

OFFICE OF THE CITY CLERK
OAKLAND
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**REDEVELOPMENT AGENCY OF THE
CITY OF OAKLAND
AGENDA REPORT**

TO: Office of the Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: September 27, 2005

RE: **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**

SUMMARY

The Community and Economic Development Agency (CEDA) is recommending approval of an Agency resolution authorizing the Agency Administrator to enter into an agreement (the "Agreement") with Chevron U.S.A., Inc. ("Chevron") regarding environmental cleanup obligations, mutual releases, and cost reimbursements for the petroleum contamination at the former service station site on the Sears parking lot at 1911 Telegraph Avenue in Downtown Oakland. The Agreement will cover environmental cleanup on that portion of the parking lot on which Forest City Residential West, Inc. ("Forest City"), or another Agency-designated development entity, will construct a park and other improvements as part of the Uptown Project (the "Parcel", as illustrated on Attachment A). The Parcel is located between a new street to be constructed on the west, Telegraph Avenue on the east, William Street on the north, and 19th Street on the south. The proposed legislation will also authorize the Agency to pass Chevron's cost reimbursements through to the appropriate development entity(ies).

Pursuant to the terms of the Agreement, the Agency and Chevron will agree to the following:

- The Agency will incorporate into the Lease Disposition and Development Agreement ("LDDA") with Forest City, or into similar agreements with another Agency-designated development entity, a requirement to remediate the Parcel;
- Chevron will make to the Agency a \$700,000 financial contribution in three installments toward the costs of remediation;
- The Agency its successors and assigns (e.g. Forest City or another Agency-designated development entity) shall release Chevron regarding the cleanup; and

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- Chevron shall release the Agency its successors and assigns (e.g. Forest City or another Agency-designated development entity) regarding the cleanup.

Chevron's payment to the Agency will cover a portion of the clean-up costs for the Parcel, the balance of which will be paid with a contribution from Sears Development Company ("Sears") of up to \$350,000. Forest City (or another Agency-designated development entity) will hire a guaranteed, fixed-price contractor for the remediation of the Parcel as part of the overall arrangement for the cleanup of hazardous materials at the Uptown Project area. At this time, the fixed-price contractor tentatively selected by Forest City has submitted a bid that includes a \$975,000 line item for the remediation of the petroleum contamination at the Parcel. Any remaining funds from Sears' and Chevron's contributions will be used to pay for periodic site monitoring.

The cleanup of the Parcel will proceed in accordance with a Remedial Action Plan/Risk Management Plan ("RAP/RMP") that was approved by the California Regional Water Quality Control Board, San Francisco Bay Region (the "RWQCB") on June 15, 2005.

The proposed Agreement releases Chevron from any claims by the Agency or its successors and assigns (e.g. Forest City or another Agency-designated development entity) should there be one relating to the petroleum contamination on the Parcel upon Chevron's delivery of the first installment of Chevron's funding contribution. Any failure by Chevron to make the second or third installment would give rise to a breach of contract claim, and the Agreement provides for the recovery of attorney's fees in any litigation over the Agreement. As a result, the risk of a default by Chevron is very low. Moreover, upon full execution of the Agreement, Chevron will fully and unconditionally release the Agency or its successors and assigns (e.g. Forest City or another Agency-designated development entity), for past and future costs, damages, and claims arising from the petroleum contamination on the Parcel.

FISCAL IMPACT

The proposed Agreement calls for 3 installment payments from Chevron to the Agency in the total amount of \$700,000. The installment payments will be made as follows: Two Hundred Thirty Thousand Dollars (\$230,000.00) on October 31, 2005; Two Hundred Thirty Thousand Dollars (\$230,000.00) on October 31, 2006; and Two Hundred Forty Thousand Dollars (\$240,000.00) on October 31, 2007. The installment payments will be deposited in the ORA Liability/Contingency/Finance Fund (Fund #9526), Community and Economic Development Agency's Capital Improvement Project Organization (Org Code 94800), Uptown Retail/Entertainment District Project (Project # P132750). The funds will be paid by the Agency to Forest City (or another Agency-designated development entity) towards funding the petroleum contamination remediation at the site.

