



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jacky Morales-Ferrand  
Rick Bruneau  
Jim Shannon

**SUBJECT:** SEE BELOW

**DATE:** May 1, 2023

Approved

Date

5/4/2023

**COUNCIL DISTRICT: 3**

**SUBJECT: APPROVAL OF THE ISSUANCE OF A MULTIFAMILY HOUSING REVENUE NOTE AND THE LOAN OF THE PROCEEDS THEREOF, AND APPROVING RELATED DOCUMENTS FOR THE FINANCING OF TAMIEN STATION AFFORDABLE, INCREASE TO THE CITY CONSTRUCTION-PERMANENT LOAN AND AUTHORIZE EXECUTION OF AGREEMENTS RELATED TO THE TRANSPORTATION DEVELOPMENT FUNDS**

## **RECOMMENDATION**

(a) Adopt a resolution:

- (1) Authorizing the issuance of a tax-exempt multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (Tamien Station Affordable), Series 2023D” in a principal amount not to exceed \$66,100,000 (2023D Note);
- (2) Approving the loan of 2023D Note proceeds to Tamien Affordable, L.P., a California limited partnership created by Core Affordable Housing LLC, a California limited liability company, to finance the construction and development of a 135-unit multifamily development known as Tamien Station Affordable located at 1197 Lick Avenue in San José (Development);
- (3) 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, 2023D Note Documents); and
- (4) Authorizing and directing the City Manager, Director of Housing, Director of Finance, Assistant Director of Housing, Assistant Director of Finance, Deputy Director of Finance – Debt and Treasury Management, or their designees, to execute and deliver the 2023D Note Documents together with any documents ancillary to the 2023D Note Documents.

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- (b) Adopt a resolution authorizing an increase of up to \$500,000 from Measure E Funds to increase the City Council-approved construction-permanent loan commitment to Tamien Affordable, L.P., a California limited partnership, from \$16,750,000 to \$17,250,000 to provide funds for tenant improvements to the commercial space for a commercial childcare facility; and
- (c) Adopt a resolution authorizing the City Manager, or designee, to negotiate and execute a Transportation Development Fund Agreement and related documents and agreements with Core Affordable Housing LLC and Central Valley Affordable Housing for funding of Department of Transportation work and services up to \$1,255,000 in Affordable Housing and Sustainable Communities grant funding; and
- (d) Adopt the following Fiscal Year 2022-2023 Appropriation Ordinance amendments in the General Fund:
  - (1) Decrease the Measure E – 30% Low-Income Households Reserve by \$500,000; and
  - (2) Increase the Measure E – 30% Low-Income Households appropriation by \$500,000.

## **SUMMARY AND OUTCOME**

In accordance with the City's Policy for Issuance of Multifamily Housing Revenue Bonds, the development sponsor Core Affordable Housing LLC, a California limited liability company (Sponsor), requested that the City issue a tax-exempt multifamily housing revenue note in an amount not to exceed \$66,100,000 (2023D Note). The 2023D Note will be purchased by Citibank, N.A. (Citibank). The proceeds of the 2023D Note will be loaned to the borrower, Tamien Affordable, L.P., a California limited partnership (Borrower) formed by the Sponsor.

Approval of the recommended actions will enable the issuance of the 2023D Note for the purpose of financing a portion of the costs of constructing the Development, a 135-unit affordable rental apartment development, with apartments restricted to low-, very low- and extremely low-income households (except for one unrestricted manager's unit) and remaining affordable for a period of at least 55 years following completion. The Development is located at 1197 Lick Avenue in San José – see **Attachment A** - Tamien Station Site Map.

The Development will serve residents with current maximum annual incomes between 30% and 60% of area median income (AMI), as adjusted for family size in accordance with California Health and Safety Code and as may be amended from time to time. Through a partnership with the County of Santa Clara (County) Office of Supportive Housing, 67 of the units will be set aside by the Borrower for tenants in the County's Rapid Rehousing program, which prioritizes residents who are experiencing homelessness. These units will be restricted to 30% AMI levels. Thirty-three of the units will be restricted to 50% AMI and, for a period of at least 20 years, be

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subsidized by Section 8 Project-Based Vouchers, while the remaining 34 units are projected to serve individuals and households who earn up to 60% AMI.

