

July 2, 2024

Texas Department of Housing and Community Affairs
Attn: Mr. Cody Campbell
Director of Multifamily Finance
211 E. 11th Street
Austin, Texas 78701

Re: UPDATE – Property Tax Exemption
Request for Return and Reallocation of Tax Credits – *Force Majeure* under 10 TAC
11.6(5)
TDHCA No. 23149; The Upland

Dear Mr. Campbell:

On May 9, 2024, the TDHCA Board considered a request for “force majeure” from Upland Housing Development, LP (“Owner”) for The Upland, TDHCA No. 23149, and the Board tabled the item.

Since this time, Owner has continued to work toward closing for The Upland, which is currently scheduled for July 17, 2024. Owner received approval from TDHCA for extension of the 10% test submission to August 15, 2024.

The following attachments address Harris County’s awareness that the inclusion of County-affiliated governmental entities in project ownership will result in a full property tax exemption:

1. March 26, 2024; Harris County Commissioner’s Court Meeting. Attached is a Request for Court Action, approved unanimously, for the American Rescue Plan Act loan and grant. Background information supporting this request indicated that the project would be structured in a way to “receive Equitable Title” (i.e., an exemption from ad valorem taxes due to a governmental entity’s ownership of equitable title to the project).
2. June 21, 2024; Letter from Harris County Appraisal District. Letter indicates that, after review of draft ownership documents, the appraisal district has determined that it would be exempt from ad valorem tax.
3. June 24, 2024; Letter from Harris County Housing & Community Development. Letter acknowledges that the participation in ownership of the Harris County Redevelopment Authority (HCRDA) will result in the project being exempt from ad valorem tax. Please note that the Chief of Staff of Harris County Precinct 4, Alice Lee, is also a board member of HCRDA.
4. June 26, 2024; ARPA Award Letter from Harris County Housing & Community Development.

In addition, to demonstrate readiness to close by our governmental entity: Last week, on June 26, 2024, at a meeting of the HCRDA board, Upland received its final approval (out of 3 levels of approvals) concerning the HCRDA's participation in the Upland as 95% member and sole manager of the general partner, and as sole owner of the landlord owning the real property. This approval also approved substantially final transaction documents to be entered at closing, including loan documents and equity documents.

Further, all County-level approvals required by the Harris County Commissioners' Court associated with the ARPA loan have been obtained (their latest was an auditor's court agenda last week). ARPA funds have been moved out of the County's account and into an account with the Harris County Housing Finance Corporation, designated for the HCRDA's acquisition of the land through its subsidiary.

Please contact Lauren Osterman at White, Starling & Osterman, PLLC if you or TDHCA staff would like additional information or have questions. Ms. Osterman's number is 214-215-1119.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ellen Moskalik', with a stylized flourish at the end.

Ellen Moskalik



Harris County, Texas

1001 Preston St., Suite 934
Houston, Texas 77002

Commissioners Court

Request for Court Action

File #: 24-1422

Agenda Date: 3/26/2024

Agenda #: 19.

Department: Housing and Community Development

Department Head/Elected Official: Thao Costis, Executive Director

Regular or Supplemental RCA: Regular RCA

Type of Request: Contract - Award

Project ID (if applicable): The Upland

Vendor/Entity Legal Name (if applicable): Upland Housing Development, LP

MWDBE Contracted Goal (if applicable): N/A

MWDBE Current Participation (if applicable): N/A

Justification for 0% MWDBE Participation Goal: N/A - Goal not applicable to request

	YES	NO	ABSTAIN
Judge Lina Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Lesley Briones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Request Summary (Agenda Caption):

Request by Housing and Community Development for approval to conditionally award up to \$7,440,000 of American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds to purchase the land for The Upland for the Harris County Housing Finance Corporation with a maximum purchase price of \$3,484,800 and to negotiate and execute a loan agreement of up to \$3,955,200 in ARPA State and Local Fiscal Recovery Funds for eligible development costs for The Upland project.

