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MEMORANDUM

TO: MS. JILL ANDERSON, CITY MANAGER
MS. DEBBIE OLSON, RLRA EXECUTIVE DIRECTOR

FROM: GEORGE SCHLOSSBERG, ESQ.
HILARY JACKLER, ESQ.

DATE: MARCH 8, 2016

RE: SUPPLEMENTAL INFORMATION REGARDING RLRA OPTIONS FOR
THE DISPOSITION AND REUSE OF THE FORMER RIVERBANK ARMY
AMMUNITION PLANT

A. INTRODUCTION

Pursuant to our discussions, this Memorandum presents several options for consideration by the City of Riverbank, acting as the City of Riverbank Local Redevelopment Authority (“**RLRA**”), for the acquisition, disposition and reuse of portions of the former Riverbank Army Ammunition Plant (“**RBAAP**”). It is our intention to use this Memorandum to help focus our discussions during our presentation to the RLRA on March 8, 2016.

It is the intention of the RLRA to execute an Economic Development Conveyance Agreement with the Department of the Army (the “**Army**”) to convey the RBAAP to the RLRA in fee for purposes of economic redevelopment pursuant to an arrangement negotiated previously between the Army and the RLRA (the “**EDC Agreement**”). Once the RBAAP property is acquired by the RLRA, the RLRA may elect to retain or dispose of such property (or a combination of both) – with each such option including a range of potential risks and rewards.

This Memorandum outlines several options for consideration by the RLRA regarding the acquisition, disposition and reuse of the RBAAP; the RLRA should be prepared to make the appropriate disposition decision prior to the time the RLRA receives title to the RBAAP property in fee. From a scheduling perspective, a notional timeline for development of the RBAAP property follows:

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1. RLRA executes Environmental Services Cooperative Agreement (“ESCA”),
2. RLRA executes Economic Development Conveyance (“EDC”) Agreement,
3. Conveyance of Phase 1 RBAAP Property from Army to RLRA,
4. Completion of ESCA Scope of Work,
5. RLRA issues Master Developer RFP and selects Master Developer,
6. Conveyance of Phase 2 RBAAP Property from Army to RLRA,
7. RLRA conveys or leases RBAAB Property to Master Developer.

A summary of each RBAAP disposition option and key questions are presented in Part B, and a more detailed explanation of each option (including pros and cons) is presented in Part C.

B. SUMMARY OF OPTIONS AND KEY QUESTIONS FOR CONSIDERATION BY THE RLRA

Part 1 of this Section lists six primary options for the RLRA’s consideration for the disposition and reuse of the RBAAP. Part 2 of this Section identifies key questions that the RLRA may wish to consider when selecting an option for disposition, and Part 3 provides a decision tree and summary chart which may be useful after the RLRA considers the key questions to determine the preferred option(s) for the disposition and reuse of the RBAAP.

1. SUMMARY OF OPTIONS:

The following options, each of which is discussed in more detail in Part C of this Memorandum, may be selected by the RLRA regarding the disposition of the RBAAP. We note that several of these options can be combined (i.e. the RLRA may elect to convey a portion of the RBAAP to a Master Developer and retain a portion for public uses or for the RLRA to lease to other users).

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TABLE 1: PRIMARY OPTIONS AVAILABLE TO RLRA FOR DISPOSITION AND REUSE OF THE RBAAP FOLLOWING CONVEYANCE OF THE RBAAP PURSUANT TO THE EDC AGREEMENT

1. Solicit and select a Master Developer to obtain *all* of RBAAP in fee (either immediately or following completion of the ESCA).
2. Solicit and select a Master Developer to obtain *a portion* of the RBAAP in fee (either immediately or following completion of the ESCA).
3. Solicit and select a Master Developer to enter into a long-term lease of RBAAP, while the RLRA (or another City-controlled entity) maintains fee ownership of the RBAAP.
4. Solicit and select tenants and execute various leases for RBAAP while the RLRA (or another City-controlled entity) acts as Master Developer and maintains fee ownership of the RBAAP.
5. Solicit and select an entity and enter into a management agreement while the RLRA (or another City-controlled entity) maintains fee ownership of the RBAAP.

2. KEY QUESTIONS

We suggest that the RLRA consider the following questions prior to selecting the option(s) desired for the reuse and disposition of the RBAAP:

TABLE 2: KEY QUESTIONS FOR CONSIDERATION BY THE RLRA

1. Does the RLRA wish to take on an active role in the management and redevelopment of the RBAAP project (or default to a local governmental role)?
2. Is the RLRA (or another City-controlled entity) interested in maintaining fee ownership of the RBAAP property for an extended period of time?
3. Is the RLRA (or another City-controlled entity) willing to maintain fee ownership of the RBAAP property for an interim period until the ESCA is completed?
4. Is a primary concern for the RLRA job generation at the RBAAP?
5. Is a primary concern for the RLRA limiting the RLRA's (or the City's) liability?
6. Is a primary concern for the RLRA receiving (immediate or long-term) revenue from the RBAAP development project?

