



AGENCY:	City Council
MEETING DATE:	April 9, 2018
DEPARTMENT:	Community Development
PRESENTED BY:	N. Gregory
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AGENDA ITEM SUMMARY

TITLE:

RECEIVE REPORT AND CONSIDER ADOPTION OF CITY COUNCIL RESOLUTION APPROVING A FORGIVABLE LOAN AGREEMENT WITH BUILDING BETTER NEIGHBORHOODS, INC. FOR THE HOUSING REHABILITATION PROJECT AT THE GLASS BEACH APARTEMENTS USING PROGRAM INCOME FUNDS THROUGH COMMUNITY DEVELOPMENT BLOCK GRANT #16-CDBG-11140 AND AUTHORIZING CITY MANAGER TO EXECUTE SAME (AMOUNT NOT TO EXCEED: \$75,000; ACCOUNT NO. 331-5052-0630)

ISSUE:

On July 11, 2016, City Council adopted Resolution No. 3917-2016 approving three Supplemental Activities for the City's 2016 Community Development Block Grant (CDBG) application #16-CDBG-11140, namely: a Housing Rehabilitation Project at Glass Beach Apartments and up to two Slip-Line Installation projects. The City has accumulated sufficient Program Income to fund the Housing Rehabilitation Project at the Glass Beach Apartments which was designated as the first priority of the three 2016 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 Building Better Neighborhoods, Inc. (also known as the Community Development Commission of Mendocino County), owner and operator of the Glass Beach Apartments. Before the Loan Agreement can be executed, City Council must adopt a Resolution approving the language of the Loan Agreement.

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 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 \$27,575 per calendar quarter in Program Income. 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. Citizen participation requirements were met during the development of the application through a Public Hearing held before the City Council on July 11, 2016.

At this time, adequate Program Income has been collected to provide \$75,000 for the Housing Rehabilitation Project at the Glass Beach Apartments. The project will provide lighting/energy conservation improvements to improve the exterior lighting at the Glass Beach Apartments. This is to ensure the environment for the tenants is safe and well-lit.

The Forgivable (Deferred) Loan Agreement is the recommended form of agreement by CDBG for rehabilitation 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 Multi-Family Rehabilitation 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 Multi-Family Rehabilitation project) are able to use the improved area. 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 and 2014 Supplemental Activities (i.e. Senior Center rehabilitation project and Food Bank solar project). 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); and
- 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 Glass Beach Apartments 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; and
- 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.

RECOMMENDED ACTION:

Adopt City Council Resolution Approving a Forgivable Loan Agreement with Building Better Neighborhoods, Inc. for the Housing Rehabilitation Project at the Glass Beach Apartments using Program Income Funds Accumulated in Grant #16-CDBG-11140 and Authorize City Manager to Execute Same (Amount Not to Exceed: \$75,000; Account No. 331-5052-0630).

ALTERNATIVE ACTION(S):

1. Do not adopt the Resolution 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.

FISCAL IMPACT:

Approval of loan documents accomplishes one of several CDBG General Conditions. Once General Conditions are cleared, CDBG will authorize implementation of the Housing Rehabilitation Project at the Glass Beach Apartments. The project will improve the Glass Beach Apartments exterior lighting, ensuring a safe and well-lit outdoor environment. 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 unexpended 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 April 30, 2018. The activity is expected to be completed by September 1, 2018.

ATTACHMENTS:

1. Resolution

NOTIFICATION:

1. Todd Crabtree, Executive Director, Building Better Neighborhoods, Inc.