

COMMITTEE MEMORANDUM

TO: Finance and Economic Resiliency Committee Members

FROM: Alina T. Hudak, City Manager

DATE: February 23, 2024

SUBJECT: **DISCUSS THE CONVEYANCE OF THE BARCLAY PLAZA APARTMENTS (1940 PARK AVENUE) TO THE HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH, A PUBLIC ENTITY OF THE STATE OF FLORIDA, FOR THE SOLE AND RESTRICTED PURPOSES OF DEVELOPING AND OPERATING THE BARCLAY AS AN AFFORDABLE AND/OR WORKFORCE HOUSING FACILITY AND DISCUSS THE REDEVELOPMENT OF THE BARCLAY PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 2023-115-KB**

HISTORY

The Barclay Plaza property, located at 1940 Park Avenue (the "Property"), is distinguished by its architectural, historic, and geographic attributes. Architectural firm Kiehnel & Elliott, also known as the architects for the Coconut Grove Playhouse and the Shorecrest Hotel, 1535 Collins Avenue, designed the Barclay for transient use. Constructed in 1935, the three-story, L-shaped building is oriented with a main entrance on Park Avenue. Designed with a terrazzo lobby floor and façade detail that is representative of traditional Art Deco design, the Property is a contributing structure in the Museum Historic District and Miami Beach Architectural District.



A prime geographic location in the Collins Park neighborhood, the Property is immediately adjacent to another City-owned residential property, the London House Apartments, currently providing 24 affordable housing units and operated and managed by the Office of Housing and Community Services. Abutting Washington Avenue and situated directly across from the Miami Beach Convention Center, the Property is within walking distance of the Collins Park Cultural Arts District, Lincoln Road, and the beachfront.

Per City Code, real property owned by the City automatically assumes GU (Government Use) zoning. The Land Development Regulations (LDRs) of the City Code provide that zoning for GU properties, i.e., setbacks, floor area ratio (FAR), signs, parking, etc., shall be the average of the requirements

contained in the surrounding zoning districts¹, which, in this case, are RM-2 (Residential Multifamily Medium Intensity) and CCC (Convention Center District). As exists today, the approximately 27,505 sf, three (3)-story, 38-foot-high building once provided 66 efficiency units, each with a kitchen and bathroom. The site is well below its maximum development capacity with an existing FAR of 0.9 as compared with the permitted FAR of 2.37 where GU zoning would allow for more than double the existing floor area and up to 75 feet in height (plus an additional three (3) feet as may be approved by the Historic Preservation Board (HPB)).

Property History

The Property operated as the bustling Barclay Plaza Hotel from 1935 to 1942, when the United States Army Air Forces Training Command took control of the commercial property to house soldiers training in Miami Beach. The Property reverted to hotel use following World War II, until 1957, when it was converted to apartment use. The Property continued to operate as residential apartments until it was no longer suitable for tenants and later acquired vacant by the City in 2015.

A. MBCDC Ownership (2007 – 2015)

Within the City Center/Historic Convention Village (City Center) Redevelopment and Revitalization Area Plan, adopted by the City Commission and Miami Beach Redevelopment Agency (the RDA) on February 12, 1993, a primary objective for promoting redevelopment is the renovation and preservation of historically designated structures.

On April 23, 2007, the City's sole community housing development organization (or CHDO), the not-for-profit Miami Beach Community Development Corporation (MBCDC), obtained title to the Barclay Plaza Apartments property. Consistent with the redevelopment activities outlined in the City Center RDA Redevelopment Plan, and specifically authorized by RDA Resolution Nos. 540-2007 and 545-2007, property acquisition funds totaling \$13.7 million were authorized to be loaned (as a forgivable loan) to the MBCDC by the RDA for the purchase and rehabilitation of the Barclay and the adjacent Allen and London House apartments. With respect to the Barclay, the principal amount of the Loan Agreement between the RDA and MBCDC, using the Barclay as collateral, was \$5,692,400.² As a stipulation of the forgivable loan, MBCDC, via a recorded restrictive covenant, was required to maintain the property as affordable housing for a thirty-year period, which covenant may be released by the City. The sale price was consistent with a July 2005 appraisal, attached to RDA Resolution No. 545-2007, which estimated the property's "as-is" value at \$5,124,545.

In addition to funding property acquisition costs, the City awarded U.S. Department of Housing and Urban Development (HUD) funds to the MBCDC, the City's largest HUD-funded beneficiary at the time, to renovate the property, including modernizing the elevator and upgrading the electrical systems to meet the requirements of the 40-Year Building Recertification. Based on engineering inspection reports obtained by MBCDC, concrete rebar spalling was observed in the basement areas and the plumbing and electrical systems were widely deteriorated and required replacement to comply with City Code. The July 2005 property appraisal described the Barclay building as in "Fair-Poor" condition.

¹ Resiliency Code Section 7.2.16

² The Miami-Dade County Property Appraiser reflects the purchase price of the Barclay by MBCDC in 2007 as \$5,668,000.

| City / MBCDC Funding Agreements for the Barclay | | |
|--|--|---------------------------------|
| Amount | Agreement | Parties |
| \$ 5,692,400 | Loan Agreement & Promissory Note (with RDA) | RDA and MBCDC: The Barclay, LLC |
| \$ 500,000 | Home Investment Partnership Program (HOME) Program Agreement, secured by Mortgage and Security Agreement | City and MBCDC |
| \$ 75,018 | Community Development Block Grant (CDBG) Agreement | City and MBCDC |
| \$ 6,267,418 | TOTAL | |
| <i>Source: Release Agreement between the City and MBCDC: The Barclay LLC, dated January 30, 2015</i> | | |

B. Property Acquisition by the City of Miami Beach (2015)

Under MBCDC ownership, certain operational and compliance lapses jeopardized MBCDC's affordable housing portfolio and raised concerns regarding MBCDC's operational capacity, including at the Barclay, where the City's Building Department expressed concern over ongoing violations that threatened the displacement of tenants. On September 17, 2014, via Resolution No. 2014-28756, the City Commission authorized the City Manager to acquire five (5) affordable housing apartment buildings (Allen, Barclay, Lottie, Madeleine Village, and Neptune) from MBCDC³, to ensure the well-being of tenants housed by MBCDC and to secure the City's investment in these assets. MBCDC voluntarily surrendered the five (5) properties to the City, with the City responsible for closing costs (approximately \$79,530 for the Barclay). Pursuant to a release agreement between the City and MBCDC, in exchange for five (5) properties, the City (and RDA) released the MBCDC of any obligations and penalties related to the loan agreement and entitlement funds associated with maintaining and operating the property as provided by HUD via the City.

