

CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA



Agenda Date:	October 19, 2020
Action Required:	Approval of Resolution
Presenter:	John Sales, Executive Director Charlottesville Redevelopment and Housing Authority
Staff Contacts:	John C. Blair, II, Acting City Manager Lisa Robertson, Acting City Attorney Brenda Kelley, Redevelopment Manager
Title:	Resolution approving and authorizing the Mayor to execute the Recovery Agreement required by the United States Department of Housing and Urban Development for the Charlottesville Redevelopment and Housing Authority

Background:

In May 2019 the City was notified that in December 2018 the U.S. Department of Housing and Urban Development (HUD) designated the Charlottesville Redevelopment and Housing Authority (CRHA) as being in “Troubled” Status. Following that notice HUD conducted an on-site assessment and audit of CRHA and conducted interviews with key stakeholders, management staff, Board members, local officials and residents.

HUD issued an Audit Report in August 2019 that documented their findings. The outcome of the Audit Report identified concerns and deficiencies related to financial, physical, management and/or governance issues.

Due to the findings, HUD requires each troubled agency to enter into a “recovery agreement” (the “Recovery Agreement”) to establish performance targets, set out strategies for meeting targets, provide incentives and sanctions for effective implementation of the strategies leading to recovery of performance and attain an improved status of at least a Standard Performer. CRHA will be required to develop an Action Plan to address concerns and provide an implementation strategy, and a Sustainability Plan.

Discussion:

Because the City Council originally activated the CRHA within the City of Charlottesville, and City Council appoints the members of the CRHA's governing board, HUD requests that the City also be a party to the Recovery Agreement. By signing this Recovery Agreement, the City:

- Agrees to work with CRHA to develop and implement a Sustainability Plan if necessary to achieve recovery; and
- Acknowledges the importance of effective governance as part of the recovery and sustainability of the CRHA. "As a signatory of this Agreement, the City of Charlottesville commits to monitor the duly appointed Commissioners, the appointees to the Charlottesville RHA Governing Board, in the discharge of their duties. Upon the discovery of any failure of the Charlottesville RHA Board to discharge its duties under this Agreement, the City of Charlottesville shall work with HUD to ensure compliance with the terms of the Agreement. Such assistance from the City of Charlottesville shall not obligate it to assume any financial obligations of the Charlottesville RHA under the terms of the ACC."

The City Attorney's office has reviewed the recovery agreement proposed by HUD (attached) and has approved the form of the agreement for Council's consideration.

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:

This request does not require any additional funding from the City budget.

Alternatives:

City Council can decline to approve the attached Resolution.

Attachments:

- Proposed Resolution
- Recovery Agreement

RESOLUTION
APPROVING A RECOVERY AGREEMENT BETWEEN CHARLOTTESVILLE
REDEVELOPMENT AND HOUSING AUTHORITY AND THE UNITED STATES
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE CITY OF
CHARLOTTESVILLE

WHEREAS, in May 2019, the City of Charlottesville was notified by the U.S. Department of Housing and Urban Development (“HUD”) that Charlottesville Redevelopment and Housing Authority (“CRHA”) has been designated “Troubled” for financial, physical and/or management indicators, or other deficiencies as HUD has identified; and

WHEREAS, in August 2019, HUD issued an Audit Report that identified specific deficiencies in operations. HUD requires each troubled agency to enter into agreements that establish performance targets to remedy deficiencies, set out strategies for meeting targets, provide for incentives and sanctions for effective implementation of the strategies leading to recovery of performance and attain an improved status of a least a Standard Performer; and

WHEREAS, HUD requests that the City of Charlottesville be a party to the Recovery Agreement and to take certain actions in the event CRHA’s governing board does not effectively perform under the Recovery Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Charlottesville, Virginia, **THAT**:

The Recovery Agreement proposed by HUD and CRHA is hereby approved, and City Council hereby authorizes the Mayor to execute the Recovery Agreement on behalf of the City of Charlottesville and City Council.

Approved by Council
October 19, 2020

Kyna Thomas, CMC
Clerk of Council

Recovery Agreement between
Charlottesville Redevelopment and Housing Authority
And
the United States Department of Housing and Urban Development
And
the City of Charlottesville

This Recovery Agreement is entered into between the Charlottesville RHA, the UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (“HUD”) and the City of Charlottesville as of this ___ day of _____, 2020.

