

CITY OF OAKLAND

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OFFICE OF THE CITY CLERK  
OAKLAND

2016 OCT 13 PM 2:33

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Mark Sawicki  
Director, EWD

**SUBJECT:** Sale of 3455 and 3461 Champion  
Street Properties

**DATE:** October 12, 2016

City Administrator Approval

Date:

10/13/16

## RECOMMENDATION

**Staff recommends that the City Council adopt an Ordinance:**

**(1) Authorizing 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 Carlos Soloman And Dominica Rice-Soloman Or A Legal Entity Affiliated with Carlos Soloman & Dominica Rice-Soloman For (A) The Sale Of The Parcels Located At 3455 And 3461 Champion Street, Reserving To The City An Easement For A Fiber Optics Hub And Related Uses ("Property") For An Amount Not Less Than Three Hundred Forty Thousand Dollars (\$340,000), And (B) Development And Operation On The Property Of A Full Service Restaurant, All Of The Foregoing Documents To Be In A Form And Content Substantially In Conformance With The Term Sheet Attached As Exhibit A, And (2) Adopting California Environmental Quality Act (CEQA) Exemption Findings.**

## EXECUTIVE SUMMARY

Old Fire House #14, located at 3455 and 3461 Champion Street and illustrated in *Attachment A*, was identified as surplus property by both the Oakland Fire Department and the Oakland Public Works Department, as custodian of the City's public facilities. The City determined that revenue from selling the property would benefit the City and the potential reuse of the building would benefit the surrounding community. The City Council authorized the City Administrator to market the property for a restaurant use through a Notice of Development Opportunity (NODO). A selection committee reviewed six responses and the highest ranking proposal was submitted by Carlos Soloman & Dominica Rice-Soloman ("Developers"), owners of another successful restaurant, Cosecha, in Old Oakland.

The minimum acceptable purchase price and the appraised value of three hundred forty thousand dollars (\$340,000) based on an independent appraisal conducted by CBRE dated December 22, 2015. The property will be sold in "as is" condition and the City will reserve an easement

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allowing the City to maintain a lease with Comcast for a fiber optics hub. The terms of the transaction will be memorialized in a Disposition and Development Agreement governing the future development and operation of a restaurant ("DDA"). The DDA will be recorded against the property at closing. The buyer's estimated date to close escrow is May 30, 2017. The target date for the restaurant to open is May 15, 2018.

### **BACKGROUND / LEGISLATIVE HISTORY**

Old Fire House #14, built in 1945 and located at 3455 and 3461 Champion Street and illustrated in *Attachment A*, exceeded its usefulness as a functional fire house and was identified as surplus property by both the Oakland Fire Department and the Oakland Public Works Department, as custodian of the City's public facilities. The property consists of two flat parcels containing +/- 8,244 square feet land and a +/- 3,275 square feet building. The parcels are located in the Dimond District near the Fruitvale exit off of Highway 580, within one block of MacArthur Boulevard. The property is adjacent to Farmer Joes and within walking distance to CVS Pharmacy, Bank of America, Wells Fargo Bank, Pete's Coffee, McDonald's, Subway and the U.S. Postal Service. The property is situated at the neighborhood's transition point between residential and light commercial. The zoning is CN-1, Commercial Neighborhood One. The General Plan land use classification is Neighborhood Center Mixed Use.

In January 2012, Real Estate staff offered Old Fire House #14 and the adjacent parcel to the general public in a surplus property solicitation. In June 2013, Council adopted Resolution No. 84485 C.M.S rejecting all bids obtained as a result of the January 2012 solicitation and, based in part on community input, authorized the City Administrator to market the property for a restaurant use through a Notice of Development Opportunity (NODO). Per the requirements of Ordinance No. 13185 C.M.S the Council made a finding and determination under Resolution No. 84485 that waiving the competitive bidding process and selling the property through a Notice of Development Opportunity was in the best interests of the City because of the proposed use and neighborhood benefits. Selling the property to a restaurant operator will yield the City greater benefit over time because in addition to the purchase price and annual property tax, the City will also receive sales tax, create local jobs, and increase neighborhood commercial activity.

Prior to circulating marketing material to sale the property to the general public, pursuant to Government Code local agencies were afforded a 60-day period by which they had first rights of refusal to acquire the property from the City. In 2014 the property was circulated as required by the Surplus Land Act of 1968.

Ordinance No. 13264 C.M.S. adopted by the City Council in September 2014 authorized the sale of the property, minus a City easement for the Comcast fiber optics hub, to Jack Stewart. The purchase and sale price was four hundred twenty five thousand dollars (\$425,000) After 12 months Jack Stewart was unable to secure financing to purchase the property. Both parties mutually agreed to terminate negotiations.

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A new NODO was issued in January 2016 and the City received six responses. The responses were reviewed and ranked by a selection committee of four staff from the Economic & Workforce Development Department (EWD) based on an established set of criteria. The criteria, alternative proposals, and rankings are provided in the Analysis section below.

Sale of the property is authorized pursuant to Ordinance No. 13287 C.M.S. which established procedures for the sale of City owned surplus real property and disposition of City-Owned property for development.

### **Fiber Optics Hub Lease**

At 3461 Champion Street, the City entered into a Telecommunications License Agreement with Comcast which commenced on February 1, 2000. Including the final two options to extend the agreement, it will expire in 2025. The City receives thirty thousand dollars (\$30,000) annually from Comcast pursuant to the license agreement. Comcast constructed an above ground Fiber Optics Hub which is approximately fifteen square feet. The elevation of the Hub is approximately ten feet. The DDA will provide for the City to retain the income stream from the Comcast agreement through an easement favoring the City.

