



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: RICHARD DOYLE
City Attorney

SUBJECT: SEE BELOW

DATE: October 24, 2014

COUNCIL DISTRICT: 3

SUBJECT: OPTION AND PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS FOR SALE OF PROPERTY TO ATHLETICS INVESTMENT GROUP LLC

RECOMMENDATION

Approval of an Option and Purchase and Sale Agreement and Escrow Instructions ("Option Agreement") for the potential sale of certain real property located at 105 South Montgomery, 150 South Montgomery, 510 West San Fernando, 102 South Montgomery, 115 South Autumn, and 645 Park Avenue (collectively, "Property") to the Athletics Investment Group, LLC (AIG), which Option Agreement provides for an initial option term of four (4) years with initial option consideration of \$100,000, three (3) one (1) year extensions of the option term for an additional consideration of \$25,000 per year, and a purchase price of \$7,000,000 for the Property if the option is exercised.

OUTCOME

Approval of the proposed Option Agreement with AIG will allow the Oakland Athletics organization to be in a position to acquire property and to propose a development consistent with the applicable zoning including a Major League Baseball stadium.

BACKGROUND

On April 7, 2009, and August 3, 2010, the City Council, by unanimous vote, affirmed its support of the efforts of the Oakland A's ownership to move the team to San Jose. Over the last several years, San Jose has worked methodically and enthusiastically to position itself to support a decision by Major League Baseball to move the A's to San Jose.

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On March 8, 2011, the City of San Jose and the Redevelopment Agency of the City of San Jose ("Agency") formed a joint powers authority under the Joint Exercise of Powers Act to facilitate the continued development and redevelopment of the Diridon Area. The Agency contributed certain real property owned by the Agency in the Diridon Area to the Authority. Some of the properties transferred to the Authority are part of a site that has been studied for a potential Major League Baseball Park.

Consistent with previous direction provided by the City Council and the Redevelopment Agency Board and in order to assist AIG in its efforts to develop a baseball stadium in San Jose, on November 8, 2011, AIG and the Authority entered into an Option Agreement for the Sale of Property ("Original Option Agreement"), which provided AIG with an option to purchase the Property for a potential Major League Baseball Park. The option was for an initial period of two (2) years and AIG paid Fifty Thousand Dollars (\$50,000) as consideration for the option. AIG ultimately extended the option for one (1) additional year paying an additional Twenty Five Thousand Dollars (\$25,000). Under the Original Option Agreement, AIG had the right to acquire the Property for a purchase price of \$6,975,227. The Original Option Agreement terminates on November 7, 2014.

On June 28, 2011, the Governor of the State of California signed into law ABX1 26, as subsequently amended by AB 1484, which provided for the dissolution and winding down of redevelopment agencies throughout the State of California ("Dissolution Legislation"). On January 24, 2012, pursuant to the Dissolution Legislation, the City elected to be the Successor Agency to the Agency to administer the dissolution and winding down of the Agency. On February 1, 2012, pursuant to ABX1 26, the Agency was dissolved and, upon dissolution, all assets, properties and contracts of the Agency were transferred, by operation of law, to the Successor Agency pursuant to the terms of Dissolution Legislation.

Under the Dissolution Legislation, the State Controller's Office ("SCO") was authorized to review all asset transfers made by redevelopment agencies after January 1, 2011 and was authorized to order the return of any assets transferred by a redevelopment agency which were deemed not to be in furtherance of the Community Redevelopment Law. Pursuant to this authority, the SCO reviewed the various asset transfers by the Agency, including the transfer of real property to the Authority in March, 2011. On March 21, 2013, the SCO issued its final Asset Transfer Review for the Agency, wherein, among other things, the SCO concluded that the transfer of real property to the Authority was not allowable under the Dissolution Legislation and ordered that the properties be returned to the Successor Agency. Although staff disagreed with the SCO's determination related to the asset transfers to the Authority, rather than engage in prolonged discussions and potential litigation with the SCO, on July 2, 2013, the Authority transferred the Property to the Successor Agency and subsequently transferred the initial option payment of Fifty Thousand Dollars (\$50,000.00) and the Twenty Five Thousand Dollar ("25,000.00) extension payment to the Successor Agency.

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Pursuant to the Dissolution Legislation, the Successor Agency prepared, and the Oversight Board approved, a long-range property management plan (the "Plan") to dispose of the real property of the Agency and submitted the Plan to the Department of Finance ("DOF") for its review in February, 2014. The Property was included in the Plan and was designated as "retain for future development". After receiving comments from DOF, an amended Plan was subsequently approved by the Oversight Board on August 28, 2014 and, on September 8, 2014, the final Plan was approved by DOF. The Dissolution Legislation provides that property retained for future development shall be transferred to the city pursuant to a compensation agreement to be entered into between the city and the other taxing entities. Successor Agency staff are in the process of drafting a compensation agreement to be circulated to the other taxing entities for their review and approval. To facilitate the future development of the Property, City staff negotiated the Option Agreement with AIG.

ANALYSIS

The Option Agreement grants to AIG an option to purchase ("Option") the Property (listed by address below) as more particularly shown on Attachment No. 1.

105 South Montgomery;
150 South Montgomery;
510 West San Fernando;
102 South Montgomery;
115 South Autumn; and
645 Park Avenue.

