

## ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

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This **ECONOMIC DEVELOPMENT PROGRAM AGREEMENT** (“**Agreement**”) is entered into by and between the **CITY OF FORT WORTH** (“**City**”), a home rule municipality organized under the laws of the State of Texas, and **EVANS ROSEDALE, INC.** (“**Company**”), a Delaware corporation.

### RECITALS

The City and Company agree that the following statements are true and correct and constitute the basis upon which the City and Company have entered into this Agreement:

**A.** The Historic Southside neighborhood and the area in and around the intersections of Evans Avenue and Rosedale Street played a vital role in Fort Worth's African-American community and the City of Fort Worth, as a whole, during the first half of the twentieth century.

**B.** The area housed numerous businesses and well-known music venues as well as Our Mother of Mercy, a private school facility for African Americans that educated a number of neighborhood children who went on to become professionals, and was home to a number of prominent members of the African-American community, including Dr. R.A. Ransom, who opened one of the first African-American hospitals in Fort Worth and the State of Texas.

**C.** Over time, commercial patterns changed, more affluent individuals left the area in favor of new suburban developments, and the area began to suffer a severe economic decline.

**D.** The City has long sought to redevelop the area in a way that is sensitive to its historic roots and that takes into account its importance to the community.

**E.** As early as 1998, the City undertook efforts to revitalize the area by applying for a \$7.5 million Section 108 Loan Guarantee from the Department of Housing and Urban Development (M&C C-16898), which was awarded and later modified to support the development of a new public health/code compliance facility and library in the area (M&C C-19859; CSC 32336).

**F.** Other progress toward redevelopment includes the creation of a new plaza and streetscape as called for in the area's October 2000 Vision Plan, designation of the area as an urban village, and establishment of the Evans & Rosedale Urban Village Master Plan.

**G.** In concert with the revitalization efforts over the years, the City, the Fort Worth Housing Finance Corporation (“**HFC**”), and the Fort Worth Local Development Corporation (“**LDC**”) have collectively amassed a total of thirty-six parcels of real property in the area (“**Development Site**”), undertaken environmental assessment and remediation, and rezoned land in an effort to facilitate redevelopment.

**H.** A few small-scale private development and redevelopment projects have been successfully undertaken in the area, but larger redevelopment projects have failed to come to fruition due to a variety of factors, including cyclical economic downturns and lack of support from the neighborhood.

**I.** In December of 2018, the City, in concert with the HFC and LDC, issued a Request for Expressions of Interest (RFEI) seeking a Master Developer arrangement for the Property and the area in and near the historic Evans & Rosedale Urban Village.

**J.** After a lengthy review and negotiation process that included extensive stakeholder and community input but that was substantially prolonged due to the negative impacts of the COVID-19 pandemic, the City, HFC, LDC, and Board of Tax Increment Reinvestment Zone Number 4, City of Fort Worth (“**TIF 4 Board**”) all took action to move forward with Company as developer for an Evans and Rosedale Redevelopment and Affordable Housing Project, consisting of the following: (1) a parking garage with at least 339 parking spaces (“**Parking Garage**”); (2) 27,000 square feet of Commercial/Retail space; a cultural square, parks, and other public spaces; and housing consisting of at least 292 multifamily units, and 28 live-work units (“**Phase 1 Improvements**”); and (3) 20 townhomes (“**Phase 2 Improvements**”) (collectively, the “**Real Property Improvements**”).

**K.** At least 20% of the total number of housing units in the Project will be affordable housing.

**L.** As part of the Project, the City allocated \$4,245,533.42 from the American Rescue Plan Act, Subtitle M (Coronavirus State and Local Fiscal Recovery Funds) to pay fair market value for the Property, consisting of thirty HFC properties (\$3,595,977.13), five (5) LDC properties (\$537,076.29), and one (1) City property (\$112,500.00) (M&C 21-0810).

**M.** The City agreed to convey all of the Property to Company for the Project in exchange for nominal monetary consideration of \$1.00 per Property plus the granting of deeds of trust covering all property to ensure the Property is used for the development and continued operation of affordable housing for a period of at least fifteen (15) years from the date of issuance of the certificate of occupancy.

**N.** In further support of the Project, the City also authorized an economic development program agreement with Company, with the aggregate value of all grant payments capped at a gross amount of \$9,000,000.00 and the amount of grant payments to actually be awarded being made contingent on Company meeting certain specifically identified investment, development, and employment criteria.

**O.** The TIF 4 Board agreed to provide funding to the Central City Local Government Corporation (“**CCLGC**”) in an amount up to \$6,500,000.00 to fund the acquisition of an easement for Parking Garage and secure public parking spaces, which easement will be owned by the CCLGC and permit CCLGC to lease the Parking Garage to Company for operations and maintenance and to benefit the Project.

**P.** The TIF 4 Board also agreed to provide funding to Company in an amount not to exceed \$500,000.00 for sidewalks and walkways, streetscape improvements, street lights and landscaping within public rights-of-way and other publicly accessible spaces, and enhancements to plaza and park spaces in and around Evans Avenue Plaza, all of which are improvements that will benefit the Project (“**Company TIF Agreement**”).

**Q.** The Real Property Improvements and Company’s operations therein will benefit the City by increasing the scope of an important mixed-use development in the City with significant opportunities for employment and tax base growth.

**R.** As recommended by the City's 2021 Comprehensive Plan, adopted by the City Council pursuant to Ordinance No. 24732-032021 ("**Comprehensive Plan**"), and in accordance with Resolution No. 5338-01-2021 ("**Policy**"), the City has established an economic development program pursuant to which the City will, on a case-by-case basis, offer economic incentives authorized by Chapter 380 of the Texas Local Government Code that include monetary loans and grants of public money, as well as the provision of personnel and services of the City, to businesses and entities that the City Council determines will promote state or local economic development and stimulate business and commercial activity in the City in return for verifiable commitments from such businesses or entities to cause specific employment and other public benefits to be made or invested in the City ("**380 Program**").

**S.** The City Council has determined that the feasibility of the proposed development project described herein is contingent on Company's receipt of the Program Grants.

**T.** The City Council has determined that the development and use of the Real Property Improvements will benefit and stimulate the local economy and that the 380 Program is an appropriate means to achieve this project.

**U.** In addition, the City Council has determined that, by entering into this Agreement, the potential economic benefits that will accrue to the City are consistent with the City's economic development objectives, as outlined in the Comprehensive Plan.

**V.** This Agreement is authorized by Chapter 380 of the Texas Local Government Code.

**NOW, THEREFORE,** in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **AGREEMENT**

### **1. INCORPORATION OF RECITALS**

The City Council has found, and the City and Company hereby agree, that the recitals set forth above are true and correct and form the basis upon which the parties have entered into this Agreement.

### **2. DEFINITIONS**

In addition to other terms defined in the body of this Agreement, the following terms will have the definitions ascribed to them as follows:

**380 Program** has the meaning ascribed to it in Recital R.

**Affiliate** means all entities, incorporated or otherwise, controlled by or under common control with Company. For purposes of this definition, "control" means possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Company, whether through the ownership of voting securities, by contract or otherwise; provided, however, that any entity that has the right to approve, disapprove or otherwise consent to certain major decisions shall not be deemed to have Control solely as a result of such rights.

**Aggregate Development Site Sales Tax Payment** has the meaning ascribed to it in Section 4.6.2.

**AMI** has the meaning ascribed to it in Section 6.1.2.

**Base Grant Percentage** has the meaning ascribed to it in Section 7.2.1.

**Business Equity Firm (“BEF”)** has the meaning assigned to it in the City of Fort Worth’s Business Equity Ordinance (Chapter 20, Article X of the City Code), as amended.

**BEF Construction Percentage** has the meaning ascribed to it in Section 7.2.2.

**BEF Construction Spending Commitment** has the meaning ascribed to it in Section 4.2.

**Commercial/Retail** means Class A office space or a facility for the retail sale of merchandise, food and beverage, or services, including by way of example but limited to, a retail store, restaurant, entertainment use (e.g., theater) or personal service use (e.g., a health spa or beauty salon), and travel center/convenience store. Commercial/Retail space includes any accessory areas, service corridors, management offices, or customer facilities that are incidental to or used for Commercial/Retail use.

**Comptroller** means the Texas Comptroller for Public Accounts.

**Comptroller Reports** has the meaning ascribed to it in Section 4.6.2.

**Development Site** has the meaning ascribed to it in Recital G.

**Development Site Personal Property Tax Revenues** means City ad valorem taxes on New Taxable Tangible Personal Property located on the Development Site. The taxable appraised value of New Taxable Tangible Personal Property located on the Development Site for any given year will be established solely by the appraisal district that has jurisdiction over the Development Site at the time.

**Development Site Purchase Agreements** means, collectively (i) that certain Contract of Sale and Purchase (Phase 1 Lots) dated on or about the date hereof by and between the City and Phase 1 Property Owner, (ii) that certain Contract of Sale and Purchase (Phase 2 Lots) dated on or about the date hereof by and between the City and Phase 2 Property Owner, and (iii) that certain Contract of Sale and Purchase (722 Rosedale) dated on or about the date hereof by and between the City and Phase 1 Property Owner, as such agreements may be amended in accordance with the terms thereof.

**Development Site Real Property Tax Revenues** means City ad valorem taxes on the Development Site and any improvements thereon, including the Real Property Improvements, *minus* the taxes attributable to the base collective taxable appraised value of the Development Site and all improvements thereon for the 2022 tax year. The taxable appraised value of the Development Site and any improvements located thereon, including the Real Property Improvements, for any given year will be established solely by the appraisal district that has jurisdiction over the Development Site at the time.

**Development Site Sales Tax Revenues** means revenue received by the City from the one percent (1%) available City sales tax that is presently in effect pursuant to Texas Tax Code Sections

321.101(a) and 321.103, resulting from taxes collected by Development Site Users on Sales transacted on the Development Site; provided, however, that Development Sales Tax Revenues specifically **excludes** all revenues from (a) the Crime Control and Prevention District Sales Tax imposed by the City pursuant to Texas Tax Code Section 323.105 and Texas Local Government Code Section 363.005, as may be amended, and (b) the Transit Authority Sales Tax paid to the City by the Fort Worth Transportation Authority d/b/a Trinity Metro pursuant to City Secretary Contract Number 19689, as previously or subsequently amended or restated, from the sales tax imposed by the Fort Worth Transportation Authority pursuant to Texas Tax Code Chapter 322. If the City's sales tax rate is ever decreased to the extent that the City receives available sales tax revenue based on less than one percent (1%) sales tax, then the meaning of Development Sales Tax Revenues will automatically be adjusted to equal the lesser percentage. If the City's sales tax rate is ever decreased to the extent that the City receives available sales tax revenues based on less than one percent (1%) sales tax and is then increased to a higher percentage whose use is not otherwise controlled, regulated, restricted, or otherwise dedicated to a specific use by the City, then the Development Sales Tax Revenues will be computed to reflect that increased percentage up to a maximum aggregate of one percent (1%).

**Development Site User** means any person or entity, including the property owner, and any employee, agent, Tenant, or invitee thereof, that has the legal right to use or occupy or to conduct Sales on any portion of the Development Site.

**Director** means the director of the City's Economic Development Department or that person's authorized designee.

**Effective Date** has the meaning ascribed to it in Section 3.

**Employment Commitment** has the meaning ascribed to it in Section 4.3.1.

**Employment Percentage** has the meaning ascribed to it in Section 7.3.1.

**Full-time Equivalent Job** means a job on the Development Site provided to one or more individuals by Company, Company's Affiliate, or a Development Site User for a total period of not less than forty (40) hours per week.

**Grocery Store** has the meaning ascribed to it in Section 4.10.1.

**Hard Construction Costs** means the aggregate of the following costs expended or cause to be expended by the Company or a Project Owner for the Real Property Improvements: actual site development and construction costs (i.e., labor and materials), contractor fees and other costs charged by a contractor in connection with the performance of its work, but excludes land acquisition costs paid by Company or a Project Owner for the various parcels that make up the Development Site.

