

June 12, 2024

**WHEREAS**, the City of Dallas ("City") recognizes the importance of its role in local economic development and the public purposes of fostering economic growth; and

**WHEREAS**, investment decisions made by business owners, developers, and property owners are often significantly influenced by a municipality's ability to provide economic development incentives; and

**WHEREAS**, on November 6, 2012, Dallas voters approved a \$642 million general obligation bond program, of which \$55 million was included in Proposition No. 3 for the purpose of providing funds for the following public purpose, to-wit: promoting economic development in the Southern area of the city and promoting economic development in other areas of the city in connection with transit-oriented development, through planning, designing, constructing, improving, extending and expanding public street, utility, and other infrastructure facilities, including the acquisition of land thereof, and through funding the city's programs for economic development including the acquisition of improved and unimproved properties, the demolition of existing structures, making loans and grants of bond proceeds and otherwise providing assistance for private commercial, industrial, retail, residential and mixed-use development; and

**WHEREAS**, on May 26, 2021, the City Council adopted an Economic Development Policy 2022-2032 ("Policy") by Resolution No. 21-0927, as amended; and

**WHEREAS**, on January 25, 2023, the City Council adopted a revised Policy to clarify action items for City staff, align the action items with ongoing plans, programs, policies, and other initiatives at the City, designate lead City departments to implement the action items, and consolidate and prioritize such action items by Resolution No. 23-0220; and

**WHEREAS**, on January 25, 2023, in furtherance of the new Policy goals, the City Council also authorized a new Economic Development Incentive Policy ("Incentive Policy") effective for the period January 1, 2023 through December 31, 2024, by Resolution No. 23-0220, as amended; and

**WHEREAS**, on June 27, 2023, the Dallas Public Facility Corporation ("PFC") Board of Directors approved the negotiation and execution of a term sheet with Savoy Equity Partners, LLC for The Cedars, a mixed-income, multi-family development to be located at 2000 and 2220 South Ervay Street; and

**WHEREAS**, on September 13, 2023, the City Council authorized the Dallas PFC to (1) acquire, develop, and own The Cedars, a mixed-income, multi-family development to be located at 2000 and 2220 South Ervay Street; and (2) enter into a seventy-five-year lease agreement with Savoy Equity Partners, LLC or its affiliate for the development of the project by Resolution No. 23-1221 ; and

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**WHEREAS**, The Cedars Project includes two separate mixed-income multi-family developments: (1) Marcus at Cedars, a 4-story multi-family building with 76 mixed-income units at 2000 South Ervay Street; and (2) Power & Light at Cedars, a 5-story multi-family building with 310 mixed-income units; and

**WHEREAS**, in the months following the City Council's approval of the Dallas PFC tax exemption for The Cedars Project, Savoy Equity Partners, LLC was informed by the City that the existing off-site wastewater infrastructure in Ervay Street could not support the Power & Light portion of The Cedars Project; and

**WHEREAS**, the scope of the Project & Light Redevelopment Project was changed to include the requirement of Savoy Equity Partners, LLC to design and construct an off-site wastewater infrastructure improvement (approximately 3,000 linear feet located in Ervay Street generally from Kelly Avenue to Gano Street) that will provide the capacity necessary to support the Project as well as future development activity within the 56-acres sewershed (see **Exhibit A**); and

**WHEREAS**, inclusion of the unanticipated off-site wastewater infrastructure cost rendered the Power & Light Redevelopment Project financially infeasible, even with the Dallas PFC tax exemption. As a result, Developer, applied to the City's Office of Economic Development ("OED") for an additional City incentive to close the Project's financing gap created by the off-site wastewater infrastructure requirement; and

**WHEREAS**, on May 13, 2024, a Letter of Intent ("LOI") for the proposed economic development grant agreement, as described herein, was executed by and between Low Ervay, LLC and/or its affiliate ("Developer") and the City's Director of the Office of Economic Development ("Director") securing the commitment of (1) new ground-up construction of a 5-story, 310-unit mixed-income multi-family building with the following affordability: (a) 40% of the units reserved for households earning less than 80% Area Median Income ("AMI"); (b) 10% of the units reserved for households earning less than 60% AMI; and (c) 50% of the units at market rate. (2) approximately 415 on-site parking spaces (approximately 390 structured parking spaces and 25 on-site surface parking spaces); (3) rehabilitation of the historic Power & Light building at 1723 Kelly Avenue into a residential amenity center; and (4) removal and replacement of an undersized wastewater infrastructure line located in Ervay Street generally from Kelly Avenue to Gano Street (the "Project"); and

