Agenda Item #: 5 B 2

PALM BEACH COUNTY **BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:

July 12, 2016

[] Consent

[X] Regular

[] Ordinance

[] Public Hearing

Department:

Department of Economic Sustainability

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: A) a budget transfer of \$250,000 from General Fund contingency reserves to the Housing and Community Development Fund to cover the second payment in accordance with the Settlement Agreement with the U.S. Department of Housing and Urban Development for Village Center Apartments; and B) a budget amendment of \$250,000 in the Housing and Community Development Fund to recognize the transfer from the General Fund to appropriate funds for the payment.

Summary: On July 21, 2015 (R2015-0926), the Board approved a Settlement Agreement with HUD for the repayment of HOME funds expended on a loan to Village Centre Apartments, Ltd. for the development of 84 rental apartments to have been located at 500 25th Street, West Palm Beach. HOME funds were expended on acquisition and predevelopment costs, but ultimately the project failed for reasons beyond the control of the County, including a substantial rise in construction costs during the planning stage, repeated delays in the development approval process, and the downturn in the housing market. Because the project did not result in affordable housing, the U.S. Department of Housing and Urban Development (HUD) required repayment of the funds. The Settlement Agreement requires the refunding of the County's HOME Trust Fund Account in the amount of \$900,000 from non-Federal funds to the County's local HOME Trust Fund Account in three (3) annual payments of which the first payment of \$400,000 has been made. Approval of this agenda item will allocate \$250,000 of general funds to make the second scheduled payment, which is due no later than July 31, 2016. After repayment to the County's local HOME Trust Fund Account, the funds are available to the County for expenditure on new activities in accordance with HOME Program requirements. District 7 (JB)

Background and Justification: On March 14, 2006 (R2006-0469), the Board awarded a \$900,000 HOME loan to Village Centre Apartments, Ltd. (general partner Northwood Renaissance, Inc.) for the payment of construction costs of the Village Centre project. The project entailed new construction of 84 affordable rental apartment units. In 2007, the City required that the project be modified from apartments to condominiums and that the number of units be reduced from 84 to 60. On October 16, 2007 (R2007-1868), the Board approved these modifications to the project along with the award of an additional \$400,000 in State Housing Initiative Partnership (SHIP) funds. On July 8, 2008 (R2008-1193), the Board approved expanding the allowable uses of the funds. The HOME funds were expended on land acquisition and predevelopment costs, but the SHIP funds were never expended. On December 28, 2009, LISC, the first mortgage lender, commenced foreclosure proceedings, and on March 29, 2010 a foreclosure judgment was issued in favor of LISC in the amount of \$2,433,535. On April 29, 2010, the HOME-acquired parcels and other properties constituting the project site were auctioned by the court. The properties were purchased by Neighborhood Properties, LLC, dba Neighborhood Properties Sunshine, LLC, an affiliate of LISC. The County's HOME mortgage was in subordinate lien position and did not receive any proceeds from the auction.

Attachment:

1. Approved Settlement Agreement (R2015-0926)

2. Budget transfer and budget amendment

Recommended By: <u>Eduard b.</u>

Department Director

Approved By: _

Date

II. FISCAL IMPACT ANALYSIS

Fiscal Years	2016	2017	2018	2019	2020		
Capital Expenditures							
Operating Costs	250,000						
External Revenues							
Program Income							
In-Kind Match (County)							
NET FISCAL IMPACT	250,000						
# ADDITIONAL FTE POSITIONS (Cumulative)	-0-						
Is Item Included In Curren Budget Account No.:	t Budget?	Yes	No X	_			
Fund <u>1101</u> Dept <u>143</u> Unit <u>1</u> 4	436 Object 8	201 Program	n Code/Porion	i			
and <u>1101</u> Dopt <u>140</u> Onit <u>14</u>	<u>+50</u> Object <u>o.</u>	<u>zo i</u> i Togran	n Code/Felloc	4			
B. Recommended Sou	rces of Fun	ds/Summar	v of Fiscal In	nnact:			
				•			
Approval of this a repay the local HOM	genda item ⁄IE Trust Fur	will appro nd account.	priate \$250,0	000 in gene	eral funds to		
C. Departmental Fisca	Fiscal Review: Shairette Major, Fiscal Manager II						
	III. <u>RE</u> V	/IEW COMI	<u>MENTS</u>				
A. OFMB Fiscal and/or	Contract D	evelopmen	t and Control	Comments			
•					•		
OFMB Page Soci	24	Cont	ract Develop	Jecolinum ment and Con	triol)		
B. Legal Sufficiency:			~				
Assistant County Atto	orney	<u> </u>					
C. Other Department R	eview:						
o. Outoi Department N	CAICAA"						

Department Director

R2015.10926

SETTLEMENT AGREEMENT

I. PARTIES

JUL 2 1 2015

This settlement agreement (the "Agreement") is entered into by and between The U.S.

