COUNCIL AGENDA: 5/16/23
FILE: 23-692
ITEM: 3.5

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Rick Bruneau

SUBJECT: SEE BELOW

DATE: April 25, 2023

Approved [signature] Date 5/4/23

COUNCIL DISTRICT: 3

SUBJECT: APPROVAL OF THE ISSUANCE OF TAX-EXEMPT MULTIFAMILY HOUSING REVENUE NOTES AND THE LOAN OF THE PROCEEDS THEREOF FOR THE FINANCING OF THE CHARLES AND APPROVING OTHER RELATED DOCUMENTS AND ACTIONS

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 (The Charles), Series 2023B-1” in a principal amount not to exceed $44,562,052 (2023B-1 Note) and (2) taxable multifamily housing revenue note designated as “City of San José Multifamily Housing Revenue Note (The Charles), Series 2023B-2" (Taxable) in a principal amount not to exceed $12,000,000 (2023B-2 Note and with the 2023B-1 Note, the 2023B Notes);

b. Approving the loan of 2023B Notes proceeds to Keyes, L.P. (Borrower) a California limited partnership created by Charities Housing Development Corporation of Santa Clara County, a California nonprofit public benefit corporation, to finance the construction and development of a 99-unit multifamily development known as The Charles located at 551 Keyes Street in San José (the Development);

c. Approving in substantially final form the Funding Loan Agreement, the Project Loan Agreement, Regulatory Agreement and Declaration of Restrictive Covenants, and related documents (collectively, the 2023B Notes Documents);

d. Confirming the eligibility of the 2023B Notes to be structured with related parties under the Bond Policy Pilot Program which allows approval of multifamily housing revenue bond transactions that are subject to a bond fee cap under the applicable Treasury regulations for multifamily housing revenue bond transactions with related parties; and

e. 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 & Treasury Management, or their designees, to execute and deliver the 2023B Notes Documents together with any documents ancillary to the 2023B Notes Documents.

SUMMARY AND OUTCOME

In accordance with the City's Policy for Issuance of Multifamily Housing Revenue Bonds, Charities Housing Development Corporation of Santa Clara County, a California nonprofit public benefit corporation (the Sponsor), requested that the City issue a tax-exempt multifamily housing revenue note in an amount not to exceed $44,562,052 (the 2023B-1 Note) and a taxable multifamily housing revenue note in an amount not to exceed $12,000,000 (the 2023B-2 Note and with the 2023B-1 Note, the 2023B Notes). The 2023B Notes will initially be purchased by Wells Fargo Bank, National Association (Wells Fargo). After construction and lease-up, California Community Reinvestment Corporation intends to purchase the 2023B-1 Note from Wells Fargo.

Approval of the recommended actions will enable the issuance of the 2023B tax-exempt and taxable multifamily housing revenue notes for the purpose of financing a portion of the costs to construct the Development, located at 551 Keyes Street, a 99-unit affordable rental apartment project, with 97 apartments restricted to low- and extremely low-income households and two unrestricted managers' units for at least 55 years after 50% of the units in the Development are first occupied.

The Development will serve residents with current maximum annual incomes between 30% and 50% of area median income (AMI) as adjusted for family size in accordance with California Health and Safety Code, as may be amended from time to time. Through a partnership with the County of Santa Clara (County) Office of Supportive Housing, all 49 units that are restricted at up to 30% AMI will be set aside for tenants in the County Rapid Rehousing program, which prioritizes residents who are experiencing homelessness. Forty-four units out of the 48 units that are restricted at up to 50% AMI, specifically two- and three-bedroom units, will be supported by Section 8 Project-Based Vouchers (PBV) for a period of at least 20 years.

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

BACKGROUND

The Sponsor is proposing to develop, own, and manage a new 99-unit affordable housing development located at 551 Keyes Street. Though the property consists of 0.9-acres, only 0.65 acres of that land is buildable; the remainder will serve as a public right-of-way for the City. The development will be new construction and is anticipated to be an all-concrete, seven stories structure, including a below-ground garage level. Construction is expected to start 30 days after the close of construction financing, which is proposed to be June 1, 2023.

