



CITY OF
HAYWARD
HEART OF THE BAY

DATE: September 23, 2014
TO: Mayor and City Council
FROM: Assistant City Manager
SUBJECT: Agenda Item #5 Staff Report and Attachments

Attached please find the staff report and attachment for Item #5 on the September 23, 2014 Council agenda.

Prepared by: Kelly McAdoo, Assistant City Manager

Approved by:

Fran David, City Manager

Attachment:
Staff Report and Attachment for Agenda Item #5

DATE: September 23, 2014

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adopt a Resolution Authorizing the City Manager to Negotiate and Execute an Amendment to the Owner Participation Agreement for the South Hayward BART Transit Oriented Project and Amendments to the State of California Infill Infrastructure Grant Documents to Release the City from Liability to Repay Grant. CEQA: The Project was previously reviewed under a Mitigated Negative Declaration (MND) and a related Mitigation Monitoring and Reporting Program was adopted for the South Hayward BART Mixed-Use Project certified by the City Council in Resolution No. 09-025 on March 17, 2009. An Addendum to the MND was also approved in June of 2011.

RECOMMENDATION

That the City Council rely on the previously approved environmental documents and adopt attached resolution (Attachment I) authorizing the City Manager to negotiate and execute an amendment to the South Hayward BART Owner Participation Agreement (OPA) and amendments to the State Infill Infrastructure Grant Documents, consistent with recommendations in this report.

SUMMARY

The development of the first phase of the South Hayward BART transit-oriented development project (the "Phase I Project") is governed under that certain South Hayward BART Owner Participation Agreement (the "OPA"), which among other things: (i) addresses the disbursement of the Infill Infrastructure Grant ("IIG") Program funds in the amount of \$16,389,520 (the "IIG Grant") from the California Department of Housing and Community Development; (ii) addresses the manner in which the parties to the OPA will manage the liability created under the Standard Agreement and Disbursement Agreement associated with the IIG Grant; (iii) sets out the parties obligations to construct the Affordable Development, the Market Rate Development and the adjacent park; and (iv) constitutes the Inclusionary Housing Agreement for the Phase I Project as required under the City's Inclusionary Housing Ordinance.

At its meeting on July 15, 2014^a, the Council approved an assignment of the project development rights of JMJ Development, LLC ("JMJ") to AMCAL Communities, Inc. or an affiliate

^a July 15, 2014 City Council agenda: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca071514full.pdf>

(“AMCAL”). Third party lenders for both the Affordable Development and the Market Rate Development have requested changes to the deal structure to address concerns about risk allocation issues, performance obligations, and remedies. In an effort to address the deal structure issues raised by the third party lenders, the parties have agreed to allow AMCAL to close escrow on JMJ’s interest in the Phase I Project no later than September 30, 2014 and desire to make the additional specified changes to the OPA and IIG grant documents, discussed in more detail below:

1. Extend the deadline by which AMCAL has to acquire the BART East Lot from BART and the Perry & Key Remainder Parcel from JMJ Development LLC;
2. Give the City Manager authority to extend construction completion deadlines for the Phase I Project;
3. Clarify how the City’s Inclusionary Housing Ordinance is being applied to the Phase I Project;
4. Remove City as a party to the Standard Agreement and Disbursement Agreement for the IIG Grant, release the City of joint and several liability for the IIG Grant under the IIG documents, and modify the City’s security and remedies related thereto; and
5. Documenting the requirement and priority of an affordability monitoring fee.

BACKGROUND

Extension of Acquisition Closing Deadline. The City Council approved the OPA for the Phase I Project on July 26, 2011.^b The current parties to the OPA are JMJ, Eden Housing Inc. (“Eden”), and the City. JMJ and AMCAL have negotiated a purchase agreement under which JMJ will transfer its interest in the Phase I Project to AMCAL. AMCAL completed its due diligence and removed contingencies under the purchase agreement and also made a \$500,000 nonrefundable deposit with the intent to close escrow under the purchase agreement. At its July 15, 2014 meeting, the City Council approved the transfer of JMJ’s interest in the Phase I Project to AMCAL and established a deadline for AMCAL to acquire the BART East Lot from BART and acquire the Perry & Key Remainder Site from JMJ on or before September 15, 2014.

