



FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2015 MAY 14 AM 10:11 **AGENDA REPORT**

**TO:** CLAUDIA CAPPIO  
ACTING INTERIM CITY ADMINISTRATOR

**FROM:** Mark Sawicki

**SUBJECT:** Fruitvale Transit Village Phase II

**DATE:** April 28, 2015

City Administrator  
Approval

Date

5/13/15

**COUNCIL DISTRICT:** 5

**RECOMMENDATION**

Staff recommends that the City Council adopt the following legislation:

**An Ordinance Authorizing The City Administrator To Negotiate And Execute A Lease Disposition And Development Agreement, A Sixty-Six (66) Year Ground Lease And Related Documents (Collectively "LDDA") Between The City Of Oakland And The Spanish Speaking Unity Council Of Alameda County, Inc. And L & M Development Partners, Inc. For Development Of Mixed-Income Housing Located On APN 033-2177-021 At 35<sup>th</sup> Avenue And East 12<sup>th</sup> Street**

**OUTCOME**

Adoption of the proposed ordinance will authorize the City Administrator to enter into a Lease Disposition and Development Agreement, a sixty-six (66) year ground lease and related documents (collectively, "LDDA") with the Spanish Speaking Unity Council of Alameda County ("Unity Council") and L & M Development Partners Inc. ("L & M"), hereinafter referred to collectively as the "Developer." The LDDA will allow the Developer to build Phase IIA of the Fruitvale Transit Village project. The Fruitvale Transit Village Phase II project is comprised of two components: Phase IIA consisting of 94 mixed-income rental housing units and Phase IIB consisting of 181 market rate rental housing units.

**EXECUTIVE SUMMARY**

***Lease Term for Phase IIA***

The City of Oakland ("City") will lease the Phase IIA site located on APN 033-2177-021 at 35<sup>th</sup> Avenue and East 12<sup>th</sup> Street to the Developer for the development and management of the mixed-income units for 66 years, under a ground lease beginning with the date the Developer closes financing to construct their Project. The ground lease payment to the City will be 50 percent (50%) of the Available Cashflow through year 66. The "Available Cashflow," is defined as cashflow available from the property after

Item: \_\_\_\_\_  
CED Committee  
May 26, 2015

collecting all rents and other income and including net debt refinancing or disposition proceeds, and after the payment of all property operating expenses, including resident services, deferred developer fees, operating and replacement reserves, interest and principal on member loans, scheduled debt service payments and residual receipts payments due lenders, payments due BART, if applicable, payments to the Developer for asset management fees, General Partner management fees, incentive management fees, guaranty fees, and other customary fees payable to its equity partners (See *Attachment A*).

Phase IIA contains 85 percent below market rate units (80 units) and 15 percent market rate units (14 units). The project will include 28 one-bedroom units, 42 two-bedroom units, and 24 three-bedroom units. The project will include a parking ratio of 0.5 spaces per unit for a total of 47 parking spaces (See *Attachment B*). The project is anticipated to be funded partially with proceeds from the sale of low-income housing tax credits and \$8,000,000 from the State of California, Housing and Community Development (HCD) Proposition IC funds which consist of a \$4,000,000 infrastructure grant and a \$4,000,000 rental housing loan. The mixed-income housing development will also generate financial and economic benefits to the City in the form of 264 new jobs, \$940,000 permit fees, and \$16,000 annual in utility taxes.

### ***Phase IIB***

The City will continue negotiating with the Developer for the development of the Phase IIB site under the existing Exclusive Negotiating Agreement (ENA). The term of the ENA is from November 18, 2014 to November 18, 2015 with an option to extend for six months. The proposed Phase IIB of the Fruitvale Transit Village is expected to be comprised of 181 market rate rental units made up of 28 studio units, 91 one-bedroom units, and 62 two-bedroom units. The proposed Phase IIB is expected to include a parking ratio of one space per unit for a total of 181 parking spaces.

The total cost of the 275 units, in both Phase IIA and Phase IIB including 94 mixed-income and 181 market rate units, with 228 parking is approximately \$116 million. The Developer and the City have worked closely in partnership to seek funding for the mixed-income units. The Developer will continue to work on the financing of the market rate component.

### **BACKGROUND/LEGISLATIVE HISTORY**

The Fruitvale Transit Village Phase II site is located immediately adjacent to the Fruitvale Transit Village Phase I project. Fruitvale Transit Village Phase I was completed in 2003 with a gross building area of 257,000 sq. ft. of retail, office, and residential uses. The site for the Fruitvale Transit Village Phase II project consists of the remaining 3.4 acre Fruitvale BART parking lot property located on E. 12th Street between 35th and 37th Avenues (see *Attachment C* map of area). The Unity Council has formed a partnership with L & M for the entire project. In July 2010, the Board of the former City of Oakland Redevelopment Agency (the "Agency") approved Resolution No. 2010-0100 C.M.S. (the "Agency Resolution"), which authorized the Agency Administrator to purchase the parking lot from the Bay Area Rapid Transit (BART) so that it could be developed into Phase II of the Fruitvale Transit Village. Phase II of the project was originally entitled by the Unity Council in 2010. The project was redesigned by a new architect, Pyatok Architects, and was newly approved by the Planning Commission on May 6, 2015.

In January 2012, all redevelopment agencies in the State of California were dissolved, the Oakland Redevelopment Successor Agency ("ORSA") became the successor agency to the Agency and pursuant to the long range property management plan approved by the California Department of Finance in May 2014, the Property was transferred to the City.

In August 2013, the City partnered with the Unity Council and jointly applied to the State of California's Department of Housing and Community Development Transit Oriented Development ("TOD") Housing Program for a grant in the amount of \$4,000,000. In addition, the Unity Council applied to the TOD Infill Loan Program. In February 2014, the Unity Council and the City received the maximum \$4,000,000 grant and the Unity Council separately received the maximum \$4,000,000 loan amount for Phase II of the Fruitvale Transit Village project.

