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JUNE 28, 2005

IGNACIO DE LA FUENTE, PRESIDENT
CITY COUNCIL
OAKLAND, CALIFORNIA

PRESIDENT DE LA FUENTE AND MEMBERS OF THE CITY COUNCIL

SUBJECT: A RESOLUTION AUTHORIZING A GRANT IN AN AMOUNT NOT TO EXCEED \$1,400,000 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

PURPOSE AND SCOPE

In accordance with the Measure H Charter Amendment, which was passed by the voters at the General election of November 5, 1996, we have made an impartial financial analysis of the accompanying Council Agenda Report and Proposed Resolution. In making our analysis we also obtained copies of financial data of the MacArthur Park Development Associates, LLC, and Baines & Robertson, Inc., and obtained copies of liens against the Palm Villas project that had been filed with the Alameda County Recorder.

Since the Measure H Charter Amendment specifies that our impartial financial analysis is for informational purposes only, we did not apply Generally Accepted Government Auditing Standards as issued by the Comptroller General of the United States. Moreover, the scope of our analysis was impaired by Administrative Instruction Number 137, effective May 21, 1997, which provides only two (2) weeks for us to plan, perform and report on our analysis. Due to this time constraint and our overall workload, we did not verify the financial data furnished by the MacArthur Park Development Associates, LLC, or Baines & Robertson, Inc.

SUMMARY

In 1999 the Agency entered into an agreement with MacArthur Park Development Associates, LLC., (MPDA) a joint venture between Baines & Robertson, Inc.(66-2/3 percent interest) and Em Johnson Interest (33-1/3 percent interest) for the development and sale of the Palm Villas Project, which was to consist of 78 affordable housing units. MPDA is both the developer and the general contractor for this project.

As of March 2004, 62 of the 78 units had been completed and the new owners had already closed escrow and moved in. However, MPDA had experienced cash flow problems, which caused them to practically shut down the project. Therefore, MPDA requested that the Council approve a \$1,100,000 grant:

“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 additional costs needed to complete the project.”

Although all 78 units have already been completed, and the homeowners have closed escrow and moved in, MPDA is requesting an additional grant in the amount of \$1,400,000:

“to finalize all costs related to project development, including punch list items, contractors indebtedness, IRS liens (employee withholdings), and material related costs.”

PROPOSED RESOLUTION

The title of the Proposed Resolution is misleading. Except for the amount of the grant (\$1,400,000) the title is identical to that of the Resolution the Council approved on April 6, 2004:

“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” (Resolution No. 2004-21 C.M.S.)

See Exhibits A and B.

As stated above, all 78 units have already been completed, and the homeowners have closed escrow and moved in. There are no significant additional costs for the development of the project.

FISCAL IMPACT

With the approval of the proposed \$1,400,000 grant, the Contractor will have received four (4) grants totaling \$6,753,000, as summarized below:

Grant	Description	Amount
1.	Converted a forgivable development loan	\$3,253,000
2.	Converted a forgivable bridge loan	1,000,000
3.	Grant to complete the project	1,100,000
4.	Proposed additional grant	<u>1,400,000</u>
	Total grants	\$6,753,000

BAINES & ROBERTSON'S FINANCIAL POSITION

Neither MPDA nor Baines & Robertson could furnish audited or reviewed financial statements prepared in accordance with generally accepted accounting principles. The only financial statements that were made available were internally prepared as of May 31, 2005. According to these statements, Baines & Robertson's liabilities exceed its assets by \$1,369,589. Therefore, the company has been unable to pay its creditors, causing them to file liens against Baines & Robertson totaling \$259,433 as of June 9, 2005.

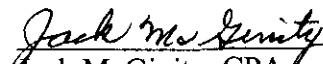
CONCLUSION

Although the stated purpose of the Proposed Resolution is:

“TO COVER ADDITIONAL COSTS FOR THE DEVELOPMENT OF THE FINAL PHASE OF THE PALM VILLAS PROJECT ON MACARTHUR BOULEVARD BETWEEN 90TH AND 94TH AVENUES”,

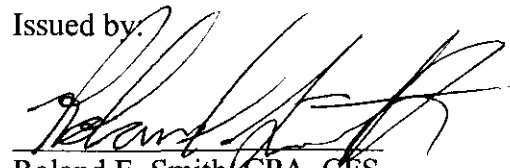
based on the information made available in the Agenda Report and financial statements, the Proposed Resolution appears to be a means to rescue MPDA from bankruptcy, rather than cover additional costs of the project.

Prepared by:


Jack McGinity, CPA

Report completion date:
June 17, 2005

Issued by:


Roland E. Smith, CPA, CFS
City Auditor

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2004 FEB 26 PM 6:26

APPROVED AS TO FORM AND LEGALITY:


AGENCY COUNSEL

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. 2004-21 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 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

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, APR 6 2004, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND
CHAIRPERSON DE LA FUENTE - 8

NOES- 0 _____
ABSENT- 0 _____
ABSTENTION- 0 _____

ATTEST: 
for CEDA FLOYD
Secretary of the Redevelopment Agency
of the City of Oakland

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING A GRANT IN AN AMOUNT NOT TO EXCEED \$1,400,000 TO MACARTHUR PARK DEVELOPMENT ASSOCIATES, LLC., TO COVER ADDITIONAL COSTS FOR THE DEVELOPMENT 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, the project serves as the catalyst for additional housing and economic projects along the MacArthur Corridor; 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 that the Agency granted forgiveness of the original \$3.25 million loan and provided an additional loan of \$1,100,000 in February of 2004; 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 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 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, the Developer has requested that the Agency fund \$1,400,000 in additional grant funds to cover the final punch list items, satisfy remaining contractors indebtedness, and completing landscaping obligations; and

WHEREAS, no other reasonable means of private or commercial financing of the project is reasonable available other than redevelopment funds; 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 \$1,400,000 to MacArthur Park Development Associates, LLC, to be used to cover remaining costs for the project; and be it further

RESOLVED: That the funding for the \$1,400,000 grant shall be provided from redevelopment funds to be identified by the Agency Administrator; and be it further

RESOLVED: That the making of the grant shall be contingent on the availability of the 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 all grant documents 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 take any other action with respect to the grant and the project consistent with this Resolution and its basic purpose.

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, California