



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Alexa Jeffress  
Director, Economic and  
Workforce Development  
Department

**SUBJECT:** East 12<sup>th</sup> Street Remainder Parcel 1  
LDDA & Ground Lease

**DATE:** December 19, 2022

City Administrator Approval

Date:

Jan 4, 2023

## **RECOMMENDATION**

**Staff Recommends That The City Council Adopt An Ordinance:**

**(1) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND (“CITY”) AND EAST 12TH STREET HOUSING, LP (“DEVELOPER”), FOR DEVELOPMENT OF 91 UNITS OF AFFORDABLE HOUSING ON A PORTION OF THE 12TH STREET REMAINDER (“PARCEL 1”), LOCATED AT EAST 12TH STREET AND 2ND AVENUE, WITH A TERM OF TWO YEARS WITH A ONE-YEAR EXTENSION;**

**(2) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A 99-YEAR GROUND LEASE OF PARCEL 1 BETWEEN THE CITY AND DEVELOPER WITH \$1 PER YEAR BASE RENT PLUS RENT BASED ON THE APPRAISED \$4,000,000 FAIR MARKET VALUE OF PARCEL 1;**

**(3) MAKING A SURPLUS LAND ACT EXEMPTION DETERMINATION; AND**

**(4) ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS**

## **EXECUTIVE SUMMARY**

Approval of this proposed lease disposition and development agreement (LDDA) and long-term ground lease (Lease) will give the Developer control over the Property, which is required to apply for needed funding to advance the Project toward construction.

City Council  
January 17, 2023

On July 19, 2022, the City of Oakland (City) and Lakehouse Commons Affordable Housing LP (Lakehouse Commons), an affiliate of the East Bay Asian Development Corporation (EBALDC or “Developer”), entered into an Exclusive Negotiation Agreement (ENA) for development of affordable housing on vacant City-owned property bounded by East 12th Street on the east, by Second Avenue and Oakland Unified School District (OUSD)-owned property on the south, open space to the west, and by Lake Merritt Boulevard to the north (Property).

EBALDC plans to build an affordable rental housing project (Project) on the Property, consisting of 91 units affordable for extremely low and low-income households earning between 30 percent and 80 percent of Alameda County area median income (AMI).

Lakehouse Commons has met the terms of the ENA. Staff recommends that the City Council (Council) approve legislation authorizing an LDDA and Lease between the City and East 12th Street Housing, LP, another affiliate of EBALDC, for approximately half of the Property, a site known as Parcel 1.

The LDDA will have a term of two (2) years, plus a one (1) one-year administrative extension option. The Lease will have a term of 99 years. Annual rent will consist of base rent in the amount of \$1 per year, plus additional rent based on the Property’s fair market value (FMV) of \$4,000,000. The specific terms of the LDDA and Lease are attached to this report (see **Attachments A & B**).

## **BACKGROUND / LEGISLATIVE HISTORY**

### **A. Property Location and Ownership History**

This Property, approximately 40,293 square feet (0.925 acre) of vacant land, was previously a public right-of-way and was created in 2011 as a result of the reconfiguration of 12th Street that was part of the City’s Lake Merritt Park Improvement/12th Street Reconstruction Project funded by Measure DD. The Property is currently owned by the City.

The Property is bounded by East 12th Street on the east, by Second Avenue and Oakland Unified School District (OUSD)-owned property on the south, open space to the west, and by Lake Merritt Boulevard to the north.

The Oakland Redevelopment Agency (Agency) acquired the Property from the City on June 16, 2011, for the purpose of guiding development of this key site through a disposition and development agreement. In January 2012, all redevelopment agencies in the State of California were dissolved, and the Oakland Redevelopment Successor Agency (ORSA) became the Successor Agency to the Agency. In February of 2012, with the dissolution of the Agency, the Property was transferred to ORSA. On April 7, 2014, ORSA transferred ownership of the Property back to the City pursuant to a directive from the California State Controller.

The Phase I Project proposed by EBALDC will meet the requirements of the Surplus Land Act under Section 37364 of the Health and Safety Code, which requires that:

- It will provide housing affordable to persons and families of low or moderate income, as

defined by Section 50093 of the Health and Safety Code.

