



MEMORANDUM

Date: September 6, 2023
To: Members of the Housing and Redevelopment Authority
CC: Ben Martig, City Administrator; Jake Reilly, Community Development Director
From: Melissa Hanson, Housing Coordinator
RE: Supplemental Background Memo No. 1

Summary Report:

The following is an update on the meeting packet made available for the Housing and Redevelopment Authority meeting on September 7, 2023.

Housing and Redevelopment Authority Regular Agenda

Update #1

Attachment to Regular Agenda item #4.

AGREEMENT

This (the “Agreement”) is made this __ day of _____, 2023 (the “Commencement Date”), by the Northfield Housing and Redevelopment Authority, a/k/a Housing and Redevelopment Authority of the City of Northfield, a body politic and corporate under the laws of the State of Minnesota (the “HRA”) and Northcountry Cooperative Foundation, a Minnesota nonprofit corporation, or its permitted assigns (“NCF”); (collectively the “parties”).

RECITALS

WHEREAS, NCF desires to receive from HRA the exclusive right and privilege to negotiate for purchase and development of the land located at _____ [address], Northfield, MN, legally described on Exhibit A attached hereto and incorporated herein (the “Property”), for the purposes of investigating the Property and determining if it is suitable for the use intended by NCF.

WHEREAS, the parties agree that it is beneficial for the parties to give NCF the exclusive right to negotiate for purchase and development of the Property for a limited period of time and subject to the conditions of this Agreement.

NOW, THEREFORE, and in consideration of the promises herein expressed, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- I. The foregoing Recitals are hereby made a part of this Agreement.
- II. NCF and the City have identified the Property as the prospective site of a new housing development project (the “Project”). NCF is willing to determine, at its own expense, the feasibility of developing the Property for the Project. The HRA is willing to provide NCF with exclusive negotiating rights during the period described below while such studies are being conducted by NCF.
- III. **EXCLUSIVE NEGOTIATING PRIVILEGE**. The HRA does hereby grant unto NCF the exclusive right and privilege to negotiate for the acquisition and development of the Property for the due diligence period and under the conditions set forth herein.
 - A. **DUE DILIGENCE PERIOD**. Within three hundred sixty-five (365) days after the Commencement Date (the “Due Diligence Period”) with respect to the possible sale of the Property and development of the Project on the Property:
 - i. NCF, will have (i) submitted at least one funding application for development of the Project, and (ii) engaged an architect to prepare a preliminary design concept, and undertaken its investigation of the Property for purposes of development of the Project pursuant to Section III.B.; and
 - ii. HRA staff and NCF will negotiate in good faith a mutually acceptable purchase agreement in compliance with applicable law using the HRA form purchase agreement for the sale of the Property by HRA to NCF via quit

claim deed, and subsequent consideration of approval of such negotiated purchase agreement by the Board of Commissioners of the HRA at a future duly noticed public meeting of the HRAn.

If either party determines that the Project is not feasible or that acceptable terms cannot be agreed upon for a purchase agreement for the Property, either party may terminate this Agreement before the end of the Due Diligence Period upon 10 days notice to the other party. If the conditions of Section III(A) of this Agreement are not satisfied by the end of the Due Diligence Period, then this Agreement will automatically terminate at the end of the Due Diligence Period without further action by either party.

- B. **RIGHT OF ENTRY.** Subject to the terms and conditions of this Agreement, and the satisfaction of the insurance requirements set forth in the following paragraph, HRA does hereby grant unto NCF, its employees, members, agents, contractors, representatives, and prospective lenders (collectively, the “NCF Parties”), at NCF’s sole cost and expense, full access and the right to enter the Property, at any time during the term of this Agreement, for the purpose of conducting environmental, engineering, percolation, soil compaction tests, surveys, appraisals, water and sewer availability tests, verifying utility existence and such other examinations or investigations for such other purposes of this Agreement and development of the Project, subject, however, to the following restrictions: (i) NCF will notify HRA not less than 48 hours in advance of NCF’s desiring to enter onto the Property; (ii) NCF will not perform any invasive testing on the Property (including digging, boring, sampling, and the like) without the prior written consent of HRA. Upon the completion of any activities permitted by this Agreement, including but not limited to any invasive testing authorized by HRA in writing, NCF will within 10 days of such activities or upon request of the HRA restore the Property to the condition that existed prior to such activities or testing at NCF’s sole cost and expense. If NCF fails to undertake and complete timely restoration to HRA’s reasonable satisfaction, HRA may undertake the work and invoice NCF for costs incurred by HRA for such work, with payment by NCF required within 30 days of invoicing from HRA. Failure to make such payments or to restore the Property to the HRA’s reasonable satisfaction shall constitute a material breach, and HRA may terminate this Agreement as provided in Section V.
- C. **INSURANCE REQUIRED.** NCF will procure and maintain during the term of this Agreement the following required insurance coverage: Commercial General Liability Insurance at limits of not less than One Million Dollars (\$1,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum of Two Million Dollars (\$2,000,000) aggregate. Such insurance will include contractual liability and premises/operations insurance and will cover acts of the NCF, its employees and consultants.
- i. The insurance policy required under this section will provide that such policy will not be suspended, voided, canceled, reduced in coverage paid, until after thirty (30) days prior written notice has been given by the insurer

to the HRA. There will be an exception for non-payment of premium, which is ten (10) days notice of cancellation.

- ii. NCF will name HRA as an additional insured and furnish the HRA a “Certificate of Insurance” with copy(ies) of the additional insured endorsement(s) as verification that coverage is in force. The HRA reserves the right to require complete copies of insurance policies at any time upon not less than five (5) business days prior written notice.
- iii. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance as required, within fifteen (15) days after written notice from HRA to NCF of such failure, will permit HRA to terminate this Agreement and that during such period NCF shall not request nor access the Property.

