

STAFF REPORT**CITY OF OCEANSIDE**

DATE: September 9, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department

SUBJECT: **APPROVAL TO APPROPRIATE \$381,000 OF HOME CHDO FUNDS TO THE FULLER CENTER FOR HOUSING SAN DIEGO TO ACQUIRE HOUSING UNITS IN OCEANSIDE TO RENT TO LOW-INCOME FAMILIES; AND APPROVAL OF A MEMORANDUM OF UNDERSTANDING WITH THE FULLER CENTER FOR HOUSING FOR THE PROJECT**

SYNOPSIS

Staff and the Housing Commission recommend that the City Council appropriate \$381,000 of HOME CHDO funds to the Fuller Center for Housing San Diego (FCHSD) Community Housing Corporation to acquire and rehabilitate housing units in Oceanside for development of rental units for low-income families; and authorize the City Manager to execute a Memorandum of Understanding with the Fuller Center for the project.

BACKGROUND

The City of Oceanside is a recipient of HOME Investment Partnership (HOME) Program grant funds from the U.S. Department of Housing and Urban Development (HUD). The HOME Program provides formula grants to States and local jurisdictions that communities use directly or in partnership with nonprofit housing organizations to fund a wide range of activities. The City may use HOME funds to build, buy, and/or rehabilitate affordable rental housing, support first-time homeownership programs for low-income households, or provide direct rental assistance to low-income individuals or families. The City of Oceanside uses HOME funds for a first-time homeowner program and to develop new rental housing that is affordable to low and very low-income households.

Under HOME Program regulations, fifteen percent of the funds granted to local jurisdictions must be allocated to a Community Housing Development Organization (CHDO). A CHDO is a private nonprofit organization that has among its purposes the provision of decent housing that is affordable to low- and moderate-income persons as evidenced in its charter, articles of incorporation, resolutions or by-laws; has a demonstrated capacity for carrying out activities assisted with HOME funds; and, has a history of serving the community within which housing to be assisted with HOME funds is to be located (24 CFR § 92.2). The fifteen percent requirement is cumulative and the City exceeded the requirement for some years due to allocation of CHDO funding for the Old Grove Apartments project. In 2008, HUD notified all participating jurisdictions that

HOME program income (repayments of loans made with HOME funds) was subject to the fifteen percent CHDO requirement and that this requirement was retroactive to whenever the jurisdiction began participating in the HOME program. This action substantially increased the amount of CHDO funds the City needed to obligate.

The HUD Los Angeles Field Office has notified the City that it is at risk of losing some CHDO funds dating back to 2002. Any HOME funds appropriated or program income received in FY 2002 including CHDO setaside funds will not be available for HOME participating jurisdictions to expend after September 30, 2009; any such funds will be recaptured by the United States Treasury. The City needs to expend \$63,437 of HOME/CHDO funds by September 30, 2009, or risk losing these funds.

ANALYSIS

Until 2008, Community HousingWorks was the only CHDO certified by the City of Oceanside. The City certified Habitat for Humanity and National Community Renaissance (formerly Southern California Housing Corporation) as CHDOs in 2008 and has now submitted documentation to HUD - Los Angeles Field Office to recognize the Fuller Center for Housing San Diego Community Housing Corporation (FCHSD) as a CHDO for housing activities in Oceanside. FCHSD is a faith-based, nonprofit organization dedicated to acquiring and rehabilitating houses for persons and families in need, and is a covenant partner of the International Fuller Center for Housing. Millard Fuller, founder of Habitat for Humanity, established the Fuller Center for Housing upon his departure from the Habitat organization.

The City proposes to loan \$381,000 to FCHSD to acquire at least two housing units currently in foreclosure or vacant, and rehabilitate them for use as rental units to low-income families. FCHSD will repay the loan over a thirty- to forty-year period at three percent (3%) interest; units would be restricted as low-income rentals for fifty-five years. FCHSD will manage the properties and remain responsible for tenant selection, property maintenance, and financial management. The City will prepare loan documents and a regulatory agreement with FCHSD for each property acquired with HOME funds. Approval of the proposed Memorandum of Understanding (MOU) will allow the project to move forward in time to meet the September 30, 2009, deadline to expend HOME funds.

FISCAL IMPACT

The City proposes to appropriate \$381,000 from the HOME Program unallocated reserve funds (923479800277) to loan to Fuller Center Housing CHDO (923113900277) for an eligible CHDO project. There is no impact on the General Fund and the City is not obligated to appropriate any additional funds to FCHSD for the project. The allocation of funds maintains the City's minimum fifteen percent appropriation of CHDO funds as required by regulations governing the use of HOME funds and must be expended on an eligible project no later than June 30, 2012. This amount is equal to the City's total CHDO requirement through FY 2009-10. The City must expend at least \$63,437 on an eligible project no later than September 30, 2009.

INSURANCE REQUIREMENTS

Recipients of HOME funds from the City must meet standard City insurance requirements.

