



City Council Agenda Bill

20197

Bill Number

Subject: Army Street Memorandum of Agreement

Summary Statement: The May 2013 City-BPDA Memorandum of Understanding and the July 2013 Army Street Property Owners Letter of Intent required the preparation and approval of a Memorandum of Agreement (MOA) by the multiple property owners participating in predevelopment work and the proposed land assembly required for the "Army Street Project". The City is one of the participating property owners and a party to the Army Street Letter of Intent. Those agreements defined a November 15, 2013 target for approval of this Memorandum of Agreement. The attached MOA has been signed by the other participating property owners and delivered to City Council with a request for final approval authorizing execution by the City.

Previous Council Action: Approval of the City-BPDA Memorandum of Understanding May 13, 2013.
Approval of the Army Street Letter of Intent, executed July 12, 2013.

Fiscal Impact: Preparation of the Army Street Concept Plan (approx. \$44,000) and the MOA (approx. \$20,000) is in the 2013 BPDA budget. Cost of proposed work on the Army Street project described in the MOA, proposed to be done in 2014, is estimated at \$1.1 MM including G&A expenses allocated to the project.

Funding Source: Existing BPDA Reserve Funds.

Attachments: Army Street Property Owners Memorandum of Agreement (Final Draft).
Handout - MOA Overview (Supplemental Information)
Handout - Concept Plan Excerpts

Meeting Activity	Meeting Date	Staff Recommendation	Presented By	Time
Committee Briefing Council Vote Requested	18-Nov-2013	Vote to Approve	Jim Long, BPDA Executive Director	20 min

Council Committee:
Committee of the Whole
Seth Fleetwood, Chair

Agenda Bill Contact:
Alison Henshaw

Committee Actions:

Reviewed By	Initials	Date
J. Long, BPDA Exec. Dir.	JML	11/12/13
T. Sundin, Special Proj. Dir.	TS	11-12-13
B. Henshaw, Finance Dir.	BH	11/12/13
Legal	AWR	11/13/13
Mayor	KL/BA	11/15/13

Council Action:

ARMY STREET PROPERTY OWNERS MEMORANDUM OF AGREEMENT

I. Preamble and Parties

This Memorandum of Agreement ("MOA") memorializes provisions for continuing good faith efforts toward the combined redevelopment (the "Project") of a site in the City of Bellingham (the "Project Site"), as generally shown in Exhibit A. This MOA is executed by and among the following current and potential owners of Property within the Project Site (each a "Party" and collectively the "MOA Parties"): (a) George Dyson; (b) Trillium Corporation; (c) City of Bellingham; (d) Bellingham Public Development Authority (the "BPDA"); (e) Wright Angle, LLC; (f) Donna MacDonald Trust; and (g) Thornberg Trust. At a future date, the owners of additional property adjacent to the Properties may become MOA Parties subject to the unanimous written approval of the MOA Parties and amendment of the MOA.

II. Background and Purpose

This MOA follows in sequence the Army Street Property Owner Letter of Intent (the "LOI"), which was executed by the MOA Parties, with an effective date of July 12, 2013. The parties to the LOI (the "LOI Parties") included provisions for preparation and approval of this MOA, defined shared interests and expectations that are reconfirmed by execution of this MOA, and defined the next steps for continued predevelopment work to be conducted according to the provisions of an MOA.

The LOI also included a requirement for preparation of a Concept Phase Development Plan (the "Concept Plan"), as defined in the LOI, and approval of the Concept Plan by the LOI Parties. The purpose of the Concept Plan was to inform and guide the preparation and approval of this MOA. Approval of the Concept Plan by the LOI Parties is confirmed by the LOI Parties' signature of the notice of Concept Plan approval attached as Exhibit B to this MOA.

This MOA is intended to serve two primary purposes. First, it provides for the performance, management, and proposed approval process for funding of predevelopment work potentially leading to development of the Project (namely, the Initial Due Diligence and Feasibility Research Stage and the Developer Recruitment and Negotiations Stage), which were generally described in the LOI and more fully described in this MOA. Second, this MOA provides for the establishment of a business organization (the "Business Entity") to unify and manage the interests of the MOA Parties and consolidate ownership of the Properties to accomplish their sale or development. The Business Entity will be established during the Initial Due Diligence and Feasibility Research Stage, including preparation of operating documents for its governance and management, but only become operational, with commitments made by the MOA Parties becoming binding, upon the satisfaction of conditions and a determination of feasibility for the Project by the MOA Parties as defined in this MOA.

III. Term of the MOA

- A. The term of the MOA is three years and will commence on the date when all MOA Parties have signed the MOA (the "Effective Date").
- B. The MOA may be terminated earlier than three years, or the termination date may be extended, with the unanimous written approval of all MOA Parties or as otherwise set forth in this MOA (including pursuant to Section-III(C) or Section XI).
- C. Notwithstanding the foregoing, if any Party notifies the other MOA Parties that such Party desires to withdraw from the process of this MOA and/or notifies the other MOA Parties that such Party is no longer interested in pursuing the Project, then this MOA shall terminate unless within thirty (30) days following such date the remaining MOA Parties consent to continue with the process of this MOA. However, if a

Party provides such notice or otherwise terminates its Involvement with this MOA, the same shall have no effect on and shall not reduce or terminate the binding obligations set forth in the following Section.

IV. Binding Obligations – No Transfer or Encumbrances

- A. With the following exceptions set forth in Section IV.B, provisions of the MOA are non-binding without the fulfillment of conditions and contingencies described in the MOA.
- B. The following provisions are intended to be binding and enforceable on the MOA Parties as of the Effective Date, and shall run with the land and inure to the benefit and be binding upon the successors and assigns of the MOA Parties. The BPDA and the City are relying on the Parties' compliance with these binding commitments with respect to their willingness to expend funds under this MOA.
 - a. Other than encumbrances and title exceptions existing at the MOA Effective Date, or refinancing transactions that do not increase debt or otherwise impact a Party's ability to perform under this MOA, each Party agrees not to further encumber their Property during the Term of the MOA without prior written notice delivered to, and unanimous written approval from, the other MOA Parties. Encumbrances refer to, but are not limited to, such actions as incurring additional debt or refinancing existing debts secured by the Property, the grant of easements or covenants, or a long term lease of all or part of the Property without an option to terminate the lease at the end of the MOA term.
 - b. Each Party agrees that their Property will be subject to a Right of First Offer ("ROFO") during the MOA Term. The ROFO will require a Party desiring to sell a property within the Project Site (a "Property") to first offer the Property for purchase by any or all of the other MOA Parties or the Business Entity. The selling party will be required to provide notice of the price and terms at which they are willing to sell their Property (the "Notice"). If the ROFO is not exercised by a Party within fifteen (15) business days following receipt of the Notice, then the selling Party can sell their Property to other prospective purchasers, but only on the same terms and conditions described in the Notice, and if the selling Party desires to alter such terms and conditions then Seller must first offer to sell their Property to the other MOA Parties or the Business Entity upon such altered terms and conditions. This provision will not apply to the transfer of a Property to an Inheritor of a MOA Party's interest in the Property, but will continue to apply to transferees by Inheritance.
 - c. The MOA Parties agree that a document summarizing the essential points of this MOA may be recorded and provide notice of binding commitments during the MOA term. Recording fees will be paid by the BPDA subject to funding conditions for continued predevelopment work described in this MOA.