Using \$113,105 of uncommitted Community Development Block Grant (CDBG) funds toward closing costs associated with acquisition of the Allen Apartments and Barclay Plaza Apartments, the City recorded a declaration of restrictive covenants against the Property, requiring its use as an affordable rental property during a fifteen (15) year affordability period commencing from January 30, 2015 (i.e., the date of acquisition by the City). This restrictive covenant exists today in Miami-Dade County Official Records, but no requirement, from HUD or otherwise, will prevent the City from rescinding it, as may be required, prior to expiration of the covenant in 2030.

As a condition to City acquisition of the Barclay on January 30, 2015, all operational agreements (management, leasing, and service contracts) and tenant leases were terminated, and the City assumed responsibility for relocating the Barclay's existing residential tenants. According to closing documents, at the time of the City's acquisition of title, the City assumed responsibility for twelve (12) open code and building violations attached to the Property, with outstanding liens and assessments totaling \$197,645. Due to the condition of the Property, these violations remain unresolved today, including Miami-Dade County Unsafe Structures Panel and Special Magistrate violations for failure to comply with the required recertification of a 40-year-old building and for operating as an apartment

³ The City did not ultimately acquire the Allen Apartments.

without a certificate of occupancy (CO) and certificate of use (CU). The Property had fallen into disrepair, became non-compliant with 40-year recertification requirements, and was declared unfit for residential tenancy before the City acquired the Property in 2015.

On February 2, 2015, immediately after City acquisition, the Barclay was the victim of arson and criminal mischief resulting in extensive damage to the building's lobby and electrical system. Following the damage, the Property's estimated repair and renovation costs were approximately \$6,000,000 and the City's then-existing and anticipated affordable housing funds were insufficient to make the necessary repairs to rehabilitate the property and maintain it as affordable housing within HUD's required timeframe controlling the use of HUD funds. As a result, the use of HUD funds for the Barclay would not adequately meet HUD program objectives or provide its intended benefits.

In 2016, HUD's Office of Inspector General prepared an independent audit report of the City's HOME Investment Partnership (HOME) program, which resulted in the recapture and reallocation of funds in the amount of \$300,278 from the Barclay Plaza to the London House Apartments project via Resolution No. 2015-29080.

C. Fiscal Year (FY) 2018 Request for Proposal (RFP 2018-021-KB)

On October 22, 2014, via Resolution No. 2014-28794, the City Commission accepted the recommendation of the Neighborhoods/Community Affairs Committee (NCAC) to identify a property for development as workforce housing. At its March 20, 2015 meeting, the NCAC unanimously endorsed the Property, contingent upon it being free of HUD funding and/or use restrictions, as a potential site for workforce housing.

On May 6, 2015, via Resolution No. 2015-29017, the City Commission accepted the NCAC recommendation to issue a RFP to identify a public-private partnership (P3) for workforce housing redevelopment of the Barclay, serving tenants earning between 120% and 140% Area Median Income (AMI) and employed in the public safety, education, and municipal sectors.

On May 11, 2016, the City Commission approved issuing Request for Qualifications (RFQ) No. 2016-097-KB for Consulting Services for Public-Private Partnerships (P3) for Workforce/ Affordable Housing Projects, which RFQ cited the Barclay first among projects within a scope of engagement. On September 14, 2016, via Resolution No. 2016-29547, the City Commission authorized an agreement for P3 consulting services with the RFQ's top-ranked proposer, the Concourse Group.

On January 25, 2017, at its Workforce/Affordable Housing Workshop, the City Commission offered direction for a Barclay RFP, to coincide with the Concourse Group's analysis of the Barclay site in anticipation of the RFP process.

On July 27, 2017, via Resolution No. 2017-29925, the City Commission accepted recommendations made by the Finance and Citywide Projects Committee (FCWPC) on March 31, 2017 and June 16, 2017 regarding certain parameters for the Barclay P3 RFP.

1. Projected rents at 30% of targeted AMI ranges and adjusted for unit size.
2. Units with minimum onsite amenities (such as laundry facilities), with the RFP providing survey data to aid developers in adequately gauging tenants' needs. (The Resolution attached neighborhood analysis compiled by the Concourse Group, to be included in the RFP issuance.)
3. Prospective P3 partners must demonstrate sufficient experience with projects of comparable size and scope, and demonstrate financial capacity to fully finance the project.
4. Project *must* include rehabilitation of existing building to ensure historic preservation, and *may* include the construction of an accessory building on the existing parking lot to maximize site development.

On October 18, 2017, the City Commission authorized the City Administration to issue the RFP and provide notice to the City Commission via Letter to Commission (LTC). Accordingly, LTC 566-2017,

announced the issuance of RFP 2018-021-KB Barclay Plaza Apartments Lease, dated November 17, 2017, and summarized the RFP scope to include:

1. No public funding or public financing for the Project.
2. Developer solely responsible for all costs and expenses associated with the development, design, construction, equipping, and installation of all FF&E and other improvements. Developer responsible for subsequent operation or use, and all alterations, repairs, or replacements thereof.
3. Developer must repay \$485,832.22 to HUD for HUD funds previously invested in the property.

Subsequently, LTC 367-2018, dated June 28, 2018, reported that, despite 91 prospective bidders accessing the advertised solicitation, the City received one (1) response to the RFP, which proposal was deemed non-responsive.

D. Fiscal Year (FY) 2019 Request for Proposal (RFP 2019-098-KB)

On January 16, 2019, the Mayor and City Commission approved the issuance of RFP 2019-098-KB for the Development of the Barclay Workforce Housing Project, and the City received three (3) responses. On October 16, 2019, Resolution No. 2019-31020 authorized negotiations for a Development and Ground Lease Agreement with top-ranked proposer Atlantic Pacific Communities, LLC (Atlantic Pacific), with the final material terms for the project subject to prior approval of the City Commission. Atlantic Pacific proposed multiple development scenarios, each requiring a combination of funding sources including a financial contribution from the City. The City commenced the negotiation process with Atlantic Pacific in early 2020. With onset of the COVID-19 pandemic soon thereafter, the City prioritized urgent issues with a focus on maintaining fiscal stability and public safety. On March 17, 2021, during an update discussion about the Property, the Finance and Economic Resiliency Committee (FERC) recommended exploring all available options for its future use, including site analysis with a pending feasibility study and an appraisal of the Property's real estate value for potential sale on the market. The City has since obtained an initial and updated property appraisal prepared by Cushman & Wakefield in 2021 and 2022. The 2022 appraisal reported an as-is, fee simple value of \$9.1 million.