Borrower

The Borrower is Keyes, L.P. a California limited partnership consisting of the following entities:

(1) General Partner: Keyes Charities LLC, a California limited liability company, the sole member/manager of which is the Sponsor.
(2) Limited Partner: An entity to be formed by Wells Fargo.

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

Site

The Development site is located at 551 Keyes Street. For reference, a site map is provided as **Attachment A.**

Development Overview

The Development involves the construction of (a) 97 studio, one-bedroom, two-bedroom and three-bedroom apartments that are subject to affordability restrictions and (b) two unrestricted two-bedroom managers' units. The affordability restrictions for the Development will remain for a period of at least 55 years. The unit mix and affordability levels by AMI is provided in the table below:

The Charles Bedroom Size	30% AMI	Monthly Rent	50% AMI	Monthly Rent	Total
Studio	28	$842	2	$1,474	30
1 Bedroom	16	$898	2	$1,580	18
2 Bedroom	1	$1,070	22	$1,896	25*
3 Bedroom	4	$1,229	22	$2,116	26
Total	**49**		**48**		**99**

* Includes two unrestricted managers' units

Through a partnership with the County's Office of Supportive Housing, the 49 units restricted at up to 30% AMI levels will be set aside for tenants in the County Rapid Rehousing program, which prioritizes residents who are experiencing homelessness. Forty-four of the 48 units restricted at up to 50% AMI will be supported by Section 8 PBVs for at least 20 years. The affordability restrictions for the Development will remain in place for at least 55 years. An agreement to enter into a housing assistance payment contract between the Borrower and Santa Clara County Housing Authority will be provided with respect to these 44 units prior to the 2023B Notes closing.

The Development will be an all-concrete building consisting of seven stories including a below-ground garage level. There will be a total of 50 residential parking spaces. The amenities for the Development include a large community room with an attached kitchen and pantry for residential and staff use, office space for property management and an onsite resident services provider, space for front desk staff, laundry facilities, locked bicycle storage, outdoor landscaped open space at the ground level for walking/recreational use, and connection to a walking and bicycle trail to the rear of the site. The Borrower plans to partner with The Health Trust and/or Second Harvest of Silicon Valley to provide food for residents. There is no commercial or non-resident serving space.

The Development will be constructed on a parcel that is currently owned by the Borrower. That parcel will be acquired by the County and leased back to the Borrower for a term sufficient to cover the term of the City's affordability restriction. The County has committed to a total investment of $9,280,000, including a predevelopment loan to the Borrower which, in part, repaid a predevelopment loan from the Apple Affordable Housing Fund (administered by Housing Trust Silicon Valley) that was used by the Borrower to acquire the parcel. As the County's investment includes a previously made acquisition/predevelopment loan, the County will own and lease back the parcel.

The Development will be subject to low-income housing tax credit restrictions. The Santa Clara County Housing Authority will provide PBVs for the 44 units consisting of two- and three-bedroom units set aside for 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 June 2023 and run through April 2025, with 100% occupancy targeted for October 2025.

Demolition and Relocation

The site is vacant with no building and the Sponsor will execute a no relocation certificate. Some off-site improvements are needed which are budgeted at approximately $1 million. These improvements include sidewalk work, storm/sanitary sewer improvements, trench work, a transformer, and the cost to cover temporary power.

City Loan for the Development

The City Council approved a loan to the Borrower on June 21, 2022 for eligible development costs up to $9,405,000 during the construction period (the City Construction Loan) and up to $9,675,885 during the permanent period after construction and lease-up (the City Permanent Loan and, with the City Construction Loan, the 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 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

Council Policy #1-16 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, 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 of the San José Municipal Code.

