

CITY of ALBUQUERQUE

TWENTIETH COUNCIL

COUNCIL BILL NO. R-13-266

ENACTMENT NO. _____

SPONSORED BY: Isaac Benton

1 RESOLUTION

2 RESCINDING THAT PORTION OF RESOLUTION F/S R-11-259 WHICH
3 DESIGNATED WORKFORCE HOUSING TRUST FUNDS FOR ACQUISITION OF
4 PROPERTY ON NORTH FOURTH STREET; REDESIGNATING WORKFORCE
5 HOUSING TRUST FUNDS TO ACQUIRE CERTAIN PROPERTY ON NORTH
6 FOURTH STREET; AUTHORIZING THE CITY TO ENTER INTO AN
7 INTERGOVERNMENTAL AGREEMENT WITH THE COUNTY OF BERNALILLO
8 TO ACQUIRE THE PROPERTY AND PERFORM OTHER RELATED
9 PREDEVELOPMENT ACTIVITIES; CALLING FOR A JOINT PLANNING
10 COLLABORATION BETWEEN THE CITY AND THE COUNTY TO ENSURE THAT
11 WORKFORCE HOUSING UNITS AND OTHER APPROPRIATE USES ARE
12 CONSTRUCTED ON THE PROPERTY.

13 WHEREAS, the Workforce Housing Opportunity Act (§ 14-9-4 (C) (3) ROA
14 1994 as amended) established land acquisition for affordable housing as a
15 priority use of funds; and

16 WHEREAS, the North Fourth Street Rank III Corridor Plan created an
17 Overlay Zone along North Fourth Street which calls for Mixed Use
18 Development, including but not limited to development of residential housing;
19 and

20 WHEREAS, approximately 5 acres of property at 3525 4th Street NW in
21 Albuquerque as more specifically described in Exhibit "1" of Exhibit "A"
22 attached hereto is for sale at a price of approximately \$900,000 (the
23 "Property"); and

24 WHEREAS, the City has Workforce Housing Trust Funds available that
25 were previously reserved in F/S R-11-259 (Enactment No. R-2011-112) for the

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1 purpose of acquiring the Property, paying reasonable closing costs, and
2 demolishing existing structures on the Property; and

3 WHEREAS, the City has thus far declined to pursue acquisition of the
4 Property pending the cure of certain defects in title; and

5 WHEREAS, the County has now expressed interest in designating some
6 of its funds towards acquisition of the Property for economic development
7 along the North Fourth Street corridor and has represented that any title
8 defects have or can be resolved in a timely manner; and

9 WHEREAS, it is an appropriate use of Workforce Housing Trust Funds to
10 pool such funds with the County for the purpose of acquiring the Property and
11 land banking the City's interest therein for future workforce housing
12 development.

13 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
14 ALBUQUERQUE:

15 Section 1. \$1,475,000 in Workforce Housing Trust Funds previously
16 designated in F/S R-11-259 for property acquisition and related costs is hereby
17 rescinded.

18 Section 2. \$1,200,000 of the Workforce Housing Trust Fund is reserved
19 for acquisition of the Property, for reasonable closing costs associated with
20 the acquisition, and for the demolition of existing structures on the Property.

21 Section 3. The City of Albuquerque shall endeavor to enter an
22 Intergovernmental Agreement with Bernalillo County as to form attached
23 herein as Exhibit "A" to facilitate a symbiotic joint effort to acquire the
24 Property (the "Agreement"). The Agreement shall specify the roles and
25 responsibilities of each entity regarding the acquisition and development of
26 the Property with the intent that each party collaborate in the development of
27 the Property.

28 Section 4. Housing built on the Property must conform to the
29 requirements of the Workforce Housing Opportunity Act, including, but not
30 limited to, that a minimum of 30% of the dwelling units are affordable to
31 families whose income is at or below 80% of Area Median Income for
32 Albuquerque.

Section 5. This resolution shall become null and void upon the expiration or termination of the Agreement.

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**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF ALBUQUERQUE AND BERNALILLO COUNTY**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this ____ day of _____, 2013, (the “Effective Date”) by and between the Bernalillo County, New Mexico, a political subdivision of the State of New Mexico (the “County”) and the City of Albuquerque, New Mexico, a municipal corporation (the “City”)(the City and County are each a “Party” and together they are the “Parties”).

RECITALS

WHEREAS, the City and the County have entered into numerous Joint Powers Agreements, Intergovernmental Agreements and Memoranda of Understanding to coordinate services; and

WHEREAS, the City and the County are desirous of developing affordable housing and promoting economic development opportunities for its residents; and

WHEREAS, land suitable for these purposes located 3525 4th Street NW containing approximately 5 acres, as more specifically described in Exhibit “1” attached hereto (the “Property”) is presently available for sale; and

WHEREAS, by resolution number R-13- ____ the City has reserved \$1,200,000 in Workforce Housing Trust Funds for acquisition of the Property, for reasonable closing costs associated with the acquisition, and for the demolition of existing structures on the Property; and

WHEREAS, the County shall provide \$200,000 for these same purposes; and

WHEREAS, the County is designated as the lead agency for the project; and

WHEREAS, the purpose of this Agreement is to facilitate the cooperation of the Parties and identify the specific financial obligations and other duties and responsibilities of each Party in the acquisition of the Property; and

NOW, THEREFORE in consideration of the promises and covenants contained herein, the Parties agree by mutual consent to the following:

AGREEMENT

ARTICLE I – INCORPORATION OF RECITALS

A. The Recitals are incorporated herein.

ARTICLE II – RESPONSIBILITIES

A. County

- a. Shall ensure that all due diligence is completed to ensure that the Property has no unreasonable encumbrances upon it at the time of closing.
- b. Shall acquire the Property through fee simple purchase, demolish any existing structures and secure the Property.
- c. Shall convene a collaborating committee to pursue options for development of the Property. This committee shall include, at a minimum, representatives from Bernalillo County Commission, the Albuquerque City Council, the County Housing Authority, the City's Departments of Family and Community Services and Planning/Metropolitan Redevelopment Agency. The Parties and/or committee may add, at its discretion, any person who may contribute to the successful development of the Property.
- d. Shall comply with the requirements of the City's Workforce Housing Opportunity Act (§19-9-1 et. seq. ROA 1974 as amended).
- e. Shall comply with the requirements of the North Fourth Street Rank III Corridor Plan and any other applicable plans or policies in the development of the Property.
- f. Shall ensure input and participation of the businesses and neighborhood adjacent to and surrounding the Property in the formulation of any plan, designs and development.

B. City

- a. Shall participate collaboratively with the County in the process called for in Article II(A)(c) and (f) and as otherwise agreed by the City.
- b. Shall reimburse the County within a reasonable timeframe for any expenditures authorized under this Agreement up to \$1,200,000.

C. City & County

- a. The Parties shall, through separate agreement, participate collaboratively in the future development of the Property as authorized by law, and as guided by all duly adopted and applicable plans and ordinances including but not limited to the Workforce Housing Act.

ARTICLE III - TERM OF THIS AGREEMENT

This agreement shall commence on the Effective Date and expire six months from that date.

ARTICLE IV – PROJECT FUNDING

- A. The maximum obligation of the City under this Agreement is one million, two hundred thousand dollars (\$1,200,000).
- B. The maximum obligation of the County under this Agreement is two hundred thousand dollars (\$200,000).
- C. It is understood and agreed that should any portion of the funds made available hereunder by the City for the purpose designated herein remain unexpended after all conditions of this agreement have been satisfied, such funds are immediately unreserved and may be used by the City for any other purpose authorized by law.
- D. In the event that the final development of the Property reflects that the Workforce Housing Trust Funds over contributed or under contributed to the pro rata share of the acquisition based on the ultimate use of the property, the County shall take necessary action to reimburse or collect the difference from the appropriate user/developer of the Property.
- E. The County shall maintain accurate and detailed records which memorialize all the expenditures incurred for the acquisition and closing on the Property, and for the demolition of existing structures. A true and correct accounting shall be rendered of all costs and expenses and all accounts, vouchers, records, and data related to the same. These records shall be subject to inspection by the City at any time. The City shall, at its own expense, have the right to audit all documents and billings at any reasonable time upon request. The right to make such an audit does not require that such an audit be made.

ARTICLE V – TERMINATION

Prior to the expenditure of any funds, this agreement may be terminated by either Party without cause upon written notice delivered to the other Party by at least thirty (30) days prior to the intended date of termination. By such termination, neither Party may nullify obligations already incurred for the performance or failure to perform to the date of termination.

ARTICLE VI - THIRD PARTY BENEFICIARIES

None of the provisions contained within this Agreement are intended to create in the public or any member thereof a third Party beneficiary or to authorize anyone not a Party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies) and/or any other claims(s) whatsoever, pursuant to the provisions of this Agreement.

ARTICLE VII – AMENDMENT

This Agreement shall not be altered, changed, or amended except in writing as executed by the City's Chief Administrative Officer and the Bernalillo County Manager.

ARTICLE VIII – APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the City and the County for the performance of this Agreement. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice being given by the City to the County or the County to the City. The decision as to whether sufficient appropriations are available shall be final and shall be accepted by both Parties.

ARTICLE IX – RELEASE

Final payment of all amounts due under this Agreement release the City and its officers and employees from all liabilities, claims and obligations whatsoever arising from this Agreement. The County shall not bind the City to any obligation not assumed herein, without express written authority from the City, and then only within the strict limits of that written authority.

ARTICLE X – APPLICABLE LAW

This Agreement shall be governed by the laws of the State of New Mexico. The venue shall be Bernalillo County, New Mexico. Neither Party is responsible for liability incurred as a result of the other Party's acts or omissions in connection with this agreement. Any liability incurred in connection with this agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, sections 41-4-1, et seq., NMSA 1978, as amended.

ARTICLE XI – NEW MEXICO TORT CLAIMS ACT

No provision of this IGA establishes any waiver of immunity for alleged tortious conduct of any employee of any Party arising from the performance of this IGA apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

IN WITNESS WHEREOF, the Parties have executed this agreement to become effective as of the Effective Date.

[SIGNATURES FOLLOW ON PAGE 5]

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CITY OF ALBUQUERQUE

BERNALILLO COUNTY

Robert J. Perry
Chief Administrative Officer

Tom Zdunek
County Manager

Date: _____

Date: _____

Recommended by:

Approved as to form:

Randy Autio
County Attorney

Date: _____

Date: _____

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to buy Property – Exhibit A.doc

Exhibit 1
Legal Description

Tracts numbered 90B2 & 90C MRGCD Map 33, and Lots 1, 2, & 3 Block 1 of REPLAT OF FITZGERALD ADDITION, Bernalillo County, New Mexico.