



Legislation Text

File #: 23-1477, Version: 1

STRATEGIC PRIORITY: Housing & Homelessness Solutions
AGENDA DATE: June 14, 2023
COUNCIL DISTRICT(S): 10
DEPARTMENT: Department of Housing & Neighborhood Revitalization
EXECUTIVE: Majed Al-Ghafry

SUBJECT

Authorize the City Manager to negotiate and execute a ground lease for a term of thirty-nine years with Cypress Creek Forest Lane, LP (Tax Credit Partnership/Tenant), approved as to form by the City Attorney, allowing the construction and operation of Cypress Creek at Forest Lane Apartments located at 11520 North Central Expressway, Dallas, Texas 75243; the lease will be prepared once lenders for the Project are identified and will include commercially reasonable provisions agreed to by the parties and approved as to form by the City Attorney - Estimated Revenue: Lease Revenues Fund \$2,153,042.00 (15 years of estimated fees and lease payments)

BACKGROUND

In December 2020, Sycamore Strategies, LLC., or its affiliates (Applicant) submitted a Request for Applications (RFA) for a Resolution of No Objection/Resolution of Support for Housing Tax Credit Developments for 2021 9% Competitive Housing Tax Credits (HTC) for the development of Cypress Creek at Forest Lane Apartments (interchangeably "Project" or "Premises"), a ground-up development mixed-income multifamily complex located at 11520 North Central Expressway, Dallas, TX 75243. Anthem Interests, LLC (Anthem), an affiliate of applicant, executed a purchase contract with Parula Partners LP, the current property owner.

The Project qualified to receive a staff recommendation for a resolution of support as a priority housing need development, located in a census tract with a poverty rate less than 20% (Census Tract 48113007805) and met the required application thresholds. The Project will be constructed as a four-story midrise product with a wrapped parking structure and will include 189 residential units. The unit mix will consist of 68 one-bedroom units, 101 two-bedroom units, and 20 three-bedroom units. The units will include energy efficient appliances, granite countertops, in-unit washer/dryers, and other Class-A features. The proposed site has insufficient data to provide a Market Value Analysis market type, but is surrounded by B, D, E, and H market types.

Community engagement outreach efforts by the developer, in accordance with state statute, began in 2020 with many local elected officials including the City and school board representatives, religious leaders and organizations, community neighborhood contacts, Hamilton Park Civic League, Hamilton Park Historic Preservation Foundation, Hamilton Park United Methodist Church, Salome Foundation, Regional Black Contractors, and other stakeholder groups.

According to the Texas Department of Housing and Community Affairs recent data on HTC properties throughout the City of Dallas, there are currently 168 (4% HTC) units in Council District 10. The Cypress Creek development would provide an additional 103 (9% HTC) units totaling 271 units available for residents in the district; the number of HTC units in Council District 10 accounts for 1.03 percent of the overall citywide dispersal of HTC units.

Issue

Private deed restrictions limit land use options on the site and prevent the Project from being carried out. Negotiations by the Applicant to remove the private deed restrictions have failed. An alternative approach to enable the design, construction, and operation by the Applicant of Project requires participation by a governmental entity with eminent domain authority to own the site and subsequently lease back the land to the Applicant for development and operation of the Project, at Applicant's sole cost and expense. The deed restrictions are unenforceable against a governmental entity with eminent domain authority such as the City for so long as the property is being used for a governmental purpose. Staff recommended this approach by resolution at the May 10, 2023 City Council meeting, and the Dallas City Council established the acceptance of the conveyance of the Land for the construction and operation of mixed-income affordable housing as a City public purpose and authorized the City Manager to accept the conveyance of the Land from Applicant, namely Cypress Creek Forest Lane, LP (hereinafter the "Tax Credit Partnership/Tenant"). To further facilitate the construction and operation of the Project, Staff desires for the City to enter into a ground lease to lease the Land to Tax Credit Partnership/Tenant allowing the Tax Credit Partnership/Tenant to, at their sole cost and expense, design, construct and operate the Project.

