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OFFICE OF THE CITY CLERK  
OAKLAND

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## AGENDA REPORT

**TO:** HENRY L. GARDNER  
INTERIM CITY ADMINISTRATOR

**FROM:** Rachel Flynn

**SUBJECT:** Fruitvale Transit Village ENA

**DATE:** October 17, 2014

City Administrator  
Approval

Date 10-29-14

**COUNCIL DISTRICT:** #5

### RECOMMENDATION

Staff recommends that City Council adopt:

**Resolution Authorizing An Exclusive Negotiating Agreement With The Spanish Speaking Unity Council ("Unity Council"), For Development of Phase II Of The Fruitvale Transit Village Project At The Bay Area Rapid Transit ("BART") Fruitvale Station Parking Lot; Authorizing A Predevelopment Loan For The Project In An Amount Not To Exceed \$350,000; and Authorizing an Exclusive Negotiating Period of One Year and One Optional Six Month Administrative Extension.**

The proposed Exclusive Negotiating Agreement ("ENA") with the Unity Council is to provide time to (i) evaluate the feasibility of the project and (ii) identify and secure additional sources of project financing. The proposed exclusive negotiation period is for a term of one year with one optional six month administrative extension to allow for the completion of all the required submittals.

### OUTCOME

Approving the proposed legislation will authorize the Interim City Administrator (the "City Administrator") to sign an ENA with the Unity Council and allow a predevelopment loan to be made in order for work to continue on advancing Phase II of the Fruitvale Transit Village project.

### BACKGROUND/LEGISLATIVE HISTORY

The proposed project site is the 3.41 acre Fruitvale BART Station parking lot immediately adjacent and south of the existing Phase I of the Fruitvale Transit Village. The Fruitvale BART station was built in the early 1970's and, since that time, the Phase II site has been used as a

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commuter parking lot for BART patrons. BART was the legal owner of the parking lot until 2010.

In July 2010, the Board of the former City of Oakland Redevelopment Agency (the "Agency") approved Resolution 2010-0100 C.M.S.(the "Agency Resolution"), which authorized the Agency Administrator to purchase the parking lot from 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 May 2010. The project entitlements are expected to be extended an additional year since they will expire in December 2014.

Pursuant to the Agency Resolution, the Agency purchased the property from BART in October 2010. In January 2012, all redevelopment agencies in the State of California were eliminated. The Oakland Redevelopment Successor Agency ("ORSA") became the successor agency to the Agency. ORSA was required to prepare and submit to the California Department of Finance ("DOF"), a long-range property management plan which addressed the disposition and use of real property, including the Agency acquired property described herein. In May 2014, DOF approved ORSA's long-range property management plan.

In August 2013, the City partnered with Unity Council and jointly applied for a grant in the amount of \$4,000,000 to the State of California's Department of Housing and Community Development Transit Oriented Development ("TOD") Housing Program. In addition, the Unity Council solely applied to the TOD Infill Loan Program. In February 2014, the Unity Council and the City received the maximum \$4,000,000 grant. In addition, 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 ("L&M") 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 housing.

## **ANALYSIS**

The project site is located within the Coliseum redevelopment project area. The general objective for the ENA and the predevelopment loan is for the future development of the site. The existing BART parking lot will be improved with a proposed mixed-use transit oriented development including 275 residential units, 289 surface parking stalls and a 277 stall parking garage. The project, which has been fully entitled by the City's Planning and Building Department, includes full design review, CEQA, a Final EIR, and associated entitlements. The project, as currently

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envisioned, contains residential units designed entirely around a central integrated parking garage.

The area immediately surrounding the project site is developed with a mix of residential and commercial uses. Along East 12<sup>th</sup> Street and between 35<sup>th</sup> Avenue and 37<sup>th</sup> Avenue, are rear yards of businesses and residential properties that front on International Boulevard, 35<sup>th</sup>, 36<sup>th</sup> and 37<sup>th</sup> Avenues. Las Bouganvillas, a senior residential facility, is located on the corner of E. 12<sup>th</sup> Street. To the south of the project site is Ascend School, a kindergarten through 8<sup>th</sup> grade small, independent school in the Oakland Unified School District that faces East 12<sup>th</sup> Street. Located to the west is a fenced and gated parking lot for Fruitvale Village. The elevated BART tracks run above that parking lot. Located to the north is Phase I of the Fruitvale Village, a three-story mixed used transit oriented development at the Fruitvale BART Station.

The City currently leases the 3.41 acre parking lot to Unity Council. Pursuant to the lease agreement, Unity Council is responsible for the day to day operations of the parking lot, including the insurance, site management and maintenance. In addition, since the proposed Phase II project may be constructed in phases, sections of the parking lot may continue to remain fully operational while other portions are developed.

