

## **CADA DEVELOPMENT PROCESS**

December 7, 2007

This document serves as a guide for the process CADA will use in advertising a site, selecting a developer and entering into agreements for state-owned property in the Capitol Area designated for residential/mixed-use development. When a determination is made to offer a site for development, any deviations from this process that the particular conditions of a site along with market and economic conditions may warrant, will be presented to the CADA Board of Directors.

This process consists of four phases. A summary flowchart of these phases is attached to this document as Exhibit A.

### **I. CONCEPTUALIZE AND STRATEGIZE TO OFFER SITE FOR DEVELOPMENT**

#### **Introduction**

Upon deciding, in collaboration with the State, to make a site available for development, CADA takes the following actions to deliver a successful project in a timely manner.

1. Removes as many site development impediments as possible such as historic preservation issues, remediation of toxic soil conditions, infrastructure shortcomings, etc;
2. Determines whether CADA financial assistance is available and in what form and type, and establish a project budget for CADA;
3. Establishes a concept for a proposed project without being overly prescriptive while letting the creative forces flow from the Developer, and his/her team; and
4. Determines the most appropriate method for offering the site to the development community based on factors such as market conditions, readiness of the site to be developed, type product desired and degree of difficulty of development.

The results of the above are documented in the RFP/RFQ to be issued that is approved by the CADA Board.

#### **A. CADA and Department of General Services (DGS) decide to make site available for development**

Project Sites are generally owned by the State Department of General Services and are sold to CADA for the purpose of developing residential use or mixed use consistent with the 1997 Capitol Area Plan. Sites are selected on a periodic basis to be offered for development. Generally, vacant or underutilized sites such as surface parking lots are made available for development before sites that have existing successful businesses. While in the past CADA has used its Annual Board Workshop to identify sites to be released for development, consideration by the Board of sites for development can be made at anytime. Upon deciding to make a site available for development, CADA submits

a written request to DGS to enter into a Purchase and Sale Agreement. DGS then decides if the site is conditionally available for CADA development.

**B. CADA/DGS obtains Appraisal that establishes the market value to be paid for the site to DGS by CADA**

The following are the necessary steps to obtain an appraisal:

- 1) CADA/DGS approve appraisal instructions for site. The appraisal instructions direct the appraiser to value the site as if the site received a "No Further Action" letter regarding removal of toxic materials and as if the site is cleared of any buildings/surface improvements and ready to be developed.
- 2) CADA/DGS select an appraiser that is mutually acceptable and divide the cost of the appraisal.
- 3) CADA engages appraiser to complete appraisal.

**C. CADA/DGS enter into a Purchase and Sale Agreement for site**

CADA and DGS enter into a Purchase and Sale Agreement for CADA to acquire the site at the market value to be determined by an appraisal as outlined above. Past Agreements typically have required that the proposed transaction close within three years or a new appraisal must be completed to reestablish the market value. Accordingly, it is important that CADA issue an RFQ/RFP as soon as possible after entering into the Purchase and Sale Agreement and completing the 30 day review of the proposed sale by the Legislature so that the development process resulting in transfer of the site to the Developer can be completed within the three year period. If transfer of the site isn't accomplished within the three year period, CADA may be faced with the risk of the proposed project becoming financially infeasible if a reappraisal results in an increased market value/acquisition price.

To date, in such Agreements, the terms of the land loan from DGS to CADA provide for a maturity term of 23 years, with no interest due the first year following close of escrow. Interest only payments are due for years 2 and 3 along with accrued interest from the first year. Starting with the third year, the remaining principal and interest payments are due over the remaining 20 years. The Agreement also gives credit against the sales price to CADA for any costs it incurs in vacating, characterizing (environmental site assessments) and remediating or removing soil from the site.

NOTE: These terms from DGS are subject to negotiation, e.g., in the most recent Purchase and Sale Agreements with DGS, CADA was given 3 years following the date of the Purchase Agreement to make claim for any vacating, characterizing or remediating credit against the purchase price of the site.

