

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2019 MAY -2 PM 3:06

APPROVED AS TO FORM AND LEGALITY


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. 13538 C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, A NINETY-NINE YEAR GROUND LEASE AND RELATED DOCUMENTS (COLLECTIVELY "LDDA") AMONG THE CITY OF OAKLAND, THE SPANISH SPEAKING UNITY COUNCIL OF ALAMEDA COUNTY, INC., AND BRIDGE HOUSING CORPORATION OR AFFILIATED ENTITIES FOR THE FRUITVALE TRANSIT VILLAGE PHASE IIB AFFORDABLE HOUSING DEVELOPMENT TO BE LOCATED ON APN 033-2197-019 BOUNDED BY EAST 12TH STREET, 35TH AVENUE TO THE WEST, AND 36TH AVENUE TO THE EAST

WHEREAS, pursuant to the authority granted in Resolution No. 2010-1000 C.M.S. adopted July 13, 2010, the former City of Oakland Redevelopment Agency (the "Agency") purchased a 3.4 acre surface parking lot consisting of two parcels, APN 033-2177-021 ("Phase IIA Property") and APN 033-2197-019 ("Phase IIB Property") bounded by 35th and 37th Avenues, East 12th Street and the Bay Area Rapid Transit (BART) tracks (Phase IIA Property and Phase IIB Property, collectively, the "Property"), to promote economic development in the community and to assist with the development of Phase II of the Fruitvale Transit Village; and

WHEREAS, in January 2012, all redevelopment agencies in the State of California were dissolved, the Oakland Redevelopment Successor Agency ("ORSA") became the successor agency to the Agency and pursuant to the Long-Range Property Management Plan approved by the California Department of Finance in May 2014, the Property was transferred to the City of Oakland (the "City"); and

WHEREAS, the City and The Spanish Speaking Unity Council of Alameda County, Inc. (the "Unity Council") and L & M Development Partners, Inc. entered into an Exclusive Negotiating Agreement ("ENA") on November 18, 2014 as authorized by Resolution 85271 C.M.S. for the purpose of studying the feasibility of the development of a proposed housing project comprised of 94 mixed-income residential units on the parcel number 033-2177-021 (the "Phase IIA Project") and the proposed affordable housing development comprised of 181 affordable residential units on the parcel number 033-2197-019 (the "Phase IIB Project"); and

WHEREAS, on June 22, 2015, the City Council authorized the City Administrator to negotiate and execute a Lease and Disposition Agreement with the Unity Council and L & M Development Partner Inc. for the development of the Fruitvale Transit Village Phase IIA project. The City amended the Lease Development and Disposition Agreement and related documents

(collectively, the "Phase IIA LDDA") to add the East Bay Asian Local Development Corporation (EBALDC) as an additional party to the Phase IIA LDDA pursuant to Ordinance No. 13346 C.M.S. adopted on December 8, 2015. The LDDA sets forth the terms and conditions of the development of the Phase IIA Project and the use of the Phase IIA Property by the Developer and any successors to the Phase IIA Property; and

WHEREAS, On July 19, 2016, Ordinance No. 13387 C.M.S. amended the Phase II A LDDA to remove L & M Development Partners and retaining the Unity Council and EBALDC as parties to the LDDA; and

WHEREAS, On July 27, 2017, Ordinance No. 13447 C.M.S. amended three ordinances to extend the term of the lease from 66 years to 99 years; and

WHEREAS, On December 18, 2017, Resolution No. 86992 C.M.S. was approved by the City Council and authorized a resolution amending Resolution No. 85271 C.M.S. to amend and restate the exclusive negotiating agreement ("Amended And Restated ENA") with the Unity Council for development of the Fruitvale Transit Village Phase II ("FTV Phase II") as follows: 1) formalize the subdivision of FTV Phase II into two projects, Phase IIA And Phase IIB; 2) extend the term of the amended and restated ENA Phase IIB Project by one year through December 30, 2018, with one six month administrative extension; and 3) add BRIDGE Housing Corporation ("BRIDGE") and or affiliated entities as a party to the amended and restated ENA for the development of the Phase IIB Project. The Unity Council and BRIDGE are hereinafter collectively referred to as the "Developer"; and

