

**TO:** Mayor Richard C. Irvin

**FROM:** David Dibo, Director Mayor's Office of Economic Development

**DATE:** July 10, 2020

**SUBJECT:**

A resolution authorizing the City Of Aurora (City) to amend the previously approved resolution (R19-382; November 12th 2019) adopting a redevelopment agreement (RDA) with Fox Valley Developers (FVD) to facilitate the redevelopment of the Old Copley Hospital located at 502 S. Lincoln Ave. The RDA was the second part of a two-step process that started with the remediation and securing of the complex (resolution No. R18-220) approved in late August 2018)

**PURPOSE:**

The purpose of this amendment is to modify the RDA approved last November in a manner that assists the execution of FVD's development plan while maintaining the spirit and key provisions in the approved RDA. The modifications are centered on resetting certain threshold dates and providing a short-term advance of \$1.5M by the City to FVD that will be matched by an additional \$1.5M advanced by the School District. These loans will likely be outstanding for no more than three months (but in no event later than year end 2020) to be repaid when the School District purchases the turnkey completed building. It also provides the City with the ability to more closely monitor the details of any proposed financing and allows for the developer to substitute collateral in lieu of standard infrastructure bonding requirements.

**BACKGROUND:**

After years of neglect and unfulfilled promises at Copley, the City entered into the two agreements with FVD referenced above; each RDA was self-contained yet depended on the success of the other. The cleanup was economically feasible only if amortized over a successful project, something that could not be implemented or even visualized without first gaining control of the property and cleaning it up. The building was certified clean in September 2019.

The RDA that was approved two months later contained a series of mutual commitments, obligations and representations including an agreed upon development plan, a set of financial incentives based on reaching certain milestones, financing commitments by FVD's lender(s), and plans for School District 131 to relocate their headquarters onto the campus, a move that would jump start the \$100 Million development plan.

The School District had specific timing parameters of being able to move in to the building in the summer of 2020 that required FVD begin construction almost immediately after the RDA was approved .

Despite a detailed term sheet executed by Sterling Bank for the entire Project funding, the Bank unexpectedly pulled this financing even though they had previously committed and have

now provided interim financing of \$7.1 Million toward the construction of the School District building. This unexpected turn had a negative cascading effect on the willingness of the tax credit investor to fund and complete the Project's capital stack. It also impacted the permissibility of the City incentives, which are tied to the completion of the School District building and affirmative proof that overall Project financing was in place. Believing that Project Financing was secured, FVD made a number of commitments related to the completion of the School District and to vendors working on the next phase (the seniors housing, adults with disabilities and commercial components). The City expressed its concern over this course of action, noting that proceeding this way was not consistent with the RDA, which incorporated a March 31, 2020 full financing deadline, and which included in Exhibit D a requirement for a \$35 million construction loan, not an interim loan for the School District building. FVD, as noted in the attached amendment, is prohibited from incurring any costs whatsoever regarding the project outside of the School District Facility, until the full financing as outlined in the Amendment is obtained.

With this backdrop, Covid-19 presented itself, impacting all aspects of the Project from supply chains to alternative financing. The City and FVD have been working since the onset of the virus to keep the Project moving while respecting the original intent of the Council approval. Many permutations were explored that culminated with the amendment that is being recommended by staff today.

The City, FVD and the School District sought a means to complete the School District building, now about 70% complete, as the funds Sterling Bank agreed to advance are insufficient to complete the building. The shortfall is about \$4.5 million and will be split evenly among FVD, the City and the School District. This assures that the District could move in by their scheduled fall due date and allow FVD the time to secure financing for the remainder of the Project. Obtaining this financing is highly related to FVD qualifying for the previously approved City incentives; these incentives had deadlines that were fast approaching as Covid-19 hit and likely would have had to be reset based on a provision in the RDA, typical of most contracts that accounts for such unforeseen circumstances (force majeure).