**The 2023D Note will not be paid from or secured by the general taxing power of the City or any other City asset.**

The recommended increase of \$500,000 to the City Council-approved \$16,750,000 City loan commitment totaling \$17,250,000 (City Loan) will enable the Borrower to complete tenant improvements for a childcare center that will occupy the commercial space. The authorization to negotiate and execute the Transportation Development Fund Agreement will allow the developer to move forward with transportation work and services in an amount up to \$1,255,000 to be funded from a state Affordable Housing and Sustainable Communities grant awarded to the Sponsor and the Developer's general partner, Central Valley Coalition for Affordable Housing.

## **BACKGROUND**

### ***Borrower***

The Borrower is a California limited partnership consisting of the following entities:

- (1) Administrative General Partner: Core Tamien Affordable, LLC, a California limited liability company, the sole member of which is the Sponsor.
- (2) Managing General Partner: Central Valley Coalition for Affordable Housing, a California nonprofit public benefit corporation.
- (3) Limited Partner: An entity to be formed by Raymond James Tax Credit Funds.

The Sponsor requested that the City issue the 2023D Note for the purpose of lending the proceeds thereof to the Borrower. The proceeds of the 2023D Note, together with other funds, will be used by the Borrower to finance the construction of the Development.

### ***Development Overview***

The Development involves the construction of (a) 134 studio, one-bedroom, two-bedroom and three-bedroom apartments that are subject to affordability restrictions and (b) one unrestricted two-bedroom manager's unit. The unit mix and affordability levels by AMI will be as follows:

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<b>Tamien Station Affordable</b>	<b>30% AMI</b>	<b>Monthly Rent</b>	<b>50% AMI</b>	<b>Monthly Rent</b>	<b>60% AMI</b>	<b>Monthly Rent</b>	<b>Total</b>
Studio	10	\$842	0	N/A	10	1,726	20
1 Bedroom	22	\$898	12	\$1,530	10	1,846	44
2 Bedroom	18	\$1,069	11	\$1,827	7	2,206	37*
3 Bedroom	17	\$1,229	10	\$2,105	7	2,543	34
<b>Total</b>	<b>67</b>		<b>33</b>		<b>34</b>		<b>135</b>

\* One unrestricted manager's unit

Through a partnership with County's Office of Supportive Housing, 67 units will be set aside for tenants in the County's Rapid Rehousing program, which prioritizes residents who are experiencing homelessness. These units will be restricted to 30% AMI levels. Thirty-three of the units will be restricted to 50% AMI and, for a period of at least 20 years, be supported by Section 8 Project-Based Vouchers, while the remaining 34 units are projected to serve individuals and households who earn up to 60% AMI.

The affordability restrictions for the Development will remain for a period of at least 55 years following the completion of construction.

The Development represents Phase 1 of a three-phase mixed-use development to be developed on the 12.56 acre Tamien Station site owned by the Santa Clara Valley Transportation Authority (VTA). Phases 2 and 3 will comprise 434 market-rate units equally divided into two buildings. VTA has committed to enter into an 85-year ground lease with the Borrower for an expected upfront discounted lump sum one-time lease payment of \$3,037,500 for development of Phase 1. Prior to the financing closing, the Tamien Station Transit-Oriented Development site will be subdivided into three separate parcels for each of the affordable and market-rate housing phases and VTA will ground lease the separate parcels for each phase of development. The market rate portion of the site will have a separate ground lease between VTA and the Borrower. The Development will, pursuant to the recorded Inclusionary Housing Agreement, be used to meet the Inclusionary Housing Ordinance requirements for the entire Tamien Station Transit-Oriented Development site.

The Tamien Station Affordable Development will consist of a five-story building with 135 total residential units and a 3,200 square foot commercial space to be used as a childcare center. The Borrower has partnered with the Low-Income Investment Fund and Santa Clara County Office of Education to solicit proposals from Title 5 childcare providers to offer subsidized childcare services. Other site amenities will include outdoor courtyard space with a splash pad, a gym, a community room, and a business center plus access to two transit rail lines and an adjoining public park.

LifeSTEPS will assist in the coordination of an onsite grocery program for residents in need of food. LifeSTEPS currently provides food programs at 18 affordable housing communities in Santa Clara County, partnering with agencies such as Loaves and Fishes Family Kitchen, The

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Health Trust, and Second Harvest of Silicon Valley. Resident needs will be identified through LifeSTEPS resident need assessments, resident self-referrals, and property management referrals.

The Development will be subject to low-income housing tax credit restrictions. The Santa Clara County Housing Authority will provide Section 8 Project-Based Vouchers for 33 units consisting of one-, two- and three-bedroom units set aside to households earning no more than 50% AMI. The City and County will also provide funding subject to affordability restrictions.

### ***Construction Schedule***

Construction is expected to commence in May 2023 and run through July 2025, with 100% occupancy targeted for November 2025.

