



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey
Rick Bruneau

SUBJECT: SEE BELOW

DATE: October 2, 2023

Approved

Date

10/12/2023

COUNCIL DISTRICT: 9

SUBJECT: APPROVAL OF THE ISSUANCE OF MULTIFAMILY HOUSING REVENUE NOTES AND THE LOAN OF THE PROCEEDS THEREOF FOR THE FINANCING OF THE DRY CREEK CROSSING DEVELOPMENT AND APPROVING OTHER RELATED DOCUMENTS

RECOMMENDATION

Adopt a resolution:

- (a) Authorizing the issuance of a (1) tax-exempt multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (Dry Creek Crossing), Series 2023E-1 (Tax-Exempt)” in a principal amount not to exceed \$31,194,905 (2023E-1 Note), and (2) a taxable multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (Dry Creek Crossing), Series 2023E-2 (Taxable)” in a principal amount not to exceed \$8,805,095 (2023E-2 Note); (collectively, 2023E Notes);
- (b) Approving the loan of 2023E Notes proceeds to CRP Dry Creek Crossing LP, a California limited partnership created by CRP Affordable Housing & Community Development LLC, a Delaware limited liability company, to finance the construction and development of a 64-unit multifamily development known as Dry Creek Crossing located at 2388 South Bascom Avenue in San José. Approving in substantially final form the Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement and Declaration of Restrictive Covenants, the Contingency Draw-Down Agreement, and related documents (collectively, the 2023E Notes Documents); and
- (c) Authorizing and directing the City Manager, Director of Housing, Acting Director of Housing, Director of Finance, Assistant Director of Housing, Assistant Director of Finance, Deputy Director of Finance – Debt & Treasury Management, or their designees, to execute

and deliver the 2023E Notes Documents together with any documents ancillary to the 2023E Notes Documents.

SUMMARY AND OUTCOME

Approval of the recommended actions will enable the issuance of the (1) tax-exempt multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (Dry Creek Crossing), Series 2023E-1 (Tax-Exempt)” in a principal amount not to exceed \$31,194,905 (2023E-1 Note), and (2) a taxable multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (Dry Creek Crossing), Series 2023E-2 (Taxable)” in a principal amount not to exceed \$8,805,095 (2023E-2) for the purpose of financing a portion of the costs to construct the Dry Creek Crossing development, a 64-unit affordable rental apartment project, with 63 apartments restricted to low-income, very low-income, and extremely low-income households that will remain affordable for a period of at least 55 years following completion, and one unrestricted manager’s unit.

The Dry Creek Crossing development will serve residents with current maximum annual incomes between 30% and 70% of area median income (AMI) with affordable rents adjusted for family size in accordance with the California Health and Safety Code, as may be amended from time to time. Dry Creek Crossing is located at 2388 South Bascom Avenue in San José which is also known as 2388 South Bascom Avenue in Campbell. (**Attachment A** - Site Map)

THE 2023E NOTES WILL NOT BE PAID FROM OR SECURED BY THE GENERAL TAXING POWER OF THE CITY OR ANY OTHER CITY ASSET.

BACKGROUND

CRP Affordable Housing & Community Development LLC, a Delaware limited liability corporation (Sponsor) is proposing to develop, own, and manage a new 64-unit affordable housing development on an 0.63-acre site located at 2388 South Bascom Avenue in San José. The address of the development is also known as 2388 South Bascom Avenue, Campbell; however, the development is within the boundaries of the City of San José. Construction of the Dry Creek Crossing development is expected to start 30 days after the close of construction financing, which is proposed to be on November 9, 2023.

Borrower

The Borrower is CRP Dry Creek Crossing LP, a California limited partnership consisting of the following entities.

- (1) Administrative General Partner: CRP Dry Creek Crossing AGP LLC, a California limited liability company.

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- (2) Managing General Partner: Pacific Southwest Community Development Corporation, a California nonprofit benefit corporation.
- (3) Limited Partner: Red Stone Equity Partners, LLC, a limited liability company.

The Sponsor requested the City issue the 2023E Notes for the purpose of lending the proceeds thereof to the Borrower. The proceeds of the 2023E Notes, together with other funds, will be used by the Borrower to finance the construction of the Dry Creek Crossing development.

Development Overview

The Dry Creek Crossing development involves the construction of (a) 20 one-bedroom apartments, (b) 25 two-bedroom apartments, (c) 18 three-bedroom apartments, and (d) one unrestricted three-bedroom manager’s apartment. The unit mix, current rent levels, and affordability levels by AMI are provided in **Table 1** below:

Table 1 – AMI Unit Mix

| APARTMENT SIZE | UP TO 30% AMI | | | UP TO 50% AMI | | | UP TO 60% AMI | | | UP TO 70% AMI | | | MGR APT | TOTAL |
|----------------|---------------|---------------|-------------|---------------|---------------|-------------|---------------|---------------|-------------|---------------|---------------|-------------|-----------|-----------|
| | Apts | Max Income ** | Rent Limits | Apts | Max Income ** | Rent Limits | Apts | Max Income ** | Rent Limits | Apts | Max Income ** | Rent Limits | | |
| 1-BD | 4 | \$40,155 | \$1,003 | 8 | \$66,925 | \$1,673 | 6 | \$80,310 | \$2,007 | 2 | \$93,695 | \$2,342 | | 20 |
| 2-BD | 8 | \$48,180 | \$1,204 | 9 | \$80,300 | \$2,007 | 4 | \$96,360 | \$2,409 | 4 | \$112,420 | \$2,810 | | 25 |
| 3-BD | 6 | \$55,665 | \$1,391 | 4 | \$92,775 | \$2,319 | 3 | \$111,330 | \$2,783 | 5 | \$129,885 | \$3,247 | 1 | 19 |
| Total | 18 | | | 21 | | | 13 | | | 11 | | | 1* | 64 |

* Unrestricted manager's apartment

**Maximum rent limits are based on California Tax Credit Allocation Committee's occupancy guidelines of 1.5 persons per bedroom. The illustration of maximum income assumes an actual family size equal to 1.5 persons per bedroom.

The Dry Creek Crossing development, a six-story residential building, will be constructed on a 0.63-acre site that currently operates as Kirk’s Steakhouses in a one-story, 2,228 square-foot, commercial building. The removal of the existing building will be scheduled as construction of the Dry Creek Crossing development begins. The total gross square footage of the new building will be 89,470 square feet. The Dry Creek Crossing development will include a clubhouse, an outdoor playground, a barbecue area, on-site laundry, and social service programs. The development will have five residential levels over a secured 29-space garage. Level 1 will consist of a lobby, parking garage, bike storage, leasing office, and various control rooms. Level 2 will be primarily residential, along with a courtyard, clubhouse, and study room. Levels 3-6 will be primarily residential, with each level having one or more study rooms. There is no commercial or non-resident serving space.

The Dry Creek Crossing development will be constructed on two parcels. One parcel, currently owned by Mollo Properties, LLC (Seller), is under contract to be sold to the Borrower through an executed purchase and sale agreement dated December 21, 2021. The second parcel, conveyed to the City in 1961 in connection with the “Kirk ditch”, is an approximate four-foot wide parcel

running along the northerly boundary of the Seller's property. The City-owned parcel is not used or improved by the City.

The City will acquire the first parcel through an assignment of the executed purchase and sale agreement between Mollo Properties, LLC and the Borrower. Prior to construction closing, which is anticipated in early November 2023, the City and Borrower may execute an option to ground lease the parcel concurrently with the assignment of the purchase and sale agreement. The City will acquire the site before the closing of construction finance for \$5,200,000 and lease both parcels to the Borrower for a term of at least 58 years. The ground lease term of at least 58 years is necessary to include the construction and lease-up period of up to three years plus the City's standard affordability restriction period of 55 years, which will ensure the ground lease lasts until the end of the affordability restriction and maturity of the \$9,450,000 construction-permanent loan by the City.

The Dry Creek Crossing development will be subject to Low-Income Housing Tax Credit restrictions as required by the California Tax Credit Allocation Commission. The City funding to the Dry Creek Crossing development is subject to an affordability restriction.

Construction Schedule

Construction is expected to commence in December 2023 and be completed by September 2025.

Demolition and Relocation

Demolition of the existing on-site commercial building is needed; however, the demolition of any existing buildings on-site will not be approved until the submittal and approval of a complete application for a building permit or grading permit. The owner of 2388 South Bascom Avenue is also the sole tenant, J Mollo & Sons, Inc., that currently operates as Kirk's Steakhouses.

Prior to the City's commitment to acquire the parcel, the Sponsor provided Mollo Properties, LLC a voluntary acquisition letter on June 15, 2022, stating that the Sponsor does not have power of eminent domain, and if the Seller decides to sell the property, it would be completely voluntary. An updated voluntary acquisition letter for the City's benefit will be provided to the Seller and reviewed by Sponsor's right-of-way consultant, TranSystems, formerly known as Overland, Pacific, & Cutler, LLC, for an expert opinion on relocation obligations of the City, if any. As an owner-occupant, Mollo Properties, LLC is not eligible for relocation assistance. The owner-occupant has not decided to open another restaurant or retire after vacating the property.

City Loan for the Development

The City Council approved a construction-permanent loan to the Borrower on January 31, 2023, of up to \$9,450,000 for eligible development costs (City Loan). The sources of funding for the City Loan will consist of Measure E Real Property Transfer Tax revenue plus other sources at the City's discretion. The City Loan will be accompanied by an affordability restriction (City's

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Affordability Restriction) that is unsubordinated to any deeds of trust. The City's Affordability Restriction will run for at least 55 years.

City as Issuer of Multifamily Housing Bonds

City Council Policy 1-16 Policy for Issuance of Multifamily Housing Revenue Bonds¹ requires the City to be the issuer of tax-exempt multifamily housing revenue obligations in connection with the financing or refinancing of rental housing projects located in the City for which it has provided, or will be providing, a loan.

Prevailing Wages and Labor Standards

In accordance with City Resolutions numbers 61144 and 61716, City prevailing wages policy will apply to the Dry Creek Crossing development and will be overseen by the Department of Public Works Office of Equality Assurance.

