

RESOLUTION NUMBER R- 307656DATE OF FINAL PASSAGE AUG 15 2012

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR OR HIS DESIGNEE TO APPROVE AND EXECUTE THE SECOND AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SAN DIEGO AND THE SAN DIEGO HOUSING COMMISSION REGARDING MANAGEMENT AND OVERSIGHT OF THE NEIL GOOD DAY CENTER IN FISCAL YEAR 2013 AND TO APPROVE THE ADVANCE OF FISCAL YEAR 2013 APPROPRIATED GENERAL FUND MONIES TO THE SAN DIEGO HOUSING COMMISSION ON A QUARTERLY BASIS FOR THE OVERSIGHT AND OPERATION OF THE NEIL GOOD DAY CENTER.

WHEREAS, on June 29, 2010 , the Council of the City of San Diego and the Housing Authority of the City of San Diego authorized City staff and the San Diego Housing Commission (Commission), respectively, to execute that certain Memorandum of Understanding (MOU) to administer the City's homeless services; and

WHEREAS, the MOU became effective July 1, 2010 through June 30, 2012; and

WHEREAS, on June 27, 2011, the Council of the City of San Diego adopted Resolution No. R-306884 and the Housing Authority of the City of San Diego adopted Housing Authority Resolution (HAR) No. 1527, approving the First Amendment to the MOU between the City and the Commission, which among other things, extends the term of the MOU until June 30, 2013; and

WHEREAS, it is contemplated pursuant to the First Amendment to the MOU that all future amendments renewing the MOU would be approved no less than one fiscal year prior to the expiration of the then-current term or extension in order to ensure availability and allocation of funding; and

WHEREAS, the First Amendment to the MOU amended Section 3 of the MOU so that the City would dedicate 100 percent of Emergency Shelter Grant funds to the shelter and service programs; and

WHEREAS, the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act) consolidates three of the separate homeless assistance programs administered by U.S. Department of Housing and Urban Development (HUD) under the McKinney-Vento Homeless Assistance Act into a single grant program, and replaces the Emergency Shelter Grant program with the Emergency Solutions Grant program; and

WHEREAS, previously HUD allowed 100 percent of Emergency Shelter Grant funds to be used for shelter and services for the homeless, the HEARTH Act only allows 60 percent of Emergency Solutions Grant funds to be used for such purposes and the other 40 percent to be used for homeless prevention and re-housing activities; and

WHEREAS, HUD has recently determined that only grantees such as the City, not the Commission, may draw down Emergency Shelter Grant and Emergency Solutions Grant funds from HUD's Integrated Disbursement and Information System (IDIS); and

WHEREAS, pursuant to the MOU, among other things, the Commission administers the Neil Good Day Center (Center), located in downtown San Diego, which offers a day center for homeless individuals, providing various services including case management, showers, laundry, and mail and message service; and

WHEREAS, the City has budgeted and intends to appropriate \$550,000 in revenue from the General Fund for the operation of the Center in the Fiscal Year 2013 Appropriations Ordinance; and

WHEREAS, with regard to the \$550,000 in revenue from the General Fund budgeted for the operation of the Center, the Commission will execute a month-to-month agreement with the current operator of the Center, pursuant to a sole source justification in an amount not to exceed \$500,000 with the remaining balance of \$50,000 to be used for the Commission's staffing and administrative expenses related to its oversight of the Center; and

WHEREAS, such a month-to-month agreement with the current operator will allow the Commission to procure an operator for the Center using a competitive bid process at the Commission's earliest opportunity; and

WHEREAS, upon the receipt of responses to the RFP the Commission intends to enter into a contract for the operation of the Center for the balance of FY 2013 with the selected operator using the balance of the funds appropriated for FY 2013. In addition, the contract shall provide for four (4) one year options, in favor of the Commission, exercisable only by the Commission, to extend the services, in subsequent fiscal years, but dependent upon funding availability; and

