



Memorandum

Southeastern
Economic
Development
Corporation

DATE ISSUED: November 24, 2009 Report No. 09-012

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Docket of December 7, 2009

SUBJECT: First Amendment to the Mayberry Townhomes Rehabilitation Loan Agreement

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Reference: On May 30, 2007, the SEDC Board of Directors approved the Rehabilitation Loan Agreement between the Redevelopment Agency of the City of San Diego and the Metropolitan Area Advisory Committee on Anti-poverty of San Diego, Inc. (MAAC) to fund the residential rehabilitation and loan refinancing for the Mayberry Townhomes located at 44th and Mayberry Streets.

On October 24, 2007, the SEDC Board of Directors approved an amendment to the May 30, 2007, approval, to revise the funding amount for an additional \$34,376.80.

On April 22, 2009, the SEDC Board of Directors approved the First Amendment to the Rehabilitation Loan Agreement.

REQUESTED ACTION:

That the Agency Adopts a Resolution: Approving the First Amendment to the Housing Rehabilitation Loan Agreement with Mayberry Townhomes, for the rehabilitation of an affordable housing community consisting of 70 townhomes in the Southcrest Redevelopment Project Area.

STAFF RECOMMENDATION – That the Redevelopment Agency approve the First Amendment to the Loan Agreement that will amend the Scope of Rehabilitation and the Schedule of Performance.

SUMMARY

The Mayberry Townhomes are located at 4328-4490 Mayberry Street in the neighborhood of Southcrest. The project, constructed in 1984, consists of 18 buildings - 70 townhome units, with a mix of 35 two-bedroom units and 35 three-bedroom units on approximately three acres. The development is east and west of 44th Street of which approximately 50% is within the boundaries of the Southcrest Redevelopment Project Area (Project Area). Affordability restrictions apply to 69 of the units, while one unit is reserved for the on-site manager at market rate.

The Housing Rehabilitation Loan Agreement (Agreement) was executed effective December 6, 2007. A copy of the Agreement can be found on SEDC's website at http://www.sedcinc.com/reports/Mayberry_Loan_Agreement.pdf. This Agreement provides for a loan totaling \$799,370.00 of the Low- and Moderate-Income Housing funds for repair and construction work to both the interior of the residential units and the common areas of the property (the "Rehabilitation Project"). The loan is at a 3% interest rate for a term of 55 years. Annual payments are to be made from a portion of the residual receipts. Fifty percent (50%) of the residual receipts are to be returned to MAAC, and 50% of residual receipts are to be distributed on a pro-rata basis to the Housing Commission and the Agency, based on the level of funding provided by each agency

The Agency's use of its 20% tax increment housing set-aside requires the restriction of the 69 rehabilitated affordable units in accordance with California Community Redevelopment Law (CRL). The affordability restrictions on all 69 units will extend for 55 years after the completion of the rehabilitation work (from the date of the recordation of the Release of Construction Covenants). These restrictions are enforced through the Agreement Affecting Real Property recorded at the San Diego County Recorder's Office. It is SEDC's intent to have the Housing Commission monitor the on-going affordability requirements.

DISCUSSION

The proposed First Amendment provides a modified, replacement version of the "Scope of Rehabilitation" found at Attachment No. 5A to the Agreement (Attachment 1). This replacement version seeks to achieve consistency with (i) the outcome of negotiations between SEDC and MAAC in August 2007 concerning the actual scope of accessibility features to be installed as part of the Rehabilitation Project and (ii) the legal requirements for the provision of accessibility features pertaining to the Rehabilitation Project.

The original version of Attachment No. 5A attached to the Agreement purported to require MAAC to install many individual ADA-compliant features and elements within the interior of the rehabilitated dwelling units, such as widening of existing doorways and passageways and installation of ADA-compliant hardware. At the time of entry into the Agreement, however, SEDC staff and MAAC's representatives actually had negotiated a compromise which recognized that installation of individual ADA-compliant features and elements throughout the interior of all rehabilitated dwelling units would be cost-prohibitive, would cause MAAC to greatly exceed the overall anticipated budget for the Rehabilitation Project, and would be more onerous than actually required by law for this type of project involving mere cosmetic or "facelift" renovations not amounting to a substantial rehabilitation of the entire buildings.

The negotiated compromise dictated that MAAC would replace all faucets, shower valves, toilet handles and interior/exterior lock sets with Universal Design compliant products where those items are being replaced. The negotiated compromise is described as "Option 3" in a letter from MAAC's representative to SEDC staff sent on August 16, 2007 – several months before the parties entered into the Agreement. (See Attachment 2) The negotiated compromise is consistent with the Redevelopment Agency's policy, most recently summarized in a memorandum dated September 4, 2008, that the incorporation of additional Universal Design components into product design, in excess of the accessibility standards prescribed by the California Building Code, is encouraged, but not absolutely required, for proposed projects receiving local, public financial subsidies from the Redevelopment Agency and/or the San Diego Housing Commission. (See Attachment 3)

Unfortunately, due to a mutual, inadvertent mistake, the parties attached a more onerous version of Attachment No. 5A to the executed Agreement, which did not reflect the negotiated compromise described above. During the course of construction of the Rehabilitation Project, MAAC has honored its commitment to abide by the earlier negotiated compromise. Thus, the replacement version of Attachment No. 5A, under the final heading entitled "Construction Standards," will reflect the negotiated compromise and will continue to hold MAAC generally responsible for compliance with all legal requirements under the ADA and the Fair Housing Act to the extent applicable to the Rehabilitation Project.

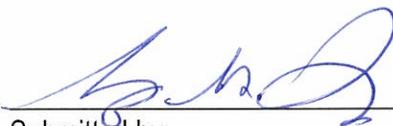
As the Rehabilitation Project has been slowed due to this attempt to correct an inadvertent error, the Rehabilitation Project will not meet the deadlines outlined in the Agreement. The First Amendment to the Agreement requests time extensions of two deadlines under the Agreement. These time extensions will allow MAAC to complete the Rehabilitation Project by January 31, 2010, and to make the units available for occupancy by March 31, 2010.

FISCAL CONSIDERATIONS – None with this action. The First Amendment to the Loan Agreement will not affect the loan amount.

ENVIRONMENTAL IMPACT: This activity is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Section 15301 (a) and (d) in that the Rehabilitation Project involves relatively minor alterations to existing facilities with no corresponding significant impact on the environment.

CONCLUSION

The First Amendment to the Housing Rehabilitation Loan Agreement for Mayberry Townhomes will bring into conformance the mutually agreed upon Scope of Rehabilitation with the actual work contemplated and performed on the site. It will also allow for a time extension to the Agreement that will allow MAAC to complete the project and occupy the units in compliance with the Agreement. Mayberry Townhomes provides affordable housing to families who meet the restrictions of low and very low income requirements. Assisting the MAAC Project to help rehabilitate these units will help to continue to provide the amount of affordable housing in the community and the City.



Submitted by:
Nancy Lytle
Vice President of Projects and Development



Approved By:
Brian L. Trotier
Acting President/CEO

- Attachment No. 1 – First Amendment to the Housing Rehabilitation Loan Agreement
- Attachment No. 2 – Letter from MAAC Project dated August 16, 2007
- Attachment No. 3 – Universal Design Features – FY 2009 Update Memorandum