

31-888

**MEMORANDUM OF UNDERSTANDING**

**by and between**

**CHABOT LAS POSITAS COMMUNITY COLLEGE DISTRICT**

**and the**

**COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF UNION CITY**

**December 4, 2008**

This **MEMORANDUM OF UNDERSTANDING** (this "Agreement") is entered into effective as of December 4, 2008 ("Effective Date"), by and among the **REDEVELOPMENT AGENCY OF THE CITY OF UNION CITY** (the "Agency"), and the **CHABOT LAS POSITAS COMMUNITY COLLEGE DISTRICT** (the "District"). The Agency and the District are hereinafter collectively referred to as the "Parties."

**WHEREAS**, Agency is a redevelopment agency formed, existing and exercising its powers pursuant to the provisions of the California Community Redevelopment Law, California Health and Safety Code Section 33000 *et. seq.* (the "Agency Act"); and

**WHEREAS**, Agency owns property in the City of Union City (the "City") within the jurisdiction of the Agency, as more particularly described on Exhibit A attached hereto (the "Property"); and

**WHEREAS**, District has notified Agency of its desire and intention to acquire the Property and, pursuant to that certain "Union City BART – Educational HUB Development Request for Qualifications – RFQ # D-09" ("RFQ"), substantially in the form on file with the Secretary of the Agency and is incorporated herein by this reference, to select jointly with Agency a developer (the "Developer") to develop and construct thereon, in one or more phases, (i) a three to eight story building consisting of approximate 10,000 square foot classroom/office space facility, (ii) if feasible, a county library facility, and (iii) at least 40,000 square feet of office/retail space, along with certain other related improvements designed to attract additional commercial activity (as more particularly described in Section 5, the "Project"); and

**WHEREAS**, District has requested that Agency enter into this Agreement to explore the feasibility of the Project and to assist District in the selection of a Developer in response to the RFQ; and

**WHEREAS**, at its meeting on November 25, 2008, the Agency Board directed staff to pursue negotiations with District regarding the disposition of the Property and authorized Agency staff to prepare this Agreement for the purpose of negotiating an exclusive negotiating rights agreement among Developer, Agency and District (the "ENRA") the terms and conditions of which shall outline the terms and conditions that will govern the development and disposition of the Property; and

**WHEREAS**, District anticipates expending funds to conduct certain studies that are needed to assess the feasibility of the development and construction of the Project and requests that Agency enter into this Agreement prior to making such expenditures;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

Section 1. Good Faith Efforts to Negotiate. The Parties shall use their best reasonable efforts to successfully negotiate the ENRA which shall describe the terms and conditions governing development of the Project on the Property. The Parties shall diligently and in good faith pursue such negotiations. Furthermore, the Parties shall use their best reasonable efforts to obtain any third-party consent, authorization, approval, or exemption required in connection with the transactions contemplated hereby. This Agreement does not impose a binding obligation on Agency to grant any approvals or

authorizations required for the Project, nor does it obligate District to agree to any specific terms or obligations.

Section 2. Term. The term of this Agreement (the "Term") shall commence on the Effective Date, and shall terminate on December 18, 2009, unless extended or earlier terminated as provided herein. The Term may be extended upon the mutual written agreement of District and Agency upon authorization of the Agency Board. During the term of this Agreement, and except as provided in the ENRA, Agency agrees not to negotiate with any other party in connection with the disposition and development of the Property.

Section 3. Relationship of the Parties. The Parties agree that nothing in this Agreement shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

Section 4. Developer Deposit. District agrees to include in the RFQ a requirement that the developer concurrently with the execution of the ENRA by Developer submit to Agency a good faith non-refundable deposit ("Deposit") in the amount of Twenty-Five Thousand Dollars (\$25,000). The Deposit shall be in the form of cash and shall be paid by Developer to Agency on or before the effective date of said agreement. Agency shall put the Deposit in an interest bearing account and such interest, when received by Agency, shall become part of the Deposit. If performance of the ENRA results in execution of a definitive agreement, as described in the ENRA. Developer shall provide Agency an additional Seventy-Five Thousand Dollars (\$75,000) to increase the total Deposit to One-Hundred Thousand Dollars (\$100,000). All funds constituting the Deposit shall be retained by Agency.

Section 5. The Project. The negotiations hereunder shall be based on a development concept consistent with the following points:

5.1 Classroom/Office Space. Developer shall develop and construct on the Property at least 10,000 square feet of Class A office space and/or classroom space.