Background and Discussion:

Upland Housing Development, LP is requesting up to \$7,440,000.00 in ARPA State and Local Fiscal Recovery Funds for the acquisition and development of a new multi-family affordable housing development called The Upland located at 1430 Upland Drive, Houston Texas 77043. Upland Housing Development, LP was awarded 9% LIHTC Tax Credits by TDHCA in 2023. Due to increase in insurance rates, interest rates, and construction costs, this project is no longer viable without partnering with Harris County and receiving ARPA State and Local Fiscal Recovery Funds. The total development costs for The Upland are \$36,383,208.00. The Harris County Housing Finance Corporation has agreed to enter the General Partnership of this Project and receive Equitable Title.

The Upland will create 120 new Multi-Family Affordable Housing Units. The unit mix will consist of 12 units for those making 30% or less of Area Median Income, 37 units for those making between 31%-50% of Area Median Income, and 71 units for those making between 51%-80 Area Median Income, The Project will consist of 10 zero-bedrooms (studio) 26 one-bedroom units, 60 two-bedroom units and 24 three-bedroom units. The HCHFC will own the land and the Project will enter a 99-year ground lease, which will keep the project affordable for 99-years.

Expected Impact:

The expected fiscal impact is to transfer \$3,484,800.00 in ARPA State and Local Fiscal Recovery Funds to the

HCHFC to acquire the land for The Upland Project and give a conditional commitment of \$3,955,200.00 in ARPA State and Local Fiscal Recovery Funds to Upland Housing Development, LP for eligible development cost for The Upland Project.

Alternative Options:

The alternative option is that the project will not move forward.

Presented to Commissioners Court

Alignment with Goal(s):

March 26, 2024

Approve: G/R

- ☐ Justice and Safety
- ☐ Economic Opportunity
- ☒ Housing
- ☐ Public Health
- ☐ Transportation
- ☐ Flooding
- ☐ Environment
- ☐ Governance and Customer Service

Prior Court Action (if any):

Date	Agenda Item #	Action Taken

Location:

Address (if applicable): 1430 Upland Drive, Houston Texas 77043

Precinct(s): Precinct 4

Fiscal and Personnel Summary				
Service Name	Affordable Rental Housing			
	Current Fiscal Year Cost			Annual Fiscal Cost
	Labor	Non-Labor	Total	Recurring Expenses
Funding Sources				
Existing Budget				
2651 - American Rescue Plan 2021	\$	\$7,440,000.00	\$7,440,000.00	\$
Choose an item.	\$	\$	\$	\$
Choose an item.	\$	\$	\$	\$
Total Current Budget	\$	\$7,440,000.00	\$7,440,000.00	\$
Additional Budget Request (<i>Requires Fiscal Review Request Form</i>)				
Choose an item.	\$	\$	\$	\$
Choose an item.	\$	\$	\$	\$
Choose an item.	\$	\$	\$	\$

Total Additional Budget Request	\$	\$	\$	\$
Total Funding Request	\$	\$7,440,000.00	\$7,440,000.00	\$
Personnel (Fill out section only if requesting new PCNs)				
Current Position Count for Service	-	-	-	-
Additional Positions Request	-	-	-	-
Total Personnel	-	-	-	-

Anticipated Court Date: March 26, 2024

Anticipated Implementation Date (if different from Court date): N/A

Emergency/Disaster Recovery Note: COVID-19 related item

Contact(s) name, title, department: Sam Borders, Director, Multi-Family Housing Development, Harris County Housing and Community Development

Attachments (if applicable): Court Order

ORDER OF COMMISSIONERS COURT
Authorizing Transfer of Funds and

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the 26th day of March, 2024 with the following members present, to-wit:

A quorum was present when, among other business, the following was transacted:

**ORDER AUTHORIZING HCD TO TRANSFER ARPA SLFRF FUNDS TO HCHFC FOR
THE PURCHASE OF 1430 UPLAND DRIVE AND NEGOTIATE AND EXECUTE A
LOAN AGREEMENT FOR THE UPLAND PROJECT**

Commissioner Garcia introduced an order and made a motion that the same be adopted. Commissioner Ramsey seconded the motion for adoption of the order.

