



# AGENDA REPORT

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

**FROM:** Alexa Jeffress  
Director EWD

**SUBJECT:** 95<sup>th</sup> & International Blvd  
LDDA & Ground Lease

**DATE:** July 28, 2020

City Administrator Approval

Date: July 22, 2020

## RECOMMENDATION

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

- 1) Approving The Proposed Terms Of A Lease Disposition And Development Agreement, A Seventy-Five Year Ground Lease For A 55-Year Capitalized Loan Value In The Amount Equal To Or No Less Than \$1,210,000, With Fully Deferred Payments, And Related Documents (Collectively, "Disposition Documents") With 95th & International Housing Partners, L.P., And/Or Affiliated Entities ("Developer") For The Development At 95th Avenue & International Boulevard On City Owned Parcels Currently Designated As Assessor's Parcel Numbers 044-4967-002, 044-4967-003, 044-4967-004-02, 044-4967-004-03, 044-4967-005, 044-4967-007-01, 044-4967-009 With Frontage On International Boulevard Between 94th And 95th Avenues (Collectively, "City Property");**
- 2) Approving The Proposed Conveyance Of Privately-Owned Parcel Currently Designated As Assessor's Parcel Number 044-4967-001 ("Private Parcel") From Developer To The City At No Cost; And**
- 3) Authorizing The City Administrator or His Designee To Negotiate And Execute The Final Disposition Documents, Including The Grant Deed Conveyance Of The Private Parcel To The City, And The Ground Lease Conveyance Of The Combined City Property And Private Parcel To Developer For The Proposed Development.**

## EXECUTIVE SUMMARY

The 95th & International Affordable Housing Project (the Project) is a proposed 100 percent affordable housing development project in East Oakland, with frontage on International Boulevard, between 94th Avenue and 95th Avenue. The Project will consist of fifty-five (55) affordable rental units for households with incomes between twenty percent (20%) and fifty percent (50%) of County of Alameda Area Median Income (AMI), approx. 2,500 square feet of ground floor retail space, and up to 33 parking spaces that will be shared between the residential and commercial uses. Acts Community Development, a California non-profit public benefit corporation (Acts) and Related/95<sup>th</sup>&International Development Co., LLC, an affiliate of The Related Companies of California, LLC, a California limited liability company (Related), have

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jointly formed 95<sup>th</sup> & International Housing Partners, L.P., a California limited partnership, which will be the legal developer entity advancing the Project (the Developer).

City Council previously authorized an Exclusive Negotiating Agreement (ENA) pursuant to Resolution No. 87107 C.M.S., and amended by Resolution No. 87858 C.M.S., with the Developer. Staff recommends adoption of the proposed ordinance to authorize the City Administrator or his designee to negotiate and execute a Lease Disposition and Development Agreement (LDDA) on the terms noted below, and upon satisfaction of the conditions set forth in the LDDA, a Ground Lease, to move forward with the development of the Project.

### **BACKGROUND/LEGISLATIVE HISTORY**

The Project is the proposed new construction of a 55-unit multi-family affordable housing community, located in East Oakland with frontage on International Blvd., between 94<sup>th</sup> Avenue and 95<sup>th</sup> Avenue (see **Attachment A**, referred to as the Property). The development will be approximately 32,200 square feet (0.74 acres) in size. Pursuant to Resolution No. 87107 C.M.S., the City entered into an ENA with the Developer on March 20, 2018 (extended thereafter per Resolution No. 87858 C.M.S.). The ENA will expire on September 20, 2020.

The Project is the second phase of a larger redevelopment effort designed to revitalize a part of the Elmhurst neighborhood along the International Blvd corridor. In 2018, the same Developer completed the Acts Cyrene Apartments at 94<sup>th</sup> and International Blvd., a similar affordable housing project containing fifty-nine (59) units and located directly across the street from the Property. The Property is conveniently located approximately 1.5 miles from both Interstate 880 and Interstate 580, with public transit easily accessible and within short walking distance to a new bus stop for the Bus Rapid Transit (BRT) route that is currently under construction.