In May 2014, the Unity Council issued a Request for Qualifications to solicit qualifications from housing developers for Phase II of the project. L & M, a New York based for-profit development firm with experience and expertise in developing large mixed-use and affordable and market rate housing developments, was selected and approved by the Unity Council Board of Directors. In September 2014, a Memorandum of Understanding (MOU) was signed between the Unity Council and L & M to develop Fruitvale Transit Village Phase II.

On November 18, 2014 the City Council approved Resolution No. 85271 C.M.S. authorizing an exclusive negotiating agreement (ENA) with the Unity Council for the development of the Fruitvale Transit Village Phase II. The Unity Council has now substantially completed the requirements of the ENA for Phase IIA, the mixed-income housing part of the project. The final review was approved by the Planning Commission on May 6, 2015.

### ***The Unity Council***

The Unity Council was founded in 1964, incorporated in 1967, and received 501(c)(3) tax-exempt status in 1968. The Unity Council is a non-profit community development corporation committed to enriching the quality of life of families primarily in the Fruitvale District of Oakland. Its mission is to help families and individuals build wealth and assets through comprehensive programs of sustainable economic, social, and neighborhood development.

### ***L & M Development Partners, Inc.***

Since its foundation in 1984, L & M states that it has been an innovator in developing quality affordable, mixed-income, and market rate housing, while improving the neighborhoods in which it works. A full-service firm, L & M works from conception to completion, handling development, investment, construction, and management. L & M is responsible for more than \$4 billion in development, construction, and investment, and has created or preserved more than 15,000 high-quality residential units in New York's Tri-State area, the West Coast and Gulf Coast region. L & M believes that community leaders, government officials, and institutional investor organizations turn to its organization because of its consistent track record of excellence.

L & M takes pride in its long-standing dedication to the communities it serves, demonstrated through an annual scholarship fund, job training programs, afterschool programs, and substantial support for local nonprofits. L & M seeks to bring a superior level of commitment to its investments in developments, and equally important, to its investment in people. Most recently, L& M completed Candlestick Point, which is an affordable housing development in San Francisco.

### *The Property*

The 3.4-acre project site currently consists of two parcels. Phase IIA or the mixed-income component is 1.23 acres (APN 033-2177-021) and Phase IIB, the market rate component (APN 033-2197-019) is 2.18 acres. The site is currently used as a surface parking lot that will be phased out during the construction of the proposed project. The City will enter into an LDDA for Phase IIA for the mixed-income housing and, upon the satisfaction of conditions precedent under the LDDA, enter into a ground lease with the Developer for this parcel. At this time, the City will continue to negotiate the terms of a disposition agreement with the Developer for the Phase IIB market rate housing component.

The project site was purchased from the BART with Coliseum Redevelopment Project Area Taxable Bond funds. BART required a number of conditions, covenants, and restrictions on the property that allow only transit-oriented development uses to be permitted.

### *The Project*

Phase I of the Fruitvale Transit Village is a successful national model for livable communities created by the Unity Council and completed in 2003. Located in the heart of the vibrant Fruitvale neighborhood, Fruitvale Village is a mixed-use development that includes prime retail spaces, offices, and apartments. Fruitvale Village is adjacent to the Fruitvale BART station with a bustling AC Transit hub, making the property an internationally renowned transit oriented development property, or TOD. Wide pedestrian plazas running through the Village are host to weekly farmer's markets, and event spaces, and are a great place to sit and enjoy the sun. Fruitvale Village is also adjacent to the bustling Fruitvale commercial district that has experienced a dramatic transformation over the past 10 years. Fruitvale Transit Village Phase I is a "mixed-use" development, meaning that the space is used by office, retail, and residential tenants. The ground floor of the Fruitvale Village Transit Village Phase I is home to locally-owned retail spaces. The second floor offers office spaces for important community resources and organizations. Finally, 47 one and two-bedroom apartments offer housing on the third floor.

Fruitvale Village Phase II is the continuation of the Unity Council's revitalization plan for the Fruitvale. This plan will bring new residents and homeowners to the Village and foster 24-hour, 7-day vibrancy and a sense of community that will further strengthen the commercial and retail components located at the Village retail plaza. The guiding principles for the Phase II development are to provide mixed-income residences, to incorporate state of the art green building and energy savings systems, and an award winning architectural finished product.

The approximately 3.4 acre site currently serves as a 547-space surface parking lot for the general public. The site is paved, and accessed from E. 12<sup>th</sup> Street. The project site is governed by the S-15 TOD Zone,

and the proposal is the next phase of a multi-year effort to develop a TOD project at the Fruitvale BART Station, capitalizing on both the BART transit resource as well as the prospective Alameda County Bus Rapid Transit (BRT) International Boulevard line to be developed two blocks north of the project.

## **ANALYSIS**

A new summary report is now required under Government Code Section 52201 before a property under the Long Range Property Management Plan (LRPMP) is sold or leased for economic development purposes. Century Urban, a real estate economic consulting firm, was retained to provide the summary report for the lease or sale of the property (see *Attachment D, Summary Report*). The summary report addresses the requirements of Government Code Section 52201 and provides information and analysis on the cost of acquisition and assembly of the site, the appraised value, a residual land value analysis, verification of the assumptions provided in the Developer's pro forma, and other requirements that meet the conditions as stated in Section 52201.

### ***Appraised Value***

The fair market value of the property with entitlements is currently appraised at \$9,000,000 and is allocated based on parcel acreage to the individual parcels as follows: Parcel A (1.23 acres) is valued at \$3,200,000, and Parcel B (2.18 acres) is valued at \$5,800,000. However, the appraised value of the property without entitlements is \$7,900,000 allocated as follows: Parcel A is \$2,850,000, and Parcel B is \$5,050,000.

