COUNCIL AGENDA: 02/23/21
FILE: 21-317
ITEM: 3.4

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Julia H. Cooper
Jim Shannon

SUBJECT: SEE BELOW

DATE: February 11, 2021

Approved D. DSyL

Date 02/12/21

COUNCIL DISTRICT: 3

SUBJECT: APPROVAL OF THE ISSUANCE OF A TAX-EXEMPT MULTIFAMILY HOUSING REVENUE NOTE AND THE LOAN OF THE PROCEEDS THEREOF FOR THE FINANCING OF ARYA APARTMENT AND TO INCREASE THE COMMITMENT FOR CITY COUNCIL APPROVED CONSTRUCTION-PERMANENT LOAN

RECOMMENDATION

(a) Adopt a resolution:

(1) Authorizing the issuance of a multifamily housing revenue note designated as "City of San José, California Multifamily Housing Revenue Note (Arya), Series 2021A" in a principal amount not to exceed $34,314,000 (the "Series 2021 Note");

(2) Approving the loan of Series 2021 Note proceeds to SAHA Arya, L.P. a California limited partnership created by Satellite Affordable Housing Associates, a California not-for-profit corporation, to finance the construction and development of an 87-unit multifamily development known as the Arya located at 500 Almaden Boulevard (formerly 226 Balbach Street), in San José (the "Development");

(3) Approving in substantially final form the Funding Loan Agreement, the Borrower Loan Agreement and Regulatory Agreement and Declaration of Restrictive Covenants (collectively, the "2021 Note Documents");

(4) Authorizing and directing the City Manager, Director of Housing, Director of Finance, Assistant Director of Finance, Deputy Director, Debt & Treasury Management and Debt Administrator, or their designees, to execute and deliver the Series 2021 Note Documents together with any documents ancillary to the Series 2021 Note Documents.

(b) Adopt a resolution:

(1) Authorizing an increase of up to $1,651,122 from $13,947,984 to $15,999,106 in the City Council-approved construction-permanent loan commitment to the Borrower ("City Loan");

(2) Authorizing a change in City Loan terms to allow an increase in the Development's rents and income up to 60% AMI (low-income) for all tenants in the event of foreclosure, to the extent the City has determined such increase is needed for feasibility of the Development and allowed by other funds;

(3) Authorizing the Director of Housing to negotiate and execute an amendment to the ground lease to modify the base lease term as may be required by the Housing and Community Development regulations so long as the total potential term of the lease and option is not increased;

(4) Making a determination that, consistent with Government Code Section 37364, the property can be leased without first offering the Property to the public for any other use, since the Property will be used to provide housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and that this use is in the City's best interests; and

(5) Authorizing the Director of Housing to negotiate and execute loan documents, lease documents, amendments, and all other documents related to these actions.

(c) Adopt the following Appropriation Ordinance Amendments in the Low and Moderate Income Housing Asset Fund:

(1) Decrease the Housing Development Reserve appropriation by $1,651,122; and

(2) Increase the Housing Loan and Grants appropriation to the Housing Department by $1,651,122.

OUTCOME

Approval of the recommended actions will enable the issuance of multifamily housing revenue notes for the purpose of financing a portion of the costs to construct the Development, an 87-unit affordable rental project, 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 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 Health and Safety Code, as may be amended from time to time.

The requested increase in the City's loan commitment (the "City Loan") will enable SAHA Arya, L.P. (the "Borrower") to cover its funding gap for the construction of the Development.

Approval of the recommended action will also allow the City Loan for the Development to provide for an increase in rents and income restrictions (but not more than 60% AMI) for all tenants in the event of foreclosure, if needed to ensure the Development's continued financial feasibility.

EXECUTIVE SUMMARY

The Arya development will bring 86 new affordable apartments to the San José community. This memorandum outlines multiple financial actions necessary to issue to the notes and to size the loan appropriately to move this development forward.