RECITALS

WHEREAS, under the United States Housing Act of 1937, as amended, (“Act”), 42 U.S.C. § 1437 *et seq.*, the United States Department of Housing and Urban Development (“HUD”) is responsible for administering low income housing programs, and pursuant to the Act, HUD has entered into an Annual Contributions Contract (“ACC”) with the Charlottesville RHA to develop and operate public housing projects of the Charlottesville RHA; and

WHEREAS, pursuant to the Act, HUD must evaluate public housing performance and has instituted the Public Housing Assessment System (“PHAS”); and

WHEREAS, on the basis of an annual PHAS score, the Charlottesville RHA has been designated Troubled or Substandard for financial, physical and/or management indicators, or other such deficiencies as HUD has identified; and

WHEREAS, the Act requires HUD to enter into agreements that establish performance targets, set out strategies for meeting targets, provide for incentives and sanctions for effective implementation of the strategies leading to recovery of performance and attain an improved status of at least a Standard Performer; and

WHEREAS, the recovery of performance is intended to lead to a sustainable sound fiscal management and good governance; and

WHEREAS, the parties desire to correct all HUD-identified deficiencies through the implementation of this Recovery Agreement, (“Agreement”);

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, HUD, the Charlottesville RHA and the City of Charlottesville agree as follows:

- I. The Charlottesville RHA agrees to achieve the outcomes outlined in the Action Plan and incorporated into this Agreement as Exhibit A.
- II. The Charlottesville RHA and the City of Charlottesville agree to work together to develop and implement a Sustainability Plan if necessary to achieve recovery.

- III. The Action Plan describes the results following HUD's review and assessments of PHA performance, the measures that need to be implemented to improve the performance and the desired outcomes to be achieved and establishes a timetable to achieve those outcomes. The Action Plan also identifies the available remedies to resolve HUD's determination of non-performance.
- IV. Upon execution of the Agreement, the Charlottesville RHA will commence with the required actions listed in the Plan within the timeframes set forth therein.
- V. The Charlottesville RHA will cure identified deficiencies within the timeframes established in the Action Plan.
- VI. Subject to section XII, regardless of possible changes in the Charlottesville RHA's Board composition, or the decision-making individuals for HUD or the City of Charlottesville, the term of this Agreement is effective as of the execution date of this document and will continue until completion of the Action Plan in accordance with 6(j) (2) and (3) of the Act, and any agreed upon extensions. This Agreement will remain in effect until the Charlottesville RHA has completed all items listed in the Plan, even if HUD removes the Charlottesville RHA's troubled/substandard designation.
- VII. HUD, in its discretion, may provide technical assistance, including training or contract support, to the Charlottesville RHA to facilitate accomplishment of the items in the Action Plan. The Charlottesville RHA's compliance with the Action Plan, however, shall not be contingent on HUD's provision of any technical assistance or other discretionary assistance.
- VIII. The Charlottesville RHA shall provide HUD with written progress reports as identified in the Action Plan. The report shall detail the Charlottesville RHA's progress towards the completion of the items required by the Action Plan. The reports shall identify those items that have been completed and provide any necessary documentation to support this determination.
- IX. HUD will review the Action Plan progress reports submitted by the Charlottesville RHA and supporting documentation. HUD will confirm in writing to the Charlottesville RHA the items that HUD determines to have been successfully completed, those that require additional documentation and those that are past due.
- X. If the Charlottesville RHA disagrees with HUD's determination concerning the completion of any item, the Charlottesville RHA may request a reconsideration of the determination and submit additional information to support its position. HUD will provide the Charlottesville RHA with a written notice of its decision.
- XI. The failure of the Charlottesville RHA, its employees, officers, agents, or contractors to comply with this Agreement, including the failure to achieve the agreed-upon outcomes or to take the actions or comply with the time frame set forth in the Action Plan, may result in HUD seeking any available remedies, including any of the following actions sequentially or simultaneously:

- a. Consolidation;
 - b. Consortia/Joint Venture;
 - c. Contraction of Operational Activities;
 - d. Cooperative Endeavor Agreement;
 - e. Debarment;
 - f. Deliver possession and control of project(s) to HUD;
 - g. Limited Denial of Participation;
 - h. Receivership; and/or
 - i. Suspension.
- XII. The parties by mutual written agreement may agree to extend the timeframes set forth in the Action Plan from time to time. In the event said timeframes are extended, HUD agrees that it will not take any of the actions against the Charlottesville RHA as set forth in this section of the Agreement for noncompliance with original timeframes.
- XIII. Communication related to the Recovery Agreement and Action Plan shall be provided to the Public Housing Director and the HUD Recovery Team leader, if applicable.
- XIV. HUD, the Charlottesville RHA and their employees, subcontractors, partners or assigns, and the City of Charlottesville shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this Agreement to which their activities are subject.
- XV. Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Agreement that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, riots, civil commotion, force majeure, acts of God, or for any other cause of same character which is unavoidable through the exercise of due care and beyond the control of the parties, provided that said failure or delay in the performance of this Agreement attributed to any of the events described herein is acknowledged in writing by HUD. Upon the issuance of HUD's written acknowledgement, the failure to perform shall be deemed excused during the continuance of such circumstances as determined by HUD, but this Agreement shall otherwise remain in effect.
- XVI. In the event of any conflict between terms in this Agreement, including all exhibits, attachments and all other documents specifically incorporated by reference, and HUD's applicable Public Housing requirements including, but not limited to, the Act, HUD regulations there under (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), the ACC, HUD notices, the HUD-approved Declaration of Trust or Declaration of Restrictive Covenants in favor of HUD, and all applicable Federal statutory, executive order and regulatory requirements, as those requirements may be amended from time to time, the applicable Public Housing requirements shall prevail. HUD reserves the right to resolve any conflict.

- XVII. Any modification or amendment of any condition or provision in this Agreement by either party will not imply or constitute a further modification or amendment of the same or any other condition or provision, nor shall it relieve the parties from performing any subsequent obligations strictly in accordance with the term of this Agreement. No modification or amendment shall be effective unless in writing and signed by the party against whom enforcement is sought. Such modification or amendment shall be limited to provisions of this Agreement specifically referred to therein and shall not be deemed a modification or amendment of any other provision. No modification or amendment of this Agreement shall constitute a HUD-approved waiver of regulatory requirements.
- XVIII. Should any term or provision of this Agreement be held, to any extent invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement to the extent that the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- XIX. To the extent authorized by the Act and HUD regulations, HUD can unilaterally amend this Agreement. Otherwise, this agreement may be amended by mutual agreement of the parties.
- XX. This Agreement states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this Agreement. However, this Agreement does not supersede, modify or amend the ACC as further described in Paragraph XXII. The parties recognize that any representations, statements or negotiations made by the staff of either party does not suffice to legally bind either party in a contractual relationship unless they have been reduced to writing and signed by their authorized representative(s). This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
- XXI. This Agreement may be executed and delivered in separate counterparts, which, when so executed and delivered, shall be deemed an original.
- XXII. This Agreement does not supersede, modify or amend the ACC between HUD and the Charlottesville RHA, or in any way excuse the Charlottesville RHA from complying fully with its obligations under the ACC. HUD does not waive its statutory, regulatory or contractual rights. Nothing contained in this Agreement shall serve to limit, modify or preclude HUD's right to take any remedial action allowed by the ACC or any provision of the Act or related regulations. Nothing contained in this Agreement shall serve to limit, modify or preclude HUD or the Charlottesville RHA's right to take any remedial action allowed by the Agreement.
- XXIII. The parties agree that any cost associated with the implementation of this Agreement, the Action Plan and the Sustainability Plan shall be their individual responsibility unless specifically agreed in writing between the parties.

XXIV. The City of Charlottesville, through its Appointing Authority, acknowledges the importance of effective governance as part of the recovery and sustainability of the Charlottesville RHA. As a signatory of this Agreement, the City of Charlottesville commits to monitor the duly appointed Commissioners, the appointees to the Charlottesville RHA Governing Board, in the discharge of their duties. Upon the discovery of any failure of the Charlottesville RHA Board to discharge its duties under this Agreement, the City of Charlottesville shall work with HUD to ensure compliance with the terms of this Agreement. Such assistance from the City of Charlottesville shall not obligate it to assume any financial obligations of the Charlottesville RHA under the terms of the ACC.

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this Agreement on the date first written above.

[signature page follows]

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

By: _____
Mr. Robert Davenport
Public Housing Director
Richmond Field Office

CRHA
ATTEST: BY ITS BOARD OF
COMMISSIONERS

By: _____
Ms. Betsy Roettger
Board Chair
Charlottesville RHA

By: _____
Mr. John Sales
Executive Director
Charlottesville RHA

CITY OF CHARLOTTESVILLE,
Approved by Resolution of Its City Council

By: _____
Nikuyah Walker, Mayor