



Office of the City Manager

CONSENT CALENDAR  
May 21, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Jane Micallef, Director, Health, Housing & Community Services

Subject: Lease Agreement: Nia House Learning Center for 2234-2240 Ninth Street

RECOMMENDATION

Adopt first reading of an Ordinance:

1. Rescinding Ordinance No. 7,114-N.S. for the sale of 2240 Ninth Street; and
2. Authorizing the City Manager to (1) execute a lease agreement and any amendments to the lease agreement with Nia House Learning Center (Nia House) for three City-owned parcels located at 2234-2240 Ninth Street for the purpose of operating a child care center and (2) give Nia House permission to seek a merger of the three parcels to facilitate its expansion.

SUMMARY

On November 10, 2009, City Council adopted Ordinance No. 7,114-N.S. for the sale of real property located at 2240 Ninth Street. The property was leased from 1987 to 2009 to Building Opportunities for Self-Sufficiency (BOSS) for the purpose of operating a transitional housing program for homeless individuals. Transitional housing is no longer a feasible use of the property due to lack of operating subsidies and inefficiencies in property management and supporting services resulting from the small size and location of the property. City Council adopted Ordinance No. 7,114-N.S. to authorize City Manager to sell 2240 Ninth Street and to deposit sales proceeds into the Housing Trust Fund. The property remains vacant today.

Staff is recommending the Council rescind Ordinance No. 7,114-N.S. and adopt an ordinance authorizing the City Manager to execute a 40-year lease with Nia House for the City-owned parcels located at 2234-2240 Ninth Street. Nia House currently operates a full day, early childhood education program ("child care program") for students between the ages of 18 months and six years old at the City-owned lot located at 2234 Ninth Street. The City has leased the property at 2234 Ninth Street, which consists of two City-owned parcels, to Nia House for 32 years. Nia House submitted a request to merge the three City-owned parcels located at 2234-2240 Ninth and enter into a new lease for all three parcels. The school intends to secure a loan from a community development lender to make major improvements on the property, including additional classrooms, outdoor play areas and administrative offices. The expansion would allow Nia House to increase its capacity from 50 to 82 child care slots, 50% of

which would be reserved for students who live in Berkeley. This number includes students whose families pay market rate fees and those students who receive a scholarship in the form of reduced fees. In addition, Nia House would be required to reserve a minimum of 50% of the scholarships to students who reside in Berkeley and whose families are extremely low, very low or low-income at the time the student is first enrolled in the program.

Leasing the three City-owned parcels would result in an annual public benefit contribution of \$313,370, including \$287,820 in scholarships to 32 very low and low-income students; \$23,050 for maintenance of City property; and \$2,500 per year in actual rent. In addition to the annual public benefit contribution, Nia House intends to make a one-time investment of approximately \$650,000 in major capital improvements as part of the expansion of its child care program.

#### FISCAL IMPACTS OF RECOMMENDATION

Leasing the three parcels to Nia House Learning Center would generate a public benefit contribution in the amount of \$313,370 annually, including \$287,820 in scholarships to 32 very low and low-income students; \$23,050 for maintenance of City property; and \$2,500 in rent. Annual rent payments shall be deposited into HUD Fund account code 045-7902-363-1000.

#### CURRENT SITUATION AND ITS EFFECTS

Nia House is requesting a long-term lease of three City-owned parcels located at 2234-2240 Ninth Street. The school intends to expand its current program and increase the number of child care slots to meet the needs of Berkeley families. There is a growing unmet need for full day, early childhood education programs such as that being offered by Nia House. The current program has a capacity of 50 students and a waiting list of over 100 families annually. By expanding the program, Nia House would create 32 additional child care slots, significantly increasing student enrollment.

Nia House currently operates the school on two City parcels located at 2234 Ninth Street and has submitted a request to enter into a new lease with the City for the three city-owned parcels, including the current site and the property at 2240 Ninth Street. The organization is also requesting authorization to merge the two parcels at 2234 Ninth Street and the one at 2240 Ninth Street in order to facilitate expansion of its child care program. The Nia House Board of Directors is in the process of evaluating design options for additional classroom and office space and intends to submit a building and zoning application in Spring 2013. The execution of a long-term lease would facilitate the process.

