

Office of the City Manager


SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: October 19, 2004

Item Number: #21 – Action Calendar

Item Description: HUD Section 108 Loan Guarantee for the Jubilee Village

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

RECOMMENDATION:

Adopt a resolution: 1) directing the City Manager to take no further action concerning the City's participation in the U.S. Department of Housing and Urban Development's (HUD) 108 Loan Guarantee Program for the Jubilee Village project; 2) authorizing the City Manager to only reimburse Community Economics for the financial services in the amount of \$3,960 that it has provided to Jubilee Village project to date; and 3) rescinding Resolution No. 62,241-N.S.

SUMMARY:

Attached is a letter from HUD's Office of Community Planning and Development to Jubilee dated October 5, 2004. The letter sets forth the findings from HUD's investigation and requires Jubilee to take certain actions within 45 days from the date of the letter. The City's participation in the 108 Loan Guarantee Program for the Jubilee Village project would have resulted in the City using its current and future Community Development Block Grant (CDBG) funds to secure a loan from HUD on behalf of the project in the amount of \$3,008,000. HUD's findings raise very serious concerns regarding Jubilee's operations and the risk that City funds would be exposed should the City proceed with extending a loan guarantee. Previously, Jubilee received a draft of the HUD letter and had a brief period of time to respond to the findings included in the report. However, HUD's final letter reiterates significant violations of its program guidelines and regulations by Jubilee. Consequently, HUD has advised the City to be extremely cautious in proceeding with current and planned activities, which might provide funds to the organization.

FISCAL IMPACTS OF RECOMMENDATION:

The City previously entered into a Predevelopment Loan Agreement with Jubilee Restoration in the amount of \$25,000 for this project. These funds have been expended. The City is also processing a \$50,000 amendment to the Predevelopment Loan Agreement to provide funding for the services of a financial consultant (Community Economics) to assist with this project. One of the Council-approved contingencies of the HUD was that Jubilee should hire an outside financial advisor/consultant to help in the structuring of the financing for the development. City Council subsequently approved the needed funding for the contract. At the request of Jubilee Restoration and Housing staff, Community Economics has provided services to Jubilee Restoration on the financial pro formas and analysis of the proposed financing. The staff will notify Community Economics to discontinue its services and the staff will stop processing the contract. However, it is requested that Council approve a recommendation to reimburse Community Economics for the services that it is provided to date. Since the Agreement between Jubilee Restoration and the City has not yet been executed, it is recommended that Resolution 62,241-N.S. which approved a fund reservation in the amount of \$50,000 be rescinded. The \$50,000 allocation will be returned to the Housing Trust Fund Program. The Housing Department will use its Consultant Fund Account to reimburse Community Economics for the \$3,960 of services provided to date.

RESOLUTION NO. – N.S.

THE CITY MANAGER IS DIRECTED TO TAKE NO FURTHER ACTION CONCERNING THE CITY'S PARTICIPATION IN THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S (HUD) 108 LOAN GUARANTEE PROGRAM FOR THE JUBILEE VILLAGE PROJECT. THE CITY MANAGER IS AUTHORIZED TO REIMBURSE COMMUNITY ECONOMICS IN THE AMOUNT OF \$3,960 FOR THE FINANCIAL SERVICES THAT IT HAS PROVIDED TO THE JUBILEE VILLAGE PROJECT TO DATE. RESOLUTION NO. 62,241-N.S. IS RESCINDED.

WHEREAS, the Department of Housing and Urban Development (HUD) has established the Section 108 Loan Guarantee Program ("Program") in order to provide below-market rate loans for qualified projects that serve the needs of low and moderate income persons; and

WHEREAS, the City of Berkeley meets the criteria to participate in the HUD 108 Loan Guarantee Loan Program as a Grantee, receiving funds through the HUD Community Development Block Grant Program (CDBG); and

WHEREAS, on September 9, 2003 the Council of the City of Berkeley approved the use of Community Development Block Grant funds as the ultimate security to participate in the HUD Section 108 Loan Guarantee Program with a loan application for up to \$3,008,000 and not to exceed eighty percent (80%) of the appraised value of the property for the Jubilee Village development; and

WHEREAS, Council of the City of Berkeley approved recommended contingencies along with the loan application; and

