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2012 APR 26 PM 1:04

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Fred Blackwell

SUBJECT: ENA at Coliseum BART Station

DATE: April 12, 2012

City Administrator

Approval

Deanna J. Santana

Date

4/20/12

COUNCIL DISTRICT: # 6

RECOMMENDATION

Staff recommends that the City Council adopt the following legislation:

Resolution Authorizing an Exclusive Negotiating Agreement with the Oakland Economic Development Corporation for Development of Phase I of the Transit Village at the Coliseum BART Station, and Authorizing a Predevelopment Loan for the Project in an Amount Not To Exceed \$400,000

EXECUTIVE SUMMARY

Staff requests approval of a resolution authorizing the City Administrator to negotiate and execute an Exclusive Negotiating Agreement (ENA) with the Oakland Economic Development Corporation (OEDC) to pursue the planning and development of a transit village at the Coliseum BART Station.

The proposed Exclusive Negotiating Agreement with OEDC is for a period of twelve months and will provide for the evaluation of project feasibility and the initiation of the environmental review process. In addition, the proposed ENA will include an option for the City Administrator to extend the ENA for an additional six months to allow for completion of all of the required submittals to cover the environmental review period if necessary. The term sheet is included as *Attachment A* to the report.

The resolution will also authorize a \$400,000 predevelopment loan to OEDC for the project.

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OUTCOME

Authorizing the City Administrator to negotiate and execute an Exclusive Negotiating Agreement with the Oakland Economic Development Corporation to pursue the planning and development of a transit village at the Coliseum BART Station and authorizing the expenditure of \$400,000 to OEDC for pre-development costs associated with the Coliseum Transit Village will allow the developer to move forward with the development of this vacant site, to begin the process of returning the property to a productive economic use.

BACKGROUND/LEGISLATIVE HISTORY

A Coliseum Transit Village Concept Plan has been previously created that provides a long-term land use vision for development of the area surrounding the Coliseum BART Station. The vision includes a concentration of residential and mixed-use commercial development designed to take advantage of the transit hub improvements and other public investments in the area. The Concept Plan also supports the objectives identified in BART's Strategic Plan, the Coliseum Area Redevelopment Plan, and the City's General Plan.

The Oakland Economic Development Corporation is a 501 (c) (3) tax exempt, not-for-profit corporation. OEDC is governed by a Board of Directors with economic development expertise from the business, government, non-profit and community sectors of Oakland. The mission of OEDC is to improve the quality of life in East Oakland, placing special emphasis on African-American residents, through the identification and development of real estate opportunities.

Concurrently, OEDC has been working together with BART on finalizing an Exclusive Negotiating Agreement in order to assess the possibility of developing the Coliseum BART Station property. Together, they will determine the feasibility of the project based on negotiations of the terms for an OEDC long-term ground lease of the BART property for development by OEDC.

Most recently, OEDC has executed a Memorandum of Understanding with UrbanCore, a leading minority-owned real estate development firm. This MOU identified UrbanCore as the fee developer for the Coliseum Transit Village project. The company primarily focuses its investments in development and redevelopment projects in central cities and urban infill areas, as well as along public-transit corridors. UrbanCore has an emphasis on both affordable and market rate housing as well as mixed use residential projects, either through joint ventures with other developers or acting as its own development entity. UrbanCore is headquartered in San Francisco, with local offices in Berkeley.

The City's ENA will memorialize the roles and responsibilities of OEDC as well as the City during the proposed negotiating period. As a condition of this ENA, OEDC seeks a predevelopment loan to fund the predevelopment activities during the timeframe of the

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agreement. If the City Council authorizes an Exclusive Negotiating Agreement with OEDC, the following issues will be addressed:

- Further negotiations in order to define the ultimate relationship between the City and OEDC.
- Secure evidence that requisite funding has been obtained to ensure that a project can be developed.
- In partnership with BART, OEDC and City staff will conduct due diligence efforts to ensure that a proposed project represents the highest and best use of subject property and would fulfill the City's joint development objectives to the maximum extent feasible.
- Conduct and pursue further discussions with BART towards its continued support for a mixed-use project and to determine activities and a schedule to secure BART's formal approval for a project.
- City can terminate ENA prior to its term expiration for cause.

