DATE: June 27, 2017

TO: Mayor and City Council
Housing Authority Board

FROM: Director of Library and Community Services

SUBJECT Public TEFRA Hearing as Required by the Internal Revenue Code of 1986, and Adoption of a Resolutions Authorizing: a) The Re-Issuance of a Tax-Exempt Multifamily Note; b) A Modification to the Construction and Permanent Loan Agreement; and, c) Related Actions in Connection with the Hayward Four Affordable Apartments

RECOMMENDATION

That the City Council:

a) Conducts a public hearing to consider the re-issuance of the Tax-Exempt Multifamily Housing Revenue Note to reimburse unanticipated project costs related to certain affordable housing developments known as Hayward Four Affordable Apartments (the "Project"), owned by Eden Housing, Inc. (Eden), and its affiliates.

b) Adopts the attached resolution (Attachment II): i) approving the use of tax-exempt bond proceeds to reimburse unanticipated project costs related to the Project; and ii) approving the re-issuance of Tax-Exempt Multifamily Housing Revenue Note for purposes of Section 147(f) of the Internal Revenue Code of 1986; and iii) approving an amendment to the Construction and Permanent Loan Agreement.

c) Adopts the attached resolution approving the amendment to the Hayward Four Loan Agreement to clarify the approved financing for the Project (Attachment III).

That the Housing Authority:

a) Adopts the attached resolution approving the amendment to the Hayward Four Loan Agreement to clarify the approved financing for the Project (Attachment IV).

BACKGROUND

On July 21, 2015, Council initially approved the financing for the acquisition and rehabilitation of the Project, which consists of four Eden-owned affordable housing developments in Hayward comprising a total of 118 units of multifamily rental housing affordable to low and very low-income families[1]. Table A shows the names of the properties in the Project, their addresses, and the number of units in each of them:

Table A: Properties Comprising the Project

Property Name	Location	No. of Units
742 Harris Ct. Apartments	742 Harris Court	4
Harris Court Apartments	734, 735, 743, 750, and 751 Harris Court	20
Cypress Glen	25100 Cypress Avenue	54
Huntwood Commons	27901 Huntwood Avenue	40
	Total:	118

Included in the Project financing was a City-issued Tax-Exempt Multi-Family Housing Revenue Note (the "Note"). In compliance with the Internal Revenue Code of 1986 (the "Code") and to be able to issue the Note, at the July 21, 2015 meeting, Council also adopted a resolution approving the issuance of such Note after holding a TEFRA[2] public hearing.

Subsequently, on February 2, 2016, Council approved a resolution that both authorized the actual issuance of the Note and the City Manager to execute all the documents necessary for the implementation of the Project[3]. Project financing, which also included the restructuring of a series of existing City and Housing Authority loans, closed on February 26, 2016 and construction commenced soon thereafter.

DISCUSSION

The Request

The 118 homes and the common areas have been rehabilitated. New fifty-five-year affordability covenants restricting occupancy of the homes by very-low and low-income families are in place. However, the conversion of the Project's construction financing into permanent financing has been delayed due to unanticipated costs related to voluntary relocation payments made to some over-income families that Eden paid for from its own funds. To reimburse Eden for those expenses and complete the implementation of the

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[1] The report is available at: https://hayward.legistar.com/MeetingDetail.aspx?ID=454203&GUID=CE09554D-DD87-4FEA-807B-8026EC21FB3A&Options=info&Search=. See item pages 445-467 of item No. 22

[2] Tax Equity and Fiscal Responsibility Act of 1982.

[3] The report is available at: https://hayward.legistar.com/LegislationDetail.aspx?ID=2555226&GUID=1D088855-0C63-4F61-98C7-C36E02FD3E9B&Options=&Search=. See item LB 16-008

Project, Eden is asking that the City re-issue the Note in order to allow an increase in the permanent loan amount (from $7.75 million to $9.21 million) to cover those expenses. The increase in the permanent loan amount will occur as a result of a reduction in the amount of the Note that was initially anticipated to be paid off in connection with the conversion of the Note to the permanent phase, thereby allowing the Project owner to retain additional moneys to reimburse Eden for the costs described herein.

The primary Project funding sources are the City-issued Note and Low-Income Housing Tax Credits ("tax credits"). Combining the two sources provides affordable housing projects one of the most favorable financing structures which, in turn, allows the owners to rent the homes at rents affordable to very-low and low-income families for the long term. The tax credit program, however, has very strict rules. The Project specifically, had to satisfy two conditions to be eligible to receive the tax credit allocation: a) all construction had to be completed in 2016, and b) all families had to earn incomes at 60% of the Area Median Income (AMI) or below. Homes with over-income (making 60% of AMI or more) families would not qualify to receive the tax credits. Thus, the Project's tax credit eligibility would be reduced on a prorated basis for each over-income "unit."

Recertification Issues: Twenty Six Over-Income Families

Qualification of the families to occupy the units is determined through a process known as recertification. The recertification requires that the families provide documentation of their income and assets. The Project's construction financing closed with the assumption that ten families were over-income and that the Project would not receive tax credits for the homes occupied by those families.

About six months into construction, a third-party audit of the income recertifications uncovered a pattern of incorrect documentation. Instead of ten over-income families, the Project had twenty-six homes occupied by over-income families. This would have resulted in a $3 million loss of tax credit equity, making the Project infeasible. Eden, as the Project's sponsor and guarantor, worked closely with the construction lender and tax credit investor to develop an action plan that would allow the construction to continue and not place all the tax credit reservation at risk. At no time, however, did this issue place the City in any kind of financial risk, as Eden is the sole guarantor of the Project.

