

November 13, 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 prioritizing investment and economic progress for underserved areas with local job creation and equitable business and real estate development projects; and

WHEREAS, it is in the interest of the City to support and secure the development, redevelopment, establishment, expansion, and relocation of businesses within the City for the economic vitality and employment opportunities that these businesses bring for Dallas residents; and

WHEREAS, on January 25, 2023, the City Council 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, the Incentive Policy established a Community Development Program as authorized by Chapter 373 of the Local Government Code to provide grants for qualified non-profit developers to support projects that inhibit the deterioration of property and restore and preserve properties of special value for historic, architectural or aesthetic reasons; and

WHEREAS, the Project is located in a Target Area per the City's Economic Development Incentives Policy, and will significantly advance the public purpose of economic development within the City; and

WHEREAS, Forest Forward has proposed the renovation, rehabilitation and an addition to the historic Forest Theater, located at 1918 Martin Luther King Blvd, Dallas, Texas 75215 (“Project”); and

WHEREAS, on September 16, 2024, based on analysis and consultation with the City’s independent outside underwriter, staff executed a Letter of Intent (LOI) with Forest Forward to make the proposed Project financially feasible. The LOI includes an \$8,000,000.00 community development grant, with \$7,000,000.00 in funding from the Infrastructure Investment Fund and \$1,000,000.00 from the Public Private Partnership Fund; and

WHEREAS, on November 4, 2024, the Economic Development Committee was briefed regarding this Project; and

WHEREAS, the City finds that the Project is not financially feasible without an offer of economic development incentives from the City; and

WHEREAS, the City desires to enter into a conditional grant agreement with Forest Forward and/or its affiliates in an amount not to exceed \$8,000,000.00 payable from the Infrastructure Investment Fund and the Public Private Partnership Fund, in consideration of the Project at 1918 Martin Luther King Blvd.

November 13, 2024

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 Chapter 373 Conditional Grant Agreement with Forest Forward (“Grantee”) in an amount not to exceed \$8,000,000.00 sourced from the Infrastructure Investment Fund and the Public Private Partnership Fund, for capital improvements and public infrastructure improvements related to the rehabilitation and addition of the Forest Theater (“Project”) located at 1918 Martin Luther King Boulevard, Dallas, Texas (“Property”) in accordance with the City’s Economic Development Incentive Policy and as approved as to form by City Attorney.

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 Chief Financial Officer is hereby authorized to disburse funds in an amount not to exceed \$8,000,000.00 to Forest Forward and/or its affiliates as follows and in accordance with the executed development agreement:

Infrastructure Investment Fund	
Fund 5117, Department ECO, Unit X153, Object 3016	
Activity IIFP, Program FRSTTHEATR, Vendor VC29613	
Encumbrance/Contract No. CX-ECO-2025-00026432	\$7,000,000.00

Public Private Partnership Fund	
Fund 0352, Department ECO, Unit X153, Object 3016	
Activity PPPF, Program FRSTTHEATR, Vendor VC29613	
Encumbrance/Contract No. CX-ECO-2025-00026432	<u>\$1,000,000.00</u>

Total amount not to exceed	\$8,000,000.00
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SECTION 4. That the Grant funds may be requested in two installments. Grantee may request the first installment of \$4,000,000.00 as a reimbursement of actual eligible and documented expenses that align with Hard Costs (specifically related to construction of Forest Theater/EDU Lab/Studio Theater, and Furniture, Fixtures & Equipment) or Public Infrastructure Improvements costs detailed in the Project Budget (attached). Costs reimbursed by the city must be supported by invoices and proof of payment or other relevant documents. Grantee may request the second installment of \$4,000,000.00 upon obtaining a final Certificate of Occupancy (CO). Grantee may also elect to request one single installment of \$8,000,000.00 after obtaining a final CO. Regardless of whether Grantee selects one or two installments, the disbursement of the full amount of the \$8,000,000.00 grant award shall be defined as “Final Payment.”

November 13, 2024

SECTION 5. That the Grantee shall design, fund and/or construct the Project as in described in Section 6.

