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2010 OCT 28 PM 02:11
REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND
AGENDA REPORT

TO: Office of the Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: November 9, 2010

RE: **An Agency Resolution Amending Resolution No. 2010-0093 C.M.S. to Reduce the Exclusive Negotiating Agreement Deposit Requirements with Sunfield Development, LLC from \$50,000 to \$25,000 for the Foothill and Seminary Development Opportunity Site**

SUMMARY

On July 20, 2010 the Agency adopted Resolution No. 2010-0093 C.M.S. authorizing an Exclusive Negotiation Agreement (“ENA”) with Sunfield Development, LLC (“Developer”). The purpose of the ENA is to provide a period of time to evaluate the feasibility of redeveloping the Agency’s eleven contiguous parcels of land bounded by Foothill Boulevard, Seminary and Bancroft Avenue (collectively, the “Properties”) for neighborhood commercial serving retail.

The initial term sheet which was attached to the previous staff report and resolution referenced the requirement of both a \$25,000 refundable Good Faith deposit and a \$25,000 non-refundable Project Expense Payment. For consistency with the original Notice of Development Opportunity (“NODO”) and other ENA requests which were presented to the Agency, the terms agreed to by and between the Developer and staff to be put forth to the Agency, should have only included the \$25,000 non-refundable Project Expense Payment.

FISCAL IMPACTS

Pursuant to the proposed ENA, the Developer shall make a non-refundable payment of \$25,000 to the Agency (the “Project Expense Payment” or “PEP”) within 10 calendar days of the date of the Agency’s ENA authorization for purposes of reimbursing the Agency for its staff and/or third party expenses. Payment of the PEP shall be in the form of a check, wired funds, or a letter of credit in favor of the Agency drawn by an institution satisfactory to the Agency.

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While receipt of the payment has been delayed, the Developer has continued developing a design direction for the proposed new project in consultation with City redevelopment, planning and traffic engineering staff. The intervening time has also enabled City staff and the Developer to negotiate and finalize a draft ENA which is ready for execution once the deposit issue has been resolved.

In the event that this Agreement is terminated or the Parties fail to reach agreement for any reason, the PEP will not be returned to the Developer, except for any PEP funds that have not been expended by the Agency. The PEP budget may be modified by the Agency from time to time so long as such amendments are reasonable and do not cause the budget to exceed the total amount of PEP authorized by this Agreement. The Developer agrees that in the event Developer requests an extension of the Negotiation Period, Developer will consider in good faith a request by the Agency to increase the PEP to cover the Agency's staff costs and reasonable expenses that are otherwise eligible PEP expenses, if the initial PEP has been exhausted or the remaining PEP is insufficient to cover such expenses.

At the request of the Developer, the Agency shall provide a report to Developer on expenditures from the PEP made by the Agency. The Developer shall give at least five (5) business days of advanced notice to the Agency for such a request.

BACKGROUND

On September 4, 2009, a NODO was issued to solicit development proposals for various Agency owned Properties. The NODO required that developers recommended to be selected by the Agency would be required to make a non-refundable good faith cash deposit of \$25,000 subsequent to Agency authorization and prior to commencing negotiations for a Disposition and Development Agreement ("DDA"). In the process of making the recommendation to the Agency for the authorization to enter into ENA's with the selected Developer, staff included a \$25,000 Project Expense Payment for the purpose of reimbursing the Agency for staff and third party expenses such as on call economic consultants and appraisers. Because the NODO only referenced a required non-refundable cash deposit of \$25,000, the Developer was opposed to having to pay both a \$25,000 refundable Good Faith deposit and a non-refundable \$25,000 Project Expense Payment.

KEY ISSUES AND IMPACTS

Staff and the Developer are still proposing a 15-month ENA period for the Foothill and Seminary Project which would include two six month review periods and a three month

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extension period. However, the ENA period would now start on the date of adoption of the attached resolution, rather than the original resolution. The extension periods may be granted by the Agency Administrator, if satisfied with Developer's progress in satisfying the basic terms of the ENA. The basic terms of the ENA include the PEP deposit and scheduled deliverables. If the Developer is unable to meet any of the milestones listed in the ENA or if the Agency and Developer cannot come to an agreement on the terms of a DDA, the ENA would be terminated.