Voluntary Permanent Relocation Payments Made

The action plan that Eden, the construction lender, and the investor developed called for voluntary permanent relocation offers to the over-income families. Eden reviewed this action plan with City staff in advance of making the offers, and City staff agreed this would be acceptable, provided that the relocation was strictly voluntary and met federal and State relocation standards. Through a third-party relocation consultant, Eden's property management made offers to all the over-income families. The amount offered to the families is an independently-determined amount based on federal and State guidelines for relocation. The average offer was $50,000. Of the twenty-six over-income families, thirteen voluntarily accepted and moved out of the properties, and three later qualified at below 60% of AMI due to unexpected reductions in their incomes.

Eden's Board of Directors advanced the necessary funds to pay for the voluntary relocation packages. Ultimately, Eden spent over $650,000 on voluntary permanent relocation, and incurred significant additional overhead and staffing costs that had to be dedicated to resolve this major issue. Pursuant to the Project's financing agreements, the funds spent in relocation would have had to be repaid over time from the Project's cash flow to Eden. This would have reduced the cash flow that could be used to pay the annual debt service on the City and Housing Authority residual receipts loans.

Additional Borrowing Supported by the Project

Eden is requesting an increase in the permanent loan amount for the Project to repay itself the advance of funds for relocation and related expenses in full this year. The additional permanent Note would pay all associated transaction costs and reimburse the City's consultants and staff costs in support of this request. Fortunately, the additional borrowing is supportable because the Project has much higher rent revenue than originally anticipated, due to an increase in Section 8 tenant voucher payments to the Project this year. The permanent mortgage lender to the Project and the tax investor have performed their own independent third-party analyses that concur with the City's financial consultant and Eden's determination that the Project is able to support the additional borrowing.

The TEFRA Hearing

The permanent loan amount increase requires an amendment to the Construction and Permanent Loan Agreement (the "Agreement") entered into by the City, the funding lender (Union Bank), and the Project owner (an affiliate of Eden). Such amendment will cause a technical Bond reissuance for federal income tax purposes, which will require the City Council, as the elected representative of the City, the host jurisdiction of Project, to approve the amendment of the Agreement only after holding a public hearing as required by Section 147(f) of the Code which must be noticed in a newspaper of general circulation. The City Council is being asked to hold such public hearing which was noticed on June 9.

Jones Hall, APLC, as bond counsel, CSG Advisors Inc., as financial advisor, and Goldfarb and Lipman, LLP, as the City's legal counsel on affordable housing, who worked on the initial bond issuance, have reviewed Eden's proposal and the documentation necessary for the reissuance to happen. The attached bond resolution (Attachment I) names these firms as consultants to the City in connection with the re-issuance of the Note. The resolution also authorizes the re-issuance of the Note and authorizes the City Manager to execute the associated Note documents.

Pursuant to the loan documents for the existing City and Housing Authority residual loans, any substantial modification to the Project financing is subject to the City's approval. Consistent with this provision, the resolutions in Attachments II and III acknowledge the

City and Housing Authority approval of the bond loan increase - a substantial change in the financing originally approved by the City.

ECONOMIC IMPACT

The rehabilitation of the Project has improved the long-term viability of the properties and ensured the long-term affordability of the 118 homes to Hayward families as a result of new fifty-five year covenants recorded against the properties. The Project implementation has also meant several other direct and potential economic benefits for the community which were described in the staff reports leading to the initial issuance of the Note.

FISCAL IMPACT

The reissuance of the Note does not represent a financial impact to the General Fund and the General Fund is not responsible for repayment of the Note. All costs associated with re-issuance of the Note will be reimbursed by the Project owner or Eden, including the City's financial advisors and bond and legal counsel fees.

SUSTAINABILITY FEATURES

The Project rehabilitation included several sustainability upgrades. This includes the installation of a solar thermal system at Cypress Glen, which uses a central hot water system and the installation of solar photovoltaic systems at all four properties. The Project also included the replacement of:

- All toilets and fixtures with low-flow models,
- Old irrigation systems with drip irrigation and low-water-use landscaping,
- All windows with thermally-broken double-pane windows to reduce energy use and improve thermal comfort,
- All appliances with new now Energy Star-rated appliances,
- Common areas and most units' lighting fixtures with high-efficiency and LED lighting fixtures.

PUBLIC CONTACT

The public outreach that led to Council approval of the Project's overall financing included the initial TEFRA public hearing and approval of the existing City and Housing Authority loan-restructuring approval held on July 15, 2015. The initial TEFRA hearing was also publicly noticed in the Daily Review on July 7, 2015. Later, at a regular meeting held on January 16, 2016, Council approved the resolution that authorized the actual issuance of the Note. In addition to these outreach efforts, notice of this public hearing was published in the Daily Review on June 9.

NEXT STEPS

Notice of the TEFRA hearing was published in the Daily Review on June 9. The Resolution included as Attachment I approves the reissuance of the Note and the execution of an amendment to the Agreement, which is the document that is causing the reissuance of the Note. Therefore, if the City Council adopts the attached resolutions, staff and consultants will finalize the documentation necessary for the Note reissuance to take place and for acknowledgement of the Project financing modification. The resolutions authorize the City Manager to negotiate and execute those documents within the parameters outlined in this report.

Prepared by: Omar Cortez, Housing Development Specialist

Recommended by: Sean Reinhart, Director of Library and Community Services

Approved by:

Kelly McAdoo, City Manager