



Staff Reports

File #: 1044-2017, **Version:** 1

To: Honorable Mayor and Members of City Council

From: Nancy Weiss, Interim City Manager

Prepared By: Jacques LaRochelle, Public Works Director

TITLE:

Civic Center and Downtown West End Gateway Project (JL FC15PW02) to develop a new joint Public Safety and City Administration building at 1600 First Street, 1115 Seminary Street, and 1511 Clay Street, and sell excess City land at 955 School Street and 930 Seminary Street, for private development (the "Project")

RECOMMENDED ACTION:

Adopt a resolution (1) Approving an Exclusive Negotiation Agreement for the Civic Center and Downtown West End Gateway Project with Plenary Properties Napa, LLC; (2) Approving Services Agreements with City Consultants to Provide Services During the Negotiation Phase of this Project, including: Project Management Services from Arup North America, Architectural and Technical Review, Real Estate and Negotiations Support Services from Jones Lang LaSalle Americas, and Environmental Review Services from FirstCarbon Solutions; (3) Approving Project Appropriations in the Amount of \$1,295,880; and (4) Approving an Appropriation in the amount of \$2,600,000 of General Fund Operating Reserve, as Security for Potential Payment of Termination Payments under the Exclusive Negotiation Agreement.

DISCUSSION:

Overview

As an implementation of direction provided by City Council at the meeting of May 30, 2017, City staff recommends that the City Council: (1) approve the Exclusive Negotiation Agreement ("ENA") for the Civic Center and Downtown West End Gateway Project ("Project") with the Developer Plenary Properties Napa ("PPN"), which establishes the processes to be followed for the preparation of design documents, financing documents, and project agreements for the Project; (2) appropriate funds necessary to proceed with activities required by the ENA to reach financial close for the Project; and (3) approve contracts and amendments with the City's expert technical consultants to provide the services that are necessary to implement the terms of the ENA. Upon City Council's approval of staff's recommendation, the City's Project Team of key City staff and expert consultants will negotiate final project agreements with PPN.

Generally, the project agreements, which are planned to be brought back to City Council for final approval in late 2018 or early 2019, will obligate PPN to: (1) design and construct a new Civic Center campus, comprised of: (a) a 130,193 gross square feet (GSF) Public Safety and City Administration Building, of which 18,000 GSF will be completed as cold shell on 4th floor, on the former "CSB Site" at 1600 First Street; (b) a 13,167 GSF Fire Station No. 1 on the current "Housing Authority Office Site"

at 1115 Seminary Street; and (c) a 271-stall Public Parking Structure on a surface parking lot at 1511 Clay Street (the “Clay Street Garage Expansion Site,” west of the existing Clay Street Garage) currently owned by the City; (2) provide long term operations and maintenance (“O&M”) services for the Civic Center campus that will be subject to key performance indicators; (3) purchase the Superblock site at fair market value and develop a hotel (250 keys +/- 25 keys, and 10,000 GSF of meeting and ballroom space), retail (approximately 40,000 GSF), residential (100 condominium units, +/- 10 units), and onsite parking structure to serve the private development. The exact square footages will be developed and the associated costs will be negotiated as part of the ENA process.

Background

Since City Council selected PPN as the preferred proposer for this Project, at the May 30, 2017 meeting, City staff and its expert consultants have been working closely with PPN to negotiate an ENA that identifies the key conceptual terms and processes by which the City and PPN will negotiate and execute the variety of project agreements needed to implement the Project, including the financing of the public facilities, the real estate transfers necessary for the Project, the design and construction of the public facilities, the operation and maintenance of the public facilities, and the entitlement and development of the private facilities.

For further background on the Project and the PPN proposal please refer to the staff report to City Council for the May 30, 2017 meeting and the materials available online on the City website: (http://www.cityofnapa.org/index.php?option=com_content&view=article&id=2265&Itemid=1255>).

The ENA and the Negotiations Process

The ENA is the principal document that will guide the negotiations between the City and PPN. The ENA, among other things, sets forth the rights and obligations of PPN and the City in the Project negotiations and establishes a timeline and performance milestones for producing, reviewing and agreeing to the terms of the various Project Agreements needed to obtain Project approvals, secure financing, and implement the Project. Importantly, the ENA also clarifies and consolidates the key commercial elements of the PPN proposal.

