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VIA E-MAIL

Re: Republic Metropolitan, LLC Transit-Oriented Affordable Housing Project

To Whom it May Concern:

On behalf of Republic Metropolitan, LLC ("ReMet"), please see below the legal authority supporting approval of ReMet's proposed transit-oriented student and affordable housing project (the "Project") at 500 Benton Street in the City of Santa Clara (the "City") under the Economic Opportunity Law, Government Code Section 52200 *et seq*. ReMet would develop the Project pursuant to a long-term ground lease of land that is (and would continue to be) owned partially by the City (the "City Property") and partially by the Valley Transportation Authority ("VTA") (together, the "Property").

As described below, the Property is not surplus to the City's needs. Existing public functions, including the City's operation, maintenance, and repair of a critical City ground water well and Caltrain parking, would be relocated on-site and would continue on the Property. In addition, the development of the Project on the Property would further the City's important public interests in promoting housing (including affordable, workforce, and student housing) in proximity to transit, increasing tax revenues, and furthering sustainability goals.

I. Economic Opportunity Law; Gov't Code Section 52200 *et seq.*

a. The City may lease the City Property to create an "Economic Opportunity," an alternative authority to any other authority granted by law to the City to lease property, including the Surplus Land Act.

b. Under Government Code Section 52200 *et seq.*, the City may "sell or lease property to create an economic opportunity. The acquisition, sale, or lease shall first be approved by the legislative body by resolution after a public hearing" and a finding that the sale or lease of the property will assist in the creation of the economic opportunity.

c. "Economic Opportunity" includes, *inter alia*, the following, all of which apply to the Project:

i. Lease agreements that increase property tax revenues to all property tax collecting entities, in which the legislative body finds that the agreement will result in an increase of at least 15 percent of total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the government entity.

ii. Creation of affordable housing, if a demonstrated affordable housing need exists in the community, as defined in the approved housing element or regional housing needs assessment.

iii. Projects that meet the goals set forth in Chapter 728 of the Statutes of 2008 and have been included in an adopted sustainable communities strategy or alternative planning strategy or a project that specifically implements the goals of those adopted plans.

iv. Transit priority projects, as defined in Section 21155 of the Public Resources Code.

d. Pursuant to Gov't Code Section 52201(c), "the provisions of this section are an alternative to any other authority granted by law to cities to dispose of city-owned property." (Emphasis added.) In other words, the Economic Opportunity Law provides an alternative method of property disposition to the Surplus Land Act (the "SLA").

e. Indeed, many cites have used the Economic Opportunity Law to dispose of property to create economic opportunity. See Exhibit A attached hereto.

f. The Economic Opportunity Law directly applies to the Project. It gives the City the ability to continue public use of the Property for both critical City infrastructure needs and substantial economic and policy benefits, including providing affordable housing.

II. The Surplus Land Act (as it existed on December 31, 2019)

a. The City of Santa Clara has never declared the Property surplus.

b. Even if the City chooses to proceed with the ground lease of the City Property pursuant the SLA (rather than the Economic Opportunity Law), the ground lease would be subject to the SLA as it existed on December 31, 2019. The 2019 version of the SLA provides the City with significant discretion in determining whether the Property is surplus.

c. Pursuant to the SLA as effective January 1, 2020, "if a local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property, the provisions of this article as it existed on December 31, 2019, shall apply, without regard to the changes made to this article by the act adding this section, to the disposition of the property to the party that had entered into such agreement or its successors or assigns, provided the disposition is completed not later than December 31, 2022." (Gov't Code § 54234(a)(1).)

d. In <u>February 2018</u>, the City (and VTA) and ReMet entered into an ENA to promote and implement the development of a mixed-income, transit-oriented project close to the Santa Clara Caltrain Station.

e. The ENA has been extended twice and the parties remain in exclusive negotiations.

f. Under the 2019 version of the SLA, the City has significant discretion in determining whether the Property is surplus or not.

   i. *See, e.g.*, *Anderson v. City of San Jose* (2019) 42 Cal.App.5th 683 ["Whether land is deemed 'surplus' is entirely within the local government's discretion."]; *Uplift Inglewood Coalition v. City of Inglewood* (2019) Case No. BS172771 (unpublished) ["[T]he legislature vested the agency with discretion to 'determine' whether public lands remain necessary for the agency's use … [which is] reviewed under the arbitrary and capricious standard."].

   ii. The City would be well within its discretion to determine that the City Property is not surplus. In entering into the ENA, the City evidenced its intent to retain the property for development in conjunction with the VTA property to further the City's housing (including student, workforce, and affordable housing) and transit-oriented development goals. The Project would provide 29 percent affordable housing in close proximity to the Santa Clara Caltrain Station.

g. The 2019 version of the SLA does not invalidate a completed lease or impose any penalties for non-compliance.

We look forward to discussing the approval of the Project under the Economic Opportunity Law or, at minimum, the SLA as it existed on December 31, 2019.

