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**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: July 13, 2010

RE: **Agency Resolution Authorizing An Exclusive Negotiating Agreement With Sunfield Development, LLC, For Disposition Of Eleven Agency-Owned Parcels Bounded By Foothill Boulevard, Seminary Avenue And Bancroft Avenue, And Development Of A Neighborhood-Serving Retail Center**

Agency Resolution Authorizing An Exclusive Negotiating Agreement With Sunfield Development, LLC, For Disposition Of Agency-Owned Parcel Bounded By Foothill Boulevard And 73rd Avenue, And Development Of A Mixed Use City Library And Peralta Community College Educational Learning Center And Community Retail Component

SUMMARY

The attached Agency Resolutions authorize entering into Exclusive Negotiation Agreements (“ENA”) with Sunfield Development, LLC for the purpose of evaluating the feasibility of proposed redevelopment of two Agency owned “Notice of Development Opportunity” (“NODO”) sites (collectively, the “Properties”) which are located in the Central City East Redevelopment Project Area:

Foothill and Seminary

Retail only development with on-site parking on Agency-owned property bounded by Foothill Boulevard, Seminary and Bancroft Avenue (see *Attachment A*).

Foothill and 73rd

Mixed use educational / learning center / senior housing development with on-site parking on Agency-owned property bounded by Foothill Boulevard, and 73rd Avenue (see *Attachment B*).

FISCAL IMPACTS

A detailed fiscal impact analysis will be undertaken during the ENA period to estimate what fiscal impacts and return benefits would accrue to the City and Agency from the development

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(e.g. land sales proceeds, sales tax, property tax, jobs, etc.).

When the Agency acquired the Properties, the Properties were reclassified as exempt. Disposition of the Properties from public to private ownership will place the Properties back into a non-exempt property tax status based on the fair market re-use appraisal of the Properties, project revenues and hard cost value of the improvements.

During the ENA period, the Properties will be re-appraised as part of the due diligence process. The re-appraised value will be based upon the fair market value of the land, assuming the highest and best use given current zoning. The re-appraised value will be compared against the residual land value to determine how much the Agency will recapture on the Agency's cost of acquisition, and if Agency assistance will be required.

Residual land value is based upon the resulting difference between the proposed project revenues and proposed project total development costs, not including assumptions for the cost of the land. The assumptions used by the developer will be tested during the ENA process by a third party consultant retained by the Agency. The Agency's consultant will evaluate the reasonableness of the developer's revenue and development cost assumptions to conclude if the developer's residual land value determinations are acceptable.

To date the Agency's expenditures on the two proposed projects are as follows:

Foothill and Seminary

- Total site acquisition cost of \$4,344,000
- Total appraisal, environmental soft costs and abatement and demolition costs: \$430,000

Foothill and 73rd Avenue

- Total site acquisition cost of \$2,340,000
- Total environmental soft costs and abatement and demolition costs: \$227,500

On-going fencing rental, weed abatement and trash removal for the Properties totals approximately \$1,850 to \$2,000 per month.

BACKGROUND

On September 4, 2009, a NODO was issued to solicit development proposals for various Agency owned properties. The Agency received a number of proposals and formed a selection committee for the purpose of reviewing the proposals and to conduct in-depth interviews with all the respondents. The committee evaluated the overall feasibility for each proposed project, which was based on multiple categories and ranked them accordingly.

During this time, the Agency has had to evaluate its goals and level of financial participation for

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the project as a result of fiscal constraints that have become more prominent over the last several months. Therefore, staff requested that the top two candidates for each project submit supplemental information to address the Agency's redefined goals for the site, which included a project scenario that would not require any public participation.

Sunfield ranked first in the initial round of evaluations and their submittal of additional information further solidified the Agency's selection for both Properties. An initial term sheet outlining the ENA has been proposed by the Agency and developer. Sunfield Development, LLC is a newly formed company. The company grew out of a team of real estate professionals, including the president, Sid Afshar, who has over 30 years of experience in real estate development and architectural design in California, and Daniel Goncharoff, a CPA with over 12 years of experience in real estate development and finance. The developer has assembled a strong team with substantial experience and an excellent reputation for each project.

Foothill & Seminary

- Developer: Sunfield Development, LLC
- Parking Consultant: International Parking Design (IPD)
- Architect: Field Paoli Architects (Oakland-based)
- Contractor: Overaa & Company (Oakland-based contractor)

Foothill & 73rd

- Developer: Sunfield Development, LLC
- Parking Consultant: International Parking Design (IPD)
- Architect: JRDV Architects (Oakland-based)
- Contractor: Overaa & Company (Oakland-based contractor)

KEY ISSUES AND IMPACTS

Staff proposes a 15-month ENA period for the Foothill and Seminary Project which would include two six month review periods and a three month extension period. For Foothill and 73rd, staff is proposing an 18-month ENA period which would include a twelve month review period and a six month extension period. The extension periods may be granted by the Agency Administrator, if he is satisfied with Sunfield's progress in satisfying the basic terms of the each ENA. The basic terms envisioned for each ENA includes certain deliverables, a good faith negotiation deposit, and a deposit to cover certain expenses that the Agency will incur during the ENA period. If Sunfield is unable to meet any of the milestones listed in the ENA or if the Agency and Sunfield cannot come to an agreement on the terms of a DDA, the ENA would be terminated.

Entering into an ENA with Sunfield will enable the Agency and Sunfield to further evaluate feasibility of the proposed projects, 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, Sunfield 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.

Foothill & Seminary

In their initial response to the Foothill & Seminary NODO, Sunfield offered to purchase the parcels from the Agency for \$3,800,000 or \$54.14 per square foot. A preliminary term sheet for the ENA has been reviewed and agreed upon by Sunfield (see ***Attachment C***). In addition to the term sheet, the Agency has requested Sunfield to submit Letters of Interests from anchor tenants prior to executing the ENA. If Sunfield is unable to submit these Letters of Interest, Agency staff will recommend that the Agency enter into an ENA with the second-ranked developer.

