

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: P. Lamont Ewell, Interim City Administrator
FROM: Community and Economic Development Agency
DATE: June 28, 2011

RE: A City Resolution Authorizing the City Administrator to Execute a Certificate of Completion and Other Release of Obligations by B. E. Fitzpatrick Development Inc., Owner of the Coliseum Lexus Dealership Project ("Project"), and its Dealer, Oakland Motor Cars, Inc., Under A Business Incentive Agreement Regarding the Project

SUMMARY

This item is a request for approval of a City resolution authorizing the City Administrator to execute a Certificate of Completion and release of security regarding the Business Incentive Agreement for the Coliseum Lexus Dealership ("Project") approved by the City of Oakland in 2002. B.E. Fitzpatrick Development Inc. ("Owner"), and Oakland Motor Cars, Inc. ("Dealer"), have completed the conditions of the Business Incentive Agreement (BIA) as set forth in 2002.

In 2002, the City granted \$2,000,000 to B.E. Fitzpatrick Development, Inc. as a secured business attraction incentive for ten years so that the City could reap 1) economic activation of an underutilized property, 2) the creation of new jobs, 3) increased general fund revenues through increased sales and business license taxes, and 4) the application of City programs including prevailing wage, living wage, local hiring and local and small local business programs. The BIA also required that the dealership project be operated in the City of Oakland for at least ten years from the date of Project completion.

Owner Ed Fitzpatrick has faithfully operated the Coliseum Lexus of Oakland dealership since 2002 and has met or exceeded the milestones and goals for the luxury auto dealership. Staff verified in 2007 that the project has generated a total of \$2,017,420 in property, sales and business license taxes to the City and Agency. Consequently, staff is recommending that the City Council approve the resolution to release Owner and Dealer from most of their obligations under the BIA, thereby reducing the number of years of required operation of the dealership from ten years to eight as of December 2010.

Approval of these actions and the resolution will allow the City to release the security interest filed in 2002. The successful completion of the project construction and operation and achievement of financial targets ahead of schedule support the recommendation. Mr. Fitzpatrick is commended for his contribution to luxury auto retailing along I-880 where his investment has

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been a handsome addition to the Coliseum Area, a good employer and an economic boon to Oakland in terms of property, sales tax and business license tax income.

FISCAL IMPACTS

The proposed action releases the Owner from the security filed against the property at 7677 Oakport Street, and relieves the Owner from a legal obligation to operate the dealership in Oakland for approximately two (2) more years. The approval of the proposed resolution does not create a specific fiscal impact. It simply recognizes that the owner has achieved the required milestones and financial revenue goals provided for in the Business Incentive Agreement.

BACKGROUND

In 2002, the Agency agreed to sell a four-acre Coliseum-area property to the Owner at the market rate so that the Owner could develop the Coliseum Lexus of Oakland dealership, following the City contract compliance programs. In addition, the City also agreed to provide up to \$2,000,000 in City Business Incentives pursuant to a Business Incentive Agreement (BIA) based on the review of ten-year pro forma estimates of business license, sales and property tax revenue.

The BIA required, among other things, that the Owner and Dealer maintain the property in good condition; use good faith efforts to create at least 36 jobs within the first two operating years; continue the business in Oakland for at least ten (10) years from Project completion; and achieve specified goals (e.g., accrual to City/Agency of sales, business, and property tax increment of at least \$2 million) in order to be relieved of the obligation to pay back the \$2 million incentive payment.

To secure the Owner's obligations under the BIA, the City required the Owner to record a deed of trust in favor of the City against the dealership property.

The Coliseum Lexus of Oakland auto dealership project was constructed in 2002, and has operated continuously since then. In 2004, the Agency conducted a review of Coliseum Area Redevelopment Projects and determined that the Lexus project generated 58 jobs, which exceeded the goal of 36 jobs, representing 161% of the goal. In addition, Coliseum Lexus of Oakland generated 69 jobs during the course of construction. Total construction and permanent jobs amounted to 127 jobs. Oakland residents achieved 18 permanent jobs and 45 construction jobs for a total local employment of 63 jobs out of the 127 representing 49.6% of the total employment. In summary, Coliseum Lexus of Oakland has been a very good source of local employment and has discharged the duties of a public private project in an exemplary fashion.

