


City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE (A) A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND LIBERATION PARK RESIDENCES, L.P., OR ITS AFFILIATES, FOR DEVELOPMENT OF 119 UNITS OF AFFORDABLE HOUSING ON A PORTION OF THE PROPERTY LOCATED AT 73RD AVENUE AND FOOTHILL BOULEVARD (“PARCEL 2”), WITH A TERM OF TWO AND ONE-HALF YEARS WITH TWO ONE-YEAR ADMINISTRATIVE EXTENSION OPTIONS, (B) A 99-YEAR GROUND LEASE, AND (C) A 55-YEAR CAPITALIZED LOAN IN THE AMOUNT EQUAL TO \$1,505,004; AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, the City of Oakland (“City”) owns a 1.22-acre parcel of land (APN 039-3291-020) located on the northwest corner of 73rd Avenue and Foothill Boulevard with an address of 7101 Foothill Boulevard, as more specifically described in the legal description attached hereto as Exhibit A (“Property”); and

WHEREAS, On July 21, 2020, the City Council adopted Resolution No. 88233 C.M.S., declaring the Property as “surplus land” pursuant to the Surplus Land Act (“SLA”), California Government Code Section 54220(b)(1), and authorizing the City Administrator to issue a Notice of Availability (“NOA”) to solicit development proposals for the disposition and development of the Property; and

WHEREAS, on October 26, 2020, the City issued an NOA for the Property, and a development team including the Black Cultural Zone Community Development Corporation (“BCZ”), the Community Arts Stabilization Trust (“CAST”), and Curtis Development (“Curtis”) (collectively, the “Original Developer”) submitted a proposal to build Liberation Park Mixed-Use Development, an affordable housing and commercial project (“Project”); and

WHEREAS, on August 25, 2021, the California Department of Housing & Community Development determined that the City met all requirements under the SLA for the purpose of disposing of the Property for the development of the Project; and

WHEREAS, on February 10, 2022, the City Administrator, pursuant to Resolution No. 88873 C.M.S., dated October 19, 2021, executed that certain Exclusive Negotiating Agreement (“ENA”) between the City and the Original Developer for the proposed development of the Project; and

WHEREAS, on July 11, 2023, the City Administrator executed a First ENA Amendment to remove Curtis from the Original Developer and add Eden Housing, Inc. (“Eden”), pursuant to Section 11 of the ENA; and

WHEREAS, the Original Developer has established two (2) separate entities for the development of the Project: Liberation Park Residences, L.P., an affiliate of BCZ and Eden (“Residential Developer”), for the affordable housing, and Liberation Park Market Hall, Inc., an affiliate of BCZ and CAST (“Commercial Developer”) for the commercial project; and

WHEREAS, the Residential Developer is proposing to construct a six-story residential building with rental 119 units, 118 of which would be affordable to households with incomes ranging from 20% to 60% of Area Median Income in Alameda County (“Residential Project”), and the Commercial Developer proposes to build a free-standing market hall and arts and cultural center with an adjacent courtyard and outdoor roller-skating rink (“Commercial Project”); and

WHEREAS, on January 27, 2023, the City’s Planning Bureau approved the entitlements for the Project (PLN 22196) pursuant to Government Code Section 65913.4 (also known as SB 35); and

WHEREAS, the Original Developer requested that the Property be subdivided into two legal Parcels: Parcel 2, comprising approximately 0.73 acres (“Parcel 2”), for development of the Residential Project, and Parcel 1, comprising approximately 0.49 acres (“Parcel 1”), for the development of the Commercial Project; and

WHEREAS, on May 24, 2023, the City Planning Bureau approved a Tentative Parcel Map to subdivide the Property into Parcel 1 and Parcel 2, which will not be recorded until execution of the Lease with the Residential Developer at closing; and

WHEREAS, on October 17, 2023, pursuant to Resolution No. 89947 C.M.S, the City Council approved a Second ENA Amendment extending the ENA term from October 19, 2023 to April 19, 2024, with one six-month administrative extension, to conclude negotiations of the transaction documents between the City and the Residential and Commercial Developers; and

WHEREAS, the City and the Residential Developer have negotiated proposed terms of a Lease Disposition and Development Agreement (“LDDA”) and Ground Lease (“Lease”) as reflected in the Term Sheets attached to the Agenda Report for this item; and

WHEREAS, Oakland Municipal Code (OMC) Section 2.42.180.A requires City property to be disposed at the fair market value, fair market rental value, or fair reuse value based on the City's assessment of the proposed development and use, prevailing market conditions and development climate at the time of disposition, and other economic and noneconomic factors, and if the amount is less than the fair market rental value, OMC Section 2.42.180.B requires that the City Council make a finding that the below market conveyance is in the best interest of the City; and

WHEREAS, as negotiated and reflected in the Term Sheets, Lease rent will consist of a one-time upfront payment in the amount of \$1,505,004 ("Rent") based on the proportional fair market value of Parcel 2, which payment will be financed with a loan from the City to the Residential Developer with a term of 55 years, a simple interest rate of three percent (3%), which will be repaid from annual residual receipts on a pro-rata basis with other public lenders providing financial assistance over the term ("Ground Rent Loan"); and

