

RESOLUTION NO. RS2021-

A Resolution authorizing the Metropolitan Development and Housing Agency to negotiate and enter into a PILOT Agreement and accept payments in lieu of ad valorem taxes with respect to a multi-family housing project located at 407 South 4th Street, known as Shelby House.

WHEREAS, Tennessee Code Annotated 13-20-104 ("the Act") authorizes a Metropolitan Government for which a housing authority is created to delegate to such housing authority the authority to negotiate and accept payments in lieu of ad valorem taxes ("In Lieu of Tax Payments") from the housing authority's lessees operating low-income housing tax credit property ("LIHTC Property") upon a finding that such payments are deemed to be in furtherance of the housing authority's public purposes; and

WHEREAS, the Metropolitan Development and Housing Agency ("MDHA") was created pursuant to state law and is the housing authority for the Metropolitan Government; and

WHEREAS, by Ordinance No. BL2015-1281 as amended by Ordinance Nos. BL2016-334 and BL2016-435 (the "LIHTC Ordinance"), the Metropolitan Council (i) authorized MDHA to negotiate and accept In Lieu of Tax Payments from qualified lessees of LIHTC Property owned by MDHA and (ii) approved MDHA's program for determining qualifications and eligibility for such In Lieu of Tax Payments, a copy of which was attached to the LIHTC Ordinance (the "PILOT Program"); and

WHEREAS, the Metropolitan Council approved an annual tax abatement not to exceed \$2,500,000; and

WHEREAS, a balance in the amount of annual funding available for LIHTC's is currently \$1,621,594 after accounting for the following projects: Poplar Bend (\$440,861), Riverwood Tower (\$31,616), Chippington Towers (\$405,929).

WHEREAS, Shelby House 1, LP ("Owner") plans to acquire land located at 407 S. 4th Street (the "Project Site"); and

WHEREAS, Owner has proposed that an apartment project consisting of approximately 195 units restricted to individuals and families earning 60% or less of the Area Median Income (AMI) utilizing income averaging, known as Shelby House, be rehabilitated on the Project Site by Owner and operated as a LIHTC Property (the "Project"); and

WHEREAS, the Board of Commissioners of MDHA has approved MDHA's purchase of the Project Site and authorized the Executive Director of MDHA to take all actions on behalf of MDHA to (i) acquire the Project from Owner, (ii) lease the Project Site and the Project to Owner, (iii) enter into an in lieu of tax agreement with the Owner, a copy of which is attached hereto as Exhibit A (the "PILOT Agreement"), and (iv) submit the PILOT Agreement to the Metropolitan Council for approval as required by the Act and the PILOT Ordinance; and

WHEREAS, the PILOT Agreement has been submitted to the Metropolitan Planning Commission which has recommended approval and provided a list of other LIHTC properties in the census tract; and

WHEREAS, MDHA has certified that the Project is consistent with MDHA's Consolidated Plan for Nashville-Davidson County and that there are no other PILOT agreements in effect in the same census tract of the Project Site; and

WHEREAS, those portions of the Project and the Project Site owned by MDHA will be exempt from ad valorem taxation pursuant to Tennessee Code Annotated 67-5-206; and

WHEREAS, the Owner has agreed to make annual PILOT payments payable to the Metropolitan Government in accordance with the attached PILOT Agreement; and

WHEREAS, the value of the project when completed is estimated to be \$19,196,385 based on an income evaluation of the Project and its corresponding tax credits;

WHEREAS, for the purpose of the \$2,500,000 annual cap set forth in the PILOT Ordinance, the difference between the annual in lieu of tax payment payable under the PILOT Agreement and the projected real property ad valorem taxes that would otherwise be payable with respect to the Project in the first tax year after completion of the Project is \$242,296; and

WHEREAS, MDHA's entering into the PILOT Agreement to facilitate the Project is in the interest and welfare of the citizens of the Metropolitan Government and will further MDHA's public purposes by providing financial incentives for construction and rehabilitation of affordable housing units through the federally sponsored low income housing tax credit program resulting in a positive impact on the supply of affordable housing in Davidson County; and

WHEREAS, MDHA has submitted the PILOT Agreement to the Metropolitan Council for approval as required by the Act and the PILOT Ordinance.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1: That the Council of the Metropolitan Government finds that MDHA's entering into the PILOT Agreement and acceptance of payments in lieu of ad valorem taxes with respect to the Project Site and the Project is in furtherance of the MDHA's public purpose of providing for and facilitating an adequate supply of affordable housing and in furtherance of the other public purposes described above.