V. Preliminary Determination of Feasibility: Initial Due Diligence and Feasibility Research Stage

- A. Commencement of work undertaken during the Initial Due Diligence and Feasibility Research Stage is contingent upon execution of this MOA. The BPDA shall be responsible for managing and funding the work to be undertaken, which includes the cost of third party consultants engaged to perform components of the work. The BPDA's commitment to fund the work is contingent upon City approval of the BPDA budget covering the cost of work to be performed. Each Party acknowledges that (except for the binding obligations set forth Section IV above) nothing in this MOA is intended to circumscribe, limit, or bind the processes and/or discretion of the City Council in making decisions within its authority under the City Charter, including, but not limited to, decisions relating to budget, City owned property, and city rights of way. Throughout the duration of this MOA, the City reserves all rights with respect to adoption

of its budget and amendment of its budget based on City priorities. Costs Incurred by the BPDA for these services will be treated as a BPDA capital contribution to the Project.

- B. Service agreements and contracts between the BPDA and third parties undertaking the work are to include provisions that limit recourse available to the engaged parties for payment only to the BPDA and not to the City or other Parties. Additionally, BPDA shall use reasonable efforts to have such service agreements and contracts include a provision consistent with Section 2.1 of the First Modification to the Second Operating Agreement between the City and the BPDA, with an effective date of April 23, 2013 substantially stating the following:

“In the event that City funding for BPDA operations is substantively withdrawn, reduced or limited after the effective date of this Agreement due to budgetary constraints, and prior to its normal completion, the BPDA may summarily terminate the Agreement as to the funds withdrawn, reduced or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the BPDA deems that the continued provision of the services covered by this Agreement is no longer in the best interest of the BPDA, the BPDA may summarily terminate this Agreement in whole notwithstanding any other termination provision of this Agreement. Termination of the Agreement under this provision will result in no further payment for services other than services provided prior to the effective date of termination. Termination under this Section shall be effective upon receipt of written notice thereof.”

- C. Work during this stage of the Project will serve two primary purposes. First, it will serve to facilitate a decision to either continue or terminate work toward the contemplated development of the Project based on project planning and supported by objective research and assessment of the several factors underlying legal, economic, site constraints and required site improvements, physical and functional requirements, environmental, regulatory, capital cost, financial and investment considerations (the “Preliminary Determination of Feasibility”). Second, it will serve to fulfill conditions and meet concerns defined by the MOA Parties.
- D. The conclusion of the Initial Due Diligence and Feasibility Research Stage will be signified by a “Preliminary Determination of Feasibility” with unanimous written approval of the MOA Parties. A negative determination will result in termination of the MOA and cessation of further work.
- E. The Preliminary Determination of Feasibility would be based on the results of component tasks and studies, including, but not necessarily limited to, some or all of those outlined in Exhibit C. This work would be performed in a general sequence of phases, with a series of interim assessments of feasibility during and at the conclusion of each phase, so that the Preliminary Determination of Feasibility is the composite of a series of component feasibility assessments. Either during the course of work undertaken during these phases or at the conclusion of each phase, the BPDA may conclude that results of that work either support a continuation of work or have a significant negative impact on the feasibility of the Project. In the event of determination of significant negative feasibility, the BPDA reserves the right to discontinue further work described in the Initial Due Diligence and Feasibility Research Stage and terminate the MOA. The Preliminary Determination of Feasibility will include the following phases and considerations:

Phase 1: Baseline Information and Assessment of Site Conditions

1. The degree to which Property encumbrances, based on current surveys and title research for the Properties, either enable or restrict the contemplated assemblage and possible sale or development of the Project Site.

2. The economic feasibility of the completed project based on an analysis of the regional and local economic base and a determination of development opportunities and market feasibility for the completed project, definition of the proposed land use mix and optimal building program, definition of development timing, and definition of production and absorption schedules for the proposed building program.
3. An assessment of market feasibility for specific contemplated uses comprising the Project (e.g. hotel/conference center, office, commercial services and retail, residential, and parking) based on market research defining the contemplated uses.
4. An assessment of the environmental conditions of the Properties or a feasible cost of mitigation if environmental conditions require mitigation.
5. The results of geotechnical and subsurface investigations or the feasible cost of mitigation if additional design and construction measures are required.
6. Valuations of vacant properties based on the value of comparable properties and/or a residual value approach based on the Concept Development Phase Plan provided in Exhibit B, and valuation or compensation relating to vacation of right of way based on state and local law and processes.
7. Current, as-is valuations for existing buildings based on appraisals performed for those participating properties with existing building improvements.
8. The projected value for the consolidated Properties, following assembly and clearing, based on appraisal of residual land values as a component of the completed, developed value of the Project.

Phase 2: Planning and Design

9. The Schematic Development Phase Plan, incorporating the results of multi-disciplinary research, plans, and analysis conducted during the Initial Due Diligence and Feasibility Research Stage.

Phase 3: Management, Financial and Fiscal Analysis

10. A methodology, plan, and cost for compensating owners of existing income-producing businesses and buildings that would be displaced by land assemblage and clearing, including the cost of tenant relocation and business relocation.
11. A determination of feasibility for the parking component of the Project based on a preliminary parking management and financing plan.
12. A financeable and economically feasible capital cost for development of the Project based on preliminary engineering and site and architectural plans and value engineering studies.
13. A feasible and acceptable financing plan for capital improvements.
14. An assessment of project approvals required for Project development and feasibility of securing required approvals.
15. A return based on a preliminary investment pro-forma projected for the developed Project with a projected financial return for the Project and MOA Parties adequate to recover or earn an acceptable return on the capital contribution made by each MOA Party or a waiver of this requirement.

16. A finding of public benefit consistent with the expenditure of public funds including, but not necessarily limited to, direct and indirect benefits referenced in Section 4.6 of the Second Operating Agreement between the City of Bellingham and the Bellingham Public Development Authority.
- F. The MOA Parties agree that the following conditions and concerns will be addressed and resolved during the Initial Due Diligence and Feasibility Research Stage and incorporated into continued predevelopment work on the Project. The continued participation of the MOA Parties and binding commitments expressed in this MOA are contingent upon the unanimous agreement of the MOA Parties that these conditions have been satisfied or waived during the Initial Due Diligence and Feasibility Research Stage.
1. Management requirements:
 - a. BPDA management of the work undertaken during the Initial Due Diligence and Feasibility Research Stage and the Developer Recruitment and Negotiation Stage.
 - b. The BPDA serving as the manager of the Business Entity.
 - c. Conveyance to the BPDA of the City's option for the Port-owned parcel (or conveyance of the parcel) included in the Army Street planning area. The exercise of this option will be contingent upon a positive environmental assessment of the parcel, a positive Initial Determination of Feasibility, creation of the Business Entity, valuation as determined by City Council, and a Final Determination of Feasibility pending a successful conclusion of the Developer Recruitment and Negotiation Stage.
 - d. Establishment of the Business Entity and preparation of operating and management documents for the Business Entity with unanimous approval of the MOA Parties.
 - e. Vacation of the Army Street right-of-way, or some other means to be determined during the Initial Due Diligence and Feasibility Research Stage, that would provide for the use of all or part of the Army Street right of way integrated into the planning and development of the Project. The actual vacation or right to use all or part of the right-of-way will be contingent upon a positive Initial Determination of Feasibility, creation of the Business Entity, and a Final Determination of Feasibility pending a successful conclusion of the Developer Recruitment and Negotiation Stage.
 - f. Vacation of the platted alley intersecting with Holly Street, or some other means to be determined during the Initial Due Diligence and Feasibility Research Stage, that would provide for the use of all or part of the alley integrated into the planning and development of the Project. The actual vacation or right to use all or part of the alley will be contingent upon a positive Initial Determination of Feasibility, creation of the Business Entity, and a Final Determination of Feasibility pending a successful conclusion of the Developer Recruitment and Negotiation Stage.
 - g. Commitment by the City to extend the December 31, 2015 sunset date described in the City-BPDA Second Operating Agreement.
 - h. Delegation to the City and the City's assumption of responsibility for negotiations with Burlington Northern and Santa Fe Railroad for agreements necessary for approval and implementation of the Army Street project.
 2. Funding Approval:
 - a. City Council approval of the 2014 BPDA budget to fund work during the Initial Due Diligence and Feasibility Research Stage.