### **ANALYSIS AND POLICY ALTERNATIVES**

The most recent NODO for the property was issued in January 2016. The City received six responses. The responses were review and ranked by a selection committee of four staff from EWD based on the following criteria:

- Experience of the developer's / operator's team and key individuals,
- Project design,
- Financial capacity,
- Project financial feasibility,
- Community and public objectives,
- Quality and completeness of proposal,
- Purchase price & net proceeds to the City,
- Developer's commitment to the development and operation of a restaurant, and
- Other factors as appropriate.

The alternative proposals and rankings are as follows:

	<b>Ranking</b>	<b>Type Of Use</b>	<b>Offer Price</b>	<b>Estimated Annual Sales Tax</b>	<b>Employees</b>	<b>Average Ranking</b>	<b>Total Points Scored</b>
1	Cosecha Restaurant	Mexican-California cuisine serving breakfast,	\$425,000	\$99,000	14	92.5	370

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		coffee bar, lunch and dinner					
2	Fieldwork Firehall	Live/Work - Brewing (including keg sales), a tasting room providing light snacks, a food truck rotation. Possibility pizza on site at a later date. The site will also accommodate Architectural and landscape offices.	\$425,000	\$154,000	Not provided	79	316
3	Weinstein Local	Full breakfast and lunch menu. Dinner services and Bar program at a later date.	\$425,000	\$110,000	Up to 50	77.8	311
4	Second Half Beer Company	Brewing & tasting room. Partnership with Kitchener Oakland to provide "Kitchener Artisan" and "Snack Bar" programs who'd prepare food on site.	\$412,250 (\$425,000 minus 3% R.E. Broker Commission)	\$74,862	8	67.5	270
5	Firehouse Bagels	Bagel bakery and café for retail and whole sale.	\$450,000	\$47,362	6	64.3	257
6	The Grease Dinner	Thrift Store	\$425,000	Not Provided	2	37.5	150

The property will be sold in an "as is" condition. The minimum acceptable purchase price is three hundred forty thousand dollars (\$340,000) based on an independent contract appraisal prepared by CBRE dated December 22, 2015. Although the bidders offered in the range of \$425,000, staff expects that upon further inspection by the purchaser, and based on our prior knowledge of the condition of the property and its impact on the appraised value, the buyers may likely seek to negotiate a lower price before accepting the "as is" condition of sale. The purchase and sale price will be negotiated as high as possible but no less than the appraised value of \$340,000.

The buyer's estimated date to close escrow is May 30, 2017. The target date for the restaurant to open is May 15, 2018.

The City reserves the right to reject any and all contract terms presented by the buyer that are not deemed in the best interest of the City. The Disposition and Development Agreement will contain provisions for forfeiture of the deposit, reversionary rights if the Developers fail to open the restaurant within two (2) years after close of escrow, reversionary rights if the Developers fail to operate the restaurant for a minimum period of three (3) years after they open and other remedies for breach of any conditions noted in the DDA.

The City has a license agreement with Comcast on 3461 Champion Street for a fiber optics hub. The City will reserve an easement in the transfer deed in favor of the City for the fiber optics hub, and ingress and egress to the hub. This easement will allow the City to maintain the license with Comcast and the revenue generated by the license.

### **Lease versus Sale Analysis**

Resolution No. 85324 C.M.S. established a policy favoring leasing over sale when the City is disposing of property. Per the Resolution, the City Administrator is required to present reasons to support a sale rather than the lease of the property, if that is the recommended action. Please see the attached *Attachment B – Lease versus Sale Analysis* where these reasons are presented to support the sale of this property.

### **FISCAL IMPACT**

Selling the property will maximize the City's economic and non-economic return, generating additional property and sales tax revenue to the City, eliminating ongoing maintenance and fire control costs, generate sales tax and reduce future litigation exposure.

The minimum acceptable purchase price is three hundred forty thousand dollars (\$340,000) based on an independent contract appraisal prepared by CBRE dated December 22, 2015. Although the bidders offered in the range of \$425,000, staff expects that upon further inspection by the purchaser, and based on our prior knowledge of the condition of the property and its impact on

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the appraised value, the buyers may likely seek to negotiate a lower price before accepting the "as is" condition of sale. The purchase and sale price will be negotiated as high as possible but no less than the appraised value of \$340,000.

The net sale proceeds will be placed in General Purpose Fund (1010), Real Estate Sale of Land (85231), Surplus Property Account (48111), Surplus Property Disposition Project (P47010), Real Estate Program (PS32).

### **PUBLIC OUTREACH / INTEREST**

There was one community meeting held in Council District Four. The residents of the Dimond District have expressed a need for more family-style restaurants in the neighborhood.

Staff sent marketing materials to the follow local entities; Restaurant Association, Merchant Associations, Dimond Neighborhood Association, all Metro & Ethnic Chamber of Commerce, restaurant supply companies, Oakland Retail Advisory, Oakland Retail Advisory Land Use Committee, Oakland Builder's Alliance and previous respondents. Staff also posted marketing materials on three websites that target commercial real estate brokers.

### **COORDINATION**

This report and the actions discussed have been coordinated with staff from the office of the District 4 City Councilmember, the City Administrator's Office, the City Attorney's Office, OPW, Facilities and Environment, and Controller's Bureau.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Selling the Properties to a restaurant operator will yield the City greater benefit over time because in addition to the purchase price and annual property tax, the City will also receive sales tax, create local jobs, and increase commercial activity.

