



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** Christina Mun  
Interim Director, Housing  
and Community  
Development Department

**SUBJECT:** Longfellow Corner Disposition &  
Development Agreement

**DATE:** November 30, 2022

City Administrator Approval 

Date: Dec 8, 2022

## RECOMMENDATION

Staff Recommends That The City Council Adopt The Following:

- 1) AN ORDINANCE (A) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH LONGFELLOW CORNER, L.P. (“DEVELOPER”) FOR THE DEVELOPMENT OF AN AFFORDABLE HOUSING PROJECT ON CITY PROPERTY LOCATED AT 3823-3829 MARTIN LUTHER KING JR. WAY AND ADJACENT DEVELOPER-OWNED PROPERTY LOCATED AT 3801-3807; (B) APPROVING THE PROPOSED CONVEYANCE OF THE CITY-OWNED PROPERTY TO DEVELOPER FOR \$99; AND (C) ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

## EXECUTIVE SUMMARY

The City of Oakland (City) owns two contiguous parcels located at 3823-3829 Martin Luther King Jr. Way (City Property), totaling approximately 9,400 square feet (0.22 acres). Two neighboring parcels owned by the Resources for Community Development (RCD) are located contiguous to the City Property at 3801-3807 Martin Luther King Jr. Way (Developer Property), totaling approximately 11,875 square feet (0.27 acres). Each parcel faces Martin Luther King Jr. Way between W. Mac Arthur Boulevard and Apgar Street and combined together, create the boundary for the Longfellow Corner affordable housing project. Through this proposed Disposition and Development Agreement (DDA) proposed in this staff report, the City will set the terms and conditions for transfer of the City Property for the purpose of developing 77 units of affordable housing.

The subject sites are blighted, vacant, undeveloped, and recently subject to extensive and repeated trespassing. Over a month and a half long period this past summer, an unlicensed automobile repair operation at the site resulted in extensive pollution requiring a hazardous abatement response, police activity to tow away stolen vehicles stored on-site, and the proper disposal of illegal dumping. The illegal activity has since been abated and the site is now under surveillance.

City Council  
December 20, 2022

In response to a Request for Proposals (RFP) issued on May 11, 2018, RCD expressed interest in acquiring the City Property and combining it with the Developer Property for developing an affordable housing project on the entire site referred to as Longfellow Corner. On July 30, 2019, and made effective per City Council [Resolution No. 87468 C.M.S.](#), the City entered into an Exclusive Negotiating Agreement (ENA) with Longfellow Corner L.P., an affiliate of RCD, to negotiate the potential price and terms of a future disposition of the City Property. On December 15, 2020, the Council authorized the ENA to be extended for an additional eighteen months with one six-month administrative extension per City Council [Resolution No. 88435 C.M.S.](#) On June 12, 2022, the term was extended by one additional six-month period to end December 12, 2022.

The proposed project will provide seventy-seven (77) affordable housing units with just over 2,000 square feet of community commercial space. As shown in **Table 1**, The proposed project will set aside housing for households with incomes between 20 percent and 50 percent of the area median income (AMI) including thirty-four (34) Permanent Supportive Housing units (PSH) for homeless households. The unit mix and affordability levels will be documented in a regulatory agreement, in the most current form used by the City for its affordable housing projects. Executing and recording the agreement will be a City condition for issuing City committed development funds before the start of construction.

**Table 1: Longfellow Corner: Affordability Level of Housing Units**

Affordability	Total Units	Percent of Total	Permanent Supportive Housing Units
20% AMI	30	39%	30
30% AMI	10	13%	4
50% AMI	36	47%	
Manager	1	1%	
<b>Total</b>	<b>77</b>	<b>100%</b>	<b>34</b>

After extensive study and substantial progress in predevelopment activities by RCD, and in consultation with City of Oakland's Environmental Services Division, the Housing and Community Development Department (HCDD) staff recommend entering into a DDA with RCD for development of the Longfellow Corner through long term site control. In addition, staff has prepared an update on current site conditions following the recent trespassing on City Property.

**REASON FOR URGENCY**

As current owner, the City is obligated to ensure City Property is suitable for development and maintain safety and security of the site. The City has investigated its parcels to create a plan for cleanup and determine the appropriate disposition of land. Based on necessary environmental remediation and mitigation, the ongoing security concerns, the predevelopment progress made for the affordable housing project, and the ENA due to expire in December 2022, staff seeks Council approval to enter into the DDA at this time.

A tax credit commitment for new construction will lead towards the activation of the City Property which is proposed to be combined with the Developer Property, under one owner, and will help to alleviate the City from long-term maintenance obligations including those stipulated under the approved Removal Action Workplan (RAW) to remediate and mitigate the subject site approved by DTSC. As previously reported the repeated trespassing on the City Property, along with illegal dumping and illicit automotive repair activities, are an immense drain on staff resources from HCDD, Oakland Public Works (OPW), Oakland Fire Department (OFD) and the Oakland Police Department (OPD) incurring significant costs for site clean-up and security.

Activating the City Property with construction activity through a site control DDA will provide for greater long-term stability of the City Property while mitigating environmental liability to the City and enabling the affordable housing project to move forward towards construction.

### **BACKGROUND / LEGISLATIVE HISTORY**

In 1990, the City of Oakland purchased 3823 Martin Luther King Jr. Way using Community Development Block Grant funding to initiate neighborhood revitalization through affordable housing development, and pursued development proposals for the site, including lending funds to a housing development organization to purchase an adjacent site located at 3829 Martin Luther King Jr. Way.

Because the developer was unable to pursue development plans, in January 2017, the City acquired ownership of the 3829 Martin Luther King Jr. Way parcel via foreclosure on a former Redevelopment Agency developer loan to the prior owner, which was in default. The Redevelopment Agency loan was transferred to the City as an affordable housing asset post-Redevelopment dissolution.

On July 19, 2016, the City Council adopted [Resolution No. 86335 C.M.S.](#), placing the Measure KK Infrastructure and Housing Bond on the November 2016 ballot. On November 29, 2016, the City Council approved [Ordinance No. 13403 C.M.S.](#), enacting the City of Oakland Affordable Housing and Infrastructure Bond Law, which identified the purchase of vacant underutilized property for newly constructing long-term affordable housing opportunities for extremely-low to low-income residents of the City of Oakland, as an eligible use for the City's affordable housing bond funds.

On June 19, 2017, the City Council approved [Resolution No. 86774 C.M.S.](#), which was subsequently amended by City Council [Resolution No. 86814 C.M.S.](#) adopted on June 29, 2017, authorizing the issuance of the first tranche of Measure KK housing bond funds in an amount not to exceed \$55 million. The authorization included funds for acquiring vacant and underutilized land to developers who propose to serve extremely-low to low-income households.

RCD, a local non-profit affordable housing developer, is the owner of two contiguous parcels located at 3801-3807 Martin Luther King Jr. Way which is next to the City Property. On February 9, 2018, RCD acquired the contiguous land with the use of Measure KK Site Acquisition Funds (\$3,175,000). The purchase extended from a vision to combine the parcels with the neighboring City Property to develop a long-term affordable housing project for

extremely-low to low-income individuals and families, including a set aside of PSH for homeless households.