Section 2: That the PILOT Agreement and the Project comply with the PILOT Ordinance and the PILOT Program.


Section 3: The Council of the Metropolitan Government finds that for the purpose of the \$2,500,000 annual cap set forth in the PILOT Ordinance, the difference between the annual in lieu of tax payment payable under the attached PILOT Agreement and the projected real property ad valorem taxes that would otherwise be payable with respect to the Project in the first tax year after completion of the Project is \$242,296.

Section 4: That the Council of the Metropolitan Government hereby approves the terms of MDHA's PILOT Agreement with the Owner in the form attached as Exhibit A.

Section 5: That this Resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED by Metropolitan

Development and Housing Agency:


Executive Director

APPROVED AS TO AVAILABILITY
OF FUNDS:

DocuSigned by:

79E58C7F7ECT4A2
Finance Director

APPROVED AS TO LEGALITY OF
FORM AND COMPOSITION

DocuSigned by:

19A638091894C
MDHA Attorney

INTRODUCED BY:

Member(s) of Council

PILOT AGREEMENT

THIS PILOT AGREEMENT (the “**PILOT Agreement**”) is made and entered into as of the ____ day of April, 2021, by and between the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY (“**MDHA**”) and Shelby House 1, LP (the “**Owner**”).

WITNESSETH:

WHEREAS, MDHA is a public body and a body corporate and politic organized under the Tennessee Housing Authorities Law, Tenn. Code Ann. §13-20-101, et seq., (the “**Act**”);

WHEREAS, §13-20-104(f) of the Act provides that a metropolitan government may delegate to a housing authority the authority to negotiate and accept in lieu of ad valorem taxes (“**In Lieu of Tax Payments**”) from a party that operates a low income housing tax credit (“**LIHTC**”) property, as such term is defined in the Act (a “**LIHTC Property**”) on property leased by such party from a housing authority;

WHEREAS, MDHA is the housing authority, as defined in the Act, for the Metropolitan Government of Nashville and Davidson County, Tennessee (the “**Metropolitan Government**”);

WHEREAS, by Ordinance No. BL2015-1281 as amended by Ordinance No. BL2016-334 (collectively, the “**PILOT Ordinance**”), the Metropolitan Government (i) authorized MDHA to negotiate and accept In Lieu of Tax Payments from lessees of LIHTC Property owned by MDHA, and (ii) approved MDHA’s program for determining qualifications and eligibility for such In Lieu of Tax Payments (the “**PILOT Program**”);

WHEREAS, Owner plans to acquire land located at 407 S 4th Street, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Project Site**”);

WHEREAS, Owner intends to construct a 195 unit apartment project, known as Shelby House Phase 1, on the Project Site and operate it as a LIHTC Property (the “**Project**”);

WHEREAS, MDHA is authorized by law and has deemed it necessary and desirable to acquire the Project Site for the purpose of facilitating the Project in accordance with the PILOT Program, the PILOT Ordinance and the Act;

WHEREAS, the Board of Commissioners of MDHA approved MDHA’s purchase of the Project Site and authorized the Executive Director of MDHA to take all actions on behalf of MDHA to undertake the following:

- (A) acquire the Project Site;
- (B) enter into a lease with Owner pursuant to which Owner will (i) lease the Project Site and the Project from MDHA with MDHA having the right to cause Owner to purchase the Project Site and the Project from MDHA upon expiration of the tenth (10th) Tax Year, (ii) construct the Project on the Project Site, and (iii) by recorded agreement, commit to operate the Project as a LIHTC Property in accordance with the requirements of the Internal Revenue Code and the Tennessee Housing Development Agency (“THDA”) for a minimum period of fifteen (15) years after the Project is complete (the “**Project Lease**”);
- (C) enter into this PILOT Agreement;
- (D) submit this PILOT Agreement to the Metropolitan Planning Commission to obtain a recommendation of approval or disapproval, as envisioned by the PILOT Ordinance;
- (E) submit this PILOT Agreement to the Metropolitan Council of the Metropolitan Government (the “**Metropolitan Council**”) for approval as required by the PILOT Ordinance; and
- (F) take such other action and execute such other documents as the Executive Director deems necessary or desirable to facilitate construction of the Project and the transactions described above consistent with this PILOT Agreement, the Act, the Project Lease, the Metropolitan Ordinance and the PILOT Program (including MDHA’s application and policies and procedures related thereto).