***Environmental:*** This proposed action does not provide any environmental benefits. Active use of the site will prevent the building from falling into further disrepair and potential blight.

***Social Equity:*** This proposed action does not provide any social equity benefits.

**CEQA**

The City Council action to sell the parcels at 3455 and 3461 to convert an existing, 3,275 square foot former fire facility into a restaurant qualify, on a separate and independent basis, for the following Categorical Exemptions under the California Environmental Quality Act (CEQA): 1) CEQA Guidelines Section 15303, New Construction or Conversion of Small Structures: the existing building will be altered and improved with new building systems and remodeled for restaurant use. The building is less than 10,000 square feet, is properly zoned for the intended restaurant use and will not involve significant amounts of hazardous substances. The building is within an urbanized area and all necessary public services and facilities are available. The surrounding area is not environmentally sensitive; and 2) CEQA Guidelines Section 15332, Infill Development Projects: the proposed project is consistent with the City's General Plan land use designation and with the zoning and other land use requirements. It is located within a substantially developed urban area, surrounded by urban uses and the site is less than 5 acres (site is approximately 8,244 square feet.) No habit values have been identified for rare, threatened or endangered species. The conversion of the building from a currently vacant public fire facility to a restaurant will not result in any significant impacts pertaining to noise, traffic, air quality or water quality because the project will comply with the Uniform Conditions of Approval and other standard City requirements. Finally, is currently served and will continue to be served adequately by all required public utilities and services.

**ACTION REQUESTED OF THE CITY COUNCIL**

**Staff recommends that the City Council adopt an Ordinance:**

**(1) Authorizing 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 Carlos Soloman And Dominica Rice-Soloman Or A Legal Entity Affiliated with Carlos Soloman & Dominica Rice-Soloman For (A) The Sale Of The Parcels Located At 3455 And 3461 Champion Street, Reserving To The City An Easement For A Fiber Optics Hub And Related Uses ("Property") For An Amount Not Less Than Three Hundred Forty Thousand Dollars (\$340,000), And (B) Development And Operation On The Property Of A Full Service Restaurant, All Of The Foregoing Documents To Be In A Form And Content Substantially In Conformance With The Term Sheet Attached As Exhibit A, And (2) Adopting CEQA Exemption Findings**

For questions regarding this report, please contact James Golde, Manager, Real Estate Services Division at 510-238-6354.

Respectfully submitted,



Mark Sawicki, Director  
Economic & Workforce Development  
Department

Reviewed by:  
James Golde, Manager, Real Estate Services  
Division

Prepared by:  
Anthony J. Reese, MBA, Real Estate Agent  
Real Estate Services Division

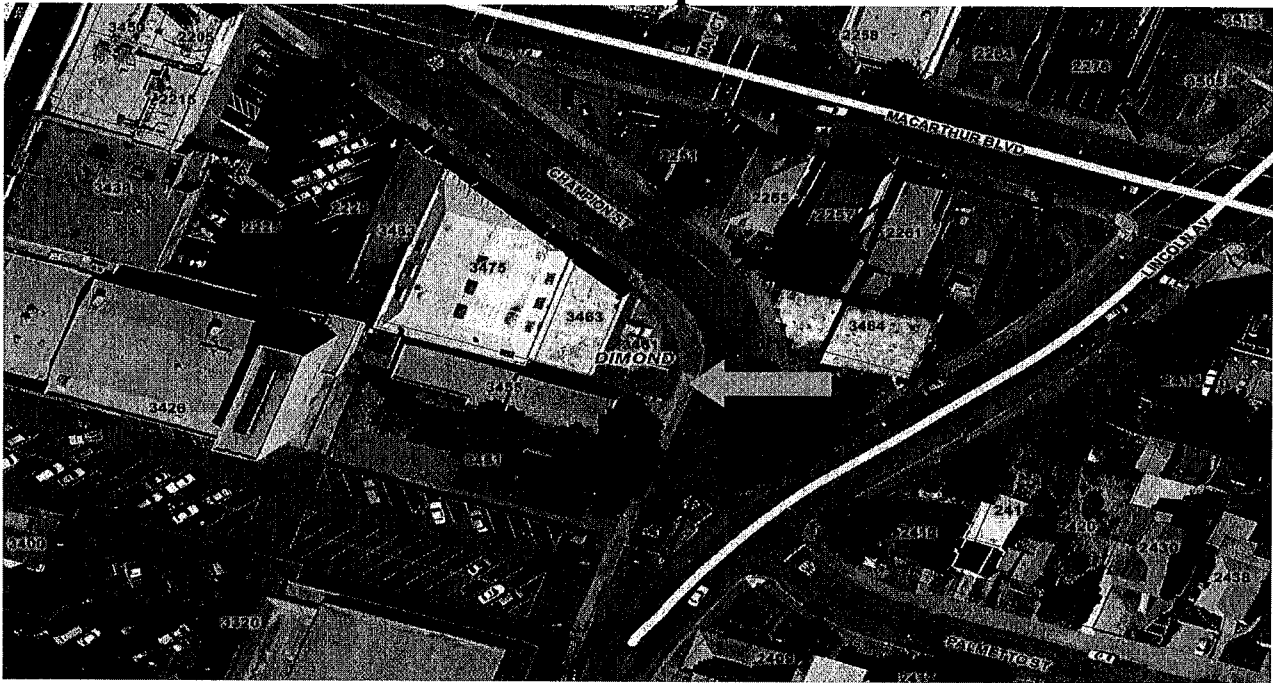
Attachment A: Photo of Subject Property  
Attachment B: Lease vs Sale Analysis

