

2005 JUN 16 PM 9:17

**CITY OF OAKLAND AND  
OAKLAND REDEVELOPMENT AGENCY  
AGENDA REPORT**

TO: Agency Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency  
DATE: June 21, 2005

RE: **RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE OAKLAND REDEVELOPMENT AGENCY AND OPUS WEST DEVELOPER GROUP FOR A TERM OF 180 DAYS TO DEVELOP A PROPOSAL FOR DEVELOPMENT OF APPROXIMATELY 50 ACRES LOCATED IN THE CENTRAL AND EAST GATEWAY AREAS OF THE FORMER OAKLAND ARMY BASE**

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**SUMMARY**

Staff seeks authority for the Redevelopment Agency Administrator to negotiate and execute an Exclusive Negotiating Agreement (ENA) between the Oakland Redevelopment Agency (ORA) and Opus West Developer Group on land within the East Gateway Subarea of the Oakland Army Base (OARB) Redevelopment Project Area [see Attachment 1]. The Opus West Developer Group (Developer) consists of Opus West Corporation and Legacy Partners as the master developers, and partners 1) Levine Fricke EcoParks, LLC., 2) United Indian Nations Community Development Corporation, 3) Michael Ziegler, and 4) Curtis Smothers.

The ENA also provides for submittal of a project proposal on an approximate 14 acre portion of the Central Gateway Subarea which would not be needed to satisfy the 70 acre land needs under the Fulton (Wayan) ENA. The exact location of the approximately 14 acres is to be determined based upon site identification in the Fulton ENA with participation by the Opus West Developer Group, as provided for in attached ENA term sheet. The recommended ENA also provides for implementation of the "right of first proposal" by the Developer on land covered by the recommended Fulton and Costco ENA's only in the event that the Agency determines to not to proceed with those developments.

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## **FISCAL IMPACT**

No fiscal impact is anticipated as a result of authorization of this ENA. The subject land areas will continue to be leased and managed by Oakland Base Reuse Authority and third party project costs necessary during the ENA period will be paid by Developer.

## **BACKGROUND**

On June 5, 2002, The Redevelopment Agency Director extended a right of first offer to present a proposal for development to the Developer. On June 14, 2005 the Community and Economic Development Agency recommended entering into an ENA with the Fulton Development Group and Developer for separate portions of the Oakland Army Base. Developer indicated a willingness to suspend its right of first offer on lands subject to other ENA's the Agency wished to pursue, and asked to submit a proposal for land not subject to other ENA's. Additionally, developer wished to re-assert the right of first offer on any land subject to ENA by Costco and Fulton Development Group in the event the Agency decided to not pursue those developments. The recommended ENA provides for implementation in of the right of first offer on these terms.

### Land Area Subject To This ENA

The recommended Developer ENA applies to two areas in the following way (refer to Map Attachment #1):

1. The 35 acre East Gateway Subarea.
2. Development of a proposal for an approximately 17 acre portion of the combined 87 acre Central and East Gateway Subareas, which is not needed for the anticipated 70 acre Fulton proposal. This area will be identified through coordination of the ENA efforts for the Fulton Development and Opus Developer Groups.

The recommended developer ENA recognizes the temporary suspension of any right of first offer to develop on land subject to either the Fulton or Costco ENA's. The recommended developer ENA also recognizes that there will be future reactivation of a right of first offer to develop areas subject to either the Fulton or Costco ENA's respectively, should either of those projects not be approved and pursued to development.

In this way, the Developer's right to first offer of development is satisfied.

### Land Use Planning

The Oakland Base Reuse Authority has initiated a land use planning study. The study prepared by DCE will be completed and presented to the Council during the ENA period. There will be recommendations regarding finalizing the DCE land use alternatives into a land use policy that the Council can adopt to guide future development. The ENA which is the subject of this report contains provisions to require consideration of the DCE Land Use Alternatives study when developing the project proposal.