Extension of Phase I Completion Deadlines. The original terms of the OPA provided that the Affordable Developer and Market Rate Developer would both commence construction simultaneously and complete construction no later than May 15, 2015. The Council approved a four month extension modification to the completion deadline (to September 15, 2015).^c An amendment to the OPA has been executed incorporating these extensions. The Council further approved an additional modification of these dates authorizing an extension of the Affordable Development completion deadline to November 1, 2016 and an extension of the Market Rate Development completion deadline to December 1, 2016.^d These extensions were conditioned on: (1) AMCAL waiving its due diligence contingencies under the AMCAL and JMJ Parcel Purchase Contract so that the \$500,000 deposit to JMJ became non-refundable by July 17, 2014; (2) AMCAL acquiring the BART East Lot and Perry & Key Remainder Parcel by September 15, 2014; (3) Eden and AMCAL paying for and pulling their building permits and impact fees by

^b Approved by the City Council at its meeting on July 26, 2011, see <http://citydocuments.hayward-ca.gov/WebLink8/0/doc/140065/Page1.aspx>

^c At its meeting on March 5, 2013, see <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCILMEETINGS/rp/2013/cca030513-IRAPA03.pdf>

^d July 15, 2014 City Council agenda: <http://www.hayward-ca.gov/CITY-GOVERNMENT/CITY-COUNCIL-MEETINGS/2014/CCA14PDF/cca071514full.pdf>

October 11, 2014; and (4) approval by HCD of AMCAL's assumption of JMJ's rights under the IIG Grant Documents.

At all times, the commencement and completion deadlines have been set in relation to HCD requirements for the Phase I Project IIG Grant and the Affordable Developer's HCD Transit Oriented Development Housing Program ("TOD") permanent loan funds of \$15.1M. As the actual start of construction approaches, it is necessary to further modify the construction completion deadlines in the OPA, as discussed below.

Removal of Joint and Several Liability and Modification of Security. To access the IIG Program Grant, the City, Eden and JMJ have negotiated and executed a Standard Agreement, a Disbursement Agreement, and other ancillary documents associated with the IIG Grant (collectively, the "IIG Documents") with the California Department of Housing and Community Development ("HCD"). The IIG documents govern the disbursement and use of the IIG Program Grant. The Standard Agreement and Disbursement Agreement require that the City, Eden and JMJ be jointly and severally liable to repay all disbursed funds in the event of a default by any party under the Standard Agreement and Disbursement Agreement. To mitigate the risk associated with the City's joint and several liability, the City negotiated security interests and remedies to protect the City's ability to cure a default under the IIG Documents. These included, among others, the recordation of various deeds of trust to secure repayment, options to acquire the projects, and various assignments. The current OPA provides for some elements of the City's security and remedy protections to be modified and allowed to be subordinated to construction lenders after the close of construction financing. As the close of construction financing approaches, HCD had agreed to remove the City from liability for the IIG Grant, requiring authorization from the Council and further modification of the OPA remedies and IIG Grant Documents, as discussed below.

Inclusionary Housing Ordinance. Under the terms of the OPA, the requirements of the Inclusionary Housing Ordinance as applied to the Phase I Project will be satisfied if the Affordable Developer constructs or causes to be constructed the Affordable Development in compliance with the terms of the OPA. The OPA further states that the Market Rate Developer shall be deemed to have satisfied its obligations under the Inclusionary Ordinance only upon the issuance of a Certificate of Occupancy for the Affordable Development. But under Section 9.2(b) of the OPA, if the Market Rate Development is completed prior to the completion of the Affordable Development, the City may issue a temporary certificate allowing for the occupancy of eighty-five percent (85%) of the Market Rate Development so long as not fewer than fifteen percent (15%) of the Market Rate Units, disbursed throughout the Market Rate Development, are held vacant and unoccupied until such time as the City issues a certificate of occupancy for the Affordable Development and, if the Affordable Development is not completed within 180 days of completion of the Market Rate Development, these units must be rented as affordable units.. AMCAL's lenders have requested the deletion of Section 9.2(b) to allow for the Market Rate Project to be fully underwritten without any affordability restrictions and to maximize the amount of permanent debt supported by the Market Rate Development.

Affordability Monitoring Fee. Under the requirements of four different public financing sources, City staff is responsible for monitoring complex and layered requirements for rental and occupancy of the Affordable Development units. Only a small portion of staff costs to perform such monitoring are reimbursed by the affordable developer under the Multifamily Housing Revenue Bond

regulatory agreement. As discussed below, staff recommends that the OPA be amended to require an additional reasonable fee to support City administrative costs to monitor project affordability.

DISCUSSION

City staff recommends that the Council direct staff to negotiate and execute a further amendment to OPA and necessary amendments to the IIG Documents to address the issues discussed below.