The Option is for an initial period of four (4) years, commencing upon the effective date of the Option Agreement. AIG will pay One Hundred Thousand Dollars (\$100,000) as consideration for the Option. AIG may extend the Option for three (3) additional periods of one (1) year each for an additional payment of Twenty Five Thousand Dollars (\$25,000) for each one (1) year extension. The Option payments will not be applied to the purchase price of the Property.

In an appraisal prepared by Carneghi and Partners, Inc., dated October 15, 2014, the Property, based on the current applicable land use designation of PQP – public quasi-public zoning district, was appraised at \$6,000,000. An appraisal prepared by Colliers International in September, 2010, concluded that the entire ballpark site, vacant, assembled and restricted for development of a ballpark, would be valued at \$19,100,000. Since the Property to be optioned to AIG, on a square foot basis, represents approximately 36.5% of the entire ballpark site, the original purchase price was represented approximately 36.5% of the appraised value of the entire ballpark site restricted for ballpark use or \$6,975,227. Notwithstanding the current appraisal, under the Option Agreement, AIG has agreed to pay Seven Million Dollars (\$7,000,000) for the Property ("Purchase Price"). The Purchase Price does not include acquisition of the adjacent City streets, which will be addressed at a later time as part of the ultimate development of the site.

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As a condition to AIG's exercise of the Option, the City shall use good faith efforts to negotiate and execute a compensation agreement with the other taxing entities, including the County, by no later than June 30, 2015. AIG shall have the right to terminate the Option Agreement (in which case the option payments shall be reimbursable) if the City has not executed a compensation agreement with the other taxing entities and the Property has not been transferred to the City by December 31, 2015.

Provided that AIG is not in material breach of the Option Agreement and the condition described above has been satisfied, and all other approvals required by law have been obtained, AIG may exercise the Option by providing written notice to the City and depositing Fifty Thousand Dollars (\$50,000) into an escrow. The Option Agreement may not be assigned by AIG except to an affiliate of AIG that retains ownership of the A's ("Affiliate"). The Property will be sold as-is with the following restrictions:

1. No Sale of Property: For five (5) years following close of escrow, AIG may not sell the Property except to an Affiliate.

2. Consistency with PQP-Public/Quasi Public Zoning District: For five (5) years following close of escrow, AIG shall develop the Property consistent with the PQP-Public/Quasi Public Zoning District.

If AIG has not started construction of a development consistent with the current zoning within five (5) years after the close of escrow, then AIG may elect to either (a) execute a quitclaim and return the Property to the City and receive a refund of the Purchase Price, or (b) retain the Property. If AIG retains the Property and the Property is rezoned to a designation other than PQP-Public/Quasi Public within thirty (30) years of the close of escrow, AIG shall pay the City additional consideration, which amount shall be equal to the difference between the Purchase Price and the fair market value of the Property as of the date of the rezoning. If the parties cannot agree on the fair market value of the Property at the time of rezoning, an appraisal process has been included in the purchase and sale section of the Option Agreement.

EVALUATION AND FOLLOW UP

City staff will update the City Council periodically as matters progress with Major League Baseball and will notify the Council if AIG exercises the Option.

PUBLIC OUTREACH/INTEREST

As mentioned above, the City Council established a Good Neighbor Committee to provide a forum for neighbors to work collaboratively to determine mitigations that could arise from developments in the Diridon Station area. The Committee met for over a year and developed the "Framework for Implementation" for the Diridon Station Areas. The City Council adopted this report on January 25, 2011

(http://www.sanjoseca.gov/clerk/Agenda/20110125/20110125_0902.pdf).

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Prior to any development of the Property substantial neighborhood outreach would be conducted with this Good Neighbor Committee and other stakeholders and community groups to identify and resolve neighborhood concerns and other issues raised regarding any development.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- Criterion 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

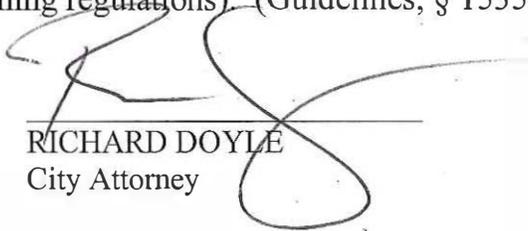
FISCAL IMPACT

As part of any compensation agreement to be executed between the City and the other taxing entities, any consideration received for the Property (including option payments, purchase price, or any additional consideration as a result of a rezoning) shall be distributed to the Successor Agency and shall be used to pay for enforceable obligations of the Successor Agency or shall be distributed to the taxing entities in accordance with the Dissolution Legislation.

CEQA

Not a Project.

Approval of the Option Agreement does not (i) constitute a decision to approve or carry out a project subject to CEQA (§§ 21065; 21080; 14 Cal Code Regs §15378(a)), or (ii) have the “potential for resulting in a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.” 14 Cal Code Regs §15060; 15378, or (iii) include approval of any specific development on the subject property, commit the City to a definite course of action in regard to a project intended to be carried out by any person, or otherwise amount to a commitment to issue or the issuance of any permits or entitlements for the use of the subject property (other than uses allowed under existing planning and zoning regulations). (Guidelines, § 15352(a).)


RICHARD DOYLE
City Attorney

Attachment:

1 – Site Map

