

**ORDINANCE AUTHORIZING A GRANT OF PUBLIC FUNDING TO THE
CHARLOTTESVILLE REDEVELOPMENT AND HOUSING AUTHORITY FOR THE
CONSTRUCTION OF AFFORDABLE FOR-RENT HOUSING UNITS AT 900 FIRST STREET
SOUTH, CHARLOTTESVILLE, VIRGINIA IN A NOT-TO-EXCEED AMOUNT OF SIX
MILLION DOLLARS (\$6,000,000.00) FOR HOUSEHOLDS OF
LOW AND MODERATE AREA MEDIAN INCOME LEVELS.**

WHEREAS, CRHA has requested a total funding commitment of \$6,000,000 (six million dollars) in support of its South First Street Phase Two Redevelopment Project located at 900 First Street South, Charlottesville, Virginia (the 'Property').

WHEREAS the Project now and shall maintain the purpose of using public funding to subsidize the construction of for-rent affordable housing to be occupied by low and moderate-income households; and

WHEREAS the production of new housing for persons of low and moderate-income is a public purpose for which the General Assembly has authorized public funds to be expended [Virginia Code Title 36, Chapter 1 (Housing Authorities Law); Virginia Code §15.2-958; City of Charlottesville Charter, Sec. 50.7].

WHEREAS, pursuant to Virginia Code § 36-19.2, the City of Charlottesville has entered into this Agreement with CRHA for its Project.

WHEREAS CRHA is planning the redevelopment of its property, funded by Low Income Housing Tax Credit (LIHTC) program funding, loans, private donations, and a grant of local funding from the City of Charlottesville.

WHEREAS the redevelopment of existing public housing sites and the provision of additional affordable housing units for rental to persons of low and moderate income align with the aims of the City's Affordable Housing Plan and its Strategic Outcome Area: housing.

WHEREAS CRHA has requested the City award a grant to subsidize the costs of producing new units of residential rental property for persons of low and moderate income, as described in CRHA's Mixed Finance Development Proposal submitted to the Department of Housing and Urban Development, known as 'South First Street Phase Two,' and

WHEREAS the City is willing to provide the requested local funding, subject to specific certifications, assurances, and binding obligations as outlined in this MOA.

NOW, THEREFORE, for and in consideration of the Project and undertakings of the Signatories of this MOA, and other good and valuable consideration, the Signatories hereto covenant and agree as follows:

Section 1. Authorization

- 1.1. Pursuant to the terms and conditions set forth in the attached Memorandum of Agreement (Exhibit A), between the City of Charlottesville and the Charlottesville Redevelopment and Housing Authority, and Resolution #R-24-021 (Exhibit B) the City Council hereby authorizes the allocation of public funding to the CRHA in a not-to-exceed amount of six million dollars (\$6,000,000.00).

Section 2. Purpose and Uses

- 2.1. The grant funds shall be utilized by the CRHA for the construction of affordable for-rent housing units at 900 First Street South, Charlottesville, Virginia, to be made available to households of low and moderate area median income levels.
- 2.2. The grant funds shall be used for the construction of no fewer than 113 units of Public and/or Affordable Housing for-rental housing units within the Project, as more specifically described herein below, and to support the redevelopment of affordable residential units within the Project into residential rental units for no less than fifteen (15) years or the expiration of the initial compliance period applicable to the Project under the Low-Income Housing Tax Credit Program ("LIHTC").
- 2.3. The Grant Funds disbursed as authorized by this Ordinance shall not be used or expended for payment of current expenses by any Signatory Entity of the companion Memorandum of Agreement or any other legal entity. The Grant Funds shall be used only to pay the following costs of the Project (subject further to the limit on "soft costs" as set forth below): the cost of improvements, property or equipment, the cost of construction or reconstruction, the cost of all labor, materials, machinery, and equipment, the cost of all land, property, rights, easements and franchises acquired, financing charges, interest before and during construction and for up to one year after completion of construction, Project start-up costs, and operating capital for the Project, and other expenses as may be necessary or incident to the financing or construction of the Project.

Section 3. Disbursement

- 3.1. *Supporting Materials and Preconditions*
 - 3.1.1. Supporting materials must be provided to the applicable city, housing, compliance, legal, finance, and executive staff for review and approval.
 - 3.1.2. In furtherance of these stated parameters, CRHA agrees that the remaining balance of the award shall be used strictly for hard costs for the redevelopment of the Project. For this MOA, hard costs shall be taken to mean at least direct expenses related to the physical construction of the project, including materials, labor, equipment, and fixtures.

