



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Leslye Krutko

**SUBJECT:** SEE BELOW

**DATE:** October 26, 2010

Approved

Date

11/1/10

**SUBJECT: CONTRACT AWARDS FOR THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP) 2 SINGLE-FAMILY ACQUISITION, REHABILITATION, AND RESALE PROGRAM**

**COUNCIL DISTRICTS:** 2, 3, 4, 5, 6, 7, 8, 10

**SNI AREAS:** 13<sup>th</sup> Street, University, Washington, Greater Gardner, K. O. N. A., Mayfair, Tully Senter, Gateway East, West Evergreen, Spartan Keyes, East Valley/680 Communities, Edenvale/Great Oaks, Hoffman/Via Monte

## RECOMMENDATION

It is recommended that the City Council adopt a resolution:

1. Authorizing the Director of Housing to negotiate and execute contracts to implement the federally funded Neighborhood Stabilization Program 2 Single-Family Acquisition/Rehabilitation/Resale Program for up to (1) \$5,600,000 with the Cypress Group, and (2) \$5,600,000 with Community Rehabilitation Partners for a total of \$11,200,000.
2. Authorize the Director of Housing to negotiate and execute subsequent contract amendments with the Cypress Group and Community Rehabilitation Partners to include future program income received from the resale of NSP 2 homes.

## OUTCOME

Approval of this recommendation will enable the City of San Jose to utilize federal NSP2 funds to purchase, rehabilitate and resell vacant, foreclosed homes in the San Jose neighborhoods hardest hit by foreclosure. NSP properties will be resold to low and moderate-income homebuyers, effectively meeting the goals of the Neighborhood Stabilization Program by eliminating blight in targeted neighborhoods and preventing further decline in neighborhood appearance and property values. Additionally, program income generated from the resale of NSP2 properties will be reinvested in the NSP Single-family Acquisition, Rehabilitation and Resale program. Program Income is estimated to be up to \$7.5 million per year over the next

four years and will be included in the annual program budget. The contract will be executed immediately upon approval of these recommendations through February 11, 2013, subject to the appropriation of funds.

## **BACKGROUND**

Since 2007, the City of San Jose has experienced a significant increase in the number of homes in foreclosure. From January 1, 2008 to January 1, 2010, lenders issued 19,472 foreclosure filings in the City of San Jose resulting in over 7,200 foreclosures over a two year period. This is nearly five times the number of foreclosures over the previous two year period.

### **Housing and Economic Recovery Act of 2008 (HERA)**

On September 26, 2008, the U. S. Department of Housing and Urban Development (HUD) allocated a total of \$3.92 billion to a new Neighborhood Stabilization Program (NSP 1) under the Housing and Economic Recovery Act of 2008. HUD allocated grants to areas across the country containing high concentrations of foreclosures, subprime mortgages, and mortgage defaults. Grant recipients may use NSP funds to acquire and rehabilitate foreclosed homes to eliminate blight in local communities. HUD monitors program implementation to ensure compliance with fair housing and civil rights regulations.

### **San Jose NSP 1 Implementation**

On November 18, 2008, the City Council adopted a resolution authorizing the Director of Housing to accept federal Neighborhood Stabilization Funds (NSP1) in the amount of \$5,628,283 under the Housing and Economic Recovery Act of 2008. On March 11, 2009, HUD executed a grant agreement with the City for the NSP1 funds.

As of October 18, 2010, the City had purchased and rehabilitated 12 foreclosed single-family homes. With the purchase of the two fourplexes and the acquisition/rehabilitation of the 12 single-family homes, the City was able to meet HUD's NSP 1 funding commitment deadline. Sales of the NSP 1 homes will generate nearly \$1,300,000 in net proceeds that will be recycled and used to purchase additional foreclosed homes within the targeted neighborhoods.

### **American Recovery and Reinvestment Act of 2009 (ARRA)**

In May 2009, HUD issued a competitive Notice of Funding Availability (NOFA) for \$193 billion in Neighborhood Stabilization Program (NSP 2) funds under the American Recovery and Reinvestment Act of 2009. NSP2 program objectives and eligible uses are similar to NSP1 in that (1) households served may not have incomes that exceed 120% AMI, (2) at least 25% of NSP funds must be allocated to households with incomes at, or below, 50% of the AMI, (3) all properties purchased with NSP funds must meet the NSP2 definition of foreclosed<sup>1</sup>, (4) all properties purchased must be acquired at an aggregate one percent discount below current

<sup>1</sup> [http://hudnshelp.info/media/resources/NSP2\\_%20NoticeAbandonedForeclosed\\_FR-5321-N-04.pdf](http://hudnshelp.info/media/resources/NSP2_%20NoticeAbandonedForeclosed_FR-5321-N-04.pdf)

appraised market value, and (5) households receiving homebuyer assistance using NSP funds must complete eight hours of HUD-approved home ownership counseling.

