



Office of the City Manager

CONSENT CALENDAR
March 19, 2013

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Eric Angstadt, Director, Planning and Development
Subject: Memorandum of Understanding between the Cities of Berkeley, Oakland and Emeryville for 6701 San Pablo Avenue

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to negotiate and execute a memorandum of understanding (MOU) between the Cities of Berkeley, Oakland and Emeryville to designate the City of Berkeley as the agency to process zoning entitlements and building permits for 6701 San Pablo Avenue.

FISCAL IMPACTS OF RECOMMENDATION

Approval of the MOU will allow for the efficient processing of zoning entitlements and building permits for the remodeling and re-tenanting of this former UC Berkeley property. This will increase the amount of property tax, business license tax and possibly sales tax collected by the City of Berkeley. The amounts of each tax increase are not known at this time and depend on both the final valuation of tenant improvements and tenant mix.

CURRENT SITUATION AND ITS EFFECTS

The former UC Berkeley building was purchased by LBA Realty and they desire to improve the building and bring in new tenants. The large, approximately 500,000 square feet, building sits across the boundaries of Berkeley, Oakland and Emeryville, with approximately 55% in Berkeley, 44% in Oakland and 1% in Emeryville. The potential for the building owner and future tenants to have to obtain zoning and building permits from two or three jurisdictions for the same use or area is inefficient and may delay the building returning to productive use.

BACKGROUND

City staff from all three jurisdictions agree that it would be more efficient to process permits under the rules of one city and that each city will benefit from having the building returned to productive, and tax generating, use. Because the slight majority of space is in Berkeley, the City of Berkeley will be the lead agency for permitting. The draft MOU (Attachment 2) has provisions to allow extra time for Oakland and Emeryville to comment on any zoning or building permit before it is issued.

RATIONALE FOR RECOMMENDATION

The MOU is the most efficient means of processing zoning and building permits for this large building that sits in three jurisdictions.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Eric Angstadt, Director, Planning and Development, 981-7401

Attachments:

- 1: Resolution
- 2: Draft MOU

RESOLUTION NO. ##,###-N.S.

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITIES OF BERKELEY, OAKLAND AND EMERYVILLE DESIGNATING THE CITY OF BERKELEY AS THE AGENCY FOR PROCESSING ZONING ENTITLEMENTS AND BUILDING PERMITS FOR 6701 SAN PABLO AVENUE

WHEREAS, the building at 6701 San Pablo Avenue, formerly owned and occupied by the University of California, was purchased by LBA Realty; and

WHEREAS, LBA Realty intends to develop the building with new tenants and make other improvements to the building; and

WHEREAS, the Cities of Berkeley, Oakland and Emeryville desire that the property be developed in an efficient manner, and in a manner compatible with the surrounding properties, with uniform rules applied to the development.; and

WHEREAS, each of the Cities will benefit from the development of this property; and

WHEREAS, the Cities desire to assign primary and lead responsibility for land use approvals and building inspection procedures for the property to one of the Cities in order to promote efficient and uniform processing and approval of developments on the property.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to negotiate and execute a memorandum of understanding between the Cities of Berkeley, Oakland and Emeryville designating the City of Berkeley as the agency to process zoning entitlements and building permits for 6701 San Pablo Avenue.

DRAFT**MEMORANDUM OF UNDERSTANDING****By and Among the City of Berkeley, the City of Oakland and the City of Emeryville**

This Memorandum of Understanding (“MOU”) is entered into this ___ day of _____, 2013 (“Effective Date”), by and among the City of Berkeley, a municipal corporation (“Berkeley”), the City of Oakland, a municipal corporation (“Oakland”) and the City of Emeryville, a municipal corporation (“Emeryville”), pursuant, respectively, to Berkeley City Council Resolution No. _____, Oakland City Council Resolution No. _____ C.M.S. and Emeryville City Council Resolution No. _____, (collectively referred to as the “Cities”). All parties to this MOU are sometimes referred to as the “Parties.”

RECITALS

A. LBA RIV-Company XII, LLC, a Delaware Limited Liability Company (“LBA”) intends to develop a mixed use facility containing, amongst other uses, sport club facilities, retail, office space, dry research space and warehousing, and associated parking located at 6701 San Pablo Avenue (the “Property”) in the Cities of Berkeley and Oakland, with a small portion of the Property located in Emeryville (the “Project”). The Property is depicted in Exhibit A attached hereto and incorporated herein.

B. The Cities desire that the Property be developed in an efficient manner, and in a manner compatible with the surrounding properties, with uniform rules applied to the development. Each of the Cities will benefit from the development of this property. Therefore, the Cities desire to assign primary and lead responsibility for land use approvals and building inspection procedures for the Property to one of the Cities in order to promote efficient and uniform processing and approval of developments on the Property.

C. Because the largest portion of the Property by square footage is within the City of Berkeley, the Cities have determined that Berkeley should be the lead City for both land use approvals and building inspection matters, including but not limited to issuance of building and occupancy permits, consistent with the terms and conditions contained in this MOU.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. LAND USE APPROVALS.

The City of Berkeley will be the lead agency for all land use approvals regarding the Property, including but not limited to zoning approvals, variances and issuance of conditional use permits or the like, to the extent any such approvals may be necessary. Berkeley shall apply its land use regulations, except as may be otherwise stated in this MOU.

(a) Berkeley will provide Oakland and Emeryville with at least 17 days' notice before any public hearing on land use matters and before any administrative approvals are issued regarding the Property.

(b) Fees for any land use approvals will be based on the Berkeley Schedule of such fees.