On May 11, 2018, HCD staff released a Request for Proposals (RFP): A Notice of Development Opportunity, seeking qualified respondents to plan, design, construct, market, sell, and/or operate an affordable housing project to be located at 3823-3829 Martin Luther King Jr. Way. In response to the RFP, RCD presented the strongest proposal for development, illustrating an efficient use of all four parcels to build the most affordable units while eliminating blight at the site.

On December 14, 2018, the Oakland City Council approved [Resolution No. 87483 C.M.S.](#), a resolution setting forth Oakland's public lands policy framework which prioritizes the use of City property to address its housing and shelter inequities and allow for zero-cost and discounted conveyances for projects that provide a benefit to the public including housing primarily for low-income and low-asset residents. The City Property at 3823-3829 Martin Luther King Jr. Way is among the City's public lands portfolio designated for below market rate housing.

In addition, on December 11, 2018, the Oakland City Council approved [Resolution No. 87468 C.M.S.](#), authorizing the City of Oakland to enter an ENA with RCD or its affiliate. On July 30, 2019, the City entered an ENA with Longfellow Corner L.P., an affiliate of RCD, per City Council Resolution No. 87468 C.M.S. The ENA set the framework for a period of environmental review and exclusive negotiations for potentially entering into a Lease Disposition and Development Agreement (LDDA)/Disposition and Development Agreement (DDA). The LDDA/DDA, subject to City Council approval, would set forth in the terms and conditions for potentially conveying the RCD parcels to the City, the merger of all four parcels, the leasing or sale of the land to RCD, and the development of the housing project. The ENA was then extended to December 12, 2022, pursuant to City Council [Resolution No. 88435 C.M.S.](#), adopted on December 15, 2020.

On August 9, 2019, City HCD staff released a Notice of Funding Availability (NOFA) for fiscal year 2019-2020. The NOFA was provided for the new construction of affordable rental, homeownership, and PSH projects. It was intended to partially fill the gap between development costs and financing available from other public and private sources. It sought the creation of new affordable rental and ownership units, projects targeting people experiencing homelessness, those in need of PSH, and projects closer to the start of construction with the aid of additional funds from the City.

On September 11, 2019, the City of Oakland's Planning Bureau approved land use zoning entitlements, including necessary clearance under the California Environmental Quality Act (CEQA) for the 77-unit project.

Pursuant to City Council [Resolution No. 87994 C.M.S.](#), approved on January 21, 2020, RCD received a \$4,264,000 NOFA funding award in response to their NOFA submittal for extremely-low to low-income housing across 3801-3807 and 3823-3829 Martin Luther King Jr. Way.

On July 12, 2021, the City executed a Standard Voluntary Agreement with the State of California Environmental Protection Agency – Department of Toxic Substances Control (DTSC), regarding the characterization of site contamination on City owned property at 3823-3829 Martin Luther King Jr. Way. The agreement allows the City and RCD to implement site characterization investigations, to investigate and evaluate a potential release of a hazardous substance, and to

initiate discussions around a clean-up determination on the property under the purview of DTSC. The investigations found ground water contamination and lead impacted soil contamination.

RCD has successfully worked with the State Department of Toxic Substances Control (DTSC) to develop a Removal Action Workplan (RAW) to address remediation of the site's prior existing contamination. The RAW underwent a 30-day public commenting period and received one comment. DTSC subsequently approved the final RAW as of July 6, 2022. In addition to DTSC approving the RAW, RCD has successfully secured funding commitments from the following competitive State sources:

- Affordable Housing and Sustainable Communities (AHSC): \$12,319,000
- No Place Like Home (NPLH): \$12,410,000

The project was then awarded an additional \$7,000,000 under the City New Construction NOFA (issued November 16, 2021) per City Council [Resolution No. 89241 C.M.S.](#), which was approved on June 7, 2022. This brings the project's total City affordable housing development loan award commitment to \$11,264,000. With the 2017 site acquisition loan, total City funding committed to the project is \$14,439,000.

Currently, RCD is waiting to hear back on an application for State Infill Infrastructure Grant (IIG) funding under a State Super NOFA submitted in July. With this IIG funding in place, the Longfellow Corner project will be positioned to compete for a federal tax credit and tax-exempt bond funding commitment and potentially start construction by the summer of 2024.

On September 20, 2022, the Oakland City Council approved [Resolution No. 89392 C.M.S.](#), a resolution providing for a no fee license agreement between the City and RCD, or affiliated entities, for the temporary license of the City Property for predevelopment activities and securing and maintaining the City Property until construction of the project may commence. Also on September 20, 2022, the Oakland City Council approved [Resolution No. 89393 C.M.S.](#), a resolution authorizing an unsecured predevelopment loan in the amount not to exceed \$2,000,000 to RCD, or affiliated entities, to support predevelopment work, including site maintenance and security associated with development of the Longfellow Corner project.

## **ANALYSIS AND POLICY ALTERNATIVES**

Over the last couple of years, RCD has made great progress bringing the affordable housing development and funding to fruition. Planning and zoning entitlements including CEQA have been approved by City Planning and Building, partial development funding has been committed by City and State sources including a Section 8 voucher commitment from the Oakland Housing Authority, and a Removal Action Workplan (RAW) to remediate and mitigate the subject site has been approved by DTSC (discussed further below).

Based on the benefits of having an active use on the City Property before construction may begin, RCD has received authorization from the City to provide security and maintenance of the City Property. Their continued presence shall serve as a deterrent to illegal dumping and vandalism until construction may commence. An unsecured predevelopment loan, allocated

from an existing City NOFA commitment, has also been approved by the City to support predevelopment work associated with the 77 unit project.

Under the ENA, RCD conducted environmental due diligence and hired Roux Environmental Consulting & Management to prepare and implement a sampling and analysis plan for all four parcels. The investigation evaluated subsurface conditions to plan for remediation and corrective actions. A review of soil, ground water, and soil vapor data (2020) indicated human health risk concerns needed to be further assessed to evaluate potential health risks to future construction workers and occupants of the site and to inform the public of potential corrective actions. Field investigations confirmed that site clean-up must occur during development to develop the Property into the Longfellow Corner affordable housing project.

Based on the environmental testing results and the severity of any environmental issues, staff recommend that the City convey its title to RCD by sale through a DDA, assuming the parties are able to agree upon the allocation of liability related to the contamination and costs for the remedial work. As discussed below, structuring the disposition as a DDA will eliminate the long-term environmental impact on the City and allow RCD to competitively compete for the remaining State and Federal financing needed to start construction.

#### *Environmental Findings and Removal Action Objectives*

Phase I and Phase II environmental site assessments for both the City Property and Developer Property indicated the presence of contaminants of concern above applicable screening levels that needed to be further characterized and assessed. To provide regulatory oversight, the State Department of Toxic Substances Control (DTSC) agreed to oversee the additional assessment if the City entered into a Standard Voluntary Agreement (SVA) with DTSC.

