

January 22, 2020

WHEREAS, the City recognizes the importance of its role in local economic development; and

WHEREAS, on June 22, 2005, City Council held a public hearing and authorized the establishment of Tax Increment Financing Reinvestment Zone Number Twelve (the "Deep Ellum TIF District") in accordance with the Tax Increment Financing Act, as amended (V.T.C.A. Tax Code, Chapter 311, hereafter the "Act") to promote development and redevelopment in the Deep Ellum area through the use of tax increment financing by Resolution No. 05-1971; Ordinance No. 26043, as amended; and

WHEREAS, on April 12, 2006, City Council authorized the Project Plan and Reinvestment Zone Financing Plan for the Deep Ellum Tax Increment Financing ("TIF") District by Resolution No. 06-1077; Ordinance No. 26304, as amended; and

WHEREAS, on September 10, 2014, City Council held a public hearing and amended the Project Plan and Reinvestment Zone Financing Plan for the Deep Ellum TIF District by Resolution No. 14-1519; Ordinance No. 29469; and

WHEREAS, on December 3, 2019, the Deep Ellum TIF District Board of Directors reviewed the proposed The Stack Deep Ellum Project and recommended City Council authorization of a development agreement with HW Commerce Office LP and/or its affiliates, in an amount not to exceed \$2,576,125.00; and

WHEREAS, to further implement the Deep Ellum TIF District Project Plan and Reinvestment Zone Financing Plan, the City desires to enter into a development agreement with HW Commerce Office LP and/or its affiliates in an amount not to exceed \$2,576,125.00, payable from current and future Deep Ellum TIF District Funds ("TIF Subsidy"), in consideration of The Stack Deep Ellum Project on property currently addressed at 2700, 2712, and 2718 Commerce Street.

Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Manager is hereby authorized to execute a development agreement with HW Commerce Office LP and/or its affiliates ("Developer") in an amount not to exceed \$2,576,125.00, payable from current and future Deep Ellum TIF District Funds, in consideration of The Stack Deep Ellum Project ("Project") on property currently addressed at 2700, 2712, and 2718 Commerce Street in Tax Increment Financing Reinvestment Zone Number Twelve (Deep Ellum TIF District), approved as to form by the City Attorney, thereby confirming the Deep Ellum TIF District Board of Director's recommendation of the dedication of future tax increment revenues, in an amount not to exceed \$2,576,125.00 as shown in **Exhibit A**.

January 22, 2020

SECTION 2. That the facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct.

SECTION 3. That the City Manager is hereby authorized to increase appropriations in an amount not to exceed \$2,576,125.00 in the Deep Ellum TIF District Fund, as referenced in SECTION 4.

SECTION 4. That the Chief Financial Officer is hereby authorized to disburse funds to HW Commerce Office LP and/or its affiliates from the Deep Ellum TIF District Fund (subject to current and future appropriations from tax increments), as follows:

Deep Ellum TIF District Fund
Fund 0056, Department ECO, Unit W497, Object 4550
Activity DETI, Program DETIF0007
Encumbrance/Contract No. CX-ECO-2020-00012403
Vendor VS100637, in an estimated amount of \$ 425,000.00

Deep Ellum TIF District Fund
Fund 0056, Department ECO, Unit W497, Object 4599
Activity DETI, Program DETIF0007
Encumbrance/Contract No. CX-ECO-2020-00012403
Vendor VS100637, in an estimated amount of \$ 505,625.00

Deep Ellum TIF District Fund
Fund 0056, Department ECO, Unit W497, Object 3072
Activity DETI, Program DETIF0007
Encumbrance/Contract No. CX-ECO-2020-00012403
Vendor VS100637, in an estimated amount of \$1,645,500.00

For a total amount not to exceed \$2,576,125.00

Funds may be shifted from one category to another as long as the total amount of TIF funding does not exceed \$2,576,125.00, as shown in **Exhibit A**.

SECTION 5. That the Developer shall design, fund and/or construct The Stack Deep Ellum Project and related public infrastructure improvements on and adjacent to property currently addressed at 2700, 2712, and 2718 Commerce Street in the Deep Ellum TIF District as described in SECTION 7 and in substantial conformance with **Exhibit B**.

January 22, 2020

SECTION 6. That nothing in this resolution shall be construed to require the City to approve payment from any source of City funds other than the Deep Ellum TIF District Fund and/or Tax Increment Bonds. Any funds expended under the development agreement that remain unpaid upon termination of the Deep Ellum TIF District, due to lack or unavailability of Deep Ellum TIF District Funds, shall no longer be considered project costs of the Deep Ellum TIF District or the City, and the obligation of the Deep Ellum TIF District to pay Developer shall automatically expire.

