

Legislation Text

File #: BILL NO. 23-143, **Version:** 1

An Ordinance approving the Tax Increment Financing Contract and Amended and Restated Community Improvement District Cooperative Agreement for the Discovery Park Project.

(Note: First read by Council on July 11, 2023. Passed by unanimous vote)

Issue/Request:

An Ordinance Approving the Tax Increment Financing Contract and Amended and Restated Community Improvement District Cooperative Agreement for the Discovery Park Project

Key Issues:

The TIF Contract and Amended CID Agreement will implement the Discovery Park TIF Plan and amended CID.

Proposed City Council Motion:

I move for adoption of An Ordinance Approving the Tax Increment Financing Contract and Amended and Restated Community Improvement District Cooperative Agreement for the Discovery Park Project.

Background:

The TIF Contract establishes the rights, duties and obligations of the City and Developer to implement the Discovery Park TIF Plan and amended Blue Parkway and Colbern Road Community Improvement District (CID), which allows for the overall development. As approved, the TIF Plan allows for reimbursement in the maximum principal amount of \$211 million from the several incentive revenue sources, compared to total projected project costs of about \$951 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, Hotel Revenues). That same budget is used as an attachment to the TIF Contract.

Impact/Analysis:

Certain key provisions of the contracts are summarized here:

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. It is not anticipated that bonds will be issued for the project. It is expected that Developer will proceed on a “pay as you go” basis for reimbursement.

If Developer requests the City to issue bonds, then 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.

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. 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 about \$221 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. If 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 3.5/1 ratio.

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

Phased Reimbursement to Incentivize Retail Development

The Contract includes a unique provision to encourage the production of retail commercial development that will also generate sales tax revenues. This provision functions as a limitation on revenue generated within Redevelopment Project 1 (the “**Project 1 Available Revenues**”) in order to encourage the retail development. The provision works as follows:

1. Upon the execution of the Contract, not more than 25% of the total certified Reimbursable Project Costs will be reimbursed from Project 1 Available Revenues.
2. Not more than 50% of the total certified Reimbursable Project Costs will be reimbursed from Project 1 Available Revenues until building permits have been issued and Initial Construction has commenced for all Commercial Structures to be located on the Project 1 Retail Parcels.
3. 100% of the total certified Reimbursable Project Costs will be reimbursed from Project 1 Available Revenues after temporary or final certificates of occupancy have been issued for each Commercial Structure to be located on the Project 1 Retail Parcels.

“**Project 1 Retail Parcels**” means Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 13 as set forth on the Preliminary Development Plan for Redevelopment Project 1. “**Commercial Structures**” means those structures that are intended, at the time of construction, to contain businesses whose primary business operation results in taxable retail sales. “**Initial Construction**” means pouring of the foundation for a structure pursuant to a validly issued building permit, with the intent to complete construction of the full structure in a timely manner.

This provision will dis-incentivize the production of only residential structures and encourage the construction and development of retail structures in the project. This provision initially applies to the Project 1 area, because that is the only area that is presently proceeding with rezoning and preliminary development plan approval. Redevelopment Projects 2-4 may be added by amendment to the Contract at a later date to address this provision as it applies to those area. No reimbursement of certified Reimbursable Project Costs from Available Revenues generated within Redevelopment Projects 2, 3 and 4 may occur until this section of the Contract is amended to allow for such payments.

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. 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 \$1.76 million over the life of the request. The hotel sales tax rebate would last for a period not to exceed the lesser of (a) 23 years from the Effective Date of the TIF Contract or (b) the date that all Obligations and Reimbursable Project Costs have been repaid.

Amended and Restated CID Agreement

The Amended CID Agreement starts with the original Agreement that was executed in 2012 between the City and the CID, and weaves in provisions to make it function properly for the Discovery Park project. The CID Agreement will allow for the reimbursement of costs incurred by the Discovery Park Developer for the overall project in accordance with the terms of the TIF Plan.

The new provisions adjust the flow of CID revenues which are generated within the Discovery Park area, as follows:

- 50% of the CID Sales Tax Revenues will be captured as EATs under the TIF Plan;
- From the remaining 50% revenues:
 - half will be paid to Developer for CID-eligible Reimbursable Project Costs; and
 - half will be paid to the City to reimburse the City for the costs previously incurred by the City for the Blue Parkway improvements that were constructed by the City leading to the main Unity Village entrance at the round-about on Blue Parkway.

This funding arrangement will remain in place until the City is full reimbursed for the previously-incurred Blue Parkway costs/ The flow of CID revenues from the original Phase 1 area and the Phase 3 area remain unchanged under this Amended CID Agreement.

Timeline:

The timeline for the project is set forth in **Exhibit G** of the TIF Contract.

David Bushek, Chief Counsel of Economic Development & Planning

Recommendation: Staff recommends approval of the Ordinance

Committee Recommendation: The TIF Commission recommended that the City Council approve a TIF contract with the Developer.