3. Design and development requirements:

- a. General consistency between work done during the Initial Due Diligence and Feasibility Research Stage and continued project planning and design of the Concept Development Phase Plan, to promote development of the Project as a themed master-planned complex, with unifying site and building elements contributing to the Project as an identifiable place, while providing for variety in building architectural treatments and materials.

- b. Inclusion of a significant parking structure as an Integral component of the Project sized to maximize the yield of parking spaces the Project site can physically and feasibly support. The total number and configuration of parking spaces would be determined during the Initial Due Diligence and Feasibility Research Stage, but as a minimum would be as required to meet Project parking needs per City code and parking regulations for the proposed Project building program.

Project planning and design will seek to maximize shared use of parking spaces and an excess of parking spaces available for City ownership or use by the general public ("Excess Spaces"). The provision of excess parking capacity exceeding Project requirements will be conditioned upon the availability of public funding for the excess spaces.

Work during the Initial Due Diligence and Feasibility Research Stage will include a parking management plan delineating public-private use of the parking structure, a general outline of a funding strategy and prorations of public-private funding obligations, and an assessment of operating requirements and feasibility for the parking facility.

- c. Inclusion of an open space amenity, such as an urban plaza, as a component of the planned development that would be owned and managed as part of the planned development and made available for public access and functions on terms to be determined.
- d. Inclusion of provisions in the planned development facilitating a grade-separated pedestrian crossing spanning the RR tracks and Chestnut Avenue, contingent upon public funding or a proration of costs among benefitted properties and the general public.
- e. Inclusion of affordable space, possibly within the parking structure, suitable for light manufacturing or studio spaces, which could be available for businesses that might otherwise be displaced.
- f. Inclusion of noise abatement measures in continued site and building planning and design to mitigate impacts of railroad traffic.
- g. Inclusion of environmental and resource conservation measures in continued project planning and design, especially for environmentally responsible use of materials incorporated into the development.
- h. Preservation of the existing stormwater vault in the Army Street right-of-way or, if necessary, its relocation or replacement with associated costs for a facility of an equal capacity borne by the Project.
- i. Approval of the Schematic Development Phase Plan prepared during the Initial Due Diligence and Feasibility Research Stage.

4. Participating Property Owner Capital Accounts:

- a. The approval of valuations of Properties, at the sole discretion of the Party owning the Property, for the purpose of defining capital contributions and interest in the governance and decision-making of the business entity and the value of capital accounts established and maintained for each Party.
- b. Cost of the work and project management costs funded by the BPDA credited to the BPDA's capital account and recoverable with a future sale or development of the consolidated properties.

5. As-Is Property Values, Building Replacement, and Business Relocations:

- a. *Vacant Parcels*. Determination of vacant land values during the Initial Due Diligence and Feasibility Research Stage acceptable to the MOA Parties.
 - b. *Income Producing Rental Properties*. Determination of an acceptable, as-is building replacement compensation during the Initial Due Diligence and Feasibility Research Stage and based on the investment value of current net income generated by building rents. Further, preparation of a building replacement and tenant relocation plan during the Initial Due Diligence and Feasibility Research Stage – subject to approval by the Parties owning income-producing investment properties – that provides for a replacement of the building, an allowance or payment based on the original building's as-is value, and relocation of existing tenants without a cost penalty to the Party owning the income-producing rental property.
 - c. *Owner Occupied Business Properties*. Determination of as-is building replacement values during the Initial Due Diligence and Feasibility Research Stage, which are acceptable to the MOA Parties and based on the value of the building in its as-is condition or the investment value of current net income generated by the business. Further, preparation of a building replacement and business relocation plan during the Initial Due Diligence and Feasibility Research Stage – subject to the approval by the Parties owning owner-occupied business properties – that provides for a replacement of the building, an allowance or payment based on the original building's as-is value, and relocation of the business without a cost penalty to the Party owning the business.
- G. Components of the scope of work to be undertaken during the Initial Due Diligence and Feasibility Research Stage, and generally to be performed by third party consultants and contractors engaged and managed by the BPDA, are outlined in Exhibit C.

VI. Final Determination of Feasibility: Developer Recruitment and Negotiations Stage

- A. The commencement of work for this stage will be contingent upon completion of the Initial Due Diligence and Feasibility Research Stage and a positive Preliminary Determination of Feasibility.
- B. The primary work to be undertaken during this stage will be the preparation of a development prospectus for the Project, research and identification of development organizations potentially interested in and capable of undertaking the proposed development, and contact and negotiations with these selected developers for either the sale and purchase of the consolidated properties or undertaking development of the consolidated properties in a joint venture with the Business Entity.

The process for recruitment and negotiation with prospective development organizations will be determined during the Developer Recruitment and Negotiations Stage and subject to approval by the

MOA Parties. Solicitations by a Request For Proposal (RFP) process would be considered, as well as a Noncompetitive Disposition process provided for in Section 7.2 of the Second Operating Agreement between the City of Bellingham and the Bellingham Public Development Authority effective March 15, 2011 ("Second Operating Agreement") which acknowledges unique aspects of this contemplated assembly of multiple properties owned by MOA Parties and their ownership interests in the Business Entity described herein.

- C. The management and funding of the cost of work during this stage will be provided by the BPDA and contingent upon budget approval by City Council. Costs incurred by the BPDA for these services will be treated as a BPDA capital contribution to the Project.
- D. The completion of this stage will be signified by unanimous acceptance and approval by the MOA Parties of a purchase and sale agreement or joint venture development agreement with a selected purchaser and developer (a positive "Final Determination of Feasibility"). A negative determination will result in termination of the MOA and cessation of further work.
- E. Any further binding commitments made by the MOA Parties, or the transfer of Property, will be contingent upon a Final Determination of Feasibility.

VII. Definition of the Business Entity

- A. The work under this MOA shall include providing a framework for business documents establishing a "Business Entity" which would serve to consolidate the interests of the MOA Parties and to consolidate ownership of their individually owned Properties, to define the ownership interests of the MOA Parties in the Business Entity, and to provide for the governance and management of future work done by the Business Entity.
- B. The form of the Business Entity, and associated operating agreements and articles, will be established during the Initial Due Diligence and Feasibility Research Stage. By way of example, the form of the Business Entity may be a corporation, a limited liability company, or some other form of business organization subject to the unanimous approval of the MOA Parties and include such considerations as tax treatment for the proceeds of sale or development of the Properties acceptable to the MOA Parties.
- C. The activation of the Business Entity, and commitments made by the Business Entity and participating property owners, will not be effective or binding until completion of the Initial Due Diligence and Feasibility Research Stage with a positive Preliminary Determination of Feasibility and successful conclusion of the Developer Recruitment and Negotiations Stage (the "Final Determination of Feasibility"). Assuming a positive Preliminary Determination of Feasibility and positive Final Determination of Feasibility, the commitments of the MOA Parties will become binding and the MOA Parties will transfer ownership of their Property to the Business Entity. The Business Entity will represent the unified interests of the participating property owners and their consolidated properties, according to governance, management, and decision-making terms and conditions defined in the business documents creating the Business Entity.
- D. The Parties' interests in the Business Entity and its governance will be proportionate to the level of the property owners' capital contributions based on the value of each parcel determined during the Initial Due Diligence and Feasibility Research Stage and working capital contributed to the project by individual property owners (including, without limitation, funds expended by the BPDA on the actions set forth in this MOA, and a reasonable percentage of general and administrative expenses of BPDA attributable to the Project).