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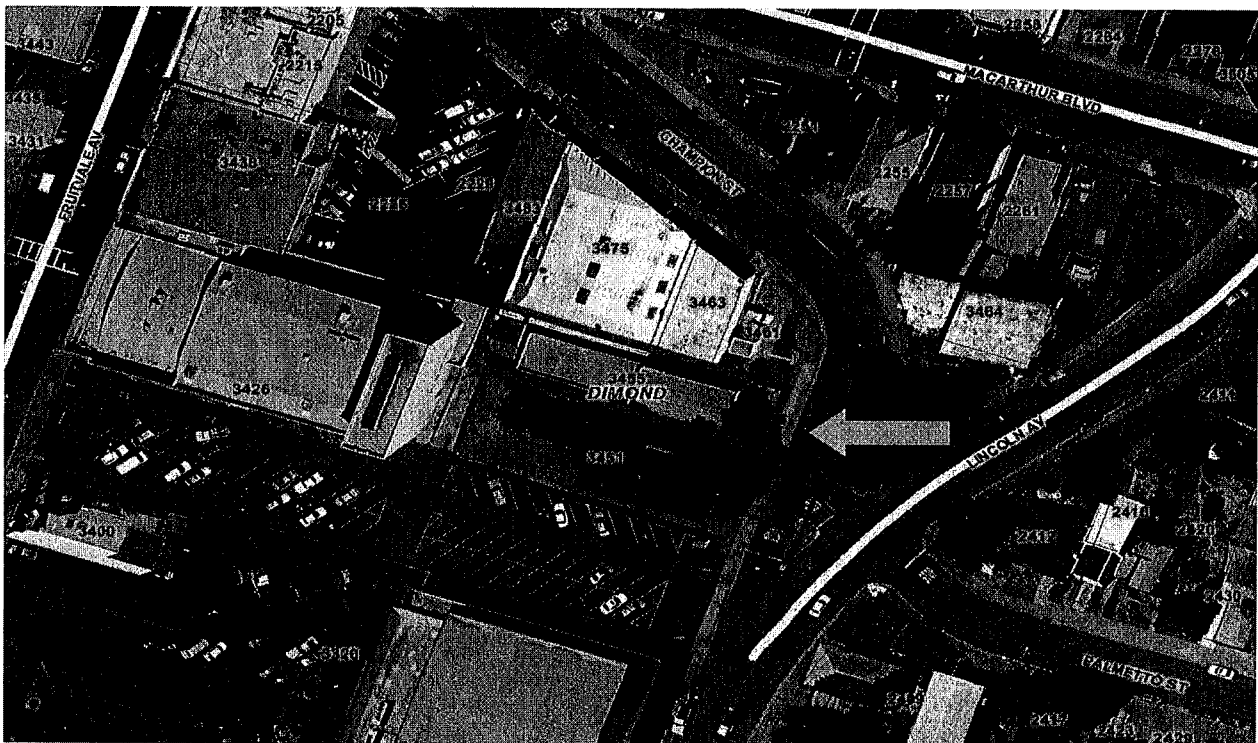


# Attachment A

## 3461 Champion St.



## 3455 Champion St.



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**Attachment B: Analysis of Ground Lease Vs. Sale of 3455 & 3461 Champion Street**

Below is a review of the pros and cons for ground lease and for sale of City property for the Closed Session Report. The Lease versus Sale Policy became effective after Council Authorized the sale of this property.

Ground Leasing City Property - PROS	In the case of Champion Street	Ground Leasing City Property - CONS	In the case of Champion Street
1. City retains ownership of the asset	By selling the parcel to a private developer, the City forever loses all its interest in the property, as opposed to leasing it long term and having the property revert back to the City for a new future use or development.	1. Ongoing liability for City	By leasing the property, the City retains potential landowner liability, including environmental and tort issues. (However, while not an absolute guarantee, these risks typically can be covered by requiring the ground tenant to obtain appropriate insurance, and provide warranties to the City).
2. City realizes benefit of property appreciation	By ground leasing, the City retains the right to get back the property at the end of the ground lease. In this case, the property may well have appreciated considerably over the ground lease term. The City, rather than a private developer, would then be the beneficiary of the property's appreciation for the public benefit.	2. Financing problems for Developer	A change to a ground lease would require all of the respondents to re-conceive the project so that it is can still be attractive to investors.
3. As Landlord, City increases its ability to oversee and enforce City policy objectives	Landlords have considerable more leverage to enforce lease provisions than a seller has once the seller has actually transferred its interest in land to a buyer. Accordingly, the City could more easily enforce community benefits, city policies and monitor and enforce the tenant's lease covenants and promises.	3. There is no downside to the additional leverage the landlord has to enforce the lease.	A sale, using a disposition and development agreement (DDA), also includes enforcement provisions requiring the developer to comply with City policies and objectives, although these enforcement provisions are more difficult to enforce and do not provide the same enforcement leverage as a lease.