E. Current Maintenance and Public Safety Services

Since the date the City acquired the asset, it was anticipated that restoration of the Barclay would be extensive, due to the building being poorly maintained over the years prior to City ownership and noncompliance with the 40-year recertification. This was further exacerbated by the fire within its historic lobby shortly after acquisition by the City. Over the years, trespassing vagrants have vandalized or destroyed electrical wiring, windows, and access points. Notwithstanding efforts to plan for redevelopment of the site, the City has continued to ensure proper and adequate funding for ongoing maintenance and loss-



prevention initiatives including, but not limited to, fencing of the site, boarding-up of access points, debris removal, etc.

Though the City had already implemented certain strategies, on May 17, 2023, the Miami-Dade County Unsafe Structures Board ratified a Compliance Agreement stipulating that the City shall secure the property, shutter the building, and maintain the tidiness of the grounds, with quarterly updates to the Special Magistrate, until such redevelopment plans bring the property into compliance. To maintain and secure the site on an ongoing basis, City records show that, in FY 2023, the City expended approximately \$14,050 on insurance and landscaping services, among others, and \$19,002 for internal maintenance and repair services by the Facilities and Fleet Management Department.

The Miami Beach Police Department (MBPD) has implemented regular monitoring of the site and the City has also recently upgraded the perimeter fence to enhance aesthetics.

F. Fiscal Year (FY) 2023 Request for Proposal (RFP) 2023-115-KB

Following discussion in 2021 about listing City real estate assets for sale including the Barclay, on April 6, 2022, the City Commission accepted the recommendation of the FERC and directed parallel tracks of (1) preparing a new competitive solicitation and (2) listing the property for sale.

On October 26, 2022, the City Commission discussed a proposed resolution, which did not gain support, to accept the Housing Authority's recommendation in HACMB Resolution No. 2022-10, to refrain from selling the Barclay and retain the property for the development of affordable or workforce housing for the benefit of Miami Beach residents. During discussion, the City Commission reaffirmed support for a P3 endeavor and provided scope parameters for the solicitation. On November 16, 2022, the City Commission authorized issuance of RFP 2023-115-KB (the "RFP").

Through this RFP, the City sought proposals from parties interested in entering into a public-private partnership via development and ground lease agreements to design, build, operate and maintain the site. Developments could involve residential apartments or other zoning-appropriate uses including, but not limited to office (e.g., general office space, tech hub), school campuses, etc. The City acknowledged that some of the proposed uses may require amendments to the LDRs. **The RFP noted that the City would consider the designation of a number of units as workforce housing as additional consideration and public benefit and that the City would consider other conditional uses, subject to approval by the City's boards and the Mayor and City Commission.**

Approximately 107 prospective bidders accessed the advertised solicitation, demonstrating sufficient notice and initial interest in the RFP. Nevertheless, upon the February 23, 2023 submission deadline, the City received only one (1) proposal from a joint venture between Urban American and Legacy Real Estate Development, LLC (the "Developer" or "Legacy").

On September 13, 2023, the City Commission unanimously directed separate, simultaneous discussions with RFP proposer Legacy, and the Housing Authority of the City of Miami Beach (the "HACMB" or Housing Authority), who had not submitted a proposal pursuant to the RFP. The City Commission requested that the Administration determine which entity could provide the City with the most affordable and/or workforce housing units (not microunits) and which provides the City with the best economic benefits. The City Commission also referred an item to the FERC to review a proposal from each entity as well as a referral to the Affordable Housing Advisory Committee (AHAC).

At the December 13, 2023 City Commission meeting, Commissioner Rosen Gonzalez sponsored a resolution to terminate the RFP and refer an item to FERC to discuss identification of funds including possible use of Arts and Culture General Obligation (G.O.) Bond funding earmarked for affordable

and workforce housing, to enable the City to fully renovate the Barclay as a City capital project, with the goal of creating new workforce and affordable housing units, with the completed project to be managed on the City's behalf by the Housing Authority. The proposed resolution also directed the Administration to identify revenue bond funding options for the project and state and federal grant opportunities to supplement City funding for the renovation of the Barclay. After discussion, the Mayor and Commission voted to defer the item for one month.

On January 30, 2024, the Housing Authority Board of Commissioners passed HACMB Resolution No. 2024-01, approving negotiations with Legacy to partner in developing the Property. The Resolution authorized a twenty percent (20%) equity interest in the project and repealed all previous resolutions in conflict or inconsistent therewith. HACMB Resolution No. 2024-01, attached as Exhibit A, was transmitted to the Mayor and City Commission on January 31, 2024.

Subsequently, on January 31, 2024, before the City Commission could consider item R7 F, the proposed resolution to terminate the RFP and commence the process to identify funding for the City to renovate the Property, the item was withdrawn by the sponsor. The City Commission adjourned the meeting before considering companion item R9 M, an update by the Administration on the status of RFP discussions.

ANALYSIS

Following the Housing Authority's authorization to negotiate a partnership with Legacy, the City received updated proposal documents reflecting a revised Total Project Cost, attributed to cost savings of \$2.4M based on the Developer's decision that all rental units be delivered unfurnished, as opposed to delivery of a portion of units as fully furnished.

The section below describes Legacy's updated proposal and discussions with the Housing Authority. Additionally, the Administration has begun exploration of a potential City development scenario, outlined further below. The section concludes with discussion of a structural demolition alternative.

A. Legacy Updated Proposal dated February 13, 2024

Legacy's RFP Proposal consisted of three (3) separate design options each with a specific financial proposal. Still subject to the Cone of Silence, the Administration has held discussions with Legacy, as directed by the City Commission, on nine (9) occasions since the September 13, 2023 City Commission meeting.

The Developer has modified some terms as shown in the updated proposal dated February 13, 2024 (Updated Proposal) (Exhibit B). Regarding design, as with one of the proposed options in the RFP Proposal, Legacy has incorporated a new construction tower, in addition to renovation of the existing structure.

