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APPROVED AS TO FORM AND LEGALITY


DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. 13541 C.M.S.

ORDINANCE (1) AUTHORIZING LEASE DISPOSITION AND DEVELOPMENT AGREEMENTS WITH MIDPEN HOUSING CORPORATION AND THE OAKLAND HOUSING AUTHORITY, OR AFFILIATED ENTITIES, FOR THE LONG-TERM GROUND LEASE OF PARCEL A AT BROOKLYN BASIN, 2) FINDING AND DETERMINING THAT THE LEASE OF THE PARCEL A PROPERTY TO NIBBI BROTHERS ASSOCIATES, INC. FOR LESS THAN ITS FAIR MARKET RENTAL VALUE IS IN THE BEST INTEREST OF THE CITY, AND (3) MAKING CEQA FINDINGS FOR THIS ACTION

WHEREAS, in 2014 and 2017, the City acquired Project Parcels A and F (the "affordable housing parcels") at the Brooklyn Basin development project (formerly the Oak to 9th project) for the development of 465 units of affordable housing; and

WHEREAS, the obligation to purchase the affordable housing parcels for development of affordable housing arises pursuant to a Development Agreement between the City and Zarsion-OHP I, LLC ("ZOHP"), originally entered into in 2006 and subsequently amended (the "Development Agreement") and a Cooperation Agreement between the City and the Oak to Ninth Community Benefits Coalition originally entered into in 2006 and subsequently amended (the "Cooperation Agreement"); and

WHEREAS, the Development Agreement provides that the City and ZOHP will work together to identify, recruit and select an affordable housing developer to acquire the affordable housing parcels and develop affordable housing, and sets forth a process for ZOHP to propose an affordable housing developer and for the City to accept or reject the proposed developer; and

WHEREAS, the Housing Authority of the City of Oakland, California ("OHA") has purchased an undivided 50 percent tenant-in-common interest in the affordable housing parcels; and

WHEREAS, the City and OHA have selected MidPen Housing Corporation ("MidPen"), a California nonprofit public benefit corporation, pursuant to the developer selection process in the Development Agreement, to be the developer of affordable housing at the affordable housing parcels; and

WHEREAS, MidPen is an experienced and capable affordable housing developer;
and

WHEREAS, on January 5, 2016, Council passed Resolution No. 85939 C.M.S. approving a financing plan for developing affordable housing at Brooklyn Basin; and

WHEREAS, on November 7, 2017, Council passed Ordinance No. 13458, authorizing a Master Housing Agreement among the City, OHA and MidPen, or affiliates, which sets forth the general terms and conditions under which the affordable housing parcels will be conveyed and the affordable housing will be financed and developed on the parcels, as well as authorizing entering into Lease Disposition and Development (LDDAs) for MidPen affiliates to develop the first 211 affordable housing units in Projects 1 and 2 on Parcel F, with long-term ground leases; and

WHEREAS, MidPen has proposed developing the affordable housing on the affordable housing parcels in phases, with 211 affordable units currently under construction on Parcel F, and is currently seeking to proceed with the final two project phases being developed on Parcel A; and

WHEREAS, MidPen has proposed to develop 130 units of family housing as part of Project 3 and 124 units of family housing as part of Project 4 on Parcel A; and

WHEREAS, all units (other than manager units) will be affordable to households earning no more than 60% of area median income; and

WHEREAS, Section 2.42.140, et seq., of the Oakland Municipal Code authorizes the City to sell or lease real property for development by ordinance; and

WHEREAS, lease disposition and development agreements among the City, OHA and MidPen will set forth the terms and conditions under which the City and OHA will dispose of Parcel A to MidPen and/or affiliated entities by means of long-term ground leases, and by which MidPen will construct Project 3 and Project 4 on Parcel A; and

WHEREAS, the conveyance of Parcel A to MidPen for development and operation of affordable housing will further the health, safety, and general welfare of the residents of the City of Oakland by increasing the stock of housing affordable to low income households; and

WHEREAS, Section 2.42.180 of the Oakland Municipal Code authorizes the City to dispose of property at its fair reuse value as assessed based on the property's proposed development and use, prevailing market conditions, development climate at the time of disposition, and other economic and noneconomic factors, and requires findings to justify any below-market disposition; and