Foothill and 73rd

In their initial response to the Foothill & 73rd NODO, Sunfield offered to purchase the parcels from the Agency for \$2,259,300 or \$42.50 per square foot. A preliminary term sheet for the ENA has been reviewed and agreed upon by Sunfield (see ***Attachment D***). The Agency has also drafted a Memorandum of Intent ("MOI") by and between the Agency, the City of Oakland Public Library Department and the Peralta Community College District (see ***Attachment E***). The MOI spells out the responsibilities of the parties and that each will use their best efforts to identify funding to help achieve a feasible joint use project. If Agency and Sunfield are unable to successfully negotiate and enter into an ENA, then Agency staff may recommend that the Agency enter into an ENA with the second highest ranked developer for an alternative development, or issue a second Request for Proposal at a later time.

PROJECT DESCRIPTION

Foothill and Seminary

Sunfield proposes to develop an all retail-only development with on-site parking at Foothill & Seminary. The retail only alternatives which Sunfield 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 three 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

Alternative 2:

- 11 parcels Agency owned (33,000 SF of retail / 76 pkg. spaces)

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- 15,000 square foot national drug store anchor
- 18,000 square foot multi-tenant in line retail

Alternative 3:

- 12 parcels expanded acquisition (36,000 SF of retail / 86 pkg. spaces)
- 15,000 square foot national drug store anchor
- 16,000 square foot multi-tenant in line retail
- 5,000 square foot retail pad

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 both a sources and uses and cash flow perspective.

Foothill and 73rd

Sunfield proposes to develop a mixed use educational / learning center / senior housing development with on-site parking on the Property. The project as currently proposed includes three alternatives which are subject to change and will be further explored in the ENA phase:

Alternative 1:

- 16,500 SF for the Peralta Community College District
- 13,500 SF for the Eastmont Branch Library
- 6,500 SF of shared space
- 6,000 SF café / restaurant
- 135 units of senior housing
- Shared on-site parking

Alternative 2:

- 20,000 SF for the Peralta Community College District
- 3,500 SF café / restaurant
- 76 units of senior housing
- Shared on-site parking

Alternative 3:

- 20,000 to 25,000 SF for the Peralta Community College District
- 14,000 to 16,000 SF for the Eastmont Branch Library
- 3,500 SF café / restaurant
- Shared on-site parking

Specific tenants for retail components will be required to be identified during the ENA period.

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SUSTAINABLE OPPORTUNITIES

Economic: The proposed projects will enhance existing and new commercial, retail and housing uses in East Oakland. New retail space will provide opportunities for new businesses and the proposed new educational center uses will provide more accessible learning opportunities and educational resources for East Oakland residents.

Environmental: The location of the proposed project in proximity to major public transportation nodes will likely encourage project retail customers to use AC Transit with linkages to BART. While both projects will be subject to 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 the Properties are not sold at its fair market value and require Agency assistance, Sunfield 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 for Agency funded project component must be paid prevailing wage rates. The developer will also be subject to the Living Wage Ordinance.

DISABILITY AND SENIOR CITIZEN ACCESS

The projects will be required to comply with current ADA standards. Each project will also be responsible for providing upgrades for pedestrian safety immediately adjacent to each respective project.

RECOMMENDATIONS AND RATIONALE

Adopting these resolutions will enable the Agency Administrator to execute a 15-month ENA for the Foothill and Seminary Project and an 18-month ENA for the Foothill and 73rd Project with Sunfield to explore the feasibility of each of the proposed projects. The ENA will allow the developer and Agency staff to explore feasibility for each project and determine if the proposals are the best development options to meet the needs of each surrounding neighborhood and City as a whole.

The proposed projects are consistent with the Central City East Redevelopment Area Plan and would enhance and support existing uses in this district, provide additional financial and social benefits to the Agency and City, and provide needed additional off-street public parking in the area.

ACTION REQUESTED OF THE COUNCIL

Staff recommends approval of both Agency resolutions authorizing Exclusive Negotiating Agreements with Sunfield Development, LLC, for disposition of the two Agency owned Notice of Development Opportunity Properties.

Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

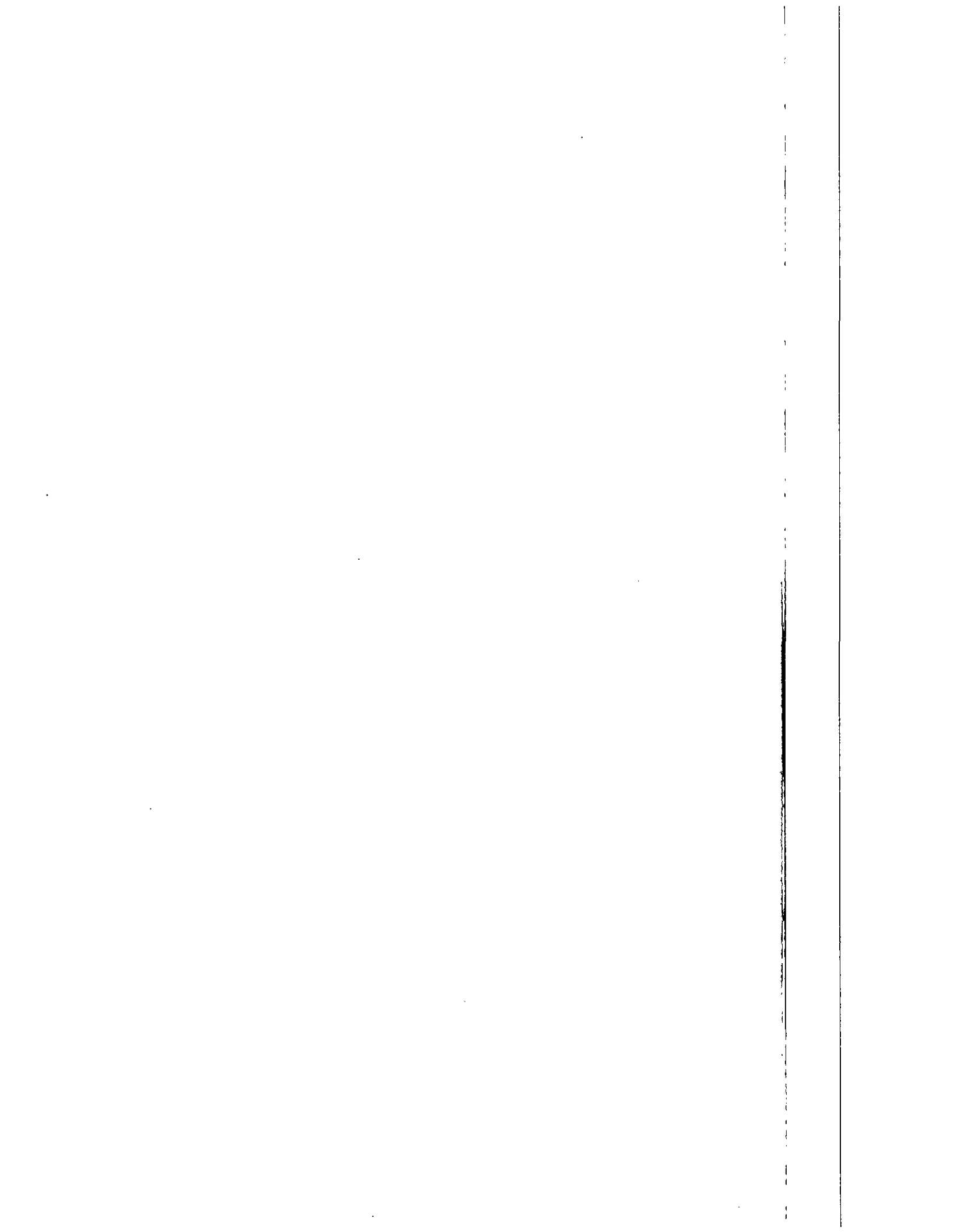
Reviewed by:
Gregory D. Hunter, Deputy Director
Economic Development & Redevelopment

