

**MOORPARK CITYCITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David C. Moe II, Economic Development and Housing Manager *DCM*

DATE: August 21, 2015 (CC meeting of 9/2/15)

SUBJECT: Consider Exclusive Negotiating Agreement Between the City of Moorpark and Aldersgate Investment, LLC to Study the Feasibility of Scattered Site Affordable Housing Projects on Various City Owned Properties

BACKGROUND

On August 27, 2012, the City of Moorpark ("City"), acting as the Successor Housing Agency of the Redevelopment Agency of the City of Moorpark, officially acquired all housing related properties and assumed the affordable housing obligations of the former Redevelopment Agency of the City of Moorpark. On January 1, 2014, SB 341 became effective, adding additional rules for expenditures of money in the housing successor's low and moderate income housing asset fund; annual reporting requirements; and establishing a five (5) year limit to develop the housing related properties (August 27, 2017).

DISCUSSION

Aldersgate Investment, LLC ("Developer") is in the process of seeking entitlements from the City to construct 390 transitional senior units on approximately 50 acres north of Casey Road and west of Walnut Canyon Road (RPD 2013-01 & GPA 2013-02). The City is currently negotiating the affordable housing component with the Developer. Due to the nature of this project, it would be difficult to apply an affordable housing component onsite. Therefore, staff is considering an offsite affordable housing component on various City owned properties (Attachment II).

The Developer has requested that the City not consider any other development proposals or conduct negotiations with any other parties while they perform their due diligence review of the properties.

Staff has prepared an Exclusive Negotiating Agreement (“ENA”) between the City and the Developer (Attachment), which the City Attorney has reviewed. The ENA will secure the Developer’s interest to enter into negotiations with the City for the purchase and development of the properties for a period of three (3) months. The thirteen (13) properties are described in Exhibit A of the referred attachment. During the term of the ENA, the City is restricted from discussion or considering any development proposal for the properties. Staff is recommending approval of the ENA.

FISCAL IMPACT

Developer shall pay \$1.00 for the exclusive right to negotiate with the City for a period of three (3) months. Developer shall also pay City for all staff time worked on processing and managing the ENA with an initial deposit of \$2,500.00.

STAFF RECOMMENDATION

Approve Exclusive Negotiating Agreement and authorize the City Manager to sign the Agreement, subject to final language approval by the City Manager and City Attorney.

Attachment - Exclusive Negotiating Agreement

AGREEMENT TO NEGOTIATE EXCLUSIVELY

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, between the City of Moorpark, a municipal corporation, hereafter referred to as "CITY" and Aldersgate Investment, LLC, a Delaware limited liability company, hereinafter referred to as "DEVELOPER".

WITNESSETH:

WHEREAS, the CITY intends to partner with a developer to construct affordable housing units on CITY owned properties in accordance with the Housing Element of the CITY's General Plan; and

WHEREAS, DEVELOPER is desirous of negotiating a contract to purchase and develop property to satisfy its affordable housing requirement for RPD 2013-01.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree as follows:

1. CITY and DEVELOPER shall cooperatively seek to develop a plan whereby the DEVELOPER may purchase real properties, as shown on Exhibit "A" "REAL PROPERTY", and constructs an affordable housing project to satisfy the affordable housing requirement for RPD 2013-01.

2. During the period from the date of this Agreement until ninety (90) days, hereafter referred to as "NEGOTIATION PERIOD", CITY and DEVELOPER shall seek, in good faith, to negotiate a Disposition and Development Agreement, hereinafter referred to as "DDA" for the sale and development of said REAL PROPERTY. Such DDA shall provide for the CITY to sell REAL PROPERTY to the DEVELOPER for a price and on terms and conditions to be determined by the parties during the NEGOTIATION PERIOD.

3. The CITY shall not negotiate regarding REAL PROPERTY or any portion thereof with any person or entity other than DEVELOPER during the NEGOTIATION PERIOD, provided DEVELOPER is pursuing its obligations under this Agreement with reasonable due diligence. At the end of the NEGOTIATION PERIOD, this AGREEMENT, if not extended by mutual written agreement, shall automatically terminate and neither party shall have any further obligations to the other party under this AGREEMENT, except for those terms and conditions that expressly survive termination as set forth below.

4. Upon execution of this AGREEMENT, DEVELOPER hereby stands ready to proceed diligently and in good faith with its obligations under this AGREEMENT. If the negotiations do not result in an agreement to purchase and develop said REAL PROPERTY, DEVELOPER will submit to the CITY copies of

all studies, plans, and reports made by DEVELOPER, provided that such studies, plans and reports shall be delivered in their as-is condition with no representations or warranties by DEVELOPER.