### Coordination with other ENA's

Two other ENA's are recommended for approval and are anticipated to be pursued during the time period of the ENA which is the subject of this report. This recommended ENA recognizes the need to coordinate development of the project proposal with other ENA's on the Army Base, and specifically requires consideration of ENA's involving Costco and Fulton Development Group, should such ENA's be approved, when developing a project proposal

## **KEY ISSUES AND IMPACTS**

### ENA Project Benefits and Considerations

The proposed ENA would allow staff to formally explore development of a project that furthers the economic development of the City. The ENA will provide a format for reconciling various community land use issues, port issues, and other development needs. It also, however, prohibits the Agency from negotiating with any other party for development of the subject property for a period of 180 days unless the ENA is terminated.

### Community Concerns

Several West Oakland community groups and organizations are interested in how the ultimate development of the Oakland Army Base will impact their neighborhood. These groups also see an opportunity to reduce impacts from certain incompatible land uses currently located in West Oakland, by relocating these uses to the Army Base. There is community interest in determining the viability of relocating recycling and port-related trucking uses to the Army Base. The Developer is required to hold at least two public meetings on the proposed development and consider this input in developing the proposal brought back to the Agency board for consideration.

### Community Business Uses and Agency Needs

The Port, business community (such as trucking and port support uses), BCDC requirements, and the Joint Apprentice Training Consortium 3-acre property allocation

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for a training facility are all required to be considered during development of a project proposal. The business community will be engaged as part of the required public outreach process. Comments from other Agencies will be coordinated by ORA.

### **OARB Land Use Analysis**

The Gateway Development Area of the Oakland Army Base in general is subject of a comprehensive land use economic, market feasibility and site planning analysis underway by an OBRA consulting team. The analysis examines a number of prospective land uses, including industrial and port-related uses. Although the results of the analysis will be presented in detail in a separate report, the Agency will have an opportunity to consider the Developer proposal together with the alternatives analyzed in the DCE Land Use Alternatives Report. The Developer will also be required to consider the findings of the DCE report in formulating its development proposal.

### **SUSTAINABLE OPPORTUNITIES**

The ENA allows the Agency an opportunity to negotiate sustainable features that could be incorporated into the project. Such features would be identified in the Disposition and Development Agreement that--pending successful ENA negotiations and completion of other pre-development requirements--would follow after the ENA period. The DDA would be subject to Agency review prior to execution by the Agency and Developer.

#### Economic

There are no economic opportunities that apply to the proposed action to execute an ENA. However, local employment and community economic benefits are issues that can be addressed in a DDA should the project proceed.

#### Environmental

There are no sustainable environmental opportunities that apply to this particular action. Sustainable issues would be addressed as part of any DDA resulting from negotiations during the ENA period.

#### Social Equity

There are no social equity opportunities that apply to this particular action. Social equity issues would be addressed as part of any DDA resulting from negotiations during the ENA period.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

This report does not include the approval of any specific projects or programs. Disability and senior access issues will be addressed when specific development plans are submitted to the City by the developer for review and approval.

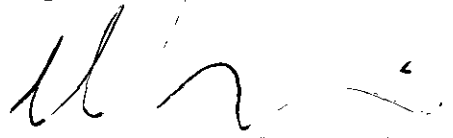
## **RECOMMENDATION AND RATIONALE**

Staff is recommending authorization for the Agency Administrator to negotiate and enter into the ENA. Execution of an ENA will allow the Agency to formally pursue a project that can yield economic, employment and other benefits to the City. An ENA will be negotiated and transmitted to Developer upon Agency direction. A summary of ENA provisions is attached to this report (Attachment #2). The proposed 180-day time period is intended to allow the Agency to work through major negotiation points with Developer.

## **ACTION REQUESTED OF THE AGENCY**

Staff recommends that the Agency adopt a resolution authorizing the Agency Administrator to negotiate and enter into an Exclusive Negotiating Agreement between the Oakland Redevelopment Agency and Developer.