The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Briones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

- Section 1.** HCD is authorized to transfer \$3,484,800.00 in ARPA SLFRF funds to the Harris County Housing Finance Corporation to purchase the land located at 1430 Upland Drive, Houston, Texas, 77043 for The Upland Project.
- Section 2.** HCD is authorized to negotiate and execute a loan agreement for The Upland Project up to \$3,955,200.00 in ARPA SLFRF funds to reimburse eligible development costs for the Project.
- Section 3.** HCD and its Executive Director, or his/her designee, are authorized to take such actions and execute such other documents as they deem necessary or convenient to carry out the purposes of this order.

Presented to Commissioners Court

March 26, 2024

Approve: G/R



Harris Central Appraisal District

13013 Northwest Freeway
Houston TX 77040
Telephone: (713) 812-5800

P.O. Box 920975
Houston TX 77292-0975
Information Center: (713) 957-7800



Office of Chief Appraiser

VIA EMAIL

June 21, 2024

Ms. Summer Greathouse
Bracewell LLP
300 Convent Street, Suite 2700
San Antonio, Texas 78205-3723

Board of Directors

Martina Lemond Dixon, Chairman
Jim Robinson, Secretary
Jonathan Cowen, Assistant Secretary
Ann Harris Bennett, Director
Tax Assessor-Collector, Ex-Officio Director
Mike Sullivan, Director
Cassandra Auzenne Bandy, Director
Grace Rodriguez, Director

Chief Appraiser

Roland Altinger
Deputy Chief Appraiser
Jason Cunningham
Taxpayer Liaison Officer
Teresa S. Terry

Re: Harris County Redevelopment Authority – The Upland Apartments

Dear Ms. Greathouse:

You have requested a letter from the Harris Central Appraisal District (“HCAD”) indicating that the above-referenced property, The Upland Apartments (“Upland”), will be exempt from property tax pursuant to Sec. 431.102 of the Texas Transportation Code, Sec. 394.905 and 394.002 of the Texas Local Government Code and Sec. 11.11 of the Tax Code. The fee title for the property will be acquired by the Harris County Redevelopment Authority (“HCRDA”), a local government corporation organized and authorized to act by Harris County pursuant to Chapter 431, Subchapter D of the Texas Transportation Code.

The land that Upland will be constructed upon will be wholly owned, controlled, and held in fee simple by HCRDA through its whole ownership and control of HCRDA Upland Landowner, LLC (the “Landowner”). The Landowner will enter into a long-term land lease with Upland Housing Development, LP, (the “Developer”) which will own and construct a new 120-unit multifamily housing apartment project to be named The Upland Apartments. The Developer is controlled by HCRDA through Upland’s sole general partner, HCRDA Upland GP, LLC (the “General Partner”), whose sole member is HCRDA. Overall, HCRDA either directly or indirectly exerts whole ownership over both the landlord and the tenant to this transaction.

Upland is intended to be financed with a 9% low-income housing tax credit property in which all 93 units will be tax credit units that shall be rented to individuals whose income is 60% or below the area median income for the Harris County area as set forth by HCRDA. Additionally, a Land Use Restriction agreement will be placed on the property by the Texas Department of Housing and Community Affairs for a period of thirty-five years. The Developer will also be required by the ground lease and regulatory agreement to ensure compliance with the income and affordability restrictions.

It is HCAD’s understanding that through its sole ownership of the Landowner and the General Partner, you assert that HCRDA has the ability to compel equitable title to the property. It is further

asserted that HCRDA would have an option to purchase Upland at any time, that at the end of the leasehold term, all improvements owned by the Developer will revert HCRDA, and that equitable title to Upland shall remain in HCRDA at all times. It is HCAD's understanding that this transaction has been or shall be approved by HCRDA's board of directors, and that HCRDA is duly permitted and authorized to act on behalf of Harris County in the manner as set forth here.

