Legislation Details (With Text)

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Type:	ORA Resolution			**Status:**	Passed
File created:	9/10/2003			**In control:**	Concurrent Meeting of the Oakland Redevelopment Agency / City Council
On agenda:	9/23/2003			**Final action:**	9/30/2003

Title: Subject: Forest City Residential West, Inc.
From: Community and Economic Development Agency
Recommendation: Adopt an Agency Resolution authorizing the Agency Administrator to negotiate and execute a second amendment to the Exclusive Negotiating Agreement between the Redevelopment Agency and Forest City Residential West, Inc. regarding development of the Uptown Project in downtown Oakland extending the Exclusive Negotiating Agreement for an additional term of one-hundred and eighty (180) days

Sponsors: Community & Economic Development Agency

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Attachments: 1. 10.28CC Supplemental.pdf, 2. 10.28CC 9-30-03.pdf, 3. 2003-71 CMS.pdf

Date	Ver.	Action By	Action	Result
9/30/2003	1	Meeting of the Oakland City Council	Adopted	Pass
9/23/2003	1	*Concurrent Meeting of the Redevelopment Agency and Council Community & Economic Development Committee	Approved the Recommendation of Staff, and Forward	Pass
9/11/2003	1	*Rules & Legislation Committee	Scheduled	

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RE: RESOLUTION AUTHORIZING THE AGENCY ADMINSTRATOR TO NEGOTIATE AND EXECUTE A SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND FOREST CITY RESIDENTIAL WEST, INC. REGARDING DEVELOPMENT OF THE UPTOWN PROJECT IN DOWNTOWN OAKLAND EXTENDING THE EXCLUSIVE NEGOTIATING AGREEMENT FOR AN ADDITIONAL TERM OF ONE HUNDRED AND EIGHTY (180) DAYS

SUMMARY

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This report recommends authorization of a second amendment to an Exclusive Negotiating Agreement (ENA) between the Oakland Redevelopment Agency (Agency) and Forest City Residential West, Inc. (Forest City). The proposed amendment will extend the ENA for an additional term of one hundred and eighty (180) days to allow completion and certification of documentation required pursuant to the California Environmental Quality Act (CEQA), and to provide sufficient time to schedule a public hearing by the Agency Board to consider whether to approve a disposition and development agreement (DDA) between the Agency and Uptown Partners, LLC, (Uptown Partners) for the development of a mixed-use project (the "Uptown Projecf') in the Uptown Area.

In addition, this report provides an updated overview of the proposed business terms between the Agency and Uptown Partners, which will be incorporated into the DDA for the Uptown Project and brought to the Agency Board following action on the Final Environmental Impact Report (EIR). This report also provides an update on various project-related activities and issues.

This report does not ask for Agency approval of the DDA or the proposed business terms. Rather, it is intended as an opportunity for the Council to make general comments on any of the business terms or the project, without binding the Council to any of the proposed business terms or the project.

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All required steps under the California Environmental Quality Act (CEQA) project approval process must be completed before the Agency can consider whether to approve a DDA or any business terms. It is anticipated that final approval of the DDA will be presented for Agency consideration in January of 2004.

In order to bring in an equity investor for the development of the Uptown Project, Forest City will form Uptown Partners, a limited liability company, with California Urban Investment Partners (CUIP). Forest City has committed to develop at least 770 rental housing units in the area generally bounded by Thomas L. Berkley Way (20'h Street) on the north, Telegraph Avenue on the east, I g1h Street on the south and San Pablo Avenue on the west. (collectively referred to as the "Project Area", as identified on Exhibit A). The Fox Theater, which is located to the cast of Parcel 6, is not part of the Project Area. Twenty percent of the units will be affordable to households earning up to 50 percent of area median income (AMI).

Furthermore, Forest City will attempt to recruit an associate developer to construct a high-rise condominium tower with approximately 270 units of market rate housing in the Project Area. Lastly, Forest City is pursuing development of a student housing project including 1,000 beds (which equated to approximately 365 residential units), and up to 50 units of faculty housing along the western side of Telegraph Avenue between Thomas L. Berkley Way (20'h Street) and 21" Street. This project is not covered under the ENA between the Agency and Forest City. However, the student housing is being analyzed in the EIR and Forest City's architectural team is preparing preliminary designs for the building.

FISCAL IMPACT

This proposed legislation does not commit the Redevelopment Agency to any expenditure of funds.

BACKGROUND

On July 23, 2002, the Agency approved Resolution 02-57 C.M.S., authorizing the Agency Administrator to enter into an ENA with Forest City, which was executed on August 7, 2002. During the FINA period, which is running for a term of one year and three months, the Agency and Forest City are evaluating the design and iinancial feasibility of a mixed-use project in the Project Area and negotiating the business temis for the project, which will be incorporated into a DDA between the Agency and Uptown Partners. On December 17, 2002, the Agency authorized the use of the preliminary design plan for the Uptown Project only for the purpose of public outreach under the CEQA process. A Notice of Preparation of Environmental Impact Report (EIR) for the Uptown Project was issued on February 26, 2003. On March 12, 2003, Forest City conducted a community workshop to present the preliminary project design and to solicit comments from the public. On March 19, 2003, the Oakland Planning Commission held a scoping session public hearing to receive comments about the content of the EIR. On

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May 6, 2003, the Council reviewed and accepted a non-binding informational report on the proposed business terms between the Agency and Uptown Partners (the new limited liability company that will be established by Forest City for the development of the Uptown Project), and the Agency's preliminary financing plan for the project. On June 30, 2003, the Agency and Forest City, pursuant to Section 1.5 (a)(i) of the ENA, executed a first amendment to the ENA providing for a 90-day extension of the ENA term because there have been unavoidable delays in completing and certifying documentation required pursuant to CEQA. The ENA will expire on November 4, 2003.

