




Office of the City Manager

CONSENT CALENDAR
April 30, 2013

To: Honorable Mayor and Members of the City Council
From:  Christine Daniel, City Manager
Submitted by: Jane Micallef, Director, Health, Housing and Community Services
Subject: Lease of Five City Parcels to Berkeley Housing Authority for the Disposition and Rehabilitation of Affordable Housing by Berkeley 75 Housing Partners L.P.

RECOMMENDATION

1. Adopt first reading of an Ordinance authorizing the City Manager to:
 - a. Execute a ground lease for seventy years with an option to renew for twenty-nine years with the Berkeley Housing Authority (BHA) for the five parcels of land at 2231 Eighth Street, 1605 Stuart Street, 1812 Fairview Street, 1519 Alcatraz Avenue, and 3016 Harper Street, to be assumed by Berkeley 75 Housing Partners L.P. (Berkeley 75) conditioned upon termination of the existing ground lease with the BHA and the close of Berkeley 75's construction financing for the rehabilitation of the units on the parcels; and
 - b. Execute an Agreement Regarding Assumption of Ground Lease with the Berkeley Housing Authority and Berkeley 75 consenting to the termination of the existing ground lease with BHA and the assignment of BHA's interest in the new ground lease to Berkeley 75 conditioned upon the close of Berkeley 75's for the rehabilitation of the units on the parcels.
2. Adopt a Resolution terminating the existing Cooperation Agreement with the BHA upon the transfer of the 75 units of low income rental housing from the BHA to Berkeley 75 Partners L.P.

FISCAL IMPACTS OF RECOMMENDATION

The City will receive an initial payment of \$500 and an annual payment of \$1 per year. Funds will be deposited into revenue fund 010- 8150- 360 -9999.

CURRENT SITUATION AND ITS EFFECTS

BHA has selected the Related Companies of California (Related) to serve as the developer, manager, and long-term owner of its public housing units. Related has formed a limited liability company to own and manage the 75 BHA scattered site public housing units for large families. Fourteen of these units were developed on five City-

owned parcels with funding from the State of California's Rental Housing Construction Program (RHCP). In order to complete the transfer of the public housing to Related, the City will need to terminate its existing lease with the BHA, grant BHA a new lease, and consent to BHA's assignment of the lease to Berkeley 75 Housing Partners, L.P., the limited partnership Related has formed for the purpose of developing and operating this project.

BHA consented to the lease's termination at its February 2013 Board meeting. The Agreement Regarding Assumption of Ground Lease (Exhibit A) will give Related the degree of site control it needs to obtain low income housing tax credits for the project. Once Related has obtained all the development financing needed and is ready to start construction, the City will execute the new Lease (Exhibit B) with BHA, and BHA will assign the Lease to Housing 75. This structure meets the financing needs of the project. The Lease has an initial term of seventy years to meet financing requirements, and has an option to renew for twenty-nine years as long as the housing is being operated within the terms of the lease. The total 99 year term is consistent with the affordability period required by HUD for this project. The Lease will give Berkeley 75 the improvements in fee for the term of the lease, meaning the improvements will belong to Berkeley 75 under the lease and revert back to the City at the termination of the lease. The Lease requires that the properties continue to be used for the purpose of providing affordable housing and be kept in good condition.

Termination of the Coordination Agreement between the City and the Berkeley Housing Authority is needed in order for the Berkeley Unified School District to approve subleasing the BUSD-owned sites to Related.

BACKGROUND

In 1982, the City entered into a ground lease for these five properties to the Berkeley Housing Authority for the purpose of developing and operating affordable housing with funding from California Department of Housing and Community Development. The lease has a 55-year term with rent of \$1 per year.

In December 2009, BHA submitted an application to the federal Department of Housing and Urban Development (HUD) to transfer its public housing units to another entity to rehabilitate and manage the units more effectively. In December 2010, HUD approved BHA's disposition application, and BHA has selected the Related Companies of California (Related) as the entity to serve as the developer, manager, and long-term owner of the public housing units. These 75 public housing units are located on scattered sites throughout the City and consist of three and four bedroom units suitable for large families. Related formed a limited partnership group, Berkeley 75, to own, operate and manage the public housing units. The projected budget for the project is nearly \$34 million and Berkeley 75 anticipates financing the acquisition and rehabilitation of all the units with a combination of low income housing tax credits, private investments and funding from the Federal Home Loan Bank's Affordable

Housing Program (AHP). The total City funding of \$700,000 along with the ninety-nine year affordability period for large family units makes this project extremely competitive for outside funding.