The ENA contemplates that all Project Agreements will be negotiated and approved within approximately one year, as described in the Performance Milestones in Exhibits C-1 and C-2 of the ENA. However, the ENA provides processes by which the Milestones may be extended, up to the “Negotiating Period” of two years, and the Negotiating Period is also subject to one 180-day extension if the City Manager determines there are extenuating circumstances. All Project Agreements are required to be brought to the City Council for final approval within the Negotiating Period.

It is important to recognize that, although the ENA contemplates concurrent project entitlement processing of public facilities (on the CSB Site, the Housing Authority Office Site, and the Clay Street Garage Expansion Site) and private development (on the Superblock Site), there will be no public funding provided for processing the private development components of the Project. PPN will pay fair market value for purchase of the Superblock Site, and PPN will pay all costs of processing project entitlements for the private development.

To meet the performance milestones and overall schedule in the ENA, the City and PPN will need to work closely together on a number of concurrent workstreams including community engagement, design and costing, entitlements, financial structuring and documentation, and development of the

Project Agreements. A summary explanation of the workstreams are provided below.

Community Engagement

City staff will lead a transparent public engagement effort for the design of the public facilities with support from PPN in addition to other public meetings required for entitlements or environmental review. This effort will include multiple community forums, specific stakeholder meetings, and project updates with Planning Commission and City Council. PPN will be creating and maintaining a project website that will provide current Project information and a way to provide comments and feedback for City staff and PPN.

PPN will lead the public engagement effort for the design of the private development, which will supplement the minimum legal requirements.

Given the proximity of the public and private components of the Project, City staff and PPN will coordinate the dissemination of the Project information and ensure information about each project component is made available to the extent possible at public forums. A Project-specific engagement plan will be created and followed as part of the ENA process.

Design and Costing

The design process for the public facilities will evolve the PPN technical proposal up to a point where PPN can submit for City review and approval, a fixed price proposal for design-build services and O&M services with limited contingency. City staff will be an active participant in an iterative design process with PPN, reviewing and approving design at completion of Schematic Design and at 50% Design Development. Detailed cost updates from PPN are required at each design milestone to ensure City staff understand (and can track) the impact of design decisions. If the fixed price proposal is agreed by the City, it will be memorialized in the Project Agreements and reflected in the financial model used to size the future City payments.

Entitlements

The public facilities entitlements are anticipated to include a design review permit and use permit for a new Civic Center campus, to include: (a) a 130,193 gross square feet (GSF) Public Safety and City Administration Building, of which 18,000 GSF will be completed as cold shell on 4th floor, on the former CSB Site at 1600 First Street; (b) a 13,167 GSF Fire Station No. 1 on the current Housing Authority Office site at 1115 Seminary Street; and (c) a 271-stall Public Parking Structure on a surface parking lot at 1511 Clay Street (the "Clay Street Garage Expansion Site," west of existing Clay Street Garage) currently owned by the City. The public entitlements are also anticipated to include the proposed abandonment of Washington Street (from First Street to Clay Street), and an abandonment of a portion of Clay Street (to facilitate construction of the new parking facility in front of the Clay Street Garage Expansion Site).

The entitlements for the private development are anticipated to include a use permit for a hotel, and a design review permit for PPN's proposed development of private uses on the Superblock Site (where the City Hall, police headquarters, and Fire Station No. 1 are currently), to include: a 250 key hotel (+/- 25 keys) with 10,000 GSF of meeting and ballroom space), approximately 40,000 GSF of retail, 100 residential units (+/- 10 units), and onsite parking structure to serve the private development.

Details regarding the exact nature of the entitlements and conditions of approval will be developed during the negotiations process and brought to Planning Commission and then to City Council for

final approvals.

Project Agreements

In order to implement the public facilities components of the Project, a number of Project Agreements will be required between the City and PPN including a ground lease, a facilities lease, a performance contract for design-build services, a performance contract for long term O&M services, and various financing documents such as the official statement, bond purchase agreements, an indenture, and opinions from counsel. A third party non-profit corporation may be required to effectuate the type of financing currently contemplated.

Implementation of the private development will necessitate a disposition and development agreement (“DDA”) between the City and PPN, and potentially other documents. The DDA will document any terms that the City imposes on PPN as conditions of sale of the Superblock Site.

