



MEETING DATE: 5/21/07

ITEM NO:

9

COUNCIL AGENDA REPORT

DATE: May 16, 2007

TO: CHAIR AND MEMBERS OF THE REDEVELOPMENT AGENCY

FROM: EXECUTIVE DIRECTOR

SUBJECT: CONSIDER ADOPTING A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN AMENDMENT TO AN AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND THE HOUSING TRUST OF SANTA CLARA COUNTY PROVIDING A TIME EXTENSION FOR EXPENDITURE OF PRIOR CONTRIBUTIONS TO THE HOUSING TRUST OF SANTA CLARA COUNTY.

RECOMMENDATION:

Adopt the attached resolution (Attachment 1): authorizing the Executive Director to execute an amendment to an agreement between the Redevelopment Agency (RDA) and the Housing Trust of Santa Clara County (HTSCC) authorizing a time extension for the use and expenditure of prior affordable housing contributions to the HTSCC.

BACKGROUND:

The HTSCC is a public/private partnership dedicated to building and sustaining a revolving loan fund and grant making program that will complement and leverage other housing resources throughout Silicon Valley. Major community, business and government leaders have joined together to address the gap between rapid new job creation and affordable, available housing within Santa Clara County.

The Housing Trust Fund serves three purposes on an equal basis:

- Low interest down payment/closing costs for first time home buyers
- Gap financing for affordable rental housing projects
- Funds to assist the homeless in attaining stable housing

At its meeting of March 19, 2001, the Agency Board adopted a resolution authorizing the Executive Director to execute an agreement with the HTSCC providing for a \$250,000 contribution of Redevelopment Affordable Housing Funds to the HTSCC. The agreement

PREPARED BY: BUD N. LORTZ
Director of Community Development

Reviewed by: PS Assistant Town Manager AK Town Attorney
____ Clerk Administrator SC Finance ✓ Community Development

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between the Agency and the HTSCC required that the contribution be expended by April 2003. In 2003, the Agency Board extended the deadline for expenditure of the funds to April 2005.

At its meeting of June 20, 2005, the Agency Board adopted a resolution authorizing the Executive Director to execute new agreement that: 1) rescinded the prior Agreement with HTSCC; 2), extended the deadline for expenditure of the previously contributed funds to April 2007; and 3) authorized affordable housing contributions of \$100,000 per year for three years (\$300,000 total contribution) to the HTSCC for their Phase III Campaign.

The new agreement, RAG:05.001 (Attachment 2), required that funds not committed or expended by April 2007 be refunded to the Agency. There is an unexpended fund balance of approximately \$178,000 remaining for use by the HTSCC.

DISCUSSION:

The HTSCC has made diligent efforts to comply with the agreement but has been unable to expend the entire contribution on affordable housing projects per the terms of the agreement and has requested an amendment to the agreement (Attachment 3) to extend the time for expenditure or commitment of funds from the agreement to April 2009.

Staff believes that allowing an additional two years to initiate projects or commit funds from the prior committed funds is reasonable given the length of time it often takes to get affordable housing projects underway.

The HTSCC has been very successful in its efforts to provide affordable housing in Santa Clara County. Over 2000 families have been provided with quality affordable housing. The previous Agency contributions to the HTSCC will be spent to increase the supply of affordable housing and home ownership opportunities in the Town of Los Gatos.

An amendment to the current agreement will be prepared, authorizing additional time (two years) for the expenditure or commitment of prior affordable housing contributions to the HTSCC. The form of the amendment to the agreement will be reviewed and approved by the Town Attorney.

CONCLUSION:

Staff recommends that the Agency adopt the attached resolution authorizing the Executive Director to execute an amendment to an agreement between the RDA and the HTSCC authorizing a time extension for the expenditure or commitment of previously distributed funds.

ENVIRONMENTAL ASSESSMENT:

Is not a project defined under CEQA, and no further action is required.

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FISCAL IMPACT:

The unused portion of the \$250,000 contribution to the HTSCC (\$178,000) has already been disbursed to the HTSCC and no additional funding is requested. A two year time extension for the expenditure or commitment of the remaining funds is allowed under the terms of the proposed agreement.

