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CITY OF YONKERS

TO: Chuck Lesnick, City Council President
Sandy Annabi, Majority Leader
Liam McLaughlin, Minority Leader
Patricia McDow, Co-Chair Community Services Committee
All City Council Members

CC: Philip A. Amicone, Mayor
Joseph Shuldiner, MHACY Executive Director
Brian Sweeney, IMC Consulting, LLC
Peter Siegel, Landex Development, LLC.
All City Council Members Elect

FROM: Philip A. Zisman, Inspector General *PAZ*

SUBJECT: Mulford Gardens/HOPE VI Development – Community Benefits
Status Report

DATE: December 18, 2009

Background

In a letter dated April 14, 2009, the City Council directed the Inspector General's Office to conduct a review of the ongoing Mulford Gardens/HOPE VI and Ridge Hill development projects to determine whether "mandates as outlined and approved in any and all legal documents and binding agreements (including, but not limited to project findings and/or land disposition agreements) have been met, or are to be met at an appropriate time during the course of [the] project's development."

Based on subsequent communications and meetings with City Council members, the City Council directive was aimed at having the Inspector General monitor "community benefits" in development projects to ensure that developers who received City approvals for their projects meet their binding commitments to

provide ancillary benefits associated with their projects. Examples of community benefits that we found in the Mulford Gardens/HOPE VI project documents include a commitment to hire women and minority owned businesses as subcontractors and to use “best efforts” to hire low income residents to work on the project; a promise to build an off-site playground and community center; and a commitment to provide a specific number of affordable housing units.

This memorandum serves two purposes: It identifies the community benefits that are set forth in the project’s documents; and since the Mulford Gardens/HOPE VI project is still ongoing, provides a status report on those community benefits.

The HOPE VI Project

In September of 2004, the Municipal Housing Authority for the City of Yonkers (“MHACY”) received a \$20 million grant from the U.S. Department of Housing and Urban Development’s (“HUD”) HOPE VI program for the revitalization of the Mulford Gardens housing project and the surrounding community. As originally planned, MHACY committed to demolishing all 550 existing public housing units at Mulford Gardens and to developing 552 units of mixed-income replacement housing. Based on amendments to the plan, MHACY is now committed to building 391 units of replacement housing. The project is being built in phases over a period of years.

To date, as part of the HOPE VI project, the Mulford Garden residents have been relocated, demolition of the Mulford Garden site is completed and site remediation and clean up are ongoing, the 60 unit Croton Heights apartment building on Ashburton Avenue has been built and fully occupied, and the next phase of construction, the 100 unit Grant Park Phase I, has started. The MHACY has expended all monies in the initial \$20 million HOPE VI grant, which represents approximately 10% to 15% of the total projected cost of the Mulford Gardens revitalization project. Each phase of the project is dependent on commitments for financing which come from a variety of federal, state and local governmental sources and from private investment. Financing for later phases of the development has not yet been secured.

Methodology

As provided by MHACY consultant Brian Sweeney, the project manager for the Mulford Gardens/HOPE VI project, and Council Member Patricia McDow we reviewed:

1. Mulford Gardens HOPE VI Application dated January 20, 2004;
2. Master Development Agreement between the MHACY and Mulford Community Partners, a joint venture between the development team of

- The Richman Group and Landex Development LLC, dated September 2004 (“Master Development Agreement”);
3. HUD letter Re: Request for Supplemental Information dated September 30, 2004;
 4. First Amendment to the Master Development Agreement, dated May 23, 2006;
 5. Letter of Brian Sweeney dated September 14, 2009, and supporting documentation including:
 - Applicable MHA policies,
 - MBE/WBE procurement spreadsheet and MBE documentation,
 - Applicable HUD regulations,
 - Mulford Community Partners Plan for Minority and Women Business Opportunities and Section 3 Employment,
 - CSS Workplan dated March 8, 2005,
 - HUD letter Re: Approval of Mixed-Finance Proposal and Evidentiaries for Croton Heights Apartments dated March 30, 2007,
 6. Letter of Brian Sweeney dated October 28, 2009, and supporting documentation including:
 - Yonkers CSS Program Benchmark Performance and Measures (2008 and January and July 2009 monthly schedules with statistics by category)
 - Neighborhood Network Center Monthly Reports for 2008
 - GED/ESL Program Updates
 - Employment and Education Program Services (Staff Reports)
 - Mulford Gardens HOPE VI Project – August 2009 Report, dated September 11, 2009

Copies of all documents reviewed are on file in the Inspector General’s Office.

Upon review of relevant documents, we identified items that we believed met our definition of a “community benefit,” and submitted written questions to Mr. Sweeney. We also sought input from the development team’s representative. Mr. Sweeney provided detailed answers to our questions; however, the development team did not respond to our requests for input. We also met with the City Council’s Community Services Committee and former Council Member Symra Brandon for their input.

A draft copy of this report was provided to MHACY and the Developer for their comments. A copy of the MHACY’s response dated December 14, 2009 along with Inspector General’s response to the MHACY is attached. The developer did not respond.

Findings

Overview

We note that the Mulford Gardens/HOPE VI project is different from most private developments subject to City approvals because it is essentially a public project of MHACY. MHACY must comply with HUD regulations specific to the HOPE VI program and other federal requirements, which generally do not apply to developers of private projects. In particular, in accepting the \$20 million HOPE VI grant, MHACY had to ensure that the residents of Mulford Gardens who were displaced because of the demolition of their former homes, received mandated services as required by HUD. In identifying the mandated community benefits associated with this project, we included the specific benefits promised to the former Mulford Gardens residents.