As to programming, the Updated Proposal enhances tenant diversity by expanding affordability options. Compared with the RFP Proposal, the proposal now includes a greater affordability range (25 affordable and 21 workforce units), with increased unit type options that include studios and 2-bedroom workforce units (the RFP proposal only offered workforce units as studios). Additionally, the income ranges are better spread throughout the Project site. Although only three (3) feet above the allowable height, the Updated Proposal design incorporates a new seven (7)-story building, up from the five (5) stories contemplated in the RFP Proposal.

In the Updated Proposal’s financial offering, Legacy has increased its Initial Rent Payment to \$344,000 (up from \$300,000 in the RFP Proposal), payable at start of construction. While the range of affordability and overall number of units has increased since the RFP Proposal, the proposed Annual Guaranteed Rent of \$50,000 payable at CO, reflects the low end of the range when compared with the three (3) options offered in the RFP Proposal (\$50k, \$100k and \$200k).

The RFP Proposal included 3% of effective gross income (EGI) if greater than the Annual Guaranteed Rent. Though discussed with Legacy, the Updated Proposal does not include this financial provision. Notably, the RFP Proposal provided for annual 1.5% escalation of the Annual Guaranteed Rent throughout the lease term, whereas now the Updated Proposal provides for annual escalations tied to Consumer Price Index (CPI) with a maximum of 3% and a minimum of 2%. Legacy’s revenue growth assumption in the RFP Proposal was 2% and has increased to 3.0% in the Updated Proposal. Total rent payments (initial and annual guaranteed) to the City over the lease term is approximately \$15.5 million in the Updated Proposal, as compared with \$11.4M for Option 1, \$22.5M for Option 2, and \$44.8M for Option 3 in the RFP Proposal.

| Key Terms Legacy Updated Proposal dated February 13, 2024 | |
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| Developer Team | <ul style="list-style-type: none"> • A potential joint venture among: <ul style="list-style-type: none"> ○ Legacy Real Estate Development (75%) ○ Urban American (25%) (referred to as “Developer” or “Legacy”) |
| Lease Term & Structure | <ul style="list-style-type: none"> • 99 years. • The City retains ownership of the land. • City’s fee interest shall be senior, and not subordinated, to any financing obtained by Ground Lessee (Developer) and non-recourse to the City. |
| Property | <ul style="list-style-type: none"> • Address: 1940 Park Avenue • Lot Size: 30,359 sf • Zoning District: GU • Existing Structure: 3-story contributing building • Construction Year: 1935 • Historic District: Museum Historic District and Miami Beach Architectural District |
| Design Site Plan | <p>52,656 gross sq. ft. mixed-use residential development with 71 residential units and estimated 1.73 FAR</p> <ol style="list-style-type: none"> 1. <u>Renovation of existing Historic Structure:</u> <ul style="list-style-type: none"> • 38 feet / 3 stories • Restoration of Art Deco façade & other historic elements • Ground floor commercial spaces (restaurant/café and artist studios) • 40 studios: 25 affordable (20 @ 30% AMI & 5 @ 80% AMI) & 15 Workforce units (10 @ 140% AMI & 5 @ 120% AMI) |

| Key Terms | | | | | | | | | | | | | | | |
|--|--|--------------------------|------------|-----------------------------|-----------|--------------------------------|-----------------|--------------------------|-----------------------|---|----|--|--------------|-------------------------------------|----|
| Legacy Updated Proposal dated February 13, 2024 | | | | | | | | | | | | | | | |
| | <p>2. <u>New Construction Addition:</u></p> <ul style="list-style-type: none"> • 78 feet / 7 stories (requires 3 ft variance by HPB) • Ground floor parking with approximately 48 spaces, which may include the stacking of cars. (Off-street parking requirement cannot be verified by the City until architectural plans are provided.) • 31 residential units (6 workforce & 25 market rate): 16 studios (13 market rate & 3 Workforce 120% AMI), 12 one-bedroom (market rate), 3 two-bedroom (Workforce 140% AMI) to be built above site of existing swimming pool & parking area. • Analysis of proposed Site Plan's conformity with Land Development Regulations is subject to Developer's preparation of schematic drawings. | | | | | | | | | | | | | | |
| Compensation to City | <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">• Initial Rent Payment *</td> <td style="text-align: right;">\$ 344,000</td> </tr> <tr> <td>• Annual Guaranteed Rent **</td> <td style="text-align: right;">\$ 50,000</td> </tr> <tr> <td>• Total Rent Payment Over Term</td> <td style="text-align: right;">\$ 15.5 million</td> </tr> <tr> <td>• Annual Rent Escalation</td> <td style="text-align: right;">CPI ; 2% min / 3% max</td> </tr> <tr> <td>• Participation in Net Operating Income</td> <td style="text-align: right;">1%</td> </tr> <tr> <td>• Projected NOI Participation (99 years)</td> <td style="text-align: right;">\$ 7,120,915</td> </tr> <tr> <td>• Participation in Sale or Transfer</td> <td style="text-align: right;">1%</td> </tr> </table> <p>* Initial Rent Payment due at Construction Commencement, anticipated in Developer Timeline around 15 months after Lease approval. ** Annual Rent commences in the year that Certificate of Occupancy obtained, estimated by Developer as 23 months after Construction Commencement.</p> | • Initial Rent Payment * | \$ 344,000 | • Annual Guaranteed Rent ** | \$ 50,000 | • Total Rent Payment Over Term | \$ 15.5 million | • Annual Rent Escalation | CPI ; 2% min / 3% max | • Participation in Net Operating Income | 1% | • Projected NOI Participation (99 years) | \$ 7,120,915 | • Participation in Sale or Transfer | 1% |
| • Initial Rent Payment * | \$ 344,000 | | | | | | | | | | | | | | |
| • Annual Guaranteed Rent ** | \$ 50,000 | | | | | | | | | | | | | | |
| • Total Rent Payment Over Term | \$ 15.5 million | | | | | | | | | | | | | | |
| • Annual Rent Escalation | CPI ; 2% min / 3% max | | | | | | | | | | | | | | |
| • Participation in Net Operating Income | 1% | | | | | | | | | | | | | | |
| • Projected NOI Participation (99 years) | \$ 7,120,915 | | | | | | | | | | | | | | |
| • Participation in Sale or Transfer | 1% | | | | | | | | | | | | | | |
| Residential Unit Mix | <ul style="list-style-type: none"> • 71 units: 56 studios, 12 one-bedroom, 3 two-bedroom • Affordability ratio: 65% affordable/workforce (46 units) 35% market rate (25 units) • Studios: <ul style="list-style-type: none"> ○ 18 Workforce @ 120% AMI (8) and 140% AMI (10) @ 400 sf ○ 25 Affordable @ 30% AMI (20) and 80% AMI (5) @ 400 sf ○ 13 market rate @ 575 sf • 1-Bedroom: 12 market rate units @ 744 sf • 2-bedroom: 3 Workforce @ 140% AMI @ 919 sf • The 20 Affordable units @ 30% AMI are comprised of Project-Based Vouchers (PBVs) • Prohibition on short-term rentals | | | | | | | | | | | | | | |
| Affordability | <ul style="list-style-type: none"> • Ground Lease and Development Agreement to incorporate affordable and workforce housing requirements of City Code Chapter 58, provided, however, that Ground Lease restrictions relating to the affordable and workforce housing shall run with the land for the entire Lease Term. • Affordable and workforce housing units restricted to rent limits (according to household size and number of bedrooms in unit), published annually by the Florida Housing Finance Corporation (FHFC), based upon HUD figures. | | | | | | | | | | | | | | |

