



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: September 12, 2011

Approved

Date

9-21-11

COUNCIL DISTRICT: Citywide
SNI AREA: N/A

SUBJECT: FIRST AMENDMENT TO THE AGREEMENT WITH THE HOUSING TRUST OF SANTA CLARA COUNTY UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - NEIGHBORHOOD STABILIZATION PROGRAM 2

RECOMMENDATION

Adopt a resolution authorizing the City Manager or designee to:

- (a) Negotiate and execute the First Amendment to the Consortium Funding Agreement with The Housing Trust of Santa Clara County under the Neighborhood Stabilization Program 2 (NSP2) to modify the Reporting and Payment Procedures section of the Agreement to authorize the capitalization of interest on NSP2 construction loans made for rental projects to be deemed as an approved use of Program Income, and;
- (b) Negotiate and execute any future amendment to the Consortium Funding Agreement for City staffing changes or for reallocation of funds between the Consortium Funding Agreement's specific activity or strategy allocations.

OUTCOME

This action will allow two multifamily development projects to proceed as scheduled. Completion of the Taylor Oaks Construction Rehabilitation project and the Ford and Monterey Special Needs project by February 11, 2013, is key to the City's strategy to meet the NSP2 "25% Set-Aside Requirement" for the benefit of Very-Low-Income Households. The amendment will make the Consortium's authorization consistent with the negotiated terms for the two projects so that they are not delayed and thus help ensure that the City will not have to forfeit its \$19,139,324 allocation of NSP2 funds ("appropriation limit"). Providing the City Manager or designee with authority to execute amendments to the Consortium Funding Agreement

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pertaining to City staffing changes and reallocation of funds between specific activities, will allow the City to quickly make changes to the Agreement so the City can meet the NSP2 deadlines.

BACKGROUND

In May 2009, a Notice of Funding Availability of \$1.93 billion was issued for NSP2 funds authorized under the 2009 American Recovery and Reinvestment Act (ARRA). These funds were allocated on a competitive basis to states, local governments, and nonprofit organizations.

In July 2009, the City, along with the Housing Trust of Santa Clara County (HTSCC) and Neighborhood Housing Services Silicon Valley (NHSSV), entered into a consortium agreement and submitted a \$25,000,000 request for NSP2 funds under the San Jose NSP2 Consortium (Consortium) with HTSCC as the Lead Member.

On January 14, 2010, HUD announced that San José was one of 56 recipients of NSP2 funding. The Consortium was awarded \$25,000,000 to implement various NSP2 activities including secondary financing for income eligible purchasers of foreclosed homes, and the acquisition, rehabilitation and re-sale of foreclosed properties. NSP2 has a 25% Set-Aside Requirement which requires that 25% of those funds be set aside for the benefit of individuals and families earning less than 50% of the area median income.

HTSCC, as the named grantee, was required by HUD to enter into a consortium funding agreement with the City to authorize the City to pursue eligible activities and to allocate the grant funds to the City for such activities. On April 6, 2010, the Council accepted the grant funds and authorized the Director of Housing to negotiate and enter into the Consortium Funding Agreement with HTSCC to provide the City with funding in the amount of \$19,139,324.

The Consortium Funding Agreement executed by the Director of Housing established funding for three activities. These are summarized below.

Activity #1 Purchase Assistance Loan (PAL): Assist 100 eligible homebuyers to purchase foreclosed homes by providing mortgage, closing cost and related purchase assistance. Program Budget - \$5,000,000.

Activity #2 (a) Single Family Acquisition and Rehabilitation Program: Purchase and rehabilitate 64 foreclosed single-family residential properties, and re-sell to income eligible homebuyers. The budget for this activity is \$11,750,000.

(b) Acquisition and Rehabilitation Program (25% Set Aside): Purchase and Rehabilitate Foreclosed Homes and Residential Properties to meet the 25% Set-Aside for the benefit of Very-Low-Income Households. Provide funding to development entities for the purchase and rehabilitation of 41 foreclosed units to

provide affordable housing to very-low income households. The budget for this activity is \$6,250,000.

Activity #3 Administration: NSP eligible activity to include management and oversight of Activity #1 and #2 above. Activities include program management, compliance and monitoring, financial management, and reporting. The budget for administration is \$2,000,000.