Entering into an ENA with the Developer will enable the Agency and Developer to further evaluate feasibility of the proposed project, and, if appropriate, negotiate the terms for a DDA. More specifically, the ENA period would allow the Developer to demonstrate financial capacity, financial feasibility, finalize project design, solidify cost estimates, solicit statements of interest from retail operators, and conduct applicable market feasibility studies for the retail and mixed use components. In addition to performing the above tasks, Developer would utilize the ENA period to complete California Environmental Quality Act (CEQA) review. Staff would work with the Developer to negotiate terms for a DDA.

PROJECT DESCRIPTION

The Developer proposes to develop an all retail-only development with on-site parking at Foothill & Seminary. The retail only alternatives which Developer is in the process of evaluating include a diverse retail tenant mix in order to attract a wider age range of consumers and to address unmet needs in the neighborhood. The project as proposed includes two alternatives which will be further explored in the ENA phase:

Alternative 1:

- 11 parcels Agency owned (33,000 SF of retail / 76 pkg. spaces)
- 15,000 square foot national drug store anchor
- 18,000 square foot single user retail anchor or multiple in-line retail tenants

Alternative 2:

- 12 parcels expanded acquisition (36,000 SF of retail / 86 pkg. spaces)
- 15,000 square foot national drug store anchor
- 16,000 square foot multiple in-line retail tenants
- 5,000 square foot retail pad for one or more tenants

Specific tenants will be required to be identified during the ENA period. During the ENA period, the Developer will also have to demonstrate project feasibility by conducting a

market study for the proposed uses, obtain strong letters of interest or intent from potential tenants, and demonstrate overall project financial feasibility from the perspective of the sources and uses of funds, as well as from a cash flow perspective. Specific tenants for retail components will be required to be identified during the ENA period.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed project will enhance the existing retail node and surrounding residential neighborhood and provide new business attraction opportunities, part-time and permanent jobs in East Oakland.

Environmental: The location of the proposed project in proximity to major public transportation nodes will likely encourage retail customers to use AC Transit with linkages to BART. The proposed project will be required to comply with the City's green building requirements for non-residential new construction which go into effect on January 1, 2011. Staff will negotiate with the developer to incorporate as many "environmental sustainability" features into the design and construction of the project as are practical and financially feasible. The DDA will include specific requirements for these features.

Social Equity: If Agency assistance is required to make the project feasible, the Developer will be required to comply with the City's contracting programs, including the Small/Local Business Construction Program, the Small/Local Business Professional Services Program (L/SLBE) and Local Employment Program. All of the workers performing construction work on projects assisted with Agency funding must be paid prevailing wage rates. The Developer's tenants may also be subject to the Living Wage Ordinance.

DISABILITY AND SENIOR CITIZEN ACCESS

The project will be required to comply with current ADA standards. The Developer will also be responsible for providing upgrades for pedestrian safety immediately adjacent to the project.

RECOMMENDATIONS AND RATIONALE

Adopting the requested amendment will enable the Developer and Agency Administrator to execute an ENA for the project to begin exploring feasibility of the proposed project. The proposed project is consistent with the Central City East Redevelopment Area Plan

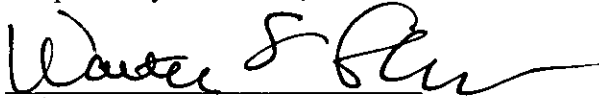
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and will enhance the Agency's redevelopment purpose for the district while also helping to provide financial and social benefits to the surrounding neighborhood and City.


ACTION REQUESTED OF THE COUNCIL/AGENCY

Staff recommends approval of the Agency resolution amending Resolution No. 2010-0093 C.M.S. to reduce the deposit requirement for the Exclusive Negotiating Agreements with Sunfield Development, LLC, for disposition of the Agency owned Foothill and Seminary Notice of Development Opportunity Properties.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by: 

Gregory D. Hunter, Deputy Director
Economic Development & Redevelopment

Reviewed by:

Larry A. Gallegos, Redevelopment Manager,
Redevelopment Division

Prepared by:

Douglas H. Cole, Urban Economic Coordinator,
Redevelopment Division

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



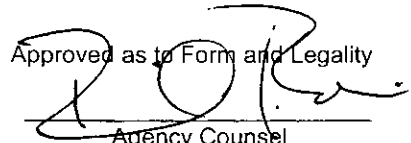
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Approved as to Form and Legality



Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S.