| Key Terms Legacy Updated Proposal dated February 13, 2024 | |
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| Project Approvals | <ul style="list-style-type: none"> • Subject to review of Lease Terms by the FERC, City Commission approves DA and Ground Lease with Concept Plan design. Developer responsible for necessary design approvals (HPB, PB, etc.). • After regulatory approvals, City Manager approves final Plans to ensure consistency with Concept Plan design and Project Requirements • Voter Referendum not required per City Charter. |
| Construction Timeline | <ul style="list-style-type: none"> • Required target dates to achieve Project milestones subject to negotiation if the City Commission authorizes Lease negotiations. The City has not been provided with an updated milestone schedule as the Project design has modified for the Updated Proposal. • The RFP Proposal provided an aggressive schedule, with Construction Commencement approximately 15 months after City Commission approval of the Lease and Construction Completion approximately 35-43 months after approval of the Lease. |
| Insurance, Taxes, Utilities | <ul style="list-style-type: none"> • Triple net lease (NNN), with Lessee to be solely responsible for all real estate taxes, utilities, assessments, or other public charges, insurance, common area maintenance, and all other costs and expenses associated with operation of the project. |
| Project Financing | <ul style="list-style-type: none"> • Developer term sheet states no public grants are contemplated. Proforma does not suggest public funding sources. • Developer estimates total project costs at \$25.1 million including \$15.4 million in hard costs. • Proforma indicates equity contribution to the Project is 35% (or \$8.7 million) of Total Project Cost. • City's contribution limited to providing use of land. • In no event shall the City's fee interest in the Property be subordinate to any mortgage or liens and the City shall have first priority right of payment of rent at all times. |
| Termination for Convenience | <ul style="list-style-type: none"> • No Developer termination for convenience following the Possession Date (i.e., after all Project regulatory approvals and financing for the Project have been obtained, and Developer takes possession of the property under the Ground Lease). • City will not have the right to terminate the Development Agreement for convenience. However, City will have the right to terminate for cause, as a result of any default by Developer, which continues beyond the expiration of any applicable notice and cure period. |

| Key Terms | |
|--|--|
| Legacy Updated Proposal dated February 13, 2024 | |
| Developer's Proposed Public Benefits | <ul style="list-style-type: none"> • Direct and indirect jobs and local hiring objectives. • Renovation, for long-term sustainability and resiliency, of existing historic building and LEED accreditation. • Property tax or other tax revenue to the City. • Public safety. • Community amenities, public infrastructure, and/or open space(s) accessible to the public. • Contribution to Miami Beach ideals, vision, and brand. • Affordable and workforce housing responds to City's significant need for greater supply of attainable housing for those who live and work in the city. • Military veteran leasing preference in residential and commercial spaces. • Upon authorization to negotiate, the City would seek to refine a comprehensive package of resident and community benefits. |

i. Lease Term and Structure

As with the two (2) previous Barclay RFPs (in 2018 and 2019), the 2023 RFP invited proposals in which developers would assume responsibility for designing, financing, constructing, delivering, and operating the project. All three (3) issued RFPs contemplated that the City would retain ownership and title to the land and the Developer (Ground Lessee) would operate the project under a 99-year ground lease. **As such, the RFP requires that the Property remain in the public domain. If negotiated pursuant to City Commission direction, a Ground Lease will require development of workforce and affordable housing for the benefit of Miami Beach resident workers.** This project delivery model is well-suited when the City desires limited participation, risk, and financial responsibility during and after project development. The Ground Lease shall be "triple net" (NNN), with the Ground Lessee solely responsible for all real estate taxes, utilities, assessments, and all other costs and expenses associated with the operation of the Project. The City's fee simple interest would be senior, and not subordinated to, any financing obtained by the Ground Lessee, and shall be non-recourse to the City.

ii. Design and Site Plan

Legacy proposes a 52,686-sf mixed-use development with 71 housing units in two (2) structures. Renovation of the 3-story historic structure within the existing building envelope will convert the 66 efficiency units into 40 studio units on the second and third floors serving affordable and workforce households. On the ground floor, the historic lobby will be preserved for commercial use, including an open-style restaurant/café and commercial art studios. A proposed 7-story addition is slated to be built at the site of the existing swimming pool and parking area. The addition's ground floor will be used for parking, with 31 residential units located above: sixteen (16) studios, twelve (12) 1-bedroom units, and three (3) 2-bedroom units serving both workforce and market rate households. The addition will be connected to the historic building via an elevator and staircase.