WHEREAS, the Commission is concurrently seeking approval of the Housing Authority of the City of San Diego to allow the President and Chief Executive Officer of the Commission to enter into a contract with the selected operator for the balance of FY 2013 with the contract having four (4) one year options, exercisable by the Commission, to extend services for subsequent fiscal years; dependent upon funding availability; and

WHEREAS, in light of the Commission's commitment to utilize its own funds in the amount of \$402,000 to exclusively fund the Single Adult Winter Shelter and the need also for the Commission to provide upfront payment for the operation of the Veterans Winter Shelter, Cortez Hill Family Shelter, and Connections Housing for Fiscal Year 2013, the Commission is seeking

an advance of the General Fund monies for the oversight and operation of the Center in the total amount of \$550,000 to be advanced on a quarterly basis, which procedure is set forth in more detail in the Second Amendment to the MOU, in order to administer to these programs efficiently and to ensure the ability to pay for the operation of these various programs and services in a timely manner; and

WHEREAS, despite the fact that the Consolidated Plan Advisory Board at its meeting on July 11, 2012 took a 4-2 vote recommending against automatically setting aside a portion of each of the City's fiscal year allocations of Community Development Block Grant (CDBG) funding from HUD to pay for the cost of operating the Center and other homeless programs, City staff, at the request of the Commission, is seeking a waiver of paragraph 16 of Council Policy 700-02 to have such future CDBG funding set aside off the top for such purposes without requiring any matching funds in order to ensure future funding for the operation of the Center, Cortez Family Shelter, Veterans Winter Shelter, and Connections Housing; and

WHEREAS, the City and Commission wish to renew the MOU in addition to amending the MOU to add language to extend the term of the MOU; to allow the City to expend and provide an advance on a quarterly basis of General Fund revenue appropriated for the oversight and operation of the Neil Good Day Center (Center) to the Commission; and, to add or clarify other provisions in the MOU related to the foregoing recitals; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, as follows:

1. That the Second Amendment to the MOU between the City and the Commission in the form attached to the City Council Report is approved.
2. That the Chief Financial Officer is authorized to appropriate and expend \$550,000 from the General Fund to the San Diego Housing Commission in Fiscal Year 2013 for the

oversight and management of the operation of the Neil Good Day Center as set forth in Section 2 of the MOU, which amount is to be provided to the San Diego Housing Commission as an advance on the first quarterly payment with subsequent quarterly advances provided only upon proper submittal of adequate documentation of expenditures for the prior quarter as determined by the City's CDBG Program staff, which payment procedure is set forth in more detail in the Second Amendment to the MOU, contingent upon the Comptroller certifying that funds are available.

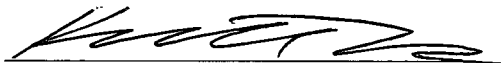
3. That the Chief Financial Officer is further authorized to appropriate and expend revenue to the San Diego Housing Commission from the General Fund appropriated by the City Council for the purposes set forth in Section 2 of the MOU, contingent upon approval of the Appropriations Ordinance for the given fiscal year and the Chief Financial Officer certifying that funds are available.

4. That the Mayor or a designee is authorized to execute the Second Amendment to the MOU, a copy of which is attached hereto as Document No. 307656.

5. That so long as the only change to the MOU is an amendment renewing the MOU, that renewal may be executed by the Mayor or a designee. Should either party propose additional changes, those changes shall be subject to approval of the San Diego City Council.

APPROVED: JAN I. GOLDSMITH, City Attorney

By

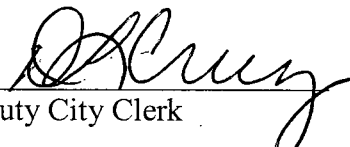


Kenneth So
Deputy City Attorney

KS:nja
07/17/12
08/01/12 Rev.Copy
Or.Dept:Econ. Devel. Division
Companion to: HA-2013-2
Doc. No. 401831_3

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 31 2012.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 8.15.12
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

**SECOND AMENDMENT
TO THE MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SAN DIEGO
AND
SAN DIEGO HOUSING COMMISSION
FOR THE PROVISION OF HOMELESS SHELTER AND SERVICES**

This Second Amendment to the Memorandum of Understanding between the City of San Diego, a municipal corporation (City) and the San Diego Housing Commission, a public agency (Commission), shall become effective upon signature of both parties.

