



AGENDA REPORT

2015 DEC -3 PM 5:49

TO: Sabrina B. Landreth
City Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: Coliseum Transit Village Owner
Participation Agreement (OPA)

DATE: November 17, 2015

City Administrator Approval

Date:

12/3/15

RECOMMENDATION

Staff recommends that the City Council adopt the following legislation:

A Resolution Authorizing The City Administrator or Designee to Negotiate and Execute (1) An Owner Participation Agreement Among the City of Oakland ("City"), The Oakland Economic Development Corporation ("OEDC") and Urban Core Partners, LLC ("Urban Core") or the City and a Related Entity of OEDC and Urban Core and (2) A Development Loan Agreement Among The City, OEDC and Urban Core or the City and a Related Entity of OEDC and Urban Core For A Loan Amount Not To Exceed Eleven Million Six Hundred Thousand Dollars (\$11,600,000) Comprised Of: (A) \$8,000,000 In Previously Approved Oakland City Council Resolution No. 84516 C.M.S. Redevelopment Project Area Excess Bond Spending Plan Uses: Coliseum Transit Village Phase I; (B) Re-Allocating \$3,200,000 in 2006 Coliseum Taxable Bond Funds From Coliseum BART Station Transit Village Infrastructure Project to the Coliseum Transit Village Phase I Project; and (C) Amending The Coliseum Redevelopment Project Area Excess Bond Spending Plan To Re-Appropriate And Re-Allocate Excess Bond Proceeds in the Amount of \$400,000 Previously Listed and Committed in the Approved Bond Spending Plan To The Coliseum City Specific Plan All in Connection With The Coliseum Transit Village Phase I Project

A Resolution Authorizing The City Administrator or Designee to Negotiate and Execute a Memorandum of Understanding ("MOU") With The Bay Area Rapid Transit District ("BART") for Purposes of Providing Additional Coliseum BART Station Surface Parking Between 69th and 75th Avenues on the City Owned Parking Lot Located on Snell Street (APN # 041-4170-005-04), and Along City Right of Way On A Portion of 71st Avenue and On Snell Street Between 69th and 75th Avenues

EXECUTIVE SUMMARY

The Coliseum Transit Village ("CTV") Phase I project is a proposed transit-oriented development with 110-unit mixed-income units planned on a 1.3-acre portion of the BART-

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owned Coliseum BART station parking lot. The project team includes OEDC, Urban Core, BART, and the City. The CTV Phase I project will be a 50 percent affordable and 50 percent market rate residential rental project.

The CTV Phase I project is part of a long-term land use vision designed to take advantage of the transit hub improvements and other public investments in the Coliseum BART station area. CTV Phase I will build on the recent successes of the award winning Lion Creek Crossing Master Development located at Lion Way between 66th Avenue and Lion Creek Drive which has over 200 residential units. The CTV Phase I will continue to develop on the transient-oriented development for the Coliseum area and will create an additional 110 units of housing needed for residents in Oakland.

Staff recommends adopting the proposed resolution which would authorize the City Administrator or her designee to negotiate and execute an (1) Owner Participation Agreement (“OPA”) with OEDC and Urban Core or the City and a Related Entity of OEDC and Urban Core and (2) a Development Loan Agreement (“DLA”) with the City, OEDC, and Urban Core or the City and a Related Entity of OEDC and Urban Core to provide a not to exceed loan of \$11.6 million for the first phase of the mixed income project. The proposed loan, funded by former Oakland Redevelopment Agency (“Agency”) bond funds, would be deferred for the term of the affordability agreement of 55 years and would accrue at a three percent simple interest rate. The \$11,600,000 loan would: 1) serve as a local match for additional grant funding, 2) reduce the tax credit equity required for the project, and 3) will make the project more competitive for future Low Income Housing Tax Credit applications. The loan would total approximately 28% of the total projections and represents the City’s commitment to supporting this key project.

Staff also recommends adopting the second resolution that would authorize the City Administrator or designee to negotiate and execute a separate Memorandum of Understanding (MOU) with BART to provide for approximately 110 replacement surface parking spaces on the City-owned parking lot on Snell Street and along City-owned right-of-way parking spaces adjacent to the BART station. This arrangement will partially mitigate the loss of 164 current surface parking spaces due to the CTV Phase I project.

BACKGROUND / LEGISLATIVE HISTORY

Previous Approvals

In March 2008, the Agency received authorization under Resolution No. 2008-0028 C.M.S. to apply for, accept, and appropriate Prop 1C funds for Transit Oriented Development Projects in Oakland and as a result was awarded \$8,485,000 in grant funds for the CTV project.

In March 2011, Agency Resolution No. 2011-0028 C.M.S. was adopted, which authorized the transfer of \$10 million of Coliseum taxable bond funds to the Low and Moderate Income Housing Fund (“LMIHF”) for the development of housing at the Lion Creek Crossing Master development. However, the Lion Creek Crossing Master development was able to obtain outside project funding and therefore the Coliseum bond funds were not expended on the development. In May 2014, Resolution No. 2014-005 was adopted which rescinded Resolution No. 2011-0028 C.M.S. and authorized the return of the original \$10 million to the Coliseum and for the CTV Phase I project.

In July 2013, the City adopted Resolution No. 84490 C.M.S., which authorized an Exclusive Negotiating Agreement (“ENA”) with the OEDC and a \$400,000 predevelopment loan for the CTV Phase I project at the Coliseum BART parking lot.

On November 6, 2013, the California Department of Finance approved the City Resolution No. 84516 C.M.S. (approved by City Council July 16, 2013), ORSA Resolution No. 2013-023, and Oakland Oversight Board Resolution No. 2013-15. These authorizations allowed the City to enter into a Bond Expenditure Agreement (executed on November 8, 2013), with ORSA to transfer excess tax allocation bond proceeds to the City to fund redevelopment projects and programs not previously funded or obligated by ORSA or the City, as long as the spending is consistent with the bond covenants. City Resolution No. 84516 C.M.S. also approved a bond spending plan for excess bond proceeds in the Coliseum Redevelopment Project Area.

The Bond Expenditure Agreement allowed the excess bond proceeds to be transferred from ORSA to the City, while the bond spending plan enables excess bond proceeds to be spent in other programs and projects within the same Redevelopment Project Area.

Project Description

The CTV Phase I site is located on a 1.3-acre portion of the BART parking lot immediately behind and to the East of the Coliseum BART Station. The BART parking lot property is located on Snell Street between 70th and 71st Avenues (***Attachment A***). OEDC has formed a partnership with Urban Core for the Phase I project and they anticipate executing a long-term ground lease with BART for the proposed project in early 2016. The CTV Phase I project is a 110-unit mixed-income transit-oriented development project with 50 percent affordable units and 50 percent market rate units.