We have identified six specific community benefits listed below. With each we: 1) describe the community benefit and cite where it appears in the written record; 2) describe MHACY's position, as it was communicated to us, regarding its efforts to meet its obligations for the identified community benefit (The developer's position is not included because we received no input from the development team); and 3) give an assessment of whether, to date, the information provided to us indicates that the community benefit has been, or is in the process of being, provided. Essentially, our report provides the status of MHACY's and the developer's efforts, to date, to provide the identified community benefits.

- **Use of MBE/WBE Contractors**

Description of the Community Benefit

MHACY has a stated policy of ensuring that minority and women owned business enterprises ("MBE/WBE") participate, to the extent feasible, in all contracts administered directly and indirectly by MHACY. The MHACY policy was incorporated into the Master Development Agreement with the goal of hiring 30% MBE/WBE contractors as part of the HOPE VI \$20 million grant. (See Master Development Agreement §1.12.1; MHACY Policy for Assistance to Small and Other Business §C HOPE VI: Section 3 Policy Directives)

Under the Master Agreement the development team is required to designate a MBE/WBE Compliance Officer to "track and manage the M/WBE and Section 3 participate [sic] program and efforts and provide monthly reports on progress made and corrective actions being taken to attain the policy goals." The development team was required to conduct an "exhaustive outreach" to locate certified minority and female owned

subcontractors. (See Master Development Agreement – Plan for Minority and Women Business Opportunities and Section 3 Employment at §B)

MHACY Status Report

The MHACY consultant Brian Sweeney reported that the Developer's and MHACY's MBE/WBE contracting efforts resulted in over \$7.7 million in contracts and funding being issued to MBE/WBE firms, which totaled 35% of the \$20 million HOPE VI grant. This met the 30% goal of the MHACY. The reported MBE/WBE contracts were as follows:

<u>Vendor</u>	<u>Amount Paid</u>	<u>Description</u>
Ron's Trucking	\$ 143,576	relocation and moving
Cook's Moving	\$ 185,364	relocation and moving
Alta Consulting	\$ 910,000	consulting
IMC Consulting	\$ 4,107,425	program management
R. Baker and Assoc.	\$ 740,950	IMC subcontractor
D.R. Wesley & Assoc.	\$ 273,600	IMC subcontractor
Stamford Wrecking	\$ 660,172	demolition

MHACY provided a copy of the MBE/WBE database that allowed potential MBE/WBEs to register with the MHACY and the Developer. We did not receive monthly reports generated by a designated MBE/WBE Compliance Officer.

MHACY stated that it participated in numerous minority and women business outreach meetings and conferences with the goal of increasing participation in the project.

According to Mr. Sweeney, the "goal" of providing 30% participation of MBE/WBE subcontractors was not a specific mandate of the project but rather a permissive objective. He also stated that HUD has accepted the submitted MBE/WBE data without comment. Therefore, the project is in full compliance with the MBE/WBE goals.

MHACY recognizes the continuing commitment and challenge of identifying qualified WBE/MBEs to participate in the Mulford Gardens/HOPE VI project. In the IMC Consulting report dated September 11, 2009, IMC, as project manager, stated that it will be working with the Developer and the General Contractor to create a mentoring program to increase MBE/WBE participation and that it "continues to work on finding

Section 3, Minority and Women Owned business and individuals that are qualified to work on the project. The efforts will continue throughout the various phases of construction and redevelopment of the Mulford Gardens site. IMC is participating in meetings with local community leaders and businesses to continue to facilitate opportunities for local companies.”

Inspector General Assessment

With respect to the initial \$20 million HOPE VI grant, MHACY met its goal of providing 30% participation of MBE/WBE subcontractors. Of the MBE/WBEs that received contracts under the HOPE VI grant, Ron’s Trucking and Cook’s Moving were listed as local Yonkers contractors. The largest contract of over \$4.1 million, or more than 50% of the total, went to Mr. Sweeney’s firm, IMC Consulting for project management.

With respect to the developer, because the development team did not respond to our requests for information, we were not provided with any documents regarding their MBE/WBE efforts. Apparently, the development team did not designate a MBE/WBE Compliance Officer to promote participation of MBE/WBE contractors, and the required monthly reports on MBE/WBE progress were not generated.

Although MHACY provided documentation indicating that they met their MBE/WBE goals because 35% of the contracts under the \$20 million HOPE VI grant were issued to MBE/WBE qualified firms, and stated that it participated in numerous outreach meeting and conferences, it is not clear to us how rigorous the outreach effort to identify and recruit qualified MBE/WBE contractors has been because there was limited documentation confirming those efforts. Moreover, greater than 50% of the MBE/WBE contracts went to a single firm.

With respect to the developer, there is no evidence in the records that we received that would support a finding that, to date, the development team has met its commitment to provide “exhaustive outreach” to identify qualified MBE/WBEs.

The MHACY consultant and HOPE VI project manager acknowledged that MBE/WBE participation remains a commitment and promised to implement a mentoring program as part of its efforts to meet this challenge. There is, however, uncertainty about whether MHACY was aware or committed to the consultant’s plans to sponsor a mentoring program to promote MBE/WBE and Section 3 resident participation. In his December 14, 2009 memorandum commenting on the draft version of this report, MHACY Executive Director Joseph Shuldiner stated that he was unaware of any promise to implement such a program. See Shuldiner memorandum dated December 14, 2009 (attached hereto) at page 5.

As part of our continuing efforts to monitor the community benefits associated with the HOPE VI project, the Inspector General's Office will request that MHACY and the developer regularly provide documentation regarding its MBE/WBE contracting efforts.