- E. The documents that govern the creation and management of the Business Entity will define categories of decisions requiring differing levels of approval by the participating property owners, based on the interests of the property owners in the Business Entity. For example, some decisions that will be binding on all members or participating property owners may require unanimous approval, some may require a “super majority,” and some may require a simple majority.
- F. Documents that govern the creation and management of the Business Entity will provide for the acquisition – by the Business Entity or another participating property owner – of another participating property owner’s interest in the Business Entity in the event of an unresolved dispute or default.

VIII. Participation of MOA Parties during the Initial Due Diligence and Feasibility Research Stage and the Developer Recruitment and Negotiations Stage

- A. The MOA Parties agree to provide access to their Property for the BPDA and consultants engaged by the BPDA, or those engaged by a prospective purchaser or developer, to perform due diligence investigations of the Properties.
- B. The MOA Parties agree to make available to the BPDA any available information pertaining to the ownership and development of their Property (e.g. surveys, title insurance policies, copies of title exception documents, engineering studies, building plans, etc.) for the purposes of conducting due diligence investigations and research.
- C. The MOA Parties agree to participate in regular meetings of the MOA Parties and to provide requested information and respond to requests for decisions in a timely way.
- D. The MOA Parties agree to participate in “open-book” disclosures and negotiations to determine values for vacant Property and income and business Properties with existing buildings (e.g., tenant rolls and lease abstracts, existing current appraisals, etc).
- E. Reports, studies, plans and other work product generated during the Initial Due Diligence and Feasibility Research Stage will be made available to the MOA Parties and may be retained by the MOA Parties for their purposes and uses, whether or not the work is completed and with or without a positive Initial Determination of Feasibility. However, all MOA Parties hereby acknowledge that the distribution and availability of such reports, studies, plans and/or work product is made without any representation or warranty of accuracy, completeness or compliance with law by any of the MOA Parties, and that any reliance of an MOA Party on any such reports, studies, plans and/or work product shall be at their own risk.

IX. Accounting and Record-Keeping

The BPDA shall be responsible for preparing and maintaining accounting and recordkeeping for all project financial accounts. Accounting and financial record-keeping services, including a current and cumulative record of Project expenditures, cost basis in the Project, and MOA Party capital contributions and capital accounts, will be provided by a third party firm engaged by the BPDA. BPDA funding of these services will be contingent upon City Council budget approvals for the Project and costs incurred by the BPDA for these services will be treated as a BPDA capital contribution to the Project.

X. Recovery of City Investment

Sections 4.5 and 4.6 of the Second Operating Agreement include provisions for the recovery of City capital costs incurred by the City for the Project (including such expenditures as property acquisition costs, infrastructure and other capital improvements related to properties owned by the City and managed by the

BPDA or conveyed to the BPDA) and BPDA general and administrative and operating expenses funded by the City) referred to as "City Basis" or "City Investment" in the Project. The provisions of the Second Operating Agreement provide for the priority application of revenue proceeds accruing to the BPDA from the sale, lease, development or operation of the Project to be reimbursed to the City to recover City Investment.

As an alternative to the reimbursement of cash proceeds generated by the Project to recover City Investment, the City may opt to acquire ownership or reserved use of an equivalent number of the Excess Spaces for use by the general public ("Parking Equivalents") in lieu of the receipt of Project revenues. The determination of the Parking Equivalents would be based on the cost of development and construction of the total number of parking spaces provided by the Project divided by the total number of spaces provided. The cumulative City Investment divided by the cost per parking space would determine the Parking Equivalents made available for public ownership or reserved use.

XI. Funding Contingency

A. The MOA Parties acknowledge that the BPDA's commitment and ability to perform its obligations described in Section V, Section VI, and Section IX are contingent upon funding approvals by the City prior to commencement of the work and continued during the MOA Term. In the event that City funding approvals are withheld or terminated, then the BPDA reserves the right to withdraw as an MOA Party and terminate the MOA upon written notice to the MOA Parties.

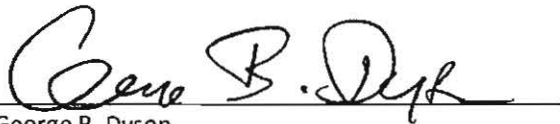
XII. Authorization of the Parties to Participate

Execution of this MOA signifies the Party's general agreement with the purposes and provisions defined in this MOA. Execution is an acknowledgement that the MOA Party owns the Property indicated by the MOA Party's signature, has a current right to acquire such Property, or has been duly authorized to sign this MOA by the owner(s) of the Property or the entity having a controlling interest in the ownership of the Property.

435 West Holly Street, an owner occupied business property including land and an existing building.

Parcel No. 3803300672130000

Owner of record or authorized representative: George B. Dyson



George B. Dyson

Date of signature: 8 November 2013

Formerly 401 and 413 West Holly Street, a vacant undeveloped lot without an existing building.

Parcel No. 380330070200; 380330086201

Owner of record or authorized representative: Trillium Corporation



Jonathan Syre, President, Trillium Corporation

Date of signature: 11/8/2013

A vacant undeveloped and unplatted lot without existing buildings, and platted but un-built street right-of-way.
Parcel No. A portion of parcel number 3802255220210000 to be determined by survey and the platted Army Street right-of-way.
City of Bellingham, as option holder for acquisition of the property from the current owner (Port of Bellingham).

Attest:

Mayor Kelli Linville

Finance Director

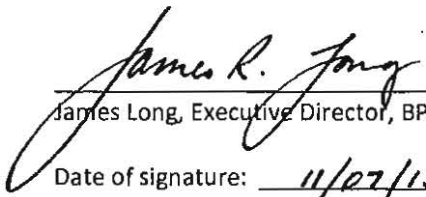
Date of signature: _____

Approved as to form: _____

Name: _____


Title: _____

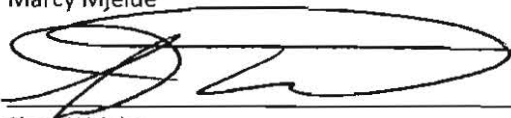
A vacant undeveloped lot without existing buildings.
Parcel No. 3803300931900000
Owner of record or authorized representative: Bellingham Public Development Authority



James Long, Executive Director, BPDA
Date of signature: 11/27/13

311 West Holly Street, an owner-occupied business property with an existing building.
Parcel No. 3803300991830000; 3803300951790000
Owner of record or authorized representative: Wright Angle, LLC



Marcy Mjelde


Sheri Wright

Date of signature: 11-7-2013

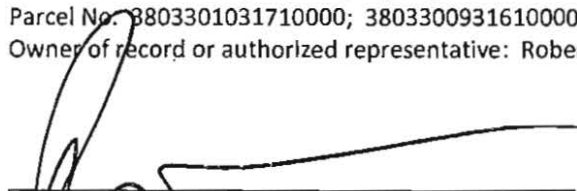
307 West Holly Street, a rental property with an existing building leased to a single commercial tenant.
Parcel No. 3803301051790000; 3803301031810000
Owner of record or authorized representative: Donna MacDonald Trust



Donna MacDonald

Date of signature: 11-8-13

301 West Holly Street, a rental property with an existing building leased to multiple commercial tenants .
Parcel No. 3803301031710000; 3803300931610000
Owner of record or authorized representative: Robert C. Thornberg Decedent's Trust



