

CITY OF SAN BERNARDINO
ECONOMIC DEVELOPMENT AGENCY

FROM: Emil A. Marzullo
Interim Executive Director

SUBJECT: **Mary Erickson Community Housing, Inc. ("MECH") - Delegation and authorization for the implementation of the Neighborhood Stabilization Program ("NSP") and approval of a certain Master Agreement between the Agency and MECH**

DATE: July 16, 2009

Synopsis of Previous Commission/Council/Committee Action(s):

On June 4, 2009, Redevelopment Committee Members Johnson, Baxter and Brinker unanimously voted to recommend that the Mayor and Common Council and Community Development Commission consider this action for approval.

Recommended Motion(s):

(Mayor and Common Council)

A: Resolution of the Mayor and Common Council of the City of San Bernardino approving and authorizing the expenditure of certain Neighborhood Stabilization Program ("NSP") Funds pursuant to the Housing and Economic Recovery Act of 2008 ("HERA") in accordance with NSP Grant Number B-08-MN-06-0520 in the principal amount equal to \$8,408,558

(Community Development Commission)

B: Resolution of the Community Development Commission of the City of San Bernardino accepting the delegation of administration and management for the use of the City of San Bernardino Neighborhood Stabilization Program ("NSP") Funds in accordance with the Housing and Economic Recovery Act of 2008

C: Resolution of the Community Development Commission of the City of San Bernardino approving and authorizing the use of Low and Moderate Income Housing Funds and Neighborhood Stabilization Program ("NSP") Funds through a certain Master Agreement by and between the Redevelopment Agency of the City of San Bernardino ("Agency") and Mary Erickson Community Housing, Inc. ("MECH"), pursuant to the Neighborhood Stabilization Program

Contact Person(s): Carey K. Jenkins Phone: (909) 663-1044

Project Area(s): N/A Ward(s): 7th

Supporting Data Attached: Staff Report Resolution(s) Agreement(s)/Contract(s) Map(s) Letter(s)

Funding Requirements: Amount: \$ 4.7 Million Source: \$2.7 Million NSP Fund and \$2 Million Low and Moderate Income Housing Fund

Budget Authority: N/A

Signature: Emil A. Marzullo, Interim Executive Director Fiscal Review: Russ DeJesus

Interim Administrative Services Director

Commission/Council Notes:

ECONOMIC DEVELOPMENT AGENCY

STAFF REPORT

MARY ERICKSON COMMUNITY HOUSING, INC. (“MECH”) - DELEGATION AND AUTHORIZATION FOR THE IMPLEMENTATION OF THE NEIGHBORHOOD STABILIZATION PROGRAM (“NSP”) AND APPROVAL OF A CERTAIN MASTER AGREEMENT BETWEEN THE AGENCY AND MECH

BACKGROUND:

On November 17, 2008, the Mayor and Common Council of the City of San Bernardino (“Council”) approved the City of San Bernardino Economic Development Agency’s (“Agency”) response to the Neighborhood Stabilization Program (“NSP”). The Agency’s plan for deploying the NSP Funds was detailed in the Agency’s “Substantial Amendment to the Fiscal Year 2008–2009 Annual Action Plan”. As described in this Substantial Amendment, the Agency plans to allocate its NSP award of approximately \$8.4 million among four different housing programs. These four programs are:

- (1). Down Payment Assistance (\$920,000);
- (2). Housing Opportunities for Households at or below 50% of the Area Median Income (“AMI”) (\$2.1 million);
- (3). Acquisition, Demolition and Redevelopment (\$920,000); and
- (4). Acquisition, Rehabilitation and Resale of single-family residences, better known as the Intermediary Services Program (\$3.7 million).

The remainder of the funds shall be used to pay for NSP administrative costs. Of the four programs mentioned above, only the “Housing Opportunities for Households at or below 50% of the AMI” program (“Rehabilitation Program”) is reserved strictly for rental properties. The decision to restrict these funds to rental housing was made for both strategic and programmatic reasons. From the programmatic perspective, the U.S. Department of Housing and Urban Development (“HUD”) requires that at least 25% of a participating jurisdiction’s NSP grant be used to address the housing needs of individuals and households whose income is at or below 50% of the AMI. Given this restriction on the use of these funds, the Agency determined from a strategic perspective that it would be best to use these funds for rental housing rather than for homeownership units.