Extension of Acquisition Closing Deadline. The parties desire to extend the deadline for AMCAL to acquire the BART East Lot from BART and acquire the Perry & Key Remainder Site from JMJ to allow for the completion of ongoing negotiations with third party lenders for both the Affordable Development and Market Rate Development. The parties have made great progress toward completing the transfer of JMJ's interest in the Phase I Project to AMCAL. The complex nature of the transaction and the demands of third-party lenders have resulted in extensive negotiations and a delay in AMCAL's ability to close on the acquisition of the properties by September 15, 2014 as previously approved by Council. Staff is confident that the on-going negotiations can be concluded within the next two weeks and that the necessary documents can be drafted and executed in time to allow AMCAL to acquire the BART East Lot from BART and acquire the Perry & Key Remainder Site from JMJ on September 30, 2014, but in no event later than October 9, 2014. The extended acquisition date will still allow the Affordable Developer and AMCAL to submit the final subdivision map for recordation and to pay for and pull the building permits by the October 11, 2014 permit application expiration date.^e

Extension of Phase I Project Completion Deadlines. The parties desire to maintain the flexibility to extend the construction commencement and completion deadlines for the Phase I Project. The parties anticipate that the most recently approved construction completion deadlines for the Phase I Project will allow them sufficient time for the construction of the Phase I Project. AMCAL has waived its due diligence contingencies and made the \$500,000 non-refundable deposit. As discussed above, AMCAL intends to close on the acquisition of the BART East Lot and Perry & Key Remainder by September 30, 2014 but in no event later than October 9, 2014. At such time, the parties will have concluded their negotiations with HCD, and AMCAL will have assumed JMJ's rights under the IIG Grant Documents. If the City is released from liability under the HCD IIG documents, it no longer needs to reserve extra time for the City to step in and complete the two developments, and consequently can provide additional flexibility in the timelines for the developers to complete the Phase I Project. At this time, staff recommends maintaining the most recently approved commencement and completion deadlines, but requests that Council authorize the City Manager to extend the commencement and completion deadlines for the Phase I Project at the City Manager's discretion, in consultation with the City Attorney and Special Counsel, so long as such extensions are consistent with HCD requirements for the Phase I Project IIG Grant and the Affordable Developer's TOD grant. If the Council grants this authority, further changes to the project deadlines will be approved administratively by the City Manager and will not require Council action.

Removal of Joint and Several Liability and Modification of Security. The Parties are in negotiation with HCD to remove all City liability for repayment of the IIG funds by removing the

^e The deadline for pulling the permit is October 11, 2014 which is a Saturday; therefore, the extended deadline is October 14, 2014 in observance of Columbus Day.

City as a party to the IIG Grant Documents. If such release is authorized by Council and granted by HCD, the Parties need to amend the OPA to reflect the release of the City, revise the City's security and remedies accordingly, and make various changes to address concerns of development lenders and investors. Consequently, staff recommends that the City Council approve the City's release from liability for the IIG Grant under the IIG Documents and the City Manager be authorized, in consultation with the City Attorney and Special Counsel, to take such actions and execute such documents as are necessary to remove the City from the IIG Grant Documents and to provide for the full release of City liability for the IIG Grant.

If the City IIG release is finalized, staff proposes that the City reconvey the various deeds of trust securing the IIG grant at the time of close of escrow on construction financing for the Affordable Development (October 2014). The City also will not require an amendment to the OPA to incorporate a guaranty from Eden for its share of the IIG Grant Funds as contemplated during the City's July 15, 2014 meeting, as the City will no longer be liable for these IIG grant funds. The parties anticipate that the other remedies available to the City under the OPA (including options to purchase on default) will continue in full force and effect prior to the close of construction financing for each portion of the Phase I Project. When construction financing closes for each development, the City's remedies will be subject to the rights of senior lenders. AMCAL intends to finance construction of the Market Rate Development with HUD 221(d)(4) financing (an FHA-insured multifamily housing loan). HUD is likely to require subordination of the OPA and the City's remedies and protections to this financing. Consequently, staff recommends that the Council authorize the City Manager, in consultation with the City Attorney and Special Counsel, to amend the City's OPA remedies for the Market Rate Project to comply with HUD requirements, and to amend the City's remedies for the Affordable Project as necessary to reflect negotiated changes with Wells Fargo Bank, the lender for the Affordable Development. However, if HUD or lender-requested provisions will materially affect the City's liability or exposure in a manner that is inconsistent with previous actions and direction of Council, the City Manager will return to Council for further authorization.