Respectfully submitted,



Dan Vanderprieem  
Director of Redevelopment, Economic  
Development, Housing and Community  
Development

APPROVED AND FORWARDED TO THE  
REDEVELOPMENT AGENCY:

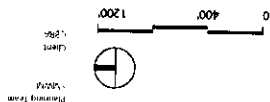
  
OFFICE OF THE AGENCY ADMINISTRATOR

Attachments:

1. Map
2. Summary of ENA Provisions (Opus ENA Project Term Sheet)

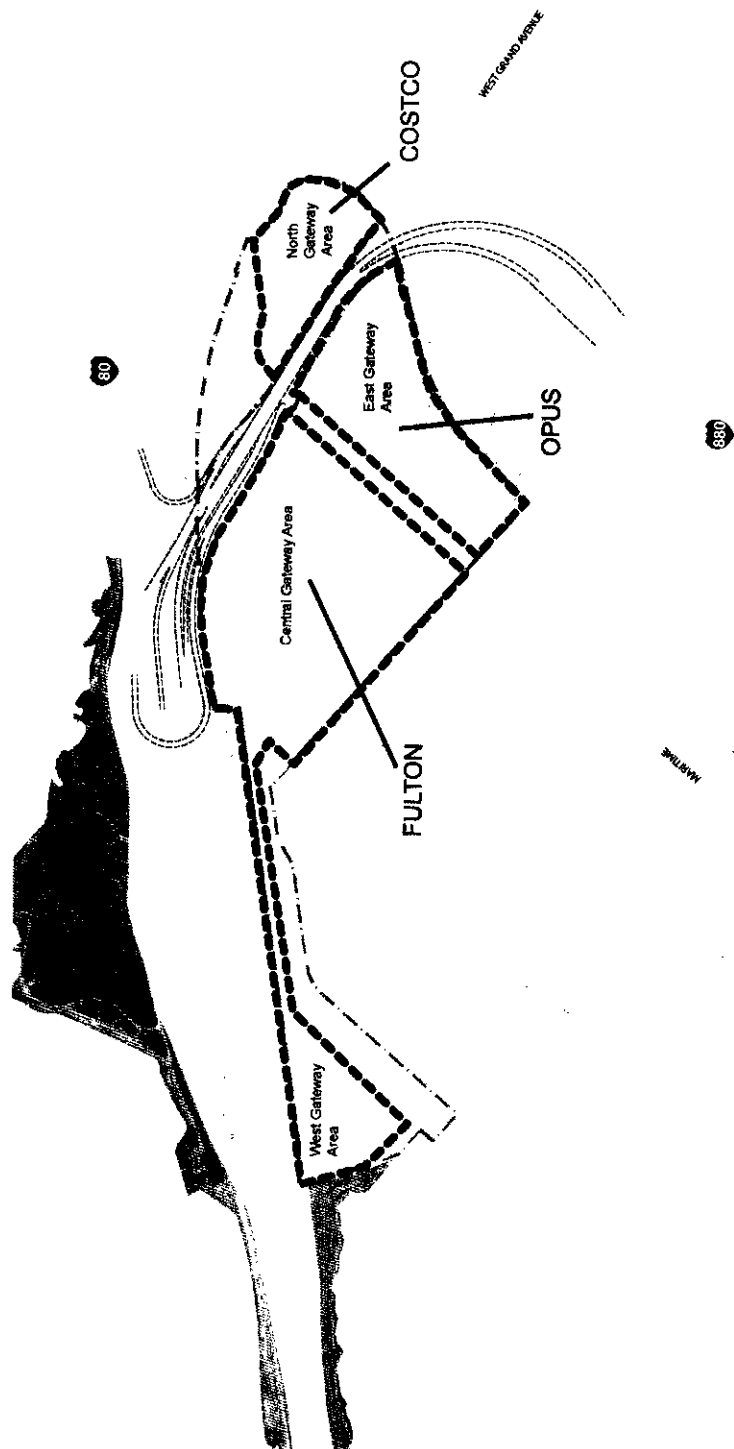
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ATTACHMENT 1



OBRA  
Program Alternatives  
3 June 2005

DRAFT



## ATTACHMENT 2

### OPUS WEST ET AL ENA TERM SHEET

#### 1. ENA Period

The ENA would be in effect for a 180-day term. Project proponents must return to the City Council for any time extension.

#### 2. Project Site

The subject site is the Balance of the Army Base lying South of Grand Avenue and East of Maritime Street, the East Gateway (see Attachment 1: Map). In addition, the approximately 17 acres of land which is part of the Central Gateway and which is in excess of the seventy (70) contiguous acre land area needed by the Fulton Project Development Group ("Fulton") will be made part of the Opus Project Site. This will require coordination with the Fulton Group. The total land area subject to this Opus ENA is approximately fifty two (52) acres.

