

Simrat Dhadli

From: Sekhri, Neil <NSEkhri@gibsondunn.com>
Sent: Friday, October 19, 2018 8:21 AM
To: Shimko, Anna C.; Steve Eimer (seimer@related.com); 'Hart, Gordon E.'
Cc: Brian Doyle; Deanna Santana; Ruth Shikada; Manuel Pineda; Kartiganer, Deborah L.; Young, Joshua (Joshua.Young@related.com); McCool, Jennifer
Subject: RE: City Place - Landfill O& M Agreement 4816-3263-4702 v.8.doc

Thanks very much Anna for this and the parking agreement. We will review both and get a meeting/call together with the appropriate people to discuss soon.

Neil S.

Neil Sekhri
Of Counsel

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
555 Mission Street, San Francisco, CA 94105-0921
Tel +1 415.393.8334 • Fax +1 415.374.8435
NSEkhri@gibsondunn.com • www.gibsondunn.com

From: Shimko, Anna C. <AShimko@bwsllaw.com>
Sent: Thursday, October 18, 2018 3:50 PM
To: Steve Eimer (seimer@related.com) <seimer@related.com>; 'Hart, Gordon E.' <gordonhart@paulhastings.com>; Sekhri, Neil <NSEkhri@gibsondunn.com>
Cc: Brian Doyle <BDoyle@SantaClaraCA.gov>; 'Deanna Santana' <DSantana@SantaClaraCA.gov>; 'Ruth Shikada' <RShikada@SantaClaraCA.gov>; Manuel Pineda <MPineda@SantaClaraCA.gov>; Kartiganer, Deborah L. <DKartiganer@bwsllaw.com>
Subject: City Place - Landfill O& M Agreement 4816-3263-4702 v.8.doc

[External Email]

On behalf of the City of Santa Clara, I am providing here the Landfill O&M Agreement in clean and red-lined versions, with a preliminary set of changes proposed by the City. The red-lined version compares the agreement to the version we last received from Related. As you are aware, the City has engaged a risk management consultant to assist the City in evaluating and shaping the agreement. The City has yet to receive and consider such consultant's findings, but will do so in the near future; thus, the City expects to supply additional comments on the agreement once that risk analysis process is completed. However, we thought it may be useful for you to review the changes we have suggested at this stage so that we will all be better poised to discuss the agreement after the risk management consultant's review is complete. We look forward to discussing the agreement with you in the near future. Thanks, Anna

Anna C. Shimko | Partner
101 Howard Street, Suite 400 | San Francisco, CA 94105-6125



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

From: Thy Vo [mailto:tvo@bayareanewsgroup.com]
Sent: Wednesday, December 12, 2018 9:05 AM
To: Lenka Wright
Subject: Questions re: City Place and Eminent Domain procedure

Hi Lenka,

Hope you're well. I'm writing a short piece this morning, for a hard 1:30 pm deadline (they moved up our deadlines!), on the city council's approval last night of the resolutions of necessity for eminent domain related to the City Place project. Unfortunately I know next to nothing about City Place so I have some questions about that as well. If my questions are phrased oddly/don't make sense to you feel free to give me a call -- 408-200-1055. Thank you for your help!

City place:

- Is the property where the City Place development is located owned by the city or a private owner? If owned by the city, has it been sold/is it being leased, was it a former RDA property?
- There was a strongly-worded letter sent to the city in late September from the developer where they said the city hasn't responded to a landfill management agreement for 14 months and it was causing unnecessary delays in the project. What happened there? Why did the city fail to respond for so long?
- Has the landfill management plan since been approved?
- Are there any city council actions that still need to occur for CityPlace to move forward?
- Is there a tentative schedule for when groundbreaking will begin?

Eminent Domain

- Is the city paying for the cost of the public infrastructure on the development site? If so, how much is it estimated to cost and can you break down the cost estimates based on the types of projects required? Will city employees be installing these infrastructure improvements or a contractor?
- Regarding the existing facilities on stars/stripes drive - are the tennis courts/golf course a private business where visitors pay to use them or a public facility operated by a private company? Would the Hyatt remain on the site/be unaffected by the development?
- The two city-owned properties involved in the eminent domain: are these both former RDA properties?
- There was a statement made by a public speaker who said the city has never used eminent domain before: is this true?

Thy

Thy Vo |
tvo@bayareanewsgroup.com
408-200-1055 Direct
[@thyanhvo](https://twitter.com/thyanhvo)



bayareanewsgroup.com

Over 5 million engaged readers
weekly

The Mercury News EAST BAY TIMES *Marin Independent Journal*

sell more stuff with  convertly



RECEIVED

September 7, 2018

SEP 11 2018

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: Deanna J. Santana, City Manager

MAYOR & COUNCIL OFFICES
CITY OF SANTA CLARA

O: file
C: full Council
Cmo

Re: Disposition and Development Agreement, dated as of August 12, 2016, by and between Related Santa Clara, LLC (“**Related**”) and the City of Santa Clara (“**City**”) (the “**DDA**”), in connection with the City Place Santa Clara project (the “**Project**”)

Dear Deanna:

As you know, since we have resolved the force majeure issues described in our April 17, 2018 letter to you (the “**Force Majeure Letter**”), Related has been diligently proceeding with its obligations under the DDA, including efforts to meet the updated Schedule of Performance dates for the Phase 1 Option Notice and first DAP submittal. To help meet this schedule, we have had ongoing and productive sessions with you and your team in our bi-weekly meetings and frequent focused working group meetings and constant dialogue. We greatly appreciate these efforts by you and your staff and are hopeful this level of partnership and cooperation will continue and intensify as we jointly tackle the difficult and complex issues yet to be resolved.

In addition during this timeframe, Related has expended millions of dollars to further fulfill our obligations under our various agreements with the City and in general further the development of the project on a timeline that is consistent with our obligations and desires to move this project into construction as soon as possible. We have shared with you our detailed project development schedule and discussed in detail on numerous occasions the absolute importance of completing tasks, including City tasks so identified, in order to make that schedule a reality. As that schedule indicates, in order for us to actually be in a position to advance the project into construction and meet our obligations to the City and others, over a hundred million dollars will need to be spent over the next 12 to 18 months. That financial commitment can only be made rationally by Related within the context that certain fundamental project requirements, including those discussed below will be concluded and satisfied by the City. The decision by Related to commit those funds is imminent.

Unfortunately, despite our diligent efforts, we are experiencing major delays in the resolution of three key issues, all of which are in the City’s hands. These delays have been so chronic that they are now affecting our ability to successfully and timely implement the Project. These delays relate to the Landfill Operation and Management Agreement, the Forty-Niners parking agreements and the condemnation actions involving the David’s lease and the Recreation Facilities Agreement.

Section 14.1 of the DDA provides that the parties will enter into a Landfill Operation and Management Agreement (the “**O&M Agreement**”) within “ninety (90) days after the Effective Date, or within thirty (30) days after the date on which all necessary Authorizations upon which the execution of the Landfill Operation and Management Agreement is contingent have issued, whichever is later.” As noted in the Force Majeure Letter, the Project obtained approval of the Waste Discharge Requirements Order on May 12, 2017 (the “**WDRs**”). Therefore, the parties had a requirement under the DDA to enter into the O&M Agreement within thirty days after May 12, 2017. The O&M Agreement is a more formal agreement required under the DDA, but reflects the heavily negotiated agreements between the City and Related that are reflected in the Operation and Maintenance Term Sheet approved by the City Council as Exhibit M to the DDA, and is consistent with the requirements of the WDRs as jointly negotiated by TRC and the City with the Regional Water Quality Control Board.