Department of Housing and Urban Development ("HUD") and Palm Beach County, Florida (the "County;" hereafter jointly referenced as the "Parties"), through their authorized representatives.

II. PREAMBLE

WHEREAS, this Agreement arises out of the County's application for and receipt of federal funds pursuant to HUD's HOME Investment Partnerships ("HOME") program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, at 42 U.S.C. 12701 *et seq.* and the program implementing regulations at 24 C.F.R. Part 92;

WHEREAS, the County is required by federal law to use federal grant monies in accordance with the requirements of the specified grant program;

WHEREAS, HUD conducted a remote monitoring review that resulted in the issuance of a finding letter on November 18, 2012, concluding that the Village Center Apartments, IDIS Activity 1840 (the HOME-Funded Project") was terminated before completion as follows:

In 2007, the County committed \$900,000 of HOME funds to develop 11 HOME-assisted units and expended the funds to purchase the land for the project. However, no HOME-assisted affordable housing units were developed. The HOME regulations at 24 CFR 92.503(b) require that a participating jurisdiction that expends HOME funds on a project that does not result in the development of HOME-assisted units must repay its Local HOME Trust Fund Account from non-federal funds. In its January 27, 2014, letter, HUD instructed the County to repay \$900,000 to the County's Local HOME Trust Fund account.

WHEREAS, HUD disallowed costs in the total of \$900,000 in connection with the finding identified above;

WHEREAS, the County acknowledges both its receipt of reasonable notice from HUD of the allegations contained in the Monitoring Review Letter that it failed to comply with the provisions of 24 C.F.R. Part 92.

III. AGREEMENT

NOW, THEREFORE, in order to avoid the delay, uncertainty, inconvenience and expenses of protracted litigation in connection with the HOME-Funded Project described herein, and in consideration of the mutual obligations of the Parties set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

- 1. This Agreement shall become effective upon the date of its execution by the U.S. Department of Housing and Urban Development ("Effective Date"). HUD properly disallowed expenditures by the County in connection with the HOME-Funded Project defined and described herein related to one or more of the requirements of the HOME program, as set forth above.
- 2. The County voluntarily shall repay its Local HOME Trust Fund account the total amount of \$900,000 in the manner set forth below to resolve the disallowed costs described above relating to the HOME-Funded Project.
- 3. The County shall repay HUD, with non-Federal funds, through deposit in the County's Local HOME Trust Fund account, the amount of \$900,000 for disallowed costs in the following number, amount and timing of installments, from August 15, 2015 to July 31, 2017:

Installment 1: \$400,000 on or before August 15, 2015

Installment 2: \$250,000 on or before July 31, 2016

Installment 3: \$250,000 on or before July 31, 2017

4. The County shall provide written notice to HUD of each repayment on the date that repayment is made by notifying the Director of HUD's Office of Affordable Housing Programs, of its Office of Community Planning and Development at:

U.S. Department of Housing and Urban Development Office of Community Planning and Development Office of Affordable Housing Programs 451 7th Street, S.W., Room #7162 Washington, DC 20410

and by notifying the Field Office Director, of its Community Planning and Development Division Field Office at:

U.S. Department of Housing and Urban Development Community Planning and Development Division Region IV, Miami Field Office Brickell Plaza Federal Building 909 SE First Avenue, Room 500 Miami, Florida 33131-3042

and also by notifying HUD's Associate General Counsel for Program Enforcement at:

U.S. Department of Housing and Urban Development Office of General Counsel 1250 Maryland, SW Suite 200 Washington, DC 20024

5. Payment in full of the County's outstanding repayment obligation of amount as set forth herein, shall constitute full and final discharge of the County's obligations with respect to the specific disallowed costs described herein. Nothing herein prevents HUD from investigating,

reviewing or taking further action with regard to the County's application for or receipt of federal funds for any other projects that are not part of the findings referenced in this Agreement.