3.2. *Soft Costs Limitation*

- 3.2.1. Up to the not-to-exceed amount of ten percent (10%) of the total award, six hundred thousand dollars (\$600,000), is allocated towards soft costs associated with the Project. For this MOA, soft costs shall be taken to mean costs that are indirect or intangible expenses that support the construction project but do not directly impact the construction process, including planning, administration, legal fees, insurance, and property management. Note this not-to-exceed amount of six hundred thousand dollars (\$600,000) shall be used without limitation towards the cost of plans and specifications, surveys and estimates of cost and revenues, the cost of engineering, environmental assessment and mitigation, soil testing, legal and other professional services, expenses incident to determining the feasibility or practicability of the project.

3.3. *Construction and Development Costs*

- 3.3.1. The remaining balance of the award, after allocations for soft costs have been deducted, shall be disbursed between September 2024 and September 2026. These disbursements will occur on an as-needed basis, but no more than monthly, contingent upon the review and approval by the City staff of appropriate documentation that the funds have been spent toward the construction of the Project as defined above. Appropriate documentation shall include but not be limited to Applications for Payment from the General Contractors and invoices from vendors and other professionals associated with the project.

3.4. *Retainage*

- 3.4.1. An amount equal to 5% of the total grant award, or three hundred thousand dollars (\$300,000), will be retained by the City until the project achieves 100% construction completion of the residential units as documented by a Certificate of Occupancy issued by the City's Building Official.

3.5. *Pre-Disbursement Conditions*

- 3.5.1. Prior to the execution of this Agreement, and as a condition precedent to any disbursement of funds under the terms herein, CRHA shall provide to the City a detailed list of milestones, activities, and deliverables for each phase of the South First Street Phase Two redevelopment project.

3.5.2. *This list shall encompass, but not be limited to, the following phases:*

- a. Predevelopment Completed (June 2024): All preparatory work was completed, all necessary permits were secured, and financing arrangements were finalized.
- b. Financial Closing and Construction Start (September 2024): Includes the execution of financial agreements and the commencement of construction activities. If construction does not commence on or before September 30, 2024, this MOA will expire unless extended by written request to the City Manager's Office.
- c. Construction Completed (September 2026): Final construction deliverables, occupancy permits, and initial tenant placements. The Completion Date may be extended due to force majeure or other reasons approved by the City Manager.

- d. Budget Establishment: The CRHA shall establish and submit a budget for the construction project to the City for review and approval. All subsequent changes to the Budget shall be subject to review and comment by the City.
- e. Compliance with Laws: Compliance with all applicable federal, state, and local laws, and securing necessary approvals, bonds, and permits.

3.6. *Preconditions, General*

No City official or employee shall disburse any Grant proceeds authorized herein this Ordinance unless and until the Recipient has furnished all of the following documents to the City for the Project:

1. Evidence of HUD Approval: copies of all written approvals required from the Department of Housing and Urban Development for the Project, specifically including, without limitation: HUD's approval of the Recipient's applications seeking approval of a Mixed Finance Development and for approval of a Demolition/Disposition of Recipient's property.
2. Documents of Record: copies of each of the following fully executed documents, or written notice given to the city identifying the deed book and page number at which the documents are recorded in the land records of the Charlottesville Circuit Court (if the documents are required to be recorded):
 - a. Memorandum of the Ground Lease for the Project (fully executed) along with a fully executed copy of the Ground Lease for the Project.
 - b. HUD Declaration of Trust/Restrictive Covenants for the Project.
 - c. The Regulatory and Operating Agreement executed for the Project by and among the members of the entity that is the Project Owner.
 - d. A copy of the Consolidated Annual Contributions Contract (ACC), number P-5513, dated August 30, 1996, and all amendments thereto.
 - e. Fully executed Mixed-Finance Development Certifications and Assurances (HUD) for the Project.
 - f. Fully executed Extended Use Agreement executed by the Project Owner for and in connection with the LIHTC Tax Credit Program.
3. Construction Contract and Schedule: a copy of the contract for construction executed between the Project Owner and the General Contractor for Construction, and a copy of the approved Construction Schedule that will be implemented by the Construction Contractor.
4. Building Permit: evidence that a building permit for the Project has been approved and issued consistent with the Contract and Schedule provided to city staff.
5. The Budget for the Project.

Section 4. Effective Date and Administrative Procedures

- 4.1. This ordinance shall take effect immediately upon adoption.