WHEREAS, on October 14, 2003 City Council approved Resolution No. 62,241-N.S. approving a fund reservation in the amount of \$50,000 from the Housing Trust Fund to execute a predevelopment loan agreement with Jubilee Restoration, Inc. to hire an outside financial consultant to assist Jubilee in the structuring of the financing for the Jubilee Village project; and

WHEREAS, the predevelopment loan agreement between the City and Jubilee Restoration, Inc. for the services of the financial consultant is not executed; and

WHEREAS, on October 5, 2004, HUD's Office of Community Planning and Development issued a letter to Jubilee Restoration Inc. finds that it is in substantial noncompliance with HUD regulations and requirements including CDBG requirements; and

WHEREAS, the HUD 108 Loan Guarantee Program requires the use of current and future CDBG funds to secure a loan for the Jubilee Village project; and

WHEREAS, HUD's findings raise very serious concerns regarding Jubilee's operations and risk that City funds would be exposed should the City proceed with extending a loan guarantee; and

WHEREAS, the City Council has not yet authorized the City Manager to execute the HUD Contract for Loan Guarantee Assistance, Note and other documents and agreements necessary to secure the HUD 108 loan; and

NOW THEREFORE, BE IT RESOLVED that the City Manager take no further action concerning the City's participation in the HUD 108 Loan Guarantee Program for the Jubilee Village project.

BE IT FURTHER RESOLVED that Resolution No. 62,241-N.S. is hereby rescinded.

BE IT FURTHER RESOLVED that as a result of the recommended contingencies approved by Council of the City of Berkeley, that the City Manager be authorized to reimburse Community Economics from the Housing Department's funds for Financial Consultant Services for the services in the amount of \$3,960 that Community Economics has provided to the Jubilee Village project to date.



U.S. Department of Housing and Urban Development
San Francisco Regional Office - Region IX
600 Harrison Street
San Francisco, California 94107-1387
www.hud.gov
espanol.hud.gov

Ms. Laura McKinney
Deputy City Attorney
2180 Milvia Street
Berkeley, CA 94704

OCT 18 2004

Dear Ms. McKinney:

Subject: Freedom of Information Act Request
FOIA Control No. 412985

This is in response to your Freedom of Information Act (FOIA) request dated October 18, 2004. In that request, you asked for a copy of the monitoring letter issued to Jubilee Restoration, Inc. on October 5, 2004 from the U. S. Department of Housing and Urban Development's Community Planning and Development Division. The City of Berkeley has requested this information be made available in time for the City Council meeting held on October 19, 2004. At this meeting, the City will discuss Jubilee Restoration, Inc.'s Section 108 Loan Guarantee for the Jubilee Village program.

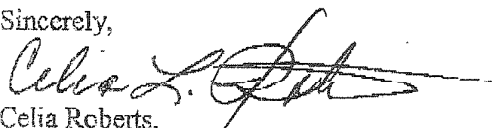
When responding to a FOIA request, HUD searches for responsive documents existing up to the date the request was received in the proper office. Your request was received on October 18, 2004.

Your request is granted in full at no cost to you. Enclosed is the monitoring letter sent to Jubilee Restoration, Inc. as a result of the monitoring review of the organization conducted by the Community Planning and Development Division staff.

For your information, your FOIA request, including your identity and the information made available, is releasable to the public under subsequent FOIA requests. In responding to these requests, the Department does not release personal privacy information such as home address, telephone number, or social security number, all of which are protected from disclosure under FOIA Exemption 6.

Thank you for your interest in the Department's programs and policies.

Sincerely,


Celia Roberts,
Liaison Officer

Enclosure

Hataitip/10/18/04 file: FOIA FI 412985

bcc: Celia Roberts, FPM, Regional Dir. (2 copies)

Sachs, 9AD

Prater, 9ADM1

Buffy-Feng, 9ADM1

Oshia/9AD

Chron File/Official

OFFICIAL FILE COPY

OCT - 5 2004

Pastor Gordon W. Choyce, Sr.
Executive Director
Jubilee Restoration Incorporated
2144 Bryon Street
Berkeley, CA 94702

Dear Pastor Choyce:

SUBJECT: Conflict of Interest On-site Monitoring
Grantee: Jubilee Restoration Incorporated
Project Name: Berkeley Interfaith Youth Initiative Satellite Drop-in
Project Sponsor: Berkeley Ecumenical Strategies Team (BEST)
Project Numbers CA01B002024 and CA01B102016
Project Identifier Number CA5251
Supportive Housing Program

On July 28, 2004, we initiated a conflict of interest review of Jubilee Restoration Incorporated. This review was prompted by our observation during the technical submission phase that Deputy Director Gordon W. Choyce II and you are related and both serve concurrently on Jubilee's board of directors.