- Not less than 80 percent of the area of the parcel will be used for the development of housing.
- Not less than 40 percent of the total number of those housing units will be affordable to households whose incomes are equal to or less than 75 percent of the maximum income of lower-income households, and at least half of which shall be affordable to very low income households, as defined in Sections 50079.5, 50093, and 50105 of the Health and Safety Code; and
- Dwelling units will be restricted by regulatory agreement to remain affordable for at least 30 years, which must be recorded on the land, with a provision making the covenants and conditions of the agreement binding upon successors.

## **B. Original Disposition Offering History**

On July 14, 2015, the City released a Notice of Availability (NOA) for the Property, which was sent to local public entities, housing sponsors, and additional requestors. The City Council instructed staff that their preference was for a proposal that provided at least 25 percent of the units at below market rate rents (BMR), maximized the total number of units to be developed on the site, and maximized community benefits. A team consisting of a market-rate developer and EBALDC was selected through this process.

The previously proposed project consisted of 360 residential units across two buildings built atop a parking garage, with a shared common hallway (Original Project). EBALDC's for-profit development partner was responsible for the construction of a tower including 252 market-rate units and 18 moderate-income units and a parking garage. EBALDC's affordable housing component included a mid-rise, 6-story building with 91 units affordable to extremely low and low-income households earning 30 percent to 80 percent of AMI.

By June 2020, EBALDC had secured all project financing, including federal and state tax credits, a tax-exempt bond allocation, and \$21.2 million in State Affordable Housing and Sustainable Communities (AHSC) funding and Infill Infrastructure Grant (IIG) funds. By November 2020, EBALDC was prepared to close on construction financing for the affordable housing component, but EBALDC's for-profit development partner had not secured all funding for the market-rate tower. Although the previous project's layout involved a legally separated, EBALDC-owned residential condominium, the design also included podium parking and common spaces shared with the market-rate tower, which made the teams reliant on each other's timing and sequencing for closing all financing and starting construction. The Original Project did not move forward. EBALDC continued to work on the affordable housing development as a separate standalone building and has submitted plans to the City for this updated version.

On July 19, 2022, the Council, pursuant to Resolution No. 89333, authorized an ENA between the City and EBALDC for the development of affordable housing on Parcel 1. EBALDC has completed the milestones of the ENA, and City staff is now seeking Council approval to enter into an LDDA and a Lease with Developer.

Pursuant to Council direction, the City has also solicited a 100 percent affordable housing proposal from Satellite Affordable Housing Associates (SAHA) for the remaining portion of the Property (Parcel

2). Staff anticipates returning to the City Council in April 2023 with a recommendation for an ENA between the City and SAHA.

**ANALYSIS AND POLICY ALTERNATIVES**

**Current Project**

EBALDC is now proposing to produce the same affordable housing program as planned for the Original Project, but as a standalone, 91-unit building on a portion of the site. The new layout entails constructing the affordable residential building at grade, rather than atop a podium parking garage.

The Phase I Project satisfies the requirements of the SLA because

- One hundred percent (100%) of the area of Parcel 1 will be used for the development of housing affordable to lower income households.
- Not fewer than 77 units (85%) will be affordable to households whose incomes do not exceed 75 percent of the maximum income of lower-income households, of which 27 units will be affordable to very low-income households, exceeding the minimum requirement of 18 very low-income units.
- All dwelling units will be restricted by regulatory agreement (Regulatory Agreement) to remain affordable for 55 years, which must be recorded on the land, with a provision making the covenants and conditions of the agreement binding upon successors. Execution and recordation of the Regulatory Agreement will be a condition to convey the Ground Lease and will occur at the time of the financial closing, as noted below.

As shown below in **Table 1**, ninety (90) residential units at the Project will only be made available to households earning between thirty percent (30%) and eighty percent (80%) of Alameda County’s AMI. One (1) unit will be set aside as an unrestricted manager’s unit. The unit mix and affordability levels will be documented through a Regulatory Agreement used by the City for its affordable housing projects.

