



**DATE:** May 16, 2017

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT:** Approval of a Resolution Approving Government Code Section 52201 Summary Report and Authorizing the City Manager to Negotiate and Execute a Purchase and Sale Agreement with William Lyon Homes, Inc. (the "Developer") for Specified Properties Located in South Hayward near Dixon and Valle Vista Avenues and Making Specified Findings in association therewith.

## **RECOMMENDATION**

That the City Council approves the attached resolution (Attachment II) approving the Government Code Section 52201 Report and authorizing the City Manager to negotiate and execute a Purchase and Sale Agreement ("PSA") with the Developer for specified properties located in South Hayward near Dixon and Valle Vista Avenues, in a form on file with the City Clerk and consistent with the terms and conditions identified in this report.

## **BACKGROUND**

### *Developer Background and Experience*

The Developer is one of the largest regional homebuilders in the Western United States. Headquartered in Newport Beach, California, the company is primarily engaged in the design, construction, marketing, and sale of single-family detached and attached homes in California, Arizona, Nevada, Colorado, Washington, and Oregon. In October of 2015, the Developer approached the City about entering into an Exclusive Negotiating Rights Agreement ("ENRA") regarding the potential development of several Caltrans 238 Bypass excess properties in the Mission/Dixon/Valle Vista Corridor. In January of 2016, the City Council authorized the City Manager to enter into an ENRA with the Developer and into a Purchase and Sale Agreement with Caltrans to acquire excess property in the 238 Bypass Corridor (the "Caltrans PSA"), including the properties covered by the ENRA.

### *Subject Properties*

Under the PSA, the City may potentially convey up to 17 properties to the Developer, including fourteen (14) Caltrans properties (the "Caltrans Property"); one (1) City owned parcel (the "City Owned Property"); one (1) parcel owned by Bay Area Rapid Transit (BART) (the "BART Property"); and one (1) parcel owned by Alameda County Flood Control (ACFC)

(the "ACFC Property"). The PSA also involves a land swap between the Hayward Area Recreation and Park District (HARD) and the City for parkland acreage.

Pursuant to Local Alternative Transportation Improvement Program (LATIP) statutes, under Government Code Section 14528.65(a)(2), the sale of the Caltrans Properties are exempt from the priorities and procedures regarding the disposal of residential property under Government Code Section 54235 et. seq.

Under Government Code Section 52201, the City is authorized to sell or lease property to which it holds title for the purpose of creating economic opportunity. Furthermore, under Government Code Section 37350, the City may purchase, lease, receive, hold, and enjoy real and personal property and control and dispose of it for the common benefit.

The City has acquired or will acquire all the properties for the purpose of creating economic opportunity, and for the common benefit described in this report.

#### *Proposed Concept Project*

The "Proposed Project" consists of residential condominiums and a commercial center off of Mission Boulevard which is connected by a park and trail spine from Valle Vista to Industrial Boulevard. Under the initial proposal, the project may contain up to 351 residential units in either the cluster townhome or row townhome variety, including 884 parking spaces for the residential component.

The Proposed Project is also expected to include a retail component of approximately 21,900 square feet of retail containing two 6,700 square foot units (end units) and two 4,250 square foot units (center units), and 76 parking spaces for retail, including parking along Mission and within the plaza to the south of the retail space.

One of the Proposed Project's key recreational amenities is roughly 2.5 acres of parkland surrounding an existing Alameda County Flood Control channel and the installation of a trail system. The park will incorporate several outdoor fitness/PAR courses, along with California native garden and educational elements, two dog parks, and other general open spaces and walkways.

Approval of the PSA is simply one step in the approval process for the Proposed Project. The Proposed Project will still need to go through the entitlement and development review process in accordance with the terms of the PSA; and nothing in the PSA imposes any legally binding obligation to approve the entitlements for the Proposed Project or the Property.

#### *Timeframes*

The Developer is prepared to move forward with a formal development application and would like to commence the entitlement process, but given the significant cost associated with pursuing entitlements, they wish to execute the PSA in place prior to seeking entitlements for the Proposed Project. Under the PSA, no transfer will occur until all environmental review has

been completed and the conveyance of the property will not occur until the Developer has completed all necessary entitlements and is ready to record a final map but not more than eighteen months from the execution of the PSA.

## **DISCUSSION**

### *Terms of Purchase and Sale Agreement*

City staff began negotiations with the Developer in January on the terms of the PSA. The salient aspects of the proposed PSA are summarized as follows:

- The City commits to transfer City Owned Property and "Caltrans Property" and to take commercially reasonable efforts to negotiate for the acquisition (and potential transfer) of the "BART Property," the "ACFC Property," and the "HARD Property," all as defined in Recital A of the PSA.
- The City will convey the Property (or such portion thereof as it acquires) to the Developer in fee in its "as-is" condition.
- The Developer will pay the City \$27,382,000 for the Property (consisting only of the City Owned Property, the Caltrans Property and the HARD Property) in the form of cash payment, subject to the following potential adjustments:
  - If specified conditions listed in Section 2.1(a) of the PSA are not satisfied by a date agreed upon by the parties, and the HARD Property is not deeded to the Developer on the "Closing Date" (defined in the PSA), then the Purchase Price may be reduced by \$1,705,000;
  - If specified conditions listed in Section 2.1(b) of the PSA are satisfied by a date agreed upon by the parties, and the BART Property and ACFC Property are conveyed as part of the Property on the Closing Date, then the Purchase Price will be increased by \$4,201,075; and
  - The additional sum to be paid as part of the Purchase Price pursuant to Section 2.1(b) of the PSA may be reduced by the remediation costs (if any) agreed upon by the parties.
- The Developer will provide up to \$300,000 for any relocation costs.
- The Developer proposes to construct, subject to City entitlement and development review approvals and completion of environmental review, the Proposed Project.

