



AGENCY: City Council
MEETING DATE: April 8, 2019
DEPARTMENT: Public Works
PRESENTED BY: N. McLaughlin
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AGENDA ITEM SUMMARY

TITLE:

Receive Report and Consider Adoption of City Council Resolution Approving a Forgivable Loan Agreement and Sub-Recipient Agreement with Parents and Friends, Inc. for the Cypress Street Residential Care Facility for the Elderly Project with Funds through Community Development Block Grant #17-CDBG-12020 and Authorizing City Manager to Execute Same (Amount Not To Exceed: \$2,802,880; Account No. 333-5041-0632)

ISSUE:

On **November 13, 2017**, City Council adopted Resolution No. 4046-2017 approving the City's 2017 Community Development Block Grant (CDBG) application #17-CDBG-12020, to fund the Cypress Street Residential Care Facility for the Elderly (RCFE) on behalf of the non-profit Parents and Friends, Inc. (PFI). Pursuant to the CDBG grant Standard Agreement, the City must enter into a loan agreement and sub-recipient agreement with PFI prior to the release and use of CDBG funds. The proposed agreements require that PFI provide services as described in the 2017 CDBG grant application for a period of 20 years. This term exceeds the minimum five-year regulatory period required by CDBG. Other conditions include maintenance of the property, documentation of adequate insurance coverage, and conditions related to City approvals required for the construction project. The proposed agreements state that if PFI complies with the covenants and conditions, the loan will be forgiven after 20 years, with the loan being reduced by 25% every five years. To approve the loan and sub-recipient agreements and the release of grant funds to PFI for the construction of three four-bedroom, three-bath residential units at 350 Cypress Street, a Resolution approving the agreements must be adopted by City Council.

ANALYSIS:

The City received notification in July 2018 of grant award #17-CDBG-12020 in the amount of \$3,038,880 from the 2017 CDBG allocation. These funds will be used for the construction of three urgently needed Residential Care Facility for the Elderly housing units. The facility will be comprised of three four-bedroom, three-bath residential units. These homes will be fully accessible and equipped for aging, disabled clients. The facility's three residential units will each be licensed by the Community Care Licensing Division of the State Department of Social Services as a Service Level 4-I, which is the highest staffing level to correspond to escalating severity of disability levels. Each home will provide residential and care services to four extremely-low-income, developmentally disabled adults suffering from age-related dementia, Alzheimer's disease, or other age-related disabilities. The facility will provide services to a total of 12 individuals at any given time. As described in the grant application and award, the Grant is comprised of the following components:

- Up to \$2,524,000 for Activity
- Up to \$302,880 for Activity Delivery
- Up to \$212,016 for General Administration

PFI is identified in the Grant Application as the Facility Operator and Owner of the Cypress Street RCFE.

The Forgivable (Deferred) Loan Agreement and Sub-recipient Agreement (Agreements) are the recommended form of agreements by CDBG for construction projects. The Agreements must be submitted to CDBG as part of the General Conditions Clearance package. CDBG requires that a “no change of use provision” must be recorded against the improved property for a minimum of five years from notification of grant closeout. The Loan Agreement accomplishes this requirement by including a Restrictive Covenant regarding a twenty-year Use Limitation to be recorded in the Mendocino County Recorder’s office.

The Loan Agreement is in the same format as previously approved Forgivable Loan Agreements executed for 2014 Activities (i.e. HOPE Project) and the 2016 Supplemental Activities (i.e. Glass Beach Housing Rehabilitation Project). Major components include:

1. **Recitals.** These identify the subject property; explain that the CDBG Program is the source of the loan funding and that funds were provided as a grant to the City; and describe the purpose of the loan as described in the CDBG grant application.

2. **Definitions.** This section explains and clarifies specific terms and terminology as used in the loan documents.

3. **Loan of Funds.** This section describes the loan amount and terms of disbursement including:

- Loan Amount (maximum amount to be disbursed to the non-profit sub-grantee);
- Interest: No interest will be charged or accumulated on the loan amount;
- Term of the loan: 20 years after project completion;
- Repayment of City Loan: For every five years, loan shall be reduced by 25%;
- Required Documentation: The related documentation that must be executed prior to disbursement of funds is listed, including Exhibits to the Loan Agreement (Deed of Trust, Truth-In-Lending Disclosure, Notice of Right to Cancel, and Restrictive Covenant); and
- Disbursement of Funds: Funds for activity construction will be released directly to vendors and contractors by the City. If the activity requires less than the maximum loan amount, any amounts less than the maximum loan amount will be considered partial repayment of the loan.

