



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Jim Shannon

SUBJECT: SEE BELOW

DATE: May 13, 2022

Approved

Date

5/13/2022

COUNCIL DISTRICT: 4

SUBJECT: EXCLUSIVE NEGOTIATION AGREEMENT, RIGHT OF ENTRY AGREEMENT, AND LOAN TO CHARITIES HOUSING FOR PREDEVELOPMENT ACTIVITIES TO DEVELOP AFFORDABLE HOUSING AT 71 VISTA MONTANA

RECOMMENDATION

- (a) Adopt a resolution authorizing the Director of Housing (the Director) to:
 - (1) Negotiate and execute an extension to the Exclusive Negotiation Agreement between the City and Charities Housing (Charities or Developer) for development of affordable housing at the City-owned Vista Montana site, located on 71 Vista Montana, San Jose, CA 95134 (the Site);
 - (2) Negotiate and execute a Right of Entry agreement with Charities for predevelopment activities including environmental review; and
 - (3) Negotiate and execute a predevelopment loan between the City and Charities in an amount not to exceed \$2,000,000, and any amendments or modifications thereto.

- (b) Adopt the following 2021-2022 Appropriation Ordinance Amendments in the Low- and Moderate-Income Housing Asset Fund:
 - (1) Decrease the Housing Project Reserve appropriation by \$2,000,000; and
 - (2) Increase the Housing Loans and Grants appropriation to the Housing Department by \$2,000,000.

OUTCOME

With City Council's approval, the Director will be authorized to amend and extend the Exclusive Negotiation Agreement (ENA) by up to three years and execute a three-year Right of Entry (ROE) agreement and a predevelopment loan agreement between the City and Charities consistent with Housing's underwriting guidelines. The ENA, ROE, and predevelopment loan to Charities will provide access and funding Charities needs to continue predevelopment activities that do not include ground disturbance, and develop entitlement plans and environmental review required to construct four phases of multifamily housing at 71 Vista Montana (Development or Project). Charities proposes a four-phased development that would yield 440 units divided among four buildings. The unit mix for the development will be a blend of studios, one bedroom, two bedroom, and three-bedroom units at or below 30% of Area Median Income (AMI) and at or below 60% AMI with average affordability in the development at or below 45% AMI. Expected population type will be large families and include a portion of rapid rehousing units for people who have experienced homelessness.

EXECUTIVE SUMMARY

The Housing Department seeks approval to extend the current ENA with Charities, set to expire on June 30, 2022, and seeks loan commitment approvals to provide predevelopment funding to secure entitlements to develop a new 440-unit affordable community for large families and people at risk of homelessness, including the completion of an environmental review. Charities is seeking \$2,000,000 for predevelopment costs until construction begins in late 2024. Total loan commitment of \$2,000,000 will be funded by the Low- and Moderate-Income Housing Asset Fund (LMIHAF).

In addition to funding, staff is seeking authority for the Director of Housing to negotiate and execute documents to grant Developer a right of entry to the Site that will allow Charities to continue predevelopment activities that do not include ground disturbance. Approval of this memorandum will enable the Developer to prepare entitlement packages in order to secure planning approvals. The right of entry agreement also enables the developer to secure additional predevelopment funding from outside lenders. As each phase of the Project is prepared to move forward, the Developer will be encouraged to apply for future rounds of the Housing Department's Notice of Funding Availability for construction and permanent financing, as well as low-income housing tax credits, tax-exempt bond allocations, and other needed development financing.

BACKGROUND

The City purchased the Site, a 4.21-acre parcel located at 71 Vista Montana, (identified as Assessor's Parcel Number 097-52-027), in June 2020. Prior to the City purchasing the Site for \$22,875,000 from San Jose Vista Montana, L.P. (Seller), Charities Housing was under contract

with the Seller to purchase the Site for an affordable housing development. The City and Charities entered into an ENA, which was executed in June 2020 and expires in June 2022.