**D. DGS circulates notice for 30 days at Legislature to sell site**

Upon completion of an appraisal and entering into a Purchase and Sale Agreement, DGS must issue a notice circulated for 30 days to the legislature identifying the terms and conditions of the proposed sale of the site. In order for DGS to complete the transaction

contemplated by the purchase agreement, there must be no objection to the proposed sale from the legislature during the 30 day circulation period.

So that CADA can accurately represent that it has site control in a proposed RFQ/RFP, the 30 day circulation period must have occurred without any objection to the proposed transaction.

#### **E. CADA prepares Technical Specifications Manual for interested developers**

The "Submittal and Technical Information Package" includes all instructions and forms to be used by interested developers to submit a statement of qualifications or proposal in the Request for Qualifications (RFQ)/Request for Proposals (RFP) process and supportive data, information, and copies of applicable State, CADA, and local policies and plans.

The "Submittal and Technical Information Package" also includes predevelopment technical information regarding the following:

- Site Information including a boundary survey
- Site Conditions
- Public Utilities
- Public Improvements
- Energy Considerations
- Fire Protection
- Planning
- Historic Preservation
- Affordable Housing
- Building/Development Fees
- Business Terms and Conditions
- Demographics
- Sample – Standard CADA Exclusive Negotiating Agreement
- Sample – Standard CADA Disposition and Development Agreement (DDA)

#### **F. CADA Prepares a Request for Qualifications (RFQ) and a Request for Proposals (RFP)**

The RFQ includes the information an interested Developer needs in order to submit their qualifications. The document includes the following: A summary statement of the RFQ, background information on CADA, the City, the Capitol Area Plan, the Capitol Park Neighborhood, the Development Sites, the Development Team Selection Process, Selection Criteria, Basic Terms and Conditions and reference to availability of the Submittal and Technical Information Package.

The RFP includes the information a Qualified Developer needs in order to submit their Development Proposal including a description of the desired development program, a copy of CADA's standard Exclusive Negotiating Agreement (ENA) and a copy of CADA's standard DDA. The Development Proposal is to include a conceptual building plan and site plan, a preliminary financial proforma showing estimated sources and uses, projected rents/sales prices and targeted returns and a preliminary schedule. It also specifies the Option Fee and Reimbursement of Expenses Payment (see Section III, A.2).

## **II. SELECT DEVELOPER**

### **A. CADA Issues a Request for Qualifications**

CADA releases a RFQ. The RFQ is sent to a list of interested developers and is advertised in state and/or local publications. In certain situations (such as a resolicitation of developers), the RFQ may be sent to a select list of developers who have been “pre-qualified” for the particular site, as with the re-issuance in December 2006 of an abbreviated Development Offering Summary for East End Gateway Sites (EEG) 2 and 3.

Respondents to a RFQ are evaluated and selected as a two-part process.

### **B. Board Selects Qualified Developers (RFQ Phase)**

The first part is to select a group of developers on the basis of their qualifications, their stated development concept and overall “fit of the Developer Team” for the site.

A Selection Committee is generally created comprised of a representative of the City and of the State, a community representative and CADA staff. A CADA consultant(s) may be included on the Committee. The Committee reviews the qualifications and the stated development concept and makes a recommendation by evaluating the submittals for the CADA Executive Director's consideration. The Executive Director makes a recommendation to the CADA Board which selects the qualified developers.

### **C. Board Selects Final Developer (RFP Phase)**

The second part is to evaluate qualified developers on the basis of the appropriateness of their development proposal for the site.

The Committee reviews the development proposals and makes a recommendation by evaluating the proposals for the CADA Executive Director's consideration. The Executive Director makes a recommendation to the CADA Board which selects the Final Developer.