WHEREAS, the Rent as financed by the Ground Rent Loan represents the fair reuse value of Parcel 2, given the development of affordable housing, as further described in the Agenda Report; and

WHEREAS, concurrently with this Ordinance, City Council is considering an Ordinance to authorize a Development and Disposition Agreement ("DDA") with the Commercial Developer to construct the Commercial Project and sell Parcel 1 to the Commercial Developer for fair market value, and the Term Sheets specify that the Residential Project must begin construction before the DDA for the Commercial Project closes escrow; and

WHEREAS, The Project was approved subject to the streamlined, ministerial approval process for mixed-use affordable housing developments under Government Code Section 65913.4, commonly referred to as an SB 35 project, and the negotiation and approval of leases for the development of the Project are not subject to CEQA review pursuant to Government Code section 65913.4(k)(1) and Section 15268 (Ministerial Projects) of the State CEQA Guidelines;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby authorizes the City Administrator to (a) negotiate and execute the LDDA and the Lease substantially in accordance with the Term Sheets attached to the Agenda Report for this item for development of the Residential Project on Parcel 2; (b) negotiate and execute such other additions, amendments or other modifications to the foregoing documents that the City Administrator, in consultation with the City Attorney's Office, determines are in the best interests of the City, do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transaction contemplated by this Ordinance; and (c) to negotiate and execute such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to implement the LDDA and the Lease and development of the Residential Project on the Parcel 2 in order to consummate the transaction in accordance with this Ordinance, or to otherwise effectuate the purpose of this Ordinance and its basic purposes.

SECTION 2. The City Council hereby authorizes the \$1,505,004 Rent to be financed by a 55-year City Ground Rent Loan, with below market interest of 3% and deferred payments; and further finds and determines that (1) the Rent does not represent the fair market rental value, but the reuse rental value of Parcel 2, given the reuse restrictions associated with development of affordable housing, as required by the conditions, covenants, and development obligations in the LDDA and Lease, and (2) that it is in the best interest of the City to lease Parcel 2 to the Residential Developer at this below market Rent given the need to redevelop Parcel 2 into affordable housing for the benefit of the community.

SECTION 3. The City Council hereby finds and determines that Ground Rent Loan payments from the Residential Project will be accepted and deposited into City Entity (1), Central City East TA Bond Series 2006A-T Fund (5643), CIP Central City East Organization (94899), Miscellaneous Land Rental Account (44219), 73rd and Foothill Development Land Sale Project (1003727), Central City East Program (SC18).

SECTION 4. The City Council hereby finds and determines, on a separate and independent basis, that pursuant to Government Code Section 65913.4, the City's review and approval of the LDDA and Lease for the Residential Project, which consists of affordable 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 further, that the negotiation and approval of the Lease for the development of the Residential Project are not subject to CEQA review, pursuant to Government Code section 65913.4(k)(1) and Section 15268 (Ministerial Projects) of the State CEQA Guidelines.

SECTION 5. The agreements and the Ground Rent Loan authorized by this Ordinance are subject to City Attorney review and approval for form and legality, and a copy of this Ordinance shall be filed with the City Clerk without returning to Council.

SECTION 6. The recitals contained in this Ordinance are true and correct and are an integral part of the City Council's decision.

SECTION 7. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase there of irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 8. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise, it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk of the Council and City of
Oakland, California

NOTICE AND DIGEST

AN ORDINANCE AUTHORIZING THE CITY ADMINISTRATOR TO (A) NEGOTIATE AND EXECUTE A LEASE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND LIBERATION PARK RESIDENCES, L.P. (“RESIDENTIAL DEVELOPER”), OR ITS AFFILIATES, FOR DEVELOPMENT OF 119 UNITS OF AFFORDABLE HOUSING ON A PORTION OF THE PROPERTY LOCATED AT 73RD AVENUE AND FOOTHILL BOULEVARD (“PARCEL 2”), WITH A TERM OF TWO AND ONE-HALF YEARS WITH TWO ONE-YEAR ADMINISTRATIVE EXTENSION OPTIONS, (B) A 99-YEAR GROUND LEASE, AND (C) A 55-YEAR CAPITALIZED LOAN IN THE AMOUNT EQUAL TO \$1,505,004; AND ADOPTING CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

This Ordinance would authorize the City Administrator to enter into a Lease Disposition and Development Agreement (“LDDA”) and 99-year ground lease for the development of 119 units of affordable housing on approximately one half of a City-owned property located at 73rd Avenue and Foothill Boulevard in Oakland. The LDDA would have an initial term of two and one-half years, with two one-year extension options. The terms of the agreements would be substantially consistent with the negotiated term sheets attached to the Agenda Report for this Ordinance. The ground lease would be financed through a 55-year capital loan from the City in the amount of \$1,505,004, which is equal to the proportional fair market value of the Parcel 2. Payments on the loan would be at below market rate interest of 3%, with payments deferred until the project produces residual receipts. The Ordinance adopts findings that such below market rate loan is in the best interests of the City and that the project is not subject to further environmental review under CEQA.