The additional assessments provided data needed to prepare a Removal Action Workplan (RAW) which is required to be approved by DTSC before any remediation activities may occur. The development of the RAW is designed to provide the scope of work needed to be performed to define contamination, source liability, and remedial costs. The RAW provides clarity to the level of remediation required on the various parcels and helps the City decide between taking title to the Developer Property or convey the City Property to the Developer. Initiated by RCD in tandem with the City, the RAW evaluates the proposed alternatives for remediation and mitigation on the impacts presented by various chemicals of concern (COCs) present in soil, groundwater, and soil vapor at the site, and identifies remedial alternatives to mitigate those impacts.

The COCs present on City Property above relevant screening criteria are volatile organic compounds (VOCs) in groundwater and soil vapor, and lead and select organochlorine pesticides and semi-volatile organic compounds in shallow soils. Based on these findings, the RAW outlines removal action objectives (RAOs) developed in response to the current environmental conditions, the anticipated future uses of the site, and the anticipated exposure pathways. The recommended RAOs include excavation of the top 1.5 feet of soil from across the site for off-site disposal, construction of a Vapor Intrusion Mitigation System (VIMS), and the filing of a Land Use Covenant (LUC) as the recommended actions for site remediation and mitigation. A VIMS would be installed beneath the foundation of the planned building in conjunction with building construction, to mitigate the potential for vapor intrusion into the future on-site building. While it's not expected that groundwater (10-12 feet below) will be a concern

for the development project, the LUC shall include provisions restricting the use of groundwater to minimize exposure to residual COCs as well as the requirements of the VIMS. The LUC will be recorded on title at the Alameda County Registrar Recorder/County Clerk’s Office. The above RAOs are recommended because of their cost-effective approach, and the remediation and mitigation will occur during construction. They can easily be implemented and are proven to be effective at providing protection to human health and the environment.

*Maintenance and Ongoing Assessment.*

To maintain the VIMS overtime, an Operations & Maintenance (O&M) Plan will also be necessary for the project site. While the O&M Plan will outline the specific inspection and monitoring activities agreed to in consultation with the DTSC, it is expected at a minimum they will include a program of semi-annual reporting on system performance and air sampling during the first year. If after the first year the VIMS is effectively mitigating the risk of vapor intrusion, then a program of annual inspections will be implemented for years two through four. After the first five years and every five years thereafter, a five-year remedy review will be performed to confirm that the VIMS is continuing to meet performance criteria, and the evaluation of whether criteria for terminating the O&M Plan have been met. The LUC will also establish engineering controls to protect and maintain the VIMS.

The VIMS O&M is estimated to cost approximately \$122,000 for five years. Additional costs associated with preparing the LUC total to approximately \$8,000. Plus, contingency costs at 20% of the combined total for a grand total of \$156,000. Please see **Table 2** for a detailed breakdown.

**Table 2: Estimated Budget for Future Environmental Scope**

Item	Amount	Units	Quantity	Cost	Key Assumptions
<b>O&amp;M – Operation &amp; Maintenance</b>					
Year 1 – Compliance Monitoring & Reporting	\$52,000	LS	1	\$52,000	Includes costs for pre- and post-occupancy sampling, assumes semi-annual sub-slab soil vapor monitoring, and stack flow monitoring
Year 2 – Compliance Monitoring & Reporting	\$26,000	LS	1	\$26,000	Includes costs for semi-annual sub-slab soil vapor monitoring, and stack flow monitoring.
Year 3-5 – Compliance Monitoring & Reporting	\$13,000	LS	3	\$39,000	Assumes annual collection of source area soil vapor monitoring probe and stack flow monitoring and reporting.



BAAQMD Permit Exemption	\$5,000	Year	1	\$5,000	Preparation of permit exemption letter for passive SSVS and BAAQMD review fees; assumes passive VMS is acceptable.
<i>Subtotal</i>				\$122,000	
<b>Land Use Covenant</b>					
Preparation of a Land Use Covenant	\$8,000	LS	1	\$8,000	
<i>Subtotal</i>				\$8,000	
<b>Item Totals</b>				<b>\$130,000</b>	
Contingency (20%)				\$26,000	
<b>Totals With Contingency</b>				<b>\$156,000</b>	
Notes BAAQMD – Bay Area Air Quality Management District LS – Lump Sum SSVS – Sub slab Vapor System					

Source: Roux Associates, Inc., "Removal Action Workplan: 3801-3829 Martin Luther King Jr. Way, July 13, 2022 (Approved Final Version)", Appendix D, pages 485-486.

*Recommendation of DDA vs. Alternatives*

Two conditions necessitate the City to enter into a Disposition and Development Agreement (DDA) or Lease Disposition and Development Agreement (LDDA) for Longfellow at this time. First, all parcels must be merged under one owner. Second, a site control agreement is critical to establish site control and to qualify for various funding programs.

As per the City of Oakland's Planning and Building Conditions of Approval (2019), a parcel map waiver to merge the four subject sites into one parcel, including a written legal description of the parcels as part of the land deed with the Alameda County Recorder's Office, must be recorded and provided to the Planning Department as proof such recording took place before a building permit may be issued. The purpose of the merger is to combine the parcels to construct the mixed-use affordable housing project in accordance with building code requirements. This means the four parcels for the Longfellow Corner project must be combined into one parcel under one landowner and the owner of record will be the responsible party for the environmental on-site conditions.

In addition, under various funding programs, including the Low-Income Housing Tax Credit Program (LIHTC), the site control agreement is critical for establishing site control. It connects the applicant, RCD, to the public agency owning the land, the City, for the proposed project. All applicants shall provide evidence that the subject property is within control of the applicant. RCD has successfully secured funding commitments from several State sources and is now in need of a significant tax credit commitment ranging up to \$30M. The targeted due date for the application submittal is the Spring of 2023.



With the above requirement to merge City-owned parcels with RCD's parcels, as well as the urgent need for the RCD to have a site control agreement, there is just one alternative to entering into a DDA for this project: taking ownership of RCD's parcels and entering a Lease Disposition and Development Agreement (LDDA) with RCD. Typically the City seeks to retain ownership of its land and allow its use through long-term leases. However, given the ongoing maintenance and costs associated with a VIMS and future long-term ground water monitoring, the potential for the City's liability, and the need for one property owner, there is no apparent benefit for the City to retain ownership of the City Property.

As discussed above, the RAO implementation strategies will involve operational and maintenance systems and costs the City will incur if the City retains ownership of the City Property. With continued ground water contamination on the City Property, some liability remains that the City could be named as a source of that contamination in the future. The Developer Property has similar contamination but less than the City owned properties. As a result, the requirement that all four parcels be under common ownership would result in an increased future liability risk to the City by the City's accepting title to the Developer Property in order to comply with the building permit requirements. Therefore, to eliminate the City's risk to future environmental liability, and per the City's public lands policy framework prioritizing the use of City property to address its housing inequities at a discounted conveyance for projects providing a benefit to the public including low-income housing (Oakland City Council Resolution No. 87483 C.M.S.), staff recommend conveying the City Property to RCD pursuant to a DDA in order to develop the site as a 100% permanent affordable housing project.

A DDA would release the City's long-term liability to the City Property including the operational and maintenance obligations. Under the proposed DDA terms, the conveyance will occur only upon Developer's satisfaction of the closing conditions, including Developer's ability to close on its financing to construct the project.

