



Legislation Details (With Text)

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On agenda:	5/13/2020	Final action:		5/13/2020	
Title:	Authorize (1) a third amendment to the Chapter 380 Grant Agreement ("2016 Chapter 380 Agreement") with WCWRD Inc and its affiliates or subsidiaries ("Developer") and a second amendment to the Tax Increment Development, Chapter 380 Grant, and Chapter 380 Loan Agreement ("2018 TIF/Chapter 380 Agreement") with Developer, approved as to form by the City Attorney, related to the Red Bird Mall Redevelopment Project ("Project") to: (a) increase the amount of the 2018 Chapter 380 conditional grant by \$3,000,000.00 in bond funds; (b) remove the requirement that the Developer make any Distributable Cash Payments to the City pari passu with distributions of cash flow to the Project's equity investors; and (c) increase the minimum Investment Requirement for the Project by \$14,000,000.00; (2) placement of a deed of trust in favor of the City on the former Sears property and, at the request of the Developer, any other future properties acquired by the Developer within the Westmoreland-IH 20 Sub-District of Tax Increment Reinvestment Zone Number Twenty ("Mall Area Redevelopment TIF District"); and (3) the City Manager to negotiate and execute any other documents, including but not limited to Subordination, Non-Disturbance, and Attornment agreements necessary to accommodate the Project in accordance with City Council approved terms, approved as to form by the City Attorney - Total not to exceed \$3,000,000.00 - Financing: Economic Development Fund (2012 General Obligation Bond Funds) (\$1,380,786.00) and ECO (I) Fund (2017 General Obligation Bond Funds) (\$1,619,214.00)				

Sponsors:

Indexes: 8

Code sections:

Attachments: 1. Exhibit A, 2. Exhibit B, 3. Exhibit C, 4. Exhibit D, 5. Exhibit E, 6. Resolution

Date	Ver.	Action By	Action	Result
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STRATEGIC PRIORITY: Economic and Neighborhood Vitality

AGENDA DATE: May 13, 2020

COUNCIL DISTRICT(S): 8

DEPARTMENT: Office of Economic Development

EXECUTIVE: Dr. Eric A. Johnson

SUBJECT

Authorize (1) a third amendment to the Chapter 380 Grant Agreement ("2016 Chapter 380 Agreement") with WCWRD Inc and its affiliates or subsidiaries ("Developer") and a second amendment to the Tax Increment Development, Chapter 380 Grant, and Chapter 380 Loan Agreement ("2018 TIF/Chapter 380 Agreement") with Developer, approved as to form by the City

Attorney, related to the Red Bird Mall Redevelopment Project (“Project”) to: **(a)** increase the amount of the 2018 Chapter 380 conditional grant by \$3,000,000.00 in bond funds; **(b)** remove the requirement that the Developer make any Distributable Cash Payments to the City pari passu with distributions of cash flow to the Project’s equity investors; and **(c)** increase the minimum Investment Requirement for the Project by \$14,000,000.00; **(2)** placement of a deed of trust in favor of the City on the former Sears property and, at the request of the Developer, any other future properties acquired by the Developer within the Westmoreland-IH 20 Sub-District of Tax Increment Reinvestment Zone Number Twenty (“Mall Area Redevelopment TIF District”); and **(3)** the City Manager to negotiate and execute any other documents, including but not limited to Subordination, Non-Disturbance, and Attornment agreements necessary to accommodate the Project in accordance with City Council approved terms, approved as to form by the City Attorney - Total not to exceed \$3,000,000.00 - Financing: Economic Development Fund (2012 General Obligation Bond Funds) (\$1,380,786.00) and ECO (I) Fund (2017 General Obligation Bond Funds) (\$1,619,214.00)

BACKGROUND

Since the 2018 TIF/Chapter 380 Agreement was authorized by City Council in June 2018, the Developer has made substantial progress on the Project. The Developer has provided an executive summary of the Project’s accomplishments as of March 23, 2020 (attached as **Exhibit A**), with specific emphasis on leasing, capital investment, and milestones outlined in the 2018 TIF/Chapter 380 Agreement.

As progress has continued on the Project, City staff has been working with the Developer over the past several months on several amendments needed to address unforeseen issues and to accommodate the Developer’s recent acquisition of the former Sears property (“Sears Property”), which was not included in the original site and budget for the Project in 2018. On February 14, 2020, the Developer submitted a formal request (attached as **Exhibit B**) for these amendments as well as for an additional \$4 million in bond funds to support the Developer’s completion of the Infrastructure Work for the Project.

