

David Whitaker, Esq.
Director
Irvin Corley, Jr.
Executive Policy Manager
Marcell R. Todd, Jr.
Senior City Planner
Janese Chapman
Deputy Director

LaKisha Barclift, Esq.
M. Rory Bolger, Ph.D., AICP
Elizabeth Cabot, Esq.
Tasha Cowen
Richard Drumb
George Etheridge
Deborah Goldstein

City of Detroit

CITY COUNCIL

LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

Christopher Gulock, AICP
Derrick Headd
Marcel Hurt, Esq.
Kimani Jeffrey
Anne Marie Langan
Jamie Murphy
Kim Newby
Analine Powers, Ph.D.
Jennifer Reinhardt
Sabrina Shockley
Thomas Stephens, Esq.
David Teeter
Theresa Thomas
Kathryn Lynch Underwood

TO: Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division

DATE: February 3, 2020

RE: **Report on Second Amended and Restated Memorandum of Understanding between the City of Detroit and the Detroit Land Bank Authority**

The Legislative Policy Division (LPD) has been requested by the Planning and Economic Development Committee of the Detroit City Council to review the proposed Second Amended and Restated Memorandum of Understanding between the City of Detroit (City) and the Detroit Land Bank Authority (DLBA).¹

LPD has an opportunity to sit down and review the proposed Second Amended and Restated Memorandum of Understanding (MOU) with counsel from the DLBA and the Housing and Revitalization Department (HRD). This report highlights what LPD identifies as the most pertinent provisions of the MOU.

Section 1, *Incorporation of Recitals*, provides that the “Whereas” recitals are made a part of the contract. The second “Whereas” indicates.

The Detroit Land Bank is governed by a Board of Directors consisting of five directors, four of which are appointed by the Mayor of the City subject to the timely approval of City Council and one by the Michigan State Housing Development Authority;

The DLBA and HRD acknowledge that in the past the Mayor has provided for the City Council to recommend one of the four appointments as its representative. LPD requested that the

¹ LPD provided a report on February 20, 2019 regarding the prior submission of the proposed agreement and reminds this Honorable Body that one of the reasons this MOU was brought forth was at City Council’s request to have a document that could serve as the underlying basis for specified transactions with the DLBA.

administration consider providing language that would reflect the Mayor's prerogative to allow one of the four appointments to the DLBA Board be based on the recommendation of City Council as a representative of its body.

Section 2, provides that the MOU supersedes and replaces the prior Original and First Amended MOU.

Section 3, *Term*², indicates the term of the MOU is to be coterminous with the date of the end of the Second Amended Intergovernmental Agreement (IGA) between the City and the Michigan Land Bank Authority which enabled the creation of the DLBA. The term of the Second Amended IGA will expire on December 19, 2023. Upon its expiration, all the Parties will evaluate the DLBA's future role if any.

Section 4, *The Detroit Land Bank Duties*, this section outlines the responsibilities of the DLBA and the services it performs under the MOU. LPD finds the following provisions in Section 4 of particular interest:

- Subsection 4(a) indicates a City Council Liaison for direct communications with City Council members and staff will be provided by the DLBA.
- Subsection 4(d) indicates the DLBA will operate and maintain a property database that will contain both a physical component of maintenance as well as a clerical or administrative component designed to identify and resolve issues that prevent properties from being returned to productive use. The City is to have certain access to the Database to track the properties sales and demolition. LPD notes the MOU does not provide who at the City will have access and what that access entails.
- Subsection 4(e) indicates that the City ratifies the prior creation of the \$2 million in Title Insurance Escrow Account and the prior transfer of funds.

LPD notes regarding Subsection 4(e), that City Council never had the opportunity to deliberate and approve the agreement to create and transfer funds to the escrow account. LPD requested that the language be modified to the "City hereby acknowledges" the prior creation, expenditure and agreements for such escrow account and authorizes the City's Chief Financial Officer (CFO) take the necessary actions to administer the account.

- Subsection 4(f) indicates where the Federal Hardest Hit Funds (HHF) used for residential demolition exceeds the \$25,000 limit, the Second Amended MOU is authorizing the City to pay the cost above the limit. The Second Amended MOU provides that the Chief Financial Officer (CFO) has the authority to approve the invoice submitted by the DLBA for the payment.

LPD recalls that this was an issue with the prior proposed MOU and requested the Administration consider adding language that the CFO be required to submit a report to the City

² LPD notes the beginning of the MOU term is dated March 14, 2014 because the Second Amended and Restated Memorandum of Understanding supersedes and replaces the Original MOU and the First Restated MOU in all respects. Therefore the beginning date of the MOU remains March 14, 2014.

Council detailing the amount that is paid over the \$25,000 limit and the reason for the cost overage within 30 days of the authorization for payment.

