

Land Clearance for Redevelopment Authority
Summary of Lease Protections and Safeguards
Prepared by David Bushek, July 9, 2019

The City will own the Property during the construction period and lease the Property to the Company pursuant to a Lease Agreement. The City will take these actions pursuant to a delegation of LCRA legal authority to the City. This document summarizes the primary safeguards and protections for the City under the Lease.

Title to Property and Compliance with Laws

City holds legal title to Property only.
Company certifies that Property is suitable for Project.
Company occupies site and constructs Project.
Company must comply with all laws and legal requirements.
If legal violation occurs, Company must cure.
Company pays all costs, expenses, claims, fines and penalties for failure to comply with laws.
Company must comply with all insurer requirements when occupying Property.

Construction of the Project

Company must construct in accordance with City approvals.
Company responsible for ensuring that construction allows for the Project.
Company responsible for public payment bond requirements (107.170).
Company must construct on schedule.
Company pays for all Project costs.
Improvements become part of the Project.
Machinery and equipment that are personal property are Company responsibility.
Alterations and modifications of Project should not be an issue during initial construction period, after which City ownership ends.
All plan modifications must be approved pursuant to normal City processes.
Company shall not permit others to take any actions related to construction that are not in compliance with all required City approvals.

Environmental Matters

Company must comply with all Environmental Laws.
Funds expended by City for compliance with Environmental Laws must be reimbursed by Company.
Company indemnifies City for failure to comply with Environmental Laws.

Rent Provisions

“Basic Rent” paid by Company is the amount of taxes that would have been paid based on the 2019 valuation of the property as if the project was taxable. This payment flows to the taxing districts in proportion to the taxing districts levy rates.

“Additional Rent” paid by Company is the amount of taxes that would have been paid based on the value added to the property above the 2019 valuation, as a result of the redevelopment project, as if the project was taxable. This payment flows to the Developer in the same manner as TIF revenues under the TIF Plan.

Additional Rent includes (1) all reasonable costs which are reasonably incurred in connection with the enforcement of any rights against the Company or the Project or in connection with a failure of the Company to perform its obligations under the Lease and (2) all other payments of whatever nature which Company has agreed to pay or assume under the provisions of the Lease.

All Rent payments are absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance, and irrespective of whether the Project has been started or completed.

Maintenance and Repairs

Company must keep Project in safe condition.

Company must perform all repairs.

Company must comply with applicable City Codes (maintenance, building, fire, etc.).

Taxes and Assessments

Company pays all real and personal taxes and assessments on all buildings, improvements, machinery and equipment.

Company may contest taxes and assessments at its option.

All utilities and utility services are paid by Company.

Company must pay for all permits, licenses, and authorizations.

Tax abatement during construction period does not apply to special assessments or any fees imposed by City or other jurisdiction.

Company makes PILOT in amount of what taxes would have been during construction period.

Cessation of construction does not relieve Company obligation to make PILOT payment.

Company receives sales tax exemption certificate to purchase construction materials, is responsible for proper use and application of certificate and pays all sales tax otherwise due for personal property used in the Project (anything not affixed to the real property).

Insurance

Company obtains title insurance.
Company must carry property insurance at its own cost.
Company must carry commercial general liability at its own cost.
Company responsible for workers compensation insurance as required by law.
Insurance policies must meet certain minimum requirements regarding quality of insurance company.
City and LCRA named as additional insureds.
City maintains waiver of sovereign immunity for tort claims, insurance protects in the amount of statutory waiver on sovereign immunity.
Company must annually present Certificate of Compliance verifying compliance with all insurance requirements.

Implementation and Administration

The Company cannot allow any liens on the Project or the Property, and must discharge all liens that may be filed against the Property.
Company may allow Permitted Encumbrances such as a traditional mortgage to finance the Project. A mortgage would apply to the leasehold interest while the Lease is in effect, and then the fee interest on the Property after the Property is transferred from the City to the Company at the end of the Lease term when construction is complete.
Company makes payment to City for costs of administering Plan and contracts.
Company may, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use.

Damage, Destruction and Condemnation

If the Project is damaged or destroyed by fire or other casualty, Company makes the decision regarding whether to apply insurance proceeds and rebuild or recommence construction.
Company is not relieved of any contractual obligations to the City, including the obligation to make PILOT payments, in the event that it does not reconstruct after a casualty.
In the event of condemnation, Company makes the decision whether to proceed with the Project.

Special Covenants

City makes no warranty as to the suitability of the Property for the Project.
Company releases the City from any liability for loss or damage to property or injury to persons resulting from the Project or Company's use of the Property.
All repairs and restoration to the Property are made at Company's expense.

Company bears sole responsibility and risk of loss for buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project.

The City has the right to access the Property to inspect and ensure compliance with the Lease.

Company can grant easements, licenses as determined by Company.

Company can mortgage and encumber its leasehold interest without City approval.

Company can mortgage and encumber the fee interest in the Property with City approval.

City will execute documents requested by Company to facilitate financings, and City will be compensated for any costs related to these actions.

Company indemnifies City against all claims arising out of the Project.

Company must defend City against all claims relating to the Project.

End of Lease Period

Company has the option to terminate the Lease at any time, and Property returns to tax rolls under early termination.

Company assumes all responsibility for sales tax payments upon early Lease termination.

Lease ends and title transfers to Company upon completion of construction.

Obligations of Company survive termination of Lease, such as obligation to indemnify.