



Board Agenda Item 54

DATE: April 9, 2024

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Agreement with Reedley I CIC, LP to Develop, Construct, and Operate 11 Units of Affordable Multifamily Rental Housing for 40 Years in the City of Reedley

RECOMMENDED ACTION(S):

1. **Approve and authorize Chairman to execute an Agreement with Reedley I CIC, LP to loan HOME Investment Partnerships Program funds with deferred payments at 0% interest for the development, construction, and operation of 11 units within the 80-unit Willow Grove affordable multifamily rental housing project in the City of Reedley effective upon execution, for 40 years following the completion of construction and closure of the project in the Federal Integrated Disbursement & Information System (\$1,820,000); and**
2. **Approve and authorize Director of the Department of Public Works and Planning, or Acting Director, or designee identified in writing, to approve limited extensions to the construction timeline for delays out of the control of Reedley I CIC, LP and amend the end date of the Agreement's term in the County's system of record, with notice to all parties, for the purpose of aligning it with Federal administrative requirements and to ensure the conditions of the loan documents are satisfied; and**
3. **Authorize Director of the Department of Public Works and Planning, or Acting Director, or designee identified in writing, such that upon review and approval by County Counsel as to legal form and Auditor-Controller/Treasurer-Tax Collector as to accounting form, the Director may execute (and if applicable, record) in the name of the County: (A) the Regulatory Agreement and Declaration of Restrictive Covenants, (B) the Promissory Note, (C) the Deed of Trust, and (D) subordination documents that do not alter the County's lienholder positions and do not cause the amount of the superior loans to exceed \$42,000,000; and**
4. **Authorize Director of the Department of Public Works and Planning, or Acting Director, or designee identified in writing, such that upon review and approval by County Counsel as to legal form and Auditor-Controller/Treasurer-Tax Collector as to accounting form, the Director may execute loan and related documents necessary to the Willow Grove Project, including, but not limited to, the Regulatory Agreement and Declaration of Restrictive Covenants, Promissory Note, Deed of Trust, any required subordination agreements and estoppel certificates, and other necessary documents and amendments thereto as shall be necessary for the purpose of developing the Project so long as the documents (A) do not contain material changes and terms materially adverse to the County's position (subject to County Counsel's determination), (B) are consistent with the County's underwriting requirements, (C) not in conflict with Federal funding requirements, and (D) electronic copies of all final executed documents are added to the**

County's system of record.

Approval of the first recommended action will authorize a zero percent interest loan of up to \$1,820,000 in Federal U.S. Department of Housing and Urban Development (HUD) HOME Investment Partnerships (HOME) program funds to offset allocable construction costs for 11 units (out of 80 total) for new, affordable multifamily rental housing at Willow Grove (Project) in the City of Reedley with construction completion anticipated on or before December 15, 2025. The County's contribution towards the 11 HOME-funded units will be less than \$165,455 per unit and will support the affordability of the units for 40 years following construction and project closeout (Affordability Period).

Approval of the second recommended action authorizes the Department of Public Works and Planning to make adjustments to the construction schedule that do not conflict with certain HUD-required milestones for securing permits, starting construction, and completing the Project and also ensure the end date of the Agreement is kept updated and aligns with both HUD requirements to mirror the Affordability Period (which would begin once the Project has been closed out in the Federal system) and to ensure the County's agreement does not lapse prior to the satisfaction of the conditions of the loan documents (which include but are not limited to the Regulatory Agreement and Declaration of Restrictive Covenants, Promissory Note, and Deed of Trust).

Approval of the third and fourth recommended actions will delegate authority to the Director of Public Works and Planning, subject to review as to legal form by County Counsel and accounting form by the Auditor-Controller/Treasurer-Tax Collector (ACTTC), to support the administrative processes and demands for last-minute flexibility inherent in a complex real estate transaction involving State tax credits and multiple investors, where the County's documents must be finalized multiple weeks before the other parties have finalized theirs.