Approving the recommended actions would promote the **holistic community safety** of the neighborhood by protecting against further dangerous conditions, support the momentum of creating more affordable housing to generate the City's **housing, economic, and cultural security**, and our actions to responsibly clean and protect the City Property would reflect **responsive, trustworthy government**.

### **FISCAL IMPACT**

There is minimal fiscal impact due to this DDA. The purchase price of \$99 shall be based on findings by the City Administrator and City Council, that it is within the City's best interest to convey the City Property because of the environmental conditions, the City's long-term liability associated with those conditions, and the need for one property owner to assume liability. The conveyance price shall be due and payable in cash and submitted into escrow. Funds will then be deposited into City Fund 2830 (Low and Moderate Housing Income Asset Fund), Organization 89929 (Housing Development), Project Code 1000388 (Housing Development Project), and Account Number 48720 (Other Revenues). A separate purchase and sale agreement will not be needed as the terms of the conveyance will be included in the DDA.

As discussed above, an O&M agreement signed by the City and DTSC specifying the operation and maintenance requirements and providing financial assurance for future operation and maintenance of the VIMS will be required, and under the terms of the DDA, RCD will be responsible for the cost, operation, and maintenance. O&M costs for the VIMS is estimated at approximately \$122,000 for five years as described in **Table 2**.

The specific terms of the DDA are shown on the attached Term Sheet negotiated by Staff with Developer (see **Attachment 1**). The final DDA will incorporate these terms and be in a form approved by the City Attorney's Office.

### **PUBLIC OUTREACH / INTEREST**

RCD first met with District 1 Councilmember Dan Kalb in June 2017 to identify community stakeholders, individuals, and groups to connect with about the Longfellow Corner. RCD received a list of relevant organizations in the area, consisting of the Neighborhood Crime Prevention Council (NCPC) Beat 6X and the Longfellow Community Association. Meetings were conducted with both groups including neighbors of the project site, such as the owner of Marcus Bookstores and the owner of the MLK Café. The owner of the MLK Café is also the owner of the residential apartment building next to the City Property.

RCD has actively stayed in close communication with the MLK Café owner and hosted its last community meeting at the MLK Café (2019). RCD continues to meet with the District 1 Council Office and local stakeholders and has been actively participating with the San Pablo Area Revitalization Collaboration (SPARC) committee for the past several years. The Northwest Community Plan was introduced to RCD by Councilmember Kalb's office. The plan was initiated by the community in 2015 in which several meetings were hosted over the years (2015-2016) to create a neighborhood specific plan for the area that would include the Longfellow Corner project site. There has been no activity with this group recently; however, RCD plans to be involved with the Northwest Community Plan when discussions are reactivated.

### **COORDINATION**

This staff report and ordinance have been reviewed by the Office of the City Attorney and by the Budget Bureau. Staff has coordinated extensively with other City and State departments in the course of evaluating a potential release of a hazardous substance and initiating discussions around a clean-up determination for the City's Property. Including the City Environmental Services Division and the State Department of Toxic Substances Control. Other coordination on the overall project includes City Planning and Building, the City Real Estate Division of the Economic and Workforce Development Department (EWD), the City Public Works Construction & Maintenance Division (OPW), the Oakland Police Department (OPD), and the Oakland Fire Department (OFD).

### **PAST PERFORMANCE, EVALUATION AND FOLLOW-UP**

RCD owns an affordable housing portfolio of over 2,500 units at 62 sites, in 25 cities across five counties, including 14 properties located in Oakland. The organization has a long track record of

owning development sites, and successfully developing and operating affordable housing to serve low-income residents of Oakland.

As reported to Council in September 2022, the repeated trespassing on the City's Property, along with illegal dumping and illicit automotive repair activities are an immense drain on staff resources from HCDD, OPW, OFD and OPD, incurring significant costs for site clean-up and security. On September 20, 2022, the Oakland City Council approved Resolution No. 89392 C.M.S., a resolution providing for a license agreement between the City and RCD to maintain and secure the City Property, which will ensure regular site clean-ups and security to prevent deterioration of the site until construction start. In coordination with the City Attorney's Office, the license agreement is under review. As of September 2, 2022, the City Property is clear of all illegal activity and is now under a security watch by ABC Security until the license agreement is signed.

Also on September 20, 2022, the Oakland City Council approved Resolution No. 89393 C.M.S., a resolution authorizing an un-secured predevelopment loan in the amount not to exceed \$2,000,000, to RCD, or affiliated entities, to support predevelopment work, including site maintenance and security associated with the Longfellow Corner project. The loan will be an advance on the City's larger affordable housing loan commitment to the project and is roughly in line with other recent predevelopment loans made to projects on City-owned land (such as 7<sup>th</sup> & Campbell and the Brooklyn Basin affordable projects) that have reached the DDA or LDDA stage. The predevelopment loan will assist RCD with carrying costs to maintain and secure the property, and the loan agreement will soon be drafted by staff.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Longfellow Corner will turn a vacant and underutilized property into a vibrant affordable housing mixed-use development. The project will provide much needed affordable housing for the City of Oakland and will act as a catalyst to further transform the area and provide a positive stimulus to the neighborhood. The proposed development will be located two blocks from the MacArthur Bay Area Rapid Transit (BART) station and will provide residents with excellent access to BART and Alameda-Contra Costa (AC) Transit along Telegraph Avenue and 40<sup>th</sup> Street. Residents will have efficient access to local and regional employment centers via BART. Creating housing near BART will reinforce the transit-oriented development strategy noted in the Association of Bay Area Governments (ABAG) MacArthur Transit Village Priority Development Area (PDA) and will reduce the financial burden of car ownership. With a high volume of development underway or approved in this neighborhood, it will be important to ensure low-income residents benefit from the value of incoming investment.

***Environmental:*** As an urban infill site, the property will require remediation prior to development. DTSC has agreed to serve as the oversight agency for the environmental investigation and will oversee RCD's approved RAW for remediation, which included a public participation component. The proposed actions in this report will prevent the further deterioration of the site's environmental impacts on residents near the property, creating a path for improved neighborhood conditions and making the area more attractive to prospective residents, tenants, and businesses of the Oakland community.

**Race & Equity:** Longfellow Corner will have a positive impact on the surrounding community by providing affordable family housing in a neighborhood that has experienced severe displacement. With an influx of market rate housing and upscale retail, market pressures in North Oakland have resulted in sharply rising land values and rents. Adding to the stock of much needed affordable housing in this neighborhood will allow an opportunity for displaced families to maintain their social networks and benefit from up and coming nearby developments. Combining the City Property with Developer Property will transform the four blighted subject parcels into high-quality, professionally maintained affordable housing.

In a historically African-American neighborhood experiencing high displacement pressures, the 77-unit development will be met with local hiring obligations and preferences for Oakland residents. Such requirements are a step towards reversing the inequities that have led to the displacement of long-standing Oakland residents. HCD will mandate as a provision of its funding commitment that the owner/developer comply with the requirements of the City's Local Employment Program for the hiring of Oakland residents and the use of apprentices on publicly-supported projects. Fifty (50%) percent of project work hours on the construction of the project must be performed by Oakland residents, a minimum of 50 percent of all new hires must be Oakland residents, and the first new hire must be an Oakland resident.

