



**Date:** December 4, 2018

**To:** Thomas J. Bonfield, City Manager  
**Through:** Keith Chadwell, Deputy City Manager  
**From:** Reginald J. Johnson, Director  
Department of Community Development  
**Subject:** Developer Agreement and Option Contract for Phase II of the Willard Street Apartments with Self-Help Ventures Fund and DHIC, Inc.

**Executive Summary**

In mid-January 2019, Self-Help Ventures Fund (SHVF) and DHIC, Inc. (DHIC) intend to submit a preliminary application to the North Carolina Housing Finance Agency (NCHFA) for Low Income Housing Tax Credits (LIHTC) for the Phase II development of the Willard Street Apartments located at the Durham Station Transportation Center site. A requirement of the preliminary application submittal is that the applicant must provide evidence of site control which can be demonstrated through a valid Option Contract and this Option Contract provides the required site control.

**Recommendation**

Department of Community Development recommends that City Council:

1. Authorize the expenditure of \$85,060.00 in Dedicated Housing Funds for Phase II predevelopment costs for the Willard Street Apartments;
2. Exempt the Jackson/Pettigrew Street Development project from the professional services procurement requirements of Article 3D of Chapter 143 of the General Statutes, pursuant to N.C.G.S. 143-64.32;
3. Authorize the City Manager to negotiate and enter into a Developer Agreement with Self Help Ventures Fund and DHIC, Inc. to include survey services not to exceed \$18,300.00 and Low Income Housing Tax Credit pre-application preparation services not to exceed \$66,760.00;
4. Authorize the City Manager to execute an Option Contract with Self-Help Ventures Fund and DHIC, Inc. for the deeding from the City to Self-Help Ventures Fund and DHIC, Inc., or to a development entity that Self-Help Ventures Fund and DHIC, Inc. control, of approximately .6 acres of land at the Durham Station Transportation Center for the sum of One and No/100 Dollars (\$1.00) subject to conditions in the Option Contract; and
5. Receive a presentation on the Willard Street Apartments development.

## **Background**

On January 2, 2018 City Council approved a Resolution in support of the Jackson/Pettigrew Street Development (Willard Street Apartments) and to Exercise Power Granted to Municipal Housing Authorities pursuant to G.S. 160A-456(b), which would allow for the City to transfer the parcel to Self Help Ventures Fund and DHIC, Inc. at below market value for the purpose of developing affordable housing on the site.

On August 9, 2018, the North Carolina Housing Finance Agency announced the allocation of 2018 LIHTC which included an award to the Willard Street Apartments. The development will include 82 units of affordable rental housing for household earning 60% or below the area median income, ground floor commercial/retail space and structured parking. Predevelopment activities are underway to ensure a timely construction start date with anticipated completion by the required placed in service date of December 31, 2020.

In an effort to ensure that the Durham community has a competitive 2019 Low Income Housing Tax Credit (LIHTC) application, the Department of Community Development has requested that the Willard Street Apartment's development team coordinate with Durham Housing Authority (DHA) on the submission of 9% LIHTC applications for Willard Street Phase II and the first phase of DHA's downtown redevelopment. Both DHA and the Willard Street Joint Venture of Self Help Ventures Fund and DHIC (JV) would submit separate preliminary applications in January 2019.

## **Issues and Analysis**

Assuming competitive applications request approximately \$700,000.00 or more in tax credits, the Durham community can expect to be awarded at most one 9% LIHTC project in any given year. The 9% application process has two phases: a pre-application phase which results in a site score, and a full application phase. Projects must typically receive a perfect site score in the pre-application phase to be competitive in the full application phase.

In order to ensure that Durham submits the most competitive application in the upcoming 2019 round, both DHA and the Willard Street JV would submit a 2019 application. To prevent DHA and the JV from competing against each other, upon the release of the individual site scores in April of 2019, the applicant with the lowest site score would remove its application from consideration for LIHTC. If both applicants were to receive the same score, the JV would remove its application from consideration, with DHA submitting a final application in May of 2019. This process helps ensure that the Durham community has a competitive application for an award of 2019 LIHTC. If the City were to request the JV to move forward, there would be an additional request for pre-development funds to complete the full tax credit application.

If the JV were instructed to move forward with their LIHTC application and receive an award, the subsidy request for the Phase II development of Willard Street is estimated at \$2.2M for the construction of a preliminary estimate of 56 affordable units for households earning 60% or below the area median income. Staff will return after the release of the site scores in April of 2019 with an update to City Council on the status of the second phase.

## **Alternatives**

City Council could request that the JV not submit a 2019 Low Income Housing Tax Credit application to the North Carolina Housing Finance Agency. If the JV were not to apply for 2019 tax credits, it could potentially have an impact on whether the City of Durham received an

allocation of 2019 tax credits. It should be noted that if the JV submitted an application, there is no guarantee of approval.

If City Council approves moving forward with the JV submitting the application, evidence of site control is required by the North Carolina Housing Finance Agency.

**Financial Impact**

The following table outlines the cost associated with the preparation of the preliminary Phase II application for LIHTC. In addition, the City is responsible for the subdivision of the site for a total cost associated with the Developer Agreement in the amount of \$85,060.00.

<b>Willard Street Phase II LIHTC Preliminary Application Budget and Scope of Work</b>		
<b>Use</b>	<b>Total Cost</b>	<b>City Cost</b>
Architecture and Land Planning	\$35,000.00	\$35,000.00
Additional Engineering	\$2,500.00	\$2,500.00
Construction Cost Estimating	\$4,000.00	\$4,000.00
Survey Work	\$2,000.00	\$2,000.00
Legal Review	\$2,500.00	\$0.00
NCHFA Pre-Application Fee	\$5,760.00	\$5,760.00
Pre-Application Preparation	\$15,000.00	\$10,000.00
Project Management	\$10,000.00	\$7,500.00
<b>TOTAL</b>	<b>\$76,760.00</b>	<b>\$66,760.00</b>
Site Surveying/ Subdivision		\$18,300.00
<b>TOTAL</b>		<b>\$85,060.00</b>

The Department of Community Development (DCD) proposes to use Dedicated Housing Fund (DHF) dollars allocated for FY19 to fund the cost associated with the submittal of the preliminary LIHTC application for Phase II. FY19 DHF funds allocated for the Public Housing Redevelopment budget line item in the amount of \$2,631,000.00 will be reduced by \$85,060.00, leaving a remaining budget of \$2,545,940.00. A new line item and budget in the amount of \$85,060.00 will be created for Willard Street Apartments Phase II (formally Jackson/Pettigrew Street Site) – Phase II Preliminary Tax Credit Application. See attached “DCD Funding Commitments FY2018-19 (Revised: November 20, 2018)”.

Additionally, if the City were to instruct the JV to move forward with the full LIHTC application in May of 2019, the JV would require a loan commitment letter from the City to include in the full application. Based on a preliminary development budget submitted by the JV which includes an estimated 56 multi-family rental units for seniors (55 and above), the project after an award of LIHTC could potentially require a subsidy or construction financing gap of an estimated \$2.2 million. Staff would return in April of 2019 requesting approval for a commitment of funding, if the JV were instructed to move forward with the full LIHTC application.

Alternate Phase II Proposal

As defined in the Developer Agreement which outlines the roles and the responsibilities of the JV and City for the Phase II development, if the City directs the JV to withdraw the Phase II LIHTC application, then the JV can submit an alternate proposal to develop the Phase II site without the use of LIHTC. The proposal should include a mixed-income housing project with a minimum of 25% of the units affordable to households at or below 80% AMI. The JV will have

until September 30, 2019 to submit an initial alternate proposal for review and acceptance by the City.

If the JV were unable to submit a final alternate proposal that meets the criteria specified in the Developer Agreement by the December 31, 2019 deadline, the City would notify the JV of the City's intent to cease further negotiations with the JV for the development of Phase II.

#### Parking Cost Associated with the Development

The Phase I construction effort will include a parking podium in support of the LIHTC project. Due to site configuration, construction means and methods and cost efficiency, the podium will be constructed to include approximately an additional 50 parking spaces to support a future Phase II development. As the cost for additional parking spaces creates a financial gap for the Phase I development, Self Help Ventures Fund will provide its own funds in the form of a bridge loan or bridge equity contribution for an estimated amount of \$903,000.00 to fill the gap until Phase II plans are finalized.

If the City rejects the Phase II alternate proposal from the JV, the City will pay the JV \$925,000.00 for the cost of the "Phase II Parking" spaces, based upon a proforma estimate of the cost of the construction of the parking spaces assigned to the Phase II property, offset by retail and other income for the Phase I development. Payment for the Phase II Parking spaces under this scenario will occur when the parking is placed into service.

If the City were to accept the Phase II proposal from the JV, the bridge funds from Self Help Ventures Fund would be included as part of the Phase II development budget and staff would return to City Council with an overall development plan for approval.

#### **Equal Business Opportunity Summary**

This item seeks to address issues related to Low Income Housing Tax Credits. It was not reviewed by the Department of Equal Opportunity/Equity Assurance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.

#### **Attachments**

DCD Funding Commitments FY2018-19 Spreadsheet