### ***Site Costs***

The total purchase price to the Agency for the Phase II property was \$6 million. Because the Agency used Redevelopment Taxable Bond Funds to acquire the site including land title and environmental reports, the lease revenues derived from the site are considered to be restricted funds available for redevelopment purposes in the Coliseum Redevelopment Project Area.

### ***Prevailing Wages***

The Developer will pay prevailing wages throughout the entire construction phase pursuant to State law.

### ***Community Benefits***

The proposed development will turn a vacant underutilized property into 80 affordable units out of the initial 94 units (85%) and will act as a catalyst to further transform the area and provide a positive stimulus to the neighborhood.

***Anticipated Fiscal and Economic Benefits to the City/Community***

1. Ground Lease- Starting in year one of the lease, the Developer will pay the City no less than 50% of the Available Cashflow through year 66.
2. Jobs Generated- An estimated 264 total jobs with approximately 261 construction jobs and 3 permanent jobs.
3. Permit Fees- The cost of permitting the project is a single one-time payment of approximately \$940,000.
4. Utility Tax- The annual utility taxes are estimated at \$16,143.

**PUBLIC OUTREACH/INTEREST**

The property is located in the former Coliseum Redevelopment Project Area. Recently, a community meeting was held on April 22, 2015 to present the project and many comments were received. Community members were mostly supportive of the project. However, concerns were raised regarding the overall parking shortage in the area. Attendees were aware that the proposal meets the parking requirements and that the parking shortfall results from the need for additional parking to support BART patrons and nearby businesses and services. The proposed development was presented and approved for entitlements by the Planning Commission on May 6, 2015.

**COORDINATION**

Staff from Economic and Workforce Development and the Bureau of Planning and Building worked with the Developer on the proposed new Fruitvale Transit Village Phase II. The Unity Council has coordinated the environmental testing on the site. Finally, Real Estate Services and former redevelopment staff were directly responsible for the acquisition of the BART parking lot parcels.

**COST SUMMARY/IMPLICATIONS**

1. SOURCE OF FUNDING: The City and the Unity Council received a grant in the amount of \$4,000,000 from the State of California's Department of Housing and Community Development Transit Oriented Development ("TOD") Housing Program. In addition, the Unity Council received from the TOD Infill Loan Program a \$4,000,000 loan. The Unity Council will submit an application for the Low Income Housing Tax Credit program on July 1, 2015 for \$27,013,903 for permanent sources plus \$5,402,781 for construction sources tax credit equity for the mixed income housing component of the project.
2. FISCAL IMPACT: The \$6 million in bond funds used for the original purchase of the property are restricted by bond covenants for redevelopment activities with the Coliseum Redevelopment Project Area for redevelopment activities. Therefore, lease payments from the Phase II project will be restricted to the Coliseum area funds. Completion of the Fruitvale Transit Village Phase II project will ultimately provide 264 construction jobs, property taxes, approximately \$940,000 in permit fees, approximately \$16,143 in annual utility taxes, and multiplier effects to the City's economy.

**SUSTAINABLE OPPORTUNITIES**

**Economic:** The proposed transit oriented development will complement and increase the housing stock in Oakland as well as the Fruitvale district. This project will improve neighborhood conditions and make the neighborhood area more attractive to current and prospective residents, tenants, and businesses that can provide employment within Oakland.

**Environmental:** The proposed transit oriented development is expected to contribute to smart growth by stimulating neighborhood use of the existing Fruitvale district and the expansion of the Fruitvale Transit Village.

**Social Equity:** The project will provide much needed residential affordable housing units and a positive stimulus to the neighborhood where the development of land is both welcomed and important to continued neighborhood growth and stability.

**CEQA**

An Environmental Impact Report (EIR) was certified in May 2010. Pursuant to Sections 15162-15164 of the CEQA Guidelines, no additional environmental review is necessary. The project was approved by the Planning Commission on May 6, 2015.

For questions regarding this report, please contact Theresa Lopez, Urban Economic Analyst IV at (510) 238-6250.

Respectfully submitted,



Mark Sawicki, Director  
Workforce and Economic Development

Reviewed by:  
Larry Gallegos, Area Manager

Prepared by:  
Theresa Lopez, Urban Economic Analyst IV  
Project Implementation

**Attachments**

- Attachment A. Term Sheet
- Attachment B. Site Plan of Phase IIA
- Attachment C. Map of Fruitvale Transit Village with Phase II
- Attachment D. Century Urban Summary Report

**ATTACHMENT A**  
**TERM SHEET**  
**FRUITVALE TRANSIT VILLAGE PHASE IIA**  
**MIXED-INCOME HOUSING**  
**MAY 12, 2015**

**TERM SHEET FOR FRUITVALE TRANSIT VILLAGE PHASE IIA  
MIXED INCOME HOUSING  
May 12, 2015**

Pursuant to an Exclusive Negotiating Agreement, dated November 18, 2014 ("ENA"), by and between the City of Oakland ("City") and The Spanish Speaking Unity Council, a California not for profit corporation ("Unity Council") ("Developer"), the City submits this non-binding summary of terms for a Lease Disposition and Development Agreement to be negotiated by and between the Parties. All capitalized terms not specifically defined in this Term Sheet shall have the definitions provided in the Exclusive Negotiating Agreement (the "ENA").

**Lease Disposition and Development Agreement (LDDA):**

The City and Developer will enter into a Lease Disposition and Development Agreement ("LDDA") for the proposed development of approximately 94 mixed-income apartment units on the property. The project is the first component of the Fruitvale Transit Village Phase II. If the Developer materially complies with all the provisions of the LDDA, and the compliance is satisfactory to City Staff, City Staff will recommend Council approve entering into a long-term ground lease with the Developer for the conveyance of the Phase IIA parcel (APN 033-2177-021).

**Property:**

The term "Property" consists of one parcel (APN 033-2177-021) that totals approximately 1.23 acres. The Developer, with City assistance, contemplates processing a lot line adjustment to correspond to the proposed future property boundaries of the Property.