In 1984, the City entered into a standard HUD Cooperation Agreement form (HUD-54281) with the BHA which addressed the provision of public services to the public housing sites and residents and provided for ten percent of the rent collected from tenants, less utility allowances, to be paid to the City in lieu of property taxes. In November 1989, with Resolution No. 55,054-N.S., the Council waived the payments due to BHA's inability to pay. The Council also authorized executing new HUD standard Cooperation Agreements with BHA in 1991 and 1992 with Resolution Nos. 55,912-N.S. and 56,222-N.S. The 1984 Cooperation Agreement was incorporated into the 1986 ground lease of Berkeley Unified School District property to BHA for the purpose of developing public housing, and BUSD has requested the Agreement be terminated in order to assign that lease to Berkeley 75 for this project. The attached resolution will authorize terminating all Cooperation Agreements upon transfer of the units to Berkeley 75 Partners.

RATIONALE FOR RECOMMENDATION

The Lease and Agreement Regarding the Assumption of the Ground Lease will allow Related to obtain financing to rehabilitate the RHCP units and to continue to operate the units as a source of needed low income housing for large families in the City of Berkeley. Terminating the Cooperation Agreement will allow BUSD to assign its lease with BHA to Berkeley 75 for this project.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Jane Micallef, Director, Health, Housing and Community Services, 981-5400

Attachments:

1: Ordinance

Exhibit A: Agreement for Assumption of Ground Lease

Exhibit B: Ground Lease

2: Resolution

ORDINANCE NO. ##,###-N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE A GROUND LEASE WITH BERKELEY HOUSING AUTHORITY FOR 14 UNITS OF AFFORDABLE HOUSING ON FIVE CITY PARCELS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the City Manager is hereby authorized to terminate the existing lease with the Berkeley Housing Authority for the five parcels located at 2231 Eighth Street, 1605 Stuart Street, 1812 Fairview Street, 1519 Alcatraz Avenue and 3016 Harper Street.

Section 2. That the City Manager is hereby authorized to enter into an Agreement Regarding Assumption of Ground Lease (Exhibit A) with the Berkeley Housing Authority and Berkeley 75 Housing Partners, L.P. for the five parcels located at 2231 Eighth Street, 1605 Stuart Street, 1812 Fairview Street, 1519 Alcatraz Avenue and 3016 Harper Street.

Section 3. That the City Manager is hereby authorized to execute a ground lease (Exhibit B) for seventy years with a renewal option for twenty-nine years with the Berkeley Housing Authority for the 14 residential units on five parcels located at 2231 Eighth Street, 1605 Stuart Street, 1812 Fairview Street, 1519 Alcatraz Avenue and 3016 Harper Street, giving Berkeley 75 Housing Partners the improvements in fee for the term of the lease.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Exhibits:

Exhibit A: Agreement for Assumption of Ground Lease

Exhibit B: Ground Lease

RESOLUTION NO. ##,###-N.S.

TERMINATING THE EXISTING COOPERATION AGREEMENT WITH THE BERKELEY HOUSING AUTHORITY

WHEREAS, in December 2009, the Berkeley Housing Authority (BHA) submitted an application to the federal Department of Housing and Urban Development (HUD) to transfer its public housing units to another entity to rehabilitate and manage the units more effectively; and

WHEREAS, in December 2010, HUD approved BHA's disposition application, and BHA has recently selected the Related Companies of California (Related) as the entity to serve as the developer, manager, and long-term owner of BHA's 75 rental housing units; and

WHEREAS, Related has formed an affiliate, Berkeley 75 Housing Partners, L.P. (Berkeley 75) to serve as the entity which will own, operate and manage the Berkeley public housing units for ninety-nine years; and

WHEREAS, in September 1984, the BHA and the City entered into a Cooperation Agreement which provided for payments in lieu of taxes to the City for certain public services; and

WHEREAS, the City wishes to further assist the BHA and Berkeley 75 in maintaining the long-term affordability of the low income public housing unit for large families.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to terminate the 1984 Cooperation Agreement and all subsequent Cooperation Agreements based on HUD form 52481 upon the transfer of the 75 low income public housing units from BHA to Berkeley 75 Housing Partners L.P.

BE IT FURTHER RESOLVED that the City Manager, or her designee, is authorized to execute all necessary legal documents, amendments, and instruments to accomplish the intent of this resolution.