Project Sponsors

The Oakland Economic Development Corporation (OEDC)

In 2003, OEDC was founded by a group of African American business and civic leaders with professional expertise and experience in the areas of economic development, redevelopment, management, accounting, and real estate. The group’s focus was to form an organization to complement and support overall economic development and revitalization efforts to improve the quality of life in Oakland. OEDC is attempting to accomplish this through the identification of large-scale mixed-use real estate opportunities that will benefit all residents of Oakland. Its goals include: fostering economic revitalization of designated areas; creating direct economic opportunities and benefits; and improving the economic and social conditions of local residents. To address these goals, OEDC considered a number of development opportunities throughout Oakland and decided to undertake the development of the CTV in East Oakland as its first development opportunity.

OEDC is the sponsor and co-developer of the CTV Phase I project. OEDC’s development strategy for CTV calls for the implementation of a public/private development partnership between OEDC, the City, and BART in conjunction with a private sector real estate development company. OEDC has chosen to partner with Urban Core, the developer, to limit overhead cost. OEDC currently operates with a volunteer board and no staff.

Urban Core Partners, LLC

Urban Core Partners, LLC is a minority-owned real estate development firm based in San Francisco. The company focuses on development projects in central cities and urban infill areas, as well as along public-transit corridors, 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.

Performance Report and Status of Project Readiness

In January 2014, the City signed an ENA with OEDC and provided a \$400,000 predevelopment loan with specific deliverables to prepare for the project. All of the deliverables have been completed as required and include:

- Obtained environmental reports including Phase One, Geotech, and parking studies by various environmental consultants;
- Obtained Planning Department approval for a CEQA Infill Exemption for the project;
- Completed a market study by a consultant to determine the market demand for the project. The market study recommends a building program;
- Pyatok Architects completed schematic design plans for the proposed 110-unit mixed-income housing project which City staff reviewed;
- Obtained the construction cost estimates and construction schedule prepared by a local general contractor;
- Submitted the financial pro formas and sources and uses budget for the CTV Phase I project;
- Completed negotiations with BART for a Ground Lease Option; and
- Completed negotiations with the City for project funding assistance.

The Property

The project site is located on Snell Street between 70th and 71st Avenues and consists of a 1.3-acre portion of the Coliseum BART parking lot. The site currently has approximately 164 surface parking spaces for BART passengers. To mitigate the loss of the 164 parking spaces, BART and the City will enter into a Memorandum of Understanding (MOU) to convert a lot on Snell Street and existing street parking along Snell Street to BART's parking permit fee program with revenue to be evenly distributed between BART and the City.

Project Description-Proposed Project in Context of the Larger Coliseum Area

The CTV Phase I project was envisioned through a concept plan created by a partnership with the City and BART in 2000. The plan created a long-term land use vision for development of the area surrounding the Coliseum BART Station. This vision included a concentration of residential and commercial developments designed to take advantage of the transit hub improvements and other public investments in the area. Historically, the area has been underserved by investment and new development, but has recently experienced both public and

private investments and is well positioned to benefit from future development given its transit hub connections and close proximity to Coliseum City.

The Coliseum BART station plaza and surrounding area has also benefited greatly from the Prop IC grant awarded by the State's Office of Housing and Community Development Department ("HCD"). The Agency was able to acquire a Union Pacific owned parcel on the corner of 69th and Snell Street; and improved the underutilized and blighted property into a paved surface parking lot. In addition, a new environmentally sustainable plaza has been created with new permeable pavers adjacent to the BART pedestrian tunnel and will serve as a future location for farmer's markets as well as food vendors and catering trucks.

CTV Phase I will build on the recent successes of the award winning Lion Creek Crossing Master Development and will continue to foster new residents in the area to create a stronger sense of community. The guiding principle for the Phase I development is to introduce some limited new market rate housing and incorporating state of the art green building and energy savings systems with an award winning architectural product.

The project site is governed by the S-15 TOD Zone capitalizing on both the BART transit resource and the recently completed Oakland Airport Connector project. The S-15 TOD Zone is intended to create, preserve, and enhance areas devoted primarily to serve multiple nodes of transportation and to feature high-density residential, commercial, and mixed-use developments to encourage a balance of pedestrian-oriented activities, transit opportunities, and concentrated development and is typically around transit centers such as BART stations, AC Transit centers, and other transportation nodes.

ANALYSIS AND POLICY ALTERNATIVES

Proposed Owner Participation Agreement (OPA)

OEDC and Urban Core or the City and a Related Entity of OEDC and Urban Core will enter into an OPA with BART and obtain site control through a long term ground lease. The OPA will continue the previous efforts made through the prior ENA which requires that the developer obtain the proper site control from BART and secure the requisite project financing, construction documents, and contracts to commence the project. OEDC is partnering with Urban Core to increase its capacity to seek financing, construct, and manage the CTV Phase I project. If the OPA resolution is not approved at this time, BART may likely be disinclined to make the necessary long-term commitment for the ground lease and if the ground lease is not completed 110 units of mixed-income housing will not be built at the Coliseum BART station in spite of many years of collaboration and advance planning.

Proposed \$11,600,000 Development Loan Agreement

A critical component of making this mixed-income project feasible is the inclusion of a public subsidy. The City engaged Economic Planning Systems, Inc. ("EPS") as an independent third party consultant to conduct a feasibility analysis by evaluating the project pro forma. EPS has concluded that a public subsidy is warranted (see **Attachment B**). Approximately \$8 million was previously approved by City Council Resolution No.84516 C.M.S. on July 16, 2013 and is allocated in the bond spending plan for the CTV Phase I project. Staff is recommending that an

additional \$3,200,000 in Coliseum taxable bond funds be approved for the project and that the Bond Expenditure Agreement be amended to provide an additional \$400,000 from Coliseum taxable bond funds for a total amount of \$11,600,000 to fund the construction of the 110 residential units with 55 affordable units and 55 market rate units.

The HCD has imposed a deadline of December 31, 2016 on all grant awardees to spend all Prop IC Round One grant funds by December 2016. As a result, staff will be requesting reimbursement for capital improvements currently underway surrounding the project and the Coliseum BART Station. This will ensure that the City will meet the State's imposed deadline to disburse all the awarded funds and will provide sufficient time for the City to be fully reimbursed for the infrastructure improvements that are currently underway at the Coliseum BART Station in support of the anticipated project.

If the proposed pieces of legislation are not approved, the \$8.5M Prop IC grant funds will be in jeopardy since the State requires the production of additional housing units on the project site in exchange for the grant award. In addition, the City will lose an opportunity to partner with BART to support a long envisioned transit-oriented development that has been in the active planning stages for over ten years.