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. 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.

On January 14, 2010, HUD announced that the San Jose Consortium had been awarded the \$25 million NSP2 grant. On April 10, 2010, the City Council approved the consortium funding agreement with HTSCC. Under the agreement, the \$25 million grant is appropriated into three activities:

1. Purchase Assistance Loan (PAL) – The HTSCC will assist 100 eligible homebuyers purchase foreclosed homes by providing mortgage, closing cost and related purchase assistance. *Program Budget - \$5,000,000*
2. (a) Single-family Acquisition, Rehabilitation and Resale Program – The City will purchase and rehabilitate a minimum of 64 foreclosed single-family residential properties within the designated 35 census tracts, and re-sell to income eligible homebuyers earning 120% or below the Area Median Income (\$124,200 for a family of 4). *Program Budget - \$11,750,000*  
  
(b) Acquisition and Rehabilitation Program (25% Set Aside) – The City will provide funding to development entities for the purchase and rehabilitation of 41 foreclosed units to provide affordable housing to very-low income households, those earning 50% of the Area Median Income (\$51,750 for a family of 4). *Program Budget - \$6,250,000*
3. Administration – NSP eligible activity to include management and oversight of Activity #1 and #2 above. Activities include program management, compliance and monitoring, financial management, and reporting. *Administration Budget - \$2,000,000*

### **NSP2 Single-Family Acquisition/Rehabilitation/Resale Program RFP**

On August 2, 2010, the Housing Department published a Request for Proposal seeking up to four development entities to assist the Housing Department in administering the Single-family Acquisition, Rehabilitation and Resale activity under the NSP2. The RFP also included opportunities for development entities to submit project proposals to meet the 25% set aside requirements under this activity. The RFP was posted on the BidSync website which was directly linked to the Housing Department's and HTSCC's website. On August 16<sup>th</sup>, the Housing

Department conducted a mandatory pre-submittal meeting to ensure all prospective respondents understood the requirements for submitting the RFP and for administering the federally funded program. The Housing Department accepted written questions submitted by August 23, 2010 and posted responses by August 30, 2010, including those asked at the Pre-Submittal Meeting. As a result, nine (9) development entities responded to and submitted proposals to the Single-family RFP by the September 10<sup>th</sup> deadline.

### ANALYSIS

The San Jose Consortium assembled an evaluation team, consisting of three Housing Department employees, two HTSCC employees, and one alternate from NHSSV, to evaluate all of the eligible proposals and to interview qualified respondents using the evaluation criteria contained in the RFP. After an initial review of all nine proposals, two were determined to be incomplete and subsequently disqualified. One proposal was received by a non-profit developer to administer the 25% set aside funding (activity 2b). After reconfirming the scheduled interview posted in the RFP with Housing staff, the non-profit development entity was later disqualified for missing their interview. The evaluation team reviewed and assessed written proposals from the six remaining entities based on the **Evaluation Criteria for Qualifications** contained in the RFP (see Attachment Two). As a result, the top four respondents were selected to be interviewed for the Single-family program. The four development entities were interviewed on September 23, 2010. The evaluation team asked each development team a series of questions based on the desired experience and skills required in the RFP. (See Attachment Three for the list of all nine respondents.)

### Recommended Entities

Based on the RFP evaluation process, the evaluation team recommends the City award contracts to the top two development entities (1) The Cypress Group and (2) Community Rehabilitation Partners. Because the only proposal to administer the 25% set aside program was disqualified, the single-family portion of the 25% set aside program will be included in a future Notice of Funding Availability (NOFA) and will result in a separate award.

*The Cypress Group* – The Cypress Group has developed and built projects ranging from single-family acquisition/rehabilitation to large scale developments. As a local development group, they have extensive experience working in San Jose and understand the City's complex development process. In addition to Cypress' development and project management experience, they have demonstrated a high level of real estate experience both purchasing and selling foreclosed properties in San Jose. Included in the Cypress partnership is the current president of the Santa Clara County Association of Realtors who is very active in the community and participates in foreclosure prevention activities.

*Community Rehabilitation Partners (CRP)* – CRP has demonstrated the ability to successfully implement the NSP1 Single-Family Acquisition, Rehabilitation, and Resale Program. With the highly competitive group of development entities competing for this NSP2 project, CRP needed to reconfirm their understanding and strategic approach for administering the NSP2 program. In addition to demonstrating their ability to provide quality homes, CRP articulated their strategy

for implementing the NSP2 program successfully and their ability to meet program and funding goals.