- Subsection 4(j) indicates that for any property the DLBA receives from the City, the DLBA shall seek approval of the Mayor and City Council prior to the subsequent transfer of ten (10) or more of such parcels to the same transferee within any rolling 12-month period.

LPD discussed this matter with the DLBA and HRD. All agreed to modify the language to provide that the DLBA shall seek the approval of the Mayor and City Council prior to the subsequent transfer of ten (10) or more of such parcels to the same transferee within any rolling 12-month period.

- Subsection 4(k) indicates that the DLBA shall adhere to the City's Zoning ordinance and any other land use ordinances and strategies adopted by the City. LPD requested that the language include the "Master Plan" as was provided in the original MOU.
- Subsection 4(r) indicates that in addition to the services outlined in the MOU the DLBA will also provide other mutually agreed upon services deemed necessary or convenient to address blight. Any such services shall require the prior approval of the CFO and shall be disclosed to the City Council prior to Disbursement.

LPD found this provision problematic. The blight removal services include anything deemed necessary or convenient to address blight and that the CFO has the authority to approve payment without City Council's approval.³ LPD discussed this matter with the DLBA and HRD. It was indicated that they would include specific blight removal services that may be covered. Anything outside of the enumerated list would require CFO and City Council approval.

Section 5, *City Duties*

- Subsection 5(a)(i) indicates that in each respective City fiscal year budget during the MOU term, City Council will approve an annual budget allocation to the DLBA, to fund in-part its obligations under the MOU and to support the DLBA operations. LPD notes that this is the specific annual budget allocation to the DLBA.
- Subsection 5(a)(ii) indicates that any payments that are in excess of the annual budget allocation made by the City to the DLBA, will be in such amounts as are approved by City Council for blight remediation services and any other relevant services. LPD notes this provision allows for general fund dollars that are approved by City Council in the fiscal year budget for blight remediation to be used to pay for any additional DLBA services as outlined in subsection 4(r) above.

³ The blight remedial services performed under this provision would be paid from general fund dollars that are in addition to those previously appropriated to the DLBA to cover services under the MOU. The general fund dollars used to cover these additional blight remedial services would come from the separate Blight Remediation appropriation provided in the budget for that fiscal year. The CFO would have authority to approve any cost incurred by the DLBA for blight removal services that include anything deemed necessary or convenient without City Council's approval. The ability of the CFO to have the sole approval for the any blight removal service deemed necessary or convenient without City Council oversight is too broad and should be more narrowly focused.

As detailed in our February 20, 2019 report, one of the reasons City Council requested an amended MOU was the use of Blight Remediation appropriated dollars for DLBA expenditures without City Council approval and documentation identifying the purpose.

- Subsection 5(b) *Demolition Advance Fund*. This provision indicates the Demolition Advance Loan Fund allows the DLBA to receive from the City not more than \$20 million in outstanding advances to be utilized by the DLBA to make payments to third parties, providing demolition related services under the HHF Demolition Program. The DLBA is required to repay all advanced dollars within forty-five 45 days of receiving the final disbursement of HHF Dollars from MSHDA. LPD notes the DLBA anticipates the HHF Demolition program will be completed by December 31, 2020.
- Subsection 5(c) indicates the City shall provide the DLBA the use of the services of certain City Departments in an effort to reduce the overall cost of public expenditures. LPD notes that the City provides funds for general operations to the DLBA, therefore to charge the DLBA for such services would be unproductive.

Section 6 *Property Transfers*, addresses residential property transfers the City has already consolidated and transferred to the DLBA through multiple City Council resolutions. The MOU authorizes the City's Planning and Development Department (P&DD) to continue to transfer property to the DLBA as appropriate. LPD discuss the provision with the DLBA and HRD and requested the language be clarified to indicate the Planning & Development Department shall comply with all Charter and City Code provisions prior to any transfer of property to the DLBA. This would include City Council approval prior to transfer.

Section 8, *Audits, Monitoring, Record Keeping and Report*, LPD requested that this provision has been modified to include not only the authority of the City's Auditor General but the City's Inspector General as well to have access to all books, documents, papers, records and project sites directly pertinent to this MOU for monitoring, audits, inspections, examinations, and making excerpts and transcriptions at all reasonable times.

Section 9, *Demolition Insurance*, indicates that the DLBA shall continue to be added as an additional insured under the insurance coverage required under all its contracts for demolition under the HHF Demolition program. The provision also requires the City to name the DLBA as additional insured under the insurance coverage of City contractors performing demolition on DLBA properties

Section 10, *Confirmation*, this provision ratifies and confirms all prior actions of the City that was authorized by the Original MOU and the First Amended MOU.

Section 11, provides that any modification to this Second Amended MOU must be in writing and signed by the parties identified in Section 12.

Section 12, provides that the Second Amended MOU will not be effective until it has been approved by the Mayor and City Council as well approvals by the DLBA Board.

If we can be of further assistance please call upon us.