WHEREAS, staff and Developer have negotiated an LDDA and Ground Lease Term Sheet for the Fruitvale Transit Village Phase IIB affordable housing development, which sets forth the terms and conditions to be included in the LDDA and its exhibits, including the Ground Lease for a 99-year lease of the Phase IIB Property for the development of the Phase IIB Project, with a residual receipts payment from a capitalized loan based on the Fair Market Value of the property. The term of the capitalized loan is for 55 years with 0% interest or such other interest rate as may be feasible based upon projected Project cash flow and the requirements of the Project's low-income housing tax credit ("LIHTC") investor. The Ground Lease for the Phase IIB Project is proposed to have a term of sixty-six (66) years commencing upon the date upon which the Developer commences construction, and shall include up to three (3) options to extend the term in increments of eleven (11) years each, for a total of thirty-three (33) additional years, subject to additional requirements of Project lender(s) and investors; and

WHEREAS, the \$6 million bond funds used for the original purchase of the property are restricted by bond covenants for redevelopment activities with the Coliseum Redevelopment Project Area. Therefore, residual receipts from FTV Phase IIB will be restricted to the Coliseum Project Area and deposited in Entity (1), Coliseum Bond Series 2006B-T Taxable Fund (5656), Land Rental: Misc Account (44219), CIP Coliseum (94859), Coliseum Program (SC12), and a Project to be determined later for appropriation; and

WHEREAS, given the financial feasibility of the Phase IIB Project, the lease of the Property to the Developer will be for a term of 99 years and will provide residual receipts payments based on the agreed upon terms in the ground lease; and

WHEREAS, California Government Code Section 52201 ("State Law") requires that before any real property formerly owned by the Agency is sold or leased for economic development purposes, the sale or lease must first be approved by the legislative body (i.e., the City Council) by resolution after public hearing; and

WHEREAS, a public hearing of the City Council was held to hear public comments on the lease of the Phase IIB Property to the Developer or affiliated entity for the Phase IIB Project; and

WHEREAS, notice of the time and place of the public hearing was given by publication in a newspaper of general circulation in Alameda County at least once a week for at least two successive weeks prior to the public hearing; and

WHEREAS, as required by State Law, the City made a report available to the public for inspection, no later than the first date of publication of the notice for the hearing, that contains: (i) a copy of the proposed lease of the Phase IIB Property and (ii) a summary of (a) the cost of the agreement to the City, (b) the estimated highest and best use value of the Phase IIB Property permitted under the City general plan or zoning, (c) the estimated value of the Phase IIB Property determined at the use with the conditions, covenants, and developments required by the proposed lease, the present value of the lease payments required to be made during the term of the lease, with an explanation of the reasons for the difference between the two values, and (d) an explanation, with supporting facts and materials, of why the lease of the Phase IIB Property and development of the Phase IIB Project will assist in the creation of an economic opportunity; and

WHEREAS, the City Council previously certified in May 2010 the Environmental Impact Report (EIR) for the Project, and the Oakland City Planning Commission approved the Project for entitlements on November 28, 2018. The residential development and accessory office at 35th Avenue for the FTV IIB development was approved by the Oakland Planning Commission on November 28, 2018. A Notice of Determination was filed pursuant to Section 15075 of CEQA Guidelines. Pursuant to Sections 15162-15164 of the California Environmental Quality Act (CEQA) Guidelines, no additional environmental review is necessary for this action; now, therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. The City Council hereby authorizes the City Administrator or his or her designee to negotiate and execute the LDDA and the Ground Lease for Fruitvale Transit Village Phase IIB affordable housing development, including the Ground Lease for 99 years for lease of the Phase IIB Property for the development of the Phase IIB Project. The Ground Lease for the Phase IIB Property is proposed to have a term of sixty-six (66) years commencing upon or substantially concurrent with the date of closing of the construction loan for the Phase IIB project, and shall include up to three (3) options to extend the term in increments of eleven (11) years each, for a total of thirty-three (33) additional years, subject to additional requirements of Project lender(s) and investors. The City Council hereby authorizes City staff to lease the Phase IIB Property for ninety-nine (99) years to the Developer or an affiliated entity approved by the City Administrator.

