



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Consider Approval of Disposition and Development Agreement Between the City of Sunnyvale and Related Companies of California, LLC, Providing for Financial Assistance in The Amount of \$12.5 Million in Housing Mitigation and Low and Moderate Income Housing Asset Funds (LMIHAF) To Construct an Affordable Housing Development on Iowa Avenue Between Mathilda Avenue and Charles Street (Block 15)

#### **BACKGROUND**

The City owns approximately 1.44 acres of land located at 365-388 Charles Street (APN# 165-130-74), 396 Charles Street (APN# 165-130-46), 397 South Mathilda Avenue (APN# 165-130-68), 402 Charles Street (APN# 165-130-45), 406-407 Charles Street (APN# 165-130-73), and 403 South Mathilda Avenue (APN# 165-130-69) in the City of Sunnyvale. Currently there are six modest, older dwelling units on the project site, of which four are vacant and two are occupied. The land was appraised at approximately \$9.4 million in October 2017, based on its value if developed consistent with the Downtown Specific Plan standards. In December 2015 Council provided policy direction and declared its intent to use this property for an affordable housing development.

On March, 12, 2018, the City entered into an Exclusive Negotiating Agreement (ENA) with The Related Companies of California, LLC (Related) to negotiate the terms of a possible Disposition and Development Agreement (DDA), a long-term ground lease, and an affordable housing agreement for the development of the affordable housing community on City owned property (RTC No. 17-0082, February 28, 2017).

The ENA allowed both parties to exclusively negotiate the details for the affordable housing development and long-term lease of the property from the City. During the ENA term, Related created a project website, completed due diligence activities, and conducted three community outreach meetings for the proposed development. However, due to financial uncertainties, the City and Related could not finalize the negotiations within the one-year term of the ENA.

Since both parties were interested in continuing the project, the City Manager used the authority in the ENA and extended the ENA term for an additional six-months (to September 13, 2018). During this time, Related applied for Preliminary Review of the project conceptual plans, and the parties further discussed details of a DDA and long-term ground lease agreement. Since the DDA was not ready by the ENA's expiration date, on September 11, 2018, City Council approved an extension of the term of the ENA until November 13, 2018 to finalize the details of the agreement (RTC No. 18-0763). Related is in the process of forming a limited partnership and limited liability company for purposes of this project (Related's "authorized assignee").

During the ENA term, the Council met in closed session three times to provide staff general direction

and feedback regarding the price and terms of payment for the proposed long-term ground lease of City property and affordable housing development (Disposition and Development Agreement).

## **EXISTING POLICY**

### **General Plan, Housing Element**

**Goal HE 1:** Assist in the provision of adequate housing to meet the diverse needs of Sunnyvale's households of all income levels.

**Goal HE 5:** Promote equal housing opportunities for all residents, including Sunnyvale's special needs populations, so that residents can reside in the housing of their choice.

### **Downtown Specific Plan**

#### **Goals and Policies**

- B. Establish the Downtown as the cultural, retail, financial and entertainment center of the community, complemented by employment, housing and transit opportunities.
  - B.2. Encourage below-market-rate housing in all residential neighborhoods.
- D. Protect and enhance existing neighborhoods.
  - D.3. Encourage intensification of specified high-density residential and commercial districts while maintaining the character and density of single-family neighborhoods surrounding the downtown.

## **ENVIRONMENTAL REVIEW**

This action is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15262 (feasibility and planning studies). This action is further exempt from the definition of a project pursuant to CEQA Guidelines section 15061 (b) (3) because it can be seen with a certainty that there is no possibility that it may have a significant effect on the environment. When a development project is submitted for development review, it will be reviewed pursuant to CEQA to assess its potential environmental impacts.

## **DISCUSSION**

Subsequent to approval of the ENA, staff entered into negotiations with Related California which has led to the attached draft DDA as well as the Ground Lease and the City Loan Agreement (Attachment 1). This staff report provides a summary of the key terms negotiated between the City and Related.