In accordance with the City's Policy for Issuance of Multifamily Housing Revenue Bonds, Satellite Affordable Housing Associates, a California not-for-profit corporation (the "Developer"), has requested that the City issue a tax-exempt multifamily housing revenue note (the "Series 2021 Note") in an amount not to exceed $34,314,000. The Series 2021 Note will be purchased by JP Morgan Chase, N.A. ("JPM Chase").

The proceeds of the Series 2021 Note will be loaned to SAHA Arya, L.P., a California limited partnership (the "Borrower") formed by the Developer. The Borrower will use these proceeds, and other funds, to finance the construction of the Development, an 87-unit rental housing project to be known as the Arya. The Series 2021 Note will not be paid from or secured by the general taxing power of the City or any other City asset.

The increase in the City Loan will enable the Borrower to cover its gap in the existing construction financing to build this new affordable development that will provide a unit mix of 18 Extremely Low Income (ELI) apartments, 38 Very Low Income (VLI) apartments, 30 Low Income (LI) apartments and one unrestricted manager's apartments, for a total of 87 households in San José. The planned start date for construction to begin is March 2021, with an estimated completion by January 2023.

BACKGROUND

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

(1) Managing General Partner: SAHA Arya LLC, a California limited liability corporation, the sole member of which is the Developer.
(2) Limited Partner: An entity to be formed by Raymond James Tax Credit Funds.

The Developer has requested that the City issue the Series 2021 Note for the purpose of lending the proceeds thereof to the Borrower. The proceeds of the Series 2021 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 87 studio, one-bedroom, and two-bedroom rental apartments, located at the Southeast corner of Balbach Street and South Almaden Boulevard, at 500 Almaden Boulevard (formerly 226 Balbach Street), in downtown San Jose. The property is 16,014 square feet and is a parking lot(see **Attachment A** for site map). The unit mix and affordability levels by Area Median Income (AMI) will be as follows:

Arya	**Apartments**	**30% AMI**	**Per-Unit Monthly Gross Rent ***	**50% AMI**	**Per-Unit Monthly Gross Rent**	**60% AMI**	**Per-Unit Monthly Gross Rent**
Studio/ 1Bath	19	11	$743	5	$1,238	3	$1,486
1 Bedroom/ 1 Bath	54	5	$849	29	$1,416	20	$1,699
2 Bedroom/ 1 Bath	14*	2	$955	4	$1,592	7	$1,911
Total Apartments	**87**	**18**		**38**		**30**	

**** City of San José Housing Department Income and Rent Limits, published June 1, 2020. Rent Limit based on HCD Occupancy Guidelines = 1 Person Per Bedroom plus 1***

The Development will have 10 wheelchair accessible apartments and an additional four apartments will be hearing/visual accessible.

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

The Development will consist of an eight-story concrete structure over a one-story podium that includes 40 parking spaces accessible via a single driveway from Balbach Street. The Development maximizes parking spaces by incorporating lifts. Two of the 40 parking spaces are accessible.

The ground floor amenities include a common space, resident artist studios and classroom, management office, and car and bike parking. The second floor amenities include a large community room with a kitchen, a smaller multipurpose room, laundry room and an outdoor courtyard. There is elevator access to all floors and all units. There will be no commercial space.

The Development is designed to be highly energy efficient, with Green Point Rated Gold Status. Design elements will feature solar thermal and photovoltaic systems that will provide the building with hot water; storm water management integrated into the landscape design via bioretention planters; high quality insulation to reduce heating loads and electricity usage; drought-tolerant and native species landscaping to reduce reliance on water; low or no VOC interior paint and flooring; Energy Star appliances; and water-efficient shower heads, faucets and toilets. For additional details regarding the development, please see the funding commitment report to City Council on February 5, 2019.

The Development will be constructed on a parcel that is owned by the City and will be leased to the Borrower for a term of 65 years with an option to extend the lease by 20 years for a total potential term of 85 years. HCD has requested that the base term be extended once the Infill Infrastructure Grant Program ("IIG") Deed of Trust is recorded and Council authority to adjust base lease term is requested above, without extending the total potential term beyond 85 years.