Although detailed architectural drawings have not been shared by the Developer, the Developer suggests, and City staff cannot confirm at this time, that the Project design will not rely on City Code /Comprehensive Plan amendments or special Commission action. The Developer proposes that all residential units will meet the minimum unit size requirements in the City Code. As proposed, the Project would require a 3-foot height variance, which is within the purview

of the HPB and is not an uncommon request with applications involving legal nonconforming structures in historic districts, such as the Barclay. Zoning information reflecting the RFP Proposal and Updated Proposal is provided below.

| Zoning Information | | | | | | |
|------------------------------|---------------------------------|-------------------|--------------|--------------|--------------|----------------------------|
| | Permitted GU Zoning Regulations | Existing Property | RFP Option 1 | RFP Option 2 | RFP Option 3 | Updated Proposal 2/13/2024 |
| Gross Floor Area (sf) | 82,880 | 27,505 | 34,000 | 34,000 | unknown | 52,686 |
| Estimated FAR | 2.37 | 0.9 | unknown | unknown | unknown | 1.73 |
| Total Buildings | n/a | 1 | 1 | 1 | 2 | 2 |
| Height | 75' | 38' | 38' | 38' | 50' | 78' |
| Stories | n/a | 3 | 3 | 3 | 5 | 7 |

iii. Residential Unit Mix and Affordability

Together, the affordable (25 units) and workforce (21 units) constitute 65% of the proposed units, interspersed between both buildings and serving eligible households ranging from 30% AMI to 140% AMI. These 46 affordable/workforce units would observe rent limits (determined by household size and number of bedrooms per unit) published by the FHFC, based on values provided by HUD. The Ground Lease would incorporate the affordable and workforce housing requirements of Chapter 58 of the City Code, with restrictions requiring the affordable and workforce housing units to remain as such for the entire term of the Ground Lease. In addition to affordability, the Developer proposes to support military veterans with a leasing preference in both commercial and residential occupancy.

| Unit Mix | | | | |
|-------------------------------|--------------|--------------|--------------|----------------------------|
| | RFP Option 1 | RFP Option 2 | RFP Option 3 | Updated Proposal 2/13/2024 |
| Total Units | 31 | 31 | 51 | 71 |
| % Market Rate | ~52% | ~81% | ~80% | 35% |
| % Affordable/Workforce | ~48% | ~19% | ~20% | 65% |
| 140% AMI | 0 | 0 | 0 | 13 |
| 120% AMI | ~15 | ~6 | ~10 | 8 |
| 80% AMI | 0 | 0 | 0 | 5 |
| 30% AMI | 0 | 0 | 0 | 20 |
| Total Studios | 16 | 16 | 16 | 56 |
| Total 1BR | 13 | 13 | 33 | 12 |
| Total 2BR | 2 | 2 | 2 | 3 |

iv. Compensation to the City

Legacy’s updated financial proposal consists of an initial rent payment of \$344,000 to the City upon construction commencement, an annual rent payment of \$50,000, with annual increases during the 99-year lease term tied to the CPI, with a minimum of 2% and a maximum of 3% annually. Annual Guaranteed Rent is abated until the issuance of the CO, anticipated by the Developer as occurring in Year 3, in which case the first annual rent payment would be \$52,020, assuming 2% escalation annually. Additional compensation to the City includes 1% participation in net operating income (NOI) and 1% participation in any sale or transfer after the initial sale. Based on the Annual Guaranteed Rent and the Initial Rent Payment, the City is guaranteed to receive a minimum of \$15.5 million over the term of the Ground Lease. With NOI at 1%, the City would receive an additional estimated \$7,120,915 over the 99-years of the Lease Term. Note that the Developer anticipates Total Project Costs of approximately \$25.1 million.

| Financial Proposal | | | | |
|--|-----------------------------------|------------------------------------|------------------------------------|----------------------------|
| | RFP Option 1 | RFP Option 2 | RFP Option 3 | Updated Proposal 2/13/2024 |
| Initial Rent Payment | \$ 300,000 | \$ 300,000 | \$ 300,000 | \$ 344,000 |
| Annual Guaranteed Rent | The greater of \$50,000 or 3% EGI | The greater of \$100,000 or 3% EGI | The greater of \$200,000 or 3% EGI | \$ 50,000 |
| Total Rent (Initial and Annual) | \$11.4 million | \$22.5 million | \$44.8 million | \$15.5 million |
| Annual Escalation | 1.5% | 1.5% | 1.5% | CPI Min 2%/ Max 3% |
| Transfer Participation | 1% | 1% | 1% | 1% |
| NOI Participation | 0% | 1% | 1% | 1% |
| % Market Rate | ~52% | ~81% | ~80% | 35% |
| % Affordable/Workforce | ~48% | ~19% | ~20% | 65% |
| Total Units | 31 | 31 | 51 | 71 |

As shown in the above table, as compared with the RFP Proposal, the Updated Proposal prioritizes the quantity and range of affordable and workforce housing units above revenue generated to the City. Though the Developer has engaged in discussions with staff, at the direction of the City Commission, it should be noted that the City Commission has not formally awarded the procurement or authorized negotiations with the Developer. Therefore, the Updated Proposal shall not be construed to reflect the Developer’s best and final offer regarding the financial terms of the deal.

B. Housing Authority Proposal

The Housing Authority exists pursuant to Chapter 421, Florida Statutes, the “Housing Authorities Law”, which authorizes the creation of local housing authorities empowered to exercise "the public and essential governmental functions" set forth in Chapter 421, Florida Statutes, which includes, among others, the power to contract, rent and lease dwellings, operate housing projects, and invest funds not required for immediate disbursement in certain property or securities. Created by enabling legislation of the Miami Beach City Commission (Resolution 7031 dated October 6, 1949), the Housing Authority is a not-for-profit social service provider that administers HUD-funded programs and is exempt from taxation. The Housing Authority has an established relationship with the City in

providing housing and community services to Miami Beach residents and the Mayor appoints the Housing Authority's Board of Commissioners. As a quasi-governmental entity, the Housing Authority observes Sunshine Law protocol, e.g., its board convenes to take action in the Sunshine at regularly noticed and advertised public meetings.

Following Commission direction provided at the September 13, 2023 City Commission meeting, the Administration met with Housing Authority staff on two (2) occasions before the Housing Authority authorized a potential partnership with Legacy pursuant to HACMB Reso. No. 2024-01. Both the Housing Authority and Legacy were provided equal opportunities by City staff to conduct discussions and exchange correspondence. Although it was the direction of the City Commission to engage in discussions with the Housing Authority and allow the submittal of a development proposal or terms, the Housing Authority did not provide the Administration with any proposal terms, project concept or detailed analysis prior to announcing its intention to partner with Legacy.