SECTION 2. The City Council hereby finds and determines that the \$6 million bond funds used for the original purchase of the property are restricted by bond covenants for

redevelopment activities with the Coliseum Redevelopment Project Area. Therefore, residual receipts from FTV Phase IIB will be restricted to the Coliseum Project Area and deposited in Entity (1), Coliseum Bond Series 2006B-T Taxable Fund (5656), Land Rental: Misc. Account (44219), CIP Coliseum (94859), Coliseum Program (SC12), and a Project to be determined later for appropriation; and

SECTION 3. The City Council hereby finds and determines that the lease of the Phase IIB Property for the Phase IIB Project will assist in the creation of economic opportunity in the City by:

- creating and expanding new jobs, including approximately 375 construction jobs and 10 permanent jobs, which is at least one full-time equivalent permanent job for every \$200,000 in City investment; and
- increasing property tax revenue to all taxing entities by at least 15% of total property tax when compared to the year prior to the City's acquisition of the Property.

SECTION 4. The City Council hereby further finds and determines that the consideration for the lease of the Phase IIB Property is not less than the fair reuse value of the Phase IIB Property at the use and with the covenants and conditions and development costs authorized by the lease, and that it is in the best interest of the City to lease the Phase IIB Property to the Developer at its fair reuse value given the need to redevelop the Phase IIB Property for the benefit of the community.

SECTION 5. All agreements associated with the conveyance of the Phase IIB Property for the Phase IIB Project shall be reviewed and approved as to form and legality by the Office of the City Attorney prior to execution by the City, and shall be placed on file with the City Clerk.

SECTION 6. The City Council hereby finds and determines that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that (1) there are no substantial changes proposed in the Phase IIB Project or the circumstances under which the Phase IIB Project is to be undertaken that would involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3).

SECTION 7. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 8. The City Council hereby authorizes the City Administrator or his or her designees to (1) determine satisfaction of conditions precedent under the LDDA to the conveyance of the leasehold estate in the Phase IIB Project, such determination to be conclusively evidenced by the execution and delivery by the City Administrator of the Ground Lease and (2) take whatever action is necessary with respect to the lease of the Phase IIB Property for the Phase IIB Project consistent with this Ordinance and its basic purposes.

SECTION 9. This Ordinance shall be in full force and effect immediately upon final adoption, as provided by Section 216 of the City Charter, if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA,

JUN 0 4 2019

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, ~~WANG~~, TAYLOR, THAO AND PRESIDENT KAPLAN — 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - 1 Reid

Introduction Date

MAY 2 1 2019

ATTEST:



LATONDA SIMMONS

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

Date of Attestation:

June 13, 2019

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, A NINETY-NINE YEAR GROUND LEASE AND RELATED DOCUMENTS (COLLECTIVELY "LDDA") AMONG THE CITY OF OAKLAND, THE SPANISH SPEAKING UNITY COUNCIL OF ALAMEDA COUNTY, INC., AND BRIDGE HOUSING CORPORATION OR AFFILIATED ENTITIES FOR THE FRUITVALE TRANSIT VILLAGE PHASE IIB AFFORDABLE HOUSING DEVELOPMENT TO BE LOCATED ON APN 033-2197-019 BOUNDED BY EAST 12TH STREET, 35TH AVENUE TO THE WEST, AND 36TH AVENUE TO THE EAST

NOTICE AND DIGEST

This Ordinance authorizes the disposition of a portion of the property at 35th Avenue and East 12th Street known as assessor's parcel number 033-2197-019 to The Spanish Speaking Unity Council of Alameda County, Inc. (the "Unity Council") and BRIDGE Housing Corporation ("BRIDGE") for the development of Fruitvale Transit Village Phase IIB, which shall consist of 181 affordable residential units, 100 parking spaces, and approximately 7,200 square feet of non-profit/commercial space. This Ordinance authorizes the City Administrator to sign the Lease Disposition and Development Agreement (LDDA) with the Unity Council and BRIDGE or their Affiliated Entities for this transaction, and makes associated findings with respect to the California Environmental Quality Act (CEQA) and other matters.