4.2. *Administrative Procedures for Annual Subsidy*

- 4.2.1. The City Manager, in consultation with the City Assessor and the Treasurer, shall establish administrative forms and procedures by which CRHA may request and receive the annual subsidy authorized by the Memorandum of Agreement and/or this Ordinance.

Section 5. General Grant Conditions

5.1. *Compliance with Government Requirements.*

- 5.1.1. In all its actions and activities undertaken to provide for the construction, management, and operation of the Project, the Recipient shall comply with:
- a. Any Recovery Agreement entered into between the Recipient and the Department of Housing and Urban Development on or after July 1, 2020.
 - b. The 1958 Cooperation Ordinance between CRHA and the City, as amended.
 - c. The Consolidated Annual Contributions Contract (ACC), number P-5513, dated August 30, 1996, and all amendments thereto.
 - d. The Ground Lease between CRHA and the Project Owner.
 - e. The Declaration of Trust/Restrictive Covenants for the Project.
 - f. The Regulatory and Operating Agreement between CRHA and the Project Owner.
 - g. HUD's Mixed-Finance Development Certifications and Assurances for the Project.
 - h. Any other legal obligations and requirements imposed on the Project, or any aspect of the Project, as a result of any federal or state law, regulation, grant ordinance, any City ordinance, or by the Memorandum of Agreement.

5.2. *Project Approval.*

- 5.2.1. By its adoption of this Ordinance, the City Council approves the Project for which the Grant Funds are awarded and requests the Recipient to construct and operate the Project.
- 5.2.2. Before the Recipient gives final approval to the Budget for the Project, the Recipient shall hold at least one public hearing to receive the views of residents of the City of Charlottesville. The Recipient shall cause public notice to be given at least 10 days prior to the public hearing, by publication in a newspaper having a general circulation within the City of Charlottesville, as required by Va. Code §36-19.2.

5.3. *Public Disclosure of Ordinance Documents.*

- 5.3.1. The Recipient acknowledges and understands that this Ordinance, and all related public proceedings and records, shall be open to the inspection of any citizen or any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act (Va. Code §2.2-3700 et seq.) and the Virginia Public Procurement Act (Va. Code §2.2-4300 et seq.) to the extent that either of those laws applies.

5.4. *No Waivers.*

- 5.4.1. No failure on the part of the City to enforce any provision(s) of this Ordinance shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any breach or failure to perform by the Recipient shall be construed as or deemed to be a waiver of any other and/or subsequent breach or failure to perform.

5.5. *Severability.*

- 5.5.1. If any term, provision, or condition of this Ordinance, or the application thereof to any person or circumstance, shall be held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Ordinance, and the application of any term, provision, or condition contained herein, to any person or circumstance other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

5.6. *No Other Understandings.*

- 5.6.1. There are no understandings or agreements between the City and the Recipient, other than those set forth within this Ordinance, and the provisions of this Ordinance supersede all prior conversations, discussions, correspondence, memoranda, or other communications between or among any employees or officials of the City and the Recipient.

5.7. *Notices.*

- 5.7.1. All notices required by this Ordinance shall be given in writing, and shall be deemed to be received on the date that is either:

- a. Five (5) business days after being mailed by first-class mail, postage prepaid, return receipt requested, or
- b. One (1) business day after being placed for next-day delivery with a nationally recognized overnight courier service, or
- c. The same date on which the notice is delivered by hand to the city.

- 5.7.2. All notices shall be addressed as follows:

- a. If given to the city: to the City Manager, with a copy to the City Attorney, each to: 605 East Main Street, Second Floor, City Hall (P.O. Box 911), Charlottesville, Virginia, 22902.
- b. If given to the Recipient: to Charlottesville Redevelopment and Housing Authority, Attention: Executive Director, 500 South 1st Street, Charlottesville, Virginia, 22902.

5.8. *Authorized Signatures.*

- 5.8.1. The Clerk of Council shall provide a certified copy of this Ordinance, along with a written Grant Acceptance Form approved by the City Attorney. The Grant Acceptance Form shall be signed by a duly authorized officer, member, or agent of CRHA, the CCDC, and the Project Owner.

Section 6. Repeal of Conflicting Ordinances

- 6.1. All ordinances or parts of ordinances that are in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 7. Publication and Distribution

- 7.1. The City Clerk is hereby authorized and directed to cause this ordinance to be published and distributed as required by law.

Approved by Council
July 15, 2020

Kyna Thomas, CMC
Clerk of Council