Our review was conducted in accordance with the Supportive Housing Program (SHP) regulations at 24 CFR Part 583, the standards of 24 CFR Part 84, Uniform Administrative Requirements, as well as the costs principles identified in Office of Management and Budget (OMB) Circular A-122 for nonprofit organizations.

The conflict of interest regulations were established as a means of ensuring program integrity and assuring public trust in our programs. When a conflict of interest has been identified, HUD, in accordance with 24 CFR Subpart 583.330(e)(2), may grant an exception, provided that it has determined that the grant recipient is functioning efficiently and effectively, notwithstanding the circumstances.

Project History

Jubilee was awarded SHP 2000 funds to pay for three *additional* full-time equivalent (FTE) positions (as listed below), and its 2001 SHP award was designed to be a continuation of the 2000 project. The SHP 2000 and SHP 2001 application and technical submission indicate funds were to be used for the following:

- (1) Counselor/drug and alcohol program director (0.5 FTE);
- (2) Counselor/AIDS and STD program director (0.5 FTE);

- (3) Counselor/employment program director (0.5 FTE);
- (4) Counselor/education development program director (0.5 FTE);
- (5) Counselor/life skills development program director (0.5 FTE); and
- (6) Counselor/life skills educational development director (0.5 FTE)

The above three FTEs were to serve at Jubilee's satellite centers that correspond to the below locations, having the following specialization:

- (1) 3332 Adeline Street for HIV/AIDS and STD prevention, recovery, and drug and alcohol recovery;
- (2) 1802 Fairview Street for life skills; and
- (3) 1125 Allston Way for vocational training and counseling.

On June 23, 2003, Jubilee notified us that the 2001 project moved from the above sites to 1500 Ashby Street, 2140 Byron Street, and 1400 Eighth Street, with all services reported to be the same as in the original application.

The 2000 and 2001 annual progress reports state that all identified supportive services were provided at the required FTE levels. The 2000 grant, with an operating year of April 2002 through March 2003, and the 2001 grant, with an operating year of April 2003 through March 2004, have been fully disbursed.

To ascertain the impact of the identified conflict of interest relationship on the effective and efficient administration of Jubilee's grant, we reviewed the SHP 2000 and 2001 Technical Submission, related payment vouchers, corresponding Annual Progress Reports (APR), and pertinent source documentation, such as payroll registers, bank statements and reconciliation, and cancelled checks. For the financial transactions, we applied the standards contained in 24 CFR Subpart 84.21, Financial Management Systems, and OMB Circular A-122, nonprofit cost principles. The Federal financial regulations, in summary, require grantees to provide for the following:

- (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in Sec. 84.52. If a recipient maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (PL 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

We expanded the scope of our review to include program cost eligibility since the disbursements made from the respective Youth and Housing checking account raised questions about program eligibility. As a result of our analysis, we have concluded that Jubilee is in *substantial noncompliance* with SHP, CDBG, and OMB requirements. The use of all SHP and CDBG funds is questioned. The failure to document expenses adequately will result in the repayment of unsubstantiated costs to HUD. Until all issues are adequately addressed and an acceptable financial management system has been implemented and described to us, no subsequent HUD funds will be released.