### ***Demolition and Relocation***

The site is vacant and no relocation is needed. No off-site improvements are needed.

### ***City Loan for the Development***

A City loan of \$16,750,000 was approved by City Council action on June 21, 2022. The City has proposed to increase lending to the Borrower for eligible Development costs up to \$14,350,000 during the construction period and up to \$17,250,000 during the permanent period after construction and lease-up. The sources of funding for the City Loan consist of the following: \$4,342,593 from Inclusionary Housing Ordinance Funds and \$12,407,407 from the Low- and Moderate-Income Fund. The proposed increase of \$500,000 from Measure E funds will fund tenant improvements for the commercial childcare facility contingent on approval of this memorandum. The City Loan will be accompanied by an affordability restriction that is unsubordinated to any deeds of trust. The affordability restriction will run for at least 55 years following the completion of the construction.

### ***City as Issuer of Multifamily Housing Bonds***

The City Policy for Issuance of Multifamily Housing Revenue Bonds requires the City to be the issuer of tax-exempt multifamily housing revenue obligations in connection with the financing or refinancing of affordable rental housing projects 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, the City's prevailing wages policy will apply to the Development and will be overseen by the City's Office of Equality Assurance. The City loans and fee reductions are excluded from the requirements of Part 3 of Chapter 14.10 pursuant to Section 14.10.250.B of the San José Municipal Code.

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### ***Sources of Development Funding***

The 2023D Note will fund a portion of the total Development costs, which are currently estimated to be \$133,192,614. Based on the Borrower's proforma dated February 24, 2023, the 2023D Note will be drawn down over time during the construction period of up to an estimated amount of \$66,100,000 and bear interest at a variable rate. Following the completion of construction of the Development and its lease-up, the 2023D Note will be paid down to a remaining principal amount of approximately \$11,590,000, with the interest rate on the Series 2023D Note converted to a fixed rate that will be set prior to 2023D Note closing. The primary sources of repayment of the 2023D Note at permanent conversion are anticipated to be low-income housing tax credit equity and the proceeds of a loan from the California Department of Housing and Community Development (HCD) under its Affordable Housing and Sustainable Communities program.

The sources and uses of funding for the Development during the construction and permanent phases are currently estimated as follows (actual amounts may vary from these estimates):

<b>City of San José – Tamien Station Affordable Development Plan of Finance – Sources of Funding</b>		
<b>Source</b>	<b>Construction</b>	<b>Permanent</b>
Citibank Tax-Exempt Note .....	\$ 66,100,000	\$ 11,590,000
City Loan.....	14,350,000	17,250,000
County Loan.....	25,000,000	25,000,000
Accrued Interest on City and County Loans.....	854,767	854,767
California Department of HCD Infill Infrastructure Grant Funds.....	3,000,000	3,000,000
California Department of HCD Affordable Housing and Sustainable Communities Funds.....	0	16,000,000
Federal Tax Credit Equity .....	23,887,747	58,197,747
General Partner Capital Contribution .....	100	100
Deferred Developer Fee .....	0	1,300,000
<b>Total .....</b>	<b>\$ 133,192,614</b>	<b>\$ 133,192,614</b>

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**City of San José – Tamien Station Affordable Development  
Plan of Finance – Uses of Funding at Permanent**

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Uses	Permanent
Acquisition Costs .....	\$ 3,037,500
Construction .....	83,804,769
Architect and Engineering.....	4,779,580
Contingency .....	4,673,418
Construction Interest .....	7,900,000
Permit and Impact Fees .....	4,535,835
Land Improvement Costs .....	9,017,239
Issuance Costs .....	969,056
Miscellaneous Financing and Soft Costs .....	10,975,217
Developer Fee.....	3,500,000
Total .....	\$ 133,192,614

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***Financing History of the Development – Key Dates***

The following are the key dates relating to the financing history of the Development:

- June 21, 2022 - City Loan for the Development was approved by the City Council.
- August 4, 2022 - The Director of Finance and Director of Housing signed a declaration evidencing the intent to reimburse expenditures with the proceeds of obligation for the Development in an amount not to exceed \$75,000,000.
- August 8, 2022 - The City submitted a joint application to the California Debt Limit Allocation Committee (CDLAC) and the California Tax Credit Allocation Committee for a private activity bond allocation in the amount of \$64,000,000, and \$6,084,890 in annual four percent Federal tax credits.
- November 30, 2022 - The City received a private activity bond allocation from CDLAC for the 2023D Note and the Borrower received a reservation of four percent Federal tax credits in the requested amounts.
- March 9, 2023 - The City submitted a joint application to CDLAC and California Tax Credit Allocation Committee for a supplemental private activity bond allocation of \$2,100,000 and an increase in Federal tax credits to \$6,467,063.
- March 28, 2023 - The City received a supplemental private activity bond allocation from CDLAC and an increase in four percent Federal tax credits in the requested amounts.
- March 27, 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 \$75,000,000 to finance the construction of the Development.
- March 27, 2023 - Resolution certified the actions of the Director of Finance.