**Attachment B: Analysis of Ground Lease Vs. Sale of 3455 & 3461 Champion Street**

Ground Leasing City Property - PROS	In the case of Champion Street	Ground Leasing City Property - CONS	In the case of Champion Street
4. City preserves increased flexibility and potential profitability from a revenue stream	If the City desires a large upfront payment, the City could require the tenant to make a significant upfront lease payment, similar to a purchase price.	4. Opportunity for the City to retain its right to get back the property at the end of the lease term and thereby reserving to the City the right to property appreciation and ownership, the upfront rent payment can approximate, but not equal the amount the City could get from a sale. The trade-off from the lesser up-front rent is the City's long-term right to property appreciation by retaining ownership rights.	In terms of "Net Present Value", the ongoing revenue stream from this Project that the City can receive through a likely ground lease deal is worth less than a payment upfront.  Based on Council's previous instructions to sale the property City staff has <u>not</u> appraised the property as a ground lease.
5. Retaining Public Property	By ground leasing the site to the developer, the City would be retaining future property rights when the lease term expires.	5. Potential for higher infrastructure cost to City	Because title to the land would revert to the City when the lease expires, in some, but not all, cases developers legitimately expect the City to pay more upfront for infrastructure costs.
6. Meeting the City's Financial Goals	In general, sale of land meets the City's short term financial goals while ground lease meets the City's long term financial and public policy goals of maintaining public property for the public.	6. Less marketable	Most developers in California build projects as condominiums so that they can sell the project or the units when condominiums are valued higher than rental projects. Although condominium projects can be (and are) ground-leased in certain cases, leasing to a developer can reduce potential profit and increase its risks. In this case the property is not zoned for multifamily housing. Additionally the site is too small for a larger project.
7. City can enforce Project Labor Agreements	Leasing provides greater legal justification for enforcing a Project Labor Agreement.	7. No downside to this factor	To date, the City is not providing a subsidy for this project so it will be difficult negotiating a PLA. However, the terms of a development disposition agreement could require the developer to comply with the City's contract compliance ordinances and standards.

**Attachment B: Analysis of Ground Lease Vs. Sale of 3455 & 3461 Champion Street**

<b>Sale of City Property – PROS</b>	<b>In the case of Champion Street...</b>	<b>Sale of City Property – CONS</b>	<b>In the case of Champion Street...</b>
1. Meeting the City's short-term Financial Goals	City will immediately (at close of escrow) receive the sale proceeds estimated between \$340,000 and \$425,000.	1. Possible windfall to private developer by permanently transferring a City asset to private use.	—
2. Faster Development	The developer will also be the restaurant operator.	2. City gives up its longer-term right to keep the parcel as public property, and the City's right to future property appreciation.	—
3. Sale by Development Disposition Agreement (DDA)	The City will be able to control the future development and use of the property after it's sold.	3. Due to the small size of this project, staff recommends a three to five year term for the DDA.	The City will retain limited control of the project. The DDA will have reversion rights if the buyer defaults during the term of the DDA.
4. DDA	The developer will be required comply with some or all of the City's contract compliance ordinances and standards.	4. Increase the developer's cost.	The City will have some ongoing administrative cost.
5. Liability	The sale of the property will reduce the City's liability. After the expiration date of the DDA the City will have no liability.	5. Certain level of liability during the term of the DDA and after the term expires.	—
6. Market Conditions	The market is on an upswing. There are minimal comparable properties on the market for sale at this time. These conditions increase the City opportunity to yield the highest sales price.	6. Converting the deal to a ground lease after marketing the property for sale will delay the process and reduce buyer's interest.	—
7. Property Tax and Sales Tax	After the sale of the property for the development and operation of a restaurant, the City will receive ongoing annual property and sales tax.	7. —	—

**Attachment B: Analysis of Ground Lease Vs. Sale of 3455 & 3461 Champion Street**

8. Asset no longer need by the OFD or any other City Department	Resolution No. 84485 C.M.S. declared the Property surplus and authorized the sale. City has an opportunity to dispose of surplus property while in a sellers' market.	8. ____	____
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FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

# OAKLAND CITY COUNCIL



City Attorney

2016 OCT 13 PM 2:30 **ORDINANCE No.** \_\_\_\_\_ **C.M.S.**

**AN ORDINANCE: (1) AUTHORIZING 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 CARLOS SOLOMAN AND DOMINICA RICE-SOLOMAN OR A LEGAL ENTITY AFFILIATED WITH CARLOS SOLOMAN & DOMINICA RICE-SOLOMAN FOR (A) THE SALE OF THE PARCELS LOCATED AT 3455 AND 3461 CHAMPION STREET, RESERVING TO THE CITY AN EASEMENT FOR A FIBER OPTICS HUB AND RELATED USES ("PROPERTY") FOR AN AMOUNT NOT LESS THAN THREE HUNDRED FORTY THOUSAND DOLLARS (\$340,000), AND (B) DEVELOPMENT AND OPERATION ON THE PROPERTY OF A FULL SERVICE RESTAURANT, ALL OF THE FOREGOING DOCUMENTS TO BE IN A FORM AND CONTENT SUBSTANTIALLY IN CONFORMANCE WITH THE TERM SHEET ATTACHED AS EXHIBIT A, AND (2) ADOPTING CEQA EXEMPTION FINDINGS**

**WHEREAS**, Old Fire House #14, located at 3455 and 3461 Champion Street was identified as surplus property by both the Oakland Fire Department and the Oakland Public Works (collectively, and excluding the Fiber Optics Hub Easement described below, the "Property"); and

**WHEREAS**, the City Council previously determined that revenue from selling the Property would benefit the City and the potential reuse of the building would benefit the surrounding community and therefore authorized the City Administrator to market the Properties for a restaurant use through a Notice of Development Opportunity ("NODO"); and

**WHEREAS**, a NODO was issued in January 2016 and the City received six responses, and such responses were subsequently reviewed and ranked by a selection committee of four staff from the Economic & Workforce Development Department based on an established set of criteria; and

