

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	October 19, 2020
Action Required:	Approve Resolution
Presenter:	Chris Engel, Director of Economic Development
Staff Contacts:	Chris Engel, Director of Economic Development Lisa Robertson, Deputy City Attorney
Title:	Authorizing resolution approving Performance Agreement to support Friendship Court Redevelopment efforts

Background:

The Piedmont Housing Alliance (PHA) intends to redevelop the 11.75-acre Friendship Court property in four phases over the next 8-9 years. This \$100 million + project includes the creation of approximately 450 affordable units with tiers of affordability. Additionally, the redevelopment will include commercial and community space as well as associated infrastructure and parking. To help facilitate the financing of the project, Piedmont Housing has requested that the city consider an agreement that will share the incremental increase in real estate tax revenue generated by the investment. With a commitment from the city to contribute the future revenue stream (as a grant), Piedmont Housing will borrow on this with a private lender to create the cash needed to begin the project.

This request does not ask for additional current revenue, it only requests future revenue that comes with an increased tax base. (As a point of clarification, the city has allocated a \$5.5 million contribution to this project in FY21 as part of its annual Capital Improvement Plan. The proposed performance agreement discussed herein is separate and distinct from that contribution).

The city in conjunction with the Charlottesville Economic Development Authority (CEDA) has used the performance agreement concept in the past to incentivize significant capital investment and job creation. In this case, the same concept is proposed but with the creation and retention of affordable housing units as the performance criteria. There is no risk to the city as the grant occurs only after the investment has been made and once the additional tax increment materializes. The City does forego the real estate tax generated by the project until the agreement terminates.

Discussion:

The property is valued at \$8,180,500 in tax year 2020. This equates to \$77,714 in annual real estate taxes paid. This amount known as the “base” amount is not subject to the agreement and continues

to be paid annually and accrues to the general fund. Only the additional real estate taxes generated above the base will be subject to the agreement.

Upon completion, phase 1 is expected to be valued at approximately \$20M yielding approximately \$190,000 in new incremental real estate tax. In this proposed scenario, once the taxes are paid and performance criteria are verified, the funds would be transferred via the Economic Development Authority to an entity controlled by Piedmont Housing. This cycle would repeat annually until a maximum not to exceed amount of \$6,000,000 is reached. A chart demonstrating the 30-year fiscal impact is included.

Phase 1 includes 106 units spanning the spectrum of affordability from below 30% AMI to 80% AMI. Should the units cease to be affordable for any reason the city's obligation to provide the grant ends. These affordability terms will also be enforced by the state through VHDA due to the LIHTC (Low Income Housing Tax Credit) award and by the City's forgivable loan.

PHA has received a commitment of Low Income Housing Tax Credits from VHDA and they are in the process of finalizing the remaining necessary financing with plans to begin construction on phase 1 in the spring of 2021. The performance agreement is a final critical piece to the remaining financing.

From a procedural standpoint, City Council would need to approve a resolution agreeing to commit the amount of the real estate tax increment to CEDA each year following verification of grant requirements. As Council is prohibited from obligating future funds this resolution is one of "intent" and thereby non-binding. CEDA would create a Performance Agreement with the developer to manage the process and would also approve a similar resolution to grant the amount of the tax increment to the developer annually.

From a policy standpoint, the proposed Performance Agreement does not impact the general fund budget as the grant is generated solely from the increase in real estate revenue received from the project. If the project is stalled or never completed for any reason the increase in taxes is not realized and therefore the City is not obligated to fund the agreement.

This agreement applies only to phase 1 of the project.

Alignment with Council Vision Areas and Strategic Plan:

This action aligns with the Council's Vision for quality housing opportunities that offers affordable housing for people of all income levels, racial backgrounds, life stages and abilities. This action aligns with the City Council's Strategic Plan Goal Four: A Strong Diversified Economy and Goal One: An Inclusive Community of Self-Sufficient Residents.

