

AGENDA

SPECIAL MEETING OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY TO THE OAKLEY REDEVELOPMENT AGENCY

Tuesday, June 5, 2018

6:00p.m.

Oakley City Council Chambers
3231 Main Street, Oakley, CA

Agendas are posted at Oakley City Hall-3231 Main Street, outside the gym at Delta Vista Middle School-4901 Frank Hengel Way and outside the Library at Freedom High School-1050 Neroly Road; agendas are also posted on the City's Internet Website www.ci.oakley.ca.us.

A complete packet of information containing staff reports and exhibits related to each item is available for public review prior to a meeting of the Oversight Board at City Hall, 3231 Main Street. Any writings or documents provided to a majority of the Oversight Board regarding any item on this agenda will be made available for public inspection, during regular business hours, at the front counter in the Main Lobby of the City Hall located at 3231 Main Street.

Agendas may be picked up at the Oakley City Hall located at 3231 Main Street for no charge.

If you have a physically challenging condition and require special accommodations, please call the City Clerk's office at (925) 625-7013.

(Please keep cell phones turned off during the meeting.)

1.0 OPENING MATTERS

1.1 Call to Order and Roll Call of the Oversight Board to the Successor Agency to the Oakley Redevelopment Agency (Bill Swenson, Chair)

1.2 Pledge of Allegiance (Bill Swenson, Chair)

2.0 PUBLIC COMMENTS

At this time, the public is permitted to address the Oversight Board to the Successor Agency to the Oakley Redevelopment Agency on non-agendized items. COMMENTS SHOULD NOT EXCEED THREE (3) MINUTES. In accordance with State Law, however, no action or discussion may take place on any item not appearing on the posted agenda. The Oversight Board may respond to statements made or questions asked or may request Staff to report back at a future meeting on the matter. The exceptions under which the Oversight Board MAY discuss and/or take action on items not appearing on the agenda are contained in Government Code §54954.2(b)(1)(2)(3). Members of the public should submit any Speaker Cards for Public Comments in advance of the Chair calling for Public Comments.

3.0 CONSENT CALENDAR

Consent Calendar items are typically non-controversial in nature and are considered for approval by the Oversight Board with one single action. Members of the audience, Staff or members of the Oversight Board who would like an item removed from the Consent Calendar for purposes of public input may request the Chair remove the item. Members of the public must submit any Speaker Cards related to the Consent Calendar in advance of the Consent Calendar being considered.

- 3.1 Approve the Minutes of the April 4, 2018 Oversight Board Special Meeting (Libby Vreonis, Secretary)**

4.0 PUBLIC HEARINGS-None

5.0 REGULAR CALENDAR

- 5.1 Option Agreement with MLC Holdings, Inc. for the Property located at 1731 Main Street (APNs 037-100-013, 037-100-019 and 037-100-023) (Bryan Montgomery, Executive Director)**

6.0 WORK SESSION DISCUSSION-None

7.0 REPORTS/COMMENTS

7.1 EXECUTIVE DIRECTOR

7.2 MEMBERS OF THE BOARD

8.0 CLOSED SESSION - None

9.0 ADJOURNMENT

Minutes of the Special Meeting of the Oversight Board to the Successor Agency
to the Oakley Redevelopment Agency held April 4, 2018
at 6:00 p.m.
Oakley City Council Chambers
3231 Main Street, Oakley, California

1.0 OPENING MATTERS

1.1 Call to Order and Roll Call of the Oversight Board to the Successor Agency to the Oakley Redevelopment Agency

Chair Bill Swenson called the meeting to order at 6:00 p.m. in the City Council Chambers located at 3231 Main Street in Oakley.

In addition to Chair Bill Swenson, Vice Chair Sue Higgins and Boardmembers John Amie, Robert Kratochvil, Joshua McMurray, Brian Oftedal and Eric Volta were present.

1.2 Pledge of Allegiance

Chair Swenson led the Pledge of Allegiance.

2.0 PUBLIC COMMENTS

None.

3.0 CONSENT CALENDAR

3.1 Approve the Minutes of the January 30, 2018 Oversight Board Special Meeting (Libby Vreonis, Secretary)

It was moved by Boardmember Kratochvil and seconded by Boardmember Amie to approve the minutes. The motion was unanimous and so ordered. (7-0)

4.0 PUBLIC HEARINGS

None.