**WHEREAS**, the selection committee has recommended that the purchase and sale of the Property be awarded to the highest ranking respondent which was Carlos Soloman & Dominica Rice-Soloman (collectively, "Developer"), owners of another successful restaurant, Cosecha, in Old Oakland; and

**WHEREAS**, the minimum acceptable purchase price and the appraised value is three hundred forty thousand dollars (\$340,000) based on an independent appraisal; and

**WHEREAS**, the City desires to sell the Property in "as is" condition and to reserve such easements as are necessary for the City to maintain a lease with Comcast for a fiber optics hub (the "Fiber Optics Hub Easement"); and

**WHEREAS**, the Developer proposes to develop and operate on the Property a full service restaurant as further described in the Term Sheet attached as Exhibit A (the "Term Sheet") and incorporated herein by this reference (the "Project"); and

**WHEREAS**, sale of the Property and development of the Project will maximize the City's economic and non-economic return, generating additional property and sales tax revenue to the City, eliminating ongoing maintenance and fire control costs and reduce future litigation exposure; and

**WHEREAS**, the requirements of the California Environmental Quality Act of 1970 ("CEQA"), the Guidelines as prescribed by the Secretary for Resources (the "CEQA Guidelines"), and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of CEQA (collectively, "CEQA Requirements") have been satisfied, and in accordance with Sections 15061(b)(3)(general rule exemption), 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), Section 15183 (projects consistent with the General Plan), 15312 (Surplus Government Property Sales), 15303 (New Construction or Conversion of Small Structure), and 15332 (In-fill Development) of the CEQA Guidelines, the adoption of this Ordinance is exempt from the provisions of CEQA; and

**WHEREAS**, Resolution No. 85324 C.M.S. established a general policy to lease rather than sell City property; and

**WHEREAS**, the City Administrator is recommending a sale of the Property instead of a ground lease in this case because a sale is necessary for the reasons set forth in the Agenda Report for this item; now therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

**Section 2.** The City Council hereby finds and determines, pursuant to Resolution No. 85324 C.M.S., that it is in the best interests of the City to sell rather than lease the Property for the reasons described in the Agenda Report for this item, and hereby authorizes the conveyance of the Property to the Developer pursuant to the terms of the documents described in Section 6 hereof for a purchase price of not less than three hundred forty thousand dollars and 00/100 (\$340,000.00).

**Section 3.** The City Council hereby finds and determines that the process by which the City has solicited and considered the development proposals and negotiated with interested entities has met the requirements of Oakland Municipal Code Section 2.42.170.

**Section 4.** The City Council hereby finds and determines, based on the appraisal conducted by CBRE dated December 22, 2015, the Property is being conveyed to Developer at its fair market value, and the City is not granting any economic development subsidy to the Project.

**Section 5.** The City Council authorizes the City Administrator to deposit the sales proceeds in General Purpose Fund (1010), Real Estate Sale of Land (85231), Surplus Property Account (48111), Surplus Property Disposition Project (P47010), Real Estate Program (PS32).

**Section 6.** The City Council hereby authorizes the City Administrator or his/her designee, without returning to the City Council, to negotiate and execute: (1) a Disposition and Development Agreement and related documents with the Developer, for the sale and development of the Property, all of the foregoing documents to be in a form and content substantially in conformance with the Term Sheet; (2) grant deeds and any other agreements or documents as necessary to convey the Property to the Developer as well as the grant of any easement(s), covenants, or similar interests to City regarding the Fiber Optics Hub as negotiated by the City Administrator pursuant to the general provisions of Term Sheet Item number 43; (3) such other additions, amendments or other modifications to any of the foregoing documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Ordinance, to be conclusively evidenced by the execution and delivery by the City Administrator of any such amendments; and (4) such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the sale and development of the Property in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purposes.

**Section 7.** The City Administrator, without returning to the City Council, shall determine satisfaction of conditions precedent to the conveyance of the Property to the Developer.

**Section 8.** All agreements associated with the Property and the Project shall be reviewed and approved as to form and legality by the City Attorney's Office prior to execution by the City, and shall be placed on file with the City Clerk.

**Section 9.** The City Council has independently reviewed and considered this environmental determination, and the City Council finds and determines, based on the information in the Agenda Report accompanying this Ordinance, that in accordance with Sections 15061(b)(3)(general rule exemption), 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), Section 15183 (projects consistent with the General Plan), 15312 (Surplus Government Property Sales), 15303 (New Construction or Conversion of Small Structure), and 15332 (In-fill Development) of the CEQA Guidelines, the adoption of this Ordinance is exempt from the provisions of CEQA.

**Section 10.** The City Administrator or his/her designee is hereby authorized to file a notice of exemption with the Office of the Alameda County Recorder and the State Office of Planning and Research, and to take any other action necessary in furtherance of the Project, consistent with this Ordinance and its basic purposes.

**Section 11.** The record before this Council relating to this Ordinance includes, without limitation, the following:

- A. All staff reports, decision letters and other documentation and information produced by or on behalf of the City, including all notices relating to this Ordinance and the DDA;
- B. All oral and written evidence received by City staff and the City Council before and during the consideration of this Ordinance; and
- C. All matters of common knowledge and all official enactments and acts of the City, such as (1) the General Plan; (2) the Oakland Municipal Code, without limitation, the Oakland real estate regulations; (3) the Oakland Planning Code; (4) other applicable City policies and regulations; and (5) all applicable state and federal laws, rules and regulations.