Prepared by:
Larry A. Gallegos, Redevelopment Manager, and
Douglas H. Cole, Urban Economic Coordinator,
Redevelopment Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



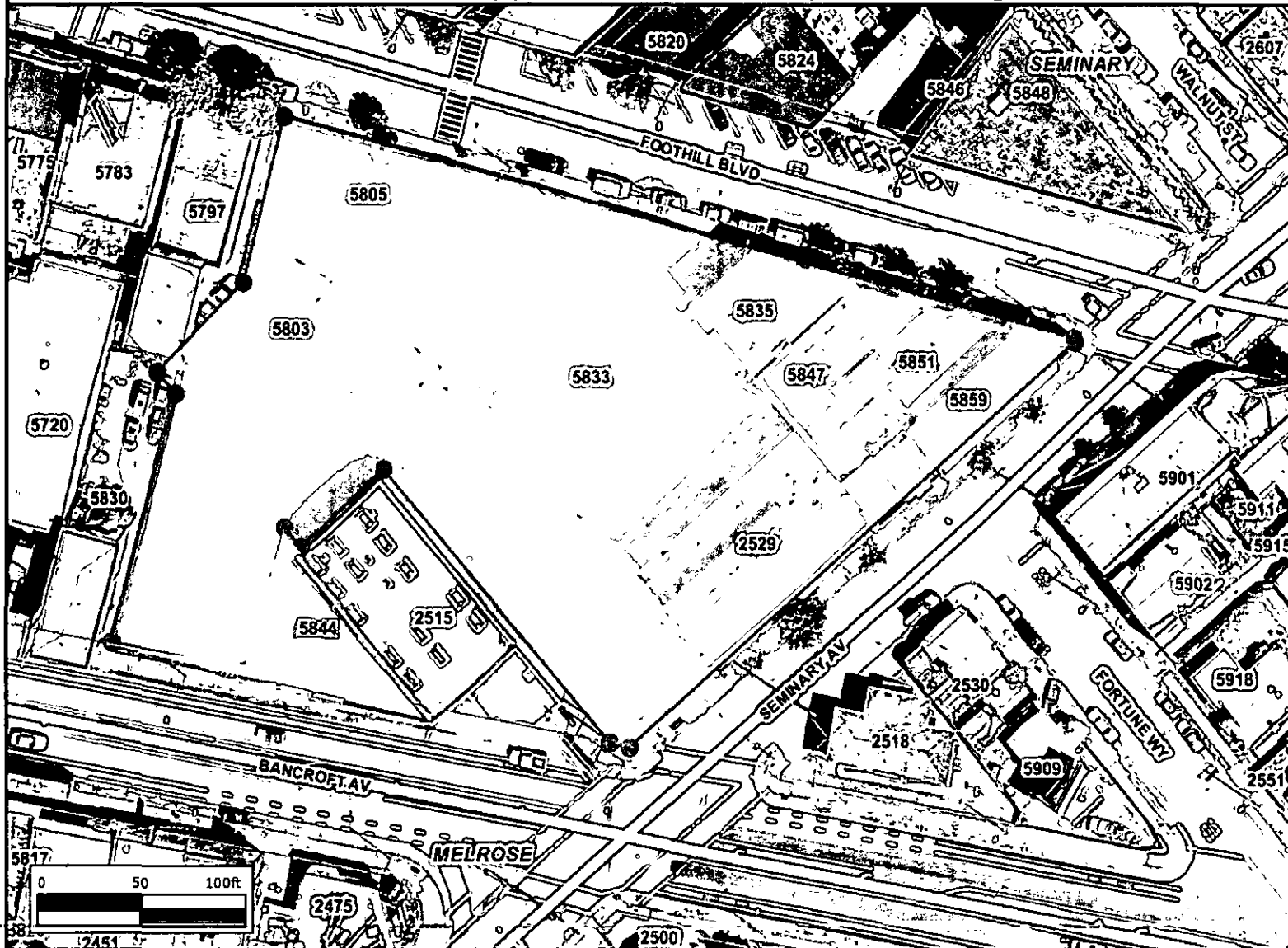
Office of the Agency Administrator










**ATTACHMENT A
FOOTHILL & SEMINARY
PROPERTY MAP**

Seminary and Foothill

S.F. approx. combined 75,093 Zoning: C-30



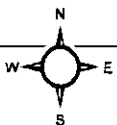
Legend

-  City Facilities Footprint
-  City Limits
-  Parcels
-  Major Sts
-  Streets
-  Water
-  Land

It is imperative that you obtain BOTH the Zoning and General Plan designations for the property(s) you are searching for.