FISCAL IMPACT

As noted, approximately \$8 million of former Redevelopment bond funds were previously approved by City Council and is currently allocated for the CTV Phase I project. Staff is recommending that an additional \$3,200,000 in Coliseum taxable bond funds be approved for the project. Staff also recommends that the Bond Spending Plan be amended to provide an additional \$400,000 from Coliseum taxable bond funds for a total amount of \$11,600,000 to fund the project. The \$11,600,000 loan shall come from \$8,000,000 in Entity (1), Coliseum Taxable Bonds (5656), Organization Coliseum Redevelopment (85242), Professional Services (54930), Coliseum BART Transit Village (C366920), Coliseum Program (SC12); \$3,200,000 in Entity (1), Coliseum Taxable Bonds (5656), Engineering Design Street Construction (92242), Third Party Contract (57411), Coliseum BART Transit Village (C366920), and Engineering Planning and Design Program (IN05); and by amending the Coliseum Bond Spending Plan by re-allocating and re-appropriating \$400,000 from Coliseum bond funds currently in Entity (1), Coliseum Taxable Bonds (5656), CIP Coliseum Services (94859), Professional Services (54930), Coliseum City Specific Plan (P452510), Coliseum Program (SC12). See Table 1A which outlines the funding sources.

Table 1A: Proposed Funding Sources

Fund Source	Organization	Account	Project	Program	Amount
5656	85242	54930	C366920	SC12	\$8,000,000
5656	92242	57411	C366920	INO5	\$3,200,000
5656	94859	54930	P452510	SC12	\$400,000
Total					\$11,600,000

PUBLIC OUTREACH / INTEREST

Four community meetings were held in 2014 to present the project and solicit feedback from the public. In addition, the project was included in the Coliseum Area Specific Plan and CEQA/EIR process. This effort included over two dozen community meetings and hearings. The Coliseum Area Specific Plan was adopted and approved in April 2015. The project received its project entitlements through a CEQA Infill Exemption on January 4, 2015.

COORDINATION

City and BART staff have collaborated and coordinated for nearly a decade on the proposed Phase I project. In addition, the project has applied for and received numerous planning grant funds from outside agencies over the years. State representatives from HCD have also supported the project through the award of the Prop IC grant. Finally, staff has coordinated with the City Attorney's Office, Public Works, Planning and Building, as well as with Real Estate Services staff with the acquisition of the Snell Street parking lot parcel.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed transit-oriented development will complement and increase both affordable and market rate housing stock in Oakland as well as in the Coliseum area. 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 Coliseum area and with the latest sustainable design standards and materials incorporated into the project.

Social Equity: The project will provide additional 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

The project obtained a CEQA Infill Categorical Exemption on January 4, 2015. In addition, the Coliseum Area Specific Plan Environmental Impact Report (EIR) was adopted in March 2015. Pursuant to Sections 15162-15164 of the California Environmental Quality Act (CEQA) Guidelines, no additional environmental review is necessary. The Planning Commission approved the Specific Plan also in March 2015 and made the required CEQA findings as necessary.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council adopt the following pieces of legislation:

A Resolution Authorizing The City Administrator or Designee to Negotiate and Execute (1) An Owner Participation Agreement Among the City of Oakland ("City"), The Oakland Economic Development Corporation ("OEDC") and Urban Core Partners, LLC ("Urban

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Core”) or the City and a Related Entity of OEDC and Urban Core and (2) A Development Loan Agreement Among The City, OEDC and Urban Core or the City and a Related Entity of OEDC and Urban Core For A Loan Amount Not To Exceed Eleven Million Six Hundred Thousand Dollars (\$11,600,000) Comprised Of: (A) \$8,000,000 In Previously Approved Oakland City Council Resolution No. 84516 C.M.S. Redevelopment Project Area Excess Bond Spending Plan Uses: Coliseum Transit Village Phase I; (B) Re-Allocating \$3,200,000 in 2006 Coliseum Taxable Bond Funds From Coliseum BART Station Transit Village Infrastructure Project to the Coliseum Transit Village Phase I Project; and (C) Amending The Coliseum Redevelopment Project Area Excess Bond Spending Plan To Re-Appropriate And Re-Allocate Excess Bond Proceeds in the Amount of \$400,000 Previously Listed and Committed in the Approved Bond Spending Plan To The Coliseum City Specific Plan All in Connection With The Coliseum Transit Village Phase I Project

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For questions regarding this report, please contact Theresa Lopez, Project Implementation Division at (510) 238-6250.

Respectfully submitted,



Mark Sawicki
Director, Economic and Workforce
Development Department

Reviewed by:
Larry Gallegos, Coliseum Area Manager

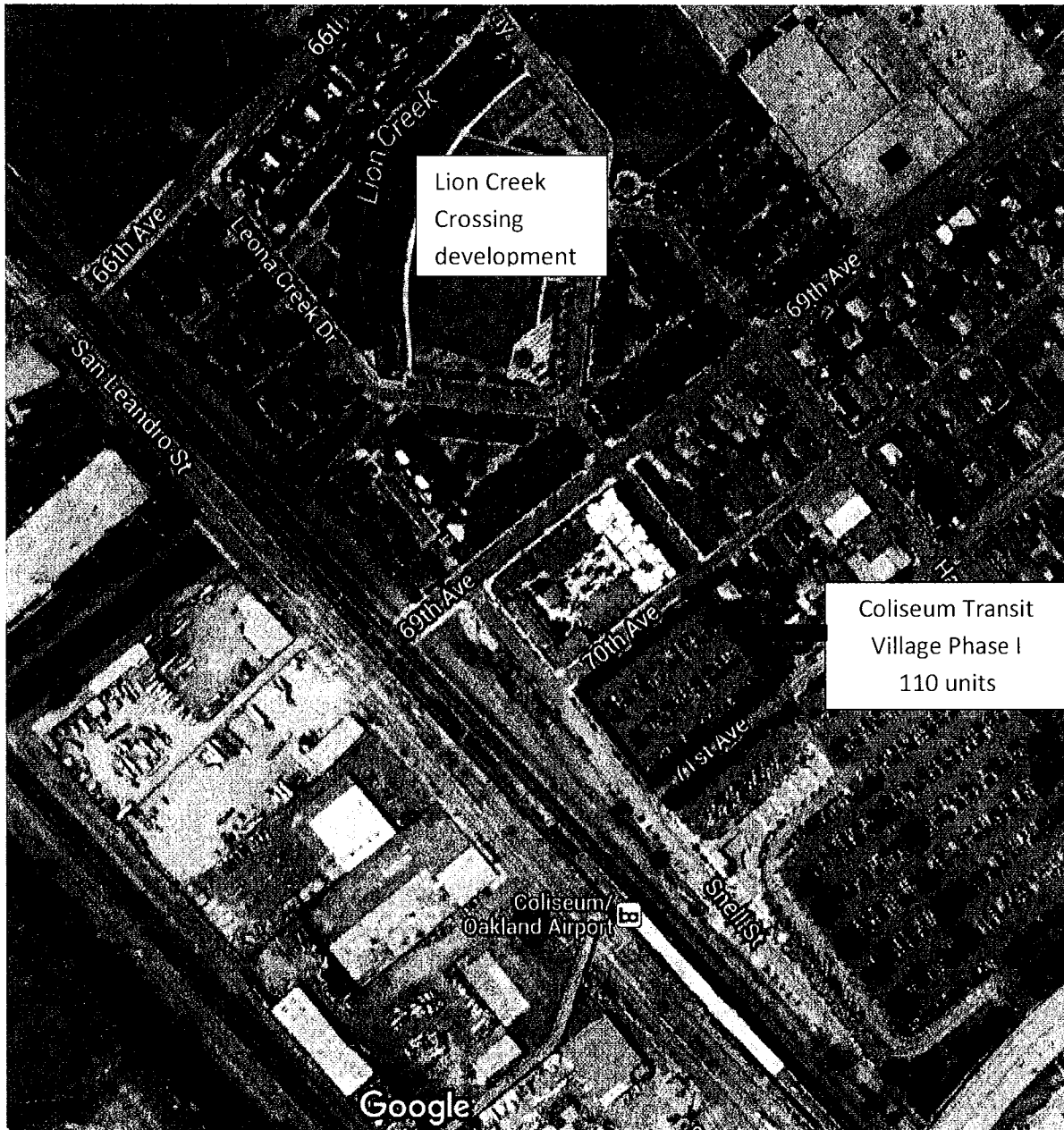
Prepared by:
Theresa Lopez, Project Manager