**Project:**

Developer shall construct the buildings and improvements including approximately 94 units in Phase IIA which consists of 80 affordable residential apartment units and 14 market rate residential apartment units together with approximately 47 parking spaces in a structured garage (the "Project") bounded by 36<sup>th</sup> Avenue, East 12<sup>th</sup> Street, 37<sup>th</sup> Avenue, and BART-owned property to the west in Oakland, California.

**Phase IIA Ground Lease:**

The Phase IIA Ground Lease is proposed to have a term of Sixty-Six (66) Years from the date upon which the Developer closes financing to construct the Project.

**Ground Rent:**

The Developer will enter into a subordinated ground lease with the City. The Developer agrees to pay the City 50% of Available Cashflow from the prior calendar year within 60 days of the end of each calendar year. The "Available Cashflow," is defined as cashflow available from the property after collecting all rents and other income and including net debt refinancing or disposition proceeds, and after the payment of all property operating expenses, including resident services, deferred developer fees, operating and replacement reserves, interest and principal on member loans, scheduled debt service payments and residual receipts payments due

lenders, payments due BART, if applicable, payments to the Developer for asset management fees, General Partner management fees, incentive management fees, guaranty fees, and other customary fees payable to its equity partners. All said fees and reserves shall be established in line with industry standards that are customary for tax credit developments involving a tax credit equity limited partner such as from the Low Income Housing Tax Credit program.

**Financing:**

The Developer shall be permitted to grant a security interest in or otherwise transfer all or any portion of its rights and beneficial interests under the LDDA in favor of a single lender or a group of lenders solely in connection with financing of the Project. With respect to Phase IIA, the City will cooperate with Developer to structure the ground lease in such a way that maximizes the benefit to compete for affordable housing funding such as from low income housing tax credits and other state and federal programs.

**Assignment**

Subject to the City's written approval, Developer shall have the right to assign the LDDA to another entity so long as Developer or an affiliate of Developer is a member/partner of the assignee.

**Taxes:**

Developer shall be solely responsible for the payment of any taxes, levies, assessments, fees or charges, which are applicable once it obtains a leasehold interest in the Property. Taxes may be assessed against Developer in relation to the Project, the occupation or operation thereof, the revenue derived therefrom, or any personal property or fixtures located thereon arising from Developer's construction and operations (collectively referred to as "Taxes"). The City acknowledges that Developer will file for property tax exemption for the Project.

**Development Documents:**

As a condition precedent to closing, the Developer shall provide the City the following documents (the "Development Documents") for its review:

1. A detailed development schedule including pre-construction, construction, marketing and leasing
2. Evidence of equity and construction financing commitments
3. Building permits, submittal drawings, and upon completion the 100% Construction Drawings
4. Such other documents relevant to the development of the Project as the City may reasonably request

**Development:**

Promptly after conveyance of the Property from City to Developer, Developer shall "Commence in Earnest" (as defined in the LDDA) construction of the Project as of the date of the Notice to Proceed. The Notice to Proceed shall be issued by the City to the Developer only upon satisfactory receipt and reasonable approval of the Development Documents. Developer shall

complete the Project pursuant to the Development Schedule; provided it shall have an option to extend the Development Schedule by a cumulative period of 12-months. Developer shall bear the reasonable cost of such efforts by the City.

### **Schedule**

The predevelopment schedule shall allow time for Developer to use its best efforts to obtain competitive affordable housing financing (Cap and Trade, 9% LIHTCs, local subsidies) for four rounds of funding, which would be equivalent to approximately two years from the Effective Date of the LDDA. Customary force majeure provisions will apply.

### **Refinance:**

The City and the Developer agree that in the event the Developer determines to refinance the debt related to the improvements of Phase IIA, a written consent from the City will be required, which consent shall not be unreasonably withheld, and the City agrees to work in good faith with the Developer and the lender(s) to negotiate a form of consent to assignment satisfactory to the City; provided however the City shall not be obligated to accept terms imposed by Developer's lender(s).

