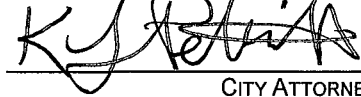


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CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. ~~13422~~ 13422 C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE, WITHOUT RETURNING TO THE CITY COUNCIL, TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT AND RELATED DOCUMENTS BETWEEN THE CITY OF OAKLAND AND OAKLAND ACURA, OR A RELATED ENTITY FOR THE SALE OF THE OAKPORT PROPERTY (APN 041-3902-021) AT THE AGREED UPON SALES PRICE OF \$5.2 MILLION FOR THE DEVELOPMENT OF AN ACURA DEALERSHIP AND ADOPTING CEQA EXEMPTION FINDINGS

WHEREAS, the City of Oakland, a municipal corporation ("City") owns an approximately 3.625 acre parcel (the "Property") located adjacent to 7001 Oakport Street; and

WHEREAS, Walnut Creek Associates 5 Incorporated, a California corporation, doing business as Oakland Acura ("Acura" or "Developer") is proposing to purchase the Property from the City of Oakland to develop an Acura dealership on the property; and

WHEREAS, on October 6, 2015, the City Council pursuant to Resolution No. 85803 C.M.S authorized an Exclusive Negotiating Agreement (ENA) with Oakland Acura for a period of twelve months with the option by the City Administrator or designee in his/her sole discretion to extend for an additional six months; and

WHEREAS, Oakland Acura has diligently completed its project deliverables pursuant to the terms of the ENA; and

WHEREAS, Oakland Acura submitted a proposal to purchase the Property to develop a new Acura Dealership featuring a showroom, service center, parts department consisting of an approximately 38,000 square foot building (the "Project") on the Property; and

WHEREAS, the agreed upon purchase price of the Property is Five Million Two Hundred Thousand Dollars (\$5,200,000); and

WHEREAS, City staff is currently negotiating the terms and conditions under which the City will pursue a Disposition and Development Agreement ("DDA") with Oakland Acura for the sale of the Property to Acura; and

WHEREAS, the Property is located in the Coliseum Project Area and was owned by the former Oakland Redevelopment Agency ("Agency") prior to its dissolution pursuant to AB IX 26 and AB 1484 (collectively, "Redevelopment Dissolution Act"); and

WHEREAS, disposition of the Property is governed by (1) the Long Range Property Management Plan prepared by the Oakland Redevelopment Successor Agency ("ORSA") and approved by the ORSA Oversight Board and the State Department of Finance, and (2) the Compensation Agreement entered into by the City and taxing entities pursuant to the Redevelopment Dissolution Act; 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 sale of the Oakport Property to Oakland Acura for the Project; and

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

WHEREAS, as required by State Law, the City made a report available to the public for inspection, no later than the first date of publication of the notice for the hearing, that contains: (i) a copy of the proposed sale of the Oakport property and (ii) a summary of (a) the cost of the agreement to the City, (b) the estimated highest and best use value permitted under the City general plan or zoning, (c) the estimated value determined at the use required by the sale, 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 sale of the Oakport property will assist in the creation of economic opportunity; and

WHEREAS, the City commissioned and received a copy of an independent Member of Appraisal Institute (MAI) appraisal from Fabbro, Moore & Associates Inc., one of the City's on-call appraisal firms, which estimated the fair market value of the Property at \$5.5M. Acura ordered its own separate and independent appraisal by Integra Realty Resources which estimated the Property's fair market value at \$4.4M.

WHEREAS, the City commissioned the consulting firm of Economic & Planning Systems, Inc. ("EPS") to undertake an independent analysis of the Property. EPS' findings indicate that the appraised value of the property is estimated at \$5.2 million based on the highest and best use permitted under the current zoning. It reflects the average between the two appraisals of the market value of fee simple interest in the land (\$5.5 million and \$4.4 million) with a 5 percent increase made by EPS to adjust for the escalation in the land value market over the last quarter of 2016; and

WHEREAS, In August 2016, the Oakland City Planning Commission determined that, under the California Environmental Quality Act (CEQA), the Project meets the criteria for a Categorical Exemption under Section 15332 of the CEQA Guidelines. The zoning for the Oakport Street parcel is currently D-CO-3, which conditionally permits auto sales.