### **Summary of DDA Agreement**

**Project Description:** The development would include 90 residential units: 89 affordable rental apartments and one manager's unit. All parking required to serve the proposed development will be provided in an underground parking structure.

The Project includes 4,000 square feet of resident serving interior amenities including onsite property management office and resident service coordinator office area as well as recreational amenities such as community/multipurpose room and onsite laundry. There will also be an additional minimum 1,500 square feet of space that may be used as either resident-serving or commercial space. In accordance with the Downtown Specific Plan design guidelines, approximately 2,000 square feet of amenities' floor area shall be located at the corner of Iowa Avenue and Mathilda Avenue to enhance pedestrian walkability.

**Land Use Entitlements:** Related will submit a formal Planning application for land use entitlements ("Special Development Permit") no later than April 10, 2019. The City may consider a one-time 30-day extension, if Related could not finalize the application package on time, subject to City Manager's approval. Related is responsible for the cost of any City permits, impact fees and construction costs. The project would meet prevailing wage requirements. In addition, Related has agreed to submit an updated Community Outreach Plan to the City within two weeks after the DDA is executed.

**Tax Credit Application:** Related has identified 9% Federal Low-Income Housing Tax Credits (LIHTC) as the preliminary source of project financing. In order to qualify for this source of funding, Related must secure land use entitlements and all the other required funding in respect to the proposed project. The proposed development cost is anticipated to be approximately \$53 million. Currently, there is an approximately \$4 million gap identified in the project financing. Related will actively look for other funding options before they can apply for 9%TCAC application. If efforts to obtain 9% Tax Credits are not successful in the first submission, Related will continue to apply for 9% Tax Credits for two additional rounds. If Related is not successful in receiving an allocation of 9% Tax Credits after three application rounds, they may pursue another method of financing acceptable to the City, including 4% Tax Credits.

**Project-Based Vouchers:** Related has identified project-based Section 8 vouchers (PBVs) from the Housing Authority of the County of Santa Clara (HACSC) as one of the potential project financing sources, which will help in obtaining permanent financing for the project. These vouchers provide cash flow sufficient to generate residual receipt payments. Related is anticipated to receive PBVs for 23 units affordable to tenants with incomes not exceeding fifty percent (50%) of Area Median Income (AMI). If the Housing Authority approves Related's proposal, the tenants will be selected through the Housing Authority's waiting list.

**Affordability Restrictions:** The units will be rented to households whose incomes do not exceed the income limits set by the Federal Tax Credits' new "Income Averaging" rule. Related has agreed to provide the units with the following provisions:

- a) The average incomes of tenants occupying dwelling units shall not exceed fifty percent (50%) of AMI upon initial occupancy;
- b) At least nine and six-tenths percent (9.6%) of the dwelling units (nine units) shall be rented to households whose incomes do not exceed thirty percent (30%) of AMI;
- c) At least twenty-five percent (25%) of the dwelling units (23 units) shall be available for adults with developmental disabilities; and
- d) The affordable units shall be rented to households whose incomes do not exceed eighty percent (80%) of AMI.

**DDA Term:** The DDA has a three-year term with the possibility of an additional one-year extension at the discretion of the City Manager, if Related fails to obtain allocation of tax credits by the third anniversary of the DDA execution and if both parties would like to continue with the project at that point.

**Ground Lease:** The City Manager would execute the Ground lease commencing on the construction loan closing and continuing for 57-67 years. The term of the ground lease will be determined once the financing is secured and based on financial projections approved by tax counsel, showing that all debt on the project can be repaid in full on or prior to the expiration of the term of the Ground Lease.

Related agrees to lease the property in “AS IS” condition, and to purchase an Environmental Impairment Policy for premises remediation if any Hazardous Materials are discovered prior to the Construction Loan Closing. The ground lease payment consists of:

1. Annual ground rent of one dollar (\$1) to the City while the City Loan remains outstanding.
2. Annual ground rent of 50% of residual cash flow, after City Loan is repaid in full, through final year of ground lease, subject to approval by investor and tax counsel.

