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Memo

To: Mayor and City Council
Gary Edwards, City Administrator

From: Joe Lauber, City Special Economic Development Legal Counsel

Date: March 10, 2016

Re: Outline of Key Points of 50 Highway TIF Contract

The purpose of this memorandum is to provide a summary of the key terms and conditions included in the proposed TIF Contract between the City and the Developer of the 50 Highway TIF Plan. This summary is provided in outline form and highlights the key provisions of the Contract that will provide for the implementation of the TIF Plan by the Developer.

Definitions

- Sections 1-5 of the TIF Contract set forth the rules of interpretation and the major definitions that will apply throughout the TIF Contract; and also identifies the TIF Redevelopment Area as a whole which is the same boundary as the Redevelopment Project Area.

Project Improvements

- Section 6 addresses the Project Improvements. The Project Improvements identified in the TIF Contract include everything necessary to complete the commercial project as proposed in the TIF Plan and open it for business. The Project Improvements are divided into two categories:
 - Private Project Improvements
 - Public Project Improvements
- The Public Project Improvements are: (1) the design and construction of a deceleration lane on 50 Highway to allow right-in, right-out access to and from the west site; and (2) dedication of all right-of-way and easements needed to accomplish the task described in (1) above. (See Exhibit D)

- The Private Project Improvements are construction of approximately 22,000 ft² of restaurant, retail, and/or other commercial facilities, together with all necessary support facilities such as utilities, parking lots, street improvements (not including those described as Public Project Improvements), storm water detention and drainage and other infrastructure improvements appurtenant thereto.
- The Redevelopment Project Cost Budget (Exhibit G) is copied and pasted below:

Redevelopment Project Costs	Estimated Costs	TIF Eligible	CID Eligible
Land Acquisition			
Proposed Redevelopment Area	1,145,000	1,145,000	
Closing Costs	35,000	10,000	
<i>SUBTOTAL</i>	1,180,000	1,155,000	
Sitework/Infrastructure			
1 Excavation/Erosion Control/Embankment	211,400	125,000	
2 Paving/Curbs/Gutters/Sidewalk	723,684	333,464	
3 Stormwater/Retention	473,095	225,000	175,000
4 Water/Sanitary/Sanitary Sewer Liftstation	120,820		95,820
5 Turf/Landscaping	124,980	75,000	
6 Lighting/Enclosures/Site Signage	93,400	45,000	
7 MoDOT Deceleration Lane	72,061		40,892
8 Electrical/Gas/Phone	95,000	50,000	
9 Project Management & Administration	134,011	50,000	
<i>SUBTOTAL</i>	2,048,451	903,464	311,712
Building Improvements			
Building Shell Costs by Developer*	1,944,000		
Improvements by Third Parties**	3,300,000		
Project Management & Administration (Developer)	97,200		
Project Management & Administration (Third Party)	165,000		-
<i>SUBTOTAL</i>	5,506,200	-	-
Soft Costs			
Legal (incl. City legal)/Consulting/Accounting	125,000	75,000	
Blight Study	10,000	5,000	-
Architectural/Engineering/Surveying	350,000	100,000	-
Geotechnical Studies/Soils Report/Environmental	85,000	50,000	-
Bonds/Permits/Fees	125,000	-	-
Commissions on Pad Sales/Leases	250,000	-	-
<i>SUBTOTAL</i>	945,000	230,000	-
Financing Costs			
Bank Charges & Financing Fees	75,000	-	-
Construction Interest [^]	250,000	-	-
<i>SUBTOTAL</i>	325,000	-	-
Miscellaneous Costs			
Developer's Fee	275,000	-	-
Contingency	849,965	-	-
<i>SUBTOTAL</i>	1,124,965	-	-
TOTAL	\$ 11,129,616	\$ 2,288,464	\$ 311,712

Redevelopment Schedule

- Section 7 of the TIF Contract establishes the expected schedule for the Project. This schedule is included as Exhibit E to the TIF Contract, but is reproduced here for your convenience.

REDEVELOPMENT PROJECT	ANTICIPATED COMMENCEMENT	ANTICIPATED COMPLETION
1	July 1, 2016	August 1, 2017

- If the Developer does not complete its projects on time, the City Council are authorized to order the Developer to appear before them at a hearing to show cause why the TIF Contract and TIF Plan should not be terminated.

