

shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST

DEC 2 2016
4-5984
Chief Administration Office
City of Richmond

O&R REQUEST

RECEIVED

DATE: November 30, 2016

DEC 05 2016

TO: The Honorable Members of City Council

OFFICE OF CITY ATTORNEY

THROUGH: Dwight C. Jones, Mayor

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

THROUGH: Lenora G. Reid, Deputy Chief Administrative Officer Finance and Administration

THROUGH: Peter L. Downey, Deputy Chief Administrative Officer Economic Development

THROUGH: Jay Brown, Director, Department of Budget & Strategic Planning

FROM: Douglas Dunlap, Interim Director, Department of Economic and Community Development

RE: To authorize the Chief Administrative Officer to enter into a Cooperation Agreement on behalf of the City of Richmond with the Richmond Redevelopment and Housing Authority for the purpose of funding site and infrastructure improvements on the for the Eastview Neighborhood.

ORD. OR RES. No. _____

PURPOSE: To authorize the Chief Administrative Officer to enter into a Cooperation Agreement in the amount of \$8,535,564 on behalf of the City of Richmond with the Richmond Redevelopment and Housing Authority to support the redevelopment of the Former Armstrong High School site at 1611 N. 31st Street (E0003312000) and 1501 N. 31st Street (E0003312005) for the purpose of constructing and developing an affordable housing development financed in part with an allocation of low income housing tax credits provided by the Virginia Housing Development Authority upon certain terms and conditions.

REASON: The City of Richmond will enter into this Cooperation Agreement to provide funding to support the Richmond Redevelopment and Housing Authority ("RRHA") for the purpose of neighborhood revitalization and redevelopment of the parcels as a mixed-income neighborhood financed in part with an allocation of low income housing tax credits provided by the Virginia Housing Development Authority ("VHDA"). The two (2) subject parcels would be devel-

oped in conformance with the preliminary Community Unit Plan approved by Council on February 9, 2015 in Ordinance No. 2015-5-30,

RECOMMENDATION: Approval is requested by the Administration.

BACKGROUND: The 1611 N. 31st Street and 1501 N. 31st Street parcels are adjacent to Oakwood Cemetery and are located just south of the Creighton Court RRHA housing development. According to tax records, the 1611 N. 31st Street site consists of approximately 11.6 acres and adjoins the 1501 N. 31st Street site which consists of approximately 9.69 acres. These two parcels total approximately 21.29 acres and will serve as a site for development of a portion of the replacement housing required with the redevelopment of the Creighton Court site. These two parcels also provide much needed property necessary to implement the first phase of the Creighton Court redevelopment.

FISCAL IMPACT / COST: \$8,535,564 in CIP funding to support the development and redevelopment of the former Armstrong High School site for site and infrastructure improvements to the site.

FISCAL IMPLICATIONS: The adoption of this paper will allow the City of Richmond to provide a grant of \$8,535,564 to the Richmond Redevelopment and Housing Authority to support development of the former Armstrong Site producing 254 units of housing that will generate real estate tax revenue.

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: Once the properties are redeveloped with the proposed mixed income use, the properties will become taxable real estate on the City's real estate tax rolls.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: December 5, 2016

CITY COUNCIL PUBLIC HEARING DATE: December 12, 2016

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE: Finance and Economic Development Standing Committee

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:

AFFECTED AGENCIES: Finance, Budget and Strategic Planning and Economic and Community Development

O&R Request

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RELATIONSHIP TO EXISTING ORD. OR RES.: Ordinance #2014-100-74, Ordinance No. 2015-46-48

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Cooperation Agreement between the City of Richmond and the Richmond Redevelopment and Housing Authority

STAFF: Douglas Dunlap, Director ECD 804-646-6822.
Denise Lawus, Deputy Director ECD 804-646-3975.

COOPERATION AGREEMENT

As Amended

THIS COOPERATION AGREEMENT (this “Agreement”) is made and entered into as of _____, [~~2016~~] 2017, by and between the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”) and the **RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “Authority”).