WHEREAS, MDHA intends to acquire the Project Site from Owner and will concurrently enter into the Project Lease; and

WHEREAS, Owner has agreed to make In Lieu of Tax Payments with respect to the Project as described herein.

NOW, THEREFORE, for and in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties hereto, and as an inducement to Owner to construct the Project and operate the Project as LIHTC Property, MDHA and Owner agree as follows:

1. With respect to Project Site and the real property component of the Project, Owner shall make In Lieu of Tax payments to MDHA who will then remit the payment to the Metropolitan Government, as follows:

(a) The In Lieu of Tax Payments shall be equal to the Applicable Ad Valorem Taxes, as defined below, through and including the calendar year in which the construction of the Project is completed.

(b) Commencing on January 1st of the calendar year following the year in which the Project is placed into service (“**Tax Year 1**”) and each tax year subsequent to the Tax Year 1 (Tax Year 1 and each subsequent tax year being referred to herein as a “**Tax Year**”) through the tenth (10th) Tax Year, in Lieu of Tax Payments shall be as follows:

1	\$10,175
2	\$10,480
3	\$10,795
4	\$11,118
5	\$11,452
6	\$11,796
7	\$12,149
8	\$12,514
9	\$12,889
10	\$13,276

Subject to Section 1(e) below, the In Lieu of Tax Payments shall be fixed and shall not fluctuate with the amount of the assessment for the Project Site or the Project or the tax rate in effect for any Tax Year. The amount of the In Lieu of Tax Payments is approximately equal to \$52 per unit within the Project, with a three percent (3%) annual increase. In Lieu of Tax Payments for each Tax Year shall be paid when due but in any event not later than the date on which the Applicable Ad Valorem Taxes would become delinquent.

(c) After the tenth Tax Year, this Agreement shall expire and Owner shall pay 100% of the Applicable Ad Valorem Taxes.

(d) The term “**Applicable Ad Valorem Taxes**” shall mean any real property ad valorem taxes that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project.

(e) Notwithstanding anything contained herein to the contrary, if THDA or the IRS determines that the Project is not in compliance with LIHTC requirements and is therefore not operated as a LIHTC Property at any time during a Tax Year, and Owner has failed to cure such default within any specified cure period, Owner shall pay 100% of the Applicable Ad Valorem Taxes with respect to such Tax Year.

(f) Notwithstanding anything contained herein to the contrary, Owner shall pay 100% of the Applicable Ad Valorem Taxes for the periods before Tax Year 1 and after Tax Year 10, if the Project Lease is in effect during such periods.

2. Commencing in Tax Year 1 and in each Tax Year subsequent through the (10th) Tax Year, Owner shall provide to MDHA an annual report not later than September 1st of each Tax Year containing the following information:

- (a) The value of the Project, as estimated by the Owner;
- (b) The date and remaining term of the Project Lease;
- (c) The amount of In Lieu of Tax Payments payable in such Tax Year;
- (d) The date in which the Project is scheduled to return to the regular tax rolls and be eligible to pay 100% of the Applicable Ad Valorem Taxes following the tenth (10th) Tax Year;
- (e) A calculation of the Applicable Ad Valorem Taxes for such Tax Year that, but for ownership of the Project Site and the Project by MDHA, would have been due and payable to the Metropolitan Government pursuant to Tenn. Code Ann. § 67-5-102 with respect to the Project Site and the Project;
- (f) A copy of the Owner's most recent Annual Certification as submitted to THDA, certifying compliance with LIHTC requirements; and
- (g) A copy of any monitoring or compliance reports provided by THDA to the Owner during such Tax Year.

3. Commencing with Tax Year 1 and each Tax Year thereafter, Owner shall pay to MDHA a monitoring and reporting fee to be set by MDHA but not to exceed five percent (5%) of the amount In Lieu of Tax Payment due with respect to such Tax Year (the "Annual MDHA Fee"). The Annual MDHA Fee shall be paid not later than fifteenth (15) day of such Tax Year. Unpaid amounts shall bear interest at the rate of four percent (4%) in excess of the average prime rate of interest published from time to time by the Federal Reserve or similar commonly accepted reporting organization if the Federal Reserve ceased to publish such information. Owner's failure to pay the Annual MDHA Fee within thirty (30) days after written notice from MDHA shall constitute a default under this PILOT Agreement in which event Owner shall pay 100% of the Applicable Tax Rate for such Tax Year instead of the In Lieu of

Tax Payment set forth above.

