



Office of the City Manager

CONSENT CALENDAR

July 25, 2006

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Stephen Barton, Director of Housing

Subject: Amendment to Pre-Development Agreement – Oxford Plaza Housing Development

RECOMMENDATION

Adopt a Resolution 1) approving the use of \$800,000 from a fund reservation of \$2,200,000 previously approved for the Oxford Plaza from the Housing Trust Fund, and authorizing the City Manager to amend and execute an amendment to the contract with Resources for Community Development for Oxford Plaza pre-development housing activities, increasing the contract amount by \$800,000 for a new contract amount not to exceed \$1,575,000; 2) approving a waiver of the Housing Trust Fund guidelines for the Oxford Plaza project regarding the maximum amount of pre-development funds which can be provided to a project; and 3) approving the amendment of Resolution No. 62,797-N.S. for the Oxford Plaza project to remove two of the funding conditions for the Housing Trust Fund reservation which require (a) the verification of all other funding sources and (b) that all appropriate approvals be received from the Permit Center before undertaking project activities.

FISCAL IMPACTS OF RECOMMENDATION

There will be no fiscal impact as a result of this recommendation. In July 2003, Council authorized a fund reservation of \$300,000 for pre-development activities. On January 25, 2005, City Council voted to approve Housing Trust Fund (HTF) recommendations, which included a fund reservation of \$2,200,000 for the Oxford Plaza Development. When the developer exhausted the \$300,000 fund reservation, in May 2005 the City Manager authorized the use of an additional \$475,000 from the \$2,200,000 fund reservation for pre-development activities. Council is being requested in this resolution to ratify the use of the \$475,000 in May 2005 for predevelopment activities and authorize allocating an additional \$800,000 of the HTF allocation approved to be used for pre-development activities associated with the project. The high expenses associated with pre-development activities and the lengthy pre-development time period has resulted in this request for a transfer of the HTF funds previously reserved for this project, to pay for pre-development activities. This transfer of funds does not affect the overall budget for the project. The Funds of \$800,000 are budgeted in the FY 2007 Housing program budget (610-8151-465-9922 and 040-8151-465-9922).

CURRENT SITUATION AND ITS EFFECTS

There was a previous fund reservation in the amount of \$300,000 approved by City Council for this project for pre-development activities. In January 2005 when Council authorized the HTF

fund reservation for \$2,200,000, Council placed conditions on the use of these funds, including requirements that all other funding sources be identified and verified and that all appropriate permits be secured from the Permit Center before undertaking project activities. For any funding above the previously authorized \$300,000 for predevelopment activities, the HTF guidelines restrict the amount of pre-development loans to the lesser of \$25,000 or \$2,500 per unit for each assisted project. Without a Council approval for exceeding the current HTF guidelines for pre-development funds, the maximum amount of pre-development funds which could be provided to project is \$25,000. Staff is recommending that Council approve waiving this HTF guideline for this project since the funds were previously allocated to the project and are currently needed. Since there are extensive pre-development costs associated with the project and because the HTF fund reservation requirements approved by Council prohibit the Developer from entering into a Development Loan Agreement and using the HTF allocation of fund for these pre-development activities, it is necessary to increase the amount of the predevelopment contract.

BACKGROUND

On July 15, 2003, City Council approved the adoption of a resolution approving a fund reservation of \$300,000 for Oxford Plaza for predevelopment housing activities. On January 25, 2005, City Council voted to approve Housing Trust Fund (HTF) recommendations which included a fund reservation of \$2,200,000 for the Oxford Plaza Development. In May 2005, \$475,000 of the \$2,200,000 was added to the Pre-development Agreement with RCD to pay for pre-development costs. However, the HTF fund reservation conditions which require that all other funding sources be identified and verified and that all appropriate permits be secured from the Permit Center before undertaking project activities, were not removed at that time nor did Council authorize an exemption of the HTF guidelines restricting predevelopment expenditures to \$25,000 when the City Manager amended the Pre-development Agreement by increasing the contract amount by \$475,000. At this time, an additional \$800,000 is needed to cover pre-development activities.

RCD has a 50% partnership interest in the development of the Oxford Plaza and David Brower Center. RCD, as the housing developer, will be responsible for the development of the housing component in addition to the retail development and parking on the first floor. The pre-development activities associated with this project include design, engineering, construction drawings, construction specifications, site testing, legal, and consulting. The design development drawings have been completed and the construction drawings are currently 65% complete. Much work remains to be done before all permits can be secured and all financing committed, however, many of the preliminary development and financing applications have been made.