Attachments:

1. Draft resolution authorizing the Executive Director to execute an amendment to agreement RAG:05.001 between the RDA and the HTSCC (4 pages)
2. Agreement RAG:05.001 between the Redevelopment Agency and the Housing Trust of Santa Clara County (6 pages)
3. Letter from the HTSCC, dated May 11, 2007

Distribution:

Cheryl Serna, Housing Trust of Santa Clara County, 1786 Technology Drive, San Jose, CA
95110

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RESOLUTION NO.

RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF THE TOWN OF LOS GATOS AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE AN AMENDMENT TO AN AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY AND THE HOUSING TRUST OF SANTA CLARA COUNTY (AGREEMENT RAG:05.001), PROVIDING A TIME EXTENSION FOR EXPENDITURE OF PRIOR CONTRIBUTIONS TO THE HOUSING TRUST OF SANTA CLARA COUNTY.

WHEREAS, on March 19, 2001 the Redevelopment Agency adopted Resolution No. 2001-2RD that authorized the Executive Director to execute an agreement with the Housing Trust of Santa Clara County (HTSCC) regarding a \$250,000 contribution to the Housing Trust Endowment Fund; and

WHEREAS, an agreement, RAG:01.002 (Agreement 1), was executed between the Redevelopment Agency and the HTSCC that contained a number of provisions regarding the use of the Agency's contribution including that funds be expended or committed within two years from the date of the agreement and that funds be used within the Central Los Gatos Redevelopment Project Area; and

WHEREAS, an amendment to Agreement 1 was approved by the Redevelopment Agency that: 1) extended until April 2005 the time period by which the Housing Trust must commit funds to affordable housing projects; 2) allowed funds to be committed to affordable housing projects at any location with the Town of Los Gatos Town limits; 3) required that the affordable housing remain available at affordable housing costs to persons and families of low or moderate income, or very low income households, as the case may be, for the longest feasible time, but not less than 55 years for rental units or 45 years for owner-occupied units, subject to California Health and Safety Code Section 33334.3(f)(1); and 4) unless an exemption applies pursuant to Labor Code Section 1720 et seq., require that the Housing Trust shall require the payment of prevailing wage on projects receiving funding utilizing the Agency's Housing Funds.

WHEREAS, on June 20, 2005, the Redevelopment Agency adopted Resolution No. 2005-9RD that authorized the Executive Director to execute a new agreement with the Housing Trust of Santa Clara County (HTSCC) that: 1) rescinded Agreement 1; 2) extended until April 2007 the time period by which the Housing Trust must commit funds from Agreement 1 to affordable housing projects; and 3); provided contributions to the HTSCC for their Phase III campaign.

WHEREAS, a second agreement, RAG:05.001 (Agreement 2), was executed between the Redevelopment Agency and the HTSCC pursuant to Resolution 2005-9RD; and

WHEREAS, the HTSCC has made diligent efforts to comply with the Agreement 2 but has been unable to expend the entire contribution on affordable housing projects in accordance with the terms of Agreement 2 and has requested an amendment to the agreement to extend the time for expenditure or commitment of funds to April 2009; and

WHEREAS, the Redevelopment Agency desires to allow additional time for the use of Agency funds and flexibility in the location of projects to the HTSCC in order for it to provide affordable housing in Los Gatos; and

WHEREAS, the provisions of the Redevelopment Law applicable to the establishment and use of proceeds from the Housing Fund (Health and Safety Code Sections 33334.2 and 33334.3) expressly contemplate and permit the use of proceeds from the Housing Fund outside the Project Area upon findings by the Town and the Agency that such use will be of benefit to the Project Area; and

WHEREAS, the provision of affordable housing within the Town of Los Gatos by the HTSCC will benefit the Project Area and serve major Implementation Plan goals and objectives by increasing the amount of housing available at affordable costs in the community; and

WHEREAS, the General Plan Housing Element includes policies and implementing strategies supporting this action; and

WHEREAS, this action is also supported by the Redevelopment Agency Five Year Implementation Plan FY2004/05 through FY2008/09 (Implementation Plan); and

WHEREAS, there is a need for affordable housing in the Town and within the Central Los Gatos Redevelopment Area; and

WHEREAS, the monies will be used to fund affordable housing projects within the Town; and

WHEREAS, by the staff report accompanying this Resolution and incorporated into this Resolution by the reference, the Agency has been provided with additional information upon which the findings and actions set forth in this Resolution are based; and

NOW, THEREFORE, BE IT RESOLVED THAT the Agency Board hereby find and determine that the above Recitals are true and correct and serve as the basis, in part, for the findings and actions of the Agency set forth below.