Nia House generates income primarily from tuition, and supplements this with grants and annual fundraising. Tuition fees represent 95% of the Nia House budget. As part of its program expansion, Nia House will obtain a construction loan from the Low Income Investment Fund (LIIF), a community development lender that provides funding for programs that serve low income communities and families. The funds will be used

for construction of major improvements on the City property. The LIIF loan, in the amount of \$650,000 at 7% interest, will require an annual loan payment of about \$56,000. In five years, Nia House intends to refinance the LIIF loan and secure permanent financing from a private lender to take out the LIIF construction loan. The long-term lease will allow Nia House to secure favorable terms with a private lender.

When it completes expansion of the program, the school will operate with an annual budget of \$1,211,800 which is sufficient to cover expenses of approximately \$1,121,000 per year. Nia House is proposing an annual lease payment of \$2,500 for the City-owned property. The lease payment represents 7% of the school's net income which is an amount that is affordable and sustainable for Nia House. Together with the scholarships, property maintenance and lease payment, Nia House will provide a public benefit contribution of \$313,370. Nia House will also make a one-time investment of \$650,000 for major capital improvements to City property, which results in almost \$1 million in public benefit contribution in the first year of the lease:

<b>ANNUAL NIA HOUSE PUBLIC BENEFIT CONTRIBUTION</b>			
	<i>Item</i>	<i>Amount</i>	<i>Notes</i>
1	Scholarships	\$287,820	Reduced Tuition fees for very low and low-income families
2	Property Maintenance	\$23,050	Estimated annual cost of maintaining City property
3	Lease Payment (Rent)	\$2,500	Represents 7% of net cash flow after expenses
<b>Total Annual Public Benefit Contribution</b>		<b>\$313,370</b>	
	One-time Investment in Capital Improvements	\$650,000	Nia House will obtain funding to make capital improvements
<b>Total Public Benefit Contribution (after first year of lease period)</b>		<b>\$963,370</b>	

**BACKGROUND**

Under its current lease with the City, Nia House has operated its Montessori-based child care program at 2234 Ninth Street for over thirty years. By renting the property to Nia House at a nominal fee of \$1 a year during this period and by providing community agency funds to support operations, the City has helped Nia House establish itself as a

stable non-profit organization serving low-income families in Berkeley. Over the years, Nia House has grown and currently serves 50 families per year. It has a waiting list of 100 families and by May of each year, the 50 slots are filled. Nia House offers an early childhood education program based on Montessori concepts. The heart of the school's mission is to "bring together children of different socioeconomic backgrounds to grow and work in harmony and cooperation, and to actively work toward all of Dr. Maria Montessori's concepts, especially that of peace through education." To make sure the school serves families of all socioeconomic backgrounds, tuition is set at a sliding scale, with over half the families paying market-rate and about 35% of the students paying a reduced fee. By expanding its operations in the additional space, Nia House hopes to increase the number of students on scholarship to 39% of total enrollment.

Three years ago when the City-owned property at 2240 Ninth Street became vacant, the Nia House Board of Directors, staff and families began to explore the possibility of expanding the school. Nia House engaged its teachers and families in brainstorming site plan and programming possibilities; raised funds to hire an architect and project manager; completed a Phase I environmental report, geotechnical studies and surveyed the site; and engaged their neighbors by offering tours of the school and meeting with staff. The Nia House team reached out to and obtained input from city staff, including the Health, Housing & Community Service Department and the Planning Department. They found much excitement and support of the expansion among the Nia House family and the surrounding community.

Council passed the ordinance to sell the property at 2240 Ninth Street in 2009 with the intention of selling the property at market value, potentially generating \$500,000 for the Housing Trust Fund. However, in the course of marketing the property in 2010, staff discovered several issues that would be problematic for prospective buyers and Nia House operations. Specifically, over the 32 years that Nia House operated its program at the current site, it has used portions of the property at 2240 Ninth for the school's entrance and play yard on the north side and its vegetable garden on the west side of the property. It was at this time that Nia House expressed interest in purchasing the property at 2240 Ninth. This led to further discussions about Nia House purchasing all three City parcels, including the two parcels at 2234 Ninth Street where Nia House currently operates its child care program, and merging the three into a single lot.

