

**DATE:** December 1, 2009

**TO:** City Council and Redevelopment Agency Board Members

**FROM:** City Manager/Redevelopment Executive Director

**SUBJECT:** Authorization to Negotiate and Execute a Professional Services Agreement with Keyser Marston Associates, and Appropriation of Funds to Prepare an Inclusionary Housing Ordinance and Affordable Housing In-Lieu Fee Review and Study

### **RECOMMENDATION**

That the City Council and Redevelopment Agency Board adopt the attached resolutions authorizing the City Manager/Executive Director to negotiate and execute a professional services agreement with Keyser Marston Associates, Inc. in an amount not to exceed \$50,000, in order to conduct a review and study of the City's Inclusionary Housing Ordinance and Affordable Housing In-Lieu Fee, appropriating said funds from the Agency's Low/Moderate Income Housing Fund.

### **BACKGROUND**

The City of Hayward adopted an Inclusionary Housing Ordinance and an Affordable Housing In-Lieu Fee by separate resolution, in June 2003. In general, the Ordinance requires that new "for-sale" residential developments of over 20 units must set aside 15% of the total number of units for purchase by households of moderate-income (incomes up to 120% of area median income). New rental developments of over 20 units also have a 15% set aside requirement, which is to be split 50/50 between very-low and low-income households at 50% to 60% of area median income.

To date, the City has entered into four Inclusionary Housing Agreements. Two of these Agreements, The Crossings at Eden Shores and Garden Walk, involved the designation of units on-site for sale to moderate-income households. The other two Agreements, for Cannery Place and with the DeSilva Group for LaVista, Garin Vista, and KB Homes, follow the "development incentives and alternatives" sections of the Ordinance, which allow for the provision of off-site affordable units.

Under the first two agreements, a total of forty-eight affordable homes have been set aside for moderate income buyers. Of these forty-eight units, twenty-seven have already been sold – many with First Time Homebuyer loans. The latter two Agreements have resulted in the development of Walker Landing, a seventy-eight-unit affordable rental development, and C & Grand Senior Housing, a sixty-unit affordable senior housing development.

Under the Ordinance, “for-sale” housing developers may request, and the City shall consider on a case-by-case basis, the payment of Affordable Housing fees in-lieu of providing the actual units. Once collected, the fees are to be deposited into an Affordable Housing Trust Fund to be used to increase the supply of affordable housing units throughout the City. The In-Lieu fee amount was set at \$80,000 per affordable unit in 2003, and the amount of the fee was to be re-evaluated on an annual basis, or as necessary. To date, the City has not collected any Affordable Housing In-Lieu fees, although the City Council did approve an amendment to the Cannery Place Inclusionary Housing Agreement with SCS/Citation Homes and Meritage Homes in 2008 that would have allowed a combination of land dedications and fee payments in-lieu of providing the remainder of its affordable housing requirement on-site. This amendment was not executed due to continued declines in the housing market, changes in the developer, the project site plans, and, consequently, the developer’s desire to re-negotiate the IHA once again.

Also, due to the downturn in the new housing construction market over the past two years, the City Council has expressed a desire to consider certain temporary relief measures - including potential relief in the timing and/or amount of payment of developer fees. The Council also discussed the potential to allow the payment of the Affordable Housing In-Lieu fee “by right” for a period of time. The City Council discussed this matter at a Council Work session on June 23d, 2009, and staff was requested to return with specific relief measures.

Finally, recent court decisions regarding affordable housing in-lieu fees and mandated affordable rental units have made it prudent to conduct a study analyzing the City’s fees and policies in the context of its Inclusionary Housing Ordinance.

## **DISCUSSION**

As a result of the economic downturn, the City Council’s desire to consider developer relief measures, and the recent court cases discussed above, staff issued a request for consultant proposals (RFP) to review Hayward’s Inclusionary Housing Ordinance and other local policies, and to conduct an analysis to determine an Affordable Housing In –Lieu Fee amount that is appropriate and sustainable in Hayward’s housing market. The RFP requested that the consultant use at least two methods to analyze the appropriate fee amount. The first method will provide detailed information regarding the cost difference between market rate housing units of different types, and the price that low-to-moderate-income households can afford to pay. This is essentially the same analysis as was used to justify the fee amount when the Ordinance was adopted in 2003.

In addition, the consultant will undertake a nexus study to determine the impact that the addition of new market-rate housing has on the need for additional affordable housing in Hayward. In general, this is done by using data sources to estimate the number of jobs that are needed to support a typical market-rate household’s “basket of consumer goods and services” in this area. These jobs are then sorted into income categories, and translated into numbers of affordable housing units that are needed to support the market-rate housing.

Finally, the consultant will consult with representative stakeholders in this community, including market-rate developers and local real estate industry representatives, as well as affordable housing

providers and advocates. The consultant will also seek to obtain information regarding the financial impact of the Inclusionary Housing Ordinance on the overall feasibility of new market rate housing development. Finally, the consultant will consider the effectiveness and value of the incentives that the City currently lists in its Housing Element and provides developers to produce affordable housing.

At the end of this process, staff and attorneys, and the consultant will consider any potential changes to the Inclusionary Housing Ordinance that may be necessary or advisable in order to improve the Ordinance or account for recent legal rulings. These will be brought forward along with any proposed change to the Affordable Housing In-Lieu fee.