The City has been advised by Legacy and Housing Authority staff that the two parties have not yet negotiated a formal letter of intent to memorialize their relationship on the Barclay project. While it is speculative to opine how the Housing Authority's participation would impact a Legacy-managed project, it is possible that the Housing Authority could provide the project with access to funding through participation in a housing voucher program serving tenant households at 30% AMI.

The Housing Authority is a sub-recipient of Federal and State funds made available by the City. Over the past five (5) years, the Housing Authority has been awarded \$3,681,513 in funding from the City through HUD entitlement allocations. The Housing Authority has utilized these funds for a range of projects and programs including those pertaining to the operations and maintenance of affordable housing units. If the Housing Authority operates the Barclay independently, and without Legacy, as recently suggested by proposed City Commission legislation, the Housing Authority will likely continue to rely on City assistance on an ongoing basis in accessing and obtaining operational funding.

Moreover, at this time, the Housing Authority has not demonstrated or communicated interest in operating the Property for the City. Rather, its leadership has only expressed a desire to become an equity partner in Legacy's redevelopment project.

C. City Development Scenario

The P3 transaction approach can be attractive because it enables the City to transfer risk and responsibility to private sector partners during some or all key stages of development: design/construction (project concept planning, delivery schedule, and construction management), financing (allocation of resources, funding financial close, asset ownership structure), and the operational stage (obligations for asset management, programming, and maintenance). Without a P3 partner to develop and lease the Property, the City will have total responsibility to finance, construct, and operate the facility.

Nonetheless, there are advantages and disadvantages to retaining complete control over how projects are planned, developed, operated and maintained. One advantage associated with a City-developed project is continuous control of the land. Under a 99-year ground lease model, as contemplated in the RFP Proposal and Updated Proposal, although the Ground Lease would restrict a portion of the property for use as workforce and affordable housing (with compliance verified annually by the City), the City would not have operational control of the property for 99 years. This extensive time period would limit the City's ability to modify activities and uses at the site, or potentially sell the Property at its discretion. Furthermore, adding and maintaining occupied residential buildings within the City's portfolio would promote a holistic approach to delivering housing

services and encourage affordable and workforce units as outlined in the City's 2040 Comprehensive Plan and 2019 Strategic Plan. The City is equipped with the knowledge base, infrastructure and exposure to renovating, managing, operating and maintaining affordable housing assets through the Offices of Capital Improvement Projects and Housing and Community Services. As such, the City does not necessarily need to outsource development, operations and facility management for the Barclay.

However, when comparing a P3 to a development scenario in which the City controls project construction and subsequent facility operations and management, the City could benefit from private sector organizational efficiencies, as the City is often constrained by procurement requirements and other processes, the impact of compliance with laws regulating government function, funding priorities and limitations, and the operational capacity of City staff. As a result, a project built and operated solely by the City could potentially take longer to develop and possibly be more expensive to build, with a substantially greater reliance on taxpayer funding. The City's former P3 consultant, the Concourse Group, recommended the City leverage the private sector's comparative advantages to deliver the same project result in less time and with less cost to taxpayers. For the foregoing reasons, the City's three (3) procurements over the past five (5) years sought public-private partnership opportunities for Barclay redevelopment.

i. City Development Scenario – Financing

In November 2021, the City's consultant, M.C. Harry and Associates, prepared a detailed conditions assessment and feasibility study for redevelopment of the property for entirely residential use. The rough order of magnitude cost estimate, updated by the consultant in May 2023, was approximately \$14.5 million. In September 2023, another consultant, Nova Consulting, estimated the construction hard costs for the same rehabilitation to be about \$17.2 million, when factoring in environmental remediation and other known contingencies. The table below lists potential funding sources that could be explored for financing a City-developed project, completion of which is estimated to cost, at a minimum, approximately \$26.62 million including hard and soft costs. This estimate is based on conversion of the 66 existing efficiencies into approximately 31 housing units. See Exhibit C (City Development Project Budget Estimate). By comparison, Legacy's 71-housing unit proposal suggests a construction financing cost of \$25.1 million, including renovation of the existing building and construction of a new seven (7)-story building.

Without the availability of private partner equity and financing, the City would explore funding from Federal and State affordable housing programs (City entitlements and competitive programs) including those administered by HUD and/or the FHFC. Miami-Dade County may also serve as a funding source through annual, competitive funding programs such as the Documentary Stamp Surtax Program. An outline of Federal, State, and County entitlement funds and other grant programs is attached (Exhibit D: Entitlement Funds and State Programs). Some of these programs are not guaranteed funding sources, as developers and affordable housing providers compete in a process that rewards projects that leverage or match potential award funds with other funding sources such as local contributions. The following table provides a preliminary, conceptual outline of the entitlements, loan programs, bonds, competitive grants and other potential funding opportunities that together, could provide the funding required for a City-developed project.

| City Development Scenario: Potential Funding Sources | | | |
|---|------------------|--|---|
| | <i>Award</i> | <i>Source</i> | <i>Notes</i> |
| 1 | \$ 4,000,000 | Arts & Culture G.O. Bond Grant | Assumes grant award by Commission; funding already available as approved by Miami Beach voters in 2022 |
| 2 | \$ 1,352,681 | Existing CDBG/HOME Entitlement Allocations | Funds currently secured |
| 3 | \$ 4,675,905 | Section 108 Loan Program | Funds not currently secured and requires future application and award; reflects an advance of up to 5x the City's annual entitlement allocation; funds repaid over 20 years (at the latest) |
| 4 | \$ 5,000,000 | County Surtax Loan | Competitive low-interest loan program for gap funding; award amount based on estimated funding allocation from Miami-Dade County |
| 5 | \$ 11,100,000 | Miami Beach Redevelopment Agency (RDA) | Requires 6 th Amendment to the Interlocal Agreement to access excess RDA revenue; subject to approval by Miami-Dade County, City and RDA |
| 6 | \$ 500,000 | Florida Div. Historical Resources Special Category Grant | Competitive grant program Assumes maximum award amount; award requires 1:1 match |
| | \$ 26.62 million | <i>Subtotal - Potential Funding Sources</i> | |

| | |
|--------------------|-------------------------------------|
| \$ 26.62 million | Estimated Minimum Construction Cost |
| - \$ 26.62 million | Total Potential Funding Sources |
| \$ 0 | Required Gap Financing |

Additional competitive funding programs including requests for applications (RFAs) may be offered on a rotational basis through FHFC. Note that many of these programs are geared toward the private and not-for-profit sector to provide affordable housing inventory statewide. The **Live Local Act** is Florida's response to the ongoing affordable housing crisis and provides tax incentives, credits and low-interest loans to developers who dedicate 40%, or a minimum of 71 residential units, for tenants earning at or below 120% AMI. The law also overrides certain local zoning and density regulations with the aim of encouraging developers to add more units to their projects.