BE IT FURTHER RESOLVED that, based on information and analysis set forth in the above Recitals and contained in the Staff Report, the Agency hereby finds and determines that pursuant to Health and Safety Code Section 33334.2(g) that the use of moneys from the Housing Fund to fund the acquisition, construction and operation of affordable rental or ownership housing and loans to assist home ownership will be of benefit to the Project Area and the program of redevelopment pursuant to the Implementation Plan.

BE IT FURTHER RESOLVED that the Agency hereby authorizes the Executive Director to execute an amendment to Agreement 2 between the Redevelopment Agency and the HTSCC to: 1) extend until April 2009 the time period by which the HTSCC must commit the funds to affordable housing projects. The remaining terms of Agreement 2 shall remain in full force and effect.

PASSED AND ADOPTED at a regular meeting of the Town of Los Gatos Redevelopment Agency held on the 21st day of May, 2007 by the following vote:

REDEVELOPMENT AGENCY MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

CHAIR OF THE REDEVELOPMENT AGENCY
TOWN OF LOS GATOS, CALIFORNIA

ATTEST:

SECRETARY OF THE REDEVELOPMENT AGENCY
TOWN OF LOS GATOS, CALIFORNIA

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AGREEMENT BETWEEN HH
THE REDEVELOPMENT AGENCY OF THE TOWN OF LOS GATOS ORD
AND REC
THE HOUSING TRUST OF SANTA CLARA COUNTY REC

RESCINDING AGREEMENT RAG:01.002, PROVIDING A TIME EXTENSION FOR EXPENDITURE OF PRIOR CONTRIBUTIONS TO THE HOUSING TRUST OF SANTA CLARA COUNTY, AND PROVIDING CONTRIBUTIONS TO THE HOUSING TRUST OF SANTA CLARA COUNTY FOR THEIR PHASE III CAMPAIGN.

THIS AGREEMENT is made and entered into as of August 30, 2005, by and between THE REDEVELOPMENT AGENCY OF THE TOWN OF LOS GATOS ("Agency") and HOUSING TRUST OF SANTA CLARA COUNTY ("Trust"), a California corporation.

RECITALS

- A. The Trust is an investment pool fund in which private corporations and public agencies participate. It has been created by the Trust for the purpose of establishing a revolving loan fund and grant-making program to address the issue of affordable, available housing in Santa Clara County.
- B. Pursuant to the Community Redevelopment Law of the State of California, Section 33000 et seq. of the California Health and Safety Code (the "Redevelopment Law"), the Town Council of the Town of Los Gatos has approved and adopted an Implementation Plan for the Central Los Gatos Redevelopment Project ("Redevelopment Project").
- C. Pursuant to the Redevelopment Law, not less than 20% of the tax increment revenues allocated to the Agency that are derived from the Redevelopment Project must be set aside in the Agency's Low and Moderate Income Housing Fund (the "Agency's Housing Funds"), to be used to increase, improve or preserve affordable housing for persons and families of low and moderate income in the Town of Los Gatos.
- D. The Agency desires to increase, improve or preserve affordable housing for persons and families of low and moderate income in the Town of Los Gatos, by participating in the Trust, as specified in this agreement.
- E. The purpose of this Agreement is to rescind Agreement RAG:01.002, allow additional time for the use of the Agency's Housing Funds dispersed via Agreement RAG:01.002, and set forth the mutual agreement of the Agency and the Trust regarding the use of the Agency's Housing Funds for the Phase III Campaign.

In view of the above, the parties agree as follows:

SECTION 1 AUTHORITY AND STATUS OF TRUST

The Trust represents and warrants that the information contained in this Agreement is true and accurate to the best of its knowledge, and that it is a duly organized, validly, existing nonprofit corporation in good standing under the laws of its place of incorporation; that its signatory to this Agreement is authorized by resolution, bylaws or constitution of the non-profit corporation, currently, in full force and effect, to execute this Agreement on the Trust's behalf.