The City ownership of the site results in property tax exemptions. The current taxable land value of the Land based on Dallas Central Appraisal District is \$2,478,560.00. The City's tax rate (.745800) generates an estimated \$18,485.10 in annual taxes and with a three percent growth rate over the next 15 years, the foregone taxes by the City will be \$343,803.00; however, the lease revenues received during the same period coupled with the additional 189 units of mixed-income housing far outweighs the foregone taxes.

Analysis of Lease Agreement Terms with Tax Credit Partnership/Tenant

Some of the salient lease terms are described below:

1. The lease will set forth the rental terms and detailed performance measures including Tenant reporting and City audit rights to ensure the City's public purpose is met. The performance measures will be the affordability requirements of the tax credits to be used to construct the Project.
2. The lease will define the terms of development of the Project including time anticipated for construction and placement into service of both the market rate and affordable units in the Project.

3. The City, as landlord, will at all times remain fee owner of the Premises and will have no obligations for the maintenance and operation of the Premises during the term of the lease.
4. The lease between the City, as landlord, and Tenant, shall be for a term of 39 years, commencing on the date of certificate of occupancy (the "Term"). Tenant shall be solely responsible for securing certificate of occupancy. Tenant shall have no right to assign, encumber, or convey the lease contrary to the public purpose without prior written consent of the City which consent shall not be unreasonably withheld.
5. The lease will provide that Tenant will construct 189 units of multifamily residential housing and set aside or rent 40% of the units to tenants whose income is less than 80% of the Area Median Income (AMI) and 10% of the units to tenants whose income is 60% of the AMI (the "Affordable Units"), such AMI shall have a floor no lower than the AMI on the Closing Date. The income and rent limits will be adjusted for family size and bedroom size and rent shall be calculated by using the Novogradac Rent and Income Limit Calculator. The Affordable Units at each AMI level will be spread pro-rata with the overall unit mix between one, two, and three-bedroom units. Once initially qualified, Tenants and their assigned units will remain income restricted so long as they are eligible under the Low-Income Housing Tax Credit (LIHTC) and the Texas Department of Housing & Community Affairs income guidelines which are monitored annually by the City staff for compliance.
6. Tenant will pay the City a one-time structuring fee of \$100,000.00 within 90 days of the City Council approval of the lease in addition to rent of 20% of the total cash flow, commencing six months after the Project stabilizes, which is defined as reaching 90% occupancy (the "rental commencement date"). Rent will be paid annually, in full, on the first of the month following six months after stabilization and every 12 months thereafter. As City-owned property, the Premises are to be exempt from real property taxes during the term of the agreement. In the event the Premises becomes taxable, the parties reserve the right to renegotiate the rental terms.
7. The lease will require the Tenant to maintain the Project as a Class A residential project and will require renovations to the extent financially feasible, to the extent necessary to maintain the Project as a Class A residential project. Tenant will insure the Project and will set aside an amount per door per year as determined by lenders as a reserve for replacements. Tenant will provide full indemnities to City. Provisions will be negotiated to help the City assure that the Project remains a Class A residential project throughout the Term, including conducting periodic needs assessments by an engineer experienced in such assessments at predetermined intervals, prior to a capital event, and at any point in time when there is a significant negative change in occupancy. For avoidance of doubt, the parties agree that maintaining the Project as a Class A apartment project means keeping the Project as originally designed and constructed in appropriate condition to compete with other Class A residential projects of the same age as the Project, but does not mean adding amenities, making structural or other changes to the exterior or interior of the Project to make it consistent with newly constructed Class A apartment projects at a future date.

