



DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Grants Management Division

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: John A. Schneider, MPA, Director, Community Development Services

DATE: October 4, 2018

SUBJECT: A RESOLUTION AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT AND RESTATEMENT OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND THE HOUSING AUTHORITY OF CHAMPAIGN COUNTY, ILLINOIS CONCERNING THE URBANA TOWNHOMES PROPERTY

Description

Included on the agenda of the October 8, 2018, meeting of the Urbana Committee of the Whole is a Resolution Authorizing the Execution of an Amendment to an Intergovernmental Agreement with the Housing Authority of Champaign County for redevelopment of the former site of the Urbana Townhomes on Lierman Avenue, Urbana.

The Intergovernmental Agreement (IGA) was executed by the City and the Housing Authority of Champaign County (HACC) on November 18, 2013, and included the redevelopment of Aspen Court as a component of the agreement. However, since that agreement was reached, Aspen Court was purchased by TWG, who procured Low Income Housing Tax Credits (LIHTC) in late 2017, in order to redevelop the property. Construction on Aspen Court began in September, 2018.

Because the HACC is not involved in the redevelopment of Aspen Court, and because the timeline articulated in the IGA for the development of Urbana Townhomes site needs to be modified, an amendment to the IGA is necessary to reflect those changes.

Issue

The issue is whether the City Council should approve the proposed Amendment to the Intergovernmental Agreement with the Housing Authority of Champaign County.

Background

The City of Urbana took title to Urbana Townhomes in December 2012 after the final five buildings of the eight-building complex were condemned and ultimately vacated (in September 2012). Due to

the poor condition of the property, the public safety nuisance it presented, and the destabilizing impact on the already sensitive neighborhood, Council approved the acquisition of the property. The acquisition was made possible through foreclosure proceedings that ultimately led to the donation of the property to the City and the site was subsequently cleared for redevelopment.

Proposed Amendment to the Agreement

In November 2013, the HACC and City entered into an Intergovernmental Agreement for redevelopment of both properties with the intent that such redevelopment would be in keeping with the City's commitment to the goals outlined in the *2005 Comprehensive Plan* and in the *City of Urbana and Urbana HOME Consortium FY 2010-2014 Consolidated Plan*:

- Goal 1: Provide decent affordable housing opportunities for low- and moderate-income households
 - Activity: Support construction of new affordable rental units through LIHTC, in compatible areas.
 - Activity: Support and provide guidance for for-profit developers building new affordable renter and owner units.
- Goal 2: Address barriers to obtaining affordable housing
 - Activity: Support efforts to increase accessible and visitable housing units for persons with disabilities
- Goal 3: Preserve and improve supply of affordable housing as a community resource
 - Activity: Rental Rehabilitation: Provide HOME funds for rehabilitation of rental housing units to rent to households with incomes at or below 60% of the area median.
- Goal 4: Work with the Housing Authority of Champaign County to improve conditions for residents of public housing.
 - Activity: Strongly encourage the Housing Authority of Champaign County to rehabilitate existing units and develop new units, which would be accessible to families, which include persons with disabilities.
- Goal 9: Preserve and support Urbana's neighborhoods as vibrant places to live.

Brinshore Development was selected by the Housing Authority of Champaign County in November 2016, as a result of a Request for Qualifications for a developer for multiple sites, including the former Urbana Townhomes site. However, since TWG had already purchased Aspen Court at the time of the RFQ, the Aspen Court site was not included as part of the RFQ for redevelopment.

The Housing Authority is now requesting that the City amend the IGA to remove reference to Aspen Court and to modify the time period for the redevelopment of the Urbana Townhomes. This will allow sufficient time for Brinshore to apply for, and hopefully acquire, the LIHTC needed for the financing of the redevelopment project to be viable.

The proposed Amendment to the Intergovernmental Agreement will also require the review and acceptance by the Housing Authority Board. Any changes requested by the Board at its October 18, 2018, regular meeting may necessitate reapproval by the City Council.

Options

1. Approve the Resolution Authorizing the Execution of an Amendment to an Intergovernmental Agreement with the Housing Authority of Champaign County Regarding the Redevelopment of Urbana Townhomes.
2. Approve the Resolution with changes.
3. Do not approve the Resolution.

Fiscal Impacts

Approval of this Amendment to the Intergovernmental Agreement does not commit any City financial resources to the project at this time. However, if LIHTC are allocated for the project, the developer may request gap financing from the City in the form of CDBG or HOME Program funding.