5.0 REGULAR CALENDAR

5.1 Adopt a Resolution Approving Documents for the Refunding of the Agency's 2008A Subordinate Tax Allocation Bonds; Authorizing the Sale to Stifel, Nicolaus & Company, Inc. as the Underwriter; and Making the Required Findings Necessary to Proceed with the Sale (Bryan Montgomery, City Manager)

City Manager Bryan Montgomery presented the staff report.

Finance Director Deborah Sultan explained the opportunity to refinance the bonds will provide a lower debt service and more property tax revenue to the taxing entities.

It was moved by Boardmember Kratochvil and seconded by Boardmember Volta to adopt the resolution. The motion was unanimous and so ordered. (7-0)

6.0 WORK SESSION DISCUSSION

None.

7.0 REPORTS/COMMENTS

7.1 EXECUTIVE DIRECTOR

Executive Director Bryan Montgomery provided a brief update on the Successor Agency parcel adjacent at Laurel and Empire. He mentioned there appears to be an offer coming pursuant to the Option Agreement.

7.2 MEMBERS OF THE BOARD

No reports were provided by the Board.

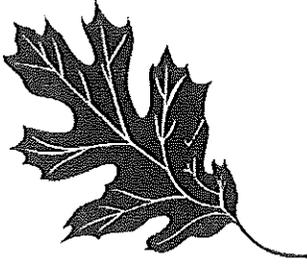
8.0 CLOSED SESSION - None

9.0 ADJOURNMENT

There being no further business, the meeting was adjourned at 6:20 p.m.

Respectfully Submitted,

Libby Vreonis
Secretary



OAKLEY OVERSIGHT BOARD STAFF REPORT

DATE: June 5, 2018
TO: Oversight Board
FROM: Bryan Montgomery, Executive Director
SUBJECT: Option Agreement with MLC Holdings, Inc for the Property located at 1731 Main Street (APNs 037-100-013, 037-100-019 AND 037-100-023)

Background and Analysis

Attached is the complete staff report submitted to the Successor Agency Board on May 22, 2018. The Successor Agency Board unanimously approved the Option Agreement and it is now before you as the Oversight Board for final consideration.

Fiscal Impact

The exact amount of the sales proceeds is unknown, but likely in the \$235,000 - \$335,000 range. The proceeds would be utilized to fulfill enforceable obligations pursuant to the Long Range Property Management Plan and distributed to the taxing entities pursuant to compensation agreements required by the State.

Staff Recommendation

Staff recommends that the Board approve the Option Agreement and authorize the Executive Director to execute the Agreement.

Attachments

1. Oversight Board Resolution
2. May 22, 2018 Staff Report to the Successor Agency

OB RESOLUTION NO. _____-18

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE FORMER OAKLEY REDEVELOPMENT AGENCY APPROVING AN OPTION AGREEMENT WITH MLC HOLDINGS, INC FOR THE PROPERTY LOCATED AT 1731 MAIN STREET (APNs 037-100-013, 037-100-019 AND 037-100-023)

BE IT RESOLVED by the Oversight Board to the Successor Agency of the former Oakley Redevelopment Agency hereby approves a certain Option Agreement with MLC Holdings, Inc, a true and correct copy of which is attached hereto as Exhibit A, and authorizes the Executive Director to execute the Agreement.

The foregoing resolution was introduced at a regular meeting of the Oakley Oversight Board held on the 5th day of June 2018, by Boardmember _____, who moved its adoption, which motion being duly seconded by Boardmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

APPROVED:

Bill Swenson, Chair

ATTEST:

Libby Vreonis, Secretary

Date



STAFF REPORT

DATE: May 22, 2018

TO: Bryan Montgomery, City Manager *Approved and Forwarded to the City Council*

FROM: Joshua McMurray, Planning Manager

SUBJECT: Option Agreement with MLC Holdings, Inc. for Agency property located at 1731 Main Street (APN's 037-100-013, 037-100-019 and 037-100-023)

Summary and Background

This Successor Agency property is a part of the Long Range Property Management Plan and designated for "Future Development". The three parcels total 1.07-acres in size and are long and narrow and not very developable unless they are assembled with the surrounding parcels to the east and west. The adjacent parcel is currently owned by Conco Land Company, but MLC Holdings, Inc. (MLC) has entered into a Purchase and Sales Agreement to purchase the two parcels totaling 20.13-acres. The Successor Agency property is critical to provide a complete frontage and ultimately will allow for a much better planned site layout for the future development takes place.