In addition, HCD will enforce local business participation requirements in accordance with the City's Local/Small Local Business Enterprise (L/SLBE) Program. Residents for housing units will be subject to Oakland preferences where the owner/developer must give preference in the selection of tenant households. When selecting eligible households, preferences must be given to displaced, neighborhood residents, Oakland residents, and workers in accordance with the Oakland Municipal Code (Chapter 15.63, Article I).

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Upon review of the City of Oakland Planning Bureau and as of September 11, 2019, the Longfellow Corner Project received a categorical exemption under CEQA as an infill development (CEQA Guidelines Section 15332) and a project consistent with a community plan, general plan or zoning (CEQA Guidelines Section 15183(f)).

### **ACTION REQUESTED OF THE CITY COUNCIL**

**Staff Recommends That The City Council Adopt The Following:**

- 1) AN ORDINANCE (A) AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A DISPOSITION AND DEVELOPMENT AGREEMENT WITH LONGFELLOW CORNER, L.P. ("DEVELOPER") FOR THE DEVELOPMENT OF AN AFFORDABLE HOUSING PROJECT ON CITY PROPERTY LOCATED AT 3823-3829 MARTIN LUTHER KING JR. WAY AND ADJACENT DEVELOPER-OWNED PROPERTY LOCATED AT 3801-3807; (B) APPROVING THE PROPOSED CONVEYANCE OF THE CITY-OWNED PROPERTY TO DEVELOPER FOR \$99; AND (C) ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

For questions regarding this report, please contact Everett Cleveland Jr., Housing Development Coordinator, at 510-326-7687, or Christia Katz Mulvey, Housing Development Services Manager, at 510-332-4461.

Respectfully submitted,

*Christina Mun*

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Christina Mun  
Interim Director, Housing and Community  
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Reviewed by:  
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Housing Development Services

Prepared by:  
Everett Cleveland, Jr., Housing Development  
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Housing Development Services

Attachments (1):

(A) Term Sheet - Disposition and Development Agreement

**LONGFELLOW CORNER TERM SHEET**  
**3823 & 3829 MARTIN LUTHER KING JR. WAY**

December 8, 2022

Note- This term sheet shall serve as the basis for the negotiation of a detailed final Disposition and Development Agreement (“**DDA**”), between the City of Oakland, a municipal corporation (the “**City**”), and Longfellow Corner, L.P., a California limited partnership (the “**Developer**”). City and Developer shall be referred to herein sometimes as the “**Parties**” and each individually a “**Party**.” The terms hereof are not binding on the parties until Developer and City, pursuant to City Council authorization, have executed a mutually acceptable DDA for the proposed project. The Final DDA may include terms that differ from, or are in addition to, the terms set forth in this term sheet.

1	<b>OWNER</b>	City
2	<b>DEVELOPER</b>	Longfellow Corner, L.P., a California limited partnership, which is an affiliate of Resources for Community Development (“ <b>RCD</b> ”).
3	<b>PROPERTY</b>	<p>Approximately 0.21 of an acre of land, comprised of two (2) contiguous parcels owned by the City located at 3823-3829 Martin Luther King Jr. Way (Assessor’s Parcel Numbers (“<b>APNs</b>”) 012-0964-004 and 012-0964-005) (jointly, the “<b>Property</b>”).</p> <p>It is currently anticipated that the City will transfer the Property to Developer.</p> <p>Following the City’s conveyance of the Property, Developer shall, at its sole cost and expense, prepare the application for a parcel map waiver to merge the City owned parcels with the contiguous property owned by Developer, located at 3801-3807 Martin Luther King Jr. Way (APNs 012-0964-006 and 012-0964-007) (collectively, the “<b>Developer Property</b>”), into one parcel for the City’s issuance of a building permit.</p>
4	<b>PROJECT DESCRIPTION</b>	The “ <b>Project</b> ” is proposed to include a six-story mixed-use building consisting of seventy-seven (77) affordable units comprised of thirty-three (33) one-bedroom units; nineteen (19) two-bedroom units; and twenty-five (25) three-bedroom dwelling units, including one (1) unrestricted manager’s unit, for households with incomes between twenty (20%) and sixty percent (60%) of County of Alameda Area Median Income (“ <b>AMI</b> ”) with approximately 2,000 square feet of ground floor retail area. The Project may also include up to thirty-nine (39) residential parking spaces, and four (4) short-term & 50 long-term bicycle spaces.

5	<b>RIGHT OF ACCESS</b>	Developer shall have the right to enter the Property prior to the City’s conveyance to conduct investigations and testing at Developer’s cost and pursuant to the DDA. Developer shall have the right to access the Property for purposes of completing Developer’s due diligence work while securing and maintaining the site, subject to providing City with indemnity, insurance and other terms set forth in the DDA, that certain Exclusive Negotiation Agreement by and between City and Developer dated effective as of July 30, 2019, as extended from time to time (the “ <i>ENA</i> ”), and/or that certain License Agreement by and between City and Developer dated effective as of _____, 2022, as extended from time to time. Notwithstanding the prior sentence, Developer shall not do any invasive testing without the prior written consent of City, which shall not be unreasonably withheld, conditioned or delayed and which City acknowledges may be required by Developer’s lenders and/or investor.
6	<b>CONVEYANCE PRICE</b>	The conveyance price will be \$99 (“ <i>Conveyance Price</i> ”).  The Conveyance Price for the Property shall be due and payable in cash submitted into escrow three (3) days before close of escrow (“ <i>Close of Escrow</i> ”), or on such other terms as may be negotiated.
7	<b>DDA TERM AND TERMS OF PAYMENT</b>	The parties acknowledge that a Project of the scale proposed will take considerable time to finance, market, prepare final design and construction documents and build. As such, Developer will have three (3) years to Close of Escrow for the conveyance of the Property for development of the Project. At Developer’s sole discretion, subject to there being no default, Developer may extend the DDA term by up to two (2) additional one (1)-year extensions (each an “ <i>Extension</i> ”). Each Extension shall be exercisable no earlier than 120 days and no later than 30 days prior to the then existing expiration date of the DDA term.
8	<b>DEPOSIT</b>	Upon executing the DDA, Developer will provide a good faith Deposit equal to \$1,000. If Developer fails to fulfill the conditions or meet the obligations set forth in the DDA, City may retain the Deposit as liquidated damages. Prior to Close of Escrow, City’s sole remedy shall be to terminate the DDA and retain the good faith Deposit. Upon Close of Escrow, the Deposit will be applied to the Conveyance Price.
9	<b>ENVIRONMENTAL INVESTIGATION AND REMEDIATION</b>	The Department of Toxic Substances Control (“ <i>DTSC</i> ”), in their July 6, 2022 approval letter, approved the final Removal Action Workplan (“ <i>RAW</i> ”) prepared by Roux Associates, Inc., dated July 13, 2022, for both the Property and the property owned by the Developer. The Developer may continue, at its sole cost and expense, engage its own environmental consultant to make such environmental site assessments