The City's affordable housing loans and fee reductions are subject to prevailing wage as noted above, but otherwise excluded from the requirements of part 3 of Chapter 14.10 pursuant to Section 14.10.250.B of the San José Municipal Code.

Sources of Development Funding

The 2023E Notes will fund a portion of the total development costs, which are currently estimated at \$61,630,513, based on the Borrower's proforma dated September 22, 2023. During the construction period, the 2023E Notes will be drawn down over time, up to an estimated aggregate amount of \$40,000,000. During construction, the 2023E Notes will bear a variable interest rate estimated at 7.92% (tax-exempt 2023E-1 Note) and 8.42% (taxable 2023E-2 Note). Following the completion of construction of the Dry Creek Crossing development and its lease-up in December 2025 (Conversion), the taxable 2023E-2 Note will be paid in full and the tax-exempt 2023E-1 Note will be paid down to a remaining principal amount of approximately \$10,050,000, termed out into a tax-exempt permanent loan with an 18-year term amortized over 40 years, and bear interest at a rate estimated at 6.47%. The primary source of repayment of the 2023E Notes at Conversion is anticipated to be Federal and State low-income housing tax credit proceeds from the Borrower's limited partner.

The sources and uses of funding for Dry Creek Crossing development's construction and permanent phases are currently estimated (actual amounts may vary from these estimates) in **Table 2** summarized below:

¹ [City Policy #1-16: Policy for the Issuance of Multifamily Housing Revenue Bonds](#)

Table 2 – Development Financing Plan

| City of San José – Dry Creek Crossing Development Plan of Finance – Sources | | |
|--|----------------------|----------------------|
| Sources | Construction | Permanent |
| 2023E-1 Note (Tax-Exempt) | \$ 31,194,905 | \$ 10,050,000 |
| 2023E-2 Note (Taxable) | 8,805,095 | 0 |
| City of San José Loan | 9,450,000 | 9,450,000 |
| Tax Credit Equity | 3,690,792 | 37,047,108 |
| Deferred Developer Fee | 6,917,710 | 5,083,405 |
| Costs Deferred Until Conversion | 1,539,270 | 0 |
| Total | \$ 61,597,772 | \$ 61,630,513 |

| City of San José – Dry Creek Crossing Development Plan of Finance – Uses | |
|---|----------------------|
| Uses of Funds | |
| Land Cost | \$ 58 |
| Construction Cost | 40,382,359 |
| Construction Contingency | 2,019,118 |
| Financing Costs | 5,423,199 |
| Architecture and Engineering | 1,659,460 |
| Other Soft Costs | 3,133,426 |
| Developer Fees | 7,703,841 |
| Soft Cost Contingency | 1,000,000 |
| Reserves | 309,052 |
| Total | \$ 61,630,513 |

Financing History of the Development – Key Dates

The following are the key dates relating to the financing history of the Dry Creek Crossing development.

- January 31, 2023 – City Loan of up to \$9,450,000 for the Dry Creek Crossing development was approved by the City Council.
- February 3, 2023 – The Director of Finance and the former Director of Housing signed a declaration evidencing the intent to reimburse expenditures with the proceeds of obligation for the Dry Creek Crossing development in an amount not to exceed \$35,000,000.
- February 7, 2023 – The City submitted a joint application to the California Debt Limit Allocation Committee (CDLAC) and California Tax Credit Allocation Commission for: (a) a private activity allocation of \$29,694,905, (b) \$2,894,579 in annual 4% federal tax credits over 10 years, and (c) \$11,618,332 in total state tax credits.
- May 10, 2023 – The City received a private activity bond allocation from CDLAC for the 2023E-1 Note and the Borrower received a reservation of 4% Federal tax credits and State tax credits in the requested amounts.
- August 31, 2023 – The Director of Finance held a Tax Equity and Fiscal Responsibility Act hearing regarding the issuance of tax-exempt multifamily housing revenue obligations in an amount not to exceed \$35,000,000 to finance the construction of the Dry Creek Crossing development.
- September 15, 2023 – The City received a supplemental private activity allocation of \$1,500,000 from CDLAC.

ANALYSIS

The Dry Creek Crossing development will provide 63 affordable homes and one unrestricted manager's unit, with 18 homes set aside for households with incomes at or below 30% AMI, 21 homes set aside for households with incomes at or below 50% AMI, 13 homes set aside for households with incomes at or below 60% AMI, and 11 homes set aside for households with incomes at or below 70% AMI.

Pacific Southwest Community Development Corporation, the managing general partner and resident services provider, will provide services to residents supporting their self-sufficiency and quality of life. Residents will have access to on-site amenities that include after-school programs for children and educational and skill-building workshops for adults. The main floor will be dedicated to common space for residents, fostering social interaction and building a sense of community among neighbors. Amenities include a clubhouse, courtyard, business center, and laundry room. A food distribution program will also be available to residents, allowing them to receive free meals and/or groceries and pantry delivery through partnerships with local nonprofit

organizations such as Loaves & Fishes Family Kitchen of San José, Second Harvest of Silicon Valley, and CityTeam.

