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AGENDA REPORT

TO: JOHN A. FLORES
INTERIM CITY ADMINISTRATOR

FROM: Mark Sawicki

SUBJECT: DDA for 12th St. Remainder Parcel
Supplemental Report #2

DATE: May 22, 2015

City Administrator
Approval

Date 5/28/15

COUNCIL DISTRICT: 2

RECOMMENDATION

Staff recommends that the City Council adopt the following legislation:

An Ordinance Authorizing: (1) The City Administrator, Without Returning To The City Council, To Negotiate And Execute A Disposition And Development Agreement and Related Documents Between The City of Oakland, And A Development Entity Comprised Of UrbanCore Development, LLC and UDR, Inc., (Or Its Related Entities Or Affiliates) For Sale Of The 12th Street Remainder Parcel Located At E12th Street And 2nd Avenue For No Less Than \$5.1 Million And Development As A Residential Mixed-Use Project, All Of The Foregoing Documents To Be In A Form And Content Substantially In Conformance With The Term Sheet Attached As Exhibit A; (2) Set-Aside Of No More Than \$500,000 From Land Sales Proceeds For Remediation of Property And; (3) Appropriation of \$200,000 From Land Sales Proceeds To Fund An Asset Portfolio Management Plan

REASON FOR THE SUPPLEMENTAL REPORT

This Supplemental Report summarizes the changes to the original staff report and Ordinance since the Community and Economic Development (CED) Committee meeting on April 14, 2015.

The following four changes were introduced at the CED on April 14, 2015.

- A. A City requirement for the Developer to provide payment and performance bonds in an amount not less than 100 percent of the Project construction costs, pursuant to the Developer-executed construction contract, will apply *only if* these are a requirement of the Developer's lender.

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- B. Twenty Five percent of net land sale proceeds will be deposited into the Affordable Housing Trust Fund (1870). Given a sales price of \$5.1 million, with \$200,000 appropriated to fund an Asset Portfolio Management Plan and \$500,000 set aside in escrow for hazardous materials remediation, 25 percent of the remaining \$4.4 million will be **\$1.1 million** at the time of the close of escrow. At the conclusion of site remediation activities, another 25 percent of the remaining amount from the \$500,000 site remediation set aside allowance will be deposited into the Affordable Housing Trust Fund.
- C. Twenty Five percent of net land sale proceeds will be appropriated to fund maintenance of Measure DD bond funded improvements. Given a sales price of \$5.1 million, with \$200,000 appropriated to fund an Asset Portfolio Management Plan and \$500,000 set aside in escrow for hazardous materials remediation, 25 percent of the remaining \$4.4 million will be **\$1.1 million** at the time of the close of escrow. At the conclusion of site remediation activities, another 25 percent of the remaining amount from the \$500,000 site remediation set aside allowance will be appropriated for maintenance of Lake Merritt's Measure DD bond funded improvements.
- D. Per the direction of CED Committee, Councilmember Abel Guillen negotiated additional community benefits since the April 14th CED meeting.

The following list of community benefits totaling **\$700,000** in monetary contributions from Developer, UrbanCore Development, LLC, will be included in the Development and Disposition Agreement (DDA). Note that this amount represents an additional \$200,000 to be added to the \$500,000 amount that was itemized in the first Supplemental Report for the May 5th City Council meeting that was adjourned early. (The \$500,000 worth of community benefits was shown as Attachment 1 to Exhibit A of the updated Ordinance.)

Social Equity / Housing Benefits

1. Developer will include 30 rent-restricted housing units within the project as shown in Table 1. Rents will be restricted by a 55-year regulatory agreement at levels affordable to individuals and families earning 80 percent to 120 percent of the Area Median Income ("AMI"), which is approximately \$47,000 (for family of 1) to \$99,000 (for a family of 3) in 2014.