RECITALS

WHEREAS, on June 29, 2010, by Resolution No. R-305962, the Council of the City of San Diego authorized the execution of that certain Memorandum of Understanding transferring responsibility for operation of the City's shelter and services for homeless persons from the City to the Commission effective July 1, 2010 through June 30, 2012 (Original MOU); and

WHEREAS, on June 27, 2011, the Council of the City of San Diego adopted Resolution No. R-306884 and the Housing Authority of the City of San Diego adopted Housing Authority Resolution (HAR) No. 1527, approving the First Amendment to the MOU between the City and the Commission extending the term of the Original MOU until June 30, 2013; and

WHEREAS, the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH) consolidates three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program, and replaces the Emergency Shelter Grants program with the Emergency Solutions Grant program; and

WHEREAS, previously 100 percent of the Emergency Shelter Grant funds could be used towards shelter and services for the homeless, HEARTH only allows 60 percent of the Emergency Solutions Grant to be used for such activities with the other 40 percent to be used for homeless prevention and re-housing activities; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) has determined that only grantees such as the City, not the Commission, may draw down Emergency Shelter Grant and Emergency Solutions Grant funds from HUD's Integrated Disbursement and Information System (IDIS); and

WHEREAS, the City has budgeted and intends to appropriate \$550,000 in revenue from the General Fund for the operation of the Center in the Fiscal Year 2013 Appropriations Ordinance;

WHEREAS, with regard to the \$550,000 in revenue from the General Fund budgeted for the operation of the Center, the Commission will execute a month-to-month agreement with Alpha Project for the Homeless

(Alpha Project), the current operator of the Center, pursuant to a sole source justification in an amount not to exceed \$500,000 with the remaining balance of \$50,000 to be used for the Commission's staffing and administrative expenses related to its oversight of the Center; and

WHEREAS, in light of the Commission's commitment to utilize its own funds in the amount of \$402,000 to exclusively fund the Single Adult Winter Shelter and the need also for the Commission to provide upfront payment for the operation of the Veterans Winter Shelter, Cortez Hill Family Shelter, and Connections Housing for Fiscal Year 2013, the Commission is seeking an advance of the General Fund monies for Fiscal Year 2013 for the oversight and operation of the Center in the total amount of \$550,000 to be advanced on a quarterly basis as set forth in paragraph 7 below, in order to administer these programs efficiently and to ensure the ability to pay for the operation of these various programs and services in a timely manner; and

WHEREAS, such a month-to-month agreement for the operation of the Center will allow the Commission to procure an operator for the Center pursuant to a competitive bid process at the earliest possible opportunity; and

WHEREAS, upon the receipt of responses to the RFP the Commission intends to enter into a contract for the operation of the Center for the balance of FY 2013 with the selected operator using the balance of the funds appropriated for FY 2013. In addition, the contract shall have four (4) one year options, in favor of the Commission, exercisable only by the Commission, to extend the services in subsequent fiscal years, dependent upon funding availability; and

WHEREAS, to ensure future funding for the operation of the Center, City staff is seeking a waiver of paragraph 16 of Council Policy 700-02 in order to have future Community Development Block Grant (CDBG) funding set aside off the top from each of the City's fiscal year allocations from HUD to cover the expense of operating and overseeing the operation of the Center, Cortez Hill Family Shelter, Veterans Winter Shelter, and Connections Housing without requiring any matching funds; and

WHEREAS, the City and the Commission wish to extend the term of the MOU and clarify other provisions of the Original MOU and the First Amendment related to the foregoing recitals; and

