

CITY OF SALINA

REQUEST FOR CITY COMMISSION ACTION

DATE
11/05/2018

TIME
4:00 P.M.

AGENDA SECTION NO: 7	ORIGINATING DEPARTMENT: City Manager's Office	FISCAL APPROVAL: BY: <i>CSB</i>
ITEM NO: 5 Page 1	BY: Mike Schrage	FINAL APPROVAL: BY: <i>MDS</i>

ITEM: Resolution No. 18-7623 authorizing the Mayor to execute a second amendment to the Development Agreement with Salina 2020, Inc.

BACKGROUND:

Negotiation of the terms of the STAR Bond issuance resulted in a requirement that \$10M of STAR Bond funds be escrowed until the Homewood Suites Hotel project is completed. Consequently, it is necessary to amend the Development Agreement provisions regarding the prioritization and distribution of the STAR Bond proceeds.

The original Development Agreement provisions read as follows:

Section 4.06 Disbursement of STAR Bond Proceeds.

As described in Section 4.03, the net STAR Bond Proceeds shall be disbursed from the STAR Bond Project Fund pursuant to the terms of this Agreement and the Bond Documents for the purpose of funding the STAR Bond Uses. The priority of uses of the STAR Bond Proceeds shall be as follows:

- A. First, the City may utilize STAR Bond Proceeds to pay or reimburse costs to construct the Fieldhouse and complete the Fieldhouse Off-street Parking Components, up to a maximum of \$9,625,000.
- B. Second, STAR Bond Proceeds shall be utilized to pay or reimburse costs incurred by a Third Party Developer to develop the Alley Project up to a maximum of \$1,642,726.
- C. Third, the Master Developer may utilize STAR Bond Proceeds to reimburse direct costs for land planning for the Project (the "Land **Planning** Costs") up to a maximum of \$200,000, provided that all work product related to such Land Planning Costs, and the right to own and use such work product, has been assigned to the City. The Land Planning Costs shall be reimbursed to the Master Developer in accordance with the provisions of Article VI.
- D. Fourth, STAR Bond Proceeds shall be utilized to pay or reimburse costs incurred by a Third Party Developer to develop to the Hotel Project up to a maximum of \$442,274.
- E. Fifth, STAR Bond Proceeds shall be utilized to pay or reimburse costs incurred by a Third Party Developer to develop the Car Museum up to a maximum of \$4,695,000.

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F. Sixth, the City may utilize STAR Bond Proceeds to pay or reimburse costs to design and construct the Streetscape and Public Infrastructure Improvements tied to the STAR Bond Project Components as depicted and described within Exhibit F-4 to the STAR Bond Project Plan up to a maximum of \$2,000,000.

G. The balance of the STAR Bond Proceeds, if any, may be utilized for any other Project Costs eligible to be funded with STAR Bond Proceeds pursuant to the STAR Bond Act and with the prior written approval of the City, the Secretary of Commerce and the Master Developer. In order for such balance of STAR Bond Proceeds to be utilized for other Project Costs, one of the following must apply to all Project Components within the STAR Bond Project Plan identified in A. through F. above:

- (1) such Project Component must be completed (as evidenced by a Certificate for Full Completion for such Project Component jointly accepted by the City and the Master Developer); or
- (2) the maximum amount of STAR Bond Proceeds allocated to such Project Component (as described above) has been disbursed for financing such Project Component; or
- (3) the Parties agree that such excess STAR Bond Proceeds are necessary to allocate to any such STAR Bond Project Component in order to facilitate completion of such STAR Bond Project Component; or
- (4) such Project Component or will not be developed within a reasonable period of time as agreed by the City and Master Developer.

The Development Agreement went on to further specify the distribution of the \$9.625M reimbursement received by the City as follows:

Section 4.09 Additional City Funds Expenditures.

A. City Funds for Stiefel Improvements and Hotel Project. Subject to satisfaction of the conditions precedent established in the Transferee Agreements for the Stiefel Improvements and Hotel Project, and in the event STAR Bonds are issued in an amount netting no less than \$9,625,000 in STAR Bond Proceeds that are paid to the City as the Fieldhouse STAR Bond Allocation, the City shall, within ten (10) days of such issuance, deposit City Funds into two separate accounts for the following purposes:

- (1) The City shall deposit \$2,000,000 of City Funds into a segregated account for purpose of paying or reimbursing costs required for

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completion of the Stiefel Improvements. The terms governing the provision of such funds and the improvements to be completed utilizing same shall be as described in a Transferee Agreement between the City, the Master Developer, and the Historic Fox Theater of Salina Foundation; and

- (2) The City shall deposit \$1,000,000 of City Funds into a segregated account for purpose of reimbursing costs required for completion of the Infrastructure Improvements for the Hotel Project exclusive of the sanitary sewer relocation and construction and connection of water service to be performed by the City as provided in Section 3.03. The terms governing the provision of such funds and the improvements to be completed utilizing same shall be as described in a Transferee Agreement between the City, the Master Developer, and the Third Party Developer of the Hotel Project.

