

RESOLUTION NO. 2019-0030

Adopted by the Sacramento City Council

January 22, 2019

Authorization as Co-Grantee to Allocate Choice Neighborhoods Implementation Grant Funds to Twin Rivers Phase 2; Execution of an \$8,000,000 Loan Commitment and Related Documents with Twin Rivers Phase 2 Lp or Related Entity; Authorization for City Section 108 Loan Program Contract; and Environmental Findings

BACKGROUND

- A. On September 28, 2015, the U. S. Department of Housing and Urban Development (HUD) awarded the Housing Authority of the County of Sacramento (HACOS) as Lead Applicant, and the City of Sacramento as Co-Applicant, a \$30 million Choice Neighborhoods Implementation (CNI) Grant to implement the Twin Rivers-River District/Railyards Neighborhood Transformation Plan.
- B. On December 15, 2015, HACOS and the City of Sacramento executed the FYs 2014-2015 CNI Implementation Grant Agreement with HUD.
- C. McCormack Baron Salazar, Inc. as Housing Lead and Master Developer of the Twin Rivers Transit Oriented Development and Light Rail Station Project (Project) has requested an allocation of up to \$8,000,000 in CNI funds as a loan to Twin Rivers Phase 2, LP to assist in funding the housing development and permanent financing of Twin Rivers Phase 2.
- D. On May 29, 2018, the City Council adopted Resolution No. 2018-0207 approving the pledge of CDBG funds to repay a Section 108 Program Loan between the Housing Authority of the City of Sacramento and HUD to assist with financing infrastructure for the Project.
- E. The recommended actions are consistent with a) the 2013-2021 Housing Element which encourages the provision of a variety of quality housing types to encourage neighborhood stability, including options for extremely low-income households (Resolution No. 2013-415); b) the Sacramento Promise Zone Plans and Goals, Sustainably Built Community sub-goal to increase housing types and transit growth to promote livability and connectivity within the Promise Zone

(Resolution No. 2015-263); and c) the River District Specific Plan adopted on February 15, 2011.

- F. A combined Initial Study/Environmental Assessment (IS/EA) was prepared for the Twin Rivers Transit-Oriented Development Project pursuant to California Environmental Quality Act (CEQA) requirements under Title 14, §15070 of the California Code of Regulations (CCR), and National Environmental Policy Act (NEPA) requirements under Title 24, Code of Federal Regulations (CFR) Part 58.36. A Finding of No Significant Impact (FONSI) pursuant to NEPA and a Notice of Determination (NOD) pursuant to CEQA have been filed for the Project. No further environmental review is required for activities in furtherance of the Twin Rivers Transit-Oriented Development Project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. All of the evidence having been duly considered, the facts as presented and stated above are found to be true and correct.
- Section 2. The City of Sacramento, as co-grantee, approves an amendment to the Choice Neighborhoods Implementation (CNI) grant budget to allocate up to \$8,000,000 of the CNI grant funds to be used as a loan for financing Twin Rivers Phase 2 Housing.
- Section 3. The Loan Commitment attached as Exhibit A for financing Twin Rivers Phase 2 Housing with \$8,000,000 in CNI funds is approved and the Sacramento Housing and Redevelopment Agency (Agency) is authorized to execute and transmit the Loan Commitment to McCormack Baron Salazar, Inc. (Twin Rivers Phase 2, L.P. or related entity).
- Section 4. HUD has approved the Section 108 loan request for funding public infrastructure for the Project and both the Agency and the City are to sign the loan documents. The City Manager is authorized to execute the Section 108 Loan Program Contract and all related documents required for funding of the loan by HUD.

Table of Contents:

Exhibit A – Twin Rivers Phase 2 Commitment Letter

Adopted by the City of Sacramento City Council on January 22, 2019, by the following vote:

Ayes: Members Ashby, Guerra, Hansen, Harris, Jennings, Schenirer, Warren, and Mayor Steinberg

Noes: None

Abstain: None

Absent: Member Carr

Attest: **Mindy Cuppy** Digitally signed by Mindy Cuppy
Date: 2019.02.05 14:31:07
-08'00'

Mindy Cuppy, City Clerk

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.