Budgetary Impact:

Funds will need to be allocated for transfer to CEDA but only after the project has been completed and increased real estate taxes have been realized.

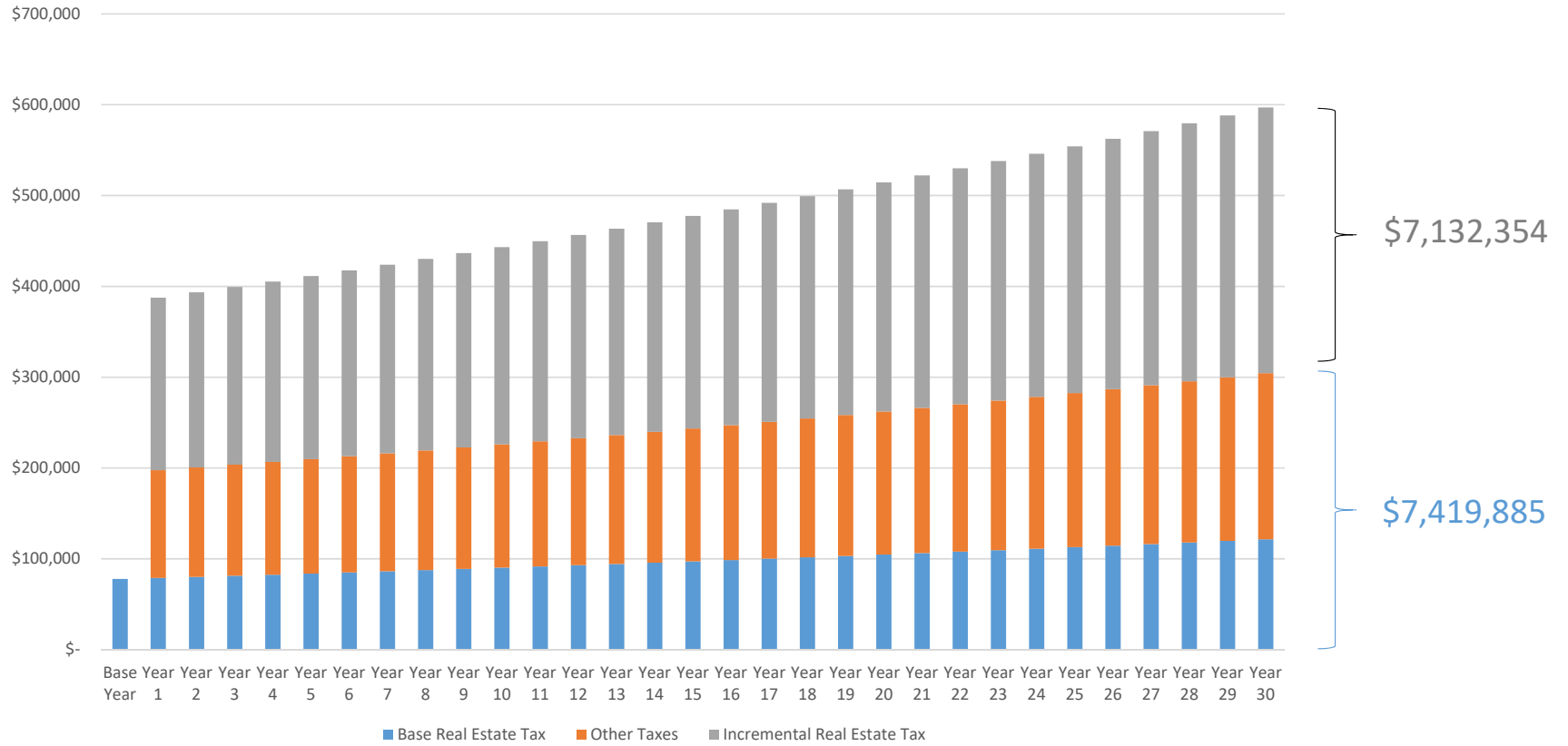
Alternatives:

City Council can decline to adopt the attached Resolution supporting the Performance Agreement.

