



DATE: September 15, 2020

TO: Mayor and City Council

FROM: Deputy City Manager

SUBJECT: Adopt a Resolution: (1) Approving the Government Code Section 52201 Summary Report for the Project; and (2) Authorizing the City Manager to Negotiate and Execute a Disposition and Development Agreement with BMODDRE2, LLC for Transfer of Specified City Owned Properties and for the Development of a New Subaru Automobile Dealership

RECOMMENDATION

That Council adopts a Resolution (Attachment II): (1) approving the Government Code Section 52201 Summary Report for the project (Attachment III); and (2) authorizing the City Manager to negotiate and execute a Disposition and Development Agreement (DDA) with BMODDRE2, LLC (Developer) for the transfer of specified properties and for the development of a new automobile Subaru dealership.

SUMMARY

City staff recommends entering into a DDA with the Developer that contemplates the following actions:

1. Disposition from the City to Developer for a purchase price of \$5,421,000 of a 4.9-acre parcel to be transferred for the development of an auto dealership (Dealership Development Parcel), and a 5.2-acre parcel to be restricted for affordable housing purposes (Adjacent Parcel);
2. Restriction of the Adjacent Parcel as future affordable housing development;
3. Retention by Developer of the Dealership Development Parcel for the construction of a new auto dealership operating under the Subaru Brand;
4. Transfer of the restricted Adjacent Parcel to the City from the Developer in exchange for a 2.1-acre City owned site located at the northeast corner of Mission Boulevard and Carlos Bee Boulevard (Swap Parcel); and

5. Development of the Dealership Development Parcel is estimated to generate between \$330,000 to \$500,000 annually in new sales tax to the City to help pay for City services and use of the Swap Parcel for parking similar to its existing use.

If approved, upon execution of the DDA, the City anticipates transferring the property to the Developer later this month and construction is projected to commence soon thereafter.

BACKGROUND

The City of Hayward entered into a Purchase and Sale Agreement (PSA) with Caltrans in January 2016 to acquire 10 parcel groups comprised of properties acquired by Caltrans for the State Route 238 expansion project. Caltrans has transferred those properties to the City subject to the City managing the disposition and development of these former State Route 238 parcel groups with the goals of removing blight, enhancing community involvement in the development process, and creating economic and public benefits, such as job generating uses and trails and parks. The City also owns other remnant parcels along the Mission Boulevard corridor that were acquired by the City as part of the now completed Mission Boulevard road widening project. As the City sells or transfers particular parcels, the City is obligated to repay Caltrans the negotiated purchase prices for the various parcel groups under the PSA.

On September 25, 2018, the City Council adopted a Resolution authorizing the City Manager to enter into an Exclusive Negotiating Rights Agreement (ENRA) with the Developer to allow them time to obtain entitlements for the proposed project and to negotiate a DDA for the property transfers.

The Developer intends to acquire the Dealership Development Parcel, a flat 4.9-acre area on the lower western portion of the site zoned for commercial use, as well as the Adjacent Parcel, a 5.2-acre upper hillside area zoned for residential use located on the eastern portion of the site. The Developer obtained planning approvals in June to develop a new first-class Subaru auto dealership on the Dealership Development Parcel. The new dealership on the Dealership Development Parcel will include the construction of a two-story 57,000-square-foot building with ancillary minor service repair. The dealership project includes the demolition of three dilapidated structures which were formally used as offices for used car dealerships. A Notice of Decision of the planning approval for the dealership was mailed to all property owners within 500 feet of the site, providing notice of the approval and of the 15-day appeal period. No appeals were received. A copy of the approved elevation, site plan, floor plan drawings, and the Conditions of Approval can be found in Attachments IV-VII.

The Adjacent Parcel is not appropriate for commercial use and is intended for future residential use. As such the Developer will record a covenant on the Adjacent Parcel to restrict any future use for affordable housing and then transfer it back to the City in exchange for the Swap Parcel, a 2.1-acre City-owned property on the northeastern corner of Carlos Bee Boulevard and Mission Boulevard. After the land swap is completed, the City will hold fee title to the Adjacent Parcel and intends to make the site available for subsequent development of affordable housing in accordance with applicable laws.

