



ADMINISTRATIVE REPORT

File #: 24-385

Meeting Date: 5/6/2024

Report Prepared by: Kimberly Nutt, Housing Program Supervisor, Housing Division/Development Services Department

SUBJECT: Approval of Termination Documents to Cancel and Disencumber Existing U.S. Department of Housing and Urban Development (HUD) Funding Commitment Agreements that were Previously Approved for the Gateway Terrace II Affordable Housing Project that Will no Longer Utilize HUD Funding

REPORT IN BRIEF

Considers approving the Termination Documents that have been prepared to terminate the existing Community Development Block Grant (CDBG), Home Investment Partnership Program (HOME), and Community Housing Development Organization HOME (CHDO HOME) funding agreements relating to the future Gateway Terrace II affordable housing project; and, provides further information and required steps regarding 'Part Two' of the final corrective actions HUD repayment process relating to the October 2021 HUD Environmental Monitoring report that was discussed at the April 2, 2024, City Council Meeting.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Termination Documents that have been prepared to terminate the existing Community Development Block Grant (CDBG), Home Investment Partnership Program (HOME), and Community Housing Development Organization HOME (CHDO HOME) funding agreements relating to the future Gateway Terrace II affordable housing project; and,
- B. Authorizing the City Manager to execute all related documents, subject to review and approval by the City Attorney, which may be necessary to support the above actions; and,
- C. Authorizing the Finance Officer to make any necessary budget adjustments related to these actions.

ALTERNATIVES

- 1. Approve as recommended by staff; or,
- 2. Deny; or,
- 3. Refer to City Staff for reconsideration of specific items to be addressed in City Council motion; or
- 4. Continue to a future City Council meeting (date and time to be specified in City Council motion).

AUTHORITY

Charter of the City of Merced, Section 200, et seq., California Government Code; and Code of Federal Regulations (CFR) applicable to the administration and financial management of HUD funds.

CITY COUNCIL PRIORITIES

Fiscal Year 2023-2024 Goals and Priorities for Housing in support of affordable housing projects.

DISCUSSION

Background & Review

At the April 2, 2024, Council meeting, Councilmembers received information regarding a National Environmental Policy Act (NEPA) Environmental Monitoring of selected HUD-assisted projects by HUD staff that occurred in January 2020, which resulted in two Findings (Finding #1 and Finding #2), or deficiencies in program performance based on a violation of statutory or regulatory requirements. HUD issued its findings report in late October 2021, which listed specific corrective actions that the City must take to address the two findings. The April 2, 2024, Administrative Report and the October 2021 HUD Environmental Monitoring Findings Report are provided at Attachments 1 and 2, respectively.

At the April 2nd Council meeting, the Council approved a Resolution that: 1) formally acknowledged the findings in the HUD Environmental Monitoring Report; 2) prohibited the pledge of additional or future HUD funds to projects listed in Finding #1; and 3) authorized the use of Housing Successor Agency (HSA) Low-Moderate Income (LMI) Housing Asset Funds to be utilized as the non-Federal/local funding source for repayment of ineligible CDBG and HOME expenditures.

Council also addressed 'Part One' of a two-part process necessary to complete the remaining corrective actions for Finding #1 by authorizing City Manager execution of documents related to the prior HOME project at 1820 I Street, allowing the transfer of documents and the funding source to transfer from HOME funds to HSA LMI Asset Funds.

Staff has since worked on the Council-approved items involved in 'Part One' - documents have been transferred to the HSA LMI Asset funding source and the payoff of the HSA LMI Asset loan has been completed. The repayment to HUD of prior HOME expenditures involving 1820 I Street is currently pending.

Remaining Steps in Corrective Actions Part Two - Gateway Terrace II Affordable Housing Project

With this report, Housing staff now requests actions related to 'Part Two' of the process, which will lead to addressing the HUD-required corrective measures related to the Gateway Terrace II affordable housing project (GTII).