Jack W. Curnow, Co-Trustee

Date of signature: 11/12/13

EXHIBIT A
THE ARMY STREET PROJECT SITE

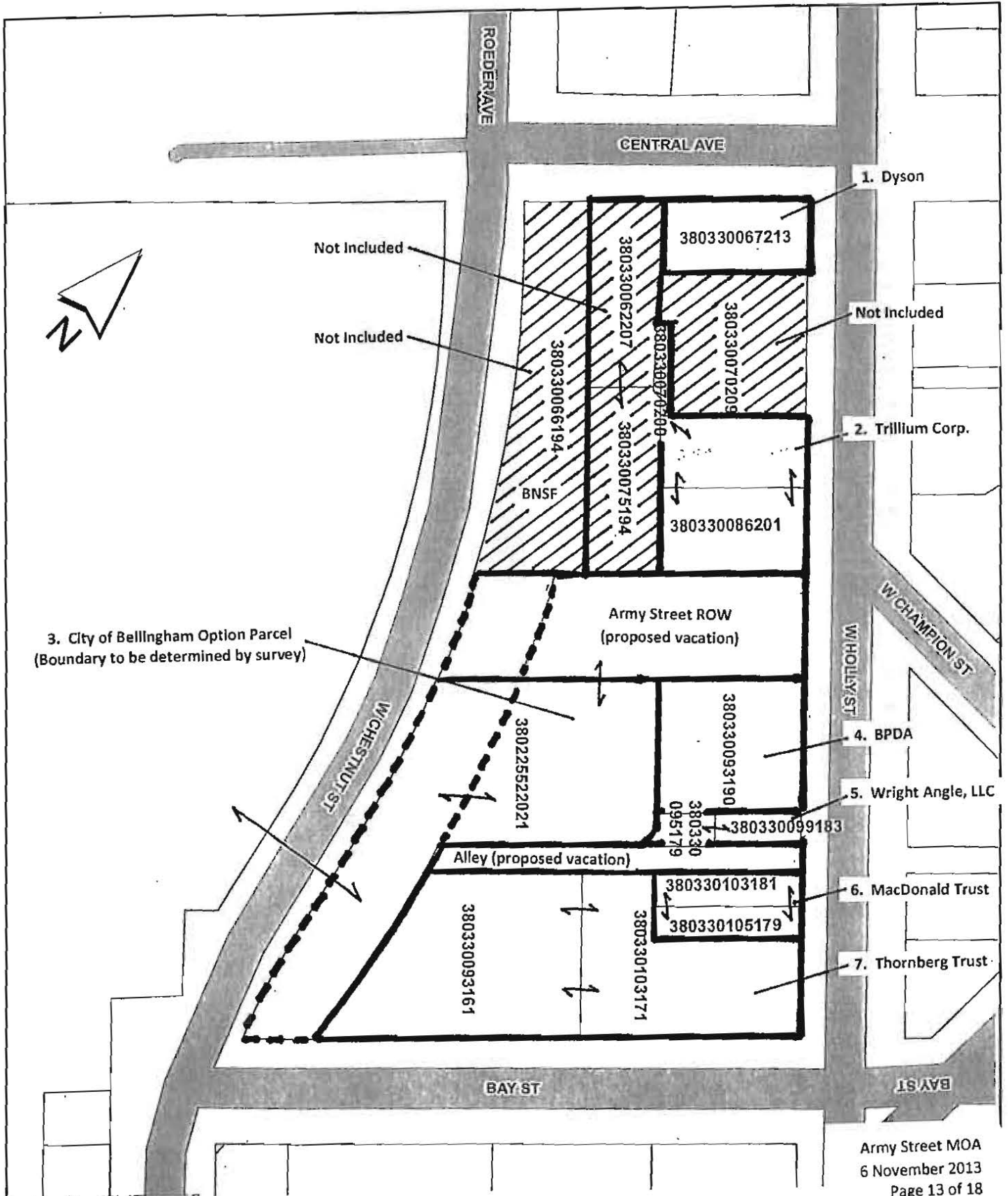
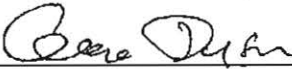


EXHIBIT B

APPROVAL OF THE ARMY STREET CONCEPT DEVELOPMENT PHASE PLAN

The Army Street Property Owner Letter of Intent (the "LOI"), which was executed by the seven LOI Parties with an effective date of July 12, 2013, included provisions for preparation of the Army Street Concept Development Phase Plan and the unanimous approval of that plan by the LOI Parties. By signature below, the LOI Parties acknowledge their approval of the Army Street Concept Development Phase Plan dated September 10, 2013 and attached as Exhibit A.

1. 435 West Holly Street, an owner occupied business property including land and an existing building.
Parcel No. 3803300672130000
Owner of record or authorized representative: George B. Dyson



George B. Dyson

Date of signature: 9/20/2013

2. Formerly 401 and 413 West Holly Street, a vacant undeveloped lot without an existing building.
Parcel No. 380330077202000; 3803300862010000; 380330070200000
Owner of record or authorized representative: Trillium Corporation



Jonathan Syre, President, Trillium Corporation

Date of signature: 9/23/2013

3. A vacant undeveloped and unplatted lot without existing buildings, and platted but un-built street right-of-way.
Parcel No. A portion of parcel number 3802255220210000 to be determined by survey and the platted Army Street right-of-way.
City of Bellingham, as option holder for acquisition of the property from the current owner (Port of Bellingham).

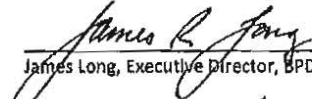
Attest:

Mayor Kelli Linville

Finance Director

Date of signature: _____

4. A vacant undeveloped lot without existing buildings.
Parcel No. 3803300931900000
Owner of record or authorized representative: Bellingham Public Development Authority


James Long, Executive Director, BPDA
Date of signature: 09/20/2013

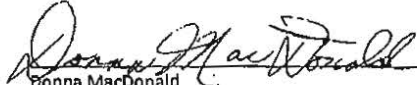
5. 311 West Holly Street, an owner-occupied business property with an existing building.
Parcel No. 3803300991830000; 3803300951790000
Owner of record or authorized representative: Wright Angle, LLC


Marcy Meide

Sheri Wright

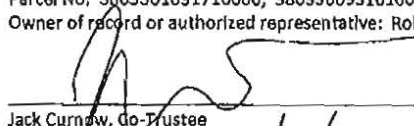
Date of signature: 09/20/2013

6. 307 West Holly Street, a rental property with an existing building leased to a single commercial tenant.
Parcel No. 3803301051790000; 3803301031810000
Owner of record or authorized representative: Donna MacDonald Trust


Donna MacDonald

Date of signature: 9-20-13

7. 301 West Holly Street, a rental property with an existing building leased to multiple commercial tenants.
Parcel No. 3803301031710000; 3803300931610000
Owner of record or authorized representative: Robert C. Thornberg Decedent's Trust


Jack Curnow, Co-Trustee

Date of signature: 09/25/13

EXHIBIT C
INITIAL DUE DILIGENCE AND FEASIBILITY RESEARCH STAGE SCOPE OF WORK

The following elements comprise work to be undertaken during the Initial Due Diligence and Feasibility Research Stage, culminating in a Preliminary Determination of Feasibility for the Project. These elements would be undertaken in phases and a sequence of steps, with an assessment of results during and at the end of each phase, to minimize the cost and risk of deferring a determination of Project feasibility until the conclusion of all the work. The sequence of work may overlap with elements undertaken concurrently. Depending upon the impacts of each element on Project feasibility and an assessment of the feasibility of mitigating negative impacts or results, the BPDA may opt to either discontinue further work or to continue.

Phase I : Baseline Information and Assessment of Site Conditions

A. Property Surveys & Base Mapping

1. Preparation of current property boundary and improvements survey for each Property, including the City Option Parcel.
2. Title policy research for each Property, including review of all title exceptions and encumbrances.
3. Preparation of composite property boundary and improvements survey combining all Properties, including topography and all surface and subsurface matters of record and providing an accurate and current base map for further Project research and planning.

B. Economic Base Analysis and Market Feasibility Research

1. Analysis of regional and local economic attributes and growth potentials, potential market-supported development opportunities and niches, market demand for potential uses, barriers to entry and strategic marketing requirements for potential uses.
2. Determination of the optimal mix of land uses for the Project building program based on production phasing and absorption schedules supported by objective research.
3. Land use specific market research and assessments for proposed component building uses, including recommendations for design and development features, potential market rates and values, market demand, and timing and feasibility.

