COUNCIL AGENDA: 04/06/10
ITEM: 4.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: March 15, 2010

Approved

Date 3-23-10

COUNCIL DISTRICT: Citywide
SNI AREA: N/A

SUBJECT: AUTHORIZATION FOR THE HOUSING DEPARTMENT TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE HOUSING TRUST OF SANTA CLARA COUNTY UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - NEIGHBORHOOD STABILIZATION PROGRAM 2 AND ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN THE MULTI-SOURCE HOUSING FUND

RECOMMENDATION

1. Adopt a resolution authorizing the Director of Housing to negotiate and enter into a consortium funding agreement with The Housing Trust of Santa Clara County under the Neighborhood Stabilization Program 2 (NSP2) in the amount of $19,139,324.

2. Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Multi-Source Housing Fund:
   a. Increase the estimate for Recovery Act – Federal Revenue in the amount of $1,000,000
   b. Establish an appropriation to the Housing Department for the Recovery Act - Neighborhood Stabilization Program 2 project in the amount of $1,000,000

OUTCOME

Acceptance of federal Neighborhood Stabilization Program funds under the 2009 American Recovery and Reinvestment Act will help the City mitigate neighborhood blight caused by foreclosed properties in targeted areas. Over the course of this three-year program, the City will implement an acquisition/rehabilitation program of foreclosed residential property for re-sale or re-occupancy to provide future affordable housing opportunities to income-eligible households. Funds may also be utilized to assist low- or moderate-income households with second-mortgage assistance.

BACKGROUND

In October 2008, the City received a direct allocation of $5.6 million under the Neighborhood Stabilization Program (NSP1), a term that references the NSP funds authorized under the Housing and Economic Recovery Act of 2008, for the acquisition, rehabilitation and re-sale or re-occupancy of foreclosed or abandoned residential property. The City's plan for use of these funds was approved in February 2009. This program has been successfully implemented, with half of the proposed properties acquired. These properties are currently being rehabilitated or will soon begin rehabilitation, and will become available for resale or re-occupancy to income-eligible households.

In May 2009, a Notice of Funding Availability of $1.93 billion was issued for NSP2, a term that references NSP 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. The program objectives and eligible uses did not change under ARRA, but the allocation and some regulations have changed.

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 million request for NSP2 funds under the San Jose NSP2 Consortium (Consortium) with HTSCC as the Lead Member.

City's Consortium Partners

The HTSCC is a 10-year old public benefit nonprofit community lending organization. HTSCC's mission is to leverage public and private resources to act as a catalyst for the creation of additional affordable housing and to assist low- and moderate-income first-time homebuyers.

NHSSV, a chartered member of the NeighborWorks National Network, operates the San Jose based NeighborWorks HomeOwnership Center. NHSSV promotes responsible homeownership as a means of revitalizing neighborhoods and engendering community pride through a variety of programs, including homebuyer education and foreclosure intervention counseling.

On January 14, 2010, HUD announced the 56 recipients of NSP2 funding. The San Jose NSP2 Consortium is one of 33 consortiums awarded to carry out activities in target areas. Grantees were selected on the basis of foreclosure needs in their selected target areas, recent experience, program design, and compliance with NSP rules and regulations. On this date, the Consortium was notified that it was awarded the full request of $25 million. With these funds, the Consortium will implement two eligible activities under NSP, which will include secondary financing for income eligible purchasers of foreclosed homes, and the acquisition, rehabilitation and re-sale of foreclosed properties. As with NSP1, twenty-five percent of the funds must be set aside for the benefit of individuals and families earning less than 50% of the area median

income, or $53,050 for a family of four. The Consortium committed to assisting a total of 205 foreclosed units in areas most impacted by foreclosures.

San Jose continues to experience a significant increase in the number of homes in foreclosure since the collapse of the national housing market, beginning with 5,800 foreclosure filings in 2007, increasing to nearly 14,000 in 2008. In 2009, the total number of foreclosure filings increased to 16,552, or a 19.7% increase over 2008.