Attachments:

- Proposed Council Resolution supporting Performance Agreement
- Copy of the draft Performance agreement

Friendship Court Phase 1 - 30 Yr Fiscal Impact



Base Year – 2020 Assessed Value of parcel #28012000
 Other Taxes includes Personal Property, Sales, BPOL, Utility and miscellaneous revenues.
 All values calculated at \$0.95 per \$100 of assessed value.

**APPROVING RESOLUTION OF THE
CITY COUNCIL
OF THE CITY OF CHARLOTTESVILLE, VIRGINIA**

WHEREAS, the Economic Development Authority of the City of Charlottesville, Virginia **(the “Authority”)**, a political subdivision of the Commonwealth of Virginia **(the “Commonwealth”)**, was established to promote the safety, health, welfare, convenience or prosperity of the inhabitants of the City of Charlottesville, Virginia **(the “City”)** by improving and rehabilitating a distressed area of the City which will enhance the tax base in the City and create opportunities for commercial and other economic development in the City; and

WHEREAS, the City Council of the City is empowered pursuant to Section 15.2-953 of the *Code of Virginia*, 1950, as amended **(the “Code”)**, to make appropriations of public funds to the Authority for the purpose of promoting economic development in the City; and

WHEREAS, the Authority is empowered pursuant to Section 15.2-4901, *et seq.*, of the Code to, among other things, accept contributions, grants and other financial assistance from the City and make grants to any person, partnership, association, corporation, business, or governmental entity for the purposes of promoting economic development in the City; and

WHEREAS, the Authority, pursuant to that certain proposed Economic Development Performance Agreement **(the “Agreement”)** by and among the Authority and Piedmont Housing Alliance, a non-profit 501(c)(3) organization under the Internal Revenue code of 1986 as amended **(“PHA”)** on its own behalf and on behalf of a limited liability company of which PHA serves as manager **(the “Developer”)**, attached hereto as **Exhibit I**, is proposing to provide a certain financial incentive grant **(the “Grant”)** to the Developer in order to encourage and induce the Developer to invest a significant amount of money into real estate improvements, described as phase I of the planned development consisting of 106 units **(the “Investment”)** located in the City currently known as Friendship Court; and such phase I and 106 units are described and depicted on Exhibit A of the Agreement **(the “Property”)** along with the other requirements included in such Investment as set forth in Exhibit B to the Agreement; and

WHEREAS, the Authority, while recognizing that the City Council of the City **(the “City Council”)** is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, has requested that the City Council annually appropriate monies to the Authority for the purpose of promoting economic development in the City by funding certain financial obligations of the Authority pursuant to and during the term of the Agreement; and

WHEREAS, there has been presented to this meeting a draft of the Agreement which sets forth the understanding and agreement between the Authority and the Developer.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTESVILLE, VIRGINIA:

1. The City Council finds and determines that the terms and conditions of the Agreement, including the provisions for the Grant, is consistent with the mission, goals and purposes of the Authority.

2. It is the current intention of the City Council to make sufficient annual appropriation of monies to the Authority for the purpose of promoting economic development in the City by funding certain financial obligations of the Authority pursuant to and during the term of the Agreement.

3. The City Manager or any other officer charged with the responsibility of preparing the City budget is hereby authorized and directed to include in the City budget for each fiscal year of the City during the term of the Agreement a request that the City Council appropriate sufficient monies to the Authority for the purpose of promoting economic development in the City and funding certain financial obligations of the Authority pursuant to the terms of the Agreement during such fiscal year.

4. The City Manager is hereby authorized to acknowledge the City's understanding of the Agreement and to execute such documents as he deems appropriate in relation to such Agreement.

5. All other acts of the City Manager, the Director of Economic Development or any other officer of the City relating to the purposes and intent of this resolution are hereby approved and ratified.