4. Owner's payment of the In Lieu of Tax Payments shall satisfy the requirement in Tenn. Code Ann. § 67-5-206(a) that MDHA pay the Metropolitan Government for services, improvements or facilities furnished by the Metropolitan Government for the benefit of the Project.

5. This PILOT Agreement may not be assigned to any party other than the assignee of the lessee's interest under the PILOT Lease pursuant to an assignment that is made in accordance with the PILOT Lease, including MDHA consent requirements, if any, specified therein. Each permitted assignee shall assume Owner's obligations under this PILOT Agreement concurrent with the assignment of the PILOT Lease.

6. This PILOT Agreement shall be construed in accordance with the laws of the State of Tennessee, and if any one or more of the provisions of this PILOT Agreement shall be held invalid, illegal or unenforceable in any respect, by final decree of any court of lawful jurisdiction, such invalidity, legality or unenforceability shall not affect any other provision hereof, but this PILOT Agreement shall be construed the same as if such invalid, illegal or unenforceable provision had never been contained herein. This PILOT Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

7. This PILOT Agreement is subject to and conditioned upon (i) approval of this PILOT Agreement by the Metropolitan Council as required by the PILOT Ordinance, (ii) Owner's satisfaction of all conditions and requirements imposed by MDHA in connection this PILOT Agreement or the transaction contemplated herein, (iii) MDHA taking title to the Property and entering into a mutually acceptable Project Lease, and (iv) THDA's approval of the Project and allocation of low income housing tax credits, to the extent such approval or allocation has not been received as of the date of this PILOT Agreement.

8. MDHA shall remit all In Lieu of Tax Payments received in connection with the Project and/or the Project Lease to the Metropolitan Government within fifteen (15) days of receipt.

IN WITNESS WHEREOF, the parties hereto have executed this PILOT Agreement as of the day and date first above written.

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY

By: *Jamie C. Hilgner*
Title: DEPUTY EXEC. DIRECTOR

Shelby House 1, LP

By: *Evan Holladay*
Name: Evan Holladay
Title: Manager

FILED WITH THE METROPOLITAN CLERK

Elizabeth Waites

Date

EXHIBIT A

Legal Description

Certain real property in Davidson County, State of Tennessee, described as follows, to wit:

Being a tract of land lying in Nashville, Davidson County, Tennessee, and being more particularly described as follows;

Beginning at an "X" on wall at the intersection of the northerly right-of-way line of Shelby Avenue and the easterly right-of-way line of South 4th Street;

Thence leaving the northerly right-of-way line of Shelby Avenue, with the easterly right-of-way line of South 4th Street, with a curve to the right, along an arc length of 23.51 feet, the central angle of which is 89 deg 48 min 44 sec, the radius of which is 15.00 feet, the chord of which is North 69 deg 47 min 30 sec West, 21.18 feet to an "X" on wall;

Thence North 24 deg 53 min 08 sec West, 259.81 feet to a point;

Thence with a line through the property of Samaritan Recovery Community, Inc., as of record in Instrument Number: 20210212-0020097, at the Register's Office for Davidson County, Tennessee for the following three calls;

- 1) North 65 deg 06 min 51 sec East, 179.14 feet to a point;
- 2) North 24 deg 20 min 34 sec West, 30.27 feet to a point;
- 3) North 65 deg 18 min 08 sec East, 259.54 feet to a point in the southerly right-of-way line of South 5th Street;

Thence with the southerly property line of South 5th Street, South 24 deg 23 min 19 sec East, 116.67 feet to a point;

Thence with a line through the property of Samaritan Recovery Community, Inc. for the following two calls;

- 1) South 65 deg 18 min 08 sec West, 137.31 feet to a point;
- 2) South 24 deg 42 min 38 sec East, 188.95 feet to a point, in the northerly right-of-way line of Shelby Avenue;

Thence with the northerly right-of-way line of Shelby Avenue, South 65 deg 18 min 08 sec West, 285.13 feet to the POINT OF BEGINNING. Containing 102,382 square feet or 2.350 acres more or less.

Being a portion of the same property conveyed to Samaritans, Inc., as of record in Deed Book 4205, Page 340, at the Register's Office for Davidson County, Tennessee and the property conveyed to Samaritan Recovery Community, Inc., as of record in Instrument Number:

20021218-0156176 and Instrument Number: 20061204-0149313, at the Register's Office for Davidson County, Tennessee and closed by Council Bill BL2020-238.