PROJECT DESCRIPTION

Forest City's development proposal for the Project Area includes the following highlights:

a A transit-oriented development of at least 770 rental apartments;
0 20 percent (154 units) of the 770 units will be affordable to households earning 50% or less of the AMI for a period of 55 years;
0 Five percent (38 units) of the 770 units will be affordable to households earning incomes not exceeding 120 percent of AM[for a period of 55 years;

0 Five percent (39 units) of the 770 units will have 3 bedrooms, proportionately distributed between affordable and market rents;
6 At least 14,500 square feet of neighborhood-serving retail along Telegraph Avenue, which will be integrated Mth the Uptown Retail and Entertainment District;
0 A 25,000 square foot public park, to be owned by the City of Oakland, that borders on Thomas L. Berkley Way, which will be paid for by the Agency and maintained by the developer at their expense;
0 Uptown Partners will be granted an option, to run for three (3) years from the date of execution of the DDA, to purchase from the Agency at fair market value a portion of the property behind the Fox Theater and start construction on a 270-unit market-rate condominium lower along San Pablo Avenue. Uptown Partners will attempt to recruit an associate developer for this project component.

KEYIMPACTS

ENA Extension

The ENA between the Agency and Forest City will expire on November 4, 2003. The City of Oakland, as Lead Agency for the project, will not complete the Environmental Impact Report (EIR) for the Uptown Project until December of 2003. The City issued the Notice of Preparation of an EIR for the Uptown Project on February 26, 2003. It is anticipated that the draft EIR will be available for public review in September of 2003. The Final EIR will not be ready for certification by the Planning Commission until December 2003, with Agency Board consideration whether to approve a DDA with

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Uptown Partners following in late January of 2004. As a result, the current ENA term is insufficient and must be extended to conform to the EIR and DDA approval schedule. Staff's recommendation for a 180-day extension of the ENA term should provide adequate time to obtain all necessary approvals required under CEQA and redevelopment law, to complete DDA negotiations and to schedule a public hearing by the Agency's governing board to consider approval of the DDA. The proposed amendment does not allow any additional 90 day extensions that could be granted under the authority of the Agency Administrator in the event of additional unavoidable delays. Any such extension will be subject to Agency Board approval.

The East Bay Housing Organization (EBHO) Proposal

In April of 2003, EBHO and the Coalition for Workforce Housing submitted a concept proposal for a 100 percent affordable housing project which would be built on a portion of Parcel 2 and all of Parcel 6 (see site map on Exhibit A) in the Project Area. These parcels are currently part of Forest City's project. EBHO prepared this project variant to demonstrate how Forest City could provide more affordable units, achieve a wider range of housing affordability, develop a larger number of family-sized units (3 and 4 bedroom units) and replace the 34 Single Resident Occupancy (SRO) units of the Westerner Hotel. Specifically, EBHO's proposal called for the construction of 225 housing units affordable to households eaming between 20 and 60 percent of AMI that included 77 units with 3 and 4 bedrooms. The proposal also aimed to provide replacement units for the 34 SRO units in the Westerner Hotel located at 1920 and 1954 San Pablo Avenue, which will be demolished during the implementation of the Uptown Project. EBHO put forward a financing plan that relies on a variety of funding sources and which is only achievable by separating the affordable housing units from the market rate units in the Project Area. As part of the financing plan, EBHO would require approximately $26,350 per unit in direct gap financing from the Agency. EBHO would also rely on the Agency to provide the necessary land, hazardous materials remediation, off-site and street improvements, as well as a proportional share toward the costs of the public park, area master planning effort, and EIR. EBHO further suggested that Forest City could modify the design and financing structure of its Uptown Project to achieve some or all of the objectives proposed by EBHO.

In response to direction from the City Council regarding EBHO's proposal, Agency staff carefully reviewed EBHO's proposal and discussed its implications with Forest City. Staff and Forest City agree that the Uptown Area represents a pioneering location for a dense urban in-fill multifamily housing project. The Agency's redevelopment strategy for the Uptown Area is to invest significant Agency funding into one large and focused mixed-income development to stimulate further private investment in the surrounding area. The public and private investment required to make this first large project in the area economically viable is considerable and bears significant risks. Therefore, it is critical to launch a project that is substantial enough to transform the existing physical conditions in, as well as the public perception of the Project Area. Forest City's proposed project, if successful, would achieve the desired impact on the area. Forest City has

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successfully developed similar large mixed-income projects in other cities and does not feet confident that a different financing structure and tenant base, as well as a significant reduction in the project size as proposed by EBHO would replicate their other accomplishments with this type of development. As a result, Forest City would not agree to changing the design or financing structure for their project, nor would they consent to relinquishing a substantial portion of land in the Project Area for a separate affordable housing development. Forest City contends that such steps would significantly reduce the critical mass of their proposed mixed-income project and pose unacceptable marketing and financial risks to the developer.