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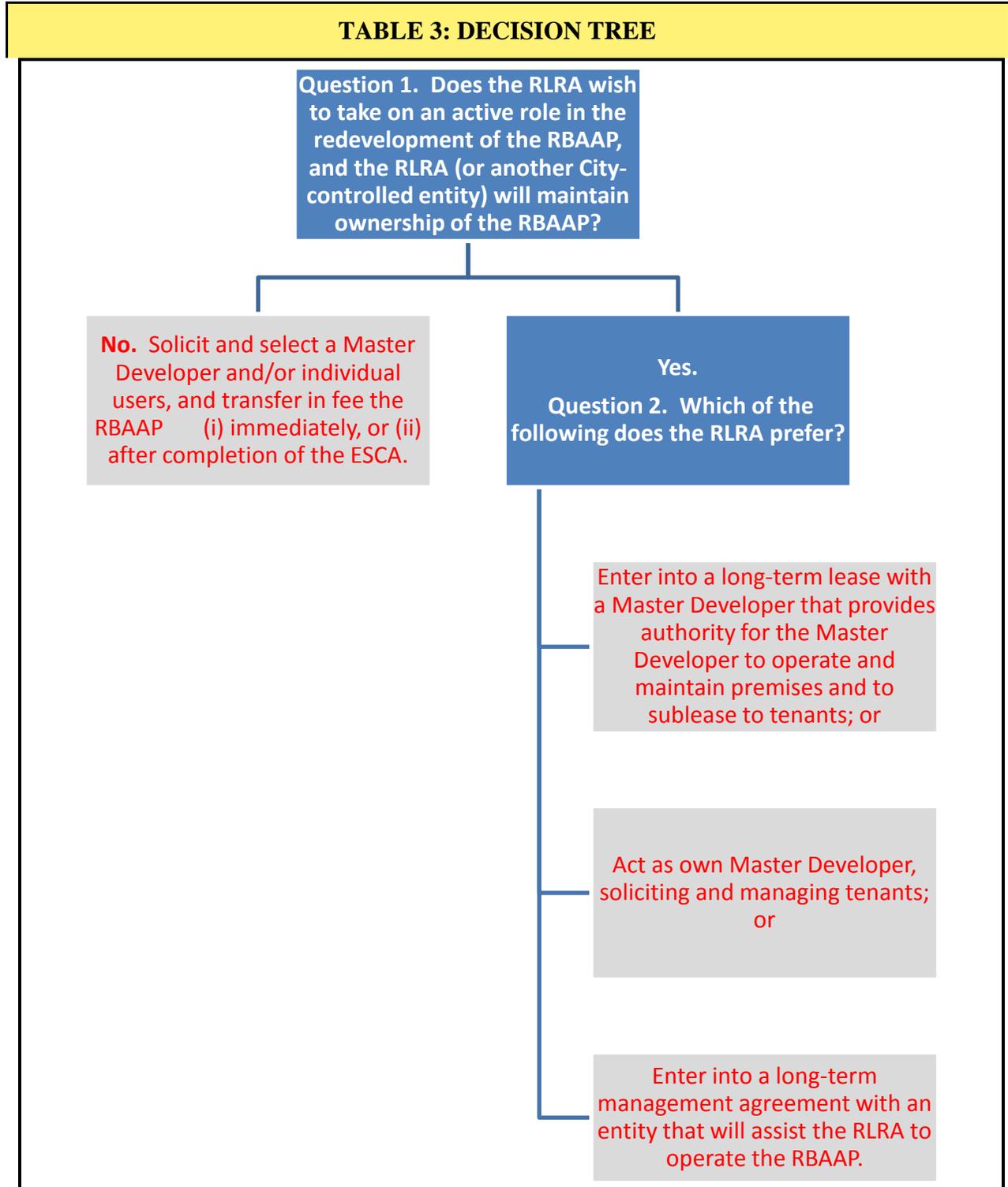
3. *REACHING A DECISION*

Tables 3 and 4 below may help the RLRA determine which option(s) (each of which is discussed in more detail in Part C of this Memorandum) it desires for the disposition of the RBAAP property.

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The chart below lists each of the options identified in this Memorandum and highlights which are most likely to lead to the various goals of job generation, limited liability to the RLRA and the City, and receipt of revenue by the RLRA.