5. During the term of this AGREEMENT, DEVELOPER shall submit biweekly written progress reports to the CITY advising of activities undertaken and completed, as part of DEVELOPER's due diligence.

6. DEVELOPER shall produce a concept plan for development of an affordable housing residential project, hereafter referred to as "PROJECT" within the period of the AGREEMENT. The concept plan will include the following:

- A. Adequate on-site parking
- B. Site plan
- C. Preliminary elevations

7. DEVELOPER is hereby granted temporary access for the benefit of itself and its employees, contractors and consultants, to access the REAL PROPERTY to conduct research and studies to determine the feasibility of the PROJECT.

8. By its execution of this AGREEMENT, the CITY is not committing itself to or agreeing to undertake: (a) any disposition of land to the DEVELOPER; (b) any DDA with DEVELOPER; or (c) any other acts or activities requiring the subsequent independent exercise of discretion by the CITY, or any department thereof. This AGREEMENT does not constitute a disposition of property or exercise of control over property owned by the CITY and does not require a public hearing. Execution of this AGREEMENT by the CITY is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by the CITY as to any DDA and all proceedings and decisions in connection therewith.

9. The CITY shall not be liable for any finder's fee, real estate commissions or brokerage fees which may arise herefrom or from subsequent sale of property to developers. The CITY and DEVELOPER each represent that it has not engaged a broker in connection with this transaction.

10. Any notice to be given pursuant to this AGREEMENT shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attention: Steven Kueny, City Manager

To: Aldersgate Investment, LLC
300 Esplanade Drive, #1550
Oxnard, CA 93036
Attention: Ernest T. Mansi

Either party may, from time to time, by written notice to the other, designate a different address, which shall be substituted for the one above specified. Notices, payments, and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

11. DEVELOPER agrees to indemnify, protect, defend, and hold harmless the CITY, and any and all of its officials, employees, and agents from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of DEVELOPER, its officers, agents, employees or sub-consultants in the performance of this AGREEMENT.

DEVELOPER agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant, contractor, subcontractor, or any other person or entity involved by, for, with, or on behalf of DEVELOPER in the performance of this AGREEMENT. Failure of CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend CITY as set forth here is binding on the successors, assigns or heirs of DEVELOPER and shall survive the termination of this AGREEMENT or this section.

CITY does not and shall not waive any rights that it may have against DEVELOPER by reason of this Section, because of the acceptance by CITY, or the deposit with CITY, of any insurance policy or certificate required pursuant to this AGREEMENT. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs and expenses described in this Agreement.

12. DEVELOPER shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit B attached hereto and incorporated herein by this reference as though set forth in full.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF MOORPARK

ALDERSGATE
INVESTMENT, LLC

By _____
Steven Kueny
City Manager

By _____
Ernest T. Mansi
Managing Partner

Exhibit A – List of Properties
Exhibit B – Insurance Requirements

Exhibit A

<u>Address</u>	<u>APN</u>
282 Los Angeles Avenue	506-0-020-240
112 First Street	512-0-102-100
124 First Street	512-0-102-110
224 Charles Street	512-0-093-020
236 Charles Street	512-0-093-030
450 Charles Street	512-0-081-050
460 Charles Street	512-0-081-060
484 Charles Street	512-0-081-080
No Address	512-0-081-090 (Pardee to transfer to City SW corner of Spring Rd. & Charles St.)
780 Walnut Street	512-0-063-010
1293 Walnut Canyon	511-0-040-140 & 511-0-040-130
1331 Walnut Canyon	511-0-040-120

EXHIBIT B

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of the License, Licensee will maintain insurance in conformance with the requirements set forth below. Licensee will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. Licensee acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to City in excess of the limits and coverage required in this License and which is applicable to a given loss, will be available to the City.

Licensee shall provide the following types and amounts of insurance:

1. Commercial General Liability

Commercial General Liability Insurance shall be provided by an Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

Licensee's policy shall contain no endorsements limiting coverage beyond the basic policy coverage grant for any of the following:

- a. Explosion, collapse or underground hazard (XCU)
- b. Products and completed operations
- c. Pollution liability
- d. Contractual liability

Coverage shall be applicable to City for injury to employees of Licensee, subcontractors, or others involved in the project. Policy shall be endorsed to provide a separate limit applicable to this project.

2. Workers' Compensation

Workers' Compensation insurance shall be provided on a state-approved policy form providing statutory benefits as required by law with employers' liability limits no less than \$1,000,000 per accident for all covered losses.

3. Business Auto Coverage

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or the exact equivalent shall be provided. Limits shall be no less than \$1,000,000 per accident, combined single limit. If Licensee owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Licensee or Licensee's employees will use personal autos in any way on this project, Licensee shall provide evidence of personal auto liability coverage for each such person.