The Project has an anticipated total cost of \$37.8 million and pertains to a location in District 4.

ALTERNATIVE ACTION(S):

Your Board may approve all or some of the recommended actions, with or without modifications to the actions or the documents as appropriate and consistent with the Federal regulations governing the use of HOME funding. If the County's HOME funds are delayed beyond April 30, 2024 or not approved, the State is expected to withdraw their funds for failure of Reedley I CIC, LP (the Developer) to secure all necessary funds and the Project would not be constructed due to insufficient financing. If the limited delegation of authority to the Department's Director is not approved, the County may be unable to bring necessary amendments before your Board with sufficient time to meet external deadlines impacting the County throughout the loan closing process and construction period, which would jeopardize the viability of the Project.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The recommended agreement commits the County to providing a loan of up to \$1,820,000 from the County's Federal HOME allocation to reimburse construction costs for the Project. The loan will be provided on the following terms: 0% interest with deferred payment. Consistent with many past affordable housing projects, deferred payment means that the repayment of the loan will occur on or before the end of the term for the promissory note (40 years from the date the Project's Notice of Completion is recorded with the County, but no later than April 9, 2068) and any payments received prior to that date would be voluntary on the part of the Developer. All funds repaid on the loan will return to the County's HOME account as Program Income. Program income generated by this project must be reused in the same manner as HOME funds and before any federally-acquired HOME funds are expended. Sufficient appropriations and estimated revenues for the loan, staff's project time, and administrative expenses are included in the Department's Org 55122008 FY2023-24 Adopted Budget and will be included in subsequent budget requests.

The County's loan will help defray the Project's total estimated construction costs of approximately \$37.8 million, providing about 4.8% of the funds needed for construction but supporting the long-term affordability of 14% of the Project's affordable units. Due to the complex financing and time-sensitive nature of affordable housing developments, it is customary for the Project's other funding sources and amounts to fluctuate as the developer secures financing from a variety of public and private funding sources.

This Project includes funds conditionally committed by California's Low-Income Housing Tax Credit (LIHTC) Program. Your Board's approval of the \$1.82 million loan of HOME funds is necessary for the State's funding to be issued and for the loan finalization and closing process to commence. A list of other funding sources and entities involved in the Project is attached for your reference. The County's loan will be in the second lien position during construction and the third position during the Affordability Period.

The recommended agreement also allows both County Counsel and the Department of Public Works and Planning to collect fees consistent with the County's Master Schedule of Fees from the Developer to reimburse for actual time spent reviewing legal and loan documents as well as to perform required annual project monitoring activities and physical inspections throughout the 40-year Affordability Period.

DISCUSSION:

The County of Fresno administers Home Investment Partnerships Program (HOME) activities on behalf of the Urban County Area, as established by the most recent Joint Powers Agreement authorized by the Board on August 8, 2023. HOME provides formula entitlement grants to states and local governments that are used-often in partnership with local nonprofit groups-to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership, or by providing direct rental assistance or downpayment assistance to low-income households. HOME is the largest Federal block grant to State and local governments designed exclusively to create and preserve affordable housing for low-income households. In accordance with HOME guidelines, the Department reviews applications seeking funds for affordable housing projects and assesses the gap in financing between the Project's funding needs and the funds available from other sources. The size of the financing gap may change as the plans for construction and financing are developed. The funding amount recommended by the Department for this Project does not exceed the per unit maximum subsidy and does not exceed the financing gap.