WHEREAS, the assessment set forth in the staff report accompanying this Ordinance concludes that, based on a financial feasibility analysis of the proposed project, the fair reuse value of Parcel A is nominal; and

WHEREAS, given the economics of the proposed projects and the need to make the projects work, the ground lease of Parcel A to MidPen at a nominal cost is necessary; and

WHEREAS, the Environmental Impact Report for the Oak to Ninth Mixed Use Development Project prepared under the California Environmental Quality Act ("CEQA") and certified by the City Council in 2006 and recertified in 2009 (the "EIR") provides a project-level analysis of the environmental impacts of the Brooklyn Basin development project and supports all levels of approval necessary to implement the Brooklyn Basin project, including affordable housing development on the affordable housing parcels; and

WHEREAS, the proposed transactions, including development of Project 3 and Project 4 on Parcel A, would not result in any significant effect that has not already been analyzed in the EIR, and there will be no significant environmental effects caused by the transactions that have not already been analyzed in the EIR; and

WHEREAS, MidPen affiliates are currently under contract with Nibbi Brothers Associates, Inc. ("Nibbi Brothers"), a contractor with over sixty years of experience in construction as their general contractor for the construction of the 211 affordable housing units on Parcel F; and

WHEREAS, Nibbi Brothers' construction management plan with the Bureau of Planning and Building calls for usage of Parcel A as a construction staging and worker parking area for up to 24 months, depending on the development Plans for Parcel A; and

WHEREAS, the 2015 – 2020 Consolidated Plan for the Housing and Community Development Department identifies that 70% of low and moderate income households in the City of Oakland (55,970 households), are facing cost burdens, paying over 30% of their income towards housing costs; and

WHEREAS, 43% of low and moderate income renters are severely cost burdened, paying more than 50% of their income towards housing costs; and

WHEREAS, Parcel F's 211 affordable housing units will help ameliorate this housing crisis; and

WHEREAS, it is mutually beneficial to have an active use on Parcel A until construction on Parcel A affordable housing units can commence; and

WHEREAS, it is not mutually beneficial to utilize the Parcel F development funds towards license costs; and

WHEREAS, the City Council finds that urgent and expeditious efforts are necessary to develop additional affordable housing solutions; and

WHEREAS, Oakland Municipal Code ("OMC") 2.42.110 provides that City-owned real property must be leased for a rent equal to or exceeding the property's fair market rental value unless the City Council has made a finding and determination that the lease of the property for less than its fair market rental value is in the best interest of the City; and

WHEREAS, in making the required finding and determination, the City Council may consider the value of in-kind services to the City or the community at-large provided by the lessee such as but not limited to property security and maintenance, social and cultural benefits to the community or other services; now, therefore

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

SECTION 1. The City Council hereby authorizes the City Administrator or her designee to negotiate and execute lease disposition and development agreements with OHA and MidPen, or affiliated entity or entities approved by the City Administrator, for the disposition of Parcel A to Mid-Pen or affiliate by long-term ground leases and the development of Project 3 and Project 4 on Parcel A by MidPen or affiliate consistent with the terms of this Ordinance and other agreements with respect to the affordable housing parcels.

SECTION 3. The City Council hereby authorizes the City Administrator or her designee to negotiate and execute license agreement(s) between the City, OHA and Nibbi Brothers, or affiliated entity or entities approved by the City Administrator, for the temporary license of Parcel A for the undertaking of construction activities on Parcel F, consistent with the terms of this Ordinance and other agreements with respect to the affordable housing parcels.

SECTION 4. The City Council hereby authorizes long-term ground leases of the City's interest in Parcel A at Brooklyn Basin to MidPen, or affiliated entity or entities approved by the City Administrator, for nominal lease payments, in return for an agreement by the developer to develop and operate Project 3 and Project 4 on Parcel A as affordable housing. The City Council further authorizes the City Administrator or her designate to negotiate and execute ground leases and any other agreements or documents as necessary to convey leasehold interests in Parcel A to MidPen or affiliates, as well as agreements or documents as necessary to transfer or assign funds or other interests the City has with respect to Parcel A including remediation and monitoring funds, escrowed funds, and environmental protections, upon the satisfaction of any preconveyance conditions imposed by the City Administrator or her designee.