In 2007, when the project achieved the financial goals specified in the BIA, the Agency provided for a partial release of the security but left some security on the property while the project continued to operate towards the ten-year operation goal.

Staff has determined that the Owner and Dealer have met the BIA's revenue, construction and employment obligations. Accordingly, staff recommends that the City release the security against the property and execute a Certificate of Completion under the BIA, thereby reducing the formal legal obligation to continue the business in Oakland by about two (2) years.

Now that over eight years of operations have been conducted in an exemplary fashion, staff is recommending that the operations restriction be modified and that the collateral be fully released following a detailed review of the achievements of the Owner and Dealer regarding the Coliseum Lexus project.

KEY ISSUES AND IMPACTS

The Coliseum Lexus of Oakland project has been an exemplary project along the I-880 Corridor and is credited with establishing the Oakport Street area as an auto retail destination that now includes One Toyota of Oakland and Coliseum Lexus of Oakland, which sell two segments of the Toyota automotive and truck lines. The City is recognizing the accomplishment of Mr. Edward Fitzpatrick for his innovative and successful management of the auto dealership. The City is pleased to acknowledge and recognize the accomplishments of Mr. Fitzpatrick and proposes to therefore release the security and operations restrictions.

Mr. Fitzpatrick constructed the auto dealership and has operated it so that the goals set forth in the BIA have been exceeded. As such, the BIA and the deed of trust securing it are no longer necessary to further implement the project. The City can now execute the Certificate of Completion for the project. It is expected that the Coliseum Lexus of Oakland will continue as a successful operation providing a much needed luxury auto presence in a viable location for years to come.

SUSTAINABLE OPPORTUNITIES

Economic: The Coliseum Lexus Dealership has energized economic development in the area surrounding the Coliseum Redevelopment Area because of the presence and the quality of the operation in the location.

Environmental: The project is located across the street from the Coliseum Complex and is accessible from the Coliseum BART Station with multimodal transit access, which will encourage customers to use public transit when they travel to the dealership.

Social Equity: The project provides high quality automobiles in a convenient location to East Oakland and to major transportation hubs.

DISABILITY AND SENIOR CITIZEN ACCESS

Disability and senior citizen access has been improved at the project site through the infrastructure upgrades. All proposed improvements are reviewed by appropriate regulatory bodies and conform to the federal and state requirements related to disability and senior citizen access.


RECOMMENDATIONS AND RATIONALE

Staff recommends that the City Council approve the resolution. The release of obligations under the Business Incentive Agreement recognizes the accomplishments of a project crucial to the Coliseum Area implementation which has fulfilled several goals of the Coliseum Redevelopment Plan.


ACTION REQUESTED OF THE CITY COUNCIL

Staff requests that the City Council approve the proposed resolution.

Respectfully Submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by: 
Gregory D. Hunter, Deputy Director
Economic Development and Redevelopment

Reviewed by:
Larry Gallegos, Redevelopment Area Manager
Redevelopment Division

Prepared by:
Jay Musante
Urban Economic Analyst IV

**APPROVED AND FORWARDED TO THE COMMUNITY
AND ECONOMIC DEVELOPMENT COMMITTEE:**



Office of the City Administrator

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Deanne McLean
City Attorney

OFFICE OF THE CITY CLERK
OAKLAND, CALIFORNIA

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A City Resolution Authorizing the City Administrator to Execute a Certificate of Completion and other Release of Obligations by B. E. Fitzpatrick Development Inc., Owner of the Coliseum Lexus Dealership Project ("Project"), and its Dealer, Oakland Motor Cars, Inc., Under A Business Incentive Agreement Regarding the Project