6. This resolution shall take effect immediately.

ADOPTED: _____, 2020

CERTIFICATION OF ADOPTION OF RESOLUTION

I, the undersigned Clerk of the City Council of the City of Charlottesville, Virginia, hereby certify that the foregoing is a true, correct and complete copy of a Resolution duly adopted by a majority of the members of the City Council at an open meeting duly called and held on _____, 2020 and that such Resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof. The following represent the votes taken at such meeting:

Member	Ayes	Nays	Abstentions
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WITNESS my hand and the seal of the Authority, this _____ day of _____, 2020.

Clerk of the City Council of the
City of Charlottesville, Virginia

[SEAL]

Exhibit I

Economic Development Performance Agreement

**ECONOMIC DEVELOPMENT
PERFORMANCE AGREEMENT**

THIS AGREEMENT is made this ___ day of _____, 2020, by and among the **Economic Development Authority of the City of Charlottesville, Virginia (the “Authority”)**, a political subdivision of the Commonwealth of Virginia and **Piedmont Housing Alliance, a non-profit 501(c)(3) organization under the Internal Revenue Code of 1986, as amended(, "PHA") on its own behalf and on behalf of _____ LLC of which PHA serves as manager (the “Developer”)**, and it recites and provides as follows.

WHEREAS, the Developer is an organization formed for the use of PHA to enable it to better accomplish its purposes and intends to invest a significant amount of money into real estate improvements, described as phase 1 of the planned development consisting of 106 units (**the “Investment”**) located in the City of Charlottesville, Virginia (**the “City”**) known currently as Friendship Court and such phase 1 and 106 units are described and depicted on **Exhibit A** hereto (**the “Property”**), which will promote the safety, health, welfare, convenience or prosperity of the inhabitants of the City by improving and rehabilitating a distressed area of the City which will enhance the tax base in the City and create opportunities for commercial and other economic development in the City; and

WHEREAS, the Developer’s Investment and the amounts and other requirements included in such Investment are set forth on **Exhibit B**; and

WHEREAS, the City Council of the City (**the “Council”**) is empowered under Sections 15.2-953 and 15.2-1205 of the *Code of Virginia*, 1950, as amended (**the “Code”**) to make appropriations of money to the Authority for promotion of economic development and to give, lend or advance to the Authority, in any manner that it deems proper, funds or other City property, not otherwise specifically allocated or obligated; and

WHEREAS, the Authority is empowered under Sections 15.2-4901, *et seq.*, of the Code to promote economic development and assist facilities for the use by non-profit organizations to enable them to accomplish such purposes for the benefit of inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience or prosperity. non-profit organizations and specifically under Sections 15.2-4905(12) and (13) of the Code to accept monies from the City and to make grants to any entity in furtherance of the purposes for which the Authority was created; and

WHEREAS, the Authority has agreed to provide certain incentives to the Developer from monies to be appropriated by the City to induce it to make the Investment on the Property, subject to annual appropriation by the City Council of the City, all as set forth herein; and

WHEREAS, the Authority and the Developer desire to set forth their understanding and agreement as to these matters in writing;

NOW, THEREFORE, for and in consideration of the premises, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows.

1. The Developer shall:

a. Make and maintain the Investment required on Exhibit B in real estate improvements described as phase 1 of the planned development of 106 units on the Property (**the “Improvements”**);

b. Make its commercially reasonable efforts to complete construction and equipping of the Improvements with the Investment no later than the **June 1, 2022**, which may be extended due to force majeure or other reasons approved by the Authority.

c. Comply with all applicable federal, state and local laws and secure all plans, approvals, bonds and permits as may be necessary or appropriate for the construction of the Improvements and the occupancy thereof.

d. Encourage contractors and sub-contractors during the construction phase of the phase 1 project to provide employment opportunities for City residents, and to that end, work closely with the City of Charlottesville Office of Economic Development and the Central Virginia Partnership for Economic Development and the Virginia Workforce Center if recruitment, screening, and training of residents is required.