8. Within one month after the execution of the lease, Tax Credit Partnership shall at its sole cost and expense, commence design and construction of the Improvements, with completion of the Improvements to be fully accomplished within two years thereafter, subject to extension by mutual agreement of the parties.
9. The lease is eligible for one automatic renewal period of six years.
10. Subject to the City Council approval, at such time as the initial term of 39 years shall expire, Tenant or its assign or designee shall have a one-time option to purchase the Project from the City, subject to and in accordance with the requirements of Texas Local Government Code 272.001 or other law applicable to a conveyance to an entity for the development of low to moderate income housing.
11. The lease will provide that Tenant will defend, with the City's choice of legal counsel, indemnify, and hold harmless the City, its officers, agents, and employees from and against any and all claims, lawsuits, judgments, costs, expenses, and damages sought or suffered by any person arising out of Tenant's use of the Premises, as well as against any and all claims, litigation expenses, and/or damages arising out of any of the restrictive covenants attached hereto as Exhibit B.
12. The Tax Credit Partnership will be required to consult with the Office of Integrated Public Safety Solutions (OIPSS) for planning and design process for security input, community activities, and incorporate Crime Prevention Through Environmental Design recommendations. Additionally, the Tax Credit Partnership will be required to provide modern security features to include a full camera system with Dallas Police Department access, controlled access, lighting, a community crime watch program, and participation in National Night Out to ensure a safe living environment for all residents and staff. The lease will be subject to performance measures representing the affordable housing requirements in a typical LIHTC Notice of Funding Availability development project whereby the City authorizes gap funding.
13. Tenant shall be responsible to pay all taxes arising out of the use of the Premises during the lease term. As the City-owned property, the Premises is assumed to be exempt from real property taxes. The City and Tenant shall have the right to contest any real property taxes assessed against the Premises.
14. Tenant shall at all times during the term of the lease, maintain in full force and effect adequate insurance, including without limitation worker's compensation, liability and builder's risk insurance, on the Premises, in such form and amounts as the City shall reasonably require, subject to the City's risk management department review and approval. In the event of fire and other casualty loss, Tenant shall promptly repair, restore, and rebuild the Premises to at least its pre-loss condition regardless of the availability of or inadequacy of insurance proceeds, subject to a reasonable period to complete negotiation of a loss claim with its insurer and complete all required repairs to restore the Premises. Failure to repair, restore, or rebuild the Premises to a condition deemed suitable by the City to maintain the public purpose shall constitute a lease default and may cause a termination of the Lease.

15. The Lease shall be subject to a use restriction ("Use Restriction") limiting the use of the Premises to the construction, maintenance, and operation of an affordable housing apartment complex which shall not be materially altered, amended, or discontinued without the prior written consent of the City.
16. During the term of the lease, the lease shall be subject to the City's right of termination and a right of reentry in favor of the City enforcing the Use Restriction and City's public purpose.
17. The lease will be subject to any and all covenants, conditions, reservations, restrictions, exceptions, easements, rights-of-way, mineral interest, mineral leases, or other instruments of record in the official real property records for the county where the Premises are located effective as to the Premises, or any part thereof, and any and all visible and apparent easements and encroachments, whether of record or not impacting the Premises.
18. The lease will be subject to a reservation by the City of floodway, flood control, drainage or levee easements as reasonably deemed necessary, appropriate or convenient by the City.
19. The lease will be subject to performance and payment bonds as required for any development, design and construction activity undertaken by Tenant and or tenant contractors.
20. Tenant shall be solely responsible for all improvements, repairs, and maintenance to the Premises, at no cost to the city, including all structural, mechanical, and core system functions maintenance, repairs and replacements. The City shall have a right of inspection to ensure compliance with Tenant's maintenance responsibilities set out in the lease.
21. Tenant shall be solely responsible for all operating costs, including all utilities, connection charges, arising out of the Project.
22. Tenant shall be responsible to comply with all applicable law and make reasonable efforts to comply with the City's Business Inclusion & Diversity policies and non-discriminatory housing requirements.
23. All construction plans and specifications for any construction work on the Premises must be reviewed by construction experienced City personnel in the City's Building Services, Planning and Urban Design, Development Services, and Housing & Neighborhood Revitalization Departments and accepted in writing by the Director of Housing or designee prior to commencement of any work.
24. The lease will be subject to such other terms, conditions, waivers and disclaimers as the City deems necessary, convenient or appropriate.