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Table 1: On-Site Rent-Restricted Housing Units

	Studio	Rent Limit	1BR	Rent Limit	2BR	Rent Limit
10 Units at 80% of AMI	3	\$1,139	4	\$1,220	3	\$1,461
10 Units at 100% of AMI	3	\$1,591	4	\$1,704	3	\$2,044
10 Units at 120% of AMI	3	\$1,919	4	\$2,056	3	\$2,466

- Developer will provide at least 20 hours of pro bono affordable housing development consulting to the City of Oakland and/or a non-profit affordable housing developer planning a project within Oakland.

Specifically, Developer will work with Councilmember Guillen and staff to identify potential sites in District 2 that can accommodate between 50 and 70 affordable housing units. Developer will:

- pay for the predevelopment preparation of architectural concept plans for the project and other due diligence materials necessary to determine the feasibility of the preferred site and project;
- prepare a feasibility study to determine the project costs;
- prepare a proforma identifying the required sources for the project; and
- assist in a process whereby a non-profit affordable housing developer is identified to implement the development.

- Developer will fund at least **\$200,000** for a tenant legal rights and education program(s) to help minimize the displacement of current tenants living within a three-mile radius of the project site, with a particular focus on outreach to monologists.
- Developer will make a **\$50,000** contribution to Rebuilding Together Oakland for its Safe At Home and Home Rehabilitation Projects in District 2

Economic Equity / Jobs Benefits

- Developer will complete a plan within 120 days of execution of the DDA to accomplish a 25 percent good-faith-effort goal for local hiring for new jobs created during construction, including hiring participants of the Cypress

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Mandela Training Center, Laney College Career Tech Training Programs, and Dewey High School and appropriate apprenticeship policies. The developer will also work with the West Oakland Jobs Center and identify re-entry/Ceasefire candidates for placements in construction-related jobs. This action will include preparing a MOU between the selected General Contractor and these organizations and providing at least **\$100,000** in funding support for these programs to be determined.

6. Developer will fund at least **\$25,000** for a study to create a Business Improvement District or Community Benefits District in the E. 18th St/Lower Park Blvd. commercial area.
7. Developer will complete a plan within 90 days of execution of the DDA to achieve a 25 percent combined goal for local-business (LBE) and small-local-business (SBE) procurement with the professional service fees and construction contracting during construction. Developer will assist the General Contractor with developing a multilingual outreach program to promote participation to meet the good faith effort combined goal for LBE and SBE of 25 percent of professional services and contracting.
8. Developer will consider using a Union General Contractor at the Developer's sole discretion.

Environmental / Open Space Benefits

9. Developer will fund at least **\$150,000** towards the construction and/or maintenance of a skate board park on existing publicly owned property.
10. Developer will fund at least **\$100,000** to the Eastlake Merchants Association or another designee for graffiti abatement and neighborhood beautification.
11. Developer will fund at least **\$50,000** for community groups such the Sierra Club Street Tree Team to plant trees east of Lake Merritt and San Antonio Park.
12. Developer will fund at least **\$25,000** in support programs at Children's Fairyland.

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13. Developer will use eco-friendly/water and energy conservation best practices, and achieve LEED (“Leadership in Energy & Environmental Design”) Silver certification or the State Green Point Rating.
14. Developer will provide adequate protections to minimize impacts for Dewey High School students during and after construction.

This above list of community benefits is detailed in UrbanCore’s May 21st letter to staff, as shown in *Attachment A*.

All the above changes are reflected in the updated Ordinance and the DDA term sheet contained in *Exhibit A*, except for the most recent expanded community benefits, which are shown in *Attachment B* to this staff report.

ALTERNATIVE STAFF RECOMMENDATION

Although the CED Committee approved a motion for 25 percent of net land sales proceeds from this transaction be used to fund the maintenance of Lake Merritt Measure DD improvements, the motion also allowed for staff to propose an alternative solution to address this issue. The use of one-time funds from the sale of this property for ongoing maintenance purposes is not recommended per the City’s fiscal policy.

Rather than allocating one-time funds from this property sale or incremental funding from interest earned on these one-time funds, the Administration has included \$400,000 of ongoing funds in the FY 2015-17 Proposed Budget for additional Lake Merritt parks maintenance beginning in FY 2016-17, after the plant establishment period ends (May 2016).