**Table 1: East 12<sup>th</sup> Street Remainder: Affordability Level of Housing Units**

| Unit Type     | 30% AMI | 50% AMI | 60% AMI | 80% AMI | MNGR | Total |
|---------------|---------|---------|---------|---------|------|-------|
| Studio        | 18      | 0       | 18      | 6       |      | 42    |
| One-Bedroom   | 7       | 0       | 17      | 4       | 1    | 29    |
| Two-Bedroom   | 1       | 0       | 12      | 3       |      | 16    |
| Three-Bedroom | 1       | 0       | 3       | 0       |      | 4     |
| Total         | 27      | 0       | 50      | 14      |      | 91    |

**Project Funding to Date**

EBALDC has already invested \$5 million to cover predevelopment costs to build the planned 91-unit

project. EBALDC also secured an extension for approximately \$18.1 million in AHSC funding from the California Strategic Growth Council (SGC), and for \$3.1 million in IIG funding from the California Department of Housing and Community Development (State HCD), provided the proposed Project moves forward. In addition to applying for tax credit and bonds, EBALDC will also pursue other funds.

The City, EBALDC, Bay Area Rapid Transit (BART), and AC Transit are co-applicants and sub-grantees for the AHSC funding. \$2.5 million of the \$18.1 million AHSC funding award will directly support sustainable transportation infrastructure and related amenities including:

- Street improvements, streetlights, and a bike share system
- Bay Area BART faregate and bike channels
- AC Transit bus and bike share passes

If the City and EBALDC do not move forward with the LDDA and Lease, and EBALDC is unable to apply for tax credit and bond financing by February 7, 2023, the City will lose the approximately \$21.2 million in State funding for affordable housing and transportation improvements. This is a significant amount of funding, nearly double the amount of funds projected to be available annually for the Housing & Community Development's Notices of Funding Availability starting in 2023.

### **LDDA and Ground Lease Terms**

The proposed LDDA will have a term of two (2) years, plus one (1) one-year administrative extension option. Under the LDDA terms, the City will lease the Property to EBALDC only upon Developer's satisfaction of the closing conditions set forth in the LDDA, including the Developer's ability to close on its financing to construct the Project (Financial Closing).

The Property has a fair market value (FMV) of \$4,000,000 and a related fair market rental value (FMRV) of \$195,000. Under the proposed Ground Lease, rent to the City will be structured as follows:

- First, there will be base rent of \$1 per year to be prepaid for the 99-year term in the amount \$99 on the Lease commencement date.
- Second, there may be additional rent payments as follows:
  - a) Annual ground rent of \$195,000 (**Ground Rent Payment**) with rent payments that cannot be made in any year to be deferred for the Ground Lease term with simple interest at three percent (3%); or
  - b) Annual debt service on a loan in the amount of the Property's \$4,000,000 FMV from the City to the Developer ("**Ground Rent Loan**"). The Ground Rent Loan shall have a term of fifty-five (55) years from permanent loan conversion and a simple interest rate of three percent (3%).

If the rent is satisfied through the Ground Rent Payment or the Ground Rent Loan, the Developer will make any such payments to the City from the Project's residual receipts on a pro-rata basis with other public lenders providing financial assistance, in accordance with the provisions of Section 8314 of the Uniform Multifamily Regulations (Cal. Code Regs. Title 25, Division 1 Chapter 7, Subchapter 19). "Residual receipts" mean Project cash flow remaining after payment of required Project expenses and

fees, including, debt service, operating expenses, required reserves, and payment of developer fees, asset management fees, and partnership management fees in amounts to be specified.

The final LDDA and Lease will incorporate these terms and be in a form approved by the City Attorney's Office. Alternative lease payments may be negotiated resulting from funding source requirements, which may require additional City Council approval.

### **Project Developer**

EBALDC is an Oakland-based nonprofit organization, with 47 years of community development experience owning and operating affordable housing buildings in Oakland. EBALDC has deep experience building affordable housing and serving the Oakland community. EBALDC has built more than 2,300 units of affordable housing and 300,000 square feet of community-serving retail and office space – and serves more than 4,000 families annually through its service programs. In response to the Covid-19 pandemic, EBALDC provided 10,300 meals and grocery runs and 1,700 wellness calls to needy residents.

### **Community Benefits**

The proposed development will turn a vacant and underutilized property into a vibrant affordable housing development. The Project will provide much needed affordable housing for the City and will act as a catalyst to further transform the area and provide a positive stimulus to the neighborhood.

Approval of the recommended actions would advance the Citywide priority of **housing, economic, and cultural security** by providing 91 units of affordable housing available to low-income households.