Rental is a better option for this category of funds because households earning 50% or below of the AMI would more than likely struggle to adequately maintain a home for which they would be financially responsible for maintenance and upkeep given the current depressed housing market. In order to make the home ownership option viable for these types of households, the Agency would have to provide an exorbitant amount of subsidy. Therefore, Agency Staff determined that these funds could optimally be used to acquire and rehabilitate existing multi-family properties that could be rented out by professional management to households whose income does not exceed 50% of the AMI. This enables the Agency to provide affordable housing opportunities using NSP funding for this segment of the population.

In addition, Agency Staff recommends the use of funds from the “Acquisition, Demolition and Redevelopment” program (“Demolition Program”) mentioned above, to acquire foreclosed, small, multi-family properties that are beyond repair. In these cases, and unless said properties were already subjected to a

demolition only through the Code Enforcement Department, the Agency would opt to demolish the structures and hold them for future housing redevelopment opportunities rather than rehabilitating the properties.

Agency Staff has determined the best method for acquiring, demolishing or rehabilitating and operating these properties would be through a non-profit corporation that could perform all of these functions on the Agency's behalf. A non-profit corporation can acquire properties more efficiently than the Agency due to its more streamlined organizational structure versus that of a public agency. Also, by having the non-profit corporation acquire the properties on behalf of the Agency, the liability to the Agency is reduced because it would not be the legal owner of the properties. There are many housing non-profits in the community that have greater capacity than the Agency for rehabilitating and professionally managing properties. Finally, the Agency is in the final stages of establishing an Agency-sponsored non-profit organization that could be the title holder to certain properties acquired under the NSP, including those properties that are demolished. Given all of these advantages, Agency Staff recommends having a non-profit corporation acquire, demolish or rehabilitate and manage the properties under consideration.

Through the Agency's 2008 Notice of Funding Availability ("NOFA") the Agency identified a non-profit, Mary Erickson Community Housing, Inc. ("MECH"), to perform the acquisition, rehabilitation and management function for households at or below 50% of AMI. Since then, Agency Staff have visited and inspected several of MECH's existing multi-family rental projects. Also, Agency Staff has reviewed MECH's organizational structure and financial statements. Based on the due diligence performed by Agency Staff, it was determined that MECH is capable of efficiently and effectively acquiring, rehabilitating and managing multi-family rental properties on behalf of the Agency.

Also, Agency Staff has decided to utilize the National Community Stabilization Trust ("NCST") in identifying the multi-family properties to be acquired under the Rehabilitation Program and the Demolition Program. NCST is a national non-profit clearing house created for the purpose of assisting public agencies to acquire foreclosed, residential properties on a wholesale basis from the larger banks. NCST will be responsible for identifying foreclosed properties that are owned by banks within the City and managing the acquisition process for those properties. NCST will not charge any fee to the Agency for its services.

CURRENT ISSUE:

As a matter of implementing the Rehabilitation Program as described above, the Agency requests the authority to enter into a Master Agreement ("Agreement") with MECH. The Agreement would give MECH the ability to acquire foreclosed, multi-family rental properties on behalf of the Agency and rehabilitate them, as determined by Agency Staff. The Agreement would also dictate the terms and guidelines for the operation of the acquired and rehabilitated multi-family properties. Following is a summary of some of the more important conditions that would be imposed on MECH for the acquisition of these properties:

- (1). Each acquisition is subject to the administrative oversight by the Agency.
- (2). Properties acquired must be within those census tract blocks within the City identified by the Agency as being the most impacted by the foreclosure crisis, otherwise known as the "NSP Target Zone".
- (3). Properties acquired with NSP funding must be foreclosed and/or abandoned for at least 90 days.

- (4). Properties must be obtained at a minimum discount of five percent from the current appraisal value and in the aggregate all NSP acquired properties must be acquired at a minimum discount of 15% from the appraised value.
- (5). All properties acquired for the purpose of rehabilitation must eventually be leased out to households whose total income is at or below 50% of the AMI.