The City's Municipal Code provision 2.8.106c., consistent with State Law, allows the direct sale of surplus parcel to the adjacent property owner without advertising for bids. Staff also believes that advertising the parcel for bid could lead to an owner that would "hold hostage" the MLC parcels and further delay any sort of vertical development that creates ongoing tax revenue for all the taxing entities. In short, a direct sale to MLC is deemed to be in the best interest of all concerned.

The attached Option Agreement provides a way to better determine a fair value of the Successor Agency parcel. The Agreement calls for a payment of 75% of the per square foot value received for the MLC parcel's to be the purchase price of the Successor Agency property.

Fiscal Impact

Revenues are unknown, but likely in the \$235,000 - \$335,000 range that would be utilized to fulfill enforceable obligations as set forth in the Long Range Property Management Plan. The sales proceeds would be distributed to all relevant taxing entities according to the compensation agreements required by the State.

Recommendation

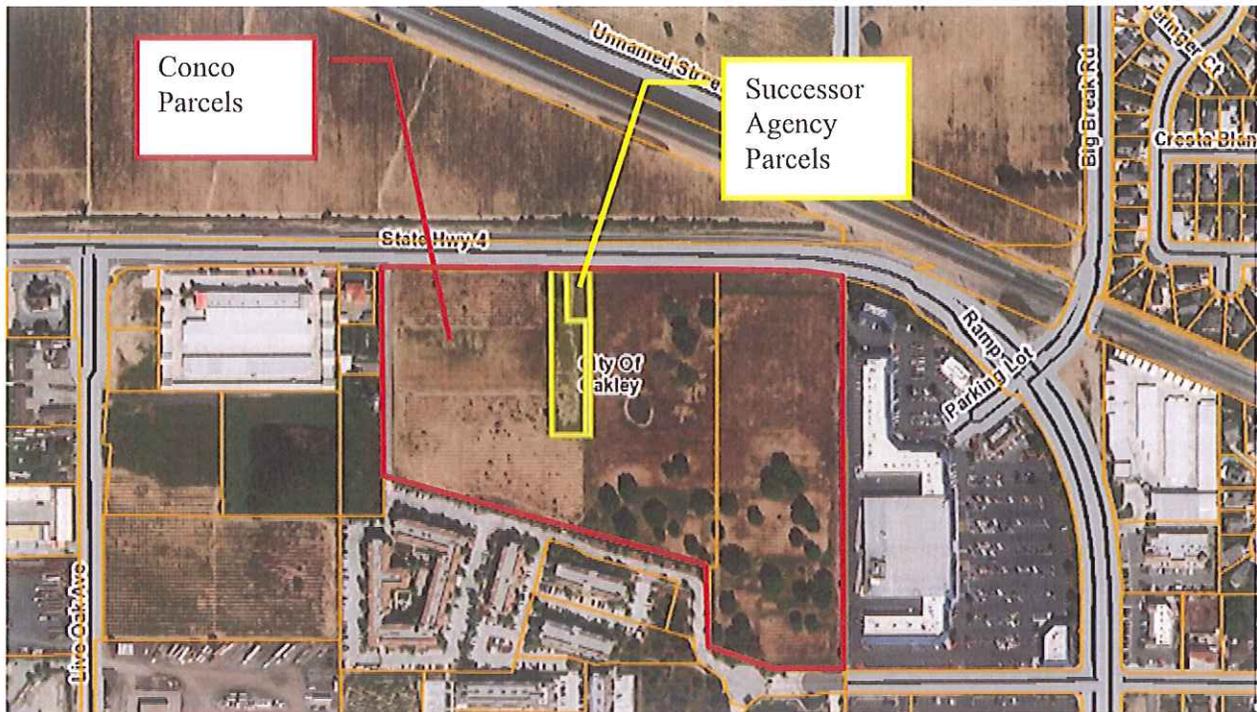
Adopt a resolution approving the Option Agreement and directing Staff to forward the Agreement to the Oversight Board for its final consideration.