### **FISCAL IMPACT**

The Developer will make a one-time prepayment \$99.00 based on \$1.00 per year for the 99-year lease term plus either a) a Ground Rent Loan payment based on the \$4,000,000 FMV of Parcel 1 to be paid from the project's residual receipts on a pro-rata basis with other public lenders providing financial assistance. The ground rent loan will have a 55-year term starting from permanent loan conversion and will carry a simple annual interest rate of three percent (3%), or b) annual fair market Ground Rent Payments of \$195,000 to be paid to the extent annual cash flow is available and with any amount that cannot be made from annual cash flow accruing from year to year with interest at three percent (3%).

Rent payments from the Project will be restricted to the Central District Project Area and deposited in City Entity (1), Miscellaneous Capital Projects Fund (5999), Central District Redevelopment Organization (85245), Land Rental: Misc. Account (44219), Downtown Redevelopment Program (SC13), in a new Project to be established.

EBALDC will bear sole responsibility for all costs associated with developing the Project for approval, including consultant fees, permitting fees, legal fees, financing expenses, etc. The eventual lease and development of Parcel 1 is expected to yield residual lease payment revenues and the eventual return of Parcel 1 to the City after the lease term. Any ongoing property tax revenue to the City from a 100 percent affordable project would be minimal due to such units being exempt from property tax.

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## **PUBLIC OUTREACH / INTEREST**

During the ENA process, EBALDC held outreach and community meetings including: a) attending a School Backpack Drive held in August 2022 at La Escuelita and handed out surveys and information about the project to parents; b) conducted a school survey from August through September 2022 with responses from approximately 20 Dewey faculty; c) attended all-hands meetings hosted by Council President Bas with EBALDC, SAHA, OUSD, and Community Group representatives in August and December 2022; and d) held a meeting with OUSD in August 2022 and plans another meeting with OUSD in March or April 2023. All these activities were required in the ENA and are part of the Schedule of Performance.

## **COORDINATION**

The Economic and Workforce Development Department has coordinated on this agenda item with the City Administrator's Office, the Housing and Community Development Department, the Planning and Building Department, the Office of the City Attorney, and the Budget Bureau.

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** EBALDC's proposed Project will transform vacant underutilized land into a residential development that will provide much-needed affordable housing units and further stimulus to the local economy. Development of Parcel 1 is expected to generate construction jobs and permanent jobs.

**Environmental:** Development of Parcel 1 is expected to maximize the potential use of Parcel 1 while being environmentally sensitive with its design, use of materials and operations. The proposed development is near multiple transportation options, which will encourage residents to use BART and AC Transit and reduce automobile reliance, decreasing the use of fossil fuels and resulting greenhouse gas emissions. Additionally, as part of the AHSC grant award, Oakland Department of Transportation (OakDOT) will receive \$1,065,053 for pedestrian improvements along 10th Street and International Boulevard and a new bike share station, in partnership with Motivate, an operations and logistics support organization in the micro-mobility industry.

**Race & Equity:** The Project will provide 91 units of deeply affordable housing for low-income residents, who are disproportionately people of color nationally and in the Bay Area. The project additionally will bring investment to an underserved neighborhood, reducing blight through a high-quality development.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The City Council hereby finds and determines, on a separate and independent basis, (1) that pursuant to Government Code Section 65651(b)(2), the City's review and approval of the Parcel 1 Project, which consists of affordable housing, including approximately 30 percent supportive housing, shall not constitute a "project" for purposes of the California Environmental Quality Act ("CEQA") (Section 21000 et seq. of the Public Resources Code) and therefore shall not be subject to CEQA review, and (2) that the anticipated environmental effects of the Project have been adequately evaluated by the Lake Merritt Station Area Plan Final Environmental Impact Report (Final EIR) (certified November 2014); the Project is consistent with a Community Plan, General Plan or Zoning under Section 15183 of the State CEQA

Guidelines (Projects consistent with a Community Plan, General Plan or Zoning); and the Project complies with Section 15183.3 of the State CEQA Guidelines (Streamlining for Infill Projects); further, the Project is exempt from CEQA under the following Sections of the State CEQA Guidelines: Section 15601(b)(3) (Common Sense Exemption), Section 15268 (Ministerial Projects), and Section 15332 (In-Fill Development Projects).

**ACTION REQUESTED OF THE CITY COUNCIL**

For questions regarding this report, please contact Jens Hillmer, Development Area Manager, at 510-238-3317.

Respectfully submitted,



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Attachments (#2):

Attachment A: LDDA Term Sheet

Attachment B: Ground Lease Term Sheet