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**Title:** Actions pertaining to Substantial Amendment No. 2018-01 to the FY 2018-2019 (FY 2019) Annual Action Plan:  
 1. RESOLUTION - Adopting Substantial Amendment No. 2018-01 to the 2018-2019 Annual Action Plan and; approving submission to the U.S. Department of Housing and Urban Development (HUD) for reprogramming \$2,259,784.43 of Community Development Block Grant (CDBG) program funds, and  
 2. Approve a \$2,259,784.43 Community Development Block Grant Program (CDBG) Agreement with FCTC Senior, L.P. for property acquisition of the proposed Fancher Creek Senior Housing Project, a 180-unit senior rental housing project at Marion Avenue and Fancher Creek Drive

**Sponsors:** Planning and Development Department

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibit A - Substantial Amendment No. 2018-01, 2. Exhibit B - Resolution, 3. Exhibit C - CDBG Agreement

Date	Ver.	Action By	Action	Result
2/28/2019	1	City Council	adopted as amended	Pass

**REPORT TO THE CITY COUNCIL**

**February 28, 2019**

**FROM:** JENNIFER CLARK, Director  
Development and Resource Management

**THROUGH:** KELLI FURTADO, Assistant Director  
Development and Resource Management Department

**SUBJECT**

Actions pertaining to Substantial Amendment No. 2018-01 to the FY 2018-2019 (FY 2019) Annual Action Plan:  
 1. RESOLUTION - Adopting Substantial Amendment No. 2018-01 to the 2018-2019 Annual Action Plan and; approving submission to the U.S. Department of Housing and Urban Development (HUD) for reprogramming \$2,259,784.43 of Community Development Block Grant (CDBG) program funds, and  
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## RECOMMENDATIONS

Staff recommends the City Council approve Substantial Amendment No. 2018-01; approve the CDBG Agreement with FCTC Senior, L.P. and authorize the City Manager to sign all necessary implementing documents.

## EXECUTIVE SUMMARY

After significant public input from the public, staff has identified \$2,259,784.43 in CDBG funds that may be reprogrammed for eligible activities (Attachment A within the Substantial Amendment No. 2018-01 Exhibit). These CDBG funds are primarily derived from project savings, LED Lighting activities which will be completed through an alternative funding source, and one multi-year activity experiencing delays.

Due to public input on Substantial Amendment 2018-01, three previously proposed reprogramming park activities are no longer included as part of Substantial Amendment 2018-01. To clarify, the following 2018-2019 Annual Action Plan activities remain fully funded in the 2018-09 Annual Action Plan, and are not included in Substantial Amendment 2018-01:

1. Dickey Playground Tot Lot Replacement (\$150,000)
2. Jaswant Singh Khaira (JSK) Tot Lot and Shade Structure (Victoria Park) (\$300,000)
3. Fink White Splash Park Year 1 (\$300,000)

In order to reprogram CDBG funds, HUD requires a Substantial Amendment to the 2018-2019 Annual Action Plan (Substantial Amendment No. 2018-01). Reprogramming these funds will allow the City of Fresno (City) to expediently utilize funds and assist the City in meeting CDBG expenditure, documentation, and drawdown requirements in time to meet HUD's May 1, 2019, timeliness test. The City is tested by HUD for timeliness sixty days prior to the end of the grantee's current program year. Timeliness is not met if the amount of entitlement grant funds available to the City exceeds the 1.5 ratio, and is **undisbursed by the U.S. Treasury**. The City currently projects a 1.45 ratio on May 1, 2019, with the approval of proposed Substantial Amendment No. 2018-01.

Once reprogrammed, the CDBG funds are proposed to assist with land acquisition and acquisition-related costs for the Fancher Creek Senior Housing Project, a 180 unit affordable senior rental housing project at Marion Avenue and Fancher Creek Drive.