Attachments

1. Aerial photo of the property
2. Chapter 8 of Title 2 of the Oakley Municipal Code – Disposal of Real Property
3. Proposed Option Agreement
4. Resolution

Vicinity Map

1731 Main Street
(APN's 037-100-013, 037-100-019 and 037-100-023)



CHAPTER 8

DISPOSAL AND LEASE OF REAL PROPERTY

Article 1 SALE OF SURPLUS REAL PROPERTY

2.8.102 Applicability.

The procedure set forth in this section shall be applicable to the disposal of real property owned by the City of Oakley and determined to be surplus and excess property no longer necessary for public purposes. The provisions of these rules shall not apply to the abandonment of streets or the vacation of easements owned by the City of Oakley and governed by the statutes of the State of California, nor shall the provisions of these rules apply to the termination, rejection or abandonment of offers of dedication pursuant to Section [66477.2](#) of the Government Code.

2.8.104 Determination of Surplus Property.

- a. All departments within the City of Oakley shall submit to the City Manager a report showing any real property in the possession, custody or control of such department that is no longer used and is otherwise surplus and excess for the needs of the department. If the City Manager finds that such real property is not required for any other public use, he/she shall so report to the City Council and the City Council may declare it surplus and cause to be prepared a written estimate of its market value.
- b. Prior to disposal of surplus real property by public sale, the City Manager shall provide written notice to public agencies in the manner prescribed by Section [54220](#) et seq. of the Government Code.
- c. The following procedures apply if the property is not purchased by a public agency pursuant to Section [54222](#) et seq. of the Government Code.

2.8.106 Manner of Disposal.

- a. The City Manager may dispose of any surplus real property which has an estimated market value of less than \$5,000 without advertising for bids.
- b. If the surplus real property has an estimated market value of \$5,000 or more, the City Manager shall dispose of the property in the manner set forth herein and shall require City Council approval for final agreement of the sale.
- c. If the parcel which is surplus real property is an uneconomic remnant such that it is not buildable by itself under the current zoning, then the City Manager may renegotiate a sale price with the adjoining property owner(s) without advertising for bids.
- d. If the parcel which is surplus real property is a buildable parcel under the current zoning, and the combining of the parcel to an adjacent parcel would provide better development from a

planning perspective than development of the surplus property by itself, then the City Manager may negotiate a sale with the adjoining property owner(s). If an acceptable price (to the City) is not reached, then the City shall dispose of the property in the manner set forth herein.

2.8.108 City Personnel Prohibited.

No City official, officer or employee shall bid or be financially interested in any bid for surplus real property sold in accordance with these rules.

2.8.110 Sale Procedures.

The conveyance of surplus real property by the City shall be made to the highest responsible bidder who most closely meets the terms and conditions of the notice inviting bids pursuant to the following procedures:

- a. A notice inviting bids shall be published at least once ten (10) days before the opening of the bids in a newspaper of general circulation in the City printed and published within Contra Costa County. The notice inviting bids shall include a legal description of the subject property, a vicinity map showing the general location of the subject property, the time and place of opening bids, and the terms and conditions for bids.
- b. Sealed bids, including a bid deposit of ten percent (10%) of the bid price, but not exceeding \$10,000, shall be submitted to the City Clerk. Said bid deposit shall be in the form of cashier's check, certified check or bidder's bond executed by an authorized surety company.
- c. At the time and place fixed in the notice to bidders, all sealed proposals which have been received shall be publicly opened, examined and declared by the City Clerk. Of the proposals submitted which conform to all terms and conditions of the sale, the proposal which is the highest shall be referred to the City Council unless a higher oral bid is received or the City Manager rejects all bids, or if the Council determines that a lower bid is more responsive for the reasons specified in subsection (e) of this section.
- d. The City Manager may set a minimum acceptable bid amount and may reject any and all bids presented.
- e. In cases where the City wishes the surplus property to be developed or used in a manner to support specified economic development, retail, industrial or housing goals and policies, the notice inviting bids shall require bidders to specify end-uses for the property and the City may specify deadlines for the accomplishment of the end-use. Preference shall be given to the bid with the highest monetary purchase price which most closely accomplishes the end-use goals. As to all cases, the City and the purchaser shall enter into a purchase agreement approved by the City Council.
- f. After opening bids, the City Clerk shall call for oral bids from those bidders tendering written proposals. If, upon the call for oral bidding, any responsible person offers to purchase the property, upon the terms and conditions specified and for a price exceeding the highest written