WHEREAS, the City Council adopted a Resolution in December 2014 to establish a general policy to lease rather than sell City property (Resolution No. 85324 C.M.S.); and

WHEREAS, City staff recommends selling the land to Oakland Acura rather than entering into a long term ground lease since Oakland Acura has indicated that they would not be able to obtain viable project financing through their parent company Honda Motors under a long term ground lease. Acura has taken the position that a long term ground lease would not work because this would adversely affect their ability to properly finance the Project since many lenders typically consider the land to be an asset under fee simple ownership and a liability under leasehold interest; and

WHEREAS, to facilitate the development with Oakland Acura, staff is recommending that the City consider the transfer of the Property through a Disposition and Development Agreement ("DDA") rather than a Lease and Development Agreement ("LDDA"); and

WHEREAS, City staff recommends a sale of the Property instead of a ground lease because a sale is necessary to promote the economic development goals of the City 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 hereby finds, 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 City Administrator or designee to negotiate and execute documents for the conveyance of the Property to Oakland Acura pursuant to the terms of the documents described in Section 5 hereof for the price of \$5.2 million.

SECTION 2. The City Council hereby authorizes the City Administrator or designee to negotiate and execute the DDA: (1) including without limitation the exhibits thereto, with Oakland Acura for the sale and development of the Oakland Acura Dealership Project; (2) upon satisfaction or waiver of the conditions precedent to the sale; and (3) upon the satisfaction of any preconveyance conditions imposed by the City Administrator or designee (4) require a \$50,000 good faith deposit from Developer upon execution of the DDA and balance of \$5,150,000 upon close of escrow; (5) said \$50,000 good faith deposit and balance of \$5,150,000 upon close of escrow shall be accepted and appropriated in Fund 5650 and Project 1001670, such other agreements or documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate the sale and development of the Property for the Oakland Acura dealership Project in order to consummate the transaction under the DDA in accordance with this Ordinance, or to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

SECTION 3. The City Council hereby authorizes the City Administrator to appropriate and distribute the net sale proceeds to the taxing entities per the compensation Agreement, including approximately 29% to the City's General Fund (1010).

SECTION 4. The City Council hereby finds and determines that the sale of the Property for the Oakland Acura Dealership Project will assist in the creation of economic opportunity in the City by:

- Retaining a total of 50 full time and 16 part-time Oakland jobs with additional positions and hiring expected at the new location. It is also anticipated that up to 80 construction jobs would be required to build the project.
- The dealership expects to continue generating at least \$200,000 in net sales tax to the City on an annual basis. Sales projections at the new location anticipate even higher sales volume.
- Approximately \$50,000 in annual business tax fees are currently generated at Acura's existing location. Due to a higher anticipated sales volume, the dealership currently estimates approx. \$65,000 in annual business tax fees being generated at the new proposed location.
- Based on a \$5.2M transaction, over \$72,800 in annual property taxes and over \$82,500 in real property transfer taxes would be generated.

SECTION 5. The City Council hereby further finds and determines that the consideration for the sale of the Oakport Property is an agreed upon price of the highest and best use of the Property and that it is in the best interest of the City to sell the Property to the Developer at its fair reuse value given the need to redevelop the Property for the benefit of the community.

SECTION 6. All agreements associated with the conveyance of the Oakport Property for the Acura Dealership 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 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 designee to (1) determine satisfaction of conditions precedent under the DDA to the conveyance of the fee simple sale, such determination to be conclusively evidenced by the execution and delivery by the City Administrator of the Purchase and Sale Agreement and (2) take whatever action is necessary with respect to the sale of the Property for the Acura Dealership Project consistent with this Ordinance and its basic purposes.

SECTION 9. This Ordinance shall be in full force and effective 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, MAR 28 2017, 2017

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, ~~ABSON McELHANEY~~, GUILLEN, KALB, KAPLAN, and PRESIDENT REID 7

NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused- McElhaneay

ATTEST:

Latonda Simmons
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date

MAR 21 2017

**AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR OR
DESIGNEE, WITHOUT RETURNING TO THE CITY COUNCIL, TO
NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT
AGREEMENT AND RELATED DOCUMENTS BETWEEN THE CITY
OF OAKLAND AND OAKLAND ACURA, OR A RELATED ENTITY
FOR THE SALE OF THE OAKPORT PROPERTY (APN 041-3902-021)
AT THE AGREED UPON SALES PRICE OF \$5.2 MILLION FOR THE
DEVELOPMENT OF AN ACURA DEALERSHIP AND ADOPTING
CEQA EXEMPTION FINDINGS**

NOTICE AND DIGEST

This Ordinance authorizes the disposition of the property immediately adjacent to 7001 Oakport Street known as assessor's parcel number 041-3902-021 to Oakland Acura for the development of the Oakland Acura Dealership which shall consist of a two-story building with programmed space for dealer showroom, sales offices, service department with service bays, parts department, washing and detailing area, and a surface parking lot featuring the latest environmental and sustainable storm-water features. This Ordinance authorizes the City Administrator to negotiate and enter into a Disposition and Development Agreement with Oakland Acura for this transaction, and makes associated findings with respect to the California Environmental Quality Act (CEQA) and other matters.