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APPROVED AS TO FORM AND LEGALITY

  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

### ORDINANCE NO. 1334 C.M.S.

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AN ORDINANCE AMENDING ORDINANCE NO. 13313 C.M.S. TO ADD THE EAST BAY ASIAN LOCAL DEVELOPMENT CORPORATION (“EBALDC”) AS AN ADDITIONAL PARTY TO THE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (PHASE IIA), A SIXTY-SIX (66) YEAR GROUND LEASE AND RELATED DOCUMENTS (COLLECTIVELY “LDDA”) AS AMENDED BY AND AMONG THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, THE SPANISH SPEAKING UNITY COUNCIL OF ALAMEDA COUNTY, INC., L & M DEVELOPMENT PARTNERS, INC. AND EBALDC FOR THE DEVELOPMENT OF MIXED INCOME HOUSING LOCATED ON APN 033-2177-021 AT 37<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**, the City and the Spanish Speaking Unity Council of Alameda County and L & M Development Partners, Inc. hereinafter collectively referred to as developer (“Developer”) entered into an Exclusive Negotiating Agreement (“ENA”) on November 18, 2014 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 (the “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

**WHEREAS**, on June 22, 2015, the City Council authorized the City Administrator to negotiate and execute a Lease and Disposition Agreement (LDDA) with the Spanish Speaking Unity Council of Alameda County, Inc. and L & M Development Partner Inc. for the development of the Fruitvale Transit Village Phase IIA project. The City now wishes to amend the Lease Development and Disposition Agreement and related documents (collectively, the “LDDA”) with the Developer to add the East Bay Asian Local Development Corporation (EBALDC) as an additional party to the LDDA. The LDDA sets 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 LDDA Term Sheet Fruitvale Transit Village Phase IIA, Mixed Income Housing 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 term payment of 50% percent of the cash flow from Year 1 to Year 66; 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 starting in year one to year sixty six; 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 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**, as required by State Law, 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, that contains: (i) a copy of the proposed lease of the Phase IIA Property and (ii) a summary of (a) the cost of the agreement to the City, (b) the estimated highest and best use value permitted under the City general plan or zoning, (c) the estimated value determined at the use required by the lease, with an explanation of the reasons for the difference between the two values, and (d) an explanation, with supporting facts and materials, of why the lease of the Phase IIA Property and development of the Phase IIA Project will assist in the creation of economic opportunity; and

**WHEREAS**, the City Council previously certified in May 2010 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 an amendment to add East Bay Asian Local Development Corporation (EBALDC) as an additional party to the LDDA related to the Phase IIA Property with the Developer for development of 94 residential units of mixed-income housing 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 designee to negotiate and execute the amendment to the LDDA

**SECTION 3.** 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 4.** 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 5.** 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 6.** The City Council 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.** The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

**SECTION 8.** The City Council hereby authorizes the City Administrator or designees 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 the 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 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, DEC - 8 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*  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

*Date of Attestation: 12/11/15*

Introduction Date  
NOV 17 2015