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12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SANTA CLARA**

14 **REPUBLIC METROPOLITAN, a**
Delaware LLC,

15 **Plaintiff,**

16 **v.**

17 **CITY OF SANTA CLARA, a municipal**
corporation; and DOES 1 through 10,
18 **inclusive,**

19 **Defendants.**

Case No. _____

COMPLAINT FOR:

1. **VIOLATION OF THE HOUSING ACCOUNTABILITY ACT**
2. **NEGLIGENT MISREPRESENTATION**
3. **SPECIFIC PERFORMANCE – ENTRY OF DISPOSITION AND DEVELOPMENT AGREEMENT**
4. **BREACH OF CITY’S CONTRACTUAL DUTY**
5. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING BY THE CITY OF SANTA CLARA**
6. **RESTITUTION/UNJUST ENRICHMENT (QUANTUM MERUIT) – RETURN OF FUNDS EXPENDED BY REMET AND TAXPAYERS**

JURY TRIAL DEMANDED

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“OUR HOUSING CRISIS IS AN EXISTENTIAL THREAT TO OUR STATE’S FUTURE, AND WE CAN’T SHY FROM THE HARD FIGHTS IT’LL TAKE TO CREATE MORE AFFORDABLE HOMES FOR CALIFORNIANS — INCLUDING PURSUING LEGAL CHALLENGES TO MAKE SURE THE HOUSING LAWS WE PASS IN SACRAMENTO TRANSLATE TO REAL, NEW UNITS IN LOCAL COMMUNITIES ACROSS OUR STATE.”

-Gov. Gavin Newsom, comment on *Cal. Renters* decision (September 2021)

“CALIFORNIA HAS A HOUSING SUPPLY AND AFFORDABILITY CRISIS OF HISTORIC PROPORTIONS.”

**-Justice Alison M. Tucher
Cal. Renters and Edu. Fund v. City of San Mateo,
No. A159320, 2021 WL 4129452 (Cal. App. Sept. 10, 2021).**

“BETWEEN 2011 AND 2017, THE BAY AREA CREATED 531,400 NEW JOBS BUT APPROVED ONLY 123,801 NEW HOUSING UNITS, A RATIO OF 4.3 JOBS FOR EVERY UNIT OF HOUSING, FAR ABOVE THE 1.5 RATIO RECOMMENDED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) TO AVOID DISPLACEMENT AND CONGESTION.”

-Bay Area Council Economic Institute, June 2021

I. INTRODUCTION

1. Confronted with a “housing supply and affordability crisis of historic proportions,” the State of California has enacted countless measures to incentivize new residential development. Too often, however, the plans of local governments and property developers committed to smart, sustainable development are nonetheless unjustifiably thwarted. Plaintiff Republic Metropolitan (“REMET”) brings this case to seek redress for the needless and senseless scuttling of one such project.

2. California’s Santa Clara County, in particular, has for decades struggled to create enough affordably priced housing—and enough housing at any price—to sustain its burgeoning population levels. The entire San Francisco Bay Area has transformed economically in recent decades, and the region now hosts many of the most profitable and best capitalized companies in the United States, and indeed, in the world. As housing has failed to keep pace with job creation,

1 however, rents have skyrocketed, and are now among the most expensive to be found anywhere in
2 the country. Santa Clara County is home to a significant number of unhoused residents. As of late
3 2019, on the eve of the global coronavirus outbreak, an ABC 7 News report estimated that the
4 homeless population in Santa Clara County was approaching some 10,000 residents. And it is
5 estimated that under current conditions, after nearly two years of a global pandemic, over 6,500
6 people sleep outside in Santa Clara County on any given night. The need for affordable housing
7 has never been more serious.

8 3. Similarly, the Silicon Valley region is in dire need of housing for both alumni and
9 current students. Santa Clara and San Jose can be proud of retaining 65.2 percent of recent
10 graduates as residents upon degree completion—placing the region fifth in the nation by that
11 measure—yet the ongoing dearth of new and affordable housing threatens to cut into that figure,
12 and subjects recent graduates to exorbitant rent expense as they begin their careers. And Santa
13 Clara University is a large educational institution enrolling thousands of new students per year.

14 4. Despite this well-documented need for local, affordable housing, the City of Santa
15 Clara (the “CITY”) unjustifiably blocked REMET’s effort to offer desperately needed workforce
16 and affordable housing as part of mixed-use, transit-oriented, sustainable infill development.
17 Worse, it allowed REMET to work for over two years on the project expending significant
18 resources and completing critical entitlements work.

19 **A. Student and Workforce Housing in the Heart of Santa Clara**

20 5. The project at issue in this lawsuit was planned for 500 South Benton Street in the
21 CITY, a parcel of land along El Camino Real ideally situated between the Santa Clara CalTrain
22 Station and Santa Clara University (SCU).

23 6. This location presented a tremendous opportunity combining transit-oriented
24 development with workforce housing in a compact package that advanced local economic
25 interests while simultaneously respecting environmental and sustainability concerns. Currently,
26 this land is in use as a parking lot, supporting both the train station and the Santa Clara Police
27 Department.

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13 7. As noted by **Santa Clara Mayor Lisa Gillmor**, the parcel of land is extremely
14 difficult to develop. In addition to the existing parking lots, it is the site of a municipal well that
15 produces approximately 5 percent of the CITY’s water supply. There are historical preservation
16 matters in play due to the parcel’s proximity to the historically significant train station.
17 Throughout negotiations with multiple stakeholders, REMET painstakingly worked through each
18 of these issues, presenting the CITY with an attractive, viable proposal that would continue to
19 provide parking for CalTrain and the Santa Clara Police Department, relocate the well onsite and
20 maintain water supply, address all historical preservation concerns, and transform the location
21 into a vibrant community and economic engine providing direly needed workforce and affordable
22 housing and substantial ongoing economic benefits to the CITY and VTA.

23 8. REMET worked diligently with the CITY and the Valley Transportation Authority
24 (“VTA”), who own the land. Pursuant to an Exclusive Negotiations Agreement (ENA) that was in
25 force for nearly three years, REMET would lease, but not purchase, the subject land from the
26 CITY and VTA, and would build thereon a state-of-the-art mixed-use development featuring 240
27 new apartments with a 29 percent affordable housing component.
28

Workforce and Student Apartments

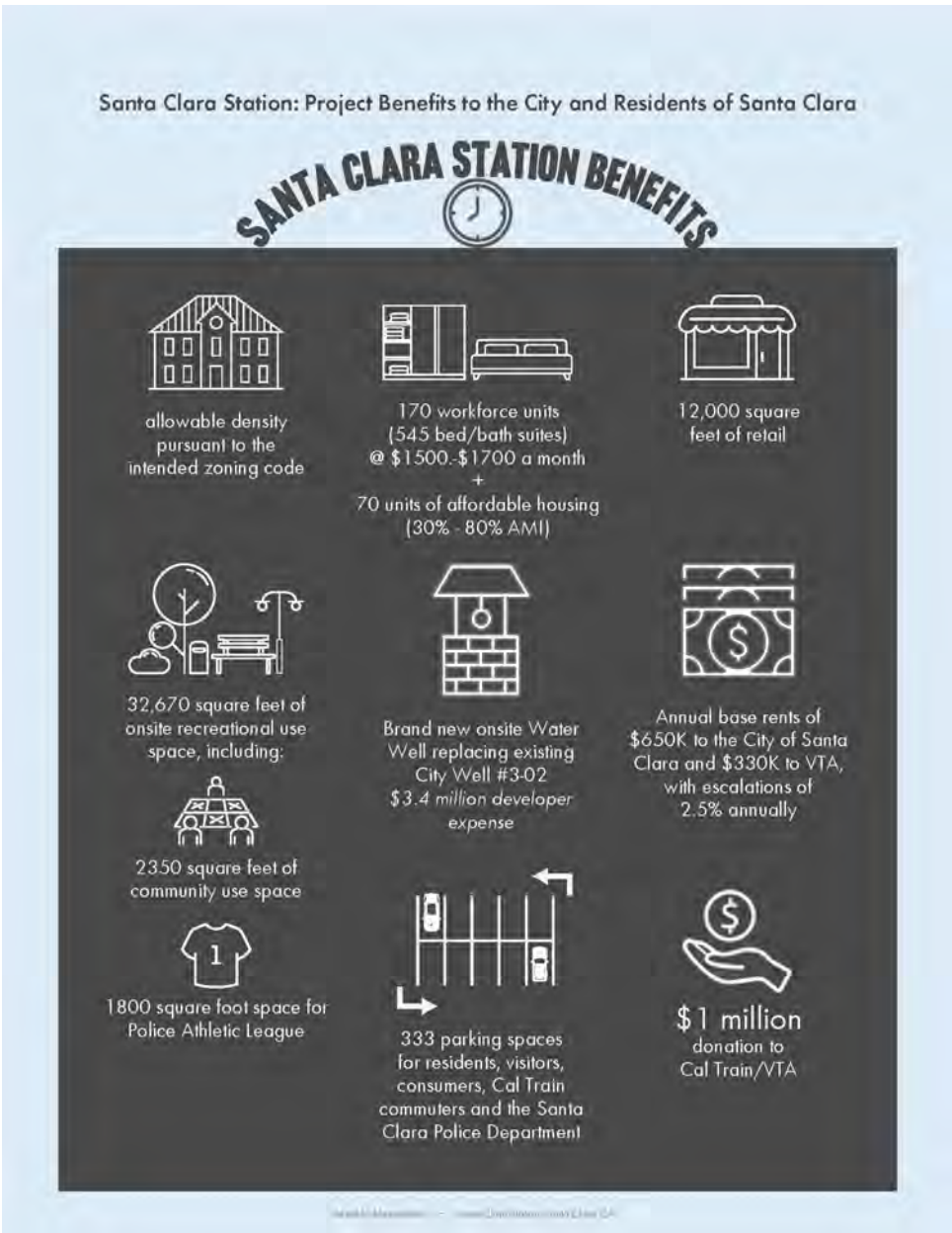


Per
Bed

Secure bedroom with bath: \$1,700. per month
4 BR / 4 BA, 1,264 SQ FT

9. In addition to 170 units of new workforce housing units at comparatively modest rents, the plan called for 70 units of affordable housing. The 170 multi-suite workforce units comprising 545 private bed/bath suites reflect an innovative, modern design choice tailored to teachers, police officers, fire fighters, students, recent graduates, young professionals, and young families unable to muster the significant sums needed to secure housing in standalone buildings in the Bay Area rental market, which only becomes more expensive each year. Rents for suites within the 170 planned units (though not officially designated “affordable”) were nonetheless extremely modest—in the range of \$1,500 to \$1,700 per month—to render them what would have become the cheapest market rate available in Santa Clara County.

10. REMET also planned a whole array of community benefits into the project. The plan called for 12,000 square feet of new retail, but also 32,670 square feet of onsite recreational use space including a teaching garden, 2,350 square feet of community use space, and 333 parking spaces for CalTrain, the Santa Clara Police Department, and residential use as required under the applicable Planning Code. The REMET plan also included a dedicated space for the Police Athletic League. In all, REMET proposed to pay annual base rents of \$650,000 to the City and \$330,000 to VTA, with annual escalations of 2.5%.



11. Not only did the denial of this housing divest the CITY and surrounding area of valuable benefits, it also appeared to be against its own financial self-interest: total economic benefits to the City and VTA were projected to exceed \$838 million over the lease terms upon completion of the project.

B. State-Led Efforts to Address the Housing Crisis

12. One has only to read any newspaper or check in with any news source to understand the depth of the housing shortage crisis throughout California and particularly in the Bay Area. As the housing shortage has deepened, disparities in wealth and income have

1 intensified, and rents have marched ever upward, more and more of the elite members of the
2 business community whose success has defined this era of the region’s culture and national
3 reputation have pulled up stakes and transferred to areas with more to offer in terms of
4 affordability and quality of life for their employees. Iconic Bay Area companies who have given
5 up and relocated elsewhere include such household names as HP, Oracle, and Tesla.

6 13. For decades, California has had legislation on the books promoting the creation of
7 affordable housing. These have included revisions to the Housing Accountability Act, the
8 Regional Housing Needs Assessment (RHNA) process, and this year’s SB 9 and SB 10 measures
9 designed to streamline approvals for certain projects. The Legislature significantly strengthened
10 one such pro-housing measure, the Surplus Land Act (SLA), with amendments in 2014 and again
11 in 2019. Under the 2014 amendments, a public agency may not dispose of public lands via a sale
12 or lease without either designating the land surplus and offering it to a buyer seeking to build
13 affordable housing or determining that an exception applies. The CITY was obligated to ensure
14 SLA compliance before entering an agreement intended to lead to disposition of the site.

15 14. Local governments have contested this restriction on their activity, and eventually,
16 one challenge resulted in a lawsuit, *Anderson v. City of San Jose*, decided by the Court of Appeals
17 in late 2019. The decision generally upheld the SLA’s applicability.

18
19 **Santa Clara Flounders To Meet State**
20 **‘Affordable’ Housing Requirements, Larger**
21 **Mandates On The Horizon**
22

23 A recent headline in *The Silicon Valley Voice*
24

25 15. The CITY, however, has utterly failed to do its part to approve and build
26 affordable housing, as it has consistently fallen behind targets for housing approvals set by the
27 State of California, even as it has approved market-rate housing. The planned REMET project
28

1 presented a perfect opportunity for the CITY to shift course and begin doing its part to contribute
2 to the region’s affordable housing supply.

3 **C. The CITY Stops the Project Cold**

4 16. The CITY, led by Santa Clara City Attorney Brian F. Doyle (“DOYLE”),
5 unjustifiably nixed the REMET project, denying the surrounding community of this valuable (and
6 desperately needed) housing complex.

7 17. Before entering into any binding agreement, the CITY like all public agencies has
8 the duty to inform its counterparties of any legislative, administrative, or regulatory hurdles that
9 could frustrate the purpose of the arrangement under consideration. In entering the ENA with
10 REMET, the CITY was representing that it had done its due diligence and that it had the good
11 faith intention of moving forward with the workforce and affordable housing project
12 contemplated for the subject site. It was in reliance on that representation that REMET responded
13 in good faith by investing thousands of hours of arduous work and over \$3.5 million in out-of-
14 pocket costs to advance the project. The CITY failed, however, in performing its due diligence,
15 and in particular by never disclosing that laws already on the books and at issue in pending
16 litigation could eventually be used to block the project from ever being built.

17 18. Notably, City Attorney DOYLE never mentioned the issue of SLA compliance at
18 any point during the planning and negotiations that led to enactment of the ENA. Neither City
19 Attorney DOYLE nor any member of the CITY staff nor the City Council raised the issue of SLA
20 compliance before signing off on the original ENA in 2018, or at any time during the process of
21 negotiating and signing off on two extensions granted in 2019. As a result, REMET invested
22 thousands of hours and millions of dollars in the project. The CITY, and City Attorney DOYLE
23 acting on behalf of the CITY, had a duty to inform REMET before entering the ENA of any
24 potential obstacle to moving forward on the project. Nevertheless, within three weeks of the
25 *Andersen* decision, City Attorney DOYLE issued a memo stating that the CITY would
26 thenceforth need to ensure compliance with the SLA for all future development projects. And the
27 following day, City Attorney DOYLE in his trademark vituperative style—more on that *infra*—
28 loudly expressed to REMET’s outside counsel in no uncertain terms that he intended to kill the

1 REMET project at 500 South Benton Street, using the SLA as his primary weapon. In other
2 words, in City Attorney DOYLE’s view, the affordable housing law should be interpreted to
3 mean that no affordable housing could be built.

4 19. City Attorney DOYLE killed the project silently, in the dark of night, behind
5 closed doors, in a manner that would leave no evidence until it was too late for REMET to do
6 anything about it. Unbeknownst to REMET, on October 15, 2020, the City Council met in closed
7 session and took a vote approving termination of the project for reasons the CITY has never
8 disclosed, despite the fact that the City Council had voted unanimously to extend the ENA only
9 three months earlier. No information is available to memorialize, or make available to the public,
10 any of the argument the Council heard or any of its reasoning for abandoning the workforce and
11 affordable housing project. Nor was any effort made to inform REMET of that argument, or
12 reasoning. Instead, Assistant City Manager Ruth Mizobe Shikada sent a curt, two-paragraph
13 letter, addressed to REMET but at the offices of its Washington, D.C.-based corporate affiliate
14 parent rather than its local Bay Area offices, stating flatly that the CITY considered the ENA as
15 amended to have “expired” in August, and therefore it had “directed staff to cease efforts” to
16 advance the project. The CITY never provided REMET with any other explanation.



1 **D. A Parking Lot Where There Should Be Housing**

2 20. The decision left REMET, its contractors, local residents, and students who had
3 worked on and pulled for the project dumbfounded. Nevertheless, the parcel at 500 South Benton,
4 nestled perfectly between Santa Clara University and immediate access to mass transit, persists in
5 its present form as a parking lot, with no prospect of hosting the workforce and affordable
6 housing for which it is so perfectly suited.

7 **E. Blocking Housing in Violation of the Law**

8 21. Aside from breaching its obligations to REMET, the CITY has violated the
9 California Housing Accountability Act (HAA), by failing in its obligation and responsibility to
10 expand affordable housing opportunities for Californians, as expressly mandated by the state
11 legislature, which has found that:

12 “The availability of housing is of vital statewide importance, and the early
13 attainment of decent housing and a suitable living environment for every
14 Californian . . . is a priority of the highest order” and local governments “have a
15 responsibility to use the powers vested in them to facilitate the improvement and
16 development of housing to make adequate provision for the housing needs of all
17 economic segments of the community.” (*See* Gov. Code, § 65580 et seq.)

18 22. It is the intent of the Legislature in enacting [the HAA] to, *inter alia*, “assure
19 that . . . **cities recognize their responsibilities** in contributing to the attainment of the state
20 housing goal.” (Gov. Code, § 65581(a))

21 23. The CITY, in arbitrarily denying REMET’s planned project, with its above-target
22 affordable housing increment, is in clear violation of the HAA and the directives of the state.

23 24. REMET therefore brings this action to seek answers, correct this injustice, and
24 either move forward in constructing the low-cost student and workforce and affordable housing
25 that the region so desperately needs, or obtain relief for the substantial economic hardship and
26 years of wasted effort caused by the CITY.

27 **II. JURISDICTION AND VENUE**

28 25. This Court has subject matter jurisdiction over this action because the defendant is
a municipal corporation located within the State of California and this is a civil action where the

1 amount in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of this
2 Court.

3 26. This Court has personal jurisdiction over this action because the defendant is a
4 municipal corporation located within the State of California.

5 27. Venue is proper in the County of Santa Clara because the instruments and
6 agreements sued upon herein were negotiated and executed within the County of Santa Clara, the
7 other acts in violation of law alleged herein were done within the County of Santa Clara, and the
8 subject property at issue in the lawsuit is located within the County of Santa Clara.

9 **III. THE PARTIES**

10 **A. Plaintiff**

11 28. Plaintiff REPUBLIC METROPOLITAN LLC (“REMET”) is and was at all times
12 relevant to this Complaint a Delaware limited liability company, and maintained and maintains a
13 business office at its home base and headquarters in San Francisco, California. REMET was party
14 to the ENA, along with the City of Santa Clara, and the Valley Transportation Authority (VTA).

15 **B. Defendants**

16 29. Defendant CITY OF SANTA CLARA (the “CITY”) is a municipal corporation
17 located within the County of Santa Clara in the State of California.

18 **C. The Doe Defendants**

19 30. The true names and capacities, whether individual, corporate, associate, or
20 otherwise of Defendants DOE 1 through DOE 10, inclusive, are unknown to Plaintiff, who
21 therefore sues said Defendants by fictitious names pursuant to California Code of Civil Procedure
22 § 474. Plaintiffs further allege each fictitious Defendant is in some manner responsible for the
23 acts and occurrences set forth herein. Plaintiff will amend this Complaint to identify the DOE
24 Defendants’ true names once ascertained.

25 **D. Aiding and Abetting and Conspiracy**

26 31. The DOE Defendants participated as co-conspirators in the violations alleged
27 herein and performed acts and made statements in furtherance of the same. Each of the DOE
28 Defendants actively conspired with one another and are liable for each other’s acts and omissions

1 alleged herein. Each DOE Defendant acted with knowledge of the conspiracy to disregard the
2 terms of the CITY's agreements and ensure that those breaches and related conflicts of interest
3 remained concealed from public view. Each DOE Defendant acted as the principal, agent, or joint
4 venturer of, and on behalf of, the conspiracy, regarding the acts, violations, and common course
5 of conduct alleged herein.

6 **E. Relevant Individuals**

7 32. The claims Plaintiff REMET asserts against the CITY arise from acts performed
8 and statements made by the City Council and certain city administrators and officials acting under
9 color of legal authority with actual and apparent authority to act on the CITY's behalf. Specific
10 actions were taken by individuals identified below, as further described herein.



21 Former City Attorney Brian L. Doyle

22 33. BRIAN L. DOYLE ("DOYLE"), an individual, served as the City Attorney for the
23 CITY from January 2017 until his termination by vote of the Santa Clara City Council on
24 September 1, 2021. Former City Attorney DOYLE misled the CITY on many issues concerning
25 the REMET project, and has now been terminated due to his many acts constituting a failure to
26 communicate appropriately with the CITY on matters of public concern. At the time of his
27 dismissal, Former City Attorney DOYLE was earning a salary of \$390,000 per year. Former City
28

1 Attorney DOYLE represented and advised the CITY in many of the negotiations with REMET
2 described herein, repeatedly gave false and misleading legal advice and coordinated, orchestrated,
3 and instigated an effort to undermine the REMET project and engineer the closed session, secret
4 vote to terminate the project out of public view, and to close off all avenues for reconsideration of
5 that ill-advised, rash decision.

6 34. Other key CITY staff members operating at the direction and exhortation of
7 Former City Attorney DOYLE were also involved in the decision to cancel the project. Deanna J.
8 Santana serves and during all times relevant herein served as the City Manager for the CITY. City
9 Manager Santana represented the CITY in many of the negotiations with REMET described
10 herein, headed the office that issued the final termination letter to REMET formally breaking off
11 negotiations for the subject project, and with input from Former City Attorney DOYLE
12 coordinated the July 2021 City Council actions that prevented reconsideration of the termination
13 decision from even receiving a vote.

14 35. Ruth M. Shikada serves and during all times relevant herein served as Assistant
15 City Manager for the CITY. Assistant City Manager Shikada represented the CITY in many of
16 the negotiations and interactions with REMET described herein and at the direction of her
17 superiors and with guidance from Former City Attorney DOYLE issued the final termination
18 letter to REMET formally breaking off negotiations for the subject project.

19 36. The actions taken by Former City Attorney DOYLE and other CITY officials
20 while acting in their official capacities under color of legal authority were done by the CITY, and
21 later ratified by the CITY through votes of the City Council and other confirmatory measures.
22 The actions of all of these individuals are attributable to the CITY, and it is the CITY that is liable
23 for them.

24 **IV. FACTUAL BACKGROUND**

25 37. REMET's project at 500 South Benton Street is designed to meet pressing needs
26 within the City of Santa Clara that are but a single local expression of far larger imbalances
27 present throughout the State of California in recent decades. The project was designed to address
28 the needs and concerns of all local constituencies and was perfectly suited to the available land,

1 and it promised to generate nearly \$1 billion in economic benefits for the City and region. But a
2 coalition of activist opponents, led by former City Attorney DOYLE, have to date erected
3 increasingly onerous obstacles that so far have ensured no affordable housing will be built.

4 **A. The Political Backdrop and Current Housing Predicament in California**

5 **1. Housing Crisis in California**

6 38. “California has a housing supply and affordability crisis of historic proportions.”
7 *Cal. Renters Legal Advocacy and Edu. Fund v. City of San Mateo*, Case Nos. A159320, A159658,
8 2021 WL 4129452, at *1 (Cal. App. Sept. 10, 2021) (*quoting* Cal. Gov. Code § 65589.8, subd.
9 (a)(2)(A)). The problem has persisted for decades, no matter the concerted efforts of public
10 officials, housing advocates, private developers, and the State Legislature to enact measures and
11 support policies that promote construction of the new housing that would alleviate the crisis.

12 39. Meanwhile, demand for housing in the Bay Area has exploded over the past
13 several decades. As local businesses have flowered from startups into some of the world’s largest
14 and best capitalized corporations, economic activity has soared, and the prospect of high-paying
15 jobs has attracted an influx of new residents from throughout the United States and overseas.
16 Their increasing prosperity comes with increased willingness to pay, but with a relatively stagnant
17 supply that willingness has only increased the cost of housing further. According to a June 2021
18 advocacy group report, from 2011 through 2017 the Bay Area added over half a million new jobs
19 but approved construction of fewer than 124,000 new housing units—a ratio of 4.3 jobs for every
20 new housing unit, far in excess of the EPA-recommended level of 1.5 jobs per new unit.

21 40. The shortage of available housing is indeed its own environmental issue.
22 California law embraces environmental protection to an admirable degree and is often looked to
23 as a model by other jurisdictions. But the failure to build new housing often leads to excessive
24 congestion in existing residential areas and widespread displacement especially of working class
25 people, who often must accept housing located far outside the reach of public transit and as far
26 away as several hours’ drive from their jobs. As has been stated in official communications of the
27 California Department of Housing and Community Development (HCD):
28

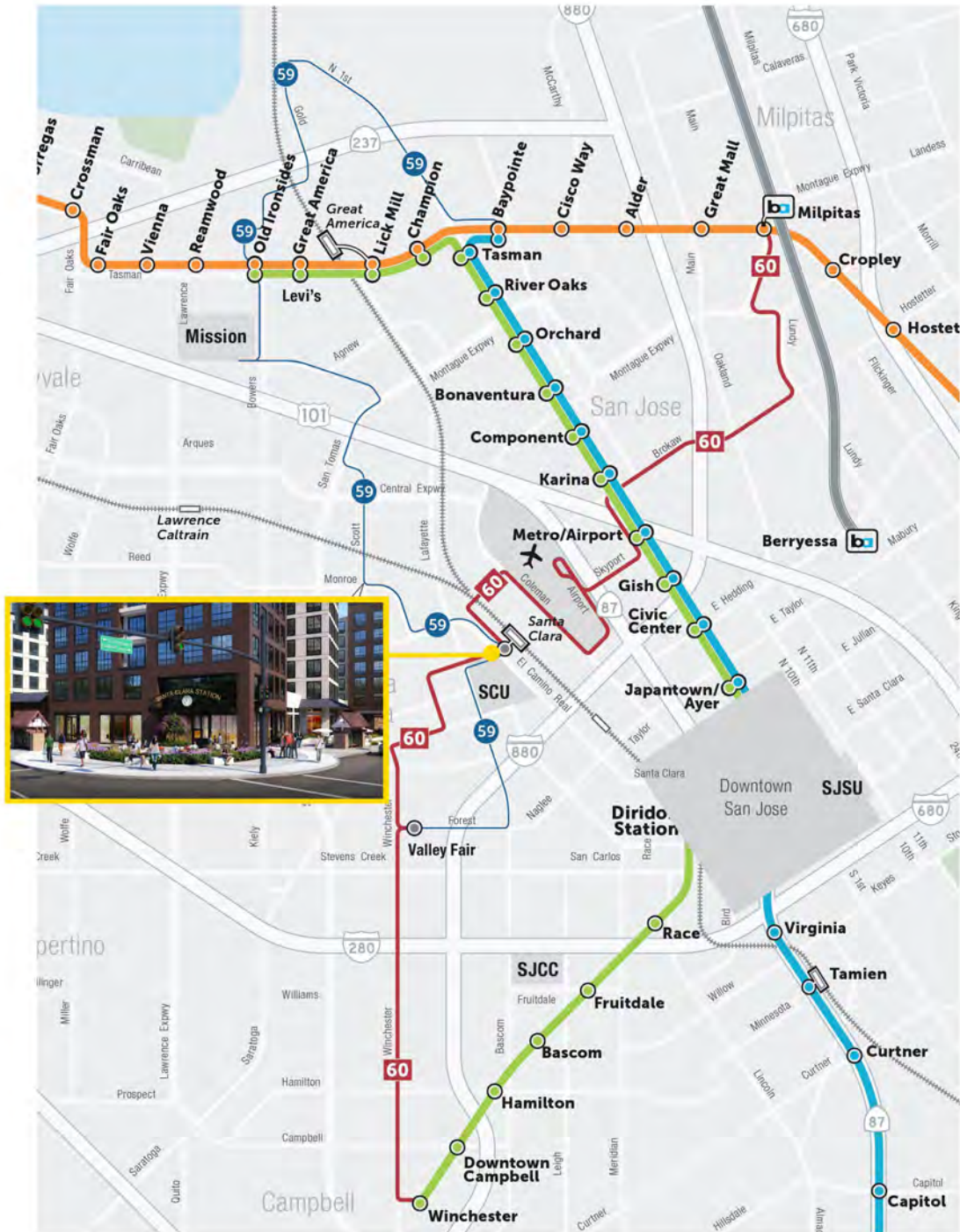
1 **The further people live from their jobs, schools, and services, the longer they**
2 **spend commuting in cars, which creates more greenhouse gas emissions.**
3 **When people have affordable options for housing close to where they work,**
4 **they can spend less time commuting and reduce their greenhouse gas**
5 **emissions. Another effective way to reduce greenhouse gas emissions is to**
6 **build affordable places to live close to public transit options.**

7 41. The gaping expanse between housing availability and demand is exacerbated by
8 the radical difference in timelines for advancing commercial and housing development projects in
9 the Bay Area—a difference resulting primarily from the fact that local jurisdictions maintain
10 authority over approving new housing projects. The assertion of local control often generates
11 multiyear approval processes and seemingly endless delay. Meanwhile, demand for housing in the
12 Bay Area has not softened: According to an analysis by McKinsey & Company, between 2009
13 and 2017, graduates of Stanford and UC Berkeley started a total of 2,948 companies. More jobs
14 means more residents searching for housing.