Other potential financial impacts of redeveloping the site may include any fee or permit waivers requested by the Developer for construction subsidy, staff costs associated with plan review and inspections during the construction phase of the project, as well as subsequent routine inspections of the units as part of the Rental Registration Program.

Recommendation

Staff recommends approval of the Resolution as attached. The proposed amendment would modify the agreement to more accurately reflect the proposed action and would extend the timeline to facilitate the application of LIHTC by the developer. The City has a positive working relationship with the Lierman Neighborhood Action Committee (LNAC), and formal City participation in this process will facilitate public input into the future use of the site as plans are developed.

Attachments:

1. A RESOLUTION AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT AND RESTATEMENT OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND THE HOUSING AUTHORITY OF CHAMPAIGN COUNTY, ILLINOIS CONCERNING THE URBANA TOWNHOMES PROPERTY
2. FIRST AMENDMENT AND RESTATEMENT OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND THE HOUSING AUTHORITY OF CHAMPAIGN COUNTY, ILLINOIS

3. Site Map – Former site of Urbana Townhomes

Cc: David Northern, HACC
Cindi Herrera, HACC

RESOLUTION NO. 2018-10-048R

**A RESOLUTION AUTHORIZING THE EXECUTION OF A
FIRST AMENDMENT AND RESTATEMENT OF AN INTERGOVERNMENTAL
AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND THE
HOUSING AUTHORITY OF CHAMPAIGN COUNTY, ILLINOIS CONCERNING
THE URBANA TOWNHOMES PROPERTY**

WHEREAS, the City of Urbana (“Urbana”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, 5 ILCS 220/1 et seq., and may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, and welfare; and

WHEREAS, the Housing Authority of Champaign County, Illinois is a unit of local government; and

WHEREAS, the Constitution of the State of Illinois (ILCS Const. Art. VII, § 10) and the Intergovernmental Cooperation Act (5 ILCS 220/1-220/9) provides that units of local government may associate among themselves, enter into contracts with one another and share services and exercise, combine, or transfer any power or function which each unit of local government may perform unilaterally; and

WHEREAS, the City Council of the City of Urbana, Illinois, has found and determined that execution of an amendment to and a restatement of an intergovernmental agreement with the Housing Authority of Champaign County as it relates to the redevelopment of Urbana Townhomes property is desirable and necessary to improve public safety and revitalize a distressed neighborhood.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That First Amendment and Restatement of an Intergovernmental Agreement By and Between the City of Urbana, Illinois and the Housing Authority of Champaign County, Illinois

("Agreement") pertaining to redevelopment of Urbana Townhomes property and related activities, between the City of Urbana and the Housing Authority of Champaign County, in substantially the form of the copy of said Agreement attached hereto and hereby incorporated by reference, be and the same is hereby authorized and approved.

Section 2. That the Mayor of the City of Urbana, Illinois, be and the same is hereby authorized to execute and deliver and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

PASSED by the City Council this _____ day of _____, _____.

AYES:

NAYS:

ABSTAINS:

Charles A. Smyth, City Clerk

APPROVED by the Mayor this _____ day of _____, _____.

Diane Wolfe Marlin, Mayor

**FIRST AMENDMENT AND RESTATEMENT OF AN INTERGOVERNMENTAL
AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND THE
HOUSING AUTHORITY OF CHAMPAIGN COUNTY, ILLINOIS**

This FIRST AMENDMENT AND RESTATEMENT OF AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF URBANA, ILLINOIS AND THE HOUSING AUTHORITY OF CHAMPAIGN COUNTY, ILLINOIS (included any exhibits and attachments hereto, collectively this “**Agreement**”), is made and entered into as of November 18, 2013, but actually executed as of the dates beneath their signatures set forth below by and between the City of Urbana and the Housing Authority of Champaign County (collectively, the “Parties”).

WHEREAS, City of Urbana (hereafter, the “City”) is a municipal corporation, a body politic, and a home rule unit of government pursuant to Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, the Housing Authority of Champaign County (hereafter, the “Authority”) was created by the Illinois State Legislature in 1939 to provide housing for low income families; and

WHEREAS, the Parties have an interest in the provision of quality affordable housing for very low and low income families as well as the overall economic health, well-being, quality of life, safety, and security within the City of Urbana generally including the Lierman neighborhood; and

WHEREAS, there existed in the City of Urbana a multi-family residential property commonly referred to as the “Urbana Townhomes” that consisted of a number of townhome buildings and that the said townhomes buildings were demolished because they presented a threat to the overall economic health, well-being, quality of life, safety and security of the Lierman neighborhood within the City of Urbana thereby leaving a vacant real estate parcel (the “Redevelopment Site”); and

WHEREAS, Urbana currently owns the Redevelopment Site; and

WHEREAS, the revitalization of the Redevelopment Site is dependent in large part on a cooperative arrangement between the City, the Authority, and one or more third persons who wish to and/or intend to undertake any form of renovation of the Redevelopment Site; and

WHEREAS, the City and the Authority seek to amend a prior intergovernmental agreement that, in part, provided for the redevelopment of the Redevelopment Site and now re-enter into an arrangement in order to promote, foster and facilitate revitalization of the Redevelopment Site which may or will include a private Development Partner who will assist the parties in undertaking the redevelopment of the Redevelopment Site.

NOW THEREFORE in exchange for good, valuable and mutual consideration which each Party acknowledges as having in hand received and in consideration for the exchange of the covenants, terms and conditions contained in this Agreement, the Parties agree as follows:

SECTION 1 – REDEVELOPMENT PLAN: The City and the Authority shall cooperate and work with one another in order to develop, design, create, and adopt a plan for the revitalization (collectively, hereafter, “Redevelopment Plan”) of the Redevelopment Site. The Parties shall contribute such expertise as each may possess in undertaking and creating the Redevelopment Plan. Such Redevelopment Plan is anticipated to consist of new construction on the Redevelopment Site for the purpose of providing mixed income multi-family rental dwelling units. Nothing herein shall be deemed to prohibit the Parties from retaining the services of or entering into one or more agreements with one or more third persons to prepare and/or assist in the preparation of the Redevelopment Plan or any portion thereof. In the event the Parties elect to retain the services of one or more third persons to prepare or assist in the preparation of the Redevelopment Plan, no such third person shall be hired or otherwise be retained unless and until the Parties agree on the formula for paying for the services of such third person. Any such Redevelopment Plan shall provide that any private or public stormwater sewer system constructed on the Redevelopment Site shall allow the owner of 1505 and 1507 East Washington Street, Urbana, Illinois to connect its private stormwater sewer system that serves said owner’s three apartment buildings to such stormwater sewer system constructed on the Redevelopment Site unless the City expressly and in writing waives this specific term and condition.

SECTION 2 – DEVELOPMENT AGREEMENT: The Parties jointly selected Brinshore Development (Brinshore) to serve as the Development Partner in the Redevelopment Plan to be undertaken at the Redevelopment Site. The parties shall negotiate mutually acceptable terms of agreement with Brinshore for undertaking of the Redevelopment Plan and the Redevelopment Project

SECTION 3 –REDEVELOPMENT SITE: The City, in its sole discretion and on terms acceptable to the City, may elect to transfer title to the Redevelopment Site to another person, whether a governmental entity, not-for-profit entity, for-profit entity, or other private person in order to undertake and complete the Redevelopment Project involving the Redevelopment Site.

SECTION 4 – REDEVELOPMENT PLAN AND PROJECT FINANCING: The Parties anticipate that the Redevelopment Project will be financed through a variety of sources including but not necessarily limited to financial assistance from local, state and federal sources which include the City and the Authority. Such financing sources may include but shall not necessarily be limited to the issuance by the City and/or the Authority of Tax Exempt Bonds, Low Income Housing Tax Credits, HUD financing, private investment, gifts, and such other sources which are known to and/or have yet to be identified by the Parties. Notwithstanding the foregoing,

- A. The City, at its sole election and upon terms and conditions agreeable to it, may –
 - i. provide indirect financial assistance in connection with the Redevelopment Project including, but not necessarily limited to, waivers of fees, permit costs, and other applicable costs; and/or
 - ii. provide and/or facilitate the provision of such other funds as are or may be available to the City for such a project; and/or

iii. facilitate access to and use of funding sources available to the City which may be willing to fund or finance such a project; and/or

iv. subordinate any City lien and/or financing currently in place, including but not necessarily limited to secondary HOME financing and/or demolition liens as is or may be needed in order to secure additional funding or financing for the Redevelopment Project or portion thereof provided that the units supported by such financing remain affordable as defined and through the terms stipulated in the HOME loan documents.

B. The Authority, at its sole election and upon terms and conditions agreeable to the Authority, may –

i. provide “gap” financing; and/or

ii. provide long-term project-based subsidies; and/or

iii. provide and/or facilitate the provision of such other funds as are or may be available to the Authority for such a project; and/or

iv. facilitate access to and use of funding sources available to the Authority which may be willing to fund or finance such a project.

Nothing herein shall constitute a representation, warranty, promise, or obligation by or on the part of the either Party to contribute that Party’s own funds to the Redevelopment Project. However, notwithstanding the foregoing, the Parties, jointly and separately, shall undertake reasonable good faith efforts to locate sources of funding, which may include but not necessarily be limited to governmental and private sources of funding, to undertake and complete the Redevelopment Project.

SECTION 5 – APPLICABILITY OF CITY CODES: Nothing in this Agreement shall be deemed or construed as constituting a waiver of any City building, building maintenance, fire, life-safety, or other code, ordinance, rule or regulation which may be applicable to or govern the Redevelopment Project other than the waiver of such fees as the City may agree, but is not obligated, to waive as provided for in Section 4 of this Agreement. In the event that the Redevelopment Project is undertaken and completed, nothing in this Agreement shall be deemed or construed as constituting a waiver of any City building, building maintenance, fire, life-safety, or other code, ordinance, rule or regulation which may be applicable to or govern the properties which have, heretofore, been identified as the Urbana Townhomes.

SECTION 6– ANTICIPATED TIME FOR REDEVELOPMENT: To the reasonable extent practicable, the Parties shall make a reasonable good faith effort to complete such redevelopment funding applications as they deem proper in order to complete the Redevelopment Project by June 30, 2019. To the reasonable extent practicable, the Parties shall make a good faith effort, whether jointly or in cooperation with one or more private developers, to undertake and complete the Redevelopment Project on or before December 31, 2021. In the event that the Parties make a reasonably good faith effort to meet the aforesaid deadlines but fail to do so, such failure

shall not be deemed to constitute a breach of or a default on this Agreement and the Parties shall continue to cooperate with each other in an effort to complete the Redevelopment Plan and Redevelopment Project in a reasonably timely manner.

SECTION 7 – DEFAULT AND CURE: In the event that either Party believes that the other Party has acted unreasonably or has defaulted in connection with any term, provision or covenant contained in this Agreement, that Party shall give written notice to the other Party which written notice shall identify the Section of this Agreement which the noticing Party believes has been breached. Such notice shall also specify in reasonable detail the means by which the other Party has acted unreasonably and/or breached this Agreement. The Party receiving the notice shall have fourteen (14) days in which to cure the alleged unreasonable conduct or breach, provide a different date by which the Party receiving the notice believes it can correct the unreasonable act or default, or provide in writing to the noticing Party why the recipient of the notice has not acted unreasonably or in breach of this Agreement. If the recipient of the notice believes that it has not acted unreasonably or otherwise in breach of this Agreement, that Party shall specify in detail why it believes it has acted reasonably and/or why it does not believe that it is in breach of this Agreement. In the event that the Parties cannot reach consensus on whether the recipient of the notice has either acted unreasonably or breached this Agreement, then either Party may terminate this Agreement by providing written notice to the other Party which advises that the Agreement shall be deemed terminated on the ninetieth (90th) day of the date of such notice of termination.

SECTION 8: MISCELLANEOUS:

A. Indemnity: Each Party agrees to defend and hold harmless the other Party and its officers, agents, and employees from and for any and all losses, costs, expenses, demands, claims, causes, causes of action, judgments, and liabilities sustained and/or alleged to have been sustained in connection with, as a result of, and/or arising out of the intentional, willful, wanton, or gross negligence of the other Party in connection with the performance or undertaking of any obligation provided for in this Agreement. Nothing herein shall be deemed, interpreted, or construed as constituting an or extending any indemnity, hold harmless, or duty to defend covenant to the intentional, willful, wanton, grossly negligent, or negligent acts of any third person unless one or both Parties to this Agreement otherwise agree in writing to indemnify and/or hold harmless such other third person. This indemnity, hold harmless, and duty to defend provision shall not expire until the statute of limitations, including any tolling period therefor, expires. In the event either Party to this Agreement seeks or elects to invoke the indemnity, hold harmless and/or duty to defend provision contained herein, such Party shall provide the other Party with written notice of such intent to exercise this Sub-Section and such notice shall provide such information as is necessary to inform or otherwise apprise the recipient of such notice of the basis and reason for seeking to exercise the terms, provisions and covenants contained in this Sub-Section.