A combined, comprehensive community outreach strategy for both phases was conducted in the Elmhurst neighborhood, and the Project was generally well-received by residents, community leaders, neighborhood organizations, and local officials, as it will add urgently-needed affordable residential units to help alleviate Oakland's ongoing shortage of housing, especially near transit-rich locations.

The Project will consist of one four-story building and will include ground floor commercial space of approximately 2,500 square feet, that fronts International Blvd (see **Attachment B**). Approximately 60,000 gross square-feet in size, the building will be bounded by 94<sup>th</sup> Avenue to the north, International Blvd to the east, residential single-family homes to the west, and 95<sup>th</sup> Avenue to the south. The residential unit mix will contain three (3) studio / one-bathroom units, twenty-four (24) one-bedroom / one-bathroom units, fourteen (14) two-bedroom / two-bathroom units, and fourteen (14) three-bedroom / two-bathroom units. Residential amenities will include a community room, bike storage, laundry room, computer lab, tot lot, open space areas, and patios/balconies. All of the dwelling units at the Project will be rented to persons whose incomes range between twenty percent (20%) and fifty percent (50%) AMI, and the units will be subject to a recorded regulatory agreement with the City.

The Project was designed by Studio T Square Architects, an Oakland-based architecture firm. It received entitlements in October 2018. The Developer has plans to close financing and

commence construction in Spring 2021. Construction of the Project should take approximately eighteen (18) months, with anticipated completion to occur in Summer 2022.

### **Parcel Acquisition and Current Condition**

In 2011, after significant engagement with the East Oakland community, the former Oakland Redevelopment Agency (the Agency) spent a total of \$1,227,038 to purchase seven of the eight contiguous parcels comprising the Property, pursuant to Resolution No. 2011-0056 C.M.S. (approved July 5, 2011). Those parcels include:

- 9409 International Blvd. or APN 044-4967-002;
- 9415 International Blvd. or APN 044-4967-003;
- 9423 International Blvd. or APN 044-4967-004-03;
- 9431 International Blvd. or APN 044-4967-005;
- 9437 International Blvd. or APN 044-4967-007-01;
- 1361 95th Avenue or APN 044-4967-004-02; and
- 95th Avenue with no street address or 044-4967-009

The eighth parcel (Corner Parcel), located at 9401 International Boulevard (APN: 044-4967-001), was purchased by the Developer on September 16, 2019, for \$495,000 with assistance from the City of Oakland's Naturally Occurring Affordable Housing (NOAH Loan) program. The NOAH Loan in the amount of \$495,000 will either be rolled into the \$6,868,659 City of Oakland NOFA residual receipts loan, administered by the City's Housing and Community Development Department (HCD), or paid back in a one-time payment at construction loan closing of the Project. The Property along with the Corner Parcel is referred to, collectively, as the Project Site.

The Project Site previously contained a number of separate, freestanding structures in blighted and dilapidated condition, which the former Agency had demolished and cleared from the site. Except for a two-story building that sits on the eighth parcel, the Project Site is currently vacant and secured with chain link fencing. The two-story building will be demolished and cleared prior to construction.

### **LDDA and Ground Lease Terms for Project**

Under the proposed LDDA terms, the City of Oakland will 1) acquire title to the Corner Parcel and then immediately lease the Property to the Developer, under a ground lease (Title Closing). These conveyances will occur only upon Developer's satisfaction of the closing conditions set forth in the LDDA, including Developer's ability to close on its financing to construct the Project (Financial Closing). At the Financial Closing, the Developer will transfer substantially all of its limited partnership interest to a tax credit investor and advance the Project. The Financial Closing and the Title Closing will be scheduled to occur on the same day, or within close proximity of each other if required by the tax credit investor, in an appropriate sequence.

