



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legislation Details (With Board Report)

File #:	SARDA RES 19-004	Name:	EG Completion Guarantees
Type:	Successor Resolution	Status:	Passed
File created:	7/1/2019	In control:	Successor Agency to the Redevelopment Agency of the County of Monterey
On agenda:	7/9/2019	Final action:	7/9/2019

Title: a. Adopt a resolution approving Completion Guarantees by Casa Acquisition Corp. for East Garrison Phase 2 and Phase 3 very low and low-income rental affordable housing units, guaranteeing a completion date for Phase 2 and Phase 3 affordable units by no later than March 31, 2025 and providing a surety performance bond in the amount of \$17,500,000 for each of the Phase 2 and Phase 3 affordable housing units; and
b. Authorize the Chair to execute the Completion Guarantees for Phase 2 and Phase 3; and
c. Authorize the Director of the Resource Management Agency to accept the Performance Bonds upon receipt and subject to approval by County Counsel as to form.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment 1 - Resolution, 3. Attachment 2 – Completion Guarantee for Phase 2, 4. Attachment 3 – Completion Guarantee for Phase 3, 5. Attachment 4 – Phase 2 CHISPA Affordable Apartments Designs, 6. Attachment 5 – CHISPA Letter, 7. Attachment 6 – MidPen Letter dated 1/10/2019, 8. Attachment 7 – Artspace Letter dated 9/19/2018, 9. Attachment 8 – UCP Letter dated 10/5/2018, 10. Attachment 9 – Affordable Housing Detailed Timeline, 11. Completed Board Order & Resolution No. 1 SARDA

Date	Ver.	Action By	Action	Result
7/9/2019	3	Successor Agency to the Redevelopment Agency of the County of Monterey	adopted	

a. Adopt a resolution approving Completion Guarantees by Casa Acquisition Corp. for East Garrison Phase 2 and Phase 3 very low and low-income rental affordable housing units, guaranteeing a completion date for Phase 2 and Phase 3 affordable units by no later than March 31, 2025 and providing a surety performance bond in the amount of \$17,500,000 for each of the Phase 2 and Phase 3 affordable housing units; and
b. Authorize the Chair to execute the Completion Guarantees for Phase 2 and Phase 3; and
c. Authorize the Director of the Resource Management Agency to accept the Performance Bonds upon receipt and subject to approval by County Counsel as to form.

RECOMMENDATION:

It is recommended that the Board of Supervisors, acting as the Board of Directors for the Successor Agency to the Redevelopment Agency for the County of Monterey:

- Adopt a resolution approving Completion Guarantees by Casa Acquisition Corp. for East Garrison Phase 2 and Phase 3 very low and low-income rental affordable housing units, guaranteeing a completion date for Phase 2 and Phase 3 affordable units by no later than March 31, 2025 and providing a surety performance bond in the amount of \$17,500,000 for each of the Phase 2 and Phase 3 affordable housing units; and
- Authorize the Chair to execute the Completion Guarantees for Phase 2 and Phase 3; and
- Authorize the Director of the Resource Management Agency to accept the Performance Bonds upon receipt and subject to approval by County Counsel as to form.

SUMMARY:

The Disposition and Development Agreement for East Garrison (DDA) includes timing “triggers” or milestones by which the affordable housing apartments must be completed. Union Community Partners East Garrison, LLC (UCP) has hit the first milestone timing for the Phase 2 very low and low-income apartments and anticipates hitting the next two milestones for Phase 2 and Phase 3 very low and low-income apartments by December 2019. Since fall of 2017 there has been concern by the UCP and the Successor Agency that the construction of the affordable units would not meet the timing requirements established by the DDA. UCP, the Successor Agency, and non-profit partners for Phase 2 Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) and Phase 3 Artspace Projects, Inc. (Artspace) worked diligently to find solutions to ensure that the DDA milestones are timely met. However, notwithstanding the best efforts of CHISPA and Artspace, and through no fault of UCP and or the Successor Agency, it is infeasible to meet the milestones for the Phase 2 and Phase 3 very low and low-income affordable housing requirements due to the lack of availability of local, state and/or federal funds to pay for the construction of the affordable units.

