

TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Shirley Taylor-Prakelt, Housing and Community Dev. Director
(954) 797-1199

PREPARED BY: Shirley Taylor-Prakelt, Housing and Community Development
Director

SUBJECT: MOU between Davie and Broward County for implementation of
the Home Investments Partnership (HOME) Grant - First-Time Homebuyers Program

AFFECTED DISTRICT: Town-Wide Based on Income Level

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE TOWN OF DAVIE AND BROWARD COUNTY FOR THE EXPENDITURE OF FY 2003/04 AND FY 2004/05 FEDERAL HOME INVESTMENTS PARTNERSHIP PROGRAM (HOME) FUNDS IN THE TOTAL AMOUNT OF \$312,704 TO PROVIDE FOR CLOSING COSTS AND DOWN PAYMENT ASSISTANCE TO FIRST-TIME HOMEBUYERS EARNING 80% < OF THE ANNUAL MEDIAN INCOME LEVEL.

REPORT IN BRIEF: The Town of Davie and 10 other entitlement jurisdictions formed a Consortium for implementation of the Federal Home Investment Partnership Program (HOME) with Broward County. As a partner in this Consortium, the Town receives a yearly allocation of HOME funds from HUD to be utilized for affordable housing programs which the Town determines best meets its needs. The Housing and Community Development Office determined that the best use of the Town's HOME funds is to provide assistance to "First-Time Homebuyers" under a Purchase Assistance Program. Priority will be given to Davie renters, mobile home occupants, and Town employees. In order for the Town to access its HOME funds in the total amount of \$312,704, a Memorandum of Understanding (MOU) between the Town and Broward County must be executed. A Memorandum of Understanding was previously approved by the Town Council by Resolution Number R-2007-70 on February 21, 2007. However, since the County's policy is to terminate all agreements at the end of the Fiscal Year, the MOU expired on September 30, 2007. As a result, a new MOU for 2003/04 and 2004/05 which will not expire until September 30, 2008 must now be executed.

PREVIOUS ACTIONS: Davie joined the county-wide HOME Program Consortium in 2004

CONCURRENCES: Consolidated Plan and Annual Action Plan

FISCAL IMPACT: Yes

Has request been budgeted? n/a

If yes, expected cost: \$312,704. Account Name: N/A- Funds to be held in County Trust Fund

RECOMMENDATION(S): Approve Resolution

Attachment(s): Resolution and MOU Between Davie & Broward County for HOME Program

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE TOWN OF DAVIE AND BROWARD COUNTY FOR THE EXPENDITURE OF FY 2003/04 AND FY 2004/05 FEDERAL HOME INVESTMENT PARTNERSHIP PROGRAM (HOME) FUNDS IN THE TOTAL AMOUNT OF \$312,704 TO PROVIDE FOR CLOSING COSTS AND DOWN PAYMENT ASSISTANCE TO FIRST TIME HOMEBUYERS EARNING 80%< OF THE ANNUAL MEDIAN INCOME INCOMES LEVEL.

WHEREAS, the Town of Davie is in a partnership with Broward County and 10 other entitlement jurisdictions under the HOME Consortium; and,

WHEREAS, the Town receives a yearly allocation of HOME funds to be utilized in a program which the Town determines; and,

WHEREAS, the Town's allocation of HOME funds for FY 2003/04 and 2004/05 combined is \$312,704; and,

WHEREAS, a Memorandum of Understanding authorizing expenditure of \$312,704 was approved by the Town Council on February 21, 2007, by Resolution No. 2007-70 which expired on September 30, 2007; and,

WHEREAS, a new Memorandum of Understanding is needed to continue this HOME funded Purchase Assistance Program until September 30, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Mayor or his designee is hereby authorized to execute the attached Memorandum of Understanding between the Town and Broward County for the expenditure of 2003/04 and 2004/05 HOME funds in the total amount of \$312,704 to provide assistance to "First Time Homebuyer's" who's incomes are at or below the 80% of the AMI under Davie's Purchase Assistance Program.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2007.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____ 2007.

MEMORANDUM OF UNDERSTANDING

Between

BROWARD COUNTY

and

TOWN OF DAVIE

for

**ADMINISTRATION OF HOME FUNDING PROGRAM
2003 and 2004**

MEMORANDUM OF UNDERSTANDING

Between

BROWARD COUNTY

and

TOWN OF DAVIE

for

**ADMINISTRATION OF HOME FUNDING PROGRAM
2003 and 2004**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida ("COUNTY"), and TOWN OF DAVIE, FLORIDA, a municipal corporation of the State of Florida ("TOWN"), collectively referred to as the "Parties."