#### 3. Project Description

The project concept and design shall be developed based on input from the Agency, the residential and business Communities, Port, BCDC requirements, Other approved ENA's which may be approved and operative during the time period of this ENA for the Fulton Development Group and Costco, Joint Apprentice Training Consortium 3 acre property allocation for training facility, and the 2005 DCE Land Use Alternatives report.

#### 4. Good Faith Negotiations

During the ENA term, the parties will use their best good faith efforts to agree on:

- a. The scope of the Developer's<sup>1</sup> development obligations;
- b. Any public finance responsibilities of the Agency;
- c. The terms and conditions under which the Agency will convey the Property to Developer for development;
- d. The process for securing the Agency's construction documents approvals;
- e. The schedules for the performance of the Developer's development obligations and the other elements to be included in the DDA; and
- f. The form of a DDA which the Agency staff can recommend to the Agency Commission and to the City Council of the City of Oakland ("City").

#### 5. Exclusive Negotiation

Agency shall not solicit proposals from third parties or negotiate with third parties for the development of the Project Site prior to the termination of the ENA or execution of a DDA, whichever occurs first. Agency shall, however, have the right to rent, lease, license or use all or any portion of the Project Site for uses that would not materially adversely affect Developer's rights under the ENA.

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<sup>1</sup> For purposes of the ENA, the term "Developer" refers to the team of developers listed in the letter from William Claggett to John Greer, dated June 5, 2002.

**6. Operation of Right of First Proposal**

- a. Subject to clause (b) below, this ENA satisfies any rights Developer has under a "right of first proposal" for the Army Base. The ENA is intended to provide a mechanism to develop a proposal for Agency consideration, and coordinate the proposal development with proposals being developed under ENA's on the Army Base with Fulton and Costco.
- b. Developer shall have a right of first proposal on lands covered by the Fulton and Costco ENA's should the Council decide not to enter into an ENA with either Fulton or Costco, respectively. The right of first proposal on land covered by an ENA(s) with Fulton or Costco shall be suspended during the period of those respective ENA's. Following an Agency determination to not enter into a DDA with either Fulton or Costco on land subject to their respective ENA's, Developer shall have a period of Sixty (60) Days to submit a proposal on those respective areas where Agency has made such determination.
- c. The provisions in this ENA govern any "right of first proposal or first offer" and no other rights exist.

**7. Project Expense Payment**

In lieu of a project expense payment, Agency and Developer will confer on needed studies and, upon mutual agreement, such studies will be performed and paid for by Developer. Anticipated project expenses which the developer will fund include, but are not limited to, outside Agency legal fees necessary for project review; cost estimating; appraisals, preparation of the California Health and Safety Code 33433 Report and other studies and documents required to assure the project design is viable, such as a traffic study.

**8. Schedule of Performance**

a. General Provisions

During the term of the ENA period, parties will attempt to reach agreement on the scope of the Developer's development obligations; public finance responsibilities of the Agency; terms and conditions under which the Agency will convey the property to the Developer; the process for securing the Agency's construction documents approvals; the schedules for the performance of the Developer's obligations and the form of a DDA which the Agency recommend for approval.

b. Initial Submittals

Within thirty (30) calendar days of the commencement of the Negotiation Period Developer shall submit to Agency the following:

- 1) A description of the specific financial structure and legal structure of the proposed development in a form that reasonably satisfies Agency that the Project is feasible. This shall include, without limitation, a written description of the specific and general roles, responsibilities, and obligations of Developer, Developer's members or partners, and any other person or entity participating in the legal entity established by Developer for purposes of developing the Project. Additionally, the written description of roles, responsibilities, and obligations shall identify the



principals and other personnel, to the extent identified, from each participating party by name, title or position, and areas of responsibility within the development entity.