Financial Structuring and Documentation

As summarized in the May 30 staff report, PPN proposes to use a “63-20 financing” for the public facilities where a non-profit corporation is created and issues tax-exempt lease revenue bonds to finance the governmental facilities. PPN proposed that 90% of the debt is publicly issued senior debt (debt that has the senior most claim on pledged revenues) and 10% of the debt is subordinate debt (debt that is junior in priority to senior debt) to be privately placed with Plenary. This subordinate debt would be held by PPN as an equity investment in the Project and the payments for the subordinate debt will be 100% subject to completion and performance risk, providing financial assurance that PPN maintains a stake in the Project over the long term and is incentivized to support the success of the Project.

During the negotiations process, the City and PPN will develop the necessary financial documentation to support the proposed financing for the public facilities.

The financing and the financing documentation required for the private development is the sole responsibility of PPN, which has Stanford and Cresleigh Homes as real estate development partners. However, PPN will be required to provide a pro forma with sufficient detail to demonstrate the estimated financial performance of the private development and the related tax revenue implications for the City.

Affordable Housing

PPN has committed, through the ENA, to construct affordable housing units in an amount that is at least 10% of the number of residential units to be built on the Superblock. Thus, based on the 100 to 110 residential condominiums to be built on the Superblock site, at least 10 to 11 affordable housing units will be built by PPN (or PPN’s housing partner) on an offsite location. When the entitlements for approval of the private development on the Superblock site are brought to City Council for approval, the affordable housing units to be built by PPN will be evaluated as an “alternative equivalent proposal” as a partial offset to affordable housing impact fees otherwise due under Napa Municipal Code Chapter 15.94 (particularly Section 15.94.070). It is anticipated that, in addition to the construction of 10 to 11 affordable housing units, the affordable housing impact fee owed for the remainder of the private development site will be approximately \$1,400,000 to \$1,500,000. City staff is continuing to work closely with PPN and its housing partner to evaluate the feasibility of other alternative equivalent proposals from PPN that may offset the fee to be paid. City staff is also independently evaluating how the City may leverage the fees from the Superblock Site to construct

other affordable housing units.

Swing Space

The simultaneous construction of public facilities and private development is necessary to accelerate the timing of tax revenues from the private development, which will help fund the City's payment obligations to PPN for the public facilities. This means the City will be required to move into temporary space at one or more locations during construction for a period of approximately 24-30 months. City staff are fully aware of the challenges this can create for the City in delivering ongoing services to the community.

Currently, staff are contemplating moving the Police Department into a new +/- 25,000 GSF building that would be constructed on the Corporation Yard where there is sufficient room to securely park vehicles and support ongoing storage requirements. The building would be a pre-engineered "Butler Building" or equivalent that would permanently house the Corporation Yard Division staff and operations once the Police Department moves into the new public facilities downtown. The Corporation Yard improvements are not part of the Project and City staff will seek City Council approval for them at a future date.

City staff is actively looking at temporary options for the rest of the City's departments that would maintain public accessibility needs and minimize disruption of the delivery of City services.

Importantly, the move into temporary space may need to occur by the end of 2018 if all the performance milestones in the ENA are to be met. Project staff is making department heads and their project representatives aware of this and examining the actions that each department may need to take to better ensure a successful move.

Access Agreement

Attached to the ENA as Exhibit D is an agreement between the City and PPN granting PPN access to the Project sites described in ENA Exhibits A-1 and A-2 (also shown in Attachment 3 to this report) to examine, inspect and perform investigations to evaluate the physical and environmental condition of the properties. The term of the agreement follows the ENA term unless it is otherwise terminated by either party or the PPN completes its investigations. The City will receive copies of all studies, reports, and assessments at no cost.

City Project Advisors Team

Given the scale and highly technical nature of this project, there are a number of services that are required to support the project such as project management, special legal counsel, financial advisory, architectural and technical review, environmental planning, construction management, and plan review and inspection services. Each project phase (as described below) will require a combination of such services.