Several of FHFC's FY23 RFAs for Live Local Act funding were designated for not-for-profit applicants and contained other eligibility requirements that did not apply to a potential redevelopment of the Barclay by the City. The Administration continues to monitor RFAs published by FHFC during the FY24 program cycle.

It should not be assumed that any or all competitive or application-based funding sources can be obtained, expediently or otherwise, by the City. If all the identified funding sources in the table above are not secured by the City, the financial stack would fall short of covering the initial construction outlay, without giving any consideration to ongoing costs to operate the Project until it reaches stabilization (revenue generation). Therefore, the shortfall in the estimated project cost would need additional Project financing and likely require the City to access **municipal reserve funds**. Pursuant to Resolution No. 2019-30954, the General Fund Reserve Policy includes a required emergency reserve of 17% in addition to a goal to also maintain a reserve for contingencies of 8%, for a total of 25% (3 months). However, should any of the potential funding sources fall through, in part or in whole, the City Commission may consider municipal reserve funds through the budget development process.

Alternatively (or additionally), the City Commission could consider a **revenue bond** to access capital upfront and pledge future project revenue (once stabilized) to cover repayment of the bond. **Revenue projections and project proformas would be required as part of a revenue bond initiative. Potential project revenue would largely be based on the development and operational program (as discussed in the section below). To further explore the potential for a City Development Project, a formal financing plan would need to be developed, perhaps with the guidance of the FERC.**

Notwithstanding the foregoing, the City's assumption of risk in employing a City-development model could be offset by the potential reward. An analysis of the potential cash flow would be required to estimate how soon the City could recover its investment if the City were to invest equity into the project. A development proforma based on a program (as discussed below), would aid the City in comparing a City development scenario with the Legacy terms, as proposed and as may be negotiated.

ii. City Development Scenario – Program

To date, preliminary cost estimates prepared on behalf of the City have primarily focused on a renovation of the existing structure for residential use, without any additional height, density, or variances. To facilitate the development of a finance plan for a City Development Project, a determination of project parameters and priorities is critical. Not only does the combination of commercial and residential uses have an impact on the feasibility of securing certain funding sources and generating revenue, but the balance of these uses can also impact quality of life for project users and neighboring residents.

Existing market conditions, the types of revenue-generating leases, and the mix and balance of uses and tenants influence project viability. Projects with 100% residential use may or may not yield the community impact or revenue associated with a mixed-use development inclusive of rentable commercial space. The quantity and type of residential units (size, income eligibility) are also a major factor in projecting project revenue.

As the FERC may discuss conveyance of the Barclay to the Housing Authority, it should be noted that the Housing Authority does not currently operate any workforce units among its existing

affordable housing portfolio of 277 units in seven (7) Miami Beach properties and 200 public housing units at Rebecca Towers. None of the housing units currently under development by the Housing Authority are planned for income levels qualifying as workforce housing.

iii. City Development Scenario – Timeline

Compared with construction projects managed by the City, the private sector is often able to deliver more closely on schedule and budget, with less significant delays and cost overruns. The potential project funding identified from Federal, State, and Local sources is not yet secured and would be contingent on competitive application and award processes through multiple public agencies. Use of the City's earmarked entitlement funds, and/or applying for competitive awards, could involve required public comment periods, amending action plans, and rigorous HUD application and compliance processes, all before securing financing prior to construction commencement. **Legacy's RFP proposal timeline projected approximately 35 to 43 months for design and construction following City Commission approval and has not been modified with the Updated Proposal and would need to be clarified further. This process would conservatively span no less than 60-72 months if managed by the City. However, there is no guarantee that either Legacy or the City would secure financing within these proposed timelines. The ability of Legacy or the City to obtain financing in a timely manner would impact the construction schedule.**

D. Structural Demolition Alternative

Given the deteriorating conditions of the building, any extended delay may diminish the economic viability of property rehabilitation. Demolition of the structure is a consideration that could be investigated. Though not ideal, the demolition alternative could allow the City to maximize development design on the irregularly shaped parcel.

The Building Official has the authority to order an emergency demolition of an unsafe structure. However, under the City Code, because this would not observe the customary process of first receiving a recommendation on a Certificate of Appropriateness (CoA) for demolition from the HPB and the issuance of a CoA for demolition by the City Commission, an Emergency Demolition Order could trigger the rebuttable presumption that any future structure developed onsite be limited to the height, massing, and floor area of the original Barclay structure. However, there is no reason to believe, at this time, that the HPB and City Commission would not give due consideration to a CoA application submitted by the City to demolish the existing structure and redevelop the Property for public housing. Since this is a City-owned property, the approval of a CoA for demolition rests with the City Commission.

CONCLUSION

Whether through the ongoing RFP process with Legacy or a City Development Project, given the City's potential financial participation and projected timeframe for project completion, **it is necessary for the City Commission, with the input of the Committee, to clearly define the City's underlying objectives and goals for pursuing the Project.**

The Administration seeks direction as to the policy and business issues outlined in this Memorandum. Based on the development objectives for the Barclay articulated by the City Commission, the Administration is prepared to proceed on any of the following options:

1. City Commission award of the RFP and direction to the Administration to officially negotiate with Legacy. The Administration would formally commence negotiation of terms more favorable to the City's interests, which interests and objectives should be clearly defined by the City Commission, to yield the greatest public benefit. Following this City Commission direction, negotiated terms would again be presented to the FERC and the City Commission for consideration and approval.
2. City Commission rejection of the Legacy bid proposal pursuant to RFP 2023-115-KB.
3. City Commission direction to the Administration to explore City-funded and managed redevelopment options based on the identification, by the City Commission, of desirable development program parameters and goals. The Administration will prepare a financing plan to include any and all available funding to offset project development costs for presentation to the FERC and the City Commission for consideration.

Attachments

- A. HACMB Resolution No. 2024-01 dated January 30, 2024
- B. Legacy Updated Proposal dated February 13, 2023
- C. Entitlement Funds and State Programs
- D. City Development Project Budget Estimate