- The City is not required to make any form of financial or other assistance to the Developer.
- The Proposed Project will be subject to and must comply with the requirements of the City's Inclusionary Housing Ordinance.

*Creation of Economic Opportunity/Common Benefit*

The Proposed Project, when constructed, will create economic opportunity in the South Hayward area. Section 52200.2 defines "economic opportunity" as any of the following:

- Development agreements, loan agreements, sale agreements, lease agreements, or other agreements that create, retain, or expand new jobs, at least one full-time equivalent, permanent job for every thirty-five thousand dollars (\$35,000) of city investment in the project after full capacity and implementation;
- Development agreements, loan agreements, sale agreements, lease agreements, or other agreements that increase property tax revenues to all property tax collecting entities, by at least 15 percent (15%) 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;
- Creation of affordable housing;
- 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; or
- Transit priority projects, as defined in Section 21155 of the Public Resources Code.

Under the PSA, 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 PSA and will create economic opportunity as defined in Government Code Section 52200.2.

*Increase in Property Tax Revenue*

Currently, all the properties subject to the PSA are not generating any property tax revenue to the City or other taxing entities. Under this PSA, these properties would have the potential to begin generating tax revenue for the City and others. Upon transfer to the Developer under the PSA, the assessed value of the Property will change from \$0 to up to \$31,583,075. The exchange will result in estimated property tax payments of approximately \$315,830.75, in its

unimproved state. The change in assessed value will result in an increase in property tax revenue to all taxing entities of more than 15% prior to the full implementation of the Proposed Project. While it is anticipated that the completion of the Proposed Project will further increase the Property's assessed value to more than \$220 million, because the Proposed Project has not been entitled, the City cannot accurately estimate the total property tax revenues resulting from the Proposed Project at full implementation. Nevertheless, based on the change in property tax revenues generated by the transfer in an unimproved state, it can be concluded that after full project implementation, the Proposed Project will increase property tax revenues to all property tax collecting entities, by more than 15 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. The Proposed Project will be subject to the requirements of the City's Inclusionary Housing Ordinance and will thus increase, improve, or preserve the supply of quality affordable housing in the community.

The total number of units of affordable housing that will be created is dependent on the total number of units approved by the City as part of the entitlement process for the Proposed Project. Section 10-17.205 provides the unit threshold and basic requirements applicable to ownership residential projects, like the one proposed to be constructed.

### *Job Creation*

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 Project and no part of the development costs for the Proposed Project will be publicly subsidized. Nevertheless, the sale of the Property under the PSA will result in job creation as a result of the anticipated construction of retail/commercial space. During the construction of the Proposed Project, it is anticipated that 420 full-time equivalent (FTE) temporary construction jobs will be created. Upon completion and full implementation, the Proposed Project is also anticipated to generate an estimated 60 permanent jobs (associated with the commercial space) without investment of City funds.

### *Public Purpose/Common Benefit*

The transfer of the Property and construction of the Proposed Project will create a common benefit and further the public purpose of economic development by creating jobs, market rate and affordable homes, parks, and vibrancy in an area of the City that has suffered from historic underdevelopment as a result of the proposed and now defunct SR 238 freeway project.

### *Government Code 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 PSA 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 PSA 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 or bonds to finance the agreement;
- The estimated 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;
- 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 less than the Purchase Price received from the Developer. The City may receive up to \$31,583,075 in compensation for the transfer of the Property, which is the estimated value of the Property at its highest and best use. The City fully expects that the purchase price received from the Developer will not be less than the costs paid by the City for the combined Property and the costs of the PSA as summarized in Section III of the Section 52201 Summary Report.

## **ECONOMIC AND FISCAL IMPACT**

In addition to the economic impact resulting from the additional jobs and affordable housing fees, the transaction contemplated in the PSA will result in increased property taxes prior to project build-out of approximately \$315,830 per year. While it is anticipated that the completion and build-out of the Proposed Project will further increase the Property's assessed value to more than \$220 million, because the Proposed Project has not been entitled, the City cannot accurately estimate the total property tax revenues resulting from the project at full implementation.

## **NEXT STEPS**

Following Council approval, the City Manager will execute a PSA in a form approved by the City Attorney consistent with the terms and conditions contemplated in this staff report and its associated attachments.

*Prepared and Recommended by:* John Stefanski, Management Analyst I

Approved by:



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Kelly McAdoo, City Manager