TO: Mayor and City Council

SUBJECT: Rental Assistance Demonstration (RAD) City Closing Documents

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Place on first reading the Ordinance authorizing execution of the Ground Lease, HOME Regulatory Agreement, RAD Use Agreement, RAD Subordination Agreement, HOME Funding Agreement, CDBG Funding Agreement, FHA and RAD Subordination Agreements (City Loans), and the Amended and Restated PILOT Agreement and other documents presented for action, and approve the necessary signatures together with such subsequent changes and corrections as may be necessary to complete the proceedings for closing.

Background: On February 21, 2017, the Wichita Housing Authority Board authorized the Wichita Housing Authority (WHA) to submit four Rental Assistance Demonstration (RAD) pilot program applications. The applications were awarded Commitment to Enter into a Housing Assistance Payments (CHAP) contracts by the Department of Housing and Urban Development (HUD) in September 2017.

The RAD pilot initiative is a voluntary program within HUD. RAD provides Public Housing Authorities (PHAs) with access to long-term funding so that needed improvements can be completed. Public Housing units across the country need more than $26 billion in repairs. However, Congress has not provided enough funding for PHAs to keep up with capital needs. RAD allows PHAs to recapitalize properties using financing products as well as private partnerships.

The WHA was successful in securing financing to continue the RAD project for the four multi-family senior housing properties of Greenway Manor, McLean Manor, Rosa Gragg, and Bernice Hutcherson Apartments as a single project called Wichita RAD Senior utilizing 4% Low Income Housing Tax Credits (LIHTC), CDBG, HOME, Capital Funds, and securing a HUD FHA 221(d)4 loan.

Analysis: The use of tax credits requires the creation of two new business entities, the project tenant/ownership entity limited partnership and the general partnership limited liability company. The tenant/project ownership entity, Wichita RAD Senior LP is composed of the investor partner, Affordable Housing Partners (AHP), a Berkshire Hathaway Company who has purchased the 4% LIHTC to provide equity for the project and the general partnership, Wichita RAD AMP 1 LLC, which is composed of the City of Wichita and KBK Enterprises, the City’s developer partner selected by a request for proposal (RFP) in 2018.

The RAD financing for the multi-family senior units is anticipated to close the week of October 11, 2021 with construction beginning immediately thereafter on vacant units at Rosa Gragg and Bernice Hutcherson. Rehabilitation of Gragg and Hutcherson units will occur in phases and each construction phase will take approximately three to four months. After which some residents of Gragg and Hutcherson will move into full renovated units and construction will begin on the newly vacated units. This pattern will continue until all units are renovated. About 30 days after closing, the residents of McLean Manor...
will be relocated to Greenway Manor and construction on the McLean tower will begin. Construction is estimated to last 10 months. Once complete, the McLean Manor residents will move back to McLean Manor and the Greenway Manor residents will be offered voluntary permanent relocation to any vacant renovated unit at McLean Manor, Gragg, or Hutcherson or will be temporarily relocated to private housing during construction. It is anticipated that construction on Greenway Manor will take approximately 10 months. Once complete any temporarily relocated residents will move back to Greenway Manor.

Also at closing, the management and maintenance of the four senior properties will transfer to Mennonite Housing. Both the issuer of the tax credits, KHRC and the purchaser, AHP require that the management entity have at least five years’ experience managing tax credit properties. The City does not meet that criteria so it published a RFP to select the property management entity Mennonite Housing was selected and has contracted with the general partnership Wichita RAD AMP 1 LLC.

Once construction is complete and the project reaches stabilization, the developer partner KBK Enterprises Inc. will step out of the general partnership leaving only the City.

The use of tax credits requires that the property and buildings be leased to the tenant/ownership entity for a period of 99 years. However, the Restated and Amended Limited Partnership Agreement provides that the lease can be terminated for ten dollars over the outstanding debt of the project after the 15-year tax credit compliance period.

On December 18, 2018, the City Council approved $2,675,000 in CDBG funds and Section 108 Program proceeds for the RAD project for construction and relocation. Significant time has elapsed reducing occupancy and therefore reducing relocation expenses. As such, relocation expenses will be covered using Public Housing Capital funds, freeing up CDBG/Section 108 funds to be used to establish a $1 million guaranty account required by the tax credit investor. The funds will be held in a local interest bearing account and can only be used for an operational shortfall. In addition, the CDBG needed for construction is only $1,154,462. The remaining $520,538 of the previously allocated funds will be held through construction as a contingency fund. If the guaranty or contingency funds are not needed, the funds will be reallocated to another CDBG eligible project in the future.