The Swap Parcel is zoned for commercial use and will be used by the Developer as additional parking for the Subaru Dealership consistent with its existing use.

DISCUSSION

The following section summarizes the key terms of the DDA, as well as the major findings of the Government Code Section 52201 Summary Report required for the sale of the property.

I. Key Terms of the DDA

City staff recommends that the Council authorize the City Manager to enter into a DDA with the Developer with the following key terms:

- **Parties** – City of Hayward and BMODDRE2, LLC, a private developer specializing in new auto dealerships.
- **Property Transfers** – The following outlines the property transfer actions contemplated by the DDA:
 - Disposition of the Dealership Development Parcel from the City to Developer in its “as-is” condition;
 - Disposition of the Adjacent Parcel, to the Developer subject to a recorded use restriction limiting the use of the site for future affordable housing development;
 - Retention by Developer of the Dealership Development Parcel and the construction of an approximately 57,497-square-foot automobile sales and full service auto repair facility, including landscaping and other site improvements, in order to establish a first-class automobile sales and full service auto repair facility;
 - Like-Kind transfer of the restricted Adjacent Parcel to the City from the Developer in exchange for the Swap Parcel; and
 - Retention by Developer of the Swap Parcel for parking consistent with its existing use.
- **Purchase Price** – \$5,421,000 to be paid by the Developer to the City in exchange for the Dealership Development Parcel and the Adjacent in the form of cash payment. All sales proceeds received by the City will be paid to Caltrans to cover the cost of the purchase price.

- **Project Description** - A new dealership on the Dealership Development Parcel including the demolition of three dilapidated structures which were formally used as offices for used car dealerships and construction of a two-story 57,000-square-foot building with ancillary minor service repair and parking consistent with Attachments IV-VII .
- **Operating Covenant** - An operating covenant with a term of 10 years will be recorded on the Dealership Parcel providing oversight on the allowed use as a first-class automobile sales and full service auto repair facility, transfers, and subleases of the Dealership Development Parcel.
- **No Financial Assistance** - The City will not make any form of direct or indirect financial contribution and will not be required to provide any other assistance to the Developer; and
- **Planning Compliance** - The proposed project on the Dealership Parcel is in compliance with the requirements of the City’s General Plan and Mission Boulevard Form Based Zoning Code.

II. 52200.2 Analysis - Creation of Economic Opportunity/Common Benefit

The actions contemplated under the DDA will create economic opportunity in the Hayward community. Section 52200.2 of the California Government Code defines “economic opportunity” as any of the following:

- (a) Development agreements, loan agreements, sale agreements, lease agreements, or other agreements that create, retain, or expand new jobs, in which the legislative body finds that the agreement will create or retain at least one full-time equivalent, permanent job for every thirty-five thousand dollars (\$35,000) of city, county, or city and county investment in the project after full capacity and implementation;
- (b) Development agreements, loan agreements, sale agreements, lease agreements, or other agreements that increase property tax revenues to all property tax collecting entities in which the legislative body finds that the agreement will result in an increase of at least 15 percent of total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the government entity;
- (c) Creation of affordable housing, if a demonstrated affordable housing need exists in the community, as defined in the approved housing element or regional housing needs assessment;
- (d) Projects that meet the goals set forth in Chapter 728 of the Statutes of 2008 and have been included in an adopted sustainable communities strategy or alternative planning strategy or a project that specifically implements the goals of those adopted plans; and

(e) Transit priority projects, as defined in Section 21155 of the Public Resources Code.

Under the DDA, the City is not providing any form of financial assistance to the Developer. The City, however, has identified the following benefits that will be generated through the implementation of the DDA and that will create economic opportunity as defined in Government Code Section 52200.2.