Sources of Project Funding

The 2023B Notes will fund a portion of the total Development costs, which are currently estimated to be $87,787,158 based on the Borrower's proforma projections dated February 27, 2023. According to that proforma projection, during the construction period, the 2023B Notes will be drawn down over time in an estimated aggregate amount of $52,653,832 ($44,261,289 of the Series 2023B-1 Note and $8,392,543 of the Series 2023B-2 Note), which is currently less than the authorized amount of the 2023B Notes. During construction, the 2023B Notes will bear interest at a variable rate. Following the completion of construction of the Development and its lease-up, the taxable 2023B-2 Note will be repaid in full, and the tax-exempt 2023B-1 Note will be paid down to a remaining principal amount of approximately $15,430,000. At that time, the 2023B-1 Note will be transferred from Wells Fargo to California Community Reinvestment Corporation with the interest rate on the 2023B-1 Note converted to a fixed rate that will be set prior to 2023B-1 Note closing. The primary source of repayment of the 2023B Notes is anticipated to be Federal and State low-income housing tax credit equity of $45,669,382.

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 – The Charles
Plan of Finance – Sources of Funding

Source	Construction	Permanent
Wells Fargo/California Community Reinvestment Corporation Tax-Exempt Note	$44,261,289	$15,430,000
Wells Fargo Taxable Note	$8,392,543	$0
City Loan	$9,171,046	$9,675,885
City Loan Accrued Interest	$504,839	$0
County Loan (and accrued interest)	$9,761,791	$9,761,791
Apple Affordable Housing Fund Loan	$4,750,000	$4,750,000
Federal and State Tax Credit Equity	$5,708,673	$45,669,382
Deferred Costs	$2,736,877	$0
General Partner Capital Contribution	$100	$100
Deferred Developer Fee	$2,500,000	$2,500,000
Total	$87,787,158	$87,787,158

City of San José – The Charles
Plan of Finance – Uses of Funding at Permanent

Uses	Permanent
Acquisition Costs	$266,554
Off-site Improvement	$1,054,622
Construction	$58,310,148
Architect and Engineering	$3,311,820
Contingency	$4,324,590
Construction Interest	$9,694,972
Permit and Impact Fees	$3,142,336
Issuance Costs	$1,200,574
Miscellaneous Financing and Soft Costs	$1,481,542
Developer Fee	$5,000,000
Total	$87,787,158

Financing History of the Project – 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 $55,000,000.
- August 9, 2022 - The City submitted a joint application to the California Debt Limit Allocation Committee (CDLAC) and California Tax Credit Allocation Commission for a private activity allocation in the amount of $44,562,052 housing revenue bonds and $4,188,983 in annual 4% Federal tax credits and $5,907,677 in total State tax credits.
- November 30, 2022 - The City received a private activity bond allocation from CDLAC for the 2023B-1 Note and the Borrower received a reservation of 4% Federal tax credits and State 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 $55,000,000 to finance the acquisition and construction of the Development.
- March 27, 2023 - The Mayor certified the actions of the Director of Finance.

ANALYSIS

The Development will provide 97 affordable homes and two unrestricted managers' units, with 49 homes set aside for households with incomes at or below 30% AMI and 48 homes set aside for households with incomes at or below 50% AMI. The Borrower plans to partner with The Health Trust and/or Second Harvest of Silicon Valley to provide food for residents.

This section of the report outlines the key elements of the proposed structure for the bond issuance.

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 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 2023B-1 Note and 2023B-2 Note operate in a similar manner to tax-exempt and taxable 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 2023B Notes pursuant to California Health and Safety Code Sections 52075-52098, as amended, which authorizes 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 2023B-1 Note uses a portion of the State's annual federal tax-exempt private activity bond volume cap allocated by CDLAC.

The 2023B-1 Note also allows the Development to qualify for tax credits provided through California Tax Credit Allocation Commission. The 2023B Notes are limited obligations of the City, payable solely from loan repayments by the Borrower, and are 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 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 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 for the 2023B-1 Note, the Development will also be subject to additional affordability restrictions.

Structure of the 2023B Notes

Direct Purchase/Funding Structure; Transfer Restrictions

The 2023B Notes will be structured as non-rated and non-credit-enhanced obligations that are directly funded and purchased by Wells Fargo. Pursuant to the City's policies regarding non-credit-enhanced bonds, Wells Fargo 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 payable solely from the Development rents and secured solely by a first leasehold deed of trust on the Development. If Wells Fargo or a subsequent holder wishes to transfer the 2023B Notes, the new holder must sign and deliver a similar Investor Letter to the City and fiscal agent.