- **Local Resident Contracting and Employment**

Description of the Community Benefit

MHACY committed to implementing a "Section 3 Plan"¹ directed at providing "employment and new business opportunities for residents, as well as low-income residents from the neighboring community and from the City of Yonkers, New York. (See Master Development Agreement – Plan for Minority and Women Business Opportunities and Section 3 Employment at § C.) Under this plan, MHACY was to use its "best efforts" to meet its Section 3 goals, which were: 1) that Section 3 residents² will represent 35% of the aggregate number of new hires; 2) total contract dollar amounts to Section 3 business concerns will represent 15% of the total contract dollars for all building trade contracts, including construction, reconstruction, and rehabilitation of housing; and 3) 5% of the total contract dollars will be awarded to all other covered contracts.

As part of the Section 3 Plan, MHACY committed to establishing a Section 3 Advisory Group comprised of representatives from the City, MHACY staff, the Resident Association, local businesses doing work for MHACY, and other groups to identify the training/mentoring resources available in the area and to establish employment and business creation strategies. MHACY also committed to establishing recruitment procedures to help promote the employment of local construction employees.

MHACY Status Report

To date, the local businesses who employed Section 3 residents that received HOPE VI contracts were MBEs Ron's Trucking and Cook's Moving. There was no data provided regarding the specific number of Section 3 residents employed by these two local businesses. There was also no data provided regarding Section 3 residents who have been employed by other companies who have engaged in HOPE VI construction.

¹ This plan refers to HUD regulations found in 24 CFR part 135, which includes Section 3 Economic Opportunities for Low- and Very Low-Income Persons in connection with HUD financial assistance to Public Housing Agencies. See HOPE VI: Section 3 Policy Directives.

² A Section 3 resident is an individual who is a public housing resident or an individual who resides in the metropolitan area or non-metropolitan county in which Section 3 covered assistance is expanded and who is a "low-income person" or a "very low-income person".

According to the MHACY, Section 3 applies only to companies that employ new workers. A company that uses existing workers is exempt. Also, the nature of much of the work, even manual labor jobs associated with the demolition phase of the project, requires special skills, licenses and certifications because of the presence of lead paint and asbestos in the debris. This makes Section 3 hiring especially challenging.

With respect to hiring professional consultants from among low income workers and MHACY residents, MHACY stated that an occupational assessment of residents resulted in a finding that no residents were qualified for consulting positions. Also MHACY did not receive any responses to community outreach to “the city council, the community and local firms seeking section 3 and minority firms with the requisite licenses and certifications.” MHACY also stated that Federal law specifically prohibits giving local businesses a preference in contracting. This has made it difficult to hire Yonkers based businesses.

Inspector General Assessment

Because of the development team’s non-participation in our request for information, we cannot verify that, to date, “best efforts” were used to hire low income residents and businesses that employ low income residents. Based on the information that we received, it is apparent that, MHACY and the developer have not presently met their stated goals that are incorporated into the Master Agreement with respect to Section 3 resident and business employment.

- **Programs for Former Mulford Gardens Residents – The CSS Plan**

Description of the Community Benefit

The HOPE VI Application and the HUD Approval Letter incorporates the MHACY’s Community and Support Services (“CSS”) Plan for the provision of wide-ranging programs and services for the former Mulford Garden residents. The CSS plan ran for five years and concluded at the end of August 2009.

MHACY allocated \$3 million of HOPE VI grant funds, including \$800,000 for case management, to CSS plan services. In addition, MHACY’s service partners committed to provide services with a projected value of \$5.4 million. The services in the CSS Plan included:

- Career development, education and training
- Youth development and parenting
- Services to assist households in maintaining their tenancy

- Senior Services
- Homeownership counseling

The largest commitments were in the areas of career development and job training, health services (including substance abuse treatment) and youth and family services.³

A CSS program administrator acted as a coordinator and facilitator for the HOPE VI case management system. In addition, the CSS administrator, under the oversight of the HOPE VI program manager, monitored the contracts of all CSS service providers. The CSS administrator gathered monthly reports from all service providers and prepared a consolidated monthly CSS report for MHACY.

MHACY Status Report

The Mulford Gardens/HOPE VI project manager, IMC Consulting, provided us with a sample of the monthly status reports regarding CSS activity, and is currently working on its final program narrative report which will describe and analyze what was accomplished during the five year CSS program.

Inspector General's Assessment

The Inspector General's Office has included the programs and services provided under the CSS Plan as a limited community benefit for former Mulford Garden residents. Since MHACY's final assessment of the CSS plan has not been completed, it is prudent for us to wait for that report to be issued before we review and comment on whether MHACY has met its goals and objectives.

• **Replacement Housing to be Provided**

Description of the Community Benefit

In its initial application for HOPE VI funding, MHACY committed to demolishing all 550 existing public housing units at Mulford Gardens and developing 552 units of mixed-income replacement housing. Based on amendments to the plan, MHACY is now committed to building 391 units of replacement housing. (See Sweeney letter dated September 14, 2009)

³ Major service provider partners included: the Yonkers Private Industry Council, Greyston Foundation and Bakery, the Renaissance Project, Westchester Community Opportunities Program and Groundwork Yonkers.

MHACY Status Report

According to Mr. Sweeney, the original grant application to HUD has been revised. The revision has been approved by HUD. Factors contributing to the reductions included issues related to the City of Yonkers' ability to timely provide the original seven parcels committed in the HOPE VI application for development, the unanticipated cost of construction in Westchester County, the financial crisis and its impact on tax credits and other factors.

The current development plan includes 391 newly constructed housing units including 114 public housing units, 119 project-based housing choice voucher units and 30 home ownership units. The remainders are tax credit units and affordable units.