5.2 Branch Library. If determined to be feasible by District, Developer shall develop and construct on the Property a 20,000 square foot facility to for a Alameda County branch library.

5.3 Office/Retail Space. Developer shall develop and construct on the Property approximately 40,000 square feet of office and/or ground floor retail space.

Section 6. ENRA Terms. The ENRA shall require District and/or Agency to lease the Property to Developer and cause Developer to (i) submit to Agency and District its business terms for development of the Project, including a financial pro forma, (ii) a complete development proposal for redevelopment of the Property and (iii) require developer to entitle the Project in accordance with the following provisions:

6.1 Agreement with Developer. District Trustees and Agency Board shall jointly select the Developer based upon Developer's qualifications and Developer's proposal for redevelopment of the Property. Developer shall undertake a due diligence study of the area and the Property and submit an

informal development proposal for redevelopment of the Property. The District Trustees, Agency Board, and Developer shall prepare and enter into the ENRA as provided in the RFQ. District agrees that with respect to the Property any ENRA between District and Developer shall be consistent with the terms of this Agreement, be submitted to Agency for its review, and shall not exceed the term of this Agreement unless approved in advance by Agency in writing.

6.2 LEEDS Standards. The Project shall be constructed to LEEDS Gold Standard.

6.3 Union City Municipal Code. District and Developer shall comply with all Union City Municipal Codes. District or Developer, as the case may be, shall submit building plans for the Project to the Fire Marshall of the City for review and comment and shall install fire sprinklers per City Code.

6.4 Floor-Area-Ratio. Developer shall construct all buildings with a minimum FAR 1.

6.5 Entitlements.

6.5.1 Submission. Developer shall submit to Agency staff and obtain staff approval of its development proposal for which entitlements are sought prior to submitting such proposal to Agency Board, the Union City Council and the Trustees for review and approval. Developer shall submit the final development proposal to the Union City Council for its approval.

6.5.2 Compliance. Developer shall comply with all land use entitlement requirements of the City, the County and any other applicable regulatory body and shall cause any developer to comply with all applicable land use entitlement requirements.

6.5.3 Schedule of Performance. District acknowledges that Agency will not convey any portion of the Property to District until all entitlements for the Project are received by Developer. Developer shall secure entitlements within twelve (12) months of execution of the ENRA and shall commence construction of the Project by 2010 and shall complete construction by no later than 2013. Such period may be extended by an additional four months if an EIR or Mitigated Negative Declaration is deemed appropriate after acceptance of the conceptual proposal by the Trustees and the Agency Board.

6.5.4 Fees. Developer shall be responsible for paying all applicable City fees, processing fees, and environmental review fees.

6.6 Design Guidelines. Developer shall comply with all design guidelines, if any, for the Agency's Union Square area and the policies of the Station District, the City's General Plan and the City's Zoning Ordinance in force at the time a development contract is issued.

6.7 As-Is; Hazardous Materials. District shall accept site as is. District (and/or a developer) shall be obligated to demolish all buildings, grading and removal of soils, and predevelopment and development costs. District specifically acknowledges that neither Agency nor City have any liability or any obligation with respect to demolition, soil removal, hazardous material removal or storage, preconstruction

Level 1  
and/or  
Level 2

or construction funding. Agency, however, will assist District in seeking funding to underwrite cost of LEEDS construction and library funding.

6.8 Taxes. District shall arrange ownership of all improvements on the Property so that they are taxable structures. District agrees to not seek a property tax exemption on any improvements and District further agrees to require any developer pay all taxes for improvement in the Property.

6.9 Design Review. Agency acknowledges that any building design will be reviewed by the State of California Architect and will work cooperatively with the State regarding design review. District agrees to design and construct the Project as approved by the city and/or Agency, and any changes requested by the state shall be submitted to the Agency for review and approval which approval shall not be unreasonably withheld.

6.10 Request for Qualifications. In the event of any inconsistencies between the provisions of this Agreement and the RFQ, the provisions of this Agreement shall control.

6.11 Financing. The District shall obtain financing commitments from prospective lenders or financing partners for each component of the Project specified in Section 5, in form and substance satisfactory to Agency, or shall provide evidence to Agency that Developer has secured such commitments, subject only to commercially reasonable conditions, for all funding necessary for the successful completion of each phase of the Project. Agency and District acknowledge that Developer may seek authorization to finance a portion of the Project for infrastructure necessary for the Project in accordance with Section 5956 of the Government Code. District further acknowledges Agency will not seek approval of a disposition and development agreement ("DDA") unless and until a pro forma for each phase of the Project that confirms the financial feasibility of the proposed redevelopment of the Property.

