



Agenda Report

20-642

Agenda Date: 7/14/2020

REPORT TO COUNCIL

SUBJECT

Authorize the Negotiation and Execution of a Third Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC for the site located at 500 Benton Street [APN: 230-08-078] [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development]

BACKGROUND

In February 2018, the City of Santa Clara, Santa Clara Valley Transportation Authority ("VTA"), and Republic Metropolitan LLC ("Developer") jointly entered into an Exclusive Negotiation Agreement ("ENA") for development of a student housing project at the Caltrain Santa Clara Station Park-N-Ride lot located at 500 Benton Street. The proposed development site consists of a larger parcel owned by the City (1.73 acres), and a smaller parcel owned by VTA (0.71 acres)("Property").

The Parties entered into the ENA to allow the Developer time to 1) prepare and process an application for entitlements together with corresponding CEQA environmental review documentation and 2) negotiate the terms of a Disposition and Development Agreement (the "DDA") pursuant to which a ground lease would be conveyed and the Developer would conduct specified development activities related to the Property.

The ENA provided for a negotiating period of twelve (12) months with an option for an extension of an additional six (6) months, subject to the discretion of the City Manager and the execution of an amendment. On February 8, 2019, an extension was granted for a period of six (6) months, through August 5, 2019.

On July 16, 2019, Council approved the Second Amendment to the Exclusive Negotiations Agreement with the Developer for the site located, which extended the negotiating period to August 5, 2020.

As per the Second Amendment to the ENA, the Developer was required to submit a new term sheet ("Revised Term Sheet") to VTA and the City within 90 days after the execution of the Second Amendment. A final form of Term Sheet would present all economic and transactional terms of the development any proposed to be fully documented in a Lease Option Agreement (LOA) or Disposition and Development Agreement (DDA) between the parties.

On February 14, 2020, the City received the Developer's Revised Term Sheet and all Parties have been negotiating the Revised Term Sheet in order to come to an agreement on a Final Term Sheet.

DISCUSSION

The Developer's proposal is for a mixed-use project including market-rate student housing development consisting of 545 beds in 170 units, an affordable housing development consisting of 70

units dedicated to low-income families (60% Average Median Income - AMI), 13,600 square feet of retail/office space, and 316 garaged parking spaces. The development would necessitate relocation of a City water well and pump station currently located near the center of the Property to another site on the property.

The Developer will not be able to complete all tasks necessary to bring forward to a public hearing an entitlement package (General Plan Amendment, Zoning Text Amendment, Rezoning, Architectural Review and Environmental Impact Report) and a DDA prior to the August 5, 2020 expiration of the ENA. In order to provide additional time to process entitlements and continue negotiations, a Third Amendment to the ENA to extend the term of the ENA for a minimum of six months should be considered. VTA has indicated it will only extend the term of the ENA if an agreement on a Non-Binding Term Sheet is reached prior to August 5, 2020. If an agreement is reached, VTA's Board will likely consider the ENA extension at its September 2020 Board meeting. The final ENA amendment may need to be modified to accommodate additional terms requested by VTA's Board. Neither the City nor VTA are obligated to extend the ENA. Under the terms of the ENA, neither party has any liability to the other for damages if an agreement cannot be reached, as long as negotiations have continued in good faith.

Upon completion, the Term Sheet is intended to provide for the economic terms and conditions that would be contained in a Disposition and Development Agreement (DDA) pursuant to which the Developer will have the right to lease the property and construct the project. It is anticipated that a Non-Binding Term Sheet will be brought forward for Council consideration in advance of the preparation of the DDA. Council cannot enter into any binding agreement until compliance with CEQA has been completed.

Key terms of the Term Sheet for future Council consideration will include:

Financial Terms:

- Term of Lease
- Annual Base Rent
- Rent Escalations
- Market Rate Adjustments

Water Well Relocation:

There is currently a City underground production water well ("well") and its appurtenances in an approximately 50 foot by 62 foot lot located on the City Parcel (APN 230-08-78) in the center of the parking lot.

- If Developer requires the City to abandon the existing well, at its sole cost, Developer must provide another well on site of equal or better water quality and production and must meet the requirements of the City and State Department of Drinking Water (DDW).
- City is requesting a second site to be made available for potential water well use.

Parking for public purposes:

The Property is currently improved with surface parking which is used by Cal Train through separate agreements with both the City and VTA. In addition, a portion of the project site is currently used as public parking available for the Santa Clara Police Department building. The

Term Sheet will specify:

- Timing and number of the Caltrain temporary parking and the permanent relocation of the parking
- Timing and number of the permanent relocation of the Santa Clara Police Department parking

CEQA compliance

The City will act as the Lead Agency for the completion of the CEQA process for the project. An analysis of the potential loss of the well site and the impact on the City's potential water supply and A Cultural Resources Treatment Plan (related to the Project's proximity to Mission Santa Clara) will need to be developed to complete the CEQA process.

The Project is also located adjacent to Santa Clara Depot, a Historical Resource Inventory property, which requires that the Historical and Landmarks Commission review the project for neighborhood compatibility and consistency with the City's Design Guidelines.

Surplus Lands Act

City will require an indemnity in relation to any potential penalties associated with the disposition of the City property under the Surplus Lands Act, CA Gov't Code section 54220 et seq..

As the ENA is a three party (City, Developer and VTA) agreement, the requested Council authorization is to extend the term to match the term authorized by the VTA Board but in no event longer than 12 months (i.e., August 5, 2021). Additional time is also needed to complete the environmental review of the Project in accordance with the California Environmental Quality Act ("CEQA").

The negotiations have been protracted. Because there is uncertainty about the parties' ability to successfully negotiate the terms of a Term Sheet and navigate the issues associated with entitlements and disposition, in addition to the authority to match the term of the ENA with VTA authority, staff recommends that the ENA Amendment also include the following:

- A final term sheet to be presented to the Council for consideration by November 2020
- Clarification that the Developer is required provide a second well site, in addition to the relocation of the existing well, so that the City's potential water resources are maintained.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

FISCAL IMPACT

There is no fiscal impact associated with this item other than administrative time and expense.

COORDINATION

This report was coordinated with VTA and the City Attorney's Office

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov.

ALTERNATIVES

1. Authorize the City Manager to negotiate and execute a Third Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC consistent with the terms in the staff report for the development of a City-owned parcel located at 500 Benton Street.
2. Direct the City Manager to allow the Exclusive Negotiations Agreement with Republic Metropolitan LLC to expire.
3. Any other action authorized by the Council.

RECOMMENDATION

Alternative 1:

Authorize the City Manager to negotiate and execute a Third Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC consistent with the terms in the staff report for the development of a City-owned parcel located at 500 Benton Street.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager