



AGENCY:	City Council
MEETING DATE:	May 23, 2016
DEPARTMENT:	Community Devel.
PRESENTED BY:	J. Owen

## AGENDA ITEM SUMMARY REPORT

### **TITLE:**

**RECEIVE REPORT AND CONSIDER ADOPTION OF CITY COUNCIL RESOLUTION APPROVING A FORGIVABLE LOAN AGREEMENT WITH MENDOCINO FOOD & NUTRITION, INC. FOR THE FOOD BANK SOLAR PROJECT USING PROGRAM INCOME FUNDS THROUGH COMMUNITY DEVELOPMENT BLOCK GRANT #14-CDBG-9881 AND AUTHORIZING CITY MANAGER TO EXECUTE SAME (AMOUNT NOT TO EXCEED: \$75,000; ACCOUNT NO. 315-5030-0630)**

### **ISSUE:**

On January 26, 2015, City Council adopted Resolution No. 3773-2015 approving the addition of three Supplemental Activities to the City's 2014 grant #14-CDBG-9881. The City has accumulated sufficient Program Income to fund the Food Bank Solar Project which was designated as the first priority of the three 2014 Supplemental Activities. Before activities can commence, the City must complete activity-specific General Conditions. One of the General Conditions is that the City must enter into a Forgivable (Deferred) Loan Agreement with Mendocino Food & Nutrition, Inc., owner and operator of the Fort Bragg Food Bank. Before the Loan Agreement can be executed, City Council must adopt a Resolution approving the language of the Loan Agreement.

### **RECOMMENDED ACTION:**

Adopt City Council Resolution Approving a Forgivable Loan Agreement with Mendocino Food & Nutrition, Inc. for the Food Bank Solar Project using Program Income Funds Accumulated in Grant #14-CDBG-9881 and Authorize City Manager to Execute Same (Amount Not to Exceed: \$75,000; Account No. 315-5030-0630).

### **ALTERNATIVE ACTION(S):**

1. Do not adopt Resolutions approving loan agreements. The projects cannot proceed without the agreements.
2. Make changes to the draft loan agreement. This would delay submittal of the General Conditions package and would delay project implementation.

### **ANALYSIS:**

On July 1, 2014, CDBG implemented new rules requiring that all CDBG Program Income on hand must be expended before any grant funds may be reimbursed for approved grant expenditures. Program Income is the funding the City receives as CDBG loans for housing rehabilitation or business loans are repaid to the City. The City Council adopted a new Program Income Reuse Agreement in September 2014 that stated that the City would expend Program Income on activities included in open and/or new grants, rather than establishing new housing or business Revolving Loan Funds. The City currently collects approximately \$6,833 per calendar quarter in Program Income funding. This amount could increase at any time if a loan is unexpectedly paid off.

In order to have an opportunity to fully expend both Program Income and grant funds, CDBG allows jurisdictions to add "Supplemental Activities" to open grants. A CDBG Design Phase Public Hearing was held on September 30, 2014, to solicit input from the public regarding 2014

Supplemental Activities. On January 26, 2015, with adoption of Resolution 3773-2015, City Council approved the addition of three Supplemental Activities to the 2014 grant #14-CDBG-9881. The three approved activities in order of priority were the Food Bank Solar Project, the Bainbridge Park Rehabilitation Project, and the Boatyard Drive Sidewalk Infill Project.

At this time, adequate Program Income has been collected to provide \$75,000 for the Food Bank Solar Project. This project will add rooftop solar panels to the Food Bank facility to provide at least 50% roof coverage, which would provide approximately 22% of electrical usage. Depending upon actual cost of bids, the Food Bank has committed to leverage the CDBG funds to add up to \$37,000 of their own funding to increase roof coverage. Based on the engineer's cost estimate, total combined funding could allow purchase of panels to cover 75% of the roof, providing up to 33% of utility usage.

The Forgivable (Deferred) Loan Agreement is the recommended form of agreement by CDBG for public facility projects. The Loan Agreement must be submitted to CDBG as part of the General Conditions Clearance package. CDBG requires that a "no change of use provision" must be recorded against the improved property for a minimum of five years. CDBG has advised staff that the five-year period should begin when the Public Facility project is completed and the "Public Benefit" is achieved. Public Benefit is generally achieved when improvements are completed and the project beneficiaries (that is, the clientele serviced within the Public Facility) are able to use the improved facility. The Loan Agreement accomplishes this requirement by including a Restrictive Covenant regarding the five-year Use Limitation to be recorded in the Mendocino County Recorder's office.