15 42. The overall level of housing construction is a key factor in preventing such
16 persistent problems, as each unit built houses individuals who do not need to seek housing
17 elsewhere. Every unit not built means that the people who would have lived in that unit must
18 search for their next best option, thereby displacing others who might have seen that option as
19 their best, in an endless chain. This phenomenon has been prominently on display in recent years
20 within the City of Santa Clara in the neighborhoods surrounding Santa Clara University. As
21 SCU’s programs and student body have grown, the student population has outpaced levels of
22 available on-campus housing, and as a result most students in upper classes arrange to live off
23 campus in surrounding neighborhoods. They have little other choice, but the resulting
24 displacement of working people and families from the off-campus units where SCU students live
25 has become a major point of contention in the surrounding neighborhoods. Mayor Gillmor has
26 publicly cited relieving such pressure as a major benefit of REMET’s proposed project.

27 43. The need to address environmental concerns also makes it imperative for decisions
28 regarding new housing development to take into account existing transit corridors. More housing
29 close to transit enables greater ridership and reduces the need for residents to rely on personal
30 automobiles, thereby easing traffic congestion, reducing emissions, and taking advantage of

1 existing infrastructure rather than relying on expansion of transit networks. The subject property
2 at issue here is therefore ideally situated, directly across the street from Santa Clara Station,
3 already in service as a CalTrain stop and planned to be included in a future BART expansion.
4 Housing alongside Santa Clara Station would therefore constitute the epitome of smart, transit-
5 oriented development.



1 44. Advancing development of a more densely populated South Bay with greater
2 reliance on existing transit infrastructure and less focus on car-dependent, standalone single-
3 family housing also has important social justice implications. According to U.C. Berkeley
4 researchers, the Bay Area as a whole has become more racially segregated in the past three
5 decades. According to a press article on the findings, “The Bay Area was more integrated in
6 previous generations. In 1980, neighborhoods in Santa Clara, Mountain View, San Jose,
7 Hayward, Milipitas, Oakland and San Francisco were considered fully integrated . . . By 2019,
8 many of those neighborhoods became more homogenous and considered lightly segregated.”¹ This
9 study had built off earlier work by the same researchers evaluating housing policy and zoning,
10 which “found roughly 80% of the region’s residential property is zoned for single family homes –
11 a telling indicator for racial segregation. Neighborhoods restricted to single family homes are
12 more likely to be exclusively White than communities with a mix of apartments and homes,
13 researchers found.”

14 45. The excessive focus on single-family standalone housing, to the virtual exclusion
15 of any other form of residential development, further exacerbates economic inequality and grinds
16 down lower-income residents—particularly so in the Bay Area where a standalone home is often
17 out of reach for a significant proportion of the population. A mismatch between housing that
18 would be suitable and housing that is actually available forces residents to make difficult choices
19 and often to commit to paying a large share of their incomes for a place to live. The lack of
20 diversification in housing options is one of the reasons that the CITY, as confirmed in a recent
21 article, has the second lowest per capita income of any subregion in the Bay Area: Median per
22 capita income in ZIP code 95054, Santa Clara, is \$59,029, ahead of only ZIP code 94555,
23 Fremont, at \$55,633.²

24 _____
25 ¹ Louis Hansen, *Bay Area has become more segregated over decades, report says*, SAN JOSE MERCURY NEWS (June
26 21, 2021), available at <https://www.mercurynews.com/2021/06/21/bay-area-has-become-more-segregated-over-decades-report-says/> (last visited Nov. 7, 2021).

27 ² Jody Meacham, *Bay Area has half the 100 most expensive ZIP codes in the U.S.; 15 are in Santa Clara County*,
28 SILICON VALLEY BUSINESS JOURNAL (Nov. 24, 2020), available at <https://www.bizjournals.com/sanjose/news/2020/11/24/bay-area-most-expensive-zip-codes-in-us.html> (last visited Nov. 7, 2021).

1 **2. State-led Efforts to Promote Housing Construction.**

2 46. Recognizing that California has too often fallen far short of building enough new
3 units to meet housing needs, the State Legislature has undertaken efforts in recent years to
4 promote, and more recently to force, approval of new housing construction.

5 47. The Surplus Land Act (SLA) specifically addressed disposition of public lands and
6 was first enacted in 1968 for the primary purpose of promoting the allocation of more land for
7 recreational use. But in 1979, the State Legislature amended the SLA to add promoting
8 construction of “low and moderate income housing” to its stated objectives. Further amendments
9 in 1982 prioritized affordable housing. Then in 2014, the Legislature amended the SLA further to
10 mandate a threshold percentage of affordable units in new residential development on lands sold
11 or leased by the public. The SLA is both procedural and substantive; it creates requirements for
12 the process that local agencies must follow before disposing of public lands and also for the end
13 result of any disposition. Before selling or leasing the land, the agency (here, the CITY) must
14 follow HCD’s procedures for determining the requirements that attach. If the agency determines
15 that the land is “surplus,” it must follow strict guidelines to ensure that entities seeking to create
16 affordable housing have priority in receiving the opportunity to develop the land. The agency may
17 also determine that the land is “exempt surplus,” but must issue written findings in support that
18 are subject to review by HCD. The effective result of these rules is that in most cases, the agency
19 must offer the land to entities that will agree to make 25 percent or more of the units available to
20 lower-income households at affordable cost (or rent) for a minimum of 55 years. Should the
21 agency fail to negotiate a sale or lease on such terms successfully, the agency can offer the land
22 on the open market, but if the land is ultimately used for residential development of 10 or more
23 units, then at least 15 percent of the units must be made available to lower income households.
24 Additional amendments passed in 2019 strengthen these requirements further by establishing
25 significant fines—imposed on the agency, not the developer—in the event of non-compliance.

26 48. In a similar vein, the Legislature in 1982 enacted the Housing Accountability Act
27 (HAA), with the stated goal of “meaningfully and effectively curbing the capability of local
28 governments to deny, reduce the density for, or render infeasible housing development projects.”

1 Cal. Gov. Code § 65589.5, subd. (a)(2)(K). The authority of local governments to block such
2 projects was significantly curtailed, and effectively eliminated with respect to projects that satisfy
3 “objective” general plan, zoning, and design review standards. As local governments persisted in
4 finding new ways to interpret the meaning of “objective” standards so as to block projects, the
5 Legislature modified the HAA in 2017 to define compliance with “objective” standards to
6 encompass all situations where “substantial evidence” would support a “reasonable person to
7 conclude” that the standards were met. *Id.* subd. (f)(4).

8 49. California also has long-standing laws, with lineage extending back to a 1969
9 Housing Element Law that declared housing a matter of “vital statewide importance,” that require
10 local jurisdictions to build enough housing to meet the housing needs of everyone in the
11 community. As the crisis has worsened in recent years, State officials have endeavored to use this
12 existing framework and interpret rules already on the books in a manner to force new housing
13 construction. The California HCD oversees the Regional Housing Needs Allocation (RHNA)
14 process, and in May of this year released new target numbers for the 2023-2031 RHNA cycle. For
15 this cycle, the Association of Bay Area Governments, which corresponds to the nine Bay Area
16 counties including Santa Clara County, is assigned 441,176 new units—more than doubling the
17 2015-2022 cycle target of 187,990 units. The CITY, meanwhile, is assigned construction of
18 11,632 new units, including an increment of at least 4,525 units affordable for low income and
19 very low income residents.

20 50. HCD issuing the RHNA numbers is no guarantee that housing units will be
21 approved, let alone built. For the 2015-2022 cycle, while the CITY has satisfied the total number
22 of units called for, the CITY’s efforts to construct affordable housing have been an abysmal
23 failure. According to a tally released earlier this year, the CITY has produced only 168 of the
24 1,050 units mandated for the very low income bracket; only 174 of 695 units mandated for the
25 low income bracket; and only 57 of 755 units mandated for the moderate income bracket.³ Most
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27 ³ David Alexander, *Santa Clara Flounders to Meet State ‘Affordable’ Housing Requirement; Mandates on the*
28 *Horizon*, THE SILICON VALLEY VOICE, available at <https://www.svvoice.com/santa-clara-flounders-to-meet-state-affordable-housing-requirements-larger-mandates-on-the-horizon/amp/> (last visited Nov. 7, 2021).

1 of the way through the cycle, then, the CITY is still a long way from reaching even 20% of its
2 RHNA affordable housing target. It met the overall threshold solely by virtue of approving market
3 rate units, to the virtual exclusion of affordable housing.

4 51. Under existing law the RHNA numbers have operated as targets, and therefore,
5 perhaps unsurprisingly, Bay Area cities and counties have regularly fallen short of meeting them.
6 Recognizing this established pattern of noncompliance, State Senator Scott Weiner introduced
7 Senate Bill 35, finally passed in 2017, which provides that jurisdictions whose housing elements
8 fail to comply with RHNA targets may see their local planning commissions surrender control
9 over decisions on approval of proposed housing developments.

10 52. The Legislature has taken further action more recently, both just before and in an
11 effort to respond to conditions worsened by the global coronavirus pandemic. The Housing Crisis
12 Act of 2019 generally locked permitting and entitlements requirements in place for purposes of a
13 given proposed housing development project; the measure generally prohibits local agencies from
14 throwing up new roadblocks after the fact once an application is under submission. A trio of bills
15 passed in September 2021 further promoted creation of affordable housing: SB 8 extended the
16 expiration date for the Housing Crisis Act rules by five years, from 2025 to 2030; SB 9 authorized
17 homeowners to bypass local permitting rules to create duplexes in areas zoned for single-family
18 residential construction and subdivide existing lots, thereby allowing up to four units where
19 before only one would have been permitted; and SB 10 created a streamlined path for local
20 jurisdictions to enact multi-unit zoning.⁴

21 53. In recent years the State has also commenced efforts to overrule anti-housing
22 decisions by taking to the courts. In October 2021, the Board of Supervisors for the City and
23 County of San Francisco voted to halt work on a proposed 495-unit transit-oriented residential
24 development project featuring a significant affordable housing allocation in downtown San
25 Francisco pending further environmental review widely regarded as pretextual and unjustified.

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27 ⁴ Iris Kwok and Samantha Lim, *Gov. Gavin Newsom passes SB 9, ending single-family zoning in CA*, THE DAILY
28 CALIFORNIAN (Sept. 23, 2021), available at <https://www.dailycal.org/2021/09/23/gov-gavin-newsom-passes-sb-9-ending-single-family-zoning-in-ca/> (last visited Nov. 7, 2021).

1 Shortly thereafter, HCD opened a formal investigation into the circumstances of this decision.
2 And in 2019, the administration of Governor Gavin Newsom filed a lawsuit against the City of
3 Huntington Beach for an arbitrary denial of approval for a residential development project there.

4 54. No doubt the path forward requires a complex balancing of environmental, transit,
5 natural resource, infrastructure, employment, and affordability considerations, to name only a
6 few—and there exists within California at multiple levels of government a robust array of legal
7 and administrative processes, along with opportunities for notice and public comment, to assure
8 that these underlying issues are identified and addressed. But in the first instance, and over and
9 above all other principles local governments may wish to apply or conditions they may wish to
10 attach to any particular project, the mandate called for by the State’s present predicament could
11 not be more clear, and that is to build more housing. Unless and until California has more housing
12 closer to where people work and live, the State will remain in perpetual crisis, with only limited
13 ability to come to the aid of its least vulnerable.

14 3. An Embattled City Attorney

15 55. Former City Attorney DOYLE was recruited to serve as interim city attorney by
16 City Councilmember Teresa O’Neill in 2017 following the resignation of then-City Attorney Ren
17 Nosky.⁵ Previously, DOYLE had enjoyed a 26-year career and risen to serve as senior deputy city
18 attorney with the CITY’s much larger next-door neighbor, the City of San Jose. At the time,
19 DOYLE was also serving as chair of the CITY’s Civil Service Commission, an entity “charged
20 with the duty of ensuring that qualified persons are appointed to the service of the City,”⁶ which
21 role gave him considerable influence over recruiting for the CITY and potentially even his own
22 hiring. DOYLE’s initial stint as interim city attorney was set for six months, though the City
23 Council would shortly thereafter confirm him as the permanent replacement City Attorney.

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26 ⁵ Ramona Giwargis, *Santa Clara’s new interim city attorney has ties to San Jose*, SAN JOSE MERCURY NEWS (Jan. 13,
2017), available at <https://www.mercurynews.com/2017/01/13/santa-claras-new-interim-city-attorney-has-ties-to-san-jose/> (last visited Nov. 7, 2021).

27 ⁶ City of Santa Clara website, “Civil Service Commission” page, available at <https://www.santaclaraca.gov/our-city/government/boards-commissions/civil-service-commission> (last visited Nov. 7, 2021).
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1 56. During his tenure as deputy city attorney with the City of San Jose, DOYLE had
2 distinguished himself for arguing forcefully, and publicly, against a pension reform plan that
3 would have affected him personally. Amazingly, in making this argument, he urged a view that
4 “The California Supreme Court has consistently held that governments cannot invalidate their
5 own contracts without running afoul of the federal and state constitutions. *This applies to*
6 *contracts with developers*, city-issued bonds and, yes, pension obligations.”⁷ As will become
7 apparent, DOYLE regularly found it convenient to adjust his position on how scrupulously local
8 governments need to fulfill their obligations according to what happened to suit DOYLE’s
9 immediate personal or political interest in any given situation.

10 57. During his time as interim and then the regularly employed City Attorney for the
11 CITY, Former City Attorney DOYLE acquired, and at times appeared to seek out, a reputation for
12 being notoriously aggressive and combative in dealing with those who opposed his preferred
13 positions. On many issues of major political significance for residents of the CITY, he would
14 speak and advocate well outside the bounds of his role—nominally as a neutral legal advisor paid
15 by the CITY to provide objective legal advice to the Mayor and City Council—and would seek to
16 advance his own views in his capacity as a CITY resident.⁸ DOYLE regularly fought with the San
17 Francisco 49ers, the NFL franchise that has played its home games in the CITY since 2014.
18 Eventually, the CITY found itself embroiled in at least eight separate legal battles with the 49ers,
19 and the fight between the CITY on the one hand and a political coalition including the Mayor and
20 Former City Attorney DOYLE became the major fault line of local municipal politics.

21 **4. Governance of the City of Santa Clara**

22 58. The CITY is governed by a seven-member City Council; the Mayor occupies one
23 seat along with six other elected councilmembers. By early 2020, Former City Attorney DOYLE
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25 ⁷ Brian Doyle, *Brian Doyle: San Jose’s assault on vested rights is patently illegal*, SAN JOSE MERCURY NEWS (Nov.
26 22, 2011), available at <https://www.mercurynews.com/2011/11/22/brian-doyle-san-joses-assault-on-vested-rights-is-patently-illegal/> (last visited Nov. 7, 2021).

27 ⁸ Carolyn Schuk, *Santa Clara’s City Attorney: Unorthodox Hire, Unorthodox Conduct*, THE SILICON VALLEY VOICE
28 (March 8, 2021), available at <https://www.svvoice.com/santa-claras-city-attorney-unorthodox-hire-unorthodox-conduct/> (last visited Nov. 7, 2021).

1 was allied with Mayor Gillmor and three other councilmembers and, owing to a seat vacated by a
2 former councilmember due to health reasons, enjoyed a 4-2 advantage on most issues coming
3 before the Council related to the 49ers or development more broadly. That all changed in the 2020
4 City Council elections, however, when the 49ers supported the candidacy of four new candidates
5 for the Council, three of whom prevailed. The coalition of diverse interests not aligned with City
6 Attorney DOYLE therefore emerged from the election with a 5-2 advantage.

SANTA CLARA MAYOR AND CITY COUNCIL



[Lisa M. Gillmor](#)
Mayor
Elected November
2018
Term expires 2022



[Kathy Watanabe](#)
Councilmember
[District 1](#)
Elected November
2020
Term expires 2024



[Raj Chahal](#)
Vice Mayor
[District 2](#)
Elected
November 2018
Term expires
2022



[Karen Hardy](#)
Councilmember
[District 3](#)
Elected November
2018
Term expires 2022



[Kevin Park](#)
Councilmember
[District 4](#)
Elected
November 2020
Term expires
2024



[Sudhanshu "Suds" Jain](#)
Councilmember
[District 5](#)
Elected November
2020
Term expires
2024



[Anthony J. Becker](#)
Councilmember
[District 6](#)
Elected
November 2020
Term expires
2024

<https://www.santaclaraca.gov/our-city/government/mayor-and-council/councilmembers>

26 59. With these shifts in the balance of power, Former City Attorney DOYLE finally
27 met his Waterloo when the CITY followed his advice to contest a lawsuit in which citizen groups
28

1 had sued the CITY for violations of the California Voting Rights Act (CVRA).⁹ At the direction
2 of Former City Attorney DOYLE, the CITY mounted a legal fight, lost the case, filed an appeal,
3 and then lost the appeal, and therefore had to absorb a judgment and appeal costs coming to well
4 over \$5 million.¹⁰ Former City Attorney DOYLE subsequently failed to communicate until it was
5 too late a settlement offer that would have greatly reduced the amount the CITY had to pay.¹¹ The
6 delay in reporting the CVRA lawsuit was consistent with a broader pattern of Former City
7 Attorney DOYLE's withholding information and channeling his legal advice to support his
8 preferred positions and strategies. And it appears inconsistent with the clear mandate of California
9 Rule of Professional Conduct 1.4.1 applicable to all California attorneys, which requires prompt
10 communication to the client of any written offer of settlement in a civil lawsuit.

11 60. As of April 2021, the performance of then-City Attorney DOYLE was under
12 investigation by the CITY, and at a closed session at a special meeting of the City Council held on
13 September 1, 2021, the City Council voted 5-2 to terminate him.

14 **B. 500 South Benton Street: Workforce, Affordable, and Student Housing**

15 61. REMET is based in San Francisco, where it maintains its home office. REMET
16 forms part of the West Coast presence of the Republic Family of Companies, and its operations
17 are national in scope: REMET is pursuing several major development projects in the Bay Area
18 and Los Angeles; a major transit-oriented development project in Charlotte, North Carolina; two
19 projects in Washington, DC; and another in Denver, Colorado. REMET was ideally suited to
20 serve as the developer for the Santa Clara Station project: it has significant experience and
21 expertise in public/private projects and particularly those involving transit-oriented development.

22
23 ⁹ Eli Wolfe, *Santa Clara city attorney firing opens new relationship with 49ers*, SAN JOSE SPOTLIGHT (Sept. 13 2021),
24 available at <https://sanjosespotlight.com/santa-clara-city-attorney-firing-fired-49ers-football/> (last visited Nov. 7, 2021).

25 ¹⁰ Lance Williams and Ron Kroichik, *Santa Clara City Council fires Brian Doyle, a frequent 49ers critic*, SAN
26 FRANCISCO CHRONICLE (Sept. 1, 2021), available at <https://www.sfchronicle.com/sports/49ers/article/Santa-Clara-City-Council-fires-city-attorney-16429700.php> (last visited Nov. 7, 2021).

27 ¹¹ Carolyn Schuk, *Black and White Evidence City Attorney – Maybe Others? – Hid Settlement Offer in CVRA*
28 *Lawsuit*, THE SILICON VALLEY VOICE (Sept. 9, 2021), available at <https://www.svvoice.com/black-and-white-evidence-city-attorney-maybe-others-hid-settlement-offer-in-cvra-lawsuit/> (last visited Nov. 7, 2021).

1 In addition to the Santa Clara Station project, REMET is also engaged in a substantial transit-
2 oriented development project in Redwood City in partnership with American Legion Post 105 that
3 includes a major housing allocation for veterans alongside significant workforce and affordable
4 housing. Based on its reputation for excellent work, REMET has become the go-to development
5 partner for YMCAs throughout the country, and REMET has partnered with the YMCA on
6 projects in Denver; Arlington, Virginia; Charlotte, North Carolina; the Bay Area; and Burbank
7 and LA's Westchester community in Southern California. Each of these projects has been
8 calibrated to the specific needs of the surrounding community, and on completion they will
9 promote smart growth in surrounding areas for generations.



1 62. The property at 500 South Benton Street within the City of Santa Clara is ideally
2 located for transit-oriented development. Because it is located directly adjacent to an existing
3 CalTrain station, it presents a perfect opportunity for residents to live with minimal dependence
4 on automobile transportation while still accessing a major swath of what the Bay Area has to
5 offer. The location is also an approved planned site for future Bay Area Rapid Transit (BART)
6 expansion, creating even broader reach for the location once that step is complete. And because
7 the site is located directly across El Camino Real from Santa Clara University, residents who
8 study or work at SCU would enjoy a walking commute.



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23 63. The specific property at issue formally consists of two separately owned plots of
24 land that for the moment function seamlessly as part of a single parking lot, with parking space
25 numbers assigned via a single numbering system. The combined space occupies an area roughly
26 tracing out a lopsided rectangle with Benton Street forming a shorter northwest boundary, El
27 Camino Real forming the longer southwest side, and Railroad Avenue sweeping around the
28 longer northeast and shorter southeast sides. VTA owns a rectangular plot assigned Assessor's

1 Parcel Number 230-08-061, starting near the corner of Benton and Railroad and consisting of
 2 roughly 31,000 square feet; the VTA portion makes up approximately 30 percent of the land area
 3 for the combined property. The CITY owns the remainder of the area within the pocket created by
 4 Benton, Railroad, and El Camino Real; this portion, assigned Assessor's Parcel Number 230-08-
 5 078, consists of roughly 75,000 square feet and makes up the remaining approximately 70 percent
 6 of the combined land area.

7 **70 Affordable Units**

8 One, Two and Three Bedroom Units
 9 Rental range: 30% - 80% AMI

10 **Santa Clara County**
 11 **2021 Area Median Income (AMI) Chart**

Income Level	Income Limits by Household Size		
	1	2	3
Low Income (LI) <80% of the Area Median Income	\$82.4K	\$94.2K	\$106K
Very Low Income (VLI) <50% of the Area Median Income	\$58K	\$82.4K	\$74.6K
Extremely Low Income (ELI) <30% of Area Median Income	\$34.8K	\$39.8K	\$44.7K

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21 64. The REMET Santa Clara Station project, in the form it had taken on at the moment
 22 of its untimely termination brought about by City Attorney DOYLE, was a mixed-use transit-
 23 oriented development that, given the particular regional and neighborhood needs of the 500 South
 24 Benton Street location, focused heavily on housing. The first component was affordable in the
 25 informal sense of low-cost, attractively priced units in 2/2, 3/3, and 4/4 configurations of bed/bath
 26 suites coupled with shared common space and kitchen amenities. In all, this housing component
 27 was to include 545 bed/bath suites within 170 units. The rental prices of these units were set to be
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1 offered at \$1,500 to \$1,700 per month, and they therefore represented what would have been the
2 most attractively priced rental opportunities in the CITY and the best opportunity for young
3 professionals, workers, and students to find a well-designed and safe living space in the
4 surrounding area. In addition, the second component was planned to include 70 units that would
5 qualify as Affordable Housing in a formal, legal sense as defined under federal HUD standards,
6 which call for rental rates ranging from 30% of average monthly income for low-income families
7 defined as those earning 80% or less of the regional median.

8 65. Residents in both housing components could make use of 32,670 planned square
9 feet of onsite recreational space. Included within these generous allotments were 2,350 square feet
10 of community use space, and an 1,800 square foot space devoted to the Police Athletic League.
11 Also onsite would be a fitness center and health clinic. The building was to be state-of-the-art,
12 professionally managed, and built to last.

13 66. REMET also rose to the challenge of accommodating the need to relocate the
14 existing municipal well. REMET studied the site extensively and settled on a perfect location for
15 a replacement well whose design would permit it to remain in service for years. The present well
16 was built in 1995 and refurbished in 2016. Studies have indicated it will fail in less than ten years
17 and cannot be refurbished a second time. The onsite replacement REMET planned was located
18 only 150 feet away from the present well site. As the REMET project took shape, the CITY
19 requested that REMET identify a second backup well location, to be verified through drilling and
20 testing. Despite receiving little input from the CITY when REMET asked, as well as general
21 bureaucratic slowdowns due to the coronavirus pandemic, and despite the fact that a second well
22 site was never contemplated under the terms of the original ENA, REMET nonetheless
23 persevered in good faith and successfully identified a promising second supplemental well site at
24 611 El Camino Real. REMET budgeted an additional \$3.4 million for development of these
25 municipal wells. The CITY therefore stood to gain well amenities far superior to those it currently
26 possesses at 500 South Benton.

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1 **C. REMET’s Extensive Community Outreach**

2 67. REMET engaged in a sustained program of community outreach from the outset.
3 After long and complex discussions and negotiations with public officials and agencies to address
4 all the hurdles to building at the site, REMET conducted design workshops with designated
5 members of the surrounding community to modify the project design and scope according to the
6 community’s stated needs and preferences. REMET also participated in a series of public
7 community outreach meetings where any member of the public could attend and was given an
8 opportunity to speak.



15 **Conceptual Design April, 2018**



20 **Round 1: Revised Design January 2019**



21 **Round 2: Revised Design October 2019**



28 **Round 3: Revised Current Design February 2020**

1 68. The project changed significantly as a result of the foregoing community input.
2 REMET did not approach these meetings as a mere procedural checkbox, but embraced time-
3 honored community outreach requirements in letter and spirit with prominent announcements and
4 by distributing postcard notices to all residents in the surrounding areas. Due to the breadth of
5 interest, these meetings generally lasted longer than scheduled, and REMET personnel remained
6 after each one to ensure all questions were heard and answered. In response to feedback received
7 at these sessions and in other conversations with public officials and community leaders, REMET
8 twice substantially redid the overall appearance and façade for the building, invested significant
9 additional resources to address historical preservation concerns and modify the design to respect
10 the area’s history, and changed the overall makeup of housing offered to include a greater share of
11 workforce housing.

12 69. With changeovers in officeholders and personnel, part of the original discourse
13 about the site and the project from back in 2016 and 2017 is lost to time. But Mayor Gillmor,
14 unanimously appointed to serve as mayor by the rest of the Council after the prior mayor
15 resigned, has remained aware and supportive of the project from the beginning.

16 70. For example, at the July 14, 2020 City Council meeting, where the Council voted
17 unanimously to authorize the third amendment and extension of the then-in-force ENA among
18 REMET, the CITY, and VTA, Mayor Gillmor commented at some length about the challenges
19 presented by the prospect of developing the subject property and the CITY’s need for assistance
20 from REMET in making it happen. At the time when the CITY was considering opening the site
21 for new housing, given its central location and ideal suitability for transit-oriented development,
22 the CITY received only two proposals, and REMET’s was deemed superior because it offered the
23 greatest economic benefits to the CITY. Mayor Gillmor noted in particular that to the extent
24 students made use of the new housing, it would relieve pressure on the areas surrounding SCU,
25 which already host many students in more traditional standalone units that might otherwise house
26 families. The Mayor also noted that the bed/bath suite setup with shared amenities was a sensible
27 approach given the examples she had observed in her neighborhood of up to seven young
28 engineers living together in a shared house, due to the exorbitant cost of housing in the region.

1 And Mayor Gillmor laid out the stark reality that: “If we don’t move this project ahead, it’s going
2 to die. And if it dies, I can’t imagine when we could move ahead and even get somebody
3 interested” in the site, given all the complications surrounding the well, parking requirements,
4 density, and affordability standards, among other concerns.

5 71. Prominent in discussions regarding development within the city in recent years has
6 been the Old Quad Residents Association (“Old Quad”), a community group formed in 1979 to,
7 in its words, “preserve the substantial historical heritage, host social events that bring about a
8 strong sense of community spirit, and promote a high-quality environment for all.”¹² The Old
9 Quad is far from monolithic, and many of its members strongly support continual smart
10 development within the City and throughout the region. Old Quad Vice President Bob Kelsey and
11 Treasurer Bob O’Keefe have both advocated for allowing the REMET project to move forward in
12 community meetings and before the City Council. Unfortunately, a few of the homeowners in the
13 Old Quad remained insistent that the site should remain a parking lot and that students should not
14 be allowed to live there, and have adopted the well-worn anti-growth mantra that the area
15 “requires more study” before any development can proceed. These anti-growth opponents
16 regularly misrepresent themselves as speaking for the entire organization in voicing their
17 coordinated opposition at CITY meetings where new development projects are under
18 consideration. As a consequence, they have wielded disproportionate influence on City Council
19 members and enjoyed at least temporary success in blocking projects they dislike.

20 **D. Timeline of Approvals and Progress**

21 **1. Preliminary Discussions**

22 72. REMET began its due diligence, to consider the possibility of a project on the site
23 that would include new residential development with a substantial affordable housing increment,
24 in 2016. REMET first held several discussions with members of the local community that
25 culminated in a meeting in January 2017 attended by local resident and former United States
26 Secretary of Transportation, U.S. Congressman, and Mayor of San Jose Norman Y. Mineta, then-

27 ¹² Old Quad Residents Association, “About” page, available at <https://www.oldquadsantaclara.org/about> (last visited
28 Nov. 7, 2021).

1 Mayor Jamie Matthews, then-City Manager Julio Fuentes, Assistant City Manager Shikada, and
2 the acting City Planning Director.

3 73. For over a year, REMET conducted an extended series of in-person meetings and
4 conversations with CITY officials, members of the VTA, community group leaders, and
5 representatives of SCU to discuss potential uses of the site and the shape of the proposed project.
6 Through these meetings and discussions, to which the CITY devoted countless hours of CITY
7 staff time, REMET uncovered and painstakingly addressed a host of concerns related to
8 affordable housing, student housing and SCU's projected needs, historical preservation due to
9 proximity to several sites of historical significance, and present uses of the parcel including
10 existing parking for VTA and the Santa Clara Police Department as well as a municipal well.
11 These iterative discussions resulted in a well-balanced plan designed to address the concerns of
12 all possible stakeholders.

13 74. REMET also engaged the services of Humphreys & Partners Architects, a
14 renowned architectural firm with considerable expertise and experience. Working in conjunction
15 with Humphreys, REMET advanced the funds to complete this substantial due diligence effort as
16 a demonstration of its seriousness and to greatly diminish any potential for non-performance in
17 the event the CITY and VTA chose to green-light the project. REMET conducted all of this work
18 at its own expense and before receiving any commitment at all from the CITY or VTA.

