pro-forma in order to prepare the DDA for City Council consideration (Amendment #1).

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 will need to commence development before the next survey season.**
3. Complete appraisal to determine land value for purposes of acquisition from SA and disposition to Developer. **During the Amendment #1 extension, staff will retain a consultant to appraise the Site as requested by the Developer.**

#### Developer

1. Conduct community meeting(s) to receive public input for use of the SA Parcel. **On Thursday, January 18, beginning at 6:00 p.m. staff and the Developer will conduct 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 identified potential retailers. The Developer requests to extend the ERN period to continue marketing efforts and further retailer commitments.**
3. Prepare site plans, preliminary engineering, and financial pro-forma to determine the economic feasibility of development. **The Developer submitted two preliminary site plan options (Exhibit C) and financial pro-formas. Depending on retailer commitments, the Developer may modify either, or both, documents during Amendment #1.**
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 marketed 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 paid Good Faith Deposit of \$15,000.**

The Developer submitted a preliminary schedule that includes executing lease agreement with key tenants by August 1, 2018, entitlement approvals by March 1, 2019, building permit issuance by September 1, 2019, and construction completion and tenant opening by December 15, 2020. Below is the Developer's preliminary schedule:

Category	Item	Start	Finish	Complete
<b>Leasing</b>				
	Identify key tenants & sign Letters of Intent (Anchors & Restaurants)	08/01/17	05/01/18	Active
	Negotiate key tenants leases (Anchors & Restaurants)	03/01/18	08/01/18	
	Leasing for remainder of project to achieve 70% pre-leasing	08/01/17	12/31/18	
<b>City Purchase Agreement</b>				
	Negotiate and sign DDA (upon signed LOIs from key tenants)	Open	Open	
	Close Escrow (upon receipt of City Entitlements and Permits)	09/01/19	09/01/19	
<b>Entitlements</b>				
	Architect prepares entitlement plans (upon signed LOIs from key tenants)	05/01/18	07/01/18	
	Design Review Committee (DRC) (assumed 2 months)	07/01/18	09/01/18	
	Prepare & process E.I.R. (assumed 8 months)	07/01/18	03/01/19	
	Conditional Development Permits (CDP) (concurrent with E.I.R.)	07/01/18	03/01/19	
<b>Construction Drawings</b>				
	Prepare Construction Drawings	03/01/19	05/01/19	
	City first Plan Check	05/01/19	06/15/19	
	NJM first Plan Check corrections	06/15/19	07/01/19	
	City second Plan Check	07/01/19	08/01/19	
	NJM second Plan Check corrections	08/01/19	08/15/19	
	City Permits	08/15/19	09/01/19	
<b>NJM Construction</b>				
	NJM bidding (with first Plan Check corrections)	07/01/19	09/01/19	
	NJM construction (assumed 7 months)	09/15/19	04/15/20	
	NJM Initial Tenant Construct TIs and Open	04/15/20	07/15/20	
	NJM Final Tenants Open	08/15/20	12/15/20	

### **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 approved the staff report and Amendment #1 to the Exclusive Right to Negotiate Agreement.

**FINANCIAL 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.

**RECOMMENDATION:**

Staff recommends that the City Council approve Amendment #1 to the Exclusive Right to Negotiation Agreement (**Exhibit D**) by and between the City of Rialto and NewMark Merrill extending the termination date to July 31, 2018.