Inclusionary Housing Ordinance Requirements. The parties desire to amend the OPA to clarify that, under the Inclusionary Housing Ordinance, the Affordable Development should be characterized as off-site construction of the inclusionary units required for the Market Rate Development. Under the original OPA, the developers agreed that they would construct and deliver all inclusionary units within the Affordable Development concurrently with the construction and delivery of the units in the Market Rate Development. Now, although both developers will pay for and pull building permits for the Phase I Project no later than October 11, 2014, construction of the Market Rate Development will commence several months after construction commences on the Affordable Development, and the parties therefore anticipate that the Affordable Development will be completed prior to the completion of the Market Rate Development.

Under Section 10-17.600 of the Inclusionary Housing Ordinance, inclusionary units may be built off-site upon a finding by the City Council that: (1) off-site construction will further affordable housing opportunities in the City to a greater extent than construction of the required units as part of the proposed residential project; (2) a schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project; and (3) the off-site units are at least equal in size and amenities to inclusionary units which would be allowed in the project, or any comparative

deficiency in size or amenities is compensated for by additional units, larger units or affordability to households with lower incomes.

Staff requests that the Council make the necessary findings under the Inclusionary Housing Ordinance to characterize the Affordable Development as off-site satisfaction of the inclusionary housing requirements of the Market Rate Development, and that the OPA be modified to reflect this characterization. These findings can be made because: (1) the off-site construction will further affordable housing opportunities in the City to a greater extent than construction of the required units as part of the proposed residential project, by providing a number of affordable units which is greater than 15% of the number of Market Rate Units; (2) completion of the off-site inclusionary units is scheduled to occur prior to the completion of the related market-rate units because the proposed OPA development schedule establishes completion dates for the Affordable Development and the Market Rate Development that are concurrent or nearly concurrent; and (3) the Affordable Development provides additional units and affordability to households with lower incomes than would inclusionary units provided within the Market Rate Development. Accordingly, if such findings are made by Council, the OPA should be amended to delete the requirement of OPA Section 9.2(b) that 15% of the Market Rate Units potentially be reserved for affordable rental, thereby allowing third-party lenders to underwrite the project at market rents which will support a higher permanent loan.

Affordability Monitoring Fee. The City desires to amend the OPA to establish the amount of the affordability monitoring fee and set forth the priority of payment of the fee. Staff requests that the City Manager be authorized to include the affordability monitoring fee in amendments to the OPA, with the amount to be determined by the City Manager, in consultation with the City's financial advisor.

ECONOMIC IMPACT

The successful development of the Phase 1 Project will have an immense positive economic impact on the City and south Hayward in particular. The commencement of the housing construction should spur future development in the area. The development of housing in the area should lead to stronger interest from retailers resulting in future planning and construction of retail centers. Initial development under this Phase 1 Project would also have a positive economic impact by creating approximately 500 immediate high-quality construction, design and engineering service jobs through the three-year development cycle. The Phase 1 Project will also increase BART ridership and decrease vehicle miles traveled and thus will help reduce greenhouse gas emissions associated with vehicles, which is in line with the goals in the City's Climate Action Plan. Total Phase I Project costs are estimated to be more than \$100 million, exclusive of land costs.

FISCAL IMPACT

Funding in the amount of \$2,054,376 has been disbursed by HCD as a part of the \$16,389,520 IIG Grant. The City, Eden and JMJ are currently jointly and severally liable for all previously disbursed funds. When AMCAL acquires JMJ's interest in the Phase I Project, JMJ will be released of its liability, and thereafter AMCAL would become jointly and severally liable, with the City and Eden, for repayment of the IIG Grant Funds. If the deal structure amendments discussed in this staff report are approved by Council, the City will no longer be jointly liable for any repayment of the

IIG funds should either of the developers default under the IIG documents. If the recommended changes are not approved by Council, the City will continue to be jointly liable, with Eden and AMCAL, for repayment of the IIG funds in the event of default under the IIG documents. This liability is currently approximately \$2 million dollars, but will increase to \$16,389,520 as the IIG-funded infrastructure is constructed.