Principal Amounts and Terms

The authorized amount of the 2023B-1 Note will be $44,562,052 and the authorized amount of the 2023B-2 Note will be $12,000,000. Based on the Borrower's proforma projections dated February 27, 2023, the estimated withdrawal amount of the 2023B-1 Note will be $44,261,289 and the estimated withdrawal amount of the 2023B-2 Note will be $8,392,543. After the Development is constructed and leased up, and conversion to the permanent loan phase occurs (the Conversion Date), the 2023B-2 Note is expected to be repaid in full and the 2023B-1 Note is expected to be paid down to a permanent loan amount that is estimated at $15,430,000. The source of 2023B Notes repayment on the Conversion Date will be Federal and State low-income housing tax credit proceeds. The Conversion Date is anticipated to occur in April 2026.

While the nominal maturity of the 2023B-1 Note is expected to be at least 30 years, the 2023B-1 Note is expected to be mandatorily redeemed in approximately 17 years after the Conversion Date. The 2023B-1 Note will amortize on a 35-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 2023B Notes will be variable and based on a one-month term Secured Overnight Financing Rate[1] plus a spread. The interest rate will convert to a fixed rate after the Conversion Date based on the 10-year United States Treasury yield – with the rate set prior to the 2023B Notes closing. The estimated permanent loan rate is approximately 6.40% based on the most recent projection (6.05% in current market conditions plus a cushion of 0.35%).

Financing Documents

The following is a brief description of the documents the City Council is being asked to approve and authorize for execution. Copies of these documents will be available in the City Clerk's Office on or about May 1, 2023.

---

[1] 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 London Inter-Bank Offering Rate (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.

Funding Loan Agreement

The Funding Loan Agreement is among the City, Wells Fargo, as funding lender (the Funding Lender) and U.S. Bank Trust Company, 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 2023B Notes proceeds and other funds established thereunder; to authenticate the 2023B Notes; and to apply and disburse payments to the Noteholder. The Funding Loan Agreement allows for Wells Fargo 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 2023B Notes. The Borrower Loan Agreement 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 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 2023B Notes proceeds to the Borrower for the construction of the Development, and for the repayment of such loan by the Borrower. The loan of 2023B Notes proceeds will be evidenced by two promissory notes (the Borrower Notes) that correspond to the repayment terms of the 2023B-1 Note and 2023B-2 Note. The City’s rights to receive payments under the Borrower Notes will be assigned to Wells Fargo, 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 (the 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.

Financing Team Participants

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

- City's Municipal Advisor: Ross Financial
- Bond Counsel: Jones Hall LLP
- Fiscal Agent: U.S. Bank Trust Company, National Association
- 2023B Notes Purchaser: Wells Fargo

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

Financing Schedule

The current proposed schedule is as follows:

- City Council approval of 2023B Notes/Notes Documents May 16, 2023
- CDLAC deadline for 2023B Notes closing June 12, 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, attached as **Attachment B -** Public Disclosures Relating to Conduit Revenue Obligations, providing good faith estimates of certain costs associated with the issuance of the 2023B Notes.

City Subordinate Financing

The City has agreed to lend up to $9,450,000 during the construction period and up to $9,675,885 during the permanent period after construction and lease up. The sources of funding for the City Loan will be Measure E Real Property Transfer Revenue plus other sources at the City's discretion. As authorized by the recommended actions and under her Delegation of Authority, the Director of Housing will negotiate City Loan documents.

City Issuance and Monitoring Fees

<u>City Policy for Issuance of Multifamily Housing Revenue Bonds</u>
The City Policy for Issuance of Multifamily Housing Revenue Bonds would normally require 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 of 2023B Notes issued and (b) 0.25% of the remaining par issued. Based on the current estimated aggregate 2023B Notes par of $52,653,832 ($44,261,289 for the tax-exempt 2023B-1 Note and $8,392,543 for the taxable 2023B-2 Note) as provided in the Borrower's pro forma projections dated

February 27, 2023, the City's policy would require an issuance fee of $156,635. The final fee will be based on the final aggregate par issued, subject up to a not-to-exceed amount of $44,562,052 for the 2023B-1 Note and $12,000,000 for the 2023B-2 Note.