COMMISSION OR COMMITTEE REPORT

The Housing Commission reviewed this item at their August 25, 2009, meeting. The lack of a quorum prevented formal action on the item; those in attendance recommended that staff move the item forward for Council action. The report of the Housing Commission is attached.

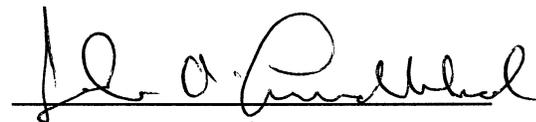
CITY ATTORNEY'S ANALYSIS

The City Council is authorized to hold a public hearing in this matter. Consideration of this matter should be based on the testimony and evidence presented at the hearing. After conducting the public hearing, the Council shall affirm, modify or deny the project. The supporting document has been reviewed and approved as to form by the City Attorney,

RECOMMENDATION

Staff and the Housing Commission recommend that the City Council appropriate \$381,000 of HOME CHDO funds to the Fuller Center for Housing San Diego (FCHSD) Community Housing Corporation to acquire and rehabilitate housing units in Oceanside for development of rental units for low-income families; and authorize the City Manager to execute a Memorandum of Understanding with the Fuller Center for the project.

Prepared by:



John A. Lundblad
Management Analyst

Submitted by:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Margery M. Pierce, Director, Neighborhood Services



Teri Ferro, Director, Financial Services



- Attachments: 1. Housing Commission Recommendation
2. Memorandum of Understanding with FHCSO

OCEANSIDE HOUSING COMMISSION REPORT

TO: CITY COUNCIL
FROM: HOUSING COMMISSION
RE: CHODO HOME FUNDING
DATE: AUGUST 25, 2009

DUE TO VACATION SCHEDULES AND ILLNESS FOUR MEMBERS WERE PRESENT. THE FOUR HAVE REVIEWED THE STAFF RECOMMENDATION TO APPROPRIATE \$381,000 HOME CHODO FUNDS TO THE FULLER CENTER FOR HOUSING TO ACQUIRE UNITS IN OCEANSIDE TO RENT TO LOW-INCOME HOUSEHOLDS AND TO APPROVE THE MEMORANDUM OF UNDERSTANDING WITH FULLER CENTER FOR HOUSING. THE CONCENSUS WAS TO MOVE THIS ITEM TO THE COUNCIL AGENDA FOR ACTION. THE PROPOSAL MEETS ALL OF THE GUIDELINES AND GOALS FOR THE USE OF CHODO FUNDS.

CAMP	PRESENT
CHRISTY	PRESENT
COOPER	ABSENT
FARMER	PRESENT
HUSKEY	ABSENT
PARKER	PRESENT
SORENSEN	ABSENT

ALTERNATE SAIZ	ABSENT
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**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF OCEANSIDE
AND
FULLER CENTER FOR HOUSING SAN DIEGO**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and the FULLER CENTER FOR HOUSING SAN DIEGO COMMUNITY HOUSING CORPORATION, a California non-profit public benefit corporation and its successors and assigns, hereinafter designated as "DEVELOPER."

RECITALS

WHEREAS, CITY is a municipal corporation organized under the laws of the State of California and is a Participating Jurisdiction in the U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnership Program;

WHEREAS, DEVELOPER is a California non-profit public benefit corporation doing business in San Diego County, California and certified as a Community Housing Development Organization (CHDO) by the City of Oceanside and the HUD - Los Angeles Field Office;

WHEREAS, DEVELOPER has proposed to acquire and rehabilitate housing units currently vacant or in foreclosure in the City of Oceanside for use as rental housing for low-income families (the "Project");

WHEREAS, CITY desires to commit the sum of \$381,000 in HOME Investment Partnership Funds to assist with the financing of the Project;

WHEREAS, the parties expect project activity to begin immediately upon execution of this MOU by the CITY;

WHEREAS, it is the desire of CITY and DEVELOPER to enter into this MOU for the purpose of establishing a binding commitment pursuant to which said HOME funds will be provided to DEVELOPER for the Project.

NOW THEREFORE, the CITY and DEVELOPER agree as follows:

1. Use of HOME Funds CITY agrees to loan to DEVELOPER up to \$381,000 in HOME Investment Partnership Program CHDO set aside funds within the provisions of 24 CFR § 92.300 and 92.301, which will be used, in addition to other sources of funds, for development of the Project.