Questions? Contact a planner at (510)238-3911.

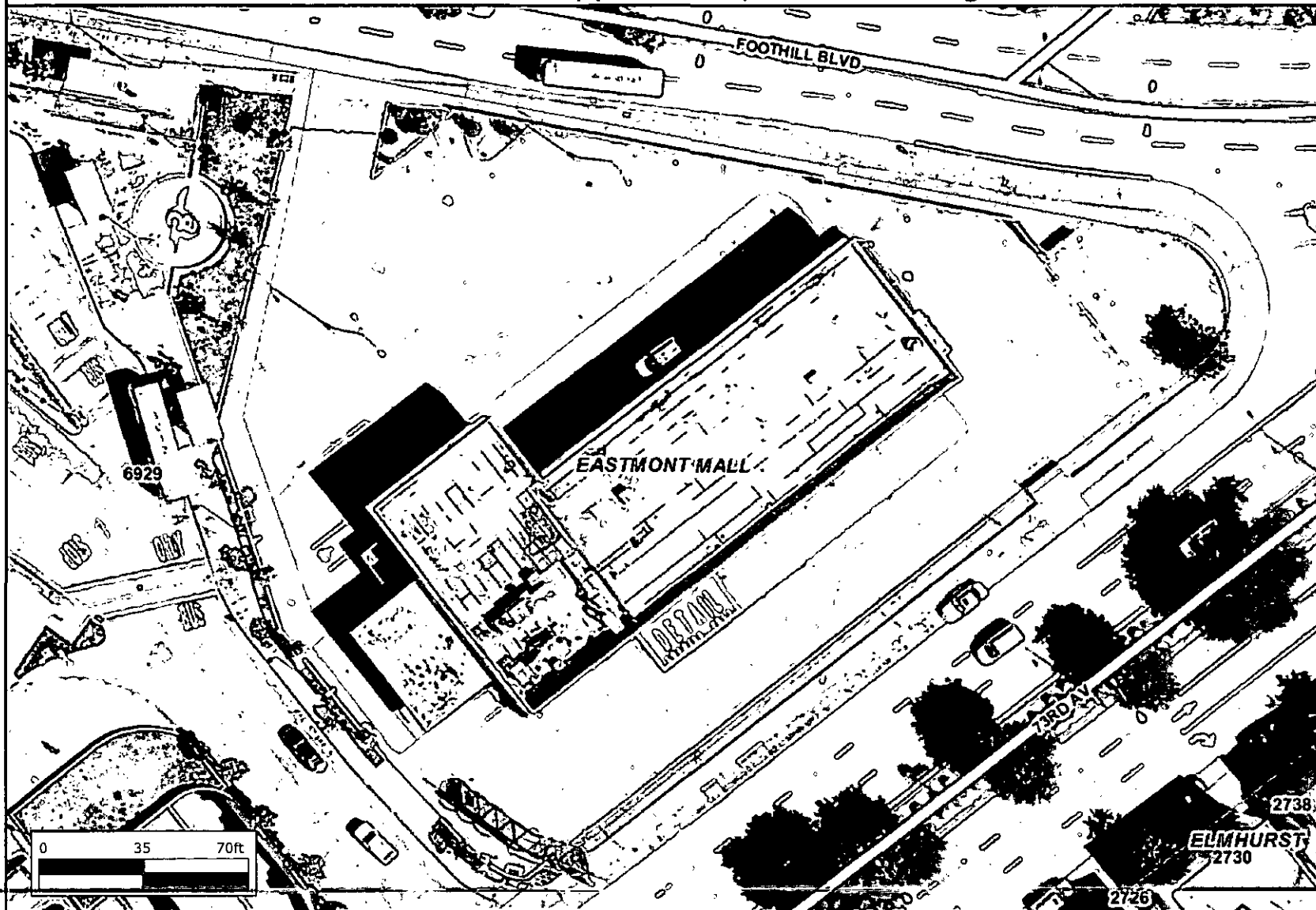
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**ATTACHMENT B
FOOTHILL & 73RD
PROPERTY MAP**

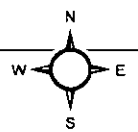
73rd and Foothill Blvd. APN: 039-3291-020

S.F. approx. 53,143 Zoning C-30



Legend

- City Limits
- Parcels
- Freeways
- Major Sts
- Streets
- Water
- Land



It is imperative that you obtain BOTH the Zoning and General Plan designations for the property(s) you are searching for.

Questions? Contact a planner at (510)238-3911.

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**ATTACHMENT C
FOOTHILL & SEMINARY
PROPOSED TERM SHEET**

ATTACHMENT C
PROPOSED TERM SHEET
Foothill & Seminary Development Proposal

The following proposed terms will be incorporated into an Exclusive Negotiation Agreement (“ENA”) between the Redevelopment Agency of the City of Oakland (the “Agency”) and Sunfield Development, LLC or a related entity (“Developer”), to develop a retail only development (the “Project”) on Agency owned parcels located southwest of Foothill Boulevard and Seminary Avenue, bounded by Foothill Boulevard, Seminary Avenue and Bancroft Avenue, APN: 038-3182-001; 038-3182-002; 038-3182-003; 038-3182-005; 038-3182-020; 038-3182-021; 038-3182-022; 038-3182-023; 038-3182-024; 038-3182-025; and 038-3182-026 (the “Property”).

