



MAYOR & COUNCIL COMMUNICATION

August 6, 2008

Subject: Approval of a Development and Real Estate Purchase Agreement with The Gadsden Company for the West Congress 14-acre parcel (Ward 1) Page: 1 of 4

Issue: On February 21, 2008 the Mayor & Council's Rio Nuevo/Downtown, Arts, Culture & History Subcommittee directed staff to negotiate the terms of a development agreement with Gadsden. Gadsden is the preferred developer of 14 acres of vacant land on the west side of downtown, south of Congress and west of the Santa Cruz River. Gadsden's conceptual master plan for the property includes retail, hotel, office, restaurant and residential uses having an end value that is likely to be in excess of \$300,000,000. This is illustrated in detail in the attached Development Agreement (same as Exhibit to Resolution). Their plan embraces the neighborhood's vision for the area, and the neighborhood is on record in support of the project. Gadsden intends to deliver high quality, sustainable and contextually appropriate urban design. There are 400 planned housing units and 35%, or 140, are designated as workforce (80-125% median) and affordable (<80% median) units (split equally).

Recommendation: Key objectives in negotiating the agreement were to: provide adequate incentive for the developer to undertake the project (risk); achieve the highest quality development and greatest community benefit possible; retain a reasonable extent of control or interest in the real estate to guard against speculation and protect the City and community in case of non-performance; and, get fair compensation for the real estate. The attached agreement sets forth the mutual obligations of the City and Gadsden, and it is recommended for approval.

Background: It was the Subcommittee's direction to negotiate a fair and equitable agreement for both parties with particular emphasis on establishing performance obligations and remedies in case of default. To that end, staff and the City Attorney's Office worked with Gadsden over the course of several months to establish values, methods of compensation, housing goals, acquisition phasing, and related terms and conditions. The more substantive deal points are summarized below.

Purchase price: Gadsden's offer to purchase, less credits discussed below, is \$3,296,033.00. This is based upon appraisals obtained by Gadsden with a concluded value of \$9.50 per square foot. That is \$0.50 per square foot less than the City's appraisal, but deemed reasonable given current adverse economic conditions (housing and capital markets) and extent of developer risk.

The negotiated offer amount was derived as follows:

- gross land area is 14.3 acres, valued unimproved at \$9.50/sf = \$5,929,853

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- less parking garage block (.94 acres, \$389,795) in consideration of dedicating xx unrestricted public parking spaces
- less public market block (1.12 acres, \$464,436) in consideration of economic feasibility of the market concept and for intended community benefits (the public market, or mercado, shall have a charter for public good giving local vendors, artisans, restaurants and would-be entrepreneurs an affordable place to operate their businesses)
- less block "a" (1.88 acres, \$779,589) in consideration of affordable housing development (70 units)

- net 10.36 acres valued at 9.50/sf = \$4,296,033
- less \$500,000 credit to Gadsden for workforce housing development (70 units)
- less \$500,000 credit to Gadsden for public improvements along Santa Cruz River

- adjusted purchase price due City = \$3,296,033

- cash from Gadsden = \$250,000 (to housing trust fund to underwrite first 35 affordable units)
- cash equivalent from Gadsden = \$3,046,033 to be made in streetcar investments for the City

- in addition, Gadsden contributes 1% of its residential sale proceeds, or ~\$1.3m, to the housing trust fund to enable the City to underwrite affordable units in future phases of the project and elsewhere (no payment on sales to affordable unit buyers)

Acquisition: The development agreement permits Gadsden to acquire the land in 4 phases. This is illustrated in the attached phasing diagram. The agreement is structured in a way that Gadsden can commence workforce and affordable housing development on a part of the site while at the same time it prepares planning and engineering documents for PAD and infrastructure approvals for the entire project area.

- Phase One: 1 block of real estate on or before March 31, 2009, and after Gadsden has demonstrated financial ability and obtained permits for partial infrastructure work, and, has obtained entitlements for all other Phase 1 improvements.

- Phase Two: 4 additional blocks within 24 months of the Phase 1 closing, and after Gadsden has: (a) completed infrastructure work and commenced vertical improvements valued at least \$10,000,000 in Phase 1; (b) secured all zoning and land use entitlements for the entire project area; (c) completed engineering and obtained permits for infrastructure work on the entire site, including streetcar track; and (d) closed a construction loan in amount adequate for all infrastructure and streetcar work.

- Phase Three: 2 additional blocks within 36 months of the Phase 1 closing, and after Gadsden has completed and conveyed to the City all streetcar and infrastructure in the

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project area, and, commenced vertical development in Phase 2 with a value of at least \$15,000,000

- Phase Four: 1 remaining block no later than 48 months after the Phase 1 closing, and after Gadsden has satisfactorily performed under all other terms of the agreement and the City has caused the removal of the property from floodplain maps.

Performance: The attached development schedule was prepared by Gadsden and is attached to the agreement. It is the means by which the City and community can measure performance. The City will receive a \$50,000 option fee from Gadsden upon execution of the development agreement. This fee is at risk until the Phase 3 closing. The City will also receive a \$250,000 performance bond at the Phase 1 closing; that will increase to \$500,000 at the Phase 2 closing. This bond will be at risk until the last block of real estate is conveyed. These deposits are to ensure the project is built out in conformance with the approved plans and PAD, and, that it is done in a timely manner. It is very important to recognize the volatility of the real estate market and the economy, and thus that schedules are subject to adjustment.

City obligations: Gadsden's success relies on the City to deliver certain improvements to the site and the surrounding area in a timely manner. This agreement obligates the City to make its best effort to complete such projects and activities that coincide with Gadsden's development plans.

These include:

- bringing impacted areas out of floodplain
- establishing mutually acceptable rough grade tolerance prior to closing(s)
- planned cultural plaza is brought to grade
- completing off-site environmental remediation activity west of that plaza
- making available all current incentives and benefits, and additionally, permit fee waivers of up to \$10,000 for each of the 8 blocks and infrastructure project(s) within the project area, provided Gadsden does not opt for 3rd party review
- completing modern streetcar improvements
- constructing the planned bridge over the Santa Cruz River
- entering into separate agreement for public improvements as typically required by the Department of Transportation
- paying a 5% fee for streetcar track construction management services Gadsden will perform as alternative compensation for the real estate
- cooperating with Gadsden to develop mutually agreeable land use restrictions for public land west of the cultural plaza, provided such restrictions do not limit the City and/or a future developer's ability to deliver projects sought by the community

Financial considerations: The land was purchased with CDBG funds for \$2.4 million as part of a 68-acre acquisition in 1982. Any net sale proceeds should be returned to the City's CDBG fund.

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Legal considerations: This agreement was negotiated and drafted in consultation with the City Attorney. A resolution approving the Agreement and authorizing the Mayor to sign it is attached.

Respectfully submitted,



Mike Hein
City Manager

MH:GShelko:vm
Downtown Development

Attachment: Resolution