19 **2. Initial Proposal to the CITY**

20 75. On May 31, 2017, Richard Kramer, Chairman of the Republic Family of
21 Companies that includes REMET, sent then-Santa Clara City Manager Rajeev Batra a letter
22 detailing a proposal for REMET, the CITY, and VTA to enter into an ENA for the purpose of
23 developing housing on the site ("Proposal Letter"). The letter noted the prior year of talks among
24 REMET, the CITY, VTA, and SCU, laid out key objectives and challenges, and proposed terms
25 for disposition and development of the property, the anticipated course of negotiations for an
26 operative disposition and development agreement (DDA), and eventual payments to the CITY
27 and VTA in excess of \$228 million. The Proposal Letter is included herewith as Exhibit A.
28

1 76. Attached to the Proposal Letter were a full preliminary conceptual design, a
2 description of the planned units, total square footage, and amenities, and a detailed multi-level
3 preliminary site plan—once again, all commissioned and paid for by REMET at its own expense
4 before receiving any commitment at all from the CITY or VTA.

5 77. Indeed, it appears probable that if REMET had not taken the initiative, the parcel
6 may well have remained in service only as a parking lot with no prospect of hosting residential
7 development for decades into the future.

8 **3. The Exclusive Negotiations Agreement (ENA) and Two Extensions**

9 78. REMET’s proposal to the CITY and VTA was successful, and the three sides
10 commenced negotiations that extended throughout the remainder of 2017.

11 79. On February 6, 2018, REMET as Developer and the CITY and VTA as Owners
12 entered into an Exclusive Negotiation Agreement for purposes of advancing the project. The
13 Recitals noted in particular that “The Owners wish to encourage and implement a mixed-income,
14 transit-oriented development close to the Santa Clara Station in support of the Station Area Plan.”
15 The document stated that the purpose of the ENA was “to establish procedures for the negotiation
16 by the Owners and the Developer of a Disposition and Development Agreement (the ‘DDA’) and
17 Ground Lease pursuant to which the Developer will conduct specified development activities
18 related to” the subject property. The ENA further mandated “Good Faith Negotiations” over a
19 negotiating period of 12 months, renewable for up to 6 months, during which time the CITY and
20 VTA would not negotiate with any entity other than REMET. To secure this arrangement,
21 REMET was required to submit two \$25,000 negotiation deposits, advance the project, and make
22 regular reports. REMET understood all of these provisions in good faith to reflect the CITY’s
23 intention to proceed with the project. City Manager Santana signed on behalf of the CITY, and
24 City Attorney DOYLE (then serving in an interim capacity) signed to approve the instrument as
25 to form. The original ENA is attached as Exhibit B.

26 80. The ENA had also specified that “The City, as majority owner, will be primarily
27 responsible for negotiations and will be considered the lead negotiator for the Owners”—in other
28 words, the CITY would take the lead in negotiating on behalf of both the CITY and VTA. As the

1 project unfolded, however, it became clear that the CITY largely would not perform its duties as
2 lead negotiator, and a great deal of responsibility for working through issues with REMET that
3 arose as the planning process proceeded ultimately fell to VTA. VTA often prepared the meeting
4 agendas and worked with REMET even on matters relevant to the CITY but not VTA.

5 81. In negotiating this agreement, the CITY had an unambiguous and non-delegable
6 duty to operate in good faith and do its due diligence to enable itself to deliver a developable
7 parcel of land to REMET—and to disclose any known or apparent risks that could disrupt the
8 planned project, including those flowing from requirements tied to entitlements or applicable
9 regulations. Yet at no time during the negotiation of the ENA or during the initial ENA term and
10 six-month extension did City Attorney DOYLE or anyone representing the CITY make any
11 mention whatsoever to REMET that there would be any necessary actions to take or procedures to
12 follow under the Surplus Land Act, or that the law could pose any obstacle at all. The
13 representation that the land was developable embodied in the CITY entering into the ENA with
14 the VTA and REMET, coupled with failing to mention any possible SLA risk factor, was all the
15 more egregious in that City Attorney DOYLE had until his appointment as City Attorney for the
16 CITY in 2017 served within the city attorney’s office for the City of San Jose, the city whose non-
17 compliance (and open defiance) of the SLA was at issue in *Andersen*. The non-disclosure by City
18 Attorney DOYLE of any issue or concern whatsoever related to the SLA communicated to
19 REMET and justified REMET in believing that there did not exist any such SLA issue or concern,
20 and moreover reflected City Attorney DOYLE’s belief that the REMET project was not subject to
21 any requirements under the SLA and could not be halted based on the SLA.

22 82. But for the misrepresentations by the CITY on which REMET relied concerning
23 whether the site was developable, REMET would not have entered the ENA and would not have
24 spent thousands of hours and millions of dollars seeking to advance the project. If the CITY had
25 done its due diligence and disclosed the potential SLA issue, REMET would have insisted on
26 further assurances and barring a satisfactory contingency plan, walked away altogether.

27 83. On February 8, 2019, REMET, the CITY, and VTA entered Amendment Number
28 1 to the ENA, thereby exercising the option to extend the negotiating term for six months, and for

1 REMET to supply a third \$25,000 negotiation deposit. For this amendment as well, City Manager
2 Santana signed for the CITY and City Attorney DOYLE approved as to form.

3 84. By mid-2019, the parties had agreed to expand the project from student housing to
4 workforce housing as well, in part based on VTA's prioritization of meeting its ridership goals.
5 REMET and the CITY agreed to this change. The parties to the ENA also agreed that more time
6 was needed to complete the plan for relocation of the well, and to complete the CEQA
7 environmental review process. Based on these considerations, all parties agreed that the project
8 would benefit from a further extension of the ENA. Accordingly, the City Council agenda'd and
9 took up the matter of a further ENA extension at the July 16, 2019 City Council Meeting, in item
10 No. 19-842. CITY staff issued a formal recommendation that the CITY execute a second ENA
11 extension. There was no public comment and no controversy or contention arose. The City
12 Council voted unanimously 7-0 to authorize the second extension.

13 85. On November 12, 2019, the parties to the ENA settled on a final form for the
14 instrument extending the ENA by an additional twelve months, for a period lasting through
15 August 5, 2020. REMET was led to believe, and believed, that all was well with the project and
16 that the parties were making good progress toward successful completion.

17 86. Once again, City Attorney DOYLE approved the agreement as to form. City
18 Manager Santana then executed the agreement on behalf of the CITY on December 5, 2019 (over
19 a week after the Court of Appeal issued its decision in *Anderson*, discussed *supra*).

20 **4. Benefits Conferred on the CITY by REMET**

21 87. Throughout the period when the ENA was in force, as well as for nearly six
22 months after the CITY terminated the project via a closed session City Council vote engineered in
23 large part by City Attorney DOYLE, REMET performed fully on its side of the deal and worked
24 tirelessly to undertake all the work necessary to bring the project to life. This included navigating
25 local political and community concerns, preparation of a comprehensive design and architectural
26 plan, and the seemingly endless series of permits, reports, and approvals a developer must obtain
27 to pursue development projects in the San Francisco Bay Area in the present day.
28

1 88. REMET and its retained consultants developed a broad range of proprietary
2 documentation that it turned over to the CITY as part of this effort. These included:

3 Site Studies

- 4 - *Environmental Soils Phase One and Two*
- 5 - *Geological Soils Phase One and Two*
- 6 - *Utilities Mapping and Due Diligence*
- 7 - *Sewer Flow Capacity Study*
- 8 - *Preliminary Title Report*
- 9 - *ALTA Survey*
- 10 - *Title Review/Title Objection Letters*

11 Well Relocation Documents

- 12 - *Technical Feasibility Study/Report*
- 13 - *Preliminary Design Report*
- 14 - *Drinking Water Source Assessment and Protection (Regulatory Checklist for DDW)*
- 15 - *Well Development Design/Construction Budget and Schedule*

16 Planning Application and Development Plan Submittals

- 17 - *Site Plans*
- 18 - *Buildings Renderings, Elevations, Sections, Floor Plans, Typical Unit Plans*
- 19 - *Landscape Plans*
- 20 - *Civil Drawings/Plans: Utilities, Grading, Circulation, Parking, Topography, et.al.*
- 21 - *Open Space Plan*
- 22 - *Green Building Checklist*
- 23 - *Other: Planning, Building, Engineering, Fire, Water, Park/Rec, Utilities, Streets*

24 CEQA Documentation (IS/MND Draft)

- 25 - *Transportation Analysis*
- 26 - *Cultural/Historical Resources Assessment*
- 27 - *Noise Assessment*
- 28 - *Air Quality Assessment*

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Economic Development Information

- Extensive Income/Expense Pro-Forma Development
- Project Development Schedule and Budgets
- Market Study

Transportation Documentation

- Transportation Demand Management Plan
- Parking Study

Transactional Documentation

- Draft Disposition and Development Agreement (DDA) & Form of Lease Term Sheet
- Draft Development Agreement
- Draft Affordable Housing Agreement

89. In short, REMET responded to and robustly satisfied every provision of the ENA assigning it with any task or obligation and, indeed, went above and beyond in addressing a series of issues and concerns that had not been contemplated by any of the three signatories at the time when the original ENA was enacted. Moreover, the two extensions of the ENA term afforded the CITY additional time to scrutinize REMET’s work, and to make additional requests. None of REMET’s performance was ever found or determined to be in any way wanting. REMET met all the project specifications, paid its deposits, lined up and engaged the right outside support, and made steady progress toward a final plan covering details that would satisfy all signatories and stakeholders, right down to the final transactional documents.

90. Furthermore, the 29 percent affordable housing level effectively doubled the CITY’s 15 percent affordable housing requirement for new housing developments. It also exceeded even the standard required for developers making successful bids under the SLA.

E. The Unlawful Obstruction of the Affordable Housing Project

1. The Anderson Pretext

91. On November 26, 2019, a short two weeks after the second ENA extension came into final form, and one week *before* City Manager Santana signed the second ENA extension on behalf of the CITY, the Sixth District Court of Appeals issued its decision in *Anderson v. City of*

1 *San Jose*. The *Anderson* decision addressed a policy statement by the San Jose City Council
2 challenging the Surplus Land Act; the policy statement took the view that the SLA simply did not
3 apply to charter cities like San Jose—or by extension to Santa Clara, also a charter city.

4 92. The Court of Appeals confirmed what the Legislature had intended (and moreover
5 had expressly said, within the text of the statute): that because the affordable housing concerns
6 identified in the SLA are properly recognized as a matter of statewide concern, the SLA is equally
7 binding on both general law and charter cities, in every instance. The ruling had limited potential
8 effect, and no immediate effect, on REMET’s 500 South Benton Street project. Notably, with the
9 ENA for the REMET project then in force, there was still time for compliance.

10 93. City Attorney DOYLE, however, immediately seized on the ruling as justification
11 for stopping the REMET project. On December 18, 2019, less than two weeks after the City had
12 followed through on the unanimous 7-0 mandate of City Council to enter a second extension of
13 the ENA, City Attorney DOYLE delivered a memorandum to Mayor Gillmor and the other
14 members of City Council in which he advised that based on the ruling, “the City of Santa Clara
15 will have to comply with the provisions of the Act whenever it seeks to sell or lease its lands.”

16 94. Then from there, DOYLE concocted two conclusions not specifically called for in
17 *Anderson*: “The City will have to review any transactions that are currently being negotiated but
18 have not yet transferred title or have been leased. [*sic*] Some of these negotiations may need to be
19 ended in order for the provisions of the Act to be complied with. This includes potential
20 transactions that are currently under an [ENA] if that ENA was not the result of a procedure that
21 was in compliance with” the SLA.

22 95. *Anderson* said nothing whatsoever about what procedural requirements might
23 attach if a City had already entered an ENA without conducting a bidding process. Nothing in
24 *Anderson* said anything at all about ending negotiations or terminating projects.

25 96. The day after City Attorney DOYLE sent his memo, he held a call with REMET
26 outside counsel Robert Mezzetti, II. As was the case in a large share of City Attorney DOYLE’s
27 professional interactions, the conversation soon degenerated into a tirade, one unleashed by City
28 Attorney DOYLE on the unsuspecting Mezzetti. City Attorney DOYLE now for the first time

1 claimed he had opposed even the *original* ENA—the ENA that he himself had approved as to
2 form in his role as interim City Attorney—and castigated REMET’s outside counsel for not
3 insisting that the CITY and VTA conduct a round of offers as contemplated under the SLA.

4 97. Nevertheless, as the valid second ENA extension had gone through and was then
5 in force, REMET continued throughout this period to follow through with project planning,
6 applications for the requisite approvals, and negotiations with City staff on a proposed form of
7 DDA. The CITY and VTA continued with their fulsome participation in these activities. There
8 was no indication that the CITY or VTA where anything other than fully committed to moving
9 the project forward toward completion.

10 98. On March 31, 2020, REMET counsel sent DOYLE a letter in response to his
11 needlessly hostile position, seeking a collaborative resolution and emphasizing the considerable
12 discretion the City retained over matters involving designating land surplus and the SLA.

13 99. On April 1, 2020, the following day, City Attorney DOYLE responded to REMET,
14 expressing his view that the project could not go forward for multiple reasons, both related and
15 unrelated to the SLA. Most conspicuously, the letter reflected *another* shift in position by City
16 Attorney DOYLE, who now argued not only that he believed (as he had expressed for the first
17 time in December 2019) that as of the February 2018 signing of the original ENA the parties
18 should have arranged for SLA compliance then, but *also* that because the subject land continued
19 to house an operating well “we do not believe that the City Council would be able to make the
20 necessary findings that the property could be declared surplus.” The referent for the pronoun “we”
21 in this statement was unspecified. The April 1, 2020 DOYLE letter is attached as Exhibit C.

22 100. City Attorney DOYLE then offered even more dissembling and questionable
23 analysis when he noted, “it has not been demonstrated that the new well site will be able to
24 produce at the same quantity and quality as the existing well.” This issue had remained open only
25 because City Attorney DOYLE himself had overruled the assigned CEQA consultant’s initial
26 study mitigated negative declaration (IS/MND) and unilaterally required a much more costly full
27 environmental impact report (EIR).

28

1 101. City Attorney DOYLE was deliberately concealing the fact that REMET had
2 undertaken substantial measures to comply with environmental standards pertaining to the well
3 relocation and environmental impacts generally, which the merits of a good faith compliance
4 analysis would have shown. In particular, REMET had engaged a highly regarded local hydrology
5 firm, Todd Groundwater, to prepare a comprehensive Technical Feasibility Report that showed
6 with exhaustive and incontestable site studies and data work that following relocation, the well
7 would produce water quality and quantity at or above the levels the CITY receives from the
8 existing well, and additionally that the new, state-of-the-art well replacement would secure this
9 source of water supply for the CITY for the next 50-75 years—far beyond the expected remaining
10 life of the existing well. The replacement, to be funded entirely by REMET, would also save the
11 CITY some \$4 million in replacement costs. REMET had also engaged a top-notch well design
12 engineering firm, Infrastructure Engineering Corporation (IEC), to prepare comprehensive
13 preliminary well relocation design plans. As of 2020, both Todd Groundwater and IEC had been
14 working productively and collaboratively with the CITY and each other on well relocation plans
15 for the better part of two years.

16 102. Rather than crediting any of this work, and after sitting on the administrative draft
17 CEQA document for over six months without communicating a rationale or saying anything to
18 the retained project CEQA consultant, City Attorney DOYLE unilaterally ordered the CEQA
19 consultant to hire a third-party consultant to conduct a peer review of the well relocation effort.
20 City Attorney DOYLE thereby overruled all other stakeholders by administrative fiat and
21 imposed significant additional cost on REMET, all for a further review that turned up nothing
22 whatsoever in disagreement with Todd Groundwater and IEC’s findings. In all, City Attorney
23 DOYLE treated environmental review not as an objective process intended to ensure all valid
24 environmental concerns were addressed and protected, but rather as a bureaucratic weapon he
25 could use to obstruct progress on a project he had decided for his own reasons he did not like.

26 **2. The Third ENA Extension**

27 103. Despite these communications behind the scenes, the CITY and REMET continued
28 to exchange information, develop and negotiate provisions for a final term sheet, and generally

1 proceed under the understanding that everything was on track and everyone was acting in good
2 faith to make the project a reality. Indeed, on April 7, 2020, which was only six days after City
3 Attorney DOYLE's letter portending new environmental and SLA compliance hurdles, the CITY
4 staff made an Informational Report to City Council, presented as item No. 20-297 at that day's
5 City Council meeting. The Informational Report is attached as Exhibit D. The Informational
6 Report recounted the procedural and logistical steps the parties were undertaking to address
7 replacement of the municipal well and a range of other issues that had arisen and had been
8 addressed during the ENA negotiations periods. But there was no reference whatsoever within the
9 report to any issue related to SLA compliance. In addition, a subsection labeled "Next Steps"
10 noted that while the ENA had called for completing several more entitlements requirements
11 before the conclusion of the ENA term, "Given the current coronavirus public health crisis,
12 deploying City resources and third-party services to achieve these milestones may not be
13 possible." The subsection concluded, "Absent other Council direction, Staff will continue to
14 facilitate efforts on this project to the extent allowable given other resourcing needs." Clearly, the
15 progress to date coupled with the inevitable slowdowns caused by the pandemic made extending
16 the ENA term once more an eminently reasonable way forward. The Informational Report also
17 conveyed to REMET that the CITY would continue in its partnership with REMET despite City
18 Attorney DOYLE's April 1, 2020 letter.

19 104. Consistent with the presentation in the April 7, 2020 Informational Report, at the
20 July 14, 2020 City Council Meeting, the Council voted unanimously 6-0 to approve a third
21 amendment and extension to the ENA, in item No. 20-642. The public comment period at the
22 Meeting featured a wide array of views. In addition, then-Councilmember Debi Davis, who has
23 since retired from Santa Clara politics, expressed concerns related to SLA compliance and
24 arrangements for the replacement well. Yet Councilmember Davis joined the other five members
25 of the Council in voting unanimously to grant the extension. The Staff Agenda Report for item
26 No. 20-642 is attached as Exhibit E.

27 105. At the same meeting, Councilmember Davis asked the prescient question regarding
28 the SLA, "Okay, so, that process I think would have had to be done before we even had an ENA

1 with Republic, am I correct? Shouldn't that conversation have been discussed prior to this?"
2 Indeed, the CITY had put the cart before the horse in entering the ENA without regard for SLA
3 requirements, and in so doing had sent the message to REMET that the SLA would not prevent
4 the project from going forward. City Attorney DOYLE however noted, correctly, that
5 continuation of the ENA would not effectuate the disposition of any public land and therefore
6 could not trigger any requirement to establish compliance with the SLA, either procedurally or
7 substantively. It was therefore understood by REMET and all parties to the ENA, as well as the
8 entire Council and all those present at the Meeting, that the SLA by its terms posed no obstacle to
9 negotiating a continuation of the ENA and further development of and planning for the project.
10 He further advised that it was the CITY, not the developer, that was responsible for any liabilities
11 associated with SLA compliance.



3. A Secret Effort to Undermine the Project

106. Without notifying REMET or any of its representatives, City Attorney DOYLE,
unlawfully and for reasons known only to him because he has not disclosed them to anyone, then
orchestrated a sustained effort to suppress all progress on and ultimately to terminate the REMET

1 project. All of these efforts were undertaken while the ENA among REMET, the CITY, and VTA
2 was still in force.

3 107. Knowing of no change to the status quo, REMET throughout the year 2020
4 continued its immensely time-consuming efforts to obtain approvals and complete the required
5 studies needed to advance the project through the entitlements phase—all at the CITY’s request.
6 Negotiations with the CITY, VTA, and various state agencies continued apace. At no time during
7 the nearly one full year from issuance of the *Anderson* decision in November 2019 until Assistant
8 City Manager Shikada delivered the final letter on behalf of the CITY terminating project did
9 anyone at all inform or advise anyone at REMET that it should cease its active efforts to develop
10 the project—active efforts that, as noted above, steadily and consistently conferred benefits on the
11 CITY.

12 108. Instead, REMET, the CITY, and VTA all collaborated and cooperated to work up
13 a proposed final form of a Term Sheet preparatory to entering into a Development Disposition
14 Agreement (DDA), the document that, once finalized and enacted, would have transferred the 500
15 South Benton location to REMET via a 99-year lease and given REMET the green light to obtain
16 final authorizations and commence with construction. Indeed, completion of the DDA had formed
17 part of the conditioning recommended by the City Manager’s office when it also recommended
18 that the City Council vote, as it did, in favor of the third ENA amendment and extension on July
19 14, 2020.

20 109. REMET did not sleep on this request. In fact, on July 30, 2020—only 16 days after
21 this Council vote, before the third ENA extension had even been signed and while the term of the
22 second ENA extension had not yet run—REMET submitted a full, detailed, 57-item Term Sheet
23 laying out a complete proposal for all required key terms to be incorporated in a final DDA or
24 Lease Option Agreement (LOA) and proposed Ground Leases.

25 110. The 57 items addressed all of the concerns raised by the CITY, VTA, and
26 members of the public previously, including student housing, the affordable housing component,
27 parking for CalTrain and the Police Department, environmental compliance, all payment terms,
28

1 phasing for the construction, and a whole range of other terms and considerations, all laid out in
2 clear, concrete language tied to specific numbers, dates, and dollar amounts.

3 111. The CITY and VTA responded in kind less than two weeks later, on August 11,
4 2020. The CITY and VTA Response is attached as Exhibit F. Their Response document reflected
5 the years of negotiations that had come before, and manifested the three stakeholders' agreement
6 on substantially all the terms. Notations within the Response document indicated that only two
7 items remained "open"—the indemnity term in REMET's proposed agreement with the CITY and
8 the "Force Majeure" term in REMET's agreements both with the CITY and with VTA. These
9 items effectively reduced to a single open issue, however, which was whether REMET would
10 agree to indemnify its counterparties in the event they should be found liable in connection with a
11 charge of having violated the mandatory provisions of the SLA. As part of its recommendations
12 related to the vote on the third ENA amendment and extension, the City Manager's office had
13 recommended that the CITY seek such an indemnity, it appears at the urging of City Attorney
14 DOYLE and based on his reading of the *Anderson* decision. But as noted above, the *Anderson*
15 decision did not speak to the timing of SLA compliance, or to prospects for complying with SLA
16 notice provisions following negotiations conducted pursuant to an ENA. In short, no caselaw or
17 other authority had ever held such an indemnity was required or even would be valid should a
18 government successfully negotiate for it. The question of how to square the development with
19 SLA requirements therefore remained open, and certainly warranted further discussion—and to
20 discontinue negotiations over insistence on an indemnity term the very idea of which remained
21 wholly untested would constitute the height of bad faith. But as of mid-August 2020, when the
22 CITY and VTA sent their proposed markup of REMET's term sheet, there was no suggestion that
23 that single open question had potential to block the entire project.

24 **4. DOYLE Blocks the Project, While Telling the Public That "No**
25 **Reportable Action" Occurred**

26 112. Everything therefore continued as normal, with the parties continuing to work
27 toward obtaining final approvals and REMET anticipating a final round of negotiations to work
28 through the last open issues. Then, unbeknownst to REMET, the City Council held a special

1 meeting on October 15, 2020, wherein it conducted secret proceedings almost entirely in closed
2 session. As a result, the entire video of the proceedings publicly available on the CITY’s public
3 website lasts 6 minutes 19 seconds, none of which memorializes or renders transparent any aspect
4 of any public-facing official action taken at that meeting. It consists only of the prefatory pledge
5 of allegiance and statement of values, roll call, time for public comment, notice of proceeding to
6 closed session, reports of action taken in closed session, and adjournment. The time for public
7 comment did not include any actual comment from the public, for the straightforward reason that,
8 as noted by the Mayor, no members of the public were present. In a similar vein, there were no
9 reports of action taken in closed session within the time allotted for that purpose, because
10 according to City Attorney DOYLE, the Council’s actions in the closed session were not
11 “reportable.”

12 113. Indeed, the entire report available to the public of actions taken in the closed
13 session consisted of City Attorney DOYLE reporting as follows: **“Thank you, Mayor. Council**
14 **took no reportable action in closed session.”**

15 114. Then for a surprise turn of events at the close, even the adjournment offered less
16 content than ordinarily available, when a Zoom glitch in the partially remote meeting resulted in a
17 recording and feedback loop where the playback compounded as the attendees made more and
18 more statements, until the audio system was shut off. The Mayor had asked if there was a motion
19 to adjourn, but due to the technical difficulties—or perhaps because the Council members were no
20 longer present—no motion came. City Attorney DOYLE advised the Mayor that she could
21 adjourn unilaterally, and she did so, bringing an unceremonious end to some of the least
22 transparent and illuminating public proceedings ever recorded on video.

23 115. The CITY’s entire approach to these proceedings was a flagrant violation, in letter
24 and in every sense of its spirit, of California’s Brown Act, the main law embodying the State’s
25 important and nationally famous tradition of public participation and open government. Under the
26 major provisions of the Brown Act, the default rule is that all agency meetings are open to the
27 public. That is because in the considered view of the Legislature, “The people of this State do not
28 yield their sovereignty to the agencies which serve them. The people, in delegating authority, do

1 not give their public servants the right to decide what is good for the people to know and what is
2 not good for them to know. The people insist on remaining informed so that they may retain
3 control over the instruments they have created.” Cal. Gov. Code § 54950.

4 116. Aware of this stringent public policy bar to secret proceedings, City Attorney
5 DOYLE carefully structured the proceedings to create the superficial appearance of satisfying one
6 of the Brown Act’s narrow exceptions, the rule permitting closed session discussions with real
7 property negotiators encoded at Government Code section 54956.8. It is that section that the
8 agenda for the meeting invoked. Yet the permissible subject matter of closed session proceedings
9 conducted pursuant to that provision is narrowly circumscribed; such meetings are allowed only
10 “for the local agency to grant authority to its negotiator *regarding the price and terms of payment*
11 for the purchase, sale, exchange, or lease.” Cal. Gov. Code § 54956.8. The subject matter for the
12 meeting orchestrated by City Attorney DOYLE, however, went far beyond the permitted scope of
13 “price and terms of payment,” and included a decision to repudiate an existing contractual
14 relationship and break off negotiations altogether—with a counterparty who had in all senses
15 performed under that agreement and then some.

16 117. Indeed, the agenda for the October 15, 2020 meeting strongly indicates malevolent
17 objectives. The Agenda for the October 15, 2020 City Council meeting is attached as Exhibit G.
18 Five items were agendized. The first concerned an update on a lawsuit against the CITY, and all
19 four of the remaining items were entitled “Conference with Real Property Negotiators (CC).” The
20 fifth item, No. 20-1026, concerned the REMET project, identified as “500 Benton Street, APN
21 230-08-078.” The precise nature of the actions or votes taken in closed session are unavailable for
22 public view, but REMET understands, on information and belief, that following a discussion
23 involving City Attorney DOYLE, the City Council voted to terminate the ENA and reverse the
24 position it had taken publicly at the July 14, 2020 meeting.

25 118. “Thank you, Mayor. Council took no reportable action in closed session.” And like
26 that, at the instigation and direction of City Attorney DOYLE, away from the prying eyes of the
27 public, REMET, and all of the numerous citizen stakeholders, and without even extending the
28 courtesy of a blindfold and a cigarette, the CITY through its City Council voted the summary

1 execution of four development projects, thereby leaving development partners who had
2 negotiated in good faith across multiple years out in the cold. Thousands upon thousands of hours
3 spent, millions and millions of dollars invested, untold taxpayer dollars wasted—the CITY keeps
4 its parking lots and a share of its residents continues to sleep outside.



18 119. The CITY did not even inform REMET through the usual communication
19 channels, and REMET therefore had no inkling that anything was amiss. Instead, on November
20 12, 2020, the CITY issued a terse, two-paragraph letter stating only that the CITY considered the
21 term of the second ENA extension as having “expired” on August 5, 2020, the CITY had
22 “directed staff to cease efforts to further [REMET]’s proposed project at 500 South Benton,” and
23 would be returning unspent portions of REMET’s deposit following an accounting and resolution
24 of outstanding third party invoices. The November 12, 2020 letter is attached as Exhibit H.

25 120. The CITY sent the November 12, 2020 letter in a manner designed to deprive
26 REMET of any timely notice of the CITY’s unilateral decision. Instead of making direct contact
27 with the REMET personnel who had long been working on the project in a regular course of
28 communication and conduct with CITY staff, the CITY sent the letter only to the Washington,

1 D.C. office of REMET’s corporate affiliate, the Republic Family of Companies. While the
2 address to which the CITY’s letter was directed was listed as an official Notice address on the
3 original ENA, REMET and the CITY had long been communicating via telephone and email
4 through other channels and reaching REMET would not have been a problem if that was the
5 CITY’s intent. Moreover, the CITY did not contact any of the other individuals and contacts
6 listed in the Notice section of the ENA. The sum effect of the CITY’s opportunistic disclosure
7 methods is that REMET received no notice at all until December 22, 2020.

8 121. During the pendency of the negotiations periods under the ENA, REMET had
9 made two separate deposit payments of \$25,000 to the CITY for use in advancing the project.
10 Despite its representations regarding an accounting and return of unspent sums in the letter, the
11 CITY has never contacted REMET with any accounting or record of the resolution of any
12 outstanding third party invoices, has never returned any portion of the negotiation deposits that
13 REMET paid, and at no time since has manifest any intention of doing so.

14 122. To some degree the actions of Former City Attorney DOYLE undertaken between
15 mid-July and mid-November 2020, including the secret closed session City Council votes elicited
16 by these officials on October 15, 2020, were the height of the proverbial self-concealing “perfect
17 crime” where no one in a position to recognize what was done remains in a place where they can
18 take action to redress it. Their secret hit job on the REMET project was consummated at the
19 special City Council meeting three weeks to the day before the 2020 general election. Apart from
20 the heavily contested national political races that in large part dominated the airwaves, municipal
21 political discourse concerning the City Council races was largely preoccupied with the larger
22 struggle between City Attorney DOYLE, also supported by the Mayor, and the councilmembers
23 and candidates seen as aligned with the 49ers. The installation of three new Councilmembers
24 washed away a good deal of institutional knowledge. City Attorney DOYLE would therefore
25 enjoy an informational advantage and temporary ability to mislead and misdirect once REMET
26 sought to challenge the CITY’s unjustified reversals on the REMET project.