**HUD** has the meaning ascribed to it in Section 6.1.2.

**Live-work Units** means a mix of both residential and commercial use within one apartment or townhouse unit. The commercial office or retail space must be at least 30% of the total square footage, accessible from the sidewalk, and be utilized for commercial office or retail only.

**New Job** has the meaning ascribed to it in Section 4.3.2.

**New Taxable Tangible Personal Property** means any personal property that (i) is subject to ad valorem taxation by the City; (ii) is located on the Development Site; (iii) is owned or leased by Company; and (iv) was not located in the City prior to the Effective Date of this Agreement.

**Parking Garage** has the meaning assigned to it in Recital J.

**Phase 1 Affordable Housing Commitment** has the meaning ascribed to it in section 6.1.2.

**Phase 1 Certificate of Completion** has the meaning ascribed to it in Section 5.1.

**Phase 1 Completion Date** means the date as of which (a) all occupiable space comprising the Commercial/Retail portion of the Phase 1 Improvements has received at least a temporary or permanent certificate of occupancy from the City for the shell building space; (b) all occupiable space for Residential Units has received at least a temporary or final certificate of occupancy from the City for residential operations; (c) the Parking Garage has received a temporary or final certificate of occupancy; and (d) the City has approved and accepted any public improvements associated with the Phase 1 Improvements, including but not limited to, park improvements.

**Phase 1 Completion Deadline** means the final day of the thirty-sixth month after the Phase 1 Start Date. After the Phase 1 Start Date is established per the terms of this Agreement, then the parties will execute an addendum clearly setting forth the Phase 1 Completion Deadline. The Phase 1 Completion Deadline shall be subject to extension in accordance with Section 25.

**Phase 1 Deed of Trust** means the deed of trust encumbering the portion of the Development Site upon which the Phase 1 Improvements will be constructed to be imposed by the City under the terms of the Phase 1 Loan Agreement to be executed by the Phase 1 Property Owner for the benefit of the City.

**Phase 1 Improvements** has the meaning ascribed to it in Recital J.

**Phase 1 Loan Agreement** means that certain loan agreement to be entered into by the City and the Phase 1 Property Owner on or prior to the Phase 1 Start Date and concurrently with the closing of the construction financing for the Phase 1 Improvements, pursuant to which the City will require the Phase 1 Property Owner to comply with the Phase 1 Affordable Housing Commitment, such loan and obligation which will be secured by the Phase 1 Deed of Trust and note.

**Phase 1 Property Owner** means Evans Rosedale Development Phase 1, LP, a Delaware limited partnership, or an Affiliate.

**Phase 1 Real Property Commitment** has the meaning ascribed to it in Section 4.1.1.

**Phase 1 Start Date** has the meaning ascribed to it in Section 4.1.1, as may be extended in accordance with Section 25.

**Phase 2 Affordable Housing Commitment** has the meaning ascribed to it in Section 6.1.3.

**Phase 2 Completion Date** means the date as of which all occupiable space for Residential Units within the Phase 2 Improvements has received a temporary or final certificate of occupancy from the City for residential operations.

**Phase 2 Completion Deadline** means the final day of the eighteenth month after the Phase 2 Start Date. After the Phase 2 Start Date is established per the terms of this Agreement, then the parties will execute an addendum clearly setting forth the Phase 2 Completion Deadline.

**Phase 2 Certificate of Completion** has the meaning ascribed to it in Section 5.2.

**Phase 2 Deed of Trust** means the deed of trust encumbering the portion of the Development Site upon which the Phase 2 Improvements will be constructed to be imposed by the City under the terms of the Phase 2 Loan Agreement to be executed by the Phase 2 Property Owner for the benefit of the City.

**Phase 2 Loan Agreement** means that certain loan agreement to be entered into by the City and the Phase 2 Property Owner on or prior to the Phase 2 Start Date and concurrently with the closing of the construction financing for the Phase 2 Improvements, pursuant to which the City will require the Phase 2 Property Owner to comply with the Phase 2 Affordable Housing Commitment, such loan and obligation which will be secured by the Phase 2 Deed of Trust and note.

**Phase 2 Improvements** has the meaning ascribed to it in Recital J.

**Phase 2 Property Owner** means Evans Rosedale Development Phase 2, LP, a Delaware limited partnership, or an Affiliate.

**Phase 2 Real Property Commitment** has the meaning ascribed to it in Section 4.1.2.

**Phase 2 Start Date** has the meaning ascribed to it in Section 4.1.2.

**Policy** has the meaning ascribed to it in Recital R.

**Property Owners** means, collectively, the Phase 1 Property Owner and Phase 2 Property Owner, and individually each being a “**Project Owner**”.

**Program Cap** means the maximum number of gross dollars comprising the sum of the aggregate amount of all Program Grants paid by the City pursuant to this Agreement, as follows:

- a. If Company meets the Phase 1 Improvement Commitment in a timely manner, as verified in the Certificate of Completion, the Program Cap will equal Eight Million Dollars and Zero Cents (\$8,000,000.00), gross.
- b. If Company meets both the Phase 1 Improvement Commitment and the Phase 2 Improvement Commitment in a timely manner, as verified in the Certificates of Completion for each, the Program Cap will be increased to equal an aggregate of Nine Million Dollars and Zero Cents (\$9,000,000.00), gross

**Program Grants** means the annual economic development grants paid by the City to Company in accordance with this Agreement and as part of the 380 Program.

**Program Source Funds** means an amount of City funds available for inclusion in a given Program Grant that is payable in a given Program year, which will equal a percentage (calculated in accordance with this Agreement) of the Development Site Real Property Tax Revenues,

Development Site Personal Property Tax Revenues, and eighty percent (80%) of the Development Site Sales Tax Revenues received by the City during the previous calendar year.

**Purchase and Lease Agreement** means an agreement between the CCLGC and Company for the acquisition of a perpetual easement for, and lease back of, the Parking Garage.

**Records** has the meaning ascribed to it in Section 4.7.

**Residential Units** means residential apartments, townhomes, and live-work units.

**Real Property Improvements** has the meaning ascribed to it in Recital J.

**Sales** means all sales of merchandise (including gift and merchandise certificates), food, alcohol, gasoline, services, and other receipts whatsoever of all business conducted in, on, or from the Development Site, whether cash, credit, electronic, or any cryptocurrency (include, but not limited to bitcoin), including mail, telephone, telefax, telegraph, internet, or catalogue orders received or filled at or from the Development Site, deposits not refunded to purchasers, orders taken (although such orders may be filled elsewhere), sales to employees, sales through vending machines, or other devices. Sales does not include (a) any sums collected and paid for any sales or excise tax imposed by any duly constituted governmental authority, (b) the exchange of merchandise purchased on and returned to the Development Site, (c) the amount of returns to shippers and manufacturers, or (d) the sale of any fixtures, furniture, or equipment.

**Second Operating Year** means the second full calendar year following the year in which the Phase 1 Completion Date occurred.

**Tenant** means a tenant or licensee with the legal right to occupy any portion of the Development Site under a lease, license, or other similar agreement.

**Tenant Improvement Costs** means Tenant allowances paid by Company and any Tenant expenditures in excess of Tenant allowances for all costs associated with the design, construction, and fixturing of a Tenant's premises, including, but not limited to, architectural, contractor, engineering, and design fees, building materials and work on a Tenant's behalf, electrical and lighting, plumbing, fire protection and sprinklers, HVAC work, storefront and glazing, demolition, barricades and staging, and any other work performed within the Tenant's premises along with the Tenant's permanent fixtures, as well as any other costs directly expended for the Phase 1 Improvements and Phase 2 Improvements, but outside of the Tenant's premises, pursuant to the Tenant's lease, including, but not limited to, common areas.

**Term** has the meaning ascribed to it in Section 3.

**Total Development Costs** means the aggregate of Hard Construction Costs, Tenant Improvement Costs, and the following costs expended or caused to be expended by Company or by third parties other than Company for the Development Site directly in connection with construction of the Real Property Improvements: engineering, architectural and other design and consulting fees; construction management fees; real estate commission, costs of third party consultants, including attorneys and environmental consultants; developer fees; zoning fees; insurance and taxes directly related to the construction of the Projects; financing costs, including capitalized interest; the cost of furniture, fixtures, and equipment; and costs of related governmental permits and inspection fees. For removal of doubt, property acquisition costs do not constitute "Total Development Costs."



### 3. **TERM**

This Agreement will be effective as of October 19, 2021, which is the date on which the City Council approved this Agreement (“**Effective Date**”) and, unless terminated earlier pursuant to and in accordance with this Agreement, will expire on the date as of which all obligations of the parties have been fulfilled as set forth herein (“**Term**”).

### 4. **COMPANY OBLIGATIONS AND COMMITMENTS**

#### 4.1. **Real Property Improvements**

**4.1.1. Phase 1 Improvements.** To receive Program Grants related to the Phase 1 Improvements, Company must meet the following conditions (“**Phase 1 Real Property Commitments**”):

- a. Begin construction of the Phase 1 Improvements within eighteen (18) months after the City and Company execute this Agreement (“**Phase 1 Start Date**”). For purposes of this Agreement, construction of the Phase 1 Improvements begins on the later date that both of the following are met: (i) Company closes on financing necessary to begin the Phase 1 Improvements and (ii) Company receives its first building permit for the Phase 1 Improvements. The Phase 1 Start Date will be memorialized by way of an addendum to this Agreement, the form of which is attached hereto as Exhibit A and incorporated herein.
- b. Cause the Phase 1 Property Owner to execute and deliver the Phase 1 Loan Agreement, the Phase 1 Deed of Trust, and any other documents related thereto (which shall be in a form and substance reasonably acceptable to City and Company) concurrently with the closing of the construction financing for the Phase 1 Improvements, such closing which must occur on or before the Phase 1 Start Date. The Phase 1 Deed of Trust will be recorded prior to the commencement of any construction of the Phase 1 Improvements and will be subordinated to the Phase 1 Property Owner’s construction or permanent financing, such subordination agreement which shall be in a form and substance approved by the City, such approval not to be unreasonably withheld, conditioned, or delayed.
- c. Expend or cause to be expended at least Sixty Million Dollar and Zero Cents (\$60,000,000.00) in Total Development Costs on the Phase 1 Improvements, of which at least Fifty-Six Million Dollars and Zero Cents (\$56,000,000.00) must be expended on Hard Construction Costs.
- d. Cause the Phase 1 Property Owner to execute the Purchase and Lease Agreement prior to the Phase 1 Completion Date and provide a copy of the fully executed Purchase and Lease Agreement to the Director.

- e. The Phase 1 Completion Date must occur on or before the Phase 1 Completion Deadline, as evidenced by the Phase 1 Certificate of Completion.
- f. Meet any and all other requirements of this Agreement in connection with the completion of the Phase 1 Improvements.

**4.1.2. Phase 2 Improvements.** To receive Program Grants related to the Phase 2 Improvements, Company must meet the following conditions:

- a. Begin construction of the Phase 2 Improvements on or before December 31, 2023 (“**Phase 2 Start Date**”). For purposes of this Agreement, construction of the Phase 2 Improvements begins on the later date that both of the following are met: (i) Company closes on financing necessary to begin the Phase 2 Improvements and (ii) Company receives its first building permit for the Phase 2 Improvements. The Phase 2 Start Date will be memorialized by way of an addendum to this Agreement, the form of which is attached hereto as Exhibit A.
- b. Cause the Phase 2 Property Owner to execute and deliver the Phase 2 Loan Agreement, the Phase 2 Deed of Trust, and any other documents related thereto (which shall be in a form and substance reasonably acceptable to City and Company) concurrently with the closing of the construction financing for the Phase 2 Improvements, such closing which must occur on or before the Phase 2 Start Date. The Phase 2 Deed of Trust will be recorded prior to the commencement of any construction of the Phase 2 Improvements and will be subordinated to the Phase 2 Property Owner’s construction or permanent financing, such subordination agreement which shall be in a form and substance approved by the City, in its reasonable discretion.
- c. Expend or cause to be expended an aggregate amount of Seventy Million Dollars and Zero Cents (\$70,000,000.00) in Total Development Costs on the Real Property Improvements (which includes both the Phase 1 Improvements and Phase 2 Improvements) (“**Phase 2 Real Property Commitment**”).
- d. The Phase 2 Completion Date must occur on or before the Phase 2 Completion Deadline, as evidence by the Phase 2 Certificate of Completion.
- e. Meet any and all other requirements of this Agreement in connection with the completion of the Phase 2 Improvements.