January 22, 2019

Daniel Falcon, Vice President
McCormack Baron Salazar, Inc.
801 S. Grand Avenue Suite 801
Los Angeles, CA 90017

Re: Conditional Funding Commitment for Twin Rivers Phase 2

Dear Mr. Falcon:

On behalf of the Sacramento Housing and Redevelopment Agency (Agency), we are pleased to advise you of its commitment of permanent loan funds (Loan) in an amount not exceed \$8,000,000 in Choice Neighborhoods Implementation (CNI) funds for the purpose of financing the development of that certain real property known as Twin Rivers Phase 2 located in the Twin Rivers development at 321 Eliza Way, Sacramento, California (Property). The Agency's decision is based on representations and information supplied by McCormack Baron Salazar, Inc. in its capacity as Housing Lead and Master Developer. If these representations and information change in a material manner without written approval of the Agency, this commitment is void. Agency's obligation to make the Loan is subject to the satisfaction of all the following terms and conditions and Borrower's execution of documentation that is in a form and in substance satisfactory to the Agency.

The Loan shall be made on standard Agency loan documents. Loan terms not included in this funding commitment shall be included in the final loan documents without additional environmental review and governing board approval. In the event of any discrepancies between terms stated in this commitment and the loan documents, the terms stated in the loan commitment letter shall be deemed to be terms of this commitment.

Unless otherwise agreed in writing by the Agency in exercise of its absolute discretion, the following shall be considered conditions to Agency approval of a financing commitment. The Agency may, in exercise of its absolute discretion, modify its requirements upon written notice to Borrower given at least sixty (60) days prior to close of escrow for the Property.

This commitment will expire December 31, 2020.

1. PROJECT DESCRIPTION: Twin Rivers Phase 2 (Project) is a new construction, mixed-income housing development. The Project is the second phase of development for the multi-phased, Twin Rivers public housing redevelopment project. The Project will include multifamily apartment, townhome, and garden-style walk-up buildings located on two separate City blocks (Block B and Block E). In addition to a maximum of 90 on-grade parking spaces, the Project will consist of a total of 10 residential buildings that will include a minimum of 113 rental housing units. The housing units will be 1-5 bedrooms in size and include a minimum of 69 public-housing replacement housing units in accordance with the HUD-approved replacement housing plan for the Project. The Project will also contain several outdoor amenities including tot lots, barbeque areas, bike and electric car share, etc., with Block B housing constructed immediately adjacent to a new 1.1 acre community park.
2. BORROWER: The name of the Borrower for the Loan is Twin Rivers Phase 2, L.P., a California limited partnership with McCormack Baron Salazar, Inc., or related entity as the lead development partner.
3. PURPOSE OF LOAN: The Loan is to be used by Borrower solely to pay the costs of development of the Project and for such other purposes as Agency expressly agrees to in the loan agreement for the Loan, as well as in such other agreements as may be generally required by the Agency for the use of the funding source for the Loan.
4. PRINCIPAL AMOUNT: The principal amount of the Loan will be a maximum of Eight Million Dollars (\$8,000,000) or such lesser amount as may be needed and as determined by Borrower and approved by Agency prior to close of the Loan.
5. TERM OF LOAN: The Loan shall mature up to 55 years from the date of completion of construction, at which point any and all unpaid principal and interest on the loan will be due and payable. Final maturity date will be determined by impact of terms and conditions of other sources of financing approved for the Project.
6. INTEREST RATE: The Loan will bear simple interest at four percent (4%) per annum. Interest shall be calculated on a 365-day year, actual days elapsed basis.
7. ANNUAL REPAYMENT: Annual principal and interest payments shall be made according to the structured payment schedule contained in the final Loan Agreement and as calculated to achieve a minimum annual debt service coverage ratio of 1.2:1. Payments shall be applied first to outstanding interest accrued and unpaid and then to principal. All outstanding principal and interest is due and payable on the maturity date. Notwithstanding the preceding payment schedule, no payments shall be required on this Loan until the full balance of principal and interest on the proposed capitalized ground lease made by the Housing Authority of the County of Sacramento to Borrower pursuant to the Master Development Agreement is paid in full.
8. SOURCE OF LOAN FUNDS:
Agency is making the Loan from Choice Neighborhoods Implementation (CNI) grant funds and is subject to all of the requirements related to the use of these funds, whether Agency requirements or otherwise. This Loan is conditioned upon Borrower's acceptance of Agency requirements and conditions related to its lending programs and funding sources, including among others the required forms of agreements for the Loan; the

requirements for covenants, conditions and restrictions upon the Property; and insurance and indemnity requirements.

Borrower acknowledges that, as a condition of the Agency's making of the Loan, the Property will be subject to restrictions on future sales and rentals which may result in less income to Borrower than could otherwise be realized, and that such restrictions run with the land, and during their operational term, will bind all successors in interest.

