



CITY OF HOUSTON

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Mayor

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Via Electronic Mail and Fed Ex

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U.S. Department of Housing and
Urban Development
Fort Worth FHEO Center
801 Cherry St., Unit 45
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Fort Worth, Texas 76102
Thurman.G.Miles@hud.gov

Re: *Response to Letter Finding Noncompliance with Title VI of the Civil Rights Act of 1964, Case Number: 06-16-R001-6*

Dear Director Miles:

The City of Houston (hereinafter referred to as "Houston"), hereby submits its response¹ to the U.S. Department of Housing and Urban Development's (HUD) January 11, 2017, Letter Finding Noncompliance with Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Letter"). HUD initiated an investigation pursuant to 24 CFR § 1.7(c) allegedly based on information that the City's actions with respect to the Houston Housing Authority's (HHA) proposed affordable housing development at 2640 Fountain View (hereinafter referred to as "Fountain View") may have had the purpose or effect of discriminating on the basis of race and national origin.

The Letter accuses Mayor Sylvester Turner, the second African-American mayor in Houston's history, of discriminating against the very Houstonians he has spent his lifetime

¹ Houston in no way waives its right to present new or additional facts or arguments. This response is being submitted to assist the Department in resolving this matter in accordance with 24 C.F.R. § 1.7(d). While believed to be true and correct in all respects, this response does not constitute an affidavit and is not intended to be used as evidence of any kind in any HUD or court proceeding in connection with the investigation that forms the basis of HUD's findings.

servicing. Ignoring the fact that he was born, raised and currently resides in a neighborhood that HUD has determined lacks the characteristics which would allow a designation of “high opportunity”, HUD hastily attributes (1) the comments of Fountain View’s neighbors, (2) a very selective view of the facts, (3) incorrect legal analysis, and (4) questionable logic to establish a finding of noncompliance as a means to force Houston to continue to ignore historically neglected communities in favor of HUD’s agenda for Houston.

A finding of noncompliance requires evidence that race and national origin were significant factors in the Houston’s action. Contrary to its unsupported and misleading statement of facts, there is no evidence that Mayor Turner took any action that was discriminatory, had a discriminatory effect, or that was inconsistent with affirmatively furthering fair housing. Houston denies that it discriminated against any Houstonian based on race or national origin or that its procedures for approving Low-Income Housing Tax Credit (LIHTC) developments reinforces and perpetuates existing patterns of discrimination. For the reasons set forth in more detail below, the January 11, 2017, Letter should be withdrawn in its entirety.

A. Cost is a legitimate, non-discriminatory reason to oppose the Fountain View project.

HHA approached Mayor Turner about the Fountain View project approximately a month after he began his first term as mayor. At that time, HHA estimated that the Fountain View project would cost \$58 Million, which amounts to \$240,000 per unit. In this meeting, which included the Mayor’s Economic Development Director, Andy Icken, the Mayor opined that the costs were high and that he had reservations about this project. HHA did not offer to lower the costs or to seek a second cost estimate. HHA did not offer to eliminate the developer’s fee. To the contrary, HHA Board Chair, Lance Gilliam, threatened to delay other HHA multifamily affordable housing projects in the pipeline if the Mayor would not place a resolution of support or no objection on the agenda for consideration by Houston’s City Council.

HHA’s Fountain View project, with the corrected cost estimate at \$260,000 a unit², is the most expensive multifamily affordable housing project that sought tax credits to date. In 2016, Houston’s Housing and Community Development Department (HCDD) received 21 9%-Tax Credit applicants. The average estimated cost per unit for those projects that requested resolutions of support or no objection was \$159,750, with the highest cost per unit being \$184,836. *See Exhibit B*, 9% Tax Applicants for 2016 (Bates COH HCD 0042839). In 2017, there were 13 9%-tax credit applicants, with an average estimated cost per unit at \$168,505.46, with the highest being \$214,614. *See Exhibit C*, 9% Tax applicants for 2017.

² HHA estimated the current total cost per unit to construct the project was not \$240,000 per unit, but instead \$260,000 per unit. *See Exhibit A*, October 20, 2016 correspondence from HHA Executive Director, Tory Gunsolley.

Additionally, Houston sought and confirmed that comparable cost per unit for a similar project in the same area was not nearly as expensive as the Fountain View Project. See Exhibit D, October 2016 Correspondence from Trammel Crow Residential.

The \$26 Million Community Development Block Grant Disaster Recovery (CDBG DR) funds HHA planned to use to fund the Fountain View project would come from Houston. Pursuant to an agreement between Houston and HHA, Houston would be responsible for funding eligible HHA projects “mutually agreed upon by the parties.” See Exhibit E, at Section 2.1. Houston “has the responsibility under the City [General Land Office] Agreement, as amended, to monitor the compliance of HHA with all applicable legal standards respecting any and all funds disbursed pursuant to [the] Agreement.” *Id.* Houston reserved “the right to review, upon reasonable request by the City, HHA’s records in connection with the Project.” *Id.* Further, the General Affirmations required as a part of the CDBG-DR Program Rental Housing Projects Sub-recipient Grant Agreement, state that Houston, as the grant recipient, “must take steps to avoid or mitigate occurrences of fraud, abuse, and mismanagement, especially with respect to *financial management* of the Contract...” See General Affirmations, at para. 12. Thus, under Houston’s GLO agreement Houston is “accountable for the distribution and eligible use of all funds pursuant to the Agreement.” *Id.* at pg. 2. HUD’s explicit and implicit premise that Houston should rubber stamp a project that was proposed to use \$26 Million of an approximately \$30 Million allotment of grant funds is nonsensical.

In addition to the CDBG-DR funds, HHA estimated \$ 14 Million of 4% tax credits were to be used to partially fund the Fountain View project. The use of this amount of public money for one project, that would serve only 23 of Houston’s families who need the most help, was, in the Mayor’s opinion, not the best use of public funds. Suggesting that Houston has absolutely no interest, monetary or otherwise, in scrutinizing any use of public funds that directly impact its citizens is nonsensical and contrary to the obligations elected officials have to their citizens.

B. False facts and unreliable information are not evidence of discriminatory intent.

HUD uses false facts and unreliable evidence to support its Letter. The Letter states that, “[c]ontemporaneous newspaper editorials, opinion pieces, and [unnamed] local non-profits also surmised the opposition was racially motivated.” *Letter*, p. 3. It also notes that HUD considered “local news reports”, and quotes a Houston Chronicle article that quotes an opinion piece in another newspaper as purportedly quoting Mayor Turner. *Letter*, p. 6. Newspaper editorials and opinion pieces are bathed in hearsay, do not lay proper foundation and are not reliable evidence to establish direct or circumstantial evidence of a violation of law. See *Jim Sowell Construction Co., Inc. v. City of Coppell*, 61 F. Supp. 2d 542, 550 (N.D. Tex. 1999), *on reconsideration sub nom. Jim Sowell Const. Co., Inc., v. City of Coppell, Texas*, 3:96-cv-0666-

D, 2000 WL 968782 (N.D. Tex. July 12, 2000)(holding that newspaper articles that purport to quote the mayor were “obviously hearsay” and “inadmissible evidence” to support a finding that race was a significant factor in the city’s decision).

In addition to relying on hearsay, HUD speculates as to why, during the relevant time period of the investigation, there were few projects proposed by private developers in areas it deemed “high opportunity”. HUD cites that Houston’s alleged complete deference to local opposition “perpetuates segregation by deterring developers from proposing projects in areas where there are likely to face opposition.” *Letter*, p. 2. Speculation as to why developers have not in the past proposed projects in “high opportunity” areas or “white neighborhoods” has no more weight on the scales of justice than hearsay. Indeed, there are many factors outside tax credits which may impact a developer’s plans for a multifamily development.

HUD’s citing as a “fact” the purported lack of opposition for market rate properties in the same area is at best misleading. As HUD is aware, resolutions of no objection are not required for private developments. There is no law – local, state, or federal – which requires private developers in Houston, Texas to hold a public hearing before proceeding with the development of property that is not using public dollars. HUD does not identify any quantifiable data to support its findings that there was no opposition to the market rate properties.

Contrary to HUD’s statement, HHA did not offer to lower the costs of the project, seek a second cost estimate, or eliminate the developer’s fees. HHA did not present, in writing, any alternative estimate of costs for the Fountain View Project before the Mayor’s decision. When specifically asked in interviews, HCDD Director, Tom McCasland, Andy Icken and Mayor Turner all stated that HHA did not make such offers. To unequivocally state that this occurred would suggest that the investigation was slanted from the onset.

Finally, HUD’s reliance on (1) what City Council Members consider in supporting LIHTC projects generally; (2) the previous administration’s practices and procedures for supporting LIHTC projects; and (3) the local opposition is illogical based on the sequence of events. Before a public meeting was ever held, the Mayor expressed reservations about the Fountain View project because of its costs. Because HHA did not propose any alternatives that resulted in reduced costs, the Mayor chose not to place the Fountain View project on the agenda. What others said or considered is irrelevant to this analysis. The Mayor was the sole decisionmaker. When considering reliable and accurate facts regarding the events leading up to and subsequent to the Mayor’s decision in August 2016 not to place the Fountain View project on the agenda, there is absolutely no evidence of the Mayor acting with discriminatory intent.

C. The Mayor's basis for opposing the project as presented in 2016 was not pretext.

HUD rejected the Mayor's basis for opposing the project as pretext for invidious race and national origin discrimination based on HUD's belief that (1) no City funds were involved in the project; (2) costs were not regularly considered for LIHTC Resolutions; (3) projects with similar costs had been approved; (4) the Mayor's decision was based in part on racially motivated local opposition; and (5) the City has an established pattern of failing to site or support affordable housing projects in predominately white neighborhoods. A discriminatory motive involves the decisionmaker selecting or reaffirming a particular course of action, in part, because of its adverse effect upon an identifiable protected class. *Jim Sowell*, 61 F. Supp. 2d at 546. Because rarely is there direct evidence of intent to discriminate, the courts make a "sensitive inquiry" into circumstantial evidence which may be available, guided by the following non-exhaustive list of factors: (1) the discriminatory effect of the official action; (2) the historical background of the decision; (3) the specific sequence of events leading up to the challenged decision; (4) departures from the normal procedural sequence; (5) departures from the normal substantive factors; and (6) the legislative or administrative history of the decision. *Id.* at 546-547.

As is demonstrated in detail below, there is no direct or circumstantial evidence that Mayor Turner acted with the intent to discriminate against the very class of people for which he has dedicated his entire career in government to serving. The evidence HUD should have considered establishes that (1) Houston's proffered alternatives to the Fountain View met fair housing standards; (2) the historical background and sequence of events leading up to the Mayor's decision do not support an inference of discrimination; and (3) the costs for the proposed Fountain View projected warranted second consideration by the new administration.

1. Houston's proffered alternatives obviate any purported discriminatory effect of delaying a project like Fountain View.

In support of its findings that Houston's decision had the purpose or effect of discriminating on the basis of race and national origin, HUD focused on (1) the "importance" of the Fountain View site for the desegregation efforts of the "housing authority"; (2) the "unique" opportunity HHA had to build affordable housing at the Fountain View site; and (3) the belief that the project was a "key component of HHA's plan to begin to remedy the legacy of segregation in its housing programs". *Letter*, p. 7. Per HUD, the Fountain View proposal would have provided housing opportunities for minority residents in a largely "white neighborhood", noting that those persons on the Public Housing waitlist who would have qualified for the 30% AMI units in Fountain view were 78% black and 19.2% Hispanic. At \$240,000.00 a unit – the most expensive multifamily housing proposal to date,

this “unique” “opportunity” would have served 23 of Houston’s families living below the poverty line.

At the time Mayor Turner chose not to present HHA’s Fountain View project to City Council, he contemporaneously asked HHA to issue a RFI and look for alternative sites in the same District. *See Exhibit F*, RFI for District G. Mayor Turner presented to City Council on February 15, 2017, the Heritage proposal, which would involve the rehabilitation of an existing multifamily complex, located in the same City Council District and zoned to the same schools as the Fountain View project. The Heritage, which is located 1.2 miles from the location of the proposed Fountain View project, has an estimated cost per unit of \$187,216. City Council unanimously approved a resolution of support for the project on February 15, 2017. *See Exhibit G*, Resolution of Support. Therefore, the resolution of support for the Heritage unequivocally establishes that Mayor Turner’s decision not to present the Fountain View project to City Council was not based on the race and/or national origin of the potential residents.

Far from abandoning affordable housing in District G, at the direction of Mayor Turner, the City began a program with HHA to increase low income citizens’ access to private multifamily buildings in high opportunity areas. Houston staff actively identified and recruited owners and managers of multifamily housing units in District G, and other high opportunity areas, and obtained their agreement to participate in the program. The Voucher Mobility Plan is a pilot program in which a non-profit agency serves as an intermediary between private apartment owners and housing authorities, assisting families with children to access units in “high opportunity” areas that were previously unavailable. *See Exhibit H*. During the pilot period, the program will target families with children who are in kindergarten through third grade and who are interested in moving to an area of high opportunity. The non-profit will lease the unit from the cooperating apartment complex and then sublet the unit to eligible families. In addition to acting as landlord, the non-profit will offer other services, including but not limited to security deposit assistance and social services to help the children make a successful transition to a new neighborhood and school. This pilot plans to serve 350 families through 2018. At this time, 12 owners of private multifamily housing units have agreed to participate in the Voucher Mobility Program, which would cost an estimated \$500,000 per year, far below the price tag of the proposed Fountain View project. If statistics govern a determination as to disparate impact, indeed the Mayor’s plan will serve far more than the 23 families purported to be served by the Fountain View project.

2. HUD ignores the Mayor’s plan for Complete Communities.

Courts consider a municipality’s response to prior similar proposals to determine if a discriminatory purpose exists. *See Jim Sowell*, 61 F. Supp. 2d at 547. HUD’s decision to take action against Houston in this case is clearly based on the Fountain View project alone. HUD ignores Mayor Turner’s plan to address housing disparities. Under Mayor Turner,

Houston supports projects that will contribute to the development of complete communities across the City.

a. Houston is committed to transforming previously neglected communities into communities of opportunity.

Many Houston neighborhoods are either on the cusp of or are currently going through gentrification. In some communities, existing family homes are being torn down and replaced with new townhome communities that are being marketed to single, working professionals rather than families with children³. This results in the number of students who live in a school's attendance zone decreasing. As attendance declines, school resources decline and eventually the school closes. To prevent these neighborhoods from dying, Mayor Turner has proposed transforming these neighborhoods one step at a time into complete neighborhoods through his Complete Communities Plan. This plan seeks to transform neighborhoods in such a way that residents will have access to grocery stores, quality schools, public transportation and work, within a short geographic distance. Mayor Turner's vision is to transform previously neglected neighborhoods into neighborhoods HUD would define as "high opportunity".

The Trails at Palm Center is an example of a project receiving a resolution of support that furthers the Mayor's Complete Communities plan. Centered in Houston's Third Ward District, the Trails at Palm Center will be within a 3-minute walk to a light rail stop, which connects Third Ward to the University of Houston, the Texas Medical Center, and other employment centers Downtown. Indeed, the revitalization of these neighborhoods is one aspect of affirmatively furthering fair housing. *See* 24 C.F.R. § 5.152.

Independence Heights, an HHA affordable multifamily housing project, is another example of a project furthers the Mayor's Complete Communities plan that received a resolution of support. Independence Heights is within a neighborhood designated as both a Community Revitalization Outreach Area of the Hurricane Ike Disaster Recovery Round 2 program and as a Great Opportunities neighborhood by Local Initiatives Support Corporation. At the time the Mayor made his decision to support HHA's Independence Heights project, the Houston Independent School District (HISD) was planning to build the new Booker T. Washington High School in the Independence Heights area. To build the school, HISD acquired nearly 16 acres of land adjacent to the school, which resulted in the loss of several homes in the area. The Mayor and the neighborhood stakeholders recognized that affordable housing was needed for the area to replace the demolished houses and populate the school with students. In addition, a partnership between the Houston-Galveston Area Council (H-GAC), the Greater Northside Management District,

³http://www.houstonisd.org/cms/lib2/TX01001591/Centricity/Domain/4/021014_School%20Closure%20and%20Consolidation%20FAQs%20UPDATED.pdf

Independence Heights Redevelopment Council and Northline Development obtained a livable centers study in 2012 which identified a goal of encouraging a mix of housing types and maintaining housing affordability. Contrary to HUD's representation, the Independence Heights project did not have similar costs to the Fountain View project. In fact, the Independence Heights project, at an estimated \$195,858, is approximately 19% cheaper than the Fountain View project and a closer cost per unit to other projects that received resolutions of support or no objection. *See* Exhibit A.

HUD ignores its own regulations in issuing the Letter. HUD's regulations define "affirmatively furthering fair housing", in part, as taking meaningful actions that, "taken together, address significant disparities in housing needs and in access to opportunity...transforming racially and ethnically concentrated areas of poverty into areas of opportunity..." *See* 24 CFR § 5.152. Additionally, HUD regulations acknowledge the importance of "...relying on local knowledge and local decision-making to determine best strategies for meeting their fair housing obligations at the local level – including making place-based investments to revitalize distressed areas, or expanding access to quality affordable housing throughout a community." *See* HUD's Affirmatively Furthering Fair Housing Final Rule Executive Summary. Thus, Houston's efforts at building affordable multifamily housing in neighborhoods HUD does not deem "high opportunity" but that are on the edge of transformation are consistent with the affirmatively furthering fair housing principle.

b. The City has issued resolutions of support or no objection for projects in "predominately white" neighborhoods.

The City does not have an established pattern of failing to site or support affordable housing projects in predominately white neighborhoods. In 2016, six of the twenty-two 9% LIHTC applicants seeking resolutions of no objection were for projects to be located in "predominately white" neighborhoods. Of the four applications considered by City Council, three⁴ (75%) of those projects received resolutions of no objection. In 2017, three of the twenty-seven applications for projects seeking 9% tax credits were in "predominately white" neighborhoods. All three⁵ applicants received resolutions of support or no objection.

As stated earlier, in addition to supporting the above-mentioned projects, Houston is launching a housing voucher program that would provide 350 families apartment homes in areas defined as "high opportunity" throughout Houston and Harris County. There is

⁴ Chapman Crossings, Crosby Meadows, and Magnolia Gardens received resolutions of no objection. Gardens at Cinco Ranch did not receive a resolution of no objection. Providence Stoneforest and Somerall Apartments voluntarily withdrew their applications.

⁵ Catalon at Harvest Green and Crosby Plaza Apartments received resolutions of support. Timberedge Lofts received a resolution of no objection.

absolutely no evidence to support HUD's findings that Houston has a history of not supporting developments in areas of high opportunity or "white neighborhoods".

3. Mayor Turner's decision not to support the Fountain View project was based on costs and not local opposition to the project.

The Letter suggests that Houston swiftly changed its support for the project after the residents of Briargrove voiced their opposition to the Fountain View project. HUD states that Houston was well aware of the costs and had previously supported the project. First, any previous support was under a different administration and City Council. Second, at the time Houston posted the Combined Notice of Finding of No Significant Impact and Intent to Request Release of Funds, the project was a 250-unit multi-family housing development, using \$20 Million of DR funds, and costing \$144,000.000 per unit. See Exhibit I.

The most disturbing of HUD's "alternative" narrative is the assertion that Mayor Turner's stated reason for his decision (costs of the project) was a lie, and that the real reason behind his decision was acquiescence to the racially-motivated opposition of the local community. HUD spent 1 ½ pages of its findings retelling the comments of the residents, then adopted those comments and hearsay from newspapers to bolster its lack of evidence, ignoring the history of documented actions of the Mayor who has spent his entire career serving those historically marginalized communities.

Prior to becoming Mayor of Houston, Mayor Turner served as the Representative for District 139, a predominantly African-American community. While in the Texas legislature, he introduced legislation that would expand Medicaid in Texas pursuant to the Affordable Care Act and voted for bills that prevented gas companies from cutting off service during freezing temperatures of those who were unable to pay their bills. He was instrumental in passage of HB 2154 (Physician Education Loan Repayment Program) which funds a loan repayment program for doctors who practice in medically underserved areas across Texas, which attracted more than 225 physicians annually to the state's Health Professional Shortage Areas in many urban centers. In May 2009, he supported HB 2962 which directed the Health and Human Services Commission to establish income eligibility levels so that children under the ages of 19 whose net family income was at or below 300 percent of the federal poverty level would be eligible for health benefits coverage. Prior to leaving his seat in the Texas House of Representatives, Mayor Turner helped pass legislation in the 83rd legislative session to spend funds remaining in the System Benefit Fund⁶ to continue to help pay the electric bills of elderly and low-income citizens. Mayor Turner also proposed a measure increasing state funding for mental health services in Harris County from \$32 Million to \$200 Million, and worked to increase funds for legal aid for poor Texans.

⁶ The State of Texas charged everyone with an electric bill a fee that went into the System Benefit Fund (SBF). SBF funded the LITE-UP Texas program, which helped elderly and low-income citizens pay their electric bills during the summer months.

Again, HUD relies on unreliable information to support its finding of discrimination. HUD quotes an article in a newspaper (that quotes an opinion in another newspaper) that purports to quote the Mayor stating that he would not support HHA's Pinemont project because the community did not support the project. Upon further inquiry, HUD would have learned that this statement was taken out of context and that the Mayor believed that many of the issues raised regarding the Pinemont project could have been averted if HHA had involved the community stakeholders in coming to a consensus about the Pinemont development. Consensus-building and taking a collaborative approach can lead to successful outcomes. Indeed, HUD's regulations expect that the development of affordable housing requires community involvement and collaboration with other governmental stakeholders. *See* 24 C.F.R. § 5.158; *see also*, HUD's Affirmatively Furthering Fair Housing Final Rule Executive Summary. To unequivocally attribute discriminatory intent on (1) the second African-American mayor in the history of the City of Houston; (2) who has spent his career working for the disadvantages; and (3) who still lives in a community that HUD does not deem "high opportunity" is not supported by any legal standard.

4. There is no evidence Houston has discriminatory "normal" procedures or deviated from non-discriminatory "normal" procedures.

HUD sometimes argues that Houston has a single discriminatory system and at other times argues that Houston has race-neutral procedures from which it deviated. Both contentions are without merit.

HUD cites the City's failure to follow its normal procedures for LIHTC credits, including considering costs as a substantive factor for not supporting the Fountain View project, as evidence of pretext. Specifically, HUD cites to the alleged lack of evidence that HCDD made a recommendation regarding the Fountain View project and the fact that the Mayor did not place the resolution of no objection for Fountain View on the agenda. However, this is not a departure from procedure, but instead, actions consistent with the Houston's Code of Ordinances⁷.

Pursuant to Houston's Code of Ordinances, the Mayor controls the agenda to be considered at City Council. The Mayor, not HCDD, is the chief policymaker for Houston. HHA Board Chair met with the Mayor about the Fountain View Project. Based on the information provided directly to the Mayor by HHA, the Mayor determined that the costs of the project were not in the best interest of Houston. The Mayor chose not to place the Fountain View project on the agenda for City Council.

⁷ *See* Rule 3 of Section 2-2, *Council rules of procedure* which states, "The mayor may submit all new items of business as a 'consent agenda,' which may contain one or more ordinances, resolutions or matters incorporated in a written motion as part of the regular agenda of matters to be considered by city council." Houston, Tex., Rev. Ordinances ch. 2, art. I, § 2-2 (1968).

HUD, ignoring its own rules⁸, argues that Mayor Turner should lack the discretion to even consider that \$240,000 per unit for an affordable housing development is exorbitant, and that he would need a recommendation from HCDD to convince him that this cost per unit was an acceptable use of public funds. Since, HHA was financing this project with \$26 Million of Houston CDBG funds, it was the Mayor's job to consider the costs of the project. HUD's inference that a mayor in a new administration is required to defer to a previous administration when confronted with different facts is not sensible.

The sequence of events is most telling as to the Mayor's intent. Mayor Turner met with former HHA Board Chair, Lance Gilliam, and Executive Director Tory Gunsolley, at HHA's request, soon after Mayor Turner was sworn into office (and before HHA's public meeting on the project). HHA quoted the costs per unit to be \$240,000.00. The Mayor, at this meeting, expressed his hesitation about the project, citing the high costs. Eight months later, with no change on the costs and HHA not making any offers⁹ to adjust the costs, the Mayor determined that the project was not in the best interest of the citizens of Houston – a project that would serve so few of those who need the most help.

D. The remedies and corrective actions proposed by HUD are not necessary.

Before the Mayor had a chance to appoint a permanent director for HCDD and develop and present his plan of action for transforming Houston neighborhoods, including addressing affordable housing matters in Houston, HUD hastily opened an investigation and issued findings based on the Mayor's decision not to support one project (Fountain View). As stated above, there is no evidence that the Mayor's decision not to place the Fountain View project before Houston City Council for a vote on a resolution of support or no objection was based on the race or national origin of the potential residents of the project. Furthermore, Houston has implemented or already had plans to implement actions similar to those proposed by HUD. As such, the proposed remedies and corrective actions are redundant and wholly unnecessary.

Houston's response to each proposed remedy and corrective action proposed in the Letter of Findings is as follows:

- 1. The City shall provide the Houston Housing Authority with the funding needed to supplement HHA's allocation of CDBG-DR funds to cover the cost of construction of the Fountain View project or another new construction or acquisition project in a low minority and high opportunity census tracts in the city of Houston.*

⁸ See *infra*, at p. 8

⁹ Contrary to HUD's findings, there was no offer, verbally or in writing, by HHA to eliminate the developer's fee or lower the costs of the project.

As stated above, on February 15, 2017, the Houston City Council approved a resolution of support for the Heritage, a multifamily affordable housing project located in District G, zoned to the same schools as the Fountain View project. As always, the City continues to welcome any LIHTC proposals, including those presented by HHA, that will provide affordable housing for Houstonians.

2. The City shall develop a strategy to encourage development of affordable housing for low and very low income persons in areas of Houston that do not perpetuate segregation and without a high concentration of poverty, specifically in census tracts in the City with poverty rate less than twenty percent (20%).

Houston's Voucher Mobility Plan is slated to provide 350 affordable housing units in cooperating private apartment complexes located in high opportunity areas. Additionally, for applicants seeking LIHTC for multifamily developments in the City, HCDD has developed a matrix that provides points for properties located in areas where the poverty concentration is less than 15%. The points provided for these projects will contribute to their ultimate rankings in receiving HCDD's recommendation for a resolution of support or no objection. Houston will continue to research and evaluate new strategies for encouraging development of affordable housing throughout the City.

3. The City shall assess City laws, policies, and practices affecting the location, cost and availability of housing and develop and implement a strategy for revising or eliminating any policies or practices that hinder or create barriers to affordable housing or fair housing, in areas of Houston that do not perpetuate segregation and without a high concentration of poverty specifically in census tracts in the City with a poverty rate less than twenty percent (20%).

The City is expected to roll out the Mayor's Complete Communities program which will specifically address affordable housing and identify plans to transform those areas with poverty rates above 20% to areas of "high opportunity" as defined by HUD. See also Houston's responses above.

4. Working with the Houston Housing Authority, the City shall develop and implement a strategy to incentivize owners to accept Housing Choice Voucher holders within areas of Houston that do not perpetuate segregation and without a high concentration of poverty specifically in census tracts in the City with a poverty rate less than twenty percent (20%).

Houston has already developed the Voucher Mobility Plan to specifically address identifying and placing families in apartment homes located in areas with a poverty rate less than 15%.

5. *The City shall create adopt, and implement a site selection policy for vetting and reviewing requests for Resolutions of Support and Resolutions of No Objection for Low Income Housing Tax Credit projects which results in the development of affordable housing in areas of Houston that do not perpetuate segregation and without a high concentration of poverty specifically in census tracts in the City with a poverty rate less than twenty percent (20%).*

The City has developed and recently utilized a matrix with objective metrics to identify projects seeking resolutions of support or no objection for LIHTC that do not perpetuate segregation based on race, national origin and/or socioeconomic status. A copy of that matrix is attached as Exhibit J.

6. *The City shall submit to HUD for review and approval each proposed multifamily housing project that will utilize HUD funds for rehabilitation or new construction.*

As there is no evidentiary basis for HUD's finding that Houston has engaged in discriminatory practices, there is no need for HUD to review and approve future projects.

7. *The City shall establish a City Fair Housing Commission that includes members of the Houston Housing Authority Board and Houston residents who reside in areas of low minority concentration and areas of high minority concentration and that Commission will work in conjunction with HUD to diminish housing segregation.*

As noted in Houston's 2016 Annual Action Plan, Houston has/will create a Community Development Advisory Council which is made up of public and private agencies that provide assisted housing, health services, and social services, community-based and regionally-based organizations that represent protected class members, and organization that enforce fair housing laws. See Exhibit K.

8. *The City shall develop criteria for determining site selection of City funded multifamily housing that ensures that selections do not have a segregative effect.*

As stated above, the City has developed and utilized a matrix with objective metrics to identify projects seeking resolutions of support or no objection for LIHTC that do not perpetuate segregation based on race, national origin and/or socioeconomic status. Houston will regularly assess the effectiveness of this tool and adjust and modify the metrics as necessary to affirmatively further fair housing.

E. Conclusion

There is absolutely no factual basis to support HUD's letter of findings of noncompliance. Additionally, the remedies and corrective actions proposed by HUD are not necessary because Houston, as demonstrated above, had instituted most, if not all, proposed actions before the issuance of the letter of findings.

Moreover, the fact that Houston has already done much of what HUD seeks disproves HUD's fundamental claim that Mayor Turner discriminates against the poor. As such, Houston respectfully requests that HUD withdraw the Letter and close this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'RCL', with a stylized flourish at the end.

Ronald C. Lewis
City Attorney

Deidra Norris Sullivan
Senior Assistant City Attorney

RCL:DNS
Enclosures