SECTION 5. As a condition of the conveyances, the City will require that appropriate restrictions on occupancy, rents and operations for affordable units developed as part of Project 3 and Project 4 be recorded against improvements developed on Parcel A.

SECTION 6. The City Council, pursuant to Oakland Municipal Code Section 2.42.170.B., hereby waives the competitive Notice of Development Opportunity ("NODO") process for disposition of Parcel A, and finds and determines that disposition of Parcel A without a competitive NODO process is in the best interests of the City in order to comply with the provisions of the Development Agreement concerning selection of an affordable housing developer for the affordable housing parcels, and to facilitate timely development of affordable housing on the affordable housing parcels by an experienced and capable affordable housing developer.

SECTION 7. Based on the reuse value assessment set forth in the staff report accompanying this Ordinance concluding that the fair reuse value of Parcel A is nominal given its

required use as affordable housing and the need to make Project 3 and Project 4 financially feasible, Council hereby finds that the ground lease of Parcel A to MidPen at nominal cost is necessary and in the best interests of the City. Because Parcel A is being conveyed at less than fair rental value, all City employment and contracting programs shall apply to Project 3 and Project 4.

SECTION 8. Based on the benefits of having an active use on Parcel A during the period prior to construction, which benefits include, without limitation, having the contractor provide security and maintenance of the site all the while having the contractor's continued and ongoing presence serve as a deterrent to illegal dumping and vandalism until construction can commence on Parcel A, and the inadvisability of using limited development loan funds on Parcel F for licensing the site temporarily, as noted above and in the City Administrator's report accompanying this ordinance, the City Council hereby finds and determines that leasing the Parcel A property at Brooklyn Basin to Nibbi Brothers for less than the property's fair market value is in the best interest of the City.

SECTION 9. All agreements associated with the Parcel A license agreement and Project 3 and Project 4 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 10. The City Council finds and determines that the proposed LDDA transactions would not result in any significant effect that has not already been analyzed in the EIR, and there will be no significant environmental effects caused by the transactions that have not already been analyzed in the EIR. The City Administrator or her designee is hereby authorized to file a notice of determination 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 City Council finds and determines that the license agreement actions authorized by this Ordinance are exempt from CEQA pursuant to CEQA Guidelines Section 15301, which exempts the operation of existing private or public facilities involving negligible or no expansion of use.

SECTION 12. 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, and all notices relating to this Ordinance, the license agreement, and the LDDAs;
- B. All oral and written evidence received by City staff and the City Council before and during the consideration of this Ordinance;
- 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, including, 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 13. The custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) the Housing and Community Development Department, 250 Frank H. Ogawa Plaza, 5th floor, Oakland CA; (b) Bureau of Planning and Building, Planning Division, 250 Frank H. Ogawa Plaza, 3rd floor, Oakland CA; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA.

SECTION 14. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision.

SECTION 15. This 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.

SECTION 16. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 04, 2019

PASSED BY THE FOLLOWING VOTE:

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

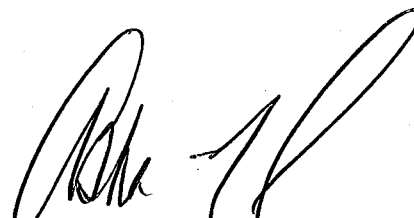
NOES- 0

ABSENT- 0

ABSTENTION- 0
Excused - 1 Perd

Introduction Date
MAY 21 2019

ATTEST:


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

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NOTICE AND DIGEST

This Ordinance authorizes the temporary ground lease of Parcel of one of the affordable housing parcels, Parcel A, to Nibbi Brothers to support construction activities on Parcel F at no cost, and also authorizes the long-term ground leases Parcel A, to MidPen Housing Corporation or their affiliates at a nominal cost for development of affordable housing, on the site, and authorizes the City Administrator to negotiate and enter into lease disposition and development agreements and ground leases with MidPen Housing Corporation and the Oakland Housing Authority for this transaction, and makes associated findings with respect to the California Environmental Quality Act (CEQA) and other matters.