## **ANALYSIS**

The Development will provide 134 affordable homes, with 67 homes set aside for households with incomes at or below 30% AMI, 33 homes set aside for households with incomes at or below 50% AMI, and 34 homes set aside for households with incomes at or below 60% AMI. A two-bedroom manager's unit will be unrestricted. There will be a ground floor commercial space in which the Borrower intends to lease to a childcare service provider that will provide services to the public and residents. The Borrower indicated that, through a partnership with the Low Income Investment Fund and Santa Clara County Office of Education, a Title 5 childcare provider will be selected at a later date. The facility will offer subsidized childcare services to a certain number of residents. In addition, LifeSTEPS will assist in the coordination of an onsite grocery program for residents in need of food.

## **Bond Financing Structure**

### **Overview of the Multifamily Housing Revenue Note Financing**

#### **General**

Multifamily housing financing historically has involved the issuance of tax-exempt bonds and as needed, taxable bonds, on behalf of private developers of qualifying affordable rental apartment projects. The City would issue such tax-exempt and taxable bonds and loan the proceeds to the Borrower. The advantages of tax-exempt financing to developers include below-market interest rates and low-income housing tax credits – features that are not available with a conventional multifamily housing mortgage loan.

The 2023D Note operates in a similar manner as a tax-exempt multifamily housing bond. 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 2023D Note pursuant to California Health and Safety Code Sections 52075-52098, as amended, 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 California Health and Safety Code Sections 52075-52098. The 2023D Note uses a portion of the State's annual federal tax-exempt private activity volume cap allocated by CDLAC.

The 2023D Note also allows the Development to qualify for tax credits provided through the California Tax Credit Allocation Commission. The 2023D Note is a limited obligation of the City, payable solely from loan repayments by the Borrower and is not secured by the general taxing power of the City or any other asset of the City.

The note financing structure has become commonplace for affordable housing transactions in California and 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 second restriction will be incorporated into the Regulatory Agreement and Declaration of Restrictive Covenants for the 2023D Note, the Development will also be subject to additional affordability restrictions.

### **Structure of the 2023D Note**

#### **Direct Purchase/Funding Structure**

The 2023D Note will be structured as a non-rated and non-credit-enhanced obligation that is directly funded and purchased 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" that is a sophisticated investor as required under the City Policy for the Issuance of Multifamily Housing Revenue Bonds, who understands and accepts the risks associated with unrated obligations secured solely by the Development rents. The 2023D Note may only be transferred in amounts representing not less than 15% of the outstanding principal amount, 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 qualified institutional buyers. If the 2023D Note is transferred to an approved transferee, the new holder must sign and deliver a similar Investor Letter to the City and fiscal agent.

#### **Principal Amounts and Terms**

Based on current projections, the estimated maximum par amount of the 2023D Note will be \$66,100,000. After the Development is constructed and leased-up, and conversion to the permanent loan phase occurs (conversion date), the 2023D Note is expected to be paid down into a permanent loan amount that is estimated at \$11,590,000. The source of 2023D Note repayment on the conversion date will be low-income housing tax credit proceeds and the proceeds of a HCD Affordable Housing and Sustainable Communities program loan. The conversion date is

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anticipated to occur approximately 33 months after the closing of the 2023D Note, subject to one six-month extension.

While the nominal maturity of the 2023D Note is expected to be at least 30 years, the 2023D Note is expected to be mandatorily redeemed in approximately 15 years after conversion. The 2023D Note will amortize on a 40-year basis, with the outstanding principal remaining on the mandatory redemption date needing to be refinanced.

### **Interest Rate**

During construction, the interest rate on the 2023D Note will be variable and based on a one-month term Secured Overnight Funding Rate<sup>1</sup> plus a spread. The interest rate will convert to a fixed rate after the conversion date. The estimated permanent loan rate is approximately 6.36% based on the most recent projection (5.92% in current market conditions plus a cushion of 0.44%). The actual fixed rate to take effect after the conversion date will be set prior to closing, which is expected to occur on or before May 29, 2023. That fixed rate will be set by reference to the 18-year United States LIBOR Swap Index on the date of rating setting plus a spread.

