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CITY OF OAKLAND
AGENCY AGENDA REPORT

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly, Agency Administrator
FROM: Community and Economic Development Agency
DATE: March 9, 2004

RE: A RESOLUTION AUTHORIZING A GRANT IN AN AMOUNT NOT TO EXCEED $1,100,000 TO MACARTHUR PARK DEVELOPMENT ASSOCIATES, LLC, TO COVER ADDITIONAL COSTS FOR THE DEVELOPMENT OF THE FINAL PHASE OF THE PALM VILLAS PROJECT ON MACARTHUR BOULEVARD BETWEEN 90TH AND 94TH AVENUES

SUMMARY

It is recommended that the Agency approve a resolution that authorizes a grant in an amount not to exceed $1,100,000 from the Low and Moderate Income Housing Fund to MacArthur Park Development Associates, LLC to provide funding to enable the developer to complete the final phase of the Palm Villas project. MacArthur Park Development Associates, LLC (MPDA), a joint venture between Baines & Robertson, Inc., and Em Johnson Interest, Inc., has 16 units remaining to complete in this 78 unit homeownership development. The units, all of which are affordable to households making up to 120% of Area Median Income (AMI), are located on MacArthur Boulevard between 90th and 94th Avenues in the Elmhurst District. The proposed grant would be used to fund the development of 14 of these 16 units.

Although the developer has made substantial progress toward completing the project, MPDA is still plagued with substantial on-going internal cash flow problems and resultant delays and project cost overruns. MPDA is requesting the $1,100,000 grant to cover those additional costs incurred and will receive no profit.

If this additional Agency funding is committed to the project, and MPDA receives a proposed immediate infusion of cash from the construction lender, Bank of America Community Development Bank ("Bank"), MPDA is anticipating that the remaining 16 units will be completed by the end of June 2004.

In 1999 when the Agency and MPDA entered into the initial development loan agreement for the Palm Villas project, Council policy allowed Low and Moderate Income Housing Funds (Low/Mod Fund) to be used for projects affordable to 120% of Area Median Income (AMI). The Palm Villas project was included under that policy and all units are still required to be affordable to households earning not more than 120% of AMI. Subsequently, Council policy has changed, limiting the affordability level to 100% of Area Median Income.

With this request for $1,100,000, the total Agency funding for this project will be $8,184,000. This includes a total of $5,353,000 in grants to MPDA ($1,000,000 from the Central District Land Sales Proceeds and the balance from the Low/Mod Fund) and $2,831,000 in other Agency and City funding which covered land costs. The $8,184,000 total above includes the land that the Agency provided to MPDA at no cost.

FISCAL IMPACT

Actions taken at the February 17, 2004 joint meeting of the City Council and Redevelopment Agency leave $3,118,850 in Redevelopment Agency affordable housing funds remaining for this fiscal year.

To date, the Agency has already provided two loans totaling $4,253,000 to MPDA for this project. That funding has already been converted to grants pursuant to Resolutions No. 02-33 C.M.S. and 2003-20 C.M.S. respectively.

It is proposed that the $1,100,000 come from the Low and Moderate Income Housing Fund ("Low/Mod Fund") [Fund: 9580, Project: P209310, Project Area: Central District]. Because there will be no sales proceeds left after repayment of the private loans, it is recommended that this new funding be provided as a grant. This will bring the total amount of Agency funds provided to the developer for this project to $5,353,000, all of which will remain in the project. The total Agency investment in the project will be $8,184,000, including $2,831,000 the Agency paid for the land it provided to the developer at no cost.

BACKGROUND

For many years the area around the project site was seen as a troubled area, desperately in need of revitalization. In 1999, MPDA proposed the development of Palm Villas-78 homeownership units that would be affordable to moderate income first time homebuyers. Over the ensuing years, the community has continued to be very active in supporting this project and has seen it as a cornerstone for the revitalization of MacArthur Boulevard in this area. Last year, the City and the developer completed major street improvements in front of the development along MacArthur Boulevard. Now, with 62 new homeowners already moved into this Palm Villas neighborhood, the positive community vision is clearly beginning to be realized. The undesirable activity along MacArthur Blvd. and 90th Avenue has been significantly reduced and the Palm Villas homeowners are becoming more involved in the surrounding neighborhood.

Over the last decade, the Agency has provided substantial subsidies towards the development of this project. Prior to MPDA taking over the project, the Agency expended $2.8 million acquiring the land and funding other work performed by the previous developer. In 1999, when MPDA took over the project, the Agency provided the site to MPDA at no cost. The

Agency and MPDA also entered into a development loan agreement for $3,253,000. To complete the funding package, Bank of America Community Development Bank (Bank) provided a $10,600,000 construction loan which was to be repaid with sales proceeds. In 2000, construction of this four-block homeownership development began.

