



City of Emeryville

CALIFORNIA

MEMORANDUM

DATE: January 17, 2017

TO: Carolyn Lehr, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: 3706 San Pablo Avenue Affordable Housing Project

Resolution Of The City Council Of The City Of Emeryville Approving And Authorizing The City Manager To Commit To An Additional Development Loan In The Amount Of \$1,000,000 For A Total Loan Amount of \$4.5 Million Between The City Of Emeryville And EAH Inc., A California Nonprofit Public Benefit Corporation, For The Development Of Affordable Housing At 3706 San Pablo Avenue/1025 West Macarthur Boulevard, Emeryville, California

Resolution Of The City Council Of The City Of Emeryville Authorizing The Execution Of The State Of California Standard Agreement For The Affordable Housing And Sustainable Communities Grant Program In The Amount Not To Exceed \$100,000

RECOMMENDATION

Staff recommends that the City Council adopt the above-referenced resolutions relating to the 3706 San Pablo Avenue Affordable Housing Project.

BACKGROUND

Property Acquisition

In December 2010 and June 2011, prior to its dissolution, the Emeryville Redevelopment Agency purchased 3706 San Pablo Avenue and 1025 West MacArthur Boulevard, respectively, (the "Site") and assembled the two properties as a 1.2-acre parcel for an affordable housing development. At the time, the Site was improved with three buildings that had become blighted due to vandalism, dumping, graffiti and trespassing. On August 16, 2011, the City Council adopted Resolution No. 11-180, finding that the demolition of the buildings was in the best interest of the public health, welfare, or safety. On July 17, 2012, the Council accepted the demolition as complete.

The Site was acquired by the former Redevelopment Agency with funding from its Low and Moderate Income Housing Fund. Following dissolution of Redevelopment, the Site

was transferred from the Successor Agency to the City as Housing Successor, with the approval of the Emeryville Oversight Board and the California Department of Finance. Accordingly, the Site is a housing asset of the City as Housing Successor and must be developed with affordable housing.

Request for Qualifications/Proposals

On September 4, 2012, the City Council approved a Request for Qualifications/Proposals (RFQ/P) for redevelopment of the site as 100% affordable family housing. The City received nine responses to the RFQ/P, and on October 15, 2013, the Council selected EAH as the Developer and authorized the City Manager to negotiate an Exclusive Right to Negotiate Agreement (ERN) with them.

Project Description

The 3706 San Pablo Avenue Project (Project) includes 87 units, of which one is a three-bedroom market rate manager's unit and the other 86 units are affordable units. The 86 affordable units include 4 studios, 8 one-bedroom units averaging 680 square feet, 45 two-bedroom units averaging 950 square feet, 22 three-bedroom units averaging 1,290 square feet, and 7 four-bedroom units averaging 1,400 square feet. The units are stacked flats in a four-story wood framed structure over a parking podium with a brick façade, and will include five units intended to be designated as Housing Opportunities for Persons with AIDS (HOPWA) depending on funding. The residential units are arranged around the perimeter of the podium, creating a central courtyard of approximately 6,750 square feet for active and passive children's play equipment, landscaping and outdoor furniture. The main entrance to the Project is at the northwest corner where San Pablo Avenue and West MacArthur Boulevard intersect, with adjacent community space, and approximately 7,000 square feet of commercial space fronting San Pablo Avenue. The Project will provide approximately 102 parking spaces, including 87 resident spaces, 3 guest spaces, and 12 retail spaces. The building height is approximately 60 feet.

Exclusive Right to Negotiate Agreement

On June 23, 2014, the City entered into an ERN with EAH. Pursuant to the terms of the ERN, EAH has been undertaking predevelopment activities for the Project, including implementing a community input process on the proposed design; obtaining Planning Commission approvals; updating and submitting the development budget and pro forma to City staff for its review; submitting draft versions of the Property Management Plan, Supportive Services Plan, and Resident Services Plan; and undertaking geotechnical and environmental investigation of the Site.