Both recommended entities are local businesses that utilize subcontractors that are predominately located in the City of San Jose. Their references demonstrate their ability to produce a quality product and provide exceptional customer service.

### NSP2 Contract

As stated in the RFP, the San Jose Consortium will negotiate the final compensation and provide a Best and Final offer to the development entities recommended by the evaluation team. As also stated, compensation would be based on 1) the most competitive and cost effective proposals 2) the overall Program budget and the ability to meet the Program goals 3) the ability of each Development Entity to meet established project performance goals.

A Best and Final Offer was made and accepted by both of the selected Development Entities. Each Development Entity was presented with a Term Sheet detailing the compensation limits acceptable to the Consortium. The Term Sheet includes limits on the developer's fee, contractors profit and overhead, and real estate commissions. The Term Sheet also identifies specific performance targets and timelines. In addition to the criteria listed above, the compensation limits are based on the anticipated volume of the program and are highly competitive with the industry standards of each discipline. Upon City Council approval, the Director of Housing will execute the two agreements with each of the entities totaling up to \$11.2 million. The program allocation balance of approximately \$550,000 will be applied to direct program costs not covered under the Administrative allocation (Activity 3). Each agreement will be a one-year contract with the ability to extend based on 1) available program funds, including future program income 2) funding deadlines and 3) the ability of the Development Entities to meet performance goals established in the agreement.

The NSP2 Program is limited to homes within 35 census tracts identified as the hardest hit by foreclosure and must be purchased a minimum of 1 percent (%) below current market value. To maximize the impact of the program, the final contract will include additional targeting requirements:

Neighborhood Focus – Within each of the 35 census tracts some neighborhoods are more impacted by foreclosure and vacancy than others. The development entities will be required to follow foreclosure trends within the designated census tracts and focus acquisition efforts in neighborhoods with the highest concentration of foreclosures. Foreclosure “hot spots” will be identified using regularly update foreclosure tracking data as well as close coordination of the multiple first look program resources available to NSP grantees.

Development subsidy limits – To ensure NSP production goals are being met and that homes are being purchased in the lower cost areas, the total development subsidy is limited to \$525,000 per property. The development subsidy includes acquisition, rehabilitation and property holding costs as well as developer's fees. Restricting the development subsidy also limits the resale price point, ensuring affordability.

Housing Conditions – The purpose of the NSP program is to prevent and eliminate neighborhood blight caused by foreclosure. The development entities will be required to evaluate the properties marketability at the time of acquisition. Properties requiring substantial improvement are often left unoccupied for longer period of time, contributing to the ongoing neighborhood decline. Targeting these properties will be a priority under the NSP2 Program.

### EVALUATION AND FOLLOW-UP

The San Jose NSP2 Consortium Funding Agreement between the Housing Trust of Santa Clara County and the City of San Jose specifies that it will purchase and rehabilitate 64 foreclosed single-family homes, and resell them to income eligible homebuyers with the initial program budget of \$11,750,000 plus future Program Income. HUD NSP2 regulations require: 50% of the funds be expended by February 11, 2012, and 100% of the funds be expended by February 11, 2013. The Housing Department will report progress in meeting these milestones via the City Manager's Reports sent to the Mayor and City Council.

### POLICY ALTERNATIVES

The Housing Department considered the following alternative before recommending approval of the entities to implement the NSP2 Single-Family Acquisition, Rehabilitation, and Resale Program:

#### *Alternative #1 Recommend award to one Development Entity*

**Pros:** Award of a contract to one entity could simplify coordination between City staff and the selected entity.

**Cons:** Award of a contract to one entity would limit the capacity to meet the mandatory program production goals and funding expenditure deadlines established by HUD. Additionally, award of one contract would limit the City's ability to respond to non-performance without jeopardizing program deadlines.

#### **Reason for not**

**Recommending:** Award of a contract to one entity would severely limit the Consortiums ability to meet the mandatory production goals and expenditure deadlines established by HUD.

#### *Alternative #2: Recommend award of contracts to three entities for up to \$3,916,667 per entity.*

**Pros:** Award of contracts to three entities could provide increased economies of scale in terms of human and capital resources for the NSP2 Single-Family Acquisition, Rehabilitation, and Resale program.

**Cons:** Award of contracts to three entities would commit NSP2 funds and staff to two untested entities instead of one. Such commitment could reduce the ability of the entities to develop synergistic efficiencies which are necessary to meet required production and expenditure milestones. Oversight of three development entities will require additional City staff time.

**Reason for not Recommending:** Award of contracts to two recommended entities would enable one untested entity to benefit from the experience of another tested entity so that synergistic efficiencies could be developed to meet required production and expenditure milestones.