RECITALS

- A. The City and the Authority desire to undertake redevelopment of the property located at 1501 North 31st Street and 1611 North 31st Street in the city of Richmond, Virginia (the “Site”).
- B. The Authority has procured The Community Builders, Inc. as the Master Developer (“Developer”) for the new construction of 256 units of mixed-income rental housing on the Site, which construction constitutes a “Housing Project” as defined in Section 36-3 of the Code of Virginia, 1950, as amended (the “Project”).
- C. The City is undertaking demolition on the Site, together with certain abatement and remediation activities in connection therewith.
- D. Pursuant to Ordinance No. 2015-46-48, the City agreed to donate the Site to the Authority to permit the construction of the Project on the Site, and the City and the Authority subsequently entered into an Option to Acquire by Donation, dated March 3, 2015, setting forth the terms and conditions pursuant to which the City would donate the Site to the Authority (the “Option”).
- E. In connection with the Developer’s efforts to obtain a low-income housing tax credit award for the first phase of the Project, the Authority assigned the Option to Church Hill North Phase I LLC, a single-purpose entity formed and controlled by Developer for purposes of obtaining financing, acquiring the Site, overseeing the development and construction of, and owning and managing the Project (the “Phase IA Owner”), pursuant to an Assignment and Assumption Agreement dated March 3, 2015 (the “Initial Assignment and Assumption Agreement”).
- F. Pursuant to an Assignment and Assumption Agreement dated as of October 1, 2015 (the “Phase IB Site Assignment and Assumption Agreement”), the Phase IA Owner assigned all of its right, title and interest in, and obligations under, the Option with respect to the Phase 1B Site (as more particularly described in the Phase IB Site Assignment and Assumption Agreement) to Church Hill North Phase 1B LLC, a single-purpose entity formed and controlled by Developer for purposes of obtaining financing, acquiring the Phase 1B Site, overseeing the development and construction of, and owning and managing that phase of the Project to be constructed on the Phase 1B Site (the “Phase 1B Owner”).

- G. Pursuant to an Assignment and Assumption Agreement dated as of February 1, 2016 (the “Phase 2A Site Assignment and Assumption Agreement”), the Phase IA Owner assigned all of its right, title and interest in, and obligations under, the Option with respect to the Phase 2A Site (as more particularly described in the Phase 2A Site Assignment and Assumption Agreement) to Church Hill North Phase 2A LLC, a single-purpose entity formed and controlled by Developer for purposes of obtaining financing, acquiring the Phase 2A Site, overseeing the development and construction of, and owning and managing that phase of the Project to be constructed on the Phase 2A Site (the “Phase 2A Owner”)
- H. Each of the Phase 1B Owner and the Phase 2A Owner, respectively, has re-assigned or will re-assign all of its right, title and interest in, and obligations under, the Option to the Phase IA Owner, and the Phase IA Owner has re-assigned or will re-assign all of its right, title and interest in, and obligations under, the Option to the Authority in order to allow the Authority to obtain title to the Site prior to the conveyance (in fee or by ground lease) of any portion of the Site to the Phase IA Owner, the Phase 1B Owner, the Phase 2A Owner or any other single-purpose entities to be formed in connection with the development and financing of the various phases of the Project.
- I. The Authority will exercise the Option and, pursuant thereto, take title to the Site prior to completion by the City of all demolition and related abatement and remediation activities on the Site.
- J. Upon taking title to the Site, and upon completion of all demolition and related abatement and remediation activities on the Site by the City, the Authority, together with the Developer, will undertake and complete the design, planning, engineering, and construction of certain infrastructure improvements to support the Project (the “Improvements”).
- K. In order to facilitate the design, planning, engineering, and construction of the Improvements, the City desires to provide a grant to the Authority in the amount of [~~\$8,535,564.00~~] \$7,835,564.00 (the “Grant Funds”).
- L. The Authority desires to accept the Grant Funds in accordance with the terms and conditions of this Agreement.
- M. The City is authorized by Section 36-6 of the Code of Virginia, 1950, as amended, to cooperate in the planning, undertaking, construction or operation of housing projects located in the City and by Section 36-7 of the Code of Virginia, 1950, as amended (the Code”) to make donations to the Authority to enable the Authority in carrying out its purposes.
- N. The Authority is authorized by Title 36, Chapter 1 of the Code, and other laws to perform the activities contemplated in this Agreement.

