

CITY OF OAKLAND



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MAY 24, 2005

IGNACIO DE LA FUENTE, PRESIDENT
CITY COUNCIL
OAKLAND, CALIFORNIA

PRESIDENT DE LA FUENTE AND MEMBERS OF THE CITY COUNCIL

SUBJECT: A TOTAL OF FOUR CITY AND AGENCY RESOLUTIONS REGARDING REDEVELOPMENT ACTIVITIES IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA:

AGENCY AND CITY RESOLUTIONS APPROVING AND AUTHORIZING EXECUTION OF: (1) AMENDMENTS TO A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE, AND RELATED DOCUMENTS BETWEEN THE REDEVELOPMENT AGENCY, THE CITY OF OAKLAND, AND FC OAKLAND, INC. (SUCCESSOR TO UPTOWN PARTNERS, LLC), FOR THE DEVELOPMENT OF A MIXED-USE RESIDENTIAL RENTAL AND RETAIL DEVELOPMENT PROJECT IN THE UPTOWN ACTIVITY AREA OF THE CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA INCREASING THE PROPERTY ACQUISITION CEILING FROM \$14,195,000 TO \$16,995,000, AND INCREASING THE AGENCY CONTRIBUTION TOWARD HAZARDOUS MATERIALS ABATEMENT FROM \$2,585,600 TO \$4,085,600; AND (2)(A) A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY, THE AGENCY AND SEARS DEVELOPMENT COMPANY FOR THE AGENCY'S ACQUISITION OF PROPERTY LOCATED AT 1911 TELEGRAPH AVENUE FOR PURCHASE CONSIDERATION EQUAL TO AN AMOUNT NOT TO EXCEED \$12.5 MILLION; AND (B) A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT, GROUND LEASE AND RELATED DOCUMENTS BETWEEN THE AGENCY AND SEARS, DEVELOPMENT COMPANY FOR THE CONSTRUCTION OF A SEARS AUTO CENTER ON TWO PROPERTIES LOCATED AT 2000-2016 TELEGRAPH AVENUE AND 490 THOMAS L. BERKLEY WAY.

PURPOSE AND SCOPE

In accordance with the Measure H Charter Amendment, which was passed by the voters at the General election of November 5, 1996, we have made an impartial financial analysis of the accompanying Proposed Resolutions and Agenda Report. We also analyzed the appraisal report prepared by an independent appraiser as of October 19, 2004.

The City Auditor is elected by the citizens of Oakland to serve as an officer in charge of an independent department auditing City government activities. The independence of the City Auditor is established by the City Charter.

Since the Measure H Charter Amendment specifies that our impartial financial analysis is for informational purposes only, we did not apply Generally Accepted Government Auditing Standards as issued by the Comptroller General of the United States. Moreover, the scope of our analysis was impaired by Administrative Instruction Number 137, effective May 21, 1997, which provides only two (2) weeks for us to plan, perform and report on our analysis.

SUMMARY

The Proposed Resolutions would approve various amendments and agreements related to the development of a mixed-use rental housing and retail development project known as the "Uptown Project." The Project is in the area generally bounded by Thomas L. Berkley Way (formerly 20th Street) on the north; Telegraph Avenue on the east; 19th Street on the south; and San Pablo avenue on the west: The Proposed resolutions would authorize:

1. execution of amendments to a lease disposition and development agreement, a ground lease and related documents between the Agency, the City of Oakland and FC Oakland, Inc;
2. negotiation of a Purchase and Sales Agreement with Sears Development Co. for the acquisition of the Sears-owned property at 1911 Telegraph Avenue for an amount not to exceed \$12.5 million; and.
3. a disposition and development agreement, ground lease and related documents between the Agency and Sears for the construction of a Sears Auto Center on two properties located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way

Amendments to a lease disposition and development agreement (LDDA)

LDDA between the City of Oakland and FC Oakland, Inc. would be amended as follows:

1. The Agency will increase the site assembly cost acquisition ceiling by \$2.8 million, from \$14,195,000 to \$16,995,000, to allow for the Agency's acquisition of the Sears-owned Property.

2. The Agency will increase its contribution to the hazardous materials cleanup costs of the Project site by \$1.5 million, from \$2,585,600 to \$4,085,600 in accordance with a cost sharing arrangement between the City and FC Oakland.

Sears Purchase and Sales Agreement

The Sears Property comprises almost a full city block between William Street to the north, Telegraph Avenue to the east, 19th Street to the south, and San Pablo Avenue to the west. The property is improved with:

1. a four-story parking garage with 620 parking spaces for Sears' customers and the public;
2. 125 surface parking spaces for Sears' staff and customers;
3. a free-standing Sears Auto center; and
4. an abandoned auto service station building.

FC Oakland plans to create a new street that will bisect the property and create two new parcels known as Parcel 2 and Parcel 4, which will be developed as part of the Uptown Project.

Generally, Agency staff has agreed to the following terms and conditions with Sears:

1. Cash. The Agency will pay to Sears \$9,700,000, cash subject to a \$350,000 holdback, which will remain in an escrow account for at least 36 months and will be used to fund a portion of the environmental cleanup of the Property.

In late 2003 Agency staff learned that there is groundwater contamination in the vicinity of the abandoned auto service station, which had been operated by ChevronTexaco from 1962 until 1978, and by Emporium Capwell from 1979 to 1988. ChevronTexaco has agreed to take the lead on developing an appropriate cleanup plan and to pay 62 percent of the costs associated with the cleanup, whereas some combination of Sears and Emporium Capwell is responsible for the remaining 38 percent.

2. New Sears Auto Center Site. The proposed Purchase Agreement would require the Agency to enter into a Disposition and Development Agreement (DDA) and ground lease with Sears for the Agency's interests in two parcels (Hahn Properties) located at 2000-2016 Telegraph Avenue and 490 Thomas L. Berkley Way, which the Agency is acquiring through eminent domain. The ground lease will allow Sears to build a new Auto Center near its retail store.

In conjunction with its eminent domain actions, the Agency has deposited \$1.6 million with the State Condemnation Deposit Fund to acquire the Hahn Properties.

3. Leaseback of Existing Sears Auto Center to Sears. After the Agency buys Sears' Property, the Agency will lease back to Sears that portion of the Property currently occupied by the Sears Auto Center and related surface parking. The leaseback will give Sears time to build its new Auto Center on the Hahn Properties site. The current estimated leaseback period is approximately 20 months, and the value of the leaseback

arrangement is estimated to be approximately \$240,000, or 10 percent per year of the property value.

- 4 Sears' Employee Parking Spaces. The City will provide to Sears at no cost fifty (50) non-exclusive parking spaces in the garage located at 2101 Telegraph for the earlier of 25 years or until Sears no longer operates a department store in downtown Oakland, whichever occurs first. The value of the Parking License is estimated to be approximately \$960,000.

FISCAL IMPACT

The total consideration for acquisition of the Sears property will be \$12.5 million, as summarized below:

Description	Amount
Cash payment to Sears	\$ 9,700,000
Deposit with State Condemnation Deposit Fund to acquire Hahn Properties	1,600,000
Leaseback Sears Auto Center and surface parking while new facilities are being built	240,000
Sears employees parking spaces	960,000
Total	\$ 12,500,000

The total consideration is consistent with the independent appraiser's estimated market value of \$12,600,000 as of October 19, 2004.

CONCLUSION

Based on the information that was made available to us, the Proposed Resolutions appear to be reasonable.

Prepared by:

Issued by:

Jack McGinity, CPA

Roland E. Smith, CPA, CFS
City Auditor

Report completion date:
May 14, 2005