- 2) Copies of balance sheets and income/loss statements, prepared in accordance with generally accepted accounting principles, and other financial documentation as reasonably requested by Agency covering the last two years of Developer, any parent, affiliates or subsidiary corporations or other entities (if such subsidiaries or affiliates will be participating in the Project) Developer's members or partners, and any other entity participating in the legal entity established by Developer for purposes of developing the Project. Include in this submission any funding sources known at the time of execution of this Agreement.
- 3) All documents related to its corporate, LLC, or partnership status, and the status of any parent, affiliates or subsidiary corporations or other entities (if such subsidiaries or affiliates will be participating in the Project) and its members or partners, including but not limited to articles of incorporation, by-laws, partnership agreements, operating agreements, joint venture agreements, lists of members of board of directors, and proof of good legal standing.
- 4) A detailed description, including references, of the Project development team's experience. The team shall cover at a minimum, the architect and engineer, the general contractor and the marketing and real estate firm for the proposed undertaking. Developer will supply Agency with a roster of Developer's Project development team and Agency will request the information it needs based on the roster.
- 5) A written statement concerning any litigation, arbitration, administrative proceedings which Developer or Developer's partners or members is a party that may have an impact on the negotiations. Developer shall provide to Agency copies of any litigation documents or filings in connection with such litigation within five (5) calendar days of Agency's written request.
- 6) A list of lenders and investors that Developer has utilized for similar projects in the past. Developer will furnish any lending, capital, or equity commitments to the extent that Developer has secured any such commitments during the term of this Agreement.

9. **Master Planning and Agency and Community Review**

Within sixty (60) calendar days of the commencement of the Negotiation Period, Developer shall complete an Administrative Draft Master Plan (the required contents of which will be provided by Agency at the effective date of this Agreement), which shall be reviewed with Agency and the Community as follows:

- a) At execution of this Agreement, ORA shall provide to Developer all existing environmental, geological, engineering and other reports within ORA's possession or control pertaining to the condition of the Property with the exception of such material that the Agency deem confidential. Agency agrees that it will describe to Developer to the extent required by laws governing confidentiality of public entity records material that Agency deems confidential.

- b) The issues to be studied in the process of refining the Administrative Draft Master Plan include:
- A site plan with
    - location and design of access road to project
    - building placement on site, massing and elevations
    - parking, delivery, and circulation layout
  - Public Improvements

For purposes of this subparagraph, the term “public improvements” shall include, without limitation, such matters as: any permanent closure, rerouting, narrowing or widening of any existing public streets or sidewalks, or creation of any new streets; public parking facilities, public parks, public pedestrian ways, plazas or other public amenities; traffic signals that may need to be replaced or installed; Any utility infrastructure and improvements; and
  - Landscape and Buffering areas
  - Regulatory Development Requirements and/or Restrictions applying to the Project Site
  - Responses to other issues raised by Agency.
  - The Administrative Draft Master Plan shall indicate proposed phasing, and specifically describe the proposed scope of the initial and subsequent phases of the Project.
- c) Unless the Parties have agreed in writing that this requirement has been met prior to execution of this Agreement, within Ninety (90) days of commencement of the Negotiation Period or 30 days following completion of the Administrative Draft Master Plan, which ever occurs first, developer shall conduct two or more design charrettes with Agency and the Developer’s design team, to refine the Administrative Master Plan and create a Draft Master Plan.
- d) Within 20 days of receipt of the Administrative Draft Master Plan, Agency shall review the Plan and forward comments to the Developer.
- e) Within one hundred and fifty (150) calendar days of the commencement of the Negotiation Period, Developer shall conduct at least two public meetings with members of the community to review and comment on the Draft Master Plan, and shall modify the Draft Master Plan as appropriate and submit the revised plan as a Final Master Plan

**10. Project Design, Financing, and Other Submissions**

- a) Within seventy (70) calendar days of completion of the Final Master Plan Developer shall submit to Agency building floor plans, exterior elevations, a landscaping plan, rendering(s), a color and materials board, and other materials as requested by the Agency.
- b) Within one hundred ten (110) days of the commencement of the Negotiation Period, Developer shall submit:

- 1) Detailed and itemized project pro-formas that are linked to the schedule for construction. Pro-formas shall include a development budget, a statement describing the sources and uses of funds, a 20-year cash flow analysis, and an annotated operating budget to a level of detail reasonably acceptable to Agency.
- 2) A detailed development schedule for construction of the project.
- 3) A list of all public improvements, if any, presently anticipated or required for the entire Project and initial phase.