C. Property Appraisals and Valuations

1. Appraisal of the value of individual vacant, unimproved Properties as-is.
2. Appraisal of the current value of Properties as-is with existing buildings based on an assessment of building condition and needed capital upgrades and repairs.
3. Appraisal of the current value of Properties as-is with existing buildings based on a net income approach for existing rental properties and owner-occupied business properties.
4. Estimation of the value of the assembled Properties, post-consolidation and post-clearing, as a percentage of the fully developed Project based on a residual analysis of the Schematic Design Phase Plan.

D. Assessment of Site Conditions

1. Phase I Environmental Assessment for each Individual Property and a combined report for the assembled Properties based on the Schematic Design Phase Plan.
2. Geotechnical and Subsurface Analysis for each individual Property and a combined report with recommendations for development of the assembled Properties based on the Schematic Design Plan.

Phase II : Schematic Design Phase Planning and Design

- A. Expansion and additional detailing of the Concept Development Phase Plan to incorporate results of research and findings during the Initial Due Diligence and Feasibility Research Stage, including:
 1. Refined mix of land uses and building program based on economic and market research.
 2. Preliminary engineering to incorporate offsite and onsite infrastructure system requirements, with a delineation of public and private improvements and including a preliminary grading plan and stormwater management plan.
 3. Preliminary transportation planning to incorporate facility requirements for auto, bike, pedestrian and public transit systems, with a delineation of public and private improvements.
 4. Preliminary environmental and resource conservation planning to incorporate facility requirements for future design, construction, and operations for the Project.
 5. Site planning for site improvements, including common areas and amenities, with a delineation of public and private improvements.
 6. Preliminary architectural plans for all component building projects, including the parking structure.

Phase III: Management, Financial and Fiscal Analysis

A. Parking Program and Management Plan

1. Assessment of parking requirements per regulatory and market-based criteria to support the proposed mix of land uses and a determination of surplus parking capacity available for public use.
2. Preparation of a parking management plan including capital and operating costs, projected rates and charges, and a public-private funding plan and strategy.
3. Assessment of financial feasibility, from both a public sector and public sector perspective.

B. Building Replacement and Business/Tenant Relocation Plan

1. Agreement on the replacement values (costs) for the relocation and replacement of existing income producing properties, tenants, and owner-occupied businesses.
2. Determination of the availability and suitability of replacement properties.
3. Research of funding sources and preparation of a management and funding plan, with an assessment of Impact on Project cost basis and feasibility.

C. Negotiations and Coordination with the BNSF RR

1. City staff shall be responsible for coordinating the interests of the City and the Project in negotiations with BNSF, which shall be led by the City and supported by the BPDA and the MOA Parties, as required to obtain any necessary agreements for approval and implementation of the Project.

D. Capital Improvements Cost Estimate and Value Engineering, Preliminary Development Budget

1. Preparation of development budgets and cost schedules, including capital and soft costs, for component building projects and the combined Project.

E. Financing Plan & Investment Feasibility Analysis

1. Preparation of a preliminary financing plan with sources and uses of funds, for component projects and the combined Project, with a delineation between public and private projects.
2. Preparation of a preliminary investment proforma for component projects and the combined Project, with a delineation between public and private projects.
3. A preliminary return analysis and feasibility assessment for component projects and the combined Project.
4. A Fiscal Impact Analysis projecting return of and return on public investment, including direct and indirect public revenue generation.

F. Project Approval Requirements

1. Determination of impacts and feasibility of required development and regulatory approvals (e.g., SEPA).

Preliminary Determination of Feasibility & Development Prospectus

- A. Review of component feasibility assessments for a composite, go-no go determination of feasibility by the MOA Parties.
- B. Review and waiver by the MOA Parties of conditions and contingencies defined in the MOA.
- C. Assuming a positive Preliminary Determination of Feasibility, preparation of a presentation quality compendium of the results of the Initial Due Diligence and Feasibility Research Stage, to support work undertaken during the Developer Recruitment and Negotiations Stage.

MEMORANDUM OF AGREEMENT OVERVIEW
Army Street Project Supplemental Information

November 18, 2013

Army Street Project Snapshot

- **Voluntary land assembly with seven property owners creating strategic, developable 2.5 acre site.**
 - ✓ Combines 14 separate parcels, seven separate owners.
 - ✓ Parcel size ranges from 1,200 – 15,000 sq. ft., with severe development constraints.
 - ✓ Avoids upfront capital outlay for land acquisition and assembly reducing development risk.
- **Concept Phase Plan.**
 - ✓ 330,000 sq. ft. mixed-use building program with potential 800 structured parking spaces.
 - ✓ Presented to Council Sept. 16th.
 - ✓ Approved by MOA Parties.
- **Big step towards implementing 2008 Old Town Sub-Area Plan.**
- **Physical connection of Downtown District, Old Town District and Waterfront District.**
- **Expansion of strategically located downtown parking capacity.**
- **Destination project, integrated development, urban plaza.**
- **Pedestrian connection between Downtown and Waterfront.**

Memorandum of Agreement Snapshot

- **Property consolidation potentials preserved during predevelopment work.**
 - ✓ Defines binding commitments during term of the MOA.
 - ✓ Positive feasibility = Sale of assembled properties to developer or Joint Venture with developer.
- **Defines predevelopment work to further shape project and determine feasibility, enhance developer recruitment and investment.**
 - ✓ Work and expenditures undertaken in phases to manage risk.
- **Defines framework for governance and management of Business Entity comprised of the MOA Parties.**
 - ✓ Separate property interests in individual parcels transposed into % interest in the Business Entity.
 - ✓ Vehicle for MOA Party capital contributions to the Project, initially leveraging \$3 in private capital to \$1 of public.
- **Defines elements and steps comprising determination of feasibility and conditions for transfer of parcel ownerships by MOA Parties.**
- **Provides for recovery of MOA Parties' investment in the Project, including the City and the BPDA.**

Status of City-BPDA MOU and Army Street LOI Requirements

Target Deadlines

- | | |
|---|--------------------|
| ✓ Letter of Intent (LOI). | June 30, 2013 |
| ○ 7 Party agreement completed July 12, 2013. | |
| ✓ Concept Development Phase Plan. | September 30, 2013 |
| ○ Approval by all other LOI Parties completed September 30, 2013. | |
| ✓ Memorandum of Agreement (MOA). | November 15, 2013 |
| ○ Requires unanimous approval of the 7 LOI Parties. | |