SECTION 7. That in addition to the conditions set out in the sections above, the development agreement is hereby expressly made subject to all of the following contingencies which must be performed or occur:

- A. Developer shall invest and document a minimum of \$73,800,000.00 in private improvements in the Project, including site preparation and construction hard costs (excluding site acquisition/contribution, soft costs, financing, leasing, and marketing) (**Exhibit D**). The Developer shall provide verification of all expenditures utilized to satisfy the minimum private investment requirement. Costs incurred prior to November 15, 2019, the final execution date of the Letter of Intent, shall not be eligible to count toward the minimum private investment.
- B. The Project shall include a minimum of 185,000 square feet of office space, of which a minimum of 50% must be occupied prior to TIF payment.
- C. The Project shall include a minimum of 18,000 square feet of leasable retail space, of which a minimum of 50% must be occupied prior to TIF payment.
- D. Developer shall obtain a building permit by March 31, 2020. A demolition or foundation permit may constitute meeting the obligation of this requirement.
- E. Construction of the Project, including associated public improvements/streetscape improvements, shall be substantially complete by March 31, 2022 as evidenced by letter of acceptance, certificate of completion, or similar documentation from the City.
- F. The proposed management entity for the Project must be submitted at least three months prior to Project completion for review by the Director of the Office of Economic Development to consider acceptance, based on the management entity's comparable experience managing other commercial or mixed-use projects, such approval not being unreasonably withheld.
- G. Developer shall execute an Operating and Maintenance Agreement for all non-standard TIF eligible improvements prior to TIF payment. Compliance with the executed Operating and Maintenance Agreement shall be required of all future Developers for the entire 20-year period of the Operating and Maintenance Agreement. If Developer chooses to forgo the TIF funding, Developer shall remain responsible for the maintenance of the non-standard public improvements through the term of the Operating and Maintenance Agreement. The maintenance obligations under the development agreement (and the Operating and Maintenance Agreement) is assignable to a new Developer of all or a portion of the Property or to the manager of a public improvement district or a property Developer's association with the written consent of the Director, which consent shall not be unreasonably withheld.

SECTION 7. (continued)

- H. The Developer shall make a good faith effort to comply with City's Business Inclusion and Development goal of 25% participation by certified Minority/Women-owned Business Enterprises for all hard construction expenditures, excluding tenant finish-out not funded by Developer, of the Project (i.e. public and private improvements) and meet all reporting requirements. See Exhibit C.
- I. Until the Project has passed final building inspection and all required paperwork for TIF payment has been submitted, Developer shall submit to the Office of Economic Development quarterly status reports (Exhibit E) for ongoing work on the Project as well as public improvements. Such status reports will be due no later than thirty (30) calendar days after the end of each calendar quarter after the City Council approval date, if any.
- J. The Urban Design Peer Review Panel ("UDPRP") is an independent group of professional designers selected by the City Manager with expertise in architecture, landscape architecture, engineering, and urban planning. Review by the UDPRP is required for all projects requesting TIF funding assistance. Following a formal review of Developer's initial Project submittal on February 22, 2019, the UDPRP provided urban design advice for the Project (thereby satisfying the initial requirement for UDPRP review related to Developer's application for TIF funding assistance). Developer shall construct the Project (public and private improvements) in substantial conformance with the conceptual site plan and conceptual renderings approved by the City's Department of Planning and Urban Design ("PUD") as shown in Exhibit B. The Director of the Office of Economic Development may authorize minor modifications to the conceptual site plan and conceptual renderings which may arise during the development process due to local, state, or federal regulatory requirements so long as the minor modifications are in substantial conformance with the spirit and intent of the UDPRP advice. Modifications to the conceptual site plan and conceptual renderings, should the Director determine they are material, shall require review by the UDPRP. As the final step in the urban design process and prior to permit approval, Developer shall provide a set of permit drawings for the Project to PUD for internal review and approval to ensure compliance with UDPRP recommendations and responses. PUD shall complete the review of the permit drawings within ten (10) business days of Developer's submission.
- K. Upon completion, the Project shall be consistent in general form, material and character with the conceptual design for both the private development and public improvements approved by the Deep Ellum TIF Board and City Council.

SECTION 7. (continued)

- L. Developer shall submit to the City a written plan describing (i) how Developer shall use and document best efforts to recruit and hire residents of the city of Dallas and (ii) how Developer shall cause all tenants of the retail/commercial spaces to use and document best efforts to recruit and hire residents of the city of Dallas. At a minimum, the written plan shall describe how Developer and tenants will target local recruitment through local advertisement, community outreach, local engagement, participation in local job fairs, and/or coordination with local hiring sources. The plan shall be subject to approval by the Director of the Office of Economic Development to ensure that employment opportunities are targeted to Dallas residents, and that reasonable efforts were made to promote the hiring of neighborhood residents for any new jobs created.
- M. Developer shall not appeal the property's Dallas Central Appraisal District valuation below a minimum of \$72,000,000.00 for a period of ten (10) years from construction completion.
- N. Developer shall own and control the property and the Project until a certificate of occupancy, defined in Section 7E above, or other equivalent evidence of completion has been issued by the City for the Project.
- O. The Director of the Office of Economic Development may authorize minor modifications to the Project including a reduction of the minimum square footage requirement of less than 10%, development mix and/or an extension of the Project deadlines up to 12 months.