Project Phase	Description	Status
Phase 1	Up to recommendation to City Council for authorization to begin negotiating Exclusive Negotiating Agreement.	<i>Complete - staff recommendation to City Council presented on May 30, 2017.</i>

Phase 2 A	ENA Development	<i>Complete - staff recommendation to City Council presented on September 5, 2017.</i>
Phase 2 B	Project Agreements, Entitlements, Negotiations & Execution	<i>To commence upon execution of the ENA</i>
Phase 3	Plan Development & Review, Swing Space Planning and Implementation	<i>To commence in parallel to Phase 2B and complete during Phase 4</i>
Phase 4	Construction	<i>As required by the project agreements</i>
Phase 5	Operations and Maintenance	<i>As required by the project agreements</i>

What follows is a summary of City staff's recommended approach for retaining services from the expert consultants that are necessary to carry out future phases of the Project with a particular focus on Phase 2 B Project Agreements, Negotiations & Execution and Phase 3 Plan Development & Review, which will have some parallel activities to Phase 2B such as swing space planning and implementation.

Project Manager: Arup North America Ltd (Arup)

Staff identified the need to hire a project management firm with direct experience negotiating and managing projects with a Design Build Finance Operate Maintain (DBFOM) delivery model.

On March 1, 2017, City staff issued an RFP for Project Management Services related to the Project. On March 27, 2017, the City received proposals from four firms. Based on evaluation criteria contained in the RFP, it was determined that Arup North America, Ltd. (Arup) was the preferred firm to provide the desired project management related services to the City for the Project. Arup showed extensive experience providing project management for similar projects in California, including the Long Beach Civic Center Project. They provided a quality proposal, expressing a good understanding about the Project and demonstrated technical ability. The staff proposed on the project management team has direct experience working on the Long Beach Civic Center Project and came highly recommended by those involved with the project in addition to high recommendations from two members of the City's existing project team. Those individuals conducting Construction Management and Owner's Representative tasks have been working as imbedded staff into the City of Long Beach's staff. The RFP review committee saw this as a distinctive advantage and benefit for the Arup team as the City envisions this process to be similar to Long Beach's. Additionally, exposure and understanding of the day-to-day municipal culture and process will help this team quickly acclimate to the City of Napa. Overall, the committee recommended Arup's proposal and team would be the best fit with the City's project team and organizational culture.

Following the City Council's direction to begin the ENA process, staff contracted Arup for an initial scope not to exceed \$124,500 to help the City prepare for and begin the ENA negotiations process and prepare a project management plan. The proposed Amendment No. 1 provides a scope of work and estimated costs to provide project management services to manage the overall Project for the City, coordinate the City's advisor team through all phases of the project as outlined above, construction oversight, tracking and reporting the private development process, and ensuring the City's contractual obligations in the Project Agreement(s) are met. Estimated not to exceed costs are outlined below:

Phase	Fee Estimate	Encumbrance Schedule
<i>Initial Scope of Work</i>		
Phase 1: Initial Scope of Work (ENA Prep & Project Management Plan)	44,230	FY 16/17
Phase 2A: Contract Negotiations Expenses	77,640 2,630	
SUBTOTAL Initial Scope	\$124,500	
<i>Amendment No. 1</i>		
Phase 2B: Contract Negotiations	875,120	FY 17/18 and FY 18/19
Phase 3: Plans and Development Review Expenses	801,720 35,000	
SUBTOTAL Amendment No. 1	\$1,711,840	
GRAND TOTAL	\$1,836,340	

Architectural and Technical Review: Jones Lang LaSalle Americas Inc.

To support the project team during negotiations, it was determined that additional technical building specifications review, pricing, and architectural review services were needed in order to help review and analyze the developer's negotiation proposals and design refinement proposals.

JLL has provided the City with consistent technical services during Phase I of the Project. The proposed Amendment No. 3 in the amount of \$43,000 includes technical building specifications, pricing, and architectural review services in support of negotiations in Phase 2B.

Real Estate Advisory and Negotiations Support Services

To support the project team during negotiations, it is anticipated that additional real estate advisory services will be needed to analyze and comment on the developer's real estate proposals and terms. Further, it is anticipated JLL will be needed to help support negotiations of the design and cost workstream leading up to and including the fixed price proposal as well as certain O&M provisions in the Project Agreements. JLL is currently providing these services under contract amendment no 2, which ends September 2017.

JLL has provided the City with consistent technical services during Phase I of the Project. The estimated amount for real estate advisory and additional negotiations support services to the end of Phase 2B is \$265,000.