NOW, THEREFORE, in consideration of the Recitals set forth above and good and valuable consideration as set forth below, the parties agree as follows:

1.0 **Use of Grant Funds.**

1.1 **Source of Funds.** The Authority acknowledges that the Grant Funds are financed by the issuance of general obligation bonds of the City of Richmond and warrants that it will not use the Grant Funds for any purpose not authorized by the Virginia Public Finance Act, the Internal Revenue Code, and any other applicable laws, with regard to such bonds.

1.2 **Authorized Activities.** Subject to section 1.1 above, the Authority shall use the Grant Funds solely for the design, planning, engineering, and construction of the Improvements and only for those costs authorized by Section 15.2-2602 of the Code of Virginia, 1950, to include the cost of construction; the cost of labor, materials, machinery and equipment, the cost of plans and specifications, surveys and estimates of cost, the cost of engineering, legal and other professional services, and expenses incident to the feasibility or practicability of the Improvements (the "Work"). The categories and budget for the Work are attached hereto and incorporated herein as "Exhibit A."

1.3 **Access to Site.** Except as provided in the Option, the Authority shall not engage in any activities on the Site until such time as fee simple title to the Site has vested in the Authority. As a condition of receipt of the Grant Funds, the Authority shall grant the City access to the Site and all rights necessary for the City to complete the demolition and related abatement and remediation activities on the Site, the terms of which will be set forth in a separate agreement acceptable to the parties and executed subsequent to the Authority's exercise of its Option and prior to delivery of a deed for the Site to the Authority from the City ("Donation Agreement").

2.0 **Funding Commitments.**

2.1 **Appropriation of Funds.** Notwithstanding any provision of this Agreement to the contrary, the City's obligation is subject to appropriation by the City Council of the City and the availability of funds. Under no circumstances shall the City's total liability under this Agreement exceed the total amount of the funds appropriated by the City Council for the City's performance of this Agreement.

2.2 **Payment of Grant.** The City shall pay over to the Authority the Grant Funds, without any rights of set-off, recoupment or counterclaim, in accordance with the provisions of this section. The City shall pay the Grant Funds as soon as is practicable after the Authority exercises its Option and enters into the Donation Agreement, but, in any case, prior the commencement of the Work. Until the Grant Funds are received by the Authority, the Authority shall have no obligation to proceed with the Work.

3.0 **Project Fund.**

3.1 **Establishment.** Consistent with the requirements of federal taxation laws applicable to tax-exempt bond proceeds the Authority shall establish a fund in its accounting and budgetary structure, into which the Authority shall deposit all funds

received pursuant to this Agreement and from which the Authority shall make all disbursements required for the Work.

3.2 **Accounting.** The Authority shall prepare financial reports and statements of all financial activity relating to the Grant Funds in accordance with generally accepted accounting principles. The Authority may use its accountant to prepare the reports and statements if it chooses, or the reports and statements may be prepared internally by the Authority, and the Authority may include these reports and statements in its regular reports and statements on other activities of the Authority.

4.0 **MBE/ESB Participation.**

4.1 **Goal.** By entering into this Agreement, the Authority agrees, for itself and its consultants, contractors and subcontractors, to work towards a goal that 40 percent of all expenditures for the Improvements will be spent with minority business enterprises and emerging small businesses, either or both, that perform commercially useful functions with regard to the prosecution and completion of the undertakings herein. For purposes of this section the terms “minority business enterprise” and “emerging small business” have the meanings ascribed to them by Section 74-4 of the Code of the City.

5.0 **Section 3.**

5.1 By entering into this Grant Contract, the Authority for itself and for its contractors and subcontractor agrees, to implement Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. Section 1701u and the regulations promulgated at 24 C.F.R. Part 135 (Section 3), to the greatest extent feasible and allowable by law. Nothing in this Agreement shall be construed as placing any obligations or liabilities on the City with regard to Section 3.