Subject to all subsequent requirements being met, it has been preliminarily determined that the property, as structured with the operating agreements including HCAD's audit authority, bylaws and ground lease, would be exempt. This is a **provisional approval** pending HCAD's final review of any updated copies of the lease and partnership agreements involving the HCRDA, updated bylaws or operating agreements, and receipt of proof of the transaction closing. HCAD is requesting that you please provide these documents **within ten (10) business days of closing**.

Pursuant to Section 11.43(a) of the Texas Property Tax Code, no application is needed for this exemption. As provided by Sec. 11.42(b) of the Tax Code, "an exemption authorized by Section 11.11 is effective immediately on qualification for the exemption." Please inform HCAD the date the property is acquired and submit a copy of the deed along with all other executed legal documents, including the lease, pertaining to this property. Afterwards, and provided there is no change in the status of the property or organization, the property and the lease should be shown as exempt in the appraisal roll as of the date of acquisition.

The chief appraiser reserves the right to review exemptions in future years, and further reserves the right to remove exemptions if there is a change in the law, a deviation from the facts or documents which have been represented to this office, a challenge from a taxing unit, or any other circumstances which indicate that the property may no longer be exempt. Pursuant to this, we ask that you please forward any documents indicating a potential change in tax-exempt status to HCAD. Should you have any questions, please feel free to contact us at your earliest convenience.

Respectfully,

/s/James Wang

James Wang

Legal Counsel

Division of Legal Services

Email: jwang@hcad.org

Phone: (713) 957-5244

Fax: (713) 957-5219

CC: Bertha Munoz, Maria Flores

Kevin McCormack



Harris County
Housing & Community Development
1111 Fannin Street, 9th floor
Houston, TX 77002
(832) 927-4955
hcd.harriscountytexas.gov

June 24, 2024
Texas Department of Housing
And Community Affairs
P.O. Box 13941
Austin, TX 78711

RE: 120-unit affordable housing project to be known as The Upland to be constructed
at 1430 Upland Drive in Houston, Texas ("Project")

Ladies and Gentlemen

I, the undersigned Executive Director of Harris County Housing and Community Development ("HCHCD"), a department within Harris County, Texas ("County"), acknowledge that HCHCD is aware of the application made by the Cesar Chavez Foundation ("Developer") relating to an award of funding by the County under the American Rescue Plan Act of 2021 ("ARPA Transaction") to provide financing for the Project. In connection with the ARPA Transaction, the Developer has requested the involvement of the Harris County Redevelopment Authority ("HCRDA") as owner of a fee interest in the land on which the Project will be situated and as the general partner of the partnership that will own the Project. HCHCD understands that this participation by HCRDA will result in the land and the improvements that constitute the Project being exempt from ad valorem taxation.

Sincerely,

DocuSigned by:

Thao Costis
Executive Director



HARRIS COUNTY HOUSING & COMMUNITY DEVELOPMENT

Thao Costis, Executive Director

June 26, 2024

Ellen Moskalik
Acquisitions Manager
Cesar Chavez Foundation
5225 Jain Lane
Austin, Texas, 78721

RE: Harris County Treasury ARPA Multifamily Development Program (TAMFAP)
The Upland Apartments

Dear Ms. Moskalik:

On March 26, 2024, the Upland Apartments project was approved for a conditional award up to \$7,440,000 of American Rescue Plan Act (ARPA) State and Local Fiscal Recovery Funds to purchase the land for the Harris County Housing Finance Corporation and eligible development costs.

Award is contingent upon the terms and conditions agreed upon between Harris County Redevelopment Authority and Cesar Chavez Foundation dated May 22nd, 2024 and submission of all required eligibility documents for closing.

Please direct all documentation, and questions regarding funding allocation to Kynira Munerlyn, Affordable Housing Manager of Multi-Family Development at Kynira.Munerlyn@harriscountytexas.gov.

Sincerely,

DocuSigned by:
Sam Borders 6/26/2024
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Sam Borders
Director, Multi-Family Development