SECTION 6. That in addition to the conditions set out in the sections above, the development agreement is hereby expressly made subject to the following contingencies which must be performed or occur:

- A. Required Project Components. The Project shall include the 1) rehabilitation of the National Register of Historic Places-listed Forest Theater complex including the approximately 35,630 square feet of auditorium, lobby and retail space as well as the renovation of the 500-seat Main State Theater and creation an education center that is expected to include a technology lab, maker space and film and video production space; 2) construction of one addition, approximately 28,000 square feet providing additional lobby space, a smaller 175-seat Black Box/White Box theater and other back-of-house elements; and, 3) additional items: a café, a roof deck, lawn for special events, and a multi-use “festival street.”
- B. Minimum Investment. Grantee shall invest (or cause to be invested) and provide detailed documentation evidencing at least \$60 million in eligible costs incurred for the delivery of the Project by December 31, 2027, including equipment, build-out construction, and other hard costs. The minimum investment requirement shall not be satisfied by real estate expenses, marketing costs, developer profit/fees, financing fees, reserves, operating deficits through stabilization, carrying costs, or legal fees. The minimum investment requirement shall be satisfied only by those eligible costs incurred after the date of City Council approval of the Grant Agreement based on the terms of this Incentive Offer
- C. Substantial Completion Deadline. Grantee shall complete construction of the Project and obtain final certificate(s) of occupancy (or equivalent evidence of completion issued by the City) by December 31, 2027.
- D. Reporting Requirements:
 - a. Quarterly Reporting: Until the Project has received a certificate of occupancy and all required paperwork documenting Project completion has been submitted to the Office of Economic Development, Grantee shall submit to the Office of Economic Development quarterly status reports for ongoing work on the Project. Such status reports shall be due within 30 calendar days following the end of each calendar quarter.

SECTION 6. (continued)

- b. Annual Reporting: During the Compliance Period, Grantee shall meet all annual reporting requirements including:
 - i. Annual Audited financial statements (Income Statement, Balance Sheet, Statement of Cash Flows)
 - ii. Programmatic outcomes and impacts, including dates of events/services, numbers of participants and other relevant information as noted above to reflect the restoration of the Forest Theater as a performance, education, and community space
 - iii. Employment and wage data for any jobs created as a direct result of the Project. Please note that any jobs hired directly by Grantee related to operations of the Project receiving the grant must pay a Living Wage.
- E. Living Wage: Any jobs directly created by Project must pay a living wage as determined by the MIT living wage index for an individual residing in Dallas County (currently \$22.06)
- F. M/WBE Inclusion in Construction: Grantee shall make a good faith effort to comply with the City's Business Inclusion and Development ("BID") goal of 32% participation by certified Minority/Women-owned Business Enterprises ("M/WBE") for all hard construction expenditures on the Project and meet all reporting requirements.
- G. Operating Reserve Requirement: Grantee shall maintain an operating reserve for the operations and maintenance of the building of \$100,000 in year one and increasing 3% annually during the Compliance Period.
- H. Replacement Reserve Requirement: Grantee shall maintain a replacement reserve of \$50,000 in year one of operations and continue to fund the replacement reserves at \$50,000 plus a 3% annual increase during the Compliance Period unless/until the fund balance of the replacement reserve exceeds \$500,000.
- I. Deadline Extension: Upon submission of a formal request by Developer, the Director of the Office of Economic Development may, at his/her sole discretion, extend any date or deadline for a period of up to twelve (12) months.

SECTION 6. (continued)

- J. Force Majeure. In the event the OED Director determines the Project has been delayed as a result of force majeure, Developer shall have additional time to complete the Project as may be required if Developer is diligently and faithfully

pursuing completion of the Project as determined by the OED Director. Extension of Project deadlines as a result of force majeure shall not require City Council approval. "Force majeure" shall mean any contingency or cause beyond the reasonable control of Developer including, without limitation, acts of nature or the

public enemy, war, riot, civil commotion, insurrection, state, federal or municipal government, or de facto governmental action (unless caused by acts or omissions of Tenant), fires, explosions, and floods.

- K. Operating and Maintenance Agreement: If applicable and prior to Project completion, Grantee shall execute an Operating and Maintenance Agreement (defined below) for any Non-Standard Public Improvements (defined below) associated with the Project that will be owned by the City but maintained by the Grantee (the "Operating and Maintenance Agreement"). If necessary, Grantee shall 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, and shall include specially designed street/pedestrian lighting, brick pavers, bollards, sidewalks, public art, fountains, landscaping and irrigation. With the exception of specially designed street/pedestrian lighting, public artwork and fountains, City shall retain ownership of such public improvements and may at its sole option, if Grantee fails to maintain such public improvements after notice from City, perform such maintenance and invoice Grantee for the costs, which costs Grantee shall pay within thirty (30) days of notice. Grantee 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 twenty (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 OED Director approval, in whole or in part, to a new owner of all or a portion of the Project. Grantee shall remain responsible for the maintenance of the Non-Standard Public Improvements for a term of twenty (20) years even if Grantee chooses to forgo the Grant or is not paid the Grant as a result of uncured default.