SECTION 2 DEPOSIT OF AGENCY'S FUNDS INTO THE HOUSING TRUST OF SANTA CLARA COUNTY FOR THE PHASE III CAMPAIGN

Agency agrees to deposit the sum of \$100,000 into the Trust for the Phase III Campaign within thirty days of the mutual execution and delivery of this agreement. An additional \$100,000 will be deposited by the Agency into the Trust in each of the next two (2) consecutive fiscal years within thirty days of the anniversary date of the first deposit.

SECTION 3 USE OF AGENCY'S HOUSING FUNDS BY TRUST

- 3.1 The Trust agrees that no fees will be charged to the Agency's Housing Fund's on deposit in the Trust for administrative or overhead costs, including but not limited to fund-raising expenses. The sole administrative expenses which may be charged to the Agency's Housing Fund's on deposit in the Trust shall be as set forth in section 6.
- 3.2 The Trust shall serve as the fiscal agent. Subject to this Section 3.2, the Agency's Housing Funds may be disbursed either as loan or grant funds. The initial disbursement of the Agency's Housing Funds from the Trust shall be used exclusively for one or more projects that meet all of the following criteria:
 - 3.2.1 Any such project must increase, improve, or preserve affordable housing at any location within the Town of Los Gatos Town limits.
 - 3.2.2 Such housing must be affordable to persons and families of low or moderate income, or very low income, or very low income households, as those terms are defined in Sections 50052.5, 50053, 50079.5, 50093 and 50105 of the California Health and Safety Code Sections, as applicable.
 - 3.2.3 The Trust shall use the Agency's Housing Funds to increase, improve or preserve affordable housing for homeless individuals and families, affordable rental housing and/or provide first-time home buyers assistance programs for persons and families of low and moderate income or very low income households, by methods of providing financial assistance that include, but are not limited to, the

methods set forth in California Health and Safety Code Section 33334.2 (e).

- 3.2.4 Any new or substantially rehabilitated housing that is developed, financed or assisted, in whole or in part, with the Agency's Housing Funds shall remain available at affordable housing costs to persons and families of low or moderate income, or very low income households, as the case may be, for the longest feasible time, but not less than (a) fifty-five (55) years for rental units, or (b) forty-five (45) years for owner-occupied units, subject to California Health and Safety Code Section 33334.3(f)(1). The Trust shall require the recording in the office of the County Recorder of covenants or restrictions implementing this Section 3.2.4 for each parcel or unit of real property subject to this Section 3.2.4, which covenants or restrictions shall run with the land and shall be enforceable, against the original owner and successor in interest, by the Agency or the Trust.
- 3.2.5 There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, national origin, ancestry, sex, or marital status in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of any such project, or any part thereof, nor shall any recipient of the Agency's Housing Funds, or any person claiming under or through such practice or practices of discrimination or segregation with reference to the selection, location, number use or occupancy of tenants, lessees, subtenants, sub-lessees, or vendees of any such project.
- 3.2.6 Subject to California law, the restrictions of this Section 3.2 shall apply only to the initial use of the Agency's Housing Funds by the Trust. After the initial use of the Agency's Housing Funds by the Trust, reinvestment of funds that are repaid to or otherwise recaptured by the Trust shall not be subject to this Section 3.2, but shall otherwise assist affordable housing projects through the Trust's Articles of Incorporation or Bylaws.
- 3.2.7 The Trust shall refund to the Agency any portion of the Agency's Housing Funds that have not been disbursed or contractually committed to be disbursed in accordance with this Section 3.2 by the date that is forty eight (48) months after the date of the Agency's deposit of the third \$100,000 installment to the Trust's Phase III Campaign.
- 3.2.8 The Trust shall refund to the Agency any portion of the Agency's Housing Funds that were dispersed via Agreement RAG:01.002 that have not been disbursed or contractually committed to be disbursed in accordance with this Section 3.2 by April 2007.
- 3.2.9 The Trust and Agency agree that unless an exemption applies pursuant to Labor Code Section 1720 et seq., the Trust shall require the payment of prevailing wage on projects receiving funding utilizing the Agency's Housing Funds.

- 3.3 All disbursements by the Trust shall be made with the advice and suggestion of the Trust Program Committee which has been formed by the Trust Board of Directors in accordance with the Trust's Articles of Incorporation or Bylaws. The Trust shall follow the recommendations regarding disbursement rendered by the Trust Program Committee unless to do so would be a violation of law, this Agreement, or the Trust's Articles of Incorporation or Bylaws.