Beyond on-site amenities, the Dry Creek Crossing development will provide residents a neighborhood that is walkable, with many locations for common errands within walking or biking distance. There are two Santa Clara Valley Transportation Authority bus lines that stop in front of the apartments on South Bascom Avenue - route 26 (West Valley – Eastridge) and route 61 (Good Samaritan Hospital – Sierra and Piedmont) - both with 15-minute headways during daytime hours. Additionally, there are a variety of restaurants, grocers, and shopping centers within a 15-minute walking distance of the Dry Creek Crossing development. Maplewood Plaza, which boasts many restaurants, a Walgreen’s pharmacy, and Lunardi’s Market is located 0.4 miles south and The Pruneyard shopping center with a Trader Joe’s is located 0.7 miles north of the Dry Creek Crossing development.

The Dry Creek Crossing development is located within the Affordable Housing Expansion Area of the City’s Affordable Housing Siting Policy approved by City Council on December 6, 2022. Affordable Housing Expansion Areas reflect areas where affordable housing can provide residents access to more economic opportunities in neighborhoods associated with upward mobility, educational attainment, and positive outcomes for children. The Dry Creek Crossing development is in a neighborhood that ranks high in metrics, including access to jobs, high-performing schools, and positive environmental factors. The City’s investment in affordable housing in new areas within the City increases housing choices for low-income families to live in areas where very little affordable housing currently exists.

Bond Financing Structure

Overview of the Multifamily Housing Revenue Note Financing

General

Multifamily housing financing historically has involved the issuance of tax-exempt multifamily housing bonds on behalf of private developers of qualifying affordable rental apartment projects. For many years, the City has issued tax-exempt bonds and loaned the proceeds to a developer/borrower. The advantages of tax-exempt financing to borrowers include below-market interest rates and Low-Income Housing Tax Credits; features that are not available with a conventional multifamily housing mortgage loan.

The 2023E Notes operate in a similar manner to tax-exempt multifamily housing bonds. The City Charter provides that the City may issue revenue bonds and execute and deliver revenue notes pursuant to California law. The City is authorized to issue the 2023E Notes pursuant to California Health and Safety Code Sections 52075-52098, as amended (the Act), which authorize cities to issue revenue bonds and execute and deliver revenue notes for the purpose of financing the acquisition and construction of multifamily rental housing. Section 52011 of the California

Health and Safety Code defines “bonds” to include notes for purposes of the Act. The 2023E Notes use a portion of the State’s annual Federal tax-exempt private activity bond volume cap allocated by CDLAC.

The 2023E Notes also allow the Dry Creek Crossing development to qualify for tax credits provided through California Tax Credit Allocation Commission.

The 2023E Notes are a limited obligation of the City, payable solely from loan repayments by the Borrower, and are not secured by the general taxing power of the City nor any other asset of the City.

Although the City's policies and state law refer to bond financing, the tax-exempt financing may be structured as bond financing or note financing. The note financing structure has become commonplace and is utilized because of a ruling of the Office of the Comptroller of the Currency that distinguished loans from bonds for purposes of Community Reinvestment Act credit. Banks have been utilizing the note financing approach on the belief that it meets the Office of the Comptroller of the Currency’s definition of a Community Reinvestment Act loan as well as CDLAC’s requirements for tax-exempt financing.

Requirements for Tax-Exemption

For a private activity multifamily housing revenue bond or note to qualify for tax exemption, Federal law requires, among other matters, that one of two restrictions apply: either (1) at least 20% of the units in the housing development must be reserved for occupancy by individuals and families whose income is 50% or less of AMI, or (2) at least 40% of the units must be reserved for occupancy by individuals and families whose income is 60% or less of AMI. While this restriction will be incorporated into the Regulatory Agreement for the 2023E Notes, the Dry Creek Crossing development will also be subject to additional affordability restrictions, including those imposed by CDLAC.

Structure of the 2023E Notes

Direct Purchase/Funding Structure

The 2023E Notes will be structured as non-rated and non-credit-enhanced obligations that are directly funded and purchased initially by Citibank. Pursuant to the City’s policies regarding non-credit-enhanced bonds, Citibank will sign an investor letter acknowledging that it is a “qualified institutional buyer” or “accredited investor”, i.e., a sophisticated investor as required under the City’s Policy for the Issuance of Multifamily Housing Revenue Bonds, that understands and accepts the risks associated with unrated obligations secured solely by the development’s rental income. The 2023E Notes may only be transferred in amounts representing not less than 15% of the outstanding principal amount of the applicable 2023E Notes series, but no less than \$100,000, to an “Approved Transferee.” An Approved Transferee includes (1) a qualified institutional buyer under the Securities Act of 1933, which is also a financial institution

or commercial bank having capital and surplus of at least \$5 billion, (2) an affiliate of Citibank, and (3) a trust or custodial arrangement established by Citibank or one of its affiliates the beneficial interests in which will be owned only by a qualified institutional buyer. If Citibank wishes to transfer the 2023E Notes, the new holder must sign and deliver a similar investor letter to the City and U.S. Bank Global Corporate Trust as fiscal agent (Fiscal Agent). The 2023E Notes may only be transferred in whole to a single transferee. Citibank may sell, grant, or convey participation interests in the 2023E Notes to an “accredited investor or “qualified institutional buyer” (collectively, a Qualified Transferee) that delivers an investor letter to the Fiscal Agent. An investor letter is not required for transfers of the 2023E Notes to an affiliate of Citibank.