6.12 Agency Obligations. Agency shall convey property at nominal cost to the District after Developer has secured all entitlements, demonstrated full financing for construction, and is ready to pull building permits.

## Section 7. District's Obligations.

7.1.1 District Studies. During the Term, District shall use its best reasonable efforts to prepare, at District's expense, any studies, surveys, plans, specifications and reports ("**District's Studies**") the District deems necessary or desirable in District's sole discretion, to determine the suitability of the Property for the Project. Such studies may include, without limitation, title investigation, relocation analyses, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. Agency shall provide District and any developer copies of all soil reports and environmental reports, zoning text and general plan requirements for the Property.

7.1.2 Relocation. Notwithstanding anything to the contrary in this Agreement or the Lease, District shall bear all responsibility for payment of any relocation costs it incurs to accommodate the construction of the Project and District shall assume all responsibility to repay Agency for any relocation costs incurred by Agency in connection with the Project if District or Developer fails to construct the Project in accordance with the ENRA.

Section 8. Full Disclosure. District is authorized to enter into this Agreement. At or prior to the execution of a DDA, District will require Developer to make full disclosure to the Agency of its principals, officers, major stockholders, partners or members; joint venturers; negotiators; development managers; consultants and directly involved managerial employees, and all other material information required by the Agency concerning the developer and the methods of financing to be used in the development of the Property.

Section 9. Expenses. Each party shall bear its own third -party costs and expenses (including, without limitation, all legal and/or consultant fees and related expenses) incurred in connection with this Agreement and the activities contemplated hereby.

Section 10. Execution of ENRA. If the Parties successfully negotiate an ENRA, staff shall recommend approval of the ENRA to their respective governing bodies. Agency shall not have any legal obligation to grant any approvals or authorizations for the Project until the ENRA has been approved by its governing body.

Section 11. Termination.

11.1 Mutual Agreement. This Agreement may be terminated at any time by mutual consent of the Parties.

11.2 Agency Right to Terminate. Upon seven (7) days prior written notice, ("**Agency Written Notice**"), Agency shall have the right to terminate this Agreement if, in their sole discretion, either party makes a good faith determination that District is not proceeding diligently and in good faith to carry out its obligations pursuant to this Agreement. Agency shall exercise such right in accordance with the provisions set forth in Section 1 of this Agreement.

Neither Party shall have the right to seek an award of damages as a result of the termination of this Agreement pursuant to this Section. Two (2) days prior to delivery of the Agency Notice, Agency shall notify District by telephone, email or facsimile of the reasons it believes District is not proceeding diligently and in good faith and District and Agency shall meet and confer in a good faith effort to resolve the matter.

11.3 District Right to Terminate. Upon seven (7) days prior written notice ("**District Written Notice**"), District shall have the right to terminate this Agreement upon making a good faith determination, in its sole discretion, that Agency is not proceeding diligently and in good faith to carry out its obligations pursuant to this Agreement. District shall exercise such right in accordance with the provisions set forth in Section 1 of this Agreement.

Neither Party shall have the right to seek an award of damages as a result of the termination of this Agreement pursuant to this Section. Two (2) days prior to delivery of the Agency Notice, Agency shall notify District by telephone, email or facsimile of the reasons it believes District is not proceeding diligently and in good faith and District and Agency shall meet and confer in a good faith effort to resolve the matter.

11.4 No RFQ. This Agreement shall immediately terminate if no eligible or qualified parties submit complete responses to the RFQ.

11.5 No ENRA. This Agreement shall immediately terminate as described in Section 12 below if the Parties do not enter into an ENRA.

✓ 11.6 No Financing. This Agreement shall immediately terminate if Developer does not secure financing for the Project within the time-line set forth in the ENRA.

Section 12. Effect of Termination. Upon termination as provided herein, or upon the expiration of the Term and any extensions thereof without the Parties having successfully negotiated an ENRA, this Agreement shall forthwith be terminated and there shall be no further liability or obligation on the part of either of the Parties or their respective officers, employees, agents or other representatives; provided however, the provisions of Section 9 (Expenses), Section 14 (Indemnity) shall survive such termination.

