

**SUMMARY REPORT PURSUANT TO GOVERNMENT CODE SECTION 52201 ON THE
DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF
HAYWARD AND BMODDRE2, LLC.**

I. Introduction

The City of Hayward (the "City") has prepared a summary report (the "Summary Report") as required by Section 52201 of the Government Code, with regards to the City's proposed execution of a Disposition and Development Agreement ("DDA") by and between the City and BMODDRE2, LLC, a California Limited Liability Company, and its permitted successor and assigns ("Developer"), for the sale of a 4.9 acre parcel to be developed under the DDA (the "Dealership Development Parcel") and a 5.2-acre parcel restricted for affordable housing purposes under the DDA (the "Adjacent Parcel"), the properties extend from Mission Boulevard on the west to Carlos Bee Boulevard on the north (24900 and 25000 Mission Boulevard, APNs APN 445-0200-012-01 and APN 445-0200-009-00) (collectively referred to as the "Property") to the Developer.

Government Code Section 52201 authorizes the City to sell or lease property to which it holds title and was held for exchange 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 this 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. As contained in the Code, the following information is included in the Summary Report:

- 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 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 DDA, 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.

In addition to the authority granted to it under Government Code Section 52201, the City is also acting pursuant to authority granted to it under; (1) Government Code Section 14528.5 which governs the disposition of State Route 238 (SR 238) parcels; and (2) Government Code Section 37350, which provides that a city may purchase, lease receive,

hold and enjoy real and personal property and control and dispose of it for the common benefit.

II. Summary of Proposed Agreement

The Developer intends to purchase the parcels commonly known various parcels of property, acquired by the City from Caltrans and other private parties, that were part of the former SR 238 project. The Property is composed of two parcels: Parcel 1 (APN 445-0200-012-01) is a City owned parcel acquired to facilitate the widening of Mission Boulevard, and Parcel 2 (APN 445-0200-009-00) was formerly owned by Caltrans acquired for the SR 238 project. The proposed development described in the DDA provides for the development of the "Dealership Development Parcel," which shall include 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 on the Dealership Development Parcel. The dealership is proposed to be operated under the Subaru brand. The Dealership Development Parcel, located at the southeast corner of Mission Blvd and Carlos Bee Blvd, is approximately a 5.2-acre site located adjacent to Mission Boulevard. The upper 4.9 acres known as the Adjacent Parcel will have a restrictive covenant limiting future development to affordable housing. Once the City's obligations to Caltrans have been satisfied, the City and the Developer intend to swap ownership of the Adjacent Parcel and a City owned parcel ("Swap Parcel") located at the northeast corner of Mission Blvd and Carlos Bee Blvd. The purpose of the exchange is to allow the City to own the "Adjacent Parcel" to make the site available for subsequent development of affordable housing in accordance with applicable laws.

The salient aspects of the proposed DDA are summarized as follows:

- The City commits to transfer the Property to the Developer as two separate parcels, the Dealership Development Parcel and the Adjacent Parcel;
- The City will convey the Property to the developer in fee in its "as-is" condition;
- The Developer will pay the City \$5,421,000 for the Property in the form of cash payment covering the cost of the Caltrans purchase price;
- The Developer will reconvey the 4.9-acre Adjacent Parcel or back to the City in exchange for the 2.1-acre Swap Parcel.
- An Operating Covenant with a term of 10 years will be recorded on the Dealership Development Parcel providing oversight on the allowed uses, transfers, subleases of the Dealership Development Parcel.

- The City is not required to make any form of direct or indirect financial contribution or to provide any other assistance to the Developer; and
- The Proposed Project is in compliance with the requirements of the City's General Plan and Mission Boulevard Form Based Zoning Code.

III. Cost of Agreement

This section presents the total estimated cost of the DDA to the City. Pursuant to California Government Code Section 52201 (a)(2)(B)(i), the cost of the DDA to the City includes all land acquisition costs, relocation costs, the cost of any improvements to be provided by the City, plus the interest on any loans or bonds to finance project under the terms of the DDA. The net cost can be either an actual cost, when expenditures exceed receipts, or a net gain, when revenues created by implementation of the Agreement exceed expenditures.

The City acquired a small portion of the Dealership Development Parcel and the Swap parcel as part of the Route 238 Corridor Improvement project. The cost to acquire the Swap Parcel and a small portion of the Dealership Development Parcel were borne by the City under the transportation project budget. The City has determined that for the purposes of this Summary Report, the costs to the City for acquisition of said properties is negligible because these are remnant parcels which were retained by the City after the completion of the transportation project and no capital funds were expended by the City for the remnant parcels.

The property to be transferred to the Developer will consist of the Dealership Development Parcel and the Adjacent Parcel. The City has a purchase and sale agreement with Caltrans related to the acquisition of various properties, including among others, the portions of the Property to be conveyed to the Developer. Under the purchase and sale agreement with Caltrans, the City is required to pay Caltrans a purchase price of \$5,421,000 which is based on the fair market value appraisals for those parcels. The cost to the City for acquiring the properties from Caltrans is the same as the purchase price being paid by the Developer to acquire the Property from the City.

The City's holding costs for the Property and the Swap Parcel is de minimus and does not impact the cost to the transactions contemplated herein.

The City has or expects to incur approximately \$35,000 on internal staff costs which will be funded through the purchase price. The City's third-party costs, including broker fees, legal fees, consulting fees, and other fees associated with the negotiation of the DDA and associated land transfer documents have been paid for by the Developer through a reimbursement agreement. All costs to the City associated with the processing of entitlements for the Proposed Project are also being paid solely by the Developer.

