

CITY OF OAKLAND



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To: President De La Fuente and Members of the City Council
From: Councilmember Jane Brunner
Date: July 17, 2007
Re: Wayans Exclusive Negotiating Agreement

Let me first say that I am extremely excited about the Wayans' proposed project. I, too, believe that this project has the potential to create a one-of-a-kind arts, entertainment and business destination on the Oakland Army Base. The Wayans cache and brand name is strong, Oakland needs new retail, and the basis of their project—film production—has been identified as a growth sector for Oakland, creating quality careers in an environmentally sustainable industry.

In short, I want to see this project work. I also want to see us start off our working relationship together on a strong footing. I am generally pleased with this ENA, as it sets out concrete deliverables on a solid timeline. To make it even stronger, and to outline each of our responsibilities more clearly, I propose the following changes:

1. **Defining "Unreasonable:"** It is clear that allowances need to be made in the ENA for unforeseen circumstances. Both Sections 3.3 and 4 attempt to do this, and both use the term "unreasonable" to limit discretion. This term is ambiguous, and I would suggest that a definition of it be included in the ENA.
2. **Discretion to Extend Time:** I would like to **amend Section 7.3** of the ENA, which grants the City Administrator the authority to extend the time of any of the terms and conditions of this ENA under her "sole and absolute discretion." I believe that language in Sections 3.3 and 4 provide for extensions for unforeseen circumstances, and while I agree that some time should be provided to accommodate each party, I don't support the unlimited discretion in this section. I would amend Section 7.3 to read:

If the Agency Administrator determines that it is in the Agency's best interests, and subject to the provisions of the Section 3.3 of this Agreement, she may extend the time for Developer's performance of any of the terms and conditions of this Agreement by a few days.

ORA/COUNCIL

July 17, 2007