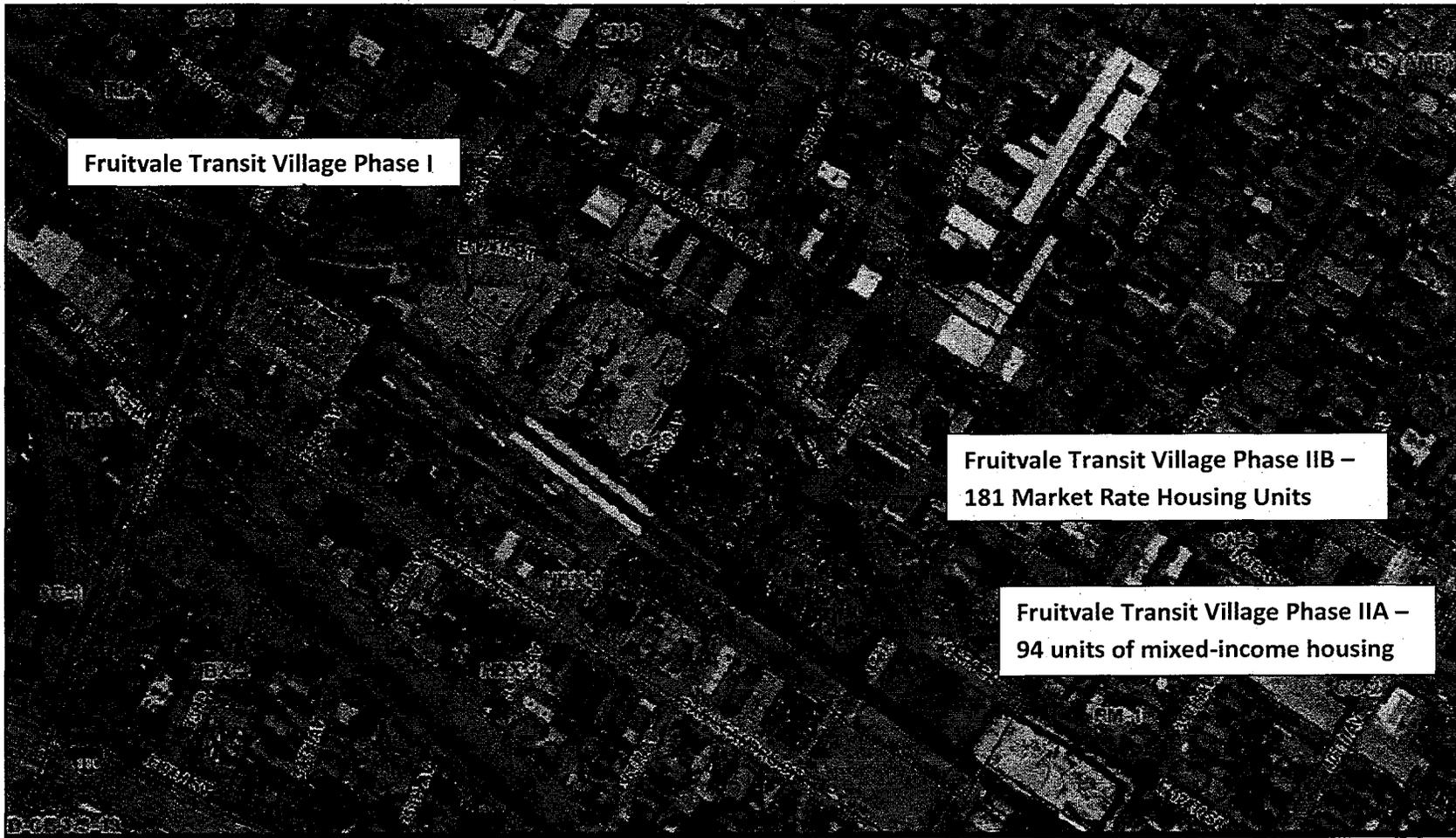
### **Restructuring of Existing BART Agreements**

City agrees to work in good faith with both Developer and BART regarding certain BART agreements recorded against the Property for obligations to make required payments to BART from Project cash flow.



**ATTACHMENT C**

**FRUITVALE TRANSIT VILLAGE**



**Fruitvale Transit Village Phase I**

**Fruitvale Transit Village Phase IIB -  
181 Market Rate Housing Units**

**Fruitvale Transit Village Phase IIA -  
94 units of mixed-income housing**

# **ATTACHMENT D**

**SUMMARY REPPORT PURSUANT TO CALIFORNIA  
GOVERNMENT CODE SECTION 52201**

**Prepared by Century Urban, LLC**

**For the City of Oakland**

**May 12, 2015**

**Summary Report Pursuant To California Government Code Section 52201 On The Proposed Conveyance Of Real Property Pursuant To A Lease Disposition And Development Agreement By And Between The City Of Oakland And The Spanish Speaking Unity Council Of Alameda County And L&M Development Partners, Inc. For The Development Of Fruitvale Transit Village Phase IIA**

This summary report dated May 8, 2015 is prepared pursuant to California Government Code Section 52201. The report describes a proposed Lease Disposition and Development Agreement (“LDDA”) by and between the City of Oakland (“City”) and The Spanish Speaking Unity Council of Alameda County and L&M Development Partners, Inc. (collectively “Developer”). The LDDA addresses the conveyance and development of a portion of the property, which is currently used as a surface parking lot, located adjacent to the Fruitvale Bay Area Rapid Transit (“BART”) Station on 35th Avenue and East 12th Street (the “Property”).

The disposition of the property for the development of Fruitvale Transit Village Phase IIA will: meet the purposes of the City’s General Plan and plan for the Coliseum redevelopment project area; implement State of California and Bay Area regional transportation and development goals for transit-oriented development; and satisfy goals for the production of housing in proximity to the Fruitvale BART Station as required by the terms of grants and/or loans provided by the California Department of Housing and Community Development (“HCD”).

This summary report addresses the requirement of California Government Code Section 52201(a)(1), which states that “Before any city, county, or city and county property that is returned to the city, county, or city and county per the long-range property management plan, pursuant to Section 34191.5 of the California Health and Safety Code, is sold or leased for economic development purposes, the sale or lease shall first be approved by the legislative body by resolution after public hearing.”

The Property identified for conveyance to one or more affiliates of Developer pursuant to the proposed LDDA was returned to the City pursuant to the Oakland Redevelopment Successor Agency’s long-range property management plan, and is therefore subject to the above requirements.

California Government Code Section 52201(a)(2) states that, “The city, county, or city and county shall make available, for public inspection and copying at a cost not to exceed the cost of duplication, a report no later than the time of publication of the first notice of the hearing mandated by this section.” The report must include:

- A. A copy of the term sheet
- B. A summary that describes and specifies all of the following:
  1. The cost of the agreement to the city including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the city, plus the expected interest on any loans or bonds to finance the agreements

2. The estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the general plan or zoning
3. The estimated value of the interest to be conveyed or leased, determined at the use and with the conditions, covenants, and development costs required by the sale or lease. The purchase price or present value of the lease payments, which the lessor will be required to make during the term of the lease. If the sale price or total rental amount is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use, then the city shall provide as part of the summary an explanation of the reasons for the difference.
4. An explanation of why the sale or lease of the property will assist in the creation of economic opportunity, with reference to all supporting facts and materials relied upon in making this explanation

This Summary Report is presented to satisfy the requirements of California Government Code Section 52201(a)(2). Section A outlines salient parts of the proposed LDDA. Section B addresses the specific provisions of California Government Code Section 52201(a)(2).