Lease Payment Revenues and Recommended Uses

Based on the 15-year pro forma for the Project provided by the Tax Credit Partnership/Tenant, the City will receive a one-time structuring fee of \$100,000.00 within 90 days after the City Council approval of the lease agreement and 20% of cash flows, commencing six months after the Project stabilizes, which is defined as reaching 90% occupancy, totaling an estimated \$2,153,042.00 in fees and lease revenues over the same period.

Revenue lease payments will be deposited into the Lease Revenue Fund, Fund 0764, Department HOU, Unit (TBD), Revenue Code 8483. The City Controller will setup an accounts payable for generated receipts to allow the Housing Department to use funds from the account for specific activities as described below subject to the City Council approval to be included in the resolution authorizing the lease agreement.

Staff recommends using the funds deposited in the Lease Revenue Fund to address public improvements to sidewalks and lighting in the area surrounding the property as recommended by the Dallas Police Department and the Dallas Public Works Department.

Staff recommends the Tenant allocating additional financial resources for recreational uses and park dedication fees for upgrades to nearby parks. More specifically, staff recommends the Tenant consult with the Dallas Department of Parks and Recreation to determine playground equipment needs at Orbiter Park and Willie B. Johnson Recreation Center for the enjoyment of residents and neighbors.

Without the City's participation in this acquisition and ground lease development structure, this mixed-income affordable housing development will not move forward to serve the City's affordable housing public purpose.

ESTIMATED SCHEDULE OF PROJECT

Begin Construction	August 2023
Complete Construction	February 2025

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On February 24, 2021, the City Council held a public hearing to receive public comments and approved a Resolution of Support for Sycamore Strategies, LLC, for 9% Competitive Low Income Housing Tax Credits for Cypress Creek at Forest Lane Apartments by Resolution No. 21-0378.

[The Housing and Homelessness Solutions Committee was briefed by memorandum regarding this matter on February 27, 2023. <https://cityofdallas.legistar.com/View.ashx?M=F&ID=11674064&GUID=0DB7558B-BC26-4F4D-8776-58AA678884C5>](https://cityofdallas.legistar.com/View.ashx?M=F&ID=11674064&GUID=0DB7558B-BC26-4F4D-8776-58AA678884C5)

On April 12, 2023, the City Council adopted the Dallas Housing Policy 2033 to replace the CHP by Resolution No. 23-0443.

On April 12, 2023, the City Council also authorized the continued operation of the housing programs previously authorized under the CHP, but now documented and restated in the Dallas Housing Resource Catalog under Resolution No. 23-0444.

On May 10, 2023, the City Council authorized the City Manager to move forward with the closing and acquisition of 2.85 acres located at 11520 North Central Expressway (the "Land") and remanded the terms of the lease agreement to be considered by the Housing and Homelessness Solutions Committee at the May 22, 2023 meeting followed by authorization of the lease agreement by the Dallas City Council on June 14, 2023 by Resolution No. 23-0641.

[The Housing and Homelessness Solutions Committee was briefed by memorandum regarding this matter on May 22, 2023. <https://cityofdallas.legistar.com/gateway.aspx?M=F&ID=f34c1c73-f0c1-4952-880f-3b76eb4fc854.pdf>](https://cityofdallas.legistar.com/gateway.aspx?M=F&ID=f34c1c73-f0c1-4952-880f-3b76eb4fc854.pdf)

FISCAL INFORMATION

Estimated Revenue: Lease Revenues Fund \$2,153,042.00. (15 years of estimated fees) and lease payments

OWNER

Sycamore Strategies, LLC

Zachary Krochtengel, Owner

MAP

Attached