Finding Number 1 – Substantial Noncompliance with SHP, CDBG, and OMB

A. Additional conflicts of interest not previously disclosed Our review of the Youth Checking Account, which housed the SHP funds, and Housing Checking Account, which contained the CDBG funds, indicates that from May 2, 2003, through July 11, 2003, \$1,400 (See Enclosure) was disbursed to Kara Choyce-Palmer, *another* family member not previously disclosed during the preliminary conflicts of interest inquiry. These costs are questioned. Our review of the roster of board members indicates that Charles

Lightfoot serves as its treasurer. At the same time, an employee with an identical last name, Charleton Lightfoot served as Adult Program Coordinator. This conflict was not previously disclosed during the preliminary inquiry. From May 23, 2003, to January 30, 2004, Charleton Lightfoot was paid \$4,782.75 (See Enclosure). Please clarify the relationship between Charles Lightfoot and Charleton Lightfoot. Until this apparent conflict of interest is resolved, these costs are questioned.

B. Ineligible and unsubstantiated project costs Our review of the three staff assigned to the SHP project determined that the first position, Development Director, is ineligible for assistance, since SHP limits supportive services expenditures to the actual cost of providing them, not developing them and OMB Circular A-122 prohibits paying for fund-raising and development activities, including the cost of preparing the application and technical submission. Furthermore, we were confused by Jubilee's representation that 1.5 FTE, identified in the application and technical submission for program development, was being carried out by the development director, which constituted a single FTE. Moreover, our examination of the second position, Youth Director, funded 90 percent with SHP and 10 percent with Measure O, indicates that it was to serve homeless and at-risk youth. SHP is specifically limited to assisting the homeless. The latter group, at-risk youth, is, therefore, an ineligible population for SHP assistance. Also, any time spent by the Youth Director developing services is ineligible for SHP assistance for the same reasons previously cited.

The third position, Outreach Worker, is not part of the approved SHP project. It is principally funded with City of Berkeley's Measure O.

Although the principal use of SHP and CDBG is to pay for salaries, Jubilee does not maintain an employee activity reporting system to document personnel costs charged Federal programs, in accordance with OMB Circular A-122. Our SHP Start-up Conference, held on February 28, 2001, and our award transmittal letter, dated June 12, 2003, specifically called to Jubilee's attention the importance of personnel documentation requirements. Nevertheless, an acceptable employee activity reporting system was never established. All personnel costs are questioned.

C. Ineligible and unsubstantiated match costs The Federal regulations at 24 CFR Subpart 84.23 require a match dollar to be documented as if it were a Federal dollar. By law, Jubilee is required to pay from a non-SHP resource 20 percent of the costs of providing the approved supportive services of (1) drug and alcohol counselor and program director, (2) AIDS and STD counselor and program director, (3) employment counselor and program director, (4) education development counselor and program director, (5) life skills development counselor and program director, and (6) life skills educational development counselor and program director.

The 2000 and 2001 application and technical submission identify the City of Berkeley's Measure O as the source of the statutorily-mandated SHP supportive services match. Our review of the City of Berkeley's \$26,000 Measure O contract with Jubilee

indicates that its purpose is to provide outreach to homeless and at-risk youth. The funds were to be used for:

- (1) Youth Outreach Worker (0.75 FTE)(The source of remaining 25 percent is unknown)
- (2) Youth Director (0.1 FTE)(The remaining 90 percent is funded with SHP)
- (3) Food for outreach (\$3,750)

Please note that *only* the amounts applied toward the SHP-approved supportive services may count as project costs or match. Neither Jubilee's application nor technical submission states that SHP will pay for *outreach and food*. *All costs for outreach and food are ineligible for the project and match*. The only portion of Measure O funds that are eligible for match consideration is a portion of the Youth Director's time applied toward the homeless. However, Jubilee did not require an accounting of time spent on approved homeless youth supportive services. Therefore, compliance with the match is questioned.

By this analysis, Jubilee has not met its statutory match, nor documented its compliance with it. Jubilee must demonstrate that it has met the match. If undocumented, all unauthorized funds drawn in excess of match requirement will have to be remitted to the line of credit.

D. Questioned program performance and ineligible use of SHP and CDBG funds

In the absence of employee activity reports, our review examined other source documents, such as payroll registers, bank statements, and cancelled checks, to ascertain the use of SHP and CDBG funds. Based on our review of these documents, we expanded our inquiry into program performance.

As a recap, with an operating year of April 2002 through March 2003, CA01B002024 was originally awarded as a homeless supportive services *expansion* project to *increase the existing* level of service by *adding three FTEs*. On this basis, Jubilee should be expending an additional \$10,136.08 [\$121,633 (total annual SHP supportive services budget)/12 months] of salaries per month starting April 2002.

