



CITY COUNCIL AGENDA REPORT



DEPARTMENT: City Manager's Office

MEETING DATE: August 1, 2017

PREPARED BY: Oliver Chi, City Manager /
Lauren Vasquez, Deputy City Manager

AGENDA LOCATION: AR-1

TITLE: Exclusive Negotiating Agreement with Robhana Group, Inc., Related to the Potential Development of a Project that Includes a Public Parking Structure in Old Town Monrovia

OBJECTIVE: To approve an Exclusive Negotiating Agreement (ENA) with the Robhana Group (RG) to assess the feasibility of developing a public-private partnership project to increase the supply of public parking in Old Town

BACKGROUND: During the past several months, staff has been assessing a variety of possible options to increase the supply of available public parking in Old Town. One of the options that we have been analyzing involves a possible partnership project RG, which acquired the office building at 111 West Lemon Avenue in mid-2015. That office building is located just east of the City parking lot situated between Lime Avenue to the north, Lemon Avenue to the south, Primrose Avenue to the west, and Myrtle Avenue to the east (Lemon / Lime Parking Lot).

RG is a privately-held real estate investment firm with key projects and holdings of Class-A office buildings in locations throughout Southern California. Staff has discussed the possibility of partnering with RG to leverage the property they own, along with the Lemon / Lime Parking Lot, to possible develop a medical office facility that incorporates a public parking structure.

ANALYSIS: In order to vet and explore the possible public-private partnership project, staff is proposing that we enter into a non-binding Exclusive Negotiating Agreement (ENA) with RG. The proposed ENA was developed to provide the real estate firm with the assurances and time needed to properly assess and analyze all elements related to the proposed initiative. Pursuant to the ENA (Attachment A), key provisions of the agreement include the following:

- Initial term of the ENA would be for an approximate five month period through January 1, 2018.
- RG would be responsible for assembling a development team to refine the conceptual project and determine overall project costs.
- In order to ensure that no City funds are expended during this initial assessment period, RG would be required to deposit \$10,000 with the City for use towards actual and reasonable out-of-pocket costs associated with the Project and incurred during the term of the ENA.
- Both the City and RG would continue negotiations towards establishing a formal development agreement during the term of the ENA.

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FISCAL IMPACT: There is no fiscal impact to the City by approving the ENA with RG. Furthermore, pursuant to the proposed ENA, RG would be required to deposit \$10,000 with the City for use towards paying any actual and reasonable out-of-pocket costs associated with analyzing the Project.

ENVIRONMENTAL IMPACT: There are no environmental impacts associated with approving an ENA with TSA.

OPTIONS: The following options are presented for City Council consideration:

- 1) Approve the proposed Exclusive Negotiating Agreement (Attachment A) with Robhana Group.
- 2) Do not approve the proposed Exclusive Negotiating Agreement with Robhana Group.

RECOMMENDATION: Staff recommends that the City Council select Option 1, thereby approving the proposed Exclusive Negotiating Agreement with Robhana Group.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to approve the proposed Exclusive Negotiating Agreement with the Robhana Group, Inc., and authorize the City Manager to execute the necessary documents in a form approved by the City Attorney.

EXCLUSIVE NEGOTIATING AGREEMENT

THIS EXCLUSIVE NEGOTIATING AGREEMENT (“Agreement” and / or “ENA”) is made and entered into this 1st day of August, 2017 (“Effective Date”), by and between the City of Monrovia (“City”), a California municipal corporation acting in its capacity as both the City and as the Successor Agency to the Monrovia Redevelopment Agency, and Robhana Group, Inc. (“Developer”), a corporation organized in the State of California. City and Developer are sometimes referred to herein individually as a “Party,” or collectively as “Parties.”

RECITALS

- a. The City desires to increase the available supply of public parking in Old Town Monrovia.
- b. The City currently owns the public lots in Old Town Monrovia, which are identifiable by APNs 8516-016-900 and 8516-016-901, and further identified by Exhibit A attached hereto (the “Site”).
- c. Developer owns the building located at 111 West Lemon Avenue in Old Town Monrovia, which is located adjacent to the Site. In addition, Developer is a privately-held real estate development firm actively engaged in the acquisition, development, construction, leasing, and management of real estate properties in Southern California.
- d. The parties hereto, by this Agreement, wish to explore the feasibility and terms by which the Developer could acquire the Site to develop a project that would increase the supply of available public parking in Old Town Monrovia.