Also, being a portion of the same property described in Quitclaim Deed to consolidate the property from Samaritan Recovery Community, Inc., a Tennessee nonprofit corporation, formerly known as Samaritans, Inc., a Tennessee corporation, to Samaritan Recovery Community, Inc., a Tennessee nonprofit corporation, recorded on February 12, 2021 in Instrument No. 20210212-0020097, in the Register's Office for Davidson County, Tennessee.



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201
615.862.7150
615.862.7209

Memo

To: MDHA
From: Metropolitan Nashville Planning Department
Date: March 15, 2021
Re: Planning Commission Recommendation for PILOT Agreement

This memo fulfills the Planning Commission obligations as outlined in the MDHA Housing Tax Credit PILOT Program General Program Description which was attached as Exhibit A to BL2016-435. The memo consists of two parts.

PART I: RECOMMENDATION ON GENERAL PLAN CONSISTENCY

Project: **Shelby House (Parcel 09303012600)**
474 affordable multi-family residential units and programming space

Zoning: Mixed Use General-Alternative (MUG-A) is intended for a moderately high intensity mixture of residential, retail, and office uses and is designed to create walkable neighborhoods through the use of appropriate building placement and bulk standards. *The site is also located in the Urban Zoning Overlay (UZO).*

Policy: T5 Center Mixed Use Neighborhood (T5 MU) is intended to maintain, enhance, and create high-intensity urban mixed use neighborhoods with a development pattern that contains a diverse mix of residential and non-residential land uses. T5 MU areas are intended to be among the most intense areas in Davidson County. T5 MU areas include some of Nashville's major employment centers such as Midtown that represent several sectors of the economy including health care, finance, retail, the music industry, and lodging. T5 MU areas also include locations that are planned to evolve to a similar form and function.

Project Details:

The site is located at the north west intersection of Shelby Avenue and S 5th Street. The southern property line abuts Shelby Avenue, the eastern property line abuts S 5th Street, the western property line abuts S 4th Street, and the northern property line abuts Alley 263.

The proposed site plan for the redevelopment of the Shelby House would permit the development of a new 75,000 square foot facility for the Samaritan Recovery Community (SRC). Information provided in the application states that the SRC provides substance abuse recovery services, with 99 percent of the SRC clients at or below 35% of poverty level.

The proposed site plan shows three phases of development and a parking deck. The parking deck is located on the eastern portion of the site with frontage along S 5th Street. The proposed site plan shows a phased development. The first phase, at the southern portion of the site includes the renovated SRC Facilities and 195 residential units. The northern half of the site shows Phase 2, with a proposed 281 residential units. The project narrative includes the following programming details: The renovated space will allow 132 residents for SRC rehabilitation services for clients who are 99% below 60% AMI income levels in addition to 474 new construction affordable apartments over the two phases, reserved for families on average 60% of area median income (AMI). In total, the 474 units will serve a wide mix of families and residents making between no income and 80% AMI. In total roughly 600 units will be created across Phase 1 and Phase 2.

Planning Department Analysis: The proposed multi-family space is permitted in the MUG-A zoning district. MUG-A also supports a variety of non-residential uses that could permit the inclusion of rehabilitation services. At the time of building permit review, the proposed site plan will need to meet the requirements of the existing zoning on site. The proposed site plan has been evaluated against the policy, but not against the requirements of Codes.