TABLE 4: OPTIONS AND KEY CONSIDERATIONS			
Option	Job Generation	Limit Liability	Receive Revenue
1. RLRA solicit and select a Master Developer to obtain <i>all</i> of RBAAP property in fee.	Yes	Yes	Uncertain
2. RLRA solicit and select a Master Developer to obtain <i>a portion</i> of the RBAAP property in fee.	Yes	Partial	Uncertain
3. Solicit and select a Master Developer to enter into a long-term lease of RBAAP property while the RLRA (or another City-controlled entity) maintains fee ownership of the RBAAP property.	Yes	No	Yes
4. Solicit and select various lessees for RBAAP while the RLRA (or another City-controlled entity) acts as Master Developer and maintains fee ownership of the RBAAP property.	Yes	No	Yes
5. Solicit and select an entity to enter into a Management Agreement while the RLRA (or another City-controlled entity) maintains fee ownership of the RBAAP property.	Yes	No	Yes

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C. ANALYSIS OF EACH OPTION

The chart below identifies various options that the RLRA may consider for the disposition and reuse of the RBAAP property. Pros and cons for each option are provided also.

Please note that if the RLRA prefers one of the options listed below that entail the RLRA maintaining fee title to the RBAAP property (whether long-term or short term through completion of the ESCA), we recommend that the RLRA explore whether the RLRA or another new or existing City-controlled entity may be in the best position to hold title so as to minimize potential liability to the City’s General Fund. While a full analysis of City-controlled management options is outside the scope of this Memorandum, examples could include the management of the RBAAP property directly by the City through an existing or new City department or a City-created stand-alone public corporation (with or without bonding capacity).

Additionally, for those options where the RLRA is listed as maintaining ownership (whether long-term or short-term), and thereby incurring potential liability, we are referring primarily to environmental liability issues associated with contamination remaining on the RBAAP property. While certain Federal statutes (i.e. the Comprehensive Environmental Response, Compensation and Liability Act [“CERCLA”], and Section 330 of the FY 1993 National Defense Authorization Act) may limit the RLRA’s responsibility for pre-existing conditions, as the land-owner, the RLRA may incur responsibility if the RLRA or one of its tenants causes an environmental spill or other contamination while operating on this industrial site.

OPTION	PROS	CONS
<i>Active role in short-term; likely no or minimal long-term role</i>		
<p>1.Solicit and select a Master Developer to obtain all of RBAAP in fee (either immediately or after completion of the ESCA). Under this scenario, the RLRA would issue a Request for Proposals seeking interested Master Developers that would be interested in acquiring all of the RBAAP in fee. The selected Master Developer would be responsible for redeveloping the</p>	<p>+ The RLRA obtains site control of the RBAAP and selects the entity responsible for redevelopment. + The RLRA imposes conditions on the Master Developer to ensure the RBAAP is developed as desired, within the timelines set forth in the</p>	<p>- Success of redevelopment lies with third party. - A deed reverter can be included if the property is not redeveloped per the RLRA’s specifications or schedule. If exercised, the RLRA would restart the RFP process or assume the</p>

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OPTION	PROS	CONS
<p>RBAAP property in accordance with the specifications provided by the RLRA in the Request for Proposal, a negotiated Development Agreement, and a Quitclaim Deed.</p>	<p>Development Agreement. + Minimal liability to the RLRA if ownership of the RBAAP is simultaneously transferred from the Army to the RLRA and from the RLRA to Master Developer. + The City will collect taxes from the Master Developer for the RBAAP property.</p>	<p>role of Master Developer. - If executing the EDC Agreement prior to selection of a Master Developer, the RLRA bears the risk that it may hold title to the property if a satisfactory Master Developer is not selected within a coincident time period.</p>
<p><i>Active role in short-term and long-term</i></p>		
<p>2.Solicit and select a Master Developer to obtain a portion of the RBAAP property in fee; retain a portion of the RBAAP property by the RLRA (or another City-controlled entity), such as for park or storm-water retention purposes. Similar to Option 1, this option includes the transfer of a portion of the RBAAP property to a Master Developer, but retains a portion of the RBAAP property for control by the RLRA (or another City-controlled entity). Again, the transfer to a Master Developer may take place immediately following conveyance by the Army or following the completion of the ESCA.</p>	<p>+The RLRA can carve up the RBAAP so that a Master Developer is responsible for a certain portion of the RBAAP property, which will minimize the RLRA’s responsibility and liability with regard to that portion of the RBAAP property. + The RLRA will have discretion to retain portions of the property for public uses (park or storm-water retention, etc.), or lease or otherwise utilize a portion of the RBAAP for purposes selected by the RLRA.</p>	<p>- The RLRA will have potential liability as a property owner. - The RLRA will both need to select (and potentially manage) a Master Developer (see Option 1), as well as take on responsibility for finding users (and operating and managing) the portion of the RBAAP property controlled by the RLRA (see Options 4 and 5).</p>