The amended RDA also resets these dates and provides short term gap financing from the City, the School District and FVD's own resources. Adjusted dates include extending the deadline for FVD to obtain the remainder of the Project funding from March 31, 2020 to June 1, 2021, extending the deadline for FVD to complete the Project from June 1, 2021 to December 31, 2022, adding an earliest payment date for the first \$4.5 million City-incentive as December 1, 2020 and extending the earliest payment date for the second \$4.5 million City-incentive from January 1, 2021 to June 30, 2021.

A substitute Project lender has expressed serious interest, and this amendment provides specific timeframes for FVD to obtain its Project financing, with City oversight, as FVD completes the School District building on-time for its promised delivery.

## **DISCUSSION:**

As with any public/private partnership, the City initially required and does so again with this amendment, the correct balance between our fiduciary responsibilities and facilitating a project that but for this proactivity and the incentives offered, would continue to blight the near east side and negatively impact the City at large.

That said, the City and School District 131 were not parties to, or notified immediately of, the unexpected turn related to the Project financing or shortfall in the interim financing and has determined that its best course of action is to narrowly focus on providing short term liquidity that will facilitate the completion of the School District building and enable the intent and thresholds of the original RDA to stand. In addition, the City's legal costs related to this modification will be reimbursed by FVD, up to \$25,000, as the School District building closing.

The expectations are that in order for FVD to receive their incentive package of \$9 million from the City, they will have to unequivocally demonstrate that the total Project financing is in place, by providing closing statements and not just term sheets, and that the School District headquarters was complete and accepted. The former requirement stands albeit with the deadlines modified for the first incentive funding from completion of the School District building and related public and private infrastructure to be constructed by FVD to completion of that building and infrastructure, but not sooner than December 1, 2020 and for the second incentive finding from the City issuing a final certificate of occupancy for the senior and IDD uses and the commercial spaces being finished in "turn-key" condition, but no sooner than January 1, 2021, to those milestones, but no sooner than June 30, 2021. The requirement that the School District be completed also stands although this is where the City would advance \$1.5 million for approved costs (as would the School District).

The City's rationale is that the unexpected withdrawal of the Project lender warrants this assistance, if the Project is to stay on schedule, allowing the School District to move in the fall. This rationale is supported by the School District's willingness to also front \$1.5 million, for this very short term.

The City and School District advances will be deposited into an escrow and paid out of the escrow to FVD for "hard costs" of construction of the School District Building, upon written approval of draw requests by the City and School District.

The City continues to limit risk by compartmentalizing the different parts of the Project. Repayment of the City's and the School District's advances is secured by personal guarantees from FVD's key principals (with proof of at least \$3 million in collective liquid net worth), a second mortgage on the School District property and a backup first mortgage on the remainder of the Copley property, if FVD does not repay the advances by the end of 2020. The City and School District advances will earn interest, in the amount of the 6 month LIBOR plus .5%, rounded up to the closest .25%.

As noted above, the \$9 million incentive payable to FVD related to the Project pursuant to the RDA is not payable unless FVD meets significant milestones, which requires FVD to get the remainder of the Project funding, complete the School District Building and associated

infrastructure, for the first \$4.5 million, and complete of the remainder of the Project and get a City-issued certificate of occupancy, for the second \$4.5 million.

Finally, although not a part of the RDA amendment the Intergovernmental Agreement (IGA) with School District 131 needs to be amended to include final costs for the Seminary vacation and Right-Of-Way construction. Exhibit B is a copy of this amendment with markups. This IGA allows for the use of up to \$1.0 million in kind/construction services provided by the City at School facility locations. Based on final cost estimates, this construction is estimated at a not to exceed amount of \$514,000 and staff is not recommending the inclusion of any contingency. The City and District 131 have met on this amendment and both parties are in agreement of this cost and project to ensure that Seminary and surrounding areas are also completed by September 2020

**IMPACT STATEMENT:**

This Amendment will allow this vital project to continue in a more phased approach but with no greater financial commitment on the part of the City or School District.