**WHEREAS**, Savoy Equity Partners, LLC, is an affiliate of Low Ervay, LLC; and

**WHEREAS**, the City finds that the Project will not occur without this offer of an economic development incentive from the City; and



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**SECTION 3.** (continued)

Economic Development and Housing Development Program Fund Fund 4U52, Department ECO, Unit X114, Activity ECNR Object 4560, Program POWERLIGHT Encumbrance/Contract No. CX ECO-2024-00025106	\$ <u>49,790.00</u>
Total amount not to exceed	\$1,854,995.00

**SECTION 4.** That the Grant Agreement shall include the following specific terms and conditions:

- A. Deadline for Project Financing and Execution of Grant Agreement. Developer shall close construction financing for the Project prior to or contemporaneously with the City's execution of the Grant Agreement. Developer shall provide sufficient and satisfactory evidence, in the Director's sole discretion, of binding commitments of all capital sources necessary to deliver the Project. Developer shall execute the Grant Agreement by December 31, 2025.
- B. Dallas PFC Final Approval. Developer shall receive final approval of The Cedars project (inclusive of the Power & Light Mixed-Income Redevelopment Project) by the Dallas PFC Board prior to the City's execution of the Grant Agreement.
- C. Property Transfer (Dallas PFC). Developer shall transfer the property that will be developed as part of The Cedars project (inclusive of the Power & Light Project parcel) to the Dallas PFC and execute the Regulatory Agreement and Declaration of Restrictive Covenants ("Regulatory Agreement") and ground lease with the Dallas PFC prior to the City's execution of the Grant Agreement. Developer shall record the executed Regulatory Agreement and Memorandum of Ground Lease as required by the PFC in the Official Real Property Records of Dallas County and submit a copy of the filed and stamped document to OED staff prior to the City's execution of the Grant Agreement.
- D. Required Project Components. The Project shall include the following required project components ("Required Project Components"):
  - i. substantial rehabilitation of the entire existing Power & Light Building to house a minimum of 2,000 square feet of tenant amenity space;
  - ii. new ground-up construction of a 5-story residential building with a minimum size of 275,000 gross square feet (inclusive of the parking garage) and a minimum of 400 on-site parking spaces;

**SECTION 4.** (continued)

- iii. on-site improvements (e.g. grading; utilities; paving; drainage; lighting; landscaping; signage; etc.) necessary to complete the components in Section 4.D(i) and Section 4.D(ii); and
  - iv. off-site infrastructure improvements necessary to complete the components in Section 4.D(i), Section 4.D(ii) and Section 4.D(iii), including required removal and replacement of an existing undersized off-site wastewater line located in Ervay Street, generally from Kelly Avenue to Gano Street with approximately 3,000 linear feet of new wastewater line ranging from 10” to 21” in size.
- E. Building Permit Deadline. Developer shall obtain a building permit from the City by December 31, 2025. A foundation permit may constitute satisfaction of this requirement. A demolition permit or grading permit does not constitute satisfaction of this requirement.
- F. Substantial Completion Deadline. Developer shall cause the construction of the Required Project Components described in Section 4.D to be substantially completed by December 31, 2028 as evidenced by certificate(s) of occupancy, letter(s) of acceptance, certificate(s) of substantial completion, and/or similar documentation issued by the City (“Substantial Completion”).
- G. Required Minimum Private Investment by Developer. Developer shall invest (or cause to be invested) and provide documentation evidencing a minimum of \$69,000,000.00 in acquisition costs and real property improvements, including the design, engineering and construction of on-site and off-site improvements and building improvements, including furniture, fixture and equipment costs associated with the Project by December 31, 2028. See **Exhibit B** for private investment expenditures eligible to be counted toward the minimum private investment requirement. Construction management costs may be included in the private investment calculation if the construction management services are performed by an independent and unaffiliated third-party. Construction management costs must be evidenced by invoices with detailed descriptions of services performed. Developer fees, legal fees, marketing fees, financing fees, leasing commissions, carrying costs, reserves, operating deficits through stabilization and other similar costs shall not be included in the private investment calculation. With the exception of acquisition costs, professional fees, environmental assessments, and other eligible due diligence costs, no expenditures made by Developer prior to execution of the LOI for the Project may be included in the private investment calculation.

**SECTION 4.** (continued)

H. Affordability (as specifically required by the Grant Agreement). The Project shall include a minimum of 300 residential units, of which a minimum of 40% of the units shall be set aside and leased solely to those households

earning a maximum of 80% of the AMI and a minimum of 10% of the units shall be set aside and leased solely to those households earning a maximum of 60% of AMI for a minimum of 15 years ("Grant Agreement Affordability Period") (although anticipated to be set aside for up to 75 years pursuant to the PFC's Regulatory Agreement and Declaration of Restrictive Covenant).