Sixty units of new construction were provided in the completed Croton Heights apartment building. An additional 100 units are to be constructed in the Grant Park Phase1 construction.

Inspector General Assessment

By letter dated September 29, 2006, HUD approved the reduction in the number of newly constructed housing units to 391. In our review, Mr. Sweeney confirmed that MHACY is committed to providing these units upon final completion of the Mulford Gardens/HOPE VI revitalization project.

- **Replacement of the On-site Community Center**

Description of the Community Benefit

The HOPE VI application on page 10 references the replacement of the on-site Community Center at the old Mulford Gardens. The planned Community Center is to serve "as a bridge to all the neighborhoods that surround Mulford Gardens."

MHACY Status Report

There continues to be a plan for a new community center at the former Mulford Gardens site. This phase of construction has not begun.

A proposed additional community center on Ashburton Avenue is not part of the HOPE VI development. This proposal was part of the City's vision for the redevelopment of the Ashburton Avenue corridor.

Inspector General's Assessment

There is a proposed community benefit of a new community center for the old Mulford Gardens site. The center should be included in a future phase of the HOPE VI project.

- **Neighborhood Park and Upgrades to Grant Park**

Description of the Community Benefit

The HOPE VI application on page 10 references that the development plan "includes a small neighborhood park with a tot lot and playground and upgrades to Grant Park."

MHACY Status Report

Green spaces and playgrounds are incorporated into the designs and plans for all of the HOPE VI developments. The development plans for the Mulford Gardens site and subsequent phases of the development include a substantial playground for residents.

The proposed improvements to Grant Park that were included in the application were a commitment of the City of Yonkers and not an obligation of the developer or MHACY.

Inspector General Assessment

The commitment to provide playgrounds remains part of future phases of the development plan. None of the documents that we reviewed committed the development team or MHACY to making improvements in Grant Park.

The Right of Former Mulford Garden Residents to Return to Newly Constructed HOPE VI Units

Although not a community benefit subject to Inspector General review, at the City Council Community Services Committee meeting on November 4, 2009, there was a discussion as to whether former Mulford Garden residents had a right to move into newly constructed housing that is part of the redevelopment. There was a concern that the residents were originally misled to believe that they had a definite right to move into replacement units. At this meeting I explained that the documents that we reviewed did not establish such a right to the new housing units.

With respect to this issue, the MHACY stated that although it has always been the intent and desire of the MHACY and the development team that the

displaced residents return to the redeveloped properties, there are rules and requirements that can disqualify a former resident from receiving new HOPE VI replacement housing. The return and re-occupancy by a resident is predicated upon the resident continuing to be in compliance with the obligations and requirements of the Housing Authority to receive public assistance.

To the extent that former residents believe that they were misled about this issue, the matter should be addressed by the MHACY. By letters dated November 13 and November 17, 2009, we advised the MHACY that this is an issue that the MHACY may want to address to the City Council Community Services Committee.

The MHACY did advise us that with respect to the new Croton Heights apartment building, 25 former Mulford Garden residents were offered apartments in February 2009, and 18 leases with former Mulford Garden residents were signed.

Future Reporting

The City Council's directive to the Inspector General requires that the Inspector General monitor the progress made in the provision of community benefits associated with the Mulford Gardens/HOPE VI project. Since this development project will not be completed for a period of years, the Inspector General's Office requests that MHACY and the developer regularly provide updates regarding their progress in providing the identified community benefits. We will issue additional status reports to the City Council as necessary.



THE MUNICIPAL HOUSING AUTHORITY FOR THE CITY OF YONKERS

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To: Philip A. Zisman, Inspector General, City of Yonkers
From: Joseph Shuldiner, Executive Director, Municipal Housing Authority for the City of Yonkers
Re: Mulford Gardens/HOPE VI Development – Community Benefits Status Report
Date: December 14, 2009

Please accept this letter as the response of The Municipal Housing Authority for the City of Yonkers (“the MHACY” or “the Authority”) to the draft version of the report on the “community benefits” associated with the Mulford Gardens/HOPE VI Development produced by the Office of Inspector General, City of Yonkers (OIGCY).

Initially The Authority notes some confusion as to the scope of your report. In your letter dated 12 June 2009 you advised the Authority that the scope of your review, dictated by direction your office received from the City Council, was to determine whether community benefits in the Mulford Gardens/HOPE VI Development project had been met, or were projected to be met, at an appropriate time during the course of the project’s development. Specifically, the Authority was advised that you had been directed by the City Council to review community benefits that were specifically mandated and approved “in any and all legal documents and binding agreements (including, but not limited to project findings and/or land disposition agreements).”

For the City Council to hold the Authority accountable for written commitments made during the course of its HOPE VI project appears eminently fair and appropriate. However, in your June letter, you further advised that in addition to investigating the Authority in regard to commitments actually made, you intended to unilaterally impose an expanded definition of “community benefit”, and review the Authority’s work in regard to that expanded definition. And in proceeding with your investigation, you considered input from the City Council’s Community Services Committee and former Council Member Symra Brandan. While the MHACY of course respects the Committee and the former Council Member, that input appears to have addressed issues outside the scope of the Authority’s actual community benefit commitments, and most assuredly was not based upon the breathe of documentation required to justify a finding pursuant to the City Council’s authorizing legislation. Accordingly, your proposed findings unfairly evaluate the Authority’s work in regard to meeting its community benefits obligations, and in some instances criticizes the Authority even where you find that standards have been met. The negative tone throughout the report, evident even in regard to findings that the Authority is in compliance with standards, is alarming. This is particularly true as the project is less than 20% completed, and one could conclude that under those circumstances, the report should have been limited to a discussion of how the Authority might best direct its efforts to assure that during the

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remaining 80% of the project, attention is drawn to any areas where full compliance has not yet been accomplished.