### 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 recommended action meets Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. This memorandum will be posted on the City's website for the November 16, 2010 Council agenda seven days in advance of City Council action on the item.

### COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

### FISCAL/POLICY ALIGNMENT

This expenditure is consistent with the most recent Council-adopted Five Year Housing Investment Plan for FY 2007/2008 through FY 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 FY 2009-10 Consolidated Annual Action Plan.

### COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$11,200,000

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2. **COST ELEMENTS OF AGREEMENT/CONTRACT:**

<b>CONTRACTS</b>	<b>2010-2011</b>	<b>2011-2012</b>	<b>TOTAL</b>
Cypress Group	\$2,800,000	\$2,800,000	\$5,600,000
Community Rehabilitation Partners	\$2,800,000	\$2,800,000	\$5,600,000
<b>TOTAL</b>	<b>\$5,600,000</b>	<b>\$5,600,000</b>	<b>\$11,200,000</b>

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

4. **FISCAL IMPACT:** The proposed operating maintenance costs of this project have been reviewed and will have no impact to the General Fund.

**BUDGET REFERENCE**

The following table describes the components of the NSP2 program costs for 2010-2011:

<b>Allocations</b>	<b>2010-2011</b>
Cypress Group (contract)	\$2,800,000
Community Rehabilitation Partners (contract)	\$2,800,000
Direct Program Costs	\$489,065
Administrative Costs	\$362,131
Acquisition/Rehabilitation/ Resale (25% Set Aside)	\$2,498,804
<b>TOTAL</b>	<b>\$8,950,000</b>

The table below identifies the fund and appropriation proposed for 2010-2011 to fund the contracts recommended as part of this memo. Funding sources and appropriation recommendations for the remaining grant funding (\$2,250,000) will be brought forward for Council approval as part of the 2011-2012 budget process.

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2010-2011 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
448	3790	Recovery Act - Neighborhood Stabilization Program 2	\$8,973,940	\$5,600,000	N/A	10/19/10, Ord. No. 28829

**CEQA**

Exempt, PP10-166.

/s/

LESLYE KRUTKO  
Director of Housing

For questions please contact Leslye Krutko, Director of Housing, at 535-3851.

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Attachment 1

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

Attachment 2

**NSP2 Single-Family Acquisition, Rehabilitation, Resale RFP  
Evaluation Criteria for Qualifications**

Proposal Responsiveness	Pass/Fail
Proposer Experience:	
▪ Proposed implementation of the program, including an understanding of the NSP single-family program requirements, timeliness, and appropriateness of the lead person for each task	25%
▪ Familiarity with local zoning, building code, flood insurance and historic preservation regulations	5%
▪ Experience with acquisition, rehabilitation, marketing, and resale of single-family homes and individual units in multifamily buildings to low- and moderate-income buyers, including coordination with local affordable housing agencies	30%
Development Entity Cost Proposal	10%
Financial Capacity/Stability	10%
Local Business Enterprise	10%
Small Business Enterprise	5%
Previous Customer References	5%
<b>Total</b>	<b>100%</b>

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**Attachment 3**

Neighborhood Stabilization Program 2  
Acquisition, Rehabilitation and Resale Program  
Request For Proposal (RFP) Respondent List

All respondent proposals were reviewed and ranked based on the Selection Criteria listed in the RFP (See Attachment 2). The top four entities were interviewed by the Evaluation Team and ranked on the respondents answers using the same Selection Criteria listed in the RFP. The result is as follows:

RESPONDENTS	RFP STATUS
Barry Swenson Builder, 777 North First Street, 5 <sup>th</sup> Floor, San Jose, CA 95112-6303	Disqualified – Inadequate required documentation
Burr Development, 1645 Almaden Road, San Jose, CA 95125	Interviewed – Not selected
Cypress Group, 18 South 21 <sup>st</sup> Street, San Jose, CA 95116	Interviewed – One of top two selected
Community Rehabilitation Partners, 2698 Berryessa Road, San Jose, CA 95125	Interviewed – One of top two selected
Golden State Builders, 148 E. Virginia Street, #1, San Jose, CA 95112-5846	Not interviewed –
Habitat for Humanity, 513 Valley Way, Milpitas, CA 95035	Disqualified – Missed interview
South Bay Affordable Housing, 1116 Saddlewood Drive, San Jose, CA 95121	Not interviewed –
Tucker Property Development, 1725-D Little Orchard Street, San Jose, CA 95112	Interviewed – Not selected
Valenti Residential Rehabilitation Services, 1513 Padres Drive, San Jose, CA 95125	Disqualified – Inadequate required documentation