NOW, THEREFORE, the City and Commission agree as follows:

1. The Second Amendment to the MOU shall extend the term of the Original MOU as amended an additional fiscal year, beginning July 1, 2013 (the expiration of the date of the Original MOU as amended) and ending June 30, 2014. In order to ensure the availability and allocation of funding, all future amendments renewing the Original MOU must be approved no less than one fiscal year prior to the expiration of the then-current term or extension.
2. Notwithstanding anything to the contrary in the Original MOU and the First Amendment, any and all references therein to the term "ESG" shall mean "Emergency Solutions Grant".

3. Section 3 of the Original MOU as amended by the First Amendment shall be replaced in its entirety and shall read in its entirety as follows:

“The City will appropriate and expend 60 percent of funds received from the HUD ESG program for shelter and service programs and 40 percent of such funds for homeless prevention and re-housing activities as required under the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The City will appropriate and expend CDBG funds in accordance with Council Policy 700-02 to the shelter and service programs itemized herein during the term of this MOU, contingent upon the City’s Chief Financial Officer certifying availability of such funds. City and Commission acknowledge that the current rate of City funding does not cover the entire cost of the shelter and service program as currently constituted and is contingent upon the ESG entitlement amount, confirmation of other funding sources, and City Council approval during the CDBG application process. In addition, the City shall dedicate and expend revenue from the General Fund appropriated by the City Council for the purposes set forth in Section 2 of the MOU, contingent upon the City’s Chief Financial Officer certifying availability of such funds. It is expressly understood the Commission may terminate this MOU upon ninety (90) days written notice to the City, if regular funding sources adequate to cover the provision of a sprung structure and social services at a level of service equal or greater than that provided by the City’s winter shelter program in FY 2010 are not made available. It is expressly understood that the City will endeavor to make funds available for each Fiscal Year that this MOU is in place at a level no less than that of the previous Fiscal Year. However, if the specified level of funding is not available and/or if program elements are changed, Commission’s responsibilities under the MOU will be changed accordingly as mutually agreed to by the parties in writing.

Commission’s financial contribution for the programs and services covered by the MOU shall not exceed \$400,000, in addition to the \$45,000 previously referenced in Section 2, during any fiscal year during the term of this MOU. This financial contribution is intended to be separate and apart from the one-time not to exceed \$402,000 contribution the Commission has agreed to make to administer the Single Adult Downtown Winter Shelter Program for Fiscal Year 2013.”

4. Section 4 of the Original MOU shall be replaced in its entirety and shall read in its entirety as follows:

“Per HUD’s direction, administration of the ESG funds must remain with the City, as HUD’s grantee, and the City will retain access to the Integrated Disbursement and Information System (IDIS). The City will reimburse the Commission for all approved and eligible ESG contracted activities.”

5. Section 11 is added to read as follows:

“11. The Commission will adhere to an appropriate procurement process for selecting the operator of the Neil Good Day Center (Center). The City and the Commission agree that the Commission will enter into a month-to-month agreement in an amount not to exceed \$500,000 with a selected operator for FY 2013 for the operation of the Center utilizing revenue from the General Fund

appropriated by the City for Fiscal Year (FY) 2013, until such time as an operator for the Center is procured using a competitive bid process which shall be done at the Commission's earliest opportunity. After issuance of the RFP the Commission, through the President and Chief Executive Officer of the Commission, shall be authorized to enter into a contract for the operation of the Center for the balance of FY 2013 with the selected operator using the balance of the funds appropriated for FY 2013. In addition, the contract shall have four (4) one year options, in favor of the Commission, exercisable only by the Commission, to extend the services in subsequent fiscal years, dependent upon funding availability. The remaining balance of up to \$50,000 of revenue from the General Fund appropriated by the City for FY 2013 for the operation of the Center shall be expended for the Commission's staffing and administrative expenses related to such purpose. The Commission shall seek approval of the contracts with the selected operator from both the San Diego Housing Commission Board and the Housing Authority of the City of San Diego, at a Joint City Council/Housing Authority meeting at the earliest possible time, currently anticipated to be in late July of 2012. In addition, the Commission will seek the approval of the San Diego Housing Commission Board and the Housing Authority of the City of San Diego and the City Council of the City of San Diego to enter into a contract with the selected operator for the balance of FY 2013 with the contract having four (4) one year options, exercisable by the Commission, to extend services for subsequent fiscal years, dependent upon funding availability."