proposal by at least five percent, then the responsible oral bid shall be received for presentation to the City Council if it meets the after-use criteria specified in subsection (e) of this section. Final receipt by the City Clerk shall not be made, however, until the oral bid is reduced to writing and signed by the offeror and an additional deposit in the amount of ten percent (10%) over the offeror's original written bid is tendered, though not to exceed an additional \$10,000. This reduction of the bid to writing and submittal of deposit shall be completed within one business day (banking) after determination of the highest bidder has been announced by the City Manager, or the offeror shall forfeit his/her bid deposit.

g. Unless otherwise specified in the notice to bidders, sale of surplus property shall be completed in an escrow of the City's choice. All successful bids shall be incorporated into a sale and purchase agreement to be approved by the City Council.

h. The successful bidder shall close escrow as specified in the purchase agreement.

i. All bidders' deposits shall be retained until escrow closes. If the apparent purchaser fails to complete the transaction and to close escrow, then the City may enter into a purchase agreement with the next lowest monetary bidder who most closely meets the requirements of subsection (e) of this section and retain the original apparent purchaser's deposit.

(Sec. 2, Ordinance No. 02-12, adopted May 8, 2012)

2.8.112 Deed – Additional Costs.

(Repealed by Ordinance No. 02-12, on May 8, 2012)

2.8.114 Funds.

(Repealed by Ordinance No. 02-12, on May 8, 2012)

2.8.116 Effect On Validity.

(Repealed by Ordinance No. 02-12, on May 8, 2012)

2.8.118 Forms.

(Repealed by Ordinance No. 02-12, on May 8, 2012)

OPTION AGREEMENT FOR PURCHASE OF REAL PROPERTY

Oakley Successor Agency/ MLC Holdings

THIS AGREEMENT is entered into this _____ day of _____, 2018 by and between the Successor Agency to the Oakley Redevelopment Agency, a public body ("AGENCY") and MLC Holdings, Inc., an Arizona corporation ("MLC").

Recitals

- A. AGENCY owns three parcels of real property located at 1731 Main Street in the City of Oakley ("the AGENCY Parcels"), consisting of APN's 037-100-013, 037-100-019 and 037-100-023 totaling approximately 1.07-acres as depicted on the attached plat map, Exhibit "A" and marked by a heavy line.
- B. MLC has entered into a purchase and sale agreement for the purchase of two parcels of real property ("the MLC Parcels") surrounding the CITY parcels, bearing APN's 037-100-049 and 037-100-048. These two parcels contain approximately 881,219 square feet, or approximately 20.13-acres.
- C. The AGENCY's parcels, in and of itself, are too small for any development potential but these parcels front on Main Street, a busy arterial street.
- D. The MLC parcels are large enough to accommodate a quality development, but it becomes more economically viable if it were to have the AGENCY parcels integrated into the design of the future project.
- E. Both the AGENCY and MLC desire to encourage development of their combined parcels. The AGENCY has an interest in development occurring in this area in the near future for the convenience of its citizens, for the encouragement of a sales tax generating use or uses, and for increased property tax revenues for all the affected taxing entities that provide vital public services to the community. The AGENCY also has an interest in residential uses that further the goals of the City.
- F. Title 2, Chapter 8, Article 1 of the Oakley Municipal Code provides for the negotiated sale of surplus property with the owners of an adjacent parcel if combining the parcels would lead to better development from a planning perspective.

WHEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Grant of Option to Purchase.

AGENCY hereby grants to MLC an option to purchase the AGENCY Parcels on the terms and conditions set forth in this Agreement.