ANALYSIS

NSP2 requires grantees to focus its activities in the areas of greatest need. The Consortium identified 35 census tracts with an average foreclosure score, of at least 18 out of 20 (20 being the highest). These census tracts and zip codes were identified using the US Department of Housing and Urban Development's (HUD) specific methodology based on foreclosure and vacancy rates. Attachment 1 details the target geographic areas identified by the Consortium.

Although each of the target geographies has been significantly impacted by the housing market downturn and foreclosures, the geographies are not homogeneous. San Jose is a large city, both in terms of population and physical size, and the socio-economic conditions in each target geography can vary widely. For example, certain Census tracts have higher overall incomes than other tracts. Both types of Census tracts suffer from destabilization due to the housing market downturn but for different reasons. There are common destabilizing variables relevant to all target geographies as well as very distinct forces adding to the destabilization, including income, ethnic composition, housing values and other socio-economic factors. However most of the targeted geographies are considered low-income areas with relatively high rates of poverty.

As proposed and approved by HUD, the Consortium will undertake two programs that will best allow a response to the widely varying conditions found in the 35 qualifying Census tracts. As described below, the two programs include: 1) purchase assistance loan program; 2) acquisition/ rehabilitation of foreclosed upon or abandoned homes to sell, rent, or redevelop.

As indicated, the Census tracts vary in terms of incomes, ethnic composition, housing values, and other socio-economic factors. Moreover, housing conditions can change significantly block by block and street by street even within a single neighborhood. Thus, some target geographies and neighborhoods may be better served by providing financial assistance to purchase foreclosed homes. Conversely, other areas may benefit from a more comprehensive program that will acquire and rehabilitate neglected, foreclosed properties in order to remove blight conditions as well as to reoccupy the home through rent or re-sale to income-eligible households.

Basic NSP2 Requirements

The NSP2 program carries the same strict requirements as with NSP1, which limits the Consortium's flexibility in developing programs. The NSP1 & 2 requirements are:

1. Households served cannot have incomes that exceed 120% of Area Median Income
2. At least 25% of the funds must be earmarked for households with incomes at or below 50% of Area Median Income.
3. All properties purchased with NSP funds must be foreclosed-upon homes or residential properties, or those that have been abandoned for at least 90 days.
4. All properties purchased with NSP funds must be acquired at a 1% discount below the current appraised market value.
5. Fifty percent of NSP2 funds must be expended within 12 months of the award or February 11, 2012.
6. All NSP2 funds must be expended no later than February 11, 2013.
7. All program income generated under each program is to be expended prior to any original NSP2 funds.

Use of Funds

The Consortium will utilize the funds and undertake the NSP2 eligible activities outlined below. Funds will be allocated to target areas with the highest foreclosure impact and to households earning less than 120% of Area Median Income. Pursuant to NSP2 regulations, 25% of the funding will be targeted for the benefit of very-low income households earning less than 50% of the Area Median Income (VLI).

To augment other existing programs such as NSP1, HTSCC's Equity Share Co-Investment Program, the City's Homebuyer and Rehabilitation Programs, and NHSSV's Homebuyer Counseling and Education Program, the Consortium will implement the following eligible activities.

NSP Eligible Uses	Amount in Dollars	Responsible Entity
(A) Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties	$5,000,000	The Housing Trust of Santa Clara County
(B) Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon in order to sell, rent or redevelop such homes and properties	$18,000,000	The City of San Jose, The Housing Trust of Santa Clara County
Administration	$2,000,000	
TOTAL	**$25,000,000**	

(A) Program #1: Purchase Assistance Loan Program (PAL)
Under the eligible activity (A) Establish Financing Mechanisms, the Consortium plans to allocate up to $5,000,000 to HTSCC to assist a minimum of 100 eligible homebuyers purchase affordable homes by providing down-payment and/or closing cost assistance.