## **III. NEGOTIATE AND COORDINATE WITH DEVELOPER TO: DETERMINE FESIBILITY/MARKETABILITY, COMPLETE CEQA, PREPARE PLANS, OBTAIN BUILDING PERMIT AND SECURE FINANCING**

### **A. CADA Enters into an Exclusive Negotiating Agreement with Developer**

#### **1. Purpose**

The purpose of the ENA is to provide a period of exclusive negotiations relating to the development of a proposed project, pursuant to specific terms and conditions. During the Exclusive Negotiating Period, CADA agrees not to negotiate with any other person or entity regarding development of the Property or any portion thereof. If upon expiration of the Exclusive Negotiating Period, the Developer has not signed and submitted a DDA to CADA, the ENA automatically terminates unless it is extended by the Board.

NOTE: Based upon current economic and market conditions, CADA will establish

realistic timelines for that a developer will be able to meet during the terms of the ENA and the DDA to determine feasibility/marketability, complete City and State reviews and complete CEQA, prepare plans, obtain building permits, and secure financing. Accordingly, developers should work with CADA to help ensure that timelines are realistic and should enter into the ENA or subsequently the DDA fully prepared and committed to meet the performance requirements within the specified timelines. Developers should proceed with the ENA and DDA with the expectation that these timelines will not be extended.

## 2. Option Fee/Reimbursement of Expenses Payment

The RFP/RFQ specifies the amount of the Option Fees and projects the Reimbursement of Expenses Payments the Developer is required to submit. The Board establishes the required Option Fee and accepts the projection of the Reimbursement of Expenses Payments upon the recommendation of the staff.

- a. The Option Fee is required to be paid upon submission of qualifications in the RFQ Phase. The Option Fee is refunded to Developers not selected. The Option Fee is intended to provide incentive for the Developer to complete the purchase of the site anticipated in the ENA and DDA. Option Fees generally range from 1-3% of the purchase price. Upon entering into the ENA, CADA agrees to allow the Developer the exclusive right to purchase the site within the period specified in the DDA at a specified purchase price. The Option Fee serves as the consideration and secures the option for CADA. In the event the Developer purchases the site, the Option Fee is applied towards the purchase price of the site. If the Developer fails to perform or chooses not to purchase the site, CADA will keep the Fee in order to provide compensation for the lost opportunity of making the site available to another developer who may have been able to meet the requirements of a DDA and to have closed on the site and to have completed a project.
- b. The Reimbursement of Expenses Payment is intended to provide reimbursement to CADA of expenses that the Developer would typically be responsible for in a comparable project in the private sector and is non-refundable. Some of the types of expenses that qualify are as follow:

### 1) Environmental Review

The policy of requiring reimbursement of environmental review expenses in accordance with CEQA by a Developer is based on the practice in the industry of Developers paying for a public agency's cost of completing any required environmental reviews.

### 2) Land Carrying Cost and Land Maintenance Payments

Requiring responsibility to pay the monthly portion of the land loan payment and maintenance costs is intended to have the Developer, as the party who will be developing the site, be responsible for paying the carrying and operating costs related to the site. This also provides an incentive for the Developer to close on the site and begin construction expeditiously. An

example of this was with East End Gateway 1-4 in which the Developers were required to make monthly payments equivalent to one-twelfth of the annual land loan payment due from CADA to DGS through final escrow. Land carrying costs would only be included in the Reimbursable Expenses Payments if CADA owned the land for a period of time prior to transferring it to the Developer and not with a proposed three party escrow as outlined in Section III.C below.

3) Legal Fees

Including Legal Fees as a reimbursable cost correctly shifts the responsibility for preparing legal documents to the Developer.

4) Street Light Reimbursement Deposits

In the past CADA installed street lights for which the Developer provided reimbursement.

5) Delay Damages

Payment by the Developer of such damages compensates CADA for delays in completing projects and the resulting delay in receiving tax increment funds generated by the proposed project. It also provides an additional incentive to the Developer to adhere to the established timeline.

6) DDA Amendment Fee

Including Legal Fees as a reimbursable cost correctly shifts the responsibility to the Developer for preparing legal costs necessitated by Developer required amendments.

