

DATE ISSUED: November 10, 2004

REPORT NO RA-04-41
CMR-04-233

ATTENTION: Mayor and Members of the City Council
Chair and Members of the Redevelopment Agency
Docket of November 15, 2004

SUBJECT: Fifth Implementation Agreement to the Disposition and Development Agreement (DDA) and Related Documents – Las Americas Project

REFERENCE: Manager's Reports No.'s CMR 02-110/RA-02-08, dated May 22, 2002; RA-01-08, dated June 13, 2001; 01-035, dated February 21, 2001; 00-247, dated November 12, 2000; RA-00-19, dated November 15, 2000; RA-00-03, dated February 16, 2000; RA-98-4, dated May 6, 1998; and RA-97-8, dated July 11, 1997.

SUMMARY

Issue(s)-

For the Council: Should the Council (1) Introduce and hold a first reading of an ordinance approving the Amended and Restated Second Amendment to Public Use Lease (Parcel A-1); (2) Approve the Amendment to Public Use Lease (Parcel B/C); (3) Approve the Second Amendment to Overall Reciprocal Easement Agreement (REA); (4) Approve the Subsequent Parcel A-1/Civic Parcel/Parcel A-3 REA; (5) Approve a Cooperation Agreement with the Redevelopment Agency regarding the conveyance and development of the Civic Parcel; (6) Approve a Quitclaim Deed for the Library Airspace Parcels; (7) Accept a Grant Deed for the Civic Parcel; (8) Authorize the City Manager to sign a consent statement under the Fifth Implementation Agreement; (9) Authorize the City Manager to continue efforts in securing a Presidential Permit for the River Pedestrian Bridge; and (10) Initiate a General Plan and San Ysidro Community Plan Amendment process for *Mi Pueblo* Pilot Village, all in connection with the Disposition and Development Agreement (DDA) with International Gateway Associates, LLC?

For the Agency: Should the Agency: (1) Enter into the Fifth Implementation Agreement to the DDA for the Las Americas Project with International Gateway Associates, LLC; (2) Enter into a Cooperation Agreement with the City regarding the conveyance and development of the Civic Parcel?

Manager's Recommendation –

That the City Council: (1) Introduce and hold a first reading of an ordinance approving the Amended and Restated Second Amendment to Public Use Lease (Parcel A-1); (2) Approve the Amendment to Public Use Lease (Parcel B/C); (3) Approve the Second Amendment to Overall Reciprocal Easement Agreement (REA); (4) Approve the

Subsequent Parcel A-1/Civic Parcel/Parcel A-3 REA; (5) Approve a Cooperation Agreement with the Redevelopment Agency regarding the conveyance and development of the Civic Parcel; (6) Approve a Quitclaim Deed for the Library Airspace Parcels; (7) Accept a Grant Deed for the Civic Parcel; (8) Authorize the City Manager to sign a consent statement under the Fifth Implementation Agreement; (9) Authorize the City Manager to continue efforts in securing a Presidential Permit for the River Pedestrian Bridge; and (10) Initiate a General Plan / Community Plan Amendment process for *Mi Pueblo* Pilot Village, all in connection with the Disposition and Development Agreement (DDA) with International Gateway Associates, LLC.

Executive Director's Recommendation –

That the Agency: (1) Enter into the Fifth Implementation Agreement to the DDA for the Las Americas Project with International Gateway Associates, LLC; (2) Enter into a Cooperation Agreement with the City regarding the conveyance and development of the Civic Parcel.

Other Recommendations - None.

Fiscal Impact -

For the City: The Amended and Restated Second Amendment to Public Use Lease (Parcel A-1) proposes to modify the Lease's economic plan by reverting the rent payment schedule back to its original state as agreed upon in 2001 (MR #01-035). The principal amount of \$6,306,000 will not change, but the full annual rent payments will be \$496,402 to be paid from City sales tax annually beginning in FY 2007 after Phase 1B1 is developed with 188,232 square feet of building space. The Agreement also requires an annual reserve allocation. For parcel A, the reserve allocation is equivalent to all excess dollars above and beyond the lease payment. This amount is to be deposited into a reserve account until a cap is reached at \$588,096 once in the life of the lease. The Lease Payments and reserve allocation will be made provided that the project development generates at least that amount of sales tax revenues to the City. The reserve requirement will be calculated annually. The only substantive change to the economic plan is such that the minimum threshold of building space to be developed as a condition for receiving the full rent payment is being reduced by approximately 20,000 square feet.

