



FRUITA
COLORADO

AGENDA ITEM COVER SHEET

TO: FRUITA HOUSING AUTHORITY

FROM: MIKE BENNETT, FRUITA HOUSING AUTHORITY EXECUTIVE
DIRECTOR

DEE WISOR, SPECIAL COUNSEL TO THE FRUITA HOUSING AUTHORITY

DATE: SEPTEMBER 5, 2023

AGENDA TEXT: RESOLUTION FHA 2023-07 - A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN ALL DOCUMENTS NECESSARY FOR ACCEPTANCE OF GRANT RECEIVED FROM THE COLORADO ENERGY OFFICE'S HIGH EFFICIENCY ELECTRIC HEATING AND APPLIANCES ("HEEHA") PROGRAM AND MAKING A LOAN OF THE PROCEEDS OF THE GRANT TO INDIBUILD FRUITA LIMITED LIABILITY LIMITED PARTNERSHIP

BACKGROUND

The Fruita Housing Authority is in the process of being awarded a grant from the Colorado Energy Office ("CEO"), for \$1,391,713. of funds from the HEEHA program ("HEEHA Funds") pursuant to an Intent to Award Letter dated July 12, 2023, and a State of Colorado Grant Agreement dated on or about the same date as this Loan Agreement ("Grant Agreement"). The Fruita Housing Authority needs to execute this Grant Agreement in order for the funds to be awarded. The Fruita Housing Authority will loan the HEEHA Funds to the IndiBuild Fruita LLLP for use in the construction and operation of the Project under the terms and conditions of the Grant Agreement. Therefore, the Fruita Housing Authority needs to execute various loan documents to memorialize the loan.

As agreed to between IndiBuild Fruita LLLP ("IndiBuild") and the Fruita Housing Authority ("FHA"), IndiBuild shall be responsible for, and indemnify the FHA against, all the Fruita Housing Authority's obligations, responsibilities, or duties under the Grant Agreement. However, please note that the Grant Agreement only lists IndiBuild as a subcontractor and does assign these responsibilities to the FHA as the grant recipient. Pursuant to the terms of the HEEHA Grant, the State will not substitute IndiBuild into its documents as the sole responsible party.

As set forth in the documents:

First Bank=First Bank of Wyoming, a Division of Glacier Bank

Equipment= Adequate panel capacity, dedicated electric panel space, electrical wire, electrical receptacles, and adequate physical space to accommodate future installation of high-efficiency electric appliances including heating, water heating, cooking, drying, and electric vehicle charging stations.

1. CEO and FHA enter into Grant Agreement pursuant to High Efficiency Electric Heating and Appliances (“HEEHA”) Program providing that CEO will grant \$1,391,713 to FHA to fund Equipment costs. This will be on a reimbursement basis after Equipment is installed.
2. FHA and IndiBuild will enter into a Loan Agreement pursuant to which FHA loans \$1,391,713 to IndiBuild. The Loan will be made in tranches as CEO advances funds to FHA. The Loan is evidenced by a promissory note and is secured by a deed of trust. The Loan bears interest at 2%. The Loan is due July 31, 2058, or upon sale of the property, with annual payments of principal and accrued interest, beginning December 31, 2024, to the extent of available cash flow. The Loan is subordinate to six other loans made to IndiBuild.
3. In the Loan Agreement, IndiBuild agrees to be responsible for all of FHA’s obligations, responsibilities, or duties under the Grant Agreement and to reimburse FHA for any costs associated with complying with the Loan Agreement. IndiBuild also agrees to defend, indemnify, and hold harmless FHA.
4. FirstBank and FHA will enter into a subordination agreement to provide that the FHA loan to IndiBuild is subordinate to the FirstBank loan of \$13,200,000.

The FHA, if approved will sign, and execute the following documents: the Grant Agreement, Loan Agreement and the Subordination Agreement. IndiBuild will execute the following packet attachments: Deed of Trust, and Promissory Note.

The proposed Resolution allows the Executive Director, special counsel and counsel for the FHA to modify nonsubstantive terms, if necessary, in the grant and loan documents without having to come back to the Board for approval.

FISCAL IMPACT

The FHA is responsible for the obligations, responsibilities, and duties under the Grant Agreement including, without limitation, recordkeeping, and reporting requirements. IndiBuild is listed as the FHA’s subcontractor on the Scope of Work. However, pursuant to the Loan Agreement, IndiBuild will be producing all of this documentation and will indemnify FHA for any losses in the event fails to comply. The Grant Funds are distributed as reimbursements after the described equipment is installed so in essence, IndiBuild will have to pay for and do the required work under the Grant Agreement in order for funds to be disbursed by the CEO to FHA and subsequently to the IndiBuild Fruita LLLLP. Therefore, there is little risk of financial exposure for the FHA because funds will not be distributed prior to the work being in compliance with the terms of the Grant.

OPTIONS AVAILABLE TO THE COMMISSION

1. Approve Resolution FHA 2023-07 – A Resolution of the Board of Commissioners of the Fruita Housing Authority authorizing the Executive Director to sign all documents necessary for acceptance of a grant received from the Colorado Energy Office’s High Efficiency Electric Heating and Appliances (“HEEHA”) program and making a loan of the proceeds of the grant to IndiBuild Fruita Limited Liability Limited Partnership

2. Advise staff to make modifications to Resolution 2023-07
3. Deny Resolution FHA 2023-07 - A Resolution of the Board of Commissioners of the Fruita Housing Authority authorizing the Executive Director to sign all documents necessary for acceptance of a grant received from the Colorado Energy Office's High Efficiency Electric Heating and Appliances ("HEEHA") program and making a loan of the proceeds of the grant to IndiBuild Fruita Limited Liability Limited Partnership

It is the recommendation of staff that the Fruita Housing Authority move to:

APPROVE A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE FRUITA HOUSING AUTHORITY AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN ALL DOCUMENTS NECESSARY FOR ACCEPTANCE OF GRANT RECEIVED FROM THE COLORADO ENERGY OFFICE'S HIGH EFFICIENCY ELECTRIC HEATING AND APPLIANCES ("HEEHA") PROGRAM AND MAKING A LOAN OF THE PROCEEDS OF THE GRANT TO INDIBUILD FRUITA LIMITED LIABILITY LIMITED PARTNERSHIP