Nevertheless, in an effort to address the concerns of the City Council, Forest City was prepared to accept a recommendation to the Council by Agency staff to set aside a portion of the land (approximately .67 acres) behind the Fox Theater (Parcel 6) for the development of a 100 percent affordable family housing project with up to 70 units (the "Affordable Housing Project"), if EBHO and the Coalition for Workforce Housing were to agree to such a compromise. As part of the proposal, Forest City would act as the

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Master Developer of Parcel 6 and, together with the Agencv, issue a Request for Proposals for the development of the site. Selection of the developer of the Affordable Housing Project would be subject to approval by Forest City and the Agency. Forest City would also establish guidelines to ensure that the Affordable Housing Project design is compatible with, and of the same finish quality as Forest City's adjacent multi-farnily housing development and that appropriate social services are provided. The project design and program elements would require approval by Forest City and the Redevelopment Agency. Forest City was also prepared to forego the gap financing associated with the development of Parcel 6, which is a part of the Agency's total direct funding assistance to Forest City's project ($1.4 million). In addition, the Agency would be responsible for the costs of land, off-site improvements, hazardous materials abatement, a proportional share of the public park to be developed along Thomas L. Berkley Way and the street improvements to be made in the Project Area.

After a presentation of the above scenario to EBHO and its coalition partners. its representatives raised issues concerning the possibility of expanding the number of three-bedroom affordable units in the Forest City Project and reserving some of the market rate units for Section 8 tenants in the Forest City project. Moreover, EBHO was concerned that Parcel 6 might be inadequate to accommodate 70 units and that a higher subsidy may be needed as the economies of scale achievable with their original 225-unit proposal would be diminished. EBHO has not provided a project feasibility analysis to validate this position. At a second meeting and in subsequent conversations, EBHO clarified that they wish to have added to the Forest City project the following two features in addition to the Affordable Housing Project:

1. An additional seven three-bedroom units within the 20% affordable housing portion of the Forest City Project.
2. Increase the affordability level of 60 units within the 20% affordable housing portion of the Forest City project by using the project-based Section 8 program.

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Forest City will not agree to these requests because they do not want to use the project-based Section 8 program as part of their financing structure for the project. Moreover, Forest City is required by law to accept Section 8 certificate holders. Since EBHO and its coalition partners do not support the Affordable Housing Project without further consideration of the two issues outlined above, Forest City is not willing to proceed with the Affordable Housing Project alternative at this time.

The Ground Lease

As part of the proposed business terms for the Uptown Project, the Agency will enter into a ground lease with Uptown Partners for a terin of 66 years, with one 33-year extension option. The Agency's land will be [eased in phases. The first phase will be leased upon Uptown Partner's receipt of tax-exempt multi-family housing revenue bond financing. The developer will acquire the land in subsequent phases upon 50% occupancy of the previous phase, or three years from lease of the previous phase, whichever occurs first, and other conditions to be negotiated as part of the DDA. Uptown Partners also has the option to acquire the Agency-owned properties during the lease term. The Agency and Uptown Partners are still negotiating the terms for the option to purchase the Agency-owned properties.

Hazardous Materials

Since 1991, the Agency has conducted groundwater monitoring investigations in the Project Area. Elevated concentrations of chlorinated solvents have been detected in certain samples of shallow groundwater, especially along the northwestern portion of the Project Area. The source of the contamination in these locations is unknown, but appears to be inactive and located outside of the Project Area. The most recent groundwater analysis in the area, dated October of 2002, indicates that while contaminants are still at detectable levels, concentrations may be slowly decreasing due to natural attenuation processes and the absence of an on-going, primary source. Uptown Partners have requested indemnification from the Agency against all claims arising out of the groundwater contamination. Agency staff, with the assistance of the City Attorney's Office, is still evaluating the limitations and conditions on any indemnity for the groundwater contamination, if such indemnity is recommended for approval by the Agency's governing board at the time of DDA authorization. The following facts are being considered in these deliberations:

• Depth of groundwater levels in the Project Area ranges from 15 to 25 feet. Uptown Partners proposes to construct underground parking that will likely not disturb the groundwater and therefore obviate the need for remediation. although certain precautions to protect workers, the community and the environment will be in place in the event of excavation or dewatering in the Project Area;
• Forest City will employ all necessary construction techniques, such as the installation of a vapor barrier underneath the garage foundation, to avoid disturbance of any contamination; P7
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• The Agency will continue to monitor groundwater contamination;
• A 2001 risk assessment for the Project Area indicates that residual concentrations of contaminants are below residential standards for vapor inhalation scenarios; and
• Forest City is exploring insurance policies that would limit any liability exposure.

Proeect Desian

Forest City and its team are making great progress in arriving at a project design that combines architectural variety for the buildings, while creating a pedestrian-oriented streetscape that establishes the Project Area and its surroundings as a unique district in the downtown. Generally, Forest City and its design team would like to construct several five-story structures atop parking podiums which would be approximately 65 feet in

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height on each block. Buildings will include different unit types, such as townhouses, live-work units and studios, one, two and three bedroom apartments. The buildings on each block will have a different design and fagade, while common streetscape elements such as paving materials, lighting and landscaping unify the character and identity of the Uptown Project. Buildings will be linked to their surroundings with narrow streets, small front yards and front porches so that a residential block feels like a small and unique neighborhood within a larger district. The design approach of Forest City's team is motivated by the "New Urbanist" understanding that it is important to create sustainable urban communities that are diverse, mixed-use, and pedestrian friendly. Hence. the project design emphasizes the development of a neighborhood that provides a range of housing types near jobs, recreation, and transit. The Planning Commission will review and comment on the proposed design in November. Agency staff would like to incorporate mutually agreed-upon design requirements into the DDA.

On May 6, 2003, the Council reviewed an inforniational report on the proposed business terms between the Agency and Uptown Partners, which included a discussion of the financing plan for the project. The following section will provide an update on the Agency's financing plan for the project.