Sincerely,

Margo N. Bradish

EXHIBIT A

- Alameda County: Agreement to sell the County's interest in the Oakland-Alameda County Coliseum Complex to Coliseum Way Partners, LLC (December 2019)
    - According to the County Administrator, the property is not considered surplus since the original purpose for sports and entertainment will remain for the foreseeable future and the property is required for the lease revenue bond structure used to finance certain improvements at the Complex.
    - The transfer of the County's interest will create an economic opportunity as defined by State law under Government Code Section 52201. The land sale will result in greater than 15% increase in property taxes to all taxing entities when the property is reassessed for the sale price, thus meeting the definition of "economic opportunity" in Government Code Section 52202.2(b).
- Anaheim: Agreement to sell City-owned property that includes Angel Stadium of Anaheim to SRB Management Company, LLC (December 2019)
    - The City considered the sale of the Property to SRB to be the optimum method to stimulate a successful mixed-use project, while retaining the Angels baseball operations and related economic/fiscal impacts and community benefits.
    - The sale of the Property to SRB will create an economic opportunity by facilitating the development of the Property in alignment with the economic development goals and objectives of the City, thereby increasing its revenue base (e.g. property tax, sales tax, transient occupancy tax, etc.), promoting the increase in the supply of housing, stimulating economic activity and job growth within the City, providing necessary infrastructure and public improvements.
    - It is estimated that the Property would generate additional property tax revenue in excess of $500,000 annually.
    - Construction of the Project would result in 18,000 construction jobs and 12,000 indirect jobs in local economy. At full building ongoing operation, the Project would result in 15,000 permanent jobs in retail/office/hotel/property management and $20 million in annual taxes to City of Anaheim.
- Oakland: Agreement to sell City-owned land to TDP-Webster, LLC (January 2016)
    - The Developer proposed to redevelop a 1.42-acre property comprising 2 parcels. The parcels are currently owned by the City and used for surface parking. The City purchased the Property on April 13, 2010 for $4.05 million.
    - The Developer proposed to develop approximately 234 residential rental units, including 36 below market rate units, approximately 17,000 square feet of ground-floor retail, and approximately 330 parking spaces, 242 of which will be conveyed to the City for use as a public parking garage.
    - The City-owned site generated no property tax revenue; thus, the increased property taxes exceed the 15% increase in property tax revenue identified as a measure of "economic opportunity" in Government Code 52200.2(b).

  - The project is expected to create 40 permanent jobs and 600 temporary construction jobs. Because there is no net investment of public resources this exceeds the benchmark measure of "economic opportunity" described in Government Code 52200.2(a).
- Oakland: 99-year lease agreement between the City and Orton Development, Inc. for the renovation of the Henry J. Kaiser Convention Center (July 2019)
  - The Project will reactivate a vacant and blighted, historically significant building, and will help create an arts and cultural hub at the foot of the revitalized Lake Merritt area, just two blocks from the Lake Merritt Bay Area Rapid Transit (BART) Station.
  - The former arena and basement will be adaptively reused to create 76,000 square feet of new office space, with a focus on attracting art and nonprofit organizations as tenants. The Project provides numerous economic opportunities, including short-term and long-term jobs, contracting opportunities for Oakland businesses, and tax and lease revenue for the City and other taxing entities.
- Daly City: Agreement to sell City-owned property to Equity Residential (January 2020)
  - The City of Daly City approved the sale of an approximately 0.36-acre parcel for the development of a multifamily residential housing development of up to 170 residential units. The Property is vacant, unimproved land and was originally acquired by the former Daly City Redevelopment Agency in November 2006.
  - The Project is estimated to create 374 new construction jobs and 56 new permanent jobs (including indirect and induced jobs). Because there is no net investment of public resources, the employment creation benefit exceeds the benchmark measure of "economic opportunity" described in Government Code 52200.2(a).
  - Additionally, the site currently generates no property tax revenue, and the increased property taxes exceed the 15% increase in property tax revenue identified as a measure of "economic opportunity" in Government Code 52200.2(b).
- Hayward: Agreement to sell City-owned land to William Lyon Homes, Inc. (May 2017)
  - The proposed project is a high-quality mixed-use retail and residential development, containing approximately 21,900 square feet of retail building space, 351 residential units, associated parking spaces, roughly 2.5 acres of public park space, and related landscaping and amenities.
  - The properties that are subject of the purchase and sale do not generate property tax revenues. Upon transfer to the Developer under the PSA, the assessed value of the Property will change from $0 to up to $31,583,075 and will result in estimated property tax payments of approximately $315,830.75 in its unimproved state.
  - The creation of affordable housing to meet demonstrated affordable housing needs identified in the Housing Element of the City's general plan constitutes an economic opportunity. The Proposed Project will be subject to the requirements of the City's Inclusionary Housing Ordinance and will thus increase, improve, or preserve the supply of quality affordable housing in the community.

- During the construction of the Proposed Project, it is anticipated that 420 full-time equivalent temporary construction jobs will be created. Upon completion and full implementation, the Proposed Project is also anticipated to generate an estimated 60 permanent jobs without investment of City funds.

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