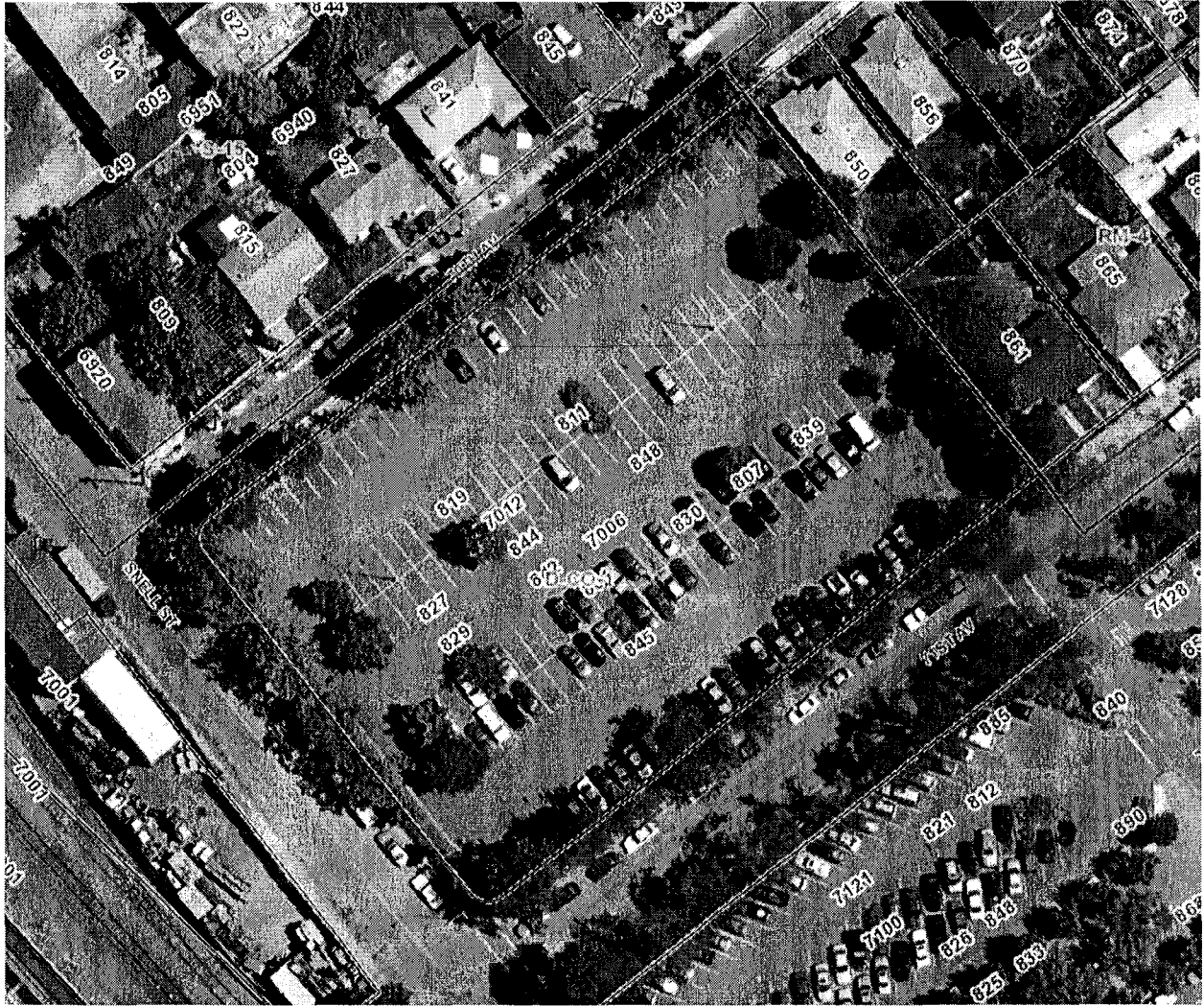
Attachments:
Attachment A - Map of the Coliseum Transit Village Site
Attachment B - Economic Feasibility Report
Attachment C - Draft Term Sheet