To enable the continued building and sale of market rate units in light of the affordable housing funding challenges, in its letter dated October 5, 2018 (Attachment 8), UCP has requested that the Successor Agency accept a guarantee by Casa Acquisition Corporation to complete the Phases 2 and 3 very low and low-income rental affordable housing units by March 31, 2025. Originally it was discussed that Century Communities would provide the guarantees for the rental affordable housing projects. However, in March, UCP learned that, due to certain loan covenants and debt ratio restrictions on Century Communities Inc.’s credit facility, it was infeasible for Century Communities, Inc. to deliver the Guaranties for the Phases 2 and 3 Affordable Housing requirements. As it turns out, Century Communities is the sole owner of another entity, Casa Acquisition Corp., that has over \$250M in net assets that can provide the Guaranties. Casa Acquisition Corp. is a parent of UCP East Garrison, LLC, the current Developer under the DDA - Casa Acquisition is the sole member of UCP, LLC, which is the sole member of UCP East Garrison, LLC. Additionally, each guarantee provides that the developer shall provide a surety performance bond in the amount of \$17,500,000, as security for the faithful performance of the construction, equipment and completion and payment for the Phase 2 and Phase 3 Guaranteed Units, respectively.

The Completion Guarantee for Phase 2 is included with this report as Attachment 2 and a separate Completion Guarantee for Phase 3 is included as Attachment 3. By approving the Completion Guarantees, the Successor Agency agrees to modify the timing for the completion of the very low and low-income affordable rental units for Phases 2 and 3, making the construction completion date for those units to occur no later than March 31, 2025, enabling the County to continue issuing building permits and certificates of occupancy for the market rate units.

The Fort Ord Committee supported approving the Completion Guarantees, but one Committee member requested the Phase 2 deadline be earlier (2023) as the Phase 2 very low and low-income affordable housing is intended to be completed ahead of the Phase 3 project so that the projects were not competing against each other for funding; and to consider requiring UCP to post a performance bond in addition to the Guarantees. Staff discussed these concerns further with the parties and County Counsel and recommends keeping the 2025 timeframe for both phases, as funding is unknown. In addition, each guarantee provides that the developer shall provide a surety performance bond in the amount of \$17,500,000 for each affordable housing project.

Staff recommends that the Board, acting as the Board of Directors for the Successor Agency of the Redevelopment Agency for the County of Monterey, adopt a resolution approving the Completion Guarantees that provide for a \$17.5 million surety completion bond and completion of the very low and low-income

affordable housing units for Phase 2 and separately for the affordable housing units for Phase 3 by no later than March 31, 2025.

DISCUSSION:

The Disposition and Development Agreement for East Garrison (DDA) calls for a total of 196 very-low and low rental affordable housing units that are to be jointly funded by the developer (Union Community Partners East Garrison, LLC or “UCP”) and the Successor Agency tax increment. The sixty-five (65) unit-Phase 1 very low and low-income affordable housing apartments, was developed by non-profit partner MidPen Housing, per the DDA were to be completed and occupied prior to the issuance of building permits for the 89th and above market rate units which occurred this year 2019. The Phase 1 affordable housing project, Manzanita Place, was complete for occupancy in 2013, approximately six (6) years ahead of the DDA timing requirement. CHISPA has been identified as the non-profit to build 65 very low and low-income units that are planned in Phase 2, and Artspace is the non-profit to build the remaining 66 very low and low-income units in Phase 3. The DDA establishes timelines, linked to development pace of market-rate units, for completion of the rental very low and low-income affordable housing units.

The DDA requires construction (to the point of weatherproofing and enclosure) of at least 50% of the affordable rental housing units (low and very-low) for Phase 2 prior to issuance of building permits for the 89th market rate unit in Phase 3, and UCP has hit this first milestone timing. The DDA also requires that certificates of occupancy be issued for all rental affordable housing units in Phase 2 and construction (to the point of weatherproofing and enclosure) of at least 50% of the rental affordable housing units in Phase 3 prior to issuance of the 191st market rate unit building permit in Phase 3. UCP anticipates applying for the 191st building permit in December 2019.