Since execution of the ENA on June 23, 2020, Charities provided a proposal to the City that seeks to develop 440 units of affordable housing over four phases. Charities also provided a preliminary planning application to the City's planning team in June 2021. The City planning team reported that the project will be eligible for a streamlined, ministerial land use review process under California Senate Bill 35 (SB35). It is estimated that a Tribal Consultation Application (AB 168), which is required prior to submitting a streamlined development application, will be submitted by Developer in July 2022, with its SB35 application to follow in September 2022. These steps have met the performance metrics outlined in the ENA.

ANALYSIS

Charities has experience developing, operating, and maintaining affordable housing for families and people at risk of homelessness. Charities has experience working with the City to build affordable housing with recent examples being Blossom Hill Senior Housing and Page Street. 71 Vista Montana will be a similar supportive, affordable housing development that will require the expertise Charities has exemplified in the past while managing the aforementioned developments.

Exclusive Negotiation Agreement

The Housing Department recommends that the City extend the current ENA with Charities to provide assurances that the City will negotiate solely with Charities for development of the Site. The extended ENA will require and give authority to Charities to manage the Site prior to construction commencing and securing entitlements for the entire Site. The term of the extended ENA will be for three years with two one-year extension options. The certainty provided by the ENA will allow Charities to secure additional predevelopment financing, submit an SB35 application, and complete the environmental review and entitlement processes.

Right of Entry Agreement

An ROE agreement will give Charities the right to manage and secure the Site until construction financing closes and a long-term ground lease is entered into with the City. The Site has experienced numerous public safety issues. Multiple break-ins have been reported and trespassers continue to damage the property and salvage materials of value from the Site. These issues have been time consuming and costly for City staff to manage and resolve. An ROE would grant ingress and egress rights to Charities so they can provide security and manage the Site closely while predevelopment work progresses. Charities plans to fund the cost of security cameras and security patrol of the Site for the period of time the Site is held. Once all CEQA clearances have been secured, Charities may begin work on the Site.

Anticipating Phase 1 construction financing to occur by the end of 2024, a three-year term with two one-year extensions options would be a conservative and appropriate timeline to allow for Charities to finish predevelopment and start construction.

Predevelopment Loan

The Department is also proposing a \$2,000,000 predevelopment loan to Charities so that they have the necessary funding to develop entitlement plans, as well as manage and secure the Site until building permits are approved for Phase 1. The funding source for the predevelopment loan will be Low- and Moderate-Income Housing Asset Fund, which consist of repayments from former 20% Redevelopment Agency-funded affordable housing loans.

Charities estimates that approximately \$487,000 is necessary to secure and maintain the Site until construction commences. The remaining \$1.5 million would be used for predevelopment expenses, primarily architecture and engineering services, as shown in the budget below:

Predevelopment Budget	
Architecture & Engineering	\$1,129,550
Property Maintenance & Security Costs	\$487,050
Legal & Misc. Fees	\$254,400
Soft Cost Contingency	\$129,000
Total	\$2,000,000

For this development, the City will continue to own the land. The predevelopment loan will be further secured by a repayment guaranty and assignment of plans and specifications. Assuming all business terms are met, staff intends to structure the loan to be repaid from or accrued into a future City construction and permanent funding commitment once the Project applies through the City's Notice of Funding Availability process.

EVALUATION AND FOLLOW-UP

Upon the fulfillment of the ENA requirements by Charities, staff will evaluate the development proposal and consider City financing for a construction-to-perm loan. The City will partner with Charities to issue tax-exempt bond allocations for the Developer to apply for California Debt Limit Allocation Committee 4% low-income tax credits, if awarded. A full timeline is included as Attachment B.

POLICY ALTERNATIVES

The Housing Department considered the following alternative before making these recommendations for the 71 Vista Montana development:

- Alternative #1:** *Extend ENA and execute an ROA with no predevelopment financing provided by City.*
- Pros:** The City has limited funding sources available for predevelopment loans of this amount and term length.
- Cons:** The Developer will need to finance predevelopment costs through more costly lenders. The City would lose the opportunity to use a loan to secure approved plans and specifications for an affordable housing development.
- Reason for not recommending:** Financing the predevelopment costs would allow Charities to potentially leverage additional loans behind the City.

