

CITY OF YUBA CITY  
STAFF REPORT

**Date:** March 20, 2007  
**To:** Honorable Chairperson & Directors of the Redevelopment Agency  
**From:** Administrative Services  
**Presentation By:** Steven C. Kroeger, Assistant City Manager

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**Summary**

**Subject:** Exclusive Right to Negotiate Agreement with Meridian Property Company  
**Recommendation:** Authorize the Executive Director of the Redevelopment Agency to Execute and Implement an Exclusive Right to Negotiate Agreement with Meridian Property Company for approximately 4.09 acres located at the corner of Plumas Street and Franklin Avenue (APN 52-380-016 and 52-380-020).  
**Fiscal Impact:** None to Agency. Reimbursement of \$23,896 for environmental assessment and work plan preparation costs incurred by the developer and will be paid by the former property owner.

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**Background:**

The Redevelopment Agency (Agency) received a proposal in spring 2005 from Meridian Property Company (Developer) to purchase land in the Town Center. The Developer proposed to develop a medical/professional office space for lease/or sale. The subject property is a 4.09 acre parcel at the northeast corner of Plumas and Franklin.

The Agency continues to negotiate with the Developer regarding the acquisition of the property. However the Exclusive Right to Negotiate (ERN) and other agreements have expired; therefore, staff proposes that the Agency initiate a new period of exclusive negotiations for the property. The following is a background of the negotiations.

- |            |   |
|------------|---|
| March 2005 | • Agency and Developer enter into the ERN   |
| July 2005  | • Both parties agree to extend the first ERN for 60 days.   |
|            | • Parties enter into a Right of Entry agreement in order to provide for time for environmental testing.   |
|            | • Right of Entry provide that the Developer would pay initial environmental cost associated with the Phase 2 Environmental Assessment – not to exceed \$20,000. |
|            | • If Agency and Developer enter into a DDA for the site, the cost of the Phase 2 Environmental Assessment are to be deducted from the purchase price.           |

- If the parties do not enter into a DDA, cost of the Phase 2 Environmental Assessment to be reimbursed to the Developer.
- September 2005
- Agency and Developer agree to postpone final negotiations in order to provide additional time for the environmental site assessment.
  - First ERN expires.
- April 10, 2006
- Right of Entry expires.
  - The parties acknowledge that Developer incurred \$23,896 in environmental assessment and work plan preparation cost associated with the Property.

Meridian Property Company is a subsidiary company of the national real estate holding company, The Marcus & Millichap Company. Meridian specializes in commercial real estate development that focuses on acquisition of vacant infill parcels of land where it can construct new professional and medical offices. William Powell is president and the main contact for this project. The company is located in San Ramon, California.

**Analysis:**

The purpose of the ERN is to establish procedures and standards for negotiations between the Agency and the developer leading up to the preparation of a Disposition and Development Agreement (DDA) for acquisition and development of the property within the redevelopment project area. The ERN provides the developer with the security that the Agency is not negotiating with any other developer while the developer conducts feasibility studies and preliminary plan designs necessary for meaningful negotiations of a DDA. It also provides the Agency the opportunity to determine whether the developer is able to perform essential pre-development tasks before the Agency is bound to that developer by the DDA, as well as provides the Agency time to continue with the environmental site work necessary to sell the site.

The ERN includes identification of the Developer, a term of 120 days to exclusively negotiate with one another that may be extended by mutual agreement for an additional 60 days, and a \$10,000 good faith deposit. The ERN also provides for reimbursement of environmental remediation costs incurred by the developer for environmental assessment and work plan preparation costs associated with the property, right of entry to the property to conduct inspections, surveys, soils testing, engineering field inspections and other evaluations, and compliance with applicable laws and regulations. Hereafter, the City will be taking the lead on the environmental work.

**Fiscal Impact:**

The ERN provides for reimbursement of environmental remediation costs incurred by the developer for environmental assessment and work plan preparation costs associated with the Property totaling \$23,896 (the "Costs"). If the Developer and Agency proceed with a DDA for the acquisition of the property the Costs will be deducted from the Purchase Price for the Property to be paid by the Developer under the DDA. Should the Agency and the Developer not enter into a DDA for purchase of the property; the Agency will reimburse the Developer for the Costs.