_____ (Borrower Initial)

9. ACCELERATION: Agency shall have the right to accelerate repayment of the Loan in the event of a default under any Loan Document or upon sale, transfer or alienation of the Property except as specifically provided for in the Loan documents.
10. SECURITY: The Loan shall be evidenced by promissory note(s) secured by a deed of trust with assignment of rents against the fee and/or leasehold interest in the Property and Improvements, which shall be a lien upon the Property and Improvements subject only to additional liens senior to the Agency's lien securing loans needed for the Project and such other liens or items as the Agency may approve in writing prior to close. The Loan shall also be secured by security agreements where required. The Agency may agree to subordinate said deed of trust in order to accommodate completion of construction of the Project.
11. LEASE AND RENTAL SCHEDULE: All leases of the Property and Improvements shall be subject to Agency review and approval prior to execution. Borrower shall not deviate from the rental schedule presented in Borrower's application for the Loan without Agency's prior written approval provided, however, that such approval shall not be required for annual adjustments to rental rates as permitted by the California Tax Credit Allocation Committee.
12. PROOF OF EQUITY: Borrower shall provide proof of equity for the Property and Improvements in the amount of no less than stated in Borrower's request for the Loan. Proof of equity will generally be in the form of verified low income housing tax credit equity and deferred developer fee. If the final equity contribution is less than that as anticipated, the difference in equity must be offset by an increase in the deferred developer fee.
13. OTHER FINANCING: Borrower, as a requirement of the Loan, shall procure and deliver to Agency evidence satisfactory to Agency that Borrower has obtained the following described financing which may be secured by a lien upon the Property and Improvements superior or subordinate to Agency's liens, and which shall be otherwise on terms and conditions acceptable to Agency:

(a) As a condition precedent to disbursement of the Agency loan, construction financing from private lender(s) in an amount(s) sufficient to complete construction of the Project according to a Scope of Work as approved by Agency (Construction Financing). The term of Construction Financing must not be less than that specified in the Schedule of Performances for completion of construction and in any event not less than the time necessary to fulfill all conditions precedent to funding of the permanent financing.

- (b) Commitments for permanent financing sufficient to “take out” all Construction Financing liens senior to the Agency’s lien.
- (c) Such commitments for construction and permanent financing shall not require modification of Agency loan documents, or any term of this commitment letter.
- (d) Such commitments shall not be based upon sources and uses of Project funds that are different from those approved by Agency for the project or be subject to conditions which require amendment of Agency documents or other agreements.
14. EVIDENCE OF FUNDS: Prior to the first disbursement of the Loan, Borrower must demonstrate evidence of adequate and assured funding to complete the development of the Project in accordance with the Agency's requirements. Borrower's evidence of available funds must include only one or more of the following: a) Borrower equity; b) firm and binding commitments for the Project from financial institution(s) or from other lender(s) approved by Agency in its absolute discretion; and c) Agency’s contribution, provided, however, that Agency is not obligated by this letter to make any contribution not stated in the terms of the letter.
15. SOILS AND TOXIC REPORTS: Borrower will submit to the Agency a hazardous substances report made in accordance with the American Society for Testing and Materials "Standard Practice for Environmental Site Assessments; Phase I Environmental Site Assessment Process" (Designation E1527-13) prepared by a licensed or registered environmental engineer or other qualified party prior to Loan closing. Borrower must, as a condition of disbursement of Loan funds, give assurances satisfactory to the Agency that hazardous materials are not present on the Property or that any hazardous materials on the Property will be remediated and that no further remediation is then required by the environmental agency having responsibility for monitoring such remediation.
16. LOAN IN BALANCE: Borrower will be required to maintain the Loan "in balance" at all times. The Loan is "in balance" whenever the amount of the undisbursed Loan funds, the remaining sums to be provided by the Borrower and the loan funds from other project lenders or the equity investor are sufficient, in the sole judgement of the Agency, to pay for the remainder of the work to be done on the project as required by written agreement with the Agency. Should the Agency determine that the Loan is not "in balance" the Agency may declare the Loan to be in default.
17. PLANS AND SPECIFICATION: Final plans and specifications, if any, for the project must be in accord with the approved proposal. Final plans and specifications will be subject to Agency's final approval prior to the disbursal of Agency Loan funds. Borrower must obtain Agency's prior written consent to any change in the approved plans and specifications or any material deviation in construction of the project. The final plans shall incorporate all related mitigation measures as required in the Mitigation Monitoring and Reporting Program of Twin Rivers Transit Oriented Development and Light Rail Station Project as may applicable to Twin Rivers Phase 2, environmental conditions required, if any, for compliance with approvals under CEQA, and/or NEPA, or the U.S. Department of Housing and Urban Development as conditions of approval of the project.
18. ARCHITECTURAL AGREEMENT: The architectural agreement (Agreement), if any, for the preparation of the plans and specifications and other services shall be subject to Agency's approval. Agency may require an assignment of Borrower's interest in and to the Agreement as security for the Loan.