A summary of the Developer’s request and staff’s recommendations follows:

- **Increase the amount of the 2018 Chapter 380 conditional grant by \$4,000,000.00 in bond funds (from \$10,000,000.00 to \$14,000,000.00) to support the Developer’s completion of the Infrastructure Work for the Project.** In early 2018, the Developer originally projected that the Infrastructure Work would cost approximately \$28 million. With a continued construction boom, price increases, and the scope and magnitude of the infrastructure/utility upgrades also growing due to the City’s development and design requirements, the Infrastructure Work budget escalated to \$40 million in 2019. Since that time, the Developer has been able to reduce or defer approximately \$5.6 million of costs, leaving the current total at approximately \$34.4 million (\$12.4 million more than the \$22 million currently being provided by the City for the Infrastructure Work). The Developer is bridging a portion of the \$12.4 million gap by securing \$8.3 million of private capital through New Market Tax Credit transactions and excess debt capacity from other parts of the Project, but a gap of approximately \$4 million still remains. Staff recommends increasing the amount of the 2018 Chapter 380 conditional grant by \$3,000,000.00 in bond funds (from

\$10,000,000.00 to \$13,000,000.00) to support the Developer's completion of the Infrastructure Work for the Project.

- **Remove the requirement that the Developer (through the Loan Guarantor) make any Distributable Cash Payments to the City pari passu with distributions of cash flow to the Project's equity investors.** The 2018 TIF/Chapter 380 Agreement contains a provision wherein the Parties agreed that if there is cash flow available for distribution to the Project's equity investors after payment of all current and accrued interest due on the City's \$12 million loan, and if the Developer (through the Loan Guarantor) elects to make such a distribution, such cash flow must be divided between the City and the equity investors in a ratio equal to the ratio of the total amount of equity invested in the Project versus the total principal balance of the City's loan. In other words, the Developer (through the Loan Guarantor) is currently required to make a payment of distributable cash to the City (to be applied to the loan balance) equal to the City's pro-rata share of distributable cash pari passu with cash distributions to the equity investors.

This requirement has had a chilling effect on the Developer's ability to attract equity investors to the Project without the realistic possibility of liquidity opportunities. In the future, and as more equity will be needed, the Distributable Cash Payment requirement will continue to significantly hamper the Developer's ability to raise additional equity needed to keep the Project moving forward. Staff recommends removing this requirement.

- **Delegate authority to the City Manager to negotiate and execute any other documents, including but not limited to Subordination, Non-Disturbance, and Attornment ("SNDA") agreements necessary to accommodate the Project in accordance with City Council approved terms, approved as to form by the City Attorney.** SNDAs are considered ordinary course of business in commercial lease transactions. Under the existing 2018 TIF/Chapter 380 Agreement, the City is a subordinate lender to the Project, and the City's loan is secured by a performance Amended and Restated Deed of Trust. The 2018 TIF/Chapter 380 Agreement gives the City Manager the authority to execute partial lien releases and lien subordination agreements as well as consent to title encumbrances, but it does not give the City Manager the explicit authority to execute an SNDA agreement with a tenant in the Project. An SNDA agreement would cover an event wherein if the City were to foreclose on/purchase the Project, it would respect a tenant's lease so long as the tenant is not in default. In the near-term, SNDA agreements are needed for several key new tenants, including Foot Locker, Chime Solutions, Parkland Hospital clinic, and The University of Texas Southwestern Medical Center. Over the longer-term, prospective future tenants will also require SNDA agreements with the City. Staff recommends delegating this authority to the City Manager.

As consideration for the above items, the Developer has agreed to provide the City with the following:

- **Increase the Developer's minimum Investment Requirement for the Project by \$14,000,000.00** (from \$101,000,000.00 to \$115,000,000.00 in the 2018 TIF/Chapter 380 Agreement and cumulatively with the 2016 Chapter 380 Agreement, from \$116,000,000.00 to \$130,000,000.00).

- **Increase the City's collateral by executing deed of trust** on the Sears Property and, at the request of the Developer, on any other future properties that may be acquired by the Developer ("Future Property") within the Westmoreland-IH 20 Sub-District of the Mall Area Redevelopment TIF District. The Sears Property is depicted in the attached **Exhibit C**.
- **Add the building portion of the Sears Property to the definition of Main Mall Properties in the 2018 TIF/Chapter 380 Agreement, subject to the rights in favor of the current tenant, The University of Texas Southwestern Medical Center.** The former Macy's building, the former Dillard's building, and the in-line Mall buildings (but excluding the surface parking lots) are already defined as Main Mall Properties. Buildings defined as Main Mall Properties cannot be sold by the Developer while the City's loan is outstanding. Therefore, adding the building portion of the Sears Property to the definition of Main Mall Properties also improves the security of the City's loan. However, it must be caveated that the new tenant of the Sears building, The University of Texas Southwestern Medical Center, has a right-of-first-refusal provision in their lease which gives The University of Texas Southwestern Medical Center the right but not the obligation to purchase the Sears building ten years after their lease commencement (i.e. December 2031). In the event that The University of Texas Southwestern Medical Center exercises the right to purchase the building at that time, the City would need to release the building from the lien.

In conjunction with placing a deed of trust in favor of the City on the Sears Property and any Future Property, the Developer is requesting to amend the Developer's Investment Requirement to:

- Allow development costs incurred by the Developer on the Sears Property to be counted towards the Developer's Investment Requirement.
- Allow development costs incurred by the Developer on any Future Property to be counted towards the Developer's Investment Requirement only if such Future Property is added as collateral to deeds of trust.
- Increase by \$6,500,000.00 (from \$10,000,000.00 to \$16,500,000.00) the limitation on the amount of acquisition costs of additional property that can be counted towards the Developer's Investment Requirement.

Pursuant to the City's Public/Private Partnership (P/PPP) Guidelines and Criteria, and as shown in **Exhibit D**, the Project is located in a Target Area and meets the minimum eligibility of the P/PPP. Additionally, pursuant to the City's Comprehensive Housing Policy, and as shown in **Exhibit E**, the Project is located in a Redevelopment Area, which is a particular focus of the City's comprehensive reinvestment strategy.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

On May 14, 2014, City Council authorized the designation of the Mall Area Redevelopment TIF District by Resolution No. 14-0783; Ordinance No. 29340.

On June 17, 2015, City Council authorized the Mall Area Redevelopment TIF District Project Plan and Reinvestment Zone Financing Plan by Resolution No. 15-1145; Ordinance No. 29771.

On January 13, 2016, City Council authorized a Chapter 380 grant agreement with 3662 W Camp Wisdom LLC and/or its affiliates or parent in an amount not to exceed \$2,400,000.00 in consideration of the Developer's causing a minimum investment of \$15,000,000.00 at Red Bird Mall (formerly known as Southwest Center Mall) by Resolution No. 16-0103.

On June 13, 2018, City Council authorized (1) a conditional grant agreement with 3662 Investors LP or an affiliate thereof in an amount not to exceed \$10,000,000.00; (2) a 15-year interest only loan in an amount not to exceed \$12,000,000.00 with 3662 Investors LP or an affiliate thereof; (3) a development agreement awarding an amount not to exceed \$15,600,000.00 in tax increment funding from the Mall Area Redevelopment TIF District with 3662 Investors LP or an affiliate thereof; (4) an assignment of all increment payable under the development agreement to the City of Dallas; (5) an amendment to the existing Chapter 380 grant agreement with WCWRD Inc. to extend all dates in the agreement by 18 months; (6) a loan payment guarantee agreement with 3662 Investors LP; and (7) an increase in appropriations in an amount not to exceed \$8,012,200.00 in ECO (I) Fund by Resolution No. 18-0850.

On January 8, 2020, City Council authorized (1) a New Markets Tax Credit transaction between the Dallas Development Fund and its subsidiaries, Capital One N.A. and its subsidiaries, and 3662 Investors, LP and/or its affiliates or subsidiaries for improvements within the Red Bird Mall Redevelopment Project located at 3662 West Camp Wisdom Road; and (2) a second amendment to the Chapter 380 Grant Agreement with WCWRD Inc and its affiliates or subsidiaries ("Developer"), a first amendment to the Tax Increment Development, Chapter 380 Grant, and Chapter 380 Loan Agreement with Developer, and to amend or execute any other documents necessary to (A) release the property owned by OMRB LLC (being the Foot Locker) and the property owned by OMRB II LLC (being the Lawn) from the lien Deed of Trust and the indebtedness evidenced by the City's 15-year interest only loan; (B) specifically remove the condition of the disbursement of the second loan installment that all 2017 General Obligation Bond Funds be fully disbursed and expended by Developer and allow the second loan installment to be disbursed on or before January 31, 2020; (C) increase the Developer's required total minimum investment for the Project by \$1,000,000.00 from \$115,000,000.00 to \$116,000,000.00 as consideration for (A) and (B); and (D) make such other modifications which may be necessary to effectuate the foregoing amendments by Resolution No. 20-0118.

The Economic Development Committee was briefed regarding this matter on May 4, 2020.

The Mall Area Redevelopment TIF District Board of Directors will review and consider this matter on May 8, 2020.

FISCAL INFORMATION

Fund	FY 2020	FY 2021	Future Years
Economic Development Fund (2012 General Obligation Bond Funds)	\$1,380,786.00	\$0.00	\$0.00

ECO (I) Fund (2017 General Obligation Bond Funds) (Proposition I - Council District 8 Discretionary)	\$1,119,214.00	\$0.00	\$0.00
ECO (I) Fund (2017 General Obligation Bond Funds) (Proposition I - Council District 3 Discretionary)	\$ 500,000.00	\$0.00	\$0.00
Total	\$3,000,000.00	\$0.00	\$0.00

DEVELOPER ENTITIES

3662 Investors, LP

Peter Brodsky, Manager of General Partner

WCWRD Inc

Peter Brodsky, President and Director