



Legislation Details (With Text)

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Attachments:	1. City First Amendment to Purchase Agreement 002, 2. Performance Agreement 010				

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Housing Successor Agency

MEETING DATE: 9/27/2017

TITLE:

Purchase Agreement First Amendment and Performance Agreement for Downtown Mixed Use Project

FROM:

Curt Watts, Economic Development Director

RECOMMENDATION:

Staff recommends the City Council, as the Housing Successor Agency, authorize the City Manager to execute a First Amendment to Purchase and Sale and Escrow Instructions Agreement between the City as the Housing Successor Agency and Cathedral Canyon Development LLC; and authorize the City Manager to execute the Performance Agreement between the City as the Housing Successor Agency, Cathedral Canyon Development LLC and the City Urban Revitalization Corporation.

BACKGROUND:

On April 26, 2017 the Housing Successor Agency of the Former Redevelopment Agency of the City of Cathedral City ("City") approved a Purchase and Sale and Escrow Instructions Agreement ("Purchase Agreement") with Cathedral Canyon Development LLC ("CCD") for the future sale of an approximate two-acre site located at the southeast corner of East Palm Canyon Drive and West Buddy Rogers Avenue. Effective the same date, CCD entered into a separate purchase agreement with the City Urban Revitalization Corporation ("CURC") to purchase approximately three acres of vacant land adjacent to the two-acre site. The two Purchase Agreements contain terms of the property sales related to purchase price, deposits, due diligence period, conditions to close of escrow, deadlines for close of escrow and completion of project construction, brokerage commissions and various representations and warranties by the respective parties. The Purchase Agreements

also each require that the parties negotiate and execute a tri-party Performance Agreement, as a pre-condition to the Close of Escrow for the combined 5-acre site, to provide among other things (a) a description of the proposed project to be developed upon the Property (subject to the City's entitlement process), (b) time requirements for processing entitlements and development of the Project, and (c) post-closing obligations with respect to the Project.

DISCUSSION:

First Amendment - The attached First Amendment to Purchase and Sale and Escrow Instructions Agreement modifies the terms of the April 26, 2017 Purchase Agreement as follows:

- 1) Clarifies that any Additional Deposit made by the Buyer under the Purchase Agreement is fully refundable if, despite using commercially reasonable good faith efforts, the Buyer is unable to obtain by the Outside Closing Date set forth in the Performance Agreement all City entitlements necessary to develop the Project;
- 2) Revises the deadline for negotiating and executing the required Performance Agreement from 60 days following expiration of the Due Diligence Period, to 90 days following that expiration. In effect, this modification changes the deadline for executing the Performance Agreement from September 25, 2017 to October 25, 2017 thereby providing sufficient time for final negotiations, approval and execution of the document by all parties. If the Performance Agreement is not negotiated and executed within that revised 90-day period the Purchase Agreement(s) may be terminated by any party to the Agreements per the provisions of those Purchase Agreements. It should be noted that the City Manager acting on behalf of the Housing Successor Agency is already authorized under the current Purchase Agreements to extend various deadlines up to 1 year.

Performance Agreement - The attached Performance Agreement includes the following provisions:

- 1) A general description of the proposed development project (the "Project") as a mixed-use residential and commercial/retail project further described in the Scope of Development (Exhibit B-1) as consisting of 7,000 to 11,000 square feet of commercial (retail or restaurant) space and 120 to 160 residential units;
- 2) The Schedule of Performance for development of the Project as outlined in Exhibit C including:
 - a. The Due Diligence Period which ended July 25, 2017 and the subsequent timeline for completing negotiations and execution of the Performance Agreement ending 90 days ends thereafter, or October 25, 2017).
 - b. Close of Escrow by March 30, 2018 (extendable by 6 months to September 30, 2018 with increase in CCD's deposit to 50% of the \$331,000 Purchase Price (i.e. \$165,500). Close of Escrow requires prior completion of the project entitlement process.
 - c. Commencement of Construction within 9 months after Close of Escrow.
 - d. Completion of Construction within 24 months after Close of Escrow (i.e. March 30, 2020, or if

Close of Escrow is extended by 6 months, September 30, 2020).

3) Language regarding permitted ownership transfers to accommodate project financing and/or equity partners after Close of Escrow.

FISCAL IMPACT:

There are no fiscal impacts to the Housing Successor Agency due to the recommended actions beyond those already anticipated by the existing April 26, 2017 Purchase Agreement. These include the receipt of \$331,000 from the Purchase Price and future relief from current obligations to pay remaining sewer district assessments of approximately \$148,000 (\$13,000 in annual principal and interest payments through 2035). These will become the future responsibility of the Buyer following Close of Escrow.

ATTACHMENTS:

1. First Amendment to Purchase and Sale and Escrow instructions Agreement
2. Performance Agreement