19. CONSTRUCTION CONTRACT: The construction contract (Contract), if any, and any change orders issued thereunder, and the contractor (Contractor) to be retained by Borrower to construct the Improvements shall be subject to Agency's approval. Agency may require an assignment of Borrower's interest in and to the Contract as security for the Loan. Agency may require Contractor to provide a performance and payment bond in a form acceptable to Agency for the amount of the Contract.
20. RETENTION AMOUNT: The Agency shall retain ten percent (10.0%) of each construction disbursement as retention, not to exceed a total of ten percent (10.0%) of the total amount of the Loan.
21. COST BREAKDOWN: Borrower shall deliver to Agency for Agency's approval prior to commencement of work a detailed cost breakdown of the cost of constructing, financing and other costs of developing the Project, which breakdown conforms to the project plans and specification and the approved budget for the Project. Borrower shall also deliver a list of all contractors and subcontractors to be employed in connection with the construction of the Improvements. If required by the Agency, Borrower shall also submit copies of all bids received for each item of work to be performed as well as copies of executed contracts and subcontracts with acceptable bidders.

All contracts, subcontracts, contractors, and subcontractors shall be subject to Agency's approval prior to close of the Loan. Agency also reserves the right to require performance and material payment bonds on any or all contractors, or in lieu of bond a letter of credit acceptable to Agency.

Agency shall make disbursements of the Loan based on a cost breakdown that lists line items in cost categories. Agency shall require that Borrower provide documentation supporting all requests for disbursement of Loan funds, including proof of work done and actual expenditure. Agency shall conduct inspections of the Property to assure that the work was done before making a disbursement.

22. COST SAVINGS: At completion of construction, Borrower shall submit to Agency a cost certification prepared by a qualified, independent auditor acceptable to Agency which shall indicate the amounts actually spent for each item in the cost breakdown and shall indicate the final sources of funding. If there is an aggregate savings, in the total of all such cost breakdown items from the cost breakdown items in the original budget approved by the Agency, after adjusting for any decrease in any funding source including any loss of any equity investment due to an adjustment in the allowable tax credits, the Agency shall withhold for itself fifty percent (50%) of such savings from the amount of retention then held by the Agency and the Loan balance shall be reduced by the amount so withheld. The Agency, in its sole discretion, shall determine any reduction and/or repayment of the Agency loan based upon this cost certification and the original approved budget for the project.
23. START OF CONSTRUCTION: Borrower shall commence construction at the earliest possible date subject to the conditions of this Agency and other involved lenders, but no later than sixty (60) days following the close of construction financing.

24. COMPLETION OF CONSTRUCTION: Borrower shall complete the construction of the Improvements no later than 24 months following the close of construction financing.
25. SECURITY CAMERAS AND OUTSIDE LIGHTING: Project shall include installation of a security camera system, exterior lighting, and security patrols, all as approved by the Agency.
26. INSURANCE PROVIDER: Each policy of insurance required under the Loan shall be obtained from a provider licensed to do business in California and having a current Best's Insurance Guide rating of A VII , which rating has been substantially the same or increasing for the last five (5) years, or such other equivalent rating, as may reasonably be approved by Lender's legal counsel.
27. HAZARD INSURANCE: Borrower shall procure and maintain fire and extended coverage insurance and during construction Builder's Risk completed value insurance in a form and substance approved by Agency. Coverage shall be for protection against loss of, or damage to the Improvements or materials for their construction to their full insurable value. Borrower shall also procure and maintain insurance against specific hazards affecting Agency's security for the Loan as may be required by Agency, governmental regulations, or any permanent lender. All such policies shall contain a standard mortgagee loss payable clause in favor of Agency. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000.00).
28. PUBLIC LIABILITY AND OTHER INSURANCE: Borrower must procure and maintain public liability and property damage insurance (with Agency named as additional insured) in a form approved by Agency. Coverage must be approved by Agency and must be in at least the following limits of liability: (1) Commercial General Liability insurance in Insurance Services Office (ISO) policy form CG 00 01 Commercial General Liability (Occurrence) or better with limits of liability, which are not less than \$1,000,000, per occurrence limit; \$5,000,000 general aggregate limit, and \$5,000,000 products and completed operations aggregate limit, all per location of the Project; (2) Property damage liability of \$1,000,000 each occurrence, \$1,000,000 single limit and \$1,000,000 aggregate; (3) Contractual liability for Bodily Injury of \$1,000,000 each occurrence, for Property Damage of \$1,000,000 each occurrence and \$1,000,000 aggregate, and Personal Injury with Employment Exclusion Deleted of \$1,000,000 aggregate; and (4) Comprehensive Automobile Liability for any vehicle used for or in connection with the Work of \$1,000,000. The insurance required shall be written with a deductible of not more than TEN THOUSAND DOLLARS (\$10,000). Borrower must also procure and maintain workers' compensation and all other insurance required under applicable law, as required by law and as approved by Agency.
29. TITLE INSURANCE: Borrower must procure and deliver to Agency an ALTA Lender's Policy of Title Insurance, together with such endorsements as Agency may require, including but not limited to CLTA endorsement nos. 100, 116, and 102.5/102.7 insuring Agency in an amount equal to the principal amount of the Loan, that Agency's Deed of Trust constitutes a third lien or charge upon the Property and Improvements subject only to such items as shall have been approved by Agency. There must be no exceptions permitted for mechanics liens. Title insurance for the Loan must be issued by a title insurer approved by Agency.

