



Staff Summary Report

Council Meeting Date: 4/9/2009

Agenda Item Number: _____

SUBJECT: Request approval of a resolution approving the City of Tempe Housing Services Division's General Depository Agreement with J.P. Morgan Chase Bank providing for the deposit of Section 8 program receipts.

DOCUMENT NAME: 20090409cdlc02 HOUSING AUTHORITY SECTION 8 (0403-01) RESOLUTION NO. 2009.22

SUPPORTING DOCS: Yes

COMMENTS: N/A

PREPARED BY: Liz Chavez, Housing Services Administrator (480-350-8958)

REVIEWED BY: Chris Salomone, Community Development Manager (480-350-8294)

LEGAL REVIEW BY: Teresa Voss, Assistant City Attorney (480-350-8814)

FISCAL NOTE: All funding associated with the preparation and administration of the Section 8 Housing Assistance Program is federal.

RECOMMENDATION: Adopt Resolution 2009.22

ADDITIONAL INFO: The U.S. Department of Housing and Urban Development (HUD) requires that all Section 8 program receipts must be promptly deposited with a financial institution selected as depository by the Housing Authority in accordance with HUD requirements. The Housing Authority must enter an agreement with the depository institution in the form required by HUD.

RESOLUTION NO. 2009.22

**A RESOLUTION OF THE CITY COUNCIL OF TEMPE,
ARIZONA APPROVING THE HOUSING SERVICES
DIVISION'S GENERAL DEPOSITORY AGREEMENT WITH
J.P. MORGAN CHASE BANK PROVIDING FOR THE DEPOSIT
OF SECTION 8 PROGRAM RECEIPTS**

WHEREAS, the Department of Housing and Urban Development (herein called "HUD") has entered into one or more contracts (herein called the "Contract") with the City of Tempe Housing Services Division ("PHA/IHA") for the purpose of providing financial assistance to develop and operate lower income housing projects, as authorized by the United States Housing Act of 1937, as amended (42 USC § 1437, *et seq.*); and

WHEREAS, under the terms of the Contract, the PHA/IHA is required to select as depositories of its funds financial institutions whose deposits or accounts are insured by either the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund as long as the Contract is in force and effect.

WHEREAS, pursuant to the Contract, the J.P Morgan Chase Bank and the PHA/IHA Agency have entered into a General Depository Agreement, Form HUD-51999 dated February 27, 2009, which provides for the deposit of specified monies of one or more additional low rent housing projects.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE ARIZONA, as follows:

Section 1. The General Depository Agreement, Form HUD 51999 dated February 27, 2009 between J.P. Morgan Chase Bank and the PHA/IHA is approved.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this 9th day of April, 2009.

Mayor Hugh Hallman

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

General Depository Agreement

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

This Agreement, entered into this 27th day of February, 2009 by and between _____
the Tempe Housing Authority (AZ031)
(herein called the "PHA/IHA"), a duly organized and existing public body corporate and politic of the _____
City of Tempe, Arizona
and J.P. Morgan Chase Commercial Bank
(herein called the "Depository"), located at P.O. Box 71, Phoenix, Arizona

Witnesseth:

Whereas, the Department of Housing and Urban Development (herein called "HUD") has entered into one or more contracts (herein called the "Contract") with the PHA/IHA for the purpose of providing financial assistance to develop and operate lower income housing projects, as authorized by the United States Housing Act of 1937, as amended (42 USC 1437, et seq.), and

Whereas, under the terms of the Contract the PHA/IHA is required to select as depositories of its funds financial institutions whose deposits or accounts are insured by either — the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund as long as this Agreement is in force and effect.

Now Therefore, in consideration of the mutual covenants herein-after set forth, the parties hereto agree as follows:

1. The deposits and accounts of the Depository shall continue to be insured by either — the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

2. All monies deposited by the PHA/IHA with the Depository shall be credited to the PHA/IHA in a separate interest bearing deposit or interest bearing accounts, designated

Accounts" (herein the "Accounts"). Any portion of PHA/IHA Funds not insured by a Federal insurance organization shall be fully (100%) and continuously collateralized with specific and identifiable U.S. Government or Agency securities prescribed by HUD. Such securities shall be pledged and set aside in accordance with applicable law or Federal regulations. The PHA/IHA shall have possession of the securities (or the PHA/IHA will take possession of the securities) or an independent custodian (or an independent third party) holds the securities on behalf of the PHA/IHA as a bailee (evidenced by safe keeping receipt and a written bailment for hire contract) and will be maintained for the full term of deposit. The Depository may substitute other securities as collateral to equal or increase the value. If PHA/IHA is an agency of an Indian tribe, the collateral shall be in United States bonds and otherwise as may be prescribed for public funds by the United States Secretary of the Treasury.

