EXECUTIVE SUMMARY
SANTA CLARA COUNTY CIVIC CENTER
PROPOSED MASTER DEVELOPMENT AGREEMENT
Revised May 2, 2016

County Team

- County, Office of Asset and Economic Development, Office of the County Executive
- County Facilities and Fleet Department
- County Counsel
- County Finance Agency
- Keyser Marston Associates, Inc.
- Sheppard, Mullin, Richter & Hampton LLP
- BAE (peer review)
- Anderson Brule Architects (Inter-Departmental Program Design, Law and Justice Center)
- David J. Powers & Associates (CEQA)

Developer

- Lowe Enterprises Real Estate Group

Properties Included

- Civic Center Campus, including former San Jose City Hall parcel and excluding jail
- Approximately 55 acres

County Objectives

- Guiding Principles approved by Board (see attached)
- Master Planning for approximately 1.15 million square feet rehabilitated, replacement or New County Facilities plus the maximum amount of those mixed uses (office, residential and ancillary retail) currently permitted under the City of San Jose's 2040 General Plan
- Civic Center Master Plan process to include community outreach and inputs with intent to manage and create a community asset
- CEQA review at a programmatic level for the entire 55 acres and CEQA project level review for the Initial Phase of New County Facilities (ostensibly a Law and Justice Center at Richey site)

Basic Structure

- Lowe to serve as manager of civic center master plan and manager of construction of a minimum amount of the new County facilities
- County to fund master plan, due diligence, entitlement process, and new County facilities
- Lowe responsible for any costs above County approved budgeted costs
- Five phases requiring County issuance of a Notice to Proceed before each phase can commence
  - Phase A – Master Plan & Due Diligence for the full 55 acres
  - Phase B – Entitlements (CEQA/EIR and Other Approvals)
  - Phase C – Initial New County Facility Phase (Richey Site) – Preliminary Design & Engineering
  - Phase D – Initial New County Facility Phase (Richey Site) – Financing & Preconstruction
  - Phase E – Initial New County Facility Phase (Richey Site) – Construction
- Construction expected to be in multiple, individual phases, with Lowe having a predefined role for a period of seven years from date of Master Plan approval of providing at least $150 million in value of new County facility construction.

Schedule

- Phases A and B proceed simultaneously – finishing at end of Month 19
- Phase C - Initial New County Facilities – Preliminary Design & Engineering
  - 12 month duration
  - Board may approve issuance of Phase C Notice to Proceed prior to completion of Phase B.
- Phase D – Financing & Preconstruction, shall start within 12 months of completion of Phase C; and Phase E – Construction, shall start no later than 4 years after completion of Phase B.

Budget

- Phases A and B
  - Proposed Budget for work under Lowe management - $3.85 million, as follows:
    - Phase A – $2,971,000
    - Phase B – $ 627,000
    - Plus budgeting for a Deferred Compensation Fee $252,000 to be paid to Lowe as "liquidated damages" in the event the County terminates the MDA for convenience after approval of the FEIR and Master Plan. (Amount is based on a multiple of 4 x the monthly cost of Lowe staffing to cover staff severance.)

- Phase C/D/E – To be determined at future date and subject to Board approval.

Decision Considerations

- Implements stewardship of the County governmental function and represents long-term re-investment in a community asset
- Working with an experienced public/private developer
- County has approval rights on new County facilities and budget
- County cost exposure is capped, with certain exceptions
- At key points, County can withdraw from transaction under Termination for Convenience
- Working with a vetted entity and establishing continuity of implementation of a complex phased project involving relocation of multiple departments
- There are opportunities for other developers to participate in the development of private revenue generating parcels and other new County Facilities beyond those constructed by Lowe

TRANSACTION STRUCTURE
CIVIC CENTER MASTER DEVELOPMENT AGREEMENT

Key Document

- Approval of Master Development Agreement (MDA) includes approval of issuance of Notice to Proceed for Phases A and B. Notices to Proceed for subsequent Predevelopment Phases subject to Board approval.