MPDA, a joint-venture between Em Johnson Interest, Inc. and Baines and Robertson, Inc., is both the developer and the general contractor for this project. This arrangement has necessitated some creative solutions for bonding, financing, and meeting several Agency requirements as well as trying to assure the flow of funds to complete this project.

In 2002, because of major cash flow problems and increasing costs the developer requested that their original $3,253,000 loan be forgiven and that the Agency provide additional funding. Pursuant to Resolution No. 02-33, the Agency authorized the conversion of that original $3,253,000 loan to a grant. Pursuant to Resolution No. 02-34, the Agency also authorized an additional $1,000,000 loan to MPDA, a portion of which was to be rolled over into silent second mortgages to eligible Palm Villas homebuyers. Again in 2003, MPDA returned to the Agency to request that the $1,000,000 loan be forgiven because of continuing cash flow problems and additional costs incurred at that time. Pursuant to Resolution No. 2003-20, the Agency authorized the conversion of that loan to a grant.

MPDA has again experienced cash flow problems which have made it necessary for them to practically shut down the project. They have requested that the Agency provide $1.1 million in additional funding to subsidize development of 14 of the 16 remaining units as part of a larger strategy to get the project started again and to finish the remaining 16 units.

KEY ISSUES AND IMPACTS

Proposed Completion Strategy

MPDA has been working with the Bank and Agency staff to come up with a plan to get the project re-started and finally completed. In the proposed plan, MPDA and the Bank have made an arrangement for the Bank to release sufficient funds to the developer to restart the project and proceed with construction of the remaining units.

The Agency is being asked to provide the $1,100,000 grant at the end of the project to take out the balance of the Bank's construction loan and three smaller private construction loans ($479,000 from Community Bank of the Bay and $136,000 from two small construction loans) as well as to cover the remaining additional costs needed to complete the project. MPDA has now completed construction and closed escrow on 62 units (all of Phase I and Phase II and half of Phase III). With the infusion of the Bank's funds, the developer will have enough funding to bring their costs current and focus on completing the remaining 16 units by the end of June 2004. The Agency's approval to fund the $1,100,000 will provide the Bank with the assurance that they will be repaid and that all other costs will be covered by the end of the project.

After reviewing the developer's latest financial projections for completing the project and researching other options, staff concurs with the developer that it is necessary to provide $1,100,000 in additional funding as a grant instead of as a loan so that MPDA will be able to finish the project and to break even.

Increase in the Term of Affordability

Staff is recommending that the resale restrictions for 14 units (all of those in Vista Court) of the remaining 16 units subsidized by this grant should be set at 45 years. This will allow the Low/Mod funds to be used to fund the $1,100,000 grant and meet recent amendments to redevelopment law. Even with the longer affordability term, buyers will still be able to purchase the units at an affordable price. However, during the first 45 years (as opposed to 15 years for other units in the development), they or any future buyers will have to comply with the requirements to sell their unit to a household making not more than 120% of Area Median Income.

Increases in Development Costs and Impact on Developer's Profit

The project has experienced considerable delays, primarily due to cash flow problems and weather problems each year that have plagued it throughout its prolonged four year development process. Because it has taken much longer to complete and sell the units in each phase, the anticipated sales proceeds from each unit or phase are not available when they are needed to fund the construction of the next group of units. These problems have resulted in a major increase in the total development cost (not including profit) for this 78 unit project from $17.2 million in 1999 to over $25 million by 2004. Some of this increase has been absorbed by the increase in the sales prices for Phase II and Phase III units, some by additional Agency funding, and some from developer profit.

However, according to the initial loan documents, any increase in construction cost was to be borne by the developer out of profits while any construction cost savings was to be earned by the developer as profit. When MPDA began the project in 1999, it was anticipated that MPDA would receive $1,503,000 in profit and $534,398 in overhead for this project. MPDA has already foregone some of their overhead to cover earlier cost overruns and will now forego all of its originally anticipated profit to help cover these additional cost overruns in a final effort to complete the project.

Despite these delays and the major cost increases, the latest cost per unit ($321,118) and the amount of Agency subsidy per unit ($104,923) are still within the same range as the newer homeownership projects that are in construction now, while the percentage of Agency subsidy to total development costs (33%) is less than what has been awarded to those projects.

