



CITY OF POMONA COUNCIL REPORT

August 6, 2018

To: Honorable Mayor and Members of the City Council

From: Linda Lowry, City Manager

Submitted By: Kirk Pelser, Deputy City Manager

Subject: **Adopt a Resolution Approving a Disposition & Development Agreement and a Development Oversight & Delivery Agreement with Maya Cinemas North America, Inc. for Development of a 12- 14 Screen Maya Cinemas Project on City/VPD Lots 6 and 7, the Gist Building and the Adjacent Vacant Lot in Downtown Pomona and for Development of a 700+ Stall Parking Structure on Vehicle Parking District Lot 10, Council Districts 1 & 2**

OVERVIEW

Recommendation – That the City Council adopt a Resolution (Attachment No. 1) to approve, in substantially the forms as submitted, a Disposition & Development Agreement (DDA) (Attachment No. 2) and a Development Oversight & Delivery Agreement (DODA) (Attachment No. 3) with Maya Cinemas North America, Inc., for Development of a 12-14 screen movie theater (“the Maya Cinemas Project”) on City/VPD Lots 6 and 7, the existing “Gist Building” (to remain) and the Adjacent Vacant Lot in Downtown Pomona and for Development of a 700+ Stall Parking Structure on Vehicle Parking District Lot 10.

Fiscal Impact – The DDA and DODA contemplates the use of \$13+ million in former RDA bond proceeds to construct the parking structure, up to \$800,000 to design and construct certain utility relocation and public improvements and up to \$200,000 to pay for Project Construction Management services to oversee the City’s interest in construction of the parking structure. The sale of Lots 6 & 7, the Gist Building and the adjacent vacant lot, at the appraised fair market value, will generate approximately \$1.9 million in sale proceeds. One time payments for planning, building and engineering plan check fees will be collected. Eventually, annual property tax revenues will be realized after existing former RDA debt is paid from remaining former project area property tax increment. The project is anticipated to generate \$20,000 - \$30,000 in annual taxable concession sales. Finally, the project will generate Water Sale revenues and Utility User Tax revenues. The Cinemas Project is anticipated to contribute to increased investment and retail activity in Pomona’s Downtown.

Environmental Review - Pursuant to the provisions of the California Environmental Quality Act (CEQA-Public Resources Code, Section 21084, *et. seq.*), the guidelines include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall, therefore, be exempt from the provisions of CEQA. In compliance with Article 19, section 15332 (Class 32 – In-Fill Development Projects), the proposed Maya Cinema project described above hereby meets the guidelines for this Categorical Exemption. Therefore, no further

environmental review is required. The parking garage project contemplated in the DDA and DODA will be subject to independent environmental review at time of design approval and award of contract.

Previous Action –

On March 19, 2018 and October 2, 2017, staff provided the Council updates regarding the proposed project and the need for amended terms of the previously approved DDA.

On February 6, 2017, the Council adopted a resolution approving a previous version of the DDA. The staff agenda report from this approval is found in Attachment No. 4.

On July 18, 2016, the Council reviewed and approved the initial business terms and directed staff to proceed with negotiating a DDA based upon said terms.

EXECUTIVE SUMMARY

The recommended City Council action is to adopt a resolution approving a Disposition & Development Agreement and a Development Oversight and Delivery Agreement with Maya Cinemas North America, Inc. for Development of a 12- 14 Screen Maya Cinemas Project on City/VPD Lots 6 and 7, the Gist Building and the Adjacent Vacant Lot in Downtown Pomona (see Attachment No. 5) and for Development of a 700+ Stall Parking Structure on Vehicle Parking District Lot 10 (see Attachment No. 6). Approval would obligate the City to pay for up to \$800,000 of the cost of utility relocations and upgrades and certain public improvements associated with the project, which also provide value to the Downtown in general. The City funded scope of utility relocations and public improvements will be bid out directly by the City as public works projects, and will be completed in advance of the Maya cinema project. Approval will also require the City to pay for services of an independent project construction manager to oversee the City's interest in the construction of the parking structure. This cost is estimated to be \$150,000- \$200,000.

BACKGROUND/DISCUSSION

The Council initially approved a DDA with Maya in February of 2017. Over the course of 2017 and early 2018, it has become clear that Maya's cost to build the planned cinema has been subject to several factors that have increased their costs significantly. The primary factors are 1) escalating commodity construction material pricing, 2) application of newly imposed ADA requirements requiring Maya to increase the purchased land area to enlarge the size of the building, while simultaneously reducing the number of seats that can be accommodated, and 3) greater than anticipated utility relocation and public improvements costs.