As administrator of the Purchase Assistance Loan, HTSCC will award homeownership assistance loans of up to $50,000 to income eligible homebuyers purchasing foreclosed homes in the proposed target geographies, on an over-the-counter basis. The eligible uses will include, downpayment assistance not to exceed 50% of the required down payment, closing costs and minor repair of foreclosed homes to facilitate the acquisition. The PAL will be secured by a 15 year promissory note secured by a deed of trust. NHSSV, a HUD-certified housing counseling agency will provide mandatory homebuyer counseling to prospective homebuyers.

(B) Program #2: Acquisition and Rehabilitation Programs
Under the Purchase and Rehabilitate Foreclosed Homes and Residential Properties Program, the Consortium will allocate $17,984,610 to the City to implement an Acquisition and Rehabilitation Program. HTSCC will coordinate and select the developers who acquire and rehabilitate foreclosed properties. The City of San Jose, Housing Department will implement this program to assist a minimum of 105 residential housing units by implementing the strategies as summarized below.

Acquisition and Rehabilitation Programs

Proposed Activity	Income Level	Expenditure	Homes/Residential Property
(B)Acquisition & Rehabilitation: Strategies 1 and 2: Homebuyer	Up to 120% AMI	Up to $11,750,000	64
(B)Acquisition & Rehabilitation: Strategy 3: Nonprofits	<50% AMI	$6,234,610	41
TOTAL		$17,984,610	105

Within this Program, there are three potential strategies for targeting these funds:

Strategy #1: This strategy is designed to expand the NSP1 - Single-Family Acquisition/ Rehabilitation and Re-Sale Program administered by the Housing Department. The City will implement and coordinate the acquisition and rehabilitation activities of foreclosed homes in the target geographies performed by the selected developer. Following acquisition, the City will rehabilitate the homes to mitigate any damage to deferred maintenance or vandalism. Energy saving green technology will be incorporated whenever practicable and utilizing the Build-It-Green system. The homes will then be sold to income-qualified households at or below the City's cost of acquisition and rehabilitation.

The Consortium plans to allocate up to $11,750,000 to this strategy. Homebuyers under this strategy will be required to successfully complete a minimum of 8 hours of homebuyer counseling as offered NHSSV and occupy the assisted home as their primary residence.

Strategy #2: The Consortium will consider the purchase of properties in a foreclosed, pre-eviction status with the intent to re-sell to previous homeowner owners, or rented to the existing low- and moderate-income tenants. This strategy will enable families to re-purchase their home following foreclosure by the lender. Under this strategy, a HTSCC approved developer will purchase a foreclosed property at no less than the required discount of 1% below appraised value and sell it back to the income-eligible former owner who continues to occupy the property as their primary residence, under an Option to Purchase Agreement.

NHSSV will conduct initial screening through their current HUD Foreclosure Counseling Program. NHSSV believes that there are a substantial number of former owners in the target geography still occupying the home following foreclosure by the lender. HTSCC will provide assistance to the City with strategy implementation. This program will maintain home affordability and prevent homelessness, and is in alignment with the efforts of the ForeclosureHelp and Destination:Home Initiatives.

Strategy #3: To meet the income targeting requirements of NSP 2, the Consortium will allocate 25% of the total request, or $6,250,000, for loans to eligible developers for the acquisition and rehabilitation of foreclosed properties to create affordable, permanent rental housing or for-sale housing to individuals and families below 50% AMI. HTSCC will coordinate and select eligible developers who will be pre-approved to participate in the program. The Consortium will award $6,234,610 of these funds to the City of San Jose to implement this strategy. City staff will underwrite and award the funds to selected developers. Housing Department staff will also oversee the rehabilitation of the properties.

The Consortium may adjust the allocation of funds among the proposed activities to ensure that all funds are expended within NSP 2 guidelines. The 25% minimum allocated for Very-Low Income activities will be maintained as required under NSP2 regulations.

Combined, the NSP2 eligible activities will provide assistance to 205 eligible properties, promote neighborhood stabilization and provide economic benefit to the impacted communities.