The City’s Request for Proposal (RFP) process for the Property complied, to the extent applicable, with Oakland Municipal Code Section 2.42.170(A), which requires that the City issue “a public and competitive Notice of Development Opportunity (“NODO”) to potential developers and other interested parties”. However, if a member of the public were to successfully assert that the proposed disposition of the Property did not comply with such requirements, the City Council could still proceed with the transaction by making a finding to waive such requirements.

Therefore, staff recommends that Council simply make this finding now and waive such requirements by make the additional finding below when adopting the proposed Ordinance:

“The Council hereby finds and determines that the City’s Request for Proposal (RFP) process for the Property complied, to the extent applicable, with Oakland Municipal Code Section 2.42.170(A), which requires that the City issue ‘a public and competitive NODO to potential developers and other interested parties.’ However, in the event that it may

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later be determined that such RFP process did not in any respect meet any applicable Code requirement for a competitive NODO process, the Council hereby waives such requirement on the basis that the process that was used was in the best interests of the City because it was most likely to elicit responses from potential purchasers with the experience, capacity and other qualifications, as well as demonstrated interest in developing a project on the site, to achieve the City's goals for development of the Property.”

COST SUMMARY/IMPLICATIONS

The land sale proceeds totaling up to \$5.1 million will be deposited in the General Purpose Fund (1010), Real Estate Services Organization (85231), Sale of Land (48111), Non-Project (0000000), Real Estate Program (PS32).

An Environmental Remediation Allowance not to exceed \$500,000 of the land sale proceeds will be set aside in escrow. The exact amount will be negotiated based on findings of a Phase II report and released directly to Developer as the remediation work is completed. Any Allowance amount remaining after remediation work is complete will be deposited into the above named account.

Of the land sale proceeds from this transaction \$200,000 will be appropriated to fund the development of an Asset Portfolio Management Plan for all City-owned real estate, to be managed by the Real Estate Services Division. The funds will be appropriated in the General Purpose Fund (1010), Real Estate Division (85231), Contract Contingency (54011), and Real Estate (PS32). The project number is to-be-established.

Twenty-five percent of Net Land Sale Proceeds will be deposited in the Affordable Housing Trust Fund (1870), Housing Development Org (89929), Sale of Land (48111), Housing Trust, Housing Dev Project (P435210), and Housing Development Program (SC14). This is consistent with the FY 2015-17 Proposed Budget.

Twenty-five percent of Net Land Sale Proceeds will be deposited and appropriated to fund maintenance of Measure DD Improvements: Lighting and Landscape Assessment District Fund (2310), Landscape Maintenance Org (30652), Contract Contingency Account (54011), Project TBD, and Grounds Program (NB07). This proposal is inconsistent with the FY 2015-17 Proposed Budget. As described above in the alternative section, the budget includes \$400,000 ongoing funds for supplemental Lake Merritt maintenance beginning in FY 2016-17, after the establishment period ends.

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Table 2 below summarizes the allocation of funds from this transaction, as recommended by CED.

Table 2: Summary of Fund Allocation, per CED

Purchase Price	\$5,100,000
Asset Management Plan for all City-owned Property	\$200,000
Environmental Remediation Allowance Set Aside	\$500,000
Net Land Sale Proceeds	\$4,400,000
25% of Net at time of closing to Affordable Housing Trust Fund	\$1,100,000
25% of Net at time of closing to Measure DD Maintenance Fund	\$1,100,000
After site remediation is complete, any amount remaining from the \$500,000 set-aside in escrow will be allocated per same Council approved percentages.	

Alternatively, staff recommends that the maintenance of Lake Merritt Measure DD bond funded improvements come from ongoing sources of funds as proposed in the FY 2015-17 proposed Budget.

For questions regarding this supplemental report, please contact Patrick Lane, Acting Manager of Project Implementation Division at (510) 238-7362.