The units subject to affordability requirements pursuant to the Grant Agreement shall be identical in finish-out and materials as market rate units, shall not be segregated or concentrated in any one floor or area of the Project, and shall be dispersed throughout all of the residential portions of the Project. Prior to the execution of the Grant Agreement, the affordability provisions specifically required by the Grant Agreement and captured in the Regulatory Agreement shall be impressed upon the Property and recorded in the Official Real Property Records of Dallas County.

After the Project's Substantial Completion, as defined in Section 4.F and throughout the Grant Agreement Affordability Period, Developer shall monitor and submit annual reports to the Director of the Office of Economic Development ("Director") on the status of its compliance with the requirements of the Grant Agreement Affordability Period. Developer shall submit written certification and documentation of compliance on the form attached as **Exhibit C** or may submit Dallas PFC compliance documents in lieu of **Exhibit C**. As part of the Dallas PFC's ownership of the Project, the City's Housing & Neighborhood Revitalization Department shall be responsible for monitoring the Project's compliance with the affordability requirements described in Section 4.H throughout the Grant Agreement Affordability Period.

Developer further agrees to complete an Affirmative Fair Housing Marketing Plan ("AFHMP"), attached hereto as **Exhibit D** and submit the plan to the Fair Housing division within the City's Office of Equity and Inclusion for approval. Developer shall submit a copy of the approved AFHMP to the Director within 30 days of approval and market the residential units in the Project pursuant to the approved AFHMP.

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**SECTION 4.** (continued)

- I. Vouchers. In accordance with Section 20-4.1(b) of the Dallas City Code (the “Code”), Developer shall make best efforts to lease up to 10% of the Project’s residential units to voucher holders during the Grant Agreement Affordability Period from the date of Project’s Substantial Completion. Developer shall register with a minimum of one local provider of housing vouchers at least 12 months prior to Project’s Substantial Completion. “Best efforts” is defined as “compliance with Section 20A-4.1(a), compliance with the development agreement, and submission of the evidence of compliance to the Director.” As applicable, Ordinance 32195 shall be enforced. **Exhibit E** shall be completed and submitted by Developer for review and verification by Director. Should Ordinance 32195 and Chapter 20A of the Code be further amended prior to Project Completion, Developer shall abide by such amended terms. Pursuant to Section 20A-4.1(a) of the Code, Developer shall not discriminate against holders of any housing vouchers, and Developer shall comply with Section 20A-28 of the Code regarding tenant selection. This requirement shall also be impressed upon the Property by deed restriction.
- J. M/WBE Inclusion in Construction of Project. Developer shall make a good faith effort to comply with a goal of 40% participation by certified Minority/Women-owned Business Enterprises (“M/WBE”) for all hard construction expenditures (i.e. public and private improvements) for the Project and meet all process and reporting requirements of the City’s Business Inclusion and Development (“BID”) program. See the BID reporting requirements and forms attached as **Exhibit F**. Compliance shall be coordinated with the City’s Small Business Center.
- K. Property Management. The proposed management group for the Project shall be submitted at least three months prior to Project’s Substantial Completion for review by Director to consider acceptance based on the management entity’s comparable experience managing other multi-family residential properties with income-restricted units, such approval not to be unreasonably withheld.
- L. Public Access to Infrastructure Not Owned by City/Acceptance of Public Infrastructure Improvements. If applicable, prior to the City’s payment of any portion of the Grant and at no cost to the City, Developer shall provide public access easements, or other instruments reasonably acceptable to the Director if any street and utility infrastructure improvements associated with the Project remain in non-City ownership but require public access. If applicable, Developer shall obtain final acceptance of any public infrastructure improvements associated with the construction of the Project, as evidenced by a letter of acceptance or similar documentation issued by the City by June 30, 2029.