The Unity Council is a 501(c) (3) tax exempt, not-for-profit corporation. The Unity Council is governed by a Board of Directors which is comprised of economic development expertise from the business, government, non-profit and community sectors of Oakland. The mission of the Unity Council is to improve the quality of life for residents of Oakland particularly the Fruitvale district with an emphasis on the Latino population through the identification and development of services and additional opportunities.

Most recently, the Unity Council has executed a MOU with L&M. This MOU identifies L&M as the partner and for-profit developer of Phase II of the Fruitvale Transit Village project. The company primarily focuses its investments in development and redevelopment projects in central cities and urban infill areas, as well as along public-transit corridors. L&M has experience with both affordable and market rate housing as well as mixed use residential projects, either through joint ventures with other developers or acting as its own development entity. L&M currently has a local office based in San Francisco.

The ENA and the predevelopment loan between the City and Unity Council is for the purpose of studying and evaluating the feasibility of the development and negotiating the terms and conditions of Phase II of the project. The ENA will be for a period of twelve months terminating in November 2015. The ENA will include a six month extension option, subject to the City Administrator's discretion or his/her designee to extend the agreement administratively.

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Staff recommends that the predevelopment loan be structured as a zero interest, deferred loan until such project is fully completed, leased and operating with revenues being generated to repay the predevelopment loan. Staff also recommends a 55 year term to coincide with the affordability restrictions under the proposed affordable units that will be constructed as part of the overall project. In addition, the proposed ENA and the predevelopment loan will memorialize the roles and responsibilities of the City and the Unity Council during the proposed negotiating period. Upon receiving authorization from the City Council to enter into the ENA, the following issues will be addressed:

1. Further negotiations in order to define the relationship between the City and the Unity Council.
2. The Unity Council will be required to seek and apply for additional grants, loans and additional financing and provide evidence that requisite funding has been obtained to ensure that a project can be built.
3. The Unity Council, in partnership with L&M, will conduct pro forma financial analyses, environmental reports, market studies and further due diligence efforts to ensure that the proposed project is feasible and would fulfill the development objectives to the maximum extent possible.
4. The Unity Council will be required to maintain their relationships with BART, AC Transit, etc., to maintain their support and partnership for the proposed transit oriented development.
5. City can terminate the ENA prior to expected length of term for cause.

Staff is requesting Council provide authorization to enter into an ENA with the Unity Council. Presuming a viable project is identified, staff will return to Council at a later date for approval of the final development proposal. The City Attorney's Office will approve the ENA as to form and content.

#### **PUBLIC OUTREACH/INTEREST**

Phase II of the Fruitvale Transit Village project will be located in the Coliseum redevelopment project area in the City of Oakland. The City has been a supporter and partner with the Unity Council for many decades and after extensive community input identified the area surrounding the Fruitvale BART station as a transit oriented development site. The previously completed Phase I Fruitvale Transit Village has received many awards and been nationally recognized by many financial and academic institutions, transit and governmental agencies.

## **COORDINATION**

Staff from many City departments as well as from Project Implementation has coordinated with the Unity Council and BART for the Fruitvale Transit Village Phase II project. This staff report and resolution have been reviewed by the Office of the City Attorney and by the City Administrator's Budget Office.

## **COST SUMMARY/IMPLICATIONS**

1. **AMOUNT OF RECOMMENDATION/COST OF PROJECT**  
Approving the resolutions will enable the City Administrator to sign a predevelopment loan with the Unity Council for \$350,000. The predevelopment loan will require that work be completed and billed on a completed basis and be reimbursed by the City with an amount not to exceed \$350,000.
2. **SOURCE OF FUNDING:**  
Funding is available in the Coliseum TA Bonds Series 2006B-T (Taxable) Fund (5656), Coliseum Redevelopment Organization (94859), Coliseum Project (C366931). Funding will be reallocated from Coliseum Project (C366931) to a project to be determined.
3. **FISCAL IMPACT:**  
The bond funds to be allocated for the predevelopment loan are protected by bond covenants for redevelopment activities within the Coliseum Redevelopment Project Area. There is no anticipated impact to the General Purpose Fund. Completion of the FTV Phase II project will ultimately provide construction jobs, sales taxes, property taxes, permit fees, and multiplier effects to the City's economy.

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** The proposed transit oriented development will complement and increase the housing 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 neighborhood has suffered from economic blight and an absence of new construction for an extended time period. The proposed transit oriented development provides a

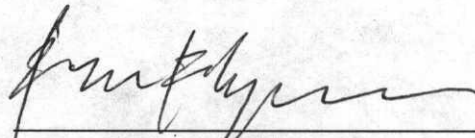
positive stimulus to the neighborhood where the development of vacant land is both welcomed and important to continued neighborhood growth and stability.

**CEQA**

The project, which has been fully entitled by CEDA Planning and Zoning Division, includes full design review, CEQA, Final EIR and associated entitlements. It is anticipated that a request will be submitted in December 2014 to extend the current project entitlements.