SECTION 4 INVESTMENT OF THE FUNDS

The Trust shall hold, manage, invest and reinvest the Trust's funds in accordance with the "reasonably prudent person" standard.

SECTION 5 FINANCIAL REPORTS

- 5.1 The Trust shall establish and maintain, in accordance with generally accepted accounting principles, a complete record of all financial transactions related to the Trust's funds.
- 5.2 The Trust shall provide the Agency with quarterly reports which shall set forth in detail all financial transactions related to the Trust's funds. The Trust shall also provide the Agency with a copy of its audited report, prepared by independent certified public accountants.
- 5.3 The Trust shall provide the Agency with a written report on the initial expenditure of the Agency's Housing Funds, including, at a minimum, for each project assisted with Agency's Housing Fund assisted project(s); number of units; rent or sale price income restrictions; and terms of restrictions.

SECTION 6. ADMINISTRATIVE FEES

The Trust may charge an annual administrative fee equal to one percent (1%) of the Agency Funds contributed to the Trust in any fiscal year. Trust shall report the fees charged against the Trust in its quarterly and annual reports.

SECTION 7 NOTICES

Any communication or notice which either party is required to send to the other or which either party desires to send to the other, shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, to the respective parties addressed as follows:

Agency: Redevelopment Agency
 Town of Los Gatos
 PO Box 949
 Los Gatos, CA 95031

Foundation: Housing Trust of Santa Clara County
1786 Technology Drive
San Jose, CA 95110

Either party may change its address by sending notice of the new address to the other party pursuant to this section.

SECTION 8. COMPLIANCE WITH ALL LAWS

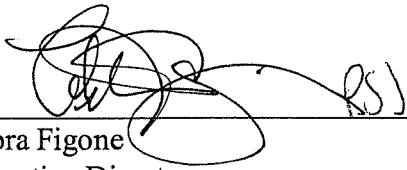
The Trust shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 9. MISCELLANEOUS PROVISIONS

- A. The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.
- B. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction.
- C. The waiver by any party to this Agreement of a breach of any provisions of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provisions of this Agreement.
- D. Any and all exhibits which are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement. This Agreement may only be amended by formal written agreement executed by both parties.
- E. If a court of competent jurisdiction adjudges any provisions of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect; provided that construction of the agreement without the invalid or unenforceable provisions does not deprive the parties of the benefit of their bargain.
- F. The Trust shall provide an accounting of how it intends to provide matching funds for all costs incurred pursuant to Section 3.2 of this Agreement. In addition, the Trust shall provide an accounting of how it intends to leverage on a 10:1 basis (ten times the Agency contribution) the funds provided by the Agency pursuant to Section 3.2 of this Agreement.

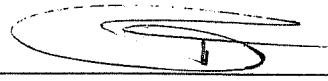
Where this agreement refers to Agency and no Officer of the Agency is named, the Agency Executive Director shall have the authority to act on the Agency's behalf.

THE REDEVELOPMENT AGENCY OF
THE TOWN OF LOS GATOS



Debra Figone
Executive Director

HOUSING TRUST OF SANTA CLARA
COUNTY




Taylor Dial
Executive Director

APPROVED AS TO FORM & LEGALITY



Orry Korb
Agency Attorney

ATTEST:



Marilyn J. Rasmussen
Secretary / Clerk Administrator
Town of Los Gatos

8/30/05

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investing in our community with vision, compassion and innovation

May 11, 2007

Mr. Joel Paulson
Associate Planner
Town of Los Gatos
110 East Main Street
Los Gatos, CA 95031

Dear Joel,

Please consider this a formal request from the Housing Trust of Santa Clara County, Inc. for an extension to the "Agreement between the Redevelopment Agency of the Town of Los Gatos and the Housing Trust of Santa Clara County Regarding a Contribution to the Santa Clara County Housing Trust Fund Endowment" dated April 24, 2001. This agreement originally expired on April 24, 2003, and has since been extended twice with a final expiration date of April 1, 2007. We would like to respectfully request another extension for 24 months or until April 1, 2009 under the same terms as noted in Resolution 2005 – 9rd. The current balance of the original funding \$250,000 is \$178,383.

Thank you for your time and consideration and please feel free to contact me if you have any questions or need any additional information.

Regards,

A handwritten signature in black ink, appearing to read "Cheryl Serna".

Cheryl Serna
Development Manager