The predevelopment loan is a no interest, non-recourse loan due 55 years from the date of the note.

Staff is requesting City Council authorization to enter into an ENA with OEDC. Presuming a viable project is identified, staff will return to Council for approval of the final development proposal. The City Attorney's Office will approve the ENA as to form and legality.

ANALYSIS

The Exclusive Negotiating Agreement between the City and OEDC is for the purpose of determining the capacity of OEDC to deliver on the project and for studying and evaluating the feasibility of the development of a transit village at the Coliseum BART station. In order to assist the review and approval process of the required submittal items, the City and BART intend to negotiate and manage two distinct and parallel ENA agreements. Some of the key concurrent tasks that are proposed to be included in the agreement are:

- OEDC will submit a project description suitable for the environmental review process that includes site plans, elevations, proposed project scaling and circulation. The project description will be reviewed by the City and BART, and will be presented to the community for review and comment prior to being finalized.
- OEDC will develop a project pro forma to evaluate the financial feasibility of the project that will include an analysis of the need for financial assistance from the City and grant funds from alternative funding sources.
- The work products generated by OEDC under this ENA will become property of the City of Oakland for its future use as needed.

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- The City will authorize work to begin on a consultant contract to complete an EIR/ EIS for the project.

The Exclusive Negotiating Agreement will be for a period of twelve months terminating in May 2013. The ENA will include a six month extension option, subject to the discretion of the City Administrator or her designee, which will cover the period until the submittals have been met or the term expires.

PUBLIC OUTREACH/INTEREST

The property is located in the Coliseum Redevelopment Project Area in the City of Oakland. The Coliseum Area Redevelopment Plan was adopted in 1995 after extensive community input. The plan identified the area around the Coliseum BART station as a future target area for housing development. The property under discussion is within that target area, is adjacent to the Coliseum BART station, and is next to the very successful Lion Creek Crossing residential development. In addition, the property is within the boundaries of the Coliseum Area Specific Plan that will focus on integrating residential, sports and entertainment, and commercial and retail uses around the Coliseum BART Station.

COORDINATION

Staff from the Office of Neighborhood Investment (former CEDA Redevelopment Division) has coordinated with the Oakland Economic Development Corporation and BART for the proposed new development.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT
(ENA and Pre Development Loan with Oakland Economic Development Corporation):

Project Delivery	\$400,000
Construction	n/a
Contingency	n/a
Total Project Costs	\$400,000

2. COST ELEMENTS OF AGREEMENT/CONTRACT
(ENA with Oakland Economic Development Corporation):

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Sub Project/Phases	\$400,000
Management	n/a
Equipment	n/a
Software	n/a
Maintenance	n/a
Service	n/a
Labor Rates	n/a
Taxes and Fees	n/a
TOTAL AGREEMENT/CONTRACT AMOUNT	\$400,000

3. **SOURCE OF FUNDING:**

The total required funding of \$400,000 is available in Fund 5656 (Coliseum: TA Bond Series 2006 B); Organization 94859 (CIP Coliseum); Account 54011 (Contract Contingencies); Project C366931 (Coliseum Bart Plaza); and Program SC12 (Coliseum). Funds were received from the former Redevelopment Agency under the Funding Agreement advance from the Coliseum Redevelopment Area project area fund balance for an ENA and predevelopment activities associated with the Coliseum Transit Village from Coliseum Area bond proceeds.

4. **FISCAL IMPACT:**

Since the funds for these contracts might be subject to an attempt by the State to return these funds to the successor agency, there could be risks to the City's General Purpose Fund if money is expended for the contracts and the State later deems the expenditures invalid; however, entering into the ENA with the development team should protect the funds from clawback since the funds will have been contractually committed to third parties for expenditure prior to any clawback order.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed transit-oriented development will complement and maximize the housing benefits in the Coliseum area of East Oakland. This project will improve neighborhood conditions and make the neighborhood area more attractive to current and prospective residents, tenants and businesses that can provide employment within Oakland.

Environmental: The proposed transit-oriented development is expected to contribute to smart growth by stimulating neighborhood housing adjacent to mass transit, thereby reducing pollution and carbon emissions.