Financial Services

Public Financial Management (PFM) is currently contracted with the City to provide a broad range of financial services to the City's Finance Department. Given PFM's familiarity with the City's finances, as well as having specific experience as a financial advisor for 63-20 financings, the Finance Director has retained PFM, as part of the existing contract, to provide ongoing financial services to the Project.

Legal Services

Due to the complex legal structure of the proposed public project as a design, build, finance, operate, and maintain (“DBFOM”) project, as well as the component elements of the concurrent private development which will include a disposition and development agreement (“DDA”) for the sale of excess City property at fair market value under specified terms of private development, the City Attorney solicited proposals and interviewed three law firms with substantial experience with the negotiation and documentation of similar contractual structures. After evaluating the respective qualifications and experience of the competing firms, along with an evaluation of references, the City Attorney selected the firm of Sheppard Mullin Richter and Hampton LLP (“Sheppard Mullin”) to provide the primary legal services for this project related to the drafting of Project Agreements under the ENA.

In addition to the negotiation and drafting of Project Agreements, the estimated legal services for this project are also anticipated to include bond counsel and related legal services necessary for the debt financing to support the costs of the public project. The City team is still in the process of evaluating candidate firms for financial legal services. Additionally, the legal services for this project will include project entitlements and review of environmental documents, in compliance with the California Environmental Quality Act, and the City will contract to receive those services from the firm of Jarvis Fay Doport and Gibson.

Environmental Planning Services

In order to analyze potential environmental impacts of the Project, in accordance with the requirements of the California Environmental Quality Act (“CEQA”), the City is in the process of finalizing a scope of services and agreement with an environmental consultant, First Carbon Solutions (“First Carbon”). First Carbon is uniquely qualified to provide environmental consulting services for this Project, since the City has recently retained First Carbon to provide similar environmental analyses for other proposed projects within the Downtown Specific Plan, and the City anticipates relying, in part, on environmental analyses previously performed under the Downtown Specific Plan Environmental Impact Report (which was certified by the City in 2012). It is anticipated that the Project approvals that will be evaluated by First Carbon will include Design Review Permit, Use Permit and a General Plan Consistency Analysis for the public facilities, and a General Plan Amendment, Zoning Ordinance Amendment, Use Permit, and Design Review Permit for the private project components. The estimated cost of First Carbon’s services in the amount of \$175,000 is included as a part of the attached budget resolution. However, as previously described in this report, all costs of private development will be paid by PPN.

Stipend Payment

When the City initially issued the request for proposals (“RFP”) for this Project, on November 7, 2016, the City Council agreed to pay a “stipend” of \$100,000 to any proposer who complied with the requirements of the RFP, but was not selected by the City as the preferred proposer. As a result of the RFP, two proposers complied with the requirements of the RFP and presented proposals to the City Council on May 30, 2017: PPN and Strada/Scannell Napa, LLC (“Strada/Scannell”). Since the City Council selected PPN as the preferred proposer, the City will make the stipend payment of \$100,000 to Strada Scannell, as required by the ENA.

FINANCIAL IMPACTS:

Total estimated City support costs for the Project during the negotiations process contemplated in the

ENA are included in the FY 2017/18 and 2018/19 Two-Year Budget's Capital Improvement Program within the Facilities Capital Improvement Fund (FC15PW02). However, Staff estimates \$1,295,880 funds budgeted for FY2018/19 are needed in FY2017/18 to meet all of the City's obligations under the ENA and other Project support costs. The table below shows all costs already encumbered and/or paid by project phase for each vendor, anticipated additional funds needed for FY2017/18 and FY2018/19 for the City to complete all anticipated work under the ENA for each vendor and/or service areas, and the proposed appropriation request for FY 17/18.

