

MEMORANDUM

To: City Council

From: Gregory E. Buckley
City Manager



Date: May 31, 2024

Subject: "Amended and Restated" Tax Incremental Financing Property Sale, Cash Grant and Developer's Performance Agreement for The Confluence Project (Located on Former Downtown Eggers Plant Site, in TID No. 16)

At the April 29 City Council work session, the Council directed that the City Attorney prepare an amendment to the December 22, 2022 Agreement with the The Confluence, LLC. That amendment was to reflect certain extensions to the project timetable as requested by the Developer and detailed in the attached staff report, and to incorporate a \$30,000 payment to the City by the Developer as consideration for granting of those extensions.

Upon review of the existing Agreement, it was apparent that the requested changes also resulted in changes to certain other areas of the Agreement. (For example, the timing for new tax increments from the project is delayed by a year, as the result of project construction being moved back by a year.) So, rather than presenting a simple amendment for Council action, the City Attorney and I have worked up the attached "Amended and Restated" Agreement, which is intended to replace the earlier Agreement in its entirety.

The attached mark-up of the original Agreement reflects all changes proposed. Further, the exhibits to the Agreement have been updated where appropriate, to reflect signing dates in 2024 instead of 2022. (These updated exhibits include Ex. B, Memorandum of Development Agreement, Ex. C, Real Estate Mortgage, Ex. D, Real Estate Purchase Agreement). The one remaining Exhibit that requires updating is Ex. E, the TID 16 Pro Forma, which needs to be updated to reflect the new anticipated project completion date (moves TID revenue stream back by one year).

I recommend that the City Council at its meeting on June 3 authorize the City Manager and City Clerk to execute the "Amended and Restated" Agreement, with the ability to make further modifications to the Agreement that the City Attorney and City Manager consider to be appropriate and not detrimental to the City's interests.




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A-4.3

The Confluence—Development Agreement Between City and the Confluence, LLC

Original project proposal: Fall 2022; 50 market rate apartment units, \$10 million investment.

Updated plan and budget: 71 units; \$22.6 million investment

City Assistance, per Development Agreement:

- \$900,000 TIF Grant Up Front
- \$900,000 TIF Grant Pay/Go
- Up to \$450,000 TIF Performance Incentive

Development Agreement has been amended three times, to grant Developer extensions on timelines. Most recent extensions were approved February 19, 2024, with March 31, 2024 deadline for final construction cost estimates and final proof of financing. Developer did not yet finalize financing, citing the challenge of high interest rates.

Developer met with City Manager, Community Development Director and 3 Council members on Friday, April 26, 2024. He reported on securing \$5 million in PACE financing for the project, and that discussions continue with three banks. He also reported on status of equity investment—will need 25 percent, or about \$5.5 million. Also reported that his team continues to evaluate mix of 2 BR, 1 BR and studio units, and is looking at alternatives with 64, 74 or 89 total units.

Developer proposes an additional amendment to the Development Agreement, with changes as follows:

1. Final project plan, cost estimate and financing commitments: July 31, 2024
2. Construction start date: September 15, 2024
3. Project completion: December 31, 2025

Developer to pay either a \$30,000 non-refundable deposit toward the land purchase, or a \$30,000 option fee to extend its option on the property and other rights under the Development Agreement.

Staff recommends directing that the City Attorney prepare an amendment to the Development Agreement, for consideration at the May 20 Council meeting, granting the requested changes for a \$30,000 option fee that will neither be refundable nor credited to the Developer.