NOW, THEREFORE, the Parties agree as follows:

1 Term. From the Effective Date of this Agreement until January 1, 2018 (the “Negotiation Period”), the City and the Developer shall in good faith seek to negotiate the terms upon which the Project can be built on the Site through a mixed-use initiative with the Developer (the “Developer Agreement”). So long as the City and Developer are using good faith efforts during the negotiation period, but have not finalized it by the end of the Negotiation Period, the City Manager shall have the right to extend the Negotiation Period by one (1) period of thirty (30) days. In furtherance of this purpose, the parties shall fulfill their respective obligations set forth herein. If a mutually satisfactory Developer Agreement has not been reached by the City and the Developer during the Negotiation Period (as such period may be extended), then this Agreement shall automatically terminate, without notice, at the end of such period. Upon termination, Developer shall have no further rights under this Agreement regarding the Site and the development thereof.

2 Exclusive Negotiations / Owner Participation. City shall not negotiate with any person or entity other than the Developer regarding the purchase, sale, leasing, transfer, encumbrance, or development of the Site, or any portion thereof, nor shall the City solicit, accept, review or entertain bids or proposals to do so, during the Negotiation Period.

3 Developer Deposit. No later than ten days following City approval of this Agreement, and prior to execution of this Agreement by the City, the Developer shall deposit with the City the amount of \$10,000.00 (the “Deposit”).

3.1 Use of Deposit. The City shall be under no duty to place the Deposit in an

interest bearing account. However, if the Deposit is placed in an interest bearing account, interest earned thereon shall be added to the Deposit for the account of the Developer. The Deposit shall be drawn upon by City to pay actual and reasonable out-of-pocket costs incurred by City during the Negotiation Period for analyzing the feasibility of locating the Project at the Site, including but not limited to the planning studies, appraisal costs, reasonable attorney fees, costs incurred in connection with negotiating and drafting the Developer Agreement provided for in Section 1 of this Agreement, and other costs that are authorized in writing by the Developer.

3.2 Deposit Progress Reports. During the Negotiation Period, upon a request by the Developer, the City shall provide the Developer with written progress reports containing itemizations and reasonably detailed supporting documentation of obligations incurred that are to be or have been paid utilizing Deposit funds, together with copies of receipted invoices for expenditures that have been paid.

3.3 Costs in Excess of Deposit. Before incurring any obligations to be charged against the Deposit that, in the aggregate, would exceed the amount of the Deposit, the Developer shall promptly increase the Deposit with an amount sufficient to meet any such additional costs, and shall do so prior to City being obligated to authorize such work, provided, however, that such additional obligations shall first be approved by Developer, which approval shall not be unreasonably withheld (provided further, however, in the event any such additional costs exceed Five Thousand Dollars (\$5,000.00), Developer shall have the right to terminate this Agreement in lieu of approving such additional costs).

3.4 Disposition of Deposit If Parties Enter Into an Agreement. If the parties enter into a Developer Agreement to sell the Site to the Developer for the Project prior to the end of the Negotiation Period, the City shall apply any unspent and uncommitted balance of the Deposit towards any of the Developer's monetary obligations included in the Developer Agreement.

3.5 Disposition of Deposit If Parties Do Not Enter Into an Agreement. If the parties do not enter into a Developer Agreement to sell the Site to the Developer for the Project because the City and the Developer determine not to go forward with Project at the Site, then the City shall refund any unspent and uncommitted portion of the Deposit to the Developer.

4 City Tasks. Following execution of this Agreement and during the Negotiation Period, the City shall be required to engage in the following tasks:

4.1 Continue good faith negotiations on terms and conditions regarding a Developer Agreement to establish the Project and a mixed-use initiative on the Site.

4.2 Undertake and complete any relevant and necessary studies, surveys, analysis, and / or tasks that are needed to successfully initiate and execute the Developer Agreement to establish the Project and a mixed-use initiative on the Site.

4.3 The City shall provide any and all necessary assistance and documentation to aid in the completion of any studies, surveys, analysis, and tasks required to be reviewed as part of the entitlement process for the establishment of the Project and a mixed-use initiative on the Site.

5 Developer Tasks. Following execution of this Agreement and during the Negotiation Period, the Developer shall be required to engage in the following tasks:

5.1 Continue good faith negotiations on terms and conditions regarding a Developer Agreement to establish the Project and a mixed-use initiative on the Site.

5.2 Undertake such tests, investigations, surveys, inquiries, and due diligence that the Developer deems necessary or appropriate to establish the Project and a mixed-use initiative on the Site.

5.3 Assemble a development team to design, construct, and operate the proposed Project and mixed-use initiative on the Site.

5.4 Pursue conditional financing commitments to pay for the Project and a mixed-use initiative on the Site.

Developer shall pay all costs associated with performing the Developer Tasks.

6 Right of Access. City hereby permits the Developer to access the Site for the purposes of conducting surveys, collecting soil samples, and performing other studies necessary for determining the suitability of the Site for the Project contemplated by this Agreement.