3. Except as stated in Paragraph 5, the Depository shall honor any (a) check or other order to pay from the Accounts, or (b) directive to purchase investment securities with monies from the Accounts or to sell securities, if such order or directive is in

writing and signed on behalf of the PHA/IHA by an officer or member designated by resolution of the Board of Directors of the PHA/IHA to have such authority. To assist the Depository in its obligation, the PHA/IHA shall furnish the Depository with a certified copy of the resolution.

4. Any securities received from the PHA/IHA or purchased by the Depository with monies from the Accounts shall be considered to be a part of the Accounts and shall be held by the Depository in safe-keeping for the PHA/IHA until sold. Interest on such securities and the proceeds from the sale thereof shall be deposited in the Account upon receipt.

5. If the Depository received written notice from HUD that no withdrawals by the PHA/IHA from the Accounts are to be permitted, the Depository shall not honor any check or other order to pay from the Accounts or directive to purchase or sell securities, or permit any withdrawals by the PHA/IHA from said Accounts until the Depository is authorized to do so by written notice from HUD.

6. The Depository is not obligated to be familiar, and shall not be charged, with knowledge of the provisions of the Contract, and shall be under no duty to investigate or determine whether any action taken by either the PHA/IHA or HUD in respect of the Accounts are consistent with or are authorized by the Contract or whether either PHA/IHA or HUD is in default under the provisions of the Contract. The Depository shall be fully justified in accepting and acting on, without investigation, any certificate or notice furnished to it pursuant to the provisions of this Agreement and which the Depository shall in good faith believe to have been duly authorized and executed on behalf of the party in whose name the same purports to have been made or executed.

7. The rights and duties of the Depository under this Agreement shall not be transferred or assigned by the Depository without the prior written approval of the PHA/IHA and HUD.

This Agreement may be terminated by either party hereto upon thirty days' written notice to the other party, and HUD. The rights and duties of the Depository hereunder shall not be transferred or assigned nor shall this Agreement be terminated during any period in which the Depository is required to refuse to permit withdrawals from the Accounts as provided in Paragraph 5.

8. HUD is intended to be a third party beneficiary of this Agreement and may sue to enforce its provisions and to recover damages for failure to carry out its terms.

9. The Depository shall promptly notify the PHA/IHA of crediting or depositing of any monies in the Accounts.

10. The provisions of this Agreement may not be modified by either Party without the prior written approval of HUD.

11. Previous General Depository or Savings Depository Agreements, if any, entered into between the Depository and the PHA/IHA are hereby terminated and all monies and securities of the PHA/IHA on deposit with or held by the Depositories pursuant to the terms of said Agreement shall continue to be held for account of the PHA/IHA pursuant to and in accordance with the provisions of this Agreement.

12. At no time shall the PHA/IHA Funds in the Accounts be permitted to exceed the amount insured by Federal deposit insurance (herein the "Insured Amount"). At any such time as the amount of funds in the Accounts reach the Insured Amount, whether by the accrual of interest or otherwise, the Depository shall promptly, as directed by the PHA/IHA, and in an amount sufficient to limit the funds in the Accounts to the Insured Amount, either: (a) remit payment to the PHA/IHA or, (b) on behalf of the PHA/IHA, purchase securities approved for

investment by the PHA/IHA. Such securities shall not be considered to be a part of the Account pursuant to Paragraph 4 hereof but shall be held by the Depository as custodian or trustee for the PHA/IHA in a separate account established for that purpose by the Depository (herein the "Securities Account"). The Securities Account shall be designated:

Income or other proceeds from securities held in the Securities Account shall, as directed by the PHA/IHA, upon receipt, be paid to or on behalf of the PHA/IHA, provided, however, that such proceeds shall, to the extent consistent otherwise with the provisions of this Paragraph, be deposited in the Accounts. If the Depository receives written notice from HUD pursuant to Paragraph 5 hereof that no withdrawals by the PHA/IHA from the Accounts are to be permitted, the Depository shall not honor any directive from the PHA/IHA to sell securities, or permit any withdrawals by the PHA/IHA, from the Securities Account until the Depository is authorized to do so by written notice from HUD. During the pendency of such restrictions on the Accounts and the Securities Account, the Depository, except as directed in writing by HUD, shall not remit any payment to the PHA/IHA for the purpose of limiting the amount of funds in the Account to the Insured Amount but shall instead purchase securities approved for investment by the PHA/IHA and hold such securities in the Securities Account.

(For use only in certain States that have statutes that prohibit Public Housing Agencies and Indian Housing Authorities from implementing paragraph 2.)

In Witness Whereof, the PHA/IHA and the Depository have caused this Agreement to be executed in their respective names and their respective seal to be impressed hereon and attested as of the date and year first above written.

(SEAL)
ATTEST:
By _____

PHA/IHA

Chairman

Secretary

J. P. MORGAN CHASE BANK, N.A.

Depository

(SEAL)
ATTEST:

By _____

George W. McManus
George W. McManus

Note: Strike paragraphs 11 and 12 if not applicable.