		<p>or investigations of the Property with respect to possible contamination by hazardous materials as the Developer deems necessary, including conducting any “Phase I” and/or “Phase II” investigations of the Property. Notwithstanding Section 5 above, Developer shall conduct any such environmental investigations as follows:</p> <ol style="list-style-type: none"> <li>a) Developer shall provide advanced notice of any Phase I surveys or inspections of the Property.</li> <li>b) Developer may not conduct any Phase II investigations unless the City’s environmental specialist has reviewed and approved Developer’s proposed work plan.</li> <li>c) Developer shall promptly deliver to the City a copy of all reports and assessments provided by the Developer’s consultants, without any warranty.</li> <li>d) Developer, its consultants and agents shall neither contact any agency having jurisdiction as to environmental matters over the Property concerning the environmental reports and assessments performed nor provide such reports or assessments to such agency without the prior written consent of the City’s Environmental Protection and Compliance department. Violation of this provision shall constitute a material breach of the DDA.</li> <li>e) The Developer shall use its commercially reasonable efforts, and at its sole cost and expense, to cause its environmental consultants to agree that the City may rely on the contents of such reports and assessments through reliance letters.</li> </ol> <p>Developer shall, at its sole cost and expense, and as the responsible party, upon commencement of construction of the Project, perform the remediation necessary and required to address all environmental concerns relating to the Property, in accordance with the RAW, which includes, without limitation, remediating the soil contaminants for off-site disposal, the construction of a vapor intrusion mitigation system, and the recordation of a land use covenant required by DTSC. The remediation shall be performed pursuant to and in accordance with any and all applicable rules and regulations of the DTSC, as well as any applicable American Society of Testing and Materials (ASTMs) standards and any others imposed by any agency having jurisdiction over the Property.</p> <p>Developer shall submit to the City and shall have obtained the written approval of the City’s Environmental Protection and Compliance unit in accordance with subsection 9(d) above, of the scope of its remediation prior to commencing the remediation work. The City shall have the right to inspect the remediation work upon reasonable notice of at least 48 hours from commencement through completion. The Developer shall also provide all soil characterization data for soil slated for off-site disposal. After a review of the data, if there is consensus on the disposal classification, the Developer is required to</p>
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		<p>have all disposal manifests signed by a member of the City’s Environmental Protection and Compliance unit; provided that the City’s consensus of the disposal classification shall be required only during such time as the City is the owner of the City Property. Additionally, fill materials such as, but not limited to, imported soil, gravel or crushed rock will be tested in accordance with the City’s Green Book of construction standards and practices.</p> <p>Upon completion of the remediation work, Developer shall request, and provide as soon as available, a letter from DTSC noting that no further action is necessary in relation to any environmental remediation to be performed at the subject Property (the “<i>Closure Letter</i>”).</p> <p>Developer shall indemnify, defend, and hold the City, and its councilmembers, commissioners, officials, directors, employees, and agents (“<i>Indemnified Parties</i>”) harmless from and against any liability arising out of a violation of any Environmental Law by Developer during the term of the City Regulatory Agreement identified in Section 14 below, any Release directly caused by the activities of Developer during the term of the Regulatory Agreement, and any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or emanating from the Property which is directly caused or exacerbated by the activities of Developer during the term of the Regulatory Agreement. Developer shall have no obligation to indemnify, defend, and hold the Indemnified Parties harmless hereunder for any violation of Environmental Law, Release, or Hazardous Substances existing, occurring or first accruing prior to Developer’s acquisition of the Property unless caused by Developer or its agents, employees, or contractors.</p> <p>Costs incurred associated with long-term monitoring (LTM) and repairs, if required, of the vapor intrusion mitigation system will be the responsibility of the Developer.</p> <p>For purposes hereof, the following definitions shall apply:</p> <p>(i) “<i>Hazardous Substance</i>” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. 9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls (“<i>PCBs</i>”), PCB-containing materials, all hazardous substances identified in the California Health &amp; Safety Code Section 25316 and Section 25281(d), all chemicals listed pursuant to the California Health &amp; Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall</p>
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		<p>not include substances which occur naturally on the Site or commercially reasonable amounts of hazardous materials used in the ordinary course of construction and operation of a mixed use or residential development.</p> <p>(ii) “<b>Environmental Law</b>” shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, and Hazardous Substance releases or reporting requirements.</p> <p>(iii) “<b>Release</b>” shall mean any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance.</p>
10	<b>PRE-CONVEYANCE REQUIREMENTS</b>	<p>Developer will be required to satisfy the City’s standard conditions of closing, as well as the following, as conditions precedent to the conveyance of the fee interest in Property to the Developer. All of the following conditions must first be met by the date indicated for each condition in the schedule of performance (the “<b>Schedule</b>”), attached hereto as <u>Exhibit A</u>. The DDA may contain provisions to extend certain dates by mutual agreement by the Developer and the City Administrator; provided, however, that only the City Council, in its sole and absolute discretion, may extend the Outside Closing Date and the completion of construction date on behalf of the City.</p>
	10.1 Financial Plan	<p>No later than the date set forth in the Schedule, the Developer shall have submitted to the City for its review and obtained the City’s approval of the following, which together will be referred to as the “<b>Financial Plan</b>”:</p> <ul style="list-style-type: none"> <li>• A detailed cost breakdown of construction of the Project (the “<b>Project Development Budget</b>”) containing an itemized construction budget for the Project, showing all construction related and non-construction related costs, including reasonable contingencies, and the funding sources of payment for each item.</li> <li>• A unit distribution across AMI showing gross rents for all unit types including permanent supportive housing and Section 8 income.</li> <li>• A 30-year cash flow projection for the Project.</li> <li>• A copy of letters of commitment for construction financing and permanent financing from reputable institutional lenders, grant funding, equity contributions, tax credit allocations, and other financing from external sources (including proposed joint</li> </ul>

		<p>ventures and Partnerships (as defined below)) as necessary to finance development of the entire Project.</p> <ul style="list-style-type: none"> <li>• A certified financial statement or other financial statement in such form reasonably satisfactory to the City, evidencing other sources of capital, sufficient to demonstrate that the Developer has adequate funds available and is committing such funds to cover the difference, if any, between the Developer's costs of development and construction and the amount available to Developer from external financing sources.</li> <li>• Any other evidence reasonably requested by the City demonstrating the economic and financial feasibility of the Project.</li> </ul>
	<p><u>10.2 Financing and Financing Documents</u></p>	<p><u>Financing.</u> The Developer shall be permitted to grant a security interest in its rights and beneficial interests under the DDA in favor of a single lender or a group of public and private, institutional lenders solely in connection with financing of the Project.</p> <p>The Schedule shall allow time for Developer to use its best efforts to obtain competitive or other affordable housing financing (including, without limitation, state housing subsidy programs, Low Income Housing Tax Credits (LIHTCs), local subsidies) for up to six (6) rounds of funding, which would be equivalent to approximately, but no longer than, two (2) years from the Effective Date of the DDA, subject to Force Majeure, which shall in no event exceed in the aggregate twelve (12) months.</p> <p>Force Majeure shall mean delays or defaults that are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; pandemics (except COVID-19 and its variants, which is a known and foreseeable condition), governmental orders that require closure of the premises, or epidemics. If a delay is caused by COVID-19 or its variants, Developer shall provide written notice to the City of the specific delay and the specific cause, and the City and Developer shall meet and confer in good faith to mutually agree to extension related to the particular delay on a case-by-case basis.</p> <p><u>Financing Documents.</u> Not later than the date set forth on the Schedule, Developer shall have submitted to the City for its review and obtained the City’s approval of a draft of the form of all documents to be used for financing construction of the Project pursuant to the approved Financial Plan (the “<b>Financing Documents</b>”). Prior to closing of the financing, the Developer shall</p>