Respectfully submitted,



Mark Sawicki
Director, Economic & Workforce Development
Department

Reviewed by:
Patrick Lane, Acting Manager
Project Implementation Division

Prepared by:
Hui-Chang Li, Urban Economic Analyst II
Project Implementation Division

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To: Patrick Lane, Hui-Chang Li

From: Michael E. Johnson

Date: May 21, 2015 (Revised)

Re: Lake Merritt Tower – E. 12th Street, Oakland

This memo is a follow-up to our conversation today regarding the above referenced project. We have done some further analysis of the financial model for the project. We have also considered the Council's desire to have the project include a mix of workforce affordable units within the project. As we discussed, we propose the following as an amendment to the DDA Term Sheet that has been negotiated with the City:

1. Developer will include **30 workforce affordable housing units within the project (or approximately 10% of the total units)** as follows:
 - a. 10 Units at 80% of AMI: 3 studio @ **\$1,139**; 4-1BR @ **\$1,220**; 3-2BR units @ **\$1,461**
 - b. 10 Units at 100% of AMI: 3 studio @ **\$1,591**; 4-1BR @ **\$1,704**; 3-2BR units @ **\$2,044**
 - c. 10 Units at 120% of AMI: 3 studio @ **\$1,919**; 4-1BR @ **\$2,056**; 3-2BR units @ **\$2,466**

These rent levels will be affordable to individuals and families making approximately \$47,000 (family of 1) to \$99,000 (family of 3) according to the City of Oakland 2014 Income Levels (see the attached City Charts).

Please note, this option still includes the Developer funding a **revised amount \$700,000 for Community Benefits** to be implemented by UrbanCore Development.

2. Developer (UrbanCore Development) will also sponsor the development of an affordable housing project in District 2 as part of the pro bono work to be completed under the terms in the Community Benefits, to include the following:
 - a. Developer to identify potential sites in District 2 that can accommodate between 50-70 units (TBD).
 - b. Developer will work with Council Member Guillen and the City staff to conduct a community engagement process to select one of the potential sites to study, and determine the type of affordable housing and targeted income levels.

ATTACHMENT A



UrbanCore

Real Estate Development

- c. The Developer will pay for the predevelopment preparation of the architectural concept plans for the project, and other due diligence materials necessary to determine the feasibility of the preferred site and project.
- d. Developer will prepare a feasibility study to determine the project costs, and prepare a proforma identifying the required sources for the project. The developer will explore the potential of using tax-exempt bonds and 4.0% Low Income Tax Credits, or 9.0% tax credits to undertake this project.
- e. The City will select a non-profit developer to undertake the project, or to partner with the Developer in completing the project.
- f. The City has the option to utilize the \$1.1 million, which is the proposed set aside from the purchase price to assist in funding this affordable housing project in District 2.
- g. The Developer, the non-profit partner and the City will work together to identify alternative additional subsidy funding for the project, including City HOME funds, State, County, HUD Section 8, and FHLB funding.
- h. The Developer will prepare a project implementation schedule for the project, and work to achieve the required entitlements for the project.

Please advise us of any questions you may have.

[Updates Attachment 1 to Exhibit A of Ordinance as Modified by Community & Economic Development Committee on April 14, 2015]

ATTACHMENT B

DDA Term Sheet Amendment, as negotiated by Councilmember Abel J. Guillen
"Lakehouse Residence"
12th Street Remainder Parcel
Updated: May 28, 2015 (updates shown in **bold underscore**)

The DDA Term Sheet is hereby amended to include the following text:

21. City Programs & Community Benefits

The following list of community benefits will be adhered to in good faith between the parties, will be implemented by UrbanCore Development on behalf of the Development entity, and will be completed during the DDA period:

1. **Developer will include 30 housing units within the project (or at least 10% of the total final unit count) with rents to be restricted under a 55-yr Regulatory Agreement at levels affordable to individuals and families earning 80 percent to 120 percent of the Area Median Income ("AMI"), which is approximately \$47,000 (for family of 1) to \$99,000 (for a family of 3) in 2014.**
 - **10 units at 80% of AMI: three studios, four 1BR, three 2BR**
 - **10 units 100% of AMI: three studio, four 1BR, three 2BR**
 - **10 units 120% of AMI: three studio, four 1BR, three 2BR**