## BACKGROUND

As part of the mandate from Congress to administer the CDBG Program, HUD is required to determine annually whether each CDBG entitlement grantee is carrying out its activities "in a timely manner." A timeliness test is conducted by evaluating the ratio of spending to allocations wherein grantees cannot have more than 1.5 times the current program year grant in the line of credit on May 1st of each year. In December 2018, staff began a process to identify funds that could be reprogrammed and assist the City in meeting its 2019 CDBG timeliness performance metric by May 1, 2019.

**SUBSTANTIAL AMENDMENT PROCESS:** In order to reprogram funds, HUD requires a substantial amendment. The amendment process involves conducting a public hearing on the Draft Substantial

Amendment No. 2018-01 and providing recommendations to the City Council. The table below summarizes the citizen participation component of the process. It is important to note the City provided notices in English in the Fresno Bee and Spanish in the Vida en el Valle, with a notice in Hmong provided to KBIF AM 900. Additionally, notices were distributed electronically to the e-mail distribution list of over 500 addresses used by the Development and Resource Management Department. The City also made Substantial Amendment No. 2018-01 available on the City’s Website, at the City Clerk’s Office, the Fresno County Library system, City Neighborhood and Community Centers, and at the Development and Resource Management Department’s public counter.

No public comments were received by the end of the public review period on January 28, 2019. The public hearing section of this report addresses comments received during the public hearings outlined below.

<b>Citizen Participation</b>	<b>Date</b>
Public Notice Published in Fresno Bee	December 27, 2018
Draft Substantial Amendment published - Minimum 30 day public review period (started)	December 27, 2018
Electronic distribution	December 27, 2018
Public Notice Read on KBIF AM 900	January 9, 2019
Public Notice Published in Vida en el Valle	January 16, 2019
Public Review Period (closed)	January 28, 2019
HCDC Public Hearing and consideration of Draft Substantial Amendment for recommendation to City Council	February 13, 2019
City Council Public Hearing	February 14, 2019
City Council Consideration of Substantial Amendment No. 2018-01	February 28, 2019

**PROPOSED SOURCES TO BE REPROGRAMMED:** Staff proposes 37 projects, representing \$2,259,784.43 primarily in savings and cancelled or delayed projects, for reprogramming. These activities are provided as Attachment A within the Substantial Amendment No. 2018-01 Exhibit. Attachment A was modified on February 14, 2019, based on public input provided at the February 13, 2019, Housing and Community Development Commission Public Hearing, and the February 14, 2019, City Council Public Hearing.

Approximately \$869,760 of reprogrammed funds are derived from the Department of Public Works LED lighting improvements. The reprogramming of CDBG funds does not result in the cancellation of the projects identified. However, CDBG funds will no longer be utilized to complete the projects. This action is a result of both challenges meeting federal procurement regulations given the lack of bids received for lighting materials, as well as city-wide funding becoming available for similar projects after the approval of the projects through the City’s 2017 Annual Action Plan. Funding for the LED lighting improvements in Pinedale, Columbia, King, Fort Miller, Jefferson, Slater, Addams, Vinland, Winchell, Roeding, Tioga, Holland, Santa Ana and Leavenworth-Hidalgo Neighborhoods will be provided through other City resources.

Also proposed for reprogramming is \$364,613 in Department of Public Works improvements for repaving of Orange/Cedar/Butler/California Avenues in District 5. Due to unforeseen delays in this multi-year project, a portion of CDBG funds (\$785,387) is proposed to remain in the 2018-2019 Annual Action Plan to allow for continued progress, with \$364,613 proposed for reprogramming. The funding estimated for this two-year project is \$1,150,000. Staff will include the balance of \$364,613 in the Draft 2018-2019 Annual Action Plan that will be made available for public review and comment during the spring of 2019. The Department of Public Works anticipates start of this project during Fiscal Year 2020.

The remaining \$1,025,411.43 of proposed reprogrammed funds is derived from savings from closed CDBG activities, previously unbudgeted amounts, and one project cancelled due to ineligibility per HUD regulations.