The Loan Agreement is in the same format as previously approved Forgivable Loan Agreements executed for 2012 Supplemental Activities. Major components include:

1. **Recitals.** These identify the subject property; explain that the CDBG Program is the source of the loan funding and that funds were provided as a grant to the City; and describe the purpose of the loan as described in the CDBG grant application.
2. **Definitions.** This section explains and clarifies specific terms and terminology as used in the loan documents;
3. **Loan of Funds.** This section describes the loan amount and terms of disbursement including:
  - Loan Amount (maximum amount to be disbursed to the non-profit sub-grantee);
  - Interest: No interest will be charged or accumulated on the loan amount.
  - Term of the loan: 5 years after project completion.
  - Required Documentation: The related documentation that must be executed prior to disbursement of funds is listed, including Exhibits to the Loan Agreement (Deed of Trust, Truth-In-Lending Disclosure, Notice of Right to Cancel, and Restrictive Covenant).
  - Disbursement of Funds: Funds for property rehabilitation will be released directly to vendors and contractors by the City. If the acquisition and rehabilitation activity requires less than the maximum loan amount, any amounts less than the maximum loan amount will be considered partial repayment of the loan.
4. **Repayment of the City Loan.** This section describes circumstances or "Triggering Events" that would cause repayment of the loan by the non-profit sub-grantees, including the following:
  - Any Transfer of the Property without the City's prior written consent.
  - Change of use such that the Food Bank stops using the property to provide services as described in the Supplemental Activities application. The use description is also stated in

the Regulatory Agreement to be recorded in the County Recorder's office.

- Failure to maintain the property at post-rehabilitation condition.
  - Default of the Loan Agreement, including misrepresentations, failure to perform obligations contained in the Loan Agreement, or failure to notify the City if a "Triggering Event" occurs.
  - Failure to maintain property insurance with City as loss payee.
  - Failure to pay any property taxes due.
  - If such a Triggering Event occurs, the City may determine the repayment terms, with discretion to allow monthly payments rather than a lump sum payment.
5. **CDBG Program Requirements.** This section requires conformity with HUD and CDBG regulations and provides that rehabilitation activities may proceed only with City approval and participation. In addition, this section contains Covenants regarding the property transfer restrictions, property maintenance requirements, prohibition against discrimination, the City's right to inspect the property, and the requirement to maintain adequate property insurance.
  6. **Defaults and Enforcement.** This section describes "events of defaults," including those described in Item 4 above, and also states that if a default occurs, the City may declare the full loan amount due and payable. Liquidated damages are provided in the event of rent or lease of the property without City consent. Specific Performance is also required in this section, because the CDBG project serves a public purpose of a "special and unique kind."
  7. **Subordination.** This section provides that the City may approve loan subordination at its discretion, but there are restrictions stated on terms of any new loan.
  8. **General Provisions.** This section contains standard loan provisions that are not unique to this transaction except to identify Notice Addresses and signers.

#### **FISCAL IMPACT:**

Approval of loan documents accomplishes one of several CDBG General Conditions. Once General Conditions are cleared, CDBG will authorize implementation of the Food Bank Solar Project. The solar panels will reduce the Food Bank utility costs significantly, freeing up additional funds for their services to the City's neediest residents. The activity will also result in a positive fiscal impact for the City as it enables the City to expend Program Income on important community activities that might otherwise remain unfunded due to lack of resources. If this Supplemental Activity is not implemented, the City may be required to return awarded but unexpendable grant funds to the state. This could directly affect the City's ability to compete for future grants and could also impact the City's ability to assist local non-profit entities in the future. Program Income may be used to pay Activity Delivery costs specific to each activity and may in some cases be allocated to General Administration costs. The City is allowed to use General Administration funding from any open CDBG grant to assist with program management, and there is adequate General Administration funding available to cover staff costs for these activities.

#### **CONSISTENCY:**

Approval of Supplemental Activities is consistent with the Program Income Reuse Agreement adopted September 22, 2014. Certification of environmental compliance is required in order to clear General Conditions. Federal NEPA as required for CDBG and state CEQA review as required by the City will be completed for this activity as part of the General Conditions package.

#### **IMPLEMENTATION/TIMEFRAMES:**

Grant General Conditions must be assembled, submitted to CDBG, and cleared by CDBG before the activity can commence. Staff estimates that CDBG clearance will be obtained and activities will

be authorized to commence by June 15, 2016. The activity is expected to be completed by September 30, 2016.

**ATTACHMENTS:**

1. Resolution
2. Exhibit A to Resolution (Loan Agreement)

**NOTIFICATION:**

1. Nancy Severy, Executive Director, Fort Bragg Food Bank

**City Clerk's Office Use Only**

Agency Action	<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	<input type="checkbox"/> Approved as Amended
Resolution No.:	_____ Ordinance No.: _____		
Moved by:	_____ Seconded by: _____		
Vote:	_____		
<input type="checkbox"/> Deferred/Continued to meeting of:	_____		
<input type="checkbox"/> Referred to:	_____		