Principal Amounts and Terms

Based on current projections, the estimated principal amount of the 2023E Notes will be \$40,000,000. After the Dry Creek Crossing development is constructed and leased up, and conversion to the permanent loan phase occurs (Conversion Date), the Series 2023E Notes are expected to be paid down to a permanent loan amount that is estimated at \$10,050,000. The source of 2023E Notes paydown on the Conversion Date will be Low-Income Housing Tax Credit proceeds. The Conversion Date is anticipated to occur approximately 24 months after the 2023E Notes’ closing, subject to two six-month extensions.

After Conversion, the 2023E-1 Note is expected to mature in approximately 18 years amortizing on a 40-year basis.

Interest Rate

The estimated construction loan rate has not been finalized, but the lender has provided a variable rate option estimated at the Secured Overnight Financing Rate as published by the CME Group, the interest rate benchmarking entity, plus 1.85% for the tax-exempt 2023E-1 Note (currently $6.07\% + 1.85\% = 7.92\%$), or plus 2.35% for the taxable 2023E-2 Note (currently $6.07\% + 2.35\% = 8.42\%$). The permanent loan rate will be fixed at construction closing based on an 18-year Secured Overnight Financing Rate plus a spread of 2.45% (currently $4.02\% + 2.45\% = 6.47\%$) based on the most recent Citibank term sheet dated September 22, 2023.

Financing Documents

The following is a brief description of the Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreement and Declaration of Restrictive Covenants, and the Contingency Draw-Down Agreement, that the City Council is being asked to approve and authorize their execution. Copies of these documents will be posted on the City’s website for the October 24, 2023 meeting.

Funding Loan Agreement

The Funding Loan Agreement is among the City, Citibank, and Fiscal Agent. The Funding Loan Agreement will be executed by the Director of Finance, or another authorized officer, on behalf of the City. Pursuant to the Funding Loan Agreement, the Fiscal Agent is authorized to receive, hold, invest, and disburse 2023E Notes proceeds and other funds established thereunder; to authenticate the 2023E Notes; and to apply and disburse payments to Citibank, as the Notes owner. The Funding Loan Agreement allows for Citibank to pursue remedies on behalf of itself as the Notes owner. The Funding Loan Agreement sets forth the guidelines for the administration, investment, and treatment of investment earnings generated by each fund and account and restrictions relating to any subsequent transfer of the 2023E Notes. The Borrower Loan Agreement (described below) obligates the Borrower to compensate the Fiscal Agent for services rendered under the Funding Loan Agreement.

Borrower Loan Agreement

The Borrower Loan Agreement is among the City, Citibank, and the Borrower. The Borrower Loan Agreement will be executed by the Director of Finance, or another authorized officer, on behalf of the City. The Borrower Loan Agreement provides for the loan of 2023E Notes proceeds to the Borrower for the construction of the Dry Creek Crossing development and for the repayment of such loan by the Borrower. The loan of 2023E Notes proceeds will be evidenced by two promissory notes that correspond to the repayment terms of the related 2023E Notes. The City's rights to receive payments under the promissory notes will be assigned to Citibank, along with certain other rights under the Borrower Loan Agreement; however, certain reserved rights have been retained by the City, such as the City's right to receive fees and notices and to indemnification.

Regulatory Agreement and Declaration of Restrictive Covenants

The Regulatory Agreement and Declaration of Restrictive Covenants (Regulatory Agreement) is between the City and the Borrower. The Regulatory Agreement contains certain covenants and restrictions regarding the Dry Creek Crossing development and its operations intended to assure compliance with the Internal Revenue Code of 1986 and applicable state law. The Regulatory Agreement is executed by the Director of Finance and Director of Housing, or other authorized officers, on behalf of the City. The Regulatory Agreement restricts the rental of Dry Creek Crossing development units to low-income residents for a period of at least 55 years after 50% of the units in the Dry Creek Crossing development are first occupied.

Contingency Draw-Down Agreement

The Contingency Draw-Down Agreement provides for the conversion of Citibank's Funding Loan from a draw-down loan to a fully funded loan if needed to preserve the tax-exempt status of interest on the 2023E-1 Note. The Contingency Draw-Down Agreement is executed by

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Citibank, the Funding Lender, the Fiscal Agent, and the Borrower. Pursuant to section 2.01 of the Funding Loan Agreement, the City must approve this agreement as to form.

Financing Team Participants

The financing team participants for the 2023E Notes consists of:

- **City's Municipal Advisor:** PFM Financial Advisors LLC
- **Bond Counsel:** Hawkins Delafield & Wood LLP
- **Fiscal Agent:** U.S. Bank Global Corporate Trust
- **2023E Notes Purchaser:** Citibank, N.A.

Payment of all costs associated with the City's Municipal Advisor, Bond Counsel, and Fiscal Agent is contingent upon the sale of the 2023E Notes and will be paid from 2023E Notes proceeds, tax credit equity, and/or Borrower funds.

