



CITY OF DURHAM | NORTH CAROLINA

**Date:** August 1, 2016

**To:** Thomas J. Bonfield, City Manager  
**Through:** W. Bowman Ferguson, Deputy City Manager  
**From:** Steven W. Hicks, Director, General Services Department

**Subject:** Proposed Reimbursement Agreement and Temporary Construction Easement between LW Apartments LLC and the City of Durham for Construction of a Pedestrian Pathway and Public Improvements entitled the Great Loop in Durham Central Park

### **Executive Summary**

LW Apartments LLC (LW), developer of Liberty Warehouse apartments ("Development"), is required to provide pedestrian access connecting Rigsbee and Foster Streets and proposes to make other infrastructure improvements to a parcel adjacent to its Development, owned by the City of Durham (City) and commonly known as Durham Central Park ("Park") (505 Rigsbee Avenue, Parcel ID # 104933 and PIN 0821-08-99-3166) as detailed in the approved Design Special Use Permit #B1400009 (DSUP) and Planning Department Case Number D1600117.

The City of Durham and LW entered into a Party Wall and Easement Agreement (Deed Book 7545, Page 763, Durham County Register of Deeds) that contemplated the potential construction of a walkway through Durham Central Park that would mutually meet the needs of the Development and the City.

Durham Central Park, Inc., (DCP) is a non-profit corporation that through its Management Agreement with the City manages and operates Durham Central Park on behalf of the City. Over the last 20-years through periodic public input sessions and design charrettes, DCP developed the Durham Central Park Master Plan which identifies a pedestrian pathway in the park referred to as the Great Loop.

The City, DCP, and LW have been working collaboratively to develop a pedestrian pathway, infrastructure improvements to control stormwater runoff within the Park, and to make repairs that are mutually beneficial to all stakeholders. The parties have expressed an interest and desire to complete construction of the Great Loop through construction of the Development, and there has been extensive participation in the design process to ensure that the final pathway routing achieves goals of interested stakeholders and meets applicable requirements and regulations.

The Great Loop is shown schematically on Exhibit A. This design features the simultaneous construction of a circular design with both a North and South walkway in Durham Central Park

(Exhibit A.3). The exact Great Loop design takes into account the space available, the topography, ADA guidelines, and seamless connectivity to existing Park elements. These improvements will be available for public use and enhance Durham Central Park for years to come.

LW proposes to install and pay for the southern portions of the Great Loop to fulfill its DSUP obligation, and has offered to construct the remaining northern section of the Great Loop with funding from the City (Exhibit A.3). The benefits to constructing the North and South portions of the Great Loop at one time include: a single mobilization; construction cost savings; fewer Park disruptions; and seamless stormwater mitigation. The City can capitalize on LW's work in the Park and complete a piece of public infrastructure that will be a significant amenity to Durham Central Park and the City.

### **Recommendation**

The General Services Department recommends City Council:

- 1) Grant a temporary construction easement to LW Apartments LLC's request to improve Durham Central Park by installing the Great Loop at 505 Rigsbee Avenue;
- 2) Authorize the City Manager to execute a reimbursement agreement which authorizes the City to expend City funds in the amount of \$70,253.42 to assist in the cost of the construction of improvements that will be constructed in Durham Central Park by LW Apartments LLC.

### **Background**

The proposed scope of work, budget, schedule and impacts for the construction of the Great Loop in Durham Central Park by LW is outlined below.

#### *Great Loop Project Scope of Work*

The scope of work is detailed on Exhibits A.1, A.2 and A.3 and involves construction of an eight foot wide concrete sidewalk loop that circles the central lawn area of the Park, and offers an entrance platform and staircase on Rigsbee Avenue near the existing skateboard park, and includes repairs to the skateboard park area. Phase 1 (south side of the loop), as shown on Exhibits A.2 and A.3, are the responsibility of LW as part of the construction of the Development, while Phase 2 (north side of the loop) and the repairs to the skateboard park are additional work that LW will construct on the City's behalf with funds provided by the City. Phase 1 of the pathway will meet ADAAG for Trails accessibility guidelines, providing an accessible path of travel for people with mobility impairments along a route designated for recreational pedestrian use. Exhibit A.1 shows the path design overlain on the DCP Master Plan to show that these improvements are consistent with DCP's original Great Loop design.

In conjunction with the pathway and grading work in Central Park, LW has also made commitments to DCP and to Liberty Arts to install a new stormwater yard inlet box near the Liberty Arts Pavilion, which will serve to capture ground water that has historically flooded this area of the park. This new yard box will be tied in to the existing stormwater system in Foster Street, and will be detailed on plans submitted to the necessary City departments for approval.

#### *Great Loop Project Budget*

The project budget (Exhibit B), details the costs associated with each of the two phases shown on Exhibit A.2. The Phase 1 south side of the loop cost of \$109,310.49 will be funded by LW and the Phase 2 north side of the loop cost of \$70,253.42 will be funded by the City. These are actual costs bid by Clancy & Theys Construction Company, who is the General

Contractor for the Liberty Warehouse Apartments. If funding is approved for construction for the Phase 2 north side of the loop, then LW and the City will execute a reimbursement agreement in which the City agrees to pay for construction of the Phase 2 improvements upon completion of those improvements up to a maximum payment of \$70,253.42.

#### Great Loop Project Schedule

Phase 1 south side of the loop is a requirement and committed element to satisfy the DSUP case #B140009 "Pedestrian Passageway" condition, and must be installed prior to obtaining a Phase 2 Certificate of Compliance ("COC") for LW's Liberty Warehouse Apartments. LW is tentatively scheduled to deliver the Liberty Warehouse Apartments in two phases, with turnover dates of October 1, 2016, and January 1, 2017 respectively. City/County planning has approved conditioning the issuance of the Phase 2 COC upon completion of the "Pedestrian Passageway," which is anticipated in January 1, 2017 thereby allowing lease up of some apartment units while the Great Loop construction is completed.

Given that the routing of the Great Loop pathway was undetermined when LW submitted for site plan approval in 2014, a site plan amendment is required to document the final pathway design. (The entire Great Loop was shown on the site plan amendment in two phases, and submitted to the City/County Planning Department.) Review comments from the City/County Planning Department have been received and are being addressed to modify the site plan.

#### Durham Central Park Impacts

Construction of the Great Loop pathway will close a section of Central Park for roughly four (4) weeks. The area requiring closure is detailed on Exhibit C and will not change regardless of whether Phase 1, 2 or both are being constructed. The skate park repairs will be coordinated such that the time the skate park is offline is minimized. LW will coordinate with DCP and the City's Parks and Recreation Department to ensure that the work will be accomplished with minimal disruption to the park activities. There will be negligible impacts to the Durham Farmer's Market and Mt. Merrill.

#### **Issues/Analysis**

The City/County Planning Department has affirmed that concurrent construction of the north and south portions of the Great Loop meet the intent of the Board of Adjustment approved Design Special Use Permit.

As a part of the temporary construction easement, LW will coordinate with the City during construction to minimize the downtime of the Durham Central Park. The proposed temporary construction easement is not anticipated to negatively affect the use of scheduled events at Durham Central Park as the construction schedule is purposely nestled after and before significant park events already on the calendar.

If construction of the Great Loop is approved, LW will be responsible for complying with all applicable building codes and other applicable municipal regulations. The City will make refunds to the LW for the specific costs outlined in the Reimbursement Agreement up to a maximum payment of \$70,253.42. LW will be responsible for all costs of the project in excess of the City reimbursement maximum outlined in the Reimbursement Agreement.

Upon completion, the improvements will add a pedestrian thoroughfare to the existing park and public improvements that will better control stormwater runoff diverting it from the Liberty Arts Pavilion.

### Alternatives

City Council has the discretion to not approve granting LW the authority to construct a pedestrian walkway through Durham Central Park. This alternate would have significant impacts for LW and would impact their ability to bring the Phase II apartments online for rental in a timely manner.

City Council has the discretion to not approve granting LW the authority to construct infrastructure improvements on behalf of the City. This alternate would delay necessary repairs to the skate park and delay completion of the north loop portion of the Great Loop, likely driving up the construction costs if bid as a stand-alone project.

Neither of these alternatives is recommended because approving this construction serves the public purpose of improving the utility, safety, and aesthetics of Durham Central Park by providing a fully developed accessible pedestrian thoroughfare through the largest downtown park in the most cost effective manner, while at the same time improving stormwater flow and making needed repairs to the skate park.

### Financial Impact

The City will reimburse Developer for the final certified construction costs up to the reimbursement maximum of \$70,253.42 ("reimbursement maximum"). LW's estimated construction costs are \$109,310.49. Any overages above the reimbursement maximum will be borne by LW. Total project cost for the Great Loop is \$179,563.91.

Improvement	Reimbursement Maximum	Code Accounts
Great Loop North Portion (LW)	\$00.00	N/A
Great Loop South Portion (GS)	\$60,094.60	0C040100/723500
Great Loop South Portion (DPR)	\$10,000.00	0H500200/723500
Great Loop South Portion (GS)	\$158.82	0C050000/720400
<b>Total Reimbursement Maximum</b>	<b>\$70,253.42</b>	

### SDBE Summary

This item does not require review by the Equal Opportunity/Equity Assurance Department.

### Attachments

Exhibit A.1 Agreement Scope of Work Great Loop Design  
Exhibit A.2 Agreement Scope of Work Great Loop Design  
Exhibit A.3 North and South Portions Great Loop Design  
Exhibit A.4 Skate Park Repairs Key Map Great Loop Design  
Exhibit A.5 Skate Park Repair Specifications Great Loop Design  
Exhibit B Great Loop Budget  
Exhibit C Reimbursement Agreement  
Exhibit D Temporary Construction Easement, Revocable Use Easement, and Warranty Agreement