4. **Repayment of the City Loan.** This section describes circumstances or “Triggering Events” that would cause repayment of the loan by the non-profit sub-grantees, including the following:

- Any Transfer of the Property without the City’s prior written consent;
- Change of use such that PFI stops using the property to provide services as described in Grant Application;

- Failure to maintain the property at post-construction condition;
- Default of the Loan Agreement, including misrepresentations, failure to perform obligations contained in the Loan Agreement, or failure to notify the City if a “Triggering Event” occurs;
- Failure to maintain property insurance with City as loss payee;
- Failure to pay any property taxes due; and
- If such a “Triggering Event” occurs, the City may determine the repayment terms, with discretion to allow monthly payments rather than a lump sum payment.

5. CDBG Program Requirements. This section requires conformity with HUD and CDBG regulations and provides that rehabilitation activities may proceed only with City approval and participation. In addition, this section contains Covenants regarding the property transfer restrictions, property maintenance requirements, prohibition against discrimination, the City’s right to inspect the property, and the requirement to maintain adequate property insurance.

6. Defaults and Enforcement. This section describes “events of defaults,” including those described in Item 4 above, and also states that if a default occurs, the City may declare the full loan amount due and payable. Liquidated damages are provided in the event of rent or lease of the property without City consent. Specific Performance is also required in this section, because the CDBG project serves a public purpose of a “special and unique kind.”

7. Subordination. This section provides that the City may approve loan subordination at its discretion, but there are restrictions stated on terms of any new loan.

8. General Provisions. This section contains standard loan provisions that are not unique to this transaction except to identify Notice Addresses and signers.

The Sub-recipient Agreement contains language that further outlines specific requirements, regulations, and Laws and Acts that CDBG requires. It is in the same format as previously approved Sub-recipient Agreements executed for 2016 Supplemental Activities (i.e. Glass Beach Housing Rehabilitation Project).

RECOMMENDED ACTION:

Adopt City Council Resolution Approving a Forgivable Loan Agreement and Sub-recipient Agreement with Parents and Friends, Inc. for the Cypress Street RCFE Project at 350 Cypress Street with Funds through Community Development Block Grant #17-CDBG-12020 and authorize City Manager to Execute Same (Amount Not to Exceed: \$2,802,880; Account No. 333-5041-0632).

ALTERNATIVE ACTION(S):

1. Do not adopt the Resolution approving loan agreements. The project cannot proceed without the agreements.
2. Make changes to the draft loan agreement. This would delay submittal of the General Conditions package and would delay project implementation.

FISCAL IMPACT:

Approval of Agreements accomplishes one of several CDBG General Conditions. Once General Conditions are cleared, CDBG will authorize implementation of the Cypress Street RCFE Project. The project would be funded using the 2017 CDBG grant fund. The CDBG grant funds are adequate to pay for the construction, including direct costs such as design, construction management, permits, and labor standards monitoring. CDBG General Administration funding is adequate to pay for City staff time required to perform grant-specific as well as general program administrative tasks. The CDBG program releases funds on a reimbursement basis. Once the City expends project-related funds, the City must request reimbursement from CDBG. The City generally has adequate funds to cover CDBG expenditures until reimbursement. Without the CDBG funding, the non-profit PFI would not be able to provide these urgently needed housing and care services at their 350 Cypress Street location. In addition, there is currently only one other facility licensed for similar specialized services in Mendocino County or in adjacent Lake County, which is now at full capacity and is owned and operated by PFI.

CONSISTENCY:

This project is consistent with the Housing Element of the City's General Plan to provide housing to low-income residents. Certification of environmental compliance is required in order to clear General Conditions. Federal NEPA as required for CDBG and state CEQA review as required by the City will be completed for this activity as part of the General Conditions package.

IMPLEMENTATION/TIMEFRAMES:

If the Resolution approving the Agreements is adopted, it will be submitted to CDBG along with other documents that are required for clearance of General Conditions. These items include site control documentation, environmental documentation, procurement compliance, cost estimates, timeline or schedule, Davis-Bacon Labor Standards Compliance information, and Section 504 Accessibility requirements. Once CDBG approves these items, CDBG will notify the City that the activity may be implemented. Once CDBG approval to proceed is received, construction tasks may commence. All activities are expected to be completed by May 31, 2020.

ATTACHMENTS:

1. Resolution
2. Forgivable Loan Agreement
3. Sub-recipient Agreement

NOTIFICATION:

1. Rick Moon, C.E.O., Parents and Friends, Inc.