WHEREAS, the Coliseum Area Redevelopment Plan ("Redevelopment Plan") includes the elimination of blight and unsafe conditions as a goal for the Coliseum Redevelopment Project Area ("Project Area"); and

WHEREAS, the City and the Redevelopment Agency are implementing projects in the Project Area as part of the Redevelopment Plan to improve the Project Area; and

WHEREAS, the Agency purchased four acres of real property in the Project Area located at 7273 Oakport Street and Hassler Way (the "Property") from the Port of Oakland and thereafter sold the Property in April 2002 to B.E. Fitzpatrick Development, Inc. for development of the Coliseum Lexus Dealership ("Project") pursuant to a Disposition and Development Agreement; and

WHEREAS, to facilitate development of the Project, the City provided B.E. Fitzpatrick Development, Inc., with business incentive payments of Two Million Dollars (\$2,000,000) pursuant to a Business Incentive Agreement ("BIA") among the City, B.E. Fitzpatrick Development, Inc., and its chosen Dealer for the Project, Oakland Motor Cars, Inc. (OMCI); and

WHEREAS, the BIA requires, among other things, that B.E. Fitzpatrick Development, Inc., and OMCI maintain the property in good condition; within the first two operating years, use good faith efforts to employ at least 36 Oakland residents; continue the business in Oakland for at least ten (10) years from Project completion; achieve specified financial goals (e.g., accrual to the City/Agency of sales, business, and property tax increment of at least \$2,000,000) in order for B.E. Fitzpatrick Development, Inc. to be relieved of the obligation to pay back the \$2,000,000 incentive payments; and that B.E. Fitzpatrick Development, Inc.'s BIA obligations be secured by recordation of a deed of trust in favor of the City against the Property (recorded April 12, 2002 in Alameda County Recorder's Office as Document No. 2002164975; "Deed of Trust"); and

WHEREAS, in 2007, Redevelopment staff determined that the BIA's financial goals had been met, and accordingly, the City recorded a partial reconveyance of the Deed of Trust relieving B.E. Fitzpatrick Development, Inc. from its obligation to repay the \$2,000,000 business incentive payments; and

WHEREAS, B.E. Fitzpatrick Development, Inc. constructed, and OMCI has operated, a 24,000 square foot auto dealership with 305 parking spaces and complied with First Source Hiring and Small Business Enterprise programs since 2002; and

WHEREAS, City staff has verified that the Project has generated at least \$2,017,420 of tax revenue to the City and the Agency from 2002 to 2007 and thus exceeded the seven year goal of generating \$2,000,000 in tax revenue in five years, well ahead of schedule; and

WHEREAS, City staff has determined that, except for the ten-year operating covenant, B. E. Fitzpatrick Development and OMCI have exceeded the financial and other Project goals for the Project set forth in the BIA; and

WHEREAS, because of the Project's exemplary performance, City staff has recommended that the City relieve B.E. Fitzpatrick Development, Inc. and OMCI from the legal obligation to keep operating the Project in Oakland for approximately two (2) additional years to comply with the ten (10) year operating covenant; and

WHEREAS, City staff recommends that the City Council authorize the City Administrator to execute a Certificate of Completion, and release of B.E. Fitzpatrick Development, Inc. and OMCI under the BIA and the Deed of Trust, excepting any obligations that survive termination of the BIA; now therefore, be it

RESOLVED: That the City Administrator is authorized to execute a Certificate of Completion and release of B.E. Fitzpatrick Development, Inc. and OMCI under the BIA and the Deed of Trust, excepting any obligations that survive termination of the BIA; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve all certificates, releases and other documents as to form and legality; and be it

FURTHER RESOLVED: That the City Administrator or his designee is hereby authorized to take whatever action is necessary with respect to the Certificate of Completion, releases, reconveyances of the Deed of Trust, or other agreements consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2011

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California