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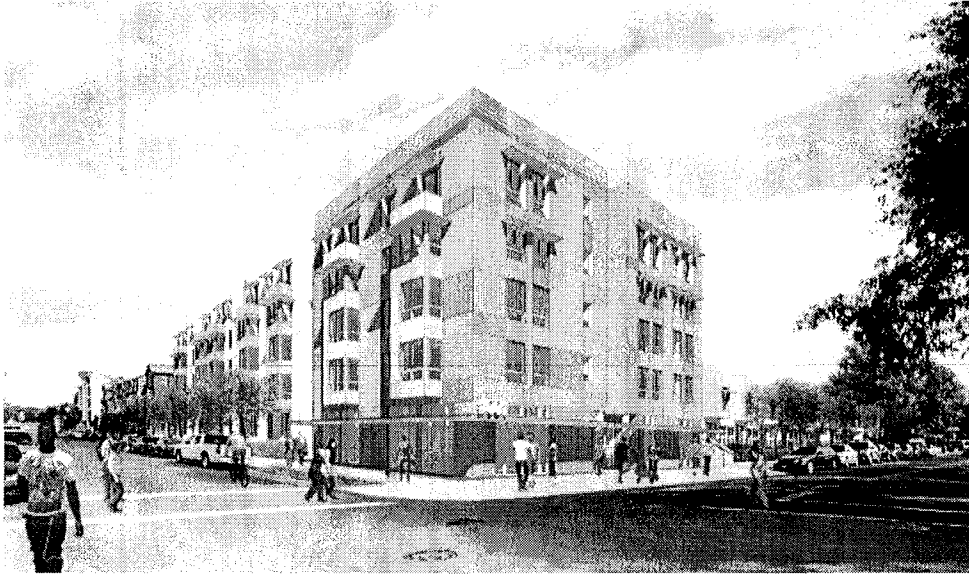
Attachment A

Aerial Coliseum Transit Village Phase I site

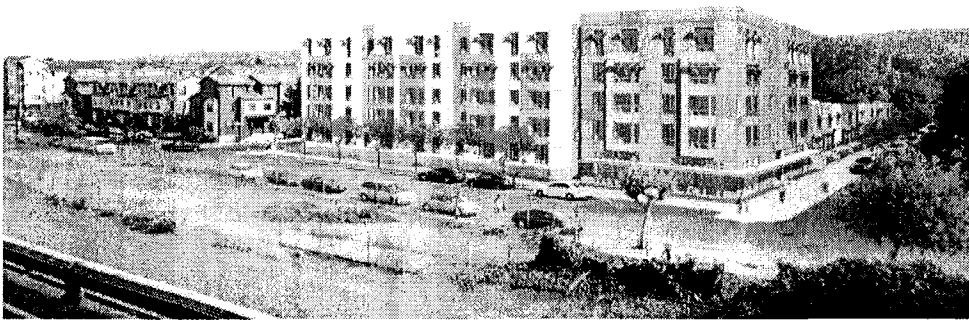




Aerial of Proposed Site:



View from Snell St.



View from BART



View from 71st Ave

DRAFT MEMORANDUM

To: Larry Gallegos, City of Oakland

From: Jason Moody and Michael Nimon

Subject: Coliseum Transit Village Development Pro Forma Review;
EPS #151091

Date: September 17, 2015

The Economics of Land Use



Economic & Planning Systems, Inc. (EPS) has been retained by the City of Oakland to review a development financial analysis prepared by Urban Core for their proposed Coliseum Transit Village Project. Urban Core has proposed to build 110 new mixed-income rental units on a portion of BART's land at the Coliseum station in Oakland.¹ It has submitted a pro forma model that simulates the project's financial performance and reflects a set of proposed deal terms and agreements between the City, BART, Urban Core, and the Oakland Economic Development Corporation (OEDC).

In August of this year, EPS reviewed the then-current pro forma and provided a list of comments and questions to the City and to Developer. In September, we have received an updated version of the pro forma reflective of our initial comments as well as a draft of the term sheet for agreements between OEDC and the City based on the pro forma analysis. Our findings pertain to the revised pro forma and the term sheet review.

Key Findings

- 1. The developer's pro forma for the Coliseum BART Project is analytically sound, based on methodologies and practices commonly used in the real estate profession, and generally reflects reasonable, albeit slightly optimistic, market assumptions.*** EPS conducted a due diligence review of the developer's financial model to identify any errors, omissions, or methodological flaws. The revised version of the model based on EPS's questions and comments conforms to the industry standards and reflects reasonable assumptions. While the market assumptions appear on the optimistic side, they could easily materialize given modest improvement

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¹ The project includes 55 market-rate units and another 55 units restricted to households earning 50 to 60 percent of Area Median Income.

in economic conditions within the broader neighborhood. For example, the project pro forma assumes that market-rate units would rent for an average of \$2.21 per square foot, a bit higher than the general market for existing apartments in the broader competitive area from Fruitvale to San Leandro. The pro forma also assumes that residents would pay \$100 extra per month for their parking space—an added cost that is not universal among competitive apartment properties, especially those adjacent to BART.

- 2. *The Project's feasibility heavily depends on public subsidies.*** Specifically, in addition to the \$12 million subsidy requested from the City of Oakland, the Project relies on \$8.6 million in low income tax credits and requires an additional \$4.5 million in State, County, and other public entity funding subsidies. The deal terms also reflect subsidized ground lease by BART. Combined, public funding comprises over 60 percent of the funding for Project development. These subsidies will be needed to support the Project's development, as the current proposal is otherwise not feasible at the Coliseum BART station. However, such subsidies may be warranted given that the Project will meet a number of policy goals including advancement of infill and affordable housing development in the City of Oakland, focus density on the existing BART nodes, and contribute to solving the regional housing shortage.
- 3. *Despite the existing feasibility challenge, the City may want to consider structuring its term sheet to share the upside if the Project exceeds financial expectations, either due to market improvement or modifications to the Project.*** One term could provide for City participation via "home run" insurance to the City as well as provision of a return on the upfront \$12 million investment. Specifically, the current deal structure reflects a priority return on the equity of 10 percent annually with the subsequent split of 50/50 between the developer and BART. The City could seek to participate in the Developer's 50 percent share once specified and appropriate return thresholds have been met. The City could also add terms to capture a portion of the Project proceeds should a sale of the Project occur that generates developer returns that exceed a mutually agreed upon threshold.

The City may also consider adding the language that reduces its participation to the extent that unit mix changes significantly to alter Project performance. For example, if the Project becomes fully affordable (rather than 50 percent as currently envisioned), the City should benefit from the additional low income tax credit of 9 percent that could be obtained by the Developer. The term sheet could also include a provision for the deal terms to be applicable to a new owner in the event of a sale.

Project Description and Deal Terms

OEDC proposes to build 110 rental housing units on the BART-owned site at the Coliseum station, including 45 townhomes and 65 "flats" on a 1.36-acre site (81 units/acre). Of these 110 units, 69 are proposed as 1BR units, and 41 2BR units. Half of the units would be "market-rate" and the remaining half "affordable" with prices restricted to households earning 50 to 60 percent of Area Median Income.