Financing Schedule

The current proposed schedule is as follows:

- City Council approval of 2023E Notes Documents October 24, 2023
- CDLAC deadline for 2023E Notes Closing November 20, 2023

Public Disclosure Report Relating to Conduit Revenue Obligations

The Borrower prepared the attached public disclosure report pursuant to California Government Code Section 5852.1, attached as **Attachment B** – Public Disclosure Report, providing good faith estimates of certain costs associated with the issuance of the 2023E Notes.

City Subordinate Financing

The City agreed to lend up to \$9,450,000 during the construction period and up to \$9,450,000 during the permanent period after construction and lease-up. The sources of funding for the City Loan will be Measure E Real Property Transfer Tax revenue plus other sources at the City's discretion. As authorized by the recommended actions and under their Delegation of Authority, the Director of Housing, Acting Director of Housing, or a designee, will negotiate City Loan documents.

City Issuance and Monitoring Fees

City Policy

The City's Policy for the Issuance of Multifamily Housing Revenue Bonds requires that the issuance fee and annual monitoring fee be calculated as follows: Issuance fee is an amount equal

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to the sum of (a) 0.50% of the first \$10,000,000 of 2023E Notes issued and (b) 0.25% of the remaining par value issued.

Based on the current estimated aggregate 2023E Notes par of \$40,000,000 (\$31,194,905 for the tax-exempt 2023E-1 Note and \$8,805,095 for the taxable 2023E-2 Note) as provided in the Borrower's proforma dated September 22, 2023, the City's Policy would require an issuance fee of \$125,000.

City Annual Monitoring Fee

In general, the City annual monitoring fee typically is equal to 0.125% of the original principal amount of the notes issued. This fee shall apply until the end of the 55-year term of the regulatory period.

Based on the Borrower's estimate of a 2023E-1 Note par of \$31,194,905 at construction, the City would charge an annual monitoring fee of \$38,993 during construction and lease-up and continue following Conversion throughout the 55-year Regulatory Agreement term. If the 2023E Notes mature or are redeemed prior to maturity, the City has the option to require the Borrower to prepay the annual fee due for the remainder of the Regulatory Agreement term.

As the 2023E Notes do not involve a "related party" transaction under Federal tax law, the City will be entitled to collect its full fees under the City Policy.

Rounds 1 and 2 of the 2021 Notice of Available Funding

City staff updated the 2021 Notice of Funding Availability pipeline report to include the 11 Notice of Funding Availability-awarded developments in **Attachment C**. These 11 developments will offer 1,211 homes, comprising of 535 two- and three-bedroom units, to approximately 2,000 people within the next two to three years.

Climate Smart San José Analysis

The recommendation in this memorandum aligns with one or more of Climate Smart San José energy, water, or mobility goals. The Dry Creek Crossing development is designed to prioritize sustainability and environmentally friendly features such as solar panels, energy-efficient fixtures, Energy Star appliances, and a Build-It-Green environmental design certification. The Dry Creek Crossing development is centrally located and residents from this community will have grocery, pharmacy, restaurant, and various other food and retail shopping options and light rail and bus connections within walking distance from their home.

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EVALUATION AND FOLLOW-UP

This memorandum presents the set of recommendations related to the City Council's approval of the issuance of the 2023E Notes and requires no follow-up to the City Council. Once the 2023E Notes close, anticipated in November 2023, and the construction of the Dry Creek Crossing development commences, the Housing Department will provide updates in its Housing production dashboard periodically posted at www.sjhousing.org.

COST SUMMARY/IMPLICATIONS

The Borrower will pay all issuance costs of the 2023E Notes from tax credit equity and/or Borrower funds. The 2023E Notes will not be paid from, nor secured by, the general taxing power of the City or any other City asset.

The City is expected to receive revenue from the issuance of the 2023E Notes in the amount of \$125,000 and annual monitoring in the amount of \$38,993.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

The method of notifying the community of the City's intent to issue the tax-exempt private activity bonds is the Tax Equity and Fiscal Responsibility Act Hearing. The Tax Equity and Fiscal Responsibility Hearing was held on August 31, 2023, before the Director of Finance. The public hearing notice for this hearing was published in the *San José Post - Record* on August 18, 2023. No public comments were made at the Tax Equity and Fiscal Responsibility hearing.

This memorandum and the 2023E Note Documents will be posted on the City's Council Agenda website for the October 24, 2023 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

HONORABLE MAYOR AND CITY COUNCIL

October 2, 2023

Subject: Approval of the Issuance of Multifamily Housing Revenue Notes and the Loan of the Proceeds Thereof for the Financing of the Dry Creek Crossing Development and Approving Other Related Documents

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CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment; Exempt per Public Resources Code Section 21080(b)(1) and CEQA Guidelines Section 15369, Ministerial Project pursuant to Government Code Section 65913.4, File No. ER20-109.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in sections 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

ROSALYNN HUGHEY
Deputy City Manager and
Acting Housing Director

/s/

RICK BRUNEAU
Director of Finance

The principal authors of this memorandum are Shelsy Bass, Senior Development Officer, and Michael Jun, Senior Development Officer. For questions regarding the financing plan, please contact Qianyu Sun, Deputy Director of Finance – Debt & Treasury Management at Qianyu.Sun@sanjoseca.gov. For questions regarding the development, please contact Ragan Henninger, Deputy Director, Housing Department, at ragan.henninger@sanjoseca.gov.