The ground lease payment to the City will be in the form of a capitalized loan of \$1,210,000 payable through residual receipts received from the Project. The \$1,210,000 loan amount represents the current Fair Market Value (FMV) of the Property based on an independent appraisal, dated February 7, 2020 by Turkull & Associates, a Member Appraisal Institute (MAI) appraiser. The City will commission another independent appraisal prior to the Financial Closing and base the Capitalized Ground Rent Loan on whichever appraised FMV is higher. Since the Developer will be conveying the Corner Parcel to the City at no cost, the FMV of the Corner Parcel (\$495,000) will not be added to this capitalized loan. The specific terms of the LDDA and ground lease (Ground Lease) are shown on the attached Term Sheet negotiated by Staff with Developer (see **Attachment D**). The final LDDA and Ground Lease will incorporate these terms and be in a form approved by the City Attorney's Office.

### **Environmental Site Conditions**

In 2017, a Phase I environmental site assessment was conducted by Iris Environmental on the City Property. The report did not find any evidence of any hazardous substance or petroleum products on or at the City Property, but it should also be noted that the findings did not consider any significant conditions as recognized environmental conditions. In addition, in December 2018, a Phase I environmental site assessment was conducted on the Corner Parcel by Ninyo & Moore. Based on historical data examined from Sanborn Maps, the report found evidence of prior distill and oil tanks located at the rear of the site. Ninyo & Moore also conducted a Phase II environmental site assessment at the location in December 2018 and discovered certain soil contaminants of potential concern. As a result, the Developer will be required, at its sole cost and expense, to perform the remediation required to address all environmental concerns relating to the Property.

The remediation work will be performed by the Developer as a part of the construction activities. So, the anticipation is that the City will accept conveyance of fee title of the Corner Parcel and then the City will convey the Ground Lease for the Corner Parcel, along with the City Property, to Developer. As noted below, these conveyances will occur only after the conditions precedent to closing outlined in the LDDA have been satisfied. While the City will be on record title to the Corner Parcel (and hence potentially liable for the contamination on this parcel), the Developer has agreed to indemnify and hold harmless the City from all claims related to this environmental contamination. In addition, the Developer will be required to obtain written approval from the Department of Public Works Environmental Services Division prior to commencing the remediation work. Further, this work shall be performed pursuant to and in accordance with any and all applicable rules and regulations of the County of Alameda Department of Health Services and any others imposed by any agency having jurisdiction over the Property.

### **Unit Mix, Income Targeting and Regulatory Agreement**

As shown below in **Table 1**, residential units at the Project will be made available to households earning between twenty percent (20%) and fifty percent (50%) of Alameda County's AMI. Eleven (11) of the units will be available to households earning up to twenty percent (20%) of AMI with tenants placed using Alameda County's Coordinated Entry System, three (3) of the units will be available to households earning up to thirty percent (30%) of AMI, five (5) units will

be available to households earning up to forty percent (40%) of AMI, and the remaining thirty-five (35) units will be available to households earning up to fifty percent (50%) of AMI. One (1) unit will be set aside as an unrestricted on-site manager unit. The unit mix and affordability levels will be documented through a regulatory agreement, in the most current form used by the City for its affordable housing projects (Regulatory Agreement). Execution and recordation of the Regulatory Agreement will be a City's condition to convey the Ground Lease and will occur at the time of the Financial Closing, as noted above.

**Table 1: 95th and International: Affordability Level of Housing Units**

<b>Affordability</b>	<b>Total Units</b>	<b>Percent of Total</b>
20% AMI	11	20.4%
30% AMI	3	5.6%
40% AMI	5	9.3%
50% AMI	35	64.7%
Manager	1	N/A
<b>Total</b>	<b>55</b>	<b>100%</b>

### **Legislative History/Previous Approvals**

The Agency approved Resolution No. 2011-0056 C.M.S. on July 5, 2011 to authorize staff to purchase the Property, as listed above.

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 pursuant to the Long-Range Property Management Plan (LRPMP) approved by the California Department of Finance. As a result, in May 2014, most of the properties owned by the Agency were transferred to the ORSA.