**Section 12.** The custodians and locations of the documents or other materials which constitute the record of proceedings upon with the City Council's decision is based are respectively (a) the Real Estate Services Division, 250 Frank Ogawa Plaza, 4th Floor, Oakland, CA and (b) Planning and Building Department, 250 Frank Ogawa Plaza, 3rd, Floor, Oakland, CA; and (c) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1st Floor, Oakland, CA.

**Section 13.** The Ordinance shall be in full force and effect immediately upon its passage 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, \_\_\_\_\_

**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

DATE OF ATTESTATION: \_\_\_\_\_

## EXHIBIT A

### DDA TERM SHEET FOR THE CHAMPION STREET DISPOSITION

1	<b>OWNER:</b>	City of Oakland (City)
2	<b>DEVELOPER:</b>	Carlos Soloman & Dominica Rice-Cisneros Or A Legal Entity Affiliated with Carlos Soloman & Dominica Rice-Soloman, as approved in writing by the City.
3	<b>GUARANTY:</b>	Developers to provide City a Guaranty prior to closing. Guarantor must be financially strong entity with significant assets, pursuant to criteria set forth in the DDA and acceptable to the City in its sole and absolute discretion, to guarantee project completion obligation, as determined by City.
4	<b>PROPERTY:</b>	3455 & 3461 Champion Street, Oakland, CA
5	<b>PROJECT DESCRIPTION:</b>	Unsubsidized acquisition for the development and ongoing operation of a full-service restaurant.
6	<b>PURCHASE PRICE:</b>	<p>\$425,000 Four hundred twenty five thousand dollars.</p> <p>The buyers have placed on deposit a \$5,000 non-refundable option fee.</p> <p>Upon executing the DDA, the Developer will provide a \$37,500 nonrefundable good faith deposit by Certified Check made out to Old Republic Title Company. Except as otherwise provided herein below, such good faith deposit [and the option fee] shall be credited against the purchase price at closing. Should the Property not be conveyed to Developer by the outside date for closing in the DDA, the City may terminate the DDA and retain the good faith deposit [and the option fee] as liquidated damages, unless the failure to close is for reasons beyond Developer's control (which reasons shall not include financial inability).</p>

7	<b>TERMS OF PAYMENT; CLOSE OF ESCROW:</b>	Purchase Price to be due and payable in cash submitted into escrow 3 days before close of escrow. Escrow to close within five (5) business days following satisfaction (or written waiver) of all contingencies, including issuance of Developer's building permit.
8	<b>USE:</b>	Full service restaurant
9	<b>EXECUTION OF DDA:</b>	If the parties have not mutually executed the DDA by December 15, 2016, the City (at its sole discretion) may terminate negotiations and sell the Property to another party.
10	<b>CONVEYANCE:</b>	<p>Conveyance of Property to be contingent upon satisfaction of all DDA conditions precedent to closing including, but not limited to:</p> <ol style="list-style-type: none"> <li>1) City approval of five year operating plan and proforma;</li> <li>2) Full financing in place to develop the Project, including: <ol style="list-style-type: none"> <li>a. Predevelopment</li> <li>b. Acquisition</li> <li>c. Construction</li> <li>d. Permanent</li> <li>e. Startup cost</li> </ol> </li> <li>3) City approval of project plans and specifications;</li> <li>4) City approval of construction contract;</li> <li>5) Receipt of all government approvals for the Project including all necessary approvals from state or federal authorities or other agencies having jurisdiction over the Property and its use.</li> </ol>
11	<b>TITLE INSURANCE:</b>	Developer to secure title insurance policy, if desired, at its own cost and expense. City to provide standard owner affidavits regarding tenants, work on site, etc. if required by the title company for issuance of an ALTA policy. Developer acknowledges that it will take title to the Property subject to the easements described in Item #43 below.
12	<b>CLOSING COSTS:</b>	Developer to pay all escrow fees and closing costs including, without limitation, city and any other county taxes.

13	<b>LIMITATIONS ON PROPERTY RIGHTS:</b>	Developers accept and acknowledge the Property is subject to deed restrictions and a recorded covenant to restrict use of the Property.
14	<b>TAXES:</b>	Developer to pay all customary taxes and assessments.
15	<b>CONDITION OF PROPERTY AT DELIVERY:</b>	Property and all structures on the Property shall be conveyed in an "as is" physical condition.
16	<b>ENVIRONMENTAL REMEDIATION:</b>	<p>After acquisition of the Property, and during construction, Developer shall be responsible for completion of any and all environmental remediation discovered at, on, under or in the Property, including, but not limited to, remediating and removing existing utility infrastructure, and obtaining closure letters from environmental regulatory agencies.</p> <p>Developer agrees to accept the Property "as is" in its current condition without warranty express or implied by the City with respect to the presence of hazardous materials known or unknown on or near the Property.</p>
17	<b>INDEMNIFICATION:</b>	Developers shall agree to provide standard commercial hold harmless and defend provisions to the City of Oakland and its employees, officers, directors, shareholders, partners and agents. City and Developers to negotiate the various levels of indemnification and project stages as part of the DDA.
18	<b>CONTRACTOR'S GENERAL LIABILITY AND BOND REQUIREMENTS DURING CONSTRUCTION:</b>	<p>Requires compliance with standard City insurance requirements, including but not limited to;</p> <p>Developer shall obtain payment bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer and contractor.</p> <p>Developer shall obtain performance bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer and contractor.</p>