VENDOR / SERVICE	PHASE	AMOUNT	FY 17/18 FUNDING NEEDS	FY 18/19 FUNDING NEEDS
ARUP NORTH AMERICA	Encumbered and/or Paid to Date	\$124,500		
	Phase 2 (Contract Amendment No 1)	\$875,120	\$1,250,000	\$461,840
	Phase 3 (Contract Amendment No 1)	\$801,720		
	Expenses (Contract Amendment No 1)	\$35,000		
	Contract Total	\$1,836,340		
JONES LANG LASALLE AMERICAS	Encumbered and/or Paid to Date	\$850,000		
	Phase 2 (Contract Amendment No 3)	\$43,000	\$218,000	\$90,000
	Phase 2 (Anticipated)	\$265,000		
	Contract Total	\$1,158,000		
PFM	Encumbered and/or Paid to Date	\$155,020		
	Phase 2 (Anticipated)	\$125,000	\$100,000	\$25,000
	Contract Total	\$280,020		
LEGAL SERVICES	Encumbered and/or Paid to Date	\$249,000		
	Phase 2 (Anticipated)	\$1,250,000	\$833,333	\$416,667
	Total Estimated Legal Fees	\$1,499,000		
ENVIRON. PLANNING SERVICES	Phase 2 (Anticipated)	\$175,000	\$175,000	\$0
	Contract Total	\$175,000		
FY 17/18 Funding Needed			\$2,576,333	\$993,507

FY 17/18 10% Contingency			\$257,633	\$99,351
Current Project Balance (Including Encumbrances)			(\$1,538,087)	\$0
FY 2017/2018 Proposed Budget Appropriation			\$1,295,880	\$1,092,857

The requested appropriation of \$1,295,880 FY 18/19 funds for use in FY 17/18 would leave approximately \$1,704,120 in FY 18/19 budget, which is sufficient to cover the estimated project funding needs in that timeframe. Please see the table below for details.

	FY 17/18	FY 18/19
Current Budget (FC15PW02)	\$2,200,000	\$3,000,000
Appropriation Supplement/(Reduction)	\$ 0	\$(1,295,880)
Paid to Date	\$(101,853)	\$ 0
Existing Encumbrances	\$(560,060)	\$ 0
Estimated FY Funding Needs	\$(2,833,967)	\$(1,092,857)
Estimated Surplus/(Shortfall)	\$(1,295,880)	\$611,263
FY 17/18 Appropriation Request	\$1,295,880	\$ 0

In addition to the City support costs for the Project, summarized above, upon the City Council's approval of the ENA, the City is required to appropriate sufficient funds to cover the costs of a potential termination payment. As defined by ENA Section 16 (see Attachment 2), if: (1) the City terminates the ENA or is in default of its obligations under the ENA, prior to financial close and execution of the Project Agreements, and (2) PPN complies with all obligations under the ENA, including providing valuable "Project Materials" to the City, then the City is required to make a termination payment to PPN in a graduated amount (depending on what Performance Milestones PPN has successfully completed) up to a maximum termination payment of \$2,600,000. To prepare for the unexpected event the City would have to make a termination payment during the negotiations process, the recommended resolution includes an appropriation of \$2,600,000 in General Fund Reserves.

CEQA:

The Public Works Director has determined that the Recommended Action described in this Staff Report is not in-and-of-itself a "project" (pursuant to CEQA Guidelines Section 15378) since it does not result in a physical change in the environment.

However, the Recommended Actions are a part of a larger "project" that will be subject to environmental review in accordance with CEQA at the "earliest feasible time" prior to "approval" consistent with CEQA Guidelines Sections 15004 and 15352. The larger "project" is "to Design and Build a New Public Safety and City Administration Building as well as to Develop Excess City Land

with Private Uses,” and staff plans to bring back a CEQA analysis of that project to Council prior to approval of the Project Agreements that commit the City to construction of the Project.

DOCUMENTS ATTACHED:

ATCH 1 - Resolution approving the ENA between the City of Napa and Plenary Properties Napa LLC; Approving service agreements with vendors to provide support work during negotiations; Approve Project appropriations in the amount of \$1,295,880; and Approving appropriation of General Fund Operating Reserve

ATCH 2 - EXCLUSIVE NEGOTIATION AGREEMENT FOR CIVIC CENTER AND DOWNTOWN WEST END GATEWAY PROJECT BETWEEN THE CITY OF NAPA AND PLENARY PROPERTIES NAPA, LLC

ATCH 3 - Site Plan of properties involved in the Project

ATCH 4 - Amendment No. 1 to Agreement No. C2017 213 with Arup North America Ltd.

ATCH 5 - Amendment No. 3 to Agreement No. C2015 033 with Jones Lang LaSalle Americas

NOTIFICATION:

Stuart Marks, PPN