Pursuant to Resolution No. 87107 C.M.S approved on March 20, 2018, the City, acting as ORSA, entered into an Exclusive Negotiating Agreement (Original ENA) with Acts and Related for the Property, or approximately 0.66-acres of the 0.74 total Project area. On September 17, 2019, the City Council authorized Resolution No.87858 C.M.S. to amend and restate the ENA with 95th & International Housing Partners, L.P. (this is the same development team identified under a new entity name), for development of the Project as well as to extend the term of the ENA to September 20, 2020.

### **Project Developers**

#### *Acts Community Development Corporation*

Acts was founded in 2002 with a mission to improve East Oakland's neighborhoods and provide affordable housing in underserved areas of Oakland. Acts is an affiliate of Acts Full Gospel Church, a longstanding and respected institution in Oakland that has spearheaded many community improvement efforts in local underserved communities over the last 30 years.

### *Related Companies of California*

Related Companies of California is one of the largest developers of urban and affordable housing in California. The company's development portfolio includes over 10,000 units of multifamily housing that have been completed or are currently under development. Nearly all of Related's development projects involve some form of public/private partnership. Related Management Company (RMC), an affiliate of Related formed in 1974, currently manages developments located in ten states across the U.S. RMC maintains regional and district offices across the U.S. The Irvine, CA office for RMC will be responsible for the property management of the Project.

### **ANALYSIS AND POLICY ALTERNATIVES**

A summary report is required under California Government Code Section 52201 (Section 52201) before a property under the LRPMP is sold or leased for economic development purposes. Century Urban Advisory, an urban economics consulting firm, was retained by the City to provide the summary report for the lease of the property (see **Attachment C**). The summary report addresses the requirements of Section 52201 and provides information and analysis on the cost of acquisition, lease and assembly of the site, the appraised value, verification of the assumptions provided in the Developer's pro forma, and other requirements that meet the conditions as stated in Section 52201.

### **Funding Sources**

Financing will include tax-exempt bonds combined with four percent (4%) tax credits, a City of Oakland NOFA Residual Receipts Loan, an Alameda County A1 Residual Receipts loan, a City of Oakland Carryback Loan, Conventional Permanent Loans, and Section 8 Project-based Vouchers (PBVs) from the Oakland Housing Authority (OHA). In addition, the Developer, in partnership with the City of Oakland, applied for a Transformative Climate Communities (TCC) Grant from the State of California Strategic Growth Council (SGC) and were recently notified of a grant award in the amount of \$13.5M for the Project.

The Developer applied for funding under the City's 2017 NOFA administered by HCD, and a residual receipts loan in the amount of \$6,868,659 was committed to the Project and approved by City Council on December 11, 2018 per Resolution No. 87470 C.M.S.

The Developer applied for \$956,341 from the Alameda County Measure A1 Fund under the Oakland Base Allocation in November 2018. An Alameda County residual receipts loan made up of City Base Allocation funds was awarded and approved by City Council on February 5, 2019 per Resolution No. 87521 C.M.S., and further approved by the County Board of Directors on January 29, 2019. This loan will be issued and administered by the County of Alameda, Housing & Community Development.

The Developer applied for Section 8 PBVs from OHA on March 13, 2019, and received OHA Board approval on April 29, 2019 for twenty-seven PBVs for the Project. The Developer also

started the National Environmental Protection Act (NEPA) clearance process in July 2019 and received NEPA clearance from the U.S. Department of Housing and Urban Development (HUD) in the form of an Authority to Use Grant Funds letter for the PBVs on February 27, 2020. The twenty-seven PBVs generate approximately \$5,251,000 in additional Conventional Permanent Loan proceeds.

As a part of the Ground Lease terms, the City of Oakland will loan the Project the FMV of the Property, in the form of a residual-receipts carryback loan. These seven parcels, together, are currently valued at \$1,210,000, but remain subject to further appraisal.