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1 **5. The CITY’s Refusals to Allow REMET a Fair Hearing.**

2 123. California has been blessed with a strong tradition of open government heavily
3 weighted in favor of public participation and active citizen engagement, and has profited greatly
4 from the disinterested selfless service of countless public officials who have sought only to
5 advance the public interest. But there are times when even the most robustly deliberative and
6 participatory systems can be hijacked by malign interests advanced by those willing to manipulate
7 the rules.

8 **a. The CITY Violates Its Own Policies on Citizen Petitions**

9 124. On April 28, 2021, after unsuccessfully attempting to reinitiate discussions through
10 informal channels, REMET petitioned the City Council to reagendize the matter of the third ENA
11 amendment and extension—an amendment and extension the Council had voted unanimously 6-0
12 in favor of when it was up for consideration in the ordinary course at a regularly scheduled July
13 14, 2020 City Council meeting featuring the customary—and in most circumstances,
14 mandatory—participation of the public. REMET counsel submitted the petition on a standard
15 CITY “City Council Written Petition” form that offers only five lines of space for description of
16 the matters to be brought up for consideration by the Council. In part for that reason, the petition
17 did not specify any particular vote or decision of the CITY or of the City Council that it sought to
18 overturn; rather, REMET merely sought an opportunity to be heard and to have the matter
19 considered in good faith, given the many years of hard work and fruitful negotiation effort that
20 had gone into the project by that point. The REMET petition is attached as Exhibit I.

21 125. From the moment of that April 28 petition, City Attorney DOYLE undertook a
22 concerted and sustained effort to obfuscate, misdirect, and mislead in a manner carefully
23 calibrated to ensure REMET, who before the secret vote on ENA termination had been denied
24 notice, would further continue into the future to be denied even the opportunity to be heard.

25 126. Written petitions to place an item on the City Council agenda are subject to the
26 provisions of City of Santa Clara Council Policy Manual, Policy 030, “Adding an Item on the
27 Agenda,” which states in relevant part:
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1 2. *Once the Written Petition is received by the City Clerk’s Office, it*
2 *should immediately be forwarded to the City Manager for placement on*
3 *an agenda within two (2) Council meetings after receipt of the original*
4 *request from the City Clerk’s Office. All written material (request and any*
5 *support material) will be submitted on the agenda in the form*
6 *substantially provided by the requester without any staff analysis,*
7 *including fiscal review, legal review and policy review, until the City*
8 *Council has had the opportunity to provide direction to the City Manager.*

6 The Policy further provides that when the Council first takes up the petition, if a majority supports
7 further study, a full staff report will be prepared within 30 days unless the Council directs
8 otherwise. “Discussion should be limited to whether an item should be added to an agenda and a
9 date, not the merit of the item.” In effect, the petition requires the City Manager to turn the
10 request over to the City Council for a clean read; structurally, it is the City Council who is
11 intended to direct the actions of CITY staff, and not the other way around. As will be seen herein,
12 however, in this instance City Attorney DOYLE succeeded in directing CITY staff not to respect
13 this bright line boundary and, in fact, to disregard it altogether.

14 127. On May 25, 2021, four weeks after the submission by REMET outside counsel, the
15 City Manager’s office made an Agenda Report for the petition, this time agendized as item No.
16 21-722. The Staff Agenda Report for item No. 21-722 is attached as Exhibit J. The organization
17 of the Agenda Report strongly suggests that CITY staff went through several rounds of edits to
18 cover the staff’s tracks after they violated the terms of Policy 030. An introductory “Background”
19 section duly notes that such petitions are governed by the Policy, and quotes from the Policy, to
20 create the impression that staff was complying with the Policy even though the other contents of
21 the Agenda Report constituted a flagrant violation of the Policy. It noted the rule that the request
22 should be submitted “without any staff analysis, including fiscal review, legal review, and policy
23 review.” From there, CITY staff, working at the direction of City Attorney DOYLE, launched the
24 following barrage against REMET, all of it featuring liberal helpings of “legal review” and
25 “policy review,” thereby stealing the floor, usurping the deliberative role of the City Council, and
26 eliminating all chance for the REMET petition to receive fair consideration:

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- 1 • According to the Staff Agenda Report, the ENA had “expired” as of August 5,
2 2020, and therefore, “there is no longer an effective contract, and amendment is
3 not possible.”
- 4 • Furthermore, to move forward with development on the site, “the next step would
5 be for the Council to analyze potential uses of the site given the location of active
6 City well, [sic] as well as an appropriate public and competitive process for
7 offering the development opportunity.” No mention was made of the many studies
8 and measures REMET had undertaken to address the well issue.
- 9 • The Staff Agenda Report purported to speak for VTA: “VTA staff have advised
10 City staff that VTA is pursuing a study of the Station area as well, and believes the
11 prudent course of action is for VTA to complete the study prior to any further
12 discussion of a long term development of its property.”
- 13 • Without stating specifics or why it was a reason not to proceed, the Report alluded
14 to compliance with the Surplus Land Act.
- 15 • The “Discussion” section concluded with a recommendation not to place the item
16 on the agenda “[b]ecause amendment of the previous ENA is not possible,” with
17 no mentions of prior amendments after the term had run or the fact that the ENA
18 itself required extension under the good faith negotiations provisions.

19 128. And the most egregious misdirection perpetrated in the Agenda Report was
20 omission of many of the most salient facts, particularly given that the Agenda Report was
21 delivered to a City Council featuring several new members who had not been around during the
22 earlier ENA activity or when the CITY took action in closed session to terminate the ENA. The
23 Agenda Report made no mention of the July 2020 vote of City Council to authorize the third ENA
24 amendment and extension. It did not disclose the fact that the City Council, at the direction of and
25 based on false information provided by City Attorney DOYLE, had taken up the project again in
26 closed session in October 2020, and had voted to terminate the project away from public view,
27 without full debate or deliberation. Instead, the Staff Agenda Report disclosed only the cherry-
28 picked fact that as a formal matter the ENA term had run—or in the Report’s words, “expired”—

1 as of August 5, 2020. Then to make matters worse, CITY staff attached three documents: 1) a
2 copy of Policy 030; 2) the one-page REMET petition; and 3) the November 12, 2020 termination
3 letter sent by Assistant City Manager Shikada. This brazenly unfair mode of presentation stacked
4 the deck against REMET. Whereas REMET had followed the rules and limited itself to the flat,
5 boilerplate submission seeking only to be heard as called for under the Policy, and without
6 argument or advocacy or any supporting substantiating material, the inclusion of the termination
7 letter in isolation from the entirety of the facts and circumstances surrounding the project, the
8 ENA, and the wrongful decision to terminate presented an incomplete picture and created the
9 false impression that the decision had received full consideration previously. The Agenda Report
10 had the intention of and succeeded in misleading the Council.

11 129. Recognizing the injustice of this bureaucratic maneuvering, outside counsel for
12 REMET followed up and requested to withdraw the petition. Since the withdrawal meant there
13 was nothing to decide, the City Council voted unanimously to accept the request to withdraw the
14 petition, and moved on.

15 **b. DOYLE and CITY Staff Block the Petition for a Fair Hearing**

16 130. Having once averted consideration of the petition on this skewed, biased record,
17 REMET tried again. On June 9, 2021, REMET outside counsel resubmitted the petition. This time
18 CITY staff agendized the petition as item No. 21-851 and submitted a Staff Agenda Report that,
19 other than noting the earlier submission and withdrawal, was in all material aspects verbatim
20 identical to the previous Staff Agenda Report addressed to the prior petition agendized as item
21 No. 21-722. It therefore again included the wholly improper legal review and policy review,
22 including all the misleading prior comment about the purported impossibility of extending the
23 ENA, the well, VTA's stance, and SLA compliance. The same three documents were attached,
24 including the cherry-picked termination letter, but now a fourth was added, compounding the
25 misrepresentation: the letter sent by REMET outside counsel requesting withdrawal of the prior
26 petition. The inclusion of this material along with the repeated assertion in the Staff Agenda
27 Report that Policy 030 had not been violated placed the CITY staff, acting at the direction of City
28 Attorney DOYLE, in the role of judge and jury on its own Policy violation. Once again, CITY

1 staff blocked City Council from obtaining a full record containing all objective information, and
2 usurped the role of the Council. The Staff Agenda Report for item No. 21-851 is attached as
3 Exhibit K.

4 131. Based on these incomplete presentations a motion was made “to support the Staff’s
5 recommendation”—*i.e.*, not agendize the ENA. This position both violated the principles of the
6 Political Reform Act as well as the meaning of Policy 030, in that the proposed basis for the
7 decision not to agendize was the opinion of CITY staff. Mayor Gillmor spoke against the motion,
8 admonishing the Council: **“I think it should be put on the agenda at least for discussion
9 because I don’t think we’ve had a big discussion with this Council on this project. There’s a
10 lot of physical restrictions on this project . . . I think you need to know more about the
11 project before you completely turn it away.”** But the damage was done, and on this limited
12 record the Council voted 4-3 to follow Staff recommendation and take no action.



25 **c. REMET Asks Again for a Hearing in Good Faith**

26 132. Again, REMET sought pre-litigation self-help, and REMET Vice President for
27 Development Kelly Macy returned to appear before the City Council at its July 6, 2021 meeting,
28 during the portion of the meeting devoted to hearing from the public on matters of continuances,

1 exceptions, and reconsiderations. Ms. Macy first clarified that there existed a change to the prior
2 posture in that REMET would now provide the indemnity for any activity pursuant to the Surplus
3 Land Act, “as requested by the City Attorney.” Ms. Macy then requested that the Council allow
4 REMET a fair hearing on the merits: “Our simple request to you this evening is a reconsideration
5 that would allow our project to be heard at a future Council meeting.”

6 133. Councilmember Park moved to reconsider, and announced that because he had
7 been among the four members on the prevailing side of the 4-3 vote at the June 22 meeting in
8 favor of following the CITY staff advice to take no action on the original REMET petition, he
9 was eligible to move for reconsideration. City Attorney DOYLE quickly sprang into action to
10 throw up enough procedural roadblocks to ensure that REMET would never get what was
11 asked—a simple opportunity to be heard, on the merits, in a manner that would offer the Council
12 a clean read and liberty to decide on the project free from bias or any notion of a predetermined
13 outcome. First, City Manager Santana, operating based on guidance from City Attorney DOYLE,
14 clarified that the motion for reconsideration pertained only to the June 22, 2021 decision not to
15 agendize revisiting the ENA amendment and extension, thereby ensuring any vote taken would
16 not reach the October 15, 2020 decision to terminate the ENA. Then following a brief public
17 comment session, City Attorney DOYLE read into the record a portion of City of Santa Clara
18 Council Policy Manual, Policy 042, holding generally that the City Council must wait to take up a
19 motion for reconsideration until the motion appears on a proper posted meeting agenda or
20 procedures for adding an unposted item have been followed. In response to City Attorney
21 DOYLE’s comments, Councilmember Park noted, “That sounds not like any previous
22 reconsideration I’ve ever heard.”

23 134. On that note, the City Council proceeded to a vote that, by virtue of the uncertain
24 prior procedural posture and the efforts of City Attorney DOYLE to conceal the prior activity and
25 prevent a fair hearing on the project, had devolved into a convoluted bureaucratic morass: A
26 motion to place on the next Council meeting agenda a motion for reconsideration of the decision
27 not to place on a Council meeting agenda the petition to reconsider the Council decision to
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1 terminate the previously authorized negotiations on the third ENA amendment and extension.
2 That dizzyingly convoluted motion, unlike most others in 2021, carried unanimously.



14 **d. DOYLE and the CITY Stack the Deck Against REMET**

15 135. Confronted with this setback, City Attorney DOYLE sought again to limit
16 REMET’s maneuvering room by quoting another portion of Policy 042: “Upon approval of a
17 motion to reconsider, and at such time as the matter is heard, the City Council shall only consider
18 any new evidence or facts not presented previously with regard to the item or a claim of error in
19 applying the facts.” In stacking this part of Policy 042 on top of the limitations already applicable
20 under Policy 030, the City Attorney sought to conveniently limit discussion only to facts germane
21 to the prior debate on the decision not to agendize.

22 136. CITY staff duly prepared a Staff Agenda Report on the motion for reconsideration,
23 now on the agenda for the July 13, 2021 City Council meeting as item No. 21-972. The Report
24 contains many misstatements. According to the Report, the topic up for discussion was only
25 reconsideration of the decision not to agendize REMET’s June 9 petition (meaning, per Policy
26 042, any discussion would be limited to “new evidence or facts not presented previously” with
27 respect to the petition). The Staff Agenda Report for item No. 21-972 is attached as Exhibit L.
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1 137. The Report then misrepresented the facts in two ways. *First*, the Report claimed
2 that the new facts available were based on REMET vice president Macy’s statement at the July 6,
3 2021 meeting that “Last July, the ENA was extended until August 5, 2021, by unanimous vote by
4 both the City Council and the VTA Board.” *Second*, the Report suggested that only information
5 submitted concurrently with the request for reconsideration could be considered as a valid basis
6 for reconsideration. Yet Policy 042 is clear on the point that new facts or evidence may be
7 considered “at such time as the matter is heard,” *i.e.*, not the time when the request for
8 reconsideration was made, but when the motion for reconsideration was ultimately heard. There
9 was no call and no basis for treating the floor for new evidence and facts as closed before that
10 meeting even began, but that is the position the CITY staff adopted in the Report under the
11 guidance of City Attorney DOYLE.

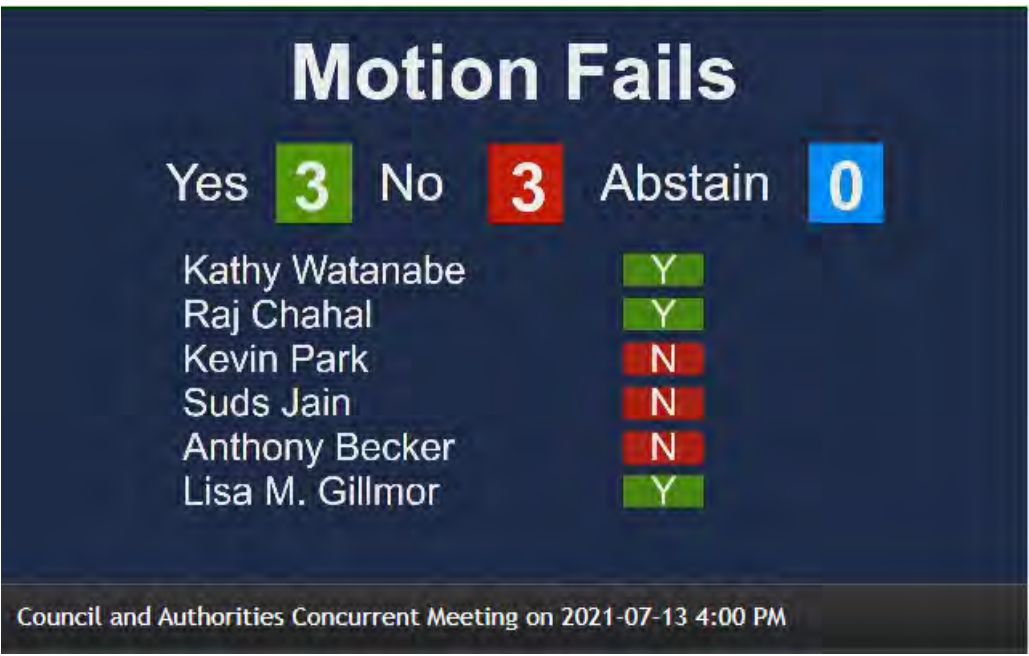
12 138. The Staff Agenda Report then doubled down by stating that in CITY staff’s view,
13 “For purpose of the Council’s reconsideration on July 13, and according to Council’s Policy, the
14 matter of whether the ENA that expired on August 5, 2020 was ever actually extended is the only
15 new matter that can be discussed under the Council Policy and only evidence or facts that were
16 previously not presented about this issue is proper for the motion for reconsideration of this item.”
17 So in the Report’s worldview, advocates for a project that had been terminated in secret closed
18 session could not obtain reconsideration of that decision, but only consideration of whether to
19 reverse the decision not to agendize the petition to hold a hearing about that decision, and such
20 consideration could only be approved if REMET were able to somehow produce a copy of a
21 document that CITY staff and City Attorney DOYLE knew not to exist.

22 139. Finally, the Staff Agenda Report completely abandoned the pretense of complying
23 with Policy 030 strictures and laid out a full legal argument on the project merits, built atop an
24 inaccurate revisionist history of the project negotiations. CITY staff now attached the Staff
25 Agenda Report for the July 14, 2020 consideration of the third ENA amendment and extension
26 item—an exercise that had concluded with City Council voting unanimously to authorize the
27 amendment and extension—and reported that executing a third extension was conditioned on
28 reaching agreement on a final term sheet, clarification that REMET would be responsible for

1 identifying a second well site, and the indemnity for potential liability in the event of action under
2 the SLA. The Report then flatly stated, “None of these items were achieved by the other parties to
3 the ENA,” and cited the November 12, 2020 termination letter. The Report slid past the fact that
4 that letter came while time still remained in November for completing the term sheet. Also
5 undisclosed was the fact that those items were not achieved in large part due to sabotage
6 orchestrated by City Attorney DOYLE, and the fact of the secret closed session termination vote
7 in October 2020.

8 140. The deck was therefore once again stacked against REMET from the start of the
9 July 13, 2021 meeting. City Manager Santana then took the floor to make a lengthy, highly
10 improper PowerPoint presentation that misrepresented facts and baselessly attacked the reputation
11 of REMET personnel, over the protestations of Mayor Gillmor who rightly noted that such
12 extensive argument was wholly inappropriate in the context of a procedural vote on whether to
13 take up the merits at a later time. At no time was REMET offered the opportunity to speak on its
14 own behalf. The anti-development crew had also been alerted, and offered yet more coordinated
15 commentary. Many citizens also spoke in favor of reconsideration, citing the potential to realize
16 new affordable housing and the many community benefits provided for in the project plans. But
17 in the end the effort to confuse and mislead by City Attorney DOYLE carried the day. The three
18 members who had not been on the Council either during the July 2020 vote to authorize the third
19 ENA extension and amendment or during the October 2020 secret closed session vote to
20 terminate the project were hoodwinked into buying into CITY staff’s view that the matter had
21 been duly considered and fully resolved previously. Because Councilmember Hardy was not
22 present and did not vote, the result was a 3-3 tie, and under the Council’s rules that meant that the
23 motion for reconsideration failed.

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141. Aside from the massive financial harm, REMET has been significantly harmed by the CITY's actions in other ways. The vast majority of REMET's activities in service of developing the 500 South Benton Street project over the past five years are irreversible, in two key senses. First, unless the project is built, REMET is out that money, and will not be able to recoup its investment. Second, because REMET already turned over all the materials above to the CITY, and because virtually any housing development project located at the subject property would need to pass through the same set of bureaucratic and administrative gates, the CITY now has within its possession a wealth of proprietary information developed by REMET and its retained consultants that the CITY could review and utilize in bringing about a different project with a different developer in the future. Therefore regardless of any individual actor or public official's ultimate or even subjective intent, the sum effect of all the CITY's actions is to have perpetrated an egregiously unfair bait and switch wherein REMET was tricked into believing it was the CITY's development partner but was in fact working toward and investing in the CITY's development for free.

1 **V. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **VIOLATION OF THE HOUSING ACCOUNTABILITY ACT (Gov. Code, § 65580 *et seq.*)**

4 142. Plaintiff REMET hereby realleges and incorporates by reference each allegation
5 set forth above as though fully set forth herein.

6 143. The California Legislature, by and through the Housing Accountability Act
7 (HAA), has found and declared that:

8 The lack of housing, including emergency shelters, is a critical problem that
9 threatens the economic, environmental, and social quality of life in California.

10 California housing has become the most expensive in the nation. The excessive
11 cost of the state's housing supply is partially caused by activities and policies of
12 many local governments that limit the approval of housing, increase the cost of
land for housing, and require that high fees and exactions be paid by producers of
housing.

13 Among the consequences of those actions are discrimination against low-income
14 and minority households, lack of housing to support employment growth,
imbalance in jobs and housing, reduced mobility, urban sprawl, excessive
commuting, and air quality deterioration.

15 Gov. Code, § 65589.5(a)(1)(A)-(C).

16 144. As further expressly determined by the California state legislature:

17 **Many local governments do not give adequate attention to the economic,**
18 **environmental, and social costs of decisions that result in disapproval of**
housing development projects. Gov. Code, § 65589.5(a)(1)(D).

19 a housing development project . . . shall be deemed if there is substantial evidence
20 that would allow a reasonable person to conclude that the housing development
project . . . is consistent, compliant, and in conformity.” Gov. Code, § 65589.5
21 (f)(4) [emphasis added].

22 145. The HAA restricts the ability of local governments to deny an application to build
23 housing if the proposed project complies with objective criteria through an “applicable plan,
24 program, policy, ordinance, standard, requirement, or other similar provision.” Gov. Code,
25 §§ 65589.5, subd. (j)(1). A housing development project is deemed to comply if substantial
26 evidence . . . would allow a reasonable person to conclude that it does. *California Renters Legal*
27 *Advocacy and Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820.
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1 146. The REMET project was “consistent, compliant, and in conformity with an
2 applicable plan, program, policy, ordinance, standard, requirement, or other similar provision”
3 and should have been accepted by the CITY to move forward towards completion.

4 147. The CITY, as alleged herein, made arbitrary “decisions that result[ed] in
5 disapproval” of the REMET housing project. The CITY’s conduct therefore violated the HAA, by
6 unjustifiably blocking the REMET project which would have provided affordable housing for
7 students, employees, and other Californians.

8 148. The REMET project, if permitted to proceed through the full approval process
9 rather than being unnecessarily blocked by the CITY, did or would satisfy all “objective” criteria
10 for a housing development as set forth in Gov. Code, § 65580 *et seq.*

11 149. Rather than permit the REMET project to move forward, the CITY unnecessarily,
12 unjustifiably, and arbitrarily blocked it. On information and belief, all of the acts or omissions
13 undertaken by the CITY to block the REMET project violated the HAA.

14 150. The CITY’s conduct directly contradicts the Legislature’s intent in enacting the
15 HAA, which was “to significantly increase the approval and construction of new housing for all
16 economic segments of California's communities by meaningfully and effectively curbing the
17 capability of local governments to deny, reduce the density for, or render infeasible housing
18 development projects. Gov. Code, § 65589.5(a)(1)(K).

19 151. Further, it is the express public policy of the State of California “that a local
20 government not reject or make infeasible housing development projects” that contribute to
21 meeting the state’s housing needs “without a thorough analysis of the economic, social, and
22 environmental effects” of such a rejection. Gov. Code, § 65589.5(b) [emphasis added].

23 152. The CITY did not conduct such a “thorough analysis” before disposing of the
24 REMET project. Moreover, the exigencies set forth in the HAA permitting a CITY to deny
25 affordable housing do not apply here. Gov. Code, § 65589.5 (d).

26 153. The HAA is clear: “It is the policy of the state that [the HAA] be interpreted and
27 implemented in a manner to afford the fullest possible weight to the interest of, and the approval
28 and provision of, housing.” Gov. Code, § 65589.5 (a)(1)(L).

1 154. The CITY, in arbitrarily blocking the REMET project as alleged herein, violated
2 the HAA.

3 155. REMET is harmed by the CITY's violation of the HAA.

4 WHEREFORE, Plaintiff REMET prays for judgment against Defendant the CITY, as set
5 forth herein.

6 **SECOND CAUSE OF ACTION**
7 **NEGLIGENT MISREPRESENTATION**

8 156. Plaintiff REMET hereby realleges and incorporates by reference each allegation
9 set forth above as though fully set forth herein.

10 157. Plaintiff REMET, Defendant the CITY, and VTA were signatories to a binding
11 and duly executed Exclusive Negotiations Agreement (ENA) enacted on February 6, 2018, and
12 amended twice, on February 8, 2019, and November 12, 2019.

13 158. In the course of negotiations leading up to entry of the ENA, Defendant the CITY
14 misrepresented numerous facts to its counterparty Plaintiff REMET, including but not limited to
15 *inter alia* that:

- 16 a. Defendant the CITY had done its due diligence to ensure that the subject
17 site planned for the REMET project was developable;
- 18 b. the subject site for the REMET project was in fact developable;
- 19 c. the subject site for the REMET project was not subject to any
20 administrative or regulatory process or procedure or any entitlements issue
21 that would block completion of the REMET project; and

22 In addition, Defendant the CITY engaged in misrepresentation by omission by not disclosing the
23 potential for the project to be halted due to:

- 24 d. the processes, procedures, and required actions to be taken by Defendant
25 the CITY before disposition of any public lands pursuant to the California
26 Surplus Land Act.

27 159. The statements and representations of Defendant the CITY were untrue in fact and
28 were misrepresentations for the reasons including but not limited to *inter alia* that:

- 1 a. Defendant the CITY had not in fact done its due diligence to ensure that the
2 subject site planned for the REMET project was developable;
- 3 b. the subject site for the REMET project was in Defendant the CITY's view
4 not in fact developable or subject to clear risks that would render the site
5 not developable;
- 6 c. the subject site for the REMET project was in fact subject to administrative
7 and regulatory processes and procedures as well as entitlements issues that
8 would block completion of the REMET project; and
- 9 d. the subject site was in Defendant the CITY's view subject to processes,
10 procedures and required actions pursuant to the California Surplus Land
11 Act.

12 160. Regardless of the honest belief regarding the truth of representations by Defendant
13 the CITY and members of the CITY staff whose actions and statements are chargeable to the
14 CITY, Defendant the CITY and members of the CITY staff had no reasonable grounds for
15 believing the aforementioned statements and representations were true when made.

16 161. Defendant the CITY and members of the CITY staff whose actions and statements
17 are chargeable to the CITY intended for Plaintiff REMET to rely on the statements and
18 representations made by Defendant the CITY and members of the CITY staff, for the purposes of
19 *inter alia* entering into a binding ENA committing Plaintiff REMET to devoting substantial
20 resources to advancing the planned REMET project, and investing thousands of hours and
21 millions of dollars in said project.

22 162. Plaintiff REMET did in fact rely on the statements and representations made by
23 Defendant the CITY and members of the CITY staff, and did in fact take the actions intended by
24 Defendant the CITY including but not limited to *inter alia* entering into a binding ENA
25 committing Plaintiff REMET to devoting substantial resources to advancing the planned REMET
26 project, as well as investing thousands of hours and millions of dollars in said project.

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1 163. By expenditure of sums of money in excess of \$3.5 million and assignment of
2 thousands of hours of uncompensated counsel, analysis, advice, and labor, Plaintiff REMET was
3 harmed significantly in a total amount to be determined at trial.

4 164. Plaintiff REMET's reliance on the misrepresentations by Defendant the CITY and
5 members of the CITY staff was a substantial factor in causing Plaintiff REMET's harm. But for
6 the misrepresentations by Defendant the CITY and members of the CITY staff, Plaintiff REMET
7 would never have entered into the ENA and would never have invested the thousands of hours of
8 labor and millions of dollars it invested in the planned REMET project.

9 WHEREFORE, Plaintiff REMET prays for judgment against Defendant the CITY, as set
10 forth herein.

11 **THIRD CAUSE OF ACTION**
12 **BREACH OF CONTRACT (SPECIFIC PERFORMANCE)**

13 165. Plaintiff REMET hereby realleges and incorporates by reference each allegation
14 set forth above as though fully set forth herein.

15 166. Plaintiff REMET, Defendant the CITY, and VTA were signatories to a binding
16 and duly executed Exclusive Negotiations Agreement (ENA) enacted on February 6, 2018, and
17 amended twice, on February 8, 2019, and November 12, 2019.

18 167. Plaintiff REMET performed, substantially performed, tendered performance, or
19 was excused from performing all of its obligations pursuant to the ENA with Defendant the CITY
20 and with VTA.

21 168. Defendant the CITY breached the ENA with Plaintiff REMET (and VTA) in at
22 least the following ways:

- 23 a. In violation of paragraphs 1 and 8 of the ENA, and further in violation of
24 the vote of City Council calling for Defendant the CITY to enter a third
25 amendment and extension of the ENA, City Attorney DOYLE and CITY
26 staff acting on behalf of Defendant the CITY unreasonably refused to
27 negotiate in good faith a final term sheet for a Draft Disposition Agreement
28 (DDA) or Lease Option Agreement (LOA);

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- b. In violation of paragraphs 1 and 8 of the ENA, City Attorney DOYLE and CITY staff acting together in concert on behalf of the CITY, advised the City Council inaccurately and fraudulently in recommending that it improperly condition entry of a third amendment and extension of the ENA on terms never contemplated by the parties under the original ENA, including but not limited to, *inter alia*, a term requiring Plaintiff REMET to “provide” a second well site and a term requiring that Plaintiff REMET indemnify Defendant the CITY for any liability Defendant the CITY might come to owe under the Surplus Land Act, which liability by operation of that law attaches only to Defendant the CITY;
- c. On information and belief, and based on the facts and circumstances described in greater detail *supra*, in violation of paragraph 1 of the ENA, City Attorney DOYLE and CITY staff acting on behalf of the CITY advised the City Council inaccurately and fraudulently in falsely representing that Plaintiff REMET had not met its obligations under the ENA and recommending that City Council therefore vote to withdraw unilaterally from and terminate the ENA and the REMET project;
- d. In violation of paragraph 1 of the ENA, City Attorney DOYLE and CITY staff acting on behalf of the CITY presented the recommendations referred to in the preceding paragraph in closed session, and ensured that such recommendations were made in closed session and the vote to withdraw unilaterally from and terminate the ENA and the REMET project were conducted in closed session for the specific purpose of depriving Plaintiff REMET and the public from receiving due process, or any meaningful process, and defeating and frustrating public oversight;
- e. In violation of paragraph 1 of the ENA, CITY staff acting at the direction of City Attorney DOYLE on behalf of Defendant the CITY sent a letter to

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Plaintiff REMET unilaterally withdrawing from and terminating the ENA and participation in the REMET project; and

f. In violation of paragraph 1 of the ENA, City Attorney DOYLE and CITY staff acting on behalf of the CITY advised the City Council inaccurately and fraudulently in misrepresenting the procedural requirements for reconsideration of the decision to withdraw from and terminate the ENA and participation in the REMET project, and thereby prevented such due reconsideration from taking place.