Social Equity: The neighborhood has suffered from economic blight and has been historically underserved. The proposed transit-oriented development provides a positive stimulus to the neighborhood where the development of vacant land is both welcomed and important to continued neighborhood growth and stability

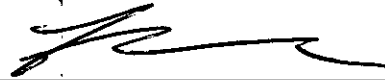
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CEQA

The developer will be required to prepare an Environmental Impact Report under the ENA.

For questions regarding this report, please contact Jeffrey Chew, Urban Economic Coordinator at (510) 238- 3629.

Respectfully submitted,



Fred Blackwell
Assistant City Administrator

Reviewed by:
Gregory Hunter, Neighborhood Investment Officer

PH

Larry Gatlegos, Redevelopment Manager

Prepared by:
Jeffrey Chew, Urban Economic Coordinator
Office of Neighborhood Investment

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Attachment A

**Oakland Economic Development Corporation
Draft Term Sheet**

Oakland CA

1. ENA Period

- The initial Exclusive Negotiation Agreement (ENA) period will be for a 12 month period with a provision for the City Administrator to extend the ENA for an additional six months to allow for the completion of all required submittals.

2. Project Budgets and Reports

- During the first 120 days of the ENA, Oakland Economic Development Corporation (to be known as "OEDC") will work with the City to prepare and complete budget studies and reports in effort to determine the feasibility of the project.

3. Planning and Cost Estimation for Development Plan

- Consulting contracts, project scopes, and fees must be mutually agreed upon by both parties in the ENA.
- Within 90 days of the date of the ENA OEDC will prepare and submit to the City a Planning and Cost Estimation budget for mutual agreement between City and OEDC.
- Within 6 months of the date of the ENA OEDC will develop a concept plan for the site that is based on the most feasible development under consideration.

4. Project Pro Forma

- Within 60 days of the date of the ENA OEDC shall be required to develop a project pro forma to evaluate the financial feasibility of the project that will include an analysis of the need for financial assistance from all funding sources.

5. Environmental Impact Report (EIR)

- Within 90 days of the date of the ENA OEDC will prepare a budget for a project EIR.

- Within 12 months of the date of the ENA OEDC will complete EIR for the project.

6. Schedule of Performance

6.1 Project Team

Within 90 calendar days of the preparation of the project budget, OEDC shall submit to the City the following:

- a) A description of the specific financial structure and legal structure of the proposed development team. This shall include a written description of the specific and general roles, responsibilities, and obligations of OEDC, OEDC's board members or partners (if any), and any other entity participating in any legal entity established by OEDC 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.
- b) Copies of the latest publicly disclosed financial information on OEDC, and any partners who will participate with OEDC in development of the Property, and if any other entity will be participating in the legal entity established by OEDC for purposes of developing the Project, then OEDC shall furnish balance sheets and other financial information as may be available for such other entity.
- c) All documents related to OEDC's corporate status, including but not limited to articles of incorporation, by-laws, lists of members of board of directors, and proof of good legal standing.
- d) A detailed description, including references, of the Project development team's experience. The team shall cover at a minimum, the candidate architect, the candidate financial partners, and the candidate marketing and real estate firm for the proposed undertaking (e.g. if hotel, residential, retail, or other tenants/uses are proposed).
- e) A written statement concerning any litigation in which OEDC, OEDC's partners, or members (if any), that may have a materially adverse effect on OEDC's ability to develop the Project. OEDC shall provide to the Agency copies of any such litigation documents or filings in connection with such litigation within five (10) business days of the Agency's written request.

6.2. Project Economics and Feasibility

Within 90 calendar days of the preparation of the project budget OEDC shall submit:

- a) Detailed and itemized project pro formas that are linked to the phases and schedule for construction of the Project. Pro formas shall include a Project development budget, a statement describing the sources and uses of funds, a ten-year cash flow analysis, and an annotated operating budget to a level of detail reasonably acceptable to the City.
- b) A copy of OEDC most recent public filings and other documentation verifying the working capital/line of credit referenced in the OEDC Project proposal to the City, and confirming the availability of such working capital/line of credit to OEDC for this Project.
- c) A reasonably detailed Project development schedule, which shall include construction and leasing of the Project's residential and nonresidential square feet.
- d) A non-residential development plan for the Project if any non-residential is proposed. Said plan shall include the square footage of the space to be leased for non-residential use, the location of the leasable area within the Project, the type of tenant to be attracted to the non-residential space and a feasibility analysis for the proposed retail use.
- e) OEDC shall cooperate in the application process for any unforeseen grant or other fund raising opportunities if potentially beneficial to the Project.