For questions regarding this report, please contact Larry Gallegos, Project Area Manager, at (510) 238-6174.

Respectfully submitted,

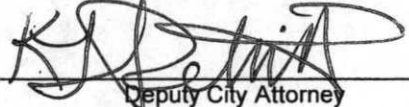


Rachel Flynn, Acting Director  
Economic and Workforce Development  
Department

Prepared by:  
Larry Gallegos, Project Area Manager  
Project Implementation Division

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APPROVED AS TO FORM AND LEGALITY:

  
Deputy City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH THE SPANISH SPEAKING UNITY COUNCIL FOR DEVELOPMENT OF PHASE II OF THE FRUITVALE TRANSIT VILLAGE PROJECT AT THE BAY AREA RAPID TRANSIT ("BART") FRUITVALE STATION PARKING LOT; AUTHORIZING A PREDEVELOPMENT LOAN FOR THE PROJECT IN AN AMOUNT NOT TO EXCEED \$350,000; AND AUTHORIZING AN EXCLUSIVE NEGOTIATING PERIOD OF ONE YEAR AND ONE OPTIONAL SIX MONTH ADMINISTRATIVE EXTENSION**

**WHEREAS**, the City of Oakland (the "City") owns approximately 3.41 acre of property located at the Fruitvale BART Station parking lot (the "Property"); and

**WHEREAS**, the City and the Spanish Speaking Unity Council ("Unity Council") desire to commence the development of Phase II of the Fruitvale Transit Village as a proposed mixed-use transit oriented development with 275 residential units, 289 surface parking spaces and 277 garage parking spaces;

**WHEREAS**, L&M Development Partners, Inc., a real estate development firm headquartered in New York and with offices in San Francisco and Unity Council have entered into a Memorandum of Understanding ("MOU") concerning the development of the Fruitvale Transit Village project (the "Project"); and

**WHEREAS**, the City and Unity Council desire to dedicate time for the preliminary study and exclusive negotiations of the proposed project, with the understanding that such study and negotiations do not constitute a binding commitment on the part of the City to the proposed Project, Unity Council or any developer; and

**WHEREAS**, the Unity Council is seeking a predevelopment loan in the amount of \$350,000 to cover associated costs with predevelopment activities related to the project, and said funds are currently available in the Coliseum TA Bonds Series 2006B-T (Taxable) Fund (5656), Coliseum Redevelopment Organization (94859), Coliseum Project (C366931) and will be reallocated to a project to be determined; now therefore be it

**RESOLVED:** That the Interim City Administrator (the "City Administrator") or his/her designee is authorized to negotiate and enter into an Exclusive Negotiating Agreement ("ENA") with the Unity Council for purposes of studying and evaluating the

feasibility of, and negotiating terms and conditions for the potential development of Phase II of the Fruitvale Transit Village at the Fruitvale BART Station parking lot, including, but not limited to, 275 residential units, 289 surface parking spaces and 277 garage parking spaces, and conducting California Environmental Quality Act ("CEQA") review and approval; and be it

**FURTHER RESOLVED:** That the exclusive negotiating period shall be for twelve (12) months from the date of the execution of the ENA,, with the option to extend said period an additional six months at the discretion of the City Administrator or his/her designee; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes a \$350,000 zero-interest predevelopment loan from the Coliseum TA Bonds Series 2006B-T (Taxable) Fund (5656), Coliseum Redevelopment Organization (94859), Project TBD to the Unity Council to fund predevelopment costs associated with the Phase II Fruitvale BART Transit Village project; and be it

**FURTHER RESOLVED:** That the term of the predevelopment loan shall be for 55 years, with repayment of the loan deferred until the developer has completed the redevelopment of the project and is generating revenues from the development, and with the loan balance due at the end of the term; and be it

**FURTHER RESOLVED:** That the work product funded by the loan, as well as other development rights for the project, shall be security for the loan and shall be assigned to the City upon default by Unity Council in the performance of its loan obligations, including obligations to pursue development of the project; and be it

**FURTHER RESOLVED:** That the City finds and determines, after independent review and consideration, that the authorization to enter into the ENA with Unity Council is exempt from CEQA pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines; and be it

**FURTHER RESOLVED:** That the City Administrator or his/her designee shall cause to be filed with the County of Alameda a Notice of Exemption from CEQA requirements; and be it

**FURTHER RESOLVED:** That all documents shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution; and be it



**FURTHER RESOLVED:** That the City hereby authorizes the City Administrator or his/her designee, to negotiate and enter into other agreements and take all other actions necessary with respect to the ENA, the predevelopment loan, and the Project consistent with this Resolution and its basic purpose.

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

**PASSED BY THE FOLLOWING VOTE:**

AYES-           BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and  
                  PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California