Multiple Affordability Restrictions. The Development will be subject to low-income housing tax credit ("LIHTC") restrictions. The City will provide funding subject to affordability restrictions. The State of California Department of Housing and Community Development ("HCD") also will provide funding subject to affordability restrictions.

Construction Schedule. Construction is expected to commence in March 2021 and continue through January 2023.

Relocation. There are no relocation requirements as the city-owned site is vacant.

City Loan for the Development. Assuming an increase in loan amount is approved by the City Council, up to $15,021,095 will be available during the construction period (the "City Construction Loan") and up to $15,999,106 will be available during the permanent period after construction and lease up (the "City Permanent Loan" and, with the City Construction Loan, the "City Loan"). The interest rate on the City Construction Loan and City Permanent Loan is 2% simple interest. The City Loan will be accompanied by an Affordability Restriction (the "City's Affordability Restriction"). The City's Affordability Restriction will run for at least 55 years from the completion of the Development and will not be subordinated, consistent with the City's underwriting guidelines.

City as Issuer of Multifamily Housing Bonds. The City's Policy for Issuance of Multifamily Housing Revenue Bonds, Council Policy 1-16, 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 No. 61144 and 61716, City prevailing wages policy will apply to the Development and will be overseen by the City's Office of Equality Assurance. The City's loans and fee reductions are excluded from the requirements of Part 3 of Chapter 14.10 pursuant to Section 14.10.250.B.

Sources of Project Funding. The Series 2021 Note will fund a portion of the total Development costs, which are currently estimated to be $65,150,772. During the construction period, the Series 2021 Note will be drawn down over time and bear interest at a variable rate. Following the completion of construction of the Development and its lease-up ("at permanent"), the Series 2021 Note will be repaid to a remaining principal amount of approximately $4,443,000 and will bear interest at a fixed rate. The sources of repayment are anticipated to be low income housing tax credits, a loan from sponsor from proceeds of a HCD loan under the Affordable Housing and Sustainable Communities Program, and a loan from sponsor from proceeds of a HCD loan under its Infill Infrastructure Grant Program.

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

City of San José – Arya Apartments
Plan of Finance – Sources of Funding

Source	Construction	Permanent
Series 2021 Note	$ 34,314,000	$ 4,443,000
Taxable Loan from Chase	551,375	0
City of San José	15,021,095	15,599,106
Land Donation	4,550,000	4,550,000
HCD Infill Grant	3,577,755	3,577,755
HCD AHSC Loan	0	12,777,880
Tax Credit Equity	3,358,234	22,388,230
General Partner Contribution	0	1,467,310
Deferred Costs	3,430,822	0
Deferred Developer Fee	347,491	347,491
	$ 65,150,772	$ 65,150,772

City of San José – Arya Apartments
Plan of Finance – Uses of Funding at Permanent

Uses	Permanent
Land	$ 4,550,000
Site Improvements	1,559,532
Construction	36,945,788
Contractor Overhead, Requirements, Insurance	5,386,407
Architect & Engineering	2,442,617
Contingency	3,371,612
Construction Interest	2,016,989
Reserves	319,129
Miscellaneous Financing and Soft Costs	5,058,698
Developer Fee	3,500,000
Total	$ 65,150,772

Financing History of the Project – Key Dates. The following are the key dates relating to the financing history of the Development:

- January 17, 2020 — The Director of Finance held a TEFRA hearing regarding the issuance of tax-exempt multifamily housing revenue obligations in an amount not to exceed $45,000,000 to finance the construction of the Development.
- February 4, 2020 — The Mayor certified the actions of the Director of Finance.
- May 11, 2020 — City Council approved an increase of $1,924,664 in the CDLAC application.
- June 11, 2020 — The City submitted a joint application to CDLAC and CTCAC for a private activity allocation in the amount of $34,314,000 (CDLAC) and $2,453,657 in annual 4% Federal tax credits (CTCAC).
- September 16, 2020 — The City received a private activity bond allocation from CDLAC for the Series 2021 Note and the Borrower received from CTCAC a reservation of 4% Federal tax credits in the requested amount.
- February 4, 2021 — The Director of Finance will be holding a second TEFRA hearing regarding the issuance of the Note as one year has elapsed since the Mayor's certification of the February 4, 2020 meeting.