These terms will be incorporated into a 15 month ENA following City Council / Redevelopment Agency Board approval. During ENA period, the development team will perform the following tasks:

1. Identify relevant zoning, design review, environmental review and code requirements and establish a schedule by which relevant zoning, design review, and environmental approvals will be obtained;
2. Define the project scope and schedule, develop a Project description suitable for environmental review under the California Environmental Quality Act (“CEQA”);
3. Retain an environmental and professional design consultant to prepare all necessary environmental documentation required to conduct environmental review under the CEQA for the Project and issue a Notice of Preparation if an Environmental Impact Report is required;
4. Demonstrate financial capacity;
5. Verify legal status;
6. Identify development team;
7. Demonstrate Project financial feasibility;
8. Arrive at a project design that meets the needs of the Agency and is acceptable to both parties.
9. Provide a market feasibility study and strategy for all aspects of the Project;
10. Solicit detailed statements of interest from retail operators;
11. Provide detailed cost estimates for the development of each component of the Project; and
12. Negotiate the terms of the Disposition and Development Agreement (“DDA”) with the Agency.

In addition to the general ENA terms listed above, the Developer must agree to the following: In consideration for the Agency entering into an ENA, the Developer shall make a deposit of Fifty Thousand Dollars (\$50,000) with the Agency. Of this amount, Twenty-five Thousand Dollars (\$25,000) is a Good Faith Deposit and Twenty-Five Thousand Dollars (\$25,000) is a Project Expense Payment (“PEP”) for purposes of reimbursing the Agency for actual and reasonable third-party expenses related to project planning, preparation of the Section 33433 report and negotiating a DDA.

The 15-month ENA, which divides the term of the agreement into two 6-month review periods and a final three-month extension period, which may be granted by the Agency Administrator if the Agency Administrator is satisfied that the Developer has made acceptable progress in completing the above requirements and has provided evidence that the Project is feasible within mutually agreed upon timeframes and terms during the first ten months of the ENA term. The additional time would be used to permit the Developer to secure land use entitlements, refine Project budgets and schedules, complete CEQA review, and complete the other tasks listed above. The DDA and other agreements will then be brought to the City Council / Redevelopment Agency Board for final discretionary approval.

**ATTACHMENT D
FOOTHILL & 73RD
PROPOSED TERM SHEET**

ATTACHMENT D
PROPOSED TERM SHEET
73rd & Foothill Development Proposal

The following proposed terms will be incorporated into an Exclusive Negotiation Agreement (“ENA”) between the Redevelopment Agency of the City of Oakland (the “Agency”) and Sunfield Development, LLC or a related entity (“Developer”), to develop a development (the “Project”) on an Agency owned parcel located southwest corner of Foothill Boulevard and 73rd Avenue, APN: 039-3291-020 (the “Property”).

These terms will be incorporated into an 18-month ENA following City Council / Redevelopment Agency Board approval. During the ENA period, the development team will perform the following tasks:

1. Identify relevant zoning, design review, environmental review and code requirements and establish a schedule by which relevant zoning, design review, and environmental approvals will be obtained;
2. Define the project scope and schedule, develop a Project description suitable for environmental review under the California Environmental Quality Act (“CEQA”);
3. Retain an environmental and professional design consultant to prepare all necessary environmental documentation required to conduct environmental review under the CEQA for the Project and issue a Notice of Preparation if an Environmental Impact Report is required;
4. Demonstrate financial capacity;
5. Verify legal status;
6. Identify development team;
7. Demonstrate Project financial feasibility;
8. Arrive at a project design that meets the needs of the Agency and is acceptable to both parties.
9. Provide a market feasibility study and strategy for all aspects of the Project;
10. Solicit detailed statements of interest from retail operators;
11. Provide detailed cost estimates for the development of each component of the Project; and
12. Negotiate the terms of the Disposition and Development Agreement (“DDA”) with the Agency.

In addition to the general ENA terms listed above, the Developer must agree to the following:

1. In consideration for the Agency entering into an ENA, the Developer shall make a non-refundable good faith, cash deposit of Twenty-five Thousand Dollars (\$25,000). The Agency will apply these funds towards internal expenses that are applicable to this project. Use of these funds is up to the sole and absolute discretion of the Agency. Any unused funds will not be applied to the purchase price.
2. Developer will work in good faith and collaboratively with the Agency, City and the Peralta Community College District in helping to develop a viable mixed use development program which meets the various needs of each of these entities and the community at large.

The ENA will be for an initial term of 12 months, and will allow the Agency Administrator to extend the ENA for up to six additional months, if the Agency Administrator is satisfied that the Developer has made acceptable progress in completing the above requirements and has provided evidence that the Project is feasible within mutually agreed upon timeframes and terms during the first ten months of the ENA term. The additional time would be used to permit the Developer to secure land use entitlements, refine Project budgets and schedules, complete CEQA review, and complete the other tasks listed above. The DDA and other agreements will then be brought to the City Council / Redevelopment Agency Board for final discretionary approval.

ATTACHMENT E
FOOTHILL & 73RD
DRAFT MEMORANDUM OF INTENT

June __, 2010

Dr. Alan Wyse, Interim Chancellor
Peralta Community College District
333 East 8th Street
Oakland, CA 94606

Dr. Robert A. Adams, President
Merritt College
12500 Campus Drive
Oakland, CA 94619

RE: Foothill & 73rd Parcel

Dear Chancellor Wyse and Dr. Adams:

I am pleased to present the following Draft Memorandum of Intent ("MOI") on behalf of the Redevelopment Agency of the City of Oakland (the "Agency") to the Peralta Community College District (the "District"). This MOI pertains to real property acquired by the Agency totaling approximately 1.22 acres located at the southwest corner of 73rd and Foothill Boulevard for which the District has expressed interest in redeveloping for joint use by the District and City. This First Draft is being submitted for District review and approval as to form by your Legal Counsel.

"DRAFT"
MEMORANDUM OF INTENT
BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND
AND
THE PERALTA COMMUNITY COLLEGE DISTRICT

FOOTHILL & 73RD DEVELOPMENT PROGRAM

This Memorandum of Intent ("MOI") is entered into this ____ day of _____, 2010 by and between the Redevelopment Agency of the City of Oakland ("Agency") and the Peralta Community College District ("District").