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. The annual fee may be reduced for not-for-profit developers to an amount equal to 0.125% of the permanent 2023B-1 Note amount at the Conversion Date subject, to a minimum annual fee of $7,500 This fee shall apply till the end of the 55-year term of the regulatory period.

Based on the Borrower's estimate of a 2023B-1 Note par of $15,430,000 at the Conversion Date, the City would charge an annual monitoring fee of $65,817 during construction and lease-up, and an annual monitoring fee of $19,288 throughout the 55-year Regulatory Agreement term. If the 2023B-1 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.

Recommended Exception to the City Policy due to "Related Party" Considerations

For the last few years, the City has had a pilot policy allowing the approval of multifamily housing revenue bond financings that include related parties in which the lender/note purchaser or an affiliate also serves as a tax credit equity investor. This pilot policy covered multifamily housing revenue bond financings that received CDLAC allocations prior to December 31, 2022.

The City received a CDLAC private activity bond allocation for the 2023B-1 Note in November 2022. Therefore, the 2023B Notes are eligible to be approved under the City's related parties pilot policy.

For the 2023B Notes, Wells Fargo is serving as the initial 2023B Notes purchaser and a Wells Fargo-affiliated entity is serving as the low-income housing tax credit investor in connection with the Development's funding. Under the Federal tax code, this relationship causes the 2023B-1 Note to be considered a "related parties" transaction – and, by extension, the 2023B-2 Note is also considered a "related parties" transaction. According to the City's bond counsel, the federal tax code limits the fees that the City can collect in connection with a related party's issuance to 0.125% of the outstanding 2023B Notes. This means that the fee will increase during the construction period as proceeds of the 2023B Notes are drawn down and decrease after conversion as the 2023B Notes are paid down. The Regulatory Agreement will require the Borrower retain an independent rebate consultant to ensure that the resulting fees paid to the City comply with the Federal tax code. The City may collect its usual fee after the 2023B Notes are repaid in full for the remainder of the 55-year CDLAC compliance period.

Because of the “related party” limitation, based on the Borrower’s current drawdown schedule for 2023B Notes proceeds and projected repayment schedule of the 2023B-1 Note after the Conversion Date, the aggregate fees projected to be received by the City in connection with the issuance of the 2023B Notes and the annual monitoring of the Development are projected to be approximately $1,034,383 through the term of the 2023B Notes and the remainder of the 55-year CDLAC compliance period as compared to approximately $1,403,929 in aggregate fees that the City would otherwise have received in the absence of a “related party.”

The following table compares the aggregate fees the City is projected to receive with respect to the 2023B Notes with the aggregate fees the City would otherwise collect if the 2023B-1 Note was not a related party transaction.

Fee Assessment Timing	Usual Fee	Projected Fee	Difference
2023B Notes – Issuance	$156,635	Incl. in line below	$156,635
2023B Notes – Annual[2]	514,369	$301,458	$212,911
2023B Notes – Remainder of CDLAC compliance	732,925	732,925	$0
Total Fees	$1,403,929	$1,034,383	$369,546

Notwithstanding this limitation on City bond-related fees, staff recommends proceeding with the proposed financing structure as part of a continuation of a Housing Department pilot program for projects obtaining private activity bond allocations before December 31, 2022 to allow issuances with related parties and request City Council approval for the consequential fee reductions. The pilot program allowed staff to evaluate whether the benefit from increased tax credit pricing in a related party transaction exceeds the impact to the City due to reduced fees, and whether the costs of this approach are substantially less than alternative financing structures that do not involve related parties.

