



REPORT TO CITY COUNCIL

Approved by:

Gary Conte, Planning Manager

Arnoldo Rodriguez, City Manager

Council Meeting of: August 5, 2020

Agenda Number: B-9

SUBJECT:

Agreement with Pacific West Communities, Inc. and Related Parties to Ensure Precise Plan Compliance (Downtown Residential-Veterans and Multi-family Housing Projects)

RECOMMENDATION:

Adopt a minute order authorizing the City Manager to enter into an agreement with Pacific West Communities, Inc. and related parties.

SUMMARY:

The City approved Precise Plans (PPLs) 2018-03 and 2018-04 include conditions specific to building elevation elements, material and colors consistent with approved building elevation concepts. Significant modifications to the approved elevations are subject to amendment(s) to the affected PPL. Building elevations submitted for plan check and issuance of a Building Permit were not in substantial compliance of the approved Conditions of Approval. Per Pacific West Communities, issuance of the Building Permits by August 14, 2020 is a funding requirement of the projects. Insufficient time exists to correct and resubmit plans for approval and to issue Building Permits by August 14, 2020. The proposed Agreement enables and requires the Applicant to correct building elevation deficiencies to the City satisfaction subsequent to the issuance of building permits.

DISCUSSION:

PPLs 2018-03 and 2020-04 were approved in October 2019. Elevations, as approved and attached to the Conditions of Approval, specified architectural treatments including varied wood, metal and plaster siding, pop-outs, window treatments, overhangs, balconies and a minimum three-colored exterior painting. First and second submittal plans for City review and Building Permit approval in May 2020 and July 2020, respectively did not reflect architectural treatments illustrated in the elevations approved or described in the Conditions of Approval. For example, fiber cement board was used exclusively for siding.

As affordable housing projects, both projects are subject to a series of federal and State funding programs. The funding programs include conditions such as strict adherence to pre-determined schedules (i.e., issuance of Building Permits). Failure to comply, jeopardizes receipt of funds. Building Permits for both

projects must be issued no-later than August 14, 2020 to comply with funding program specifications. Insufficient time exists to correct and resubmit plans for approval to issue Building Permits by August 14, 2020.

The proposed Agreement enables Building Permits to be issued on or before August 14, 2020 and for the City to work with the Applicant to bring the projects in compliance with the approved Conditions of Approval. Agreement includes specifications such as adding one or more additional material to create greater variation of tone and texture, modification of window detailing and/or replacement of window type, addition of window sunshade awnings, street trees to diffuse building massing and revised color pallet. Project plans will be corrected to the satisfaction of the City. Costs for corrections to plans and all subsequent change orders will be borne by the Applicant. Final inspection and occupancy permit will be subject to corrections being implemented.

FISCAL IMPACT:

City will not be fiscally impacted by the Authorization of an Agreement between the City and Pacific West Communities, Inc. and related parties. Costs necessary to bring the site plans in compliance with approved PPL Conditions of Approval will be borne by Pacific West Communities, Inc. and related parties.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

The PPLs Conditions of Approval were developed with specific design criteria to implement the City's vision statements and policies. The first of the four vision statements, "A Well-Planned City" promotes affordable, quality housing that is accessible to all its residents." Policy CD-33 of the General Plan states "The exterior of residential buildings shall be varied and articulated to provide visual interest to the streetscape." The architectural quality of the buildings as defined by the PPLs Conditions of Approval advances both the vision statement and policy and are intended to provide visual interests to the City's Downtown streetscape.

ALTERNATIVES:

Should Council take no action on the Agreement, project financing will be jeopardized. Should the request be denied, the projects would likely not be constructed.

ATTACHMENTS:

1. Agreement for Amendment of Site Plans to Substantially Comply with the Conditions of Approval for Precise Plans 2018-03 and 2018-04

**AGREEMENT FOR AMENDMENT OF SITE PLANS TO SUBSTANTIALLY COMPLY WITH
CONDITIONS OF APPROVAL FOR PRECISE PLANS 2018-03 AND 2018-04**

This Agreement is entered into effective the ____ day of August, 2020, between the City of Madera, a Municipal Corporation, herein referred to as “City” and Pacific West Communities, Incorporated, a Professional Corporation, herein referred to as “Applicant.”

RECITALS

WHEREAS, City approved Precise Plan 2018-03 and Precise Plan 2018-04 (“Precise Plans”) in October 2019 for the Downtown Residential – Veterans and Multi-Family Housing Projects submitted by Applicant, for the property generally located at the corner of North C Street and 5th Street; and

WHEREAS, the Conditions of Approval for the Precise Plans included conditions specific to building elevation elements, material and colors consistent with approved building elevations concepts attached to said Conditions of Approval; and

WHEREAS, the building elevations submitted for plan check, approval, and issuance of a Building Permit are not in substantial compliance with Conditions of Approval; and

WHEREAS, the Project has received funding from multiple sources and requires issuance of a Building Permit on or before August 14, 2020; and

WHEREAS, there is insufficient time for the Applicant to prepare, submit, and obtain approval of updated building elevations from the City on or prior to August 14, 2020; and

WHEREAS, Applicant has represented to the City that the failure to receive Building Permit on or before August 14, 2020, will jeopardize Project funding; and

WHEREAS, project may proceed with construction allowed under a grading permit and building permit; and

WHEREAS, City is desirous of ensuring that affordable housing gets built in the City and is amenable to issuance of a building permit(s) if Applicant shall immediately commence work on amendment of the building elevations consistent with the Precise Plans Conditions of Approval and obtains approval of the same from the City within a reasonable period of time; and

WHEREAS, this Agreement is subject to approval as to legal form by the City Attorney.