Section 13. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that a duplicate copy of the notice is promptly delivered by overnight delivery. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

Agency : Community Redevelopment Agency of the City of Union City  
34009 Alvarado-Niles Road  
Union City, California 94587  
Attn.: Executive Director  
Tel: (510) 675-5345  
Fax: (510) 475-7318

District: Chabot Las Positas Community College District  
5020 Franklin Drive  
Pleasanton, CA 94588  
Attn.: Lorenzo Legaspi, Vice Chancellor Business Services  
Tel: (925) 485-5203  
Tel: (925) 485-5255

✓ Section 14. Indemnification. The District hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend the Agency and the City and their respective elected and appointed officials, officers, agents, representatives and employees ("**Indemnitees**") from and against all claims, costs (including without limitation reasonable attorneys' fees and litigation costs) and liability, arising out of or in connection with this Agreement provided however, District shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee, or any actual breach of agreement or applicable law by any Indemnitee.

Section 15. Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

Section 16. Entire Agreement; Amendments In Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

Section 17. Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

Section 18. Approvals. Unless otherwise provided in this Agreement, the Executive Director of Agency (the "**Executive Director**") shall be authorized to enter into all written approvals, consents or waivers by the Agency without further authorization by the governing board of the Agency. Nothing herein, however, shall be deemed to prevent the Executive Director from requesting formal approval by the governing board of the Agency if the Executive Director, in his or her sole discretion, determines to seek such approval.



Section 19. No Discrimination. District shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. District covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or part thereof, nor shall District or any person claiming under or through District establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. District shall include such provision in all leases, contracts and other instruments executed by District, and shall enforce the same diligently and in good faith.

All deeds, leases or contracts made or entered into by District, its successors or assigns, as to any portion of the Property or the Project shall contain the following language:

19.1. In deeds, the following language shall appear:

"Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

Notwithstanding the above paragraph, with respect to familial status, the above paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the above paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the above paragraph.

19.2. In leases, the following language shall appear:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on

account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased."

Notwithstanding the above paragraph, with respect to familial status, the above paragraph shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in the above paragraph shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11 and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to the above paragraph.

19.3 In *contracts*, the following language shall appear:

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

Section 20. Conflicts. To the extent permitted by the laws of the State of California, the laws, municipal codes, regulations, ordinances and policies of the City shall prevail if any conflict arises between said City laws, municipal codes, regulations, ordinances and policies and the any laws of the State of California.

Section 21. Captions. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.

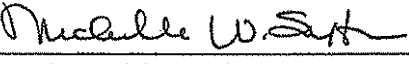
Section 22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

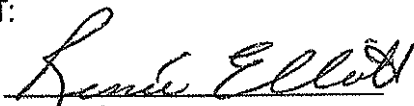
**COMMUNITY REDEVELOPMENT AGENCY  
OF THE CITY OF UNION CITY**

By:   
Executive Director

APPROVED AS TO FORM:

By:   
General Counsel

ATTEST:

By:   
Agency Secretary

**CHABOT LAS POSITAS COMMUNITY COLLEGE  
DISTRICT**

By:   
Vice Chancellor Business Services

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Special Counsel

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

COMMUNITY REDEVELOPMENT AGENCY  
OF THE CITY OF UNION CITY

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Executive Director

By: \_\_\_\_\_  
General Counsel

ATTEST:

By: \_\_\_\_\_  
Agency Secretary

CHABOT LAS POSITAS COMMUNITY COLLEGE  
DISTRICT

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Vice Chancellor Business Services

By: *Sean Ball*  
Special Counsel

EXHIBIT A

PROPERTY

LEGAL DESCRIPTION

Real property in the City of Union City, County of Alameda, State of California, described as follows:

PARCEL ONE:

PARCELS 2 AND 4, PARCEL MAP 2094, FILED DECEMBER 09, 1977, IN BOOK 98, PAGES 72 AND 73, OF MAPS, ALAMEDA COUNTY RECORDS.

PARCEL TWO:

NON-EXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITY PURPOSES, APPURTENANT TO PARCEL 1 ABOVE, OVER, UNDER, ALONG, ACROSS AND THROUGH ALL THOSE PORTIONS OF PARCELS 1 AND 3 OF PARCEL MAP 2094, FILED DECEMBER 09, 1977, IN BOOK 98, PAGES 72 AND 73, OF MAPS, ALAMEDA COUNTY RECORDS, WITHIN THE LINES OF THOSE CERTAIN PRIVATE COMMON ACCESS AND PUBLIC UTILITY EASEMENTS AS SHOWN ON SAID MAP.

APN: 087-0019-012-01