- (a) The option to purchase commences immediately and, unless earlier terminated, shall continue in effect for two (2) years from the date of this Agreement, at which time this Option shall automatically expire. This period shall be known as "the Option Period".
- (b) MLC may exercise this Option by notifying the AGENCY in writing at any time on or before the expiration of the Option Period of their intent to exercise this Option. The Notice of Intent shall include the proposed purchase price, as specified in this Agreement, and the commercial retail and/or residential use to which the combined parcel will be put, and the closing date ("Closing Date") for the AGENCY Parcels.
- (c) The parties may extend the Option Period for an additional one (1) year only if both parties concur in writing to an extension. Either party requesting an extension shall so notify the other party in writing at least thirty (30) days prior to the expiration date, and the party receiving such request shall respond with concurrence or disapproval prior to the date on which the Option would have automatically terminated.
- (d) In the event that MCL does not acquire the MLC Parcels as spelled out in Recital B, then this Agreement is null and void.

2. Deposit for Option.

- (a) Within thirty (30) days of the date of this Agreement, MLC shall pay and post with the AGENCY the sum of Five Thousand Five Hundred (\$5,000) Dollars as a deposit for the purchase price of the AGENCY Parcels and also as compensation to the AGENCY for this Option (the "Deposit")
- (b) In the event that a purchase price and sale is consummated among the parties pursuant to this Agreement, then this Deposit shall be credited to the purchase price and the compensation owing to the AGENCY for the purchase shall be reduced by the deposit amount. Except in the event of a default by AGENCY hereunder or as set forth in Section 3 below, in the event that a purchase and sale is not consummated among the parties, for whatever reason, then the AGENCY shall retain the entire Deposit amount as its compensation for removing its parcel from the real estate market and for the granting of this Option.

3. Purchase Price for AGENCY Parcels.

The parties acknowledge that MLC's obligations under this Agreement are contingent upon MLC's acquisition of the MLC Parcels for the purpose of commercial and/or residential development. In the event MLC is unable to acquire the MLC Parcels on terms and conditions satisfactory to MLC, MLC may terminate this option in which even the Deposit shall be returned to MLC. The method of calculating the purchase price of the AGENCY parcel through this Option Agreement is as follows:

- (a) The purchase price that MLC shall pay for the AGENCY Parcels shall be seventy-five (75%) percent of the per-square-foot sale price of the MLC parcels, multiplied by the number of square feet encompassed in the AGENCY Parcels.
- (b) The parties shall establish and escrow ("Escrow") and issue escrow instructions to the title company handling this transaction as to the calculated purchase price to be paid for the AGENCY parcel. On or before the Closing Date for the AGENCY Parcels, AGENCY shall deliver or cause to be delivered into Escrow the all documents and instruments required to effectuate the closing contemplated hereunder.
- (c) The AGENCY shall have the right to reject MLC's exercise of this Option if the calculated purchase price for the AGENCY Parcels is less than Five (\$5.00) Dollars per square foot, or if the AGENCY disapproves of the proposed use or uses that would be developed on the combined parcels; provided, however, in the event if the calculated purchase price for the AGENCY Parcels is less than Five (\$5.00) Dollars per square foot, MLC may elect to purchase the AGENCY Parcels for Five (\$5.00) Dollars per square foot.
- (d) MLC may assign this Option Agreement to the third party acquiring their parcel so that escrow can proceed in a more efficient manner. However, no such assignment shall affect the AGENCY's rights as stated herein.
- (e) The third party purchaser of both parcels may combine the parcels in any manner authorized by law, including by way of parcel map, merger or certificate of compliance, or other lawful method. However, the AGENCY shall not have any financial obligation to participate in such combination.

4. Review of the AGENCY Parcels.

- (a) Throughout the Option Period, MLC shall have the opportunity to enter the AGENCY Parcels and to conduct investigations of the AGENCY Parcels to determine if it is in any way inappropriate for development or for consideration to purchase. If MLC exercise this Option, such action shall be prima facie evidence of their conclusion that there is no impediment, restriction or limitation pertaining to the AGENCY Parcels. AGENCY shall provide to MLC all documents relating the AGENCY Parcels relevant to MLC's investigation of the AGENCY Parcels.
- (b) AGENCY represents, and warrants to and agrees with Buyer, as of the date hereon and as of the Closing Date, as follows:
 - a. There are no leases, occupancy agreements, easements, licenses, or other agreements that grant third-parties any possessory or usage rights to all or any part of the AGENCY Parcels.