It is clear that the DDA milestones for completion of the very low and low-income affordable rental housing components of Phase 2 and Phase 3 will not be met within the timeframes set forth in the DDA due to numerous factors. Since fall of 2017 there has been concern by the UCP and the Successor Agency that the construction of the affordable units would not meet the timing requirements established by the DDA. UCP, the Successor Agency, and non-profit partners for Phase 2 Community Housing Improvement Systems and Planning Association, Inc. (CHISPA) and Phase 3 Artspace Projects, Inc. (Artspace) worked diligently to find solutions to ensure that the DDA milestones are timely met. However, notwithstanding the best efforts of CHISPA and Artspace, and through no fault of UCP and or the Successor Agency, it is infeasible to meet the milestones for the Phase 2 and Phase 3 very low and low-income affordable housing requirements due to the lack of availability of local, state and/or federal funds to pay for the construction of the affordable units. Staff presented the timing concern to the Fort Ord Committee at its March 22, 2018 meeting, indicating it would continue to work with UCP and non-profit partners to identify a solution.

CHISPA has invested approximately \$350,000 to date in the design and the County has completed design review for CHISPA’s 65-unit low and very-low rental apartment building for Phase 2 (Attachment 4), and the estimated project cost is \$22 million. The funding identified in the DDA from the developer and Successor Agency would only provide approximately \$13.7 million, resulting in a shortfall of \$8.3 million that still need to be raised. CHISPA is committed to constructing the East Garrison apartments and has been working with the Successor Agency and UCP to develop a funding-strategy for the project. Unfortunately, there are few fund assistance programs available to fully fund this project at this time and public funds are not anticipated to become available for this project until 2020 (See Attachment 5).

To determine if a larger non-profit such as MidPen might have other funding resources to leverage, that could advance the Phase 2 project more rapidly, UCP requested MidPen to consider CHISPA’s summary of affordable housing financing options. MidPen concurred that the funding sources identified and challenges facing CHISPA

are the same that MidPen would have (See Attachment 6).

Also limiting the project is that the Successor Agency tax increment funds are insufficient at this time to fund the Agency's portion of the units. Staff is updating its tax increment projections to determine when funding for the affordable housing units is anticipated.

For Phase 3, Artspace is committed to constructing the East Garrison affordable housing apartment project, however, the project is likewise dependent on the availability of state and local funding. Because Artspace's Phase 3 development will utilize very similar funding resources as the Phase 2 project, Artspace cannot proceed until Phase 2 has secured its funding commitments to avoid competing for the same funding resources (See Attachment 7).

The DDA contemplated the possibility of such delays and Section (B)(7) of Attachment No. 3 of the DDA provides:

"In the event that Rental Affordable Housing Development does not secure timely financing or experiences construction delays or other Enforced Delay under Section 604 of this Agreement, notwithstanding its best efforts, or is in default under the terms of this Assignment and Assumption Agreement entered into between Developer and such Rental Affordable Housing Developer such that there could be a withholding of building permits and/or certificates of occupancy for market rate units in the Project under Part B of this Attachment No. 3, William Lyon Homes, Inc. [*UCP's predecessor in interest*] ("Guarantor"), in its sole and absolute discretion, may execute and deliver to the Agency one or more guarantees, as applicable, of the completion of the Rental Affordable Housing units through a completion guaranty substantially in the forms attached to this Agreement as Attachment No. 18, and upon delivery of such guarantee(s) to the Agency, the Agency and County shall waive, without further condition, compliance with the conditions to issuance of building permits for market rate units in paragraphs 2 through 5, inclusive, and the issuance of certificates of occupancy for market rate units in paragraph 6, to which such guarantee(s) may be applicable."

To enable the continued building and sale of market rate units considering the affordable housing funding challenges, pursuant to the DDA UCP has requested that the Successor Agency accept a guarantee to complete the Phases 2 and 3 very low and low-income rental affordable housing units. UCP has further provided that each of the Phase 2 and Phase 3 rental affordable housing projects be secured by a \$17.5 million surety performance bond, to be provided to the Successor Agency within fifteen (15) days of executing the guarantees. Assuming funding will be available and contracted by mid-2020, preliminary timelines suggest it is possible the Phase 2 CHISPA project could be completed as early as 2022 (See Attachment 9). If local, state and federal funding options continue to be available for the Phase 3 project, the Artspace apartments may be completed as early as 2023. UCP has proposed 2025 date to provide a reasonable cushion for possible further funding delays and or unforeseen design/construction issues that may arise.