WHEREAS, the Parties enter into this MOU pursuant to Section 163.01, Florida Statutes, as may be amended from time to time, also known as the Florida InterLocal Cooperation Act of 1969; and

WHEREAS, COUNTY and TOWN are members of the Broward County HOME Consortium ("Consortium"), and are subject to the terms and conditions of that certain HOME Investment Partnership Program Consortium Cooperation Agreement ("HOME Agreement") entered into on June 25, 2002; said HOME Agreement is incorporated herein by reference; and

WHEREAS, COUNTY, in its representative capacity to the Department of Housing and Urban Development (“HUD”) for all members of the Consortium, is the recipient of HOME funds from HUD, and has allocated these funds to various municipalities within Broward County, including CITY; and

WHEREAS, CITY is desirous of procuring the services of COUNTY to administer its allocation of HOME funding pursuant to federal and local laws and regulations; NOW, THEREFORE,

IN CONSIDERATION of the mutual covenants set forth, the Parties agree as follows:

1. Funding. COUNTY shall allocate Three Hundred Twelve Thousand Seven Hundred and Four Dollars (\$312,704) in HOME funding to TOWN for the 2003-2004 and 2004-2005 Fiscal Years. COUNTY agrees to administer TOWN’s allocation of HOME funds for the HOME Program described in Exhibits “A” and “B,” attached hereto and incorporated herein this MOU.
2. It is specifically understood and agreed by the Parties that all rights and powers as may be vested in TOWN pursuant to Chapter 166, Florida Statutes, or any other law, ordinance or regulation of TOWN not specifically addressed in this MOU shall be retained by TOWN.
3. Administration. COUNTY shall administer and assume overall responsibility for ensuring that the HOME Program referenced in this MOU and Exhibits “A” and “B” are carried out in compliance with the requirements of 24 CFR Part 92, incorporated herein by reference.
4. Term. This MOU shall become effective upon execution by COUNTY and shall continue until September 30, 2008, unless terminated earlier as provided for herein.
5. Termination. This MOU may be terminated by either party upon thirty (30) days written notice to the other party in accordance with the Notice provision set forth in paragraph 10(B) herein. If TOWN elects to terminate this MOU, or otherwise terminate or cease its membership in the Consortium and does not become a HOME Participating Jurisdiction, TOWN shall not be entitled to a refund or return of any unused portion of TOWN’s HOME fund allocation referenced above, nor any program income or recapture monies derived from any projects by TOWN pursuant to this Agreement. For the purposes of this MOU, “program income” shall be as defined in 24 CFR Part 92.2.

6. Should TOWN withdraw from the Consortium and become a HOME Participating Jurisdiction, COUNTY shall transfer to TOWN, at TOWN's request and following HUD approval, any program income, recapture monies and any unused portion of TOWN's HOME fund allocation for the particular project referenced herein this MOU. In this event and upon the transfer of such HOME funds to TOWN, TOWN shall assume all obligations and responsibilities attributable to such HOME funds.
7. Amendment. No modification, amendment, or alteration in the terms or conditions shall be effective unless contained in a written document prepared with the same or similar formality as this MOU and executed by the Parties, as provided for herein. Such amendment shall be subject to approval of the Board of County Commissioners, except the County Administrator shall be authorized to execute amendments that change the term of the MOU or that change the Project, so long as the Project consists of eligible activities under 24 CFR Part 92.
8. Liability. The Parties are state agencies or political subdivisions of the state of Florida and each agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this MOU or any other contract. Additionally, the Parties shall each individually defend any action or proceeding brought against their respective agency and shall be individually responsible for all its own costs, attorneys fees, expenses and liabilities incurred as a result of any such claims, demands, suits, actions, damages and causes of action, including the investigation or the defense thereof, and from and against any orders, judgments or decrees which may be entered as a result thereof; except such claims, demands, suits, actions, damages and causes of action caused by negligent acts or omissions of a party, its officers, agents, servants, and employees.
9. Insurance. The Parties shall each individually maintain throughout the term of this MOU any and all applicable insurance required by Florida law for governmental entities and each shall furnish to the other party written verification of such insurance upon request of the party.
10. Miscellaneous:

A. Third Party Beneficiary. Neither TOWN nor COUNTY intends to directly or substantially benefit a third party by this MOU. Therefore, the Parties agree that there are no third party beneficiaries to this MOU and that no third party shall be entitled to assert a claim against either of them based upon this MOU. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this MOU.

B. Notice. Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

COUNTY: Director
Broward County Housing and
Community Development Division
115 South Andrews Avenue, Room 311
Fort Lauderdale, Florida 33301

CITY: Town of Davie
Director of Housing and Community Development
4700 Southwest 64th Avenue, Suite D
Davie, Florida 33314

C. Assignment. Neither this MOU nor any interest herein shall be assigned, transferred, or encumbered by either party, except COUNTY may subcontract services to complete the work related to COUNTY's administration of the HOME funds referenced in this MOU and Exhibit "A."