6.0 **Records.**

6.1 **Maintenance of Records.** The Authority shall maintain records of the cost for the Work pursuant to generally accepted accounting principles, and in accordance with the Virginia Public Records Act and such other methods as the City may require. The Authority shall retain all invoices, checks and other records showing billing and payment for materials, equipment and labor relating to the Work; shall maintain books of account with respect to the Work; and shall require its consultants, contractors and subcontractors to maintain similar records.

6.2 **Access to Records and Audit.** The Authority and its contractor and subcontractors shall, and shall cause its consultants, contractors and subcontractors to, at reasonable times and upon request at any time during the progress of the Work, afford the City access to the records described in Section 6.1 (“Maintenance of Records”) and any other records related to this Agreement and the determination of the cost thereof, wherever located, for such examination and audit by the City or its agent as the City may desire (such examination and audit to be conducted at the City’s sole cost and expense). The City, at its cost, may

make copies of any records that the City has the rights under this Agreement to access, examine, and audit.

6.3 **Audit by City Auditor.** The Authority acknowledges that the Grant is funded by an appropriation by the City Council of the City. Pursuant to Section 2-187 of the Code of the City, the Authority shall be subject to periodic audits by the City Auditor, on demand and with notice, of solely its finances and expenditures of the Grant Funds. In addition, the Authority shall afford the City access to all records relating to the expenditure of monies from the Grant Funds, wherever located, for such examination and audit by the City as the City may desire (such examination and audit to be conducted at the City's sole cost and expense). The Authority shall afford the City the opportunity, at the City's sole cost and expense, to make copies of the records that the City has the rights under this section to access, examine, and audit. The Authority shall ensure that the requirements of this section are made binding on any consultants, contractors and subcontractors of the Authority.

6.4 **Public Disclosure.** The Authority for itself and its consultant, contractors and subcontractors acknowledges and agrees that this Agreement and any other records furnished, prepared by or in the possession of the City or its agents are subject to the retention and disposition requirements of the Virginia Public Records Act and the public disclosure requirements of the Virginia Freedom of Information Act.

7.0 **Protection of City.**

7.1 **Insurance.**

7.1.1 **Required.** The Authority shall require any consultants, contractors, or subcontractors performing work contemplated herein to maintain the following insurance in accordance with the requirements of this Section 7.1 ("Insurance"): Commercial General Liability Insurance in an amount of not less than \$1,000,000.00 combined single limit. The contract shall contain a provision that it shall not be terminated or otherwise allowed to expire prior to 30 days after written notice to that effect is received by the Authority, provided that a shorter notice period may be accepted with the concurrence of the City. Approved insurance coverage shall be kept in full force and effect, without expense to the City, at all times during the term of this Agreement.

7.1.2 **Certificates of Insurance.** At the time the City signs the Agreement or at the time the Authority signs any applicable contract with a consultant or contractor, whichever is later, the Authority shall furnish the City with an original, signed certificate of insurance evidencing the above coverage.

7.1.3 **Contracts and Policies.** The Authority is not required to furnish the City with copies of insurance contracts or policies required by this Section 7.1 ("Insurance") unless requested at any time by the City.

8.2 **Indemnification.**

8.2.1 **Generally.** The Authority shall use its best efforts to require that any consultants or contractors engaged by the Authority in connection with the performance of the Work contractually agree to defend, hold harmless and indemnify the City, its officers, its employees and its agents from and against any and all actions, awards, causes of action, claims, costs, damages, expenses, judgments, liabilities, losses and suits (including costs relating to litigation and reasonable attorneys' fees) arising out of the performance of the Work contemplated herein, as well as any and all actions, awards, causes of action, claims, costs, damages, expenses, judgments, liabilities, losses and suits (including costs relating to litigation and reasonable attorneys' fees) arising out of, caused by or resulting from errors, omissions, negligent acts or intentional acts of the consultant or contractor, its officers, its employees, its agents, its subcontractors and its suppliers. Nothing in this section 8.2.1 shall be deemed to require any consultants or contractors engaged by the Authority in connection with the performance of the Work to defend, hold harmless and indemnify the City for any claims arising out of, caused by or resulting from the negligence or willful misconduct of the City, its officers, employees or agents and nothing herein shall be construed as a waiver of the City's sovereign immunity.