ANALYSIS

Reallocation of Funds

The City's strategy for meeting the NSP2 "25% Set-Aside Requirement" was to fund the rehabilitation and/or new construction of rent-restricted multifamily rental projects. Given the timeline required to complete implementation, there were a very limited number of potential multifamily project sites that could be developed within this timeframe. The most likely candidates were rehabilitation projects and/or new constructions that had all their land use entitlements and were fully designed. The projects approved by the City are the Taylor Oaks project, which has been awarded up to \$5,250,000 in NSP2 funds, and the Ford and Monterey project, which has been awarded up to \$3,211,000 in NSP2 funds.

Capitalization of Interest on NSP2 Construction Loans

Taylor Oaks is a 59-unit project located at 2726 – 2738 Kollmar Avenue. Taylor Oaks received an NSP loan of \$5,250,000, and is funded by tax-exempt bond proceeds in an expected aggregate amount of \$6,300,000 and tax-credit equity of an expected amount of \$3,158,998.

In order to fill a funding gap, the Housing Department is recommending that the project developer be allowed to capitalize up to \$420,000 of accrued, unpaid construction loan interest. This amount would then be added to the principal of the permanent loan instead of paying the City back when the loan converts from construction to permanent financing. The Consortium Funding Agreement treated interest as "Program Income" to be put back into the City's program income budget for potential use on other eligible NSP2 activities and did not expressly authorize the City to capitalize acquisition or construction loan interest. This amendment will ensure that there is Consortium authorization for this use of the NSP2 funds so that the Taylor Oaks project can move forward. This approval must take place before the bonds for the project close. Bonds for Taylor Oaks are scheduled to close in October 2011.

Future Modifications to the Consortium Funding Agreement

The Consortium Funding Agreement lists specific staff positions and dollar amounts associated with the different NSP2 activities mentioned in the background section of this memo. Due to various budget issues and staff changes, the personnel assigned to the NSP2 program needs to be modified. In addition, the Consortium needs to have flexibility to move funds from one activity

to another due to external factors. For example, if the PAL Program is not meeting its production targets, funds can be moved to the Acquisition and Rehabilitation Program (25% Set Aside) if the multifamily program needs additional funds. It is possible that additional NSP funds may be needed for the Ford and Monterey if funds from the Low- and Moderate- Income Housing Fund (20% funds) cannot be used for this project. The proposed change would allow the Director of Housing to negotiate and execute an amendment to the Consortium Agreement to allow such a change. Any changes made to the Consortium Agreement will be within the overall project budget and will be coordinated with the other Consortium partners prior to execution.

EVALUATION AND FOLLOW-UP

Program performance will be reported to the Council in the Consolidated Annual Performance Evaluation Report, which reports the outcome of all City HUD-funded programs at the end of each fiscal year. Additionally, performance will be reported on a quarterly basis through the ARRA-required FederalReporting.gov reporting system to account for job creation and retention, and to provide overall transparency on the Consortium's members and its subcontractors. Activity accomplishments, obligations, and drawdowns will be reported on HUD's Disaster Recovery Grant Reporting System on a quarterly basis and posted on the City's website as required.

POLICY ALTERNATIVES

Alternative #1: Do not authorize the amendment to the Consortium Agreement that would resolve the funding issue for the previously approved Taylor Oaks multifamily project that is necessary to meet HUD's 25% set-aside requirement for Very-Low-Income households.

Pro: The City would potentially have more funds to complete other single family rehabilitation projects under the NSP2 Program.

Con: The City would have to implement another strategy to meet the 25% set-aside requirement. Given the limited time available, there are no other viable options available.

Reason for not recommending: Failure to meet the 25% set-aside requirement would result in the forfeiture of the entire \$25,000,000 allocated to the Consortium. The City would be required to pay HUD the funds already expended or committed from this funding source.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**

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- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The recommendations in this memorandum meet Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. This memorandum will be posted on the City's website for the October 4, 2011, Council agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This proposed recommendation is consistent with the strategy for addressing the foreclosure crisis as stated in the City's Five Year Consolidated Plan.

BUDGET REFERENCE

Not applicable.

CEQA

Not a Project, File No. PP10-066, Agreements/Contracts.

/s/
LESLYE CORSIGLIA
Director, Housing Department

For questions, call Leslye Corsiglia, Director of Housing, at (408) 535-3851.