169. As a direct and legal result of Defendant the CITY’s aforementioned acts and omissions, Plaintiff REMET has suffered and continues to suffer irreparable harm that can only be remedied by issuance of an injunction mandating specific performance of Defendant the CITY of all obligations owed by Defendant the CITY to Plaintiff REMET under the terms and provisions of the ENA.

170. Defendant the CITY’s breaches of the ENA were substantial factors in causing the harm incurred and to be incurred by Plaintiffs.

171. Specific performance by Defendant the CITY is the sole and unique remedy that will eliminate the irreparable harm and prevent loss and forfeiture that will otherwise be suffered by Plaintiff REMET.

WHEREFORE, Plaintiff REMET prays for judgment against Defendant the CITY, as set forth herein.

**FOURTH CAUSE OF ACTION
BREACH OF CONTRACT (DAMAGES)**

172. Plaintiff REMET hereby realleges and incorporates by reference each allegation set forth above as though fully set forth herein.

173. Plaintiff REMET, Defendant the CITY, and VTA were signatories to a binding and duly executed Exclusive Negotiations Agreement (ENA) enacted on February 6, 2018, and amended twice, on February 8, 2019, and November 12, 2019.

1 174. Plaintiff REMET performed, substantially performed, tendered performance, or
2 was excused from performing all of its obligations pursuant to the ENA with Defendant the CITY
3 and with VTA.

4 175. Defendant the CITY breached the ENA with Plaintiff REMET (and VTA) in at
5 least the following ways:

- 6 a. In violation of paragraphs 1 and 8 of the ENA, and further in violation of
7 the vote of City Council calling for Defendant the CITY to enter a third
8 amendment and extension of the ENA, City Attorney DOYLE and CITY
9 staff acting on behalf of Defendant the CITY unreasonably refused to
10 negotiate in good faith a final term sheet for a Draft Disposition Agreement
11 (DDA) or Lease Option Agreement (LOA);
- 12 b. In violation of paragraphs 1 and 8 of the ENA, City Attorney DOYLE and
13 CITY staff acting together in concert on behalf of the CITY, advised the
14 City Council inaccurately and fraudulently in recommending that it
15 improperly condition entry of a third amendment and extension of the ENA
16 on terms never contemplated by the parties under the original ENA,
17 including but not limited to, *inter alia*, a term requiring Plaintiff REMET to
18 “provide” a second well site and a term requiring that Plaintiff REMET
19 indemnify Defendant the CITY for any liability Defendant the CITY might
20 come to owe under the Surplus Land Act, which liability by operation of
21 that law attaches only to Defendant the CITY;
- 22 c. On information and belief, and based on the facts and circumstances
23 described in greater detail *supra*, in violation of paragraph 1 of the ENA,
24 City Attorney DOYLE and CITY staff acting on behalf of the CITY
25 advised the City Council inaccurately and fraudulently in falsely
26 representing that Plaintiff REMET had not met its obligations under the
27 ENA and recommending that City Council therefore vote to withdraw
28 unilaterally from and terminate the ENA and the REMET project;

- 1 d. In violation of paragraph 1 of the ENA, City Attorney DOYLE and CITY
2 staff acting on behalf of the CITY presented the recommendations referred
3 to in the preceding paragraph in closed session, and ensured that such
4 recommendations were made in closed session and the vote to withdraw
5 unilaterally from and terminate the ENA and the REMET project were
6 conducted in closed session for the specific purpose of depriving Plaintiff
7 REMET and the public from receiving due process, or any meaningful
8 process, and defeating and frustrating public oversight;
- 9 e. In violation of paragraph 1 of the ENA, CITY staff acting at the direction
10 of City Attorney DOYLE on behalf of Defendant the CITY sent a letter to
11 Plaintiff REMET unilaterally withdrawing from and terminating the ENA
12 and participation in the REMET project; and
- 13 f. In violation of paragraph 1 of the ENA, City Attorney DOYLE and CITY
14 staff acting on behalf of the CITY advised the City Council inaccurately
15 and fraudulently in misrepresenting the procedural requirements for
16 reconsideration of the decision to withdraw from and terminate the ENA
17 and participation in the REMET project, and thereby prevented such due
18 reconsideration from taking place.

19 176. As a direct and legal result of Defendant the CITY's aforementioned acts and
20 omissions, Plaintiff REMET has suffered and continues to suffer economic damages to be
21 determined at trial, plus interest and costs of suit.

22 177. Defendant the CITY's breaches of the ENA were substantial factors in causing the
23 damages incurred by Plaintiffs.

24 WHEREFORE, Plaintiff REMET prays for judgment against Defendant the CITY, as set
25 forth herein.

1 **FIFTH CAUSE OF ACTION**
2 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

3 178. Plaintiff REMET hereby realleges and incorporates by reference each allegation
4 set forth above as though fully set forth herein.

5 179. Plaintiff REMET, Defendant the CITY, and VTA were signatories to a binding
6 and duly executed Exclusive Negotiations Agreement (ENA) enacted on February 6, 2018, and
7 amended twice, on February 8, 2019, and November 12, 2019.

8 180. Plaintiff REMET performed, substantially performed, tendered performance, or
9 was excused from performing all of its obligations pursuant to the ENA with Defendant the CITY
10 and with VTA.

11 181. Defendant the CITY unfairly prevented Plaintiff REMET from receiving the
12 benefits it was entitled to under the ENA, including in at least the following ways:

- 13 a. In violation of the vote of City Council calling for Defendant the CITY to
14 enter a third amendment and extension of the ENA, and unfairly and in bad
15 faith, City Attorney DOYLE and CITY staff acting on behalf of Defendant
16 the CITY unreasonably delayed action on applications for approvals and
17 refused to negotiate in good faith a final term sheet for a Draft Disposition
18 Agreement (DDA) or Lease Option Agreement (LOA);
- 19 b. City Attorney DOYLE and CITY staff acting together in concert on behalf
20 of the CITY, unfairly and in bad faith, advised the City Council
21 inaccurately and fraudulently in recommending that it improperly condition
22 entry of a third amendment and extension of the ENA on terms never
23 contemplated by the parties under the original ENA, including but not
24 limited to, *inter alia*, a term requiring Plaintiff REMET to “provide” a
25 second well site and a term requiring that Plaintiff REMET indemnify
26 Defendant the CITY for any liability Defendant the CITY might come to
27 owe under the Surplus Land Act, which liability by operation of that law
28 attaches only to Defendant the CITY;

- 1 c. On information and belief, and based on the facts and circumstances
2 described in greater detail *supra*, City Attorney DOYLE and CITY staff
3 acting on behalf of the CITY advised the City Council, unfairly and in bad
4 faith, inaccurately and fraudulently in falsely representing that Plaintiff
5 REMET had not met its obligations under the ENA and recommending that
6 City Council therefore vote to withdraw unilaterally from and terminate the
7 ENA and the REMET project;
- 8 d. City Attorney DOYLE and CITY staff acting on behalf of the CITY,
9 unfairly and in bad faith, presented the recommendations referred to in the
10 preceding paragraph in closed session, and ensured that such
11 recommendations were made in closed session and the vote to withdraw
12 unilaterally from and terminate the ENA and the REMET project were
13 conducted in closed session for the specific purpose of depriving Plaintiff
14 REMET and the public from receiving due process, or any meaningful
15 process, and defeating and frustrating public oversight;
- 16 e. CITY staff acting at the direction of City Attorney DOYLE on behalf of
17 Defendant the CITY, unfairly and in bad faith, sent a letter to Plaintiff
18 REMET unilaterally withdrawing from and terminating the ENA and
19 participation in the REMET project; and
- 20 f. City Attorney DOYLE and CITY staff acting on behalf of the CITY
21 advised the City Council, unfairly and in bad faith, inaccurately and
22 fraudulently in misrepresenting the procedural requirements for
23 reconsideration of the decision to withdraw from and terminate the ENA
24 and participation in the REMET project, and thereby prevented such due
25 reconsideration from taking place.

26 182. In its acts and omissions memorialized and summarized in the preceding
27 paragraph, the CITY and agents acting on behalf of the CITY acted unfairly toward REMET, and
28 the CITY acted in bad faith.

1 183. As a direct and legal result of Defendant the CITY's aforementioned acts and
2 omissions, Plaintiff REMET has suffered and continues to suffer economic damages in an amount
3 to be determined at trial, plus interest and costs of suit.

4 184. Defendant the CITY's aforementioned acts and omissions were substantial factors
5 in causing the damages incurred by Plaintiff REMET.

6 WHEREFORE, Plaintiff REMET prays for judgment against Defendant the CITY, as set
7 forth herein.

8 **SIXTH CAUSE OF ACTION**
9 **UNJUST ENRICHMENT/QUANTUM MERUIT**

10 185. Plaintiff REMET hereby realleges and incorporates by reference each allegation
11 set forth above as though fully set forth herein.

12 186. Plaintiff REMET, Defendant the CITY, and VTA were signatories to a binding
13 and duly executed Exclusive Negotiations Agreement (ENA) enacted on February 6, 2018, and
14 amended twice, on February 8, 2019, and November 12, 2019.

15 187. Pursuant to the ENA, and in fulfillment of the course of negotiations between
16 Plaintiff REMET and Defendant the CITY from 2016 until CITY staff acting on behalf of
17 Defendant the CITY sent the termination letter on November 12, 2020, Plaintiff REMET engaged
18 in good faith efforts to perform under the agreement and did so perform, and in so doing thereby
19 conferred extensive economic benefits and items of economic value on Defendant the CITY,
20 including but not limited to site studies, well relocation documents, planning application and
21 development plan submittals, CEQA documentation, economic development information,
22 transportation documentation, and transactional documentation.

23 188. The aforementioned economic benefits and items of economic value were
24 conveyed by Plaintiff REMET on Defendant the CITY and have accrued to Defendant the CITY,
25 remain available for future use by Defendant the CITY, and thereby have improved Defendant the
26 CITY's economic standing in an amount to be determined at trial.

27 189. In providing the aforementioned economic benefits and items of economic value to
28 Defendant the CITY, Plaintiff REMET incurred significant detriment and economic cost in

1 amounts exceeding at least \$5 million, and in a total amount to be determined at trial. Defendant
2 the CITY has neither reimbursed Plaintiff REMET for this detriment and cost, nor has Defendant
3 the CITY offered to make such reimbursement.

4 190. As a result of Defendant the CITY's unlawful conduct described above, Defendant
5 the CITY has been and will continue to be unjustly enriched by the receipt of economic benefits
6 and items of economic value for which they have paid no just and due compensation.

7 191. Under common law principles of unjust enrichment, Defendant the CITY should
8 not be permitted to retain the benefits conferred on it by Defendant REMET.

9 WHEREFORE, Plaintiff REMET prays for judgment against Defendant the CITY, as set
10 forth herein.

11 **VI. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 13 1. For an order mandating immediate resumption of the parties' good faith
14 negotiations under the terms of the contracts and under existing law;
- 15 2. For damages to be determined at trial;
- 16 3. For pre- and post-judgment interest on all damages as allowed by the law;
- 17 4. For costs of suit incurred herein;
- 18 5. For attorney fees as provided for in the contracts and under existing law; and
- 19 6. For such other and further relief as the Court may deem just and proper.

20 **VII. JURY DEMAND**

21 Plaintiff demands trial by jury on all issues so triable.

22 Dated: January 24, 2022

COTCHETT, PITRE & McCARTHY, LLP

By: 

JOSEPH W. COTCHETT

Attorneys for Plaintiff

Exhibit A

Commercially Sensitive & Confidential

May 31, 2017

Mr. Rajeev Batra, City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Proposal to Enter Into An Exclusive Negotiating Agreement for the Cal Train Parking Lot located at El Camino Real at Railroad Avenue and Benton and Franklin Streets in Santa Clara, CA

Dear Mr. Batra:

As Chairman of the Republic Family of Companies (Republic) I am pleased to submit this proposal to the City of Santa Clara (the City) for the development of a purpose-built student housing project. As discussed in this proposal, the development will provide:

- Significant financial returns to the City;
- Much needed student housing for Santa Clara University (SCU);
- Substantial relief to the community abutting SCU, particularly The Quad.

Over the past year Republic principals, staff, and consultants have met with officials of the City, the Santa Clara Valley Transportation Authority (VTA) and SCU to discuss better utilization of two contiguous parcels of property which comprise an entire City block located between El Camino Real and Railroad Avenue and between Benton Street and Franklin Street in Santa Clara (the Site). The larger of the Site's two parcels is owned by the City, and the smaller parcel is owned by the VTA. Currently, the Site is used principally for general commuter parking in support of the nearby Santa Clara Cal Train station as well as for the Santa Clara Police Department. A portion of the Site that is owned by the City has a municipal well and pumping station located on it which serves as part of the City's potable water system. Both parcels that compose the Site are currently zoned Light Industrial.

The City owned Site is bound, generally, by El Camino Real to the west, Franklin/Railroad Street to the south, and by Benton Street to north, and having a recorded parcel number of 230-08-078. The approximate area of both parcels Republic proposes for its development comprises approximately 2.45 acres including the VTA parcel. The City's parcel is approximately 71% of the Site area and consists of approximately 1.732 acres. The second parcel owned by the VTA consists of approximately .714 acres for the remaining 29%. The Site owned by the VTA has a recorded parcel number of 230-08-06.

Please accept this letter on the behalf of Republic as our proposal to enter into an Exclusive Negotiating Agreement (ENA) with the City of Santa Clara for the exclusive right to negotiate a 99-year ground lease. The VTA has indicated its willingness to follow the City's lead in negotiating the ground lease.

Proposal to Enter Into An Exclusive Negotiating Agreement

Cal Train Parking Lot - El Camino Real at Railroad Avenue & Benton Street Santa Clara, CA

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To a greater or lesser degree, virtually every urban university in the country is faced with the problem of student encroachment into neighboring residential communities. Understanding SCU is sensitive to this issue, we have found the University to be extremely receptive to new ways to respond. In meetings with SCU officials and key representatives of the community, it is clear that a solution is needed to remedy the negative impacts caused by students crowding into nearby homes. Please note:

- The University has a substantial need for additional student housing to meet current and anticipated enrollment growth;
- The University is in the midst of a substantial investment in campus infrastructure and is adding several new state-of-the-art facilities. This investment allows SCU to position itself for future enrollment growth;
- SCU enrolls 5,438 undergraduates and projects undergraduate enrollment growth to over 6,000;
- Despite construction of new dorms on campus, there will still be a need of more than 1,000 new beds. Privately financed student housing can free up SCU to use its dollars to invest in additional needed educational facilities.
- There are currently no purposely designed privately financed and owned student housing communities serving the University;
- Republic is committed to a collaborative process with key stakeholder involvement to develop a sustainable project that will provide great benefit to the City, SCU, and local residents. Our proposed development provides substantial assistance to the effort to meet the student housing deficit at SCU. It is a pedestrian location close to the academic core of the campus which will minimize impact on the local neighborhood, is optimally located to serve the University, and in a location suited for student density, being separated from the neighborhoods which today is housing many of these same students.

Republic has spent considerable time and investment in preparing its preliminary design (included below). We have engaged Humphreys & Partners Architects, the most respected and qualified architectural & engineering firm serving the national student housing industry and have performed substantial due diligence for the project. The significant amount of work Republic has completed to date greatly diminishes the risk of non-performance during the ENA process. Republic has worked collaboratively with the City, VTA and SCU.

Republic's preliminary design for a purpose-built student housing project on the Site includes:

- 600 - 680 beds of student housing with open and modern floor plans;
- All units contain bed-bath parity (all bedrooms having en suite bathrooms);
- Approximately 20,000-40,000 square feet of ground floor retail space which is expected to contain community enhancing retail services;
- Student-centric amenities including smart labs and study rooms, wellness and fitness centers, and programmed services designed to enhance the student experience;

Proposal to Enter Into An Exclusive Negotiating Agreement

Cal Train Parking Lot - El Camino Real at Railroad Avenue & Benton Street Santa Clara, CA

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- Ability to deliver approximately 270 parking spaces within the project which will provide substantial parking for a pedestrian student community, as well as for retail and police use.
- Republic will provide an additional 240 parking spaces on adjacent land owned by Cal Train for commuter parking. Republic has priced this cost into our project;
- Republic will commit to relocate the current municipal well and pumping station.

Republic offers the following terms and conditions for the Site:

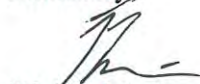
- Ground lease consisting of 99 years;
- A first year ground rent payment of \$750,000;
- Progress payments of \$750,000 consisting of \$150,000 paid at execution of the ground lease, \$300,000 at receipt of building permits and entitlements, and \$300,000 on the first anniversary of the commencement of construction;
- Rental increases per annum of 2% throughout the entire lease term;
- Total value of lease payments over the lease term of \$228,847,284.

In summary, we trust that in addition to considering the substantial economic benefits from our proposal, you will also take into account the substantial advantage our proposed development for the Site provides for the university's immediate neighbors. Republic has spent considerable time working with SCU to better understand the University's housing needs both current and planned. Republic has consulted extensively with the University's Vice president of Finance and Administration in our plans for the Site and we intend to include SCU as well as the City and VTA in its continued design.

Of course, we are willing to work out any aspects of our proposal which may cause you difficulty in our formal negotiations with the City regarding this transaction. We respectfully request that you enter into the ENA process with Republic.

Also, please refer to our website for further review on Republic and its various projects and activities.

Sincerely,



Richard L. Kramer

CHAIRMAN, REPUBLIC FAMILY OF COMPANIES

www.republicfamilyofcompanies.com

cc: Hon. Lisa M. Gillmor, Mayor

Proposal to Enter Into An Exclusive Negotiating Agreement
Cal Train Parking Lot - El Camino Real at Railroad Avenue & Benton Street Santa Clara, CA
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AERIAL VIEW OF SITE



Proposal to Enter Into An Exclusive Negotiating Agreement
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PARCEL INFORMATION

CITY OF SANTA CLARA PARCEL

Site Owner: City of Santa Clara
Site Location: El Camino Real and Railroad Avenue, Santa Clara, CA
Site Area: Approximately 75,000 SF
Santa Clara County APN: 230-08-078
Current Use: Cal Train Parking / Water Pumping Station
Current Site Zoning: ML (Light Industrial)

General Plan/Santa Clara Station Area Plan Designation: CT (Thoroughfare Commercial) and R3-36D (Medium Density Multiple Dwelling), 36 Dwelling Units/Acre, 45' Height Limit

VTA PARCEL:

Site Owner: Valley Transportation Authority
Site Location: 500 Benton Street, Santa Clara, CA
Site Footprint: Approximately 31,000 SF
Santa Clara County APN: 230-08-061
Current Use: Cal Train Parking
Current Site Zoning: ML (Light Industrial)

General Plan/Santa Clara Station Area Plan Designation: CT (Thoroughfare Commercial) and R3-36D (Medium Density Multiple Dwelling), 36 Dwelling Units/Acre, 45' Height Limit

Proposal to Enter Into An Exclusive Negotiating Agreement
Cal Train Parking Lot - El Camino Real at Railroad Avenue & Benton Street Santa Clara, CA
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PRELIMINARY CONCEPTUAL DESIGN



Proposal to Enter Into An Exclusive Negotiating Agreement
Cal Train Parking Lot - El Camino Real at Railroad Avenue & Benton Street Santa Clara, CA
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SANTA CLARA STUDENT HOUSING

PRELIMINARY PROJECT DETAILS

- Units: 230
- Beds: 688

	<u>Units</u>	<u>Beds</u>	<u>Avg. SF</u>	<u>Total SF</u>
1 Bed/1 Bath	20	20	701	14,020
2 Bed/2 Bath	86	172	835	71,780
4 Bed/4 Bath	124	496	1,386	171,842
Total	230	688	1,120	257,642

- Retail SF: Up to 42,000
- Total SF: 299,642

- Parking: 270 Spaces

Amenities:

- Clubhouse (5,000 SF)
- Pool
- Lounges
- Ground floor retail
- Open courtyard
- "Smart" Study / Lab Rooms
- Game / Club Room

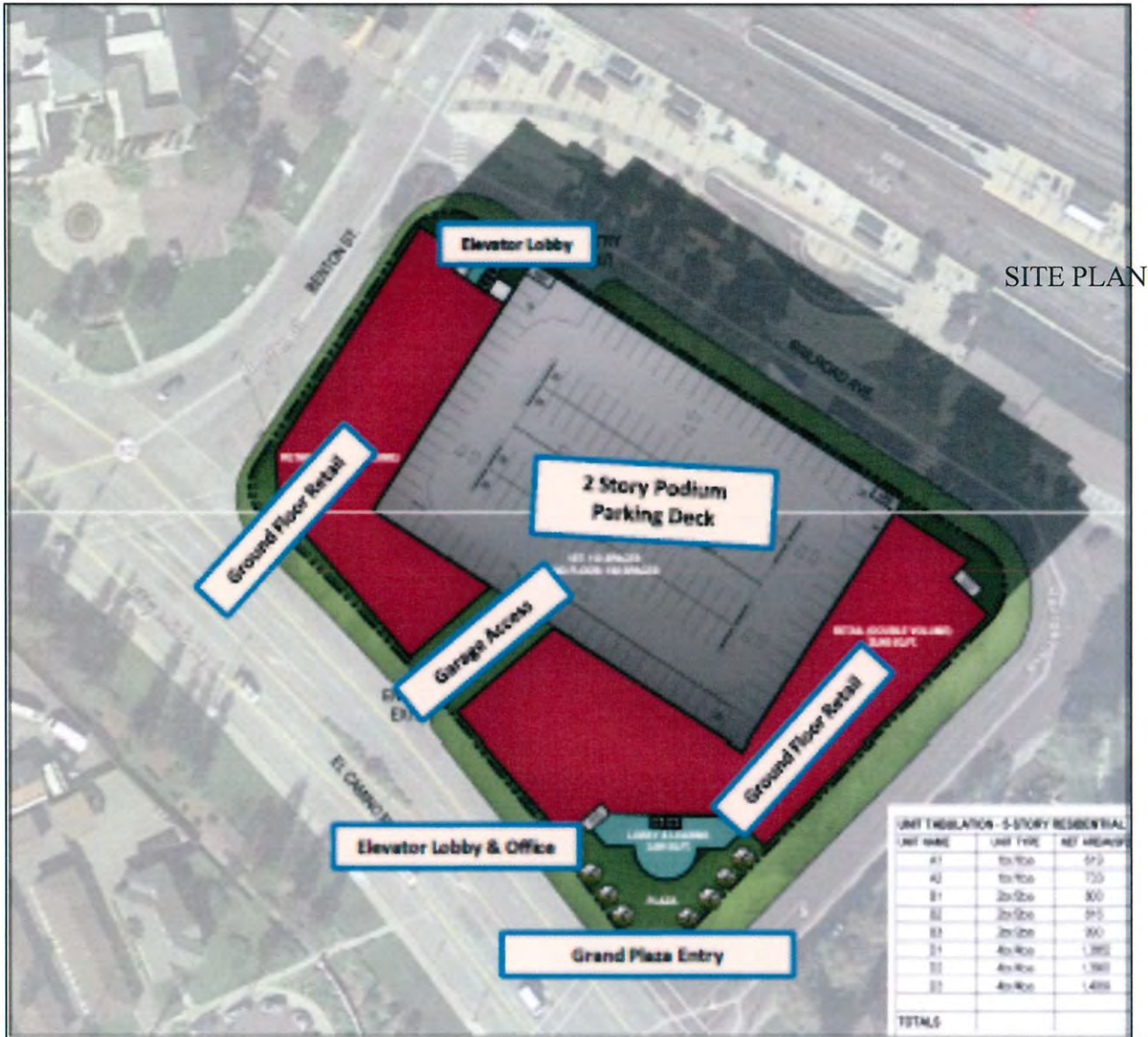
Proposal to Enter Into An Exclusive Negotiating Agreement
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PRELIMINARY SITE PLAN



SITE PLAN DETAILS

Proposal to Enter Into An Exclusive Negotiating Agreement
 Cal Train Parking Lot - El Camino Real at Railroad Avenue & Benton Street Santa Clara, CA
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DETAILS

Proposal to Enter Into An Exclusive Negotiating Agreement
 Cal Train Parking Lot - El Camino Real at Railroad Avenue & Benton Street Santa Clara, CA
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Exhibit B

EXCLUSIVE NEGOTIATION AGREEMENT
(APNs 230-08-061 and 230-08-078)

6/2/18 This Exclusive Negotiation Agreement (this "Agreement") is entered into as of this day of February, 2018, by and between the City of Santa Clara (the "City"), the Santa Clara Valley Transportation Authority ("VTA"), and Republic Metropolitan LLC, a Delaware limited liability company (the "Developer"), on the basis of the following facts:

RECITALS

1. The City and VTA (collectively referred to as the "Owners") own two adjoining properties located in the City of Santa Clara across from the Santa Clara Caltrain Station (collectively referred to as the "Property"). The City is the owner of certain real property and improvements assigned Assessor Parcel Number 230-08-078. VTA is the owner of certain real property and improvements assigned Assessor Parcel Number 230-08-061.

2. A "Negotiation Team" comprised of Owners' representatives will negotiate all terms and agreements with the Developer. The City, as majority owner, will be primarily responsible for negotiations and will be considered the lead negotiator for the Owners. The Negotiation Team will also determine the composition of a "Joint Consultant Team" to help manage contract administration. The Joint Consultant Team will be chosen from a pre-qualified list of VTA consultants and will enter into an agreement with the Owners.

3. The Owners wish to encourage and implement mixed-income, transit-oriented development close to the Santa Clara Caltrain Station in support of the Station Area Plan.

4. In its initial proposal to the Owners, the Developer proposed to redevelop and revitalize the Property as a purpose-built, transit-oriented, student housing facility primarily serving students attending Santa Clara University with a preliminary plan for up to 230 units, (688 beds), 270 parking spaces, 5,000 SF clubhouse, pool, lounges, ground floor retail, open courtyard, "Smart" Study/Lab Rooms, and game/club room (the "Project"). The Owners have expressed their desire that the project, as finally agreed-upon, will be for the development of mixed income, transit-oriented, student and faculty housing, maximizing both height and density.

5. The purpose of this Agreement is to establish procedures and standards for the negotiation by the Owners and the Developer of a Disposition and Development Agreement (the "DDA") and Ground Lease pursuant to which the Developer will conduct specified development activities related to the Property. A mutually acceptable DDA will provide for disposition of a leasehold interest in the Property to the Developer and/or its affiliates for ultimate development. As more fully set forth in Section 21, the Developer acknowledges and agrees that this Agreement in itself does not grant the Developer the right to develop the project, nor does it obligate the Developer to any activities or costs to develop the Project, except for the preliminary analysis and negotiations contemplated by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

EXCLUSIVE NEGOTIATIONS RIGHT

1. **Good Faith Negotiations.** The City, VTA, and the Developer (collectively referred to as the "Parties") agree that, in the course of the Negotiating Period set forth below, they will negotiate diligently and in good faith to arrive at the terms of a DDA for the development of the Project on the Property. It is expressly understood and agreed by the Parties that this is an agreement regarding negotiations only and does not convey any interest in the Property or a potential agreement or constitute any approval whatsoever of any proposed project or in any other way create legal rights to an agreement.

Among the issues to be addressed in the negotiations are: (i) the final leasehold consideration for each parcel comprising the Property; (ii) physical and land title conditions of the Property and remediation of any adverse conditions; (iii) the development schedule for the Project; (iv) financing of the Project; (v) marketing and management of the Project; (vi) design and aesthetic considerations of the Project; and (vii) the provision of public improvements related to the Project.

2. **Negotiating Period.** The negotiating period (the "Negotiating Period") under this Agreement shall be twelve (12) months, commencing on the effective date of this Agreement. The Negotiating Period may be extended for an additional period of six (6) months upon presentation of a written request from the Developer together with a schedule of tasks to be accomplished during the additional period. Approval of the extended negotiating period shall be at the discretion of the City Manager.

Additional extensions or modifications of the Negotiating Period in excess of a twelve (12) month Negotiating Period and a six (6) month additional period will require formal amendment of this Agreement executed by the City, VTA, and the Developer.

If a DDA has not been executed by the City, VTA, and the Developer (or its affiliate) by the expiration of the Negotiating Period, then this Agreement shall terminate and no party shall have any further rights or obligations under this Agreement, except as set forth in Section 4 and Section 23. If a DDA is executed by the City, VTA, and the Developer (or its affiliate), then, upon such execution, this Agreement shall terminate and all rights and obligations of the Parties shall be as set forth in the executed DDA.

3. **Exclusive Negotiations.** During the Negotiating Period, the Owners shall not negotiate with any entity, other than the Developer, regarding development of the Property, or solicit or entertain bids or proposals to do so.

4. **Negotiation Deposits.** The Developer shall tender to the City no later than ten (10) days after the full execution of this agreement, and the City shall accept, a deposit (the "First Negotiation Deposit") in the amount of Twenty-Five Thousand Dollars (\$25,000), in the

form of a cashier's check made payable to the City. The Developer shall tender to the City no later than ten (10) days after completion of the Due Diligence Period (discussed in Section 5), and the City shall accept, an additional deposit (the "Second Negotiation Deposit") in the amount of Twenty-Five Thousand (\$25,000), in the form of a cashier's check made payable to the City. The total sum of the First and Second Negotiation Deposits will be Fifty Thousand Dollars (\$50,000). The Developer agrees that the Owners may use the Negotiation Deposits to reimburse any costs associated with the Project such as, but not limited to, Consultant Costs (as defined in Section 5 below), outside attorneys' fees, appraisers, title reports, and other third party costs as needed to complete negotiations. The Owners shall have no obligation to begin the negotiation of the DDA or the Ground Lease or to retain consultants until the Developer delivers the First Negotiation Deposit to the City. The Owners may cease negotiations and terminate this Agreement if the Second Negotiation Deposit is not made in a timely manner.

5. **Due Diligence Period.** For the period of six (6) months following the effective date of this Agreement ("Due Diligence Period"), the First Negotiation Deposit shall be fully refundable, except for any costs incurred by the Owners as described below.

During the Due Diligence Period the First Negotiation Deposit may be used by the Owners to pay for reasonable costs and expenses in negotiating and preparing the DDA, the Ground Lease and ancillary documents, and complying with planning and environmental review. Such costs may include, but are not limited to, reasonable fees and services of third party traffic and economic consultants and attorneys, selected by the City, relating to the Project and the preparation of the DDA, Ground Lease and ancillary documents ("Consultant Costs").