Design and Construction of Project Improvements

- Sections 8-9 address design and construction of the Project improvements.
- Project Improvements
 - Public
 - Must be constructed in accordance with legal requirements. Includes payment of prevailing wages, if applicable. Developer must require contractors to have on-site workers complete OSHA construction safety training, comply with applicable immigration law requirements, and bidding requirements for public works projects, if required by law. Developer must indemnify City for any liability incurred as a result of Developer’s failure to comply with legal requirements.
 - Developer has to submit construction schedule to City for approval and then adhere to it.
 - Developer must get City approval during preliminary design phase.
 - Developer must obtain all rights of way necessary for the Public Project Improvements. City will assist Developer with right of way acquisition if necessary, including consideration of the use of eminent domain.
 - City assistance is unlikely in this case because the Developer has already purchased the property adjacent to the 50 Highway right-in, right-out improvement.
 - Developer is responsible for the cost of relocating existing utilities that are not paid for by the utility company.

- Developer must allow City to inspect the Public Project Improvements to ensure that standards are being satisfied.
 - The Public Project Improvements must be dedicated to MoDOT or the City, as appropriate, upon completion and acceptance.
 - Developer must carry insurance for its work on the Public Project Improvements.
 - Developer must comply with the insurance requirements set forth in the City's Ordinances and policies, as amended from time to time.
- Private
 - Developer must seek City approval on Land Use Approvals (i.e. Preliminary Plats, Site Plans, etc.).
 - Developer must construct, or cause to be constructed, the estimated square footage proposed in the TIF Plan.
 - Developer's responsibility is the illustrated building footprints in the western portion of the West Parcel as depicted in Exhibit B-3 of the redevelopment agreement.
 - The remaining portions of the Private Improvements will be completed by third parties.
 - The Developer is highly motivated by the pay-as-you-go financing method to ensure that these third parties complete the remaining Private Improvements and begin generating tax revenues quickly.

Control and Completion of Project Improvements

- Section 10 addresses control of the redevelopment project and provides a process for determining when the Developer has completed its obligations under the TIF Contract.
- Control
 - Subject to all legal requirements, the Developer will have complete control over the Private Project Improvements.
 - Developer needs to dedicate all necessary utility easements or right of way not otherwise dedicated to MoDOT or the City at no charge.
 - Developer must negotiate in good faith with MoDOT for necessary road right of way needed for the Public Project Improvement.

- Developer must enter into long-term ground lease with the CID for CID-eligible portions of the Public Project Improvements, not otherwise dedicated to the City or MoDOT.
- As the Public Project Improvements become sufficiently complete to be functional and used as intended, the Developer may request the City to issue a Certificate of Substantial Completion, which is a prerequisite for obtaining certificates of occupancy for the structures within the development. These certificates may be issued for distinct subsets of the Public Project Improvements as the subset is completed.
- The Developer is required (and must contractually obligate his tenants) to maintain the Private Project Improvements in the same manner as similar commercial developments and must keep the development in good condition.
- Certificate of Completion and Compliance
 - Section 12 provides that once the Developer completes all of the Project Improvements, he may request the City to issue a Certificate of Completion and Compliance. This certificate indicates that the Developer has satisfied his obligation for construction of the Public and Private Project Improvements in accordance with the TIF Contract and has otherwise materially complied with all other provisions of the TIF Contract. These “final” certificates will be recorded with the Pettis County Recorder of Deeds for each parcel affected.

Project Financing

- The Developer will use private funds to pay for the Private Project Improvements and the related Public Project Improvement. The private funds will be primarily in the form of debt incurred by the Developer or third parties (tenants), but also may include equity investment by the Developer.
- CID Financing (Section 17)
 - The Petition for establishment of the Galaxy West Community Improvement District was filed with the City Clerk on December 18, 2015. The City Council held a public hearing on the establishment of the CID on February 16, 2016.
 - The CID will impose a 1% sales tax, to be collected by the Missouri Department of Revenue.
 - The City, the Developer and the CID must enter into a CID Cooperative Agreement that allows the City to approve budgets, receive CID sales tax revenues, and administer the CID. The Cooperative Agreement must also cause the CID Board to pledge the non-captured CID revenues to pay Reimbursable Project Costs. The CID Cooperative Agreement has been negotiated and also will be on the agenda for the Council’s consideration at the March 21 meeting.