As illustrated in Table I below, the Agency will provide funding assistance to Uptown Partners in two major categories: (1) site assembly and infrastructure development costs; and (2) development gap financing. Agency costs in the first category total $31.2 million. The second category represents the monies required to fill the financial gap attributable to the $170.0 million project development cost. These monies total approximately $28.3 million, and are referred to as development gap financing. Gap financing will be provided in two ways, property tax increment abatement for the remaining term of the Central District Redevelopment Project Area, if necessary, and a lump sum cash payment that will be made in at least two disbursements as the properties are leased by Uptown Partners.
The Agency's total project contribution is limited to $59.5 million. After Uptown Partners completes its due diligence and decides to proceed with the project, Uptown Partners will be responsible for any cost overruns in excess of the Agency's contribution.

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In addition, any cost savings during project construction will accrue to the Agency in the form of a reduction in the Agency's development gap financing.

The table below shows that financing occurs in three phases. Phase I is funded by: (1) the estimated value of currently owned property; (2) funds in the FY 01-03 ORA Capital Budget; and (3) Series 2003 bond proceeds. Phase 11 funding is proposed to be generated from a combination of land sale proceeds, bond-swap proceeds, and parking revenue bonds. Phase III financing utilizes rebates of property tax increment.

Table I

Agency/City Fundi g Sources (in million)
Phase I Phase 11 Phase III
Financing Financing Financing

NPV of Projected
Agency Estimated Tax See Generated Tax
Agency/City Budget Land Increment Discussion Increment/Gross Total
Funding Uses FY 03-05 Value Bonds Below Receipts Tax Uses
Completed Site
Assembly --- 5.3 --- 5.3
Future Site Assembly 3.1 --- 13.1 --- 16.2
Hazardous Materials
Abatement --- --- 3.0 --- 3.0
Off-sites: Streets,
Curbs, Gutters, etc. --- --- 5.0 .7 $5.7
Public Park --- --- --- 1.0 --- $1.0
Development Gap
Financing - Property
Tax Increment
Abatement 13.1 $13.1
Development Ga
Financing 15.2 --- $15.2
Total Sources $3.1 S5.3 $21.1 $16.9 $13.1

Phase I Financiny, - Land Assembl

Land in the Project Area currently owned by the Agency totals S5.3) million in estimated value. The Fiscal Year 03-05 capital budget includes $3.1 million for land assemblage in the Project Area. The Series 2003 bond issuance provides an additional $21.1 million to the Agency's Fiscal Year 2003-05 budget for the Uptown Project. These funds are needed for land assembly, site clearance, remediation, residential and business relocation, and construction of off-site improvements, such as utilities, sidewalks, etc. However, the Agency has temporarily used $7.0 million of these funds to pay to the City of Oakland for the City Center T-10 site, which is designated for purchase by Camden USA, Inc. for thedevelopmentofaresidentialproject. IfthesaleoftheT-]OpropertytoCamdenUSA is delayed. funds needed for the Uptown project may not be available in Fiscal Year

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2004-05. Furthermore, the Agency has received authorization from the City Council to repurchase the vacant Key Systems building and the adjacent vacant parcel from Arnin-Broadway LLC for an as yet undetermined amount. The funding required for the purchase will also be taken from the Uptown Project's Fiscal Year 2003-05 budget and returned to this project once the resale of the properties to a developer has been completed. If a sale to a developer is delayed, funds needed for the Uptown project may not be available in Fiscal Year 2004-05.

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Phase 11 Financing - Development Gap Financing Lumn Sum PaVinent

Most of Phase 11 financing is needed for development gap financing as shown in Table 1. This would consist of at least two lump-suin payments, with payments being made at the commencement of each of the project construction phases. The anticipated financing sources are shown in Table 2. Both the sale of Preservation Park and the issuance of a Parking Revenue bond will require separate Council actions.

Table 2

Source: Amount
Sale of Preservation Park $6.5 million
Bond Swap Proceeds $3.9 million
Parking Revenue Bond $6.5 million
Total S16.9 million

The finance Committee has reviewed various options for increasing revenues from City and Agency-owned parking facilities. Under the above scenario, debt service from parking revenues would require approximately $500,000 (A parking revenue bond for a term of 30 years with a rate of 6.5%) in annual payments. With planned rate increases, and parking meter staff cost reassignments to meter revenue, there will be sufficient funding remaining for transportation engineering salaries and overhead. The City Council has made a series of decisions to implement Phase 11 Financing including: 1) utilization of the "bond swap" proceeds, as authorized by the City Council on February 25, 2003; and 2) re-activation of the Parking Authority as authorized by the Council on June 24, 2003. In addition, the City Council will have to authorize 1) the sale of Preservation Park, and 2) the issuance of parking revenue bonds.

The Agency issued a RFP for the sale of Preservation Park in July. It is anticipated that staff will request authorization for the sale of the Preservation Park in January of 2004. Any authorization for the sale of Preservation Park or issuance of parking revenue bonds could be made contingent upon entering into a DDA with Uptown Partners.

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Phase III Financing-1 @Develo @ment Fina@ncinGa @Pament @Stream

The proposed business terms establish that the Agency will return property tax increment generated by the project to the developer to provide Uptown Partners with extra revenues for covering debt service on up to $13.1 million in additional permanent financing.