The Developer anticipates applying for an allocation of tax-exempt bonds from the California Debt Limit Allocation Committee (CDLAC) and a reservation of four percent (4%) low-income housing tax credits from the California Tax Credit Allocation Committee (TCAC) in 2020. The tax-exempt bonds will be used to finance the Project during construction. The tax-exempt bonds, the Tax Credit Equity generated by the four percent (4%) tax credits, and a Conventional Permanent Loan will be provided by a private lender, anticipated to be Union Bank, N.A.

Finally, the Developer will defer \$1,500,000 of their developer fee. **Table 2** below summarizes all of the funding sources proposed to date:

Transformative Climate Communities Grant	\$13,560,000
City of Oakland HCD Residual Receipts Loan	\$6,868,659
Alameda County A1 Residual Receipts Loan	\$956,341
City of Oakland EWD Carryback Loan	\$1,210,000
Tax Credit Equity (Private Investor TBD)	\$14,307,843
Conventional Permanent Loan (Private Lender TBD)	\$5,251,000
Deferred Developer Fee	\$1,500,000
<b>Total Permanent Sources</b>	<b>43,653,843</b>

### **Ground Lease and Loan Terms**

In lieu of requiring an annual Ground Lease payment, the City would receive a promissory note (Note), preferred because other project funding sources would take a senior position over any lease payments. Moreover, if the lease payment was based on the Developer's profits or gross receipts, the City could potentially be considered an equity partner under federal tax law, thereby jeopardizing the delivery of the tax credits to the tax credit investor. Thus, in an effort to keep all external funding sources in place while still maximizing the amount paid to the City for its land contribution, the ground rent is being restructured as a capitalized ground rent loan.

Under this approach, the City would be repaid via "residual receipts" in annual payments over the term of the 55-year loan with a simple interest rate of three percent (3%), or such other interest rate as may be feasible based upon Project cash flow. The Developer would make payments on the loan evidenced by the Note on an annual basis from the Project's residual

receipts on a pro rata basis with other public lenders in a manner consistent with the applicable provisions of the California Department of Housing and Community Development Uniform Multifamily Regulations (California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19), including Section 8314(a)(2)(A) and (B) thereof. Under the Ground Lease, "Residual Receipts" would be defined as "Project cash flow remaining after payment of required Project expenses and fees, including, without limitation, debt service, operating expenses, required reserves, and payment of developer fees, asset management fees, and partnership management fees in amounts to be specified." The City's loan will remain unsecured and subordinated to the senior lending.

### ***Community Benefits***

The proposed development will turn a vacant and underutilized property into a vibrant affordable housing mixed-use development. The Project will provide much needed affordable housing for the City of Oakland and will act as a catalyst to further transform the area and provide a positive stimulus to the neighborhood. The specific blocks along International Boulevard identified for the Project were also studied in the City's International Boulevard Transit-Oriented Development Plan. Alameda-Contra Costa Transit District (AC Transit) is in the process of completing the BRT line along International Boulevard, and one of the future stops will be located right next to the Project at 95th Avenue and International Blvd. The Developer will pay prevailing wages throughout the entire construction phase pursuant to California State law.

### **FISCAL IMPACT**

#### ***Anticipated Fiscal and Economic Benefits to the City/Community***

Ground Lease- Starting in year one of the lease, the Developer will begin accruing interest based on a Capitalized Loan valued at no less than \$1,210,000 to the City of Oakland. However, based on the Developer's latest pro forma and cash flow projections, the project does not anticipate making annual payments to the City and any of the other soft lenders until year 17 of operations. The capitalized 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. The \$1,227,038 in bond funds used for the original purchase of the property are restricted by bond covenants for redevelopment activities with the Coliseum Redevelopment Project Area. Therefore, residual receipts from the Project will be restricted to the Coliseum Project Area and deposited in Entity (1), Coliseum Bond Series 2006B-T Taxable Fund (5656), CIP Coliseum Organization (94859), Land Rental: Misc. Account (44219), Coliseum Program (SC12), and a Project to be determined later for appropriation.