6. Section 12 is added to read as follows:

"12. For Fiscal Year 2013, the City shall provide an advance to the Commission of \$137,500 (\$125,000 for the operation of the Neil Good Day Center and \$12,500 for the Commission's costs in overseeing and managing such operation) and reimbursements on a quarterly basis up to the amount of \$137,500 for a total amount of up to \$550,000 to be paid to the Commission by the end of Fiscal Year 2013. The advance of \$137,500 shall be processed within thirty (30) calendar days of the execution of this Second Amendment to the MOU. Within thirty (30) calendar days of the end of each quarter, the Commission shall submit request for reimbursement (RFR) forms with supporting documentation including a request for reimbursement of the Commission's administrative expenses to the City's CDBG fiscal unit. The end of the first quarter shall be September 30, 2012; the end of the second quarter shall be December 31, 2012; the end of the third quarter shall be March 31, 2013; and, the end of the fourth quarter shall be June 30, 2013. Prior to the Commission receiving any reimbursement to the advance, the Commission must submit RFR forms with all supporting documentation to the City's satisfaction to substantiate the Commission's expenditures for the prior quarter. Within thirty (30) calendar days of receipt of the RFR forms and all supporting documentation from the Commission, CDBG staff shall review and ensure any and all expenditures are eligible based on the San Diego Housing Commission Agreement for Shelter and Services for Homeless Persons- Neil Good Day Center with Alpha Project for the Homeless or any subsequent agreement executed for Fiscal Year 2013 pursuant to the award of a competitive bid (collectively, "Neil Good Day Center Operating Agreement"). If any expenditure is deemed ineligible by CDBG staff, a disallowance form will be submitted by CDBG staff reducing the Commission's RFR payment for the subsequent quarter. The reimbursement amount of payment shall be determined by CDBG staff and will be processed by the City Comptroller's Department. CDBG staff shall notify the Commission of any disallowances by email before the Commission's receipt of the reimbursement payment. The Commission shall submit to CDBG staff any and all final documents supporting expenditures related to the operation and management of the Neil Good Day Center no later than July 31, 2013. If any disallowance is found in the last quarter's submission or if any advanced funds

are remaining at year end, the Commission shall reimburse such funds to the City within fifteen (15) calendar days after the Commission is notified by CDBG staff. CDBG staff reserves the right to review, and the Commission must promptly provide at the City's request, original documents at any time during the term of the Neil Good Day Center Operating Agreement for Fiscal Year 2013."

This Second Amendment shall affect only the pages and sections and terms and conditions referred to herein. All other terms and conditions of the Original MOU as amended shall remain in full force and effect.

IN WITNESS WHEREOF, this Second Amendment is executed by the City of San Diego, acting by and through its Mayor or his designee, pursuant to San Diego City Charter Section 265 authorizing such execution, and by the Commission.

I HEREBY CERTIFY that I can legally bind the San Diego Housing Commission and that I have read all of this Amendment this _____ day of _____, 20__.

SAN DIEGO HOUSING COMMISSION

CITY OF SAN DIEGO

By: _____
Name:
Title:

By: _____
Jeffrey Baer
Director of Purchasing & Contracting

Date: _____

Date: _____

I HEREBY APPROVE the form and legality of the foregoing Amendment this _____ day of _____, 20__.

JAN I. GOLDSMITH, City Attorney

By _____
Kenneth R. So
Deputy City Attorney