On December 15, 2022, the Department issued a Notice of Funding Availability (NOFA) requesting applications for affordable housing projects whose developers were intending to apply to the California Tax Credit Allocation Committee (TCAC) for 2023 LIHTC funds. For this Project, the Developer submitted an application to the County for HOME funds on January 17, 2023 to support the development of Willow Grove, a new-construction, multifamily rental development at 2007 E. Dinuba Avenue, Reedley, CA 93654. As the Developer's application met the NOFA criteria, the Department issued a reservation letter on April 18, 2023 indicating that \$1,000,000 in HOME funds had been reserved for the Project, contingent upon the Developer securing all other funding necessary to complete the Project. The Project was not selected as a recipient of the State's Round 1 9% LIHTC funds. The Department then reviewed an updated application and was able to underwrite the project for \$1,500,000 in HOME funds. The Department then issued a reservation letter in that amount on July 28, 2023 and the Project was awarded tax credits in the State's Round 2 9% LIHTC funds on November 8, 2024. Compliance with the County's bonding and monitoring requirements increased the gap in the Project's financing by \$320,000, bringing the total HOME gap financing needed to \$1,820,000.

The Project will consist of a mix of one-, two- and three-bedroom rental units, for a total of 80 units, of which 79 are restricted under LIHTC requirements to households at varying income levels that will range from 30% to 60% of the County's Area Median Income (AMI) at time of leasing. The single unrestricted unit is reserved for the Project's on-site manager. The five residential buildings will be two stories and residents will have access to a 1,506 square foot community center, a laundry facility, and a playground. The project also includes 1,000 square feet of office/retail space.

The County's loan for 11 of the 79 affordable units is in addition to LIHTC funds and tenants must meet both

LIHTC and HUD HOME requirements to be eligible. Presently, the Developer intends (but may decide otherwise) to use BSB Design, Inc. as the architect, Emmerson Construction, Inc. as the construction contractor, and CONAM Property Management for ongoing property management of the Project. Regardless of who is performing the work, the Developer through its Managing General Partner, Pacific Southwest Community Development Corporation (PSCDC) will be responsible for ensuring the eligibility of prospective and ongoing tenants satisfy LIHTC and HOME requirements as well as for ensuring ongoing compliance with property habitability standards and other HOME or County monitoring requirements.

The County's loan will be further secured by a Promissory Note, Deed of Trust, and Regulatory Agreement, each carrying restrictions that will remain with the land during a 40-year Affordability Period. The 40-year Affordability Period exceeds the HOME program's standard Affordability Period for newly-constructed rental units (normally just 20 years). Although allowing a 40-year Affordability Period will ultimately delay the required repayment of the funds back to the County's Community Development HOME reuse account by 20 years, the move will also support a positive cash flow for the Project and support the affordability of the 11 units for an additional 20 years, making the County's investment less than \$4,136 per unit, per year. This investment also obligates the County to monitor the Reedley I CIC, LP's compliance regarding the habitability of the assisted units throughout the affordability period and ensure all HOME regulations (including but not limited to tenant income limits, lease requirements, rent caps, and property standards) are followed. Once at least 20 years of the Affordability Period have passed, if the Developer has repaid the County's HOME loan and all other loan and agreement terms are met, your Board may consider authorizing an amendment to this agreement to end the Affordability Period early. Due to HUD regulations, repayment of the HOME loan prior to fulfilling at least 20 years of the Affordability Period will not release the Developer nor the County from the HOME obligations of this Agreement.

In the event of foreclosure, both the recommended Agreement and the Regulatory Agreement include a clause allowing the foreclosing lender to complete the first sale post-foreclosure without County approval. The obligations contained in the recommended Agreement and the Regulatory Agreement would continue to bind any and all successive owners. The Department does not object to this language in this particular instance due to the experience of the Developer and the annual monitoring by the Department of the Project's audited Statement of Cash Flows, Distribution of Net Cash Flow, Balance Sheet, and Profit and Loss Statements.

On May 10, 2022, the City of Reedley adopted Resolution No. 2022-042, adopting Environmental Assessment No. 2022-5, a categorical exemption dated April 21, 2022. The City Council also approved Conditional Use Permit Application No. 2022-1 with conditions and noted the Project, as proposed, is considered categorically exempt from California Environmental Quality Act (CEQA) review, because permits granted under the SB 35 pathway are subject only to ministerial review, and therefore no discretionary action is made to trigger CEQA.