SUSTAINABLE OPPORTUNITIES

There are no new sustainable opportunities as a result of these recommended actions. All environmental opportunities regarding this project were discussed in the agenda report for Resolution No. 99-36 C.M.S. which was approved in July 1999.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no new issues regarding disability and senior citizen access as a result of these recommended actions. The issues regarding disability and senior access were discussed in the agenda report for Resolution No. 99-36 C.M.S.

RECOMMENDATION(S) AND RATIONALE

This project has been seen as a key part of the neighborhood revitalization efforts for many years. With three quarters of the homes completed and occupied, it is clearly having a tremendous positive impact on the neighborhood both in addressing blight and in providing low to moderate income homeownership units for homebuyers. However, this project is again at a very critical stage. If the requested $1,100,000 grant is approved, work on the final 16 units can begin again and those buyers, many who have been waiting for several years now, can finally move in to their new homes by the end of June 2004. Without this further assistance from the Agency, the developer will be forced to shut down the project permanently due to the substantial cash flow problems, delays, and cost overruns.

Staff is recommending that the Agency approve the $1,100,000 grant to help bring this 78 unit homeownership project back into balance, to cover the cost overruns, to allow the developer to restart construction on the remaining units and complete them. The grant would be funded from Low/Mod funds. The Agency will not release any of the $1.1 million to the developer until 12 of the remaining 16 units have been completed and staff has confirmed that those units can be transferred, without encumbrances, to the qualified homebuyers. The funds would be released only on an as-needed basis, as determined by the Agency at its sole discretion, to provide sufficient cash flow to allow all of the remaining units to be completed. At completion, any outstanding liens will be paid through escrow.

With this additional $1,100,000 in funding, the total Agency investment in this project will be $8,184,000, including $2,831,000 in land costs. The Agency's return on this substantial investment is already being realized as each new homebuyer moves into their new home and becomes a member of the community.

ALTERNATIVE RECOMMENDATION(S)

As an alternative, the Agency may wish to deny the request for this additional funding. However, staff does not recommend that the Agency deny the request. The negative impact to the project, and to the buyers of the remaining 16 units, would be tremendous. Under the assumption that the Agency will determine that the project must be completed and will approve the request, the Bank is willing to release funds in February to restart the project.

If the Agency does not authorize the funding, following is very likely to occur:

- The developer would be forced to shut down permanently because they would not be able to pay for work completed.
- Subcontractors would begin recording liens against any portion of the project that has not closed escrow yet. Any houses that have been completed but not sold would not be able to close escrow because of the liens.
- The Bank's loan would be seriously out of balance and the Bank would be forced to foreclose on the project.
- The other private loans and the letter of credit would be called.
- MPDA would not be able to get additional funding from any private lender.
- The Bank would be forced to take over the project and complete the remaining units.
- The Bank would sell those remaining units at market rate, without having to comply with the Agency's affordability requirements.
- The units would be lost as affordable housing and even moderate households would not be able to purchase any of those remaining units.

ACTION REQUESTED OF THE REDEVELOPMENT AGENCY

Staff requests that the Agency approve the attached resolution authorizing a grant, in an amount not to exceed $1,100,000, to MacArthur Park Development Associates, LLC to cover additional costs for the Palm Villas Homeownership Development in Elmhurst District.

Respectfully submitted,

DANIEL VANDERPRIEM
Director of Redevelopment, Economic Development and Housing

Prepared by:
Roy L. Schweyer, Director
Housing and Community Development
Marge L. Gladman, Housing Development Coordinator

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:

OFFICE OF THE AGENCY ADMINISTRATOR

OFFICE OF THE CITY CLERK
OAKLAND

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APPROVED AS TO FORM AND LEGALITY:

AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. ____________ C.M.S.

A RESOLUTION AUTHORIZING A GRANT IN AN AMOUNT NOT TO EXCEED $1,100,000 TO MACARTHUR PARK DEVELOPMENT ASSOCIATES, LLC, TO COVER ADDITIONAL COSTS FOR THE DEVELOPMENT OF THE FINAL PHASE OF THE PALM VILLAS PROJECT ON MACARTHUR BOULEVARD BETWEEN 90TH AND 94TH AVENUES

WHEREAS, pursuant to Resolution No. 99-36 C.M.S., the Redevelopment Agency (the "Agency") and MacArthur Park Development Associates, LLC (the "Developer") entered into a forgivable development loan in an amount not to exceed $3,253,000 to assist the Developer in the development and sale of the Palm Villas project (the "project"), a 78 unit homeownership project on MacArthur Boulevard between 90th and 94th Avenues; and

WHEREAS, all units in this three-phase project have been or will be sold at prices affordable to households earning no more than 120% of area median income; and