The evaluation process utilized by your office is problematic in another significant regard as well. As indicated by your proposed findings, requests for information were issued not only to the Authority's Project Manager, but to the developer as well. A massive amount of time and attention was given to your inquiry on behalf of the MHACY, which is routinely subject to state and federal oversight. Indeed, it is not without significance that the Authority's HOPE VI project is audited annually by HUD, its primary funding source, and that those audits have consistently reflected the Authority's success in meeting standards actually attributable to it. In your draft report the standards have been manipulated and the Authority's successes have been under-emphasized, while no findings whatsoever have been made in regard to the non-responsive developer. In the future one would have to seriously question the propriety of cooperating with investigations initiated by your office. More importantly, the OIGCY's process itself has completely distorted the community benefits issue.

The obligation to provide "community benefits" is historically the result of an actual "Community Benefits Agreement" ("CBA") that a developer enters into in order to obtain certain concessions (zoning variances, land, etc.) from the jurisdictional government. The Authority is unaware of any such agreement entered into between the City of Yonkers and the developer, and the MHACY knows that no such agreement was executed by the Authority. Yet the draft report fails to indicate the absence of any such agreement here. Instead, in defining the "community benefits" that are the subject of its review, the OIGCY references the MHACY's HOPE VI application, and contracts the Authority executed with HUD. The problem with that process is twofold. First, it is misleading and perhaps disingenuous to equate the content of the Authority's initial HOPE VI application as mandated community benefits, as if they were freely negotiated and/or conversely as if they were demanded by and promised to the community. This is particularly true as many parts of the HOPE VI project have changed since it was originally approved by HUD, not the least of which relates to the project's overall funding. Second, to the extent that the OIGCY is merely examining the MHACY's compliance to HUD requirements, the OIGCY is proceeding without standing or jurisdiction. Significantly, the Housing Authority and the HOPE VI Grant is in fact annually audited by HUD, and HUD has consistently determined the grant is in full compliance with HUD mandates.

The OIGCY's Consideration of Twelve Alleged Community Benefits:

In specific regard to your proposed findings, the Authority notes that while your letter of June 12, 2009 identified twelve (12) alleged community benefits, your draft report only draws conclusions on six (6) community benefits. This is of particular import, as the MHACY understands that your review was triggered by unnamed third parties who asserted a failure of the Authority to meet a series of commitments that in fact were never made, and indeed are not set forth in any of the documentation generated in regard to the Hope VI project. The Authority submits that affirmative findings should be

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made that six of the original categories suggested in your June letter were either unsubstantiated and/or represented areas outside the scope of any benefits addressed in the Hope VI project, and that accordingly no adverse findings were made against the Authority in regard to those six areas. Accordingly, the Authority takes issue with the report's failure to expressly make such affirmative findings. Indeed, in excluding the affirmative findings, and negatively reporting in regard to areas in which the Authority is in compliance, the draft report unfairly suggests misconduct by the Authority when in actuality it finds that there are only a few areas in which further attention is recommended during the remaining 80% of the project term.

Areas In Which the MHACY is Entitled to Affirmative Findings Where None Were Made:

In regard to the six (6) community benefits that are subject to your draft report, the MHACY responds as follows:

In three (3) areas, the report should affirmatively report the OIGCY's finding that there was no basis to conclude that the alleged commitments were ever included into the HOPE VI project. Those three areas are:

Unqualified Right of Return – According to the OIGCY draft report, this community benefit was identified by "City Council concerns" generated by residents who were allegedly told that they had an unqualified and absolute right of return to the project area upon its completion. While the MHACY has an unparalleled commitment to returning residents to the redeveloped properties, the resident's right to return is subject to the resident being in good standing in regard to his/her responsibilities as dictated by federal law. This means that the resident remains eligible for public housing and has not committed any act that would have led to his/her eviction had the resident remained at Mulford. The MHACY is without authority to alter those federally mandated rules, and most assuredly could not and did not agree to a deviation from those rules in any legal documents it executed in regard to the HOPE VI project. Significantly, a review of the literature on HOPE VI redevelopment projects throughout the nation shows that many other housing authorities have in fact placed restrictions on the right to return. These include requirements in regard to employment, education and even non-smoking. Some authorities have required drug testing as a condition to a resident's right to return. The MHACY has imposed none of these requirements.

Because a resident's right to return is of particular import to the community, the report should have affirmatively found that the right is in fact subject to federal regulations (and HUD oversight), which require a resident to be in good standing, and that the MHACY has not imposed any undue impediments to that right.

Community Center to be built on the Hospital Site – Consideration as to an alleged community benefit to build a community center on the hospital site was initiated by unspecified "City Council concerns". The OIGCY investigated those concerns, and concluded that no such commitment was ever

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included in any legal documents executed by the Authority in regard to the HOPE VI project. Because rumors can serve to create unfounded expectations in the community, and unfairly direct attention away from the benefits actually promised and produced to the community, the report should affirmatively find that the Authority did not ever agree to build a community center on the hospital site as part of its HOPE VI project.

Developer Office in the YCAP Building - Consideration as to an alleged commitment of the developer to open an office in the YCAP building was also initiated by unspecified "City Council concerns". The OIGCY investigated those concerns, and concluded that no such commitment is evidenced in documents generated in regard to the HOPE VI project. Because rumors can serve to create unfounded expectations in the community, and unfairly direct attention away from the benefits actually promised and produced to the community, the report should affirmatively find that the developer did not make a commitment to open an office in the YCAP building.