PUBLIC OUTREACH

This report will be posted to the City's website for the May 24, 2022, City Council Agenda.

CLIMATE SMART SAN JOSE

The recommendation in this memorandum furthers the goals of Climate Smart by facilitating the creation of low-income housing close to jobs and transit in North San José, which would reduce both vehicle miles traveled and greenhouse gas emissions.

COORDINATION

The memorandum has been coordinated with the City Attorney's Office and the Planning, Building and Code Enforcement Department.

FISCAL/POLICY ALIGNMENT

The recommended action is consistent with the objectives of creating 10,000 units of affordable housing within five years in the City's *FY 2020/21 – FY 2020/23 Affordable Housing Investment Plan*, adopted by the City Council on October 29, 2020.

COST SUMMARY/IMPLICATIONS

The recommendations in this memorandum will appropriate \$2,000,000 in the Low- and Moderate-Income Housing Asset Fund to provide predevelopment funding, maintenance, and security for Charities' 71 Vista Montana proposal. There is no ongoing fiscal impact to the General Fund as a result of this action.

BUDGET REFERENCE

The table below identifies the fund and appropriations proposed for the predevelopment loan commitment recommended as part of this memo.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2021-2022 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
346	8437	Housing Project Reserve	\$73,115,775	(\$2,000,000)	984	02/08/2022, 30717
346	0070	Housing Loans and Grants	\$74,668,057	\$2,000,000	983	10/19/2021, 30682

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
JACKY MORALES-FERRAND
Director, Housing Department


JIM SHANNON
Budget Director

For questions, please contact Rachel VanderVeen, Deputy Director, at 408-535-8231.

Attachment A: Location Map

Attachment B: Proposed Development Schedule

ATTACHMENT A

Location Map 71 Vista Montana



ATTACHMENT B

Proposed Development Schedule 71 Vista Montana

SITE ACQUISITION/SITE CONTROL	
City purchase of Site	June 2020
Charities ENA #1 executed	June 2020
Staff report deadline for City Council meeting	April 2022
City Council Meeting – approval to negotiate ENA #2	May 2022
ENA #2 finalized legal agreement	June 2022
Right of Entry Agreement	July 2022
Long term Ground Lease to be executed	At construction closings – see below
ENTITLEMENT	
Community meeting outreach one-on-one meetings after ENA #2 approval	June – August 2022
Tribal Consultation	July – August 2022
SB35 application submittal	September 2022
Community meeting #2 local stakeholders – post SB35 application submittal	October 2022
30-day period for City to notify us of objective standards not met	November 2022
60-day period for us to correct design and City to review updated design	January 2023
Planning Approvals completed	February 2023
DESIGN/BUILDING PERMITS	
GC prelim estimate update after expedited entitlement submittal	November 2022
Engage Schematic Design consultants	January 2023
GC updated estimates at 75% DD drawing phase	August 2023
Value Engineering exercise to reduce costs	October 2023
100% Construction Document drawings ready	January 2024
Submit for building permits	January 2024
Permit approvals (9 months)	August 2024
FINANCING/CLOSING	
City predevelopment financing	July 2022
City/County construction commitments after entitlement approvals	June 2023
HCD/Tech funding TBD, as needed	July 2023 – January 2024
TCAC/CDLAC 4%/bonds - Application/Award – Phase 1	March 2024/May 2024
Construction Finance Closing – Phase 1	September 2024
TCAC/CDLAC 4%/bonds - Application/Award – Phase 2, 3, and 4	Assume every 6 months after
Construction Finance Closing – Phase 2, 3, and 4	Assume every 6 months after

CONSTRUCTION/LEASE UP	
<i>Phase 1</i>	
Construction start	September 2024
Construction complete (18 months)	July 2026
Lease up units to 100% (4 months)	December 2026
Conversion (9 months)	September 2027
8609 received (up to 12 months)	September 2028
<i>Future Phases</i>	<i>Every 6 months after</i>
Construction Start – Phase 2, 3, and 4	March 2025, September 2025, March 2026
Construction Complete – Phase 2, 3, and 4	December 2026, July 2027, December 2028