**4.2. Construction Spending Commitment with BEFs.** Company, either through itself, an Affiliate, Development Site User, or a general contractor, must expend or cause to be expended at least fifteen percent (15%) of all Total Development Costs for both the Phase 1 Improvements and Phase 2 Improvements, regardless of the total amount of such

Total Development Costs, with BEFs by the Phase 1 Completion Date and Phase 2 Completion Date, as applicable (“**BEF Construction Spending Commitment**”).

#### **4.3. Employment Commitment**

**4.3.1.** On or before December 31, 2024, Company must use commercially reasonable efforts to cause Company, its Affiliates, or a Development Site User to employ at least 30 new Full-Time Equivalent Jobs to individuals whose principal place of residence is within the boundaries outlined and set forth in the map in Exhibit “B”, which is attached hereto and incorporated herein for all purposes, at the Development Site (“**Employment Commitment**”).

**4.3.2.** From and after the completion of the Phase 1 Improvements, Company must maintain or cause its Affiliates or Development Site Users to maintain at least 30 Full-Time Equivalent Jobs at the Development Site for the Term of this Agreement (each a “**New Job**”). A Full-Time Equivalent Job will be considered new if the individual was hired on or after Effective Date.

**4.3.3.** Determination each year of compliance with the Employment Commitment will be based on the employment data provided to the City pursuant to this Agreement for the year under evaluation.

#### **4.4. Reports**

##### **4.4.1. Quarterly Reports**

From the Effective Date until the Phase 1 Completion Date or Phase 2 Completion Date, as applicable, Company must provide the Director with a calendar quarterly report in a form reasonably acceptable to the Director that specifically outlines (i) the then-current aggregate Total Development Costs expended for the Real Property Improvements; and (ii) the then-current aggregate Total Development Costs expended with BEFs for the Real Property Improvements, separated out by Phase 1 Improvements and Phase 2 Improvements.

##### **4.4.2. Final Construction Report**

- a.** Phase 1 Final Construction Report. In order for the City to assess whether the Phase 1 Real Property Commitment and the BEF Construction Spending Commitment have been met, Company must provide the Director with a report in a form reasonably acceptable to the Director within ninety (90) calendar days following the Phase 1 Completion Date that specifically outlines (i) the Total Development Costs expended or caused to be expended for the Phase 1 Improvements as of the Phase 1 Completion Date and (ii) the Total Development Costs expended or caused to be expended with BEFs for the Phase 1 Improvements as of the Phase 1 Completion Date, together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid, including, without limitation, final

lien waivers signed by the general contractor for the Phase 1 Improvements.

- b. **Phase 2 Final Construction Report.** In order for the City to assess whether the Phase 2 Real Property Commitment and the BEF Construction Spending Commitment have been met, Company must provide the Director with a report in a form reasonably acceptable to the Director within ninety (90) calendar days following the Phase 2 Completion Date that specifically outlines (i) the Total Development Costs expended or caused to be expended for the Phase 2 Improvements as of the Phase 2 Completion Date and (ii) the Total Development Costs expended or caused to be expended with BEFs for the Phase 2 Improvements as of the Phase 2 Completion Date, together with supporting invoices and other documents necessary to demonstrate that such amounts were actually paid, including, without limitation, final lien waivers signed by the general contractor for the Phase 2 Improvements.

#### **4.4.3. Annual Employment Report**

On or before December 31, 2024 and December 31 of each year thereafter, in order for the City to assess the degree to which the Employment Commitment for the previous calendar year was met, Company must provide the Director with a report in a form reasonably acceptable to the Director that sets forth the total number of individuals who held Full-time Equivalent Jobs on the Development Site up to the 30 Full-time Jobs commitment, all as of December 31 (or such other date requested by Company and reasonably acceptable to the Director) of the previous calendar year, together with reasonable supporting documentation. The report provided by Company may include redactions to protect the personal information of employees that satisfy the 30 Full-Time Jobs commitment.

#### **4.4.4. Performance by Affiliates**

The City will accept performance of any obligations set forth in this Section 4 by an Affiliate of Company or a Development Site User, with the understanding that Company will be responsible for preparing and providing all reports required hereunder, including the assembly of and access by the City to any data or information of an Affiliate that is reflected in any such report.

#### **4.4.5. Additional Information**

Company agrees to provide the City with any additional information that the Director may reasonably require to ascertain Company's compliance with this Agreement and to assist the City in properly calculating Program Grants payable in accordance with this Agreement.

### **4.5. Inspections of Development Site**

**4.5.1.** At any time during Company's normal business hours throughout the Term and following reasonable written notice to Company, the City will have the

right to inspect and evaluate the Development Site and any improvements thereon, including the Real Property Improvements, and Company must provide full access to the same, in order for the City to monitor compliance with the terms and conditions of this Agreement. Company will cooperate fully with the City during any such inspection and evaluation and City will cause its representatives and agents to comply with the safety rules and regulations imposed by Company or its contractors in connection with such inspections.

**4.5.2.** Notwithstanding the foregoing, Company will have the right to require that any representative of the City be escorted by a representative or security personnel of Company during any such inspection and evaluation.

**4.6. Annual Sales Tax Report**

**4.6.1.** To the extent reasonably possible, Company will require Development Site Users to provide Company and the City with annual Sales data sufficient to determine annual sales tax payments required herein.

**4.6.2.** On or before February 1 of the Second Operating Year and for each year thereafter, Company must provide, or cause to be provided, the City with annual report(s) that set forth the following:

- a.** the aggregate amount of sales tax paid to the Comptroller by Development Site Users during the previous year (“**Aggregate Development Site Sales Tax Payment**”);
- b.** a copy of the sales tax reports filed with the Comptroller (“**Comptroller Reports**”) verifying Aggregate Development Site Sales Tax Payments; and
- c.** a list containing the retail site of and sales tax identification number of each Development Site User.

**4.6.3.** Company must keep and maintain, or cause to be kept and maintained, copies of all Comptroller Reports from Development Site Users for at least seven (7) years following the end of the year to which such Comptroller Reports relate and ensure that such Comptroller Reports can be made available to the City for inspection pursuant to this Agreement.

**4.6.4.** Company understands and agrees that the City’s calculation of Development Site Sales Tax Revenues in a given year will be based solely on the Aggregate Development Site Sales Tax Payments as verified by the Comptroller Reports, plus any additional sales tax payments made by Development Site Users in such year, as reflected on Comptroller Reports, that the City is reasonably able to ascertain, in the City’s sole but reasonable judgment, are attributable to Sales on the Development Site.

**4.7. Audits.** The City will have the right throughout the Term to audit the financial and business records of Company or any Affiliate that relate to Total Development Costs expended for the Real Property Improvements or New Taxable Tangible Personal Property as well as any other documents necessary to evaluate Company’s compliance with this

Agreement or with the commitments set forth in this Agreement (collectively “**Records**”). The scope of the audit will not include an audit of the rates charged by any third-party contractor as set forth in its construction contract in connection with such Total Development Costs but may include the application of such rates to the cost of the work being performed by such contractor. Company must make all Records available to the City on the Development Site or at another location in the City with reasonable advance notice that is acceptable to both parties. Company will otherwise cooperate fully with the City during any audit assuming that reasonable advance notice acceptable to both parties has been provided. This section will survive the expiration or early termination of this Agreement.

#### **4.8. Community Meetings**

**4.8.1.** From and after execution of this Agreement by the City and every six months thereafter until the Phase 2 Improvement Commitment has been fulfilled, Company must conduct public meetings and notify, invite, and share the location and time of each meeting with the following at least thirty (30) days in advance: the City of Fort Worth Economic Development and Neighborhood Services Departments, Near Southside Inc, Southeast Fort Worth Inc., and the Historic Southside Neighborhood Association. The City reserves the right to post the details of each meeting, stream it live, and post it virtually on its platforms as it sees fit. A virtual-only meeting should be held only as a last resort and with approval (which may be by email) from the Director and an officer of Historic Southside Neighborhood Association.

**4.8.2.** Company must hold each meeting at a venue within the Historic Southside unless a venue of appropriate size and capacity cannot be secured through the good faith effort of the Company. In which case, the Company must hold the meeting as close to the Historic Southside as possible.

**4.8.3.** At each meeting, Company must present and discuss the most up-to-date plans and renderings and answer questions or concerns of the community as it pertains to the Development Site.

**4.9. Financial Capacity and Commitments.** Prior to commencement of construction of the Phase 1 Improvements or the Phase 2 Improvements, as applicable, Company must demonstrate to the City that it has the financial capacity and commitment to completely carry out the terms of this Agreement with respect to the Phase 1 Improvements or Phase 2 Improvements, as applicable.

#### **4.10. Attracting a Grocer**

**4.10.1.** Company will make a good faith effort to attract a grocer to the Development Site, which will be demonstrated by an official site plan and construction of at least 15,000 square feet of ground floor commercial retail space that has the essential aspects of a grocer site, such as loading docks and a paved path from the doors of the building to the Parking Garage’s public parking spaces that can serve the grocery stores parking needs (“**Grocery Store**”). Company should provide an entrance to the Grocery Store that is visible and accessible to the Grocery Store and Parking Garage on the South Freeway to handle traffic and increase the likelihood of a success.

**4.10.2.** From and after the Effective Date of this Agreement and for one (1) year after receiving a certificate of occupancy for the Grocery Store, Company must make a good faith effort to actively pursue and market the Grocery Store for occupancy by a grocer and meet with local independent grocer leads as demonstrated by marketing materials and proof of correspondence and meetings.

**4.10.3.** The City will make a good faith effort to pursue a grocer for the Grocery Store and produce leads for the Company.

**4.10.4.** Company will make a good faith effort to attend any meetings organized by the City with a grocer.

**4.10.5.** The City will provide any pertinent data that it has access to and attend local or virtual meetings with leads to demonstrate City support at the request of Company.

**4.10.6.** Company will make a good faith effort to follow through with any financially viable grocer leads that arise from conversations and any Tenant Improvement Costs associated with securing the grocer will be eligible toward the Phase 1 Real Property Commitment so long as such costs are expended prior to the Phase 1 Completion Deadline.

**4.11. Development Design.** Company will make good faith efforts for the Phase 1 Improvements and Phase 2 Improvements design, specifically the buildings and public spaces, to be informed by the historic and cultural context of the neighborhood area. Buildings within the Terrell Heights local historic district must be consistent with those guidelines and those outside the Terrell Heights local historic district must be consistent with the standards, guidelines and regulations of the Near Southside Development Standards & Guidelines. New buildings must be compatible with the massing, size, scale and design elements of traditional buildings within the surrounding context. Potential existing elements include but are not limited to the Evans Plaza, the Mount Zion Baptist Church at 874 Verbena St, Historical Sunshine Cumberland Church at 1100 and 1104 Evans Avenue, the Ella Mae Shamblee Library and it's Tommy Tucker School Building at 1062 Evans Ave, the building on the Southwest corner of Evans & Terrell Ave, The Bethlehem Center at 951 Evans Ave, or any contributing structure within the Terrell Heights local historic district.

## **5. CERTIFICATE OF COMPLETION**

**5.1. Phase 1 Certificate of Completion.** Within ninety (90) calendar days following receipt by the City of the final construction spending report for the Phase 1 Improvements and assessment by the City of the information contained therein, if the City is able to verify completion of the Phase 1 Real Property Commitment, the Director will issue Company a certificate stating the amount of Total Development Costs expended for the Phase 1 Improvements and the amount of Total Development Costs expended specifically with BEFs (“**Phase 1 Certificate of Completion**”).

**5.2. Phase 2 Certificate of Completion.** Within ninety (90) calendar days following receipt by the City of the final construction spending report for the Phase 2 Improvements and assessment by the City of the information contained therein, if the City is able to verify

completion of the Phase 2 Real Property Commitment, the Director will issue Company a certificate stating the amount of Total Development Costs expended for the Phase 2 Improvements and the amount of Total Development Costs expended specifically with BEFs (“**Phase 2 Certificate of Completion**”).

**5.3.** The Certificate of Completion for each phase will serve as the basis for determining the extent to which the Company met the overall BEF Construction Spending Commitment.

## **6. AFFORDABLE HOUSING**

### **6.1. Affordable Housing Set Aside**

**6.1.1.** Company understands and agrees that providing affordable housing is an essential component of this Agreement and the Company TIF Agreement. Therefore, failure to comply with the affordable housing requirements will constitute an event of default under this Agreement and may result in the termination of this Agreement or a repayment of the Program Grants if the default is not cured in a timely manner (as set forth below).

#### **6.1.2. Phase 1 Affordable Housing Commitment**

- a.** For a continuous period of at least fifteen (15) years as described in Section 6.1.2(b), Company must ensure that at least twenty percent (20%) of all completed Residential Units within the Phase 1 Improvements, but in no event less than sixty-four (64) Residential Units at completion of the Phase 1 Improvements, are at all times set aside for or leased to eligible affordable households, one-half of which (i.e., a minimum of thirty-two (32) Residential Units) leased to households earning at or below 80% of area median income (“**AMI**”) for the Fort Worth-Arlington Region as determined by the Department of Housing and Urban Development (“**HUD**”) and one-half of which (i.e., a minimum of thirty-two (32) Residential Units) are leased to households earning sixty (60%) or below of AMI (“**Phase 1 Affordable Housing Commitment**”).
- b.** The fifteen-year Phase 1 Affordable Housing Commitment begins on January 1 of the calendar year following the date that the City issues the first certificate of occupancy for the Phase 1 Improvements.

#### **6.1.3. Phase 2 Affordable Housing Commitment**

- a.** For a continuous period of at least fifteen years as described in Section 6.1.3(b), Company must ensure that at least twenty percent (20%) of all completed Residential Units within the Phase 2 Improvements, but in no event less than four (4) Residential Units at completion of Phase 2 Improvements, are leased at all times to eligible affordable households, one-half of which (i.e., a minimum of two (2) Residential Units) leased to households



earning at or below 80% of area median income (“**AMI**”) for the Fort Worth-Arlington Region as determined by the Department of Housing and Urban Development (“**HUD**”) and one-half of which (i.e., a minimum of two (2) Residential Units) are leased to households earning sixty (60%) or below of AMI (“**Phase 2 Affordable Housing Commitment**”).

- b.** The fifteen-year Phase 2 Affordable Housing Commitment begins on that date that the Residential Units January 1 of the calendar year following the date that the City issues the first certificate of occupancy for the Phase 2 Improvements.

#### **6.1.4 Lease Requirements**

- a.** For Residential Units leased to households earning at or below 80% AMI, Company will not charge an eligible household leasing an affordable unit more than the lesser of (i) thirty percent (30%) of the household’s gross monthly income or (ii) thirty percent (30%) of 80% of the AMI for the Fort-Worth Arlington Region for the applicable year as determined by HUD.
- b.** For Residential Units leased to households earning at or below 60% AMI, Company will not charge an eligible household leasing an affordable unit more than the lesser of (i) thirty percent (30%) of the household’s gross monthly income or (ii) thirty percent (30%) of 60% of AMI for the Fort-Worth Arlington Region for the applicable year as determined by HUD.

#### **6.1.5 Changes in Income**

- a.** The determination of whether an eligible household meets the requirements necessary to comply with the Phase 1 and Phase 2 Affordable Housing Commitment, as applicable, will be made by the Company or a Project Owner on the basis of the current income of such eligible household at the time of their initial lease, subject to periodic recertification and the reporting requirements set forth in Section 6.2 below. Company will cause each Property Owner to utilize forms approved by the Director for providing certification and reporting.
- b.** If, upon any such certification, the eligible household of a Residential Unit met the necessary requirements set forth in Section 6.1.2(a) and 6.1.3(a) at the last income certification, but is subsequently found to no longer comply with the same, then such Residential Unit will continue to be treated as complying with the Phase 1 and Phase 2 Affordable Housing Commitment, as applicable, until the next available Residential Unit of comparable or smaller size is available for lease, and such Residential Unit must be rented to a person that meets the requirements of the Phase 1 or Phase 2 Affordable Housing Commitments, as applicable.

- c. A Residential Unit that has been vacated will continue to be treated as meeting the requirements of the Phase 1 or Phase 2 Affordable Housing Commitment, as applicable, provided that (i) reasonable attempts are made to rent the Residential Unit and (ii) no other Residential Units of comparable or smaller size are rented to person who do not meeting the requirements for the Phase 1 or Phase 2 Affordable Housing Commitments, as applicable.

## **6.2. Reporting**

**6.2.1.** On or before February 1 of the year following Year 1 for each applicable phase and for each year thereafter, for the City to assess the degree to which the Company met the Phase 1 or Phase 2 Affordable Housing Commitments in the previous calendar year, Company must provide the Director with a report in a form reasonably acceptable to the City that sets forth the followings, at a minimum:

- a. the total number of Residential Units on the Development;
- b. the total number of affordable housing units;
- c. the number of Residential Units that were under lease at any given time during the previous calendar year;
- d. the number of affordable housing units that were under lease at any time during the previous calendar year; and
- e. for each affordable housing unit that was under lease at any time during the previous calendar year, sufficient documentation for the City to assess the adjusted income of the tenant leasing such affordable housing unit and the amount of monthly rent paid by the tenant.

**6.2.2.** The City may request additional documentation to show at its sole and absolute discretion.

**6.3 Deeds of Trusts.** To secure the Phase 1 Affordable Housing Commitment and Phase 2 Affordable Housing Commitment as described in this Section 6, Company will cause each Property Owner to execute (i) the Phase 1 Loan Agreement, Phase 1 Deed of Trust, and related promissory note, and (ii) the Phase 2 Loan Agreement, Phase 2 Deed of Trust, and related promissory note, to be recorded in lien priority as agreed herein at each phase's respective Start Date.

## **7. PROGRAM GRANTS**

### **7.1. Generally**

**7.1.1.** As more specifically set forth herein, if Company meets the Phase 1 Real Property Commitment in a timely manner, Company will be entitled to receive fifteen (15) annual Program Grants, payment of which will begin in the Second Operating Year.

**7.1.2.** The amount of each Program Grant will equal a percentage of the Program Source Funds available for that Program Grant, which will be based on the extent to which various commitments set forth in this Agreement have been met and,

specifically, will equal the sum of the Base Grant Percentage, BEF Construction Percentage, and Employment Percentage.

**7.1.3.** In no event will any Program Grant exceed eighty percent (80%) of the Program Source Funds available for that year's Program Grant.

**7.1.4.** Notwithstanding anything to the contrary herein, aggregate Program Grants payable under this Agreement will be subject to and will not exceed the applicable Program Cap.

## **7.2. Allocation of Program Grants**

### **7.2.1. Attainment of Real Property Commitment (65%)**

Provided that the Director is able to verify that the Phase 1 Real Property Commitment is met, each annual Program Grant will include sixty-five percent (65%) of the Program Source Funds available for that year's Program Grant ("**Base Grant Percentage**").

### **7.2.2. BEF Construction Spending Commitment (10%)**

Provided that the Director is able to verify that the BEF Construction Spending Commitment is met for the Phase 1 Improvements and Phase 2 Improvements, as applicable, each annual Program Grant will include ten percent (10%) of the Program Source Funds available for that year's Program Grant ("**BEF Construction Percentage**").

## **7.3. Employment Commitment (Up to 5%)**

**7.3.1.** Each annual Program Grant will include a percentage of the Program Source Funds available for that year's Program Grant that is based on Company's compliance with the Employment Commitment in the previous calendar year ("**Employment Percentage**").

**7.3.2.** The Employment Percentage for each Program Grant will equal the product of five percent (5%) multiplied by the percentage by which the Employment Commitment was met in the previous calendar year, which will be calculated by dividing the actual number of Full-time Jobs provided on the Development Site in the previous calendar year by the Employment Commitment.

- a.** For example, the Employment Commitment is to employ 30 Full-Time Jobs and retain them for the Term of the Agreement.
  - 1.** If only 20 Full-time Jobs were provided and filled on the Development Site in a given year, the Employment Percentage for the Program Grant payable in the following year would be 3.35% instead of 5% (or  $.05 \times [20/30]$ ), or  $.05 \times .67$ , or  $.0335$ ).
  - 2.** If the Employment Commitment is met or exceeded in any given year, the Employment Percentage applicable

the Program Grant payable in the following year will equal five percent (5%).

**7.4. Program Cap**

**7.4.1.** The City's obligation to pay Company Program Grants under this Agreement is limited by the Program Cap.

**7.4.2.** The amount of the Program Cap will increase if the Phase 2 Improvement Commitment is met in a timely manner.

**7.4.3.** If, in any Program Year, the amount of the Program Grant calculated in accordance with this Agreement would cause aggregate Program Grants paid by the City to exceed the Program Cap, the amount of the Program Grant payable in that Program Year will be limited to equal only the difference between the aggregate amount of all Program Grants previously paid and the Program Cap amount, in which case, upon payment of such Program Grant, this Agreement will expire automatically.

**7.5. Deadline for Payments and Source of Funds**

**7.5.1.** The first Program Grant payable hereunder will be paid by the City on or before June 1 of the Second Operating Year.

**7.5.2.** Each subsequent annual Program Grant payment will be made by the City to Company on or before June 1 of the year in which such payment is due.

**7.5.3.** It is understood and agreed that all Program Grants paid pursuant to this Agreement will come from currently available general revenues of the City and not directly from ad valorem taxes on the Development Site or improvements thereon or on New Taxable Tangible Personal Property that are received by the City.

**7.5.4.** Company understands and agrees that any revenues of the City other than those dedicated for payment of a given annual Program Grant pursuant to and in accordance with this Agreement may be used by the City for any lawful purpose that the City deems necessary in the carrying out of its business as a home-rule municipality and will not serve as the basis for calculating the amount of any future Program Grant or other obligation to Company.

**8. APPLICATION FEE AND FEE CREDIT**

**8.1.** Company has paid an economic development incentive application fee of \$5,000.00.

**8.2.** Of that amount, \$2,000.00 is non-refundable and will be used to offset costs incurred by City staff in processing the application and preparing this Agreement.

**8.3.** In accordance with Section 18.2 of the Policy, the remaining \$3,000.00 may be used by Company for application toward any fees charged by the City in connection with the Real Property Improvements on or before the Completion Deadline.

**8.4.** After the Completion Deadline, any unused balance of this credit will be refunded to Company within thirty (30) days following receipt of a written request from Company, but only if such written request is submitted to the Director within ninety (90) calendar days following the Completion Date.

**9. DEFAULT, TERMINATION AND FAILURE BY COMPANY TO MEET  
VARIOUS DEADLINES AND COMMITMENTS**

**9.1. Failure to Meet Phase 1 or Phase 2 Real Property Commitments**

Notwithstanding anything to the contrary herein, the City will have the right to terminate this Agreement immediately upon provision of written notice to Company, without further obligation to Company hereunder, if the Phase 1 Real Property Commitment has not been met. Company will not be entitled to any Program Grants for the Phase 2 Real Property Commitment if the City terminates this Agreement for failure to comply with the Phase 1 Real Property Commitment. If Company fails to timely satisfy the Phase 2 Real Property Commitments, Company will be not be eligible for the increase in the Program Cap associated therewith; provided, however, that failure to satisfy the Phase 2 Real Property Commitments will not reduce or otherwise terminate the Program Grants related to the satisfaction of the Phase 1 Real Property Commitments.