BACKGROUND

On July 20, 2004, the Agency approved Resolution No. 2004-38 C.M.S., and the City approved Resolution No. 78728 C.M.S., authorizing the Agency Administrator and the City Administrator to enter into a Lease Disposition and Development Agreement (LDDA), ground lease and related documents with FC Oakland, Inc. an affiliate of Forest City to develop the Uptown Project. The LDDA was executed on October 14, 2004. Among other obligations on the part of the Agency, City and Forest City, the LDDA requires the Agency to use good faith efforts to assemble and transfer 38 properties comprising the Uptown Project Area to Forest City, which include a 3-acre property (the "Property") located at 1911 Telegraph Avenue owned by Sears. The Sears' Property will be subdivided into smaller parcels, which will include the Parcel.

On June 21, 2005, the Agency approved Resolution No. 2005-0038 C.M.S., and the City approved Resolution No. 79314 C.M.S., authorizing the Agency Administrator to enter into a Purchase and Sales Agreement with Sears for the sale of the Property. Sears has agreed that up to \$350,000 of the purchase price to be paid by the Agency will remain in an escrow account and will be applied towards funding a portion of the petroleum contamination on the Parcel. The closing of escrow for the Agency's property purchase from Sears is contingent upon approval of the Agreement between the Agency and Chevron.

PROJECT DESCRIPTION

Pursuant to the terms of the LDDA, Forest City will redevelop the Parcel as follows: (1) a public park and related facilities (the "Park") to be owned by the City located on an approximately 25,000 square foot area; and (2) a mixed-use residential development with subsurface parking, at-grade residential dwellings, and at-grade retail space ("Mixed-use Development").

KEY IMPACTS

In late 2003, the Agency learned that certain samples from groundwater monitoring wells installed on the Parcel for the first time showed high concentrations of petroleum hydrocarbons in the vicinity of an abandoned gasoline service station location. Subsequent testing on the Parcel in June of 2004 confirmed that releases of petroleum hydrocarbons from previously excavated underground storage tanks had impacted subsurface soils and groundwater at the site.

Agency research indicated that Chevron operated the gas station on the Property from 1962 until 1978, and that Emporium Capwell managed it from 1979 to 1988. After the Agency contacted Chevron in the fall of 2004, the parties, including Forest City, met and conferred about the nature and extent of the petroleum contamination and methods by which such contamination could be cleaned up consistent with the RAP/RMP. Chevron initially agreed to take the lead on developing an appropriate cleanup plan and to pay approximately 62 percent of the costs

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associated with the cleanup. Chevron based the calculation of its share of costs on a "site tenure" formula that divides the number of years during which Chevron managed the gas station by the total number of years of garage operation. Based on Chevron's calculation, some combination of Sears and Emporium Capwell would be responsible for the remaining 38 percent of total remediation costs.

As discussions with Chevron progressed, Forest City proposed an alternative to Chevron's implementation of the cleanup plan. In return for a lump sum cash payment from Chevron, Forest City was prepared to include Chevron's portion of the cleanup work on the Parcel in the overall arrangement for the remediation of hazardous substances at the Uptown Project Area, which is to be completed by a guaranteed, fixed-price contractor. Forest City has received a bid from its fixed-price contractor that includes a \$975,000 line item to remediate the contamination on the Parcel. Agency and Chevron representatives were agreeable to Forest City's proposal, and in return for shifting the responsibility for the cleanup work to Forest City's fixed-price contractor, the Agency and Chevron negotiated a settlement agreement, pursuant to which Chevron will pay to the Agency a fixed amount of \$700,000 in 3 installments (Two Hundred Thirty Thousand Dollars (\$230,000.00) on October 31, 2005; Two Hundred Thirty Thousand Dollars (\$230,000.00) on October 31, 2006; and Two Hundred Forty Thousand Dollars (\$240,000.00) on October 31, 2007), which represents well over 70 percent of total projected remediation costs for the petroleum contamination at the Parcel.

The proposed arrangement has the benefit of bringing the cleanup costs at the Parcel within the guaranteed, fixed price contract for the overall remediation effort. Any cost overruns would be covered by the fixed-price contractor and/or a remediation cost cap liability insurance policy. Chevron's payments plus Sears' contribution of up to \$350,000 will cover the cleanup costs in the amount of \$975,000 quoted by the fixed-price contractor for the contamination on Parcel 4. Any remaining funds from Sears' and Chevron's contribution will be used to pay for periodic site monitoring.