2. The Authority, subject to annual appropriation by the Council and the Developer’s fulfillment of the requirements of paragraph 3 below, shall provide a grant (**the “Grant”**) to the Developer each year, as further described in this Agreement, beginning 15 months following the annual valuation of the Property by the City Assessor after a certificate of occupancy has been issued by the City for at least 50% of the units in Phase 1 of the planned development (i.e. **(53)** units) (**the “Completion Date”**) and annually thereafter, within ninety (90) days following receipt by the City of the annual assessed real property taxes paid by the Developer (or subsequent owners of the Property) related to the Property. The Grant shall be equal to (and shall not exceed) 100% of the total of the annual real property taxes received by the City attributable to the portion of the assessed value of the Property which is the incremental increase in assessed value of the Property (**the “Incremental Increased Value”**) from the value of the Property on the tax rolls (i.e. City assessment records) of the City effective January 1, 2020, (i.e. \$8,180,500) (**the “Base Value”**) in connection with the phase 1 development as determined by the City Assessor as of January 1 of the year on which the Grant payment is due.

3. An example of the calculation of the Grant, based on the Incremental Increased Value is attached as **Exhibit C** to this Agreement. The Grant shall be paid, annually during the term of this Agreement which is 40 years from the Completion Date, subject to funding by the Council, in a cumulative grant amount not to exceed \$6,000,000. The determination of assessed value of the Property shall be solely determined by the City Assessor.

The payment of any Grant is dependent upon

a. the Developer making the Investment in the Property no later than the Completion Date and providing the City and the Authority with reasonable evidence of the amount of such Investment, and evidence of continued compliance with the other requirements of the Investment in the Property, including, if requested by the Authority, copies of invoices that were paid.

b. The Developer and any subsequent owner or owners of all or any portion of the Property agreeing not to contest any increase in assessed value for the Property for any year on which a Grant is based.

c. To the extent that the assessed value of the Property is decreased for any reason during the term of this Agreement, the amount of Grant shall be reduced by the tax decrease based on the decrease in Incremental Increased Value.

d. No Grant shall be paid so long as any taxes of any kind due and owing to the City by the Developer or subsequent owner or owners of all or any portion of the Property remain unpaid or if the assessed value for the Property is being contested. Developer agrees to pay all taxes due to the City in a timely manner.

4. While recognizing that it is not empowered under Virginia law to make any binding commitment beyond the current fiscal year of the City, it is the current intention of the Council to make sufficient annual appropriations during the term of this Agreement to fund all financial obligations of the Authority hereunder. To that end, the Council has directed the City Manager or other officer charged with the responsibility of preparing the City's budget to include in the proposed budget for each fiscal year of the City during the term of this Agreement a request that the Council appropriate the amounts due under this Agreement during such fiscal year. If at any time during any fiscal year of the City, the Authority or the Developer determines that the amount appropriated in the budget is insufficient to pay such funds when due that fiscal year, then the City Manager (or other officer charged with the responsibility of preparing the City's budget) shall submit to the Council at the next scheduled meeting of the Council or as promptly as practicable, a request for a supplemental appropriation sufficient to cover the deficit.

5. This Agreement shall not create a joint venture, or any relationship of agency, employer-employee, or contractor between any of the parties of this Agreement.

6. The Authority reserves the right to approve any assignment of this Agreement by the Developer to any individual or entity and, the ownership interests of any such entity must be disclosed to the Authority. Any change in PHA no longer acting as Manager of the Developer shall also be subject to approval by the Authority. Any such assignee shall be bound by all the terms and conditions of this Agreement, including but not limited to the Investment amounts and other requirements set forth in this Agreement.