For the Agency: The Parcel A-1 Loan Agreement's principal amount owed by the Agency will be reduced from the DDA's proposed \$1,780,000 amount to \$41,246,758, saving the Agency \$533,242 in principal, or \$1,696,977 over 30 years.

Environmental - The City Council certified the Final Environmental Impact Report (adopted April 2, 1996 by Council Resolution No. R-287149) and a Mitigated Negative Declaration (MND) (adopted on May 12, 1998 by Council Resolution No. R-290105

SCNo. 98031064) for this project with approval of the DDA on May 12, 1998. The proposed housing development on Parcel A-3 will go through an environmental review process and will require future discretionary approvals from the Council and Agency.

Code Enforcement Impact - None with this action.

Housing Affordability Impact – Las Americas is a component of *Mi Pueblo*, San Ysidro’s Council-designated Pilot Village, under which it is proposed that the residential development on Parcel A-3 will contain units available for mixed (low and moderate) income families.

BACKGROUND

On May 12, 1998 the Redevelopment Agency and LandGrant Development entered into a Disposition and Development Agreement (DDA) to develop Las Americas, a 1.4 million square foot mixed-use retail, office, hotel, and transit center on a 67 acre site in the San Ysidro Redevelopment Project Area, adjacent to the former commercial border crossing at Virginia Avenue. The project has a value of approximately \$280 million and would generate an estimated 2,200 permanent and 3,400 construction jobs, \$1.6 million in annual sales tax revenue, \$900,000 in annual tax increment revenue, and \$1.3 million in annual bridge revenue. The project also proposes to link San Diego to Tijuana via a new monumental river pedestrian bridge that would celebrate our two cities and cultures.

LandGrant opened the first phase of Las Americas in November of 2001, consisting of 370,000 square feet of retail shops and restaurants (Parcel B/C). The project has received national and international attention both for its architectural design and impact on the border area. The project has been featured on the national ABC evening news, KPBS television and the Travel Channel.

On February 22, 2000, the Agency entered into the First Implementation Agreement which provided for the first phase of the project proceeding ahead of the anticipated International Bridges and Border Commission (IBBC) authorization of the River Pedestrian Bridge. On November 21, 2000, the Redevelopment Agency entered into the Second Implementation Agreement with the Developer. The Second Implementation Agreement provided for the Agency assuming certain offsite improvement costs associated with the project. On November 21, 2000, the Redevelopment Agency entered into the Third Implementation Agreement with the Developer. The Third Implementation Agreement amended the Schedule of Performance by extending the date the Developer had to receive federal approvals for the River Pedestrian Bridge from June 30, 2001, to June 20, 2002. It also adjusted some dates for submission of plans, etc. to reflect the changes in the anticipated construction schedule. Finally, the Agency entered into the Fourth Implementation Agreement with International Gateway Associates, LLC (Developer) on May 28, 2002. The Fourth Implementation Agreement amended the Schedule of Performance and Scope of Development to allow for the following: sub-phasing of Parcel A, which affected the payment schedule for the Parcel A Public Use Lease and Loan Agreements; contemplation of a Library development at Las Americas, contingent upon the City being awarded State Proposition 14 Grant dollars; a “Building X Option” for developing a 23,980 square foot building on either Parcel A-1 or A-3; and a provision for the City to acquire a Grant Deed for

two Library Airspace Parcels above Parcel A-2, which included a reversionary clause with a deadline of September 30, 2003. This clause stipulated that if the City did not acquire the necessary funds for a Library before the deadline, the Parcels would be quitclaimed back to the Developer.

As part of the project's financing plan, the Agency and City have entered into, or will enter into, a series of agreements with the Developer as required under the DDA. The purpose of these agreements is to help finance the Las Americas Project with land acquisition and public improvement costs. These agreements include several Loan Agreements (tax increment) and two Public Use Leases (sales tax).

The *Mi Pueblo*, located in the San Ysidro community planning area, was designated as a Pilot Village by the City Council on February 10, 2004. The proposed project includes the historic commercial core of San Ysidro Boulevard, the residential neighborhood immediately adjacent to San Ysidro Blvd., the *Las Americas site*, and Pathways to Knowledge, a system of pedestrian connections throughout the community that links the project's major components. *Mi Pueblo* anticipates providing approximately 1,100 new residential dwelling units, a public market (Mercado), social services (Casa Familiar offices), commercial office, public plazas, community gardens, senior housing, a linear park, a new branch library and a community center.