Phase A – Master Plan & Due Diligence (*Lowe Lead*)

- Lowe scope of work
  - Coordinate all master planning and due diligence work
    - Manage all consultants
    - Undertake due diligence
    - Master Plan the Civic Center and prepare a Project specific plan for Richey

- Lowe compensation
  - Fixed fee of $756,000 paid at the rate of $63,000 per month over the course of the approved 12 month schedule
  - In the event the County terminates the MDA for convenience after approval of the FEIR and Master Plan Plus, a Deferred Compensation Fee $252,000 as "liquidated damages." (Amount is based on a multiple of 4 x the monthly cost of Lowe staffing to cover staff severance.)

- County responsibilities
  - Reimburse Lowe's Phase A costs for third party consultants
  - Manage County's consultant, Anderson Brule Architects (ABA), to work with 16 County departments to prepare a ***Law and Justice Center (Civic Center Master Plan) Service Model & Operational Plan, Program Development, and Conceptual Layout***
  - Review and approve all Lowe prepared plans, proposed budgets and work products

Phase B – Entitlements (CEQA/EIR and Other Approvals) (*County Lead*)

- Lowe scope of work
  - Support and advise County staff
  - Prepare proposed budget for Phase C, and
  - Based on County direction (ABA final report), prepare preliminary budget estimate for Cost of Work for construction of initial phase of New County Facilities

- Lowe compensation
  - Fee not to exceed $262,500 paid on monthly basis at $37,500, for a maximum of up to 7 months, or until the issuance of a Notice to Proceed for Phase C, whichever occurs first.

- County responsibilities
  - Manage all Phase B - CEQA consultants and coordinate with Lowe consultants
  - Review and accept ABA's final report ***Law and Justice Center (Civic Center Master Plan) Service Model & Operational Plan, Program Development, and Conceptual Layout*** and provide direction to Lowe regarding planning for the initial phase of New County Facilities
  - Consider and take action on Final EIR and Master Plan
  - Reimburse Lowe's Phase B costs for third party consultants
  - Review and approve all Lowe prepared plans, work products,
  - Set the scope of work for the Initial New County Facility Phase (tentatively identified as Richey Site)
  - Review and approve and proposed budgets for Phase C, including preparation of Preliminary Design & Engineering, involving deliverables, schedule and budget
  - Consider issuance of "Notice to Proceed for Phase C - Initial New County Facility Phase (Richey Site) Preliminary Design & Engineering, including deliverables, schedule and budget."

Phase C – Initial New County Facility Phase (Richey Site) – Preliminary Design & Engineering

- Lowe scope of work
  - Coordinate preliminary design and engineering
    - Manage all Phase C consultants
    - Prepare proposed Budget for Phase D and update the estimated of Cost of Work for the initial phase of New County Facilities
- Lowe compensation
  - Over the total combined schedule of Phases C and D, Lowe will be paid a fixed Development Management Fee (DMF) according to the table below and spread on a monthly basis over the County approved schedule for Phases C and D, subject to a ten percent (10%) retention, half of which is released upon completion of Phase C and half of which is released upon completion of Phase E-Construction. The County's obligation to make these payments during Phase D below is contingent on County's issuance of a Phase D Notice to Proceed.

TABLE 1: Development Management Fee - for Initial and Subsequent NCF Phases*

PROJECT	Total DMF over combined schedule of Phases C & D**	
1. **Office Building Project,** including associated TI's FF&E, on-site alterations, parking alterations, and off-sites	Option A 150,000 - 250,000 sf	$ 1,680,000
	Option B 300,000 to 400,000s.f.	$ 2,390,000
2. **Alternate: Parking Structure**	550,000 sf accommodating approximately 1,600 spaces	$ 580,000
3. **Alternate: Central Plant**	1 Lump Sum	$ 250,000
4. **Alternate: Specialty Building Space** (e.g. Board Chambers, amenity space - cafeteria, etc.)	15,000 – 25,000 sf	$ 320,000

*The Development Management Fee and Construction Management Fee shall be escalated annually on January 1st beginning with January 1, 2020 for any Subsequent NCF Predevelopment Phase C or D and for any Subsequent NCF Phase E the start for which would occur after that date. The method of adjustment shall be to use the annual rate of increase for the preceding twelve months as published in the Engineering News Record's (ENR) Building Cost Index (BCI)

for San Francisco, or other equivalent index if the ENR becomes no longer available.
** Reconciliation Provision: the Development Management Fee shall be reconciled and shall not exceed two percent of the audited final costs of Direct Costs and Offsite Costs for the relevant phase of New County Facilities.