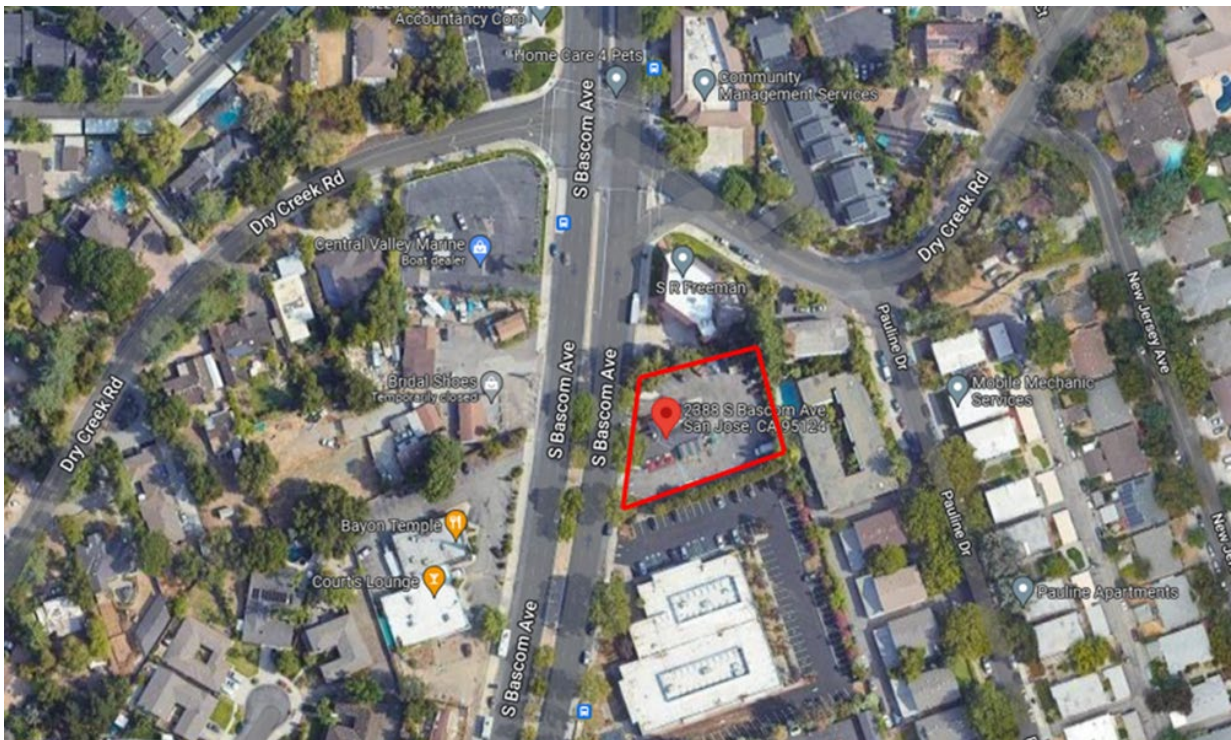
ATTACHMENTS

Attachment A: Site Map

Attachment B: Public Disclosure Report

Attachment C: Updated 2021 Notice of Funding Availability Pipeline Report

ATTACHMENT A – SITE MAP
2388 South Bascom Avenue, San José, CA
also known as 2388 South Bascom Avenue, Campbell, CA 95008



ATTACHMENT B – PUBLIC DISCLOSURE REPORT

PUBLIC DISCLOSURES RELATING TO CONDUIT REVENUE OBLIGATIONS

Pursuant to California Government Code Section 5852.1, the borrower (the “Borrower”) identified

below has provided the following required information to the City of San José (the “City”) prior to the City’s regular meeting (the “Meeting”) of its City Council (the “City Council”) at which Meeting the City Council will consider the authorization of conduit revenue Note as identified below.

1. Name of Borrower: **CRP Dry Creek Crossing LP, a California limited partnership.**
2. City Council Meeting Date: **October 24, 2023.**
3. Name of Bond Issue / Conduit Revenue Obligations: **City of San José Multifamily Housing Revenue Note (Dry Creek Crossing) Series 2023E-1 and Series 2023E-2 (the “Notes”)**
4. Private Placement Lender or Note Purchaser, Underwriter or Financial Advisor (mark one) engaged by the Borrower from which the Borrower obtained the following required good faith estimates relating to the Note:

(A) The true interest cost of the Notes, which means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the new issue of the Note (to the nearest ten-thousandth of one percent): **6.466%**

(B) The estimated finance charges of the Note, which mean the sum of all fees and charges paid to third parties: **\$500,000**

(C) The amount of proceeds received, or deemed received, by the public body for sale of the Note less the finance charges of such Note described in subparagraph (B) and any reserves or capitalized interest paid or funded with proceeds of such Note: **\$39,500,000**

(D) The total payment amount, which means the sum of all payments the Borrower will make to pay debt service on the Note plus the finance charges of the Note described in subparagraph (B) not paid with the proceeds of such Note (which total payment amount shall be calculated to the final maturity of such Note): **\$55,772,023**

This document has been made available to the public at the Meeting of the City Council.