Notably, the Agency has a Reimbursement Agreement with Yuba City Steel Products Company (Yuba City Steel) in which Yuba City Steel agrees to reimburse the Agency for costs incurred in connection with the remediation of hazardous materials on the Property. Yuba City Steel's responsibility for cleaning up and remediating the property was established in the Acquisition

Agreement between the Agency and Yuba City Steel when the Agency acquired the property in 1991. The \$23,896 incurred by Meridian has already been reimbursed by Yuba City Steel and is being held by the Agency. Total future remediation efforts related to the Property are estimated at \$290,000, which includes the \$23,896 that has already been spent.

Pursuant to the first ERN, the Developer deposited a good faith deposit in the amount of \$10,000 into an interest bearing account escrow account (Escrow No. NCS-154996) with first American Title Company. If the parties do not enter into a DDA on or before expiration of this agreement, the deposit will be returned.

**Alternatives:**

1. Approve the ERN amendments. If this alternative is chosen, staff will propose desired amendments to Developer for consideration and bring the modified ERN back for Agency approval at a subsequent meeting.
2. Do not approve ERN. If this alternative is chosen then staff will proceed with environmental remediation efforts.

**Recommendation:**

Approve the ERN with Meridian Property and authorize the Executive Director to execute and implement the agreement.

**Attachments:**

Exclusive Right to Negotiate Agreement  
Map of Subject Parcel

Prepared By:



Steven C. Kroeger  
Assistant City Manager

Submitted By:




Steven R. Jepsen  
City Manager

Reviewed By:

Finance

City Attorney



## EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT

THIS EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of February, 2007, by and between the REDEVELOPMENT AGENCY FOR THE CITY OF YUBA CITY, a public body, corporate and politic (the "Agency") and MERIDIAN PROPERTY COMPANY, a California corporation (the "Developer"), on the terms and provisions set forth below.

### RECITALS

- A. The Agency has been vested with the responsibility to carry out and implement redevelopment activities within the Yuba City Redevelopment Project Area (the "Project Area") pursuant to its authority under the California Redevelopment Law (Health & Safety Code Section 33000, et seq.) and the Redevelopment Plan for the Project Area (the "Redevelopment Plan").
- B. The Agency is the owner of certain real property (the "Property") located within the Project Area at the junction of Plumas Street and Franklin Avenue and further shown on the map of the Property attached hereto as Exhibit "A." The Property is approximately 4.09 acres of currently vacant land zoned for commercial use.
- C. On March 15, 2005, the Agency and Developer entered into an Exclusive Right to Negotiate Agreement (the "First ERN") to initiate a period of exclusive negotiations regarding the acquisition of the Property by Developer.
- D. The Agency and Developer negotiated in good faith during the initial period of exclusive negotiations. On July 14, 2005, the Agency and Developer agreed to extend the period of exclusive negotiations for sixty days.
- E. Although the parties continued to negotiate in good faith, the Agency and Developer agreed to postpone final negotiations regarding the acquisition of the Property, in order to provide additional time for environmental testing of the Property, and to allow time to prepare an updated appraisal of the Property. As a result, the First ERN expired on September 12, 2005.
- F. The Agency and Developer additionally entered into a Right of Entry Agreement (the "Right of Entry Agreement") on July 14, 2005, which permitted the Developer to conduct certain soils and engineering tests on the Property. The Right of Entry Agreement expired on April 10, 2006.
- G. The Right of Entry Agreement also provided that Developer would initially pay for costs associated with the Phase 2 Environmental Assessment (defined in the Right of Entry Agreement) of the Property, provided that the costs of the Phase 2 Environmental Assessment did not exceed Twenty Thousand Dollars (\$20,000.00). Additionally, the Right of Entry Agreement provided that, if the Agency and Developer enter into a DDA for the Site, the costs of the Phase 2 Environmental Assessment, up to but not exceeding Twenty Thousand Dollars (\$20,000.00), shall be deducted from the Purchase Price for the Property to be paid by the

Developer under the DDA. In the event that the parties do not enter into a DDA for the Property for any reason, the Right of Entry Agreement provided that the costs of the Phase 2 Environmental Assessment would be reimbursed to the Developer within 60 days after receipt by the Agency of written demand for reimbursement of costs of the Phase 2 Environmental Assessment.

H. Following execution of the Right of Entry Agreement, Developer incurred \$23,896.00 in costs to Great Pacific Associates in connection with the environmental assessment of the Property, and the development of a work plan for the future environmental remediation of the Property. The Agency subsequently retained Great Pacific Associates to continue the work that was commenced under contract with Developer.