Recitals

A. The Agency owns, controls and wishes to develop the southwest corner of Foothill Boulevard and 73rd Avenue totaling 1.22 acres (53,160 square feet) of land zoned for commercial use, APN: 039-3291-020 (the "Property"), as shown in Exhibit A.

B. The Agency acquired the Property pursuant to Resolution No. 2008-0063 C.M.S. for the purpose of eliminating blight and facilitating redevelopment of the Property and to this end has expended \$2,617,879 for appraisal services, acquisition, environmental remediation and demolition in good faith towards preparing the Property for development.

C. The Agency and District have collaborated over the past several months to explore the potential of developing a joint use facility on the Property which would house satellite classrooms and administration space for the District and expanded relocation space for the Eastmont Branch Library which is currently located within the adjoining Eastmont Towne Center along with the addition of commercial retail space and senior housing, if feasible.

D. The District has stated to the Agency that the District could potentially use eligible bond funds obtained by District for the District's pro-rata share of the acquisition, predevelopment and construction improvements which need to be either owned, or leased with the option to purchase by the District.

E. To begin the process of facilitating developer interest in the Property, the Agency issued a Notice of Development Opportunity (the "Notice") in on September 4, 2009 to the development community.

F. In response to the Notice the Agency received proposals from developers and formed a Selection Committee ("Committee") which included representatives from the District to conduct in-depth interviews and to evaluate each proposal in multiple categories and rank them accordingly.

G. The Committee ranked Sunfield Development, LLC ("Developer") first in the initial round of evaluations and their submittal of additional information further solidified the Committee's selection for the proposed Project.

H. Based on the Committee's recommendation, Agency staff are in the process of obtaining authorization from the Agency to authorize the Agency Administrator to enter into an Exclusive Negotiating Agreement ("ENA") with the Developer.

I. Because the Agency is owner of the Property, the City, Agency and District have determined that the Agency is the proper entity to prepare the site for development and enter into an ENA with Developer.

J. The Agency and District recognize and acknowledge that the feasibility of the proposed development has not been determined to the satisfaction of the Agency or the District and that the purpose of the ENA is to allow the Agency and Developer, along with the District, to determine the feasibility of the Project proposal and negotiate the terms for possible Agency and District financial assistance to the Project.

K. The purpose of this MOI is to establish the relationship between the Agency and District regarding each entities interest, respective roles and responsibilities, and willingness to work together with Developer towards achieving a viable Project which meets the redevelopment goals of the Agency and the needs of the City, District, and Developer.

L. This basic terms of this MOI will be assigned to the ENA and Disposition and Development Agreement ("DDA") by and between the Agency and Developer for the Property following Redevelopment Agency Board approval. During the ENA period, the development team will perform the following tasks with assistance from the Agency and District as required:

1. Identify relevant zoning, design review, environmental review and code requirements and establish a schedule by which relevant zoning, design review, and environmental approvals will be obtained;

2. Define the project scope and schedule, develop a Project description suitable for environmental review under the California Environmental Quality Act ("CEQA");
3. Retain an environmental and professional design consultant to prepare all necessary environmental documentation required to conduct environmental review under the CEQA for the Project and issue a Notice of Preparation if an Environmental Impact Report is required;
4. Demonstrate financial capacity and Project financial feasibility;
5. Arrive at a project design that meets the needs of the Agency, City and District and is acceptable to all parties;
6. Provide a market feasibility study and strategy for all aspects of the Project where required, e.g. retail and senior housing components;
7. Solicit detailed statements of interest from all retail operators for retail components only;
8. Provide detailed cost estimates for the development of each component of the Project; and
9. Negotiate the terms of the Disposition and Development Agreement ("DDA") with the Agency.

The ENA between Agency and Developer will be for an initial term of 12 months, and will allow the Agency Administrator to extend the ENA for up to six additional months, if the Agency Administrator in consultation with the District is satisfied that the Developer has made acceptable progress in completing the above requirements and has provided evidence that the Project is feasible within mutually agreed upon timeframes and terms during the first ten months of the ENA term. The additional time would be used to permit the Developer to secure land use entitlements, refine Project budgets and schedules, complete CEQA review, and complete the other tasks listed above. The DDA and other agreements will then be brought to the City Council / Redevelopment Agency Board for final discretionary approval.

M. Agency's Responsibilities

- a. Responsible lead for overall project coordination with Developer, District and City.
- b. To work cooperatively with District throughout the planning, pre-development and implementation phase of the Project.
- c. Represent and negotiate ENA and DDA in good faith to protect Agency, City and District's development interest in the Project.
- d. To make every reasonable effort to ensure that District's and City's infrastructure and programmed space requirements including Furniture, Fixtures and Equipment are addressed and included in the Project.
- e. Agency with the approval of the Agency's governing body may retain or apply land sales proceeds to cost to acquire a condominium ownership interest in the Property on behalf of the City for the proposed Branch Library.

- f. If it is determined that the inclusion of a new Branch Library is not viable, Agency shall work with Developer to see if the inclusion of a national credit tenant might also be viable and complementary with Districts concurrence.

N. District's Responsibilities

- a. To work cooperatively with Agency throughout the planning, pre-development and implementation phase of the Project, including but not limited to providing budgets, schedules, specifications, notice of special permit and inspection requirements for educational facilities.
- b. To identify and provide notice of funding, budget and cash flow profomas to reimburse Developer for pro-rata share of acquisition, construction costs of facilities to be owned or leased to purchase by District.
- c. District responsible for their pro-rata share of acquisition cost in the form of a cash reimbursement or lease to purchase option to be negotiated.
- d. District responsible for their pro-rata share of the total development (predevelopment, hard and soft) cost of the District's program shell space in the form of a cash reimbursement or lease to purchase option to negotiated.
- e. District responsible for their tenant improvements, furniture, fixtures and equipment costs required to make their facilities operational in the form of a cash reimbursement or lease to purchase option to be negotiated.