B. Notices: Any and all notices required to be given by this Agreement shall be given in the following means and any such notice shall be deemed effective as hereinafter provided:

- i. If by First Class U.S. Postal Service: Any and all notices sent by U.S. Postal Service shall be sent via First Class mail, registered or certified mail with return

receipt requested. If any notice is placed in a properly addressed and stamped envelope, such notice shall be deemed effective five (5) business days after the date of placement with the U.S. Postal Service.

ii. If by facsimile transmission: Any and all notices sent by facsimile transmission shall be deemed effective the day after the date of transmission but only if the sending fax machine provides a written acknowledgement that the transmission was properly sent to the recipient Party's facsimile telephone number and received by the recipient Party's fax machine. If any one of the immediate afore-stated conditions is not met, the notice shall be deemed ineffective.

iii. If sent by overnight courier service: Any and all notices sent by overnight courier service shall be deemed effective the date after delivery of such notice but only if the said courier service provides or otherwise makes available a tracking of the delivery of such notice which tracking shall include the date and time when such delivery to the recipient Party was made.

iv. If by personal service: Any and all notices which are personally served on the recipient Party shall be deemed effective the day after delivery is made but only if the person delivering any such notice executes an affidavit which states the date when such personal delivery was made.

C. Record Keeping: The Parties agree to keep and maintain any and all records and documents created in connection with the creation of the Redevelopment Plan and any undertaking of the Redevelopment Project. Such records shall be kept and maintained in accordance with the State Records Act (5 ILCS 160/1 *et seq*/).

D. Severability: If any term or other provision of this Agreement is declared by a court or administrative agency of competent jurisdiction to be invalid, illegal or incapable of being enforced, all other conditions and provision of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of these transactions contemplated hereby is not affected in any manner materially adverse to either Party. Notwithstanding the immediate foregoing, if in any such proceeding one Party's performance under this Agreement is declared to be unenforceable by the other Party, then this Agreement shall be deemed to automatically terminate with such termination date to be effective on the date when such declaration, finding, order, or decree is entered.

E. Entirety of Agreement: This Agreement constitutes the entire agreement between the Parties; it supersedes any prior agreement or understanding between them, oral or written, with respect to the matters addressed herein, all of which are hereby canceled.

F. Amendment or Modification: This Agreement may not be amended or modified except by an instrument in writing signed by both Parties.

G Waiver: Any waiver or release by one Party of the other Party of any term, condition or covenant contained in this Agreement shall be deemed effective only if such waiver is contained in a writing signed by the Party granting such waiver. Any such waiver shall not

be deemed, construed, or interpreted as a waiver or release of any other term, condition or covenant contained in this Agreement.

H. Execution in Counterparts: This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

I. Governing Law and Jurisdiction: The laws of the State of Illinois shall apply to any construction, interpretation, enforcement, or action for breach of this Agreement. In the event that any action is filed which seeks to interpret, enforce or declare breach of this Agreement, any such action shall be filed and maintained in the Sixth Judicial Circuit of the Circuit Court, Champaign County, Illinois.

J. Representations and Warranties of Authority to Execute: The Parties represent and warrant that the person executing this Agreement on the respective Party's behalf is duly authorized to do so.

K. Termination and Expiration of Agreement: This Agreement shall terminate upon the occurrence of any one of the following:

- i. Completion of the Redevelopment Project as substantially provided for in such Redevelopment Plan or any amendment thereto.
- ii. After a reasonable good faith effort has been undertaken by the Parties to undertake the Redevelopment Project in accordance therewith but without success and upon written notice of one Party to the other Party to such effect.
- iii. Upon the Parties' failure, following reasonable good faith efforts, to obtain the necessary participation and financing by one or more third persons to undertake the Redevelopment Project.
- iv. Upon mutual agreement of the Parties which Agreement shall be in writing whether for cause or without cause.
- v. Upon a breach or default of this Agreement where the non-breaching or non-defaulting Party declares in writing that this Agreement shall be terminated as of a date provided in such notice of breach or notice of default.

For the City of Urbana:

For the Housing Authority of Champaign County:

By: _____

By: _____

Its: _____

Its: _____

Attest: _____

Attest: _____

Urbana Townhomes Location Map



 Urbana Townhomes Site