7 Site Access Indemnification. The Developer shall indemnify, defend and hold the City, its employees, officers, agents and representatives harmless against any claim for damages to person or property arising from any activity of the Developer, its employees, officers, agents, representatives, contractors, subcontractors or consultants on the Site. The City shall indemnify, defend and hold the Developer, its employees, officers, agents and representatives harmless against any claim for damages to person or property arising from any activity of the City, its employees, officers, agents, representatives, contractors, subcontractors or consultants on the Site.

8 Access to Reports and Studies.

8.1. City shall provide Developer with all documents and information in City's possession, if any, regarding the environmental and soils conditions of the Site and the availability and capacity of utility services to the Site.

8.2 Provided that disclosure will not compromise the exemption, if any, of the documents from public inspection under the California Public Records Act, City shall provide Developer access to all studies, reports and analyses in City's possession or secured in performance of the City Tasks.

8.3 Provided that disclosure will not compromise the exemption, if any, of the documents from public inspection under the California Public Records Act, Developer shall provide City access to all studies, reports and analyses secured in performance of the Developer Tasks.

9 Limitations. This Agreement does not constitute a disposition of property or exercise of control over property. It is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof. By its execution of this Agreement, City is not committing itself to or agreeing to (a) enter into a Developer Agreement with the Developer, (b) sell or acquire land, (c) effect any changes to City zoning ordinances or the City General Plan or (d) undertake any

other acts or activities requiring the subsequent independent exercise of discretion by the City or any agency or department thereof. Developer understands and acknowledges that any agreement resulting from the negotiations hereunder shall become effective only after and only if such Developer Agreement has been considered and approved by the City Council at a public hearing called for such purpose.

10 Separate Document. This ENA shall stand separate and independent of any and all other agreements, including, but not limited to any future development agreement, joint development agreements (JDA), or development agreements of any form.

11 Notices. Formal notices, demands, and communications between the Parties shall be sufficiently given if personally delivered, transmitted by email, facsimile reproduction, or dispatched by first class mail postage prepaid to the principal offices of City and the Developer as follows:

DEVELOPER:

Robin Hanasab
President
Robhana Group, Inc.
606 S. Olive St., Suite 600
Los Angeles, CA 90014
Phone: (213) 683-8000 ext 102
Robin@Robhana.com

CITY:

Oliver Chi
City Manager
City of Monrovia
415 South Ivy Avenue
Monrovia, CA 91016
Phone: (310) 663-9837
ochi@ci.monrovia.ca.us

12 Assignment. Developer may not assign its rights and obligations under this Agreement except with the approval of the City. Notwithstanding the foregoing, Developer shall have the right to assign its rights and obligations under this Agreement to a limited partnership or limited liability company in which Developer or its affiliate acts as a general partner or managing member, as applicable, pursuant to a form of assignment agreement approved by the City..

13 Attorney's Fees. In the event either party shall bring legal action to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs as part of its judgment.

14 No Third-Party Beneficiary. This Agreement is entered into for the benefit of the City and the Developer, and not for any other person. No other person shall have any rights, benefits or obligations with respect to, or under, this Agreement, its execution, performance or non-performance.

15 Entire Agreement. This Agreement represents the entire agreement of the Parties and

supersedes all negotiations or previous agreements between the Parties with respect to the development of the Project Scope. This Agreement may not be amended except in writing signed on behalf of both Parties.

16. Non-Recourse to Agents. No member, official, employee, agent, or consultant of any party to this Agreement shall be personally liable to any other party, or any successor in interest or person claiming by, through or under any party, in the event of any default or breach, or for or on account of any amount which may be or become due, or in any claim, cause or obligation whatsoever under the terms of this Agreement.

17. Actions by the City. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the City, the approval, consent, authorization, or waiver of the City Manager of the City shall constitute the approval, consent, authorization or waiver of the City without further action of the City Council.

18. Relationship of the Parties. The subject of this Agreement is a private development with neither party acting as the agent of the other party in any respect. None of the provisions in this Agreement shall be deemed to render the City a partner in the Developer's business, or joint venture or member in any joint enterprise with the Developer.

19. Cooperation. In connection with this Agreement, the Developer and the City shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, the Developer and the City shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything that this Agreement contemplates that the party shall do to accomplish the objectives and purposes of this Agreement.

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In witness whereof the Parties have had their duly authorized officers execute this Agreement this _____ day of _____, 2017.

CITY:

CITY OF MONROVIA

By: _____
Oliver Chi, City Manager

ATTEST:

By: _____
Alice Atkins, City Clerk

APPROVED AS TO FORM:

By: _____
Craig Steele, City Attorney

DEVELOPER:

ROBHANA GROUP, INC.

By: _____
Robin Hanasab, President

EXHIBIT A
“SITE”



The Site is comprised of the two parcels highlighted above, which include properties identifiable by APNs 8516-016-900 and 8516-016-901.