



AGENDA ITEM SUMMARY FORM

PROPOSED MEETING DATE: October 2, 2023
PREPARED BY: Gregory Miller, Bond Counsel
DEPARTMENT: Bickerstaff Heath Delgado Acosta LLP

AGENDA ITEM DESCRIPTION:

Consideration, discussion, and possible action to reaffirm the Board's authorization of the negotiation and execution of agreements and other instruments in furtherance of the MHPFC/W2 multifamily development that was previously approved by the Board at a meeting held on May 31, 2023.

BACKGROUND/SUMMARY:

The action items is to authorize the negotiation and execution of three documents that are essential to the project: the Company Agreement, Lease Agreement, and Regulatory Agreement.

Company Agreement

This agreement establishes the terms by which the PFC, through its limited liability corporation partners with W2 to develop and operate the project and share in project revenues of the project. The agreement also covers how major decisions are made as regards the operation of the project, project marketing requirements, liability for claims and damages relating to the operation of the project, affordability levels, and how funds are distributed when the project is sold or the project otherwise ends.

The project may be sold to a different developer with or without affordability restrictions after 15 years.

The key terms regarding affordability, which are incorporated into the agreement, are summarized in the attached draft MOU, which formed the basis for the Board's approval of the project at the May 31, meeting.

Lease Agreement

Because this is a PFC transaction, W2 will transfer ownership of the site to the MHPFC so that the land will be exempt from taxes. MHPFC will lease the land back to W2 so that it may complete the development of the housing project.

The lease is for a period of 75 years. However, the project may be sold to a different developer with or without affordability restrictions after 15 years.

As with the Company Agreement, this lease states terms for the responsibility for the day-to-day management of the project, project marketing, affordability levels, indemnification, and rent payments by W2 to MHPFC. These payments are as specified in the attached draft MOU.

Regulatory Agreement

Whereas the Company Agreement and the Lease set out affordability requirements, marketing requirements, and tenant protections, this agreement is filed in the real property records, and as such, binds whoever uses the land to comply with those provisions. The document is a safeguard to ensure that the property is used for affordable housing for the full term of the agreement.

This agreement is operational for at least 15 years, and as long as the property qualifies for the PFC tax exemption.

The key terms regarding affordability, which are incorporated into the agreement, are summarized in the attached draft MOU, which formed the basis for the Board’s approval of the project at the May 31, meeting.

LEGAL REVIEW:	Yes
FISCAL IMPACT:	Yes. The finalization and execution of the documents commits the PFC to the agreements, which include the tax exemption. This is for the City a tax-neutral transaction because of the lease payment structure. The developer will offset the City’s share of the tax exemption with lease payments to the City.
PRESENTATION:	No
ATTACHMENTS:	Yes

- Draft MOU
- Company Agreement
- Lease Agreement
- Regulatory Agreement

STAFF RECOMMENDATION:

Staff recommends that the PFC Board authorizes and directs the General Manager to negotiate and execute all required agreements and other instruments in furtherance of the MHPFC/W2 multifamily development that was previously approved by the Board at a meeting held on May 31, 2023.