### **Financing Documents**

The following is a brief description of the documents the City Council is being asked to approve and authorize their execution. Copies of these documents will be available in the City Clerk's Office at least ten days prior from the City Council meeting date for this memorandum.

### **Funding Loan Agreement**

The Funding Loan Agreement is among the City, Citibank as funding lender and Wilmington Trust Company, N.A., as fiscal agent (Fiscal Agent). The Funding Loan Agreement will be executed by the Director of Finance, or another authorized officer, on behalf of the City, and attested by the City Clerk. Pursuant to the Funding Loan Agreement, the Fiscal Agent is authorized to receive, hold, invest, and disburse 2023D Note proceeds and other funds established thereunder; to authenticate the 2023D Note; and to apply and disburse payments to the Noteholder. The Funding Loan Agreement allows for the Fiscal Agent to pursue remedies on behalf of itself as the Noteholder. 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 2023D Note. The Borrower Loan Agreement (described below) obligates the Borrower to compensate the Fiscal Agent for services rendered under the Funding Loan Agreement.

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<sup>1</sup> Secured Overnight Funding Rate represents a broad measure of the cost of borrowing collateralized by United States Treasury securities. The Secured Overnight Funding Rate index is the primary successor index to the London Inter-Bank Offering Rate, known as LIBOR, which will be phased out on June 30, 2023. LIBOR had served as a benchmark for various interest rates. The Secured Overnight Funding Rate is set by the New York Federal Reserve Bank.

*Borrower Loan Agreement*

The Borrower Loan Agreement is among the City, the Fiscal Agent 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 2023D Note proceeds to the Borrower for the construction of the Development, and for the repayment of such loan by the Borrower. The loan of 2023D Note proceeds will be evidenced by a promissory note that corresponds to the repayment terms of the 2023D Note. The City's rights to receive payments under the Borrower Note 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 Development and its operations intended to assure compliance with the Internal Revenue Code of 1986. 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 Development units to low-income residents for a period of at least 55 years after 50% of the units in the Development are first occupied.

*Contingency Draw-Down Agreement*

The Contingency Draw-Down Agreement provides for the conversion of the Funding Loan from a draw-down loan to a fully funded loan if needed to preserve the tax-exempt status of interest on 2023D Note. The Contingency Draw-Down Agreement is executed by Funding Lender, the Fiscal Agent, and the Borrower. Pursuant to section 2.1 of the Funding Loan Agreement, the City must approve this agreement as to form.

**Financing Team Participants**

The financing team participants for the 2023D Note consists of:

- City's Municipal Advisor: Ross Financial
- Bond Counsel: Hawkins, Delafield & Wood LLP
- Fiscal Agent: Wilmington Trust Company, N.A.
- 2023D Note Purchaser: Citibank, N.A.

All costs associated with the Municipal Advisor, Bond Counsel, and Fiscal Agent are contingent upon the sale of the 2023D Note and will be paid from tax credit equity and/or Borrower funds.

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### **Financing Schedule**

The current proposed schedule is as follows:

- City Council Approval of 2023D Note/Note Documents May 16, 2023
- CDLAC Deadline for 2023D Note Closing June 4, 2023

### **Public Disclosure Report Relating to Conduit Revenue Obligations**

The Borrower, through its financial consultant, prepared a public disclosure report pursuant to California Government Code Section 5852.1, providing good faith estimates of certain costs associated with the issuance of the 2023D Note. See **Attachment B** - Public Disclosures Relating to Conduit Revenue Obligations Report.

### **City Subordinate Financing**

#### **Increase in City Loan Commitment**

The City authorized a Construction-Permanent loan in an amount up to \$16,750,000; sources of funding for the City Loan will consist of the following: \$4,342,593 from Inclusionary Fee Funds and \$12,407,407 from the Low- and Moderate-Income Fund. As authorized by the recommended actions and under her Delegation of Authority, the Director of Housing will negotiate City Loan documents.

Staff recommends City Council authorization to increase the City Loan commitment by \$500,000, composed of Measure E 30% Low-Income funds, to bring the total commitment total to up to \$17,250,000. The additional \$500,000 will assist the Development in completing necessary tenant improvements to construct commercial space to be reserved for a childcare facility. Tenant improvements in affordable housing developments are a City Council-approved use of Measure E funds, per the fiscal year 2021-2022 Measure E spending plan as approved by the City Council on May 17, 2022<sup>2</sup>.