**City Loan:** The DDA and the Subordinate Loan Note (Exhibit F of the DDA) sets forth the terms of the City’s loan of \$12.5 million to Related (\$8.5 million from Housing Mitigation Funds [HMF] and \$4 million from Low and Moderate Income Housing Asset Funds) including financing terms, disbursement requirements, and general requirements for the project. The proposed loan terms include 3% simple annual interest, fully deferred, with residual receipt payments, due annually from 50% of any available “surplus” cash flow, and an affordability term of 55 years. The term of affordability runs with the land for the term, and does not terminate early if the loan is paid off early. This loan is currently anticipated to be paid off by year 45 of the ground lease.

**Development Timeframe:** If Related secures land use entitlements on time, then they can apply for the first round of TCAC application in 2020. If the TCAC funds are awarded, Related will prepare and submit complete construction documents (e.g., building permits, Parcel Map, improvement plans) to the City. Construction will start six months after the award of tax credits and will be completed 22 months after close of the escrow through which the execution of ground lease, the construction loan and the City loan closing is conducted.

### **FISCAL IMPACT**

In FY 2018/19, a total of \$13 million is planned to be allocated for the Block 15 Affordable Housing Site project, from the Housing and the Redevelopment Housing Fund. This allocation will create expenditure(s) of approximately \$9 million from HMF funds (Fund 70-100), and \$4 million out of the Low and Moderate Income Housing Asset Funds (Redevelopment Housing fund or Fund 72). Related is requesting financial assistance in the amount of up to \$12.5 million. These funds exist for the purpose of funding affordable housing projects such as this; staff finds that the recommended action is consistent with its purpose and various city policies regarding affordable housing.

A portion of the site was purchased with General Funds, and a portion was purchased using Housing Mitigation funds. As a separate action, staff will return to the City Council with a proposed Budget Modification to transfer funds from the Housing fund to the General Fund so that the entire site is under Housing funds assets.

For the ease of the Council’s review, the draft form of the Affordable Housing Agreement and Declaration of Restrictive Covenants, which is Exhibit H of the DDA, is attached as Attachment 2.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City’s website.

### **ALTERNATIVES**

1. Approve the draft Disposition and Development Agreement and associated appendices with The Related Companies of California, LLC or its authorized assignee for the establishment of the affordable housing development on Block 15; and authorize the City Manager to sign it in final form substantially consistent with Attachment 1 to the report and as approved by the City Attorney.
2. Approve the terms of the draft Disposition and Development Agreement and associated appendices with The Related Companies of California, LLC or its authorized assignee for the establishment of the affordable housing development on Block 15 with modifications specified by Council; and authorize the City Manager to sign it in final form substantially consistent with Attachment 1, as modified by Council, and as approved by the City Attorney.
3. Do not approve the draft Disposition and Development Agreement and provide direction to staff to issue a new Request for Proposal, or other action deemed appropriate by the City Council.
4. Other Council direction.

### **STAFF RECOMMENDATION**

Alternative 1: Approve the draft Disposition and Development Agreement and associated appendices with The Related Companies of California, LLC or its authorized assignee for the establishment of the affordable housing development on Block 15; and authorize the City Manager to execute the Agreement in substantially the same form as Attachment 1 to the report, and as approved by the City Attorney.

Prepared by: Shila Behzadiaria, Associate Planner

Reviewed by: Trudi Ryan, Director, Community Development Department

Reviewed by: Timothy J. Kirby, Director, Finance

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

### **ATTACHMENTS**

1. Draft Disposition and Development Agreement between the City of Sunnyvale and Related California LLC (***without Exhibit H***)
2. Draft Affordable Housing Agreement and Declaration of Restrictive Covenants (***Exhibit H of DDA***)