Las Americas, now under full ownership and management control by JER Partners (also referred to as International Gateway Associates, LLC, or IGA), is set to open its next phase of development in the Spring of 2005. Phase 1B1 will consist of approximately 188,272 square feet of new retail space (see Attachment 1). Along with the subject Phase 1B1 approvals, the City has an opportunity to acquire a street-front parcel for the construction of a public facility at Las Americas. It is the Agency's goal to place Las Americas on the path to acquire the necessary approvals to implement the residential/mixed-use development as proposed in *Mi Pueblo*, San Ysidro's Pilot Village program.

DISCUSSION

Because of the size and complexity of the Las Americas Project, shifting market conditions, and the changing needs of the community, it is necessary to alter the master plan for the Las Americas Project to allow for a more efficient, *Village*-oriented development of the land and a modification to the economic structure of the deal. The proposed actions will allow for:

- Adjustments to boundary lines;
- Revisions to the terms of development as they relate to Parcel A-1, Development Impact Fees (DIF), and the Public Use Lease for Parcel A;
- City to acquire the "Civic Parcel," an approximately 26,500 square foot parcel located in front of the Las Americas Shopping Center, for the development of a new public facility (i.e. Library or City office);
- Changes in use on Parcel A-3 with Agency support;
- Elimination of the "Building X Option" in the 4th Implementation Agreement;
- Modification of the Schedule of Performance;
- "No Cross-Defaulting" and "Stand-Alone" provisions in the relevant agreements;

- Clarification of loan amounts;
- A Change in the payment terms of the Parcel A Public Use Lease; and
- The reiteration of the City’s commitment to the proposed River Pedestrian Bridge

Based on current market trends and patron shopping patterns observed after the opening of Phase 1A, the Developer and Agency staff have agreed to pursue modifications of some of the terms under the Las Americas DDA. With that, Agency and City staff have negotiated certain terms with the Developer to facilitate an exchange of benefits to all parties involved including the Developer, City, and Agency. The actions are more fully described as follows:

For the Council:

1. The Amended and Restated Second Amendment to Public Use Lease (Parcel A-1) with IGA provides for an adjustment to the lease payment schedule to reflect the payment schedule included in the original Public Use Lease (Parcel A), dated March 20, 2001, by Ordinance OO-18932, as shown on the table below. On January 13, 2004, the Council authorized the execution of the Amendment to Public Use Lease (Parcel A) to accommodate the sub-phasing and pro-ration of payments contemplated in the Fourth Implementation Agreement of the DDA, dated May 28, 2002. This first amendment’s sub-phasing of the payments (70% and 30% of full rent) created an incentive, in favor of the City, for the Developer to construct the Library on the City’s behalf. This incentive was caused by the fact that the Library would sit on the second floor above first-floor retail, creating the necessary ground floor square footage as justification for payment of the 30% balance of rent. The City was unable to acquire the necessary funds for the Library construction, eliminating the logical link between Lease payments and Library, therefore Agency staff is recommending the Lease payment schedule be adjusted to its original state which would be consistent with the decision of the City and Agency not to build a Library on Parcel A-2. There is no change in the \$6,306,000 principal owed on the Public Use Lease (Parcel A), nor in the two-tier rent structure. As shown in the table below, the first tier base rent of \$1,145,000 will bear interest at 10% annually, and the second tier base rent of \$5,161,000 will bear interest at 6% annually. The annual rent payment is fixed at \$496,402 for a period of 30 years, beginning in approximately November of 2006 after City has received the necessary sales tax revenues. In addition, the proposed Amendment allows for an adjustment to the Plan for Improvements and a minor adjustment to the physical location of the “park & ride” parking spaces (see Attachment 2).

