



LEE'S SUMMIT

LAW DEPARTMENT
OFFICE OF THE CITY ATTORNEY

January 3, 2019

TO: Lee's Summit City Council

FROM: David Bushek

**RE: Streets of West Pryor Project –
Summary of TIF Contract and CID & TDD Cooperative Agreements**

This memo is a summary of the Streets of West Pryor TIF Contract and CID and TDD Cooperative Agreements. This summary focuses on certain key provisions of the contracts, some of which relate to issues that have been discussed at the December 18, 2018 Council meeting. This is not a summary of all provisions of the contracts.

TAX INCREMENT FINANCING CONTRACT

General Summary

The TIF Contract establishes the rights, duties and obligations of the City and Developer to implement the Streets of West Pryor TIF Plan, which allows for the overall development. As approved, the TIF Plan allows for reimbursement in the maximum principal amount of \$29.95 million from the several incentive revenue sources, compared to total projected project costs of about \$182 million. The TIF Plan contained a project budget which itemizes the project costs and lists the items that are reimbursable from public sources (TIF, CID, TDD) and Chapter 100 cost savings. That same budget is used as an attachment to the TIF Contract.

Summary of Key Provisions and Protections for the City

Financing Structure

The Contract allows for bonds to be issued on terms that are acceptable to the City. Developer will be responsible for funding with private funds all costs of the project that are not funded by bonds. After the Contract is executed, the Developer must present a Financing Plan to the City, which sets forth the anticipated sources of funds to pay for all project costs, and the type and term of each source. The Financing Plan must explain the terms under which Developer will obtain private financing for the balance of the project that is not funded with bond proceeds. The Financing Plan is subject to the City's review and reasonable approval, in accordance with the approved budget for the project.

The bonds may be issued either in one series for the entire project or in more than one series in connection with multiple phases of development. The sizing of each bond issue will be based on the

revenues that are projected to be generated as development occurs. The City has the sole authority to determine the amount, terms, interest rates, redemption terms and other terms and conditions of the bond issuance. The Contract provides that a company which is mutually approved by the parties will be the underwriter for the bonds. The City has the ability to use Piper Jaffray as the City's financial advisor for the financing, as a continuation of that company's work when the TIF Plan was considered and approved by the Council.

The size of each bond issue will be based upon the revenues that are projected to be generated by tenants that have been secured by Developer. An independent revenue study will be conducted prior to each bond issuance to determine the projected revenues that may be available for bond repayment. The amount of bonds issued will be based upon the projected revenue.

Developer Must Certify Costs for Reimbursement

Developer will receive reimbursement only for costs actually incurred for the project. Developer must submit each request for reimbursement within 180 days after incurring such costs. Developer is required to prove that eligible costs have been incurred through documentation, and the documentation must be in sufficient detail for verification by City staff. Each request for reimbursement must be for an eligible line-item in the approved budget. The City has the right to request additional verification and documentation for any requested reimbursable item.

Land Uses

The TIF Contract incorporates the allowed land use list from the approved Preliminary Development Plan ordinance. If the City approves amendments to the PDP at a later date, these amendments will automatically be incorporated into the allowed uses under the TIF Contract. The TIF Contract also contains a list of land uses which are prohibited in the project area (Exhibit I). Some of the uses on the list are prohibited as primary land uses, but are allowed as secondary uses to another primary use on the property. For example, precious metal/stones purchasing cannot be a primary use of a property but may be a secondary use, such as part of jewelry store operations. This contract does not provide the City with the right to approve tenants and does not contain a list of pre-approved tenants – the restricted land uses list and the PDP is the City's method of controlling what uses occur on the property in addition to the zoning restrictions that are already in place.

Reimbursement Limit and City Safeguards on Reimbursement

Public reimbursement is limited to the principal amount of \$29.95 million. The Developer is responsible for cost overruns associated with the overall project costs. In order to ensure that the public assistance provided by the TIF Plan does not subsidize an otherwise economically viable project, and to ensure that reimbursement is scaled to the total amount of project costs that are actually funded with private funds, the TIF Contract imposes two limitations on reimbursement:

- (1) Profit limit. Developer's unleveraged cash on costs rate of return is limited to 14.0%. Developer is required to annually submit information and documentation showing the calculation of actual earnings. These statements must be certified by the Developer's Chief Financial Officer. The City may request additional documentation as necessary to verify Developer's statements of profit.
- (2) Private / Public Reimbursement Ratio. When bonds are issued, Developer is required to itemize all costs funded from private funds (Developer and third parties) based on actual costs already incurred or expected costs which can be documented based on executed contracts. This amount will be compared to the requested amount of TIF reimbursement for the pending bond issue. If the ratio of private to public costs is less than the ratio of 6.5/1 (\$6.50 funded from private

sources for every \$1 of TIF reimbursement, excluding all CID- and TDD-generated revenues) then reimbursement from TIF revenues will be reduced to a point that maintains the 6.5/1 ratio. This ratio is adjusted to incentivize complete build-out of the project according to the following schedule:

Public / Private Ratio	Condition	Maximum TIF Reimbursement %
6.5 / 1	Initial ratio at start of TIF Contract	15.4%
6.0 / 1	Certificates of occupancy (COs) (temporary or final) have been issued for (i) the grocery store, (ii) the Apartments, and (iii) at least 20,000 but less than 40,000 additional square feet of gross floor area of structures (excluding the grocery store) in the Redevelopment Project Area	16.7%
5.5 / 1	Same as above and COs issued for at least 40,000 but less than 60,000 additional square feet of gross floor area of structures	18.2%
5.0 / 1	Same as above and COs issued for at least 60,000 additional square feet of gross floor area of structures	20%

A true-up will occur at the end of project construction, and final reimbursement will be scaled to meet the required private/public ratio.

Prohibition on Business Relocation

Developer may not lease or sell any portion of the project to any business operation if the business intends to close its current store in the City and move into the project area. A business is deemed to move into the project area if it closes its prior store within one year before or one year after the opening of the new store in the TIF area. If the City waives this prohibition, or if a business relocates from an existing location within Jackson County but outside the City into the Summit Place project area, then the base sales that occurred at the prior store are imputed to be the base sales of the new store that opens in the TIF area so that the prior sales tax levels are maintained with respect to all sales taxing jurisdictions.

City Hotel Sales Tax Rebate

The TIF Contract provides for the hotel sales tax rebate as discussed at the December 18, 2018 Council meeting. This rebate applies only to the City’s 1% general sales tax levy collected from charges for sleeping rooms paid by transient guests of the hotel. This revenue would be annually appropriated to reimburse Developer for certified reimbursable project costs. Developer’s total projected revenue from the Hotel Sales Tax Rebate is about \$508,000 over 30-year life of the request. The hotel sales tax rebate would last for a period not to exceed the lesser of (a) 30 years from the Effective Date of the TIF Contract or (b) the date that all Obligations and Reimbursable Project Costs have been repaid.

CID & TDD COOPERATIVE AGREEMENTS

The CID and TDD Cooperative Agreements are functionally identically, but tailored to work for each of the respective districts. These agreements contain substantially identical rights duties and obligations for the City and the appropriate funding district. A summary of some of the key provisions are summarized below.

Sales Tax Rate

The CID will impose a 1.0% sales tax on all retail sales in the project area. The TDD will impose a 0.5% sales tax on all retail sales in the project except the grocery store.

Administrative Costs

Each District will be able to fund administrative costs in an amount not to exceed \$25,000 for the operation of each district. City will receive actual costs for the administrative services performed by the City, up to an annual maximum of \$5,000 for each district.

Collection and Distribution of District Sales Taxes

The sales tax revenues for each district will be remitted to the Department of Revenue by each business in the district area. The revenues will then be transferred by wire from DOR to the City. The City Finance Department will distribute the revenues in accordance with each cooperative agreement and the appropriate provision of bond documents if bonds are issued. There general order of distribution will be first pulling 50% of the district revenues into the TIF Special Allocation Fund, and then paying for administrative costs and distributing the remainder to the bond trustee (if bonds have been issued) or to the Developer for reimbursement of eligible Reimbursable Project Costs that have been certified by the City pursuant to the TIF Contract.

Annual Budgeting

Each district will be required to adopt an annual budget. The budget must be delivered to the City Finance Department at least 90 days prior to adoption for review and comment. The budget must incorporate the City's reasonable comments.

Approvals for Reimbursement

Developer is required to submit request for reimbursement to the Finance Director. Reimbursement requests will be reviewed and approved in the same manner as specified in the TIF Contract. Developer must prove that reimbursable cost shave been incurred with proof and documentation.

Approval of Plans & Specifications, Dedication of Improvements

All improvements that are within the City's right-of-way or within the project area and which will be reimbursed with district revenues must be constructed in accordance with all normally applicable City Code requirements. Developer is required to obtain approval from KCP&L for relocation of the power lines. If improvements funded by a special district are constructed within City right-of-way, the improvements must be inspected and dedicated to the City in accordance with all normally applicable City Code requirements.

Issuance of Bonds

Developer is general proposing that bonds would be issued by the City, or another issuer as approved by the City, and the CID and TDD revenues which are not captured by the TIF Plan will be dedicated as one of several repayment sources for the bonds. The process for issuance of bonds will be controlled by the provisions of the TIF Contract. Bonds cannot be issued by either district without City approval.