- In the event the County terminates the MDA for convenience at the culmination of Phase C, Lowe will be paid a "liquidated damages" Deferred Compensation Fee in an amount equal to a multiple of 4 x the monthly payment of the DMF, based on covering staff severance, subject to a $1 million cap. This cap is not expected to be reached.

- County responsibility
  - Reimburse Lowe's Phase C costs for third party consultants
  - Determine the final scope for the Initial phase of New County Facilities
  - Review and approve all Lowe prepared plans, work products, and proposed budgets for Phase D and estimated Cost of Work for initial Phase of New County Facilities
  - Prepare preliminary financing plan for the initial phase of New County Facilities, and
  - Consider issuance of "Notice to Proceed for Phase D: Initial New County Facility Phase (Richey Site) – Financing & Preconstruction, including deliverables, schedule and budget."

Phase D – Initial New County Facility Phase (Richey Site) – Financing & Preconstruction

- Lowe scope of work
  - Manage all Phase D consultants and other costs
  - Competitively select a General Contractor based on a minimum of three competitive bids.
  - Prepare for County review and approval a proposed set of final construction drawings and construction schedule
  - Negotiate Guaranteed Maximum Price (GMP) construction budgets
  - Prepare and present for County approval a proposed GMP budget

- Lowe compensation
  - Following issuance by the County of the Notice to Proceed for Phase D, County continues to make monthly payments to Lowe of the DMF according to Table 1 above, subject to a ten percent (10%) retention, half of which is released upon completion of Phase D and half of which is released upon completion of Phase E-Construction.
  - In the event the County terminates the MDA for convenience at the culmination of Phase D, Lowe will be paid a "liquidated damages" Deferred Compensation Fee in an amount equal to a multiple of 4 x the monthly payment of the DMF, to cover staff severance, subject to a $1 million cap. This cap is not expected to be reached.

- County responsibility
  - Reimburse Lowe's Phase D costs for third party consultants
  - Review and approve final construction drawings and plans for Phase E construction
  - Review and approve the Final budget including the GMP for Phase E of the Initial Phase of New County Facilities
  - Implement the County's Financing Plan for Phase E
  - Consider issuance of "Notice to Proceed for Phase E: Initial New County Facility Phase (Richey Site) – Construction"

Phase E – Initial New County Facility Phase (Richey Site) – Construction

- Lowe scope of work
  - Execute construction contracts within GMP approved in Phase D
  - GMP shall include a Contractor Contingency of 2.5%, and 100% of any unexpended funds revert to County unless the Savings Incentive provision takes effect. (See Below RE: MDA Section 15.22).
  - GMP shall include a Developer Contingency of 6%. Any unexpended Developer Contingency reverts to County.
  - Manage all aspects of construction.
  - Coordinate contractors and relocation of County departments.
  - Lowe responsible for any cost overruns in excess of County approved GMP budget.
  - Change Orders:
    - Developer may propose a Change Order, subject to County's approval. In order to avoid any increase in the GMP, the following sources of funds shall be considered in order of priority: Contractor Contingency, Developer Contingency, and then any savings garnered thus far.
    - County may propose or agree to a Change Order in its sole discretion that would increase the GMP. The County may consider funding such Change Order (1) out of a previously approved Project Contingency ("Owner's Contingency"), to the extent one has been approved by the Board, in its sole and absolute discretion
  - Warranty:
    - Lowe: 1 year Warranty Fix It Period
    - General Contractor, first 3 years all responsibility for each warranty and guaranty otherwise assigned to the County:
      - Building Systems and Building Façade - 2 years
      - Structural Elements - 6 years
      - Roofing: From the manufacturer of all roofing materials and from the Subcontractor performing the construction and installation – 20 years

- Lowe compensation
  - Over the number of months in the approved GMP Phase E schedule, Lowe will be paid a fixed Construction Management Fee (CMF) according to the table below and on a pro-rated monthly basis, subject to a ten percent (10%) retention.