O. Development Agreements

- a. Any and all development agreements resulting from proposed or actual development program shall be subject to environmental review and governmental approvals.

P. Overall Project Management

- a. Agency in consultation with the District and per the stipulations of this MOI will manage the overall Project Development Program with the Developer and any selected sub-consultants. District will be responsible for the fiscal and financial management of their specific tenant improvements required for the successful operation of their educational program and any selected sub-consultants. The Agency shall not be responsible for any contract cost overruns without its express written approval.
- b. District shall maintain a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this MOI, and full and complete documentation of performance related matters such as benchmarks and deliverables. District's records shall be made available for review and audit by the Agency upon not less than three working days advance notice by the Agency. District shall be responsible for maintaining for not less than five years after completion of this MOI all records pertaining to this MOI, including subcontracts and expenditures, and all other financial and property records. Records must be kept accurate and up-to-date.

Q. Studies and Reports

- a. Parties to exchange copies of any studies or reports relating to the Property including soils tests, surveys, regulatory reviews, engineering studies, title reports upon execution of this MOI, and thereafter upon completion of reports, including but not limited to any District studies or reports relating to the Districts facilities master plan and bonding capacity documents for the purpose of increasing the Agency's awareness and understanding of the Districts development program and financing.

R. Right of Entry

- a. The Agency to grant right of entry to District to conduct tests and other feasibility studies. District to indemnify the City for entry.

S. Schedule

- a. The schedule for deliverables by the Agency and or the District shall be coordinated with the schedule for deliverables referenced to in the ENA and DDA to be negotiated by and between the Agency and the Master Developer in consultation with the District.

- b. Agency and District have targeted the following major milestones with the intent of moving forward on this Project.

- July 6, 2010: Agency Closed Session regarding ENA with Developer.
- July 13, 2010: Agency/CEDA Committee authorization to enter into an ENA with Developer.
- July 23, 2010: Agency authorization to enter into an ENA with Developer.
- Aug. 2, 2010: Commencement of ENA Period
- Aug. 23, 2010: Classes Resume
- Sept. __, 2010: Town Hall Meeting with Academic and Faculty Senate
- Oct. __, 2010: District Wide Facility Committee
- Nov. __, 2010: District Board Approval (MOI and Budget authority to expend soft costs)
- Jan. __, 2011: Start Design & Design Review

T. Termination on Notice

- a. Either the Agency or District may terminate MOI for failure of the other party to comply with the provisions of this MOI upon giving thirty (30) calendar days written notice.

- b. The noticed party shall have an additional thirty (30) days to cure the alleged breach prior to termination.

U. Indemnification

- a. District shall defend, indemnify and hold harmless the Agency, the City of Oakland, and their respective directors, officers, agents, and employees from all claims, demands, suits, losses, damages, injury, and liability arising from the operation of the 73rd & Foothill Blvd development program.
- b. The Agency shall defend, indemnify and hold harmless District and its directors, officers, agents, and employees from all claims, demands, suits, losses, damages, injury, and liability arising from the Agency's funding obligations under this MOI.
- c. The indemnifying party shall at its own cost and expense, including attorney's fees, defend any and all claims, actions, suits, or other legal proceedings brought or instituted against another party to this MOI, its directors, officers, agents, and employees, and to pay and satisfy any resulting judgment or settlements disposing of such claim, action, suit or other legal proceedings.
- d. This indemnification does not extend to any such claims, actions, or suits or other legal proceedings if and to the extent they arise from the affirmative negligence or willful misconduct of the indemnified party, its directors, officers, agents, or employees.

V. Notice

- a. If either party shall desire or be required to give notice to the other, such notice shall be given in writing, via electronic mail, facsimile, or department letterhead, addressed to recipient as follows:

City of Oakland
CEDA Redevelopment Division
Gregory Hunter, Deputy Director Economic Development & Redevelopment
Douglas Cole, Urban Economic Coordinator
250 Frank Ogawa Plaza, 5th Floor
Oakland, CA 94612
Tel: (510) 238-7661
Fax: (510) 238-3691
Email: dcole@oaklandnet.com

Peralta Community College District
Dr. Sadiq Ikhara, Vice Chancellor General Services
Arteria Smith, Facilities Planning and Development Manager
333 East 8th Street
Oakland, CA. 94606
Tel: 510.333.2286
Fax: 510.291.2853
Email: atheriasmith@peralta.edu

- b. Any party to this MOI may change the name or address of representatives for purpose of this Notice paragraph by providing written notice to the other party ten (10) business days before the change is effective.

W. Limitations

- a. Neither District nor its agents may assign or otherwise transfer any rights, duties, obligations or interest in this MOI or arising hereunder to any other person or entity without the prior written consent of the Agency.
- b. Neither District nor its agents shall have any authority to bind the Agency to any obligation. The Agency does not undertake or assume any responsibility or duty to District, or to any third party with respect to the 73rd and Foothill Development Program.
- c. Funds paid pursuant to this MOI may not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, or for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

X. Nondiscrimination

- a. Neither District nor its agents shall discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- b. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Y. Modification

- a. Any modification of this MOI will be effective only if it is signed in writing.

The foregoing MOI is agreed to by the Agency and the Peralta Community College District. This Memorandum of Intent is not intended to be contractual in nature, but is merely a statement of the general terms and conditions upon which the parties are prepared to consider in moving forward with the Project through the Exclusive Negotiations Agreement Period by and between the Agency and Developer. This Memorandum of Intent shall automatically be null and void and of no force and effect unless the Peralta Community College District has signed the acknowledgment on this Memorandum of Intent and returned the acknowledgment within fifteen (15) business days of the date of the return receipt request. If the terms contained in this Memorandum of Intent are acceptable, please so indicate by signing in the spaces provided below and return to the undersigned.

Agency / District MOI for 73rd and Foothill Blvd.

Thank you for your consideration of the above referenced terms. If you have any questions regarding this memorandum please do not hesitate to contact me at (510) 238-2992.