**9.2. No Default for Failure to Meet BEF Construction Spending Commitment or  
Employment Commitment**

**9.2.1.** If the Company fails to meet the Employment Commitment in any given year, such failure will not constitute a default hereunder or provide the City with the right to terminate this Agreement, but, rather, will only cause the amount of the Program Grant that the City is required to pay in the following year to be reduced in accordance with this Agreement.

**9.2.2.** If the Company fails to meet the BEF Construction Spending Commitment for either the Phase 1 Improvements or the Phase 2 Improvements, such failure will not constitute a default hereunder or provide the City with the right to terminate this Agreement but, rather, will only cause the amount of the Program Grant that the City is required to pay for the BEF Construction Commitment to be reduced by a percentage equal to the percentage of the shortfall in the BEF Construction Spending Commitment.

**9.3. Failure to Comply with Affordable Housing Commitments**

**9.3.1.** If Company or a Property Owner (i) fails to comply with the Phase 1 Affordable Housing Commitment or Phase 2 Affordable Housing Commitment, as applicable, for any reason (other than on account of a Force Majeure Event), for a period of sixty (60) consecutive calendar days at any time during the applicable term for providing such affordable housing units as set forth in Section 6, Company will be in default under this Agreement, and the City will have the right to terminate this Agreement following provision of notice and opportunity to cure in accordance with this Agreement and enforce its remedies under the Phase 1 Deed of Trust or Phase 2 Deed of Trust, as applicable. Notwithstanding the foregoing, in no event shall the Phase 1 Deed of Trust or the Phase 2 Deed of Trust be cross-

defaulted and (i) failure of the Company to comply with the Phase 1 Affordable Housing Commitment shall not entitle the City to exercise remedies under the Phase 2 Deed of Trust absent a failure to comply with the Phase 2 Affordable Housing Commitment, or (ii) failure of the Company to comply with the Phase 2 Affordable Housing Commitment shall not entitle the City to exercise remedies under the Phase 1 Deed of Trust absent a failure to comply with the Phase 1 Affordable Housing Commitment.

**9.3.2** The parties understand and acknowledge that the term for compliance of the Phase 2 Affordable Housing Commitment may exceed the fifteen-year term for the payment of Program Grants. If the City terminates this Agreement because of Company's failure to comply with the Phase 2 Affordable Housing Commitment after the City pays the final Program Grant, then Company must reimburse the City a percentage of the Program Grant that the City paid Company as a result of the increase of the Program Cap for the completion of the Phase 2 Improvements (i.e., the \$8,000,000.00 to \$9,000,000.00 increase to the Program Cap). In other words, Company will be liable for reimbursing the City a prorata amount equal to the percentage shortfall. Expressed as an equation where  $N$  = Number of years remaining on the Phase 2 Affordable Housing Commitment and  $Y$  = Program Grants Paid to Company in excess of \$8,000,000:  $(N/15) \times Y$ .

- a. By way of example only and assuming the following are true:
  - 1. Phase 1 Completion Date is December 31, 2024
  - 2. Second Operating Year begins on January 1, 2026
  - 3. Program Grant payments begin in 2026, with a Program Cap of \$8,000,000.00
    - i. Final Program Grant will be paid in 2040
    - ii. Phase 2 Completion Date, including receipt of certificate of occupancy for Phase 2 Affordable Housing, on January 1, 2029 and Program Cap increases to \$9,000,000.00
    - iii. Term of the Phase 2 Affordable Housing Commitment is January 1, 2029 to December 31, 2043.
    - iv. City pays the full \$9,000,000.00 in Program Grants to Company
    - v. City terminates this Agreement because of Company's failure to comply with the Phase 2 Affordable Housing Commitment on December 31, 2041.
    - vi. If Company complied with the Phase 2 Affordable Housing Commitment for 13 years, then Company would be liable for reimbursing the City in the amount of \$133,333.33. Expressed as an equation where  $(2/15) \times \$1,000,000.00$ .

**9.4. Failure to Submit Reports.** If Company fails to submit any report required by and in accordance with this Agreement, the City's obligation to pay any Program Grants at the time, if any, will be suspended until Company has provided all required reports; provided, however, that if any report required hereunder is delinquent by more than one

(1) year, the City will have the right to terminate this Agreement following provision of notice and a thirty (30) day opportunity to cure in accordance with this Agreement.

**9.5. General Breach.** Unless stated elsewhere in this Agreement, Company will be in default under this Agreement if Company breaches any term or condition of this Agreement. In the event that such breach remains uncured after thirty (30) calendar days following receipt of written notice from the City referencing this Agreement (or, if Company has diligently and continuously attempted to cure following receipt of such written notice but reasonably requires more than thirty (30) calendar days to cure, then such additional amount of time as is reasonably necessary to effect cure, as determined by both parties mutually and in good faith), the City will have the right to terminate this Agreement immediately by providing written notice to Company.

**9.6. Cross-Default.** A breach or default by Company or a Property Owner of any other agreement between Company or a Property Owner and City, Company and City, or Company and CCLGC related to this Agreement, including, but not limited to, the Company TIF Agreement, the Purchase and Lease Agreement, and Development Site Purchase Agreements, constitutes a contemporaneous breach of this Agreement. In the event that any other such agreements are terminated in accordance with their respective terms and conditions due to a breach or default by Company, City will have the right to terminate this Agreement, as the case may be, without further notice or obligation to Company hereunder.

**9.7. Knowing Employment of Undocumented Workers**

**9.7.1.** Company acknowledges that the City is required to comply with Chapter 2264 of the Texas Government Code, enacted by House Bill 1196 (80th Texas Legislature), which relates to restrictions on the use of certain public subsidies. *Company hereby certifies that Company, and any branches, divisions, or departments of Company, does not and will not knowingly employ an undocumented worker, as that term is defined by Section 2264.001(4) of the Texas Government Code. In the event that Company, or any branch, division, or department of Company, is convicted of a violation under 8 U.S.C. Section 1324a(f) (relating to federal criminal penalties and injunctions for a pattern or practice of employing unauthorized aliens):*

- a. *if such conviction occurs during the Term of this Agreement, this Agreement will terminate contemporaneously upon such conviction (subject to any appellate rights that may lawfully be available to and exercised by Company), and Company must repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the Program Grants received by Company hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum; or*
- b. *if such conviction occurs after expiration or termination of this Agreement, subject to any appellate rights that may lawfully be available to and exercised by Company, Company must repay, within one hundred twenty (120) calendar days following receipt of written demand from the City, the aggregate amount of the*

***Program Grants received by Company hereunder, if any, plus Simple Interest at a rate of four percent (4%) per annum.***

**9.7.2.** For the purposes of this Section 8.6, “**Simple Interest**” is defined as a rate of interest applied only to an original value, in this case the aggregate amount of Jobs Grants paid hereunder. This rate of interest can be applied each year, but will only apply to the aggregate amount of Program Grants paid hereunder and is not applied to interest calculated. For example, if the aggregate amount of the Program Grants paid hereunder is \$10,000 and such amount is required to be paid back with four percent (4%) interest five years later, the total amount would be \$10,000 + [5 x (\$10,000 x 0.04)], which is \$12,000. This Section 8.6 does not apply to convictions of any subsidiary or affiliate entity of Company, by any franchisees of Company, or by a person or entity with whom Company contracts. Notwithstanding anything to the contrary herein, this Section 8.6 will survive the expiration or termination of this Agreement.

## **10. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed that Company will operate as an independent contractor in each and every respect hereunder and not as an agent, representative or employee of the City. Company will have the exclusive right to control all details and day-to-day operations relative to the Real Property Improvements and the Development Site and any improvements thereon and will be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees. Company acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Company, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Company further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Company.

## **11. INDEMNIFICATION**

***COMPANY, AT NO COST TO THE CITY, AGREES TO DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS OFFICERS, AGENTS SERVANTS, REPRESENTATIVES, AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, ACTIONS, COSTS AND EXPENSES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, THOSE FOR PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO COMPANY’S BUSINESS AND ANY RESULTING LOST PROFITS) AND PERSONAL INJURY, INCLUDING, BUT NOT LIMITED TO, DEATH, THAT MAY RELATE TO, ARISE OUT OF OR BE OCCASIONED BY (i) COMPANY’S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR (ii) ANY NEGLIGENT ACT OR OMISSION OR INTENTIONAL MISCONDUCT OF COMPANY, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS (OTHER THAN THE CITY) OR SUBCONTRACTORS, RELATED TO THE DEVELOPMENT SITE, OR ANY IMPROVEMENTS THEREON, INCLUDING THE REAL PROPERTY IMPROVEMENTS, OR OTHERWISE TO THE PERFORMANCE OF THIS AGREEMENT.***

## **12. NOTICES**

All written notices called for or required by this Agreement must be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, electronic transmittal or by hand delivery:



**City:**

City of Fort Worth  
Attn: City Manager  
200 Texas Street  
Fort Worth, TX 76102

**Company:**

Evans Rosedale, LLC  
Attn: Steven Shelley  
1717 Main Street, Ste. 5630  
Dallas, Texas 75201

***with copies to:***

the City Attorney at the same address  
and the following:

City of Fort Worth  
Attn: Director  
Economic Development Department  
1150 South Freeway  
Fort Worth, TX 76104

Munsch Hardt Kopf & Harr, P.C.  
500 N. Akard Street, Suite 3800  
Dallas, Texas 75201  
Attn: Phillip Geheb

**13. ASSIGNMENT AND SUCCESSORS.**

Company may, at any time assign, transfer, or otherwise convey any of its rights or obligations under this Agreement to an Affiliate without the approval of the City so long as Company, the Affiliate, and the City first execute an agreement under which the Affiliate agrees to assume and be bound by all covenants and obligations of Company under this Agreement. Otherwise, Company may not assign, transfer, or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of the City Council, which consent will not be unreasonably withheld, conditioned on (i) the prior approval of the assignee or successor and a finding by the City Council that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with the City under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of Company under this Agreement. Any attempted assignment without the City Council's prior consent will constitute grounds for termination of this Agreement following ten (10) calendar days of receipt of written notice from the City to Company. Any lawful assignee or successor in interest of Company of all rights under this Agreement will be deemed "Company" for all purposes under this Agreement. Notwithstanding the foregoing, Company may collaterally assign this Agreement (a "**Collateral Assignment**") to a third-party lender or financial institution with the prior written consent of the City (through its City Manager or designated Assistant City Manager), which consent will not be unreasonably withheld, conditioned, or delayed. The form for the consent to Collateral Assignment is attached hereto as Exhibit C and incorporated herein, the substance of which may be changed based on the circumstances of each assignment.

**14. COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS**

This Agreement will be subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter and ordinances, as amended.

**15. GOVERNMENTAL POWERS**

It is understood that by execution of this Agreement, the City does not waive or surrender any of its governmental powers or immunities.

**16. NO WAIVER**

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder will not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

**17. VENUE AND CHOICE OF LAW**

If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Agreement, venue for such action will lie in state courts located in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division. This Agreement will be construed in accordance with the laws of the State of Texas.

**18. NO THIRD PARTY RIGHTS**

The provisions and conditions of this Agreement are solely for the benefit of the City and Company, and any lawful assign or successor of Company, and are not intended to create any rights, contractual or otherwise, to any other person or entity.

**19. INTERPRETATION**

In the event of any dispute over the meaning or application of any provision of this Agreement, this Agreement must be interpreted fairly and reasonably, and neither more strongly for or against any party, regardless of the actual drafter of this Agreement.

**20. CAPTIONS**

Captions and headings used in this Agreement are for reference purposes only and will not be deemed a part of this Agreement.