- b. The Agency acknowledges the approximately 1-acre site was developed sometime prior to 1939 and used as an auto salvage and junk yard operations. The site was remediated by the City of Oakley Redevelopment Agency with removal of structures and excavation of petroleum impacted soils to a Class II landfill (Republic). The site was certified by DTSC on June 30, 2010.
- c. Except as may be disclosed in the Title Report, AGENCY has not made any commitment or representation to any governmental authority, or any adjoining or surrounding property owner, that would in any way be binding on Buyer or would interfere with Buyer's ability to develop and improve the AGENCY Parcels as a residential development, and AGENCY shall not make any such commitment or representation that would affect the AGENCY Parcels or any portion thereof, without Buyer's written consent.
- d. There are no shared expense agreements, repayment agreements, reimbursement agreements, or development payback agreements that affect all or any portion of the AGENCY Parcels.
- e. All of the representations, warranties, and agreements of AGENCY set forth in this Agreement shall be true upon the Agreement Date, shall be deemed to be repeated at and as of the Closing Date, and shall survive the delivery of the Deed and the Closing. Prior to a termination of this Agreement, AGENCY shall not take any action, fail to take any required action, or willfully allow or consent to any action that would cause any of AGENCY's representations or warranties to become untrue.

5. Title.

- (c) In the event that this Option Agreement is exercised, AGENCY will deliver title to its parcels free, good and marketable, subject only to any exceptions contained in the title report which are acceptable to MLC.
- (d) Because MLC will own much larger and commercially viable of the five parcels, MLC shall pay any mapping expense and all escrow, title and recording fees associated with the acquisition of the AGENCY Parcels.

6. Notices.

All notices under this Agreement shall be given in writing by one party to the other, deposited in the U.S. Mail or delivered personally to the following addresses:

To Agency:
Executive Director
City of Oakley Successor Agency

3231 Main Street
Oakley, CA 94561
Email: montgomery@ci.oakley.ca.us

To MLC:

MLC Holdings, Inc.
2603 Camino Ramon, Suite 140
San Ramon, CA 94583
Attention: Mark Forster
Telephone: (925) 543-4017
E-mail: mark.forster@mlcholdings.net

With A Copy To:
MLC Holdings, Inc.
8800 East Raintree Drive, Suite 300
Scottsdale, Arizona 85260
Attn: Ryan Hamilton
Telephone: (480) 515-8089
Facsimile: (623) 321-6642
Email: ryan.hamilton@meritagehomes.com

And With A Copy of Any Default Notice to:

Meritage Homes Corporation
8800 E. Raintree Drive, Suite 300
Scottsdale, Arizona 85260
Attention: General Counsel
Facsimile: 480-375-2914

7. Remedies

- (a) Default by AGENCY. If AGENCY shall breach any of the terms or provisions of this Agreement or otherwise fail to perform any of AGENCY's obligations under this Agreement at or prior to Closing, and if such failure continues for ten (10) days after MLC provides AGENCY and Escrow Agent with written notice thereof, and provided MLC is not then in default, then MLC may, as MLC's sole remedies for such failure: (a) waive the effect of such matter and proceed to consummate this transaction; (b) cancel this Agreement and receive a full refund of the Deposit and recover from AGENCY the reasonable out-of-pocket expenses incurred by MLC related to the AGENCY Parcels and this transaction; or (c) proceed with any remedies available to MLC at law or in equity, which may, without limitation, include the bringing of an action against AGENCY for specific performance and/or recovery of the Deposit and any other damages suffered or incurred by MLC as a result of any breach or failure by AGENCY to perform any of AGENCY's obligations under this Agreement. Notwithstanding anything herein to the contrary, if MLC is unable to secure the remedy of specific performance due to

the acts or omissions of AGENCY, then MLC may pursue any action for actual damages.

