Legislation Details (With Text)

File #:	41200	**Version:**	2	**Name:**	SUBSTITUTE: Authorizing the Mayor and City Clerk to execute loan agreements with Heartland Housing, Inc. (and/or an affiliate legal entity) for up to $1,615,000 from the Affordable Housing Fund for the development (pre-development and construction) of app
Type:	Resolution			**Status:**	Passed
File created:	12/22/2015			**In control:**	BOARD OF ESTIMATES (ended 4/2017)
On agenda:	1/19/2016			**Final action:**	1/19/2016
Enactment date:	1/22/2016			**Enactment #:**	RES-16-00064

Title: SUBSTITUTE: Authorizing the Mayor and City Clerk to execute loan agreements with Heartland Housing, Inc. (and/or an affiliate legal entity) for up to $1,615,000 from the Affordable Housing Fund for the development (pre-development and construction) of approximately 45 units of permanent supportive housing at 7933 Tree Lane for families experiencing homelessness.

Sponsors: Samba Baldeh, Maurice S. Cheeks, Matthew J. Phair, Paul E. Skidmore

Indexes:

Code sections:

Attachments: 1. Tree Lane AHF res 41200 Ver 1.pdf

Date	Ver.	Action By	Action	Result
1/19/2016	2	COMMON COUNCIL	Adopt	Pass
1/11/2016	2	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
1/5/2016	1	COMMON COUNCIL	Refer	Pass
12/23/2015	1	Community Development Division	Referred for Introduction	

Fiscal Note

The City's 2016 Adopted Capital Budget authorizes up to $6 million for the Affordable Housing Fund (Community Development Division Project No. 17110). That sum includes up to $1.5 million for construction of Phase II of the City's permanent supportive housing initiative for homeless families (also known as the Tree Lane project). The $6 million total for 2016 includes $1.5 million of GO Borrowing, reauthorized from the 2015 Adopted Capital Budget to support three proposed tax credit housing development projects. A Resolution authorizing City financial support for those three projects was adopted by the Common Council on December 2, 2014 (RES-14-00871, Legistar #36185).

The Affordable Housing Fund project in the 2015 Capital Budget (Project Nos. 35 and 42) included $115,000, made available to support pre-development costs associated with Phase II of the City's permanent supportive housing initiative for homeless families. Those funds remain available, thus, this resolution has no fiscal impact on the City's budget.

Title

SUBSTITUTE: Authorizing the Mayor and City Clerk to execute loan agreements with Heartland Housing, Inc. (and/or an affiliate legal entity) for up to $1,615,000 from the Affordable Housing Fund for the development (pre-development and construction) of approximately 45 units of permanent supportive housing at 7933 Tree Lane for families experiencing homelessness.

Body

WHEREAS, funds for pre-development and construction costs associated with the development of permanent supportive housing for families experiencing homelessness (Phase II, a/k/a the Tree Lane project) were authorized in the City's 2015 Adopted Capital Budget.

This Resolution authorizes an award of up to $1,615,000) (covering $115,000 for pre-development and $1.56 million for development costs) to Heartland Housing, Inc., for the development of the Phase II permanent supportive housing project at 7933 Tree Lane.

BACKGROUND

On October 15, 2013 (RES-13-00804, Legistar #31765), the Common Council directed the CDA to draft and issue a request for qualifications ("RFQ") for development services relating to the development, operation and financing of housing for homeless families (Phase II of the permanent supportive housing initiative).

As a result of that RFQ process, on December 2, 2014 (RES-14-00908, Legistar #36175), the Common Council approved the selection of the team of

- Heartland Housing, Inc., to develop and provide property management services for the housing project; and
- YWCA of Dane County, to provide support services to the residents of that housing.

The 2015 Adopted Capital Budget authorized funds to develop the first phase of the City's initiative to develop approximately 250 units of affordable housing serving homeless persons per DPCED Project No. 25 (Permanent Supportive Housing), and authorized funds necessary for the second and subsequent phases of that initiative per DPCED Project No. 42 (Affordable Housing Fund).

ACTION

WHEREAS, the 2015 Adopted Capital Budget's DPCED Project No. 42 (Affordable Housing Fund) has an unused balance of $115,000 remaining, which was intended to assist Heartland Housing, Inc. with pre-development costs associated with the second phase of permanent supportive housing as described above; and,

WHEREAS, the 2016 Adopted Capital Budget's DPCED Project No. 42 (Affordable Housing Fund) authorizes up to $1.5 million for development costs associated with that project:

NOW, THEREFORE BE IT RESOLVED that the Mayor and Common Council hereby authorize a total allocation of up to $1,615,000 from the CDD's Affordable Housing Fund to Heartland Housing, Inc., and/or an affiliate legal entity ("Heartland"), to support the proposed permanent supportive housing development at 7933 Tree Lane; and,

BE IT FURTHER RESOLVED, that up to $115,000 of this allocation shall be made available to Heartland for the purpose of pre-development activities upon the following terms:

- Form of Loan
  - The purpose of the Loan is to provide predevelopment financing that will enable Borrower to pay certain predevelopment costs of the project (e.g., architectural, legal, permits and fees); and
  - The loan shall be evidenced by a promissory note made by developer payable to the City in the amount equal to the loan at zero percent (0%) interest; and
  - The loan shall be forgivable in the case that the developer fails to secure tax

powered by Legistar™

credits, except if the developer fails to apply for tax credits; and

- A twelve percent (12%) interest rate will apply in the case of default.
- Events of Default
  - Borrower fails to make any payment of principal of or interest on the Note within ten (10) days after the date on which such payment is due; or
  - Borrower fails to observe or perform any other term, covenant, undertaking or agreement contained in this Agreement or any other Loan Document, and such failure continues unremedied for a period of thirty (30) days after written notice has been given to Borrower by Lender, or, if such failure is not reasonably capable of being remedied within such period of thirty (30) days, Borrower has not commenced remedial action or is not proceeding with diligent efforts to remedy such failure; or
  - Any representation or warranty made by Borrower, in this Agreement or the other Loan Documents, or any statement or representation made in any certificate, report or opinion delivered pursuant to this Agreement or the other Loan Documents, proves to have been false, misleading or incorrect in any material respect when made or deemed made; or
  - Borrower becomes insolvent, or fails or ceases to pay its debts as they mature or makes an assignment for the benefit of creditors or files a petition in bankruptcy or is adjudicated insolvent or bankrupt, or petitions or applies to any tribunal for the appointment of any receiver or any trustee, or commences any proceeding under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or any such proceeding is commenced against Borrower that is not dismissed within a period of sixty (60) days, or Borrower, by any act indicates its consent to, approval of, or acquiescence in any such proceeding or the appointment of any receiver of or any trustee for it or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of sixty (60) days; or
  - Any material adverse change occurs in the financial condition of Borrower that Lender in its reasonable judgment believes may materially adversely affect the ability of Borrower to repay the Note or the ability of Borrower to perform their respective obligations under this Agreement or the other Loan Documents and Lender is not provided with reasonably satisfactory evidence to the contrary or Collateral sufficient to reduce the risk within thirty (30) days following notice to Borrower; or
  - A default occurs (and continues beyond any applicable notice and cure period) under any portion of the Construction Financing or under the terms of any instrument or document evidencing or securing, or otherwise executed or delivered in connection with, any portion of the Construction Financing, or any portion of the Construction Financing is terminated, canceled, withdrawn, or reduced for any reason and such action is likely to have a material adverse effect on Borrower's ability to obtain Construction Financing; or
  - A default occurs (and continues beyond any applicable notice and cure period) under any other loans now or financing now or in the future provided to Borrower by Lender or under the terms of any instrument or document evidencing or securing, or otherwise executed or delivered in connection with, any other loans or financing now or in the future provided to Borrower

powered by Legistar™

by Lender; or

- Borrower fails to apply for Section 42 tax credit financing of the Project on or before January 29, 2016.

- Assignment
  - Lender may assign or otherwise transfer its rights under this Agreement at any time or times, in its sole and absolute discretion, without any prior approval or consent from Borrower; and any holder or holders of the Note or other Loan Documents shall be deemed an assignee of such rights. Lender agrees to notify Borrower of any assignment or transfer within ten (l0) business days after the effective date of such assignment or transfer; provided, however, that the failure to give such notice shall not invalidate in any way any assignment or transfer.
  - Borrower may assign its rights and delegate the performance of its obligations under this Agreement to its assign. Borrower shall provide to Lender an executed copy of such assignment within ten (10) business days of its effective date.
- Material Changes - developer shall not
  - Permit or enter into any modification or amendment to its certificate of limited partnership or limited partnership agreement or articles of organization or operating agreement, as applicable, if such modification or amendment is likely to materially adversely affect City's ability to collect on the Note; or
  - Dissolve, liquidate, consolidate with, merge into, or form a partnership or joint venture with, any corporation or other organization, or otherwise acquire all or substantially all of the assets, capital stock, or properties of any corporation or other organization.
  - City agrees and acknowledges that the developer intends to add an investor member to its ownership structure, which will be documented by amending and restating the developer's operating agreement. Developer represents and warrants that such modification/amendment will not materially adversely affect City's ability to collect on the Note.

BE IT STILL FURTHER RESOLVED that up to $1,500,000 shall be provided to Heartland for development activities, upon the following terms:

- Form of Loan
  - The assistance be ~~provided in the form of low-cost loans, 50% of which will be amortized over 30 years and payable over 16 years, contingent upon available cash flow, and 50% of which will be~~ a 0% interest, long-term deferred loan payable upon sale or change in the use of the property; and
  - The developer shall apply the proceeds of the Loan to the expense of acquiring, constructing and/or rehabilitating the property which includes at least 45 units to be used as affordable housing for rent to income eligible households as specified above.
  - The disbursement of City funds continues to remain contingent upon each project developer demonstrating that it has secured financing sufficient to complete the project, including LIHTC's; that it has received from the City all necessary land use and permit approvals; and that it has satisfied any other City requirements or documentation, including commitment to a 30-year period of affordability; and
  - The Loan will be secured by a subordinate mortgage, note and Land Use Restriction Agreement; and
  - The loan agreement will be in full force and effect until the loan is repaid or at the expiration of the period of affordability, whichever is longer.
- Assignment - the loan shall not be assigned without permission of the City except for an assignment to an affiliate entity of the developer prior to loan closing.
- Closing

powered by Legistar™

- Prior to closing, the developer must submit to the City a standard ALTA commitment for a loan policy of title insurance in the amount of the Loan for such Property, which will be subject only to municipal and zoning ordinances and agreements entered under them, recorded easements for the distribution of utility and municipal services, mortgages, security agreements, assignments of leases and rents, regulatory and land use restriction agreements and an extended use commitment pursuant to Section 42 of the Internal Revenue Code, recorded building and use restrictions and covenants, taxes levied in the year of closing, and any other encumbrances acceptable to the City; and
- Provide evidence of property insurance as required by the Mortgage containing a standard loss payee endorsement identifying the City as mortgagee. Developer agrees to provide evidence of property insurance annually by February 10th or before expiration of current policy.

BE IT FINALLY RESOLVED, that the Mayor and City Clerk are hereby authorized to execute, deliver, accept and record any and all requisite documents and take such other actions as shall be deemed necessary or desirable to accomplish the purpose of this Resolution, in a form approved by the City Attorney.

powered by Legistar™