TABLE 2: Construction Management Fee - for Initial and Subsequent NCF Phases*

PROJECT	CMF **	
5. Office Building Project, including associated TI's FF&E, on-site alterations, parking alterations, and off-sites	Option A 150,000 - 250,000 sf	$ 2,900,000
	Option B 300,000 to 400,000s.f.	$ 4,120,000
6. Alternate: Parking Structure	550,000 sf accommodating approximately 1,600 spaces	$ 1,000,000
7. Alternate: Central Plant	1 Lump Sum	$ 430,000
8. Alternate: Specialty Building Space (e.g. Board Chambers, amenity space -cafeteria, etc.)	15,000 – 25,000 sf	$ 550,000

*The Development Management Fee and Construction Management Fee shall be escalated annually on January 1st beginning with January 1, 2020 for any Subsequent NCF Predevelopment Phase C or D and for any Subsequent NCF Phase E the start for which would occur after that date. The method of adjustment shall be to use the annual rate of increase for the preceding twelve months as published in the Engineering News Record's (ENR) Building Cost Index (BCI) for San Francisco, or other equivalent index if the ENR becomes no longer available.
** Reconciliation Provision: the Construction Management Fee shall be reconciled and shall not exceed three percent of the audited final Cost of Work, excluding the DMF, for the relevant phase of New County Facilities.

- Savings Incentive Alternate Provisions
  - (A) There shall be no sharing of savings, 100% reverts to County; or,
  - (B) County and Lowe may jointly seek an FPPC Opinion regarding Gov. Code Section 1090 and if FPPC issues a favorable written opinion, an alternate Provision (MDA Section 15.22) takes effect:
    - Savings Incentive - Savings will be shared with Lowe 35/65 County, subject to a cap*. Savings distribution capped at 35% of Lowe's Construction Management Fee. Savings includes any unexpended Contractor Contingency; and,
    - Developer Contingency is reduced from 6% to 5%; and,

    - Lowe assumes responsibility for any cost of remediating environmental contamination that is excluded from or otherwise exceeds the loss limits of County's Pollution Liability Limit Insurance ($10,000,000).
  - Savings shared with Lowe is capped at no more than 35% of the Construction Management Fee

- Delay Compensation Fee Payment:
  - If within 12 months following Lowe's satisfactory completion of the Initial NCF Phase C, the County has not terminated the MDA but does not move forward with a notice to Proceed for Phase D, Lowe is paid a Delay Compensation Fee Payment in an amount equal to a multiple of 4 x the monthly DMF payment, subject to a one million dollar cap; or,
  - Outside date – the Delay Compensation Fee Payment shall be due if the County has not the County has not terminated the MDA and has not moved forward with construction of any buildings within four years after approval of the Master Plan.
  - If the County moves forward to construct New County Facilities having made any Delay Compensation Fee Payments, such payments shall be applied to meet the County's obligation to pay the Construction Management Fee.
  - If the County subsequently terminates the MDA for convenience, there shall be no double payment of a Delayed Compensation Fee and a Deferred Compensation Fee.

- Termination for Convenience. In the event the County terminates the MDA for convenience during a Phase E construction phase and the County has issued a Notice to Proceed for a Predevelopment Phase with respect to a subsequent NCF Phase, then Lowe will be paid a "liquidated damages" Deferred Compensation Fee in an amount equal to a multiple of 4 x the monthly payment of the CMF, to cover staff severance, subject to a $1 million cap. This cap is not expected to be reached.

- County responsibilities
  - Fund County Project costs and the Phase E GMP cost
  - Manage Lowe during construction