The Failure to Report MBE/WBE Compliance Fairly & Affirmatively:

In regard to the MBE/WBE contractor issue, the draft report fails to consider the issue within fair parameters and negatively reports positive findings. Specifically, the OIGCY appears to have considered the MBE/WBE contractor issue as if the HOPE VI project is a jobs program. It is not. To the extent that contracts have been executed by the Authority during the project, those contracts have at all times been subject to federal bidding, bonding and licensing requirements. Significantly, the federal government does not permit the use of local preferences when selecting contractors. Thus while local contractors may be disappointed in their inability to compete with contractors from outside the city, it is disingenuous to suggest that said failure is somehow attributable to the Authority. Moreover, the OIGCY's proposed finding that "these contracts should have benefited the local community" is contrary to law and irresponsible. Indeed, the proposed finding perpetuates a myth that the Authority can skew the bidding results to the benefit of local contractors, when such conduct would in fact be illegal.

Of equal import is the draft's failure to affirmatively report on the Authority's remarkable success in regard to the use of MBE/WBE contractors. Instead of highlighting that success, the report downplays it by suggesting greater significance to the absence of an MBE/WBE compliance officer and by erroneously asserting that the Authority has an obligation to make "exhaustive" outreach efforts to assure MBE/WBE compliance, when it does not. Via federal regulation, the Authority is required to, and did, use "best efforts" in regard to MBE/WBE compliance.

In truth, the Authority's demonstrated record of exceeding MBE/WBE goals is believed to be an exceptional accomplishment, a fact easily confirmed by HUD and/or the U.S. Department of Labor, both of which maintain records in regard to MBE/WBE compliance under similar circumstances. Moreover, the Authority and its Program Manager accomplished its record of success by working extensively with

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the community, SBAY and the City Council to identify MBE/WBE contractors licensed and qualified to work on the HOPE VI project, another fact easily confirmed through investigation.

The OIGCY's recommendation that the Authority hire a compliance officer is misplaced. Compliance officers are designated to review the work performed under the MBE/WBE contracts, review the contractor's certified payrolls and review the quality of the materials utilized. As indicated by the documentation submitted to the OIGCY, such a review by the Authority's Program Manager and the N.Y.S. Department of Housing and Community Renewal took place in regard to the Croton Apartment project, and the Authority is in fact committed to the review required in all other phases of the project. While the Authority has already expended an enormous amount of time answering the OIGCY's inquiries, MHACY can make the monthly reports that were also generated in regard to the Croton Apartment project available to the office for even further review. However, the Authority notes that while it has already provided documentation demonstrating the Authority's compliance with MBE/WBE standards, the OIGCY declined to reference those numbers in the draft report, and thus any further reporting appears futile.

The OIGCY's recommendation of further monitoring of the Authority in regard to MBE/WBE compliance similarly appears unwarranted, particularly in light of the Authority's success in the area and its ongoing efforts in regard to MBE/WBE compliance. See Journal News ad appearing Monday, December 7th, wherein the MHACY invites MBE/WBE companies to the Authority's third outreach meeting at the Yonkers Riverfront Library on Thursday, December 10th. [ad attached].

In regard to the draft's reference to a mentoring program, the Authority reiterates that it is unaware of an alleged "promise" to implement such a program, and the report cites no documentation evidencing such a promise. Accordingly, the Authority submits that an affirmative finding that no such promise was ever made should be incorporated into the report. That being said, the Authority notes that our Program Manager is working with the developer and general contractor to implement various programs to facilitate additional minority participation and they are reviewing the viability of using a mentoring program for that purpose.

Lastly, in regard to the draft's reference to the Authority's Minority Database, The Authority submits that the report misrepresents the very purpose of the database, and its concomitant community benefit. The Database is an online vehicle for MBE/WBE firms to register their contact information, skills, capacity and qualifications. The information is used by the contractors to solicit interest and bids from those in the database. The perception that the database is a monitoring tool and intended to provide reports for compliance is without basis. The relevant "community benefit" is in fact the creation of the database itself, and the report should fairly report that it was created, provided and utilized. Any other finding is simply unsupported by the documentation, and inconsistent with the Authority's clear record of exceeding MBE/WBE standards.

The Failure to Evaluate the Issue of Local Resident Contracting & Employment Fairly:

Absent a fair review of Section 3 compliance issues, the draft report concludes that the Authority did not use “best efforts” in regard to local resident contracting and employment. Section 3 references a 1968 federal statute designed to promote employment and contracting in regard to people and companies living and situated in economically distressed communities. In providing admirable goals, the law itself recognizes some of the difficulties agencies will confront when striving to reach those goals. First, Section 3 applies only to companies that employ new workers. A company that uses a crew of existing employees is exempt. This makes Section 3 hiring especially challenging in a downsized economy because few companies have a need to hire additional workers. Second, the nature of much of the work requires special skills and licenses. Beyond the obvious professional positions of attorneys, architects, and engineers, even labor jobs associated with demolition require heightened certification because of the presence of lead paint and/or asbestos in the debris. It is within the context of these parameters, undisclosed in the report, that the Authority’s efforts must be evaluated. The Authority submits that within the actual parameters of Section 3, there is no basis for the draft’s proposed finding that the Authority failed to utilize its best efforts. Indeed there is not one example to justify the OIGCY’s proposed adverse finding.

Significantly, as the HOPE VI project moves forward and for other projects in which the Authority is involved, the MHACY will continue to explore ways to involve more of its residents. For example, the Authority is currently providing stipends to its residents to complete GED and pre-GED courses. It has contracted with WESTHAB to reach out to its residents and create skills data banks and identify training courses. Moreover, the MHACY is working with Joan O’Gorman of the Yonkers Public School System to hold adult education courses at our sites.