**RECOMMENDATIONS:**

Staff recommends approval of the First Amendment to the Redevelopment Agreement with FVD for the Development of the former Copley Hospital in the City of Aurora. Staff further recommends that the Mayor be authorized to execute the amendment to the IGA with School District 131 as attached.

cc: Finance Committee



CITY OF AURORA, ILLINOIS

RESOLUTION NO. \_\_\_\_\_  
DATE OF PASSAGE \_\_\_\_\_

A Resolution authorizing the amendment of a redevelopment agreement between the City and Fox Valley Developers, LLC and the amendment of an intergovernmental agreement between the City and the Board of Education of East Aurora Public School District 131, both related to the redevelopment of the former Copley Hospital.

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the City Council previously approved R19-132 authorizing a redevelopment agreement between the City and Fox Valley Developers, LLC, for reimbursement of eligible redevelopment project costs for the property commonly known as Old Copley Hospital in the City; and

WHEREAS, representatives of the City and Fox Valley Developers, LLC, have negotiated a proposed amendment the redevelopment agreement authorized by R19-132; and

WHEREAS, the proposed amendment, captioned "First Amendment to the Redevelopment Agreement for the Avalon Heights Development in the City of Aurora, Illinois," is attached to this resolution as Exhibit A; and

WHEREAS, it is the best interests of the residents of the City that the First Amendment to the Redevelopment Agreement be entered into by the City and further, that but for the amendment of the provisions for incentives as provided therein, the property would not otherwise be developed as provided therein; and

WHEREAS, in the furtherance of the redevelopment contemplated by the original redevelopment agreement, the City and the Board of Education of East Aurora Public School District 131 ("District 131") entered into an intergovernmental agreement

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DATE OF PASSAGE \_\_\_\_\_

("Intergovernmental Agreement") that required the City and District 131 to perform various obligations related to the District 131's anticipated acquisition and occupancy of a portion of the former Copley Hospital property; and

WHEREAS, as a result of the contemplated amendment to the redevelopment agreement, it is necessary that the City and District 131 also amend the Intergovernmental Agreement to accommodate the changes set forth in the amended redevelopment agreement; and

WHEREAS, representatives of the City and District 131 have negotiated a proposed amendment to the Intergovernmental Agreement which is attached to this resolution as Exhibit B; and

WHEREAS, approval of the amendment set forth in Exhibit B is in the best interests of the City and District 131 and consistent with the purpose, intention, and authority conferred by Article VII, Section 10 of the Constitution of the State of Illinois and the Intergovernmental Cooperation Act;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Aurora, Illinois, as follows: that the Council, constituting the corporate authorities of the City, finds the above recitals to be true and incorporates them herein; and further

BE IT RESOLVED, that the Mayor shall be and hereby is authorized and directed to execute on behalf of the City, a First Amendment to the Redevelopment Agreement with Fox Valley Developers, LLC be entered into by the City, with said First Amendment to the Redevelopment Agreement in substantially in the form attached hereto as Exhibit A to this Resolution; and further

BE IT RESOLVED, that the Mayor shall be and hereby is authorized and directed to execute, on behalf the City, an amendment to the Intergovernmental Agreement between the City and the District No. 131 for the purposes of facilitating the development contemplated by this Resolution in substantially the same form as set forth in Exhibit B to this Resolution; and further

BE IT RESOLVED, that the respective officers and employees of the City shall be and hereby are authorized and directed to take all actions necessary and proper to carry into execution the purposes of the agreements set forth in Exhibit A and Exhibit B; and further

BE IT ORDAINED, that prior to any disbursements pursuant to this Agreement, the City shall request and obtain from the Developer a certified statement of expenses detailing line item per cost category, including, but not limited to, a contractor's statement and an owner's statement.

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ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020, pursuant to a roll call vote as follows:

APPROVED by me this \_\_\_\_ day of \_\_\_\_\_, 2020.

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Richard Irvin, City Mayor