Entitlements and Building Permits

The Site lies mostly in Emeryville, but partially in Oakland. The two cities entered into a Memorandum of Agreement on June 3, 2014 whereby it was agreed that Emeryville would take the lead on planning entitlements and building permits, under Emeryville

regulations. On January 22, 2015, the Planning Commission unanimously adopted Resolution No. UPDR14-001 and approved a Conditional Use Permit and Design Review for the Project, including a finding that the Project is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Section 15332 that applies to in-fill development, and also under Section 15061(b)(3), the “general rule” that CEQA does not apply to projects where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, based on traffic and visual simulation studies conducted for the Project. The Commission’s approval included modifications to the conditions of approval addressing design issues and the addition of motorcycle parking. A building permit application was submitted on September 26, 2016 and is currently under review.

Ground Lease Disposition and Development Agreement

On April 16, 2015, the City Council adopted Resolution No. 15-32 and the City entered into the Ground Lease Disposition and Development Agreement (DDA) with EAH. The key terms in the DDA are as follows:

Developer Obligations

- Construct a residential rental project with 87 units pursuant to the Conditional Use Permit and Design Review as approved by the Planning Commission.
- Submit a funding application to the California Tax Credit Allocation Committee (TCAC) no later than July, 2017.
- Provide the City with evidence of approval and funding of construction financing and the initial installment of tax credit equity no later than October 31, 2017.
- Prior to closing, secure all project approvals for development of the improvements and obtain firm commitments for debt and equity financing.
- Sign Ground Lease and Affordable Housing Covenant concurrent with close of escrow, to occur no later than January 31, 2018.
- Commence construction no later than 60 days after closing escrow and complete construction within 24 months after commencing construction.
- EAH shall ground lease the Site from the City in its “AS IS” condition. Accordingly, any environmental issues uncovered during the course of construction are the responsibility of EAH to address, and the DDA provides that EAH is releasing any claims it may have against the City. Note, as discussed below, the City has obligations to implement and complete the cleanup of the Site prior to close of escrow and ground lease of the site to EAH.
- Pay prevailing wages in connection with construction of the improvements.
- Provide 86 units of affordable housing for 55 years. One unit for the manager shall be unrestricted as to rent and income. Incomes for all but the manager's unit shall not exceed the respective income limits used to set rent limits at the time the units are first occupied.
- Submit property management, residential marketing, and supporting services plans to the City for approval.

- Maintain the improvements and landscaping on the site in a clean, orderly, and good condition.

City Obligations

- Lease the Site to the Developer for \$1 a year for 55 years.
- Prior to close of escrow and ground lease of the Site to EAH, City shall implement and complete the Site Cleanup Plan (SCP) approved by the Regional Water Quality Control Board (RWQCB) including post remediation monitoring. The SCP requires the City to record a Covenant and Environmental Restriction on Property in favor of the RWQCB which prohibits the use of groundwater beneath the Site.

Letter of Intent

On February 16, 2016, the City committed to providing a Development Loan in the amount of \$3.5 million to EAH (Resolution No. 16-16). The reason for the loan was to increase the Project's competitiveness for funding in the first round of 9% Low Income Housing Tax Credits administered by the California Tax Credit Allocation Committee (TCAC) in 2016. The strategy was effective and the Project was awarded tax credits. One of the reasons for seeking award of tax credits as soon as possible was the alarming rate of increase of construction costs, making it advantageous to have a strong application for tax credits in the earliest round possible.

DISCUSSION

Requested Increase in Loan

EAH is now requesting an additional \$1 million in the loan amount due to an unanticipated increase in construction costs, so that the City's total loan would be increased to \$4.5 million (i.e., the \$3.5 million pledged in February 2016, plus an additional \$1 million). The loan shall be for a term of 75 years, with an interest rate of 3%, with repayment to the City from surplus cash flow from the Project during the term of the loan, with the balance due at the end of the term. The loan shall be secured by a deed of trust on the Project land and/or improvements; and the loan funds shall be reserved no later than June 30, 2017 and shall be subject to reprogramming at the end of this period unless EAH, Inc. has secured commitments for full Project funding or provided other assurances of adequate Project funding that the City Manager deems sufficient within his or her discretion, within the reservation period.