The Determination to Monitor the Authority’s CSS Plan is Unjustified:

The Authority’s Community and Supportive Services (“CSS”) program and plan was developed in accordance with HUD metrics. The MHACY reports quarterly and annually to HUD in regard to its compliance with the articulated standards, and the MHACY is additionally audited annually by HUD in regard to its compliance. With HUD’s input the plan has been updated and revised annually. As the Authority has provided the OIGCY with documentation evidencing its compliance with goals to date, the proposed finding that the Authority should be subject to further review by the OIGCY is unwarranted and excessive. Moreover, the Authority submits that in light of the documentation provided, the report should include a finding that the MHACY is in full compliance with standards associated with its CSS Plan.

Replacement Housing:

Because of changes in the project’s financing, and because only 20% of the project has been completed to date, it is clearly premature to reach any conclusions in regard to whether the Authority has fulfilled

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its obligations in regard to replacement housing. That being said, the Authority notes that 60 units have been constructed and are now occupied. The second phase of the project, consisting of 100 units, had its closing on December 4, 2009, and the infrastructure work on that phase should begin in January with vertical construction scheduled to begin in the spring. Phase 3 of the project, a 49 unit senior building is scheduled to close in January and the construction there will also begin later in 2010. The remainder of Mulford is currently being packaged for financing in 2011 and construction is expected to commence in 2012. Within the context of the current economic realities to the project, and because we had to demolish over 500 units before construction could begin at Mulford, these developments are remarkable and laudable.

Replacement of the On-site Community Center:

As indicated in the draft report, a community center is incorporated into the development plans, as is an onsite play area and their construction has been provided for via awards recently received for the project. Additionally, the recently completed Croton Apartments project includes a community center for its residents and a small outdoor tot play area.

Neighborhood Park and Upgrades to Grant Park:

In the draft report the OIGCY acknowledges that this issue pertains to commitments made by the City of Yonkers. Obviously the Authority views green space as a necessary component to a good neighborhood and will continue to work with the City of Yonkers to maximize recreational opportunities in the area.

Future Reporting:

The OIGCY states that as the project will still be in progress for years to come, the Authority and the developer should continue to provide it with reports. As the developer has yet to provide any documentation, any future reporting by it appears speculative. Nevertheless, upon request the Authority will provide all records that it provides HUD that do not contain privileged information, as that term is defined by federal privacy statutes. The Authority will object to any requests that it generate new reporting forms to satisfy the OIGCY, especially given the lack of creditable complaints filed to date in regard to the HOPE VI project.

The Municipal Housing Authority for the City of Yonkers is proud of its efforts at Mulford although the Authority recognizes that it still has many units to build and people to house. We openly welcome and often solicit constructive criticism and recommendations that will help us improve our services to our residents. Accordingly we have worked extensively with Members of the City Council, the City, our residents and the community and will continue to do so. We ask the OIGCY to revise its report so that it not only offers criticism, but does so fairly while simultaneously recognizing the successes we have accomplished in partnership with the City to date. Moreover, we seek warranted findings that will

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finally refute the unfounded, unsubstantiated, but oftentimes asserted representation that the project made promises regarding local employment regardless of qualification or licensure, the use of the YCAP building, the construction of a new community center at the hospital and an unqualified right of return. Our understanding of the mandate imposed by the Council on the OIGCY is that these alleged "community benefits" would be either substantiated or refuted in this report. In this time of limited resources, where there is a critical lack of affordable housing in Westchester, it is imperative that those who are proceeding to build new affordable housing be held to reasonable standards that are consistent with their stated commitments and the governing law. Wanton criticism will only give ammunition to those who oppose affordable housing and make the act of providing it more difficult.

Yonkers HOPE VI Revitalization

The City of Yonkers Office of Business Development, Municipal Housing Authority for the City of Yonkers ("MHACY"), Monadnock Construction, Inc. and HOPE VI Development Team invite you to an informational session to discuss the next phase of the HOPE VI development in Yonkers. This informational session will focus on contract opportunities for minority and women owned business in the construction trades.

Thursday, December 10, 2009

10:30AM to 12:00PM

At Yonkers Riverfront Library

2nd Floor Community Room (A)

1 Larkin Center, Yonkers, NY 10701

PHILIP A. AMICONE
MAYOR



CITY HALL
YONKERS, NEW YORK 10701-3883

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DEPARTMENT OF
INSPECTOR GENERAL
CITY OF YONKERS

TO: Joseph Shuldiner, Executive Director MHACY
FROM: Philip A. Zisman, Inspector General *Paz*
SUBJECT: Draft Mulford Gardens/HOPE VI Development – Community Benefits Status Report dated December 3, 2009
DATE: December 18, 2009

I write in response to your memorandum dated December 14, 2009, in which you comment on the above-referenced draft Inspector General's report. (A copy of your memorandum and this response is attached to the final report.)

After carefully considering your concerns, I have made some substantive and stylistic changes to the report. I do not, however, believe that your critique requires significant changes. As a general matter, you did not provide new information that contradicts our findings regarding the status of MHACY's and the developer's efforts to provide the community benefits that we have identified. Furthermore, many of your comments do not directly relate to our specific findings and some are inaccurate.

For example, your repeated focus on the June 12, 2009 letter that I sent to MHACY consultant and HOPE VI project manager Brian Sweeny is particularly misdirected. That letter, dated almost six months before our draft report was issued, was written to specifically solicit MHACY's input on the potential community benefits that we had identified in our initial review of the HOPE VI Application, the Master Agreement, the HUD award letter and from discussions with City Council members. Mr. Sweeney's response dated September 13, 2009 and a follow up letter dated October 28, 2009, which are both referenced in the draft report, provided the input we sought regarding the potential community benefits that we originally listed.