- 6. If the County fails to make a timely installment payment required by this Agreement, in the amount required by this Agreement, HUD shall issue the County a written notice of default and shall permit sixty (60) days to cure the default. If the County fails to cure the default to HUD's reasonable satisfaction within the sixty-day period, HUD shall declare the County in default and, for each year the repayment is insufficient to meet the requirements of this Agreement, shall reduce the County's HOME grant(s) by the amount of the repayment shortfall for the consolidated program year in which the default occurred, as defined at 24 CFR § 91.10. Further, in the event that County's HOME grant funds are insufficient in any calendar year to permit reimbursement to HUD through grant reductions as contemplated by this paragraph, HUD shall recoup those unreimbursed funds from subsequent years' HOME grant funds to the County.
- 7. The County agrees that HUD may reduce the HOME grant upon a declaration of default as specified in Paragraph 6, authorizes all such grant reductions, waives any right to an opportunity for hearing pursuant to 42 U.S.C. 12753 and 24 C.F.R. § 92.552 on the basis of any such grant reductions, and further waives any other right to legal or administrative review or relief on the basis of any such grant reduction.
- 8. HUD shall cancel IDIS Activity 1840 within five (5) business days following the effective date of this Agreement.
- Nothing contained in this Agreement is intended to be construed as limiting either or both Parties in connection with any claims or lawsuits seeking damages unrelated to this Agreement.

- 10. Nothing in this Agreement is intended or shall be construed to give any person or entity, other than the Parties hereto and their respective successors and permitted assigns, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein.
- 11. This Agreement may be amended or modified solely upon written consent of the Parties.
- 12. By signing this Agreement, the undersigned representative of the County represent and warrant that she is authorized by the County to enter into and bind the County to this Agreement.

So Agreed:

Harriet Tregoning, Principal Deputy Assistant Secretary for Community Planning and Development, D
U.S. Department of Housing and Urban Development

8 · 6 · 2015

PALM BEACH COUNTY, FLORIDA, a Political Subdivision of the State of Florida

BOARD OF COUNTY COMMISSIONERS

Shelley Vana	
The Honorable Shelley Vana	Date
Mayor, Palm Beach County, Florida	

ATTEST: Sharon R. BeckJNT Y Clerk & Comptroller

By:

Deputy Clerk

Deputy Clerk

Approved as to Form and Legal Sufficiency

James Brako Assistant Qounty Attorney R2015 ±0926

Document No.:

JUL 2 1 2015

Approved as to Terms and Conditions Department of Economic Sustainability

Edward W. Lowery, Director

OFMB Department - Posted

BOARD OF COUNTY COMMISSIONERS PALM BEACH COUNTY, FLORIDA BUDGET AMENDMENT

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BGEX-143-0622160000001540 BGRV-143-0622160000000495

Board of County Commissioners

FUND 1101 - Housing and Community Development

Use this form to provide budget for items not anticipated in the budget.

Department of Economic Sustainability INITIATING DEPARTMENT/DIVISION Administration/Budget Department Approval		Signatures — Edunard B.,	houng _	Date 6/22/2016	<u> </u>	<u>,</u>	By Board of County Comm At Meeting of : July 12, 2016 Deputy Clerk to the	issioners
	TOTAL EXPENDITURES	13,329,655	12,531,149	250,000	0	12,781,149		
EXPENDITURES 143-1436-8201	Contributions Non Governmental Agency	25,500	25,500	250,000	0	275,500	0	275,500
REVENUES 143-1436-8000	Transfer from General Fund 0001 TOTAL REVENUES	0 13,329,655	0 12,531,149	250,000 250,000	0	250,000 12,781,149		
ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED	REMAINING BALANCE

BOARD OF COUNTY COMMISSIONERS PALM BEACH COUNTY, FLORIDA BUDGET TRANSFER

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BGEX-143-0622160000001539

FUND 0001 -General Fund

Use this form to provide budget for items not anticipated in the budget.

ACCOUNT NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED	REMAINING BALANCE
EXPENDITURES								
820-9900-9901	Contributions Non Governmental Agency	20,775,190	19,146,901	. 0	250,000	18,896,901	0	18,896,901
820-9100-9015	Transfer to Housing and Community Dev Fund 1101	0	0	250,000		250,000	0	250,000
	TOTAL EXPENDITURES			250,000	250,000			

Office of Financial Management and Budget
INITIATING DEPARTMENT/DIVISION
Administration/Budget Department Approval
OFMB Department - Posted

Signatures
Shudud W. Johnson

Date

By Board of County Commissioners At Meeting of :

July 12, 2016

Deputy Clerk to the

Board of County Commissioners