(c) Notwithstanding anything in the Berkeley General Plan, Zoning Ordinance, West Berkeley Specific Plan or other zoning related regulations, the following limitations shall be applied to the Property and enforced by Berkeley in its review and approval of any development for the Project. Berkeley shall:

(i) apply Oakland standards to street trees and landscaping planted in the public right of way along 67th Street and the portions of San Pablo Avenue located in Oakland except as Oakland may otherwise specify in writing.

(ii) require that the installation or modification of any telecommunication equipment on the roof of the Property that is visible from 67th Street shall be screened pursuant to Berkeley standards for such installations.

(d) On an ongoing basis, each City reserves the right to take such actions as necessary to enforce the laws, conditions or requirements within each city, recognizing that the land use and building permit rules and regulations of Berkeley apply to the Property. Each City agrees to cooperate with the other cities in any action undertaken to enforce any laws applicable to and any condition or requirement imposed on the Project.

2. BUILDING AND PERMIT INSPECTIONS.

(a) Berkeley will be responsible for plan check, issuance of building permits, issuance of certificates of occupancy, building inspections and similar activities for the entire Project consistent with the appropriate procedures, fees, and standards of Berkeley.

(b) LBA shall be responsible for paying any building permits and inspection fees to Berkeley for the entire Project. Fees for building permits and inspections will be based on the Berkeley Schedule of such fees.

(c) Permits for work in the public right of way shall be issued by the jurisdiction in which the public right of way is located according to its standard process.

(d) Fire and Life Safety Systems shall be reviewed and approved by all fire departments that will have primary responsibility to respond to fire and life safety issues at the Property. Copies of approved plans and permits will be provided to fire departments in all three jurisdictions.

3. EMERYVILLE BENEFITS.

LBA shall provide the following benefits to the City of Emeryville:

4. TAXES.

Property taxes, parking and business License Taxes and similar taxes will be divided amongst the three Cities as follows. Property taxes shall be based on the current practice of assessing and allocating property taxes on the basis of the square footage of the Property located in each City, and the improvements located on such portion. Parking fees, to the extent applicable, will be based on the number of parking stalls located in each City. Business license taxes will be based on the location of the business in the respective City.

5. EMERGENCY AND PUBLIC SAFETY SERVICES.

The responsibility for and the allocation of costs for the provision of emergency and public safety services to the Property shall be determined under a separate agreement amongst the Parties. This agreement shall also address fire code enforcement issues, burglar and fire alarms and noise complaints related to such alarms. This agreement will be completed and prior to the issuance of the Certificate of Completion by Berkeley.

Each unit will have its own address, in Berkeley, Oakland, or Emeryville, depending on where its front door is located, except as may otherwise be agreed by the City’s respective Fire Departments based on fire and life safety considerations.

6. TERMINATION ON NOTICE.

No Party may terminate this MOU within five years of its Effective Date. After that time, any Party may terminate this MOU with or without cause upon giving sixty (60) calendar days written notice to the other parties. No termination of this MOU shall invalidate or have any affect on land use approvals and Building and Occupancy permits issued prior to such termination.

7. NOTICE.

(a) In undertaking noticing for actions by Berkeley, a 300-foot radius will be used to ensure that neighbors from both jurisdictions are notified.

(b) For any action related to this MOU, each City and LBA shall be sent notices at the following addresses:

To Berkeley: [CONTACT INFORMATION]

To Oakland: [CONTACT INFORMATION]

To Emeryville: [CONTACT INFORMATION]

To LBA:

8. INDEMNIFICATION.

(a) **No Liability to Third Parties.** Nothing in this MOU shall be deemed to create rights or obligations in LBA or third parties not signatories to this MOU except as specifically stated herein.

(b) **Berkeley.** Berkeley shall defend, indemnify and hold harmless Oakland and Emeryville from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOU or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Berkeley, the Berkeley City Council, the Berkeley City Planning Commission and its respective officers, agents or employees.

(c) **Oakland.** Oakland shall defend, indemnify and hold harmless Berkeley and Emeryville from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOU or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Oakland, the Oakland City Council, the Oakland City Planning Commission and its respective officers, agents or employees.

(d) **Emeryville.** Emeryville shall defend, indemnify and hold harmless Berkeley and Oakland from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damage arising out of the performance of this MOU or arising from or connected to the approval process or relating to the Project, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or the result of the negligent or intentional acts or omissions of Emeryville, the Emeryville City Council, the Emeryville City Planning Commission and its respective officers, agents or employees.

9. GOVERNING LAW.

This MOU shall be governed by the laws of the State of California.

10. MODIFICATIONS.

Any modification of or amendment to this MOU will be effective only if it is signed in writing by all Parties. The Parties shall notify LBA at least 17 days before making any changes to this MOU and shall cooperate with LBA in making any such changes.

11. COUNTERPARTS.

This MOU may be executed in any number of counterparts (including by fax, pdf,

or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Memorandum of Understanding as of the Effective Date.

THE CITY OF BERKELEY, a municipal corporation

Approved as to form:

By: _____,
its City Manager

By: _____
City Attorney

THE CITY OF OAKLAND, a municipal corporation

Approved as to form and legality:

By: _____,
its City Administrator

By: _____
Deputy City Attorney

THE CITY OF EMERYVILLE, a municipal corporation

Approved as to form:

By: _____,
it's City Manager

By: _____
City Attorney

**EXHIBIT A
PROPERTY DESCRIPTION**

[The description will be of the 6701 San Pablo Property]

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