ANALYSIS

The Arya development is at the final stages of financing, prepared to have the City issue notes, finalize loan terms, execute documents and begin construction. This portion of the report is divided into several sections to address the items in staff's recommendation to proceed with the financing for the Development. These sections describe the financing structure, financing documents, financing team participants, and financing schedule.

Note Financing Structure

Overview of the Multifamily Housing Revenue Note Financing

General. Multifamily housing financing historically has involved the issuance of tax-exempt bonds on behalf of private developers of qualifying affordable rental apartment projects. The City would issue tax-exempt bonds and loan the proceeds to the developer/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 Series 2021 Note operates 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 Series 2021 Note 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 Series 2021 Note uses a portion of the State's annual federal tax-exempt private activity volume cap allocated by CDLAC.

The Series 2021 Note also allows the Development to qualify for tax credits provided through the California Tax Credit Allocation Commission (CTCAC). The Series 2021 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 is being utilized because of a ruling of the Office of the Comptroller of the Currency ("OCC") that distinguished loans from bonds for purposes of Community Reinvestment Act ("CRA") credit. For the past several years, banks have been utilizing the note financing approach on the belief that it meets OCC's definition of a CRA 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 area median income or (2) at least 40% of the units must be reserved for occupancy by individuals and families whose income is 60% or less of area median income. While this second restriction will be incorporated into the Regulatory Agreement for the Series 2021 Note, the Development will also be subject to additional restrictions.

Structure of the Series 2021 Note

Direct Purchase/Funding Structure. The Series 2021 Note will be structured as a non-rated and non-credit-enhanced obligation that is directly funded and purchased initially by JPM Chase. Pursuant to the City's policies regarding non-credit-enhanced bonds, JPM Chase 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's 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. If JPM Chase wishes to transfer the Series 2021 Note, the new holder must sign and deliver a similar Investor Letter to the City and Fiscal Agent – except for a one-time transfer to an affiliate of JPM Chase. The Series 2021 Note may only be transferred in whole to an "Approved Transferee", which is: a qualified institutional buyer under the Securities Act or 1933 (a "QIB") and a financial institution having capital and surplus of at least $5 billion; an affiliate of JPM Chase; a trust or custodial arrangement established by JPM Chase (or an affiliate) the beneficial owners of which are QIBs; Fannie Mae, Freddie Mac or another government sponsored entity which is also a QIB or an accredited investor; or a nonprofit corporation or organization all the shareholders or members of which are QIB and which invests in obligations of the same type as the Note as a principal aspect of its business. JPM Chase, however, may sell participations in the Note in minimum denominations of $250,000 provided that JPM Chase remains the funding lender and the participant is an "authorized participant" or an Approved Transferee.

Principal Amounts and Terms. Based on current projections, the estimated maximum par amount of the Series 2021 Note will be $34,314,000. After the Development is constructed and leased up, and conversion to the permanent loan phase occurs (the "Conversion Date"), the Series 2021 Note is expected to be paid down to a permanent loan amount that is estimated at $4,443,000. The sources of Series 2021 Note paydown on the Conversion Date are low income housing tax credit payments and proceeds of a loan from HCD under its Affordable Housing and Sustainable Communities program. The Conversion Date is anticipated to occur approximately 34 months after Series 2021 Note closing.

The maturity of the Series 2021 Note is expected to be approximately 20 years after conversion. The Series 2021 Note will amortize on a 20-year basis.

Interest Rate. During construction, the interest rate on the Series 2021 Note will be variable and based on one-month LIBOR plus a spread. If LIBOR is discontinued during the construction period, a successor index will be the "CB Floating Rate" which will be based on the Prime Rate subject to an adjustment factor as determined by JPM Chase. The interest rate will convert to a fixed rate after the Conversion Date based on a LIBOR-based swap rate plus a spread – with the rate set prior to Series 2021 Note closing. The estimated permanent loan rate is approximately 3.66%.