The City Loan Documents will contain the following provision pertaining to “related parties”:

> *In the absence of City Council approval, related parties are not allowed. In the event that related parties are approved, the Borrower must provide a Third-Party Rebate Analyst. This Third-Party Rebate Analyst will provide the following reporting for the Bond, (a) monthly tracking of cumulative bond draws prior to conversion (b) monthly tracking of outstanding bonds following conversion. The Borrower will share all reporting and its calculations with the City’s Housing and Finance Departments. The Borrower shall also provide, to the City, any such other requests for information, to ensure compliance with requirements of applicable Treasury regulations. After payment of the Bonds, the annual issuer bond monitoring fee will*

[2] Approximately three years until conversion and 17 years after conversion (fee steps down for nonprofit Borrowers after conversion to 0.125% of permanent loan amount.

revert to what would have been paid under the City's policy had there not been a related parties issue. In addition, if Federal tax law changes to eliminate the related parties issue, the issuer fees will revert to the fee under the City's policy.

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 within a half-mile proximity to transit and utilizes a community open space that connects to a bicycle and walking trail at the rear of the Development. 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. Residents from this community will have access to grocery, pharmacy, restaurants, and various other food and retail shopping options and bus connections within walking distance from their homes.

EVALUATION AND FOLLOW-UP

This memorandum presents the set of recommendations related to the City Council's approval of the issuance of the 2023B Notes and requires no follow-up to the City Council. Once the 2023B Notes financing closes, anticipated in late May 2023, and the construction of the Development commences, the Housing Department will provide updates in its Housing production data.

COST SUMMARY/IMPLICATIONS

The Borrower will pay all issuance costs of the 2023B Notes from tax credit equity and/or Borrower funds. The 2023B 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 aggregate revenue of $1,034,383 from the issuance of the 2023B Notes and annual monitoring during the construction period and throughout the 55-year regulatory period.

Funding in the amount of $9,675,885 has been previously appropriated in the Measure E – 40% Extremely Low-Income Households and Measure E – 30% Low-Income Households to fund construction of the Development. There is no fiscal impact to the General Fund as a result of this action.

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 Act hearing 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 2023B Notes 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

The Development is exempt from CEQA 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 section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

