

Attachment 12

Resolution Adopting the Disposition and Development Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF SANTA CLARA,
CALIFORNIA, APPROVING A DISPOSITION AND
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF
SANTA CLARA AND RELATED SANTA CLARA, LLC, FOR
THE CITYPLACE SANTA CLARA PROJECT LOCATED AT
5155 STARS AND STRIPES DRIVE, ET AL, SANTA CLARA**

SCH#2014072078

CEQ2014-01180 (EIR)

PLN2014-10554 (General Plan Amendment, Rezoning and Development Agreement)

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

WHEREAS, on May 23, 2014, Santa Clara Centennial Gateway, LLC (predecessor in interest to Montana Property Group), filed a preliminary application for the development of a mixed-use project on approximately 9.48 acres of real property (together, the "Tasman Parcels") located at 5120 Stars and Stripes Drive (APNs 104-03-038 and -039);

WHEREAS, on June 9, 2014, Related Santa Clara LLC (the "Applicant") filed a preliminary application for the development of a mixed-use project on approximately 230 acres of real property (together, the "City Landfill Parcels") located at 5155 Stars and Stripes Drive (APNs 104-03-036, 104-03-037, 104-01-102, 097-01-039, 097-01-073), generally located to the north and northeast of the Tasman Parcels;

WHEREAS, the Tasman Parcels and the City Landfill Parcels (together, the "Project Site") encompass approximately two hundred forty (240) acres of land generally located north of Tasman Drive, east of Great America Parkway and San Tomas Aquino Creek, west of the Guadalupe River, and south of Great America Way and State Route (SR) 237, most of which was formerly occupied by a landfill and is currently occupied by the Santa Clara Golf & Tennis Club, a restaurant and banquet facility, a maintenance building, Fire Station 10, a Bicycle-Motocross (BMX) track, the Ameresco

Methane Plant, the Eastside Retention Basin, a City vehicle washing station, and vacant lots used for parking;

WHEREAS, on August 5, 2014, an application was filed by Related Santa Clara, LLC (the “Applicant”), to combine the two development proposals into a single project (the “Original Project”) that would encompass up to 9.16 million gross square feet (gsf) of office buildings, retail and entertainment facilities, residential units, and hotel rooms, consistent with the elements of the “CityPlace Project” discussed in the Master Community Plan;

WHEREAS, on February 5, 2015, Montana Property Group and the Applicant formed a joint venture to develop the “City Center” portion of the Project Site (as described in the Master Community Plan), with the remainder of the Project Site to be developed by the Applicant;

WHEREAS, the Applicant later proposed a modification to the Original Project, referred to as the “Enhanced Open Space Variant” (the “EOS Variant”) to reserve a portion of one of the parcels (APN 104-01-102) (designated as “Parcel 3” in the Master Community Plan) for parks and open space uses, with the office uses and associated parking that would otherwise have been developable on Parcel 3 being reallocated to other parts of the Project Site;

WHEREAS, the Project approvals (the “Project Approvals”) will include: Certification of the Environmental Impact Report (EIR) for the CityPlace Santa Clara Project (“EIR Resolution”); General Plan Amendment #83 to change the land use designation from Parks/Open Space and Regional Commercial to Urban Center/Entertainment District, to revise Figure 2.3-1 Areas of Potential Development and Table 8.6-2 Proposed Development (Approved, Not Constructed and Pending Projects), to add transportation demand goals to Appendix 8.13 (Climate Action Plan), and to make related minor text amendments; Rezone of the Project Site from Public, Quasi-Public, Park or Recreation (B) and Commercial Park (CP) to Planned Development-Master Planned Community

(PD-MC) Zoning District, with a corresponding Master Community Plan, Infrastructure Master Plan, and Conditions of Approval, attached hereto; a Development Agreement; this Disposition and Development Agreement; an Ordinance to allow leases in excess of 55 years at the Project Site; and an Override of the Airport Land Use Commission Comprehensive Land Use Plan;

WHEREAS, the Disposition and Development Agreement contemplates that implementation of the Project will require myriad permits, approvals, entitlements, agreements, permits to enter, utility services, subdivision maps, building permits, and other authorizations in order to implement the Project, including but not limited to ground leases (the "Ground Leases") for portions of the Project Site (together, the "Project Documents");

WHEREAS, the Project Documents, including the Disposition and Development Agreement and the Ground Leases, will provide the City with fair market value, taking into account the development and market risk, extraordinary up-front costs, and reasonable private development return expectations;