Financing Documents

The following is a brief description of the documents the City Council is being asked to approve and authorize its execution. Copies of these documents will be available in the City Clerk's Office on or about February 11, 2021.

Funding Loan Agreement. The Funding Loan Agreement is among the City, JPM Chase, as funding lender (the "Funding Lender") and U.S. Bank National Association as fiscal agent (the "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 Series 2021 Note proceeds and other funds established thereunder; to authenticate the Series 2021 Note; and to apply and disburse payments to the Noteholder. The Funding Loan Agreement allows for JPM Chase 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 Series 2021 Note. 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, the Fiscal Agent and the Borrower (the "Borrower Loan Agreement") and accepted and acknowledged by JPM Chase as Funding Lender. 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 Series 2021 Note proceeds to the Borrower for the construction of the Development, and for the repayment of such loan by the Borrower. The loan of Series 2021 Note proceeds will be evidenced by a Borrower note that corresponds to the repayment terms of Series 2021 Note. The City's rights to receive payments under the Series 2021 Note will be assigned to JPM Chase, along with certain other rights under the Borrower Loan Agreement and the Borrower note; however, certain reserved rights have been retained by the City, such as the City's right to receive fees and to indemnification.

Regulatory Agreement and Declaration of Restrictive Covenants. The regulatory agreement and declaration of restrictive covenants (the "Regulatory Agreement") is among the City, the Fiscal Agent 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.

Financing Team Participants

The financing team participants for the Series 2021 Note consists of:

- **City's Municipal Advisor:** Ross Financial
- **Note Counsel:** Stradling, Yocca, Carlson & Rauth, LLP
- **Fiscal Agent:** U.S. Bank National Association
- **Series 2021 Note Purchaser:** JP Morgan Chase, N.A.

All costs associated with the Municipal Advisor, Note Counsel and Fiscal Agent are contingent upon the sale of the Series 2021 Note and will be paid from Series 2021 Note proceeds, tax credit equity and/or Borrower funds.

Financing Schedule

The current proposed schedule is as follows:

- **Council Approval of Series 2021 Note/Note Documents:** February 23, 2021
- **Pre-Close Series 2021 Note:** March 9, 2021
- **Close Series 2021 Note:** March 11, 2021
- **CDLAC Deadline for Series 2021 Note Closing:** March 15, 2021

Public Disclosure Report Relating to Conduit Revenue Obligations

The Borrower, through its financial consultant, has prepared a public disclosures report pursuant to California Government Code Section 5852.1, providing good faith estimates of certain costs associated with the issuance of the Note. ***See attachment C for Public Disclosure Report.***

City Subordinate Financing

Increase in City Loan Commitment The City Council, through a series of prior actions, as increased by the Director of Housing under her delegation of authority, previously has authorized increases in the construction-permanent loan for the Development in a total funding amount up to $13,947,984. The table below sets forth the history of actions associated with the City Loan for the Development:

- June 2, 2017 — City Council authorized a predevelopment loan to the Developer in the amount of $200,000.

- February 5, 2019 — City Council authorized a funding commitment up for a construction-permanent loan of up to $11,623,320 in Low and Moderate Income

Housing Asset funds for a Construction/Permanent Loan to SAHA, including $533,320 in construction period interest.

- May 11, 2020 — The City Council authorized an increase of $1,924,664 – to $13,947,984 – in the total commitment. This increase enabled the City to submit the CDLAC application without a funding gap for the Development.

- May 15, 2020 — Housing Department executed an increase of $400,000 in the predevelopment loan under the Director's Delegation of Authority. Total predevelopment loan amount increased to $600,000.

Based on the Keyser Marston Associates ("KMA") 2019 "Review of Affordable Housing Development Costs", the cost of mid-rise affordable housing development in San José averaged $652,000 per unit or 11% more than the average cost of non-San José projects. Affordable housing development costs have continued to climb significantly in this market since then and furthermore in 2020 due to the economic impact of the pandemic. Arya's current per unit development cost is 15% higher then the 2019 average at $748,859.

