
AGENDA REPORT**Meeting Date:** January 24, 2025**Item Number:** 4**Prepared By:** Jason Greiner**Subject**

Consider possible action regarding reconsideration of the First Amendment to Performance Agreement between the WEDC and MLKJ Investments, LLC.

Recommendation**Discussion**

As the Board will recall, the WEDC entered into a contract with MLKJ Investments, LLC on September 21, 2022, to sell Lots 2, 3, and 4 of Wyndam Estates for the development of two spec office buildings. The WEDC and MLKJ closed on the property on December 1, 2023. At closing, both parties executed all closing documents, including a Real Estate Lien Note (dated Nov. 30, 2023), a Memorandum of Repurchase Option (dated Nov. 30, 2023), and a Performance Agreement (dated Dec. 1, 2023).

At this time, MLKJ's failure to commence construction of the improvements by June 1, 2024, as described in the Contract and Memorandum of Repurchase has granted the WEDC an option to repurchase the property, which does not expire until June 1, 2025. Also, MLKJ's failure to obtain a Certificate of Completion on the first building prompted the WEDC Board to consider a First Amendment to the Performance Agreement to avoid a default on the Performance Agreement. Subsequently, on December 18, 2024, the Board approved a First Amendment to the Performance Agreement between the WEDC and MLKJ Investments, LLC, amending the "Building A CC Deadline" in Section 2 (a). i. from one (1) year to 18 months and to further authorize the Executive Director to execute any and all necessary documents.

Since that time, the WEDC Board has indicated their desire to possibly reconsider the First Amendment to Performance Agreement between the WEDC and MLKJ Investments, LLC.

Staff will lead the discussion and provide any additional updates as needed.

2. Performance Obligations. The WEDC's obligation to provide Company with the Economic Assistance stipulated above is expressly contingent upon Company completing the following items (the "Performance Obligations") by the due dates set forth below:

(a) Year One. Economic Assistance will be provided to the Company in the form of (i) forgiveness of a portion of the Seller Note in an amount not to exceed Fifty Thousand Dollars (\$50,000.00) plus any accrued interest, and (ii) payment of a qualified infrastructure incentive in an amount not to exceed Forty Thousand Dollars (\$40,000.00) upon completion of the following Performance Obligations for Year One;

i. Company shall construct or cause to be constructed Building A on the Property, as evidenced by a Certificate of Completion or letter from the City's Chief Building Official (a "Certificate of Completion") for Building A, no later than one (1) year after the Effective Date of this Agreement (the "Building A CC Deadline"), provided, however, that Company shall have the right to extend the Building A CC

Deadline two (2) times for periods of ninety (90) additional days each by providing written notice thereof to WEDC prior to the Building A CC Deadline;

ii. Company shall supply documentation to the WEDC verifying the total project cost as evidenced by paid invoices, no later than the Building A CC Deadline; and

iii. Company shall supply documentation to the WEDC that the Qualified Infrastructure for Building A has been completed and that the cost of constructing the Qualified Infrastructure for Building A was at least Two Hundred Eighty Thousand Dollars (\$280,000.00) no later than the Building A CC Deadline; and

iv. Company shall be current on all ad valorem taxes and other property taxes due on the Property through the Building A CC Deadline and provide written notice and evidence of such payment to WEDC in a form satisfactory to WEDC; and

v. Company shall supply documentation to the WEDC on or before the Building A CC Deadline that Company has paid on time all fees associated with construction of Building A including, but not limited to, Building Permit Fee, Plumbing, Mechanical, and Electrical Permit Fees, Fire Inspection Fee, Fire Department Plan Review Fee Fire Development Fee, Thoroughfare Impact Fee, Water & Sewer Impact Fees, third party review of Fire Sprinkle and Fire Alarm plans, and all other inspection fees not specifically named that may be applicable to the construction of Building A.

Attachment

- Performance Agreement
- Real Estate Lien Note
- First Amendment to Performance Agreement – Draft