With the increase in multifamily housing construction activity in the East Bay, construction costs have been increasing more than anticipated. EAH had anticipated an increase of \$2 million but was not prepared for the \$5 million increase encountered at the 50 percent construction drawing bid. In addition, EAH had not anticipated \$1 million in fees imposed by the East Bay Municipal Utility District (EBMUD). Since the 50 percent construction drawing bid was received, EAH has worked to reduce costs through value engineering,

secured additional Project Based Voucher funding and allocated a portion of their developer fee to the Project.

Because the competitive nine percent tax credits are capped at the amount requested at the time of the application, the project was not able to increase the amount of tax credits to the project and remain in the nine percent program. EAH requested a change from nine percent credits to four percent credits. The advantage of this change is that the four percent credits are not competitive, have better permanent loan pricing, and the basis for the tax credits can be increased from \$42,305,102 to \$52,108,495. Nine percent credits yielded \$23,166,556 in equity, while four percent credits, using the higher basis number, will yield \$25,943,006 in equity. This increases funding to the project by approximately \$2.8 million provided the tax credit investor maintains their previously committed pricing of \$1.20 per credit. The new sources and uses calculation using four percent credits and assuming a constant credit price still leaves a \$1 million shortfall in funding, necessitating the \$1 million loan increase from the City.

Acceptance of Affordable Housing and Sustainable Communities Grant

On May 5, 2015, the City Council adopted Resolution 15-39 authorizing the City and EAH to jointly apply for funds from the Affordable Housing and Sustainable Communities (AHSC) program. For applications for affordable housing development funds, the AHSC program requires the inclusion of a transportation infrastructure project that benefits the proposed affordable housing. Staff requested AHSC funding for median improvements at 40th Street and San Pablo Avenue. The application was successful, with \$100,000 awarded to the City for the median improvements and \$5.4 million awarded to EAH for construction of the Project. In order to access these funds, the City must enter into a standard agreement with the California Department of Housing and Community Development (HCD). HCD requires a resolution of the governing body of the grant recipient authorizing the execution of the standard agreement. This resolution is included as Attachment 1.

Benefits of the Project

The Project will provide a number of benefits to the City, summarized below:

- Development of 86 rental units affordable to low and very low income households at between 30 and 60 percent of median income, including 22 three-bedroom units and 7 four-bedroom units suitable for larger households. Development of these units will forward the goals of the City's Housing Element by helping the City meet its Regional Housing Needs Allocation (RHNA). In the recently completed 2007-2014 RHNA cycle, only 110 very low income units had been developed to offset the City's 186 very low income unit allocation.
- Alleviation of blight in Emeryville by causing the remediation of a contaminated site and redevelopment of an underutilized property.

FISCAL IMPACT

The City has two funds that are available for affordable housing development, both of which have restrictions on the population to be served and the time in which they must be disbursed. The Housing Asset Fund (Fund 298) must be utilized to provide affordable housing for extremely low, very low, and low income households. The funds collected through the Affordable Housing Impact Fee Fund (Fund 239) must be utilized for workforce housing for very low, low, and moderate income households and spent within five years of receipt. Staff proposes to use a combination of funds from the Housing Assets and the Affordable Housing Impact Fee funds. There are currently sufficient balances in the two programs to fund this loan including the requested increase in the loan.

No loan funds will be disbursed prior to the close of escrow of all financing necessary to develop the Project and syndication of tax credit based equity for the project. The loan will be repaid each year out of a portion of the surplus cash flow earned by the owner for the previous year after the Project is completed and a surplus is determined to exist through an audited annual financial statement. The interest rate shall be 3% per year.

LEGAL CONSIDERATIONS

The City Attorney has reviewed and approved as to form the Commitment Letter and the resolutions accompanying this staff report.

PREPARED BY: Catherine J. Firpo, Housing Coordinator

REVIEWED BY: Chadrick Smalley
Economic Development and Housing Manager

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Carolyn Lehr, City Manager

Attachments:

1. Proposed Resolution Authorizing AHSC Grant Agreement
2. Proposed Resolution Approving Loan Commitment Letter
Exhibit A – Loan Commitment Letter
3. Sources and Uses of Funds
4. Project Development Schedule