



CITY COUNCIL STAFF REPORT



December 7, 2021

ITEM TITLE

Contract Amendment: Consider Approving the Third Amendment to the Real Property Purchase and Sale Agreement with Tecture Red, LLC for 224 Third Avenue

Report Number: 21-0233

Location: 224 Third Avenue

Department: Economic Development

Environmental Notice: The Project qualifies for an exemption pursuant to the California Environmental Quality Act State Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning); Section 15332 Class 32 (In-Fill Development Projects); and Section 15061(b)(3).

Recommended Action

Consider adopting a resolution approving the third amendment to the Purchase and Sale Agreement with Tecture Red LLC for 224 Third Avenue.

SUMMARY

In April 2019, the City Council approved the Real Property Purchase and Sale Agreement with Tecture Red, LLC ("Proposed Buyer") for 224 Third Avenue to allow the Proposed Buyer to develop that parcel in its redevelopment of the adjacent Vogue Theatre. In December 2020, the City Council approved a second amendment to the purchase and sale agreement to allow additional time for the Proposed Buyer to consider impacts of the pandemic on the entertainment industry while completing and submitting construction documents to the City and providing proof of financing. Staff has been in communication with the Proposed Buyer throughout the pandemic and has been monitoring the deadlines set forth in the approved amendment to the agreement. The Proposed Buyer has requested additional time to submit complete construction documents and pull permits as found in the proposed third amendment to the agreement that is the subject of this action. As the Proposed Buyer is currently in default due to its failure to meet the deadlines in the agreement, should the City Council elect not to approve the third amendment, City staff would proceed to terminate the agreement in accordance with the contract terms.

ENVIRONMENTAL REVIEW

The proposed Project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the Project qualifies for an exemption pursuant to State CEQA

Guidelines Section 15183 (Projects Consistent with a Community Plan or Zoning); Section 15332 Class 32 (In-Fill Development Projects); and Section 15061(b)(3), because the proposed project would not result in a significant effect on the environment, create a cumulative impact, damage a scenic highway, or cause a substantial adverse change in the significance of a historical resource. Thus, no further environmental review is required.

BOARD/COMMISSION/COMMITTEE RECOMMENDATION

Not applicable.

DISCUSSION

In February 2015, the City Council authorized the purchase of the vacant 0.14-acre parcel at 224 Third Avenue, directly north of the Vogue Theater, for a purchase price of \$260,000. The City's acquisition of the subject parcel was an open-market opportunity purchase made with the intent of holding the property for future use as an economic incentive to encourage redevelopment of the adjacent Vogue Theater.

In April 2019, the Real Property Purchase and Sale Agreement and Joint Escrow Instructions ("Agreement") was presented to and approved by the City Council. Escrow opened on May 29, 2019 with a deadline for the Proposed Buyer to close escrow on the property no later than November 29, 2020. Prior to close of escrow, the Agreement stipulated that building permits would need to be pulled and other requirements would need to be met by the Proposed Buyer to help ensure timely completion of the project.

In February 2020, staff provided a 90-day performance monitoring letter to the Proposed Buyer advising that complete construction drawings would need to be submitted to the City by April. Shortly after the letter was sent, the Coronavirus pandemic reached San Diego County in mid-March of 2020.

During the pandemic the Proposed Buyer requested additional time to meet the deadlines in the agreement, the parties entered into a first amendment to the agreement which administratively extended escrow to December 29, 2020 to allow time for City Council consideration of an additional extension. In December of 2020, the City Council approved the second amendment to the agreement which authorized a two- year extension to the deadlines in the agreement. It was staff's intention that the second amendment would provide the Proposed Buyer with additional time while the economy stabilized during the remainder of the pandemic and until music/entertainment venues could open and operate.

Due to the Coronavirus pandemic, the Proposed Buyer has continued to experience difficulties moving forward with the design of the construction documents and financial furtherance of the project and is requesting additional time via a third amendment to the agreement. To safeguard the City's property and encourage its future development, staff incorporated the modifications of the below performance measures within the third amendment to the agreement. Failure to meet any of the below standards on or before the extended date for close of escrow would result in City not transferring the property to the Proposed Buyer. Proposed updates to the deadlines from the second to third amendment are shown in the following table in ~~strikeout~~/underline.

