

2005 SEP 29 PM 3:55


Agency Counsel

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

2005 - 0057

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH CHEVRON U.S.A., INC., REGARDING ENVIRONMENTAL CLEANUP OBLIGATIONS, MUTUAL RELEASES, AND COST REIMBURSEMENTS FOR THE PETROLEUM CONTAMINATION AT THE FORMER SERVICE STATION SITE ON THE SEARS PARKING LOT PROPERTY AT 1911 TELEGRAPH AVENUE IN DOWNTOWN OAKLAND; AND AUTHORIZING THE AGENCY ADMINISTRATOR TO PASS THROUGH ANY COST REIMBURSEMENTS FROM CHEVRON TO FOREST CITY RESIDENTIAL WEST, INC., OR ANOTHER AGENCY-DESIGNATED DEVELOPMENT ENTITY

WHEREAS, the City of Oakland ("City"), the Redevelopment Agency of the City of Oakland ("Agency") and FC Oakland, Inc., an affiliate of Forest City Residential West, Inc., or other affiliate(s) of Forest City Residential West, Inc., ("FC") are parties to a Lease Disposition and Development Agreement ("LDDA") whereby FC, is the developer of approximately one and a half blocks of land bounded by Thomas L. Berkley Way (formerly 20th) on the north, Telegraph Avenue on the east, 19th St. on the south, and San Pablo Avenue on the west (the "Uptown Project Area") in the Uptown Activity Area of the Central District Urban Renewal Area commonly referred to as the "Uptown Project"; and

WHEREAS, pursuant to the terms of the LDDA, FC intends to redevelop the Uptown Project Area corresponding to Parcels 1, 2, and 3 and the Public Park Parcel into a mixed-income housing project and related uses and a public park, as required by the LDDA; and

WHEREAS, FC or another Agency-designated development entity will redevelop Parcel 4, which is also located in the Uptown Project Area, into a mixed-income housing project and related uses; and

WHEREAS, the Agency is acquiring those portions of the Uptown Project Area that are not presently owned by the Agency or FC, including a property owned by Sears Development Corporation ("Sears") located at 1911 Telegraph Avenue that includes Parcel 4 and the Public Park Parcel; and

WHEREAS, data collected from soil, groundwater, and soil vapor sampling at and in the vicinity of Parcel 4 and the Public Park Parcel indicate that petroleum hydrocarbons have contaminated the subsurface soil, groundwater, and soil gas at and in the vicinity of Parcel 4 and the Public Park Parcel (collectively, the "Contaminated Area"), and that remediation of the Contaminated Area is appropriate before redevelopment of the Uptown Project Area for the purposes contemplated in the LDDA; and

WHEREAS, the Agency determined that Chevron USA, Inc. ("Chevron") operated a gas station in the vicinity of the Contaminated Area on the Sears-owned property from 1962 until 1978; and

WHEREAS, the Agency, Chevron and FC met and conferred about the nature and extent of the petroleum contamination and methods by which such contamination could be cleaned up consistent with Remedial Action Plan/Risk Management Plan ("RAP/RMP") approved by the California Regional Water Quality Control Board, San Francisco Bay Region (the "RWQCB") on June 15, 2005; and

WHEREAS, the parties anticipate that the investigation and cleanup of contamination at the Contaminated Area will proceed in accordance with RAP/RMP; and

WHEREAS, pursuant to the LDDA, FC will contract with one or more appropriate entities for the remediation of the Contaminated Area as part of FC's overall arrangement for the remediation of hazardous substances at the Uptown Project Area; and

WHEREAS, Chevron is prepared to enter into an agreement (the "Agreement") with the Agency, which will obligate 1) the Agency and FC, or another Agency-designated development entity, to remediate the Contaminated Area, 2) Chevron to make a \$700,000 financial contribution in three installments to the Agency toward the costs of remediating the Contaminated Area, and 3) the Agency or its successors and assigns (e.g., FC or another Agency-designated development entity), on the one hand, and Chevron on the other hand to mutually release each other regarding the remediation of the Contaminated Area; and

WHEREAS, it is anticipated that Chevron's payments plus a contribution of up to \$350,000 from Sears will cover the cleanup costs for the Contaminated Area; and

WHEREAS, the City, as the Lead Agency for this Project for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"), has prepared a focused Environmental Impact Report analyzing the significant environmental effects and mitigation measures in accordance with the California Environmental Quality Act, Public Resources Code § 21000, et seq.; and

WHEREAS, on February 18, 2004, the City Council in accordance with CEQA Guidelines § 15090 certified that the Final Environmental Impact Report ("EIR") on the Project has been completed in compliance with CEQA, the Guidelines for Implementation of the California Environmental Quality Act (14 CCR sections 15000, et seq.); and

WHEREAS, the Agency, as a "Responsible Agency" under the California Environmental Quality Act of 1970 ("CEQA"), has independently reviewed and considered the environmental effects of the project as shown in the EIR and other information in the record; now, therefore, be it

RESOLVED: That the Agency hereby finds and determines on the basis of substantial evidence in the record that the EIR fully analyzes the potential environmental effects of the project and incorporates mitigation measures to substantially lessen or avoid any potentially significant impacts in accordance with CEQA. None of the circumstances necessitating preparation of additional CEQA review as specified in CEQA and the CEQA Guidelines, including without limitation Public Resources Code Section 21166 and CEQA Guidelines Section 15162, are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance" as described in CEQA Guidelines Section 15162(a)(3); and be it further

RESOLVED: That the Agency Administrator or her designee is hereby authorized to cause to be filed with the appropriate agencies a Notice of Determination for this action; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to negotiate and enter into the Agreement with Chevron regarding cleanup obligations, mutual releases and cost reimbursements for petroleum contamination at the former service station site on the Sears-owned Property at 1911 Telegraph Avenue in Downtown; and be it further

RESOLVED: That all installment payments from Chevron pursuant to the Agreement with Chevron be deposited in the Agency's Liability/Contingency/Finance Fund (Fund 9526), Organization 94800; and be it further

RESOLVED: That the Agency hereby appropriates these installment payments from Chevron to Project P132750, and authorizes disbursement of said installment payments to FC, or another Agency-designated development entity; and be it further

RESOLVED: That any environmental cleanup cost overruns shall be governed by the terms of the LDDA; and be it further

RESOLVED: That all documents related to this action shall be reviewed and approved by Agency Counsel prior to execution; and be it further

RESOLVED: That the Agency Administrator or her designee is hereby authorized to take whatever action is necessary with respect to the Agreement or the remediation of the Contaminated Area consistent with this Resolution and its basic purpose; and be it further

RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community & Economic Development Agency, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland CA; (b) the Community & Economic Development Agency, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, CA.

IN AGENCY, OAKLAND, CALIFORNIA, OCT 04 2005, 2005


PASSED BY THE FOLLOWING VOTE:

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

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 
LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California