<b>Commercial Tenant Improvements Cost Estimate</b>	
Construction	\$745,463
Hard Cost Contingency	\$142,495
Construction Overhead, Insurance, Fees	\$98,143
Architect, Engineering, Permits, Other Soft Costs	\$270,000
Soft Cost Contingency	\$27,000
<b>Total Cost</b>	<b>\$1,283,101</b>

<sup>2</sup>City Council memorandum: Measure E Real Property Transfer Tax Revenue Proposed Spending Plan For FY 2022-2023 and Amendment to the Measure E Real Property Transfer Tax Spending Plan for Fiscal Years 2020-2021 and 2021-2022 <https://www.sanjoseca.gov/home/showpublisheddocument/88295/637947041739530000>

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The commercial space reserved for the childcare facility will have approximately 3,200 square feet of indoor space and 3,500 square feet of outdoor space. It is expected to provide daycare and preschool services for up to 12 infants, 12 toddlers, and 16 preschoolers. It is expected that 14 staff positions will provide these services. The childcare services will open to the public, though residents of the Development are expected to be offered these services at a discount.

***Variance from the Underwriting Guidelines and Standard Procedures***

During the process of underwriting the City's loan for the Development, staff requested the form of junior lender subordination that the HCD would require the City to execute. HCD was unable to provide the form of subordination, but staff reviewed a similar recent junior lender subordination. Based on this review, it was determined that the HCD subordination requirements are inconsistent with the City's underwriting guidelines as that it would limit the terms of City loan subordinations in order to protect the City's loan and its affordability restrictions. Amongst other things, the subordination that staff reviewed requires the City to represent that there is no conflict between the HCD documents and the City documents; this is unlikely to be correct, given the lower rents than the City requires. If the final subordination executed after completion of the development includes this term, it will represent a variance from the adopted underwriting guidelines.

HCD's Uniform Multifamily Regulations Section 8315, subordination policy requires that a subordination agreement may be executed and recorded whereby HCD's lien(s) shall not be subordinated to the liens of a local governmental entity unless either:

- (1) the total local governmental assistance to the Project is more than twice the amount of the Department's total assistance to the Project (including both loans and grants); or*
- (2) the total local governmental assistance to the Project is more than the Department's total assistance to the Project (including both loans and grants) and the local government entity manages a portfolio of their own loans that includes over 10,000 rental units with rent and occupancy restrictions.*

In the case of the Development, the intended commitment of \$17,250,000 is less than HCD's Affordable Housing and Sustainable Communities and Infill Infrastructure Grant commitments of a total of \$31,749,949. Therefore, the HCD will require that it holds a higher lien position above the City's and thus the City will be required to execute a junior lender subordination. City will continue to negotiate with HCD that the City's Affordability Restriction and Affordability requirements not be subordinate to any HCD documents and will ask HCD to confirm that the most restrictive affordability covenant or restriction will control in order to preserve City's requirement that lower rents are applied to the Development.

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### ***Transportation Grant Improvements***

The Recommendation also requests City Council's authorization to the Department of Transportation to enter into a Transportation Development Fund Agreement with Core Affordable Housing LLC and Central Valley Coalition for Affordable Housing, which allows the City to receive grant funding secured by the Developers through \$1,255,000 in Affordable Housing and Sustainable Communities grant funds. These funds will provide \$50,000 for investment in the Walk N Roll program. The program will be expanded to establish two Safe Routes to School for residents living at the Tamien Station development where children can walk safely to local public schools. Additionally, \$1,205,000 will be used to invest in the City's Sustainable Transportation Infrastructure to expand the bicycle network and pedestrian improvements near the Tamien light rail station.

### ***City Issuance and Monitoring Fees***

#### **Policy for Issuance of Multifamily Housing Revenue Bonds**

The City's Policy for 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 to the sum of (a) 0.50% of the first \$10,000,000 issued and (b) 0.25% of the remaining par issued.
- Annual Fee applicable to for-profit developers is an amount equal to 0.125% of the initial par for the 55 year term of the regulatory period.

Based on the current estimated 2023D Note par of \$66,100,000, the City's policy would require an: (a) issuance fee of \$190,250 and (b) an annual monitoring fee of \$82,625 thereafter throughout construction and the 55-year Regulatory Agreement term. If the 2023D Note matures or is 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.

### **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 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 Development is located next to VTA's Tamien Station transit stop. Residents from this community will have ready access to grocery, restaurant, pharmacy, and various other food and retail shopping options and light rail and bus connections are within walking distance from their homes.