Dated: September 22, 2023

Information Provided by: PFM Financial Advisors LLC and CRP Affordable Housing and Community Development LLC

ATTACHMENT C – Updated 2021 Notice of Funding Availability Pipeline Report

| | |
|---|----------------------|
| June 2021 Round 1 Original NOFA | \$75,000,000 |
| Total NOFA Applicant Request | \$20,000,000 |
| Dec 2021 Round 2 Original NOFA | \$150,000,000 |
| Total NOFA Applicant Request | \$237,376,951 |
| Original Total Dec 2021 NOFA Award | \$145,101,951 |
| YTD Original NOFA requests | \$82,300,885 |
| YTD Council Approved NOFA requests | \$113,677,826 |
| YTD Council Approved NOFA Increase Total | \$31,376,941 |
| % Increase | 38% |

2021 Round 1 & 2 NOFA PIPELINE REPORT

| City Council Approved Commitments | | | | | | | | |
|-----------------------------------|------------|------------------|-------------------------------|--|--------------------------|------------------------|---------------|--|
| Project Name | District # | Total # of Units | Original NOFA Funds Requested | Updated Amount of NOFA Funds Requested | Increase in NOFA request | Total Development Cost | Per Unit Cost | Project Stage |
| Parkmoor Community Apartments | 6 | 81 | \$10,175,000 | \$16,826,688 | \$6,651,688 | \$77,880,350 | \$961,486 | Construction to start by end of Dec 2023 |
| Dry Creek Crossing | 9 | 64 | \$9,450,000 | \$14,650,000 | \$5,200,000 | \$61,630,513 | \$962,977 | Construction to start by end of Dec 2023 |
| 777 W San Carlos | 6 | 154 | \$19,125,000 | \$22,247,500 | \$3,122,500 | \$138,030,091 | \$896,299 | Construction began July 2023 |
| 1860 Alum Rock Multifamily | 5 | 60 | \$7,500,000 | \$8,087,753 | \$587,753 | \$58,879,963 | \$981,333 | Construction began July 2023 |
| Tamien Station | 3 | 135 | \$14,125,000 | \$17,250,000 | \$3,125,000 | \$133,192,614 | \$986,612 | Construction began July 2023 |
| The Charles (551 Keyes) | 3 | 99 | \$9,675,885 | \$9,675,885 | \$0 | \$88,453,887 | \$893,474 | Construction began July 2023 |
| 797 Almaden | 3 | 99 | \$12,250,000 | \$24,940,000 | \$12,690,000 | \$110,380,539 | \$1,114,955 | CDLAC application May/June 2024 |
| SUBTOTAL | | 692 | \$82,300,885 | \$113,677,826 | \$31,376,941 | | | |

ATTACHMENT C – Updated 2021 Notice of Funding Availability Pipeline Report

| Conditional Commitments - Awaiting Council approval | | | | | | | | |
|---|------------|------------------|-------------------------------|--|--------------------------|------------------------|---------------|--|
| Project Name | District # | Total # of Units | Original NOFA Funds Requested | Updated Amount of NOFA Funds Requested | Increase in NOFA request | Total Development Cost | Per Unit Cost | Project Stage |
| 525 N Capitol | 5 | 160 | \$15,000,000 | \$27,800,000 | \$5,000,000 | \$115,288,702 | \$720,554 | Projected Increase. CDLAC application 2024 |
| VTA 605 Blossom Hill | 10 | 89 | \$10,875,000 | \$17,675,000 | \$6,800,000 | \$71,483,828 | \$803,189 | Projected Increase. CDLAC application 2024 |
| 2080 Almaden Apartments | 6 | 80 | \$9,750,000 | \$18,750,000 | \$9,000,000 | \$55,619,833 | \$695,248 | Projected Increase. CDLAC application 2024 |
| Kooser Apts | 9 | 190 | \$19,251,066 | \$29,251,066 | \$10,000,000 | \$131,064,204 | \$689,812 | Projected Increase. CDLAC application 2024 |
| SUBTOTAL | | 519 | \$54,876,066 | \$93,476,066 | \$30,800,000 | | | |

| NOFA Award Returned | | | | | | | | |
|---------------------|------------|------------------|-------------------------------|--|--------------------------|------------------------|---------------|---|
| Project Name | District # | Total # of Units | Original NOFA Funds Requested | Updated Amount of NOFA Funds Requested | Increase in NOFA request | Total Development Cost | Per Unit Cost | Project Stage |
| 2350 S Bascom | 9 | 123 | \$12,300,000 | \$0 | \$0 | \$89,735,520 | \$729,557 | Returned City NOFA Award. City funds reallocated. Outside bond issuance with California Municipal Finance Authority, construction to be completed 12/2024 |
| Dupont | 3 | 141 | \$17,375,000 | \$0 | \$0 | \$62,345,612 | \$442,167 | Returned City award and CDLAC allocation. City award reallocated. |
| McEvoy | 3 | 224 | \$20,000,000 | \$0 | \$0 | \$117,600,000 | \$525,000 | Returned City award and CDLAC allocation. City award reallocated. |
| SUBTOTAL | | 488 | \$49,675,000 | \$0 | \$0 | | | |