Creation of New Jobs

Under Section 52200.2 (a), economic opportunity is achieved if an agreement results in the creation, retention, or expansions of new jobs, at least one full-time equivalent, permanent job for every thirty-five thousand dollars (\$35,000) of city investment in the project. As previously discussed, the City is not providing any financial assistance for the proposed development and no part of the development costs for the proposed project will be publicly subsidized. Nevertheless, the sale of the Property under the DDA will result in job creation as a result of the anticipated construction and operation of the auto dealership. During the construction of the project, it is anticipated that approximately 400-500 full-time equivalent (FTE) temporary construction jobs will be created. In addition, upon completion and full implementation, the dealership itself will generate an estimated 70-100 full-time permanent jobs. The majority of the jobs being created are high skilled technical positions and sales positions paying well over \$100,000 per year.

Increase in Property Tax Revenue

Currently, none of the properties are generating any property tax revenue to the City or other taxing entities because they are publicly owned. Upon transfer to the Developer pursuant to the DDA, the assessed value of the combined Dealership Development Parcel and the Swap Parcel is expected to increase from \$0 to approximately \$5,421,000, which will result in estimated property tax payments of approximately \$54,000 (1% of assessed value), in its unimproved state. The change in assessed value will result in an increase in property tax revenue to all taxing entities prior to the full implementation of the proposed development. It is anticipated that the completion of the proposed project will further increase the Dealership Development Parcel's assessed value to more than \$30 million. Based on the change in property tax revenues generated by the transfer in an unimproved state, it can be concluded the proposed development will increase property tax revenues to all property tax collecting entities, by more than fifteen percent (15%) when compared to the year prior to the property being acquired by the government entity and the condition of Section 52200.2 (b) will be satisfied.

Creation of Affordable Housing

The creation of affordable housing to meet demonstrated affordable housing needs identified in the Housing Element of the City's General Plan constitutes an economic opportunity per Section 52200.2 (c). While no affordable housing is being constructed as part of the proposed

project, as part of the property exchange, the City will be receiving the Adjacent Parcel, which will have a covenant restriction on the site limiting the development to affordable housing only. The City contemplates that the future development of the site will result in the creation of twenty or more affordable housing units (depending on unit size and type).

Public Purpose/Common Benefit

The transfer of the property and construction of the proposed development will create a common benefit and further the public purpose of economic development by creating jobs, increasing property taxes for all taxing entities, and the future creation of affordable housing. It also brings about the redevelopment of a site that has suffered from historic underdevelopment as a result of the proposed and now defunct State Route 238 freeway project.

III. Government Code 52201 Summary Report

Government Code Section 52201 authorizes the City to sell or lease property to which it holds title for the purpose of creating economic opportunity. The City must first secure approval of the proposed sale from the City Council after a public hearing. A copy of the proposed DDA and a summary report that describes and contains specific financing elements of the proposed transaction is required to be available for public inspection prior to the public hearing. Staff prepared the Government Code Section 52201 Summary Report in compliance with the code (the "Section 52201 Summary Report"). The Section 52201 Summary Report is attached to this report as Attachment III and is incorporated herein by this reference.

The Section 52201 Summary Report contains the following information:

- The cost of the DDA to the City, including land acquisition costs, clearance costs, relocation costs, and the costs of any improvements to be provided by the City, plus the expected interest on any loans of bonds to finance the agreement;
- The estimate value of the interest to be conveyed, determined at the highest and best use permitted under the general plan and zoning;
- The estimated value of the interest to be conveyed in accordance with the uses, conditions and covenants, and development costs required under the proposed PSA, i.e., the fair reuse value of the property;
- An explanation of why the sale of the property will assist in the creation of economic opportunity; and
- If the sale price is less than the fair market value of the interest to be conveyed, determined at the highest and best use consistent with the general plan and zoning, then the City must provide as part of the summary an explanation of the reasons for the difference.

The conclusion of the Section 52201 Summary Report reflects that the estimated total cost to the City is projected to be equivalent to the purchase price received from the Developer. The City will receive \$5,421,000 in compensation for the transfer of the Dealership Development Parcel and the Adjacent Parcel, which is the estimated value of the property at its highest and

best use. In addition, the like-kind exchange between the City and the Developer under the land swap, will result in the Swap Parcel being transferred from the City to the Developer in exchange for the fee title to the Adjacent Parcel. The land swap results in the City taking possession of the 4.9-acre Adjacent Parcel in exchange for the 2.1-acre Swap Parcel, an equivalent transfer of properties valued at their highest and best use. The City fully expects that the purchase price received from the Developer and the fee title to the Swap Parcel will not be less than the costs paid by the City for the combined Dealership Development Parcel, the Adjacent Parcel and the Swap Parcel and the costs of the DDA as summarized in Section III of the Section 52201 Summary Report.