After careful consideration by its Board and in its discussions with City staff, Nia House decided acquisition of the three parcels would make the project infeasible at this time and concluded that the best option is for the school to enter into a long-term lease with the City. Purchasing the city-owned property would be financially infeasible. Keeping in mind its mission to serve families of different socio-economic backgrounds, Nia House would not be able to pay market value on the property without sacrificing an already limited number of scholarships and subsidized slots for the low-income families they have traditionally targeted.

### Summary of Lease Terms

Following is a summary of the lease terms specific to the City-owned property located at 2234-2240 Ninth Street:

1. Lease Term: 40 years. Nia House needs the long-term lease in order to secure a construction loan from Low Income Investment Fund (LIIF). The 40-year term will also help Nia House secure favorable loan terms when it refinances the construction loan in five to seven years
2. Rent: \$2,500 annually
3. Student Scholarships: Nia House shall maintain a goal of filling 50% of the total child care slots to students who reside in Berkeley upon the time of signing the enrollment contract. In addition, Nia House shall be required to set aside a minimum of 50% of the scholarships, in the form of reduced fees, to students who reside in Berkeley and whose families are extremely low, very low and low-income at the time of enrollment. If Nia House is unable to meet the goal of reserving 50% of the scholarships to students who live in Berkeley, Nia House would need to obtain a waiver from the City Manager or her designee to fill the scholarship slots with non-Berkeley residents. However, in any given year, the number of scholarships allocated for extremely low, very low and low-income Berkeley families shall be no less than 33% of the total number of scholarships.
4. Property Maintenance: Nia House will assume all responsibility for day-to-day management and long term maintenance of buildings and property which is currently estimated to be approximately \$23,050 per year. Nia House also plans to make a one-time investment of \$650,000 for the expansion of Nia House facilities.
5. Long-term Property Management: Nia House will be responsible for completing periodic physical needs assessments through a third party contractor, as more fully described in the lease agreement.
6. Reporting: Nia House will be responsible for submitting annual reports providing an update on school enrollment and maintenance of buildings and school grounds.

Since the lease term is longer than what the City typically grants to other child care centers operating on City-owned property, the City will conduct an inspection of the buildings and premises at the end of every 10-year period of the lease term to make sure the property remains in good condition and to confirm that items identified in the periodic physical needs assessment are being addressed.

As an active supporter of the City's 2020 Vision goals, Nia House will continue to prepare Berkeley's youth for school-readiness by offering affordable full-day, early

childhood education programs for children and their families, creating opportunities for low-income parents to return to work or continue job-training and education and offering continued parenting lessons for all participating families. By securing a long-term lease, Nia House will be well-positioned to continue offering its highly-regarded full day, Montessori program at an affordable price, particularly for very low and low-income families.

#### RATIONALE FOR RECOMMENDATION

Leasing the three City-owned parcels would result in an annual public benefit contribution of \$313,370, including \$287,820 in scholarships to 32 extremely low, very low and low-income students; \$23,050 for maintenance of City property; and \$2,500 per year in actual rent. In addition, Nia House intends to make a one-time investment of approximately \$650,000 in major capital improvements as part of the expansion of its child care program. With this initial investment in capital improvements, the total public benefit contribution would amount to \$1 million after the first year of the lease term. The long term lease will allow Nia House to expand its Montessori-based early childhood education program to families of different socioeconomic backgrounds and help the City achieve its goals of closing the achievement gap set forth in the City's 2020 Vision Plan.

The staff also recommends Council authorize the City Manager to give Nia House permission to seek the lot merger needed for the expansion of the Nia House facilities. Nia House plans to obtain a \$650,000 construction loan to make major improvements to the property that will include additional classrooms, outdoor play areas and administrative offices to support its program expansion. In order to carry out the planned improvements, Nia House will require a lot merger and will need City Manager's permission to seek the lot merger. Nia House needs the long-term lease to secure the construction loan with LIIF and later, to secure permanent financing with a private lender. Although the loan will be secured with the City's long-term lease which presents some risk to the City, Nia House is a viable organization that is financially stable and whose income is based largely on continued enrollment of students in its child care program. With a waiting list of over 100 students every year, Nia House will have the ability to fill the child care slots and provide a much needed service in Berkeley.