**11. Agency Submittals to Developer**

Provided that Developer is in compliance with the material provisions of this Agreement, within one hundred eighty days (180) days of the commencement of the Negotiation Period, Agency shall submit to Developer a draft DDA that includes, but is not limited to:

- the scope of the Developer's development obligations;
- any public finance responsibilities of the Agency;
- the terms and conditions under which the Agency will convey the Property to Developer for development;
- the process and schedule for completing CEQA review
- the process for securing the Agency's construction documents approvals;
- the schedules for the performance of the Developer's development obligations and the other elements to be included in the DDA; and
- the form of a DDA which the Agency staff can recommend to the Agency Commission and to the City Council of the City of Oakland ("City").

*H. Miller*

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

REDEVELOPMENT AGENCY  
OF THE CITY OF OAKLAND

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RESOLUTION No. \_\_\_\_\_ C.M.S.

**RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE OAKLAND REDEVELOPMENT AGENCY AND OPUS WEST DEVELOPER GROUP FOR A TERM OF 180 DAYS TO DEVELOP A PROPOSAL FOR DEVELOPMENT OF APPROXIMATELY 50 ACRES LOCATED IN THE CENTRAL AND EAST GATEWAY AREAS OF THE FORMER OAKLAND ARMY BASE**

**WHEREAS**, the Redevelopment Agency adopted the Redevelopment Plan for the Oakland Army Base Redevelopment Project ("Oakland Army Base Redevelopment Plan ") on July 1, 2000; and

**WHEREAS**, one of the goals included in the Oakland Army Base Redevelopment Plan was subdividing the site into parcels suitable for modern, integrated development; and

**WHEREAS**, one of the proposed actions included in the Oakland Army Base Redevelopment Plan was redevelopment of land by private enterprise; and

**WHEREAS**, the Oakland Base Reuse Authority ("OBRA") has acquired 365 acres of the former Oakland Army Base and has approximately 170 acres available for private development after transfers of land to the Port of Oakland, California Department of Transportation and East Bay Regional Park District; and

**WHEREAS**, OBRA plans to convey all of its interests in the Army Base land to the Redevelopment Agency in 2006; and

**WHEREAS**, the Opus West Wind group ("OWW") consists of the following parties: Opus West Corporation, Legacy Partners Commercial, Levine Fricke EcoParks, L.L.C., United Indian Nations Community Development Corporation, Michael Ziegler and Curtis Smothers; and

**WHEREAS**, the Agency has recommended that OWW develop a portion of the property; and

**WHEREAS**, the Agency and OWW, as the prospective developer, wish to enter into a period of preliminary study and negotiations over a project proposal, understanding that this does not constitute a binding commitment on the part of the Agency to any project or developer for the property; now therefore be it

**RESOLVED:** That the Agency Administrator is authorized to negotiate and enter into an Exclusive Negotiating Agreement with OWW for purposes of studying and evaluating the feasibility of, and negotiating terms and conditions for the potential development of a portion of the Army Base as more particularly defined as the Project Site in the term sheet attached to the agenda report for this item, and on the general terms and conditions of the term sheet; and be it

**FURTHER RESOLVED:** That the exclusive negotiating period will be for one hundred and eighty days (180); and be it

**FURTHER RESOLVED:** That the Exclusive Negotiating Agreement shall be reviewed and approved as to form and legality by Agency Counsel prior to execution; and be it

**FURTHER RESOLVED:** That the Agency has independently reviewed and considered this environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency is exempt from CEQA pursuant to Section 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA Guidelines; and be it

**FURTHER RESOLVED:** That the Agency Administrator or her designee shall cause to be filed with the County of Alameda a Notice of Exemption for this action; and be it

**FURTHER RESOLVED:** That the Agency Administrator is further authorized to take whatever action is necessary with respect to the Exclusive Negotiating Agreement and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2005

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
CHAIRPERSON DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
Secretary of the Redevelopment Agency  
of the City of Oakland