SECTION 8. That Developer shall work to minimize Project construction impacts on adjacent businesses and traffic circulation and shall abide by the following conditions unless specifically modified by mutual agreement of Developer and the City:

- A. Developer shall ensure that the Project's General Contractor ("GC") and all GC's subcontractors arrange for remote parking and/or shuttling to construction site. With the exception of the Project site, no unreserved, accessible short-term parking spaces (on-street or parking lots/garages, whether publicly or privately owned) within 1,800 feet from the Project site may be used as construction parking. Developer has submitted a satisfactory remote parking/shuttling plan, with accompanying construction parking map. Any changes to the remote parking/shuttling plan must be reviewed and approved by the Office of Economic Development, not to be unreasonably withheld.
- B. Developer shall abide by the requirements of the Dallas City Code, as well as all applicable state, federal and local laws, codes and regulations.
- C. Commerce Street is to remain open to traffic, with the exception of limited periods when closure is necessary for crane assembly/disassembly, utility construction, and street construction.

SECTION 8. (continued)

- D. Any necessary closure of Commerce Street for construction as listed above will be limited to Monday through Wednesday between the hours of 10:00 a.m. and 2:00 p.m.
- E. Large crane operations that require street closure shall be scheduled to limit street closures to no more than three consecutive days, or before 11:00 a.m. on any other day.
- F. Construction hours shall be limited to normal hours allowed by the Dallas City Code, but construction shall cease on weekdays by 7:00 p.m. and Saturday by 5:00 p.m. Limited exceptions to these hours may be approved by mutual consent and with reasonable advanced notice.
- G. Reasonable advanced notice shall be given of utility shut off, which shall be limited to short periods between 7:00 a.m. and 11:00 a.m.
- H. To the extent permitted by applicable law, Developer shall post signage, along with road closure and construction signage, detailing alternative public parking options.
- I. Developer shall establish security measures such as fences and guards and shall clear trash and debris during construction. Developer shall promptly repair any damage caused to the surrounding streets by Project related construction activity.
- J. Developer shall locate dumpsters behind construction fencing on private property to minimize visibility.

SECTION 9. That payment of the TIF Subsidy is subject to the availability of tax increment. If the appraised value of the property in the Deep Ellum TIF District remains constant or decreases in value from the base year value, the TIF Subsidy for that year may be reduced or unpaid due to the lack of available increment. The TIF Subsidy shall be paid solely from the Tax Increment Fund, if and when tax increments are received and available for such purpose, during the life of the Deep Ellum TIF District (including collection of the 2027 tax year increments in calendar year 2028), subject to the limitations on repayment of the TIF Subsidy provided in the development agreement.

SECTION 10. That assuming all other conditions for payment have been met, the City of Dallas will administer the payment of the TIF Subsidy for the Project annually, pursuant to the Deep Ellum TIF District Increment Allocation Policy attached hereto as **Exhibit F**.

SECTION 11. That prior to completing all obligations in SECTION 7 required to begin receiving payment of the TIF Subsidy, the Developer may assign the TIF development agreement only to a direct affiliate with the Director of the Office of Economic Development prior approval, but in no case shall this Section supersede Section 7N.

SECTION 11. (continued)

After completing all obligations in SECTION 7 required to begin receiving payment of the TIF Subsidy, an assignment of the obligations of the TIF development agreement, in whole or in part, shall require the written approval of the Director of the Office of Economic Development (which approval shall not be unreasonably withheld). If the Director, in his or her sole discretion, allows the Developer to assign the TIF development agreement, however, the terms and conditions of the TIF development agreement shall be binding upon the successors and assigns. Such assignment shall not be effective unless or until the assignee assumes and expressly agrees to perform, observe, and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Developer under the TIF development agreement from and after the date of assignment.

Any receivables due under the TIF development agreement may be assigned and transferred by Developer or assignee upon providing the Director of the Office of Economic Development with written notice within 30 calendar days of such assignment. Developer and assignee have the right, from time to time, to collaterally assign, pledge, grant a lien or security interest in, or otherwise encumber any of their respective rights, title, interest under the TIF development agreement for the benefit of their respective lenders without the consent of, but with written notice to, the Director of the Office of Economic Development. The collateral assignment, pledge, grant of lien or security interest, or other encumbrance shall not, however, obligate the lender to perform any obligations or incur any liability under the TIF development agreement unless the lender agrees in writing to perform such obligations or incur such liability.

Upon dissolution or termination of the assignee, however, the terms and conditions of the TIF development agreement shall revert to the Developer.

SECTION 12. That prior to or contemporaneously with the execution of the TIF development agreement, Developer shall provide evidence of binding commitments of all capital sources necessary to complete the Project.

SECTION 13. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.