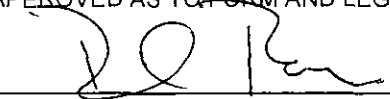
5. Environmental Review and Planning Approvals

- a) Within sixty (60) calendar days of completion of feasibility study the City shall retain environmental consultants to prepare all necessary environmental documentation required to conduct environmental review under the California Environmental Quality Act ("CEQA") for the Project.
- b) Within thirty (30) calendar days of the completion of items 5(a) the applicant shall submit a project description suitable to initiate the environmental review process.

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APPROVED AS TO FORM AND LEGALITY:


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH THE OAKLAND ECONOMIC DEVELOPMENT CORPORATION FOR DEVELOPMENT OF PHASE I OF THE TRANSIT VILLAGE AT THE COLISEUM BART STATION, AND AUTHORIZING A PREDEVELOPMENT LOAN FOR THE PROJECT IN AN AMOUNT NOT TO EXCEED \$400,000

WHEREAS, the City of Oakland is working to redevelop the Coliseum BART Station parking lot property into a transit village; and

WHEREAS, the Oakland Economic Development Corporation (OEDC) has recently executed a Memorandum of Understanding with UrbanCore, a leading minority-owned real estate development firm headquartered in San Francisco and with offices in Berkeley, concerning the transit village project; and

WHEREAS, the City and OEDC want to enter into a period of preliminary study and negotiations over the project, and agree that this does not constitute a binding commitment on the part of the City to any developer or to participate in any project; and

WHEREAS, OEDC is seeking a predevelopment loan in the amount of \$400,000 to cover associated costs with predevelopment activities related to the project, and said funds are currently available in the Coliseum Tax Allocation Bond Series 2006T (Taxable) Bonds Fund (9456), Economic Development Organization (94800), Coliseum Land Acquisition Project (T315820) for this purpose; now therefore be it

RESOLVED: That the City Administrator is authorized to negotiate and enter into an Exclusive Negotiating Agreement with OEDC for purposes of studying and evaluating the feasibility of, and negotiating terms and conditions for the potential development of phase I of a transit village at the Coliseum BART Station parking lot, including, but not limited to, the following provisions; and be it

FURTHER RESOLVED: That the exclusive negotiating period shall be for 12 months from the date of this Resolution, with the option to extend said period an additional six months at the discretion of the City Administrator or her designee until the Environmental Impact Report/Environmental Impact Statement for the project is certified; and be it

FURTHER RESOLVED: That the City Council hereby authorizes a \$400,000 zero-interest predevelopment loan from Coliseum Tax Allocation Bond Series 2006T (Taxable), Fund 5656, Org 94859 to OEDC to fund predevelopment costs associated with the Coliseum BART transit village project; and be it

FURTHER RESOLVED: That the term of the predevelopment loan shall be for 55 years, with repayment of the loan deferred until the developer has completed the redevelopment of the project and is generating revenues from the development, and with the loan balance due at the end of the term; and be it

FURTHER RESOLVED: That the work product funded by the loan, as well as other development rights for the project, shall be security for the loan and shall be assigned to the City upon default by the developer in the performance of its loan obligations, including obligations to pursue development of the project; and be it

FURTHER RESOLVED: That the City has independently reviewed and considered this environmental determination, and the City finds and determines that this action complies with CEQA because this action on the part of the City 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 all documents shall be reviewed and approved as to form and legality by City Counsel prior to execution; and be it

FURTHER RESOLVED: That the City 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 City hereby authorizes the City Administrator or her designee, to negotiate and execute documents and take all other actions necessary with respect to the Exclusive Negotiating Agreement, the predevelopment loan, and the project consistent with this Resolution and its basic purpose.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,
SCHAAF, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California