RATIONALE FOR RECOMMENDATION

In order to assist the project with pre-development funds it is necessary to amend the current Pre-development Agreement for an additional amount of \$800,000. This amount is expected to be able to assist the project until the Developer can enter into the HTF Development Loan Agreement for the remaining HTF allocation already reserved. This is not an increase in project costs, but an allocation of funds already reserved, to enable the Developer to proceed with pre-development activities and be reimbursed for these costs. Since the HTF guidelines limit the amount of pre-development financing and the \$2,200,000 reservation requires that all other

funding sources be verified prior to entering into a DLA for these funds, it is necessary to amend the pre-development agreement and to amend the \$2,200,000 reservation which requires the verification of all other funding sources and that all appropriate approvals be received from the Permit Center before undertaking project activities.

ALTERNATIVE ACTIONS CONSIDERED

There are no other sources of funding available at this time to fund the pre-development activities required to continue the progress that is needed at this time. In order to access these funds for these project activities, staff investigated entering into an HTF development loan agreement at this time and paying for these project expenses. However, the HTF reservation and the HTF guidelines prevent the staff from using the reservation for these activities.

CONTACT PERSON

Stephen Barton, Director, Housing Department, 981-5400

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

AMENDMENT TO PRE-DEVELOPMENT AGREEMENT

WHEREAS, the City Council established a Housing Trust Fund Program (“Program”) to assist in the development and expansion of housing affordable to low income persons who either work or reside in Berkeley, and authorized the City Manager to implement the Program; and

WHEREAS, the Housing Advisory Commission reviewed the application, and the Planning Commission and the Commission on Disability were able to review the application in accordance with the Program Guidelines adopted by the City Council on January 23, 1996 and revised on November 23, 1999 and April 16, 2002, and found the project as proposed to be consistent with said Guidelines; and

WHEREAS, on July 15, 2003, City Council approved the adoption of a resolution approving a fund reservation of \$300,000 for Oxford Plaza for predevelopment housing activities; and

WHEREAS, on the City and Resources for Community Development entered into a Pre-Development Loan Agreement on March 17, 2004; and

WHEREAS, on January 25, 2005, City Council approved a fund reservation in the amount of \$2,200,000 for the Oxford Plaza project from the Housing Trust Fund with conditions, and authorized the City manager to execute loan agreements, any amendments and all other documents related to this fund reservation for Resources for Community Development; and

WHEREAS, in May 2005 the City Manager amended the Predevelopment Loan Agreement to increase the amount of the Pre-Development Loan Agreement by \$475,000;

WHEREAS, the General Fund and HOME funds are currently available in the FY 2007 Housing program budget (610-851-465-9922 and 040-851-465-9922); and

WHEREAS, the following Housing Trust Fund reservations are subject to the provisions outlined in Housing Trust Fund Guidelines and to the project-specific conditions in the reservation allocation regarding the project financing; and

WHEREAS, Housing Trust Fund guidelines require that pre-development loans shall not exceed the lesser of \$25,000 or \$2,500 per assisted unit for each project; and

WHEREAS, the fund reservation approved by City Council on January 25, 2005 for the Oxford project requires verification of all other funding sources and that all appropriate approvals be received from the Permit Center before undertaking project activities.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it ratifies the action taken by the City Manager in May 2005 to amend the Pre-Development loan by increasing it by \$475,000; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley that it retroactively waives the Housing Trust Fund guidelines for the Oxford Plaza project regarding the maximum amount of pre-development funds which can be provided to a project as to the \$475,000 increase in May 2005; and (2) with respect to this \$475,000, retroactively remove two of the funding conditions for the Housing Trust reservation which require (a) the verification of all other funding sources and (b) that all appropriate approvals received from the Permit Center before undertaking project activities; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley approves a waiver of the Housing Trust Fund guidelines for the Oxford Plaza project regarding the maximum amount of pre-development funds which can be provided to a project to allow for the use of an additional \$800,000 for predevelopment activities from a fund reservation of \$2,200,000 previously approved for the Oxford Plaza from the Housing Trust Fund, and authorize the City Manager to execute an amendment to the contract with Resources for Community Development for Oxford Plaza pre-development housing activities, increasing the contract amount by \$800,000 for a new contract amount not to exceed \$1,575,000. A record signature copy of said contract to be on file in the Office of the City Clerk; and

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley approve amending Resolution No. 62,797-N.S. for the Oxford Plaza project to remove two of the funding conditions for the Housing Trust reservation which require (a) the verification of all other funding sources and (b) that all appropriate approvals received from the Permit Center before undertaking project activities, to exempt the use of the \$800,000 of funds which will be moved to pre-development funding.