ENVIRONMENTAL IMPACT

The environmental impacts associated with the construction of the Phase 1 Project were previously reviewed under a Mitigated Negative Declaration (MND) and related Mitigation Monitoring and Reporting Program adopted for the South Hayward BART Mixed-Use Project certified by the City Council via Resolution No. 09-025 on March 17, 2009. Environmental analysis related to revisions to the project regarding rephrasing and a rescoping of the entire project were addressed in an Addendum to the MND approved in June of 2011. The amendments to the OPA as outlined in this report are not substantial in nature for purposes of CEQA review and there is no change of circumstances or new or increased environmental impact as result of the recommended amendments. As such, it is appropriate for the City Council to rely on the previously approved environmental documents pursuant to Public Resources Code Section 21166 and Section 15162 of the CEQA guidelines.

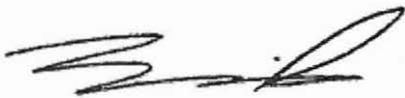
NEXT STEPS

If the attached resolution is adopted, the City Manager may negotiate and execute an amendment of the OPA in a manner that is consistent with this staff report.

Prepared by: John DeClercq, Project Manager

Recommended by: Kelly McAdoo, Assistant City Manager

Approved by:



Fran David, City Manager

Attachments:

Attachment I: City Council Resolution

CITY COUNCIL OF THE CITY OF HAYWARD

RESOLUTION NO. 2014-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE OWNER PARTICIPATION AGREEMENT FOR THE SOUTH HAYWARD BART TRANSIT ORIENTED DEVELOPMENT PROJECT AND AMENDMENTS TO THE STATE OF CALIFORNIA INFILL INFRASTRUCTURE GRANT DOCUMENTS TO RELEASE THE CITY FROM LIABILITY TO REPAY GRANT

WHEREAS, the City of Hayward (the "City"), Eden Housing, Inc. ("Eden") and JMJ Development LLC ("JMJ"), as the successor in interest to Wittek Development LLC and Montana Property Group LLC, are parties to that certain Owner Participation Agreement, as amended by that certain First Amendment to Owner Participation Agreement dated as of March 5, 2013 (collectively, the "OPA") that governs the development and operation of Phase I of the South Hayward BART TOD Project, as more specifically described in the staff report accompanying this Resolution (the "Staff Report"); and

WHEREAS, JMJ has negotiated an agreement to sell its interest in the Phase I project including its interest in the OPA to AMCAL Communities, Inc., or an approved affiliate ("AMCAL");

WHEREAS, at its July 15, 2014 meeting, the City Council approved the transfer of JMJ's interest in Phase I to AMCAL, and authorized the City Manager to negotiate an amendment to the OPA with a specific acquisition and construction timeframe;

WHEREAS, due to the complex nature of the Phase I project and the demands of project lenders, the parties require more time to negotiate the form of OPA amendment and AMCAL requires more time to acquire the market rate development site;

WHEREAS, due to the additional time needed for AMCAL to acquire the market rate development site, the parties may need flexibility concerning the project commencement and completion deadlines, provided that construction of the Phase I project shall not commence until such time as AMCAL has acquired the Market Rate Site;

WHEREAS, the City, JMJ, Eden, and the State of California Department of Housing and Community Development ("HCD") are parties to a Standard Agreement and Disbursement Agreement pertaining to State Proposition 1C Infill Infrastructure Grant Funds (the "IIG Grant Documents").

WHEREAS, the parties are negotiating an amendment to the IIG Grant Documents to reflect AMCAL's assumption of JMJ's interest and the revised project schedule;

WHEREAS, such amendment may remove the City as a party to the IIG Grant Documents and thereby release the City of any liability to repay the Infill Infrastructure Grant Funds ("IIG Grant") in the event of a developer default;

WHEREAS, if the City is removed as a party to the IIG Grant Documents, the City's remedies under the OPA must be modified accordingly, as more particularly described in the Staff Report;

WHEREAS, the parties desire to amend the OPA to clarify that, under the City's Inclusionary Housing Ordinance, the affordable component of the Phase I project constitutes the off-site construction of the inclusionary units required for the market rate portion of the Phase I project;

WHEREAS, under Section 10-17.600 of the City's Inclusionary Housing Ordinance, inclusionary units may be built off-site upon a finding by the City Council that: (1) off-site construction will further affordable housing opportunities in the City to a greater extent than construction of the required units as part of the proposed residential project; (2) a schedule for completion of the off-site units concurrently with completion of the related market-rate units is provided and agreed upon as a condition of approval for the project; and (3) the off-site units are at least equal in size and amenities to inclusionary units which would be allowed in the project, or any comparative deficiency in size or amenities is compensated for by additional units, larger units or affordability to households with lower incomes;