PROPOSED USES OF REPROGRAMMED FUNDS: CDBG funds are proposed to be reprogrammed through a CDBG Agreement with FCTC Senior, L.P for land acquisition and acquisition related costs. If approved, the CDBG Agreement will provide Developer with a CDBG Loan in the amount of \$2,259,784.43 at 2% interest for a minimum period of fifty-five years for eligible costs.

Federal Regulations at 24 CFR Part 570.201(a) allow for the use of CDBG funds to acquire real property by a private nonprofit corporation. FCTC Senior, LP has identified its managing general partner as Community Revitalization and Development Corporation, a California non-profit public benefit corporation. The Agreement, disbursement of funds, and subsequent close of escrow remains contingent on Developer maintaining an eligible 501(c)(3) non-profit for the duration of the Affordability Period. Once completed, the project will consist of 180 housing units, 92 which will be required to be occupied by low-income senior households at affordable rents, a community room and on- and off-site improvements.

The land value was determined through an appraisal, required and accepted by the California Tax Credit Allocation Committee for use in underwriting the affordable housing application. Cost reasonableness for CDBG is guided primarily by the Uniform Administrative Requirements at 2 CFR 200, specifically 200.404. In the case of property purchase, market price is typically demonstrated through an appraisal. The appraisal shows the land value, in the form of cost per unit, at \$12,500 per unit; in comparison, the appraisal comparables ranged from \$4,063-\$18,750 per unit with the most similar property with a land value of \$13,111 per unit. Land is just one element in the overall cost per unit which is expected to be \$198,778; the land value is just 6.2% of the total cost per unit.

Additionally, on February 10, 2017, the Housing and Community Development Division released a NOFA for 2017 HOME funding. In response to the NOFA, the City received several applications one of which was the Developer's Fancher Creek Senior Housing Project. After preliminary underwriting and technical assessment of the applications, the Fancher Creek Senior Housing Project was determined to be the most "shovel ready" and will be recommended for HOME funding in the amount of \$1,420,500 as a residual receipts loan at no less than fourth position, at 2% interest, with the balance due and payable in full at a 55-year maturity date.. This HOME Program item will be presented to Council for funding consideration at a later date.

Based on the above, staff finds that the project is an eligible use of CDBG funds, was identified as a need in the 5-year Consolidated Plan, and has been found to be cost reasonable according to HUD

guidelines.

Pending City Council and HUD approvals, it is anticipated the proposed land acquisition and related costs will be completed in April 2019, prior to the May 1st timeliness test.

**PUBLIC HEARINGS:** The City's Housing and Community Development Commission (HCDC) held a public hearing and recommended approval of Substantial Amendment No. 2018-01 to the City Council at its February 13, 2019, meeting. Five members of the public spoke at the HCDC Public Hearing. Four of the community members expressed concerns with the proposed defunding of three parks in Substantial Amendment No. 2018-01. They spoke about the value that parks add to quality neighborhoods and how they represent the value of our community. The speakers acknowledged the need for affordable senior housing but insisted the risk of defunding the listed park projects was too high. The four speakers collectively opposed the reduction of CDBG funds at Dickey, Jaswant Singh Khaira (Victoria Park), and Fink White Park. One speaker spoke in favor of the need for affordable senior housing, while acknowledging that investment in parks is also essential. This speaker represented the Developer, and indicated that the proposed project for affordable senior housing is shovel ready and under deadlines to finalize the project or risk other funding awards.