WHEREAS, Section 54220 et seq. of the California Government Code (the "Surplus Lands Act" or the "Act") requires cities "disposing of surplus land" (as the term "surplus land" is defined in the Act) to offer such land for sale or lease for certain public purposes prior to disposing of such land;

WHEREAS, the City has determined that the Project Site is not "surplus land" as defined in the Act, for the following reasons: (i) the City has not made a determination that the Project Site is no longer necessary for the City's use; (ii) the portions of the Project Site that are within the boundaries of the closed Santa Clara All-Purpose Landfill are necessary for the City's continued use to meet its legal obligations to ensure continued operation and maintenance of the landfill cap, the landfill gas extraction system, the landfill leachate control system, and the landfill groundwater monitoring program pursuant to the Waste Discharge Requirements order issued to the City by the San Francisco

Bay Regional Water Quality Control Board and a Closure Permit and Post-Closure Permit issued to the City by the Santa Clara County Department of Environmental Health, and are furthermore necessary for continued operation of an on-site facility which produces electric power for the City from methane extracted from the closed landfill; (iii) the non-landfill portions of the Project Site are necessary for the City's continued use in order to create a viable economic structure sufficient to offset the significant premium costs of developing a developable platform and supporting infrastructure above the landfill portions of the Project Site, and to provide the City with the benefits of the proposed development; and (iv) certain non-landfill portions of the Project Site are also necessary for the City's continued use under commitments for parking to support Levi's Stadium.

WHEREAS, the City has determined, further, that, pursuant to the City's reversionary interest in the Project Site and the improvements constructed thereon, the Project Site is excepted from the Surplus Lands Act's definition of "surplus land" as property held for the purpose of exchange or sale to a third party following the termination of each applicable lease, and is therefore not subject to the Act;

WHEREAS, the City has determined, further, that, because the Project Site is not "surplus land" under the Act, the City is not required to offer the Project Site for sale or lease in accordance with the terms thereof;

WHEREAS, notice of the public hearing on the proposed Disposition and Development Agreement was published in the *Santa Clara Weekly*, a newspaper of general circulation for the City on June 15, 2016;

WHEREAS, notices of the public hearing on the Disposition and Development Agreement were mailed to all property owners within 1,000 feet of the Project Site, according the most recent assessor's roll, on June 16, 2016;

WHEREAS, the City Council has reviewed the Disposition and Development Agreement;

WHEREAS, before considering the Disposition and Development Agreement, the City Council reviewed and considered the information contained in the EIR (SCH#2014072078), the CEQA Findings and the Statement of Overriding Considerations for significant unavoidable impacts in the areas of land use, transportation, air quality, greenhouse gas emissions, noise, and biology; and cumulative significant unavoidable utilities impacts that cannot be avoided or substantially lessened by the adoption of feasible mitigation measures; and,

WHEREAS, on June 28, 2016, the City Council conducted a duly noticed public hearing, at which time all interested persons were invited to provide testimony and evidence, both in support and in opposition to the proposed Disposition and Development Agreement.

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

1. That the City Council hereby finds and determines that the foregoing Recitals are true and correct and by this reference makes them a part hereof.
2. That the City Council hereby approves the Disposition and Development Agreement, substantially in the form attached hereto as Exhibit "Disposition and Development Agreement," subject to such minor and clarifying changes consistent with the terms thereof as may be approved by the City Attorney prior to execution thereof.
3. That this Resolution, including the Disposition and Development Agreement approval described in Section 2 above, is based on the findings set forth above, the EIR, the EIR Resolution, the CEQA Findings Related to the Certification of the EIR, the General Plan Amendment, the Development Agreement, and the Rezoning.
4. That the City Manager and/or his designee is hereby authorized and directed to perform all acts to be performed by the City in the administration of the Disposition and Development

Agreement pursuant to the terms of the Disposition and Development Agreement. The City Manager is further authorized and directed to perform all other acts, enter into all other agreements and execute all other documents necessary or convenient to carry out the purposes of this Resolution and the Disposition and Development Agreement.

5. Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this Resolution is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the Resolution. The City of Santa Clara, California, hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

6. Effective date. This Resolution shall take effect at such time as Ordinance No. _____ approving the Development Agreement becomes effective, and if such Ordinance has not become effective by December 31, 2018, this Resolution shall be deemed to be void and of no further force or effect.

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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 28th DAY OF JUNE, 2016, BY THE FOLLOWING VOTE:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Disposition and Development Agreement

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DDA Resolution 20160622.doc