Respectfully,

Gregory D. Hunter, Deputy Director,
Community and Economic Development Agency

"DISTRICT"

PERALTA COMMUNITY COLLEGE DISTRICT,
a public entity

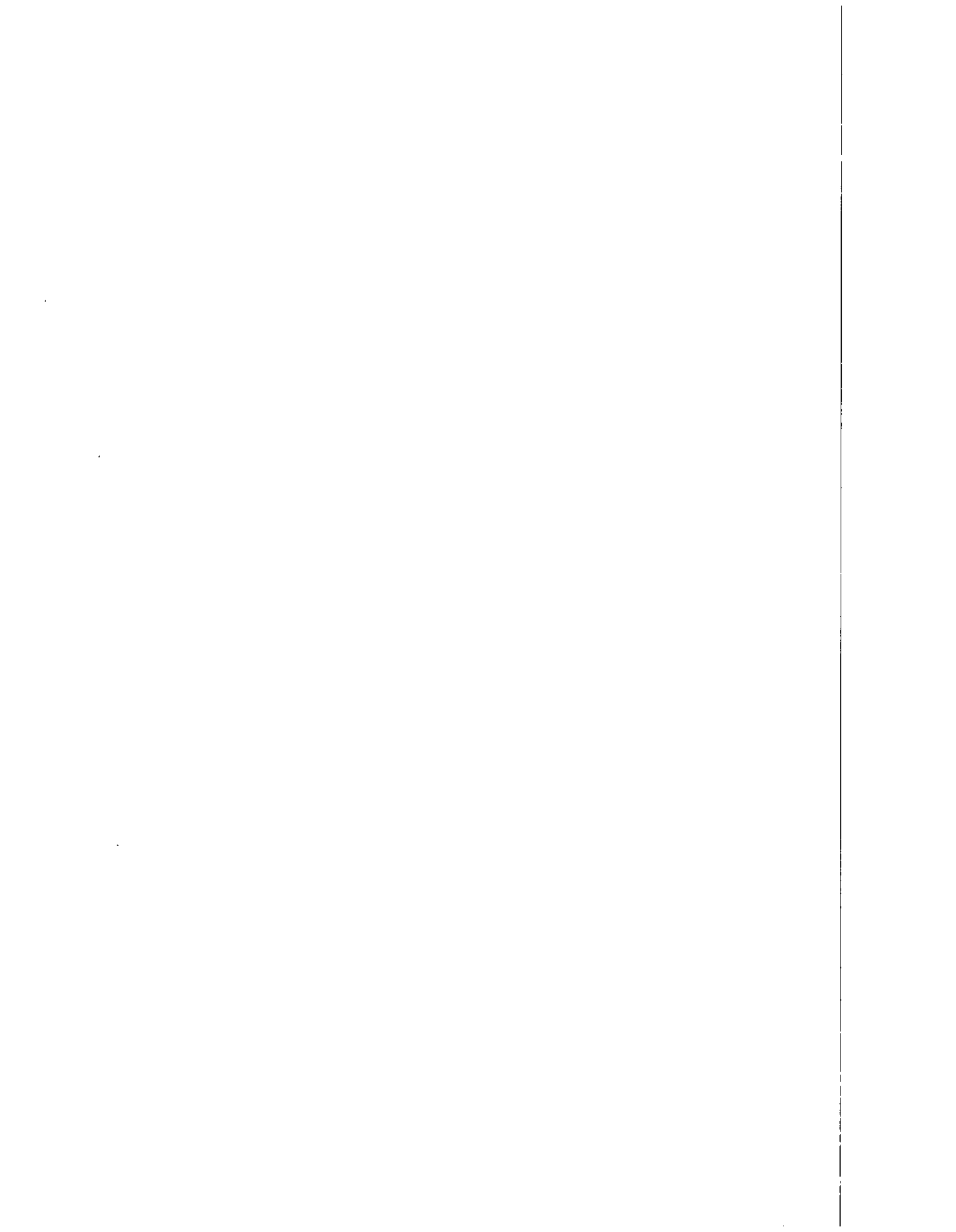
By: _____
Dr. Alan Wyse, Interim Chancellor
Peralta Community College District

By: _____
Dr. Robert Adams, President
Peralta Community College District, Merritt College Campus

By: _____
Rebecca Kinney, Dean
Peralta Community College District, Merritt College

Approved as to form and legality:

By: _____
Counsel for Peralta Community College District



2010 JUN 30 AM 10: 56

Approved as to Form and Legality


Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S.

AGENCY RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH SUNFIELD DEVELOPMENT, LLC, FOR DISPOSITION OF ELEVEN AGENCY-OWNED PARCELS BOUNDED BY FOOTHILL BOULEVARD, SEMINARY AVENUE AND BANCROFT AVENUE, AND DEVELOPMENT OF A NEIGHBORHOOD-SERVING RETAIL CENTER

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, an initial term sheet outlining the terms of the ENA has been agreed to by the Agency and Developer; 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-__ 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.); now, therefore, be it

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 JUN 30 AM 10:56

Approved as to Form and Legality


Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S.

AGENCY RESOLUTION AUTHORIZING AN EXCLUSIVE NEGOTIATING AGREEMENT WITH SUNFIELD DEVELOPMENT, LLC, FOR DISPOSITION OF AGENCY-OWNED PARCEL BOUNDED BY FOOTHILL BOULEVARD AND 73RD AVENUE, AND DEVELOPMENT OF A MIXED USE CITY LIBRARY AND PERALTA COMMUNITY COLLEGE EDUCATIONAL LEARNING CENTER AND COMMUNITY RETAIL COMPONENT

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 the parcel located at the southwest corner of Foothill Boulevard and 73rd Avenue totaling 1.22 acres (53,160 square feet) of land zoned commercial use, APN: 039-3291-020 (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, an initial term sheet outlining the ENA terms has been agreed to by the Agency and Developer; 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-__ 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.); now, therefore, be it

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 public and commercial use; and be it

FURTHER RESOLVED: That the ENA period will be for twelve months from the date of this Resolution, with the option to extend said period by an additional six 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

