




Berkeley Housing Authority

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Office of the Executive Director

Item 6D
NEW BUSINESS
September 8, 2011

To: Honorable Chairperson and
Members of the Berkeley Housing Authority Board

From: Tia M. Ingram, Executive Director 

Subject: Exclusive Negotiating Rights Agreement with The Related Companies of
California, LLC for transfer of the 75 units of BHA-owned family rental housing

RECOMMENDATION

Approve a resolution (1) authorizing the Executive Director to enter into an Exclusive Negotiating Rights Agreement (ENRA) with The Related Companies of California, LLC (“Related”) for a period of 90 days, with the possibility of one 30-day extension, to negotiate the terms of the Disposition and Development Agreement to transfer the 75 units of BHA owned family rental housing; and (2) designating the joint Finance/Feasibility Subcommittee as the lead to work with staff on the negotiations.

BACKGROUND

In 2009, as a condition of continued receipt of federal funds for the Low Income Public Housing (LIPH) Program, the U.S. Department of Housing and Urban Development (HUD) required Berkeley Housing Authority (BHA) to agree to certain performance criteria. The criteria and the evaluation benchmarks were detailed in the Memorandum of Agreement (MOA) executed in March, 2008. Concerned about the quality and condition of the housing stock, HUD required BHA to perform a Physical Needs Assessment and submit a plan (including financing) and timeline for rehabilitating the units to HUD by August 15, 2009. Absent such a plan, BHA was required to submit an Inventory Removal Application by December 31, 2009.

Strategic Plan

Recognizing that BHA and maintenance vendors had tried unsuccessfully since initial construction to manage the units, including (a) complete outsourcing to a property management firm and (b) joint management, in April 2009, BHA contracted with EJP Consulting Group, LLC (EJP) to study long-term portfolio options, and to make a recommendation for the future of the 61 units of Low Income Public Housing and 14 units of State-subsidized housing funded under the Rental Housing Construction Program. At a minimum, these options were to include assessments of the following:

1. Continue to operate the units under the public housing program and develop strategies to address the physical needs of the property and ensure long-term financial viability;
2. Dispose of the units through the HUD disposition process, replacing subsidy with housing choice vouchers and recommending ownership, management and financing structure as well as tenant protections; and,
3. Other options that may meet the goals of BHA and the community at large.

These options were based on the following facts as listed in a July 3, 2009 staff report to the Board:

- The Berkeley Housing Authority Low Income Public Housing program had been designated by HUD as “troubled” for several years.
- The management, financial and maintenance challenges that continue to confront the Authority date back to at least 1991 as documented in a study performed by the City of Berkeley.

Based upon an analysis of existing conditions of the LIPH and RHCP portfolio and the available options for rehabilitating and operating the units over the long term, EJP made the following recommendations:

1. Pursue disposition of the 61 LIPH and 14 RHCP units to an affordable housing development entity to own and manage the units, apply project-based vouchers to the units, and make the necessary capital improvements to maintain the units as affordable and to sustain the units for the long term;
2. Study further the ability to reconfigure units as part of the capital improvements to create a wider diversity of bedroom sizes (1, 2, 3 & 4 BR vs. the current 3 & 4 BR configuration);
3. Address some of the current overhousing problems and relocation needs as a result of the planned improvements by establishing a priority in the project-based referral process for existing public housing and RHCP households;
4. After HUD approval of the Disposition Application, apply for replacement/
relocation vouchers;
5. Develop policies for: relocation; current negative rent households; and reoccupancy criteria and household accountability. The existing LIPH and RHCP residents should be invited to participate in helping to develop these new policies through working committees as there is potential for significant impact on their lives.

The EJP recommendations achieve three important goals of the BHA Board:

1. At least 75 units would be preserved as permanently affordable rental units;
2. There would be rental protections for existing tenants to ensure that no resident is required to pay more than 30% of adjusted income for rent; and,
3. The units will be rehabilitated to modern standards.