Maya proposes to address the cost increase by generating \$3 million in additional New Market Tax Credits, increasing the Maya equity investment by \$1 million, and asking the City to take on up to \$950,000 - \$1,000,000 of the cost increase through a combination of absorbing a portion of the needed utility relocation and public improvement costs and transferring the cost of a third party project construction manager (the "PCM") to the City. The overall cost of utility relocation

and public improvements is estimated to be approximately \$1.3 million. If approved, the DDA will call for the City to pay for \$800,000 of these costs and to perform the relocation. In addition, the City would assume the PCM cost, which is estimated to be \$150,000- \$200,000.

It is important to note that Maya's ability to proceed with the planned project is very much dependent upon their ability to secure a sufficient allocation of Federal New Market Tax Credits. These Credits are competitively allocated to worthy projects which create investment and jobs within income qualified census tracts.

The previously approved DDA incorporated all of the elements for the cinema development and the Maya/City partnership to build the parking garage. In working through the needed DDA revisions, the City, Maya and their respective legal counsel, determined it would be appropriate to now use two documents to address the comprehensive program, hence the preparation of the attached DDA and DODA. The DDA's focus is on the sale of the City/VPD land and Maya's commitment to build their cinema, while the DODA focuses on the City/Maya partnership to fund and build the parking garage. Collectively, the DDA and DODA address the same terms and obligations as found in the previously approved DDA, other than the newly introduced terms for the City to fund up to \$800,000 of utility relocation and public improvements and the PCM cost of \$150,00-\$200,000 as described above in more detail.

At their January 8, 2018 regular meeting, a council motion from the dais was made directing staff and the City Attorney to take steps to include a Project Labor Agreement (the "PLA") requirement in the revised DDA and implementation documents for the City funded parking structure. Staff has discussed the PLA requirement with Maya and the necessary language is incorporated in the DODA and will also be inserted into the parking structure design build RFP that will be published soon.

The DDA and DODA are based upon the primary business terms below, which will allow Maya to proceed with their project and, through a partnership with Maya, will assist the City/VPD in getting the Lot 10 parking structure constructed expeditiously, and at a lower cost than if the City acted alone. The attached DDA and DODA are in nearly final form. Minor non-material modifications and edits may be made prior to execution by the City Manager. These basic Council approved business terms on which the DDA and DODA are written are as follows:

Primary Business Terms

1. Maya Cinemas North America, Inc, (MCNA) will construct a state of the art 12-14 screen multiplex of 50,000-60,000 square feet to be operated by a MCNA subsidiary operating company under a lease agreement.
2. MCNA will purchase the fee simple interest, for appraised fair market value, of the City/VPD Lot 7 (\pm 31,200 sf) and a small portion of City/VPD Lot 6 . MCNA will also directly acquire an approximately 12,670 square foot piece of land privately held on Second Street adjacent to the School of Arts and Enterprises. A recent MAI appraisal concludes the fair market value of the City/VPD land to be \$13.97 per square foot and the Gist Building to be \$730,000.