The report is organized as follows:

- A. **Summary of the Disposition** - This section includes a description of the Property and the proposed Fruitvale Transit Village Phase IIA project to be developed on the Property (the "Project").
- B.1. **Cost of the Disposition to the City** - This section outlines the cost to the City of the proposed LDDA.
- B.2. **Estimated Values of the Property at its Highest and Best Use** - This section summarizes the estimated value of the Property at its highest and best use permitted under the general plan and zoning designation and the estimated value of the Property at its highest and best use under current entitlements and/or development plans.
- B.3. **Estimated Value of the Property as Constrained by the Use and Conditions, Covenants, and Development Costs Identified in the LDDA** - This section summarizes the estimated value of the Property as constrained by the use and the conditions, covenants, and development costs required under the proposed LDDA and provides an explanation of the reasons for the difference between this value and the highest and best use value.
- B.4. **Creation of Economic Opportunity** - This section identifies the economic opportunities created by construction of the Fruitvale Transit Village Phase IIA project and its use as a high-density residential development within the Coliseum redevelopment project area.
- C. **Conclusion**

## A. Summary of the LDDA

### Description of the Property

The LDDA provides for the ground lease of one of two parcels of property in the former Coliseum redevelopment project area, which comprise the 3.41-acre Fruitvale BART Station parking lot immediately adjacent and south of the existing Phase I of the Fruitvale Transit Village project. The two parcels are bounded by 35th Avenue, East 12th Street, 37th Avenue, and the BART train tracks. The Assessor's parcel numbers for these parcels are #033-219701900 and #033-217702100. The City intends to convey parcel #033-217702100 to an affiliate of Developer under a ground lease agreement.

### Description of the Fruitvale Transit Village Phase IIA Project

Pursuant to the LDDA, Developer will be obligated to construct the Fruitvale Transit Village Phase IIA project as follows:

On the southern parcel comprising 1.33 acres adjacent to 37th Avenue, a mixed-income residential multifamily rental project will be constructed with a minimum of 94 units, 85% of which (80 units) are below market rate units and 15% of which (14 units) are market rate units. The project is anticipated to include 28 one-bedroom units, 42 two-bedroom units, and 24 three-bedroom units. 20% of the below market rate units will be affordable to households earning 30% of area median income ("AMI"), 12% to households earning 40% of AMI, 32% to households earning 50% of AMI, and 21% to households earning 60% of AMI. The project will include parking at a ratio of 0.5 spaces/unit for a total of 47 parking spaces. The project is anticipated to be funded primarily with proceeds from low-income housing tax credits. However, the project has also been awarded funding by HCD, and it must satisfy the requirements for receipt of the full \$4,000,000 infrastructure grant and full \$4,000,000 rental housing loan awarded by HCD to the project. Construction of the project is to commence no later than two years after the effective date of the LDDA.

### Ground Lease Payment for the Property

The Property will be ground leased for a term of 66 years to an affiliate of Developer. Developer will pay to the City 50% of available cash flow generated by the Project during each calendar year within 60 days after the end of such calendar year. Available cash flow is defined as cash flow available from the property after collecting all rents, other income, and net debt financing or disposition proceeds, and following the payment of all property operating expenses, including resident services, deferred developer fees, operating and replacement reserves, interest and principal on member loans, scheduled debt service payments and residual receipts payments due lenders, payments due BART, if applicable, and market rate payments to Developer for fees such as asset management fees, incentive management fees, and guaranty fees.

### **B.1. Cost of the LDDA to the City**

This section presents the estimated costs of the LDDA to the City. These estimated costs consist of the City's costs to acquire the Property from BART in 2010, so that the Property can be developed as Phase IIA of the Fruitvale Transit Village project. The total cost to the City of acquiring the entire 3.41-acre site is approximately \$6 million, which amount includes the purchase price and related legal and transaction costs. Allocating this cost of \$6 million to the Property based on its size relative to the size of the entire site results in an estimated cost of the LDDA to the City of approximately \$2.3 million.

### **B.2. Estimated Values of the Property at its Highest and Best Use under General Plan and Zoning Designations and under Current Entitlements and/or Development Plans**

Real Estate Decisions Company ("REDC") was commissioned in March 2015 to provide an appraisal of the estimated market value of the fee simple interest in the Property under two premises. Premise One values the Property "as is" subject to general plan and zoning restrictions without giving consideration to current entitlements or development plans in the appraisal of the Property's value. REDC classifies this as a "hypothetical" value, because it does not consider current existing entitlements. The Property is zoned for and/or designated on the general plan for multi-family residential housing. The zoning designation is S-15, which allows a density of 1 residential unit per 450 square feet of land area; resulting in a potential of 129 residential units. REDC's appraisal concluded an estimated "hypothetical" value of \$27,190 per unit, which translates to a "hypothetical" value for the Property of approximately \$3.5 million.

Premise Two values the Property "as is" subject to current entitlements and/or development plans. REDC classifies this as a "market" value, because it gives consideration to current existing entitlements. The Property's current entitlements allow for a total of 94 residential units (14 market rate and 80 below market rate units) and 47 parking spaces. REDC's appraisal concluded an estimated "market" value of \$35,100 per market rate unit and \$14,500 per below market rate unit, which translates into a "market" value for the Property of approximately \$1.7 million.

REDC's analysis utilized a sales comparison approach only to arrive at the concluded hypothetical and market values described above.

### **B.3. Estimated Value of the Property as Constrained by the Use and Conditions, Covenants, and Development Costs Identified in the LDDA**

As described above, the proposed LDDA specifies that the City is to receive annual payments of 50% of available cash flow. Based on the projected cash flows in Developer's pro forma and assuming that the Project is refinanced at the end of Year 15 of stabilized operations, these payments to the City are projected to total approximately \$2.8 million in nominal dollars during the Project's first 15 years of stabilized operations. Assuming an annual discount rate of 5% and a construction and lease-up period of two years, the net present value of this amount is estimated to be approximately \$1.4 million. In addition to the projected amount of these payments during the first 15 years of stabilized operations, the City would continue to receive

payments of 50% of available cash flow for the remainder of the 66-year term of the ground lease.