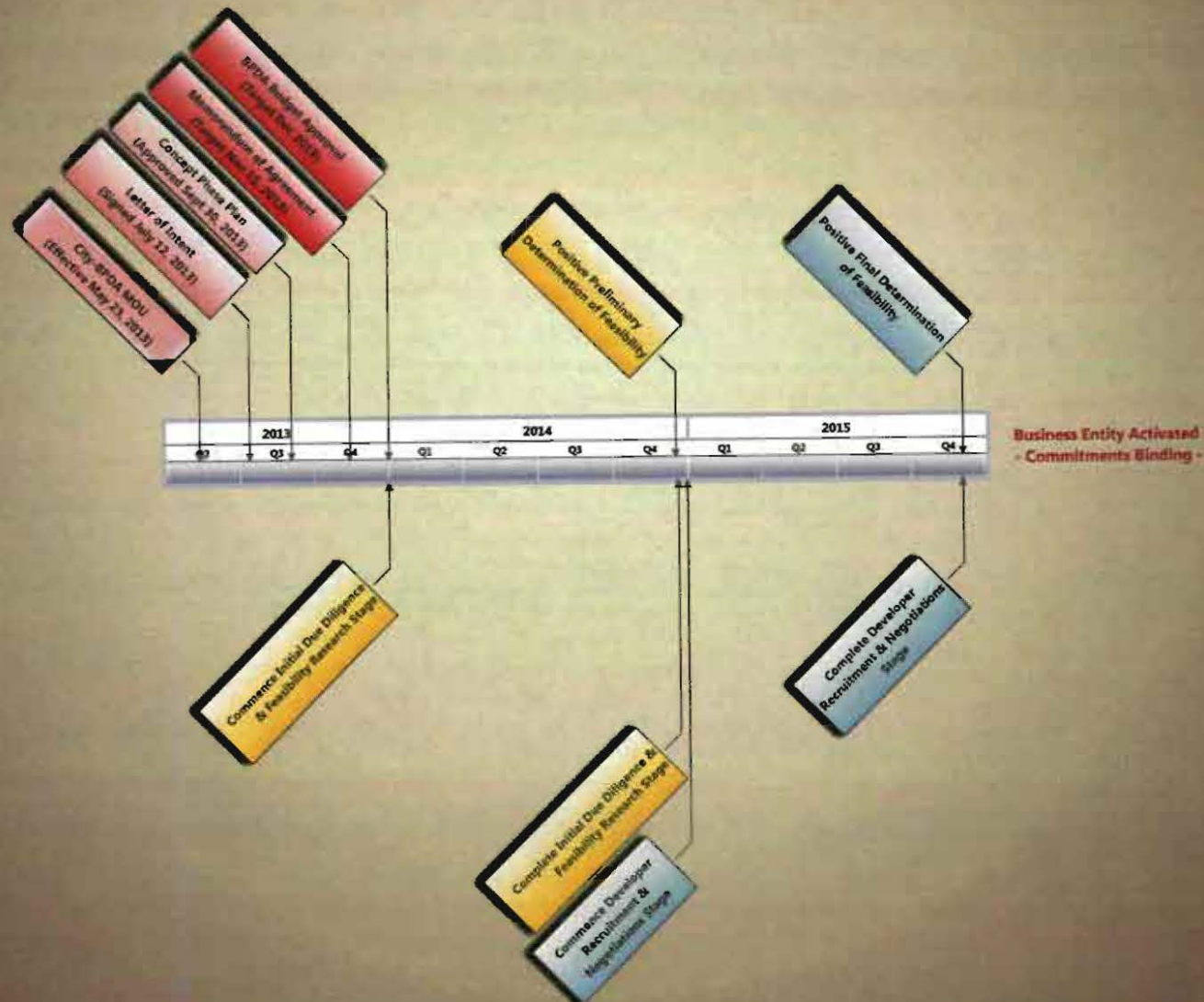
Additional Consideration:

- 2013 BPDA budget considerations directed project to include "significant" parking component.
- Concept Development Phase Plan provides for potential 790 spaces (four levels) providing excess spaces over and above code requirements for preliminary land use mix.

LOI Parties/MOA Parties & Properties



Army Street Project Timeline & MOA Work



The MOA: What is its purpose?

- **Defines next steps in the land assembly and predevelopment process.**
 - ✓ Methodology consolidating the separate properties into larger combined site.
 - ✓ Maps out next steps in the predevelopment process and scope of work.
 - ✓ Roles, responsibilities of the MOA Parties.
 - ✓ Performance and management of the work.
 - ✓ Component elements and steps comprising “determination of feasibility”.
 - ✓ Defines MOA Parties’ requirements to be satisfied as conditions prerequisite to property transfers and binding commitments.

- **Framework for the “Business Entity”.**
 - ✓ 3 to 1 leveraging: Approx. \$3 MM in as-is land values contributed/subordinated to project as initial property owner capital investment.
 - ✓ Vehicle for management and governance of the combined property interests.

- **Sets forth binding and non-binding (until defined conditions are met) commitments during the term of the MOA.**
 - ✓ Preserves potential for parcel consolidation during the term of the MOA.
 - ✓ Recordable document.

MOA Provisions

1. MOA Parties

- ✓ The seven LOI Parties.
- ✓ Additional contiguous owners may join, subject to unanimous approval.

2. MOA Term

- ✓ Three years.
- ✓ Earlier termination or extension, subject to unanimous approval.

3. Binding Obligations During MOA Term

- ✓ No additional encumbrances for individual properties without unanimous approval.
- ✓ No sale of individual properties without Right of First Offer ("ROFO") to other MOA Parties or the Business Entity.
- ✓ Summary of the MOA recordable, notice of MOA binding commitments.

MOA Provisions (con't)

4. Preliminary Determination of Feasibility: Initial Due Diligence & Feasibility Research Stage

- ✓ 23 conditions defined by the MOA Parties prerequisite to binding commitments consolidating ownership of the separate properties, to be fulfilled or waived.
- ✓ Supports decision to continue or terminate, based on objective research.
- ✓ BPDA commitment to perform work contingent upon MOA funding/budget approval.
- ✓ Work managed by the BPDA.
- ✓ Value of BPDA property and BPDA costs prorated to project treated as capital contribution , recoverable.
- ✓ Limits recourse to BPDA assets.
- ✓ Risk management – Work in sequence of discrete phases with interim feasibility assessments at end of each phase.
- ✓ 16 elements comprise the “Preliminary Determination of Feasibility” at end of stage.
- ✓ Scope of work described in Exhibit C.

MOA Provisions (con't)

5. Final Determination of Feasibility: Developer Recruitment & Negotiations Stage

- ✓ Contingent upon successful completion of the Initial Due Diligence & Feasibility Research Stage and positive Preliminary Determination of Feasibility.
- ✓ Development prospectus - proposed preliminary development program and plans, supportive research and analysis.
- ✓ Identification of capable, experienced and potentially interested development organization(s).
- ✓ Contact and negotiations with selected developers.
- ✓ Strategies: Sale of combined properties to developer or joint venture participation.
- ✓ BPDA management and funding of the work, recoverable additional capital contribution.
- ✓ Completed upon execution of purchase and sale agreement or development JV agreement, unanimous MOA Party approval.

MOA Provisions (con't)

6. Business Entity Set-Up

- ✓ Consolidates ownership interests in combined Property, provides for governance and management of the organization.
- ✓ Ownership and governance interests proportionate to MOA Party's capital contributions.
- ✓ Form of entity (e.g. corporation, LLC, et al) and set-up documents during Initial Due Diligence and Feasibility Research Stage.
- ✓ Defines decisions requiring different levels of approvals.
- ✓ Default and cure provisions, including acquisition of interests by non-defaulting MOA Party.
- ✓ Prerequisites for activation and binding commitments (e.g., property transfers):
 - Positive Preliminary Determination of Feasibility at completion of Initial Due Diligence and Feasibility Research Stage.
 - Positive determination of feasibility at completion of Developer Recruitment and Negotiation Stage.

MOA Provisions (con't)

7. Participation and Involvement of the MOA Parties

- ✓ Access to properties.
- ✓ Delivery of existing, available studies and information.
- ✓ Oversight of work, meeting participation and timely decision making.
- ✓ Open-book negotiations.
- ✓ Shared ownership of due diligence materials.

8. Accounting & Record-Keeping

- ✓ Third party accounting services.
- ✓ Accounting and financial records, esp. MOA Party capital accounts, project cost basis.

MOA Provisions (con't)

9. Alternative Provisions for Recovery of City Investment

- ✓ Preferential return of capital per provisions of the City-BPDA Operating Agreement (from project sale or revenues).

Or

- ✓ Ownership of a specific number of parking spaces in excess of project parking requirements per code, in lieu of project generated revenues.
 - "Parking Equivalents" = Cumulative City Investment divided by cost per parking space.
 - Cost per parking space = Total cost of all parking spaces included in the Project divided by total number of parking spaces provided in the Project.