- IV. **INDEMNIFICATION.** (i) NCF agrees to indemnify, defend, and hold harmless the HRA, its employees, agents, and representatives against any and all claims, demands, suits and actions of every nature and description, including attorneys’ fees brought against HRA, its employees, agents and representatives arising as a result of any and all willful or negligent acts or omissions of NCF, its employees, agents, representatives, assigns or successors., By signing this Agreement below, Alliance Housing Inc. guarantees the performance of NCF under this Agreement. The indemnification provision of this Section shall not apply to damages or other losses proximately caused by or resulting from the negligence or willful misconduct of HRA. All indemnification obligations shall survive termination, expiration or cancellation of this Agreement. NCF agrees, that in order to protect itself and HRA under the indemnity provisions set forth above, it will at all times during the term of this Agreement keep in force policies of insurances required in the Paragraph entitled, “Insurance Required.” Nothing in this Agreement shall be construed to waive any immunities or limitations to which HRA is entitled under Minn. Stat. Chapters 466 and 469 or otherwise.
- V. **TERMINATION.** In addition to termination under Section III.A. and III.B., HRA may also terminate this Agreement in the event of continued material breach of any provision of this Agreement by NCF for a period of ten (10) days after the giving of notice thereof by HRA to NCF. Upon any termination of this Agreement, or failure to extend the term of this Agreement, HRA may, at HRA’s cost and election, acquire from NCF, at a cost equal to NCF’s actual cost therefor, NCF’s right, title, and interest in and to any of the reports, studies, plans, and other due diligence in connection with its investigation and anticipated development of the Property as selected by HRA.
- VI. **HRA NOT LIABLE FOR NCF’S EXPENDITURES.** Except as otherwise expressly set forth in this Agreement, HRA will not be liable for any expenditure whatsoever made by the NCF during the period of this Agreement arising out of or related to this Agreement.
- VII. **SEVERABILITY.** Any term, covenant or condition deemed invalid or unenforceable by a Court of competent jurisdiction is completely severable and will not invalidate or render

unenforceable this document as a while, or any other term, covenant or condition contained herein.

- VIII. **APPLICABLE LAW.** This Agreement and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the laws of the State of Minnesota.
- IX. **NO JOINT VENTURE.** HRA and NCF expressly acknowledge and agree that there exists no intentional or implicit joint venture, partnership or other legal relationship between them and that this document will not be deemed evidence of any such relationship.
- X. **NOTICES.** Where notice or approval are required in this Agreement, they will be given in writing, by certified mail, return receipt requested.

As the HRA, notice or approval will be addressed to:

They City of Northfield- HRA
c/o Melissa Hanson
801 Washington Street
Northfield, MN 55057
Attn: Melissa Hanson (email: melissa.hanson@northfieldmn.gov)

with copies to:

They City of Northfield- Community Development
c/o Jake Reilly
801 Washington Street
Northfield, MN 55057
Attn: Jake Reilly (email: jake.reilly@northfieldmn.gov)

As to NCF, notice or approval will be addressed to:

Northcountry Cooperative Foundation
c/o Tory Clark
2715 University Avenue West, Suite 300
St. Paul, MN 55114
Attn: Tory Clark (email: victoria@northcountryfoundation.org)

with a copy to:

Avisen Legal, P.A.
c/o John Saunders
901 Marquette Ave, Suite 1675
Minneapolis, MN 55402
Attn: John Saunders (email: jsaunders@avisenlegal.com)

- XI. **COMPLIANCE WITH THE LAW.** NCF agrees to abide by all applicable federal, state and local statutes, ordinances, rules and regulations, including procurement of all applicable permits, licenses and approvals pertaining to the work to be performed hereunder.
- XII. **ASSIGNMENT.** NCF will not assign this Agreement, in whole or in part without HRA's approval, which approval will not be unreasonably withheld, conditioned, or delayed, provided that NCF may assign its interest in this Agreement to another entity wholly controlled by NCF without HRA's consent. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- XIII. **MODIFICATION.** All terms and conditions made between HRA and NCF are included herein and can be modified only by an amendment signed by both parties.
- XIV. **DATA PRACTICES.** The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act (Act), Minnesota Statutes, Section 13.01 *et seq.*
- XV. **NO WAIVER.** Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.
- XVI. **MECHANIC'S LIENS.** NCF hereby covenants and agrees that NCF will not permit or allow any mechanic's or materialman's liens to be placed on HRA's interest in the Property during the term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so placed on HRA's interest, NCF shall take all steps necessary to see that it is removed within thirty (30) days of its being filed; provided, however, that NCF may contest any such lien provided NCF first posts a surety bond, in favor of and insuring HRA, in an amount equal to 125% of the amount of any such lien.
- XVII. **EXECUTION.** This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

[Signatures appear on the next page]

IN WITNESS WHEREOF, this Agreement represents the full intent and interest of the parties hereto as evidence by their respective signatures affixed below as of the date and year hereinabove written.

NORTHCOUNTRY COOPERATIVE
FOUNDATION, a Minnesota nonprofit
corporation

By _____

Its: _____

NORTHFIELD HOUSING AND
REDEVELOPMENT AUTHORITY, a body
politic and corporate under the laws of the
State of Minnesota

By: _____
Brent Nystrom, Its Chair

By: _____
Jayne Hager Dee, Its Secretary

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Lot A of SPRING CREEK TOWNHOMES OUTLOTS