Time of Performance

NSP2 funding is subject to strict statutory deadlines for expenditure. At least 50 percent ($12,500,000) of allocated funds must be expended within two years beginning February 11, 2010 and 100 percent ($25,000,000) by February 11, 2013. Under the Consortium Funding Agreement, services provided by the City shall start on February 11, 2010 and end on February

11, 2013. The City shall expend no less than $9,500,000 (including 50% of Administration cost) by February 11, 2012, and the balance of funds by February 11, 2013. The Agreement and the provisions will cover the time period during which the City remains in control of NSP2 funds or other NSP2 assets, including program income (net proceeds from the resale of an NSP2 assisted home), but the deadline for expenditure of allocated funds is absolute. Program income revolves back into the NSP2 program to fund additional NSP2 eligible activities, including 10% for program administration. Funds not expended may be recaptured by HUD and reallocated to performing jurisdictions.

Administration and Program Staff Cost

The Housing Department will be receiving a total of $2,567,437 in funding to support administration and direct program staffing and overhead costs for the implementation of the NSP2 program. This funding will be distributed over four fiscal years with the following approximate distributions:

Fiscal Year	Administration	Program	Total Staff Cost
FY 2009-10 (1 quarter)	$90,532	$72,276	$162,808
FY 2010-11	$362,131	$489,065	$851,196
FY 2011-12	$372,996	$503,736	$876,732
FY 2012-13 (3 quarters)	$287,895	$388,806	$676,701
TOTAL	**$1,113,554**	**$1,453,883**	**$2,567,437**

The staffing costs for NSP2 are made up of two components. The first component is staffing costs related to overall administration of the program. Up to 10% ($2,500,000) of the awarded funds may be used to administer the program. Under the proposal, and in an effort to maximize the number of assisted units, the Consortium has agreed to utilize a maximum of $2,000,000 of the award for administrative purposes. The City staffing cost to administer the program is estimated at $1,113,554 over the four fiscal years, which includes program oversight monitoring compliance, internal auditing, and reporting to the federal government. Additionally, the City agrees to provide an amount not less than $500,000 of in-kind services including: $250,000 in program design and administrative oversight and supplies/materials; and $250,000 in homebuyer education and counseling as required under NSP2 through a contractual agreement with NHSSV. Part of the homebuyer education obligation was met as a result of funding that was allocated and approved in the Low and Moderate Income Housing Fund as part of the 2009-2010 Mid-Year Budget Review. NHSSV will provide 8 hours of homebuyer education and counseling to prospective buyers of NSP2 assisted units and maintain an active pool of eligible homebuyers to facilitate the rapid re-sale of the single family housing units.

The second component of staffing costs funded by the program is for program implementation. It is estimated that $1,453,883 over the term of the grant will be used to support staff working directly on program implementation. Staff will perform project management and oversight of

projects including housing inspections, construction management, loan underwriting, environmental reviews, and other support services.

Accountability and Transparency

The Recovery Act calls for an unprecedented level of accountability and transparency in the use of Recovery Act funding. Staff has set up internal control systems to ensure compliance with these requirements and financial controls to ensure separate accounting and prevent co-mingling of Recovery Act funding.

EVALUATION AND FOLLOW-UP

Program performance will be reported to the City 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.

As part of this memorandum, $1,000,000 of grant funding is recommended to be recognized and appropriated for the Neighborhood Stabilization Program 2. Based on the estimated timing of program expenditures and subsequent reimbursements, future appropriation actions will be brought forward for Council approval as part of the proposed budget process in the respective fiscal years as follows:

Fiscal Year	Amount
2009-2010	$1,000,000
2010-2011	$8,000,000
2011-2012	$7,000,000
2012-2013	$3,139,324
Total	**$19,139,324**

POLICY ALTERNATIVES

Alternative #1: Allow HTSCC to take on a greater role in the administration and implementation of NSP2.
Pros: The City would have a lesser role and would not add to staff workload.
Cons: The original application for funding envisioned a major role for the City in implementation of these federal dollars, and our participation to a large extent, strengthened the

application and resulted in the positive outcome. Implementation of the Program will result in increased revenue to the City and allow for the retention of existing staff.
Reason for not recommending: Housing staff has extensive experience and knowledge in implementing housing rehabilitation programs and the administration of federal programs, which will result in greater efficiencies and immediate program implementation. This will allow for a rapid response to neighborhood stabilization, mitigate the risk of blight in San Jose neighborhoods, increase the City's supply of affordable housing, and provide valuable assistance to first time homebuyers.