Request for Proposals (RFP)

On April 14, 2011, the BHA Board met to review and suggest edits to the draft RFP for Developers/Owners. The focus of that discussion was: the purpose of the RFP, the scoring that would be used to evaluate proposals, and timeline. The stated purpose of the RFP was to:

- A. Preserve units as long-term affordable housing – serve same household income;
- B. Renovate units to modern standards – maintain at least 75 units;
- C. Provide opportunities for existing households to return – minimize disruption to residents;
- D. Provide on-going social services;
- E. Create competition amongst strong, experienced affordable housing owners and operators;
- F. Address both Federal Public Housing and State RHCP Units;
- G. Provide compensation to BHA to address on-going operating deficits in the administration of its Housing Choice Voucher Program; and,
- H. Obtain additional temporary and permanent rehousing opportunities in East Bay.

The RFP was widely advertised within the non-profit development community and to the broader affordable housing industry. Two organizations attended the pre-proposal conference: Affordable Housing Associates (AHA) and Resources for Community Development (RCD), both of Berkeley. Through outreach by the BHA consultants, 5 organizations eventually filed their Intent to Submit a Proposal, and two of these responded with full proposals by the July 11th deadline: The Related Companies of California, LLC and TRG/Pacific. Both proposals were reviewed by the consultants and deemed complete.

Evaluation of Proposals

The recommendation to enter exclusive negotiations with Related is based on a three-phased evaluation process including: (1) an evaluation by an outside panel of affordable housing experts: Mark Sawicki, Economic Development and Housing Manager, City of San Carlos, Marianne Lim, LEED AP, Senior Project Manager, Marin Housing Authority and Eileen Duffy, Administrative Operations Manager, Housing Authority of the City of Alameda—as well as a BHA resident, Carole Krezman. Also in attendance were two Feasibility Subcommittee (FS) members, Adolph Moody, Val Agostino and the BHA consultant;¹ (2) An oral interview/scoring by the Feasibility Subcommittee, with the active participation of Carol Krezman (see Attachment 1, a copy of the scoring matrix); and (3) verification of references for Related, including the Oakland Housing Authority, Richmond Housing Authority, San Francisco Redevelopment Agency, Union Bank and Citibank.

STATUS

BHA staff has worked closely with the consultants, aided significantly by the expertise and commitment of members of the LIPH Feasibility Subcommittee. We conducted a fair and open process designed both to welcome non-profit housing organizations to compete for the units, and to evaluate fairly the proposals in keeping with the goals and objectives expressed by the Board.

While we acknowledge the lack of response from the non-profit community, we are confident that Related can deliver the quality housing product we desire for low-income families in the City of Berkeley, and that we can incorporate appropriate conditions in the Disposition and Development Agreement, Ground Lease and other instruments to ensure the long-term preservation of at least 75 units of affordable, family rental housing in the City of Berkeley. Additionally, Related has a strong history and track record of working within the affordable

¹ Carole Norris gave her seat on the Feasibility Subcommittee (FS) temporarily to Val Agostino because of her extensive knowledge of affordable housing development and operations. Carole Krezman was also invited to return for the developer interviews and to take part in the scoring.

housing realm. It is important to note that this action does not necessitate any action or impact on current residents.

Critical next steps include negotiating the details of the Disposition and Development Agreement, which will require, among other things, reaching agreement on (a) the final rehabilitation scope of work, (b) financial compensation to BHA, (c) the operating budget, and (d) the rehabilitation schedule. BHA staff, working with the LIPH Feasibility Subcommittee, Related and our Relocation consultant (Overland, Pacific & Cutler) will define and implement the relocation plan.

RATIONALE FOR RECOMMENDATION

Based on the Outside Review Panel, Feasibility Subcommittee final scores and reference checks, we recommend entering into an Exclusive Negotiating Rights Agreement with The Related Companies of California, LLC for the purpose of negotiating a Disposition and Development Agreement (DDA).

