

HAYWARD CITY COUNCIL

RESOLUTION NO. 22 – _____

Introduced by Council Member _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE THE FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT WITH TRUMARK PROPERTIES, LLC TO ALLOW DEFERRAL OF THE EXCESS PURCHASE PRICE ABOVE THE CALTRANS BASE PURCHASE PRICE UNTIL ISSUANCE OF CERTIFICATES OF OCCUPANCY FOR THE TRANSFER OF PARCEL GROUP 5, BUNKER HILL

WHEREAS, the City of Hayward entered into a Purchase and Sale Agreement (PSA) with Caltrans in January 2016 to acquire 10 parcel groups comprised of properties acquired by Caltrans for the State Route 238 expansion project; and

WHEREAS, Caltrans has transferred those properties to the City subject to the City managing the disposition and development of these former State Route 238 parcel groups with the goals of removing blight, enhancing community involvement in the development process, and creating economic and public benefits, such as job generating uses and trails and parks; and

WHEREAS, as the City sells or transfers particular parcels, the City is obligated to repay Caltrans the negotiated purchase prices for the various parcel groups under the PSA; and

WHEREAS, in 2019, the Council approved the issuance of a Request for Proposals (RFP) for the parcel located between Harder Road on the south, Carlos Bee Boulevard on the north, California State University East Bay on the east, and Central Boulevard on the west, referred to as “Parcel Group 5,” which was intended to facilitate the re-sale of the parcels through a competitive process to ensure the best price and land use for the City; and

WHEREAS, on December 13, 2019, the Council authorized the City Manager to negotiate and enter into an Exclusive Negotiating Rights Agreement (ENRA) with the proposed Developer (Trumark Properties LLC), based on their proposal to construct 74 single family housing units, certain accessory dwellings units and other improvements on or adjacent to the Parcel Group 5 property; and

WHEREAS, after significant due diligence and site planning efforts, the Developer submitted an application for development of seventy-four single family residential units, including eighteen accessory dwelling units that will be available for occupancy by very low income households at an affordable rent; and

WHEREAS, the application required approval of a zone change and tentative map, which was approved by the Planning Commission on March 24, 2022; and

WHEREAS, the City and the Developer successfully completed the obligations under the ENRA and now desire to enter into a Disposition and Development Agreement (the “DDA”); and

WHEREAS, on April 19, 2022, the City Council of the City of Hayward authorized the City Manager or designee to execute a DDA the City entered into a DDA with the Developer for the disposition from the City to Developer for a total purchase price of \$14,000,000 for the 238 Parcel Group 5 property; and

WHEREAS, since approval of the DDA, the Developer notified the City of significant feasibility issues related to the increase in construction and financing costs due to inflation, and continuing increases in interest rates, which have affected both market demand from potential homebuyers and direct financing costs for the Developer.; and as a result, the Developer requested an extension of the land transfer and other project milestones outlined in the DDA to allow time for interest rates to stabilize, to value-engineer the housing development, and to explore other potential cost saving measures; and

WHEREAS, consistent with the DDA, on October 3, 2022, the City Manager granted an extension of the DDA milestones for three months to March1, 2023 with the potential to extend for additional time, if needed; and

WHEREAS, In addition to the time extension granted by the City Manager, staff is also recommending that the Council authorize the City Manager to negotiate and execute a first amendment to the DDA with the Developer to allow for deferral of the excess purchase price above the Caltrans base purchase price until issuance of certificate of occupancy for the transfer of Parcel Group 5, if needed to make the project feasible; and

WHEREAS, the deferral of the excess sales proceeds to the City reduces the Developer’s financing and carrying costs, which helps the Developer improve the feasibility of the Parcel Group 5 development; and

WHEREAS, on July 9, 2019, the Council reviewed and approved the Parcel Group 5 Master Development Plan and a related Addendum to the Hayward 2040 General Plan EIR. The Addendum was prepared pursuant to CEQA Guidelines Section 15164 that “The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” As part of the approval of the Master Plan, the Council found that the proposed modifications to the General Plan EIR described in the Addendum would not require major revisions to the General Plan EIR due to new or substantially increased significant environmental effects. Further, the analysis contained in the Environmental Checklist confirmed that the Master Plan development

project was within the scope of the General Plan EIR, would have no new or more severe significant effects and that no new mitigation measures were required; and

WHEREAS, additionally, the proposed Zone Change and Tentative Map application was deemed consistent with the adopted Master Plan; therefore, no subsequent or supplemental EIR or further CEQA review was required prior to approval of the proposed project; and

WHEREAS, finally, the proposed First Amendment to the DDA and modifications to the related agreements do not change the proposed project or uses; and therefore, no subsequent or supplemental EIR or further CEQA review is required for the Parcel Group 5 development.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Hayward authorizes the City Manager or designee to execute the first amendment to the DDA, and all ancillary documents attached thereto, on behalf of the City in substantial conformance to the terms outlined in the staff report, subject to such nonsubstantive or minor modifications or amendments as may be necessary to complete the transactions contemplated hereby, and subject further to the City Attorney's approval as to form.

BE IT FURTHER RESOLVED that the City Council designates the City Clerk as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the office of the City Clerk, at 777 B Street, Fourth Floor, Hayward, CA 94541.

BE IT FURTHER RESOLVED that this Resolution shall take immediate effect from and after its passage.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2022

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward