

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

AGENDA

Tuesday, May 6, 2014
Immediately Following the Adjournment of the 7:00 p.m. City Council Meeting
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Janet Abelson – Chairperson

Vice Chairperson Rebecca Benassini
Boardmember Mark Friedman
Boardmember Scott Hanin

Boardmember Jan Bridges
Boardmember Greg Lyman
Boardmember Karen Pinkos

ROLL CALL

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

- 1. BOARD / STAFF COMMUNICATIONS**
- 2. ORAL COMMUNICATIONS FROM THE PUBLIC**

All persons wishing to speak should sign up with the Board Secretary. Remarks are limited to 3 minutes per person and are limited to items listed on this special Municipal Services Corporation meeting agenda only.

- 3. PRESENTATIONS – None**
- 4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4**

Approval of Minutes

Approve the April 1, 2014 special meeting – closed session minutes.

- 5. POLICY MATTERS**

Amend Existing Exclusive Negotiating Rights Agreement and Approve a Term Sheet with Build, Inc. for the Development of the Mayfair Block

Adopt a resolution authorizing an amendment of the existing Exclusive Negotiating Rights Agreement (ENRA) with Build, Inc. (Developer) for the development of the Mayfair block and for endorsement of a term sheet. *Extension of the ENRA and endorsement of the proposed term sheet is not a project pursuant to CEQA. Execution of the DDA will require that the project complies with CEQA. Project-specific review of the project will be reliant on, and completed after, the San Pablo Avenue Specific Plan's Programmatic EIR is certified.*

- 6. ADJOURN SPECIAL MUNICIPAL SERVICES CORPORATION MEETING**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

MINUTES

Tuesday, April 1, 2014 – 6:15 p.m.
Hillside Conference Room

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Janet Abelson – Chairperson

Vice Chairperson Rebecca Benassini
Boardmember Mark Friedman
Boardmember Scott Hanin

Boardmember Jan Bridges
Boardmember Greg Lyman
Boardmember Karen Pinkos

ROLL CALL

Present: Chairperson Abelson, Vice Chairperson Benassini, Directors Friedman, Hanin, Lyman, and Pinkos. Director Bridges arrived at 6:21 p.m.

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

1. **BOARD / STAFF COMMUNICATIONS** – *No reports.*
2. **ORAL COMMUNICATIONS FROM THE PUBLIC** – *No speakers.*
3. **PRESENTATIONS** – *None*
4. **ADOPTION OF THE CONSENT CALENDAR – Item No. 4**

Approval of Minutes

Approve the August 20, 2013 special meeting minutes.

Action: Moved, seconded (Lyman/Benassini; Ayes — Directors Benassini, Friedman, Hanin, Lyman, Pinkos and Chairperson Abelson; Noes — None; Absent — Director Bridges) to approve the minutes.

5. **ANNOUNCEMENT OF CLOSED SESSION**

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (*Pursuant to Government Code Section 54956.8*)

Property: 11600 and 11690 San Pablo Avenue

Agency Negotiators: Karen Tiedemann, Special Counsel, Scott Hanin, City Manager, Melanie Mintz, Community Development Director

Under Negotiation: Terms of sales.

RECESSED INTO CLOSED SESSION at 6:17 p.m.

Action: The Directors provided direction to staff.

6. **ADJOURNED SPECIAL MUNICIPAL SERVICES CORPORATION MEETING** at 7:08 p.m.

***El Cerrito
Municipal Services Corporation***

Agenda Report
Item No. 5

Date: May 6, 2014
To: El Cerrito Municipal Services Corporation Board
From: Dwayne Dalman, Senior Economic Development Program Manager
Melanie Mintz, Interim Community Development Director
Subject: Amend the Exclusive Negotiating Rights Agreement with Build, Inc. and
Approval of a Term Sheet with Build Inc. for the Development of the
Mayfair Block

ACTION REQUESTED

Adopt a resolution authorizing an amendment to the existing Exclusive Negotiating Rights Agreement (ENRA) with Build Inc. (Developer) to extend the negotiating period to February 15, 2015 for the development of the Mayfair block and approving the endorsement of a Term Sheet.

BACKGROUND

The Mayfair Block is approximately 1.16 acres bordered by San Pablo and Knott Avenues, Kearney Street, and Cutting Boulevard. The block is immediately adjacent to the del Norte BART station, and consists of three parcels of land that have been purchased by the former El Cerrito Redevelopment Agency over a period of time. The former Redevelopment Agency transferred the parcels to the Municipal Services Corporation (MSC), prior to the Agency's dissolution.

On July 15, 2013, the MSC executed an Exclusive Negotiating Rights Agreement (ENRA) with Build Inc (Developer) to develop a mixed-use residential project on the property. The developer submitted their conceptual site plans/capacity study at the time the ENRA was executed, and proceeded to complete a project budget and proforma. The conceptual site plans showed a project that included buildings on the land owned by the MSC and a small sliver of land owned by BART. Additionally, the conceptual project anticipated the vacation of Kearney Street to allow for a public plaza space.

When the developer completed their original project budget and proforma, the project's economics were negatively impacted by the upturn in the residential real estate in the greater San Francisco Bay Area resulting in higher than anticipated construction costs. In addition, the developer's proforma income analysis was limited by a lack of local rental comparables, as there has not been a comparable project built in the project vicinity in several years. This resulted in an initial negative project proforma that showed project costs to be higher than anticipated project incomes. The proforma was

run both with and without prevailing wage and with and without the provision of below-market rate (affordable) units.

Over the last several months, the developer has been reevaluating the project to determine whether the project economics could be improved through updated assumptions and/or modification of other project variables. The developer has submitted a new operating budget and development proforma that demonstrates a positive return on investment based on decreased project costs and increased operating income. The forecasted project operating income has been increased to reflect the current and anticipated future upturn in residential market conditions.

The reduction in project costs is primarily due to a reduction from 23,000 sf to 13,000 sf of ground-floor commercial space, and decreased offsite public improvements, beyond those adjacent to the project site. While not directly related to cost, the project also no longer currently includes 40 units on BART property, as that proposed phase would be reliant on future negotiations with BART. The concept design presented at the onset of the ENRA was completed to demonstrate site capacity. The developer has since hired David Baker Architects (DBA) as the project architect. DBA is a San Francisco-based architecture firm recognized for its dedication to sustainable, mixed-use and often affordable high-density projects. (See Attachment 2 for a portfolio of representative DBA projects.)

In addition to looking to work with BART in a future phase to develop additional residential units, the development team is continuing to propose that the City consider a street vacation of Kearney Street to allow it to be reconfigured and incorporated into the project design as a public plaza. Conveyance of the property to the Developer may be conditioned upon the Developer obtaining the necessary street vacation or reconfiguring the project as currently envisioned to remove the need for the street vacation. The City Council will be required to approve any street vacation.

Exclusive Negotiating Rights Agreement (ENRA)

The MSC executed an ENRA with Build Inc. on July 15, 2013. The overall negotiating period of the ENRA was 15 months, with the possibility of an extension of 120 days. During the initial negotiating period, the following tasks were to be completed:

- a. Build to submit conceptual site plans
- b. Build to submit a detailed development budget and project operating proforma
- c. Both Build and the MSC to agree on the selection of an appraiser to appraise the property
- d. Property appraisal to be completed
- e. Build to submit a proposed detailed schedule of performance for the development
- f. Build to submit a Term Sheet for the project setting forth the purchase price and material terms of the purchase and sale agreement

All of the tasks outlined above have been completed. The process has taken slightly longer than anticipated, due to the length of time it took to develop a viable proforma (as discussed above). As such, the negotiation and completion of the Disposition and Development Agreement (DDA) will need several months beyond the original terms. The proposed amendment to the ENRA extends the original time frame for completion of the DDA from October 2014 to February 15, 2015. This proposed time extension takes into consideration the City's time frame for approval of the San Pablo Avenue Specific Plan and its Environmental Impact Report (EIR), which is currently scheduled for approximately September 2014. Review of the project pursuant to CEQA will be reliant upon the San Pablo Avenue Specific Plan Programmatic EIR and therefore cannot be completed until the Specific Plan EIR is certified. Furthermore, the proposed project intends to be entitled under the framework and regulations of the upcoming San Pablo Avenue Specific Plan and Form Based Code, and will therefore also not be able to be completed until after the Specific Plan is adopted by City Council.

Appraisal and Community Benefits

An appraisal of the subject property has been completed by John Clifford of Clifford Advisory and has been reviewed by MSC Staff, MSC legal counsel and the MSC's consultant, Keyser Marston. The new property appraisal reflects the updated El Cerrito market conditions and shows a Fair Market Value of \$2,260,000. The appraisal includes multiple approaches to determine value, including sales comparables, income and cost comparisons.

The MSC obtained title to the property from the former RDA pursuant to a conveyance agreement that requires that the MSC dispose of the property consistent with the Community Redevelopment Law requirements. The Community Redevelopment Law requires that the property be disposed of for not less than the fair market value or the fair reuse value. The proposed purchase price for the property in the Term Sheet constitutes the fair market value and therefore conforms to the requirements of the Redevelopment Law.

The proposed project is to be funded entirely with private funds and there are no proposed public funds to be used in the development. Because development of the project is not funded in whole or in part with public funds, the project is not required to pay prevailing wages pursuant to Labor Code 1720.

As demonstrated by the proforma, the payment of prevailing wage would make the project financially unfeasible given the project costs and projected market rents. Similarly, the project is also not financially able to support an affordable housing component. Staff recommends moving forward with the sale of the property without a prevailing wage or affordable housing requirement in order to provide 240 new transit-oriented development housing units and fulfill the City Council's long-time goal of catalyzing revitalization and transit-oriented development in the area of the del Norte BART station.

Although prevailing wage is not a regulatory requirement of this project, staff has discussed with the developer its labor practices. The developer has extensive

experience working with the trades and unions and commits to doing so in El Cerrito. The developer works with a variety of general contractors, many of whom have signatory agreements with unions in the key trades, such as the carpenters, plumbing, electrical, and laborers. The developer has a "union preference/right of first offer policy" that gives preference to general contractors that hire a greater percentage of union labor, so long as their price is competitive. The developer has indicated that they will give preference to general contractors that have a higher percentage of signatory agreements with trade unions that are prevalent in the greater El Cerrito area. The proposed Term Sheet includes a clause that requires the developer to provide "good-faith documentation" of their efforts to negotiate and hire general contractors that employ union labor.

Term Sheet

The Term Sheet requires the Developer to pay \$2,260,000 for the land owned by the MSC, as detailed in the attached proposed Term Sheet, which represents the fair market value of the property as supported by a Fair Market Value Appraisal. In addition to the purchase price, the Term Sheet outlines the following conditions:

- Pre-disposition conditions in the DDA that must be in place before escrow can close on the property
- Build to pay all closing costs in connection with transfer of title to the property
- Build to pay to the MSC a non-refundable \$50,000 option payment on November 1, 2014 on an annual basis, until close of escrow. The option payments will be made in addition to the purchase price.
- Build will be able to access the property to complete their due diligence analysis
- Build cannot assign or transfer the rights or obligations of the ENRA or Term Sheet without prior approval of the MSC
- The project will comply with all CEQA requirements
- Build will be required to provide "good-faith documentation" of their efforts to negotiate and hire general contractors that employ union labor

Going Forward

After the amendment to the ENRA is executed, the developer and the MSC will start to negotiate the DDA. The developer has also expressed interest in beginning a pre-entitlement process, to begin to work with City staff and engage the public in the project's design process. The City and the developer anticipate entering into a Letter Agreement to begin to review their proposed project with the agreement that no entitlements can or will be issued prior to adoption of the San Pablo Avenue Specific Plan and associated Zoning Ordinance updates and General Plan Amendments. The DDA is not expected to be brought to the MSC Board for approval prior to the final approval of the San Pablo Avenue Specific Plan and the certification of the Programmatic EIR. Based upon the anticipated timeline, the developer plans to break ground on the project in 2015.

FINANCIAL CONSIDERATIONS

Existing financial terms and requirements of the project are identified in the Term Sheet. Future terms and requirements will be identified in the negotiated DDA. The proposed purchase price exceeds the MSC's remaining debt on the land and the option payments will cover the current property taxes. No budget adjustments are currently necessary.

ENVIRONMENTAL CONSIDERATIONS

Extension of the ENRA and endorsement of the proposed term sheet is not a project pursuant to CEQA. Execution of the DDA will require that the project complies with CEQA. Project-specific review of the project will be reliant on, and completed after, the San Pablo Avenue Specific Plan's Programmatic EIR is certified.

RECOMMENDATION

Based on the current status of the project and the information that has been presented to date, staff feels that the developer's development idea continues to meet the criteria that the City is looking for in a high-quality, transit-oriented development adjacent to the del Norte BART station. Staff recommends that the MSC Board provide authorization to amend the existing Exclusive Negotiating Rights Agreement (ENRA) to extend the negotiating period to February 15, 2015 and to endorse the proposed Term Sheet, pursuant to the ENRA, outlining the purchase price and material terms of the Development and Disposition Agreement (DDA).

Reviewed by:

A handwritten signature in black ink, appearing to read 'Scott Hanin', written over a horizontal line.

Scott Hanin, Executive Director

Attachments:

1. Resolution
Exhibit A: Amendment to Exclusive Negotiating Rights Agreement and Term Sheet
2. David Baker Architect's representative projects

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. 2014-XX

RESOLUTION OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION AUTHORIZING EXECUTION OF AN AMENDMENT TO THE EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH BUILD, INC. AND TO ENDORSE A TERM SHEET WHICH OUTLINES THE BASIC TERMS FOR BUILD'S PROPOSED PURCHASE AND DEVELOPMENT

WHEREAS, the former El Cerrito Redevelopment Agency ("Agency") conveyed property located at 11600 and 11690 San Pablo Avenue (the "Property") to the El Cerrito Municipal Services Corporation ("MSC") pursuant to a conveyance agreement; and

WHEREAS, pursuant to the terms of the Conveyance Agreement the MSC is responsible to convey and dispose of the property in accordance with the Agency's redevelopment goals and objectives; and

WHEREAS, the goals of the Redevelopment Plan include alleviation of blighting conditions and the stimulation of economic development activities in the Project Area; and

WHEREAS, the MSC entered into an Exclusive Negotiating Rights Agreement ("ENRA") on July 15, 2013 with Build, Inc. ("Developer"), substantially in the form on file with the MSC Secretary, to seek to negotiate the terms of a Development and Disposition Agreement ("DDA") for the development of the Property; and

WHEREAS, the Developer and the MSC staff have been working diligently to complete the tasks set forth in the ENRA during the negotiating period and have made substantial progress toward completion of the tasks and negotiation of a DDA; and

WHEREAS, the ENRA requires that the Developer and the MSC develop a Term Sheet setting forth the essential terms of the sale of the Property to the Developer and that such Term Sheet be endorsed by the MSC Board prior to the parties proceeding with negotiation of the DDA; and

WHEREAS, the Developer is requesting additional time to complete the tasks associated with negotiation and approval of a DDA, including obtaining project entitlements from the City of El Cerrito; and

WHEREAS, the MSC has determined that extension of the ENRA term in accordance with the First Amendment to the ENRA substantially in the form attached hereto as Exhibit A and approval of the Term Sheet are in the best interest of the City and meet the goals and objectives of the Redevelopment Agency set forth in the Redevelopment Plan.

NOW THEREFORE, BE IT RESOLVED, that the Municipal Services Corporation Board of Directors hereby approves the First Amendment to the Exclusive Negotiation Rights Agreement substantially in the form attached hereto as Exhibit A subject only to such changes as are approved by the Executive Director and authorizes and directs the Executive Director to

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Attachment 1

execute the First Amendment to the Exclusive Negotiating Rights Agreement on behalf of the MSC and to take all other actions required to implement the terms of the First amendment to the Exclusive Negotiating Rights Agreement: and

BE IT FURTHER RESOLVED, that the MSC hereby approves the Term Sheet substantially in the form as incorporated into the Exclusive Negotiation Rights Agreement and attached as Exhibit A to this resolution subject only to such changes as are approved by the Executive Director and authorizes the Executive Director to execute the Term Sheet on behalf of the MSC.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon its passage and adoption.

I CERTIFY that at a regular meeting on May 6, 2014, the El Cerrito Municipal Services Corporation passed this Resolution by the following vote:

AYES:	BOARD MEMBERS:
NOES:	BOARD MEMBERS:
ABSENT:	BOARD MEMBERS:

IN WITNESS of this action, I sign this document on May __, 2014.

Cheryl Morse, Secretary

APPROVED:

Janet Abelson, Chair

FIRST AMENDMENT TO
EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT

This First Amendment to Exclusive Negotiating Rights Agreement ("First Amendment") is entered into as of this ____ day of ____, 2014, by and between the El Cerrito Municipal Services Corporation, a California nonprofit public benefit corporation ("MSC") and Build Inc., a California corporation ("Developer"), on the basis of the following facts:

RECITALS

A. The MSC and Developer entered into that certain Exclusive Negotiating Rights Agreement dated July 15, 2013 ("ENRA") whereby the parties established certain procedures and standards for the negotiation by the MSC and the Developer of a DDA related to that certain property located at 11600 and 11690 San Pablo Avenue, El Cerrito, Contra Costa County, California, as more fully described in Exhibit A ("Property").

B. Since execution of the ENRA the MSC and the Developer have worked diligently to meet the timelines and tasks set forth in the ENRA.

C. The MSC and the Developer now desire to enter into this First Amendment to amend certain terms of the ENRA and to incorporate within the ENRA a Term Sheet as contemplated by Section 2.4 of the ENRA related to certain terms and conditions of the disposition of the Property by the MSC to the Developer.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. Negotiating Term. The first sentence of Section 1.2 of the ENRA is hereby amended in its entirety to read as follows:

The negotiating period (the "Negotiating Period") under this Agreement shall commence on the Effective Date of the ENRA and expire on February 15, 2015, provided, however, if any of the interim development steps set forth in Article 2 are not met within the time frames set forth in Article 2, subject to the notice and cure provisions of Section 3.7 hereof and subject to the force majeure provisions of Section 3.8 hereof, the MSC shall have the right to terminate this Agreement upon ten (10) days written notice to Developer.

2. Term Sheet. In accordance with Section 2.4 of the ENRA, the Term Sheet attached as Exhibit B is incorporated into the ENRA, and the parties acknowledge that endorsement of the Term Sheet by the MSC satisfies the requirements of Sections 2.3 and 2.4 of the ENRA. Notwithstanding anything set forth in the Term Sheet, the parties, upon mutual agreement may revise any of the terms set forth in the Term Sheet prior to execution of the DDA. The incorporation of the Term Sheet herein in no way obligates either the MSC to convey the Property

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MSC Resolution No. 2014-XX
Exhibit A

to the Developer or the Developer to acquire the Property to the MSC but rather merely sets forth the terms for such a conveyance if the Parties are able to reach agreement on the terms of a DDA.

3. Schedule of Performance. Developer has submitted to the MSC a Schedule of Performance, attached as Exhibit C. Execution of this First Amendment evidences the MSC's approval of the attached Schedule of Performance.

4. Effect of Amendment. Unless otherwise amended herein by this First Amendment, the ENRA shall remain in full force and effect. In the event of a conflict between this First Amendment and the ENRA, this First Amendment shall control. All capitalized terms not otherwise defined in this First Amendment shall be defined in accordance with the ENRA.

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

DEVELOPER:

Build Inc. a California corporation

By: _____

Its: _____

MSC:

El Cerrito Municipal Services Corporation, a
California nonprofit public benefit corporation

By: _____
Scott Hanin,
Executive Director

EXHIBIT A

PROPERTY LEGAL DESCRIPTION AND MAP

PROPERTY LEGAL DESCRIPTION

McKillop (1925 Kearney St. APN 502-062-003)

Real property in the City of El Cerrito, County of Contra Costa, State of California, described as follows:

LOTS 19 AND 20, BLOCK 2, AS SHOWN ON THE MAP OF "RICHMOND JUNCTION", FILED MAY 6, 1913, BOOK 9 OF MAPS, PAGE 221, IN THE OFFICE OF THE COUNTY RECORDER, CONTRA COSTA COUNTY CALIFORNIA.

APN: 502-062-003

Valente (11600 San Pablo Ave. APN 502-062-029)

Real property in the City of El Cerrito, County of Contra Costa, State of California, described as follows:

LOTS 1 THROUGH 12, INCLUSIVE AND LOTS 21 THROUGH 32, INCLUSIVE, IN BLOCK 2, AS SHOWN ON THE MAP ENTITLED, "RICHMOND JUNCTION", CONTRA COSTA CO., CALIFORNIA, FILED ON MAY 6, 1913 IN BOOK 9 OF MAPS, AT PAGE 221.

EXCEPTING THEREFROM:

THAT PORTION AS CONDEMNED TO THE PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH THE DEPARTMENT OF TRANSPORTATION, RECORDED NOVEMBER 6, 1995, AS INSTRUMENT NO. 95-193521, OFFICIAL RECORDS.

APN: 502-062-029

Christiansen (11690 San Pablo Ave. APN 502-062-028)

Real property in the City of El Cerrito, County of Contra Costa, State of California, described as follows:

LOTS 13, 14, 15, 16, 17 AND 18, IN BLOCK 2, AS SHOWN ON THE MAP OF RICHMOND JUNCTION FILED MAY 6, 1913, IN BOOK 9 OF MAPS 1 PAGE 221, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY.

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN THAT CERTAIN GRANT DEED FROM THE REDEVELOPMENT AGENCY OF THE CITY OF EL CERRITO, TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 17, 1994 SERIES NO. 94-46446 WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOTS 13 THROUGH 16, INCLUSIVE 1 IN BLOCK 2 AS SHOWN ON THE MAP ENTITLED "RICHMOND JUNCTION" FILED MAY 6, 1913, IN BOOK 9 OF MAPS, AT PAGE 221, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT A CITY OF RICHMOND MONUMENT, AT THE INTERSECTION OF SOUTH

50TH STREET AND WALL AVENUE, AS SHOWN ON THE MAP ENTITLED "SUBDIVISION 2972 IN THE CITY OF RICHMOND, CONTRA COSTA COUNTY, CALIFORNIA" FILED JUNE 6 1 1963 IN BOOK 93 OF MAPS AT PAGE 12 IN THE OFFICE OF THE RECORDER OF CONTRA COSTA COUNTY 1 HAVING CALIFORNIA STATE PLANE COORDINATES OF N=525042.222 1 E=1474512.420 1 1927 DATUM, ZONE 3 1 FROM WHICH A CITY OF RICHMOND MONUMENT, MARKING AN ANGLE POINT IN SOUTH 50TH STREET, AS SHOWN ON SAID MAP AND HAVING CALIFORNIA STATE PLANE COORDINATES OF N=524763.819, E=1474629.806, 1927 DATUM 1 ZONE 3, BEARSS 22° 51' 44" E 1 302.14 FEET;

THENCE, S 66° 00' 25" E 1 1263.30 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE 1 FROM A TANGENT WHICH BEARS S 62° 01' 02" W, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 10.00 FEET, THROUGH AN ANGLE OF 90° 00' 00", A DISTANCE OF 15.71 FEET;

THENCE, S 62° 01' 02" W 2.00 FEET;

THENCE, S 28° 55' 10" E, 87.41 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 13;

THENCE, ALONG SAID SOUTHEASTERLY LINE, S 61° 59' 39" W, 3.21 FEET TO THE MOST SOUTHERLY CORNER OF SAID LOT 13;

THENCE, ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK 2, N 28° 00' 21" W 99.99 FEET TO THE MOST WESTERLY CORNER OF SAID BLOCK 2;

THENCE, ALONG THE NORTHWESTERLY LINE OF SAID BLOCK 2 1 N 61° 59' 39" E 1 13.02 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A", FROM WHICH THE TRUE POINT OF BEGINNING BEARSS 21° 58' 58" E;

THENCE, S 27° 58' 58" E 1 2.60 FEET TO THE TRUE POINT OF BEGINNING.

Development Site:



EXHIBIT B
TERM SHEET

Mayfair Term Sheet

This Term Sheet is entered into as of _____, 2014 by and between the El Cerrito Municipal Services Corporation, a California nonprofit public benefit corporation ("MSC") and Build Inc., a California Corporation ("Developer") and sets forth the basic terms for Build's proposed purchase and development of that certain Property more particularly described in Exhibit A attached.

1. Purpose. The purpose of this Term Sheet is to set forth the preliminary terms that have been negotiated between the MSC and the Developer with respect to the purchase of the Property by Build and its subsequent development in accordance with the provisions of that certain Exclusive Negotiating Rights Agreement entered into by the MSC and Build dated July 15, 2013 as amended by the First Amendment to the Exclusive Negotiating Rights Agreement dated _____ ("ENRA"). The acquisition of the Property by Build and its subsequent development will not occur until the Parties have negotiated the terms of a Disposition and Development Agreement ("DDA") and all pre-disposition conditions set forth in the DDA have been met. Additionally, the purchase and development of the Property will not proceed until all environmental reviews required by the California Environmental Quality Act ("CEQA") have occurred.

2. Preliminary Terms.

1. Purchase Price and Terms: The purchase price for the Property to be paid by Build to the MSC shall be not less than Two Million Two Hundred Sixty Thousand Dollars (\$2,260,000). The purchase price shall be paid in full at Close of Escrow, provided, however, if Build is able to negotiate assumption of the existing Valente Promissory Note, Build may pay the purchase price by paying to the MSC the difference between the purchase price and the outstanding balance of the Valente Note in cash and assuming the Valente Promissory Note.
2. Close of Escrow: Escrow shall close within 60 days following the satisfaction of the pre-disposition conditions in the DDA. The pre-disposition conditions shall include:
 3. Developer will have obtained all necessary entitlements for the development of the Property consistent with the conceptual development plans approved by the City;
 4. The City of El Cerrito will have conducted and, if appropriate, certified the environmental review required for the proposed development under CEQA and the Developer will have incorporated any mitigation measures adopted by the City into the proposed development.
 5. The Developer will have submitted for the MSC's approval evidence of financing demonstrating financing sufficient to construct the Development, including evidence of any equity investments and loans;
 6. There will have been no material adverse change in the title or physical condition of the land comprising the Property not caused by the Developer, including any environmental contamination, after the Developer's inspection of the Property during the Due Diligence Period pursuant to the ENRA.
 7. the MSC will deliver the Property free of all leases and occupancies other than those previously approved by Developer.

- B. Hiring and Employment Practices. The DDA will incorporate requirements that the Developer demonstrate to the MSC that it has made good faith efforts to hire contractors for the construction of the Development who will employ union labor.
- C. Closing Costs: At Closing, title to the Property will be conveyed to the Developer subject only to real estate taxes not yet due and payable, the Valente Note, if assumed by the Developer, and such other exceptions to title as have been approved by the Developer or created by the Developer. At Closing, Developer will pay escrow fees, title insurance costs, recording fees, transfer taxes and similar costs in connection with the transfer of the Property to the Developer.
- D. Option Payments. In addition to the Purchase Price, the Developer shall, commencing on November 1, 2014 and continuing each November 1st thereafter until such time as Developer has acquired the Property or the DDA has been terminated, pay to the MSC, as consideration for Developer's option to acquire the Property, the amount of Fifty Thousand Dollars (\$50,000). All such payments are non-refundable.
- E. Commissions: There are no real estate commissions arising out of this transaction.
- F. Due Diligence: Following approval of this Term Sheet, and continuing through the Negotiating Period in the ENRA, Developer, at Developer's sole cost and expense, shall have the right to inspect the Property and conduct tests and/or measurements thereon, including survey, soils, geotechnical, and environmental studies. Developer's entry onto the Property to conduct such tests and inspections shall be in accordance with the Right of Entry included in the ENRA and Developer shall comply with all of the requirements contained in the ENRA prior to entering the Property.
- G. Assignment: Developer shall not transfer or assign any or all of its rights or obligations under the ENRA or this Term Sheet except with the prior written consent of the MSC, which consent may be granted or withheld in the MSC's sole discretion. Notwithstanding the preceding sentence, the Developer may assign its rights and obligations under this Term Sheet to a single purpose limited liability company wholly owned and controlled by the Developer, provided such entity assumes all of Developer's obligations and the MSC has approved such assignment agreement and provided further that the Developer demonstrates that such entity is capitalized sufficiently to undertake the obligations set forth herein and in the ENRA.
3. No Impact on CEQA. In order to comply with the California Environmental Quality Act ("CEQA") and give the public an opportunity to be aware of the environmental consequences of the development of the Property and to fully participate in the CEQA process, the MSC retains the absolute sole discretion to (i) modify the transaction, create and enter into transactional documents and modify the development as may, in its sole discretion, be necessary to comply with CEQA, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the development against any significant environmental impacts prior to taking action if such significant impacts cannot otherwise be avoided, and/or (iv) determine not to proceed with the development of the Property. No legal obligation will exist unless and until the parties have negotiated, executed and delivered

mutually acceptable agreements based upon information produced from the CEQA environmental review process and on other public review and hearing processes, subject to all applicable governmental approvals.

By signing below, the Parties evidence their general agreement with the provisions of this Term Sheet and agree to use this Term Sheet as the framework for the good faith negotiations of a binding DDA. Any agreement resulting from negotiations will become effective only if and after such agreement has been considered and approved by the MSC following conduct of all legally required procedures.

DEVELOPER:

Build Inc. a California corporation

By: _____

Its: _____

MSC:

El Cerrito Municipal Services Corporation, a
California nonprofit public benefit corporation

By: _____
Scott Hanin,
Executive Director

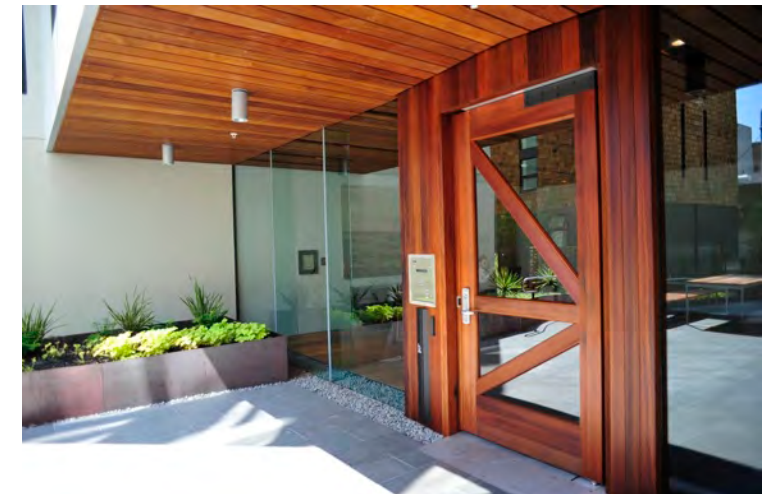
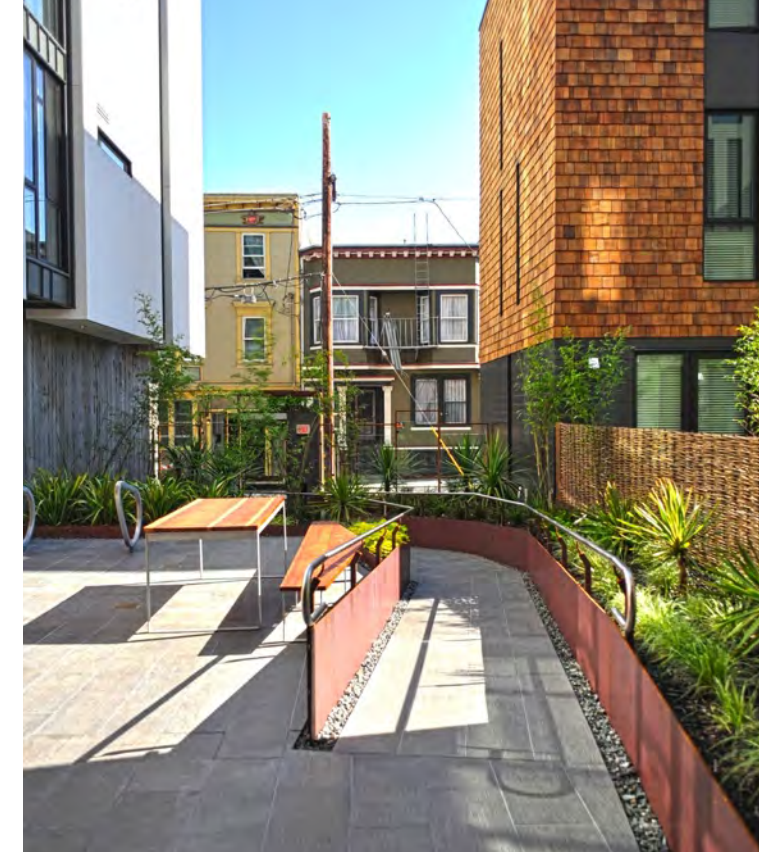
EXHIBIT C SCHEDULE OF PERFORMANCE

This Schedule of Performance summarizes the schedule for various activities related to the development of the Property. The description of items in this Schedule of Performance is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the ENRA.

Whenever this Schedule of Performance requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the City or other applicable governmental entity within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

	Action Item	Date for Completion
1.	Developer submits pre-application including: site plan, conceptual floor plan, elevations and written description of proposal with uses, number and style of units	July 1, 2014
2.	Developer and City Staff develop Letter Agreement or similar document setting out pre-entitlement/pre-Specific Plan process	July 30, 2014
3.	Community Open House and Design Review Board presentations to solicit community input	August – October 2014
4.	City staff prepare memo analyzing the projects consistency with the goals and objectives of the Specific Plan and the environmental review submitted (for informational purposes and does not constitute formal approval or disapproval of the proposed development)	September 30, 2014
5.	City certifies Final EIR, approves San Pablo Avenue Specific Area Plan and any related zoning & General Plan amendments	October, 2014
6.	Developer submits final application for project entitlements (including final design package and community benefits proposal) to the City including any required CEQA analysis	October 31, 2014
7.	Project-level CEQA document published	November 2014
8.	Design Review Board Approval of Project Design	December 2014
9.	Approval of DDA by MSC (including any necessary ancillary agreements)	February 2015
10.	Developer submits evidence of financing for development to the MSC	March 30, 2015
11.	Close of escrow/acquisition of Property from MSC	April 30, 2015
12.	Project Building Permit issued	April 30, 2015

13.	Construction commences	May 31, 2015
14.	Completion of Construction/Occupancy	January 2017

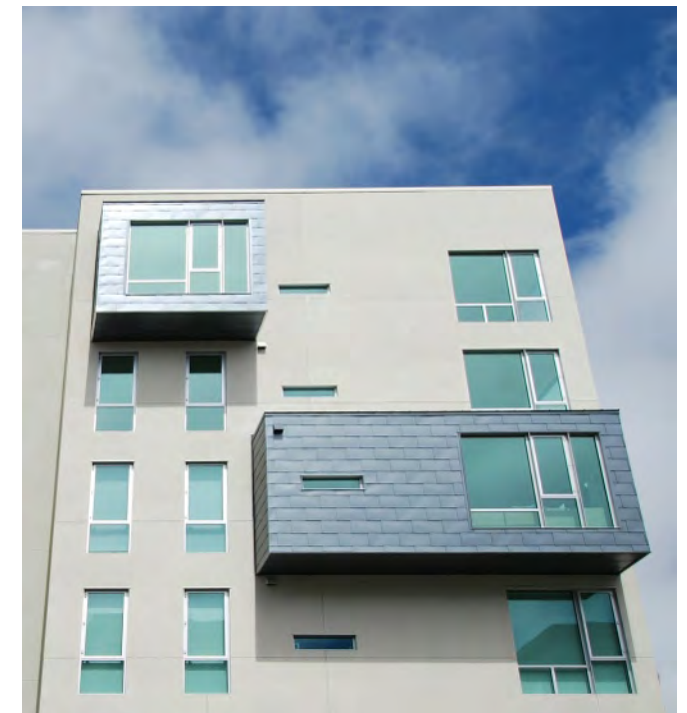
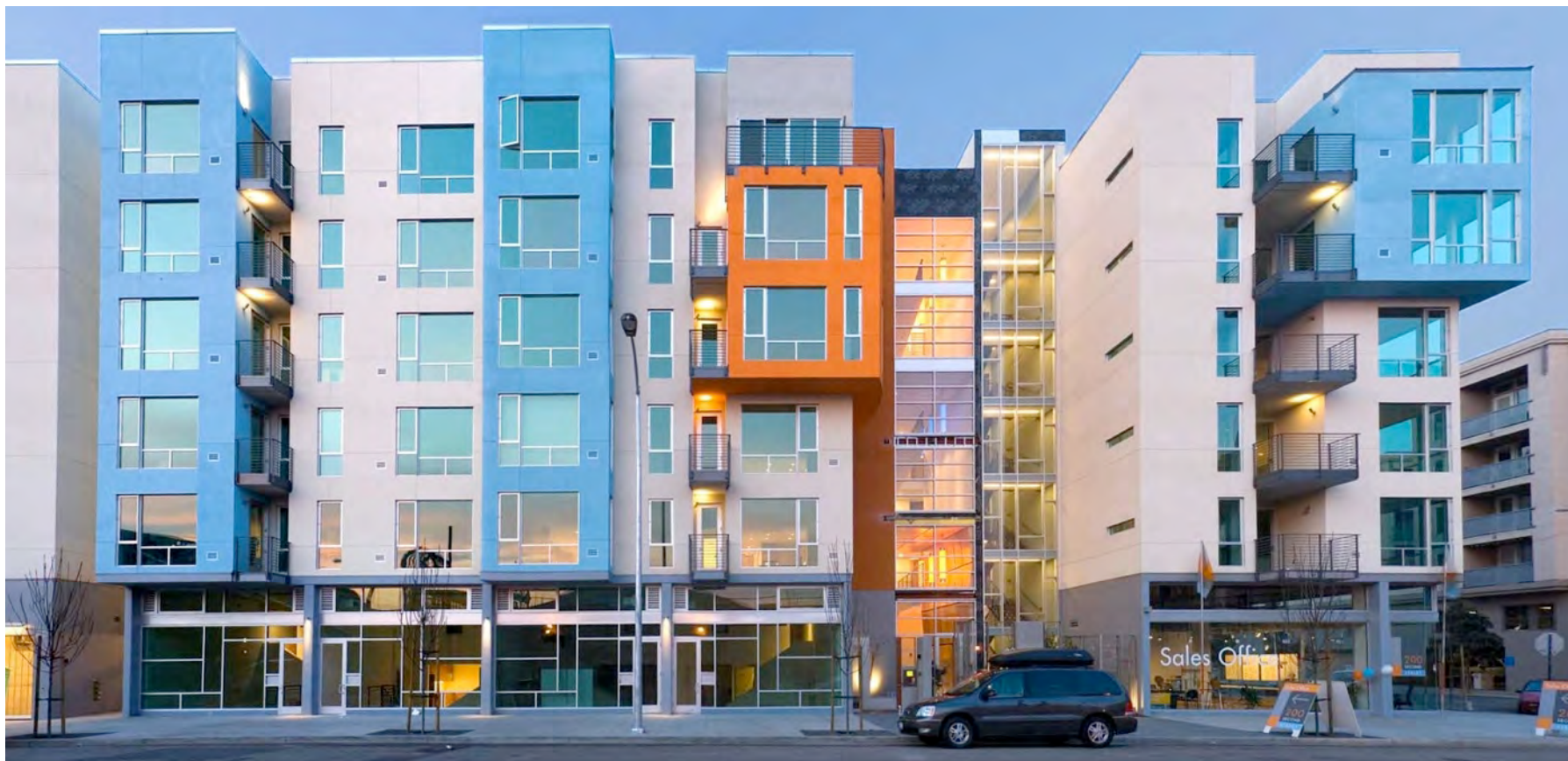




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El Cerrito Del Norte TOD Residential Precedents















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