LEASE PAYMENT SCHEDULE	
FIRST TIER BASE RENT A	SECOND TIER BASE RENT A
\$1,145,000 (10% APR)	\$5,161,000 (6% APR)
BASE RENT A	ANNUAL RENT PAYMENT
\$6,306,000 Principal Original Lease Payment	\$496,402 Original Annual Rent Amount

2. The Amendment to Public Use Lease (Parcel B/C) allows for simple adjustments to boundary lines (see Attachment 3).
3. The Second Amendment to Overall Reciprocal Easement Agreement (REA) with IGA would provide for the coordination and integration of the various Las Americas parcels, including the Civic Parcel. The REA allocates the rights and obligations of the three parcels including Parcel A-1, Civic Parcel, and Parcel A-3 as they relate to the redevelopment efforts for Las Americas, giving the City, under its Civic Parcel fee ownership, all the benefits of being in the integrated redevelopment project without having to bear its proportionate share of the obligations. The Second Amendment also removes from the Civic Parcel a drainage easement that would have precluded the development of a civic building; this easement instead will be on other IGA property (Parcels A-1 and A-3). The Second Amendment also allocates the parking obligations among the Parcels. Finally, the Second Amendment to the Overall REA assures that the neighboring Parcels cannot object to the development of a civic building on the Civic Parcel, or a residential development on Parcel A-3 (see Attachment 4).
4. The Subsequent Parcel A-1/Civic Parcel/Parcel A-3 REA with IGA would provide for certain rights and restrictions as they apply to the City's newly-acquired Civic Parcel, including, but not limited to, access to the Las Americas Shopping Center common areas, maintenance of the streetscape and landscape surrounding the building developed on the Civic Parcel, a parking easement for 134 parking spaces, and restrictions on the uses permitted within the building space of the Civic Parcel. The Developer will absorb the Civic Parcel's share of the Common Area Maintenance (CAM) fees in perpetuity. The CAM fees include all ground floor maintenance, security, and liability insurance for the common areas. The City will be responsible for its building's insurance protections, building interior and exterior maintenance, and repairs. Finally, the Subsequent REA permits the City to sell the property to a third party buyer if needed, and it also offers the Developer a right of first refusal to match the terms of a proposed purchase agreement with a third party buyer (see Attachment 5).
5. The Cooperation Agreement between the City and Agency would provide for certain responsibilities and obligations as they relate to the conveyance, disposition and development of the Civic Parcel. Although the City will be the legal owner of the Civic Parcel, the Agency will take the lead in the planning and redevelopment efforts for the property on behalf of the City under the Cooperation Agreement (see Attachment 6).
6. The Quitclaim Deed will satisfy the requirements of the Library Airspace Parcels Grant Deed under the Fourth Implementation Agreement which allowed for the City to acquire two Airspace Parcels above Parcel A-2. The Grant Deed has a reversionary clause with a deadline of September 30, 2003, which has now expired. The property must be transferred back to Developer (see Attachment 7).

7. The Grant Deed for the Civic Parcel will be granted to the City by IGA for future development of a public facility. The Civic Parcel is approximately 26,500 square feet in size, with an estimated value of \$3,500,000. The estimated value considers the land and its entitlements, the perpetual CAM relief, and the easement for 134 parking spaces. There is no obligation to develop a public facility on the Civic Parcel, which offers the City flexibility over the property like any typical real estate asset held by the City. There is, however, an 84-month timeframe for the City to actuate either construction or sale of the property. If the 84-month timeframe expires, IGA has a right to repurchase the land at a cost of \$1.25 million plus an inflation factor based on the Consumer Price Index (CPI). The Second Amendment to Overall REA and Subsequent Parcel A-1/Civic Parcel/Parcel A-3 REA contain the rights and restrictions as they relate to the Grant Deed (see Attachment 8).
8. Reinforce the City's commitment for the implementation of the Las Americas River Pedestrian Bridge. With the help of private consultants, the City and Developer desire to analyze the feasibility of pursuing and reapplying for a Presidential Permit through the State Department of the United States – the City being the Applicant.
9. The Fifth Implementation Agreement clarifies the business agreement between the Agency and Developer as it relates to the City and its acquisition of the Civic Parcel, and is outlined below under the Agency's section of Discussion. There is a consent statement attached to the 5th Implementation Agreement for the City to sign (see Attachment 9).
10. The *Mi Pueblo* Pilot Village Project's proposed intensity of development is not supported by the current San Ysidro Community Plan, and therefore requires some changes to the Plan's text and maps. In order for the Planning Department to begin the analysis of appropriate land use designations and intensity of development for *Mi Pueblo*, the General Plan / Community Plan amendment process must be initiated. The initiation will allow Planning Department staff to work closely with the *Mi Pueblo* applicants as they move through the entitlement process to determine appropriate intensity of development, land use designations, and subsequent rezoning for proposed projects within the Pilot Village site.