CONTACT PERSON

Tia M. Ingram, Executive Director, 981-5471

Kathleen Sims, Project Manager, 482-1227

Jesy Yturalde, Finance Manager, 981-5488

Attachments:

1. Development Proposal Scoring Sheet
2. Resolution

BHA DEVELOPER RFP: REVIEW PANEL EVALUATION

DEVELOPER: _____

EVALUATION FACTORS	Score *	Comments
<p>Experience and Capacity of Development Team - 20 points Successful experience in the planning, construction and operation of acquisition/rehabilitation development projects of comparable size and complexity;</p>	<p>1 2 3 4 5</p>	
<p>Proven ability to obtain, structure and implement layered financing using a variety of private and public sources of financing;</p>	<p>1 2 3 4 5</p>	
<p>Demonstrated ability to complete projects of similar complexity with reasonable promptness;</p>	<p>1 2 3 4 5</p>	
<p>Degree of team's familiarity with state and local rules, practices, conditions and/or personnel which are important to the success of the development</p>	<p>1 2 3 4 5</p>	
<p>The degree to which the Developer/Owner demonstrates quality, long-term viability and successful experience with ownership, property management and services delivery for affordable housing developments of similar size.</p>	<p>1 2 3 4 5</p>	
<p>Successful experience and track-record of the proposed property management entity in providing quality services and maintaining a high level of tenant satisfaction.</p>		
<p>SUBTOTAL</p>		
<p>Financial Capacity and Business Terms – 20 points</p>		
<p>The financial capacity (as Developer/Owner and provider of guarantees) as evidenced by audited financial statements, the firm's bank and client references, and the Developer/Owner's</p>	<p>1 2 3 4 5</p>	

- * 1 = does not meet minimum standards
- 2 = somewhat meets minimum standards
- 3 = meets standards
- 4 = somewhat exceeds standards
- 5 = significantly exceeds standards

EVALUATION FACTORS	Score *	Comments
discussion of how it intends to honor all guarantees should the need arise;		
The degree to which the Developer/Owner includes projected compensation to the BHA, including the amount, timing and contingencies associated with the one-time acquisition payment and quarterly residual cash flow payments during operations;	2 4 6 8 10	
The degree to which the Developer/Owner shows restraint in its development, general contractor and property management fees for the project and creativity in its leverage of other resources, both capital and in-kind, to minimize the net use of public funds;	1 2 3 4 5	
The proposed number of project-based HCVs required to implement the development proposal		
SUBTOTAL		
Organizational Capacity - 10 points		
Creativity and flexibility of the team, demonstrated by examples of or proposals of unique collaborative relationships;		
Cohesion of the team, as demonstrated by previous experience working together, and coherence of their technical response;	1 2 3 4 5	
Experience of key staff in managing tasks associated with their roles and responsibilities;		
Capacity of the team members to accommodate the time, resources and effort necessary to successfully accomplish the program in a timely fashion and with undue strain	1 2 3 4 5	
SUBTOTAL		

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EVALUATION FACTORS	Score *	Comments
Project Approach – 30 points		
The degree to which the Developer/Owner understands the critical issues of BHA's housing preservation effort and can adequately demonstrate a feasible rehabilitation, financing, relocation and implementation plan; The degree to which the Developer/Owner demonstrates an appreciation of the potential problems associated with the project and a coherent and creative approach to solving them;	2 4 6 8 10	
The degree to which the approach minimizes disruptions to existing LIPH/RHCP residents and provides a wide variety of rehousing options, both within the project and the Developer/Owner's existing portfolio;	1 2 3 4 5	
The feasibility, quality, specificity and appropriateness of the proposed development plan as well as the likelihood of the proposed approach for this project being funded and implemented in a timely manner	1 2 3 4 5	
The degree to which energy efficiency and Green Building techniques as enumerated in the 2008 Building Energy Efficiency Standards for California, 2010 California Green Building Standards Code, 2011 Enterprise Green Communities Criteria Checklist, LEED, or equivalent standard are incorporated into the rehabilitation plan;	1 2 3 4 5	
The degree to which the development team encourages community participation	1 2 3 4 5	
SUBTOTAL		
Supportive Services– 10 points		
The track record of the developer/owner and property manager at coordinating supportive service activities in other communities;	1 2 3 4 5	
The depth and range of proposed supportive service activities and match with proposed resident population;		