4. Excess or Umbrella Liability

Excess or Umbrella Liability insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Licensee, subcontractors, or others involved in the Work. The scope of coverage provided is subject to the approval of city following receipt of proof of insurance as required herein. Limits are subject to review.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the state of California and with A.M. Best rating of A- or better and a minimum financial size of VII.

Licensee and City agrees as follows:

1. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess liability policies. Contractor agrees to have its insurer endorse the third party general liability coverage required herein using standard ISO endorsement CG 2010 with an edition prior to 1992 or other endorsement form that City considers equivalent. Contractor also agrees to require all contractors and subcontractors to do likewise.
2. Any waiver of subrogation express or implied on the part of the City to any party involved in this License or related documents applies only to the extent of insurance proceeds actually paid. City, having required that it be named as an additional insured to all insurance coverage required herein, expressly retains the right to subrogate against any party for sums not paid by insurance. For its part, Licensee agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors,

subcontractors, or others involved in any way with the project contemplated by this License to do likewise.

3. All insurance coverage maintained or procured by Licensee or required of others by Licensee pursuant to this License shall be endorsed to delete the subrogation condition as to the City, or to specifically allow Licensee or others providing insurance herein to waive subrogation prior to a loss. This endorsement shall be obtained regardless of existing policy wording that may appear to allow such waivers.
4. It is agreed by Licensee and City that insurance provided pursuant to these requirements is not intended by any party to be limited to providing coverage for the vicarious liability of City, or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this or any other Agreement (express or implied) in any way relating to City is intended to apply to the full extent of the policies involved. Nothing referred to here or contained in any agreement involving City in relation to the project contemplated by this License is intended to be construed to limit the application of insurance coverage in any way.
5. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the City, as the need arises. Licensee shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discover period) that may affect City's protection without City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of binders of coverage, or endorsements, or certificates of insurance, shall be delivered to City at or prior to the execution of this License. In the event such proof of insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Licensee or deducted from sums due Licensee, at City option.
8. Licensee agrees to endorse, and to required others to endorse, the insurance provided pursuant to these requirements, to require 30 days notice to City and the appropriate tender prior to cancellation or reduction of such liability coverage and notice of any material alteration or non-renewal of any such coverage, and to require contractors, subcontractors, and any other party in any way involved with the project contemplated by this License to do likewise.

9. It is acknowledged by the parties of this License that all insurance coverage required to be provided by Licensee or any subcontractor, and any other party involved with the project who is brought onto or involved in the project by Licensee, is intended to apply first and on a primary non-contributing basis in relation to any other insurance or self-insurance available to the City.
10. Licensee agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Licensee, provide the same minimum insurance coverage required of Licensee. Licensee agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this License. Licensee agrees that upon request, all agreements with subcontractors and others engaged in this project will be submitted to City for review.
11. Licensee agrees that all layers of third party liability coverage required herein, primary, umbrella and excess, will have the same starting and expiration date. Licensee agrees further that all other third party coverages required herein will likewise have concurrent starting and ending dates.
12. Licensee agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, architect, engineer, or other entity or person in any way involved in the performance of Work on the project contemplated by this License to self-insure its obligations to City. If Licensee's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Licensee, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
13. The City reserves the right at any time during the term of this License to change the amounts and types of insurance required by giving the Licensee ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Licensee, the City will negotiate additional compensation proportional to the increased benefit to City.
14. For purposes of applying insurance coverage only, all contracts pertaining to the project will be deemed to be executed when finalized and any activity commences in furtherance of performance under this License.
15. Licensee acknowledges and agrees that any actual or alleged failure on the part of City to inform Licensee of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

16. Licensee will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this License. This obligation applies whether or not the Agreement is canceled or terminated for any reason. The insurance shall include but not be limited to products and completed operations and discontinued operations, where applicable. Termination of this obligation is not effective until City executes a written statement to that effect.
17. Licensee agrees to waive its statutory immunity under any workers' compensation statute or similar statute, in relation to the City, and to require all subcontractors and any other person or entity involved in the project contemplated by this License to do likewise.
18. Requirements of specific coverage features are not intended as limitations on other requirements or as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be all-inclusive.
19. Any provision in any of the construction documents dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this License and are intended by the parties to be interpreted as such.
20. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the project that is the subject of this License and evidencing products and completed operations coverage for not less than two years after issuance of a final certificate of occupancy by all appropriate government agencies or acceptance of the completed work by City.
21. Licensee agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to change City or Licensee for the cost of additional insurance coverage required by this License. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.