The total project cost is $35,984,255 comprised of tax credit equity, hard and soft debt, as well as grants including CDBG, HOME, Capital Fund, State Housing Trust Fund, and HUD rehabilitation assistance funds. The full sources and uses are included as an attachment. In order to close, several documents must be executed as follows:

- Amended and Restated Operating Agreement – Defines the terms of the General Partnership Wichita RAD AMP 1 LLC;
- Ground Lease – Leases the land and structures to the Wichita RAD Senior LP for a term of 99 years;
- Memorandum to Ground Lease – The document that is used for recording of the Ground Lease
- Estoppel Certificate – Conveys the existing cellular tower leases to the project;
- Seller Loan- Note and Mortgage – Establishes the terms, note and mortgage of the ground lease;
- CDBG Funding Agreement- Note and Mortgage – Establishes the terms, note, and mortgage required for $1,154,462 in CDBG funds for construction;
- Capital Fund- Note and Mortgage – Establishes the terms, note, and mortgage of Public Housing Capital Funds invested in the project;
- HOME Funding Agreement- Note and Mortgage – Establishes the HOME rents, unit composition, and requirements, and establishes the terms, note, and mortgage required for the $1,113,950 in HOME funds for construction;
- FHA Subordination Agreement (City Loans) – Established the City HOME and CDBG loans subordinate to the Federal Housing Administration (FHA);
• Cingular Wireless Subordination Agreement – Establishes that the cellular tower lease agreement subordinates to the RAD and FHA debt and/or requirements;
• Verizon Wireless Subordination Agreement – Establishes the cellular tower lease agreement subordinates to the RAD and FHA debt and/or requirements;
• Loan Disbursement Process Agreement – Defines how funds will be drawn from varying sources;
• RAD Conversion Commitment – Defines the terms of the RAD conversion;
• Request to Amend RAD Conversion Commitment – Request to correct errors in the RAD Conversion Commitment;
• RAD Use Agreement – The City is agreeing to a 20-year Housing Assistance Payments contract expected to renew for subsequent terms of 20 years until such time that a release is issued;
• Certifications and Assurances – Certifies the accuracy of all submission document;
• Consolidated Owners Certification – Attesting to the accuracy of the financial and physical condition, third party consents, truth and accuracy, resident meeting requirements, construction management, Project Based Rent Assistance (PBRA) conversion, and tenant notification of the lease termination and new lease execution;
• Amended and Restated PILOT Agreement – Extends the Payment in Lieu of Taxes agreement established for these properties as housing for low-income seniors;
• Wichita Initial Year Funding Tool AMP 1 and AMP 2 – Calculates the Public Housing funds needed to transfer to the Section 8 HAP Contract for November and December 2021;
• Deed of Conveyance – Relays the property to the project in accordance with the ground lease;
• Development Agreement – Agreement between KBK Enterprises and the City of Wichita;
• Guaranty Agreement for AHP Housing Fund 249 – Defines the guaranty of construction in accordance with the plans and specifications and the partnership agreement;
• Pledge & Security Agreement for AHP Housing Fund 249 – Pledges limited partnership assets to AHP in the event of default of the partnership agreement;
• Right of First Refusal – Gives the City the right to terminate the ground lease after the tax credit compliance period;
• Wichita Senior Deposit Account Pledge & Security Agreement – Establishes the terms and requirements for the required $1 million operations guaranty account funded with CDBG funds authorized for this project on December 18, 2018;
• Performance and Repayment Guaranty- KHRC – defines the terms of Housing Trust Funds;
• Completion Guaranty- KHRC – Defines the guaranty of construction in accordance with the plans and specifications and the Housing Trust Fund;
• RAD Subordination Agreement (City Loans) – the HOME and CDBG restrictions subordinate to the more restrictive RAD restrictions.

**Financial Considerations:** There is no impact to the General Fund and the execution of the documents makes no changes to the financial structure of the project.

**Legal Considerations:** Execution of documents will be subject to the Law Department’s final approval as to form.

**Recommendation/Action:** It is recommended that the Council place on first reading the Ordinance authorizing execution of the Ground Lease, RAD Use Agreement, HOME Regulatory Agreement, RAD Subordination Agreement (Bond LURA), HOME Funding Agreement, CDBG Funding Agreement, FHA and RAD Subordination Agreements (City Loans), the Amended and Restated PILOT Agreement, and the other documents presented for action, and approve the necessary signatures together with such subsequent changes and corrections as may be necessary to complete the proceedings for closing.

**Attachments:** Sources and Uses - for reference
Amended and Restated Partnership Agreement - for reference
Amended and Restated Operating Agreement
Ground Lease
Memorandum to Ground Lease
Estoppe Certificate
Seller Loan- Note and Mortgage
CDBG Funding Agreement- Note and Mortgage
Capital Fund- Note and Mortgage
HOME Funding Agreement- Note and Mortgage
FHA Subordination Agreement (City Loans)
Cingular Wireless Subordination Agreement
Verizon Wireless Subordination Agreement
Loan Disbursement Process Agreement
RAD Conversion Commitment
Request to Amend RAD Conversion Commitment
RAD Use Agreement
Certifications and Assurances
Consolidated Owners Certification
Amended and Restated PILOT Agreement
Wichita Initial Year Funding Tool AMP 1
Wichita Initial Year Funding Tool AMP 2
Deeds of Conveyance
Development Agreement
Guaranty Agreement for AHP Housing Fund 249
Pledge & Security Agreement for AHP Housing Fund 249
Right of First Refusal
Wichita Senior Deposit Account Pledge & Security Agreement
Performance and Repayment Guaranty- KHRC
Completion Guaranty- KHRC
RAD Subordination Agreement (City Loans)
Ordinance