7. The covenants of the Authority as stated in this Agreement shall not be interpreted to establish any pledge, security interest, lien, or other encumbrance on property of the City and/or

the Authority. All obligations of the Authority hereunder are contingent upon the satisfaction and continued performance by the Developer of its obligations set forth in paragraph numbered 1 above and the appropriation and receipt of funding from the City.

8. This Agreement shall be governed by the laws of the Commonwealth of Virginia, and, in the event of litigation, jurisdiction and venue shall be in the Circuit Court of the City of Charlottesville, Virginia, and all legal actions involving this Agreement shall be brought only in such court. All parties hereto agree that in the event of any action brought to enforce the terms and provisions hereof, the prevailing party shall be entitled to reimbursement of reasonable attorney's fees and court costs. All parties to this Agreement have standing to enforce any covenants, terms, provisions, and agreements set forth herein.

9. This Agreement is the entire agreement between the parties hereto, sets forth all of promises, agreements, conditions, and understandings between the parties respecting the subject matter hereof and supersedes all prior and contemporaneous negotiations, conversations, discussions, correspondence, memoranda, and agreements between the parties concerning such subject matter.

10. This Agreement is subject to modification only by written agreement signed by all parties hereto.

11. All notices required under this Agreement shall be given in writing, and shall be deemed to be received five (5) business days after being mailed by first class mail, postage prepaid, return receipt requested, or one (1) business day after being placed for next day delivery with a nationally recognized overnight courier service, or upon receipt when delivered by hand, addressed as follows:

if to the Authority, to:

Economic Development Authority of the City of Charlottesville, Virginia
c/o Office of Economic Development
Attention: Executive Director
P.O. Box 911
Charlottesville, Virginia 22902

with a copy to:

Daniel M. Siegel, Esquire
Sands Anderson PC
P.O. Box 1998
1111 E. Main Street
Richmond, VA 23218-1998, and

John Blair, City Attorney
City of Charlottesville
P.O. Box 911
Charlottesville, Virginia 22902

if to the Developer, to:

c/o Piedmont Housing Alliance
682 Berkmar Circle
Charlottesville, VA 22901
ATTN: Sunshine Mathon, Executive Director
with a copy to:

Erik T. Hoffman
Klein Hornig LLP
1325 G Street NW
Suite 770
Washington D.C. 20005

12. This Agreement may be executed, via facsimile or email and, in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. If any provision of this Agreement is determined to be unenforceable, then the remaining provisions of this Agreement shall be interpreted as in effect as if such unenforceable provisions were not included therein. Each of the parties to this Agreement represents that it is fully authorized to enter into, and that it will be bound by, this Agreement.

13. The provisions of this Agreement are intended to and shall survive closing, the delivery of any deed or other instrument, and any other event.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first written above.

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____

Title: _____

Date of Execution: _____

**DEVELOPER
PIEDMONT HOUSING ALLIANCE on its behalf and as Manager of _____ LLC**

By: _____

Title: _____

Date of Execution: _____

ACKNOWLEDGED BY THE CITY OF CHARLOTTESVILLE, VIRGINIA

By: _____

Title: City Manager

Date of Execution: _____

EXHIBIT A

(Description of Property)

Parcel # 280112000 consisting of 11.77 acres in the City of Charlottesville, Virginia



