

PROGRAMMATIC AGREEMENT
AMONG
THE CITY OF OAKLAND,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE DEVELOPMENT THE OF THE
MARTIN LUTHER KING, JR. PLAZA,
5714 MARTIN LUTHER KING, JR. WAY, OAKLAND, CALIFORNIA

WHEREAS, the City of Oakland (City) proposes to develop the Martin Luther King, Jr. Plaza at 5714 Martin Luther King, Jr. Way as a mixed used development composed of community, medical, professional and food services, public park, and housing (undertaking); and

WHEREAS, the City, through Title I of the Housing and Community Development Act of 1974 (42 U. S. C. 5301 et. seq.) (Community Development Block Grant Program), assisted in the acquisition and maintenance of the property; and

WHEREAS, the City, through Title II of the Cranston-Gonzales National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992, (42 U.S.C. 12701) (Home Investment Partnership Program [HOME]) will assist in the undertaking; and

WHEREAS, the City has determined that the undertaking may have an effect upon the University High School, a property included in the National Register of Historic Places, and has consulted with the Advisory Council on Historic Preservation (ACHP) and the California State Historic Preservation Officer (SHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, IDG/Baner Urban Ventures, a California corporation (Developer), participated in the consultation and has been invited to execute this Programmatic Agreement (Agreement);

NOW, THEREFORE, the City, the ACHP, and the SHPO agree that the undertaking shall be administered in accordance with the following stipulations to satisfy the City's Section 106 responsibility for all individual aspects of the undertaking.

Stipulations

The City will ensure that the following measures are carried out:

1. The City shall continue to ensure that University High School is protected against damage from vandalism and the weather until the measures stipulated below are implemented. The City will repair any such damage until a time when the measures stipulated below are implemented.

2. The City shall ensure that every reasonable effort is made to design the rehabilitation of the University High School in a manner consistent with the recommended approaches for rehabilitation set forth in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Standards) (U. S. Department of the Interior, National Park Service, 1990), and in a manner consistent with the California State Historical Building Code (California Code of Regulations, Title 24, Building Standards, Part 8) (SHBC), and that plans are developed in consultation with the SHPO and the ACHP and are submitted to the SHPO and the ACHP for approval. The City shall ensure that the following project documents, as defined by the American Institute of Architects standards, are submitted to the SHPO and the ACHP: (1) schematic design; (2) design development; and (3) construction. The City will be responsible for a survey of University High School that will identify, in consultation with the SHPO, the significant historic elements and features. This information, which will include a photographic survey of the property, will be forwarded to the SHPO and the ACHP in the first step of design development. Consultation with the SHPO and the ACHP about the design and specifications for the rehabilitation will not be required if either the City or the Developer submits an application for Part II Certification of the investment tax credit program pursuant to Section 47 of the Internal Revenue Code of 1986 (IRC) and implements the provisions of stipulation 3, below.
3. The City shall notify the SHPO and the ACHP as soon as practicable if either the City, on behalf of the Developer, or the Developer submits an application for investment tax credits pursuant to the IRC. For purposes of this Agreement, the review of the rehabilitation plans and specifications shall be undertaken within the context of the IRC if either the City or the Developer submits a Part II Certification to the National Park Service (NPS). If the rehabilitation project receives Part II Certification without conditions from the NPS it shall be deemed to conform to the Standards and that portion of the undertaking will require no further review under this Agreement. The City shall ensure that the SHPO will be provided with a copy of the notice of the Part II Certification. If the Part II Certification is approved with conditions, the City shall ensure that the project documents are modified to comply with the conditions. The City shall provide the modified plans to the SHPO for review. If the SHPO agrees that the modified plans satisfy the Part II conditions, the rehabilitation project will require no further review under this Agreement. Neither the City nor the Developer shall make any irrevocable commitment regarding project design until Part II Certification has been approved by the NPS.
4. If either the City or the Developer is denied Part II Certification or is unable to meet conditions for such certification, the City shall consult with the SHPO and the ACHP to explore prudent and feasible alternatives that in the opinion of the SHPO and the ACHP would meet the Standards. If within 30 days following commencement of such consultation the SHPO and the ACHP determine that the City or the Developer is unable to develop a project design that is compatible with the Standards, and prior to the alteration of the University High School, the City shall contact the NPS, Western Region, 600 Harrison Street, Suite 600,

San Francisco CA 94107-1372, to determine the level and kind of recordation that is required for the property. Unless otherwise agreed to by the NPS, the City shall ensure that all documentation is completed and accepted by Historic American Building Survey (HABS)/Historic American Engineering Record (HAER) prior to the alteration, and that copies of this documentation are made available to the SHPO, the Oakland Main Library, the Temescal Branch Library, and the Oakland Office of Planning and Building.

5. If demolition of historic elements and features is proposed, the City will ensure that the Oakland Heritage Alliance, the Oakland Museum, and the Office Planning and Building, with advice from the City's Landmarks Board, have the opportunity to select architectural elements for reuse in the undertaking or for curation. The City shall ensure that the items selected are removed in a manner that minimizes damage and are delivered with legal title to the recipients.