### **PUBLIC OUTREACH / INTEREST**

The Property is located in the former Coliseum Redevelopment Project Area. A series of community meetings were held to solicit feedback from the neighborhood residents, and in the past community members have been overwhelmingly supportive of the project. The City and former Redevelopment Agency have worked with the Property owners and various development teams on this Project for over a decade, to realize the vision of new mixed-use affordable



housing developments and vibrant commercial uses on both sides of International Boulevard between 94th Avenue and 96th Avenue. The specific community participants that were included in the community engagement process included local residents, businesses, neighborhood associations, schools, religious, civic, and non-governmental organizations, and local officials.

### **COORDINATION**

Staff from the Economic and Workforce Development Department (EWD), HCD, the Department of Planning and Building, and City Attorney's Office have collectively worked together with the Developer on the Project. Oakland Public Works, Environmental Services staff reviewed the environmental testing on the site that was conducted by the Developers' consultants. Finally, Real Estate Services and former Redevelopment Agency staff were directly responsible for the acquisition of the original seven vacant parcels in 2011.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** The proposed Project will complement and increase affordable housing opportunities in the Elmhurst neighborhood of East Oakland. The Project will improve neighborhood conditions and make the area more attractive to current and prospective residents, tenants, and businesses that can provide employment within Oakland.

***Environmental:*** The proposed Project is expected to contribute to smart growth by placing housing adjacent to transit services so that residents have easy access to public transportation.

***Race & Equity:*** The project will provide fifty-five (55) affordable residential units which are in great demand along International Boulevard in East Oakland and the City of Oakland.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND PLANNING APPROVALS**

The Project applied for entitlements in September 2018 and received entitlement approvals from the Oakland Planning and Building Department on October 23, 2018, based on Section 15332 of the State CEQA Guidelines for In-fill development and 15183 under Projects consistent with a Community Plan, General Plan, or Zoning (see ***Attachment E***). In order to include the possibility of a community health clinic on the ground floor, the Developer applied for a Conditional Use Permit with the Planning and Building Department, approved on February 26, 2020 by the Planning Commission and received an additional exemption under Section 15332 of the State CEQA Guidelines for In-fill development and 15183 under Projects consistent with a Community Plan, General Plan, or Zoning.

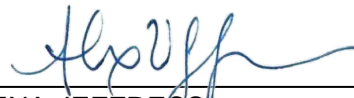
**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance:

- 1) Approving The Proposed Terms Of A Lease Disposition And Development Agreement, A Seventy-Five Year Ground Lease For A 55-Year Capitalized Loan Value In The Amount Equal To Or No Less Than \$1,210,000, With Fully Deferred Payments, And Related Documents (Collectively, "Disposition Documents") With 95th & International Housing Partners, L.P., And/Or Affiliated Entities ("Developer") For The Development At 95th Avenue & International Boulevard On City Owned Parcels Currently Designated As Assessor's Parcel Numbers 044-4967-002, 044-4967-003, 044-4967-004-02, 044-4967-4-03, 044-4967-005, 044-4967-007-01, 044-4967-009 With Frontage On International Boulevard Between 94th And 95th Avenues (Collectively, "City Property");
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- 3) Authorizing The City Administrator or His Designee To Negotiate And Execute The Final Disposition Documents, Including The Grant Deed Conveyance Of The Private Parcel To The City, And The Ground Lease Conveyance Of The Combined City Property And Private Parcel To Developer For The Proposed Development.

For questions regarding this report, please contact Rupa Parikh, Urban Economic Analyst III, at [rparikh@oaklandca.gov](mailto:rparikh@oaklandca.gov) or (510) 238-2970.

Respectfully submitted,



ALEXA JEFFRESS  
Director, Economic & Workforce  
Development Department

Reviewed by:  
Larry Gallegos, Development Area Manager

Prepared by:  
Rupa Parikh, Urban Economic Analyst III  
Public/Private Development

- Attachments (5):  
A: Aerial of site  
B: Project Rendering  
C: CA Gov. Code 52201 and 53803 Report  
D: LDDA Term Sheet and Ground Lease Term Sheet  
E: Planning Approval