Based on the input from Mr. Sweeney, we determined that there were only six community benefits that we needed to address. The June 12th letter was essentially an early checklist of items that we believed required MHACY input. Contrary to your assertion, it did not represent a final list of community benefits that we were obligated to report on. Once we received the necessary information, we refined the list of community benefits to include only those matters that were documented in the written records.

Notwithstanding my belief that many of your comments do not relate to the draft report, in an effort to add further clarity to our report, set forth below are responses to some of the statements in your memorandum:

- With respect to your suggestion (memorandum page 1) that we wrongfully considered input from the City Council's Community Services Committee:

The only non-community benefit that we addressed in the report – but took no position on – was the concerns a former and a present City Council member expressed at the November 4, 2009 City Council Community Services Committee meeting. They alleged that former Mulford Gardens residents had been misled into believing that they had a definite right to move into newly constructed housing that is part of the redevelopment project. Because of the seriousness of these allegations, I alerted you to these concerns by memorandum dated November 13, 2009, and sent a clarifying memorandum on November 17th. In our draft report, I specifically stated that these allegations did not constitute a community benefit which was subject to our review. I included these concerns in the report because of the seriousness of the claim.

- With respect to your statement (page 1) that we unilaterally imposed an expanded definition of the term "community benefits":

Our working definition of what constituted a community benefit was set forth in my memorandum to Mr. Sweeney dated June 12, 2009. In Mr. Sweeney's response dated September 13th, he objected to us considering as community benefits the services and amenities earmarked for displaced Mulford Gardens residents. In my response to Mr. Sweeney dated September 23rd, I indicated that I considered these services and amenities "limited community benefits" for the former Mulford Gardens residents, and that is why we determined that we would review compliance with the CSS Plan. As indicated in the draft report, given that MHACY is currently in the process of preparing its final narrative on CSS activity, we decided not to comment on whether MHACY has met its stated goals and objectives for this limited community benefit until you issue the final narrative.

- With respect to our findings regarding MBE/WBE contractors and local resident contracting and employment:

The Master Agreement between MHACY and the developer places obligations on both the MHACY and the developer with respect to MBE/WBE contractors and the hiring of Section 3 residents. We specifically stated what those obligations are in the draft report. We received no records that indicated that the developer (not MHACY as you assert on page 4) met its specific obligation to provide “exhaustive outreach” to identify qualified MBE/WBE contractors, and we received no information that the developer designated a MBE/WBE Compliance Officer.

On page 5 of your memorandum, you state that with respect to the Croton Apartment project, MHACY’s project manager conducted a compliance review. However, the review you describe is not consistent with the language that we cited from the Master Agreement. Furthermore, we were not provided with any documentation that indicated that either MHACY or the developer conducted MBE/WBE compliance reviews consistent with the requirements in the Master Agreement.

With respect to MBE/WBE contracting it was not clear to us from the records whether MHACY used “best efforts” to identify and hire such contractors for two reasons: 1) we were only provided with a spreadsheet regarding the contractors who were awarded the \$7.7 million in MBE/WBE contracts, but were not provided with documents related to efforts made to identify these and other qualified contractors, and 2) \$4.1 million, or over 50% of the total amount, went to a single contractor, the project manager.

In reviewing the language in our draft report, we will make some clarifying changes to emphasize that it is the developer who did not cooperate with our audit and apparently has not, to date, met its obligation under the Master Agreement. We note, however, that the obligations to include MBE/WBE and Section 3 residents in the Mulford Gardens/Hope VI project are joint obligations of both the developer and MHACY under the Master Agreement. We will also delete our comments regarding the MBE/WBE database based on your explanation on page 5. We will also make reference to the Federal law which prohibits the use of local preferences.

With respect to your statement that we found that MBE/WBE contracts “...should have benefited the local community” (page 4), you have misread the draft report because there simply is no such finding. Your comment appears to be based on a my November 17, 2009 letter to you regarding concerns expressed at the City Council Community

Services Committee meeting on November 4, 2009, which are not part of our report.

With respect to your claim on page 5 that MHACY is unaware of an alleged “promise” to implement a mentoring program, I refer you to the August 2009 Mulford Gardens/Hope VI Project Monthly report prepared by MHACY consultant IMC Consulting, on page 2, where it is stated “Program Management will be working with the Developer and their General Contractor to create a mentoring program to increase the number of Section 3, MBE/WBE and local companies’ participation in the redevelopment efforts at the Grant Park and Ashburton phase of the work.” This report was provided to us by Mr. Sweeney in his October 28, 2009 letter.

- With respect to the need for future Inspector General reporting on the Mulford Gardens/HOPE VI project:

We agree with your statement that the project is only 20 percent completed, and thus, there is still much work to be done. The purpose of this first report was to identify the documented community benefits and provide an assessment of the progress, to date, that has been made in providing these benefits. Because the benefits could not have possibly been completed at this early stage of the project, future status reports are necessary in order for my office to meet the directive of the City Council to monitor and review community benefits associated with the Mulford Gardens/HOPE VI project.

Finally, I must take exception to your unsupported assertions that there is a “negative tone throughout the report” that is “alarming” (page 1), the Inspector General has distorted the community benefits issue (page 2), the draft report suggests that MHACY engaged in misconduct (page 3), and the Inspector General’s Office may have manipulated standards (page 2). There is nothing in our report that supports these allegations. Our objective in this review was to 1) identify the mandated community benefits, and 2) report on the current status of these benefits. I believe that we have done this in a professional and objective manner, which is consistent with the mission of the Office of Inspector General.