AGREEMENT

Based on the foregoing recitals and the terms and conditions herein, City and Applicant agree as follows:

A. APPLICANT REQUIREMENTS

1. Applicant has retained Paul Halajian Architects (PHA) and Applicant and PHA understand that time is of the essence and commit to the following in consideration of the City's issuance of the building permits.
 - a. In consultation and coordination with the City, Applicant will develop revised elevations for both Precise Plans (PPLs) 2018-03 (Downtown Residential – Veteran's Housing) and 2018-04 (Downtown Residential – Multi-Family Housing) projects previously approved by the City ("Revised Elevations").
 - b. The Revised Elevations shall include one or more additional material to create greater variation of tone and texture.
 - c. The Revised Elevations shall remove or modify window inserts details or make windows larger.
 - d. The Revised Elevations shall include sunshade awnings at some, but not all windows. Focus will be on the south and west exposures and street frontage windows.
 - e. The Revised Elevations shall include the provision of street trees placed in tree wells and revisions to the irrigation system sufficient to sustain and support health of street trees.
 - f. The Revised Elevations shall contain a revised color palette to meet City preference of blue and grey tones.
 - g. Initial revisions of the Revised Elevations shall be prepared in the form of one or more schematic drawings to illustrate building elevation corrections prior to submittal of revised detailed construction plans and specifications to City for approval.
2. The Revised Elevations shall be updated, revised, or modified to the satisfaction of the City as the City determines in its sole discretion is reasonably necessary to bring the Revised Elevations into consistency with the Conditions of Approval. Applicant commits to complete the Revised Elevations for submission to City within 180 days of the date of this Agreement.

3. Applicant shall perform the requirements of this Agreement at no expense to City. Applicant shall bear design, permitting, inspection and change order costs and fees incurred to implement this Agreement, and shall pay the City for all costs associated with processing and approving the Revised Elevations, the preparation and approval of this Agreement, and any other related expenses incurred by the City.
4. Applicant agrees that it is not entitled to final inspection or the issuance of an occupancy permit until the Revised Elevations have been approved by the City, and building is constructed in accordance with said Revised Elevations.

B. CITY RESPONSIBILITIES:

1. City shall issue building permit(s) for PPLs 2018-03 and 2018-04 on or before August 14, 2020.
2. Where applicable, City may grant the right-to-construct tree wells and supportive improvements and tree plantings in the public right-of-way.
3. If the Revised Elevations are not resolved by the time construction arrives at the stages of façade construction, City has the authority to stop construction until resolved.
4. Nothing herein requires that City issue occupancy permits that do not meet City standards and applicable codes.

C. ADDITIONAL REQUIREMENTS

1. It is understood and agreed that Applicant and the Applicant's Architect are and shall remain independent contractors under this Agreement.
2. To the furthest extent allowed by law, Applicant agrees to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Applicant or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making or performance of this Agreement; (ii) the design, installation, operation, removal or maintenance of the work, including those associated with the Improvements, by Applicant and Applicant's employees, officers, agents, contractors or subcontractors; (iii) the inspection, maintenance, or other work, including those associated with the Improvements, by City including that necessitated by

Applicant's failure to timely perform under this Agreement; and iv) the refusal by a subsequent owner to comply with this Agreement. Applicant's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

3. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
4. If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.
5. Except as provided by Paragraph 4 regarding attorney's fees and legal expenses, in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed Applicant's sole legal remedy for breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.
6. The provisions of this Agreement shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any one provision thereof. The Courts shall liberally interpret this Agreement in favor of the City and any benefited properties.
7. This document shall constitute an Agreement in favor of the City of Madera and shall run with the land subject to the Precise Plans and be binding upon the undersigned, its grantees, heirs, and successors and assigns. The Applicant shall provide to every prospective purchaser of any portion of the property subject to the Precise Plans of notice of this Agreement and its obligations.

8. This Agreement shall remain in full force and effect until such time as the City approves the Revised Elevations, and is paid in full for all of its costs. Notwithstanding, Paragraphs 2, 4, and 5 of this Section shall survive termination of this Agreement. The Planning Manager or Director of the Planning Department of the City of Madera is authorized to issue and record a release of this Agreement with the Madera County Recorder.
9. This Agreement requires Applicant to obtain a subordination agreement from any person, entity, partnership, or corporation that may have a beneficial interest in the property subject to the Precise Plans. The subordination agreement(s) shall be in the form approved by the City and shall be recorded at the same time that this Agreement is recorded.

IN WITNESS WHEREOF, the parties duly executed this Agreement.

CITY OF MADERA:

By: _____
Arnoldo Rodriguez, City Manager

ATTEST:

By: _____
Alicia Gonzales, City Clerk

APPROVED AS TO FORM:

By: _____
Hilda Cantú Montoy, City Attorney

COVENANTOR:

Pacific West Communities, Incorporated

By: _____ *

Print Name:

Title: President and Chief Executive Officer

*NOTARY ACKNOWLEDGEMENT
REQUIRED