Table 1: Total Development Costs, Average Per Unit, 2019

	San José Select Projects	Other Cities Select Projects	All 16 Projects	San José Cost Difference
All Projects	$652,000	$585,000	$623,000	11%
Large Family	$814,000	$637,000	$716,000	28%
Special Needs	$523,000	$454,000	$503,000	15%

** KMA reviewed the development costs of nine (9) affordable housing projects built in San José since 2015 and seven (7) other affordable housing projects recently built in California. The projects contain a total of 1,533 units. All 16 projects are rental apartment projects that have been financed, in part, with Low Income Housing tax credits.*

In addition to this, the Arya development is not receiving any funding from the County and relies solely on funding from the City of San José and HCD. The City is financing 24% of the total development costs and requesting an increase in the loan to ensure the long term feasibility of this development. This has resulted in the City loan exceeding the $125,000 per unit requirement indicated under its 2018 multifamily underwriting guidelines, for a total of $179,300 per unit.

Please see the below chart that describes the changes in the increased total commitment for both the predevelopment and construction permanent loan.

Date	Action	Amount
October 2018	Original Loan	$ 10,875,000
February 2019	Construction Interest capitalized	533,320
February 2019	1st Predevelopment Loan + Interest	215,000
	Subtotal	**$ 11,623,320**
May 2020	2nd Predevelopment Loan	400,000
May 2020	CDLAC Increase	1,924,664
	Subtotal	**$ 13,947,984**
February 2021	New Construction Loan Increase	1,606,431
February 2021	Construction Interest Adjustment	44,691
	Total	**$ 15,599,106**

Staff is recommending City Council authorization to further increase the City Loan commitment by $1,651,122 to $15,599,106. This increase will enable the Borrower to close the current funding gap for the Development. This funding gap arose from the following:

- Downward Rent Adjustments – The Borrower initially had underwritten its projections based on CTCAC's maximum rents per CTCAC's regulations, rather than the lower rents required by California Community Redevelopment law for projects funded by City low and moderate income housing asset funds. The Borrower needed to adjust those rents to the City's recently published rents, which were lower. This rent adjustment decreased the Development's supportable permanent loan from $6,946,000 to $4,443,000.

- Reduced Equity Pricing – The Developer issued an RFP for tax credit equity pricing in November 2020. Proposals were lower than estimated, resulting in lower tax credit equity available for the Development.

City Loan Terms Pending City Council approval, the City will lend up to $15,021,095 during the construction period and up to $15,599,106 during the permanent period after construction and lease up. As authorized by the recommended actions and under her Delegation of Authority, the Director of Housing will negotiate City Loan documents to include the following terms:

- **Interest Rate:** The fixed interest rate on the City Loan will be 2% per annum simple interest.
- **Loan Term:** The construction loan term will be 34 months with one potential six month extension; the permanent loan term will be 55 years from the completion of the Development.
- **Lien Structure:** The City Loan may be subordinated to JPM Chase's loan if required for financial feasibility, consistent with the City's subordination policy.
- **Deferred Developer Fee:** The total Developer Fee is restricted to $3,500,000, per Section 8312(c) of the HCD's 2017 Uniform Multifamily Regulations. $347,292 of the developer fee

will be deferred to the permanent period and repaid from the Borrower's 50% share of net cash flow. Per the Department's Underwriting Guidelines, the maximum allowable developer fee taken during construction is capped at $2,500,000.

- **Affordability Restrictions**: The City will require that all non-manager units be restricted to Affordable Rent and that 18 units be restricted to households with incomes that do not exceed 30% AMI, 38 units be restricted to households with incomes that do not exceed 50% AMI, and 30 units be restricted to households with incomes that do not exceed 60% AMI. The City Affordability Restrictions will not be subordinated to JPM Chase's loan.
- **"Float Up":** Subject to City Council approval, Development rents and income restrictions are subject to increase (but not more than 60% AMI) for all tenants in the event of foreclosure, to the extent the City has determined the increase to ensure the Development's continued financial feasibility.
- **Prevailing Wage:** The City's Prevailing Wage policy will apply.