The proposed Agreement releases Chevron from any claims by the Agency or Forest City (or another Agency-designated development entity) related to the petroleum contamination on the Parcel upon Chevron's delivery of its funding contribution to the Agency. Moreover, upon full execution of the Agreement, Chevron will fully and unconditionally release the Agency and its successor or assigns (including, but not limited to Forest City) for past and future costs, damages, and claims arising from the petroleum contamination on the Parcel.

Forest City has indicated that it may have one entity develop Phase I of the project, a different entity may construct the public park site, and a third entity may build Phase II on Parcel 4. The evolving identity of the various development entities is primarily a function of Forest City having (or anticipating) different investor partners for the different phases (or no partner for the area that is to be the public park).

As a result of this uncertainty, the Agreement will be executed by the Agency and Chevron, but be binding on any and all entities that (1) come into title/possession subsequent to the Agency, or (2) that enter into any agreements with the Agency to develop all or any portion of the Parcel. Pursuant to the terms of the Agreement, Chevron will make its remediation payments to the Agency, which will agree to devote the funds to environmental cleanup. The Agency will pass the funds through to the appropriate development entity(ies) once those details are known.

SUSTAINABLE OPPORTUNITIES

Economic

There are no economic benefits associated with the proposed Agreement.

Environmental

The remediation of petroleum contamination on the Parcel contributes greatly to the revitalization of this underutilized neighborhood in the Central District.

Equity

Forest City will comply with the City's contracting programs, including the Small/Local Business Construction Program, the Small/Local Business Professional Services Program (L/SLBE) and the Local Employment Program. All of the workers performing remediation work for Agency funded projects must be paid prevailing wage rates. Forest City will also be subject to the Living Wage Ordinance.

DISABILITY AND SENIOR CITIZEN ACCESS

Although the proposed legislation does not affect "Disability and Senior Citizen Access", Forest City's project design must comply with the requirements of the Americans with Disabilities Act.

RECOMMENDATIONS AND RATIONALE

Staff recommends that the Council and Agency approve the proposed Agency resolution authorizing the Agency Administrator to enter into an Agreement with Chevron regarding petroleum contamination at the former service station site on the Parcel in the Uptown Project area.

The successful reuse and redevelopment of the Uptown Project Area by Forest City (or another Agency-designated development entity) will transform an underutilized and environmentally contaminated area located in the center of downtown Oakland into productive

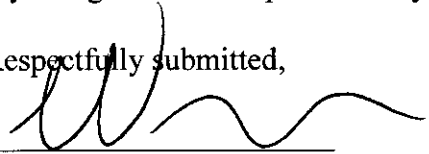
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economic use by creating an attractive transit-oriented residential development. The proposed arrangement will bring the cleanup costs at the Parcel within the guaranteed, fixed price contract for the overall remediation effort. . This approach has several advantages. First, it establishes a fixed price for the cleanup that can be covered by the combined contributions from Chevron and Sears. Second, any cost overruns will be covered by the fixed-price contractor and/or a remediation cost cap liability insurance policy. Third, actual remediation work is more easily integrated into the overall project construction schedule since the site remediation will now be handled by a single contractor and not by two or more entities, which would have entailed potentially challenging coordination issues.

ACTION REQUESTED OF THE AGENCY

It is recommended that the Agency approve an Agency resolution authorizing the Agency Administrator to enter into an Agreement with Chevron U.S.A., Inc., regarding petroleum contamination at the former service station site on the Parcel, which is located in the Uptown Project area; and authorizing the Agency Administrator to pass through any cost reimbursements from Chevron to Forest City, or another Agency-designated development entity.