**21. SEVERABILITY**

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

**22. ENTIRETY OF AGREEMENT**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Company, and any lawful assign and successor of Company, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. Notwithstanding anything to the contrary herein, this Agreement may not be amended unless executed in writing by both parties and approved by the City Council of the City in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

**23. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which will be considered an original, but all of which will constitute one instrument.

**24. ELECTRONIC SIGNATURES**

This Agreement may be executed by electronic signature, which will be considered as an original signature for all purposes and have the same force and effect as an original signature. For these purposes, “electronic signature” means electronically scanned and transmitted versions (e.g. via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as Adobe Sign.

**25. FORCE MAJEURE**

25.1 It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, epidemics, pandemics, unreasonable delays by the City in issuing any permits or certificates of occupancy or conducting any inspections of or with respect to the Project (based on the amount of time that the City customarily requires in undertaking such activities and based on the then-current workload of the City department(s) responsible for undertaking such activities), or delays caused by unforeseen construction or site conditions or issues, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities or their contractors, or any actions or inactions of third parties or other circumstances that are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted will be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement will be extended for a period of time equal to the period such party was delayed.

25.2 The Parties acknowledge that this Agreement is being entered into during a state of emergency following the COVID-19 pandemic outbreak. The Parties agree that this provision will not apply to the COVID-19 pandemic outbreak unless a subsequent binding order is issued by an entity with direct jurisdiction over Company or City that prohibits the continuation of the Agreement.

**26. PROGRAM GRANTS MADE SUBJECT TO MASTER DEVELOPMENT PLAN.**


City acknowledges that the Program Grants are being made in furtherance of master development plans adopted by the City for the Historic Southside neighborhood prior to December 22, 2017, as described in the Recitals, as such master development plans have been further amended or revised. Company acknowledges and agrees that the City expresses no opinion whatsoever and that none of the City, nor any of their respective boards, directors, partners, officers, consultants, employees, or agents has made any representations or covenants with respect to the federal income tax treatment of the Program Grants.

[Signature Page to Follow]

**EXECUTED** as of the last date indicated below:

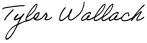
**CITY OF FORT WORTH:**

**EVANS ROSEDALE, INC.**  
a Delaware corporation

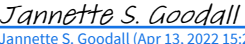
By:   
Reginald Zeno  
Assistant City Manager  
Date: **Apr 12, 2022**

By: **Steven Shelley** Digitally signed by Steven Shelley  
Date: 2022.04.09 14:20:12 -05'00'  
Steven Shelley  
Vice President  
Date: **Apr 8, 2022**

**APPROVED AS TO FORM AND LEGALITY:**

By:   
Tyler F. Wallach  
Assistant City Attorney

**ATTEST:**

By:   
Jannette S. Goodall  
City Secretary

M&C: 21-0812 (October 19, 2021)  
Form 1295: 2021-807200

**CONTRACT COMPLIANCE MANAGER:**

By signing below, I hereby acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements:

By:   
Martha Collins  
Economic Development Revitalization Coordinator

**EXHIBIT "A"**  
**Form Addendum for Phases 1 and 2 Start Dates and Completion Deadlines**

**PHASE [REDACTED] START DATE AND COMPLETION DATE MEMORANDUM FOR FORT WORTH CITY SECRETARY CONTRACT [REDACTED], AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**

**THIS MEMORANDUM** is made by and between the **CITY OF FORT WORTH**, a home-rule Texas municipal corporation ("**City**") and **EVANS ROSEDALE, LLC** ("**Company**"), a Texas limited liability company.

**WHEREAS**, City and Company are parties to an Economic Development Program Agreement, said agreement being recorded with the Fort Worth City Secretary as City Secretary Contract Number [REDACTED] ("**Agreement**").

**WHEREAS**, Company began construction of the Phase [REDACTED] Improvements on [REDACTED], [REDACTED], which triggers the Phase [REDACTED] Deadline.

**WHEREAS**, City and Company desire to enter into this Memorandum memorializing the Phase [REDACTED] Start Date and Phase [REDACTED] Completion Date.

**NOW, THEREFORE**, City and Company agree as follows:

1. The actual Phase [REDACTED] Start Date of the Agreement is [REDACTED], [REDACTED].
2. The actual Phase [REDACTED] Completion Deadline of the Agreement will be [REDACTED], [REDACTED].
2. Capitalized terms not defined herein shall have the same meaning as set forth in the Agreement.

**CITY OF FORT WORTH:**

**EVANS ROSEDALE, INC.**

a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Assistant City Attorney

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
City Secretary

M&C: 21-0812 (October 19, 2021)  
Form 1295: 2021-807200

**CONTRACT COMPLIANCE MANAGER:**

By signing below, I hereby acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements:

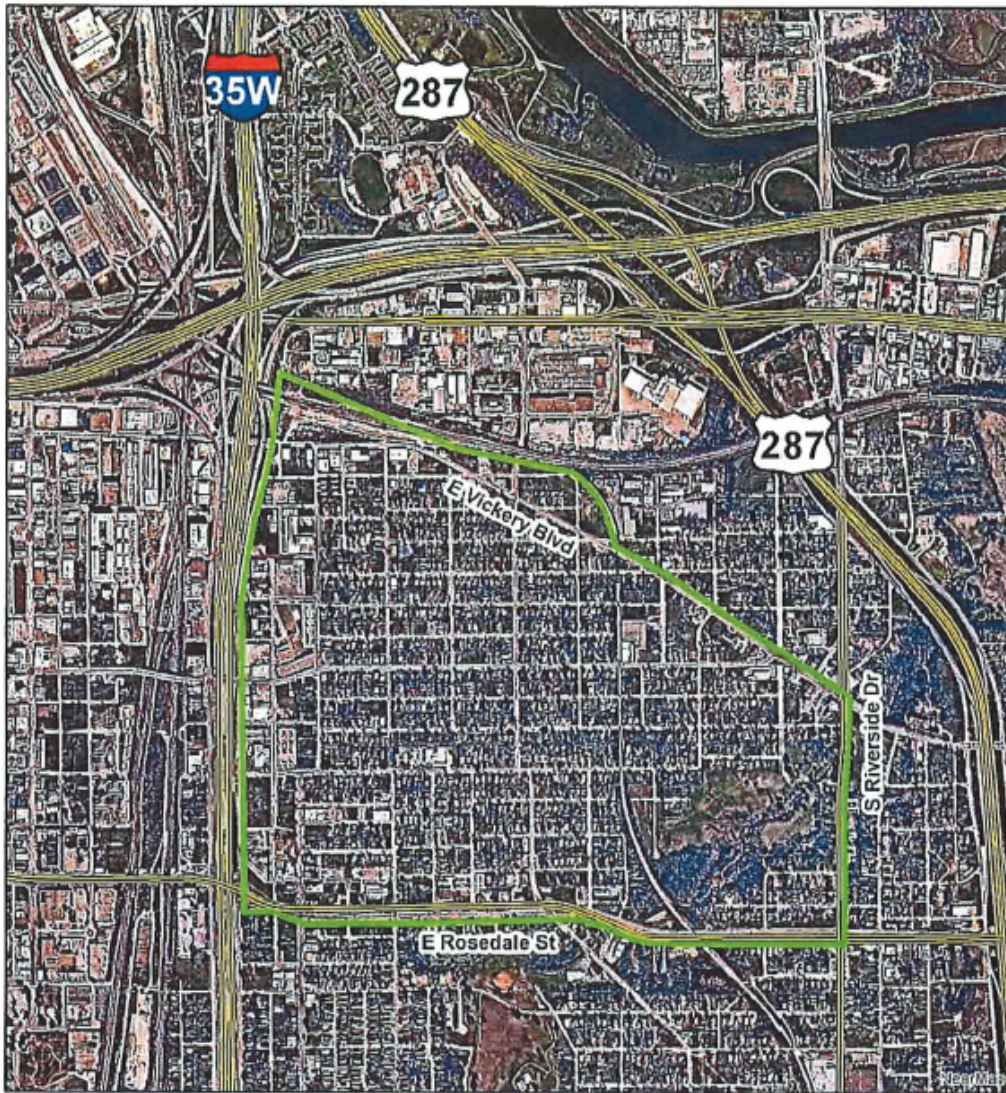
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT BA”**  
**Description and Map Depicting the Development Site**

**Location Map/ Neighborhood Map**

Historic Southside Neighborhood



Copyright 2021 City of Fort Worth. Unauthorized reproduction is a violation of applicable laws. This products of for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents on the approximate relative location of property boundaries. The City of Fort Worth assumes no responsibility for the accuracy of said data.

## **EXHIBIT “C”**

### **CONSENT TO ASSIGNMENT FOR SECURITY PURPOSES OF ECONOMIC DEVELOPMENT PROGRAM AGREEMENT BETWEEN THE CITY OF FORT WORTH AND EVANS ROSEDALE, INC.**

This **CONSENT TO ASSIGNMENT FOR SECURITY PURPOSES OF FORT WORTH CITY SECRETARY CONTRACT NO. [REDACTED]** (“**Consent**”) is entered into by and between the **CITY OF FORT WORTH (“CITY”)**, a home-rule municipal corporation of the State of Texas, **EVANS ROSEDALE INC,** a corporation organized under the laws of Delaware (“**Company**”); and [REDACTED], a [REDACTED] banking institution (“**Lender**”).

### **RECITALS**

The City, Company, and Lender agree that the following statements are true and correct and constitute the basis upon which the parties have entered into this Consent:

**A.** The City and Company are currently parties to an Economic Development Program Agreement (“**Agreement**”), the same being Fort Worth City Secretary Contract No. [REDACTED]. The Agreement is a public document subject to disclosure pursuant to Texas public information laws.

**B.** Section 13 of the Agreement provides that the Company may collaterally assign the Agreement to a third-party lender or financial institution with the prior written consent of the City (through its City Manager or its designated Assistant City Manager.).

**C.** Company wishes to obtain a loan from Lender in order to finance construction of certain improvements for the Real Property Improvements and required by the Agreement (“**Loan**”). As security for the Loan, certain agreements between Company and Lender governing the Loan including, but not limited to, that certain Construction Loan Agreement (“**Loan Agreement**”) and other “**Loan Documents**” as defined in the Loan Agreement (collectively, “**Loan Documents**”) require that Company assign, transfer and convey to Lender all of Company’s rights, interest in and to the Agreement until such time as Company has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender’s security interest in the Agreement (“**Assignment**”).

**D.** The City is willing to consent to this Assignment specifically in accordance with the terms and conditions of this Consent.

### **AGREEMENT**

**1.** The City, Company, and Lender agree that the recitals set forth above are true and correct and form the basis upon which the City has entered into this Consent.

**2.** The City consents to the Assignment at the request of Company and Lender solely for the purpose of Lender securing the Loan pursuant to and in accordance with the Loan Documents. Notwithstanding such consent, the City does not adopt, ratify, or approve any of the particular provisions of the Loan Documents and, unless and to the extent specifically acknowledged by the City in this Consent, does not grant any right or privilege to Lender or any



assignee or successor in interest thereto that is different from or more extensive than any right or privilege granted to Company under the Agreement.

3. In the event that the City is required by the Agreement to provide any kind of written notice to Company, including notice of breach or default by Company, the City must also provide a copy of such written notice to Lender, addressed to the following, or such other party or address as Lender designates in writing, by certified mail, postage prepaid, or by hand delivery:

If to Lender:

or such other address(es) as Lender may advise City from time to time.

4. If Company fails to cure any default under the Agreement, the City agrees that Lender, its agents or designees will have an additional thirty (30) calendar days or such greater time as may specifically be provided under the Agreement to perform any of the obligations or requirements of Company imposed by the Agreement and that the City will accept Lender's performance of the same as if Company had performed such obligations or requirements; provided, however, that in the event such default cannot be cured within such time, Lender, its agents or designees, will have such additional time as may be reasonably necessary if, within such time period, Lender has commenced and is diligently pursuing the remedies to cure such default, including, without limitation, such time as may be required for Lender to gain possession of Company's interest in the Development pursuant to the terms of the Loan Documents.