The draft Term Sheet indicates that the project would be built on a 66-year ground lease. These terms appear customary and appropriate. The ground lease terms proposed for BART include a fixed payment of \$15,000 per year for 66 years (with no escalation factor), plus 50 percent of any "available cashflow," meaning net operating revenues after operating expenses, debt service payments on the project's loan, and a 10 percent return on the developer's initial equity are

deducted. The developer's proposal to collect a priority return on modest equity investment is reasonable and falls within the lower end of a typical return range. In a typical deal, equity investors may seek a higher priority return on equity (say, 15 to 30 percent depending on market risks), but EPS believes the proposed terms are appropriate under these circumstances, given the level of direct or implicit subsidy in the project.

The developer proposes to share 50 percent of "available cashflow" with BART after the priority return and a minimum ground lease payment. Consistent with EPS's review of the initial Term Sheet with the City, additional opportunity exists for the City to participate in the remaining share of the cash flow as well as the net proceeds of a sale or refinancing, in recognition of the upfront subsidy provided by the City.

Key Assumptions and Results

Land Value and Ground Lease

The \$15,000 fixed ground lease payment indicates a very low value for the land. At 1.36 acres under this project, this fixed payment would represent less than \$5,000 per acre per year, or fee-simple-equivalent land values at well under \$200,000 per acre.² However, EPS is aware from past studies for BART and others that land in the Coliseum area has constrained value based on the feasibility challenges of new development. Still, it is worth noting that the proposed terms reflect a very limited land value for BART's property at Coliseum station, when some other Bay Area development sites have been generating land values of multiple millions per acre.

Sources of Funding

OEDC is assuming that more than half of the project's overall development costs will be funded through a variety of subsidies, including a forgivable loan from the City of Oakland, Low-Income Housing Tax Credits, and other grant funding (perhaps "Cap and Trade" dollars). The developer is shown to contribute only \$1.25 million in equity, representing only 3 percent of total development costs. This equity ratio is well below those typical of market-rate development projects, and is essentially a "nominal" equity contribution, albeit still at risk of not being repaid through project revenues.

Operating Revenues

The pro forma shows the market-rate units achieve average rents of \$2.21 per square foot, when weighted by unit mix, size and estimated rent. According to the market study conducted for OEDC by David Paul Rosen & Associates in May 2014, the Coliseum area has seen virtually no new market-rate apartment development for many years and has little comparable inventory, but most existing apartment complexes near the most proximate BART stations (Fruitvale to the north and San Leandro to the south) were achieving rents below \$2.00 per square foot. While there should be a premium associated with newer units, there is risk that the Coliseum station area may not be able to achieve the rents projected in the pro forma.

In addition, the pro forma assumes that residents will pay separately for parking, at a stated rate of \$100 per space per month. While not unprecedented in urban areas, the additional parking costs may limit the project's market appeal compared to other potential locations, and make

² In EPS's experience, ground lease payments typically represent 6-9 percent of fee simple value.

the already optimistic rent assumptions more challenging to achieve. Despite this, operating revenues are assumed to increase at 2 percent a year. This rate is fairly modest as inflation alone is typically in the 2 to 3 percent a year range.

Vacancy and Operating Expenses

This analysis reflects a vacancy rate of 5 percent. This is based on the blend of market rate and affordable units and is a typical level of stabilized vacancy. Annual operating expenses are assumed at \$4,700 per unit. These expenses reflect a blend of market rate and affordable units and typically include property management, administration, maintenance, utilities, insurance, and taxes. For affordable units, management and administration expenses also include services required for monitoring, compliance and other costs associated with fulfilling the affordability requirements. Operating expenses are assumed to grow at 2.5 percent a year, roughly at the rate of inflation.

Development Costs

The cost for new construction has been increasing over the past several years due to improvements in the economy, revival of new development activity, and growth in demand for construction services and materials. The developer assumes direct construction cost of \$381 per gross square foot reflective of prevailing wage. Development costs also include indirect expenses, development fees and overhead, and startup/reserves. Indirect costs include permits and fees, architecture and engineering, construction management, professional services and fees, builder contingency, taxes, financing, marketing, and FF&E costs. Combined, these costs comprise approximately 22 percent of direct cost and fall within a reasonable range of 20 to 40 percent.

Financial Returns

Expected returns on development investment vary based on a range of factors such as risk, capital and real estate market conditions, building uses, among others. Under the current proposed structure and assumptions, the developer will reach a leveraged internal rate of return of about 15 percent over a 20-year holding period. This return is reasonable given the priority return guarantee of 10 percent on equity and falls within the lower end of a typical range for infill projects of similar size and scale.

**TERM SHEET FOR OWNER PARTICIPATION AGREEMENT
BETWEEN
OAKLAND ECONOMIC DEVELOPMENT CORPORATION, URBAN CORE DEVELOPMENT LLC
AND/OR AFFILIATED ENTITY AND
CITY OF OAKLAND
FOR
COLISEUM TRANSIT VILLAGE PHASE I**

DATED: November 30, 2015

Pursuant to an Exclusive Negotiating Agreement dated January 10, 2014 (“ENA”) and a Predevelopment Loan Agreement dated January 10, 2014 (“Predevelopment Loan Agreement”), both by and between the City of Oakland, a municipal corporation (“City”) and Oakland Economic Development Corporation, a California not for profit corporation (“OEDC”) and Urban Core Development, LLC (“Urban Core”) and/or affiliated entity (“Developer,”). City submits this non-binding summary of proposed terms (“Term Sheet”) for the Owner Participation Agreement (“OPA”) 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 ENA.

Property:

The term “Property” shall be further defined in the OPA but generally consists of the 1.3 acre Coliseum BART parking lot property (APN #:041-4166-031-02) bounded by 70th and 71st Avenues and Snell Street, Oakland, California (the “Property”) and improvements now or hereafter located thereon.

Project:

Developer shall be fully responsible for the construction of the buildings and improvements including approximately 110 residential apartment units with approximately 50% Market Rate and 50% Affordable and approximately 95 parking spaces in a partially underground garage, along with an approximate 750 square feet for a publicly accessible community cafe (the “Project”) on the Property.

Predevelopment Loan Funding:

In January 2014, pursuant to the Predevelopment Loan Agreement, the City loaned OEDC the amount of \$400,000 (the “Predevelopment Loan”) to assist with predevelopment costs and expenses of the Project.

Owner Participation Agreement (“OPA”):

The City, OEDC, Urban Core and or its affiliate or related entity expect to enter into an Owner Participation Agreement based substantially on the terms agreed to herein, and which may be incorporated into an OPA for approval by the City Council.