Given the urgency of community conditions, the opportune availability of funds and current real estate market prices, there is now a perfect window of time in which to mitigate the negative housing conditions currently affecting neighborhoods throughout the City.

Organization Overview:

The overall mission of MECH is to promote the well-being of working families in Southern California by increasing and preserving the supply of affordable housing. Established as a 501(c)(3) non-profit organization, MECH is designated as a Community Housing Development Organization (“CHDO”) currently serving Orange County and parts of Riverside, Los Angeles and San Bernardino Counties.

MECH was founded in 1991 by its namesake, a retired school teacher who was devoted to the principals of community participation and well-being. MECH established the first affordable housing complex in San Clemente and has since grown to include multiple properties serving hundreds of working poor families within Southern California. Specific affordable multi-family housing developments include:

- (1). Acquisition and rehabilitation of a 24-unit multi-family property targeted to households at or below 50% of AMI located at 25421 Cole Street in Loma Linda, CA with the property currently managed by Capstone.
- (2). Acquisition, rehabilitation and resale of a total of 17 single family homes targeted to home owners above 80% of AMI for the County of Los Angeles.
- (3). Acquisition and rehabilitation of 22 units of scattered site multi-family housing targeted to households at or below 50% of AMI in the City of San Clemente, CA with the property currently managed by Del Mar PMC.
- (4). New construction of 22 units of multi-family housing targeted to households at or below 50% of AMI in the County of Riverside. This project is under construction.
- (5). Acquisition, rehabilitation and resale of a total of 10 single family homes targeted to home owners above 80% of AMI for the City of Corona Neighborhood Stabilization Program. This program was recently launched.

The overall goal of MECH is to provide quality affordable housing for working families, promote the economic self-sufficiency of their tenants through free Life Skills classes, transition tenants into homebuyers, help transition residents’ children into successful, productive adults and develop community support for affordable housing. Since 2006, the Officers of the Board of Directors for MECH include Susan McDevitt, Executive Director; Josh Anderson, President; Kathleen K. Loewy, Vice President; John Gould, Secretary; Gerald Gibbs, Treasurer; and Jeanne Davis, Director at Large.

Project Overview:

The primary Project under this Master Agreement consists of the acquisition and rehabilitation of the 25 separate 4-plex apartment complexes. The acquisition and ultimate rehabilitation of these four-plexes comprises the first phase ("Phase 1") of the Project.

Based on the terms and conditions of the Agreement, it will be the intent of MECH to acquire title to each of the 4-plexes through its own efforts either through direct negotiations with the current owners or through negotiations with lenders for the purchase of the targeted properties. Acquisitions will be funded with a combination of NSP funds in the amount of \$2.1 million, Agency Housing 20% Set aside funds in the amount of \$1 million and other available funds to be procured by MECH for the balance of the Project. Please refer to Exhibit "B" that identifies the Preliminary Project Budget.

MECH will also be given the authority to negotiate for the other 4-plexes and vacant lots located in the area generally bounded by 19th Street to the north, Sunrise Lane to the south, Guthrie to the east and Argyle to the west. In this case, however, the purchase agreements and escrow documents for these 4-plexes and vacant lots will then be assigned to the Agency or its designated non-profit corporation, as assignee, to then close each of these escrows. This component of the Project is considered Phase 2 ("Phase 2") and is also identified in Exhibit "A" of the attached map.

In order to provide safeguards to ensure that the Project will be developed as envisioned by the Agency, after the acquisition of each 4-plex within the Project, MECH will not resell any of the acquired properties without prior written approval of the Agency. Additionally, once MECH acquires a minimum of five (5) separate 4-plexes on 19th Street and five (5) separate 4-plexes on Sunrise Lane, it will initiate a process with the City to prepare and file an application for a new parcel map for these properties by creating one legal parcel for 19th Street and one legal parcel for Sunrise Lane for all 4-plexes then owned by MECH. Any subsequently acquired 4-plexes will be amended into the applicable parcel map on 19th Street or Sunrise Lane so that separate 4-plexes or units within each 4-plex cannot be resold by MECH except to another single property owner.