MOA Provisions (con't)

10. Scope of Work: Initial Due Diligence & Feasibility Research Stage

- MOA Exhibit C lists work elements.
- Component elements and sequence of feasibility assessments culminate in Preliminary Determination of Feasibility:

➤ Phase I: Baseline Information / Assessment of Site Conditions

- Property surveys, title research and base mapping.
- Economic base analysis and market feasibility research.
- Property appraisals and valuations.
- Phase I Environmental Site Assessments.
- Geotechnical and subsurface investigations.

➤ Phase II: Planning and Design

- Schematic Design Phase Plan and multi-disciplinary supporting studies.

MOA Provisions (con't)

10. Scope of Work: Initial Due Diligence & Feasibility Research Stage (con't)

➤ Phase III: Management Considerations / Financial & Fiscal

- Parking program and management plan.
- Building replacement and business/tenant relocation plan.
- BNSF RR coordination and negotiations.
- Capital cost estimating and value engineering, project budget.
- Preliminary financing strategy – sources and uses of funds, phasing.
- Preliminary investment proformas and return analysis – private sector.
- Preliminary fiscal impact analysis – public sector investment and returns.
- Assessment of regulatory processes and approvals.

➤ End of Stage: Preliminary Determination of Feasibility

- Compilation of component assessments.
- Fulfillment or waiver of MOA Party conditions and contingencies.
- Proceed to Developer Recruitment and Negotiations Stage.



- Old Town Urban Village Plan Area
- Arts District
- Army Street Planning Area

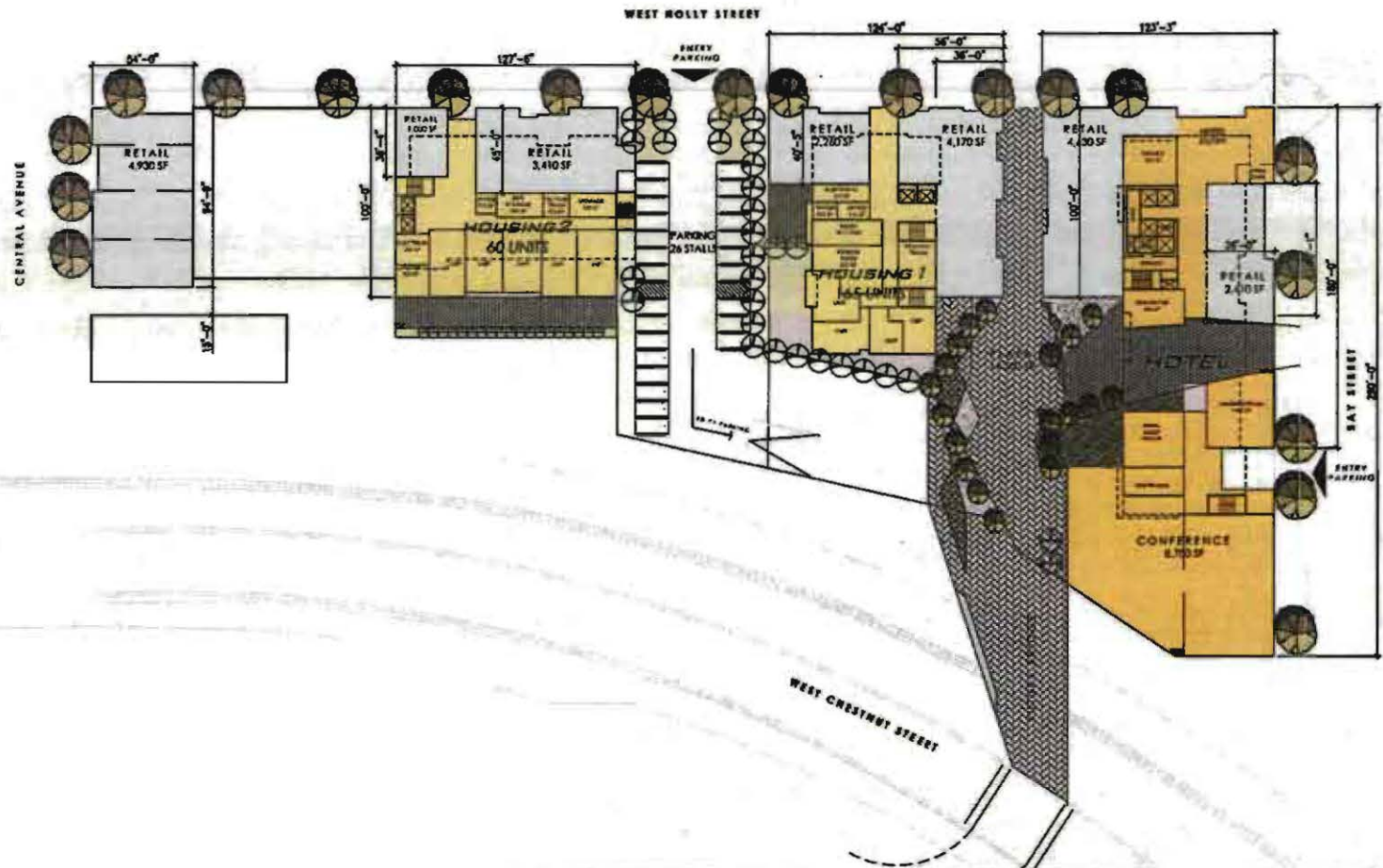


"...5 minutes is a tolerable walking distance for an attractive, but not weather-protected area during periods of inclement weather..."

Bellingham Public Development Authority (BPDA)
ARMY STREET PROJECT - INFLUENCE AREA



3/21/12
CDM



A PLAN 01

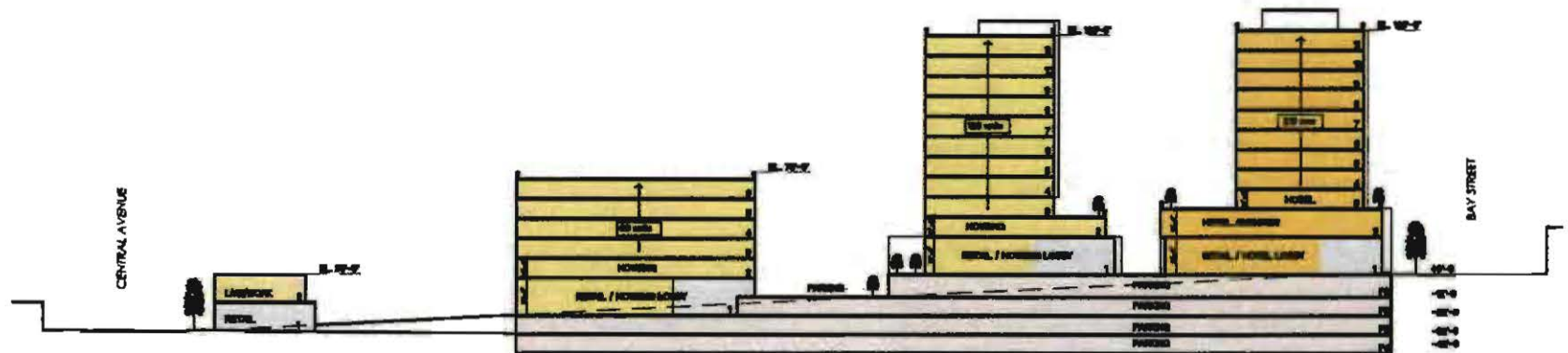
Project: **ARMY STREET CONCEPT PLAN**

Date: **10 SEPTEMBER 2013**

Client: **BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY**



ZERVAS/GBD



Section
SECTION (EAST-WEST)

Project
**ARMY STREET
CONCEPT PLAN**

Date
10 SEPTEMBER 2003

Client
**BELLINGHAM PUBLIC
DEVELOPMENT AUTHORITY**

Scale
0 10 20 50

Architect
ZERVAS/GBD

BUILDING SECTIONS



RENDERING- ARIAL VIEW