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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 2023D Note and requires no follow-up to the City Council. Once the 2023D Note financing closes, which is anticipated in late May 2023, and the construction of the Development commences, the Housing Department will provide updates in its Quarterly Construction Reports posted at [www.sjhousing.org](http://www.sjhousing.org).

## **COST SUMMARY/IMPLICATIONS**

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

Funding in the amount of \$16,750,00 has been previously appropriated from the Low and Moderate Income Housing Asset Fund (\$12,407,407) and the Inclusionary Fee Fund (\$4,342,593). With the budget actions recommended in this memorandum, \$500,000 will be appropriated from the Measure E – 30% Low-Income Households Reserve within the General Fund to the Measure E – 30% Low-Income Households appropriation for tenant improvements for the childcare facility.

The Department of Transportation will take future action to appropriate the funds related to the Transportation Development Funds.

## **BUDGET REFERENCE**

The table below identifies the fund and appropriations to fund the recommended loan commitments.

Fund #	Appn #	Appn Name	Total Appn	Rec. Budget Action	2022-2023 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	8745	Measure E – 30% Low-Income Households Reserve	\$25,895,102	(\$500,00)	941	3/14/2023, Ord. No. 30892
001	224M	Measure E – 30% Low-Income Households	\$28,596,367	\$500,000	N/A	3/14/2023, Ord. No. 30892

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## **COORDINATION**

This report has been prepared in coordination with the City Attorney's Office and the Department of Transportation.

## **PUBLIC OUTREACH**

The method of notifying the community of the City's intent to issue tax-exempt private activity bonds is a Tax Equity and Fiscal Responsibility Act Hearing. A Tax Equity and Fiscal Responsibility Act Hearing regarding the information in memorandum was held on March 27, 2023 before the Director of Finance. The public hearing notice for this hearing was published in the *San José Post - Record* on March 15, 2023. No public comments were made at the Tax Equity and Fiscal Responsibility Act Hearing.

This memorandum and the 2023D Note Documents will be posted on the City's Council Agenda website for the May 16, 2023 City Council meeting

## **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action

## **CEQA**

Tamien Station (PD20-003): Determination of Consistency with the Mitigated Negative Declaration for Tamien Station Transit-Oriented Development Project (Resolution No. 79567), File No. PDC18-025.



HONORABLE MAYOR AND CITY COUNCIL

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## **PUBLIC SUBSIDY REPORTING**

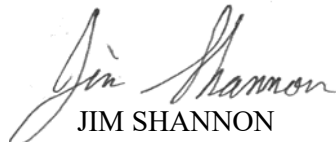
This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