6. The City shall ensure that the project design for any new construction is compatible with the historic and architectural qualities of the University High School in terms of scale, massing, color, and materials, and is responsive to the recommended approaches to new construction set forth in the Standards, and that the design and specifications for this aspect of the undertaking are developed in consultation with the SHPO and the ACHP and submitted to the SHPO and the ACHP for approval.

7. The City shall ensure that the Martin Luther King, Jr. Plaza is landscaped in accordance with a landscaping plan designed in consultation with and approved by the SHPO and the ACHP to include, but not limited to, extant and proposed parking, streets, driveways, walkways, lighting, plantings, and street furniture.

8. The City shall ensure that if an archeological property is discovered after construction begins, all work that might adversely affect the archeological property will be halted until the City can evaluate and, if necessary, mitigate effects to the new discovery. A person meeting the Secretary of Interior's Professional Qualifications Standards (48 CFR 44738-9) will inspect and evaluate the archeological property, and the City, in consultation with the SHPO, will determine whether that property is eligible for inclusion in the National Register of Historic Places. If the property is determined eligible, then the City will consult with the SHPO to determine an appropriate course of action pursuant to 36 CFR 800.11(b)(2).

9. A committee of community residents including, but not limited to, representatives of the Oakland Heritage Alliance and members of the Citizens' Advisory Committee previously convened to recommend a developer for the project to the Oakland City Council, will be apprised of and asked to comment on the implementation of this Agreement and on issues regarding historic preservation at the Martin Luther King, Jr. Plaza project. This committee includes members who represent a wide range of interests and organizations in the Oakland community in which the undertaking will take place. The committee will be invited to comment at each regularly scheduled Citizens' Advisory Committee meeting and at any meeting convened as needed in order to provide for further participation from the public.

10. The SHPO and the ACHP may monitor activities carried out pursuant to this Agreement, and the ACHP will review such activities if so requested. The City will cooperate with the ACHP and the SHPO in carrying out their monitoring and review responsibilities.
11. Within 60 days upon completion of the undertaking, defined as the date of the final occupancy permit, the City shall consult with the SHPO to determine if the property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed. If in the opinion of the SHPO the criteria no longer apply, the City will proceed with the provisions outlined at 36 CFR 60.15 (Removing properties from the National Register). If in the opinion of the SHPO the criteria for listing in the National Register still apply, the City shall further consult with the SHPO to determine if the boundary description in the National Register nomination form is still valid. If in the opinion of the SHPO boundary alterations should be made, the City will proceed with the provisions outlined at 36 CFR 60.14(a) (Changes and revisions to properties listed in the National Register--Boundary changes). In addition, the City will amend the existing National Register nomination form, as necessary, to take into account any changes in property description and property significance. If the City disagrees with the opinion of the SHPO for purposes of this stipulation, the City shall request a determination from the Secretary of the Interior pursuant to applicable NPS regulations.
12. Failure to carry out the terms of this Agreement requires that the City will notify all parties to this Agreement and again request the comments of the ACHP in accordance with 36 CFR Part 800. If the City does not carry out the terms of this Agreement, the City will not take or sanction any action or make any irreversible commitment that would result in an adverse effect to the historic modification or alternatives to the undertaking.
13. If any of the signatories to this Agreement believes that the terms of the Agreement cannot be carried out, or that an amendment to the terms of the Agreement must be made, that signatory shall immediately notify the other signatories and request consultation to amend this Agreement. The process of amending the Agreement shall be the same as that exercised in creating the original Agreement.
14. Should the SHPO or the ACHP object within 30 days to any comments, actions, or decisions proposed pursuant to this Agreement, the City shall consult with the objecting party to resolve the objection. If the City determines that the objection cannot be resolved, the City shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either: a) provide the City with recommendations, which the City will take into account in reaching a final decision regarding the dispute; or b) notify the City that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any ACHP comments provided in response to such request will be taken into account by the City in accordance with 36 CFR 800.6(c) with reference to the subject of the dispute. Any recommendation or comment provided by the ACHP will be

understood to pertain only to the subject of the dispute; the City's responsibility to carry out all actions under this Agreement that are not subjects of the dispute will remain unchanged.

15. At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the City shall take the objection into account and immediately notify the other signatories of the objection. The City shall consult as needed with the objecting party, the SHPO, and the ACHP to resolve the objection.

16. Any party to this Agreement may terminate it by providing 30 days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the City will comply with 36 CFR 800.4 through 800.6 with regard to all individual aspects of the undertaking covered by this Agreement.

Execution and implementation of this Agreement evidences that the City has satisfied its Section 106 responsibilities for all individual aspects of the undertaking.

CITY OF OAKLAND

By: Craig G. Kocian Date: 4-6-94
Craig G. Kocian, City Manager

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: Cheryl Widell Date: 4/22/94
Cheryl Widell, State Historic Preservation Officer

IDG / BANER URBAN VENTURES, A CALIFORNIA CORPORATION

By: Jim H. Ashmaru Date: 4/11/94
Jim H. Ashmaru, President

By: William B. Baner Date: 4/11/94
William B. Baner, Vice-President and Secretary

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Robert Bush Date: 5/25/94
Robert Bush, Executive Director