PUBLIC OUTREACH/INTEREST

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

☑ **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 1: Requires Council action on the use of public funds equal to $1 million or greater and 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 April 6, 2010 Council agenda.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

This expenditure is consistent with the most recent Council-adopted Five Year Housing Investment Plan for 2007-2008 through 2011-2012, which sets forth a goal of constructing 2,250 affordable rental units and providing at least 553 new low- and moderate-income homebuyers with down payment assistance during the five-year period. Utilization of this new, temporary funding source is also in alignment with the strategy of aggressively seeking funds from local, State, and federal sources as described in the 2009-2010 Consolidated Annual Action Plan.

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: $19,139,324

2. COST ELEMENTS OF CONSORTIUM FUNDING AGREEMENT:

Purchase Assistance Loan Program	$41,160
Acquisition/Rehabilitation – Up to 120% AMI	$11,750,000
Acquisition/Rehabilitation -Minimum 25% VLI Set-Aside	$6,234,610
Administration	$1,113,554
Total Costs	**$19,139,324**

3. SOURCE OF FUNDING: Fund 448 - Multi-Source Housing Fund

4. FISCAL IMPACT: No ongoing fiscal impact.

BUDGET REFERENCE

Not applicable.

CEQA

Not a project.

LESLYE KRUTKO
Director, Housing Department

JENNIFER A. MAGUIRE
Budget Director

I hereby certify that there will be available for appropriation in the Multi-Source Housing Fund in the Fiscal Year 2009-2010 moneys in excess of those heretofore appropriated therefrom, said excess being at least $1,000,000.

JENNIFER A. MAGUIRE
Budget Director

For more information, call LESLYE KRUTKO, DIRECTOR OF HOUSING, at (408) 535-3851.

Attachment 1
Qualifying Target Geographies – City of San Jose

Census Tract	City	Zip Code	Planning Area
5009.02	San Jose	95112	Central
5011	San Jose	95112	Central
5024	San Jose	95125	Willow Glen
5025	San Jose	95125	Willow Glen
5031.03	San Jose	95112	South
5031.06	San Jose	95122	South
5031.11	San Jose	95122	South
5032.04	San Jose	95111	South
5032.17	San Jose	95111	South
5033.04	San Jose	95121	Evergreen
5033.05	San Jose	95122	Evergreen
5033.17	San Jose	95121	Evergreen
5033.19	San Jose	95135	Evergreen
5033.2	San Jose	95135	Evergreen
5033.28	San Jose	95138	Evergreen
5034.01	San Jose	95122	Alum Rock
5035.04	San Jose	95122	Alum Rock
5035.08	San Jose	95127	Alum Rock
5035.1	San Jose	95127	Alum Rock
5037.02	San Jose	95116	Alum Rock
5037.06	San Jose	95116	Alum Rock
5037.07	San Jose	95116	Alum Rock
5039	San Jose	95127	Alum Rock
5040.02	San Jose	95116	Alum Rock
5041.02	San Jose	95127	Alum Rock
5043.1	San Jose	95131	Berryessa
5043.18	San Jose	95112	Berryessa
5120.01	San Jose	95138	Edenvale
5120.02	San Jose	95138	Edenvale
5120.16	San Jose	95123	Edenvale
5120.17	San Jose	95111	Edenvale
5120.21	San Jose	95136	Edenvale
5120.23	San Jose	95123	Edenvale
5120.29	San Jose	95123	Edenvale
5123.04	San Jose/ Morgan Hill	95037	Coyote