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OPTION	PROS	CONS
	<p>This may include subsidized rent in order to get tenants on-site, placement of City services, etc.</p> <p>+ The RLRA could get both an up-front payment (from the Master Developer) and an on-going revenue stream from the portion owned by the RLRA.</p> <p>+ The City will collect taxes from the Master Developer for the RBAAP property transferred in fee.</p>	
<p>3.Solicit and select a Master Developer to enter into a long-term lease of RBAAP property while the RLRA (or another City-controlled entity) maintains fee ownership of the RBAAP property. This option allows the RLRA to select a Master Developer for a short or long-period of time, with the fee interest remaining with the RLRA. When the leasehold interest terminates, the RLRA would have the option to extend the lease, select another Master Developer (or other users) to acquire the RBAAP property in fee or under a new lease, or begin acting as its own Master Developer.</p>	<p>+ The RLRA may select a lease duration that is consistent with the RLRA’s current goals (i.e. a short-term lease if the RLRA would be interested in obtaining site control in a few years after potentially changing market conditions, or a long-term lease if the RLRA wants the option decades from now to reconsider its decision on disposition).</p> <p>+ The RLRA will maintain more control over activities at the RBAAP if the</p>	<p>- The RLRA may incur liability as the land owner.</p> <p>- The RLRA will have an on-going relationship with the Master Developer, which will require oversight and resources dedicated by the RLRA.</p> <p>- In the event of termination of the lease with the Master Developer, the RLRA would need to resolicit a Master Developer or assume this role.</p> <p>- The City will not collect taxes from the Master Developer for</p>

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OPTION	PROS	CONS
	<p>property is leased rather than conveyed to a Master Developer.</p> <ul style="list-style-type: none"> + The RLRA may elect to have minimal involvement (i.e. a triple net lease with no approval rights) or active involvement (i.e. approval of all subtenants) depending upon the RLRA’s preferences. + The RLRA may have a long-term revenue stream. 	<p>the RBAAP property transferred in fee (may tax only leasehold interest).</p>
<p>4.Solicit and select various lessees for RBAAP property while the RLRA (or another City-controlled entity) acts as Master Developer and maintains fee ownership of the RBAAP. This option provides the RLRA with the most active involvement over the reuse of the RBAAP. As landlord and property manager, the RLRA will solicit and manage tenants, find new tenants when there is turn-over, assist tenants with their day-to-day operations as landlord, and operate and maintain the entire premises (buildings, utilities, etc.).</p>	<ul style="list-style-type: none"> + The RLRA has maximum control over uses of the RBAAP, including the ability to negotiate incentives for location at the RBAAP and select users that align with goals of the RLRA. + The RLRA has discretion to receive the amount of revenue it deems appropriate and does not need to share such amount with another party. 	<ul style="list-style-type: none"> - The RLRA may incur liability as the land owner. - The RLRA will have to perform oversight over the tenants. - The RLRA will need to maintain (or contract with someone to maintain) any common areas. - The RLRA will need to address tenant complaints (that are the RLRA’s responsibility under the lease). - The City will not collect taxes from the RBAAP property (may tax only leasehold interest).

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OPTION	PROS	CONS
<p>5.Solicit and select an entity to enter into a Management Agreement while the RLRA (or another City-controlled entity) maintains fee ownership of the RBAAP. This option allows the RLRA to maintain its fee ownership over the RBAAP, but enlists the assistance of a contractor to act as property manager that can identify tenants and perform typical landlord responsibilities.</p>	<ul style="list-style-type: none"> + The RLRA preserves its ability to transfer the RBAAP in fee or by long-term leases to a Master Developer in the future. + The RLRA avoids the need to solicit tenants and perform typical landlord responsibilities. + The management relationship may be structured such that the property manager and the RLRA share the revenues received from the tenants. 	<ul style="list-style-type: none"> - The RLRA may incur liability as the land owner. - The RLRA will have to perform oversight over the property manager. - The RLRA will need to enter into individual leases with the tenants, thus still requiring an on-going active role of the RLRA. - As the land owner, the RLRA may still receive complaints from tenants if the property manager is not performing in a satisfactory condition. - In the event of removal of the property manager, the RLRA will need to assume this role (until such entity is replaced). - The City will not collect taxes from the property manager for the RBAAP property transferred in fee (may tax only leasehold interest).

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D. CONCLUSION

We hope that this Memorandum will serve as a helpful tool as the RLRA continues to discuss key questions and determines how the RLRA desires to proceed with the acquisition, disposition and reuse of the RBAAP property. We look forward to discussing all of these issues and options more fully with you during the March 8, 2016 meeting. Please do not hesitate to contact George Schlossberg directly at 202-828-2418 or george.schlossberg@kutakrock.com, or Hilary Jackler directly at 202-828-2470 or hilary.jackler@kutakrock.com with any questions or comments.

G.R.S. & H.A.J