The City does not expect to incur any relocation costs, as the various parcels that are being transferred are vacant unoccupied property. If, and to the extent any relocation obligations arise, the Developer has agreed to pay for any relocation costs incurred as a result of the implementation of the DDA.

The City has not incurred and will not incur any demolition costs as part of this transaction.

IV. Estimated Highest and Best Use Value of the Interest to be Conveyed

Section 52201 requires that the City to identify the value of the interest being conveyed at the highest use permitted under the General Plan and zoning in place on the property. The valuation must be based on the assumption that the property is vacant, and that near-term development is required. The highest and best use of a property is that the use of the property that generates the highest property value and is physically possible, financially feasible, and legally permitted. The valuation does not take into consideration any extraordinary use, quality, and/or income restrictions being imposed on the development by the City. The value at highest and best use is based solely on the value created and not on whether or not that use carries out the development goals and policies for the City as set forth in the DDA.

This section presents an analysis of the fair market value of the various parcels at their highest and best use values. This section explains the value of the various property to be sold or transferred to the Developer and the consideration being provided by the Developer.

The City reviewed appraisals for the various parcels and the proposed valuation of the parcels was based on a commercial land value analysis in their existing condition with the current land use designations for the Dealership Development Parcel and the Swap Parcels, and the residential land value analysis in its existing condition with the current land use designations for the Adjacent Parcel. Based on the appraisals, the City determined that the purchase price of \$5,421,000 represents fair market value for the Property and the fair market value for the Swap Parcel is estimated to be \$1,988,000. The purchase price being paid by the Developer for the Dealership Development Parcel and the Adjacent Parcel is based on the parties' negotiation of the Property value taking into account the aforementioned financial evaluation and previous appraisals of the Property as well as the impact on value of the Property resulting from entitlement of the Project Site for the use consistent with the Proposed Project.

V. Estimated Fair Re-Use Value of the Interest to be Conveyed

In calculating the fair re-use value, re-use value is defined as the highest price in terms of cash or its equivalent which a property or development right is expected to bring for a specified use in a competitive open market, subject to the covenants, conditions, and restrictions imposed by the DDA. The DDA does contain a covenant on the Dealership Development Parcel that will restrict the use of the property for the construction and continual operations of the Improvements, substantially in the form as identified in the DDA for a period of ten years following the Notice of Completion. An additional covenant on the "Adjacent Parcel" will be recorded against the parcel restricting the use for affordable housing purposes.

Notwithstanding the covenants being recorded as part of the sale under the DDA, the Developer is being required to purchase the Dealership Development Parcel and the Adjacent Parcel for their fair market value, at their highest and best use and not for the fair re-use value. In addition, the land swap is based on the fair market values of the Swap Parcel and the Adjacent Parcels.

VI. Explanation of the Difference (if any) between the Compensation to be paid to the City under the DDA and the Fair Market Value of the Property

Under Section 52201, the City is required to explain 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 this Summary Report an explanation of the reasons for the difference. In this instance, there is no difference. The City will receive \$5,421,000 in compensation for the transfer of the Property, 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 Property and the Swap Parcel and the costs of the agreement summarized in Section III, above.

VII. Creation of Economic Opportunity

The Proposed Project, when constructed, will create economic opportunity in the Mission Boulevard 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.

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

A. Increased Property Taxes

Currently, none of the properties that are subject of the DDA generate property tax revenues because all of the Property has been under the ownership of a governmental entity. The property tax revenue the year prior to the property being acquired by the City was \$0. Upon transfer to the Developer under the DDA, the assessed value of the Property will change from \$0 to up to \$5,421,000 and will result in estimated annual property tax payments of approximately \$54,000 in its unimproved state.

The sale of the Property to the Developer is estimated to cause the following increase in the property tax revenue:

Assessed Value at Date of Acquisition		\$0.00
Property Tax Rate	<u>1.0%</u>	
Estimated Property Tax Revenue		\$0.00
Assessed Value after sale to the Developer (unimproved state)		\$5,421,000
Property Tax Rate	<u>1.0%</u>	
Estimated Property Tax Revenue (unimproved state)		\$54,000
Increase in Property Tax Revenue to Taxing Entities		\$54,000

The change in assessed value will result in an increase of more than 15% prior to the full implementation of the project. While it is anticipated that the completion of the Proposed Project will further increase the Property's assessed value to more than \$30 million, the City cannot accurately estimate the total property tax revenues resulting from the project at full implementation at this time. Nevertheless, based on the change in property tax revenues 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.

The Developer intends to develop the approximately \$30 million Proposed Project on the Project Site. The assessed value of the Project Site will result in additional benefits to the City.

B. 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 direct or indirect 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 DDA will result in job creation as a result of the anticipated construction of the new auto dealership on the Dealership Development Parcel. During the construction of the Proposed Project, it is anticipated that 400 – 500 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 70 - 100 permanent jobs. Thus, the project will result in economic opportunity and significant job creation without investment of any City funds.

C. 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, the City will be receiving fee title to the Adjacent Parcel which will have a covenant restriction on the site limiting the development to affordable housing only. The future development of the Adjacent Parcel will result in the creation of approximately twenty affordable housing units (depending on unit size and type).

D. Public Purpose

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 potential 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 SR 238 freeway project.