For the Agency:

1. The Fifth Implementation Agreement (Attachment 9) would authorize the following:
 - a. Adjustment of the boundaries of former Parcels A-1, A-2, and A-3 to accommodate the redevelopment of Parcel A-1, Parcel A-3, and the E Property. This allows for the creation of new Parcels A-1, Civic Parcel, and A-3 under the DDA.
 - b. The conveyance of the Civic Parcel to the City for the future development of a public facility.

- c. Provide for the disposition and development of Parcel A-1, Civic Parcel, and Parcel A-3 as follows:

PARCEL (SIZE)	BUILDINGS	BLDG SQ FOOTAGES	PHASING
A-1 (13.042 acres)	A, B, D-1, D-2	188,272 sq ft (with option to develop additional 3,631 sq ft).	1B1 – Construction completion in Spring of 2005.
Civic Parcel (0.608 acres)	Civic Building	Up to 25,000 sq ft max, with max footprint of 15,000 sq ft, and up to two stories.	City has 84 months to develop or sell the Civic Parcel before the right to purchase is triggered by the Developer.
A-3 (8.415 acres)	Residential: Up to 350 units. Commercial: Neighborhood-serving.	Residential: Up to 400,000 sq ft. Commercial: Between 5,000 and 75,000 sq ft.	Construction financing in May '07, Construction Completion 12-18 months thereafter.

- d. The Developer to execute various Grant Deeds for easements as they relate to remapping of the project site.
- e. Approval of the new 2004 West Side Map and 2004 East Side Map.
- f. Revise the Schedule of Performance, Attachment 3 to the DDA, to reflect the adjustment to the construction phasing for Parcel A-1 and Parcel A-3, and to extend the Developer's ability to pursue, on behalf of the City, the Presidential Permit for the River Pedestrian Bridge to June 30, 2005.
- g. Revise Section 718 of the DDA, allowing for a change in the payment schedule (sales tax) under the Public Use Lease (Parcel A) to allow full rent payment to be paid after completion of Parcel A-1 improvements as described earlier.
- h. Revise the Method of Financing, Attachment 2 to the DDA. As part of the DDA, the Agency approved one note in the amount of \$1,780,000 to be repaid over 30 years from tax increment revenues for Parcel A. This note was to be triggered by a certain amount of developed square footage. Based on the level of improvements on Parcel A-1 (188,272 sq ft) compared to the original Parcel A plan for improvements (270,000 sq ft), the pro-rating of the principal amount of the Parcel A Loan Agreement equates to a 70% pro-ration, or a \$1,246,758 new principal owed. Since the Developer wants to decrease the amount of commercial improvements on former Parcel A, and desires a change in use on Parcel A-3, the note needs to be amended to reflect the change. The loan obligation is for 30

years at a 10% annual interest rate, with annual payments of \$132,255 expected to begin in approximately November of 2006. The Agency will save over \$530,000 of tax increment under the Parcel A Loan's principal, or \$1.7 million over 30 years.

1. Approval of a Cooperation Agreement between the City and Agency as it relates to the conveyance and disposition of the Civic Parcel. This agreement will authorize the Agency to oversee all future disposition and redevelopment efforts as they relate to the Civic Parcel.

ALTERNATIVE

Do not approve this action. This would disable Developer's ability to acquire construction financing for the Phase 1B1 retail component and potentially stop the development of the remainder of the project.

Respectfully submitted,

Debra Fischle-Faulk
Deputy Executive Director,
Redevelopment Agency /
Assistant Director
Community and Economic
Development Department

Approved: Hank Cunningham
Assistant Executive Director,
Redevelopment Agency / Director
Community and Economic
Development Department

Approved: Bruce Herring
Deputy City Manager

CUNNINGHAM/RC

Note: Attachments are available for review in the Office of the City Clerk.

- ATTACHMENT(S):
1. Las Americas Site Plan
 2. Amended and Restated Second Amendment to Public Use Lease (Parcel A-1)
 3. Amendment to Public Use Lease (Parcel B/C)
 4. Second Amendment to Overall Reciprocal Easement Agreement (REA)
 5. Subsequent Parcel A-1/Civic Parcel/Parcel A-3 REA
 6. Cooperation Agreement between City and Agency
 7. Quitclaim Deed for Library Airspace Parcels
 8. Grant Deed for Civic Parcel
 9. Fifth Implementation Agreement – Las Americas Project