Pursuant to the terms of the OPA the City shall provide an additional loan amount of \$11,600,000, which together with the Predevelopment Loan will total \$12,000,000 (the "Development Loan") to OEDC or its affiliate or related entity contingent upon the conditions set forth below under "Funding Commitment" to provide development funding to the Project during the predevelopment and construction phase. The Development Loan is comprised of \$11.6 million bond funds to be approved and appropriated by the City Council in its sole and absolute discretion, and the previously disbursed \$400,000 Predevelopment Loan. The OPA will set forth the terms by which the City shall release \$11.6 million of the remaining Development Loan proceeds, including but not limited to, an approved Development Budget to be attached to the OPA. The Developer and the City shall agree on the Development Budget for the Project, which will include: (a) the Development Loan, (b) a portion of the construction and soft costs (determined by draw requests approved by the City and the Project Lenders), and (c) invoices and other documentation of work completed on the Project on a monthly basis. Notwithstanding the above, the City shall reserve the right to re-evaluate its share of subsidy contribution in the event the total number of units or the unit mix (including the proportion of deed restricted below market rate units) changes significantly.

Taxes:

Once Developer obtains a leasehold interest in the Property from BART, Developer shall be solely responsible for the payment of any and all taxes, levies, assessments, fees or charges on the Property. Taxes, levies, assessments, fees or charges (collectively referred to as "Taxes") shall be assessed against Developer in relation to the leased premises and the occupation or operation thereof and the revenue derived therefrom, or any personal property or fixtures located thereon arising from Developer's construction and operations.

Development Documents:

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

1. A detailed development schedule including, but not limited to, pre-construction, construction, marketing and leasing;
2. Signed and fully executed long term ground lease by and between Developer and BART for the Property;
3. Evidence of equity and construction financing commitments for total project costs;
4. Project completion guarantee;
5. Guaranteed Maximum Price set of architectural drawings;
6. Proper evidence of Project and zoning entitlements;
7. Compliance with local, state, and federal requirements such as environmental, accessibility, living wage, contracting, etc.; and
8. Other such documents relevant to the development of the Project as the City may reasonably request

Funding Commitment:

The City shall provide the Development Loan in the total amount of Twelve Million Dollars (\$12,000,000), contingent upon (i) the City's receipt of the Development Documents listed as 1-8 above; (ii) Review and approval of the proposed subsidy amount by the City's independent third party economic consultant; (iii) Council approval of the Development Loan; and (iv) Upon reimbursement to the City from the State of California Housing and Community Development Department of the Proposition 1C transit oriented development ("TOD") grant funds. The Development Loan shall fund a portion of the Project costs, including a portion of additional predevelopment costs and expenses in the amount of \$750,000 based on the Council's approval of the OPA and Development Budget, the construction of the off-site and on-site work, infrastructure costs, and the structured parking garage. The Development Loan shall bear 3% simple interest, and shall be subordinated to the lender's first deed of trust construction and permanent loan security instruments, and any mezzanine financing approved for the Project by the City. The Term of the Development Loan shall be 55 years from the date of execution of the OPA and shall be due and payable at the end of the Term, provided however, if the Developer has fulfilled the requirements under the Deed Restrictions for maintaining 50% of the total units as affordable, the Development Loan will be forgiven. The OPA shall also provide that annual payments to the City may be deferred until after the refinance or full repayment of the first mortgage on the Property. However, if prior to the refinance or full repayment of the first mortgage on the Property, the private equity has received a cumulative return of 15% annually, and assuming that any deferred developer fees have also been repaid from cash flow, then Developer and City shall each receive 50% of the available cash flow not paid to BART.

Replacement Parking:

The City shall construct approximately 20 spaces at the City owned Snell Street parking lot that shall be reserved for BART parking during the weekdays only and approximately 3 parking spaces that shall be reserved for a car share provider. In addition, the City shall work in good faith to enter into an MOU with BART to convert additional on-street parking into BART's paid parking system along Snell Street from 69th Avenue to 73rd Avenue. The City and BART expect to equally share the parking revenue generated from the converted Snell Street and Snell lot parking spaces. Parking rates shall be the same as the BART rate and shall be determined in a separate MOU between the City and BART. In the future, if another parking lot is constructed for BART, these spaces shall revert back as City public parking.

Refinance or Sale of Improvements:

The City and the Developer agree that in the event the Developer seeks to refinance the debt related to the Project, a written consent from the City will be required, which 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). In the event the Developer sells their ownership interests in the Improvements on the Property, the provisions of this Term Sheet shall be applicable to the new owner. .

Performance and Payment Bonds:

A performance bond in an amount not less than 100% of the cost of construction of the Project as security for the faithful performance of such construction; and a labor and material payment bond in an amount not less than 100% of the cost of construction of the Project as security for payment to persons performing labor and furnishing materials in connection with such construction shall be required.

Completion Guaranty:

Prior to and as a condition to close escrow, ODEC shall cause a Guarantor(s) to execute a Completion Guaranty in a form attached to the OPA and deliver it to the City.

City's Contracting Requirements

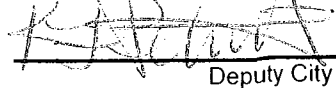
Developer shall be required to fully comply with State Prevailing Wage requirements and follow the City's Contracting policies including application of local hire, apprenticeship programs, living wage, equal benefits requirements, employment nondiscrimination, and shall enter into a project labor agreement with the appropriate unions for the construction of the Project. Developer shall also be required to comply with the City's local and small local business enterprise and first source programs.

Non-Binding:

All proposed terms contained in this Term Sheet are preliminary and shall not be binding until both parties have executed the OPA. The other paragraphs of this Term Sheet are intended to create no legally binding obligations, express or implied. No party shall be bound to such other terms hereof until each party has executed mutually acceptable definitive documents with respect thereto.

2015 DEC -3 PM 5:49

Approved as to Form and Legality:


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A Resolution Authorizing The City Administrator or Designee to Negotiate and Execute (1) An Owner Participation Agreement Among the City of Oakland (“City”), The Oakland Economic Development Corporation (“OEDC”) and Urban Core Partners, LLC (“Urban Core”) or the City and a Related Entity of OEDC and Urban Core and (2) A Development Loan Agreement Among The City, OEDC and Urban Core or the City and a Related Entity of OEDC and Urban Core For A Loan Amount Not To Exceed Eleven Million Six Hundred Thousand Dollars (\$11,600,000) Comprised Of: (A) \$8,000,000 In Previously Approved Oakland City Council Resolution No. 84516 C.M.S. Redevelopment Project Area Excess Bond Spending Plan Uses: Coliseum Transit Village Phase I; (B) Re-Allocating \$3,200,000 in 2006 Coliseum Taxable Bond Funds From Coliseum BART Station Transit Village Infrastructure Project to the Coliseum Transit Village Phase I Project; and (C) Amending The Coliseum Redevelopment Project Area Excess Bond Spending Plan To Re-Appropriate And Re-Allocate Excess Bond Proceeds in the Amount of \$400,000 Previously Listed and Committed in the Approved Bond Spending Plan To The Coliseum City Specific Plan All in Connection With The Coliseum Transit Village Phase I Project