(b) Default by MLC. IF BUYER SHALL BREACH ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR OTHERWISE FAIL TO PERFORM ANY OF BUYER'S OBLIGATIONS UNDER THIS AGREEMENT AND IF SUCH FAILURE CONTINUES FOR TEN (10) DAYS AFTER SELLER PROVIDES BUYER AND ESCROW AGENT WITH WRITTEN NOTICE THEREOF, AND PROVIDED SELLER IS NOT THEN IN DEFAULT, THEN SELLER MAY WAIVE SUCH BREACH AND PROCEED TO CONSUMMATE THIS TRANSACTION IN ACCORDANCE WITH THE TERMS HEREOF, OR SELLER MAY, AS ITS EXCLUSIVE REMEDY, CANCEL THIS AGREEMENT AND RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AND AS CONSIDERATION FOR THE ACCEPTANCE OF THIS AGREEMENT AND FOR TAKING THE PROPERTY OFF THE MARKET, AND NOT AS A PENALTY. BUYER AND SELLER HAVE DETERMINED AND HEREBY AGREE THAT IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN WITH ANY DEGREE OF CERTAINTY THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY SELLER IF BUYER FAILS TO PERFORM ANY OF ITS OBLIGATIONS IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT, AND THE PARTIES AGREE THAT A REASONABLE ESTIMATE OF SUCH DAMAGES UNDER THE CIRCUMSTANCES IS AN AMOUNT EQUAL TO THE DEPOSIT. ACCORDINGLY, BUYER AND SELLER AGREE THAT IF BUYER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE DEFAULTS HEREUNDER, SELLER MAY RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. THE PAYMENT AND RETENTION OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.

AGENCY's Initials

MLC's Initials

8. Entire Agreement; Interpretation.

This Agreement represents the full and complete understanding of the parties with respect to the properties. MLC represent that they have had full opportunity to review this Agreement and to have it reviewed and negotiated by their counsel. Therefore, no interpretation shall be given to this Agreement which would favor or disfavor the drafter.

9. Time of Essence. Time is of the essence of this Agreement.

WHEREFORE, THE PARTIES CONCUR WITH THE TERMS OF THIS AGREEMENT and execute it as follows:

AGENCY:

MLC:

By: _____
BRYAN H. MONTGOMERY, Executive Director

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

Agency Legal Counsel

RESOLUTION NO. XX-18

A RESOLUTION OF THE OAKLEY CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE OAKLEY REDEVELOPMENT AGENCY APPROVING OPTION AGREEMENT WITH MLC HOLDINGS, INC. FOR THE REAL PROPERTY LOCATED AT 1731 MAIN STREET (APN'S 037-100-013, 037-100-019 AND 037-100-023)

WHEREAS, the Successor Agency is the owner of real property, a former Oakley Redevelopment Agency property, located at 1731 Main Street, Oakley, California, commonly known as Contra Costa County Assessor's Parcel Numbers 037-100-013, 037-100-019 and 037-100-023 ("the Property"); and

WHEREAS, a Long Range Property Management Plan, required for all former Oakley Redevelopment Agency properties, was approved by the State Department of Finance on December 30, 2015 and calls for the sale of the Property; and

WHEREAS, Conco Land Company is the owner of two parcels totaling 20.13-acres of land immediately adjacent and to the west and east of the Property; and

WHEREAS, MLC Holdings, Inc. (MLC) has entered into a Purchase and Sales Agreement to purchase the two parcels totaling 20.13-acres; and

WHEREAS, the Property is too small for any significant development potential unless combined with the parcels owned by Conco; and

WHEREAS, the Property does add significant value to the development viability of the parcel owned by Conco; and

WHEREAS, the Successor Agency finds that an option agreement (a true and complete copy of which is attached hereto as Exhibit A) with MLC will facilitate the development of both parcels in the best interests of the Successor Agency and all taxing entities.

NOW, THEREFORE, BE IT RESOLVED by the Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency hereby approves the option agreement with MLC for the purchase of the former Oakley Redevelopment Agency property located at 1731 Main Street, Oakley, California pursuant to the approved Long Range Property Management Plan.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency directs the Executive Director to present the proposed sale to the Oakley Oversight Board for its final consideration. If approved by the Oversight Board, the Executive Director is authorized to execute a purchase and sales agreement on behalf of the Successor Agency.

The foregoing resolution was introduced at a regular meeting of the Oakley City Council Acting as the Successor Agency to the Oakley Redevelopment Agency held on the 22nd day of May 2018, by Board member _____, who moved its adoption, which motion being duly seconded by Board member _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Randy Pope, Mayor Date

ATTEST:

Libby Vreonis, City Clerk Date