The amount of these payments reflect the estimated value of the Property as constrained by the use and conditions, covenants, and development costs identified in the LDDA. Based on Developer's pro forma, Developer is projected to invest a total of approximately \$45 million from various funding sources to construct the Project.

As described above, the LDDA imposes a number of development constraints and requirements that reduce the value of the land. These include the requirement to include a significant number of below market rate units, which are affordable to households earning 30% to 60% of AMI. Additionally, these constraints and requirements include Developer's obligations to pay prevailing wage for Project construction, to indemnify the City against liability arising in connection with the presence of hazardous materials on the Property, to obtain payment and performance bonds or similar assurance of performance, and to indemnify the City against any requirement to return HCD grant and/or loan funds, if the Project is not completed within the specified timeframe. Developer is also subject to restrictions on transfer of the Property and ownership of the Developer entity.

Additionally, development of the Property is subject to Section 17.97 of the City's Planning Code (the "Code"), which applies to sites such as the Property with a zoning designation of S-15 (transit oriented development zones). Section 17.97.200 of the Code states that:

*No development which involves more than one hundred thousand (100,000) square feet of a new floor area shall be permitted except upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 and Section 17.97.100, or upon the granting of a planned unit development approval pursuant to Chapters 17.140 and 17.142.*

As the Project exceeds 100,000 square feet, it is subject to the requirements of Section 17.97.200 of the Code, which requires that Developer obtains either a conditional use permit or planned unit development approval in order to develop the Project.

Furthermore, as noted above, REDC utilized only a sales comparison approach to arrive at the concluded "hypothetical" and "market" values for the Property. A sales comparison approach can result in substantially different valuation results due to site and development specific considerations. These considerations include, but are not limited to, the requirements and obligations described above and likely contribute to the difference between the appraised "hypothetical" and "market" values of the Property and the projected value of the payments to the City as reflected in the LDDA and described above.

#### **B.4. Creation of Economic Opportunity**

The Property is currently owned by the City and was previously owned by BART. The City and BART are not subject to payment of property taxes for property owned by either party. As a result, during the construction phase and thereafter, the City and other taxing agencies will benefit from increases in the amount of property taxes collected from the Property.

The City's Housing Element 2015-2023 adopted December 9, 2014 demonstrates a need for affordable housing and specifically for affordable housing at very low income (50% of AMI) and low income (80% of AMI) levels. The 80 below market rate units included in the Project will benefit low-income tenants and meet the need for affordable housing at these income levels.

Per City representatives, the Property has been designated by the Association of Bay Area Governments as a Plan Bay Area land use site. Plan Bay Area includes the region's Sustainable Communities Strategy. Accordingly, the Fruitvale Transit Village Phase IIA project meets the goals set forth in Chapter 728 of the Statutes of 2008 and has been included in an adopted sustainable communities strategy.

The Project is a transit priority project. As mentioned above, the Project has satisfied requirements to be awarded a rental housing loan for new construction from HCD's Transit Oriented Development Housing Program ("TOD") and an infrastructure grant from TOD. Additionally, per City representatives, the area in which the Property is located has been designated as a Priority Development Area.

In addition to the items listed above, which create economic opportunity as defined by California Government Code Section 52200.2, the Project will increase employment during the construction phase and provide additional fiscal benefits to the City.

#### **C. Conclusion**

For the reasons indicated in this summary report, the consideration to be paid by Developer to the City for the Property is not less than the fair value at the use and with the covenants and conditions and development costs identified in the LDDA.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2015 MAY 14 AM 10:12

APPROVED AS TO FORM AND LEGALITY

  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

---

**AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, A SIXTY-SIX (66) YEAR GROUND LEASE AND RELATED DOCUMENTS (COLLECTIVELY "LDDA") BETWEEN THE CITY OF OAKLAND AND THE SPANISH SPEAKING UNITY COUNCIL OF ALAMEDA COUNTY, INC. AND L & M DEVELOPMENT PARTNERS, INC. FOR DEVELOPMENT OF MIXED-INCOME HOUSING LOCATED ON APN 033-2177-021 AT 35<sup>TH</sup> AVENUE AND EAST 12<sup>TH</sup> STREET**

**WHEREAS**, pursuant to the authority granted in Resolution No. 2010-1000 C.M.S adopted July 13, 2010, the former City of Oakland Redevelopment Agency (the "Agency") purchased a 3.4 acre surface parking lot consisting of two parcels, APN 033-2177-021 ("Phase IIA Property") and APN 033-2197-019 ("Phase IIB Property") bounded by 35<sup>th</sup> and 37<sup>th</sup> Avenues, East 12<sup>th</sup> Street and the Bay Area Rapid Transit (BART) tracks (Phase IIA Property and Phase IIB Property, collectively, the "Property"), to promote economic development in the community and to assist with the development of Phase II of the Fruitvale Transit Village; and

**WHEREAS**, in January 2012, all redevelopment agencies in the State of California were dissolved, the Oakland Redevelopment Successor Agency ("ORSA") became the successor agency to the Agency and, pursuant to the long range property management plan approved by the California Department of Finance in May 2014, the Property was transferred to the City of Oakland (the "City"); and

**WHEREAS**, on November 18, 2014, the City and the Spanish Speaking Unity Council of Alameda County, Inc. ("Unity Council") entered into an Exclusive Negotiating Agreement ("ENA") for the purpose of studying the feasibility of the development of a proposed mixed income housing project comprised of 94 mixed income residential units on the parcel number 033-2177-021 ("Phase IIA Project") and a proposed market rate housing project comprised of 181 market rate residential units on the parcel number 033-2197-019 ("Phase IIB Project," and together with the Phase IIA Project, the "Project"); and

**WHEREAS**, the City desires to enter into a proposed Lease Disposition and Development Agreement and related documents (collectively, the "LDDA") with the Unity Council and L & M Development Partners, Inc. (collectively, the "Developer") which will set forth the terms and conditions of the development of the Phase IIA Project and the use of the Phase IIA Property by the Developer and any successors to the Phase IIA Property; and

