



Monterey County

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Board Report

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Current Status: Agenda Ready

Matter Type: General Agenda Item

- a. Consent and Agree to an Amended and Restated First Implementation Agreement with UCP East Garrison, LLC; and
- b. Authorize the Director of the Resource Management Agency to sign the agreement.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Consent and Agree to an Amended and Restated First Implementation Agreement with UCP East Garrison, LLC; and
- b. Authorize the Director of the Resource Management Agency to sign the agreement.

DISCUSSION:

The East Garrison Project is a mixed use residential development project that is the subject of a Disposition and Development Agreement (DDA) approved by the former Redevelopment Agency in 2005. The Project consists of a mixed use development of up to 1,470 dwelling units (including low- and moderate-income housing); approximately 34,000 square feet of commercial, retail and community uses; the rehabilitation of historic structures; and the development of certain public facilities, including a fire station, library and Sheriff sub-station, and requires Agency financial assistance to pay for a portion of certain aspects of the Project, including public facilities, affordable housing and historic preservation and renovation. The Project also contemplates that the Agency shares in any profits achieved by the developer above Project Costs.

On June 28, 2011, as part of the budget process and without any substantive hearings, the State Legislature adopted the Dissolution Act, which restricted the powers of, and eventually dissolved, redevelopment agencies. Successor agencies were created as part of the Dissolution Act, and tasked with completing and winding down previously approved redevelopment activities and agreements. Although the former Redevelopment Agency took all necessary actions to continue to operate, the California Supreme Court struck down that part of the law as unconstitutional.

Coincidentally, also on June 28, 2011, but prior to the adoption of the Dissolution Act, the former Redevelopment Agency approved a First Implementation Agreement with UCP East Garrison LLC. The First Implementation Agreement was the product of months of negotiations, and formally recognized UCP East Garrison as the Master Developer under the DDA, and the assignment to UCP of all the rights and obligations of the Master Developer.

The State Department of Finance has taken a position that the First Implementation Agreement was not authorized under the Dissolution Act. Accordingly, it contends that none of the Agency obligations under the East Garrison DDA (which the DOF does recognize as valid) can be funded without some sort of assignment/amendment that DOF approves. Further, DOF has stated that it will not approve any such agreement unless it reduces the financial obligations of the Successor Agency.

Staff of the Successor Agency has attempted in various ways to address DOF's professed concerns. A more detailed discussion of these efforts is contained in Attachment 1. While the Successor Agency authorized the filing of a lawsuit to resolve this dispute, which has been filed, staff also recommends attempting to meet DOF's stated concerns if it can be done in a way that does not harm the East Garrison Project.

The proposed Amended and Restated First Implementation Agreement (Attachment 2) maintains the essence of the original First Implementation Agreement so as to reflect the parties' continuing belief that the original agreement was, and continues to be an authorized and effective legal document. It does, however, include a provision that reduces the total amount of financial assistance from the (now) Successor Agency by \$1 million. This reduction meets the stated aim of DOF and does not jeopardize the completion of the East Garrison Project.

If this Amended and Restated First Implementation Agreement is approved by the Successor Agency and the County consents and agrees, it must still be reviewed and approved by the Oversight Board and then the DOF. Staff does not know if the DOF will continue to raise objections to the "assignment" of the East Garrison Project's rights and obligations under the DDA to UCP East Garrison LLC, but if this is accepted, it might be able to be a basis for settlement of the lawsuit.

OTHER AGENCY INVOLVEMENT:

County and Successor Agency Counsel have reviewed the Amended and Restated First Implementation Agreement and approved it as to form.

FINANCING:

There is no negative impact to the County as a result of approving the amended and restated First Implementation Agreement. Currently, the staff costs associated with processing this amended and restated First Implementation Agreement are funded under the respective FY 2016-17 Adopted Budgets. Should the Department of Finance approve an Amended Recognized Obligation Payment Schedule (ROPS) there may be an opportunity for these applicable staff costs to be reimbursed by the Successor Agency as part of the Administrative Cost allowance.

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Reviewed by: John Guertin, RMA Acting Deputy Director
Approved by: Carl P. Holm, AICP, RMA Director

The following attachments are on file with the Clerk of the Board:

Attachment 1 - Discussion of Staff Efforts to Address DOF Concerns

Attachment 2 - Amended and Restated First Implementation Agreement to Disposition and Development Agreement between the Successor Agency to the Redevelopment Agency of the County of Monterey and UCP East Garrison, LLC