2. Before completion of project construction, developer will provide at least 20 hours of pro bono affordable housing development consulting to the City of Oakland or a non-profit affordable housing developer planning a project within District 2.
Specifically, Developer will work with Councilmember Guillen and staff to identify potential sites in District 2 that can accommodate between 50 and 70 affordable housing units.
Developer will:
 - **pay for the predevelopment preparation of architectural concept plans for the project and other due diligence materials necessary to determine the feasibility of the preferred site and project;**
 - **prepare a feasibility study to determine the project costs and potential sources of subsidy;**
 - **prepare a proforma identifying the required funding sources for the project; and**
 - **assist in a process whereby a non-profit affordable housing developer is identified to implement the development.**

3. At the time of transfer of the property, developer will fund at least **\$200,000** for a tenant-legal rights and education program(s) to help minimize the displacement of current tenants living within a three-mile radius of the project site, with a particular focus on outreach to monolingualists (residents whose primary language is not English).

[Updates Attachment 1 to Exhibit A of Ordinance as Modified by Community & Economic Development Committee on April 14, 2015]

4. **At the time of transfer of the property, developer will make a \$50,000 contribution to Rebuilding Together Oakland for its Safe At Home and Home Rehabilitation Projects in District 2.**
5. Developer will complete a plan within 120 days of execution of the DDA or before transfer of property, whichever occurs earlier, to accomplish a 25% good-faith-effort goal for local hiring for new jobs created during construction, including hiring participants of the Cypress Mandela Training Center, Laney College Career Tech Training Programs, and Dewey High School, and incorporating appropriate apprenticeship policies; and work with the West Oakland Jobs Center to identify re-entry/Ceasefire candidates for placement in construction-related jobs. This action requires preparing a MOU between the selected General Contractor and each of the three organizations and providing no less than \$100,000 in funding support at the time of transfer of the property. The 25% goal will be based on the total projected number of new jobs by the General Contractor and subcontractors during the project duration.
6. At the time of transfer of the property, developer will fund the Lake Merritt Business Association's designated fiscal agent with at least \$25,000 for a study to create a Business Improvement District or Community Benefits District in the E. 18th St/Lower Park Blvd. commercial area.
7. Developer will complete a plan within 120 days of execution of the DDA to achieve a 25% combined goal for local-business (LBE) and small-business (SBE) procurement of professional services and construction contracting, based on dollars spent during the construction phase. Developer will assist the General Contractor with developing a multilingual outreach program to promote participation to meet the good faith effort combined goal for LBE and SBE of 25% of professional services and contracting, based on dollars spent during the construction phase.
8. Developer will consider using a Union General Contractor at the Developer's sole discretion.
9. At the time of transfer of the property, developer will fund at least \$150,000 into escrow towards the construction of a skate board park on existing publicly-owned property in Council District 2, such as at San Antonio Park. If the remaining funds necessary for the development of the skate board park are not available at the time of transfer, the developer's funds will remain in escrow until the entire skate board park funding is available. Should the skate board park project not go forward during the DDA period, the \$150,000 will be distributed to organizations that already are recipients of these community benefits, as decided by the District 2 Councilmember.

[Updates Attachment 1 to Exhibit A of Ordinance as Modified by Community & Economic Development Committee on April 14, 2015]

10. At the time of transfer of the property, developer will provide \$100,000 to the East Lake Merchants Association's designated fiscal agent for graffiti abatement and neighborhood beautification.
11. At the time of transfer of the property, developer will provide at least **\$50,000** to the Sierra Club Tree Team (Northern Alameda County Group of the San Francisco Bay Chapter) for the purchase of trees to be planted east of Lake Merritt in Council District 2, including around San Antonio Park.
12. At the time of transfer of the property, developer will fund at least \$25,000 in support of programs at Children's Fairyland.
13. Developer will use eco-friendly/water and energy conservation best practices, and achieve LEED Silver certification or the State Green Point Rating.
14. During construction developer will provide adequate protections against noise and dust to minimize impacts on Dewey High School students.