City Issuance and Monitoring Fees

City Policy. The City's Policy for Issuance of Multifamily Housing Revenue Bonds require that the issuance fee and annual monitoring fee applicable to nonprofit project sponsors 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 permanent loan amount at Conversion, subject to a minimum fee of $7,500, for the 55-year term of the regulatory period.

Based on a maximum Note par of $34,314,000 at issuance and an estimated Note amount of $4,611,000 at Conversion, the City will receive: (a) an issuance fee of $110,785, (b) an annual monitoring fee of (i) $42,892.50 during the construction period and (ii) $7,500 after Conversion during the 55-year Regulatory Agreement term. If the Series 2021 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.

Ground Lease of City-owned Property

When the City as the Housing Successor to the former redevelopment agency wishes to sell or lease property to which it holds title and if that property was acquired in whole or in part with property tax increment funds, the Housing Successor may only sell the property consistent with California Community Redevelopment law and if it is sold or leased pursuant to California Health and Safety Code Section 33433, the local legislative body must approve of the proposed sale or lease agreement after a public hearing and upon findings that the consideration that the City will receive for lease of the Site is not less than the fair reuse value for the proposed use, with the covenants and conditions.

On December 2019, the City Council approved the lease of the property for affordable housing purposes and the summary report pursuant to Section 33433 for the disposition of the City property located at 226 Balbach Street (now 500 Almaden Boulevard), authorizing an option to ground lease to Satellite Affordable Housing Associates (SAHA) for the Arya affordable housing project under the terms and conditions of the proposed leasehold restrictions, option and ground lease.

Under the recent amendments to the Surplus Lands Act, the City must follow certain procedures in selling or ground leasing of City property which require the offering of that property to the public, unless the sale or lease falls under an exemption. This property is to be leased for housing affordable to persons and families of low or moderate income, as defined by Section 50093 of the Health and Safety Code or as defined by the United States Department of Housing and Urban Development or its successors, and the Council has previously determined in its funding commitment actions and other approvals that this use is in the City's best interest. Thus, the Council can make the findings required by Government Code Section 37364 to allow the property to be leased without first offering the Property to the public for any other use.

CONCLUSION

The recommended actions will enable the issuance of a multifamily housing revenue note for the purpose of financing a portion of the costs to construct the Development with apartments restricted to low and extremely low income households, and remaining affordable for a period of at least 55 years following completion.

The Development, located in the Downtown core, will serve some of the most vulnerable populations in San José. It will be restricted to residents with current maximum annual incomes between 30% and 60% of AMI.

Approval of the recommendation action will also allow the City Loan for the Development to provide for an increase in rents and income restrictions (but not more than 60% AMI) in the event of foreclosure, is needed to ensure the continued financial feasibility of the Development.

EVALUATION AND FOLLOW-UP

This Memorandum presents the set of recommendations related to the City Council's approval of the issuance of the Series 2021 Note and requires no follow-up to the City Council. Once the Series 2021 Note closes, anticipated in mid-March 2021, and the construction of the Development commences, the Housing Department will provide updates in its Quarterly Construction Reports posted at www.sjhousing.org under "Reports & Data."

CLIMATE SMART SAN JOSE

The recommendation in this memo aligns with one or more of Climate Smart San José energy, water, or mobility goals.

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 (TEFRA) Hearing. The initial TEFRA Hearing was held on January 17, 2020 before the Director of Finance. The public hearing notice for that hearing was published in the *San José Post - Record* on January 9, 2020. No public comments were made at the TEFRA hearing. The second TEFRA Hearing will be held on February 4, 2021 before the Director of Finance. The public hearing notice for that hearing was published in the *San José Post - Record* on January 25, 2021.

This Memorandum and the 2021 Note Documents will be posted on the City's website for the February 23, 2021 meeting.

COORDINATION

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

COMMISSION RECOMMENDATION / INPUT

This item was not heard by the Housing and Community Development Commission, as approvals of affordable development financing do not fall under the functions, powers and duties of the Commission delineated in Section 2.08.2840 of the San José Municipal Code.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *Consolidated Plan 2015-2020,* adopted by City Council on May 5, 2015, to provide homes for very low- and extremely low-income households; and with Goal H-2 of the City's *Housing Element 2014-2023,* adopted by City Council on January 27, 2015, to "increase, preserve, and improve San José's affordable housing stock."