Without this property tax increment abatement, which will be in effect until 2019, the additional debt service could not be supported by project revenues and the project would be financially infeasible. Hence, the net present value of the property tax abatement over time would total approximately $I 3.1 million, although this amount is subject to the final assessed value of the project by Alameda County's tax assessor's office, which determines the amount of property taxes to be paid by the developer.

A copy of the proposed business deal is attached to this report as Exhibit B.

SUSTAINABLE OPPORTUNITIES

Economic

This redevelopment infill project will take blighted, underutilized and contaminated sites and turn them into economically productive use by building a large-scale housing and retail project. The development of over 1,000 housing units in the Uptown Area should attract over 2,000 new residents to downtown Oakland with corresponding disposable income to help revitalize underutilized retail sites and stimulate job creation through increased demand for local services and shopping opportunities. A local real estate and urban economics consultant estimated that these new residents will generate up to $19 million in potential direct spending, which will support up to 48,000 square feet of new commercial and retail space and create more than I IO new jobs, if Oakland captures all of this spending. Even if Oakland only captures 50 percent of the estimated direct spending or $9.5 million, it would still result in 24,000 square feet of new retail space and 55 newjobs.

Environmental

By developing in already built-up areas, this project reduces the pressure to build on agricultural and other undeveloped land, and contribute to the prevention of urban sprawl.

The location of the Project Area in proximity to major public transportation nodes, together with fight-sized parking, will likely encourage use of BART and AC Transit by project residents and retail customers. The business term sheet stipulates that environmental sustainability measures will be incorporated into the Uptown Project to the extent that such features are equivalent or lower in cost than comparable non-sustainable alternatives, when measured over their respective life-cycles.

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Lquity

The Uptown Project will expand the supply of affordable housing in Oakland by

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including 140 rental units that will be affordable to households earning 50 percent or less of the area's median income. The Affordable Houing Project will provide additional housing with family-sized units and a wider range of affordability. Uptown Partners will comply with the City's contracting programs, including Small/Local Business Construction Program, the Small/Local Business Professional Services Program (USLBE) and the Local Employment Program. All of the workers performing construction work for Agency funded projects must be paid prevailing wage rates. Uptown Partners will also be subject to the Living Wage Ordinance.

DISABILITY AND SENIOR CITIZEN ACCESS

Any project to be developed by Uptown Partners in the Project Area will comply with the requirements of the Americans with Disabilities Act.

RECOMMENDATIONS AND RATIONALE

It is recommended that the Agency Board authorize a second amendment to the ENA between the Agency and Forest City to extend the ENA for an additional term of one hundred and eighty (180) days to allow completion and certification of documentation required pursuant to CEQA and to provide sufficient time for Agency Board consideration whether to approve a DDA between the Agency and Uptown Partners, LLC, for the development of a mixed-use project in the Uptown Area.

ALTERNATIVE RECOMMENDATION

The City Council could, in addition to the above recommended action, direct staff to work with Forest City to incorporate the "Affordable Housing Project" behind the Fox Theater.

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ACTION REQUESTED OF THE AGENCY

It is recommended that the Agency Board authorize a second amendment to the ENA between the Agency and Forest City to extend the ENA for an additional term of one hundred and eighty (I 80) days.

Respect y submitted,

Dan Vanderpriern
Director of Redevelopment, Economic
Development and Housing

Prepared by:
Jens Hillmer
Urban Economic Analyst IV
Redevelopment Division

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE

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EXIMIT A

UGZND Project Location and

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EXHIBIT B

Uptown Partners, LLC.
Business Term Sheet

1. Scope

1. 1. Uptown Partners LLC. a partnership between Forest City Development and California Urban Investment Partners (the "Developer"), shall design and construct the following improvements:

1.1.1 770 apartments on parcels 1, 2, 3 and 4
1.1.2 Twenty percent @20% or 154 units) shall be affordable to families earning 50 percent of area's median income (AMI) for a period of 55 years, and 5 percent (3)5 units) shall be affordable to households earning incomes not exceeding 120 percent of AMI for a period of 55 [The period of affordability has to be 55 years per AB 6371 years
1.1.3 Five percent (5% or 39 units) of all 770 units shall have 3) bedrooms, proportionately distributed between the affordable and market rate units
1.1.4 14,500 sq.ft. of neighborhood-serving retail on parcels 3 and 4
1.1.5 815 Parking Spaces

1.1.6 A 25,000 sq. ft. public park, subject to the provision in 1.4.2 and 1.5.

Collectively, these improvements will be referred to as the Uptown Project.
1.2. Working with the Agency, the Developer will use its best efforts to recruit immediately an associate developer, with sufficient experience, good reputation, and financial capacity, to construct a market-rate residential condominium tower with approximately 269 units (the "Condo Project") on a portion of parcel 6 (the "Condo Lot"). Either party may recruit a developer for the Condo Project. Approval of the selected developer of the Condo Project shall not be unreasonably withheld by either party. Ownership of the Condo Lot will not be transferred to Developer as part of the Disposition and Development Agreement (the "DDA"). However, Developer or the associate developer shall be granted an option for a term of three (3) years from the date of execution of the DDA (the "Option"), to purchase the Condo Lot from the Agency at its fair market rate, and start construction on the Condo Project. Failure by Developer or an associated developer to begin construction on the Condo Project within the Option term shall result in a default and immediate termination of the Option, or if mutually agreed to by the Agency and

Developer, the Developer or the associate developer may extend the term of

the Option for an additional three (3) year term by paying to the Agency an amount for project expense and staff administration ("PEP"), and the annual tax increment anticipated from the Condo Project, which is currently estimated to be in the amount of $877,500, until such time as the Condo Project is placed on the tax roll. The parties may negotiate a phase-in of the in-lieu tax increment payment during the option period.