Though it will not directly acquire any of the properties identified as Phase 2 of the Project, MECH will be given the right of first opportunity to undertake all or any portion of the redevelopment of this area which is presently targeted for a senior citizens apartment complex and a single family owner occupied housing development. Both of these conceptual proposals will be targeted to low and moderate income households. After an adequate number of parcels have been acquired under Phase 2, the Agency will allow MECH to submit a proposal for the development of the parcels under consideration which will be reviewed by the Agency and negotiated in good faith by both parties.

In all instances, MECH will identify Eligible Properties and will negotiate purchase and sale agreements to be approved by the Agency sponsored non-profit corporation that provide for a discount in purchase price from the Current Market Appraised Value of no less than five percent (5%) for any individual property, but a blended aggregate average discount of at least fifteen percent (15%). No property will be purchased at a price that reflects a discount of not less than the required discount unless MECH obtains written approval from the Agency Staff as the administrator of the program.

For those properties recommended for demolition, the Agency sponsored non-profit corporation will acquire them and select the appropriate demolition firm to conduct such work from no less than four (4) separate

solicitations for service or it may utilize the existing pre-approved list of demolition firms presently used by the City's Code Enforcement Department. This process will be overseen by the Agency and will include provisions for environmental testing and demolition debris removal services.

Rehabilitation Process:

Once acquired, MECH will ensure that specific activities, goals and milestones are met with respect to the overall rehabilitation process. Specifically, this will include the following:

- (1). Secure the property including a locked perimeter fencing and board up of windows, when necessary.
- (2). Adequate property management including maintaining utility service connections and keeping the interior and exterior appearance of each property in an attractive manner;
- (3). Provide a total development budget and financing plan to the Agency for each property being purchased. The budget estimate will include all costs associated with the development of the property, including acquisition, labor and materials for rehabilitation work, contingency, construction loan interest, construction loan origination fee, the general contractor fee and overhead, marketing costs, relocation, lease-up costs, replacement reserves, permanent financing origination fee, closing costs and developer fee. The financing plan will demonstrate all sources of funds readily available for the acquisition and rehabilitation of each property to be purchased.
- (4). Provide a timeline in the Agency's format for completion of the various steps involved in the acquisition, rehabilitation and lease-up of these properties. The timeline will start from the point that MECH enters into escrow for the acquisition of each specific property through the stabilization of operations.
- (5). Provide project management services for rehabilitation of projects, to include but not be limited to: establishing a scope of work, identifying or obtaining the financing to pay for all labor and materials, conducting weekly on-site project inspections, managing relationships with all sub-contractors, verifying permits and City compliance, administering both conditional and unconditional lien releases, advertising the apartments for rental through various local media, conducting mass mailings targeted at potential renters, partnering with local churches and other community groups to identify prospective Qualified Tenants, processing the rental application, coordinating quick close of escrow and expediting lender requirements.
- (6). Maintain adequate files for each property, ensuring compliance with all Agency and lender requirements, all documents required to verify compliance with the Affirmative Marketing Guidelines such as tenant waiting lists, copies of advertisements published in local and community newspapers, etc.

Regular Reporting Requirements:

MECH will commit to an Agency-approved program to provide periodic monitoring of compliance of each property being purchased under the Program. Additionally, within 30 days after the end of each calendar quarter, MECH will provide a status report to the Agency Staff, City Council and the CDC regarding the activities of MECH and progress made on overall NSP objectives. The report will detail, among other things: (1) funds expended to date; (2) progress made on acquisition activities; (3) any relocation that has occurred; (4) properties placed back into service; (5) properties in the process of being rehabilitated; and (6) any unforeseen issues of a material nature.