**WHEREAS**, staff and Developer have negotiated a Term Sheet for Fruitvale Transit Village Phase IIA, Mixed Income Housing dated May 12, 2015 ("Term Sheet"), which sets forth the terms and conditions to be included in the LDDA and its exhibits, including the Ground Lease for 66 years for lease of the Phase IIA Property for the development of Phase IIA Project, with a lease payment of 50% percent of the Available Cashflow from Year 1 to Year 66, as detailed in the City Council Agenda Report and the Term Sheet attached as Attachment A thereto; and

**WHEREAS**, given the financial feasibility of the Phase IIA Project, the lease of the Property to the Developer will be for 66 years and will provide revenue to the City from Available Cashflow; and

**WHEREAS**, California Government Code Section 52201 ("State Law") requires that before any real property formerly owned by the Agency is sold or leased for economic development purposes, the sale or lease must first be approved by the legislative body, i.e., the City Council, by resolution after public hearing; and

**WHEREAS**, a public hearing of the City Council was held to hear public comments on the lease of the Phase IIA Property to the Developer for the Phase IIA Project; and

**WHEREAS**, notice of the time and place of the public hearing was given by publication in a newspaper of general circulation in Alameda County at least once a week for at least two successive weeks prior to the public hearing; and

**WHEREAS**, the City made a report available to the public for inspection, no later than the first date of publication of the notice for the hearing as required by State Law; and

**WHEREAS**, in May 2010, the City Council certified the Environmental Impact Report (EIR) for the Project and the Oakland City Planning Commission approved the Project for entitlements on May 6, 2015; now, therefore

The Council of the City of Oakland does ordain as follows:

**SECTION 1.** The City Council hereby authorizes the preparation of a LDDA related to the Phase IIA Property with the Developer for development of 94 mixed income residential units on the Phase IIA Property located on assessor's parcel number 033-2177-021 and to lease the Phase IIA Property for sixty-six (66) years to the Developer or an affiliated entity approved by the City Administrator; and

**SECTION 2.** The City Council hereby authorizes the City Administrator or his or her designee to negotiate and execute: (1) a LDDA, including without limitation, the exhibits thereto, in accordance with the terms and conditions set forth in the Term Sheet, with the Developer for the lease and development of the Phase IIA Project; (2) upon satisfaction or waiver of the conditions precedent, a Ground Lease; and (3) upon the satisfaction of any preconveyance conditions imposed by the City Administrator or his or her designee, such other agreements or documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the lease and development of the Phase IIA Property for the Phase IIA Project in order to consummate the transaction under a

LDDA in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

**SECTION 3.** The City Council hereby authorizes the City Administrator or his or her designee to (1) determine satisfaction of conditions precedent under the LDDA to the conveyance of the leasehold estate in the Phase IIA Project, such determination to be conclusively evidenced by the execution and delivery by the City Administrator of a Ground Lease and (2) take whatever action is necessary with respect to the lease of the Phase IIA Property for the Phase IIA Project consistent with this Ordinance and its basic purposes.

**SECTION 4.** The City Council hereby finds and determines that the lease of the Phase IIA Property for the Phase IIA Project will assist in the creation of economic opportunity in the City by:

- creating and expanding new jobs, including approximately 261 construction jobs and 3 permanent jobs, which is at least one full-time equivalent permanent job for every \$35,000 in City investment; and
- increasing property tax revenue to all taxing entities by at least 15% of total property tax when compared to the year prior to the City's acquisition of the Property.

**SECTION 5.** The City Council hereby further finds and determines that the consideration for the lease of the Phase IIA Property is not less than the fair reuse value of the Phase IIA Property at the use and with the covenants and conditions and development costs authorized by the lease, and that it is in the best interest of the City to lease the Phase IIA Property to the Developer at its fair reuse value given the need to redevelop the Phase IIA Property for the benefit of the community.

**SECTION 6.** The City Council previously certified the EIR and hereby finds and determines that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that (1) there are no substantial changes proposed in the Phase IIA Project or the circumstances under which the Phase IIA Project is undertaken that would involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3).

**SECTION 7.** All agreements associated with the conveyance of the Phase IIA Property for the Phase IIA Project shall be reviewed and approved as to form and legality by the Office of the City Attorney prior to execution by the City, and shall be placed on file with the City Clerk.

**SECTION 8.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

**SECTION 9.** This Ordinance shall be in full force and effect immediately upon final adoption, as provided by Section 216 of the City Charter, if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2015

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID,  
and PRESIDENT GIBSON MCELHANEY

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

**AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, A SIXTY-SIX (66) YEAR GROUND LEASE AND RELATED DOCUMENTS (COLLECTIVELY "LDDA") BETWEEN THE CITY OF OAKLAND AND THE SPANISH SPEAKING UNITY COUNCIL OF ALAMEDA COUNTY, INC. AND L & M DEVELOPMENT PARTNERS, INC. FOR DEVELOPMENT OF MIXED-INCOME HOUSING LOCATED ON APN 033-2177-021 AT 35<sup>TH</sup> AVENUE AND EAST 12<sup>TH</sup> STREET**

**NOTICE AND DIGEST**

This Ordinance authorizes the disposition of a portion of the property at 35<sup>th</sup> Avenue and East 12<sup>th</sup> Street known as assessor's parcel number 033-2177-021 to the Spanish Speaking Unity Council of Alameda County and L & M Development Partners Inc. for the development of Phase IIA which shall consist of 94 mixed income residential units and 47 parking spaces. This Ordinance authorizes the City Administrator to negotiate and enter into a Lease Disposition and Development Agreement with the Spanish Speaking Unity Council of Alameda County and L & M Development Partners Inc., for this transaction, and makes associated findings with respect to the California Environmental Quality Act (CEQA) and other matters.