5. If, at any time, Lender wishes to exercise any foreclosure rights under the Loan Documents, before taking any foreclosure action, Lender must first provide written notice to the City of such intent ("Notice"). Lender must copy Company on the Notice and deliver such Notice to Company by both first class and certified mail return receipt concurrent with its transmittal of the Notice to the City and represent in the Notice that it has done so. Notwithstanding anything to the contrary herein, unless Lender enters into a written agreement with the City to assume and be bound by all covenants and obligations of Company under the Agreement, Lender understands and agrees that the City will not be bound to pay Lender any funds pursuant to the Agreement. In addition, Lender understands and agrees that, if Lender wishes to sell all or any portion of the Development Site or any improvements thereon to a third party following Lender's exercise of any foreclosure rights under the Loan Documents, the City will not be bound to pay such third party any funds pursuant to the Agreement unless Lender and such third party comply with the procedure for assignment set forth in Section 13 of the Agreement, including the obligation of such third party to enter into a written agreement with the City to assume and be bound by all covenants and obligations of Company under the Agreement. In the event that payment of any reimbursements are withheld by the City pursuant to this Section 5, any rights to receipt of those reimbursements are hereby waived.

6. In the event of any conflict between this Consent and the Agreement or any of the Loan Documents, this Consent controls. In the event of any conflict between this Consent and any of the Loan Documents, this Consent controls. In the event of any conflict between the Agreement and any of the Loan Documents, the Agreement controls.

7. This Consent may not be amended or modified except by a written agreement executed by all of the parties hereto. Notwithstanding anything to the contrary in the Loan Documents, an amendment to any of the Loan Documents does not constitute an amendment to this Consent or the TIF Agreement.

**8.** Once Company has fully satisfied all duties and obligations set forth in the Loan Documents that are necessary to discharge Lender's security interest in the Agreement and such security interest is released, Lender must provide written notice to the City that Lender has released such security interest, in which case this Consent will automatically terminate.

**9.** This Consent will be construed in accordance with the laws of the State of Texas. Venue for any action arising under the provisions of this Consent will lie in state courts located in Tarrant County, Texas or in the United States District Court for the Northern District of Texas, Fort Worth Division.

**10.** Capitalized terms used but not specifically defined in this Consent have the meanings ascribed to them in the Agreement.

**11.** This written instrument contains the entire understanding and agreement between the City, Company, and Lender as to the matters contained herein. Any prior or contemporaneous oral or written agreement concerning such matters is declared null and void.

**12.** This Consent is effective on the later date as of which all parties have executed it. This Consent may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. The failure of any party hereto to execute this Consent, or any counterpart hereof, shall not relieve the other signatories from their obligations from their obligations hereunder.

**13.** This Consent may be executed by electronic signature, which will be considered as an original signature for all purposes and have the same force and effect as an original signature. For these purposes, "electronic signature" means electronically scanned and transmitted versions (e.g. via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as Adobe Sign.

EXECUTED as of the last date indicated below:

[SIGNATURES IMMEDIATELY FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned have caused this Consent to be executed in Fort Worth, Tarrant County, Texas.

**CITY OF FORT WORTH**

**EVANS ROSEDALE, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date \_\_\_\_\_

Resolution Nos. 04-2021-02 (October 13, 2021)

APPROVED AS TO FORM  
AND LEGALITY:

By: \_\_\_\_\_  
Tyler F. Wallach  
Assistant City Attorney

[BANK]

a \_\_\_\_\_ banking institution

Contract Compliance Manager:

By signing, I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

by: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# Mayor and Council Communication

**DATE:** 10/19/21

**M&C FILE NUMBER:**

**LOG NAME:** 17ARPA ALLOCATIONS EVANS & ROSEDALE REDEVELOPMENT

## **SUBJECT**

(CD 8) Approve Allocation of Funds from the American Rescue Plan Act in the amount of \$4,245,533.42 for the Evans and Rosedale Redevelopment and Affordable Housing Project; Authorize Purchase at Fair Market Value of Thirty Fort Worth Housing Finance Corporation Properties and Five Fort Worth Local Development Corporation Properties and Execution of Necessary Agreements Therefor; and Authorize Sale to Hoque Global, LLC of the Thirty-Five Acquired Properties and Another City Owned Property in Exchange for Nominal Monetary Consideration and the Grant of Deeds of Trust to Ensure Certain Use for Affordable Housing and Execution of Necessary Agreements

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## **RECOMMENDATION:**

It is recommended that the City Council:

1. Approve the allocation of up to \$4,245,533.42 from the American Rescue Plan Act, Subtitle M (Coronavirus State and Local Fiscal Recovery Funds) for the Evans and Rosedale Redevelopment and Affordable Housing Project (Project) to pay the fair market value of thirty-six properties being acquired and contributed to the Project, consisting of thirty Fort Worth Housing Finance Corporation (FWHFC) properties (\$3,595,977.13), five (5) Fort Worth Local Development Corporation (LDC) properties (\$235,950.00), and one (1) City property (\$112,500.00);
  2. Authorize acquisition of thirty (30) properties from, and execution of all necessary agreements with, the FWHFC;
  3. Authorize acquisition of five (5) properties from, and execution of all necessary agreements with, the LDC; and
  4. Authorize sale of the thirty-five (35) acquired properties and another City-owned property to, and execution of all necessary agreements with, Hoque Global, LLC for nominal monetary consideration of \$1.00 per property and the granting of deeds of trust covering all property to ensure the property is used for the development and continued operation of affordable housing for a period of at least fifteen (15) years from the date of issuance of the certificate of occupancy.
- 

## **DISCUSSION:**

The purpose of this Mayor and Council Communication (M&C) is to approve actions associated with the real estate transactions for the Evans and Rosedale Redevelopment and Affordable Housing Project (Project).

### **Project Background**

The thirty-six properties (collectively, the Property) are located within the boundaries of the Historic Southside Neighborhood, the Evans and Rosedale Urban Village, Tax Increment Reinvestment Zone Number 4, and Census Tract 1231.001, which is a Qualified Census Tract. The Property was part of the December 2018 Request for Expressions of Interest (RFEI) in which the City of Fort Worth, the Fort Worth Housing Finance Corporation (HFC), and the Fort Worth Local Development Corporation (LDC) sought a Master Developer arrangement in and near the historic Evans & Rosedale Urban Village.

Eight proposals were received through the RFEI and reviewed through an extensive staff and stakeholder evaluation process. The selection criteria established included: 1.) Vision with respect to the history of the area; 2.) Quality of design; 3.) Economic impact to the City; 4.) Qualifications and experience of the development team; 5.) Financial capacity of the team; 6.) Community engagement; 7.) Alignment with the City's comprehensive plan and strategic economic development plans. Hoque Global Properties, LLC ("Hoque") was selected as the development team that was most closely aligned with the selection criteria. After significant community engagement and feedback, staff for the HFC, the City, and the LDC recommend that Hoque be selected to redevelop the area.

Between early 2019 and September, 2021, HFC, LDC, and City staff have negotiated a term sheet with Hoque. Hoque is proposing a two-phased redevelopment that will result in a total of at least \$70 million worth of investment; approximately 292 multifamily units, 20 townhomes, and 28 live-work units, with at least 20% of the total number of units being affordable; a cultural square; parks, and other public spaces.

A neighborhood meeting outlining the conceptual project design and basic economic terms was held on September 16, 2021 at Shamblee Library. The HFC and LDC met in a joint session on September 21, 2021 and approved resolutions authorizing the sale of the parcels owned by HFC and LDC to the City as-is for the fair market value price, with each corporation authorizing its General Manager to execute closing documents. Fair market value was determined using information from a broker's property opinion, which indicated the value of the area properties is \$21.27/s.f.

Due to market considerations, in order for the development to be financially feasible, Hoque must be able to purchase the Property at a value significantly less than fair market value. As noted in prior public presentations and addressed in more detail below, the plan is for the City to allocate \$4,245,533.42 in Subtitle M funds under the American Rescue Plan Act (ARPA) to pay the fair market value of the Property that will be contributed to the Project.

Approval of this M&C authorizes the purchase of the 30 properties from the HFC at a price of \$3,595,977.13 and the five properties from the LDC for \$235,950.00 and allocates funding to pay for the one parcel owned by the City and valued at \$112,000. As authorized by Texas Local Government Code Section 272.001(g), the Property, which has a combined fair market value of \$4,245,533.42, would be sold to Hoque for monetary consideration of \$1 each for the purpose of developing low- to moderate-income housing; to effectuate and maintain the public purpose of affordable housing, the Property will be subject to a lien through a Deed of Trust to Secure Performance, ensuring the required affordable housing is offered at the Property for a period of at least 15 years. If the affordable housing requirements are not met, Hoque would be required to repay the full fair market value of the Property out of its own separate funds.

The Property to be sold includes:

#### Fort Worth Housing Finance Corporation Property

NO.	CFW_ID	ADDRESS	PARCEL LEGAL DESCRIPTION	AREA (s.f.)	VALUE (\$21.27/s.f.)
1	125739	924 MISSOURI AVE	SCHLATORS SUBDIVISION Block 1 Lot 7	6530.439453	138,902.45
2	125098	916 MISSOURI AVE	SCHLATORS SUBDIVISION Block 1 Lot 5	6769.264648	143,982.26
3	125264	920 EVANS AVE	EVANS SOUTH ADDITION Block 1 Lot 6	8766.886719	186,471.68
4	126389	1000 EVANS AVE	EVANS SOUTH ADDITION Block 3 Lot 1 & 2	5069.969727	107,838.26
5	125304	920 MISSOURI AVE	SCHLATORS SUBDIVISION Block 1 Lot 6	5913.998047	125,790.74
6	124251	904 MISSOURI AVE	SCHLATORS SUBDIVISION Block 1 Lot 2	7039.71875	149,734.82

7	125104	917 SOUTH FWY	SCHLATORS SUBDIVISION Block 1 Lot 12	5146.254883	109,460.84
8	124500	901 SOUTH FWY	SCHLATORS SUBDIVISION Block 1 Lot 14 THRU 16	5148.732422	109,513.54
9	126163	810 MISSOURI AVE	EVANS SOUTH ADDITION Block 3 Lot 12	6047.929688	128,639.46
10	125957	928 MISSOURI AVE	SCHLATORS SUBDIVISION Block 1 Lot 8	7118.005859	151,399.98
11	123988	900 EVANS AVE	EVANS SOUTH ADDITION Block 1 Lot 1	8071.225586	171,674.97
12	125737	924 EVANS AVE	EVANS SOUTH ADDITION Block 1 Lot 7	7644.488281	162,598.27
13	125946	928 EVANS AVE	EVANS SOUTH ADDITION Block 1 Lot 8	7592.90625	161,501.12
14	126155	1000 EVANS AVE	EVANS SOUTH ADDITION Block 3 Lot 1 & 2	4088.458984	86,961.52
15	125045	916 EVANS AVE	EVANS SOUTH ADDITION Block 1 Lot 5	7523.294922	160,020.48
16	125314	921 SOUTH FWY	SCHLATORS SUBDIVISION Block 1 Lot 11	5135.705078	109,236.45
17	124006	708 E TERRELL AVE	SCHLATORS SUBDIVISION Block 1 Lot 1 W43' LOT 1	2835.770508	60,316.84