30. ORGANIZATIONAL AGREEMENTS: Borrower must submit to Agency certified copies of all of Borrower's organizational documents, including all amendments, modifications or terminations: if a corporation, Borrower's Articles of Incorporation and By-Laws; if a partnership, its Partnership Agreement and, as applicable, Certificate of Limited Partnership or Statement of Partnership; if a Limited Liability Company, its Articles of Organization and its Operating Agreement; and in all cases with all exhibits and amendments to such documents, fictitious business name statements, other related filings or recorded documents and such related documents as Agency may request. If it is a corporation, Borrower must submit a corporate borrowing resolution referencing this Loan. If Borrower is other than a corporation, Borrower must submit such proof of authority to enter this Loan as may be required under the organizational documents.
31. PURCHASE OR LEASE OF PROPERTY: Borrower shall provide Agency with copies of all documents relating to Borrower's ownership interest in the Property.
32. FINANCIAL INFORMATION: During the term of the Loan, Borrower shall deliver to Agency within 120 days of the end of each fiscal year an audited income and expense statement, a balance sheet, and a statement of all changes in financial position signed by authorized officers of Borrower. Prior to close of the Loan and during its term, Borrower must deliver to Agency such additional financial information as may be requested by Agency. Agency reserves the right to review and approve financial statements and other credit information and references prior to closing. During the term of the Loan, Borrower must deliver to Agency a monthly rent-roll including household composition information and operating statements with respect to the Property management, as Agency may request.
33. MANAGEMENT AGREEMENT: Prior to execution, Borrower must submit to Agency any agreement providing for the management or operation of the Property or Improvements by a third party which agreement is subject to Agency Approval.
34. RESIDENT SERVICES AGREEMENT: Prior to execution, Borrower must submit to Agency an agreement providing for the resident services by a third party which agreement is subject to Agency Approval.
35. LOW INCOME HOUSING TAX CREDITS (LIHTC): Borrower represents that as a condition of closing this Loan it is applying for an allocation of LIHTC's and agrees to perform all actions and meet all requirements to maintain the LIHTC allocation if granted.
36. SMOKE-FREE ENVIRONMENT: At least 50% of the buildings but no less than 50% of the units must be smoke free. All indoor common areas must be smoke-free.
37. DOCUMENTATION: This letter is not intended to describe all of the requirements, terms, conditions and documents for the Loan, which shall also include customary provisions and documents for an Agency transaction of this type. All documents to be delivered to or approved by Agency must be satisfactory to Agency in all respects. Borrower must promptly deliver to Agency any further documentation that may be required by Agency.

38. CONSISTENCY OF DOCUMENTS: As a material obligation under this commitment letter, Borrower shall assure that the loan documents for the Project are consistent with lender's commitment approved by the Agency and comply with same.
39. CHANGES OR AMENDMENTS: No documents or contracts which are to be delivered to Agency or are subject to Agency's review or approval shall be modified or terminated without the prior written approval of Agency.
40. ACCEPTANCE OF THIS COMMITMENT: Borrower's acceptance of this Commitment shall be evidenced by signing and delivering to Agency the enclosed copy of this letter. Until receipt of such acceptance by Agency, Agency shall have no obligation under this letter. Agency may withdraw this commitment at any time prior to Borrower's acceptance.

Sincerely,

La Shelle Dozier
Executive Director

The undersigned acknowledges and accepts the foregoing Commitment and its terms and conditions.

BORROWER:
Twin Rivers Phase 2 L.P., a California limited partnership
By: McCormack Baron Salazar, Inc., or related entity

By: _____
Daniel Falcon, Vice President