D. Materiality. The Parties agree that each requirement, duty, and obligation set forth in this MOU is substantial and important to its formation and, therefore, is a material term.

E. Waiver. The failure of the Parties to enforce any provision of this MOU shall not be deemed a waiver of such provision or modification of this MOU. A waiver of any breach of a provision of this MOU shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this MOU.

- F. Severability. In the event a portion of this MOU is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless a party elects to terminate this MOU. An election to terminate this MOU based upon this provision shall be made within seven (7) days after the finding by the court becomes final.
- G. Joint Preparation. The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this MOU has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.
- H. Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached, any document or events referred to, or any document incorporated into this MOU by reference and a term, statement, requirement, or provision of this MOU, the term, statement, requirement, or provision contained in paragraphs 1 through 10 of this MOU shall prevail and be given effect.
- I. Governing Law and Venue. This MOU shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this MOU and any action involving the enforcement or interpretation of any rights under this MOU shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, and shall be governed by the laws of the state of Florida. To encourage prompt and equitable resolution of any litigation that may arise, each party waives any rights it may have to a trial by jury of any such litigation related to or arising out of this MOU.

- J. Merger. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this MOU that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions shall be effective unless set forth in writing in accordance with this MOU.

- K. Independent Contractors. TOWN is an independent contractor under this MOU. Services provided by TOWN pursuant to this MOU shall be subject to the supervision of TOWN. In providing such services, neither TOWN nor its agents shall act as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to TOWN or TOWN's agents any authority of any kind to bind COUNTY in any respect whatsoever.

- L. Incorporation by Reference. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties and incorporated herein as if set forth in full hereunder. The attached Exhibit(s) "A" and "B" are incorporated into and made a part of this MOU.

- M. Multiple Originals. This MOU may be fully executed in multiple copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

- N. Survival. Any rights either party may have in the event it terminates this Agreement pursuant to the terms hereof shall survive such termination. Any provision of this Agreement which contains a restriction or requirement by which extends beyond the date of termination set forth herein shall survive termination of this Agreement and be enforceable.

IN WITNESS WHEREOF, the parties hereto have made and executed this MOU: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same by Board action on May 13, 2003 and May 24, 2004 and TOWN OF DAVIE, signing by and through its Mayor, duly authorized to execute same.

COUNTY

WITNESSES:

BROWARD COUNTY, through

it's COUNTY ADMINISTRATOR

Signature

Interim County Administrator

Print Name

_____ day of _____,
20__.

Insurance Requirements
approved as to form by
Attorney
Broward County's Risk
Management Division

Approved as to form by
JEFFREY J. NEWTON, County
for Broward County, Florida
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By_____

By_____

(Date)

A. Denise Sagerholm
Assistant County Attorney

MEMORANDUM OF UNDERSTANDING BETWEEN BROWARD COUNTY AND
TOWN OF DAVIE, FLORIDA, FOR ADMINISTRATION OF HOME FUNDING
PROGRAM

TOWN

TOWN OF

ATTEST:

By:

Mayor

Town Clerk

Print/Type Name

_____ day of _____,

20____.

Approved as to form:

Town Attorney

EXHIBIT A

PROJECT DESCRIPTION
FISCAL YEARS 2003 and 2004

Project Name: **Town of Davie HOME-Funded Purchase Assistance Program**

Project Description:

The Town of Davie will utilize both the FY 2003/04 and 2004/05 HOME funds in the total amount of \$312,704 to assist income-eligible persons who earn less than 80 percent of the median income, with a deferred-loan in the amount of \$39,088 toward the purchase of a home.

A lien will be placed on the unit for 10 years if newly constructed, and five (5) years if it is an existing structure, and will meet the HOME requirement as stated at CFR 92.254. Each year that the unit is not sold or rented, and is maintained in good condition, the lien will be amortized down so it is free and clear after the applicable 10 year or 5 year period.

Single family homes, condominium units, townhouses, villas etc., which are fee-simple title, are eligible for purchase.

Broward County will administer the Purchase Assistance Program and shall certify each applicant or household for income-eligibility.

EXHIBIT B
COSTS/BUDGET FOR PROJECT

Funding Sources				
Category	(1) HOME	(2)	(3)	Total
A Construction				
B. Inspections				
C. Developer fee				
D. Direct client subsidy	\$312,704*			
E. Contractual Services				
F. Appraisal				
G. Other (Itemize)				
H. Totals	\$312,704*			

*FY 2003/04 \$157,293

FY 2004/05 \$155,411