SECTION 6. (continued)

- L. Public Access to Infrastructure Not Owned by City: Prior to City's payment of any portion of the Grant and at no cost to City, Grantee shall provide reasonable public access easements, deed restrictions, or other instruments reasonably acceptable to the OED Director if any street, utility, or open space improvements associated with the Project remain in non-City ownership but require public access.
- M. Urban Design Peer Review Panel: 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. Grantee presented the Project to the City's Urban Design Peer

Review Panel on September 27, 2024, and shall incorporate the Panel's comments into the final design of the Project.

Grantee shall submit a set of construction drawings to the Preservation and Urban Design staff of PDD and OED Director for a final staff review to ensure that the

Project (public and private improvements) will be constructed in substantial conformance with the final approved conceptual drawings and renderings attached to the Grant Agreement. PDD and OED staff shall complete the final staff review within ten (10) business days of submission.

Allowable minor modifications to the Project's design may include those required to comply with development regulations administered by the City's PDD or other City departments, federal, state and local laws, codes and regulations. Prior to making any Project design changes that would be considered minor in nature, Grantee shall notify the OED Director and submit proposed changes to the OED Director for review and approval. OED staff shall complete the final review to ensure compliance with concept plan of any such minor design changes within ten (10) business days of submission by the Grantee.

- N. Grant Payment: The Grant shall be payable to support payment of approved expenses as detailed in the Project Budget (and further defined in the Grant Disbursements section of this Incentive Offer) and/or upon completion of the Project. The Grant of up to \$8,000,000 shall be paid to support the construction costs and public infrastructure costs of the Project, and shall not include leasing commissions, developer fees, or attorney fees.

The Grantee shall be required to operate the facility for no less than seven (7) years following City's disbursement of the Final Payment ("Compliance Period").

SECTION 6. (continued)

The Grant shall be secured by a performance deed of trust (or other security instrument approved by the City Attorney) in favor of the City and recorded in the real property records of Dallas County against Grantee's interests in the Property within fourteen (14) business days of execution of the Grant Agreement.

The City's Grant Security may be subordinated only to the liens of Grantee's senior lenders (construction and/or permanent) on the Project, including any liens required to facilitate Property Assessed Clean Energy (PACE) financing, New

Markets Tax Credit (NMTC) financing, or Historic Tax Credit (HTC) financing for all or a portion of the Project. In the event subordination agreements are required, the City agrees to provide in a form acceptable to the City Attorney, so long as such senior lender's subordination documents are acceptable to City in City's sole discretion.

- O. Grant Recapture Liability: Grantee's obligation to repay the Grant due to uncured default will be reduced by 1/7 (\$1,142,857.14) annually for the successful completion of the required performance obligations during the Compliance Period.
- P. Compliance Period: The Compliance Period for the Project shall commence on the date of the City's disbursement of the Final Payment and shall terminate upon the 7th anniversary of the City's disbursement of the Final Payment.

Failure by Grantee to maintain and operate the facility during the Compliance Period shall be an event of default of the Grant Agreement.

Uncured default may result in enforcement of the City's interests, or any other action allowed by law. During the Compliance Period, the City has the right to declare Grantee in default, and/or terminate the Grant Agreement if Grantee fails to:

- a. Maintain the Property in compliance with all federal, state, and local laws and codes.
- b. Operate the facility as a theater with a community component, unless otherwise agreed to by City Council.
- c. Submit annual compliance reports to the OED Director by April 15 each year of the Compliance Period.
- d. Obtain OED Director approval at least sixty (60) calendar days in advance of any proposed sale of the Property occurring prior to the end of the Compliance Period.

November 13, 2024

SECTION 7. That until completion of the Project, an assignment of the development agreement shall only be allowed to a direct affiliate of Developer with the prior written approval of the Director, not to be unreasonably withheld. After completion of the Project, Developer may assign its rights or obligations under the development agreement to any entity with the prior written approval of the Director.

Any receivables due under the development agreement may be assigned by Developer or assignee upon providing the Director with written notice within thirty (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 development agreement for the benefit of their respective lenders without the consent of, but with written notice to, the Director. 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 development agreement unless the lender agrees in writing to perform such obligations or incur such liability.

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.