**SECTION 4.** (continued)

- M. Operating and Maintenance Agreement. If applicable, and prior to Project's Substantial Completion, Developer shall execute an Operating and Maintenance Agreement (defined below) for any Non-Standard Public Improvements (defined below) associated with the Project ("Operating and Maintenance Agreement"), and if necessary, obtain a license from City for the purpose of maintaining any improvements in the public right-of-way. "Non-Standard Public Improvements" shall be defined as those public infrastructure improvements which exceed the City's standard design requirements, as determined by the City, including specially designed street/pedestrian lighting, brick pavers, bollards, public art, fountains, landscaping, and irrigation. If Developer fails to maintain such Non-Standard Public Improvements after notice from the City, the City may, at its sole option, perform such maintenance and invoice Developer for the costs, which costs Developer shall pay within 30 days of notice. Developer shall submit documentation evidencing that an executed Notice of Operating and Maintenance Agreement specifying the existence of an executed Operating and Maintenance Agreement for the Non-Standard Public Improvements was recorded with the Dallas County Clerk's Office. The term for the Operating and Maintenance Agreement shall be 20 years. The terms and conditions of the Operating and Maintenance Agreement are binding upon the successors and assigns of all parties hereto and may be assignable, subject to Director approval (not to be unreasonably withheld, conditioned, or delayed), in whole or in part, to a new owner of all or a portion of the Project.
- N. Quarterly Reporting. Until the Project has passed final building inspection and all required paperwork documenting Substantial Completion pursuant to Section 4.F has been submitted to the OED, Developer shall submit to the Director quarterly status reports for ongoing work on the Project, in the form to be attached to the Agreement. Such status reports shall be due within 30 calendar days following the end of each calendar quarter.
- O. Deadline Extension. At Developer's written request, the Director may authorize one extension of the Project's material deadlines by up to 12 months for just cause.

Force Majeure. In the event the Project has been delayed because of Force Majeure, Developer shall have additional time to complete the Project, as may be required in the event of Force Majeure, defined herein, so long as Developer is diligently and faithfully pursuing completion of the Project, as reasonably determined by the Director. Extension of Project deadlines because of Force Majeure shall not require the City Council approval. "Force Majeure" shall mean any contingency or cause beyond the reasonable control of the Developer, as reasonably determined by the Director including, without limitation, acts of nature or the public enemy, war, riot, civil commotion, insurrection, state, federal



**SECTION 4.** (continued)

municipal government (including, without limitation, timely issuance of permits need to complete the development of the Project), or de facto governmental action (unless caused by acts or omissions of Developer), fires, explosions, floods, pandemics, epidemics, or viral outbreaks other than the COVID-19 pandemic, shortages in labor or materials, and strikes. In the event of Force Majeure, Developer shall be excused from doing or performing the same during such period of delay, so that the completion dates applicable to such performance shall be extended for a period equal to the period of time Developer was delayed.

- P. Assignment. Until Developer achieves Substantial Completion of the Project, an assignment of the rights and/or the obligations under the Grant Agreement in whole or in part shall only be allowed to an affiliate of Developer with the prior written approval of the Director, not to be unreasonably withheld.

After Developer achieves Substantial Completion of the Project, Developer may assign its rights and/or obligations under the Grant Agreement to any entity with the prior written approval of the Director, not to be unreasonably withheld.

- Q. Cross Default. The Grant Agreement shall include a cross-default clause with the Dallas PFC Regulatory Agreement, meaning that a default under one agreement shall constitute a default under both agreements.

- R. Liquidated Damages. Developer and City agree that, in the event Developer fails to comply with any of the terms or provisions of the Grant Agreement or the Dallas PFC Regulatory Agreement for the term of the Grant Agreement Affordability Period, the City's damages would be uncertain and difficult (if not impossible) to accurately estimate. Accordingly, Developer and City agree that, in the event of an uncured default resulting in termination of the Grant Agreement (including a termination as a result of a cross-default under the Dallas PFC Regulatory Agreement), Developer shall pay the City an amount equal to the Grant amount as liquidated damages, so long as the Grant has been previously paid to the Developer. The liquidated damages payment shall be due and owing to the City by cashier's check no later than 30 days after the date of the City's notice of termination, and payment of liquidated damages shall be enforceable by specific performance. If the City is required to take legal action to enforce such payment, Developer shall be responsible for all costs incurred by the City including court costs and legal fees.

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**SECTION 5.** That the Grant amount paid to Developer shall be limited to the design cost, permit costs, and hard construction costs of the off-site wastewater infrastructure improvements actually incurred by Developer, less the actual participation by Dallas Water Utilities in the qualifying hard construction cost of the off-site wastewater infrastructure improvement pursuant to and in accordance with Chapter 49 of Dallas City Code.

**SECTION 6.** That the Grant shall be payable in one lump-sum upon completion and acceptance of the Project, including acceptance by the City of the off-site wastewater infrastructure improvement.

**SECTION 7.** That this resolution does not constitute a binding agreement upon the City or subject the City to any liability or obligation until such time as the Developer/Provider agreement is duly approved by all parties and executed.

**SECTION 8.** 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.