1.3. Agency will, subject to provisions conditioning the DDA on the Agency's discretion to adopt appropriate resolutions of necessity, acquire and deliver 10 Developer parcels 1, 2, 3, 4, 5, and 6, not currently owned by Developer, subject to the provision in Section 1.4 and 1.5 below. In addition, Agency will pay for the following:

1.3.1. The cost of relocation of the existing Sears Auto Center and the Telegraph Plaza Garage exchange with Sears, Roebuck & Co "(Sears").

1.3.2. The cost of design and construction of a neighborhood park and all off-site improvements required for the project.

1.4 The Agency has acquired properties with an estimated value of $5.3 million.

1.5 In addition to the Agency-owned properties under Section 1.4 above, the Agency has allocated a maximum total of $25.9 million for the following activities to be completed prior to and during the term of the DDA:

Site Acquisition - $16.2 million
Hazardous Materials Abatement - $3.0 million
Off-Site Improvements - $5.7 million
Public Park Construction - $1.0 million

The Agency's total contribution for these activities shall not exceed $25.9 million. The Agency shall have reasonable discretion to reallocate unexpended funds from one category to another category. The parties will agree to a fixed amount and scope for the development of all off-site improvements required by the Uptown Project, with Developer agreeing to fund cost overruns over the initial estimated cost of $5.7 million. The scope of off-site improvements has been estimated, but will be confirmed prior to execution of the DDA; the $5.7 million off-site improvement estimates only cover improvements that extend to the middle of the streets. Developer shall not be responsible for the costs of additional off-site improvements required by City or Agency subsequent to the latter of obtaining all project approvals (including, without limitation, certification of the EIR) and obtaining its building permit for any particular phase, unless such requirements (i) are imposed as a result of City ordinances, resolutions, codes, plans, policies, rules, regulations, conditions or other

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requirements effective at the time the building permit is issued for a particular phase; (ii) are necessary to satisfy adopted mitigation measures or conditions of approval; (iii) are necessary to satisfy state or federal laws, regulations or other requirements (including, without limitation, CEQA).- or (iv) City or Agency determines, in its discretion, that such requirements are necessary and feasible and there are no other reasonably feasible alternatives to imposing such requirements.

1.6 The neighborhood park shall be constructed in phase I by Developer at the Agency's expense, and maintained by Developer at Developer's expense for the lease term (including extensions). The neighborhood park shall be owned by the City of Oakland. The construction and maintenance of the neighborhood park shall be subject to certain construction and maintenance standards to be included in the DDA. The City of Oakland will provide, at no cost, insurance or public indemnity for the park equal to that which is provided on other typical City-owned parks.

1.7 All public streets within the project area will remain public. In the event that Developer proposes non-standard off-site improvements, Developer shall be responsible for the maintenance thereof.

2. Financial

2.1. Agency will ground lease the land to Developer in phases (the "Ground Lease").

2.1.1. The first phase will be transferred at the initial multi-family tax-exempt housing bond closing for said phase, and subsequent phases will be transferred as provided herein. The Agency will convey the land in subsequent phases. The land will be leased in subsequent phases upon 50% occupancy of the previous phase, or three years from the exercise of the previous option, whichever occurs first, and other conditions to be negotiated. The parties shall agree on DDA provisions allocating the Agency's gap financing or other assistance among the phases.

2.1.2. The Ground Lease will be for a term of 66 years, with one 33-year extension option. The Developer will have the option to acquire the Agency-owned properties during the initial and extension term of the ground lease on terms to be negotiated. Developer will contribute its land in the project area at no cost to the Agency, and will be responsible for any billboard relocation and hazardous materials remediation required on its site. Developer will receive an equity credit for the acquisition, remediation and relocation costs.

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2.13. The Agency will not subordinate its fee interest in the land or, unless agreed to by the Agency because of financing or regulatory requirements, the affordable housing covenants. The Ground Lease payments will be based on residual receipts as described in 2.3. 1,

2.2. Developer will receive up to 100% of the available monthly TI for a total amount not to exceed $13.1 million in net present value calculated on the basis of a 5.5 percent discount rate (net of mandatory payments to the City, the school district, reallocations to the Educational Revenue Augmentation Fund ("ER-Al'"), and other eligible entities) generated by the project. excluding the TI created by the condominium development, until expiration of the Central District Redevelopment Area in 2019, if necessary. Any potential shortfall in the available TI, which is created by property tax shifts to the FRAY and which is less than the TI amounts projected for the project in the last pro forma preceding the date of this term sheet will be mitigated by the Agency. The Gross Receipts Tax generated by the project will serve as a meaSUTernent standard to determine the amount of the additional funds, if any, to be provided by the Agency, and will not in any event exceed the actual Gross Receipts Taxes generated by the project.

2.3. Ground Lease residual receipts payments:

2.3.1. The Agency will receive a 25% participation in the excess cash flow ("Excess Cash Flow") generated by the property. The Excess Cash Flow is defined as any cash flow generated by the project that is greater than that required to provide a 12% cumulative return on Developer's equity including any outstanding balance of cumulative preferred return. The Agency's participation shall continue until it has been repaid the outstanding NPV balance of the TI (and any other revenues provided by the Agency such as amounts measured by the gross receipts tax), and any outstanding nominal balance of the GAP. NPV shall be calculated based on a 5.5 percent discount rate.