Property Description for Phase 1 of Friendship Court Redevelopment

February 27, 2019

Friendship Court Redevelopment Phase 1 is a parcel of land comprising approximately 3.87 acres, being the easternmost portion (the "Phase 1 Parcel") of a larger tract of real property lying within the City of Charlottesville, Virginia, owned by NHTE Piedmont Garrett Square Limited Partnership ("NHTE Piedmont Garrett Square LP, and described in the tax records of the City of Charlottesville as Tax Parcel 280112000, NHTE Piedmont Garrett Square LP having taken title to the real property by deed recorded in the office of the Clerk of Circuit Court of Charlottesville, Virginia in Deed Book 876 at Page 72, the real property being more particularly described by the following metes and bounds: beginning at a pk nail found along the west line of 6th Street, S.E. north of its intersection with Monticello Avenue, said point being the point of beginning, thence departing 6th Street, S.E. and with the northwest radial arc of its intersection with Monticello Avenue along a curve to the right, with a chord bearing north $85^{\circ} 35' 39''$ east 49.68', having a radius of 30.00' and a length of 58.53' to a pk nail found; thence with the north line of Monticello Avenue the following courses: north $38^{\circ} 30' 49''$ west 120.51' to an iron rod found; along a curve to the right, with a chord bearing north $30^{\circ} 09' 56''$ west 127.22, having a radius of 438.12' and a length of 127.67' to a point; along a curve to the left, with a chord bearing north $30^{\circ} 09' 56''$ west 176.00', having a radius of 606.12' and a length of 176.62' to a point; north $38^{\circ} 30' 49''$ west 287.33' to an iron rod found; thence departing Monticello Avenue, and with the northeast radial arc of its intersection with 2nd Street, S.E. along a curve to the right, with a chord bearing north $09^{\circ} 45' 15''$ west 28.87', having a radius of 30.00' and a length of 30.12' to an iron rod found; thence with the east line of 2nd Street, S.E. the following courses: north $19^{\circ} 00' 20''$ east 361.37' to an iron rod found; north $19^{\circ} 00' 20''$ east 100.00' to an iron rod found; thence departing 2nd Street, S.E., and with the southeast radial arc of its intersection with Garrett Street, along a curve to the right, with a chord bearing north $64^{\circ} 55' 52''$ east 28.74', having a radius of 20.00' and a length of 32.06' to an iron rod found; thence with the south line of Garrett Street the following courses: south $69^{\circ} 08' 27''$ east 164.46' to a pk nail found; along a curve to the right, with a chord bearing north $64^{\circ} 29' 53''$ east 260.59', having a radius of 1608.89' and a length of 260.87' to a point; south $59^{\circ} 51' 10''$ east 356.35' to a pk nail found; thence departing Garrett Street and with the southwest radial arc of its intersection with 6th Street, S.E., along a curve to the right, with a chord bearing south $13^{\circ} 42' 28''$ east 28.84', having a radius of 20.00' and a length of 32.22' to an iron rod found; thence with the west line of 6th Street, S.E., the following courses: south $32^{\circ} 26' 15''$ west 100.00' to a pk nail found; south $32^{\circ} 26' 15''$ west 509.21' to an iron rod found; south $29^{\circ} 42' 07''$ west 186.95' to the point of beginning, and containing 11.771 acres, more or less, as shown on a boundary survey exhibit by Timmons Group dated February 27, 2019.

EXHIBIT B

Investment

This Agreement only relates to investment for phase 1 development in an amount anticipated to result in a total Real Property Value (including land, land improvements, parking, and buildings) of no less than \$25,000,000 which contains: (i) 46 rental dwelling units with Project-Based Section 8 operating subsidy will be provided as a one-for-one replacement of the 46 to-be-demolished rental units in the existing Friendship Court site, (ii) an additional 30 rental dwelling units will be provided for households with incomes at or below 60% of the Charlottesville Area Median Income (“AMI”), (iii) an additional 30 rental dwelling units will be provided for households with incomes at or below 80% AMI. The affordability levels will be required to be met for 40 years as of the completion date of the agreement.

Completion Date

The earlier of the date on which a certificate of occupancy for the Property and Improvements is issued by the City for at least 50% of the 106 units in phase I (i.e. 53 units) or June 1, 2022, which may be extended due to force majeure or other reasons approved by the Authority.

EXHIBIT C

**Grant Calculation of Incremental Increased Value
(Example)**

	Prior to Project (Base)	Estimated After Project Completion	Estimated Annual Tax Increment
Value of Property	\$7,165,700	\$27,238,620	
Real Estate Tax	\$68,074	\$258,766	\$190,693

Based on real estate tax rate \$0.95 per \$100.