3. Requirements under an Exclusive Negotiating Agreement

Upon selection of a Developer team, CADA enters into a structured Exclusive Negotiating Agreement with benchmarks for performance, realistic timeframes and significant Option Fees that provide incentive to the Developer and compensate CADA for removing the site from the market and negotiating exclusively with the Developer.

The Developer and CADA are responsible for the following under an ENA:

- a. Developer submits copies of contracts with members of the development team (architect, civil engineer, structural engineer and general contractor). Contracts are to provide for assignment to CADA in event of developer default.
- b. Developer submits Development Program

Development Program includes Schematic Design drawings (conceptual site plan, preliminary building plans with elevations and sections, perspective sketches and a statistical summary of the design area), Estimated Project Sources and Uses, Development and Operating Proforma and Preliminary Development Schedule.

CADA/Developer present the Development Proposal to various stakeholders including the Capitol Area Committee, the City Planning Commission and the City Design Review Commission for review and comment to CADA Board prior to requesting Board approval.

- c. CADA completes CEQA review and Board certifies
- d. Developer submits developer entity legal formation documents.
- e. Developer approves DDA Term Sheet

The DDA Term Sheet is intended to be a non-binding statement of the basic terms of a proposed transaction for a proposed DDA between CADA and the prospective Developer. The Term Sheet does not create a binding agreement of any kind, but is a good faith statement of the Developer's intent and provides a basis for drafting a DDA. It is intended to cause CADA and the Developer to come to agreement on basic business terms early in the Negotiating Period and to make sure both parties are moving forward with the same assumptions and expectations. As a result, it is expected to reduce legal expenses in drafting and negotiating a DDA. It is also intended to help the Developer to anticipate all of its obligations and to insure that they are provided for in the Development and Operating Proforma submitted as a part of the Development Program.

- f. CADA prepares DDA based upon the term sheet and finalizes negotiations.

## **B. CADA and Developer enter into a Disposition and Development Agreement (DDA)**

The DDA sets forth the terms and conditions for the development of the proposed project, identifies required construction of improvements on the property, and provides for the transfer of title to the property to Developer. Some of the major areas addressed in the DDA are as follow:

1. Architectural scope, schedule, quality, design of Developer's project and approval required of the Developer.
2. Project financing
  - a. Evidence of financing
  - b. Subordination of Documents
  - c. Developer equity contribution requirement
  - d. Developer return threshold
  - e. CADA return threshold
  - f. Affordable Housing financing, if any
3. Construction Security
  - a. Developer guarantee
  - b. Payment and Performance Bonds
  - c. Good Faith Deposits
  - d. Insurance
  - e. Permits and fees Note: CADA submits for the Permits and Fees utilizing the Developer's funds and information, exercising its exemption authority from

certain fees and subjective city reviews. The Permits are assigned to the Developer in the close of escrow.

**C. CADA purchases the land from the state and transfers site once Developer meets certain requirements including obtaining financing and a building permit**

It is CADA's intent to clear the site of any existing buildings and other site improvements, remove any toxic materials and transfer the site to the Developer in a "ready to develop condition unless otherwise negotiated." Generally, the State will reduce the market value of the site based upon site characterization, toxic remediation and building removal costs. Unless CADA chooses to acquire the site from DGS in advance of the Developer complying with the provisions of the DDA, the sale escrow will not close until the Developer has complied with the provisions of DDA, at which time a three party escrow will transfer the land from DGS to CADA and then simultaneously to the Developer.

**IV. DEVELOPER COMPLETES CONSTRUCTION**

**Developer Provides a Certification of Development Costs and CADA issues Certificate of Substantial Completion**

Upon the substantial completion of the project, developer submits a written request to CADA for a Certificate of Completion that the Improvements are substantially complete. Prior to issuance of the Certificate of Substantial Completion, the Developer provides CADA with a certified statement of the development cost (which includes both "hard" and "soft" costs and a listing of each check listed by date of issuance, line item and vendor) for the project.