I. Notwithstanding the fact that the First ERN and Right of Entry Agreement have expired, Developer continues to have an interest in acquiring the Property for the purpose of developing medical office space to offer for lease or sale.

J. The Agency and Developer wish to execute this Agreement to initiate a new period of exclusive negotiations between the parties regarding the potential acquisition of the Property by Developer. By signing this Agreement, Agency represents and warrants that, other than this Agreement, it is not in contract with and has not signed any binding agreement with any third party for the acquisition of the Property.

K. The Agency has found that the redevelopment of the Property and the fulfillment generally of this Agreement are for the purpose of community improvement and welfare, for the benefit of the Agency and the Project Area and in accord with the public purposes and provisions of the Redevelopment Plan and applicable federal, state and local laws and requirements.

NOW, THEREFORE, THE AGENCY AND DEVELOPER HEREBY MUTUALLY AGREE AS FOLLOWS:

#### AGREEMENT

1. Incorporation of Recitals. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth in full.

2. Exclusive Negotiations. The Agency and Developer agree to negotiate exclusively with one another regarding acquisition of the Property by Developer, in accordance with the terms and conditions of this Agreement. The Agency agrees that during the term of this Agreement, it will not offer or negotiate with any other person or entity relating to the use, leasing, acquisition or development of the Property without the prior written consent of Developer. During the term of this Agreement, the parties shall negotiate exclusively with each other and shall use good faith, best and diligent efforts in connection with this Agreement and such negotiations.

3. Term. The term of the exclusive right to negotiate set forth in this Agreement shall be for 120 days commencing on the date of execution of this Agreement by both parties. The term of this agreement can be renewed for an additional term of 60 days by the mutual written consent of the parties hereto. Developer can terminate this Agreement at any time on or before expiration

of the term of this Agreement (as extended) upon delivery of a written termination notice to the Agency, in which case (1) Escrow Agent shall return the Deposit to Developer upon Developer's sole instructions to Escrow Agent; and (2) such termination shall automatically constitute Developer's written request for reimbursement of Costs under Section 5 of this Agreement.

4. Deposit. Pursuant to the First ERN, the Developer deposited a good faith deposit (the "Deposit") in the amount of TEN THOUSAND DOLLARS (\$10,000) into an interest bearing escrow account (Account No. NCS-154996) (the "Escrow Account") with First American Title Company (the "Escrow Agent"). Notwithstanding the expiration of the First ERN, the Deposit has remained in the Escrow Account. The parties agree that the Deposit and all interest accrued to date shall remain in the Escrow Account and shall constitute Developer's Deposit under this Agreement. All interest, when received to the account, shall become part of the Deposit. Escrow Agent is hereby instructed that if the parties have not entered into a purchase and sale agreement for the Property on or before expiration of this Agreement, including any extension thereof, then Escrow Agent shall return the Deposit to Developer upon Developer's sole instructions to Escrow Agent, including any interest received thereon, and neither party shall have any further rights against or liability to the other under this Agreement. Any expense or fee due to Escrow Agent associated with the escrow account shall be the sole responsibility of and at the sole cost to Developer. Upon execution of a purchase and sale agreement by the parties, the Deposit, including any interest earned thereon, shall continue to be held by the Escrow Agent in accordance with the terms of the purchase and sale agreement if the agreement requires a Deposit; otherwise, it shall be returned to Developer.

5. Reimbursement of Environmental Remediation Costs. The parties acknowledge that Developer incurred \$23,896.00 in environmental assessment and work plan preparation costs associated with the Property (the "Costs"). The Developer has provided the Agency with all reports, studies, findings and other documentation generated by Great Pacific Associates in connection with the environmental assessment and work plan preparation completed under contract with the Developer. If the Agency and Developer enter into a DDA for the Property, the Costs, shall be deducted from the Purchase Price for the Property to be paid by Developer under the DDA. Should the Agency and Developer for any reason not enter into a DDA for the Property, the Agency shall reimburse the Developer for the Costs. Any such reimbursement shall be paid to the Developer within sixty (60) days after receipt by the Agency of written demand for reimbursement of the Costs. The Agency's obligation to reimburse Developer for the Costs as set forth herein shall supersede and replace the reimbursement obligation as set forth in Section 10 of the Right of Entry Agreement. The reimbursement obligation set forth in Section 10 of the Right of Entry Agreement shall have no further force and effect, upon execution of this Agreement. The Agency's reimbursement obligation set forth in this Section 5 shall survive the expiration or termination of this Agreement.