After deeper evaluation by Housing staff of the steps and timing required to address and process items related to GTII, this will, in itself, need to be a multi-part process with Council.

Actions being requested with this report involve approval of the termination documents that will cancel all of the prior funding commitment documents. Thereafter, staff expects to return at the

soonest Council meeting available (May 20, 2024 - or if needed, June 3, 2024) to request action by Council for a new set of loan agreements - using HSA LMI Asset and American Rescue Plan Act (ARPA), and City Housing Opportunity Fund resources. Documents are currently being prepared by an outside consultant and are expected to be ready for the next Council meeting.

The detailed steps required to address 'Part Two' for GTII involve the following:

1. *Council Meeting 5/6/2024* - approval of all Termination Agreements and subsequent execution by City Manager

The City Council has previously provided direction to use HSA funds towards of the GTII project. The project is still viable, has full entitlements, approved building and civil infrastructure plans, and all impact, water/sewer connection, and permit fees have been paid. As such, following Council action to terminate the existing agreements, the following will then occur in this order between now and the next Council action:

2. Executed termination documents recorded at the Merced County Recorder Office
3. All liens removed from the subject property (currently owned by the Housing Authority of the County of Merced - HACM, which was previously purchased with HUD funding by HACM)
4. Formal HUD approval of the sale of the property from HACM to Central Valley Coalition for Affordable Housing (CVCAH) (*HUD has informally approved, but requires property to be free of liens before formal approval will be given*)
5. CVCAH to purchase the land using CVCAH funds

Then,

6. *Council Meeting 5/20/2024 (or June 3, 2024)* - approval of new loan agreements for Gateway Terrace II housing project (planned sources: HSA LMI Asset, ARPA, and City's Affordable Housing Opportunity Fund)

Following Council approval of new loan documents, the following will occur to complete the corrective action to repay HUD and re-set funding for the GTII project to allow the project to finally proceed:

7. Executed new loan agreements recorded at the Merced County Recorder Office
8. HSA LMI Funds sent to a (as-yet unselected) title company to hold in escrow for GTII project funding closing
9. HUD repayment from new HSA loan funds

Central Valley Coalition for Affordable Housing will likely be applying for tax credit funding and other available grants or subsidies to fulfill the total project costs needed.

IMPACT ON CITY RESOURCES

The actions involved with this report (only the termination of existing loan documents) will have no impact on City resources.

As previously stated, Council approved the use of HSA LMI Asset funds to be used as the local

funding source for repayment of CDBG and HOME funds to HUD.

Also, it is staff's understanding, based on conversations with the City's HUD representatives, that a portion of the repaid CDBG and HOME funds might be returned to the City to be re-used towards alternative, eligible program activities.

ATTACHMENTS

1. Administrative Report - April 2, 2024
2. October 2021 HUD Environmental Monitoring Report
3. CDBG Termination Documents
4. HOME Termination Documents
5. CHDO HOME Termination Documents
6. CDBG - Notice of Affordability Restrictions on Transfer of Property
7. CDBG - Agreement Containing Covenants Affecting Real Property
8. CDBG - Deed Restriction Covenant and Loan Agreement
9. CDBG - Deed of Trust and Security Agreement
10. HOME - Notice of Affordability Restrictions on Transfer of Property
11. HOME - Regulatory Agreement and Declaration of Restrictive Covenants
12. HOME - Agreement Containing Covenants Affecting Real Property
13. HOME - Deed Restriction Covenant and Loan Agreement
14. HOME - Deed of Trust and Security Agreement
15. CHDO HOME - Notice of Affordability Restrictions on Transfer of Property
16. CHDO HOME - Regulatory Agreement and Declaration of Restrictive Covenants
17. CHDO HOME - Agreement Containing Covenants Affecting Real Property
18. CHDO HOME - Deed Restriction Covenant and Loan Agreement
19. CHDO HOME - Deed of Trust and Security Agreement