6. **Post-Due Diligence Period.** Following the Due Diligence Period, the Developer shall tender to the City the Second Negotiation Deposit of Twenty-Five Thousand Dollars (\$25,000). Prior to incurring Consultant Costs during the Post-Due Diligence Period, the Negotiation Team shall provide the Developer with a schedule of the Consultant Costs incurred during the Due Diligence Period together with an outline budget for use of the Negotiation Deposits describing the general scope of work, costs, and timing of expenditure for the Post-Due Diligence Period. Developer shall review and reasonably approve or disapprove such anticipated budget for the Post Due Diligence Period within seven (7) days following the Negotiation Team's submittal thereof. Developer's failure to approve or disapprove such budget within seven (7) days shall be considered approval thereof.

If Developer disapproves of any item in the budget, the Parties will meet and in good faith evaluate the objectionable items and attempt to reach a compromise budget acceptable to all Parties. If no compromise budget can be reached within thirty (30) days, the Negotiation Team may at that time put the Developer on notice that such failure to approve the estimate of such reasonable anticipated additional costs may be deemed an event of default under the terms of this Agreement. The Owners shall be reimbursed for all additional costs above the total sum of the Negotiation Deposits incurred by the Owners prior to the date of the termination of this Agreement.

7. **Termination During Negotiating Period.** To the extent this Agreement is terminated prior to or as of the end of the Negotiating Period and the Owners have incurred costs that are less than the total sum of the Negotiation Deposits, and the Developer has negotiated in good faith and is not in breach of this Agreement, the City shall return the unexpended balance of the Negotiation Deposits to the Developer along with an accounting of the costs incurred by the Owners.

If this agreement is terminated by the Owners due to a failure by the Developer to negotiate in good faith under this Agreement, the Negotiation Deposits and any interest earned thereon shall be retained by the Owners, as more fully provided in Section 25.

NEGOTIATION TASKS

8. **Overview.** To facilitate negotiation of the DDA, the Parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Agreement in a timeframe that will support negotiation and execution of a mutually acceptable DDA prior to the expiration of the Negotiating Period.

9. **Preliminary Scope of Project.** Within thirty (30) days following the effective date of this Agreement, the Developer shall prepare and submit to the Negotiation Team a scope of development describing location and land uses of the proposed Project.

10. **Site Plan.** The Developer shall prepare and submit to the Negotiation Team a proposed site plan identifying the size and shape of the parcels that comprise the Property (the "Development Parcels") and the location of the Project improvements to be constructed on each of the Development Parcels.

11. **Estimated Ground Lease Payments for the Property.** The Negotiation Team and the Developer shall meet to determine the Ground Lease payments to be paid for the Property based on the highest and best use of the Property.

12. **Financing and Costs of Development.** The Developer shall provide the Negotiation Team with a detailed financial pro forma for the Project, subject to information then available, containing, among other matters, a detailed development budget setting forth the projected costs of the tasks to be undertaken by the Developer. The financial pro forma will be used to evidence the general financial feasibility of the Project and to assist in the negotiation of terms regarding payment of costs of land and development. Prior to executing the DDA, the Developer shall provide the Negotiation Team with evidence of financial wherewithal of the Developer and its affiliates to effectuate the Project with customary equity and financing.

13. **Acquisition/Relocation of Existing Uses/Tenants.** During the initial six (6) months following the effective date of this Agreement, the Developer will study and determine the financial feasibility of relocating public use facilities and existing tenants currently within the property boundaries. During this same initial six month period, the Developer will determine the physical and logistical feasibility of relocating the same facilities and tenants. Responsibility for any potential acquisition/relocation costs will be borne by the Developer.

14. **Schedule of Performance.** During the initial sixty (60) days following the effective date of this Agreement, the Developer shall provide the Negotiation Team with a detailed schedule of performance for the Project which shall include, but not be limited to, a plan setting forth the proposed timeline for the preparation of development concepts, community outreach and planning, and environmental review/approval. Following the Due Diligence Period, the Developer shall provide the City with a detailed schedule of performance to incorporate into the DDA, which shall include milestones for the development of each Development Parcel, specifically addressing the mix of development uses, phases of development, the projected date for the submittal of construction plans to the City, the estimated date for close of escrow on the conveyance of the Development Parcels, and the dates for commencement and completion of construction of Project components on the Development Parcels.

15. **Organizational and Team Information.** The Developer shall provide the Negotiation Team with information outlining key personnel's roles and information reflecting the financial wherewithal of the Developer and its affiliates to effectuate the Project.

16. **Environmental Review.** The Negotiation Team and the Developer shall prepare or cause to be prepared any environmental documentation required by the California Environmental Quality Act ("CEQA") for consideration of approval of the DDA and the Ground Lease; provided, that nothing in this Agreement shall be construed to compel the Owners to approve or make any particular findings with respect to such environmental documentation. The Developer shall provide such information as may be required to enable the Negotiation Team to prepare or cause preparation and consideration of any CEQA-required document, and shall otherwise generally cooperate with the Negotiation Team to complete this task. The Developer shall be responsible for all costs associated with the preparation of the required CEQA documentation.

17. **Due Diligence.** During the Negotiating Period, the Developer shall conduct the following due diligence activities:

a. **Property Adequacy Determination.** The Developer shall determine whether the Property is suitable for development of the Project, taking into account the geotechnical and soil conditions, the presence or absence of toxic or other hazardous materials, the zoning of the Property, the massing of the proposed Project improvements and the parking requirements imposed on projects of this type, traffic restrictions, the feasibility of relocating public facilities, and any other environmental and regulatory factors that the Developer deems relevant. If, in the Developer's judgment based on such investigations and analyses, the Property is not suitable for development, the Developer shall notify the Negotiation Team in writing no later than ninety (90) days after its determination. Upon such timely notification by the Developer, the remaining balance of the Negotiation Deposits shall be immediately refunded to the Developer and this Agreement shall be terminated without further action of the Parties, and thereafter no party shall have any further duties, obligations, rights, or liabilities under this Agreement, except as set forth in Sections 24 and 25.

b. Objections to Title. Promptly following the execution of this Agreement, the Developer shall cause a title company mutually approved by the Developer and the Owners to issue a Preliminary Title Report (the "Report") on the Property to the Developer and the Negotiation Team. If the Developer objects to any exception appearing on the Report or should any title exception arise after the date of the Report, the Developer may object to such exception, provided such objection is made to the Owners in writing no later than thirty (30) days following the date the Developer receives the Report. If the Developer objects to any exception to title, the Negotiation Team shall notify the Developer in writing within fifteen (15) days of receipt of the Developer's objection whether the Owners elect to: (i) cause the exception to be removed of record; (ii) obtain a commitment from Title Company for an appropriate endorsement to the policy of title insurance to be issued to the Developer, insuring against the objectionable exception; or (iii) terminate this Agreement unless the Developer elects to take title subject to such exception.

If any of the Parties elects to terminate this Agreement pursuant to this subsection (b), the remaining balance or the Negotiation Deposits shall be immediately refunded to the Developer and no party shall thereafter have any obligations to or rights against the other hereunder, except as set forth in Sections 24 and 25. If the Developer fails to provide any notification to the Negotiation Team regarding this matter prior to expiration of the time period set forth herein, the condition set forth in this subsection (b) shall be deemed satisfied and this Agreement shall continue in effect.

18. Right of Early Entry on Property. During the Negotiating Period, as defined above in Section 2 of this Agreement, and subject to the terms of this Section 18, the Developer may enter the Property for the purposes of conducting any surveys and appraisals, collecting soil samples, and performing other studies that the Developer feels are necessary for determining the suitability of the Property for development of the Project. The Developer shall use commercially reasonable efforts to minimize any adverse impacts to the City's and VTA's operations on the Property. In furtherance of the foregoing, the Developer shall in no event close off more than five percent of the total existing striped parking spaces on the Property for any consecutive 24-hour period. To the extent possible, on-site inspections will take place on weekends or holidays so as to minimize, to the extent possible, any disruption to the City's and VTA's operation of the existing parking facility or public utility. Any on-site inspections by the Developer shall require ten (10) business days' advance notice to the Negotiation Team and shall be conducted in the presence of an authorized City or VTA employee or contractor. The Developer shall not disturb Caltrain's operations on or near the Property and shall not cause any damage to the Property. The Developer shall not be permitted to engage in any invasive or destructive testing without the written consent of the Owners, which may be granted or denied in the Owners' reasonable discretion. All inspections and entries onto the Property by the Developer shall be in compliance with all applicable laws, regulations, and ordinances.

Prior to any entry onto the Property, the Developer shall obtain and maintain, at the Developer's sole cost and expense, and shall deliver to the Negotiation Team evidence of insurance coverage and limits as provided in the attached Exhibit A. Developer is also obligated

to ensure that its General Contractor and all Consultants carry and maintain the insurance required herein during provision of services to the Developer that involve the Property. In addition, the Developer shall require any contractor and its agents to obtain and maintain said insurance and name the City and VTA as additional insured parties; the Developer shall deliver to the Negotiation Team evidence of the same.

The Developer agrees to indemnify against, and hold the City and VTA harmless from, any claim for liabilities, costs, expenses (including, without limitation, reasonable attorneys' fees actually incurred), damages, or injuries arising out of or resulting from the inspection of the Property by the Developer or its agents, and notwithstanding anything to the contrary in this Agreement, such obligation to indemnify and hold harmless the City and VTA shall survive any termination of this Agreement through the applicable statute of limitations period (presently four years); provided, however, that the Developer's indemnity, hereunder, shall not include any losses, cost, damage, or expenses resulting from the sole negligence or willful misconduct of the City or VTA, or the mere discovery of any pre-existing condition of the Property that is not exacerbated as a result of such inspection.

19. **Reports.** The Developer shall provide the Owners with copies of all reports, studies, analyses, correspondence and similar documents, but excluding confidential or proprietary information, prepared or commissioned by the Developer with respect to this Agreement and the Project, promptly upon their completion. The Owners shall provide the Developer with copies of all reports, studies, analyses, correspondence and similar records (collectively referred to as the "documents"), but excluding privileged or deliberative information, prepared or commissioned by the Owners with respect to this Agreement and the Project; such documents shall be considered the property of the Owners and may be retained by the Owners in the event that this Agreement is terminated without execution of a DDA.

The Owners will work with the Developer to protect confidential and proprietary information that might become subject to disclosure under the Public Records Act (Government Code Sections 6253, *et seq.*). The Developer acknowledges that the Owners may share information provided by the Developer of a financial and potential proprietary nature with third party consultants, members of the Santa Clara City Council, and members of the VTA Board of Directors as part of the negotiation and decision-making process.

20. **Progress Reports.** From time to time as reasonably agreed upon by the Parties, the Developer shall make written progress reports advising the Owners of studies being conducted and matters being evaluated by the Developer with respect to this Agreement and the Project.

GENERAL PROVISIONS

21. **Limitation on Effect of Agreement.** This Agreement shall not obligate the Parties to enter into a DDA or to enter into any further agreement. By execution of this Agreement, neither the City nor VTA are committing or agreeing to undertake acquisition, disposition, or exercise of control over any property. Execution of this Agreement by the Owners

is simply an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Agreement shall become effective only if and after such DDA has been considered and approved by the City and VTA.

22. **Notices.** Formal notices, demands, and communications between the Owners and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the Parties shown as follows, or such other address as the Parties may designate in writing from time to time:

City:	City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050 Attention: City Manager
Copy to:	City of Santa Clara 1500 Warburton Avenue Santa Clara, CA 95050 Attention: City Attorney
VTA:	Santa Clara Valley Transportation Authority Real Estate and Joint Development Division 3331 North First Street Building A-1 San Jose, CA 95134 Attention: Ron Golem, Deputy Director
Copy to:	Santa Clara Valley Transportation Authority General Counsel's Office 3331 North First Street Building C-2 San Jose, CA 95134 Attention: Victor Pappalardo, Senior Assistant Counsel
Developer:	Republic Metropolitan LLC 1201 Maryland Avenue, SW Suite 850 Washington, D.C. 20024 Attention: Robert Mendelsohn
Copy to:	Robert Mendelsohn P.O. Box 174 Ross, CA 94957

Copy to: Mezzetti Law Firm, Inc.
31 E. Julian Street
San Jose, CA 95112

Copy to: Republic Holdings Corp.
41 West Putnam Avenue, Second Floor
Greenwich, CT 06830
Attention: Mr. Richard Kramer

Such written notices, demands, and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

23. **Costs and Expenses.** Except for the Developer's obligation to fund certain City or VTA expenses under Section 4, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

24. **No Commissions.** The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any DDA that may result from this Agreement. The City represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer shall defend and hold the Owners harmless from any claims by any broker, agent, or finder retained by the Developer.

25. **Defaults and Remedies.**

(a) **Default.** Failure by a party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) **Remedies.** In the event of an uncured default by either of the Owners, the Developer's sole remedy shall be to terminate this Agreement, upon which termination the Developer shall be entitled to the return of the unexpended portion of the Negotiation Deposits and any interest earned thereon, provided, however, if the uncured default is the result of the City's or VTA's gross negligence or willful misconduct, the Developer's remedies shall include return of the original amount of the Negotiation Deposits. Following such termination and the return of the appropriate amount of the Negotiation Deposits and any interest earned thereon, no party shall have any further right, remedy, or obligation under this Agreement; provided, however, that the Developer's indemnification obligation pursuant to Section 24 shall survive such termination.

In the event of an uncured default by the Developer, the Owners' sole remedy shall be to terminate this Agreement and to retain any unexpended funds remaining in the Negotiation Deposits and any interest earned thereon. Following such termination, no party shall

have any right, remedy, or obligation under this Agreement; provided, however, that the Developer's indemnification obligation pursuant to Section 24 shall survive such termination.

Except as expressly provided above, no party shall have any liability to the other for damages or otherwise for any default, nor shall a party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims it might otherwise have at law or in equity.

26. **Attorneys' Fees.** The prevailing party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other party.

27. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.


28. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties regarding the subject matters of this Agreement.

29. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties on the date first above written.

DEVELOPER

REPUBLIC METROPOLITAN LLC, a
Delaware limited liability company

By: 
Robert Mendelsohn,
Authorized Agency

CITY

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

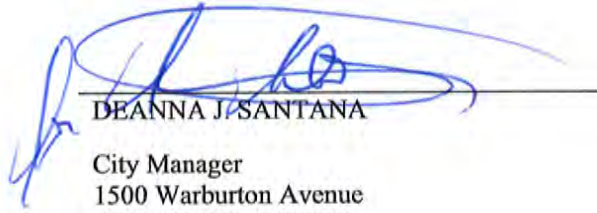


BRIAN DOYLE
Interim City Attorney

ATTEST:



ROD DIRIDON, JR.
City Clerk




DEANNA J. SANTANA

City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

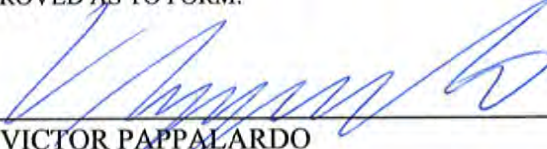
VTA

**SANTA CLARA VALLEY TRANSPORTATION
AUTHORITY, a special district**

By: 

NURIA FERNANDEZ
General Manager

APPROVED AS TO FORM:

By: 

VICTOR PAPPALARDO
Senior Assistant Counsel

EXHIBIT A
REQUIRED INSURANCE

Without limiting the Developer's indemnification of the Owners, the Developer must procure and maintain for the duration of the Agreement insurance against any claim for personal injury or property damage caused by the Developer or its agents, employees, or contractors in connection with the Developer's inspections, tests, construction, entry, and use of the Property. The cost of such insurance must be borne by the Developer. The Developer must furnish complete copies of all insurance policies, within three (3) business days of any request for such by the Owners. The Developer is also obligated to ensure that its General Contractor and all Consultants carry and maintain the insurance required herein during provision of services to the Developer that involve the Property.

A. MINIMUM SCOPE OF INSURANCE

Coverage must be at least as broad as:

1. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
2. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake, or omission in the performance of services under this Agreement by the Developer or Prime Consultants, including but not limited to design work including stamping of plans for submission to approving jurisdictions. This coverage must be maintained for a minimum of two (2) years following completion of this Agreement. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.
5. Contractor's Pollution Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.

B. MINIMUM LIMITS OF INSURANCE

Developer must maintain limits no less than:

1. General Liability: \$10,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a

general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the General Liability primary policy limit per occurrence be less than \$2,000,000. Excess policies must feature inception and expiration dates concurrent with the underlying general liability policy, and a "Drop Down" provision.

2. Automobile Liability (including umbrella/excess liability): \$5,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto with Excess or Umbrella, but in no event may the Automobile Liability primary policy limit per occurrence be less than \$2,000,000. Excess policies must feature inception and expiration dates concurrent with the underlying general liability policy, and a "Drop Down" provision.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Professional Liability: \$2,000,000 each occurrence/aggregate limit per claim.
5. Contractor's Pollution Liability: \$5,000,000 per occurrence.

Notwithstanding any language in this Agreement to the contrary, if the Developer carries insurance limits exceeding the minima stated in paragraphs B.(1)-(3) immediately above, such greater limits will apply to this Agreement. The General Contractor and all Design Consultants must meet the above minimum coverage limits, but such limits may be reduced or waived for all other Consultants in Owners' reasonable discretion.

C. SELF-INSURED RETENTION

The certificate must disclose the actual amount of any deductible or self-insured retention for all coverages. Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if the Developer is a publicly-traded company) must be declared to and approved by the Owners. To apply for approval for a level of retention in excess of the stipulated amounts stated herein, the Developer must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of the Owners, either: the insurer must reduce or eliminate such self-insured retention as respects the Owners, their officers, officials, employees, and volunteers; or the Developer must procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is

written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

1. The policy retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, the Developer must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must be of at least two (2) years.
3. No prior acts exclusion to which coverage is subject that predates the date of this Agreement.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

E. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability
 - a. The Owners, their officers, officials, employees, and volunteers are to be named as additional insureds as respects: liability arising out of premises leased to, occupied or used by the Developer. The coverage must contain no special limitations on the scope of protection afforded to the Owners, their officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
 - b. The Developer's insurance coverage must be primary insurance as respects the Owners, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Owners, their officers, officials, employees, or volunteers must be excess of the Developer's insurance and may not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies may not affect coverage provided to the Owners, their officers, officials, employees, or volunteers.
 - d. Coverage must state that the Developer's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. The General Liability General Aggregate limit must apply per project, not per policy.
 - f. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

2. All Coverages

The insurer must agree to waive all rights of subrogation against the Owners, their officers, officials, employees, and volunteers for losses arising from the leased premises.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Agreement are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Agreement, the Owners reserve the right to require the Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

F. ACCEPTABILITY OF INSURERS

Insurance must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by the Owners.

G. CERTIFICATES OF INSURANCE

Developer must furnish the Owners with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates will be issued on a standard ACORD Form. The Developer must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to the Owners.

The certificates will: (1) identify the underwriters, the types of insurance, the insurance limits, the deductibles, and the policy term; (2) include copies of all the actual policy endorsements required herein; and (3) in the "Certificate Holder" box include:

- City: City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attention: City Manager
- VTA: Santa Clara Valley Transportation Authority
Real Estate and Joint Development Division
3331 North First Street
Building A-1
San Jose, CA 95134
Attention: Ron Golem, Deputy Director

In the Description of Operations/Locations/Vehicles/Special Items Box, the Agreement title must appear, the list of policies scheduled as underlying on the Umbrella policy must be listed, Certificate Holder should be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Agreement.

All certificates and endorsements are to be received and approved by the Owners before work commences. The Owners reserve the rights to require complete, certified copies of all required insurance policies, at any time.

If the Developer receives any notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, the Developer or insurer must immediately provide written notice to the Owners that such insurance policy required by this Exhibit is canceled or coverage is reduced.

H. MAINTENANCE OF INSURANCE

If the Developer fails to maintain (or cause the General Contractor or any applicable Consultant) such insurance as is called for herein, the Owners, at their option, may deny the Developer access to the Property until a new policy of insurance is in effect.

Exhibit C



April 1, 2020

VIA E-MAIL

mbradish@coxcastle.com

Margo Bradish, Esq.
Cox, Castle, & Nicholson LLP
50 California Street, Suite 3200
San Francisco, CA 94111

Re: Republic Metropolitan, LLC Transit-Oriented Affordable Housing Project

Dear Ms. Bradish:

We have reviewed your letter citing the legal authorities that Republic Metropolitan, LLC believes support it in moving its project forward in compliance with the Surplus Land Act, Gov't Code §54220 et seq. ("SLA").

Any analysis requires a history of the City's use of the property. The City acquired the property in 1931. It was not acquired for economic development purposes. Since 1955 there has been an operating well on-site and the current well location is one of the highest producing wells for the City. The site is also utilized for police employee and Caltrain parking. All of these uses are public agency use. It does not appear that the land was ever acquired or used for economic development purposes. The property has always been in "agency use" for purposes of the application of the SLA requirements.

Your argument that the land is not "surplus" because the property will continue to maintain a well on-site but at a different location is simply not correct. The SLA requires the City to make the finding that the property is no longer necessary for the agency use. However, the project property has the potential of drilling one or more wells in addition to the existing well. Also, it has not been demonstrated that the new well site will be able to produce at the same quantity and quality as the existing well. Because of the loss of new potential wells on site, we do not believe that the City Council would be able to make the necessary findings that the property could be declared surplus.

Gov't Code §52200 et seq. is not an exception to the Surplus Land Act. Although it may provide an alternative authority for disposition of land that had been held for economic development purposes or is otherwise not in active agency use, there does not appear to be any authority that it was intended to amend the SLA's requirements, nor did the recent amendments to the SLA reference any intent to consider those sections to be additional exceptions.

April 1, 2020
Letter to Margo Bradish
Re: Republic Metropolitan, LLC
Page 2 of 2

Given the exigencies of the current Covid-19 emergency, the City Attorney's Office must devote its resources to more essential functions. We anticipate that our discussion this afternoon will conclude our mutual consideration of these legal issues that we raised in December 2019.

Sincerely,



Brian Doyle
City Attorney

cc (via email): Deanna Santana, City Manager
Ruth Shikada, Assistant City Manager
Elizabeth Klotz, Assistant City Attorney
Robert Mezzetti, Esq.

Exhibit D



Agenda Report

20-297

Agenda Date: 4/7/2020

INFORMATIONAL REPORT TO CITY COUNCIL

SUBJECT

Update on project located at 500 Benton Street with Republic Metropolitan LLC [Council Pillar: Promote and Enhance Economic and Housing Development]

BACKGROUND

On November 19, 2019, City Council approved the Second Amendment to the Exclusive Negotiations Agreement with Republic Metropolitan LLC (Developer) for the site located at 500 Benton Street [APN: 230-08-061]. While Council approved the Second Amendment which extended the term of the agreement to August 5, 2020, Council also directed staff to report back to Council within 120 days (March 18, 2020) with an update on the revised term sheet, along with updates on the proposed water well location and the preservation of the historic railroad buildings.

DISCUSSION

The following responds to Council's request for an update on the Term Sheet, water well and the historic railroad buildings.

Term Sheet

As per the Second Amendment to the Exclusive Negotiations Agreement, the Developer is 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. The Revised Term Sheet presents all economic terms of any proposed 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. The ENA contemplates that all parties use their best efforts to negotiate and develop mutually acceptable terms and conditions of a DDA or LOA (the "Final Term Sheet"), within 120 days following the submittal of the Revised Term Sheet (i.e., June 13, 2020). City staff and Developer discussed the Developer's Revised Term Sheet on March 19.

The Final Term Sheet is intended to provide for the economic terms and conditions pursuant to which the Developer will have the right to lease the property and construct the project. These terms would be documented in a Disposition and Development Agreement (DDA) and brought for Council consideration together with CEQA and project land use entitlement actions.

The key terms of the Revised Term Sheet are summarized below together with a general status of the item:

Proposed Project:

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, 18,600 sf of retail/office space, 316 garaged parking spaces, and includes relocation of water well and pump station.

The Developer has submitted a Planning Application for the proposed project.

Financial Terms:

The Developer has proposed a 99-year Ground Lease with financial terms for both VTA and the City. Parties are reviewing the project underwriting; proposed rents; and, proposed escalations/rent adjustments over time.

Cal Train Relocation:

The Property is currently improved with surface parking which is used by Cal Train through separate agreements with both the City and VTA. The Cal Train parking would be temporarily relocated offsite during construction and relocated back primarily to the VTA Parcel after completion of the Affordable Housing Component's construction. The VTA Lease will contain the terms and a form of sublease for the Cal Train Relocation.

Community Improvement Plan:

During the DDA/LOA Term, VTA and Developer will work collectively and cooperatively to develop a public safety and student ridership program for the Student Housing Component in order to meet the stated program goals ("Transit Ridership Incentive Program"). During the DDA/LOA Term, the VTA and Developer will negotiate a separate agreement to provide monthly ridership passes to the program ("TRIP Agreement"). The TRIP Agreement will provide that, after construction of the Project, Lessee will provide a one-time payment of an amount not to exceed up \$1,000,000.00 to the TRIP ("TRIP Funds") for the funding of the TRIP, the details to be provided for in the DDA/LOA.

Police Department Parking:

While not included in the current Term Sheet, the City has requested that 30-50 parking spaces be made available for Police Department use. There is not adequate parking available in front of the Police Building for the public accessing the Police services and/or the community room within the Police Building.

Water Well Relocation

This item is included in the Term Sheet but for the purposes of this Report, it is broken out separately.

There is currently a City underground production water well ("well") and its appurtenances in approximately 50 feet by 62 feet lot which is located on the City Parcel (APN 230-08-78) in the center of the parking lot. The current project site also has potential to install multiple wells. The current well location is in conflict with the proposed development Project footprint.

To mitigate the conflict, the Developer will be required to abandon the existing well and provide another well of equal or better water quality and production. The existing well is one of the top producing water wells in the City's water system that brings drinking water to Santa Clara.

For the relocation, the Developer has proposed an onsite location at the southeast corner of Benton Street and El Camino Real. In addition to the proposed well site at 500 Benton Street, the Developer must also - consistent with the requirements of the City and State Department of Drinking Water

(DDW) - provide a potential viable site of approximately 100 feet x100 feet for a future well that will deliver an equal or better water quality and production level in comparison to the current well 3-02. City staff has asked the Developer to offer a site for a future well but has not received any information.

Developer is currently working with the City Water and Sewer Department to satisfy the operations and maintenances elements of the proposed site, and City/DDW Regulatory requirements. California Environmental Quality Act (CEQA) review for the proposed well is in process. The City's Water and Sewer Department staff is working with the Developer's engineering firm, Infrastructure Engineering, and Well consultant Todd Groundwater, to obtain the 50-foot radius variance and source water assessment from DDW.

Developers' consultant will be required to drill at test hole with permitting and contract approval by the City (various departments - Public Works, Community Development, Water District etc.). Once the test hole is drilled and results are obtained then the Developer must coordinate with City to provide the requested information to DDW for their approval, provided the results are satisfactory and in line with the current well or better.

Final production well plans, and specifications needs review and approval by the City and DDW. The design and construction may take two to six months based on the CEQA requirements and other approvals after the test hole is drilled. After the proposed well is in service, the existing well would be abandoned.

As of the date of the preparation of this Report, it is unknown whether or not the proposed well site will meet the production and quality requirements set forth as equal or better than the existing well.

Preservation of historic railroad buildings

The City will act as the Lead Agency for the completion of the CEQA process for the project. Cultural Resources Treatment Plan will need to be developed to complete the CEQA process due to the Project's proximity to Mission Santa Clara.

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. The HLC recommendation will be provided to the relevant Boards and Commissions for considerations as the project proceeds through the entitlement process.

Next Steps

There are a number of items to address and accomplish prior to the finalization of a Term Sheet for Council consideration and Council's consideration of a DDA. The ENA sets out a 120-day time period (or June 13, 2020) for the finalization of a Term Sheet. The ENA contemplates that prior to the end of the ENA term (August 5, 2020), the Project would have secured the following approvals: CEQA clearance; project entitlements; and a final Disposition and Development Agreement with the City and VTA. Under normal conditions, preparing and finalizing CEQA clearance in this timeframe (a necessary prerequisite for project entitlements and consideration of a DDA) would be problematic. Given the current coronavirus public health crisis, deploying City resources and third-party services to achieve these milestones may not be possible. Absent other Council direction, Staff will continue to facilitate efforts on this project to the extent allowable given other resourcing needs.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) 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.

COORDINATION

This report has been coordinated with the City Attorney's Office.

FISCAL IMPACT

There is no additional cost to the City to prepare this report other than administrative staff time and expenses. Third party costs associated with the negotiation and preparation of the Disposition and Development Agreement have been paid by the Developer from a deposit to the City.

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 <<mailto:clerk@santaclaraca.gov>> .