Since the SHP operating year had started on April 2002, we looked for evidence of hiring additional FTEs. Our examination of the payroll register from April 2002 through September 15, 2002, did not indicate any additional FTEs were hired. The Youth Director was not hired until October 2003, and only a portion of this salary may be eligible for assistance with SHP. A comparison of Jubilee's IRS Form 990 for 2001 and 2002 indicates that it had incurred an increase of only \$6,810 in salaries between the two years, not enough to indicate whether three FTEs were hired for SHP. Moreover, Jubilee's IRS Form 990 for 2002 reports a total of \$112,712 in salaries for its *entire* operations. In contrast with the \$112,712, the total annual approved SHP supportive services budget, which is comprised of completely salaries, is \$121,633. We also noted

that none of the satellite centers is identified as having eight hours of operations per day, a foundation of the full time, 2080-hour year.

In this regard, since it appears that no additional FTEs were hired for the SHP project until October 2003, we examined the checks issued by Jubilee against the Youth and Housing checking accounts. The following are our results:

1. Other than a portion of the Youth Director's salary, none of the other salary payments appear to pay for SHP approved supportive services. All remaining salary charges are questioned.
2. The youth outreach worker position is funded with City of Berkeley funds and is *not part* of the approved SHP activities.
3. The *adult* program director is not within the scope of approved supportive services, since it is an existing position for a program with a genesis prior to the SHP grant and has a target group of adults, which is not the SHP target group of youth.
4. Throughout this period, duplicated salary payments appeared to have been paid. (See Enclosure) Regular withdrawals were made to the payroll account, 6229-156111, but at the same time individual checks were written to the same employees in the same month. These duplicated payments need to be adequately substantiated. If inadequately substantiated, all duplicated salary payments must be repaid.
5. Throughout this period, the Youth checking account paid for salaries outside of the scope of SHP activities (See Enclosure). We noted the same practice for the Housing checking account (See Enclosure). An explanation is required for these payments. Please note that all fund raising and similar development activities are ineligible for Federal financial assistance. It appeared that payroll withdraws from both the SHP and CDBG checking accounts went for the *entire* agency, not just the proportionate SHP or CDBG FTE amounts. All withdrawals for payroll beyond the authorized SHP and CDBG FTEs from the respective checking accounts need to be explained. If these withdrawals from the Youth and Housing checking accounts are unsubstantiated, they will have to be returned to the line of credit.
6. Also, throughout this period, regular unspecified transfers were made out of the SHP and CDBG checking account without an adequate explanation (See Enclosure). Please provide an explanation for each transfer. All unsubstantiated transfers must be repaid.

7. The SHP and CDBG checking account paid for several unallowable costs, such as an insufficient fee charge, overdraft charge, and social costs for an office luncheon. (See Enclosure). Numerous costs that were not in accordance with the approved technical submission were charged to SHP. Without an adequate explanation, all unallowable items must be repaid.

Required Actions

The following actions should be completed within 45 days of the date of this letter:

1. Please provide an adequate accounting of the source and use of SHP and CDBG funds, going back three years. Jubilee's Form 990 for 2002 reports a substance abuse grant. Please identify the source, amount, use and term of the substance abuse grant.
2. Please provide an explanation for each withdrawal from the SHP and CDBG checking account that is not within the scope of the respective grant agreements.
3. Return all unsubstantiated costs must be returned to the line of credit.
4. Please develop a financial management system that meets the requirements of 24 CFR Subpart 84.21 and OMB Circular A-122. This system needs to be submitted to HUD for our review.
5. The newly identified apparent conflicts of interest for Kara Choyce-Palmer, Charles Lightfoot, and Charleton Lightfoot must be adequately addressed in accordance with 24 CFR 583.330(e).

No additional HUD funds will be released and disbursed to Jubilee until it has adequately addressed the above issues.

If you have any questions, you may call me at (415) 436-6597.

Sincerely,

ORIGINAL SIGNED BY:
STEVEN B. SACHS

Steven B. Sachs, Director
Community Planning and
Development Division

Enclosures