#### ALTERNATIVE ACTIONS CONSIDERED

In 2009, staff proceeded to market the property at 2240 Ninth Street but found the site presented challenges to prospective buyers, and any changes to bring the site up to acceptable zoning standards would negatively impact the operations of the child care program. The sale of the property at 2240 Ninth Street could potentially raise \$500,000 for the City's Housing Trust Fund. However, this amount would be sufficient to support the construction of only one or two affordable housing units, and additional City funds would be required to build housing that would have a large enough impact in meeting the City's affordable housing needs. On the other hand, providing Nia House a long-term lease on the three City-owned parcels will give Nia House the ability to expand its

program, providing much needed affordable child care for another 40 years to low-income students in the community.

CONTACT PERSON

Lourdes Chang, Community Development Project Coordinator, (510) 981-5419

Attachments:

1: Ordinance

Exhibit A: Lease

ORDINANCE NO. -N.S.

LEASE AGREEMENT: NIA HOUSE LEARNING CENTER FOR CITY PROPERTY AT 2234-2240 NINTH STREET FOR OPERATION OF CHILD CARE PROGRAM AND RESCINDING ORDINANCE NO. 7,114-N.S.

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The Council of the City of Berkeley (the "Council") finds as follows:

- a. The City of Berkeley (the "City") owns certain real property located at 2234-2240 Ninth Street (the "Property").
- b. On November 10, 2009, the City adopted Ordinance No. 7,114-N.S. to sell the real property located at 2240 Ninth Street and deposit the sales proceeds into the Housing Trust Fund for affordable housing.
- c. During the course of efforts to market the property at 2240 Ninth Street, City staff found the site provided challenges to prospective buyers, and any changes required to bring the parcel up to current zoning standards would negatively impact Nia House's longstanding child care operations.
- d. Nia House Learning Center (Nia House) leases two City-owned parcels located at 2234 Ninth Street where it has operated an early childhood education program serving very low and low income families for 32 years.
- e. Nia House intends to expand its facilities to increase the number of child care slots in their program and is requesting a new long-term lease for use of City property at 2234-2240 Ninth Street for its child care program.
- f. Nia House needs a long-term lease to obtain a loan to construct improvements required for expansion of its program which will enable Nia House to increase the number of child care slots for very low and low-income families.
- g. Nia House is in the process of securing the financing to fund certain tenant improvements to the premises. As such, the City agrees to cooperate, as necessary or appropriate, with Nia House's pursuit of said financing. The City Manager is authorized to execute any documents, petitions, applications, amendments to the lease and authorizations that may be reasonably necessary or appropriate, in City's sole discretion, to that end.
- h. As a condition of the lease, Nia House shall be required to maintain an annual goal of filling 50% of the total child care slots with students who live in Berkeley upon the signing of the enrollment contract. This includes students whose families pay market rate tuition fees and those who receive scholarships in the form of reduced fees.



- i. In addition, Nia House shall reserve 50% of the scholarships, or reduced fees, to students who live in Berkeley and who are from extremely low, very low and low-income households upon the signing of the enrollment contract. If Nia House cannot meet the requirement of reserving 50% of the scholarships to Berkeley residents, Nia House must obtain a waiver to offer the scholarships to non-Berkeley residents. In any given year, the amount of scholarships reserved for Berkeley residents shall not be less than 33% of the total number of scholarships.
- j. In line with the City of Berkeley's 2020 Vision goals, Nia House will continue to prepare Berkeley's youth for school-readiness by offering affordable full-day, early childhood education programs for children and their families, creating opportunities for low-income parents to return to work or continue job-training and education and offering continued parenting lessons for all participating families

Section 2. The City Council hereby rescinds Ordinance No. 7,114-N.S. for the sale of 2240 Ninth Street and authorizes the City Manager to (1) execute a lease agreement and any amendments to the lease agreement with Nia House Learning Center (Nia House) for three City-owned parcels located at 2234-2240 Ninth Street for the purpose of operating a child care center and (2) give Nia House permission to seek a merger of the three parcels. Such lease shall be on substantially the terms set forth in Exhibit A.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibit:  
A: Lease