Staff is also presenting the Completion Guarantees to the Board sitting as Board of the County consent to the Completion Guarantees. Staff recommends that the Board, acting as the Board of Directors of the Successor Agency to the Redevelopment Agency for the County of Monterey, adopt a resolution approving the Completion Guarantees that provide for a \$17.5 million surety performance bond and completion of the very low and low-income affordable housing units for each of the Phase 2 and Phase 3 rental affordable housing projects by no later than March 31, 2025.

OTHER AGENCY INVOLVEMENT:

The Office of County Counsel has reviewed the Completion Guarantee as to form. CHISPA and Artspace are

the non-profit affordable housing developers identified in the DDA for the Phase 2 and Phase 3 rental apartment units, respectively. Concurrent with the Successor Agency's consideration of this action, the County of Monterey shall consider whether to acknowledge the Completion Guarantees for Phases 2 and 3.

This item was presented to the Board's Fort Ord Committee on February 11, 2019. The Fort Ord Committee supported approving the Completion Guarantees, and one Committee member requested the Phase 2 deadline be earlier (2023) as it is intended to be completed ahead of the Phase 3 project so that the projects were not competing against each other for funding; and to consider requiring UCP to post a performance bond in addition to the Guarantees. Staff discussed this further with the parties and counsel. While Phase 2 would likely be the first to proceed and it is UCP's and CHISPA's intent to bring the project in sooner, funding sources are unknown, so they request to retain the 2025 timeframe to complete both Phase 2 and Phase 3 projects. Staff and UCP did, however, negotiate that a surety performance bond in the amount of \$17.5 million be provided for each of the Phase 2 and Phase 3 affordable housing projects. The proposed bond amount was reviewed by the Chief Building Official and deemed sufficient to cover the cost of construction of the affordable housing projects, should it be necessary that UCP step in and complete the projects.

FINANCING:

The East Garrison Disposition and Development Agreement (DDA) obligates the (now) Successor Agency to use tax revenues ("tax increment") generated from the East Garrison project to provide financial assistance for DDA administration, affordable housing, public facilities, and historic building rehabilitation. The Successor Agency has requested \$2 million for affordable housing (Item No. 19 East Garrison Housing Subsidy) on the Recognized Obligations Payment Schedule (ROPS) for FY 2019-2020. The Consolidated Oversight Board considered and approved the Successor Agency's ROPS 19-20 at its January 17, 2019 meeting and on April 2, 2019 the Department of Finance approved the ROPS 19-20. Staff is in the process of re-evaluating the calculations for affordable housing subsidy per the terms of the East Garrison DDA updating its tax increment projections. Staff anticipates adjusting the housing subsidy costs in future ROPS.

To further ensure that the affordable housing projects are constructed and the necessary financial security is in place through March 31, 2025, each guarantee provides that the developer will provide a surety performance bond in the amount of \$17.5 million respectively for Phase 2 and Phase 3 affordable housing projects.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Approving Completion Guarantees for Phases 2 and 3 very low and low-income housing developments at the East Garrison development achieves the following Board of Supervisors' Strategic Initiatives:

- *Economic Development*, "Through collaboration, strengthen economic development to ensure a diversified and healthy economy", by helping to reduce poverty and economic hardships of low and very-low income residents.
- *Health and Human Services*, "Improve health and quality of life...and promoting access to equitable opportunities for healthy choices and healthy environments", by providing affordable housing opportunities at East Garrison, designed to be a walkable community with many acres of parks and open space designed within it, and located adjacent to the habitat and open space lands of the former Fort Ord and the Fort Ord National Monument.

☒ Economic Development
☐ Administration
☒ Health & Human Services
☐ Infrastructure
☐ Public Safety

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Approved by: Nicholas Chiulos, Assistant County Administrative Officer

Attachments

Attachment 1 - Resolution
Attachment 2 - Completion Guarantee for Phase 2 Affordable Rental Housing Units
Attachment 3 - Completion Guarantee for Phase 3 Affordable Rental Housing Units
Attachment 4 - Phase 2 CHISPA Affordable Apartments Designs
Attachment 5 - CHISPA Letter
Attachment 6 - MidPen Letter dated January 10, 2019
Attachment 7 - Artspace Letter dated September 19, 2018
Attachment 8 - UCP Letter dated October 5, 2018
Attachment 9 - Affordable Housing Detailed Timeline