		submit to the City the final Financing Documents for the City’s review and approval. The full execution of the Financing Documents and the closing of all construction financing for the Project shall be a concurrent condition to issue City funds for the project to the Developer.
	10.3 <u>Schematic Designs.</u>	Developer has submitted to the City for its review and obtained the City’s approval, in its proprietary capacity, of the Schematic Design Plans for the Project. The term “ <b>Schematic Design Plans</b> ” means schematic drawings, exterior elevations, site plans, floor plans and a garage layout, unit plans (including square footage), a landscaping plan, schematic plans for street and sidewalk improvements.
	10.4 <u>Design Development Plans.</u>	By no later than the deadline set forth in the Schedule, Developer shall have submitted to the City for its review and obtained the City’s approval, in its proprietary capacity, of the Design Development Plans for construction of the Project. The term “ <b>Design Development Plans</b> ” means drawings, outline specifications and other documents based on the approved Schematic Design Plans that fix and describe the size and character of the Project as to architectural and basic structural systems, materials and other elements as appropriate.
	10.5 <u>Property Taxes</u>	At or prior to the Close of Escrow, Developer will be responsible for paying all outstanding real estate taxes for the Property, including any past due or delinquent real estate taxes.
11	<b>Loan Closing Requirements</b>	As conditions precedent to the closing of City funds, the loan financing will be in accordance with the terms and conditions contained in the December 7, 2020 and June 24, 2022 City of Oakland NOFA funding commitment letters. The closing requirements must first be met by the date indicated for each condition in the Schedule.
	11.1 <u>Public Improvements.</u>	The Project may include a number of Public Improvements as required by conditions of approval, and any such Public Improvements will be subject to the review and approval by the City in its proprietary capacity and by the appropriate City departments as part of standard review and permitting processes. For purposes of this subparagraph, the term “ <b>Public Improvements</b> ” shall include, without limitation, such matters and improvements as: (1) any permanent closure or rerouting of any existing public streets or sidewalks; (2) any traffic signals that may need to be replaced or installed; (3) any street lights that may need to be replaced or installed; (4) any relocation of existing utilities and easements to the extent required under planning and building approvals for the Project; and (5) any act that may be required to be performed as a mitigation measure under any environmental document for the Project or as a

		condition to the issuance of any governmental permit for the Project and any other improvement currently anticipated to be required to develop the Project.
	<u>11.2 Final Construction Plans.</u>	By no later than the date set forth on the Schedule, Developer shall have submitted to the City for its review and obtained the City's approval of the Final Construction Plans for construction of the Project. The term " <b>Final Construction Plans</b> " means all construction documentation upon which a Developer and Developer's general building contractor will rely on constructing the Project, and shall include, but not necessarily be limited to, final architectural drawings, landscaping plans and specifications, final elevations, building plans, final specifications, plans for street and sidewalk repairs or improvements, a detailed breakdown of the costs of construction for the Project. The Final Construction Plans shall be substantially consistent with the Design Development Plans approved by the City.
	<u>11.3 Green Building Requirements.</u>	The Design Development Plans and Final Construction Plans shall demonstrate how principles of environmental sustainability will be incorporated to meet the applicable requirements of the City's Green Building Ordinance (Ordinance No. 13040 C.M.S.), as set forth in Chapter 18.02 of the Oakland Municipal Code (Sustainable Green Building Requirements for Private Development) for residential construction development or applicable building use, as determined by the City. The Developer and its design consultants shall work with City staff to develop appropriate and economically feasible sustainable building goals and strategies using the City's Sustainable Building Guide and Project Management Tool. Principles of environmental sustainability, including substantial use of such green building techniques as energy-conserving design and appliances, water-conserving fixtures, design of surface parking areas with bio-retention, bio-swales, and storm water filtration features, low-maintenance landscaping, recycled-content building materials and low waste construction techniques, shall be incorporated into the Design Development Plans and Final Construction Plans for the Project.
	<u>11.4 Construction Contract.</u>	Developer shall enter into a contract or contracts for the construction of the Project with a licensed and reputable general building contractor meeting the employment and contracting obligations contained herein (the " <b>Construction Contract</b> "). In no event shall a Developer contract with any party which has been debarred or suspended by HUD under 24 CFR Part 24. The Construction Contract shall provide for the Project to be constructed for a fixed and specified guaranteed maximum amount pursuant to the approved Final Construction Plans.

		<p>No later than the date set forth on the Schedule, Developer shall have submitted to the City for its review and obtained the City’s approval of a draft of the form Construction Contract. Not later than the date set forth for this action in the Schedule, the Developer shall have submitted a draft of the final Construction Contract for the Project to the City for its review and obtained the City’s approval prior to execution to determine that the cost of the development of the Project has been clearly fixed and determined, that no material changes to the Project will be made without the prior written consent of the City to the extent required under the DDA, and that the City’s employment and contracting requirements as set forth in the DDA will be met, and that all of the terms and conditions required to be included in the construction contract by funding sources for the Project have been included. The Developer shall also submit, prior to, or together with, the final Construction Contract, a detailed cost breakdown budget for Project construction and development, and a construction schedule, and a construction cash flow (draw-down) projection to the City for its review and approval.</p>
	<p><u>11.5 Performance and Payment Bonds</u></p>	<p>Prior to the Close of Escrow, Developer shall obtain a labor and materials payment bond in the amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer. Developer shall obtain a performance bond in an amount not less than 100% of the cost of construction of the Project pursuant to the Construction Contract to be executed by Developer.</p> <p>The performance bond and labor and materials payment bonds shall be issued by a licensed surety, shall name the City as co-obligee or assignee, and shall be in a form reasonably satisfactory to the City.</p>
	<p><u>11.6 Governmental Approvals</u></p>	<p>To the extent not already obtained, Developer shall, not later than the date specified in the Schedule, apply for all permits, land use entitlements, and parcel map waivers, plan and other required governmental regulatory approvals allowing any consolidation of the Property, if so proposed, and construction and development of the Project to completion (together, the “<b>Governmental Approvals</b>”). Developer shall also complete environmental review pursuant to CEQA and NEPA and incorporate any mitigation measures identified in the environmental review process and required to be included in the plans for Project development and operations. The Developer shall give the City ten (10) days’ prior notice of any hearings regarding matters described in the DDA, or if the Developer shall receive less notice a reasonable amount of advance notice to enable the City to elect to attend such hearings.</p>