RICK BRUNEAU  
Director of Finance

/s/

JACKY MORALES-FERRAND  
Director, Housing Department



JIM SHANNON  
Budget Director

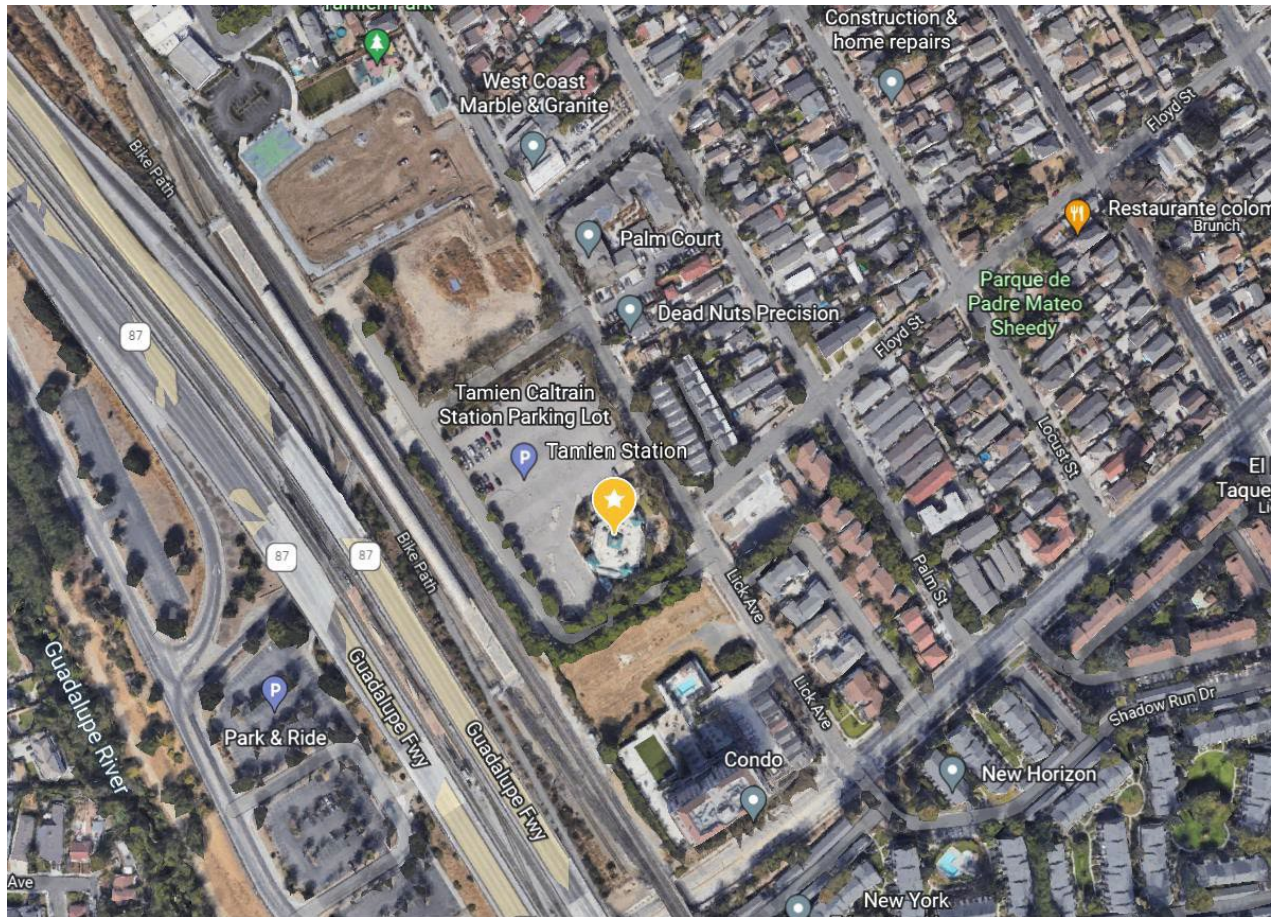
For questions, please contact Qianyu Sun, Deputy Director, Debt & Treasury Management at (408) 535-7832 or Rachel VanderVeen, Assistant Director of Housing at (408) 535-8231.

## **ATTACHMENTS**

Attachment A: Tamien Station Site Map

Attachment B: Public Disclosures Relating to Conduit Revenue Obligations Report

## ATTACHMENT A – TAMIEN STATION SITE MAP



## ATTACHMENT B – PUBLIC DISCLOSURES 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 Notes as identified below.

1. Name of Borrower: **Tamien Affordable, L.P., a California limited partnership.**
2. City Council Meeting Date: **May 9, 2023.**
3. Name of Bond Issue / Conduit Revenue Obligations: **City of San José Multifamily Housing Revenue Note (Tamien Station Affordable) Series 2023D (the “2023D Note”)**
4.    Private Placement Lender or Note Purchaser,    Underwriter or X Financial Advisor (mark one) engaged by the Borrower from which the Borrower obtained the following required good faith estimates relating to the Notes:
  - (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 Notes (to the nearest ten-thousandth of one percent): **(a) 6.36% at permanent for the 2023D Note (estimated as of 2/27/23; rate to be set prior to closing on or about 5/24/23) (b) rate on the 2023D Note is variable during construction but assumed at 7.48%).**
  - (B) The estimated finance charges of the 2023D Note, which mean the sum of all fees and charges paid to third parties: collectively, **\$5,215,369 (\$1,630,056 paid at closing per the costs of issuance budget, \$528,188 paid during the term of the 2023D Note and \$3,057,125 paid from the maturity of the 2023D Note through the end of the 55 year compliance period in the Regulatory Agreement).**
  - (C) The amount of proceeds received, or deemed received, by the public body for sale of the 2023D Note less the finance charges of the 2023D Note described in subparagraph (B) and any reserves or capitalized interest paid or funded with proceeds of the 2023D Note: **an estimated \$58,200,000 (\$66,100,000 par of the 2023D Note less estimated construction interest). All other finance charges funded from a source other than the proceeds of the 2023D Note).**
  - (D) The total payment amount, which means the sum total of all payments the Borrower will make to pay debt service on the 2023D Note plus the finance charges of the 2023D Note described in subparagraph (B) not paid with the proceeds of the 2023D Note: **\$78,960,321 (consisting of: (a) estimated principal and interest payments of \$73,744,953 with respect to the 2023D Note and (b) estimated finance charges identified in (B)).**

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

Dated: March 28, 2023