2.3.2. The Agency shall also receive a Windfall Profit Participation ("Windfall") upon the first sale of the project if, in the year of sale, the sales price is in excess of the pro forma sales prices listed on the proforma. dated January 10, 2003, prepared by Developer. In this case, Agency shall share in 50% of the differential between the net sales proceeds and that year's pro fomia sales price as shown in the pro forma dated January 10, 2003, prepared by Developer, provided that in no case shall the Agency's Windfall exceed that amount necessary to pay any outstanding balance of the combined NPV of its TI (and any other revenues provided by the Agency such as any amounts measured by the gross receipts tax used as contributions) and its development gap contribution ("GAP"). Net Present Value will be calculated based on a 5.5 percent discount rate. No sale will occur prior to 2020

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without the express consent of Agency, and shall be based on an arms-length transaction to a bona fide third-party purchaser.

2.4. The Developer shall be permitted to refinance the project under the following conditions, which are intended to limit Developer's ability to take cash out of the project in excess of the amount of the equity contributed:

2.4.1. The total amount of debt on the project shall not exceed I 00% of total project costs less the GAP (based upon the current pro formas, the total amount of debt permitted via refinancing would be up to $154 million).

2.4.2. The total debt does not exceed 90% of appraised value.

2.4.3. The interest rate shall not exceed 12%.

2.4.4. The debt coverage ratio shall not exceed 1: 1.

2.5. The Agency will induce the project for up to $154 million dollars and will issue tax-exempt multi-family revenue bonds for the project. Agency will be entitled to: (1) an issuance fee; and (2) an annual administrative fee for said bonds in the amount of one-eighth of one percent of the total bond amount.

2.6. The Developer will provide the Agency with a description of the sources of financing for the project prior to execution of the DDA. Additional proof of financing requirements will be incorporated into the DDA.

2.7. If Developer cannot achieve a price for the low income housing tax credits of $.80 on the dollar provided that the tax credit investor receives (i) no participation in project cash flow; (ii) no excess depreciation. and (iii) no repayment of initial principal investment, Developer agrees to have a third party conduct a tax credit investor solicitation process on the same terms and conditions as stated above.

General Provisions

3.1. Agency's GAP will be capped at a specific dollar amount in the DDA. The GAP is currently estimated to be $15,1 88,834 based on the current project pro forma supplied by Forest City on January 10, 2003.

3.2. If actual construction costs total less than those presented in the final pro fon-na, then Developer shall return to the Agency the difference between the costs as estimated in the final pro forma and the actual construction costs, and said repayment shall reduce the GAP on a per phase basis.

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3.3. Agency cash assistance shall not be increased for any phases of the project. Any request by Developer for additional financial contributions following execution of the DDA will be considered a default and result in the termination of the DDA, thereby allowing the Agency to negotiate with other developers and not be in violation of the DDA.

3.4 If parking in any portion of the project is made available to the general public, any Net Operating Income generated by that parking shall be paid to the Agency.

3.5 The terms of the DDA are binding on any successors in interest.

3.6 The Developer agrees to comply with all currently existing City contracting programs, including Small/Local Business Construction Program, the Small[Local Business Professional Services Program (L/SLBE), the Local Employment Program and the Living Wage Ordinance. All of the workers performing construction work for Agency funded projects must be paid prevailing wage rates.

3.7 Transfer Restrictions. The DDA will include certain restrictions pertaining to the sale or transfer of the project before and after completion of construction. Except for permitted transfers to be negotiated, the Developer shall not be permitted to transfer the project before completion of construction of all phases of the project. After completion of all phases of the project, Developer shall be entitled to transfer the project to a third party subject to the Agency's reasonable discretion. Factors which the Agency can consider include, but are not limited to, sufficient financial capacity to own and operate the project, good reputation, and sufficient experience with the operation and maintenance of projects of the same type and size as the Uptown Project.

3.8 "As-Is" Ground Lease. Developer has the right to perform "due diligence" investigations, including but not limited to hazardous materials investigations, on the Agency-owned properties prior to DDA execution (pursuant to a permit to enter) and during a specified pre-lease conveyance period under the DDA. Developer will have the option during the pre-lease period to terminate the DDA if it is detertnined that remediation of any hazardous materials present on the properties is financially infeasible. If Developer elects to proceed with the project, Agency shall transfer the land in its "as-is" condition and Developer shall waive any rights it may have against the Agency for all claims, including claims related to hazardous materials contamination. Notwithstanding any of the above, if staff recommends and the Agency approves that the Agency indemnify Developer against all claims arising out of or related to the groundwater contamination that is known to currently exist beneath the property and which is not exacerbated or contributed to by the Developer, such indemnification shall be subject to the negotiation of limitations and conditions. Developer, at its expense and to the

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greatest extent possible consistent with environmental laws, shall design, construct and maintain the project to avoid disturbing such contamination. Construction techniques shall include, but not be limited to, the placement of a vapor barrier for volatile organic compounds underneath all of the foundations of the improvements contemplated for the Uptown project. Agency will reimburse or advance any required costs for the remediation of hazardous materials up to a maximum amount of $3.0 million, as set forth in section 1.5.

3.9 Right to Review and Approve. The Agency has the right to review and approve all plans and specifications for the project in its reasonable discretion, except that the Agency will have sole discretion to review plans for the public park.

3.10. The DDA will include a detailed Scope of Development describing in detail the project requirements and a Schedule of Performance with detailed schedule requirements.

3.11. Developer and Agency shall make pay-ins from their respective equity and development gap financing contributions during project construction on a 50/50 basis.