The City Council held a public hearing related to Substantial Amendment No. 2018-01 on February 14, 2019. Four members of the public spoke at the City Council Public Hearing. The first speaker represented the Fresno Housing Authority and spoke about the importance of affordable housing, shared information about Fresno's housing crisis, and supported the use of CDBG funds for affordable housing. Speaker number two spoke in support of parks, and appreciated a potential solution to not include park projects in a revised substantial amendment as proposed by Councilmember Chavez. Speaker number two shared that budgets reflect values and again appreciated any efforts to keep the three parks from any potential reprogramming. The third speaker spoke about the importance of designating funds, and making sure that the funding remains where it is allocated. Speaker number three discouraged redirecting funds, and was supportive of keeping funds where they were originally allocated for all projects. The last and fourth speaker questioned how the City arrived at this point, acknowledged a serious problem with funding of affordable housing and parks, commented that it is important there are funds to improve these conditions, suggested the City find a way that it is not "either or," but "both and," and acknowledged that it is a hard task and parks are essential in every city.

**U.S. HOUSING AND URBAN DEVELOPMENT:** Pending adoption by the City Council, Substantial Amendment No. 2018-01 will be submitted to HUD for approval, which may take up to 45 days to receive approval.

## **ENVIRONMENTAL FINDINGS**

Environmental Impact Report No. 10133, prepared for the Fancher Creek Project (EIR No. 10133) was certified by the Council of the City of Fresno on May 17, 2005, by Resolution No. 2005-183. EIR No. 10133 evaluated the construction of over 2300 residential units in the entire 475 acre area for the Fancher Creek development, including 240 residential units in a mixed use portion of the Town Center. On March 25, 2010, the Council adopted an Addendum to EIR No. 10133, dated June 29, 2009 which addressed a total of 740 residential units in the Town Center, which is an increase of 500 units. After adoption of the Addendum to EIR No. 10133, the Council approved a Development

Agreement by and between the City of Fresno and Fancher Creek Properties LLC which set forth the rights and responsibilities for development of the Fancher Creek Town Center, including the residential units within the Town Center Area. This approval is for a portion of the development of the Town Center as contemplated by the Development Agreement, EIR No. 10133, and the Addendum to EIR No. 10133. An analysis has been performed pursuant to CEQA Guidelines § 15162 to determine whether subsequent environmental review is required for this approval. Based upon this analysis the following findings are made to support the determination that no subsequent environmental review is required:

1. No substantial changes are proposed in the project which will require major revisions to EIR No. 10133 or the Addendum to EIR No. 10133 due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
2. No substantial changes occurred with respect to the circumstances under which the Fancher Creek Project or the Development Agreement for the Fancher Creek Town Center were undertaken which will require major revisions to the EIR No. 10133 or the Addendum to EIR No. 10133 due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
3. There is no new information, which was not known and could not have been known with the exercise of reasonable diligence at the time EIR No. 10133 was certified or the Addendum to EIR No. 10133 was adopted that shows any of the following:
  - a. The project will have one or more significant effects not discussed in EIR No. 10133 or the Addendum to EIR No. 10133;
  - b. Significant effects previously examined will be substantially more severe than shown in EIR No. 10133 or the Addendum to EIR No. 10133;
  - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - d. Mitigation measures or alternatives which are considerably different from those analyzed in the EIR No. 10133 or the Addendum to EIR No. 10133 would substantially reduce one or more significant effects on the environment but the project proponents decline to adopt the mitigation measure or alternative.

Based upon these findings, it has been determined that no further environmental documentation is required for this project.

Furthermore, an environmental review of the Project pursuant to the National Environmental Policy Act (NEPA) guidelines was completed on August 2, 2017, that resulted in a finding of No Significant Impact.

## **LOCAL PREFERENCE**

Local preference is not applicable because of the use of federal funding.

## **FISCAL IMPACT**

Adoption of Substantial Amendment No. 2018-01 of the Annual Action Plan and approval of the CDBG Agreement will allow the City to reprogram \$2,259,784.43 in entitlement funding that needs to be expended prior to May 1, 2019.

**Attachments:**

Exhibit A - Substantial Amendment No. 2018-01

Exhibit B - Resolution

Exhibit C - CDBG Agreement