On June 5, 2017, we sent the City our proposed draft of the O&M Agreement that incorporated the required terms from the DDA and the WDRs. We received comments from the City’s outside counsel on July 3, 2017 and provided timely and responsive comments to the City on July 17, 2017. Since that time, despite my constant and weekly reminders to the City, we have received no response. Finally, you mentioned to me last week and the City Attorney told us as recently as Wednesday that he is still not in a position to provide comments and that he will not be able to do so until October, *a full sixteen months after our initial draft*. This delay is inconsistent with the City’s obligations under the DDA, and now threatens Related’s ability to meet its project deadlines. For example, as required by the agreement itself, once the agreement is finally completed by our staffs and signed, Related must obtain the insurance necessary to obtain a Permit to Enter and Ground Lease from the City, a process that can take up to six months or longer for a project of this complexity; a fact that is well known to all parties. Exercising the Option for Phase 1 and preparing and submitting the DAP without the executed O&M Agreement places extreme undue risk on Related, a risk caused entirely by the inaction of the City.

Second, the City’s ability to deliver clean title to Related for the Phase 1 Ground Lease will require a change to the two separate Parking Rights Agreements, both dated March 29, 2012, between the City and the Santa Clara Stadium Authority, and the Forty-Niners Santa Clara Stadium Company, LLC that will relocate their existing surface parking elsewhere within the Project site. The City has already agreed in its October 12, 2016 Title Notice that it would be willing to execute any necessary documentation to amend these agreements, on the precondition that Related and the Forty-Niners reach an agreement that does not adversely affect the City and does not result in any cost to the City.

In reliance on that letter, Related negotiated the terms of an agreement with the Forty-Niners, discussed the terms with the City and presented drafts based on these discussions to the City for its review and approval. We sent our most recent draft on March 28, 2018, with a follow-up discussion on May 23, 2018 where no significant issues were raised. Since that time, we have had no response on these draft agreements. Certainty of title is critical to Related’s decision to exercise the Phase 1 Option. Despite constant reminders from me of the critical nature of finalizing these documents, we are told, again, that the drafts are in the City Attorney’s office, and we will not receive comments until October, *a full seven months after our submittal*.

Again, this delay, despite our diligent efforts, puts the project and our ability to proceed at risk and is now another critical path item.

Finally, as you know, we have been doing everything we can to attempt to assist the City on obtaining clean title to early Phases of the Project that are subject to the David's lease and the Recreation Facilities Agreement. Despite my numerous attempts to establish a dialogue with you and the City Attorney's office in an effort to facilitate a successful and timely conclusion to this process, we have had virtually no substantive communication from the City on these matters for months until just this week.

In general, while this process has not moved as quickly as we had hoped, we understand that progress has been recently made to move the Recreation Agreement matter forward and discussions with the entity benefitting from the Agreement are likely to move forward in the upcoming weeks. I would note that it is my understanding that the David's lease matter is still pending action by the City Council and we urge that this matter be brought forward for action immediately. While the City has not involved Related in these processes to date, we believe that Related can play an important and helpful role in resolving these title issues, especially as it relates to the Recreation Facilities Agreement negotiations. I am hopeful that based on my recent conversation with the City Attorney that he will now allow us to engage with you in a constructive dialogue about strategic considerations in the negotiating and finalization process. Again, as the deadline for the Phase 1 Option exercise draws near, having more certainty around the status of these two actions is critical to us.

I understand that the City Attorney has been involved in many pressing matters on the City's behalf and would respectfully suggest that the City consider, if needed, committing additional resources necessary to properly address the workload as it relates to the necessities of facilitating the joint implementation of our project. Under separate cover, our attorney will be sending a letter documenting our approach to force majeure with respect to all of the foregoing delays.

Thank you for your continued cooperation and assistance as we move forward with this important project and I hope the issues discussed above can now finally receive the attention required to bring about successful resolution very shortly.

Very truly yours,



Steve Eimer
Executive Vice President

cc: Mayor Lisa Gillmor
Brian Doyle, Esq.
Ken Himmel
Jennifer McCool, Esq.