AN AGENCY RESOLUTION AMENDING RESOLUTION NO. 2010-0093 C.M.S. TO REDUCE THE EXCLUSIVE NEGOTIATING AGREEMENT DEPOSIT REQUIREMENTS WITH SUNFIELD DEVELOPMENT, LLC FROM \$50,000 TO \$25,000 FOR THE FOOTHILL AND SEMINARY DEVELOPMENT OPPORTUNITY SITE

WHEREAS, the Redevelopment Agency has determined that it desires to encourage infill development at specific retail nodes identified in a City-wide Retail Strategy along the Foothill and MacArthur Boulevard Corridors in the Central City East Redevelopment Project Area; and

WHEREAS, the City of Oakland ("City") and Agency have determined that the best way to encourage development is to make Agency-owned land available and to work with developers to consolidate land; and

WHEREAS, the Agency has acquired a total of 11 contiguous parcels of land at the southwest corner of Foothill Boulevard and Seminary Avenue totaling 1.724 acres (75,093 square feet) of land zoned commercial use (together, the "Property"); and

WHEREAS, on September 4, 2009, the Agency issued a Notice of Development Opportunity ("NODO") to solicit development proposals for the Property; and

WHEREAS, the Agency received three proposals and formed a Selection Committee ("Committee") for the purpose of reviewing the proposals and to conduct in-depth interviews with all three respondents; and

WHEREAS, the Committee evaluated each proposal in multiple categories and ranked them accordingly; and

WHEREAS, Sunfield Development, LLC ("Sunfield" or the "Developer") ranked first in the initial round of evaluations and their submittal of additional information further solidified the Agency's selection of their Project; and

WHEREAS, the City and Redevelopment Agency have determined that the Redevelopment Agency is the proper entity to prepare the site for development and enter into an Exclusive Negotiating Agreement ("ENA"); and

WHEREAS, the Agency and Developer recognize and acknowledge that the feasibility of the development proposed by Developer has not been determined to the satisfaction of the Agency and the purpose of the ENA is to allow the Agency and Developer to determine the feasibility of the Project proposal and negotiate the terms for possible Agency financial assistance to the Project; and

WHEREAS, the proposed action is consistent with and will further the purposes of the Redevelopment Plan adopted for the Central City East Redevelopment Project on July 29, 2003 (Resolution No. 2003-64 C.M.S.) and Five Year Implementation Plan adopted for the Central City East Redevelopment Project on July 15, 2008 (Resolution No. 2008-70 C.M.S.); and

WHEREAS, the reference to both a refundable \$25,000 Good Faith Deposit and non-refundable \$25,000 Project Expense Payment were included in the original staff report, initial term sheet and resolution; and

WHEREAS, for reasons of maintaining consistency with other Exclusive Negotiating Agreements by and between the Agency and developer, the required ENA deposit should only include a non-refundable \$25,000 Project Expense Payment; now, therefore, be it

RESOLVED: That the Redevelopment Agency hereby amends Resolution No. 2010-0093 C.M.S. to reduce the Exclusive Negotiating Agreement deposit requirement to include only a non-refundable \$25,000 Project Expense; and be it

FURTHER RESOLVED: That the Agency Administrator is authorized to negotiate and enter into an ENA by and between the Agency and developer for purposes of studying and evaluating the feasibility of, and further negotiating terms and conditions for, the transfer of the Property and its development for commercial use; and be it

FURTHER RESOLVED: That the ENA period will be for fifteen months from the date of this Resolution, equal to two six month review periods with the option to extend said period by an additional three months with the approval of the Agency Administrator in his sole discretion; and be it

FURTHER RESOLVED: That the ENA shall be reviewed and approved as to form and legality by Agency Counsel prior to execution; and be it

FURTHER RESOLVED: That the Agency finds and determines, after independent review and consideration, that this action complies with the California

Environmental Quality Act ("CEQA") because it 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 the Agency Administrator or his 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 Agency Administrator is further authorized to take whatever action is necessary with respect to the ENA and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST:

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