Defaults and Remedies:

For the occurrence of any identified Event of Default by MECH, the City or the Agency, as an agent of the City, can take any of the following remedies: (1) demand that the Event of Default be cured (if curable) within 30 calendar days; (2) declare that any unused amount of NSP or other Agency funds be immediately repaid to the City or Agency; (3) take any and all actions permitted by law that is necessary to enforce performance and observance of any obligation, agreement or covenant of MECH under the Agreement or any other related agreements; (4) suspend allowing MECH access to any NSP or Agency funds unless the Event of Default (if curable) is cured; (5) demand reimbursement from MECH for any payments made to it by the City or Agency for which the contracted work product was not satisfactorily delivered; and (6) take possession of any material or other work product purchased or produced by MECH for the Project.

Termination:

The Agreement may be terminated by either party for any reason by giving the other party ninety (90) calendar days' prior written notice. The Agency will pay MECH for all work authorized by the Agency and completed, prior to the effective termination date. In the event of a termination of the Agreement because of performance, MECH will provide all documents, notes, maps, reports, data or other work product developed in performance of the Scope of Services to the Agency, within ten (10) calendar days after the effective date of the termination and without additional charge to the Agency.

Compensation:

Compensation for services rendered will be derived from three separate activities which include a Developer's Fee, Property Management Fee and Residual Receipts Income from the operating cash flows from the various Eligible Properties that comprise the Project once they are completed, leased and have reached "financial stability".

- (1). The Developer's Fee will be included as a line item in the development budget for each property presented to the Agency prior to its acquisition. The amount of Developer Fee will be equal to a flat fee based on the Total Development Cost for each property as reflected in the Agency established Development Pro Forma Template. The total development cost will be comprised of those approved line items that appear in the Development Pro Forma Template. A Developer Fee Bonus equal to an additional two percent (2%) that will be paid if MECH is successful in obtaining a cumulative amount of at least one million dollars (\$1,000,000) from financing sources other than the Agency that is applied toward the acquisition, rehabilitation, and/or operations of the properties on terms approved by the Agency Staff in the exercise of their discretion.
- (2). The Property Management Fee will be included as a line item in the First Year Operating Budget for each property presented to the Agency Staff by MECH prior to its acquisition and rehabilitation. This fee will only be paid in the case where such a property is leased to eligible tenants and where there is adequate revenues generated from the operation of the property to pay such a fee. This fee shall not exceed seven percent (7%) of the Effective Gross Income.
- (3). The Agency shall receive 50% of any "surplus cash flow" after all operating expenses and debt service payments have been made on each property acquired, rehabilitated and placed into service by MECH. This surplus cash flow is commonly called Residual Receipts Income ("Residual Receipts"). The remaining portion of Residual Receipts will be available to MECH as the owner of the property.

Budget Request:

For activities associated with Phase 1 of the Project, the Agency Staff requests authority to utilize NSP funds derived from the Housing Opportunities for Households at or below 50% of the AMI in the amount of \$2.1 million. In addition, the Agency Staff also requests that an additional \$1 million Tax Increment Housing Set-Aside Funds be made available for Phase 1 activities. As it relates to Phase 2 activities, the Agency Staff requests authority for the Agency or its designated non-profit to use \$600,000 in NSP Demolition funds and \$1 million in Tax Increment Housing Set-Aside funds for acquisition and demolition purposes.

In those instances where a property needs to be acquired in order to complete the overall redevelopment strategy but said property has not been foreclosed upon, and thus not eligible under NSP, Tax Increment Housing Set-Aside Funds can be used for acquisition, demolition or rehabilitation purposes. This is applicable to both Phases 1 and 2.

ENVIRONMENTAL IMPACT:

None.

FISCAL IMPACT:

There will be no fiscal impact to the City's General Fund. The services provided under the Rehabilitation Program, the Demolition Program and the associated administration costs, will be funded either with \$2.7 Million in NSP funds derived from HUD or \$2 Million funds from the Agency's Tax Increment Housing Set-Aside. As it relates to the \$2 Million of Agency Housing set-aside, these funds are being allocated to assist with NSP activities in the form of the Agency's Residential Revitalization line item in the upcoming Fiscal Year 2009-2010 Agency Budget.

RECOMMENDATION:

That the Mayor and Common Council and Community Development Commission adopt the attached Resolutions.

Emil A. Marzullo, Interim Executive Director