Environmental Review

The City finds and determines that the sale of the Property is exempt from California Environmental Quality Act, California Public Resources Code §21000- §21177, as amended ("CEQA") pursuant to Government Code Section 14528.65. Furthermore, pursuant to CEQA and its implementing guidelines, the City (in its capacity as "lead agency"), has prepared and shall cause to be filed with the Alameda County Recorder's Office, a Notice of Exemption (the "Notice of Exemption") for the transactions contemplated by this Agreement.

The transfer and development of the Dealership Parcel is exempt from CEQA under 14 California Code of Regulations Section 15332 in that the Development: (1) is consistent with the applicable general plan and zoning designations and regulations; (2) the proposed development will occur within the City limits, and the Dealership Parcel is less than five acres; (3) the Dealership Parcel has no value as habitat for endangered, rare, or threatened species; (4) the approval of the proposed Development will not result in any significant effects relating to traffic, noise, air quality or water quality; and (5) the Dealership Parcel can be served by all required utilities and public services.

The transfer of the Adjacent Parcel is exempt from CEQA under 14 California Code of Regulations Section 15061(b)(3) as it can be seen with certainty that there is no possibility that this transfer will have a significant impact on the environment. The City agrees that additional CEQA review for the development of the Adjacent Parcel by its subsequent owner will be conducted at such time as there is a development proposal brought for City approval for the development of affordable housing on the Adjacent Parcel.

The transfer of the Swap Parcel to the Developer and the continued use of the Swap Parcel is exempt from CEQA under 14 California Code of Regulations Section 15301 as continued operation of an existing facility and use.

ECONOMIC IMPACT

The proposed development would have a positive economic benefit for the City of Hayward. No property taxes are currently being paid on the parcel group. Sale of the Dealership Development Parcel and the Swap Parcel to a non-governmental entity will place it back on the tax rolls. In addition, the proposed project of a new auto dealership would include the new auto sales along with a service facility, which would generate positive sales tax revenue

and create local jobs. This development could serve as a revitalization project strengthening Hayward's Auto Row and encouraging other development or investments in the area.

FISCAL IMPACT

The sales proceeds will be utilized by the City to repay Caltrans as required under the PSA. Upon transfer of the property from the City to the Developer, the property's assessed valuation and tax exclusions would change and would result in a projected ongoing increase in property tax revenue for the City. According to estimates based on projected value of the property and planned improvements, the completed projected assessed valuation is estimated at more than \$30 million, resulting in approximately \$300,000 in annual property tax revenue to the taxing entities collecting property tax in the City. The City would receive about \$45,000 of this property tax revenue annually. Additionally, a new Subaru auto dealership is estimated to generate between \$330,000 to \$500,000 annually in new sales tax, a portion of which would also go to the City for City services.

According to an estimate based on a City of Hayward Fiscal Impact Model, the project would generate about \$550,000 in annual revenue from taxes including: property, business license, and sales tax, and would generate approximately \$21,115 in annual costs related to City services including but not limited to Fire, Police, Maintenance Services, resulting in a net positive impact of approximately \$528,885 per year.

STRATEGIC ROADMAP

The proposed project supports the Strategic Priority of Grow the Economy, and specifically, relates to the implementation of the following project:

Project 5, Part 5.a-c: Facilitate disposition and development of Route 238 Corridor lands.

NEXT STEPS

Following Council approval, staff will take necessary steps to convey the property to the Developer in accordance with the DDA. The Developer will continue the process of pursuing construction permits for the project. The development team is currently planning for construction to begin this fall with ultimate completion in late 2021.

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Recommended by: Jennifer Off, Deputy City Manager

Approved by:



Kelly McAdoo, City Manager