WHEREAS, the City desires to amend the OPA to establish the amount of an affordability monitoring fee for the Phase I affordable units and to set forth the priority of payment of the fee;

WHEREAS, the City prepared and, by Resolution No. 09-025, approved the Mitigated Negative Declaration (the "Mitigated Negative Declaration") studying the environmental effects under CEQA for the Phase I Project, and thereby evaluated the environmental effects of the of the Phase I Project;

WHEREAS, the City prepared an Addendum to that Mitigated Negative Declaration in June 2011 studying the environmental effects under CEQA for the Phase I Project; and

WHEREAS, the City Council acting as the lead agency considered the environmental effects of the South Hayward BART TOD as shown in the Mitigated Negative Declaration and related Addendum.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the Recitals above are true and correct and by this reference made a part hereof.

BE IT FURTHER RESOLVED, that the City Council hereby modifies its July 15, 2014 approvals and extends the deadline by which AMCAL must acquire the market rate site to approximately September 30, 2014, but in no event later than October 9, 2014, and such deadline is to be reflected in an amendment to the OPA.

BE IT FURTHER RESOLVED, that the City Council hereby modifies its July 15, 2014 approvals and authorizes the City Manager to extend the commencement and completion deadlines set forth in the OPA for the Phase I project at the City Manager's discretion, in consultation with the City Attorney and Special Counsel, so long as such extensions are consistent with HCD requirements for the Phase I project and provide that construction shall not commence until AMCAL acquires the market rate development site.

BE IT FURTHER RESOLVED, that the City Council hereby approves amendments to the IIG Grant Documents providing for removal of the City from the IIG Grant Documents and the release of City liability for the repayment any IIG Grant Funds.

BE IT FURTHER RESOLVED, the City Manager is authorized, in consultation with the City Attorney and Special Counsel, to take such actions and execute such documents as are necessary to remove the City from the IIG Grant Documents, to provide for the full release of City liability for the IIG Grant, and to modify the OPA to reflect such release, including the remedies under the OPA, in a manner that is consistent with the staff report.

BE IT FURTHER RESOLVED, that pursuant to Section 10-17.600 of the Inclusionary Housing Ordinance, the City hereby finds, based on the information and analysis set forth in the staff report, that the Affordable Development qualifies as off-site construction of inclusionary units for the Market Rate Development and further finds that: (1) off-site construction of the Affordable Development will further affordable housing opportunities in the City to a greater extent than construction of the required units as part of the Market Rate Development by providing a number of affordable units which is greater than 15% of the number of units in the Market Rate Development; (2) that the development schedule in the OPA, as it is proposed to be amended, establishes completion dates for the affordable component and the market rate component that are concurrent or nearly concurrent; and (3) the Affordable Development provides additional units and affordability to households with lower incomes than would inclusionary units provided within the Market Rate Development.

BE IT FURTHER RESOLVED, that the City Manager is authorized, in consultation with the City Attorney and Special Counsel, to negotiate an amendment to the OPA to clarify that the affordable units constitute off-site inclusionary units and, more specifically, to delete the requirement of OPA Section 9.2(b) that 15% of the market rate units potentially be reserved as affordable units in the event the market rate project is completed in advance of the affordable project.

BE IT FURTHER RESOLVED, that the City Manager is authorized to include the affordability monitoring fee in an amendment to the OPA, with the amount to be determined by the City Manager, in consultation with the City's financial advisor.

BE IT FURTHER RESOLVED, that the City Manager is authorized to take all reasonable steps which may be necessary to implement the terms and conditions of this Resolution and take all further actions and execute all other documents which are necessary or appropriate to implement this Resolution and the authorized and approved amendments to the OPA and HCD Documents.

BE IT FURTHER RESOLVED, that the City Council determines that no further CEQA analysis is required because, pursuant to 14 California Code of Regulations Section 15162: (1) there have not been substantial changes in the program for the Phase I Project that would require major revisions to the Mitigated Negative Declaration; (2) there have not been substantial changes with respect to the circumstances under which the program for the Phase I Project is being implemented that would require major revisions to the Mitigated Negative Declaration; and (3) there has not been the appearance of new information that was not known and could not have been known as of the date of consideration and approval of the Mitigated Negative Declaration that are relevant to the consideration and approval of the Mitigated Negative Declaration.

BE IT FURTHER RESOLVED, that this Resolution shall take immediate effect from and after its passage.

HAYWARD, CALIFORNIA, September 23, 2014

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk, City of Hayward

APPROVED AS TO FORM:

City Attorney