Staff issued the RFP to four consultants: Keyser Marston Associates, Seifel Consulting, Inc., Bay Area Economics and HR&A Advisors Inc. All four firms have undertaken housing economics studies and nexus studies previously, and are well qualified to undertake this study. The proposals ranged in cost from \$43,500 to \$85,000 depending in part on the detail proposed. Staff subsequently interviewed two of the lower cost firms, and selected Keyser Marston Associates as the lowest competent bidder.

Keyser Marston has completed residential nexus studies for the City of Seattle, the City of San Francisco, Napa County, and the City of Elk Grove. They have also prepared nexus analyses for other types of impact categories, including jobs-housing impacts, child care, parks and other programs. The lead consultant for this study will be Ms. Kate Funk.

The consultant initially proposed \$43,500 for the proposed study; however, staff is recommending that \$50,000 be appropriated in order to allow additional stakeholder input, including a potential meeting of the stakeholders to discuss the costs, benefits, impacts, and opportunities presented by the Ordinance. It is also anticipated that KMA will be present at a City Council work session to discuss the Inclusionary Housing Ordinance and Fee, as well as a City Council meeting, as necessary.

## **FISCAL IMPACT**

The proposed study was not anticipated during the preparation of the FY 2010 budget. As a result, it is recommended that the amount of \$50,000 be appropriated from the Redevelopment Low/Moderate Income Housing Fund (Fund 452) for the cost of the study. This fund has a current available fund balance of approximately \$9.5 million. Much of the remaining fund balance is proposed to be dedicated to the South Hayward BART development and the Route 238 tenant's home purchase program.

## **PUBLIC CONTACT**

As previously noted, the Inclusionary Housing Ordinance and In-Lieu Fee were discussed as part of a potential package of developer relief measures and incentives at a City Council work session held in June of this year. Staff has also received preliminary input from developers and a representative of the Home Builders Association of Northern California.

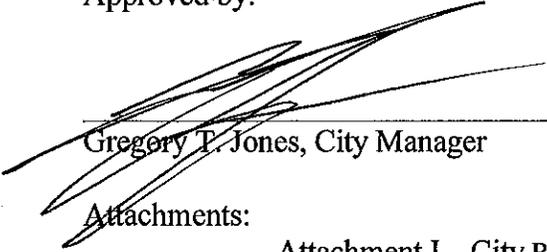
## NEXT STEPS

If the proposed contract is approved, the consultant can begin immediately by undertaking both local housing market research as well as stakeholder interviews. The nexus study itself will take two months to prepare. It is estimated that a draft of the proposed study can be prepared by March of 2010, and that any proposed modifications to the Affordable Housing In-Lieu Fee and Ordinance can be presented shortly thereafter. The Ordinance modifications may also include considerations for “developer relief” measures, such as deferral of In-Lieu fee payment, and payment of In-Lieu fees by right. In addition, the Development Services Department is preparing separate recommendations for developer relief measures for presentation in February, 2010.

*Prepared by:* Maret Bartlett, Redevelopment Director

*Recommended by:* Fran David, Assistant City Manager

Approved by:



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Gregory T. Jones, City Manager

Attachments:

Attachment I – City Resolution – Authorization to Negotiate and Enter into Contract with Keyser Marston Associates for Affordable Housing In-Lieu Fee Study – Not to Exceed \$50,000

Attachment II – Agency Resolution – Appropriating \$50,000 from Agency Low/Mod Housing Fund 452 for Affordable Housing In-Lieu Fee Study

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KEYSER MARSTON ASSOCIATES, INC., TO PREPARE AN INCLUSIONARY HOUSING ORDINANCE AND AFFORDABLE HOUSING IN-LIEU FEE STUDY

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute a professional services agreement with Keyser Marston Associates, Inc., to prepare an Inclusionary Housing Ordinance and Affordable Housing In-Lieu fee study, in an amount not to exceed \$50,000, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_

City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

REDEVELOPMENT AGENCY OF THE CITY OF HAYWARD

RESOLUTION NO. RA 09-\_\_\_\_\_

RESOLUTION AMENDING RESOLUTION RA 09-16, AS AMENDED,  
THE BUDGET RESOLUTION FOR FISCAL YEAR 2009 RELATING TO  
AN APPROPRIATION OF FUNDS FROM THE REDEVELOPMENT  
AGENCY'S LOW AND MODERATE INCOME HOUSING FUND, FUND  
452

BE IT RESOLVED by the Agency Board of the Redevelopment Agency of  
the City of Hayward that Resolution No. RA 09-16, as amended, the Budget Resolution for fiscal  
year 2009, is hereby further amended by approving an appropriation of \$50,000 in order to  
prepare an Inclusionary Housing Ordinance and Affordable Housing In-Lieu Fee Study, from the  
Redevelopment Agency Low and Moderate Income Housing Fund, Fund 452.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES:                    AGENCY MEMBERS:

MAYOR:

NOES:                    AGENCY MEMBERS:

ABSTAIN:                AGENCY MEMBERS:

ABSENT:                 AGENCY MEMBERS:

ATTEST: \_\_\_\_\_

Secretary of the Redevelopment Agency  
of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_

General Counsel