FULLER CENTER FOR HOUSING SAN DIEGO 2009

2. Affordability The housing provided through the assistance of said HOME funds shall meet the affordability requirements of 24 CFR § 92.252 or 92.254, as applicable. DEVELOPER agrees to be bound and abide by all applicable rules and regulations with respect to repayment of the HOME funds if the housing does not meet the affordability requirements for the specified time period. The parties agree to prepare, execute and record such other and further agreements and documents as are necessary to ensure compliance with the affordability requirements.
3. Project Requirements The parties agree to prepare, execute and record such other and further agreements and documents as are necessary to ensure compliance with HOME Program project requirements.
4. Property Standards PROJECT housing shall meet the property standards set forth in 24 CFR § 92.251 and the lead-based paint requirements set forth in 24 CFR Part 35, subparts A, B, J, K, M and R, upon project completion. DEVELOPER shall maintain the Project housing in compliance with § 92.251 for the duration of the affordability period.
5. Other Program Requirements DEVELOPER agrees to carry out the Project in compliance with the program requirements specified in 24 CFR §92.504 c. 3. v., including but not limited to affirmative marketing responsibilities; federal nondiscrimination requirements; displacement relocation and acquisition requirements; labor requirements; and conflict of interest provisions.
6. Records and Reports DEVELOPER agrees to maintain and provide to CITY, as and when required, all records and reports that CITY, as a Participating Jurisdiction, is required to submit to HUD in meeting its recordkeeping and reporting requirements under the HOME Program.
7. Enforcement The parties agree to prepare, execute and record such other and further agreements and documents, including but not limited to deed restrictions and covenants running with the land, as are necessary to provide for a means of enforcement of the affordable housing requirements by the CITY or the intended beneficiaries.
8. Requests for Disbursement of Funds DEVELOPER may not request disbursement of funds under this MOU until the funds are needed for payment of eligible costs. The amount of each request, when made, must be limited to the amount needed.
9. Term of Agreement Except as otherwise specifically provided, the term of this MOU shall commence upon the date of execution by the parties and shall continue and be in effect

FULLER CENTER FOR HOUSING SAN DIEGO 2009

until the execution by the parties of other documents with respect to the Project, at which time this MOU together with its obligations and liabilities shall terminate; provided, however, that the affordability period required by the CITY, as a Participating Jurisdiction, under 24 CFR § 92.252 shall be specified as the affordability period set forth in the regulatory agreement.

10. Conditions Precedent, Contingencies This MOU is contingent upon the finalization and execution of all documents and further agreements as may be required by the parties hereto and by other third parties to commit and secure adequate additional funding to pay for the acquisition and rehabilitation of at least two housing units of the Project and to enable DEVELOPER to satisfy the covenants contained in this MOU.
11. Indemnification Insofar as it is legally authorized, DEVELOPER shall hold free and harmless, indemnify and defend, CITY, members of the City Council, boards or commissions, its employees, officers and agents, and each of them while acting as such, from all claims, loss, damages, liabilities, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name kind and description, which the CITY may incur as a direct or indirect consequence of the provision of HOME funds and/or the performance or failure to perform any of DEVELOPER's obligations under this MOU; provided, however, that DEVELOPER's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the sole negligence or willful misconduct of the CITY. DEVELOPER's duty to indemnify the CITY shall survive the term of this MOU.
12. Interpretation of Agreement The interpretation, validity and enforcement of this MOU shall be governed by and construed under the laws of the State of California. The CITY and DEVELOPER shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.
13. Notice Any notice required or permitted under this Agreement shall be deemed given when actually delivered or when deposited in the mail, certified or registered, postage prepaid, addressed as follows:

DEVELOPER:

Fuller Center for Housing San Diego
PO Box 84215
San Diego, CA 92138-4215
Attn: Cheryl Keenan, Executive Director

FULLER CENTER FOR HOUSING SAN DIEGO 2009

CITY:

Neighborhood Services Department, Housing & Code Enforcement
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attn: Margery Pierce, Director, Neighborhood Services

- 14. Agreement Modification This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
- 15. Signatures The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of DEVELOPER and the CITY.

FULLER CENTER FOR HOUSING SAN DIEGO COMMUNITY HOUSING

a California non-profit public benefit corporation EIN: 27-0551500

By: Cheryl Keenan

⁰³⁷²
Aug 28 2009
Date

Title: Executive Director

By: _____

_____ Date

Title: _____

SIGNATURES MUST BE NOTARIZED

CITY OF OCEANSIDE

a municipal corporation

APPROVED AS TO FORM

Peter A. Weiss, City Manager

Robert Samuelson, B.S.T.
City Attorney

ATTEST:

City Clerk

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO }

On AUGUST 29, 2009 before me, JACQUELINE S HESS NOTARY PUBLIC
Date Here Insert Name and Title of the Officer

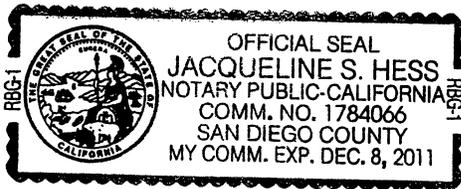
personally appeared CHERYL LYNN DYER-KEENAN
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jacqueline S Hess
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

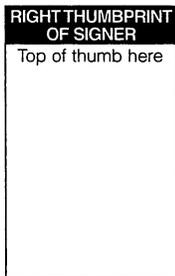
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

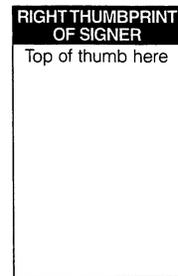
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____