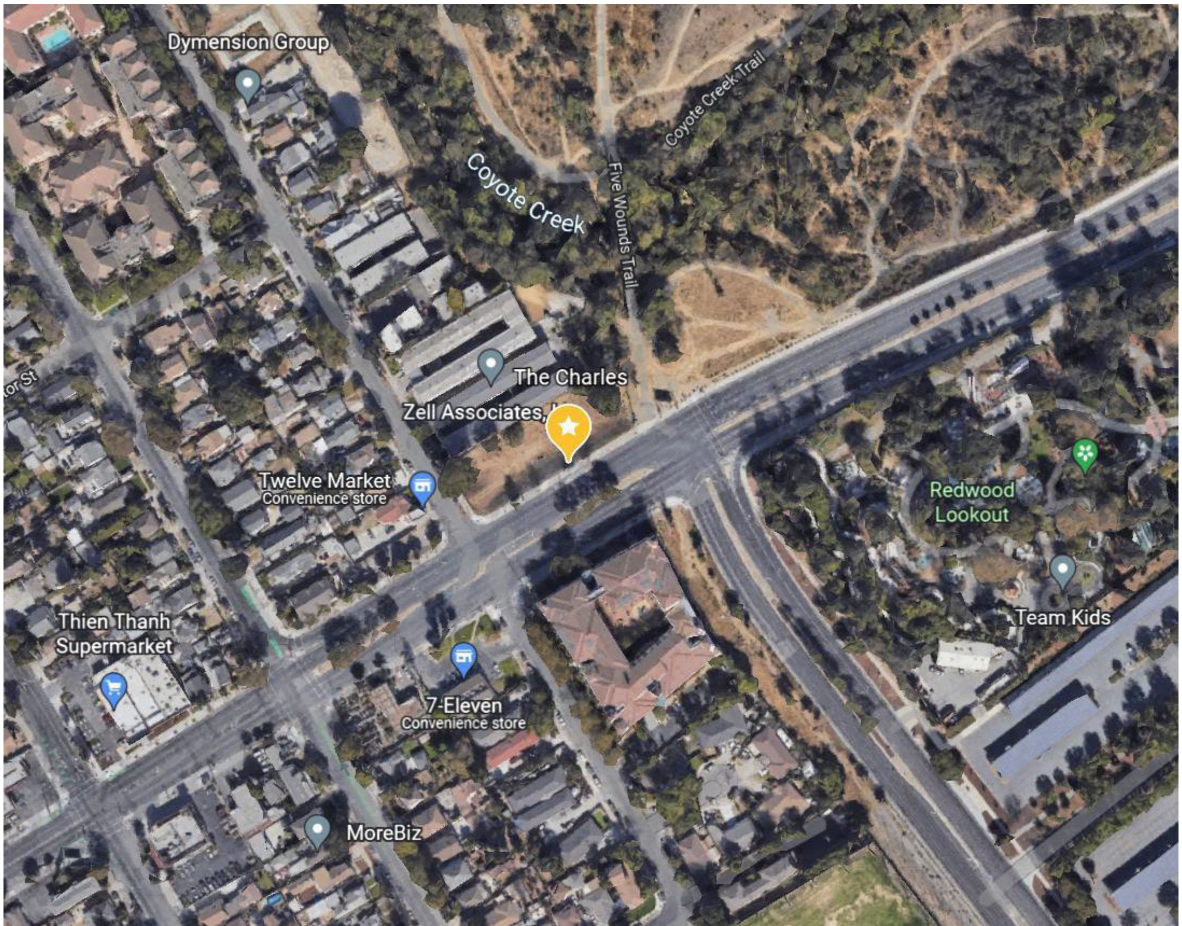
/s/
RICK BRUNEAU
Director of Finance

/s/
JACKY MORALES-FERRAND
Director, Housing Department

The principal authors of this memorandum are Shelsy Bass, Senior Development Officer and Michael Jun, Development Officer. For questions, regarding the financing plan, please contact Qianyu Sun, Deputy Director of Debt & Treasury Management, Finance Department, at Qianyu.Sun@sanjoseca.gov or (408) 535-7832. For questions regarding the project, please contact Rachel VanderVeen, Assistant Director, Housing Department, at Rachel.VanderVeen@sanjoseca.gov or (408) 535-8231.

ATTACHMENTS
Attachment A: Site Map
Attachment B: Public Disclosure Relating to Conduit Revenue Obligations

ATTACHMENT A – SITE MAP



ATTACHMENT B: PUBLIC DISCLOSURE

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: **Keyes, L.P., a California limited partnership**.

2. City Council Meeting Date: **May 16, 2023**.

3. Name of Bond Issue / Conduit Revenue Obligations: **City of San José Multifamily Housing Revenue Note (The Charles) Series 2023B-1 (the "2023B-1 Note") and City of San José Multifamily Housing Revenue Note (The Charles) Series 2023B-2 (Taxable)(the "2023B-2 Note" and with the 2023B-1 Note, the "Notes")**

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) 6.277% at permanent for the 2023B-1 Note (estimated as of 2/27/23; rate to be set prior to closing on or about 6/1/23) (b) rate on the 2023B-1 Note and 2023B-2 Note is variable during construction but assumed at 8.55%and 8.65% respectively).**

   (B) The estimated finance charges of the Notes, which mean the sum of all fees and charges paid to third parties: collectively, **$2,292,457 ($1,200,574 paid at closing per the costs of issuance budget, $301,458 paid during the term of the Notes and $732,925 paid from the maturity of the 2023B-1 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 Notes less the finance charges of the Notes described in subparagraph (B) and any reserves or capitalized interest paid or funded with proceeds of the Notes: an estimated **$44,147,194 ($52,653,832 aggregate par of the Notes less estimated construction interest on the Notes). All other finance charges funded from a source other than the proceeds of the Notes).**

   (D) The total payment amount, which means the sum total of all payments the Borrower will make to pay debt service on the Notes plus the finance charges of the Notes described in subparagraph (B) not paid with the proceeds of the Notes: **$61,988,294 (consisting of: (a) estimated principal and interest payments of $59,695,838 with respect to the Notes 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 29, 2023