RECOMMENDATION

Note and File the Informational Memo on the project located at 500 Benton Street with Republic Metropolitan LLC.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Site Map

Exhibit E



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

Exhibit F

Santa Clara Station TOD Term Sheet

City/VTA’s Response to ReMet/TMO’s 7/30/2020 Proposal

Summary of Key Terms for DDA/LOA and Ground Leases

Dated August 11, 2020

General Conditions	
1. Development Site	<ul style="list-style-type: none"> • The City of Santa Clara (“City”) - fee owner of approximately 1.7-acres (“City Parcel”) • VTA - fee owner of 0.7-acres (“VTA Parcel”) • See sites in Exhibit A
2. Developer	<ul style="list-style-type: none"> • Republic Metropolitan LLC and/or its affiliates approved by City and VTA (“ReMet”)
3. Affordable Housing Developer	<ul style="list-style-type: none"> • City and VTA acknowledge that The Michaels Organization (“TMO”) has been approved as the Affordable Housing Developer. During the DDA period, VTA and City retain the right to review and approve, in their sole discretion, an alternative Affordable Housing Developer proposed by Developer. See #19 on Transfers, Assignment, and Subletting.
4. Proposed Components	<ul style="list-style-type: none"> • “Student Housing Component” to be built on City Parcel • “Affordable Housing Component” to be built on VTA Parcel <ul style="list-style-type: none"> ○ Affordable Housing Component will satisfy the City’s Inclusionary Housing requirement for the Student Housing Component and will comply with VTA’s Affordable Housing Policy • See Plans in Exhibit B
5. “Student Housing Component” Program	<p>The Developer’s proposed program includes:</p> <ul style="list-style-type: none"> • 545-bed (170-unit) market-rate student apartment/workforce housing • 4,400 +/- square feet of community/recreational facility space • 8,900 +/- square feet of commercial/retail space • 140 residential use and 27 retail use parking for a total of 167 parking spaces • 16 Caltrain transit parking spaces • 25 Santa Clara Police Department (SCPD) dedicated parking spaces • Student Housing Component project program will be subject to Planning Commission and City Council review and discretionary approval

<p>6. “Affordable Housing Component” Program</p>	<p>The Developer’s proposed program includes:</p> <ul style="list-style-type: none"> • 70 affordable units, 100% of units deed restricted at or below 60% AMI, with 50% of units at or below 50% AMI and 50% of units at or below 60% AMI + 1 Manager’s Unit • Deed restriction in perpetuity • 3,000 +/- square feet of commercial/community facility space • 37 parking spaces for residential use • 9 parking spaces for retail use • 79 Caltrain transit parking spaces • Affordable Housing Component project program will be subject to Planning Commission and City Council review and discretionary approval
<p>7. Caltrain Parking</p>	<ul style="list-style-type: none"> • Developer will provide a Caltrain Temporary Parking Plan and a Caltrain Permanent Parking Plan by September 2020 • All items pertaining to Caltrain temporary and permanent parking including number of spaces, design, construction, and operations/maintenance will require signoff by Caltrain and VTA. Any change to the current allocation between Components will require written approval by City, VTA, Caltrain, and Developer/ground lessee for each parcel. • Caltrain Temporary Parking Plan: Developer will temporarily relocate not less than 90-100 Caltrain replacement spaces off-site during the entire period of project construction and will use commercially reasonable efforts to relocate an additional 100 spaces for a total of 200 temporary spaces. Developer will provide 90 temporary Caltrain spaces in the right-of-way located south of the train station (“South Site”). • Caltrain Permanent Parking Plan: Developer will provide 95 permanent replacement transit parking spaces allocated between the two Components for Caltrain users. The Caltrain Permanent Parking Plan will include allocation of spaces between each component, layout, electronic signage and wayfinding, sublease terms, and operation and maintenance terms acceptable to City, VTA, and Caltrain. • At each Component’s completion, the ground lessee for each parcel will sublease their allocation of Caltrain, for the term of the ground lease, with advance approval of the sublease to Caltrain to include terms and conditions acceptable to VTA, City, and Caltrain. Subleases and/or reciprocal access easements will enable Caltrain to install equipment/infrastructure, access, manage, operate, and maintain the Caltrain parking stalls within the Components.

<p>8. Santa Clara Police Replacement Parking</p>	<ul style="list-style-type: none"> • Developer shall develop a plan to accommodate 25 dedicated parking spaces for the City of Santa Clara Police Department at no cost to the City, subject to the approval of City and VTA.
<p>9. Phasing</p>	<ul style="list-style-type: none"> • The Affordable Housing Component shall be built prior to, or concurrent with, the Student Housing Component and, pursuant to City of Santa Clara Inclusionary Ordinance, begin construction “within a similar timeframe” as the Student Housing/Workforce component. • The ground leases for the Student Housing Component and the Affordable Housing Component shall be executed concurrently at the DDA Closing and a condition to DDA Closing will be that all financing for both components must be in place with the exception of the Affordable Housing Developer’s CTAC (tax credit) financing, which instead shall only be required to have been awarded prior to DDA Closing. Developer will provide a short-term bond in the amount of what would have been the affordable housing in lieu fee for the Student Housing Component to guaranty that the Affordable Housing Developer will close on the CTAC (tax credit) financing.
<p>10. Environmental Conditions</p>	<ul style="list-style-type: none"> • The VTA Parcel will be ground-leased to Developer in an “as-is, where-is” condition.

Leasehold Disposition and Development Agreement (DDA) and/or Lease Option Agreement (LOA)

There are different ways to structure this interim agreement, which covers the period after the ENA and before the execution by VTA and City of separate ground leases.

- (a) One DDA with three or four parties, depending on Developer’s arrangement with Affordable Housing Developer (City, VTA, Developer, Affordable Housing Developer) One DDA with three parties is intended. Form to be agreed upon following agreement on key terms.
- (b) One DDA between Developer and City and a separate LOA between VTA and Affordable Housing Developer

The DDA/LOA Shared Conditions specified below provide terms that VTA and the City will require in the joint DDA or their respective legal documents. Below the Shared Conditions are requirements VTA and the City will separately impose.

DDA/LOA Shared Conditions	
11. DDA/LOA Term	<ul style="list-style-type: none"> • 2 years from the date of DDA/LOA execution with one (1) one-year extension option upon payment of annual Option Payment Consideration • DDA/LOA will terminate (a) upon execution of both Ground Leases or (b) two years from DDA/LOA execution, whichever is earlier, unless otherwise extended by Force Majeure or by the Option to Extend
12. Exclusive Negotiation	<ul style="list-style-type: none"> • The City and VTA will negotiate exclusively with Developer for the disposition of their respective parcels during the DDA/LOA term. • Prior to the execution of the DDA/LOA, City will record any documents necessary to correct the parcel lines of the City Property to the satisfaction of the Title Company.
13. Permitted Uses	<ul style="list-style-type: none"> • Developer shall have the right, at its sole cost and expense with the consent of City and VTA (as applicable) to (i) seek any permits, entitlements, funding, and government approvals that Developer, VTA, and/or City determine are required for the construction, development, and operation of the Components, subject to prior City and VTA approval in writing (as applicable) of all application, permit, or other submittal documents, (ii) access to the City Parcel and VTA Parcel to perform due diligence, environmental testing, Phase 1 + 2 reports, surveys, soils testing, and other activities to ascertain site condition and suitability for development following VTA and City’s established permitting procedures, including insurance requirements and (iii) and, if authorized by the City Water Department, to design, drill and construct the New Well (“DDA Well Construction”) and in that circumstance, the

	DDA/LOA will contain a right to enter and perform the DDA Well Construction on the City Parcel as required prior to the Close of Escrow.
14. Entitlements and Cooperation	<ul style="list-style-type: none"> • VTA will collaborate with Developer to help obtain local, regional, and federal approvals to qualify the Affordable Housing Component for grants, affordable housing financing, and other project improvement costs as needed.
15. Uses Requiring Owner Approval	<p>City and VTA, in their capacity as property owners, will have the right to review and approve, in their sole discretion:</p> <ul style="list-style-type: none"> • Any subdivision, lot line adjustment, lot merger • Any dedications or easements affecting the property • Utility relocations • City will have the right to review and approve the DDA Well Construction (includes design, drill, and construction of New Well and abandoning the Existing Well). DDA Well Construction will only take place on the City Property. • Relocation of transit facilities • Design, management, enforcement, and operational decisions related to Caltrain transit parking in consultation with Caltrain
16. Owner Costs	<ul style="list-style-type: none"> • City and VTA will be responsible for paying operating costs, utilities, taxes, and assessments on their respective parcels during the DDA/LOA Term.
17. DDA/LOA Deposit	<ul style="list-style-type: none"> • Upon execution of DDA/LOA, Developer shall tender a \$100,000 deposit (“DDA/LOA Deposit”) to reimburse City and VTA for reasonable costs and expenses incurred during the DDA/LOA term, including but not limited to, outside attorneys’ fees, appraisers, design and economic consultants, and other third-party costs (see Exhibit C for budget); such DDA/LOA Deposit shall not exceed \$200,000 in the aggregate (this is exclusive of the \$50,000 deposit paid under the ENA). • Whenever the DDA/LOA Deposit balance reaches \$10,000 or less, upon presentation of accounting of previous expenses by City and VTA, Developer will replenish the DDA/LOA Deposit to \$100,000 upon written notice from City or VTA. • City/VTA will provide the required accounting for the previously submitted \$50,000 in deposits provided by Developer pursuant to the terms of the ENA and the portion of the \$100,000 provided under the DDA/LOA,
18. Conditions Precedent to Closing	<ul style="list-style-type: none"> • Developer shall be ready to close Escrow (the “Closing”) subject to the satisfaction or waiver of conditions defined in the DDA/LOA to complete the Ground Lease transaction.
19. Transfers, Assignment, and Subletting	<ul style="list-style-type: none"> • Except for Permitted Transfers, no transfers, assignment, or subletting under the DDA/LOA are permitted except as otherwise approved in writing by VTA and City in their sole and absolute discretion.

<p>20. Affordable Housing Financing</p>	<ul style="list-style-type: none"> Developer and the Affordable Housing Developer are responsible for securing the necessary funding to complete the Affordable Housing Component. In the event of an unanticipated funding shortfall, the financing gap is the full responsibility of the Developer and the Affordable Housing Developer and will not be subsidized with any additional capital provided by the City and/or VTA.
<p>21. DDA/LOA Payment</p>	<ul style="list-style-type: none"> The Student Housing Developer shall pay \$150,000 per year to City and the Affordable Housing Developer shall pay \$150,000 per year to VTA, each paid payable annually upfront. Any overpayments will be credited to payments required under the Ground Lease.
<p>22. Statutory Indemnity and Guarantee</p>	<ul style="list-style-type: none"> Specific Indemnity regarding disposition, Statutory Obligations. Indemnity will be backed up with a Guarantee/Letter of Credit. [OPEN, pending further discussions]
<p>Additional VTA Terms for DDA/LOA</p>	
<p>23. VTA Design Review</p>	<ul style="list-style-type: none"> VTA to review and comment on architectural design and specified exterior materials and interior materials and FF&E at 50% and 90% Design Development with VTA signoff at 100% Design Development for development on VTA’s parcel and impacts to transit facilities and operations. Developer cannot advance plans until it receives VTA signoff at 100% DD. VTA will review at 50% and 90% Construction Drawings with VTA signoff required at 100% CDs. Any formal plan submittal to the City will require Owner review and signoff. VTA retains right to review and approve any subsequent value engineering related to exterior building aesthetics, urban design, and landscaping, including but not limited to changes to elevations, exterior materials, form, and massing. VTA will turn around comments on design phase documents within a reasonable period TBD in DDA.
<p>24. VTA Additional Conditions Precedent to Closing of VTA Ground Lease</p>	<ul style="list-style-type: none"> In addition to the conditions identified in the DDA/LLA, Developer shall agree to additional conditions to the satisfaction of VTA prior to the execution of the Ground Lease, including: A mutually agreeable plan for project phasing, construction staging, a construction parking and determining when construction is complete An outreach and engagement plan compliant with VTA’s Public Participation Plan based on guidelines provided by VTA A Transit Ridership Incentive Program (“TRIP”) for the Affordable Housing Component: Developer will offer a total of \$1 million towards a transit subsidy program that will offer free transit passes to residents of the Affordable Housing

	<p>Component. There are multiple transportation options adjacent to the project, including Caltrain, VTA, Amtrak, and ACE. The Affordable Housing Developer will develop a plan to equitably distribute transit passes tailored to the specific needs of each resident household (“TRIP Plan”). The Affordable Housing Developer will administer the distribution of the transit passes, pursuant to a plan approved by VTA.</p> <ul style="list-style-type: none"> • A commitment to provide public infrastructure, access improvements, and other mutually agreed community benefits TBD in DDA. • A Project Labor Agreement for the Affordable Housing Component, if applicable (see #48 in VTA Ground Lease Terms). • A Maintenance and Operations Plan • A Caltrain Parking Plan
<p>Additional City Terms and Conditions for DDA including but not limited to ground rent, design review, are conditions precedent to closing, will be addressed during the negotiation of the DDA.</p>	

CITY GROUND LEASE TERMS

At Closing, City, as ground lessor, will enter into a ground lease (the “**City Ground Lease**”) with the City Ground Lessee (TBD) to provide for the construction and operation of the Student Housing Component on the City Parcel.

25. Lessor	City
26. Lessee	ReMet or its affiliate
27. Lease Premises	The City Parcel
28. Lease Term	99 years from execution of Ground Lease [Note: any change to the lease term will require discussion with Council]
29. City Lease Commencement Date	City Lease Commencement Date will be the date upon which the City Lease is executed by Lessor and Lessee upon Closing under the DDA/LOA.
30. City Lease Structure	<p>At the commencement of the City Lease, there will be a City Pre-Operations Period during which ReMet will perform the Relocation (defined below), the temporary Cal Train restriping, the Grading (defined below) on the Property and the overall development and construction of the Student Housing Component. During the City Pre-Operations Period, a City Pre-Operations Payment (defined below) will be paid as set forth below. City Rent commences upon expiration of the City Pre-Operations Period.</p> <p>The Pre-Operations Period will begin at the time of the start of horizontal construction (commencement site grading) but following the Relocations (Well #3-02 abandonment, Cal Train temporary replacement parking and certain utilities as required by the project). The period from the Lease Commencement Date to the end of the Relocations will be referred to as the “Site Clearance Period”.</p>
31. City Pre-Operations Period Commencement Date	City Pre-Operations Period commences upon the City Lease Commencement Date and terminates upon the City Rent Commencement Date.
32. City Pre-Operations Payment	The City Pre-Operations Payment will be payable in equal, consecutive monthly installments of Twenty-Five Thousand and No/100 (\$25,000.00) (“ Monthly City Pre-Operations Payment ”), with a cumulative maximum payment during the City Pre-Operation Period of Seven Hundred Fifty Thousand and No/100 (\$750,000.00). The payment of Monthly City Pre-Operations Payments shall start upon the City Pre-Operations Period Commencement Date and end upon the City Rent Commencement Date or upon the date that the aggregate of the Monthly City Pre-Operation Payments reaches \$750,000.00.
33. Temporary Cal Train Parking	The City Lease will provide the terms for the temporary relocation of Caltrain surface parking on the City Leased Premises to the Caltrain surface parking site which is south of Property (“ Caltrain South Site ”)

	<p>prior to Lessee’s commencement of Grading and during Lessee’s construction of the City Parcel. If needed, Lessee to temporarily relocate and restripe the Caltrain South Site to accommodate more parking spaces. Entitlements and CEQA approvals for improvement of the Caltrain South Site should be considered part of the Project description for CEQA purposes. The Schedule of Performance shall include the restriping for the additional parking on Caltrain South Site. See the VTA Lease section below for temporary Caltrain relocation on VTA Parcel.</p>
<p>34. Final Caltrain Parking</p>	<p>The Caltrain existing parking will be temporarily relocated during construction and the permanent replacement parking split between the Affordable Housing Component and Student Housing Component (see Caltrain Parking under General Conditions).</p>
<p>35. Final Police Dept Parking</p>	<p>Developer shall develop a plan to accommodate 25 parking spaces dedicated for SCPD.</p>
<p>36. Marketing and Management</p>	<p>The City Lease will contain a mutually acceptable form of Marketing, Operations and Management Plan (“Plan”) to be performed by a property management company (“Property Management Company”) on the City Parcel during the term of the City Lease.</p>
<p>37. City Pre-Operations Period Scope</p>	<p>Lessee will perform the following items during the City Pre-Operations Period (all items are subject to Force Majeure):</p> <ol style="list-style-type: none"> 1. City Waterline and City Well. [Note: this section needs further review by City Water Department]. There is currently a City water well and water line serving the well located on the City Parcel (“Waterline/Well”), the current location of which conflicts with the Student Housing Component footprint. Lessee shall relocate Waterline/Well to a location onsite at the corner of Benton and El Camino Real during the Site Clearance Period and prior to the City Pre-Operations Period (“Waterline/Well Relocation”) subject to the requirements of the City and State Department of Drinking Water (DDW) and confirmation the Waterline/Well will deliver an equal or better water quality and production level in comparison to the current well 3-02. Entitlements and CEQA for the Waterline/Well Relocation will be processed concurrently with the Project Entitlements. The DDA/LOA’s Schedule of Performance will include the Waterline/Well Relocation (excluding the DDA Well Construction). <p>The Developer will provide a brand new, onsite, state of the art Well to replace Well #3-02 which is currently intended to be brought online by November of 2022</p>

	<p>In addition to the proposed well site at 500 Benton Street, the Developer must also - consistent with the requirements of the City and State Department of Drinking Water (DDW) – use commercially reasonable effortst to identify and deliver a viable well site of approximately 100 feet x100 feet for a future well that will deliver an equal or better water quality and production level in comparison to the current well 3-02.</p> <p>2. <u>Temporary Caltrain and Police Department Parking.</u> Caltrain and City Police Department are currently parking on the City and VTA Parcels’ existing surface parking lots. Lessee shall use commercially reasonable efforts to temporarily relocate 200 temporary parking stalls from the surface parking on the City Parcel concurrently with the Caltrain parking on the VTA Parcel during the Site Clearance Period and prior to the City Pre-Operations Period (“Caltrain Temporary Relocation”).</p> <p>3. <u>Utilities Relocation.</u> There are power poles, overhead lines and traffic signal boxes/transformers (and possibly other utilities which the Parties may agree upon during the DDA/LOA term to relocate as well) currently located on both the City and VTA Parcels which must be relocated prior to construction and prior to the City Pre-Operations Period. Lessee shall relocate these utilities on the City Parcel concurrently with the utilities on the VTA Parcel (“Utilities Relocation”). The Waterline/Well Relocation, Cal Train Temporary Relocation and Utilities Relocation shall be collectively referred to as the “Relocations.” These Relocations shall be performed during the Site Clearance Period. (Note: this scope of work should not occur until the Ground Leases are executed).</p> <p>4. <u>Grading.</u> Grading of the Property shall commence after the Relocations have been completed and during the Pre-Operations Period. Lessee will rough grade the City Parcel concurrently, with the rough grading of the VTA Parcel (“Grading”).</p> <p>5. <u>Project Construction, Certificate of Occupancy and Pre-Leasing.</u> of the Student Housing Component and certificate of occupancy will all take place during the City Pre-Operations Period.</p>
<p>38. Rent Commencement Date</p>	<p>City Rent Commencement Date for the Student Housing Component shall begin 33 months after the Commencement Date or within 30 days following the issuance of a temporary COO, whichever is earlier subject to Force Majeure.</p>
<p>39. City Annual Base Rent Payments</p>	<p>Annual base rent for the first Lease Year after the City Rent Commencement Date shall be Six Hundred Fifty Thousand Dollars (\$650,000) (“City Annual Base Rent”) paid in equal consecutive</p>

	installments of Fifty-Four Thousand One Hundred Sixty-Six Dollars and 67/100 (\$54, 166.67) per month (“ City Monthly Rent ”).
40. Rent Escalations	Commencing on the second year and every year thereafter, Annual Base Rent shall escalate by CPI per year, with a cap of 2.5% escalation in any one year. Market Rate Rent Adjustments in the 25 th , 50 th and 75 th Project Lease Years (methodology to determine market rate adjustment to be agreed upon in form of Ground Lease).
41. Lease Term Costs and Expenses	During the term of the City Lease, Lessee will be responsible for paying for all operating costs and utilities and all taxes and assessments with respect to the City Parcel.
42. Lease Permitted Uses	During the term of the City Lease, Lessee may use the City Parcel for the development and operation of a mixed income, transit oriented, student housing Component (permitted but not restricted*) with ground floor retail uses and other community oriented uses, and parking (for residential and retail uses), including but not limited to seek any permits and entitlements (those normally obtained in the course of construction after and pursuant to the Entitlements) regarding the City Parcel that Lessee determines are required for construction of the Student Housing Component, to demolish any existing structures and improvements on the City Parcel, to construct, develop and operate the Student Housing Component and for any other uses as may be consistent with the Entitlements and as determined by Lessee. *Note: Fair housing requires us to lease without discrimination so long as our polices are applied evenly. This means non-students who meet rental guidelines cannot be turned away.
43. Non-Subordination and Financeability	City’s fee ownership and right to receive City Rent will not be subordinated; provided, however, that the City Lease will contain customary mortgagee protection provisions and will work with Lessee’s lenders to include appropriate language in the Ground Lease as such lenders may request.
44. Statutory Indemnity and Guarantee	Specific Indemnity regarding ground lease and Statutory Obligations. Indemnity will be backed up with a Guarantee/Letter of Credit. [OPEN, pending further discussions]
45. Force Majeure	The Parties’ respective obligations under the City Ground Lease shall be excused during the period its performance is prevented or delayed by Force Majeure. “Force Majeure” shall mean an act of God, war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, quarantine restrictions, cyclones, casualties, acts of the public enemy, epidemic, government restrictions, freight embargoes, shortages of labor or materials, unusually inclement weather, lack of transportation, litigation (including writ petitions), court order, or any other similar causes beyond the control or without the fault of either Party. [OPEN, the exact language to be negotiated in the DDA and Ground Lease]

VTA GROUND LEASE TERMS

At Closing, VTA, as ground lessor, will enter into a ground lease (the “**VTA Ground Lease**”) to provide for the construction and operation of the Affordable Housing Component on the VTA Parcel.

46. Ground Lease Term	<ul style="list-style-type: none"> 65 years from execution of Ground Lease (“Commencement Date”) with one five-year option to extend
47. Permitted Uses	<ul style="list-style-type: none"> Ground Lessee must use the Leased Premises to develop and operate a 100% affordable housing component with retail, tenant amenities, and parking consistent with VTA’s Affordable Housing Policy and the Approved Construction Documents.
48. Construction and Project Labor Agreement	<ul style="list-style-type: none"> Ground Lessee must comply with VTA’s requirements for prevailing wages, apprenticeship hours, and other measures to achieve labor harmony. In the event VTA, prior to execution of the Ground Lease, adopts a policy regarding Project Labor Agreements (PLA), Affordable Housing Developer will also negotiate and deliver a PLA to VTA for the Affordable Housing Project at least 30 days prior to Ground Lease Closing. Ground Lessee will undertake all site, utility, temporary transit facilities and other pre-construction work, including requirements of the Archaeological Plan, at its sole cost and expense.
49. Construction Period Rent	<ul style="list-style-type: none"> Construction Period Rent (“CPR”) paid annually upfront from the Commencement Date until start of Ground Lease Base Rent Ten Thousand Six Hundred and Six and 06/100 Dollars (\$10,606.06) per month for Construction Period Rent (“CPR”) to VTA, payable annually upfront, with the total cumulative CPR being capped at Three Hundred Fifty Thousand and No/100 Dollars (\$350,000). Any overpayments will be credited towards payments required under the Ground Lease Base Rent. VTA will credit CPR received to community benefits identified by VTA
50. VTA Ground Lease Base Rent	<ul style="list-style-type: none"> Ground Lease Base Rent shall commence 33 months after the Commencement Date or within 30 days following the issuance of a temporary COO whichever is earlier, subject to Force Majeure. Annual Ground Lease Base Rent for the first lease year will be Three Hundred Thirty Thousand and No/100 Dollars (\$330,000.00) per year with \$285,000 per year to VTA payable in arrears and in equal monthly installments in years 1-10 and \$45,000 abated in base rent for the first ten years. Starting in Year 11, the abatement will expire, and Ground Lessee will

	<p>owe Ground Lease Base Rent to VTA as if the full \$330,000 in Year 1 had been subjected to annual Base Rent Adjustments. Payment to VTA of \$285,000 of the Base Rent will be the responsibility of the Student Housing Developer and payment to VTA of the \$45,000 will be responsibility the Affordable Housing Developer.</p>
51. Base Rent Adjustment	<ul style="list-style-type: none"> • Commencing one (1) year after the VTA Ground Lease Base Rent Commencement Date, VTA’s Annual Base Rent shall escalate at the annual HCD published CPI Factor for Rent Residential for All Urban Consumers for the West with a cap at 2.5% per year. • Market Rate Rent Adjustments in the 20th and 45th Project Lease Years (methodology to determine market rate adjustment to be agreed upon in form of Ground Lease).
52. Management and Operations	<ul style="list-style-type: none"> • During the Ground Lease Term, Ground Lessee shall maintain and operate all portions of the Affordable Housing Component at its sole cost and expense pursuant to Marketing, Operations, and Management Plans as approved by VTA
53. Lease Term Costs and Expenses	<ul style="list-style-type: none"> • Ground Lessee shall be responsible for paying all operating costs, utilities, insurance, taxes, and assessments
54. Design Review	<ul style="list-style-type: none"> • During construction, VTA will have design review and approval rights for any material changes throughout construction, including change orders and substitutions made per value engineering for development on VTA’s parcel. • VTA will retain design approval rights for any substantive changes or improvements later sought by Ground Lessee in excess of \$100,000 at any time during the Ground Lease Term • VTA will turn around comments within a reasonable period TBD in Ground Lease.
55. Transfers, Assignment, and Subletting	<ul style="list-style-type: none"> • Except for limited permitted exceptions to be set forth in the Ground Lease (which shall include the removal of the general partner(s) by the investor limited partner and replacement with an affiliate of the investor limited partner, as well as the transfer of limited partner interest to the general partner(s) or affiliates of the general partner(s) after the end of the 10-year credit period), Ground Lessee shall not transfer, assign, or sublet (except for typical subleasing of apartments and retail space) its rights or obligations under the Ground Lease.
56. Non-Subordination and Financing	<ul style="list-style-type: none"> • Subject to VTA’s reasonable approval, Ground Lessee may encumber its leasehold estate with mortgages, deeds of trust, or other financing instruments, provided, in no event will VTA’s fee title interest, retained rights, or rent payable under the Ground Lease be subordinated or subject to Ground Lessee’s financing or other claims or liens; provided further, however, that the VTA Ground Lease will contain customary

	<p>mortgagee protection provisions and VTA will enter into customary recognition agreements with Lessee’s lenders as such lenders may reasonably request. VTA agrees to execute the standard form of the California Tax Credit Allocation Committee’s lease rider upon request.</p>
<p>57. Force Majeure</p>	<ul style="list-style-type: none"> • The Parties’ respective obligations under the VTA Ground Lease shall be excused during the period its performance is prevented or delayed by Force Majeure. “Force Majeure” shall mean an act of God, war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, quarantine restrictions, cyclones, casualties, acts of the public enemy, epidemic, government restrictions, freight “embargoes, shortages of labor or materials, unusually inclement weather, lack of transportation, litigation (including writ petitions), court order, or any other similar causes beyond the control or without the fault of either Party. [OPEN, the exact language to be negotiated in the DDA and Ground Lease]

Exhibit A – Site Map



Exhibit B – Project Plans

Exhibit C – Estimated Schedule of Consultant Costs

Task	Consultant	Scope	Estimated Cost*
Architectural Peer Review	Dahlin Group	Provide architecture peer review including analysis of potential phased project	\$20,500
Economic Peer Review	Economic & Planning Systems, Inc	Assist with economic review on ENA and term sheet negotiations	\$35,000
Access Study	IBI	Evaluate access impacts and multi-modal improvement strategies for buses, shuttles, taxis, pedestrians, bicycles, etc.	\$80,000
Community Outreach	Multiple Vendors	Translation services, printing, postage for community outreach	\$6,500
Legal	Hanson Bridgett LLP	Legal review and negotiation	\$175,000
		TOTAL	\$317,000

* The above estimated costs are subject to change and do not limit the right of VTA or the City of Santa Clara to invoice for additional costs. Budget estimate as of 4/29/2020.

Exhibit D – Schedule of Performance

Santa Clara Student Housing Development Schedule – Updated – 7/28/2020

TASK	EST. COMPLETION DATE
Execute ENA	February 6, 2018
ENA Extension	Feb. 6, 2019 - Aug. 2019 August, 2019 – Aug., 2020 August, 2020 - TBD (up to August, 2021)
Refine Program and Concept Design with City and VTA	March, 2018 – October, 2019
Site Due Diligence – Studies, Legal, Etc.	March, 2018 – August, 2018
Submit post ALTA revised and updated Title Objection Letters to City and VTA	March, 2019
Initial DDA and Lease Term Sheet Submittal	March, 2019
Revised DDA and Lease Term Sheet Submittal	February, 2020
Planning Application (GPA/PD Zoning, Etc.), Development Plan	February, 2019
Development Plan Resubmittal	February, 2020
Well Relocation TFM Submittal	December, 2019
Well Relocation PDR Submittal	February, 2020
Application Completeness	August, 2020
Early Review of GPA by CC	August, 2020
Architectural Review	September, 2020
Public Comment Period for CEQA Document	September, 2020 - October, 2020
Negotiation of DDA and Form of Lease Agreement	June, 2020 - August, 2020
Negotiation of Development Agreement/AHA	July, 2020 - September, 2020
Finalize Entitlements: VHD-MU Zoning, General Plan Amendment, DA, Arch. Review, FAA, CEQA, et.al	October, 2020
Planning Commission Project Review/Recommendations	October, 2020
City Approvals	November, 2020
Project Construction Documents Plan Checks and Permits	November, 2020 – November, 2021
Construction Loan Funding/Execution of Ground Leases	SH - November, 2021

	AFF (Loan Close) – April, 2022-July, 2022
Cal Train Temporary Relocation Parking Paving/Restriping	December, 2021 – February, 2022
City Well #3-02 Abandonment	February, 2022
City Well #3-02 Relocation	January 2019 – November, 2022
Utilities Relocation	December, 2021 – February, 2022
Construction and Certificates of Occupancy	SH - March, 2022 – August, 2024 (Vertical Starts May, 2022) AFF – Vertical May, 2022 - August, 2022 - April, 2024 - June, 2024 (Start contingent on financing close)
Pad Delivery to TMO	May, 2022
Lease Assignment to TMO	May, 2022 - July, 2022
Student Housing Delivery	August, 2024
Affordable Housing Delivery	April-June, 2024
SH/WF Opening	Fall Semester, 2024

Exhibit G



City of Santa Clara

Call and Notice of Special Meeting

City Council

Thursday, October 15, 2020

3:30 PM

City Hall Council Chambers
1500 Warburton Avenue
Santa Clara, CA 95050

Pursuant to the provisions of California Governor's Executive Order N-29-20, issued on March 17, 2020, to prevent the spread of COVID-19, the City of Santa Clara has implemented methods for the public to participate remotely:

- Via Zoom:

- o <https://santaclaraca.zoom.us/j/99706759306>

Meeting ID: 997-0675-9306 or

- o Phone: 1(669) 900-6833

- Via the City's eComment (now available during the meeting)

- Via email to PublicComment@santaclaraca.gov

As always, the public may view the meetings on SantaClaraCA.gov, Santa Clara City Television (Comcast cable channel 15 or AT&T U-verse channel 99), or the livestream on the City's YouTube channel or Facebook page.