Environmental Assessment No. 2357H02 was completed by the Department under the provisions of the National Environmental Policy Act (NEPA). Based on the environmental review, A Finding of No Significant Impact (FONSI) per 24 CFR 58.36 was made for the project, and a Combined Notice of Finding of No Significant Impact and Intent to Request Release of Funds was published on January 29, 2024. The Department received HUD's approval of the County's Request for Release of Funds and Certification on March 15, 2024.

The County is obligated by HUD regulations to tie the HOME requirements to the land the Project is occupying. For this Project, this is achieved by including a legal description of the land (e.g., a specific parcel as recorded by the County) within both the Regulatory Agreement and the Deed of Trust. As part of the acquisition for the Project, the Developer is pursuing a parcel split. Although the Department anticipates the new parcel map will be duly authorized and recorded in time to satisfy LIHTC requirements, its status was pending approval with the City of Reedley at the time this item was finalized. On March 20, 2024, the Department received word from City staff that the parcel map had been conditionally placed on the City Council Agenda for March 26, 2024, contingent upon approval of the Developer's off-site improvement plans. After the parcel map has been recorded and prior to the initiation of the loan closing process, the

placeholders in the Regulatory Agreement and Deed of Trust must each be updated with a legal description of the land. The Location Map and Architectural Design attachment provides an overview of the Project's location, the parcel map, and the intended design of the housing.

As is customary with projects of this nature, the County is being asked to subordinate its loan to those lenders investing a higher amount of dollars in the project than the County's contribution by executing one or more subordination agreements. A subordination agreement establishes the priority of debts to be repaid and guarantees that senior debt (e.g., lien position 1) will be paid before lower tier debts if the debtor goes bankrupt or is foreclosed upon. The County being in the second or third positions means that for purposes of loan payoff the County can only collect its full debt owed once the Developer has satisfied all superior debts. Payments to junior lienholders are permitted, if required or allowed by the terms of their loans, so long as senior debt payments are current, not delinquent, and not in arrears. Subordinate liens carry a risk of not being repaid after a foreclosure sale. HOME regulations do not require HOME funds be issued as loans, so there is no regulatory risk if the HOME funds loaned are not repaid; however, if the Project fails to exist as affordable housing throughout the minimum Affordability Period of 20 years required by regulation, the funds used for the Project will have to be repaid by the County to HUD.

The requested delegation of your Board's authority is requested due to the complex financing and time-sensitive nature of large housing development projects. It is not unusual for terms and funding sources to change as the developer solidifies financing from a variety of public and private funding sources. The delegation of authority will allow the Director, or Acting Director, or designee identified in writing, to execute, subject to review as to legal form by County Counsel and review as to accounting form by the ACTTC, necessary documents (including but not limited to the Regulatory Agreement and Declaration of Restrictive Covenants, Promissory Note, Deed of Trust, and any required subordination agreements and estoppel certificates) for developing the Project. Such delegation is authorized so long as the documents under review do not contain material changes and terms materially adverse to the County's position (as determined through review by County Counsel), are consistent with the County's underwriting requirements, are not in conflict with Federal funding requirements, and electronic copies of all final executed documents are added to the County's system of record. Documents containing material changes will be brought before your Board.

REFERENCE MATERIAL:

BAI #40, August 8, 2023

ATTACHMENTS INCLUDED AND/OR ON FILE:

Location Map and Architectural Design

Other Funding Sources and Entities Involved

On file with Clerk - Agreement with Reedley I CIC, LP

On file with Clerk - Regulatory Agreement and Declaration of Restrictive Covenants

On file with Clerk - Promissory Note

On file with Clerk - Deed of Trust

CAO ANALYST:

Salvador Espino