



## CITY OF NORMAN, OK STAFF REPORT

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**MEETING DATE:** 11/14/2023

**REQUESTER:** Anthony Purinton, Assistant City Attorney

**PRESENTER:** Anthony Purinton, Assistant City Attorney

**ITEM TITLE:** CONSIDERATION OF ACCEPTANCE, APPROVAL, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF CONTRACT K-2324-94: A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF NORMAN OKLAHOMA AND MILESTONE PROPERTY DEVELOPMENT, LLC, AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE ANY DOCUMENTS ON BEHALF OF THE CITY OF NORMAN TO EFFECTUATE THE TRANSACTIONS, INCLUDING ISSUANCE OF LETTERS OF COMMITMENT RELATING TO THE TRANSACTION AND BUDGET TRANSFER.

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### **BACKGROUND:**

The City of Norman is in a very unique position to utilize a portion of the funding received from the American Recovery Program Act (ARPA) to address the shortage of affordable housing within our community. The City originally allocated 6.4 million dollars of its ARPA award to be used for Affordable Housing. The City used some of that funding to purchase real property located on the NE Corner of Imhoff and Oakhurst as a potential location for an affordable housing development. The City closed on the property in January 2023 and issued RFP-2223-62 in May 2023 seeking proposals for an affordable housing development using City ARPA funds in conjunction with Low Income Housing Tax Credit funding.

The Low-Income Housing Tax Credit (LIHTC) subsidizes the acquisition, construction, and rehabilitation of affordable rental housing for low- and moderate-income tenants. The LIHTC was enacted as part of the 1986 Tax Reform Act and has been modified numerous times. Since the mid-1990s, the LIHTC program has supported the construction or rehabilitation of about 110,000 affordable rental units each year.

Affordable Housing projects are eligible uses for ARPA/SLFRF funds, specifically being categorized as a presumptively eligible use that combats the public health and negative economic impacts of the pandemic when the funds are used in conjunction with the LIHTC program. If the project is using the SLFRF funds as a long-term loan and the project meets certain criteria, the repayment on such loans are not subject to program income rules, meaning the City can retain those funds once repaid by the developer.

On October 24<sup>th</sup>, 2023, City Council unanimously approved an initial term sheet agreement between the City and the selected developer, which set out overall terms to be included in the eventual final contracts. This contract, K-2324-94, is the Disposition and Development agreement between the City and the Developer, Milestone Property Development, which sets out the responsibilities of the City and Developer in much greater detail than the term sheet. An overview of the key contract terms contained in this agreement are outlined below.

## **DISCUSSION:**

All key terms of this agreement are consistent with the Term Sheet Agreement which City Council approved on 10/24/23 in anticipation of further, more detailed, agreements between the parties. This Disposition and Development Agreement formalizes and expands upon most of those terms contained in the Term Sheet, resulting in a more detailed agreement. Future agreements will still be necessary, such as agreements relating to the City's financing of the project using SLFRF funds. An overview of the key parts of the agreement can be summarized as follows:

### *Sale of Property to Developer, Milestone Property Development*

The City agrees to convey the property to the Developer under certain conditions (as discussed below). To meet certain regulatory requirements, the property is being split into two separate lots, which will be conveyed to the Developer at a later date after securing federal affordable tax credit financing. The Developer will purchase the properties for a total amount of \$525,000.00, which is the same amount the City purchased the property for earlier this year.

### *Development of an Affordable Housing Project*

The developer agrees to design, construct, finance, own, and manage a 75-unit affordable housing development. The contract sets out minimum development requirements, such as setting minimum HERS ratings, requiring compliance with the City's visitability program, and setting aside at least 10 units for project-based vouchers. The agreement contains several levels of protections to ensure compliance with federal, state, and local regulations.

### *City to Complete Site Work on Property Before Sale*

In addition to its SLFRF loan, the City agrees to perform preliminary site work of the property prior to conveyance of the property. This work includes installing some infrastructure for the project, such as the widening of Imhoff road. The total commitment of the City for the site work shall not exceed \$500,000.00.

### *Construction of Development*

As part of the Developer's agreement to construct the project, several protections have been put in place. The agreement requires the Developer to provide the City with a wide range of documentation evidencing that the Developer has secured all necessary construction contracts, financing, and performance bonds prior to the start of the construction. The Developer must complete the project either by August 31, 2026 (if the project is funded in round one of the 2024 tax credit financing awards) or by October 31, 2026 (if project is funded in round two of the 2024 tax credit financing awards).

### *Affordability Restrictions*

The developer is required to maintain the units at a certain level of affordability for households making 30%-60% or less of the area median income (AMI) for the City of Norman. The affordability requirements must be maintained for forty (40) years from when the development receives its certificate of occupancy. The developer must also file a Declaration of Affordability Requirements, a restrictive covenant running with the land, to ensure compliance during the affordability period. These restrictions are also contained in the deed of the property, the form of which is attached to the agreement.

### *Funding*

The developer will receive a long-term loan from the City using its SLFRF funds with an aggregate amount of \$5,500,000.00 at 3% interest paid over 30-years. The loan will not be amortized, but will be repaid as 75% of the development's annual surplus cash. This loan shall be repaid in the event that the project fails to meet the affordability requirements or upon sale of the property. More detailed loan agreements will be finalized and brought back to Council for approval closer to the closing date.

The developer is required to apply and receive tax credit funding through the Oklahoma Housing Finance Agency. The developer has two chances to apply for funding in 2024. If the developer is not successful in obtaining funding through OHFA, the City has the right to terminate all agreements between the two parties. Due to SLFRF requirements, the developer must be successful in obtaining financing through OHFA in order for the City to finance the project using SLFRF funds.

### *Construction*

The agreement contains several construction benchmarks for the developer to meet after obtaining OHFA funding. The completion deadline for the project depends on which application period the project was funded in: if funded during the first round, the completion deadline is August 31, 2026; if fully funded during the second round, the deadline is October 31, 2026.

### *Prohibition on Transfer*

The agreement requires the developer to obtain approval from the City prior to transferring the property to another entity that is not already associated with the developer or tax credit investors.

Funds are available for the SLFRF loan (in the amount of \$5,500,000.00) in ARPA Miscellaneous-Other (account 22330303-45799). City Council has already re-allocated funds for the \$500,000.00 for the City's contribution to the property's site work when it approved item K-2324-89 (Asp Ave Parking Lot Purchase - account BG0255-LAND – 50594908-46001). These funds need to be transferred to a new project created for this purpose.

### **RECOMMENDATION 1:**

Staff recommends that City Council approve contracts K-2324-94. In addition, Staff recommends City Council authorize the City Manager or his designee to execute any documents on behalf of

the City of Norman to effectuate the transactions, including issuance of letters of commitments relating to the transaction.

**RECOMMENDATION 2:**

Staff recommends that City Council transfer \$500,000 from the Asp Ave Parking Lot Purchase project (account BG0255-LAND – 50594908-46001) to the Imhoff & Oakhurst Property Prep project (account BG0091-LAND – 50193395-46002).