Conditions Precedent to Developer's and City's Duties

- Sections 18 and 19 address conditions that must be satisfied prior to the Developer or the City having to do the things that are required of either of them under the TIF Contract.
 - Conditions Precedent to Developer's Duties (Section 18)
 - Acquisition by Developer of all real property within the TIF Redevelopment Area.
 - Execution of the CID Cooperative Agreement
 - Imposition of the CID Sales Tax
 - City approval of zoning, subdivision, and permit applications
 - Conditions Precedent to City's Duties (Section 19)
 - Same as above.

PILOTs, EATs, and the Special Allocation Fund

- Sections 20-23 address statutorily required provisions related to the measurement, collection, and disbursement of PILOTs and EATs.
- These sections also include provisions regarding the City's establishment and maintenance of the special allocation fund and how money collected into that fund will be disbursed to pay for Reimbursable Project Costs.

Certification of Reimbursable Project Costs

- Section 25 addresses the procedure by which the Developer will submit requests for certification that project costs incurred are eligible for reimbursement in accordance with the TIF Plan and the TIF Contract.
- This process will be administered by City Staff, who in turn will receive an administrative fee of 1% of TIF revenues to cover the costs of additional City resources needed to administer the TIF. The City's documented costs of third party assistance are also reimbursable up to 5%.
- Developer can apply cost savings in one cost category to pay for cost overruns in another cost category so long as the Developer does not: (a) exceed the reimbursement cap (thirty-four percent (34%) of the total actual costs paid by the Developer (not including Third Party costs); provided that the total aggregate amount of Reimbursable Project Costs shall not exceed Two Million Six Hundred Thousand One Hundred Seventy-Six Dollars (\$2,600,176)); or (b) transfer to line items that are not approved as Reimbursable Project Costs.
- Payment of interest expenses is covered in subsection D of this section.

Reimbursement Adjustments

- Section 28 addresses what happens if the project is significantly more successful than projected. This is designed to allow the City and other taxing jurisdictions to share in some of the Developer's success
- Pad site sales are projected to be an aggregate of \$2,500,000. If aggregate proceeds for actual sales is greater than 110% of the projected \$2,500,000 of sales proceeds, then the reimbursable Project Costs cap shall be reduced by 34% of the amount of the excess.

Tenant Approvals and Prohibitions

- Section 29 addresses the types of businesses that may be located within the development. While the Developer has complete control over the leasing and sales within the development, the City prohibits certain types of business and is retaining the right to review and approve certain tenants for the development.
 - The City must first approve any relocation of businesses that already exist within the City, unless the business intends to operate its existing business for more than eighteen (18) months after opening a new location within the new development. Relocation Penalty Payment shall be due for violations of this term—the Developer would have to pay the City three times the amount of all retail sales tax revenue the relocated business would have produced at its prior location.
 - The City must first approve any surplus stores, second hand stores, thrift shops, or flea markets.
 - The City must first approve any gasoline stations and/or convenience stores within the development.
 - The City must first approve any auto repair businesses, oil change businesses, or other businesses that include a garage door as a primary feature of its facility.
 - Unless approved by the City, non-sales tax generating businesses (including those generating less than \$50 per square foot of retail sales) utilizing more than a cumulative total of twenty percent (20%) of finished first floor space in the Redevelopment Area are prohibited.
 - The City must first approve any adult entertainment establishments, pawn shops, payday/title loan businesses, e-cigarette or “vaping” shops, tattoo or piercing parlors, rental stores, and retail sales of LP gas.

Sale or Disposition of Project Property

- Section 31 addresses the sale or other transfer of all or any portion of any property interest within the boundaries of the Redevelopment Area.
- Other than sale of specific building sites to pad or anchor users, the Developer is not allowed to sell the project and assign its obligations to another entity without City approval.
- Developer is allowed to assign its rights to receive reimbursement for Reimbursable Project Costs—this is typically required in the Developer's private financing.

- If the Developer desires to sell the project and assign its obligations to another entity, the City must find that the purchaser has all of the qualifications and financial responsibility necessary and adequate to fulfill the obligations of the Developer as outlined in the TIF Contract.

Standard TIF Contract Obligations

- The remaining sections of the Contract primarily deal with generally standard contract obligations of a developer on TIF projects (e.g., progress reports, compliance with applicable laws, recording of the document, notices, indemnification, insurance, etc.) and the mechanics of capturing and accounting for TIF revenues.