WHEREAS, the San Francisco Bay Area Rapid Transit District (“BART”) owns a 1.3 acre surface parking lot at the Coliseum BART Station bounded by 70th and 71st Avenues and Snell Street, APN: 041-4166-031-02; and

WHEREAS, in July 2013, the City adopted Resolution No. 84490 C.M.S. which authorized an Exclusive Negotiating Agreement (“ENA”) with the Oakland Economic Development Corporation (“OEDC”) and a \$400,000 predevelopment loan for the Coliseum Transit Village project at the Coliseum BART parking lot; and

WHEREAS, In November 2013, the Oakland Redevelopment Successor Agency (“ORSA”) and the City entered into a Bond Expenditure Agreement pursuant to Resolution No. 84516 C.M.S. which authorized the transfer of pre-2011 bond proceeds held by ORSA. The Bond Expenditure Agreement allocated \$8,000,000 in excess bond proceeds for the Coliseum Transit Village Phase I project (“Project”); and

WHEREAS, the City now wishes to enter (1) an Owner Participation Agreement with

OEDC and their development partner Urban Core Development, LLC (“Urban Core”) or the City and a Related Entity of OEDC and Urban Core and (2) a Development Loan Agreement with OEDC and Urban Core or the City and a Related Entity of OEDC and Urban Core for an aggregate loan amount of \$11,600,000 for the development of the Project which will consist of 110 mixed-income housing units on APN: 041-4166-031-02; and

WHEREAS, the interest payments on the loan will accrue at a rate of 3% simple interest, and be deferred for 55 years or as long as the term of the affordability agreement set on the development of the Project; and

WHEREAS, the \$11,600,000 loan shall come from the prior Council approved Resolution No. 84516 C.M.S. which allocated \$8,000,000 to the Project with funds currently in City (1), Coliseum Taxable Bonds (5656), Organization Coliseum Redevelopment (85242), Professional Services (54930), Coliseum BART Transit Village (C366920), Coliseum Program (SC12); \$3,200,000 million in Coliseum taxable bond funds currently in City (1), Coliseum Taxable Bonds (5656), Engineering Design Street Construction (92242), Street Construction (57411), Coliseum BART Transit Village (C366920), and Engineering Planning and Design Program (INO5); and amending the Coliseum Excess Bond Proceeds Spending Plan by re-allocating and re-appropriating \$400,000 from Coliseum bond funds currently in Entity (1), Coliseum Taxable Bonds (5656), CIP Coliseum Services (94859), Professional Services (54930), Coliseum City Specific Plan (P452510), Coliseum Program (SC12); and

WHEREAS, the City and an independent third party consultant Economic Planning Systems (“EPS”) has reviewed the pro forma for the 110 mixed-income housing units and determined that based on the development costs, rental income, and other anticipated revenue from the property, the Project is feasible with the development loan in the aggregate amount of \$11.6 Million; now therefore, be it

RESOLVED: that the City Council hereby authorizes the City Administrator or designee to negotiate and enter into an Owner Participation Agreement and a Development Loan Agreement for an aggregate loan amount of \$11,600,000 with OEDC and Urban Core or the City and a Related Entity of OEDC and Urban Core for the development and construction of the Project consisting of 110 mixed-income housing development; and be it

FURTHER RESOLVED: That the funds will come from Coliseum taxable bond funds as follows:

Fund Source	Organization	Account	Project	Program	Amount
5656	85242	54930	C366920	SC12	\$8,000,000
5656	92242	57411	C366920	INO5	\$3,200,000
5656	94859	54930	P452510	SC12	\$400,000
Total					\$11,600,000

and be it

FURTHER RESOLVED: That the Owner Participation Agreement and Deve lopment

Loan Agreement 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 Administrator or designee is further authorized to negotiate and enter into the Owner Participation Agreement and Development Loan Agreement and take whatever action is necessary with respect to the Owner Participation Agreement, the Development Loan Agreement and the Project, consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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

2015 DEC -3 PM 5:49

Approved as to Form and Legality:


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A Resolution Authorizing The City Administrator or Designee to Negotiate and Execute a Memorandum of Understanding (“MOU”) With The Bay Area Rapid Transit District (“BART”) for Purposes of Providing Additional Coliseum BART Station Surface Parking Between 69th and 75th Avenues on the City Owned Parking Lot Located on Snell Street (APN # 041-4170-005-04), and Along City Right of Way On A Portion of 71st Avenue and On Snell Street Between 69th and 75th Avenues

WHEREAS, in July 2013, the City adopted Resolution No. 84490 C.M.S. which authorized an Exclusive Negotiating Agreement (“ENA”) with the Oakland Economic Development Corporation (“OEDC”) and a \$400,000 predevelopment loan for the Coliseum Transit Village project at the Coliseum BART parking lot; and

WHEREAS, In November 2013, the Oakland Redevelopment Successor Agency (“ORSA”) and the City entered into a Bond Expenditure Agreement pursuant to City Council Resolution No. 84516 C.M.S. and ORSA Resolution No. 2013-023 which authorized the transfer to the City of pre-2011 bond proceeds held by ORSA. Council authorized the Bond Expenditure Agreement which allocated \$8,000,000 in excess bond proceeds for the Coliseum Transit Village Phase I project (“Project”); and

WHEREAS, BART owns a 1.3 acre surface parking lot at the Coliseum BART Station bounded by 70th and 71st Avenues and Snell Street, APN: 041-4166-031-02; and

WHEREAS, the current BART parcel has approximately 164 surface parking spaces for commuters and with the anticipated loss of these parking spaces as a result of the proposed Project, BART is currently interested in entering into a Memorandum of Understanding (“MOU”) with the City to convert: (1) a small recently improved City-owned lot consisting of approximately 20 surface parking spaces on Snell Street (APN: 041-4170-005-04) and (2) the existing street parking along a portion of 71st Ave and along Snell Street between 69th and 75th Avenues under BART’s parking permit fee program, respectively, with revenue to be evenly distributed between BART and the City; and therefore be it

RESOLVED: That the City Council hereby authorizes the City Administrator or Designee to negotiate and enter into a MOU with BART regarding the additional surface parking replacement as a result of the construction and development of the Project consisting of a110 mixed-income housing units; and be it

FURTHER RESOLVED: That future parking revenues generated as a result of the proposed MOU shall be placed in Fund 5650 Coliseum Projects to be determined; and be it

FURTHER RESOLVED: That the MOU 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 Administrator or Designee is further authorized to negotiate and enter into the MOU and take whatever action is necessary with respect to the MOU consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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