		Developer acknowledges and agrees that receipt of all Governmental Approvals necessary to commence construction of the Project is a precondition to the issuance of City funds to the Project.
	<u>11.7 Property Management Contract</u>	Prior to close of Escrow, the Developer shall have submitted to the City for its review and have obtained the City’s approval of the draft contract or contracts with the selected property management company for management of the Project once developed (the “ <b>Property Management Contract</b> ”).
	<u>11.8 Review and approval of Developer Submissions</u>	<p>If any Developer submission that is <u>timely submitted</u>, and <u>in its entirety</u>, is reasonably satisfactory to the City (in its proprietary capacity), then within ten (10) City Business Days of receipt by the City’s project manager (the “<b>City Response Date</b>”), the City shall, in its proprietary capacity, approve in writing that Developer submission, and no further filings by the Developer or approval by the City thereof shall be required for that Developer Submission, except for any subsequent Material Change in the contents of the Developer Submission. Notwithstanding the foregoing, the City may approve those portions of a Developer submission that are reasonably satisfactory and reject those portions that are not. The City may also approve all or a portion of a Developer submission subject to conditions requiring further submissions for City review and reasonable approval.</p> <p>City shall provide written notice of its approval or disapproval of any Developer submission (each, a “<b>City Notice</b>”) on or prior to the City Response Date, and in the event of disapproval or conditional approval shall include in any City Notice the specific basis and reasons for the City’s disapproval or conditional approval and changes that would make the Developer Submission or applicable portion thereof acceptable to City (in each case, “<b>City Conditions</b>”). If City fails to deliver the City Notice, then Developer shall provide a second written request for a response to the applicable Developer Submission, and the City shall have ten (10) City business days from receipt of the subsequent written request to provide the City Notice. Failure by City to meet the City Response Date or the additional ten (10) City Business Day period shall not constitute a default by City under this Agreement, and in such event, the subject Developer submission shall be automatically deemed disapproved.</p>

<b>12</b>	<b>CONSTRUCTION OF THE PROJECT</b>	
	12.1 <u>Commencement of Construction</u>	The Developer shall commence construction work on the Project no later than the date set forth in the Schedule.
	12.2 <u>Construction Obligations</u>	Construction of the Project shall be substantially in accordance with the Final Construction Plans approved by the City, without substantial deviation therefrom unless approved by the City in writing.
	12.3 <u>Disabled Access.</u>	The Developer shall develop the Project in compliance with all applicable federal, state, and local requirements for access for disabled persons, including, without limitation and as applicable, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794).
	12.4 <u>Lead-based Paint.</u>	The Developer and its contractors and subcontractors shall not use lead-based paint in the construction of the Project or maintenance of Project units. The Developer shall insert this provision in all contracts and subcontracts for work performed on the Project which involves the application of paint.
	12.5 <u>Quality of Work.</u>	The Developer shall construct the Project in conformance with general industry standards and shall employ building materials of a quality suitable for the requirements of the Project. The Developer shall develop the Project in full conformance with applicable local, state, and federal statutes, regulations, and building and zoning codes.
<b>13</b>	<b>COMPLETION GUARANTY</b>	<p>RCD (the “<i>Guarantor</i>”) shall provide City a Completion Guaranty pursuant to the DDA and as a condition to closing on City funds, in a reasonable form to be agreed upon by the Guarantor and City and attached to the DDA as an exhibit (the “<i>Form of Guaranty</i>”). The Guarantor shall guarantee completion of the Project in accordance with the terms of the DDA.</p> <p>Guarantor and City will finalize and approve the Form of Guaranty prior to the conveyance of the City Property to Developer; provided, the Completion Guaranty will be executed at the time of close of escrow for the City loan financing. Developer shall not commence construction prior to the execution of the Completion Guaranty.</p>
<b>14</b>	<b>REGULATORY AGREEMENT</b>	Following completion of the Project, the use and operation of the Property and the improvements developed thereon shall be restricted according to the terms of the Regulatory Agreement, which shall contain income and rent restrictions for tenants for a term of not less than fifty-five (55) years from the date that fifty percent (50%) of the units have received a certificate of occupancy.

15	<b>DEFAULT</b>	The DDA will include City’s standard remedies including, without limitation, the right to terminate the transaction upon Developer’s default, subject to standard notice and cure provisions permitting cure rights for Developer and the Project lenders and investor.
16	<b>INDEMNIFICATION AND INSURANCE</b>	<p>The DDA will require Developer to indemnify, defend, and hold the Indemnified Parties harmless from and against any liability directly or indirectly arising or resulting from Developer’s development, operation, and/or management of the Project, including, without limitation, liability arising as a result of property damage, personal injury, or violation of state, federal, or local laws.</p> <p>In addition, the City shall indemnify, defend and hold Developer harmless from any and all claims relating to relocation benefits and compliance or failure to comply with applicable relocation law first accruing prior to the effective date of the DDA.</p>
17	<b>DEVELOPER MAINTENANCE/ STANDARD OF PROPERTY</b>	Prior to and following project completion, Developer shall maintain the Property and the Project in compliance with applicable law and in good condition and repair to the reasonable satisfaction of the City. The Developer shall ensure that the Property does not violate the City’s Blight Ordinance.
18	<b>PERMITTED TRANSFERS</b>	Prior to Project completion, the Developer shall not have the right to assign or transfer all or any portion of its rights and obligations under the DDA, other than an assignment to, and assumption of, the DDA by a limited partnership (“ <i>Partnership</i> ”) of which the Developer or another entity affiliated with and controlled by RCD, transfers of limited partner interests and the removal and replacement of the general partner by the tax credit limited partner in accordance with the partnership agreement.
20	<b>OFF-SITE IMPROVEMENTS</b>	Developer shall be responsible for the cost of any and all off-site improvements and any relocation of existing utilities and easements to the extent required under planning and building approvals for the Project.
21	<b>TRANSPORTATION IMPACT FEE</b>	Developer shall pay any and all permit and regulatory fees, including, but not limited to, the City’s Transportation Impact Fee (“ <i>TIF</i> ”), which applies to the Project pursuant to City Ordinance OMC Chapter 15.74, Transportation Impact Fees.
22	<b>CITY EMPLOYMENT &amp; CONTRACTING REQUIREMENTS</b>	Developer shall abide by all applicable City employment and contracting requirements, including, but not limited to, the following: the provisions of City’s Local and Small Local Business Enterprise Program; Local Employment Program; Required Prevailing Wages; Living Wage Ordinance; the City of Oakland’s First Source

		Employment Referral Program; Employment Nondiscrimination; and Reporting Requirements of the City of Oakland.
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**Exhibit A**  
Schedule

<b>Task</b>	<b>Scheduled Completion Date</b>
<b>Pre-conveyance Requirements</b>	
1. Financial Plan	December 30, 2022
2. Schematic Designs	July 16, 2019 (Complete)
3. Design Development Plans	April 1, 2023
4. Convey Land to Partnership	January 31, 2024
<b>Loan Closing Requirements</b>	
1. Financing Documents	May 1, 2024
2. Parcel Map Waiver Recordation	May 1, 2024
3. Public Improvement Plans	May 15, 2024
4. Final Construction Plans	May 15, 2024
5. Construction Contract	May 15, 2024
6. Payment and Performance Bonds	May 15, 2024
7. Property Management Contract	May 15, 2024
8. Government Approvals	May 15, 2024
9. Outside Closing Date	May 31, 2024
<b>Construction of the Project</b>	
1. Commencement of Construction	June 1, 2024
2. Completion of Construction	February 28, 2026
3. DTSC Closure Letter	February 28, 2031