3.12. Developer shall contribute equity equivalent to 24 percent of total development costs (excluding the Agency's cost outlined in Section 1.4) to the project. Developer's equity can consist of cash value, equity or other collateral subject to the Agency's approval.

3.13. This term sheet includes all of the major basic business terms for the negotiation of a proposed transaction between the Agency and the Developer. However, this term sheet is not exclusive and does not bind the City or the Agency, nor commit the City or Agency to a course of action with respect to the proposed project. The parties acknowledge that neither the Agency nor the City can be bound unless and until all CEQA or other necessary environmental requirements have been satisfied and the Agency votes to approve the DDA.

3.14. A parent or affiliate of Developer with substantial financial assets, approved by the Agency in its sole discretion. shall provide a Completion of Construction Guaranty for the entire project.

4. Design and Construction

4.1. Developer commits to a certain design and construction standard that must be delivered even if project costs increase. Exterior material shall be similar in appearance to the "Central Station" project in Chicago. Developer shall prepare schematic drawings, including, but not limited to, elevations and building footprints for the project, which shall be attached to the DDA, and approved by the Agency when it approves the DDA.

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4.2. The current construction cost estimates contain provisions for compliance with Title 24.

4.3. The parties agree and understand environmental sustainability measures will be incorporated into the project to the extent that such features are equivalent or lower in cost than comparable non-sustainable alternatives, when measured over their respective life-cycles.

4.4. Developer will demolish all buildings still remaining on the property at transfer provided that the Agency reimburses Developer for any environmental costs associated with the remediation of asbestos and lead paint related to the demolition, subject to the $3 million cap on Agency reimbursement for remediation costs as cited in Section 1.5.

4.5. Agency acknowledges that Developer has assumed $6,000 per unit in City and other fees. Agency will cooperate with Developer to verify the adequacy of this estimate prior to execution of the DDA. However, Agency shall not be responsible to pay or reimburse Developer for this or any other amount representing such fees.

Notwithstanding any other terms, the Agency shall not under any circumstances provide financial assistance to the Developer or for the project in excess of the following amounts:

I) $25.9 million for site assembly, hazardous materials abatement, the construction of off-site improvements and a neighborhood park; except for the following (a) the potential inderrmification obligation under Section 3.8; (b) the obligation to pay the additional costs for which Agency may become responsible under Section 1.6 for Agency- requested changes to previously-approved scope@ (c) the estimated value of $5.3 million for the properties already acquired by the Agency under Section 1.4; and

2) $28.3 million in total gap financing per Section 2.2 and Section 3. 1.

Item #7
CED Committee
September 23, 2003

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REDEVELOPMENT AGENCY

OF THE CITY OF OAKLAND

RESOLUTION No. C. M. S.

RESOLUTION AUTHORIZING THE AGENCY ADMINSTRATOR TO NEGOTIATE AND EXECUTE A SECOND AMENDMENT TO THE EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND FOREST CITY RESIDENTIAL WEST, INC. REGARDING DEVELOPMENT OF THE UPTOWN PROJECT IN DOWNTOWN OAKLAND EXTENDING THE EXCLUSIVE NEGOTIATING AGREEMENT FOR AN ADDITIONAL TERM OF ONE HUNDRED AND EIGHTY (180) DAYS

WHEREAS, on July 23, 2002, the Redevelopment Agency (Agency) approved Resolution 02-57 C.M.S., authorizing the Agency Administrator to enter into an Exclusive Negotiating Agreement (ENA) with Forest City Residential West, Inc. (Forest City), for purposes of studying and evaluating the feasibility of, and negotiating terms and conditions for the development of a mixed-use project including retail and housing in the Uptown Area; and

WHEREAS, the ENA, which was executed on August 7, 2002, had an initial term of one (1) year; and

WHEREAS, Forest City is required to complete and certify documentation required pursuant to the California Environmental Quality Act (CEQA) of 1970 during the ENA term; and

WHEREAS, on June 30, 2003, pursuant to Section 1.5(a)(i), the ENA was amended to extend the negotiation period by ninety (90) days to November 4, 2003, to allow Forest City to complete and certify the Environmental Impact Report (EIR) for the project required pursuant to CEQA; and

WHEREAS, Forest City has experienced additional unavoidable delays in the completion of certification of the EIR required pursuant to CEQA; and

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WHEREAS, the Agency desires to provide Forest City with sufficient time to complete and certify the EIR required pursuant to CEQA and to complete negotiations of the terms and conditions for the development of a mixed-use project; now, therefore, be it

RESOLVED: That the Agency Administrator is authorized to negotiate and enter into a Second Amendment to the FNA with Forest City to extend the negotiation period of a term of one hundred and eighty (180) days; and be it

FURTHER RESOLVED: That the Exclusive Negotiating Agreement shall be reviewed and approved as to form and legality by Agency Counsel prior to execution, and copies will be placed on file with the Agency Secretary; and be it

FURTHER RESOLVED: That the Agency has independently reviewed and considered this environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency 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

ENA Extension ResoIL111011 Joe

FURTHER RESOLVED: That the Agency Administrator is further authorized to take whatever action is necessary with respect to the ENA, as amended, and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, 2003

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER. CHANG, NADEL. QUAN. REID, WAN, AND CHAIRPERSON DE LA FUENTE,

NOES-

ABSENT-

ABSTENTION-

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ATTEST-
CEDA FLOYD
Secretary of the Redevelopment Agency
of the City of Oakland

Item # 7
CED Co-mmittee
September 23,2003

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