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EVALUATION FACTORS	Score *	Comments
The extent to which the respondent is leveraging existing services in the community and the nature of the partnering agreements.	1 2 3 4 5	
SUBTOTAL		
Economic Opportunity Plan – 10 points		
The degree to which the team demonstrates experience in meeting and exceeding compliance with Section 3 requirements and resident participation;	1 2 3 4 5	
The successful Developer/Owner must agree to require that any contractor or subcontractor participate in any available appropriate apprenticeship program;	1 2 3 4 5	
The response must include a discussion of the affirmative steps the team will utilize to seek and enable strong participation by minority-, women- and disadvantaged-businesses. Identify the extent to which MBE/WBE/DBE businesses are included in the development team. Prior development experience utilizing MBE/WBE/DBE businesses should be described in sufficient detail to reveal the team's track record and allow an assessment of the level and quality of effort	1 2 3 4 5	
SUBTOTAL		
TOTAL		

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- 3 = meets standards
- 4 = somewhat exceeds standards
- 5 = significantly exceeds standards

BERKELEY HOUSING AUTHORITY

RESOLUTION NO 11-_____

AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT (ENRA) WITH THE RELATED COMPANIES OF CALIFORNIA, LLC TO NEGOTIATE THE BUSINESS TERMS OF THE DISPOSITION AND DEVELOPMENT AGREEMENT TO TRANSFER THE 75 UNITS OF BHA-OWNED FAMILY RENTAL HOUSING; AND (2) DESIGNATING THE JOINT FINANCE/FEASIBILITY SUBCOMMITTEE AS THE LEAD TO WORK WITH STAFF ON THE NEGOTIATIONS.

WHEREAS, the Berkeley Housing Authority executed a Memorandum of Agreement (MOA) with the U.S. Department of Housing and Urban Development (HUD) that required BHA to rehabilitate the Low Income Public Housing (LIPH) rental units to an acceptable level by August 2009 or submit an Inventory Removal Application; and

WHEREAS, BHA's annual Capital Fund allocation was insufficient to fund the required repairs of the LIPH stock; and

WHEREAS, BHA engaged EJP Consulting Group, a private consultant, to study options for continuing to operate a Public Housing Program within the fiscal constraints of the annual funding allocation, and concluded it was not feasible by the August 2009 deadline; and

WHEREAS, in December 2009 BHA submitted an Inventory Removal Application which was approved by HUD in December 2010, the first step in transferring ownership of the units; and

WHEREAS, in April 2011, BHA adopted a set of goals and principles designed to ensure the rehabilitation of the units, and their long-term preservation as affordable rental housing; and

WHEREAS, on May 2, 2011, BHA issued a Request for Proposals to identify a developer which would rehabilitate the units and preserve them long-term as affordable rental housing; and

WHEREAS, on July 11, 2011, The Related Companies of California, LLC submitted a proposal that was fully responsive to the goals and principles adopted by the Board and scored the highest of the two respondents; and

WHEREAS, the next step in the process is to discuss and agree upon the final terms of a Disposition and Development Agreement that will govern the real estate transaction, and the long-term operation of the units.

NOW THEREFORE BE IT RESOLVED, that the Board of the Berkeley Housing Authority does hereby authorize the Executive Director to execute an Exclusive Negotiating Rights Agreement with The Related Companies of California, LLC in order to negotiate, within a ninety (90) day period, the business terms of a Disposition and Development Agreement to transfer the 75 units of BHA-owned family rental housing.

FURTHER REVOLVED, that the ENRA period may be extended at the request of Developer for up to one successive period of thirty (30) days ("Extension Period"); provided that Developer delivers a written request for such extension prior to expiration of the Negotiating Period, and provided further that Developer is not then in default under this Agreement.

FURTHER RESOLVED, that the LIPH Feasibility Subcommittee and the Finance Committee are designated to work with the Executive Director to negotiate the terms of the transfer of the units.

FURTHER RESOLVED, that, in the event no DDA is entered into by the end of the end of the Negotiating Period, the Executive Director, is authorized to to move to the second ranked respondent to perform a similar level of due diligence and negotiate similar terms for an ENRA.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on September 8, 2011 by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Attest: _____
Tia M. Ingram, Secretary