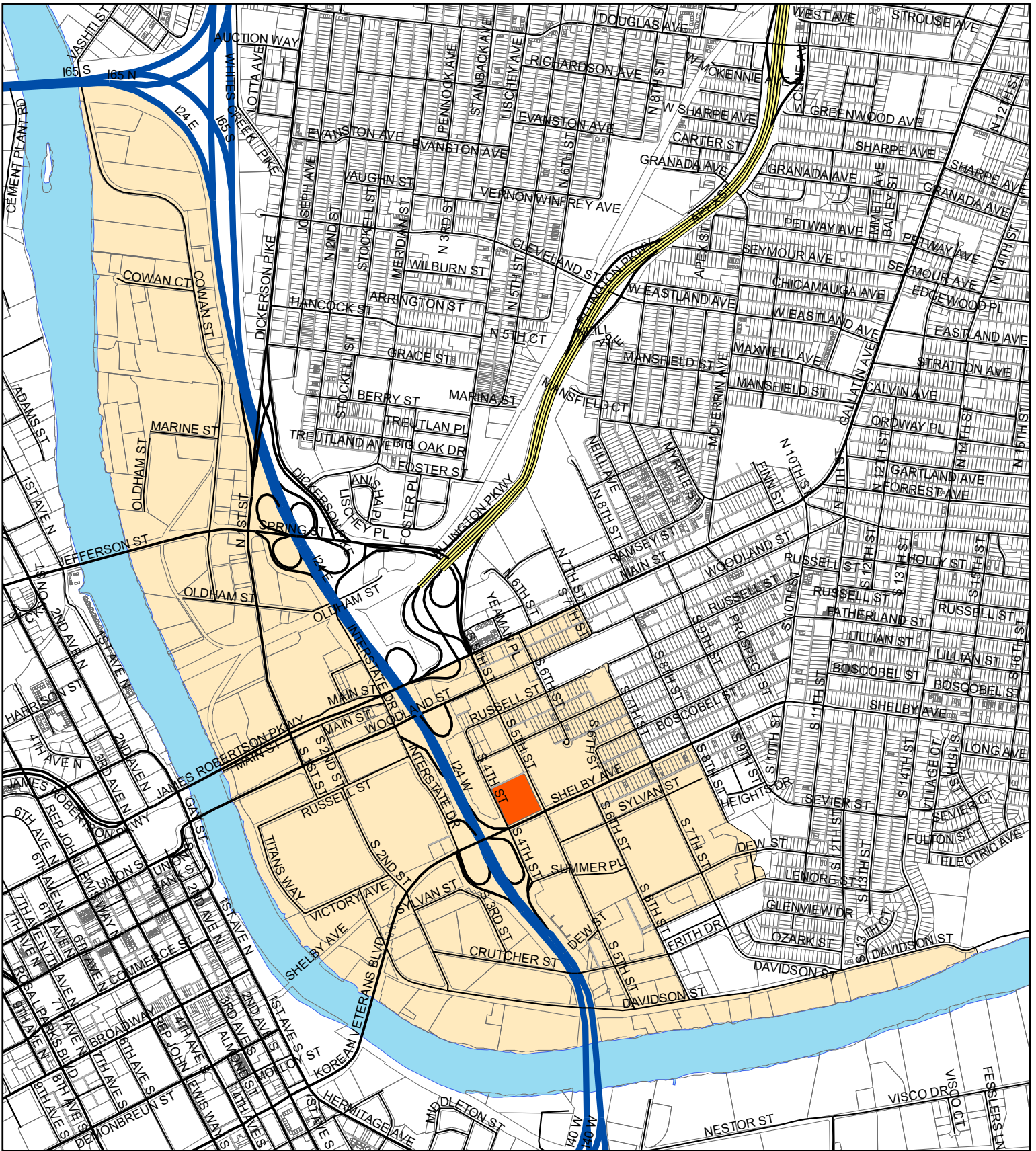
The policy on the site, T5 MU, is intended to maintain, enhance, and create high-intensity urban mixed-use neighborhoods with a diverse mix of residential and non-residential land uses. The policy encourages high density residential development, as shown on the proposed site plan. The policy also encourages the provision of services to meet the daily needs of residents in the neighborhood and within a five to ten minute walk of the area, as well as services that are needed less frequently within a regional service area. Other characteristics of the policy which benefit the project site and are enhanced by the project site include walkability, urban building placement, location along streets, and access to transit.

Planning Determination: The proposed redevelopment of the Shelby House as outlined in the PILOT submittal meets the intent of the policy including establishing high-density residential and providing services to the immediate and larger community. This project is consistent with the NashvilleNext adopted general plan and the Community Character Policies.

PART II: LIST OF FEDERALLY SUBSIDIZED MULTI-FAMILY PROPERTIES WITHIN THE CENSUS TRACT

See attached map.

Federally Subsidized Multi-Family Projects within Census Tract 47037019300



- Low Income Tax Credit Project
- Parcel 09303012600



Certification of Consistency with the Consolidated Plan

U.S. Department of Housing
and Urban Development

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan.
(Type or clearly print the following information:)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

Name of the Federal
Program to which the
applicant is applying: _____

Name of
Certifying Jurisdiction: _____

Certifying Official
of the Jurisdiction
Name: _____

Title: _____

Signature: _____

Date: _____

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