WHEREAS, in 2002 the Developer encountered substantial increases in construction costs and cash flow problems that were causing the private construction loan to be out of balance and were threatening to stop the project; and

WHEREAS, the Developer was unsuccessful in obtaining any of the needed funding from other public or private sources and requested that the Agency forgive the original $3.25 million loan and provide an additional loan of $1,000,000; and

WHEREAS, pursuant to Resolution No. 02-33 C.M.S., the full $3,253,000 loan was converted to a grant and, pursuant to Resolution No. 02-34 C.M.S., the Agency and the Developer entered into a bridge loan, in an amount not to exceed $1,000,000, to the to address the increases in construction costs and cash flow problems; and

WHEREAS, in 2003 with only 40 units completed, the Developer again was encountering substantial cash flow problems and increasing costs that could not be

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covered by net sales proceeds and requested that the Agency forgive the bridge loan; and

WHEREAS, pursuant to Resolution No. 2003-20 C.M.S., the bridge loan was converted to a grant; and

WHEREAS, now as the project approaches its 40th month of construction, the Developer once again is faced with significant increases in construction costs and is experiencing substantial cash flow problems that are threatening to permanently stop the project with only 16 units remaining to be completed; and

WHEREAS, once again the Developer has been unsuccessful in obtaining any of the needed permanent funding from other public or private sources; and

WHEREAS, the Developer has requested that the Agency fund $1,100,000 in additional grant funds for 14 of the 16 units remaining, and recognizes that they will receive no profit from the project; and

WHEREAS, the Agency desires to provide a $1,100,000 grant to the Developer to cover the additional costs incurred for these 14 units in order to complete the project; and

WHEREAS, the $1,100,000 grant will be made from the Low and Moderate Income Housing Fund; and

WHEREAS, no other reasonable means of private or commercial financing of the project is reasonably available other than the Low and Moderate Income Housing Fund; and

WHEREAS, under current redevelopment law, when Low and Moderate Income Housing funds are used as a development subsidy in a homeownership project, the affordability term for the units must be a minimum of 45 years; and

WHEREAS, the original Affordability Agreement, which covers all 78 units and runs with the land, required that there be a 15 year affordability term for all of the units per the requirements of redevelopment law then in effect; and

WHEREAS, the Affordability Agreement would need to be amended to specify that the 14 units subsidized by this grant must remain affordable for 45 years; now, therefore, be it

RESOLVED: That the Redevelopment Agency hereby authorizes the Agency Administrator or his or her designee to provide a grant in an amount not to exceed $1,100,000 to MacArthur Park Development Associates, LLC, to be used to cover the increased project costs for 14 units in the Palm Villas project; and be it further

RESOLVED: That the funding for the $1,100,000 grant shall be provided from the Low and Moderate Income Housing Fund [Fund: 9580, Project: P209310, Project Area: Central District]; and be it further

RESOLVED: That the Affordability Agreement shall be amended to increase the affordability term and resale controls for the 14 project units subsidized by this grant from 15 years to 45 years; and be it further

RESOLVED: That the making of the grant shall be contingent on and subject to such other appropriate terms and conditions as the Agency Administrator or his or her designee may establish; and be it further

RESOLVED: That the making of the grant shall be contingent on the availability of sufficient Agency funds to cover the grant; and be it further

RESOLVED: That as a condition of this grant, the developer will receive no profit from this project; and be it further

RESOLVED: That as a condition of this grant, none of these funds will be dispersed until 12 of the remaining 16 units have been completed and staff has confirmed that those units can be transferred, without encumbrances, to the qualified homebuyers; and be it further

RESOLVED: That the funds will be dispersed only on an as-needed basis, as determined by the Agency at its sole discretion, to provide sufficient cash flow to allow all of the remaining units to be completed and transferred without encumbrances; and be it further

RESOLVED: That all grant documents and the amendment to the Affordability Agreement shall be reviewed and approved by Agency Counsel for form and legality prior to execution; and be it further

RESOLVED: That the Agency hereby appoints the Agency Administrator, or his or her designee, as agent of the Agency to conduct negotiations, execute documents, administer the grant, and the amendment to the Affordability Agreement, and take any other action with respect to the grant and the Project consistent with this Resolution and its basic purpose.

IN AGENCY, OAKLAND, CALIFORNIA, ______________, 2004

PASSED BY THE FOLLOWING VOTE:

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

NOES- _____

ABSENT- _____

ABSTENTION- _____

ATTEST: ______________________________

CEDA FLOYD
Secretary of the Redevelopment Agency
of the City of Oakland

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