



**STAFF REPORT TO THE CITY COUNCIL &
REDEVELOPMENT SUCCESSOR AGENCY**

DATE: Regular Meeting of April 24, 2018

TO: Members of the City Council & Successor Agency

SUBMITTED BY: David Biggs, City Manager
Patrick Tang, City Attorney

SUBJECT: Major Amendment to 2008 Hilltown Development and Owner Participation Agreement (“Development Agreement”) with Santa Clara Valley Housing Group (SCVHG) to: Extend the Term for Six Months with Provision for Additional Extension; Remove the Redevelopment Agency as Party to the Agreement; and Make Additional Changes to the Original Agreement Consistent with Changed Circumstances

RECOMMENDATION: Receive staff report, Open, Conduct, and Close Public Hearing, and take the following actions:

Successor Agency:

Adopt a Resolution of the Hercules Successor Agency approving certain amendments to the 2008 Hilltown Development Agreement, including but not limited to removal of the redevelopment agency as a party to the agreement (Attachment 2).

City Council:

Waive the First Reading and introduce an Ordinance approving amendments to the Hilltown development agreement to remove the redevelopment agency as a party to the agreement, conditionally extend the term of the agreement, and to clarify the developer’s obligations regarding affordable housing, stormwater and clean water requirements, and the in-lieu sports facility fee (Attachment 3).

...

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: On April 2, 2018, the Planning Commission approved Resolution 18-04 to recommend to the City Council the approval of the proposed amendments to the Development Agreement (Attachment 1).

FISCAL IMPACT OF RECOMMENDATION: None as a result of this action.

DISCUSSION: Hilltown is a 44 acre undeveloped site within the city limits of Hercules, bounded by John Muir Parkway to the south, San Pablo Avenue to the west, the Victoria By The Bay development to the north, and by Interstate 80 to the east. The site was developed by PG&E in the late 1970s as an oil storage, heating and pumping station in connection with a PG&E pipeline from Richmond to eastern Contra Costa County. PG&E used these facilities to supply heavy fuel oil to power generating facilities in Pittsburg. Santa Clara Valley Housing Group (SCVHG) purchased the property from PG&E in 2005. In 2008, envisioning a project that would evoke “the Italian hill towns built centuries ago” and feature an “urban density in a highly livable, marketable, picturesque package”, the City and the Redevelopment Agency entered into a ten year Development and Owner Participation Agreement (“Development Agreement”) with SCVHG to develop the site in accordance with all required project approvals as follows:

- up to 640 residential dwelling units,
- a neighborhood retail facility,
- a series of public and private open space amenities,
- payment of an in-lieu housing fee,
- payment of a park and Recreation in-lieu fee for a sports facility, and
- a network of new roadways to provide access to the developed site.

A copy of the 2008 Development Agreement can be downloaded at this link:
[2008 Hilltown DOPA.](#)

In 2017, apparently intending to abandon the original project, SCVHG approached the City with a different plan for development of the site. Discussions between the Parties took place regarding the scope of the proposed alternate project, and initial plans for a new project were presented and discussed before the Planning Commission. Following presentation of various development options to the City Council at the meeting of February 13, 2018, SCVHG conveyed to the City that they would be willing to proceed with the original plan as specified in the 2008 Development Agreement. SCHVG has since confirmed with staff that they wish to proceed with the development as approved in the 2008 Development Agreement; however, because the agreement expires in November, SCVHG seeks an extension of the original ten-year term to allow SCVHG additional time to proceed with the project. Both Parties have identified other provisions of the Development Agreement that should be modified, as described further in this report. A copy of the proposed amendment is provided as Attachment 4 to this report.

As far as the process for amending the 2008 Development Agreement, per state law (Government Code Section 65864 et seq.) and the City’s municipal code (Title 10, Chapter 8), an amendment to the term of the original 2008 Development Agreement requires a public hearing before the Planning Commission, and a subsequent public hearing and approval by the City Council. As indicated previously, the required public hearing before the Planning Commission occurred on April 2, 2018, with the Commission recommending approval of the proposed amendments to the Development Agreement.

The main points addressed in the draft amendment to the Development Agreement are:

- **RDA:** Due to the enactment of ABx1 26 and subsequent amendments, the Hercules Redevelopment Agency was dissolved as of February 1, 2012. The parties propose removing the RDA as a party to the agreement and provide that references to the RDA throughout the document shall be construed to mean "City". Section E in the Recitals references a resolution proposed to be adopted by the Successor Agency prior to consideration and adoption of the amending ordinance that will memorialize the removal of the RDA as a party to the Development Agreement. This resolution would be presented to the Council serving in its capacity as the Successor Agency.
- **Extension of Term:** The Parties propose amending the Term in sec. 2.2 to provide for: a) a 6 month extension to April 23, 2019, and b) an additional 4 month extension if Owner submits by April 23, 2019 a complete application for a tentative map in a form acceptable to the City, and reimburses the City \$50,000 of the \$100,000 due to the City for Owner's share of CEQA work for the Project. Owner will be required to make the final payment of the remaining \$50,000 to City for CEQA work on or before August 23, 2019 or prior to recordation of a final map, whichever occurs first.
- **Park and Recreation In-Lieu Fee:** The original Development Agreement provides for payment of, in addition to existing Impact Fees including Park and Recreation Facilities Impact Fees (Sec. 3.6.1), a Sports Facility in-lieu fee in the amount of \$5,000 per residential unit. However, per the terms of the 2008 Agreement, those funds were earmarked for construction of new sports facilities. The Parties propose amending the Park and Recreation in-lieu Fee sec. 3.6.1.3 to clarify that the City can use the fee proceeds for any park or recreation use consistent with the City's General Plan.
- **Affordable Housing.** The original Development Agreement at Sec. 3.6.1.6 provides for Owner to pay a \$3,453,030 Affordable Housing In-Lieu Fee for 58 moderate income housing units. The amount provided for in the original Development Agreement is not sufficient to construct the 58 moderate housing units contemplated in 2008. The Parties propose amending the Affordable Housing provision Sec. 3.6.1.6 to require a 5% set-aside of the Project's total number of residential units for moderate income housing, instead of the \$3,453,030 Affordable Housing In-Lieu Fee. The proposed amendment references an Exhibit G, which will lay out in more detail how the affordable housing requirement will be determined. As of the date this report went to publication, the moderate income designation was determined to be 80-120% of the County of Contra Costa Area Median Income.
- **HMU.** Because the Hercules Municipal Utility (HMU) is no longer a functioning entity, having been purchased by PG&E in 2013, it would be appropriate to delete the requirement that the developer utilize HMU for electric utilities. Staff recommends including this change in the draft Amendment.

ATTACHMENTS:

Attachment 1 –Planning Commission Resolution
 Attachment 2 – Successor Agency Resolution
 Attachment 3 – City Council Ordinance
 Attachment 4 –Development Agreement Amendment