8.2.2 **Regulatory Compliance.** The Authority shall use its best efforts to ensure that if any consultant or contractor violates laws or regulations that govern the Work contemplated herein, the consultant or contractor shall defend, hold harmless and indemnify the City against any fines or penalties or both that result from such violation. To the extent that such violation is the result of the negligence or other actionable conduct of the consultant or contractor, the consultant or contractor shall defend, hold harmless and indemnify the City against any third party claims, suits, awards, actions, causes of action or judgments, including, but not limited to, all attorneys' fees and costs incurred thereunder, that result from such violation.

9.0 **Miscellaneous Provisions.**

9.1 **Captions.** All section titles or captions in this Agreement are for convenience of reference only. They should not be deemed to be part of this Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement.

9.2 **Compliance with Laws.** The Authority shall obtain all necessary governmental approvals and permits and shall perform such acts as are necessary to effect the compliance with all laws, rules, ordinances, statutes, and regulations of any governmental authority applicable to the completion of the Work and shall ensure the same compliance by its consultants, contractors and subcontractors.

9.3 **Counterparts.** This Agreement may be executed by the City and the Authority in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Agreement.

9.4 **Entire Agreement.** This Agreement contains the entire understanding between the City and the Authority and supersedes any prior understandings and written or oral agreements between them respecting this subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between the City and the Authority relating to the subject matter of this Agreement that are not fully expressed in this Agreement.

9.5 **Governing Law and Forum Choice.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and the Authority in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. With the exception of the provisions contained in Section 8.2 (“Indemnification”) of this Agreement, each party shall be responsible for its own attorneys’ fees in the event this Agreement is subject to litigation.

9.6 **Modifications.** This Agreement may be amended, modified and supplemented only by the written consent of both the City and the Authority preceded by all formalities required as prerequisites to the signature by each party of this Agreement.

9.7 **No Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give.

9.8 **No Joint Venture.** The terms and conditions of this Agreement shall not be construed or interpreted in any manner as creating or constituting the City as a partner or joint venture with the Authority or as making the City liable for the debts, defaults, obligations or lawsuits of the Authority or its assigns, consultants, contractors or subcontractors.

9.9 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Agreement, the City and the Authority hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City and the Authority; (iii) no individual or entity shall obtain any right to make any claim against the City or the Authority under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase “individual or entity” means any individual or entity,

including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.

9.10 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U. S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219

B. To the Authority:

Richmond Redevelopment and Housing Authority
Street Address: 901 Chamberlayne Parkway
Richmond, Virginia 23230
Mailing Address: Post Office Box 26887
Richmond, Virginia 23261-6887
Attention: Chief Executive Officer

Either party may change any of its address information given above by giving notice in writing stating its new address to the other party.

9.11 **Authorization to Act.** The Chief Administrative Officer of the City of Richmond, Virginia, or a designee thereof, is authorized to act on behalf of the City under this Agreement.

9.12 **Authority to Execute.** The Authority represents that the Authority's signatory is duly authorized by the Authority to enter into this Agreement and thereby bind the Authority to this Agreement's terms and conditions.

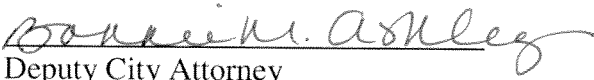
SIGNATURES ON FOLLOWING PAGE

WITNESS the following signatures.

CITY OF RICHMOND, VIRGINIA,
a municipal corporation of the
Commonwealth of Virginia

By: _____
Selena Cuffee-Glenn
Chief Administrative Officer

Approved as to Form:


Deputy City Attorney

RICHMOND REDEVELOPMENT
AND HOUSING AUTHORITY, a
political subdivision of the
Commonwealth of Virginia

By: _____
TK Somanath
Chief Executive Officer