For those individuals that do not have the above access, the City Cafeteria has been set up to accommodate up to 10 people at a time and public comment will be given from that location.

The meeting set-up is in line with the recommendations of the COVID-19 White House Task Force, which notes no more than 10 people gatherings. The Mayor will be present for the meeting with Councilmembers and department heads participating remotely. A limited number of staff will also be present.

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of California Government Code §54956 ("The Brown Act") and Section 708 of the Santa Clara City Charter, the Mayor calls for a Special Meeting of the City Council of the City of Santa Clara to commence and convene on October 15, 2020, at 3:30 PM for a Special Meeting in the City Hall Council Chambers located in the East Wing of City Hall at 1500 Warburton Avenue, Santa Clara, California, to consider the following matter(s) and to potentially take action with respect to them.

3:30 PM SPECIAL COUNCIL MEETING**Call to Order in the Council Chambers****Pledge of Allegiance and Statement of Values****Roll Call****PUBLIC PRESENTATIONS**

[This item is reserved for persons to address the Council or authorities on any matter not on the agenda that is within the subject matter jurisdiction of the City or Authorities. The law does not permit action on, or extended discussion of, any item not on the agenda except under special circumstances. The governing body, or staff, may briefly respond to statements made or questions posed, and appropriate body may request staff to report back at a subsequent meeting. Although not required, please submit to the City Clerk your name and subject matter on the speaker card available in the Council Chambers.]

CLOSED SESSION**Public Comment**

The public may provide comments regarding the Closed Session item(s) just prior to the Council beginning the Closed Session. Closed Sessions are not open to the public.

1. **20-965** [Conference with Legal Counsel-Existing Litigation \(CC\)](#)
[Pursuant to Gov. Code § 54956.9\(d\)\(1\)](#)
[County Sanitation District 2-3, West Valley Sanitation District,](#)
[Burbank Sanitary District, Cupertino Sanitary District, and The](#)
[City of Milpitas v. The City of San Jose, The City of Santa](#)
[Clara, and Does 1 through 50, Inclusive, Santa Clara Superior](#)
[Court Case No. 18CV325480](#)

2. **20-1027** [Conference with Real Property Negotiators \(CC\)](#)
[Pursuant to Gov. Code § 54956.8](#)
[Property: Pond A18, APN: 015-32-042, 015-32-043](#)
[City/Authority Negotiator: Deanna J. Santana, City](#)
[Manager/Executive Director \(or designee\)](#)
[Negotiating Parties: City of San Jose, City of Santa Clara, and](#)
[Santa Clara Valley Water District](#)
[Under Negotiation: Purchase/Sale/Exchange/Lease of Real](#)
[Property \(provisions, price and terms of payment\)](#)

3. **20-1012** [Conference with Real Property Negotiators \(CC\)](#)
[Pursuant to Gov. Code § 54956.8](#)
[Property: Please see below listing for APNs and addresses](#)
[City/Authority Negotiator: Deanna J. Santana, City](#)
[Manager/Executive Director \(or designee\)](#)
[Negotiating Parties: Please see below listing for names for](#)
[negotiating party\(ies\)](#)
[Under Negotiation: Purchase/Sale/Exchange/Lease of Real](#)
[Property \(provisions, price and terms of payment\)](#)

	<u>APN</u>	<u>Property Address</u>	<u>Property Owner (Name)</u>
1	224-04-062	2755 LAFAYETTE STREET, SANTA CLARA	WITKIN PROPERTIES LP
2	224-04-057	890 WALSH AVENUE, SANTA CLARA	L.A.W. LLC
3	224-04-088	2555 LAFAYETTE STREET, SANTA CLARA	GAHRAHMAT FAMILY LP 1
4	230-03-090	525 MATHEW STREET, SANTA CLARA	NEWARK GROUP INDUSTRIES INC
5	224-35-014	630 MARTIN AVENUE, SANTA CLARA	D & R MILLER PROPS LLC
6	224-08-109	2908 LAFAYETTE STREET, SANTA CLARA	DOLLINGER LAFAYETTE ASSOCIATES
7	224-36-001	840 COMSTOCK STREET, SANTA CLARA	LAPTALO JAKOV, TRUSTEE
8	224-04-090	851 MARTIN AVENUE, SANTA CLARA	GAHRAHMAT FAMILY LP II
9	224-04-071	651 MARTIN AVENUE, SANTA CLARA	GAHRAHMAT FAM LP II LP
10	224-61-002	1401 MARTIN AVENUE, SANTA CLARA	ALMAN DIANA J TRUSTEE & ET AL
11	224-60-014	1261 MARTIN AVENUE, SANTA CLARA	MARTIN INVESTMENT PROPERTIES LLC
12	224-60-012	1199 MARTIN AVENUE, SANTA CLARA	1065 MARTIN AVE LLC
13	224-60-013	1061 MARTIN AVENUE, SANTA CLARA	1065 MARTIN AVE LLC
14	224-60-011	1055 MARTIN AVENUE, SANTA CLARA	YOUNG SANG A AND ANNE C TRUSTEE
15	224-60-010	1015 MARTIN AVENUE, SANTA CLARA	1015 Martin Ave LLC
16	224-60-006	1051 MARTIN AVENUE, SANTA CLARA	BAY AREA CELLULAR TELEPHONE CO
17	224-60-005	999 MARTIN AVENUE, SANTA CLARA	POLLACK ENTERPRISES INC
18	224-60-004	953 MARTIN AVENUE, SANTA CLARA	ROBINSON OIL CORPORATION
19	224-35-019	2495 LAFAYETTE STREET, SANTA CLARA	WONG KING WAN TRUSTEE & ET AL
20	224-35-020	2435 LAFAYETTE STREET, SANTA CLARA	WESCO PROPERTIES INC
21	224-40-010	2365 LAFAYETTE STREET, SANTA CLARA	BOWLES, ECKSTROM & ASSOCIATES LLC
22	224-40-009	2325 LAFAYETTE STREET, SANTA CLARA	RICHARD & DOROTHY LONG REVOCABLE
23	224-40-008	2311 LAFAYETTE STREET, SANTA CLARA	WHITNEY BRUCE S AND JUDITH R TRUSTEE
24	224-40-007	2301 LAFAYETTE STREET, SANTA CLARA	MEUSER WILLIAM E AND ANN E TRUSTEE
25	224-03-080	2265 LAFAYETTE STREET, SANTA CLARA	SEW LLC
26	224-03-081	800 MATHEW STREET, SANTA CLARA	PATEL JITENDRA G AND SHASHI J TRUSTEE
27	230-03-106	2500 DE LA CRUZ BLVD, SANTA CLARA	EMF LLC
28	224-07-099	960 CENTRAL EXPRESSWAY, SANTA CLARA	OWENS CORNING INSULATING
29	224-56-001	925 WALSH AVENUE, SANTA CLARA	PSB NORTHERN CA INDUSTL PORTFOLIO LLC
30	224-57-015	925 WALSH AVENUE, SANTA CLARA	PSB NORTHERN CA INDUSTL PORTFOLIO LLC
31	224-57-014	1451 Walsh Ave. Santa Clara	UNITED STATES POSTAL SERVICE
32	224-57-003	1515 Walsh Avenue, Santa Clara	The Malisic Survivor's Trust, Malisic Residual Trust
33	224-58-003	1150 Walsh Avenue, Santa Clara	Ragingwire Data Centers, Inc. A Nevada Corp.
34	224-04-093	2845 LAFAYETTE STREET, SANTA CLARA CA	Digital Lafayette, LLC
35	224-04-094	2805 LAFAYETTE STREET, SANTA CLARA	DIGITAL BH 800 LLC
36	224-61-004	1501 MARTIN AVENUE, SANTA CLARA	INTEL CORPORATION
37	230-03-105	2600 DE LA CRUZ BLVD, SANTA CLARA	C-1 Santa Clara, LLC

- 4. **20-1025** [Conference with Real Property Negotiators \(CC\)](#)
[Pursuant to Gov. Code § 54956.8](#)
[Property: APN 104-03-038, APN 104-03-039, APN 104-03-036,](#)
[APN 104-03-037, APN 104-01-102, APN 097-01-039, APN](#)
[097-01-073](#)
[City/Authority Negotiator: Deanna J. Santana, City Manager \(or](#)
[designee\)](#)
[Negotiating Parties: Stephen F. Eimer, Related Santa Clara](#)
[Under Negotiation: Purchase/Sale/Exchange/Lease of Real](#)
[Property \(provisions, price and terms of payment\)](#)

- 5. **20-1026** [Conference with Real Property Negotiators \(CC\)](#)
[Pursuant to Gov. Code § 54956.8](#)
[Property: 500 Benton Street, APN 230-08-078](#)
[City/Authority Negotiator: Deanna J. Santana, City Manager \(or](#)
[designee\)](#)
[Negotiating Parties: Robert Mendelsohn, Republic Metropolitan](#)
[Under Negotiation: Purchase/Sale/Exchange/Lease of Real](#)
[Property \(provisions, price and terms of payment\)](#)

Convene to Closed Session (Council Conference Room)

REPORTS OF ACTION TAKEN IN CLOSED SESSION MATTERS

ADJOURNMENT

The next regular scheduled meeting is on Tuesday evening, October 27, 2020 in the City Hall Council Chambers.

MEETING DISCLOSURES

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision. Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. If a person wishes to challenge the nature of the above section in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Santa Clara, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

AB23 ANNOUNCEMENT: Members of the Santa Clara Stadium Authority, Sports and Open Space Authority and Housing Authority are entitled to receive \$30 for each attended meeting.

Note: The City Council and its associated Authorities meet as separate agencies but in a concurrent manner. Actions taken should be considered actions of only the identified policy body.

LEGEND: City Council (CC); Stadium Authority (SA); Sports and Open Space Authority (SOSA); Housing Authority (HA); Successor Agency to the City of Santa Clara Redevelopment Agency (SARDA)

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 <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

If a member of the public submits a speaker card for any agenda items, their name will appear in the Minutes. If no speaker card is submitted, the Minutes will reflect "Public Speaker."

Exhibit H



**City of
Santa Clara**
The Center of What's Possible

City Manager's Office

November 12, 2020

Republic Metropolitan LLC
1201 Maryland Avenue, SW, Suite 850
Washington, DC 20024
Attn: Robert Mendelsohn

Re: Exclusive Negotiations Agreement
500 S. Benton, Santa Clara, CA

Dear Mr. Mendelsohn:

The purpose of this letter is to advise that the City of Santa Clara considers the February 6, 2018 Exclusive Negotiations Agreement as amended to have expired as of August 5, 2020. The Santa Clara City Council has directed staff to cease efforts to further Republic's proposed project at 500 S. Benton.

City staff will be rescinding its authorization on Republic's Planning application for environmental review and entitlements. The City is collecting the outstanding third-party invoices from VTA and following the reimbursement of these expenses, will process a refund of any remaining deposits to Republic.

We appreciate Republic's effort to pursue a development in Santa Clara.

Best regards,

A handwritten signature in black ink, appearing to read "Ruth Shikada", written in a cursive style.

Ruth Mizobe Shikada
Assistant City Manager

cc: Deanna Santana, City Manager
Brian Doyle, City Attorney
Ron Golem, Deputy Director, VTA
Vic Pappalardo, Senior Assistant Counsel
Rob Mezzetti

Exhibit I

CITY OF SANTA CLARA
2021 APR 28 PM 3:12



City of Santa Clara
The Center of What's Possible

CITY COUNCIL WRITTEN PETITION

Please provide the information requested below. When complete, please submit to the City Clerk's Office, 1500 Warburton Avenue, Santa Clara, CA 95050.

Date: April 28, 2021

I, Robert L. Mezzetti, II, am hereby requesting to be placed on the Santa Clara City Council Agenda for the following purpose:

At the next City Council meeting I would like to agendize Amendment
No. 3 to the Exclusive Negotiation Agreement by and between the City,
MTA and Republic Metropolitan LLC for the proposed project located at 500 S.
Benton Street (APNs 230-08-061 and 230-08-078)

I understand that it is important that I attend the meeting in the event there are any questions the Council wishes to ask me.

Signed:

NAME: Robert L. Mezzetti, II

ADDRESS: 31 E. Julian Street
Street
San Jose 95112
City Zip Code

TELEPHONE:* (408) 279-8400
Optional

DATE: April 28, 2021

*NOTE: This is a public document. If your telephone number is unlisted or if you do not want it to be public, please provide an alternate number where you can be reached.

Exhibit J



City of Santa Clara

1500 Warburton Avenue
Santa Clara, CA 95050
santaclaraca.gov
@SantaClaraCity

Agenda Report

21-722

Agenda Date: 5/25/2021

REPORT TO COUNCIL

SUBJECT

Action on a Written Petition submitted by Robert Mezzetti, II Requesting to Discuss Amendment No. 3 to the Exclusive Negotiation Agreement by and between the City, VTA and Republic Metropolitan an LLC for the proposed project located at 500 S. Benton Street (APN 230-08-061 and 230-08-078)

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

Council Policy 030 - *Adding an Item on the Agenda* (Attachment 1) sets forth the procedure for written petitions. Any member of the public may submit a written request raising any issue or item within the subject matter jurisdiction of the Council. Per the policy, the written request will be submitted on the agenda, in the form substantially provided by the requestor, without any staff analysis, including fiscal review, legal review, and policy review. If a simple majority of the City Council supports further study of the request, then a full staff analysis shall be prepared within thirty (30) days, unless otherwise directed by the City Council.

DISCUSSION

The City Clerk's Office has received a Written Petition for Council consideration from Robert Mezzetti, II, dated April 28, 2021 (Attachment 1) requesting to discuss Amendment No. 3 to the Exclusive Negotiations Agreement (ENA) by and between the City, VTA and Republic Metropolitan an LLC for the proposed project located at 500 S. Benton Street (APN 230-08-061 and 230-08-078).

The ENA for the proposed project was a no-bid three-party agreement between Republic Metropolitan (Developer), Santa Clara Valley Transportation Authority (VTA), and the City of Santa Clara. The ENA was entered into on February 26, 2018 and expired as of August 5, 2020. As the ENA is expired and there is no longer an effective contract, an amendment is not possible. In addition, any next steps for the development site would require the concurrence of VTA as a partial owner of the overall project site.

If Council is interested in pursuing development of this property, the next step would be for the Council to analyze potential uses of the site given the location of active City well, as well as an appropriate public and competitive process for offering the development opportunity. VTA staff have advised City staff that VTA is pursuing a study of the Station area as well, and believes the prudent course of action is for VTA to complete the study prior to any further discussion of a long term development of its property. Following any Council policy decision to change the existing use of the property and pursue development, the City would be required to follow the procedures described in the California Surplus Land Act (Government Code section 54220 et seq.).

Because amendment of the previous ENA is not possible, staff does not recommend placing this item

on a future agenda.

FISCAL IMPACT

There is no fiscal impact associated with considering the request to be placed on a future agenda except for staff time.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a administrative activity that will not result in direct or indirect physical changes to the environment.

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 report to council may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>.

ALTERNATIVES

1. Set a future Council meeting date to take action on the Written Petition received.
2. Take no action on the petition and do not place this item on a future agenda.
3. Any other City Council Action, as determined by the City Council.

RECOMMENDATION

That Council take no action on the petition and do not place the item on a future agenda.

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Policy and Procedure 030 - Adding an Item on the Agenda
2. Written Petition dated April 28, 2021 from Robert Mezzetti, II
3. November 12, 2020 letter to Republic Metropolitan

Exhibit K



Agenda Report

21-851

Agenda Date: 6/22/2021

REPORT TO COUNCIL

SUBJECT

Action on a Written Petition submitted by Robert Mezzetti, II Requesting to Discuss Amendment No. 3 to the Exclusive Negotiation Agreement by and between the City, VTA and Republic Metropolitan an LLC for the proposed project located at 500 S. Benton Street (APN 230-08-061 and 230-08-078)

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

Council Policy 030 - Adding an Item on the Agenda (Attachment 1) sets forth the procedure for written petitions. Any member of the public may submit a written request raising any issue or item within the subject matter jurisdiction of the Council. Per the policy, the written request will be submitted on the agenda, in the form substantially provided by the requestor, without any staff analysis, including fiscal review, legal review, and policy review. If a simple majority of the City Council supports further study of the request, then a full staff analysis shall be prepared within thirty (30) days, unless otherwise directed by the City Council.

DISCUSSION

The City Clerk's Office has received a Written Petition for Council consideration from Robert Mezzetti, II, dated April 28, 2021 (Attachment 1) requesting to discuss Amendment No. 3 to the Exclusive Negotiations Agreement (ENA) by and between the City, VTA and Republic Metropolitan an LLC for the proposed project located at 500 S. Benton Street (APN 230-08-061 and 230-08-078). This item was withdrawn by the petitioner from the May 25, 2021 Council agenda. On Wednesday, June 9, 2021 the petitioner requested to resubmit his written petition.

The ENA for the proposed project was a no-bid three-party agreement between Republic Metropolitan (Developer), Santa Clara Valley Transportation Authority (VTA), and the City of Santa Clara. The ENA was entered into on February 26, 2018 and expired as of August 5, 2020. As the ENA is expired and there is no longer an effective contract, an amendment is not possible. In addition, any next steps for the development site would require the concurrence of VTA as a partial owner of the overall project site.

If Council is interested in pursuing development of this property, the next step would be for the Council to analyze potential uses of the site given the location of active City well, as well as an appropriate public and competitive process for offering the development opportunity. VTA staff have advised City staff that VTA is pursuing a study of the Station area as well, and believes the prudent course of action is for VTA to complete the study prior to any further discussion of a long term development of its property. Following any Council policy decision to change the existing use of the property and pursue development, the City would be required to follow the procedures described in

the California Surplus Land Act (Government Code section 54220 et seq.). Because amendment of the previous ENA is not possible, staff does not recommend placing this item on a future agenda.

FISCAL IMPACT

There is no fiscal impact associated with considering the request to be placed on a future agenda except for staff time.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a administrative activity that will not result in direct or indirect physical changes to the environment.

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 report to council may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>>.

ALTERNATIVES

1. Set a future Council meeting date to take action on the Written Petition received.
2. Take no action on the petition and do not place this item on a future agenda.
3. Any other City Council Action, as determined by the City Council.

RECOMMENDATION

That Council take no action on the petition and do not place the item on a future agenda.

Reviewed by: Nora Pimentel, Assistant City Clerk

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Policy and Procedure 030 - Adding an Item on the Agenda
2. Written Petition dated April 28, 2021 from Robert Mezzetti, II
3. November 12, 2020 letter to Republic Metropolitan
4. Post Meeting Material from May 25, 2021

Exhibit L



Agenda Report

21-972

Agenda Date: 7/13/2021

REPORT TO COUNCIL

SUBJECT

Per City Council Policy 042: Reconsideration of Council Action-Reconsideration of Council action taken at the June 22, 2021 City Council meeting regarding Council's action to take no action and not to place an item on a future agenda for the request submitted by Robert Mezzetti, under Council Policy 030: Adding An Item to the Agenda, requesting "discussion on Amendment No. 3 to the Exclusive Negotiation Agreement by and between the City, VTA and Republic Metropolitan LLC for a project located at 500 S. Benton Street (APN 230-08-061 and 230-08-078)."

COUNCIL PILLAR

Enhance Community Engagement and Transparency

BACKGROUND

On July 6, 2021, Kelly Macy, Vice President of Republic Metropolitan requested reconsideration of the June 22, 2021 Council vote to take no action on the Robert Mezzetti petition regarding 500 S. Benton. After discussion, Council voted to place Ms. Macy's request for reconsideration on the July 13, 2021 Council agenda. The City Attorney then read into the record the requirements for reconsideration of a Council action. Per City Council Policy 042, RECONSIDERATION OF COUNCIL ACTION (Attachment 1), the July 13, 2021 reconsideration is restricted as follows:

Upon approval of a motion to reconsider, and at such time as the matter is heard, the City Council shall only consider any new evidence or facts not presented previously with regard to the item or a claim of error in applying the facts.

As background, the written petition submitted by Robert Mezzetti (Attachment 2) and staff report (RTC# 21-851) (Attachment 3) provided the evidence and facts which led to the Council action to take no action and not add it to a further Council agenda. Under the Council's Policy, the new evidence or facts that were previously not presented are based on Ms. Kelly Macy's statement:

Republic Metropolitan has been working diligently on the 500 Benton Street project in good faith with the City of Santa Clara, the VTA and the community since early 2018. Last July, the ENA was extended until August 5, 2021, by unanimous vote by both the City Council and the VTA Board....(Full Transcription, Attachment 4)

Upon these comments, staff requested submission of the executed ENA as the new fact and evidence to justify the Council's reconsideration action. As of July 8, Ms. Macy has not submitted the required new evidence supporting her claim that led to the Council's ability to proceed with reconsideration (Attachment 5). Despite staff's request on July 6 and 8, nothing has been submitted to include in this packet and in support of reconsideration. To staff's knowledge, such executed document does not exist.

DISCUSSION

For purpose of the Council's reconsideration on July 13, and according to Council's Policy, the matter of whether the ENA that expired on August 5, 2020 was ever actually extended is the only new matter that can be discussed under the Council Policy and only evidence or facts that were previously not presented about this issue is proper for the motion for reconsideration of this item.

Exclusive Negotiating Agreement

The Exclusive Negotiating Agreement with Republic Metropolitan (Developer) for 500 S. Benton was three party agreement between the City, VTA and Developer, executed on February 6, 2018 for a term of 12 months. The First Amendment to extend the term an additional six months was executed on February 8, 2019. The Second Amendment to the ENA was executed on November 12, 2019 and extended the term to August 5, 2020.

On July 14, 2020, Council authorized the City Manager to negotiate and execute a Third Amendment to the ENA consistent with the terms in the staff report (Attachment 6 - RTC# 20-642). The staff report outlined several key provisions:

- A final term sheet 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.
- Developer provides the City (and VTA) with an indemnity in relation to any risk or liabilities, including potential penalties associated with the disposition of the City property under the Surplus Lands Act, Gov't Code section 54220 et seq.
- As the ENA is a three party (City, Developer and VTA) agreement, 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).

None of these items were achieved by the other parties to the ENA. On November 12, 2020, the City advised the Developer in writing that the ENA expired as of August 5, 2020 (Attachment 7). Prior to the transmittal of the letter, City staff discussed its position with VTA staff. VTA staff advised that the Developer had not satisfied the requirements for an ENA extension, as well.

On July 6, 2021, Ms. Macy testified that the ENA was extended until August 5, 2021 by unanimous vote of by the City Council and VTA Board. The City Manager requested that Republic provide the City with an executed copy of the amendment. Without such information there are no new facts for the Council to consider or discuss that would satisfy the requirements of Policy 042. As of July 8, 2021, nothing has been provided in support of Ms. Macy's statement and, as already stated, staff believes such document does not exist and the November 2020 letter is the final City position communicated to Developer.

Absent new information from the June 22, 2021 Council discussion and action, staff does not have a recommendation that would support adding an item of reconsideration to a future agenda as such an action would not be consistent with the Council own Policy to reconsider Council action.

COORDINATION

This item has been coordinated with 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 <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Staff's position is the same as the June 22, 2021 report and, based on Council Policy 042 alone, the requirements of new evidence or facts in support of Council reconsideration have not been met.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Council Policy 042 - Reconsideration of Council Action
2. Petition from Robert Mezzetti
3. Transcript of Kelly Macy Testimony - July 6, 2021
4. June 22, 2021 Staff Report on Written Petition
5. Email Follow Up Request
6. July 14, 2020 Report to Council
7. November 12, 2020 Letter to Bob Mendelsohn



RECONSIDERATION OF COUNCIL ACTION

PURPOSE

To establish a clear, effective, and easily understood process for members of the City Council and the public to request reconsideration of a Council action.

POLICY

Request/Motion for Reconsideration

A request for reconsideration may be made by any person at the same meeting at which the action was taken (including an adjourned or continued meeting), at the next regular meeting of the City Council, or at any intervening special meeting of the City Council. The person making the request should state orally or in writing the reason for the request, without dwelling on the specific details or setting forth various arguments. A motion to reconsider an action taken by the City Council can be made only by a Councilmember who voted on the prevailing side, but may be seconded by any Councilmember, and is debatable. At the time such motion for reconsideration is heard, testimony shall be limited to the facts giving rise to the motion.

The motion must be approved by a majority vote of the entire City Council. Four votes (majority of the seven-seat Council) are required for the motion to carry.

Reconsideration of Any Council Action

A motion to reconsider an action taken by the City Council must be made at the same meeting at which the action was taken (including an adjourned or continued meeting), at the next regular meeting of the City Council, or at any intervening special meeting of the City Council.

If an intent to make a motion for reconsideration is communicated to the Mayor or City Manager by any Councilmember who voted on the prevailing side prior to the state law deadline for posting the City Council meeting agenda, then the item shall appear as a possible reconsideration on the posted agenda for the next regular meeting or intervening special meeting. Otherwise, no City Council discussion or action on a possible reconsideration may occur unless the item is appropriately added to the agenda pursuant to Government Code Section 54954.2(b), which addresses adding items that are not listed on a posted agenda.



RECONSIDERATION OF COUNCIL ACTION

PROCEDURE

Effect of Approval of Motion

Upon approval of a motion to reconsider, and at such time as the matter is heard, the City Council shall only consider any new evidence or facts not presented previously with regard to the item or a claim of error in applying the facts.

If the motion to reconsider is made and approved at the same meeting at which the initial action was taken and all interested persons (including applicants, owners, supporters and opponents) are still present, the matter may be reconsidered at that meeting or at the next regular meeting or intervening special meeting (subject to the discretion of the maker of the motion) and no further public notice is required.

If the motion to reconsider is made and approved at the same meeting at which the initial action was taken but all interested persons are not still present, or if the motion is made and approved at the next regular meeting or intervening special meeting, the item shall be scheduled for consideration at the earliest feasible City Council meeting and shall be re-noticed in accordance with the Government Code, the City Code and Santa Clara agenda rules and procedures.

The Clerk shall provide notice to all interested parties as soon as possible when a matter becomes the subject of a motion to reconsider.

RESOLUTION NO. 20-8896

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA
TO AMEND COUNCIL POLICY 042 ENTITLED
“RECONSIDERATION OF COUNCIL ACTION”**

BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, amending the Reconsideration of Council Action policy will establish a clear, effective, and easily understood process for members of the City Council and the public to request reconsideration of a Council action;

WHEREAS, the amended Reconsideration of Council Action policy maintains that a request for reconsideration may be made by any person at the same meeting at which the action was taken (including an adjourned or continued meeting), at the next regular meeting of the City Council, or at any intervening special meeting of the City Council, and that a motion to reconsider can be made only by a Councilmember who voted on the prevailing side, but may be seconded by any Councilmember;

WHEREAS, the amended Reconsideration of Council Action policy expands on the policy language that a motion to reconsider an action taken by the City Council must be approved by a majority of the entire City Council and clearly states that four votes (majority of the seven-seat Council) are required for a motion to carry; and,

WHEREAS, the amended Reconsideration of Council Action policy, attached hereto as Attachment 1, establishes the policy and procedure on requests for reconsideration of Council action.

NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the current Council Policy 042 entitled “Reconsideration of Council Action,” is hereby rescinded in its entirety.

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2. That Council Policy 042 entitled "Reconsideration of Council Action," attached hereto as Attachment 1, is hereby approved and adopted, and the City Manager is directed to number (and renumber, as appropriate) the Council Policy Manual such that they are organized in a logical fashion.

3. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 27TH DAY OF OCTOBER, 2020, BY THE FOLLOWING VOTE:

AYES:	COUNCILORS:	Chahal, Davis, Hardy, O'Neill, and Watanabe, and Mayor Gillmor
NOES:	COUNCILORS:	None
ABSENT:	COUNCILORS:	None
ABSTAINED:	COUNCILORS:	None

ATTEST: 
NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:
1. Council Policy 042 entitled "Reconsideration of Council Action"

CITY OF SANTA CLARA

2021 APR 28 PM 3:12



**City of
Santa Clara**
The Center of What's Possible

CITY COUNCIL WRITTEN PETITION

Please provide the information requested below. When complete, please submit to the City Clerk's Office, 1500 Warburton Avenue, Santa Clara, CA 95050.

Date: April 28, 2021

I, Robert L. Mezzetti, II, am hereby requesting to be placed on the Santa Clara City Council Agenda for the following purpose:

At the next City Council meeting I would like to agendaize Amendment
No. 3 to the Exclusive Negotiation Agreement by and between the City,
MTA and Republic Metropolitan LLC for the proposed project located at 500 S.
Benton Street (APNs 230-08-061 and 230-08-078)

I understand that it is important that I attend the meeting in the event there are any questions the Council wishes to ask me.

Signed:



NAME: Robert L. Mezzetti, II

ADDRESS: 31 E. Julian Street
Street

San Jose 95112

City Zip Code

TELEPHONE:* (408) 279-8400
Optional

DATE: April 28, 2021

*NOTE: This is a public document. If your telephone number is unlisted or if you do not want it to be public, please provide an alternate number where you can be reached.

Statement of Kelly Macy, VP Republic Metropolitan
July 6, 2021 City Council meeting

[link](#)
1:52:00

Good evening and thank you Mayor and Council. I am Kelly Macy, Vice President of Development for Republic Metropolitan. Republic Metropolitan has been working diligently on the 500 Benton Street project in good faith with the City of Santa Clara, the VTA and the community since early 2018. Last July, the ENA was extended until August 5, 2021, by unanimous vote by both the City Council and the VTA Board. Since then, a new development is that Republic Metropolitan is willing to comply and offer an indemnity to the City with respect to the Surplus Land Act, as requested by the City Attorney. We are proposing a very strong project, with many community benefits. In addition to the market rate, the project would provide nearly 30% of the total units dedicated to affordable housing, at low and very low income levels. Our simple request to you this evening, is a reconsideration that would allow our project to be heard at a future council meeting. Thank you.