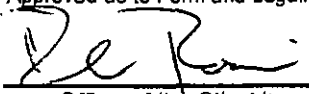


FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2013 APR 25 PM 2:25

REVISED

REVISED APRIL 23, 2013

Approved as to Form and Legality:  
  
Office of the City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. \_\_\_\_\_ C.M.S.

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**RESOLUTION (1) AUTHORIZING EXERCISE OF THE EARLY PURCHASE OPTION TO PURCHASE AFFORDABLE HOUSING PARCELS AT THE OAK TO NINTH/BROOKLYN BASIN DEVELOPMENT, AND (2) AUTHORIZING A PUT AGREEMENT PROVIDING FOR THE RESALE OF THE PARCELS TO OAKLAND HARBOR PARTNERS AT THE CITY'S OPTION**

**WHEREAS**, the Oak to 9th/Brooklyn Basin Development (the "Project") proposed by developer Oakland Harbor Partners ("OHP") and approved by the City in 2006 is projected to comprise approximately 3,100 housing units, along with over 200,000 square feet in retail space, 29.9 acres of parks and public open space, two renovated marinas and restoration of an existing wetland area; and

**WHEREAS**, under affordable housing production requirements in California redevelopment law, development of the Project would require the production of 420 to 465 affordable housing units within the Central City East Redevelopment Project Area for low to moderate-income households in connection with the Project; and

**WHEREAS**, under the Development Agreement ("DA") for the Project, OHP agreed to set aside and sell Project Parcels F and G (the "affordable housing parcels") for affordable housing at a discount to the Redevelopment Agency after performing site work and environmental remediation ; and

**WHEREAS**, the Redevelopment Agency was given an "Early Purchase Option" in the DA to acquire the affordable housing parcels at any time prior to the site work and remediation work being completed, and receive an additional early purchase discount; and

**WHEREAS**, OHP would still be required to perform the site work and remediation work at its own cost after the Early Purchase; and

**WHEREAS**, the Redevelopment Agency in 2006 entered into a Cooperation Agreement with the Oak to Ninth Community Benefits Coalition, a consortium of four community organizations, requiring the Agency to purchase Project Parcels F and G (the "affordable housing

parcels") for affordable housing development and to ensure, subject to economic feasibility, the development of at least 465 affordable housing units, of which at least 388 are to be built on the affordable housing parcels, unless the Coalition consents to off-site construction of some or all of these units; and

**WHEREAS**, on June 20, 2006 and July 18, 2006, the City Council and the Oakland Redevelopment Agency (1) approved Resolution No. 79981 C.M.S. certifying the Environmental Impact Report, SCH No. 2004062013, consisting of the Draft EIR, the Final EIR, and the Addendum to the EIR (the "EIR") for the Oak to Ninth Mixed Use Development Project; and

**WHEREAS**, following the City's certification of the EIR and approval of the Project, two lawsuits were filed in Alameda County Superior Court ("Court") challenging, among other claims, the City's certification of the EIR; and

**WHEREAS**, in response to a Court Order and Judgment and Peremptory Writ, the City circulated a document entitled "Revisions to the Analysis in the Oak to Ninth Project EIR (SCH No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order in Case No. RG06-280345 and Case No. RG06-280471" ("Revisions to the EIR"); and

**WHEREAS**, on January 20, 2009, the City Council approved Resolution No. 81769 C.M.S. (a) rescinding Resolution No. 79881 C.M.S. to the extent that it certified the EIR, approved the CEQA Findings and Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program; and (b) recertifying the EIR as revised by the Revisions to the EIR and Response to Comments, and readopting the CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program, as revised; and

**WHEREAS**, the EIR provides a project-level analysis of the environmental impacts of the Project and supports all levels of approval necessary to implement the Project; and

**WHEREAS**, the proposed changes authorizing staff to exercise the early purchase option to purchase affordable housing parcels at the Project and authorizing a put agreement with OHP would not result in any significant effect that has not already been analyzed in the EIR, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIR; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 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 significant 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 defined in CEQA Guidelines Section 15162(a)(3); and

**WHEREAS**, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning), 15378(b)(5) (City Council authorization of the early purchase option and a put agreement with OHP is not a project because the proposed changes are related to how the City administers the DA, and such administrative activities of the City will not independently result in a physical change in the environment) and 15061(b)(3) (no significant effect on the environment); and

**WHEREAS**, the City of Oakland is the transferee of the housing functions and obligations of the dissolve Redevelopment Agency per Health and Safety Code Section 34176, including Agency housing obligations and functions with respect to the DA; and

**WHEREAS**, the Oakland Redevelopment Successor Agency (“ORSA”) has reserved \$23,600,000 from the 2011A-T Subordinated Housing Bond Fund for the City to purchase the affordable housing parcels, and has included the purchase obligation as an enforceable obligation on the Recognized Payment Obligation Schedule (“ROPS”) 13-14A; and

**WHEREAS**, the actual purchase price for the affordable housing parcels will be determined by an appraisal process set under the DA; and

**WHEREAS**, OHP and the City have negotiated a Put Option Agreement that would allow the City, at its option, to sell back the affordable housing parcels to OHP for the original purchase price any time from December 31, 2015, through December 31, 2018; and

**WHEREAS**, staff has determined that it would be advantageous to the City to pursue the Early Purchase Option and the Put Option Agreement; now, therefore be it

**RESOLVED:** That the City hereby authorizes the City Administrator or her designee to exercise the Early Purchase Option on behalf of the City to purchase the affordable housing parcels from funds received from ORSA for this purpose; and be it

**FURTHER RESOLVED:** That the Early Purchase shall be contingent on the availability of sufficient funds to cover the purchase; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes the City Administrator to negotiate and execute a Put Option Agreement providing for the City, at its option, to sell back the affordable housing parcels to OHP for the original purchase price any time from December 31, 2015, through December 31, 2018, with the execution of the Put Option Agreement a condition to the City’s exercise of the Early Purchase Option; and be it

**FURTHER RESOLVED:** That the City Administrator or her designee shall file a Notice of Determination/Notice of Exemption, and an Environmental Declaration under the California Fish and Game Code (Section 711.4) with the County of Alameda; and be it

**FURTHER RESOLVED:** That all agreement and purchase documents shall be reviewed and approved by the City Attorney's Office for form and legality prior to execution; and be it

**FURTHER RESOLVED:** That the City hereby authorizes the City Administrator or her designee to conduct negotiations, execute documents, administer the agreements, and take any other action with respect to the Early Purchase and the Put Option Agreement consistent with this Resolution and its basic purpose.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_

LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California