3. City will provide MCNA a five year option to purchase: a) the VPD owned vacant land on Second Street ($\pm 26,050$ sf) between Park and Gordon, b) the VPD lot 6 ($\pm 31,200$ sf) and c) the Gist Building . MCNA may exercise these options together or separately after the parking structure on Lot 10 is operational. MCNA's option to purchase Lot 6 and the vacant land on Second Street will be at the appraised fair market value of \$13.97 per square foot, and adjusted annually by the common Consumer Price Indicator (CPI) factor from the Bureau of Labor Statistics - Los Angeles region. The option for the Gist building will be based upon the appraised value of \$730,000 and will also be adjusted annually by the same CPI factor.
4. The grant deeds conveying property to MCNA will contain a power of termination reverting title to the City if MCNA fails to obtain all necessary financing within three years after close of escrow.
5. Following completion of the cinemas and Lot 10 parking structure, MCNA may exercise the options and develop and construct a retail/commercial/restaurant project on the vacant City/VPD land along Second Street & Main Street.
6. Utilizing former RDA proceeds (\$13+ million) the City will purchase a finished parking structure from MCNA a 700+ parking structure on VPD Lot 10. MCNA will retain a design-build team selected in accordance with the City's procurement requirements pursuant to the Pomona City Code to construct the structure. The City has agreed to pledge the bond proceeds as collateral in favor of the design-build team while the parking structure is being built under terms outlined by the City's bond counsel. MCNA will have the ability to reject the City's selected design-build team and continue with building their theater project. The City would then act alone to build the parking structure. In such scenario, the City would need to retain a project/construction manager, and Maya has expressed interest in serving in such capacity. The DODA gives the City the absolute right to terminate the document and proceed independently to build the parking structure if Maya does not commence grading and foundation work by December 31, 2019.
7. City will provide 4 hours free validated parking in the Lot 10 parking structure for cinema patrons for the first seven years of operations. Thereafter, cinema patrons will receive 2 hours free parking with validation.
8. At no cost to MCNA, City will cooperate in the applications and processing needed to vacate existing alley ways in Lots 6 & 7 and that segment of Gordon Street between Second and Third Streets. The City will commence needed street & alley vacations ASAP and will deposit the adopted vacation resolutions (if approved by the City Council) into escrow. The vacation resolutions will only be recorded if Maya closes escrow on the land they buy from the City.
9. At their sole cost, MCNA will temporarily move the parking spaces currently on Lot 7 to Lot 6 and the vacant parcel on 2nd Street.
10. City will provide reasonable, non-monetary, assistance necessary for MCNA to apply for federal New Market Tax Credit financing for the project.
11. MCNA will provide a corporate guarantee for the obligation under the DDA.

12. MCNA guarantees that it will require the construction firm that builds the cinema to provide a performance bond sufficient to complete the construction.
13. Protections are included in the DDA and DODA for the City regarding any issues stemming from third party actions or activities, e.g., Public Utilities Commission (PUC) input regarding impacts at, or near, the rail road crossing adjacent to the Lot 10 Parking Structure. The City will pay up to \$800,000 to design and complete certain utility relocations and public improvements that benefit the Downtown in general. This work will be bid out directly by the City and will be completed in advance of the Maya cinema project. In no event will the City incur costs exceeding \$800,000 for this work.
14. The City will assume the cost of services for a Project Construction Manager to oversee the City's interest in the construction of the parking structure. This cost is estimated to be \$150,000- \$200,000.
15. The Grant Deed by which the City will convey property to Maya has a reversion clause allowing the City to take the property back if Maya has not obtained sufficient financing to move forward on their project within three years of close of escrow for the City property.

Environmental Review

Pursuant to the provisions of the California Environmental Quality Act (CEQA-Public Resources Code, Section 21084 et. Seq.), the guidelines include a list of classes of projects that have been determined not to have a significant effect on the environment and that shall, therefore, be exempt from the provisions of CEQA. In compliance with Article 19, section 15332 (Class 32 – In-Fill Development Projects); the proposed Maya Cinema project described above hereby meets the guidelines for a Categorical Exemption. Therefore, no further environmental review is required. The parking garage project contemplated in the DDA and DODA will be subject to independent environmental review at time of contract award and bid selection, and is not part of the above exemption.

CONCLUSION

Staff is recommending that the Council approve the revised DDA and the DODA and thereby agree to assume up to \$800,000 of the utility relocation and public improvement costs as well as the anticipated \$150,000-\$200,000 fee for PCM services. The only viable source of funds to allocate to these costs is the same CIP account that will be used to pay for construction of the parking structure. We had anticipated using \$14,200,000 toward the parking structure construction. This amount would be reduced to roughly \$13,200,000 if the Council agrees to assume the costs described above. The reduction in budget would translate to the loss of approximately 56 parking stalls in the structure. Other than the above noted changes, the terms and obligations in the DDA & DODA are consistent with those previously approved by the Council in February 2017.

Structured parking and downtown cinemas are key common elements to the economic revitalization of many historic urban downtown environments in Southern California and across

the Country. Research and analysis of the factors that help create dynamic downtowns consistently identify plentiful public parking, multiple entertainment options, entrepreneurial private property owners, organized districts (i.e., PBID's), etc. as part of what makes a downtown thrive. By embracing a cinema and parking structure, Downtown Pomona is on the cusp of taking its next healthy evolutionary step as a community wide resource. Maya's *conceptual* site plans and elevations are found in Attachment No. 5. These plans have not yet been formally submitted to the City and should not be considered as a final design vernacular.

Attachments:

- 1) Resolution
- 2) DDA
- 3) DODA
- 4) February 6, 2017 Agenda Report
- 5) Conceptual Elevations & Site Plans
- 6) Lot 10 Arial Photo