19	<b>DEVELOPER MAINTENANCE:</b>	Upon close of escrow, Developer is responsible for all maintenance of the Property.
20	<b>NO COMMISSION:</b>	Neither the City nor the Developer shall pay or be liable for any commissions or brokerage fees. The parties shall defend and hold each other harmless against any claims for commissions or brokerage fees.
21	<b>DEADLINE FOR BUYER TO REMOVE PROPERTY INSPECTION AND FINANCING CONTINGENCIES:</b>	March 31, 2017
22	<b>DEADLINE TO CLOSE ESCROW:</b>	May 30, 2017
23	<b>CONSTRUCTION COMMENCEMENT DATE:</b>	July 30, 2017
24	<b>CONSTRUCTION COMPLETION DEADLINE:</b>	February 28, 2018
25	<b>DEADLINE FOR BUSINESS OPENING:</b>	May 15, 2018
26	<b>TRANSFER / ASSIGNMENT OF RIGHTS:</b>	Not permissible without the City's written consent in its sole and absolute discretion
27	<b>RIGHT OF ENTRY:</b>	<p>Developer to have the right to enter onto the Property prior to transfer to conduct any investigation, testing, appraisals and other studies, at Developers cost, required as part of its due diligence.</p> <p>Developer shall be required to provide City with indemnity and evidence of insurance (in form and amounts to be further described in an exhibit to the DDA) and meet other standard City conditions to entry. Indemnity obligation shall not include matters arising out of the mere discovery of existing conditions at the Property or City's gross negligence or willful misconduct.</p> <p>City to have right of entry onto the property following close of escrow to inspect the Property and the Project during standard operating hours and upon required notice (except no notice is required for emergencies); this provision does not otherwise limit City's right to enter under its separate regulatory authority.</p>

28	<b>DDA SUBJECT TO REVIEW BY LENDER/INVESTORS:</b>	Developer's selected financial institution or lender(s) may review DDA prior to execution. In the event financial institution or lender(s) provides written comments regarding the DDA, City to consider responding and revising DDA at the sole and absolute discretion of the City.
29	<b>TITLE COMPANY:</b>	Old Republic Title Company, Oakland, CA
30	<b>BUSINESS HOURS OF OPERATION:</b>	Daily Continental breakfast from 8:00 a.m. to 11:00 a.m. Lunch from 11:00 a.m. to 3:00 p.m. Dinner from 5:00 p.m. to 10:00 p.m.

31	<b>REPURCHASE OPTION/RIGHT OF REVERTER (“Reversion Rights):</b>	<p>Subject to force majeure delays and a 30-day default notice period, in addition to the remedies described in Item 36 below, if construction does not start by July 30, 2017, or if the Project is not completed by February 28, 2018, City will have the option to repurchase/right of reversion for the Property for the original sale price (City’s “Reversion Rights”). The City can assign or transfer its Reversion Rights. The repurchase rights shall be subject to the mortgagee protection provisions included in the DDA.</p> <p>A Deed Restriction, CC&amp;R’s or DDA will be recorded against 3455 &amp; 3461 Champion St. that will restrict the use of the properties to the operation of a full service restaurant for a term of five years from the date that the Developer received written authorization from the City Building/Planning department and the County Health Department to open for business.</p> <p>I. Reversion rights;</p> <ol style="list-style-type: none"> <li>a. Start Up - The Buyer shall open the restaurant for service on or prior to May 15, 2018. If the Buyer fails the City may exercise its Reversion Rights.</li> <li>b. Continued Restaurant Operations – Buyer shall operate a full service restaurant for a term not less than five years. If the Buyer fails the City may exercise its Reversion Rights.</li> <li>c. If the Buyer complies with the terms and conditions of this DDA the City’s Reversion Rights expire one day after the fifth anniversary of the date the Developer was authorized (in writing) by the City and County to open for business.</li> </ol>
32	<b>CONTRACTOR’S WORKERS COMPENSATION INSURANCE REQUIREMENTS DURING CONSTRUCTION:</b>	<p>Requires compliance with City Standards.</p>

33	<b>EASEMENTS FOR COMCAST FACILITY:</b>	<p>3461 Champion Street will be delivered to the Developer subject to easements in favor of the City over the area covered by an existing lease between the City and Comcast for the operations of a fiber optics hub.</p> <ol style="list-style-type: none"> <li>a. The Comcast fiber optics hub will remain at its existing location, operational and is excluded from the sale.</li> <li>b. The lease between the City and Comcast at 3461 Champion St. will remain the property of the City. The income stream from the Comcast lease is excluded from the sale.</li> <li>c. Easements for the benefit of the City at 3461 Champion St.: <ol style="list-style-type: none"> <li>i. One for the existing location of the Comcast fiber optics Hub (approximately 20 feet by 20 feet.)</li> <li>ii. One for underground conduit for fiber, power, telecommunications, ingress, egress, repairs and maintenance thereto, that will run West to East (approximately 20 feet by 40 feet from the Hub to the Street). Buyer may use for parking.</li> <li>iii. One for underground conduit for fiber, power, telecommunications, ingress, egress, repairs and maintenance thereto, that will run North to South (approximately 20 feet by 40 feet from the Hub to the Street). Developer may use for parking.</li> <li>iv. Developer may use 3461 Champion St. for parking. Other uses require written approval by the City in its sole and absolute discretion.</li> </ol> </li> </ol>
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34	<b>RIGHTS RESERVED:</b>	The City reserves the right to accept or reject any and all terms of the DDA, whether or not minimum qualifications are met, and to modify, postpone, or cancel the negotiation without liability, obligation, or commitment to any party, firm or organization.
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