COST SUMMARY/IMPLICATIONS

The Borrower will pay all issuance costs from proceeds of Series 2021 Note, tax credit equity and/or Borrower funds. The Series 2021 Note 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 an upfront issuer fee of $110,785, and an annual monitoring fee of $48,982.50 during the construction period and $7,500 after Conversion. All issuance costs will be paid from proceeds of Series 2021 Note, tax credit equity and/or Borrower funds.

Funding in the amount of $13,947,984 has been previously appropriated in the Low and Moderate Income Housing Asset fund for a Construction-Permanent Loan. With the recommended City Council action, an additional $1,651,122 will be appropriated from that fund through a decrease in the Housing Development Reserve and an increase in the Housing Loans and Grants appropriation. This action brings the total loan commitment from the City to $15,599,106. The loan will be repaid over an 55-year period with annual repayments estimated at $10,000.

BUDGET REFERENCE

The table below identifies fund and the appropriations proposed to fund the actions recommended as part of this memorandum.

Fund #	Appn #	Appn. Name	Total Appn	Recom. Budget Action	2020-2021 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
346	8437	Housing Project Reserve	$27,442,775	($1,651,122)	X-61	10/20/2020 Ord. No. 30494
346	0070	Housing Loans and Grants	$85,897,185	$1,651,122	X-60	10/20/2020 Ord. No. 30494

CEQA

Not a Project, PP12-003, Agreement/Contract (New or Amended) resulting in no physical changes to the environment. Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (EIR) (Resolution No. 76041), and Envision San José 2040 General Plan Supplemental EIR (Resolution No. 77617) and Addenda thereto; Downtown Strategy 2000 Final EIR (Resolution No. 72767) and Addenda thereto, File No. H18-057.

/s/
JULIA H. COOPER
Director of Finance

/s/
JACKY MORALES-FERRAND
Director, Housing Department

Jim Shannon
JIM SHANNON
Budget Director

For questions, regarding the financing plan contact Nikolai J. Sklaroff, Deputy Director, Debt & Treasury Management, at (408) 535-7832; for questions regarding the project, contact Rachel VanderVeen, Deputy Director, Housing Department, at (408) 535-8231.

Attachment A: Site Map
Attachment B: Anticipated Development Timeline
Attachment C: Public Disclosure Report

ATTACHMENT A – SITE MAP

Arya Development

ATTACHMENT B

Arya Development
Anticipated Timeline

CDLAC/TCAC Allocation Award	September 2020
Bond Allocation Award	March 2021
Building Permits	February 2021
Close Financing	March 2021
Start Construction	May 2021
Complete Construction	January 2023

ATTACHMENT C – PUBLIC DISCLOSURE REPORT

Arya Development

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: **SAHA Arya, L.P., a California limited partnership**.

2. City Council Meeting Date: **February 23, 2021**.

3. Name of Bond Issue / Conduit Revenue Obligations: **City of San José Multifamily Housing Revenue Note (Arya Project) Series 2021A (the "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 Note:

   (A) The true interest cost of the Note, 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): **(a) 1.95% during construction and 3.66% at permanent (estimated rate as of 1/26/21; rate is variable during construction and fixed during permanent with rate to be set prior to closing; fixed rate underwritten at 3.91%).**

   (B) The estimated finance charges of the Note, which mean the sum of all fees and charges paid to third parties: collectively, **$1,364,696 ($787,226 paid at closing per the costs of issuance budget, $329,970 paid during the term of the Note and $247,500 paid from Note maturity 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 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: an estimated **$34,314,000 (All finance and interest charges funded from a source other than the proceeds of the Note).**

(D) The total payment amount, which means the sum total 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): **$37,646,936 (consisting of: (a) estimated principal and interest payments of $36,282,240 with respect to the 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: February 23, 2021