18	124006	710 E TERRELL AVE	SCHLATORS SUBDIVISION Block 1 Lot 1 W41'E82' LOT 1	3270.558594	69,564.78
19	124006	900 MISSOURI AVE	SCHLATORS SUBDIVISION Block 1 Lot 1 E41' LOT 1	2659.220703	56,561.62
20	124003	901 SOUTH FWY	SCHLATORS SUBDIVISION Block 1 Lot 14 THRU 16	6964.4375	148,133.59
21	124258	901 SOUTH FWY	SCHLATORS SUBDIVISION Block 1 Lot 14 THRU 16	5138.206055	109,289.64
22	124888	915 MISSOURI AVE	EVANS SOUTH ADDITION Block 1 Lot 4 W 65'4 BLK 1	7413.944336	157,694.60
23	124888	912 EVANS AVE	EVANS SOUTH ADDITION Block 1 E 86'LOT 4	Included in 915 Missouri parcel	—
24	125967	759 E DASHWOOD ST	SCHLATORS SUBDIVISION Block 1 Lot 9	5860.902344	124,661.39
25	124396	900 EVANS AVE	EVANS SOUTH ADDITION Block 1 Lot 3 E 84'3 BLK 1	7895.463867	167,936.52
26	124536	908 MISSOURI AVE	SCHLATORS SUBDIVISION Block 1 Lot 3	6018.348633	128,010.28
27	124536	913 SOUTH FWY	SCHLATORS SUBDIVISION Block 1 Lot 13	5135.777344	109,237.98

28	124917	925 SOUTH FWY	SCHLATERS SUBDIVISION Block 1 Lot 10	5130.567383	109,127.17
29	125770	900 EVANS AVE	EVANS SOUTH ADDITION Block 1 Lot 2	7132.858398	151,715.90
30	124170	900 EVANS AVE	EVANS SOUTH ADDITION Block 1 Lot 3 W 67'3 BLK 1	included in 900 Evans parcel 124396	-
			<b>TOTALS</b>	<b>169,063.33 sf</b>	<b>\$3,595,977.13</b>

Local Development Corporation Property

NO.	ADDRESS	PARCEL LEGAL DESCRIPTION	AREA (s.f.)	VALUE (\$21.27/s.f.)
	901 EVANS 1 AVE	MC ANULTY & NESBITT SUB EVANS BLOCK 2 LOT 1	4799.548828	102,086.40
	901 EVANS 2 AVE	MC ANULTY & NESBITT SUB EVANS BLOCK 2 LOT 2	5191.926758	110,432.28
	909 EVANS 3 AVE	MC ANULTY & NESBITT SUB EVANS BLOCK 2 LOT 30	4727.975586	100,564.04
	1009 EVANS 4 AVE	KRAUSE, A SUBDIVISION BLOCK 4 LOT 2F	4915.320313	104,548.86
	1013 EVANS 5 AVE	KRAUSE, A SUBDIVISION BLOCK 4 LOT 2E	5615.641602	119,444.70
		<b>TOTALS</b>	<b>25,250.41 sf</b>	<b>\$537,076.29</b>

City of Fort Worth Property

NO.	ADDRESS	PARCEL LEGAL DESCRIPTION	AREA (s.f.)	VALUE



1	1005 EVANS AVE	KRAUSE, A SUBDIVISION BLOCK 4 LOT 1E	7,500	\$112,500
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All properties are located in COUNCIL DISTRICT 8.

### **Allocation of ARPA Subtitle M Funding**

Responding to the negative economic impacts of the coronavirus pandemic is a specifically identified use of ARPA dollars under Section 603(c)(1)(A) of Title VI of the Social Security Act (added by ARPA). Treasury Department guidance specifically notes that these Fiscal Recovery Funds can be deployed for a broad range of uses to address “the disproportionate . . . economic impacts of the crisis on the hardest-hit communities, populations, and households” and to provide services and additional investments in Qualified Census Tracts, such as the one in which the Project is located. Therefore, it has been determined that paying for the Property so that can be contributed to the Project below cost is an eligible use of funds as a response to negative economic impact and an investment in housing and neighborhoods in a Qualified Census Tract.

The following chart reflects the current status for allocation of the City's ARPA funding under Subtitle M and incorporates each ARPA M&C on the October 19, 2021 Council Agenda:

Status	Amount	M&C's
Total CFW ARPA Subtitle M Funding	\$173,745,090.00	21-0445
Allocations Approved To-Date	\$6,000,000.00	25ARPA-VFW-TDG
Pending Allocation	\$1,000,000.00	13ARPA-ADMINISTRATION
Pending Allocation	\$10,100,000.00	19ARPA ALLOCATIONS TO HOUSING AND HUMAN SERVICES PROJECTS
Pending Allocation	\$300,000.00	25ARPA-WRMC MURAL PLAQUES
Pending Allocation	\$2,400,000.00	17ARPA ALLOCATIONS UNTHSC TECHSTARS
Pending Allocation	\$3,000,000.00	17ARPA ALLOCATION CDFI FRIENDLY AMERICA
Pending Allocation	\$4,245,533.42	17ARPA ALLOCATIONS EVANS & ROSEDALE REDEVELOPMENT (This M&C)
<b>Remaining Unallocated Balance</b>	<b>\$146,699,556.58</b>	

The Evans-Rosedale Project was also determined to be a qualified priority by City Management for ARPA funding as approved by the City Council in M&C 21-0445 on June 22, 2021. ARPA funds must be committed by the end of 2024 and spent by the end of 2026. The Property purchase should be completed by March 2022.

Approval of this M&C will allocate \$4,245,533.42 for FY2022 in the American Rescue Plan Act project in the Grants Operating Federal Fund budget. Necessary reporting and documentation requirements will be followed to ensure the City can comply with all reporting requirements of the ARPA legislation.

**FISCAL INFORMATION / CERTIFICATION:**

The Director of Finance certifies that upon approval of the above recommendations, funds are available in the current operating budget, as appropriated, of the Grants Operating Federal Fund. The Economic Development Department shall be responsible for ensuring that only expenditures allowable under the American Recovery Plan Act are charged to this funding source.

<b><u>Submitted for City Manager's Office by:</u></b>	Fernando Costa	6122
	Jay Chapa	5804
<b><u>Originating Business Unit Head:</u></b>	Robert Sturns	2663
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Expedited

# Mayor and Council Communication

**DATE:** 10/19/21

**M&C FILE NUMBER:**

**LOG NAME:** 17EVANSROSEDALE EDPA

## **SUBJECT**

(CD 8) Authorize Execution of an Economic Development Program Agreement with Hoque Global Properties LLC, and/or Related Affiliates, to develop certain properties owned by the City of Fort Worth, Fort Worth Housing Finance Corporation, and Fort Worth Local Development Corporation located in the Evans & Rosedale Urban Village as a mixed-use urban development.

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## **RECOMMENDATION:**

It is recommended that the City Council authorize the execution of an Economic Development Program Agreement with Hoque Global Properties LLC, and/or Related Affiliates, to develop certain properties owned by the City of Fort Worth, Fort Worth Housing Finance Corporation, and Fort Worth Local Development Corporation located in the Evans & Rosedale Urban Village as a mixed-use urban development on the terms set forth below in the discussion.

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## **DISCUSSION:**

Hoque Global Properties LLC and Related Affiliates (Developer) intend to develop certain properties owned by the City of Fort Worth, Fort Worth Housing Finance Corporation, and Fort Worth Local Development Corporation located in the Evans & Rosedale Urban Village (Project Site) as a mixed-use urban development. The development will include commercial, retail, and residential units, as well as a parking structure and enhancements to the plaza and other public spaces ("Development"), in return for the economic development incentives.

In order to facilitate the Development, the City proposes to enter into an Economic Development Program Agreement (EDPA) with the Company to provide up to 15 annual grants equal to up to 80% of the incremental increase from the City's ad-valorem taxes on the real and business personal property at the Project Site and 80% of the City's available one-cent sales tax attributable to the Project Site (Grants). The combined aggregate value of all EDPA grants will be capped at a gross amount of \$9,000,000.00 (Program Cap). Requirements for payment of the incentive are as described below.

## **Developer Commitments:**

### **Developer Investment:**

#### **I. Developer Construction Commitments**

- a. Developer must invest at least \$60 million in total development costs within the boundaries of the Project Site, where a minimum of \$56 million must be **Hard Construction Costs**, with construction starting within 18 months and completion within an additional 36 months from the signing of the required agreements for development of the Development, which includes:
  - i. 292 multifamily units and 28 live/work units
  - ii. 27,000 square feet of retail or office space
    - a. 15,000 square feet of the retail space will be marketed to an urban grocer for up to 12 months past receipt of the Certificate of Occupancy
  - iii. 339 space parking garage
  - iv. enhancements to include the cultural square, linear parks, interactive square, and other public spaces.
- b. **Phase II** - Invest an aggregate of at least \$70 M in Total Development Costs within the boundaries of the Project Site, to include those requirements in Section 1.a. as well as:
  - i. 20 townhomes
- c. Spend 15% of Total Development Costs with contractors that are business equity firms, as defined in the City's ordinance. Failure to meet this requirement will result in a reduction of the Potential Grant by 10%.
- d. Rent no fewer than 20% of all rental residential units as affordable housing, to be comprised of i) 10% of all residential units leased to individuals or families earning at or below 80% of the Area Median Income for the Fort Worth-Arlington region in a given year as established by the U.S. Department of Housing and Urban Development, and ii) 10% of all

residential units leased to individuals or families earning at or below 60% of the Area Median Income. Failure to meet the criteria outlined in Section I.d. shall be an event of default.

**Other Developer Commitments:**

- a. Demonstrates the financial capacity and commitments to complete the project prior to any land transactions and no later than 6 months after signing of the Definitive Agreements;
- b. Employ or cause to employ a minimum 30 Full-Time Employees on the Property by December 31, 2024, using good faith efforts to hire from the neighborhood areas indicated in the attached “Exhibit A”;
- c. The Developer shall hold an initial public community meeting during the time period identified by City, which shall be after the full execution of this Term Sheet by Developer and the City, and continue to hold public community meetings every six months following the initial public meeting, until Phase I of the project is complete. Beginning upon execution of this agreement until Phase I is complete, the Developer shall provide quarterly project status updates to the City to be made public via the City website. The City will not seek approval until the initial community meeting has been held.
- d. Is responsive to and specifically informed by historic and cultural context in designing the buildings and public spaces; and
- e. Developer will also work with the City of Fort Worth to make best efforts to attract a grocer to the Development.
- f. The Developer will pursue a waiver of certain permit and impact fees related to the Development through the Neighborhood Empowerment Zone application process.
- g. The Developer will make best efforts to acquire the property located at 912 Missouri Avenue, Fort Worth, TX 76104 from the private property owner with a conclusion of such efforts no later than March 31, 2022. This is a hard deadline and may only be extended only by action of the City. In the event acquisition of 912 Missouri Avenue, Fort Worth, TX 76104 does not occur, the scope of the Phase I and Phase II construction commitments outlined in Section I.a. and 1.b. may be revised based upon the redesign of the project.

**City Commitments:**

**Economic Development Program Agreement Grants**

Pursuant to Section 10, Catalytic Development Project, of the Economic Development Program Policy, enter into an Economic Development Program Agreement that will provide up to fifteen annual grants based on the incremental value of the real and business personal property at the Project Site and 80% of the City’s available one-cent sales tax attributable to the Property (“Grants”). The Chapter 380 incentive cap shall be \$8 million (gross) upon completion of the Phase I commitments. If Phase II commitments are achieved, the Chapter 380 incentive cap shall increase to \$9 million (gross).

The amount of the grants will be determined annually and in accordance with the following table.

Company Commitment	Maximum Grants
Real & Business Personal Property Investment (Base Commitment)	65%
15\% M/WBE Contractors	10%
30 Full-Time Employees	5%
<b>TOTAL</b>	<b>80%</b>

The grants will begin in the second calendar year following the completion date of the Project, and will be based on the tax year that immediately follows the year in which the completion date occurred. For example, if the Project is completed on December 31, 2024, the grants will be based on the value of property assessed for the 2025 tax year, with the grants paid in calendar year 2026.

**FISCAL INFORMATION / CERTIFICATION:**

The Director of Finance certifies that approval of this agreement will have no material effect on the Fiscal Year 2022 Budget. While no current year impact is anticipated from this action, any effect on expenditures and revenues will be budgeted in future Fiscal Years and will be included in the long-term financial forecast.

**Submitted for City Manager's Office by:**    Jay Chapa        5804

**Originating Business Unit Head:**                Robert Sturns    2663

**Additional Information Contact:**                Robert Sturns    2663

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