6. Right of Entry. During the term of this Agreement the Agency grants to Developer, its officers, employees and agents the right to enter upon the Property to conduct inspections, surveys, soil tests (including, but not limited to, Phase II environmental surveys), engineering field inspections and other evaluations as Developer deems necessary. Developer shall give the Agency at least 24 hours prior notice of its intent to enter the property for the purposes set forth above.

7. Indemnification. Developer agrees to indemnify, defend and hold harmless the Agency from and on account of any and all liability, claims losses, damages, injury and liability of any kind and description, including that for personal injury, death and property damage arising from Developer's exercise of its rights and obligations under this Agreement, including, but not limited to, entry onto the Property as set forth in Section 6 of this Agreement, but excluding from the foregoing obligations (i) any and all pre-existing matters or defects revealed or discovered by Developer; and (ii) any liability, claim, loss, damage, injury or expense to the extent caused by Agency or any third party.

8. Limitation of Effects of the Agreement. By execution of this Agreement, the Agency is not committing to or agreeing to the disposition of and transfer of any real property to Developer. Execution of this Agreement by each party is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof.

9. Assignment. Developer's rights and obligations under this Agreement are not assignable or transferable without the express written consent of the Agency.

10. Compliance with Laws and Regulations. Developer shall comply with all Federal, State and local laws and regulations in exercising its rights and obligations under this Agreement.

11. Attorneys' Fees. Should either party hereto institute any action or proceeding to enforce any provision of this Agreement, or for damages by reason of any alleged breach of this Agreement, or for a declaration of such party's rights or obligations under this Agreement, or for any other remedy, the prevailing party in such action or proceeding shall be entitled to recover from the losing party all costs and expenses incurred in any such action or proceeding, including, but not limited to, its reasonable attorneys' fees. "Prevailing party" shall mean the party legally entitled to recover its costs whether or not the suit proceeds to final judgment.

12. Waiver. No failure or delay by a party to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power or remedy hereunder shall constitute a waiver of the same or any other term of this Agreement or preclude such party from enforcing or exercising the same or any such other term, conditions, covenant, right, power or remedy at any later time.

13. Modifications. Any alteration, change or modification of or to this Agreement must be in writing executed by both parties.

14. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

15. Notices. Any approval, disapproval, demand or other notice which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means, including first-class mail, personal delivery or overnight

courier, to the party to whom the notice is directed, at the address of the party as set forth below, or at any other address as that party may later designate by notice.

If to Agency:           Redevelopment Agency of the City of Yuba City  
1201 Civic Center Blvd.  
Yuba City, CA 95993  
Attn: Steve Kroeger

tel: (530) 822-4620  
fax: (530) 822-7689

If to Developer:       Meridian Property Company  
5000 Executive Parkway, Ste. 150  
San Ramon, CA 94583  
Attn: William C. Powell, President  
tel: 925.244.7592  
fax: 925.901.0887

and to:                 Robert H. Kennis, General Counsel  
Meridian Property Company  
777 California Ave., Palo Alto CA 94304  
Tele: 650.842.2367  
Fax: 650.213.8183

16. Authority to Enter into Agreement. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and execute this Agreement on behalf of the Agency and Developer.

17. Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, or by the parties executing separate counterpart signature pages, including facsimiles transmitted by telecopier, all of which shall be deemed to be original counterparts of this Agreement. Any party who transmits a facsimile of a signature page by telecopier shall provide to the other party an executed original of such signature page within 48 hours of the execution thereof by such party.

18. Laws of the State of California. The laws of the State of California shall govern the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set opposite their signatures. The effective date of this Agreement shall be the date this Agreement is signed by the Agency.

"AGENCY"

Reviewed by :

REDEVELOPMENT AGENCY FOR THE CITY OF YUBA CITY, a public body corporate and politic

\_\_\_\_\_  
AGENCY COUNSEL

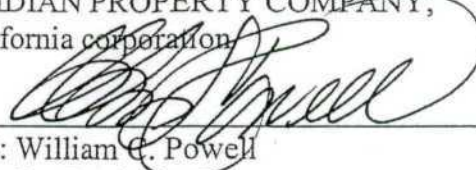
Attest:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
AGENCY CLERK




"DEVELOPER"

MERIDIAN PROPERTY COMPANY,  
a California corporation

By:   
Name: William C. Powell  
Its: President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**City of Yuba City**

-  Subject Parcels
-  Parks
-  Parcels