| Task | Description | Deadline |
|-------------|---------------------------------------------------------|------------------------------------------|
| 17.a. | Submit 100% complete construction documents to the City | November 29, 2021 <u>2022</u> |
| 17.b. | Provide proof of financing | November 29, 2022 |

| | | |
|-------|-----------------------------------------------|----------------------------------------------|
| 17.c. | Pull permits | November 29, 2022 May 31, 2023 |
| 17.d. | Maintain adjacent property, The Vogue Theater | Ongoing |

The close of escrow date would also change to June 30, 2023 to allow the above deadlines to be met. Should the amendment to the Agreement be approved, the Proposed Buyer will be required to provide quarterly progress reports over the course of the next 12 months. At close of escrow, the property sale price of \$210,000 would remain the same as was determined to be fair market value at the time the Agreement was entered into. Additionally, due to the extended delay, exterior maintenance and upgrades to the Vogue Theater will continue to be required. The Proposed Buyer has made improvements to the adjacent site such as the addition of exterior lighting and painting/maintaining a clean façade. Additional facade improvements will be made as a show of good faith in furthering the project. Costs for the improvements will be paid by the Proposed Buyer as they own the Vogue property. The Proposed Buyer is currently in default and should the City Council not elect to approve the third amendment, City staff will proceed to terminate the agreement in accordance with the contract terms.

The Vision and Use

Tecture's mission for the Vogue Theater is to embrace and celebrate the existing culture of Chula Vista and Third Avenue while providing an entertainment venue that stimulates the region and cultivates South San Diego's creative scene. The Vogue Theater has been a symbol of Third Avenue for over 70 years and has historical and sentimental significance to the community. The theater's location on Third Avenue offers enormous potential to further improve the business district by offering a family-friendly entertainment option to complement the existing eateries and retail stores. The proposed remodel is anticipated to be a catalyst to encourage further revitalization on Third Avenue.

Tecture's vision for The Vogue is to preserve the theater's historic attributes while providing an entertainment alternative to the single-screen theater model. The space is designed as an all-ages and family friendly venue for an estimated 500-1,000 seats. The venue would offer on-site alcohol and food sales to support the theater's operation. Tecture's intent is to support and compliment the local craft beer tasting rooms and local dining establishments to ensure there is non-direct competition.

A draft preliminary concept design proposes an approximate total of 6,189 square feet of interior and exterior improvements. The project proposal includes the addition and remodel of: the box office, a single-screen and entertainment space, downstairs main floor bar, upstairs marquee bar, mezzanine seating, and multi-function spaces. The exterior remodel and proposed build-out onto the 0.14-acre parcel include an outdoor game area, communal seating, a lounge for live music and movie viewing, fixed food service area, green rooms, storage rooms, an outdoor screen surrounded by communal tables and a food/mobile truck access point. These features and activities will be best enjoyed in a post-COVID-19 environment. The intended buyer envisions being one of the first safe entertainment venues to open post-COVID-19 with new health safeguards in place.

About Tecture

Tecture is a design and fabrication studio of designers, craftsmen, artists and builders who pride themselves on bringing alluring and functional concepts to life. Tecture has experience in taking a project from the initial

idea and concept through the design and construction process to completion. The studio offers a wide breadth of services including concept design, interior design, exterior design, space planning, custom furnishings, fabrication, project management, construction administration and general contracting in the retail, commercial, residential and service industries. Their portfolio of featured design-build projects in San Diego County includes Nolita Hall, Kettner Exchange, George's at the Cove, Firehouse American Eatery, Bivouac Ciderworks and more. Slade Fischer is currently serving on the Third Avenue Village Association 2021 Board of Directors.

DECISION-MAKER CONFLICT

Staff has reviewed the property holdings of the City Council and has found that Mayor Mary Casillas Salas has real property holdings within 1,000 feet of the boundaries of the property which is the subject of this action. Consequently, pursuant to California Code of Regulations Title 2, sections 18700 and 18702.2(a)(7), this item presents a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.) for the above-identified member.

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision-maker conflict of interest in this matter.

CURRENT-YEAR FISCAL IMPACT

There is no current year fiscal impact by approval of the amendment to agreement.

ONGOING FISCAL IMPACT

There is an anticipated impact of \$210,000 as one-time revenue to the City's General Fund from the property's sale at the close of escrow. Additionally, the sale will convert the once government-owned tax-exempt property into a taxable parcel resulting in future property tax revenue.

ATTACHMENTS

1. Third Amendment to Real Property Purchase and Joint Escrow Instructions

Staff Contact: Miranda Evans, Special Projects Manager