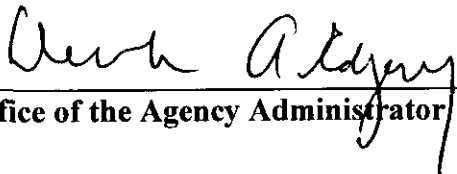
Respectfully submitted,



Dan Vanderpriem
Director of Redevelopment,
Economic Development, Housing
and Community Development

Prepared by:
Jens Hillmer
Urban Economic Coordinator
Redevelopment Division

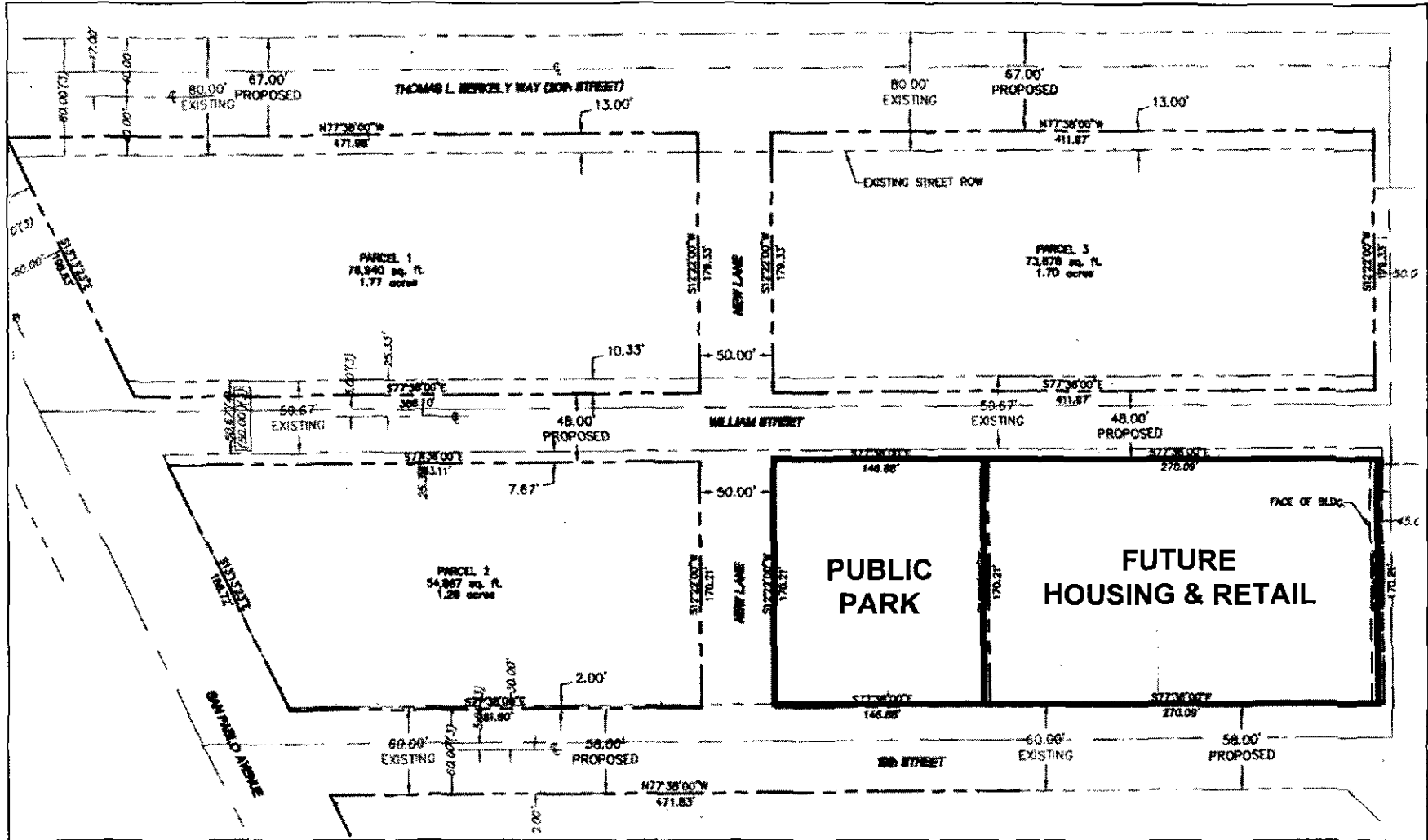
**APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE**


Office of the Agency Administrator

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EXHIBIT A

SITE PLAN



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.

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 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, _____, 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