B. Certification of Expenditures for City Funds. Payment or reimbursement of Project Costs for the Stiefel Improvements and reimbursement of Project Costs for the Hotel Project through City Funds shall occur pursuant to the Certification of Expenditures process as provided in Article VI herein.

C. City Funds for Fieldhouse Off-site Parking Components. In the event STAR Bonds are issued in an amount netting no less than \$9,625,000 in STAR Bond Proceeds, the City shall, within ten (10) days of such issuance, deposit \$1,625,000 of City Funds into a separate account (the "Fieldhouse Off-site Parking Account"). The priority of uses of the Fieldhouse Off-site Parking Account shall be as follows:

- (1) First, the Fieldhouse Off-site Parking Account shall be utilized to pay or reimburse costs incurred by the City to purchase fee title to the BOA parking lot. The City shall use best efforts to enter into a contract for the purchase of fee title to the BOA parking lot as soon as reasonably practicable, with such terms and conditions of the purchase contract, including the purchase price, to be described in a supplemental purchase agreement between the City and the applicable property owner. Unless waived by the City in writing, closing on the contract for purchase of the BOA parking lot shall be subject to satisfaction of the condition precedent that STAR Bonds have been issued in an amount netting no less than \$9,625,000 in STAR Bond Proceeds.
- (2) Second, the balance of the Fieldhouse Off-site Parking Account shall be utilized to payor reimburse costs incurred by the City to improve and integrate the BOA parking lot and adjoining city parking lots.

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(3) Third, the balance of the Fieldhouse Off-site Parking Account, if any, shall be utilized to pay or reimburse costs incurred by the City to purchase fee title to the Bennett parking lot. The City shall use best efforts to enter into a contract for the purchase of fee title to the Bennett parking lot, with such terms and conditions of the purchase contract, including the purchase price, to be described in a supplemental purchase agreement between the City and the applicable property owner. The City shall have no obligation to purchase the Bennett parking lot if the negotiated purchase price for the Bennett parking lot exceeds the balance of funds in the Fieldhouse Off-site Parking Account.

In light of the escrow terms associated with the STAR Bond issuance, staff has negotiated and recommends escrowing and distribution of funds as follows:

Completion Dates

Old Chicago	December	2018
BOA Parking	December	2018
Barolo Grille	April	2019
Alley	July	2019
Hotel (YaYas & Starbucks)	December	2019
Fieldhouse Parking	October	2020

\$8.6M Distribution

(At Closing)

Stiefel	\$	950,000
Hotel	\$	950,000
Car Museum	\$	357,274
Fieldhouse Parking	\$	-
Fieldhouse Reimb	\$	4,700,000
Alley	\$	1,642,726
		8,600,000

\$10M Distribution

(Hotel / YaYas / Starbucks/ Barolo Grille)

(12/19)

Stiefel Theatre	\$	1,050,000
Fieldhouse Parking	\$	1,625,000
Land Planning	\$	200,000

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Hotel	\$	492,000
Car Museum	\$	4,337,726
Streetscape	\$	2,300,000
	\$	10,004,726

Total \$ 18,604,726

Proceeding as proposed reimburses the City for Fieldhouse costs as anticipated; funds The Alley upon completion as agreed; foregoes reimbursement of NMTC expenditures on the Bank of America parking lot until the Homewood Suites Project is completed; makes funds available to reimburse City expenditures for additional parking lot improvements in advance of the scheduled parking lot renovations and provides funds for the Stiefel Theatre and Car Museum projects to proceed with preliminary work in anticipation of the remainder of their project funding being released upon completion of the Homewood Suites.

The proposed completion dates of the Homewood Suites, Stiefel Theatre and Car Museum projects has been taken in to account in the Development Strategies STAR Bond Revenue Study and the resulting bond sizing estimates such that the proposed modifications to the timeline and funds distribution do not have a material effect on the STAR Bond financing.

CONFORMANCE WITH THE STRATEGIC PLAN:

The proposed action is consistent with the following components of the City's shared vision statement:

- Salina will be a city that is exciting to live in and thriving both economically and socially.
- The city will be clean, attractive and inviting.
- Salina will be a place with a quality of life that not only appeals to residents, but also to visitors.
- The city of Salina will be attractive and well maintained. It will be evident that good housekeeping and high community standards are valued.
- The City Commission of Salina will have committed to providing the highest quality City services possible within available resources. The City Commission recognizes their role and responsibility to provide the needed policy direction and resources to its administration. At the same time, the City's administrative personnel are committed daily to transforming this direction and resources into the highest possible quality of municipal services, consistent with the expectations of both the City Commission and the citizens of Salina.

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- Downtown Salina will be a thriving and vibrant place. It will include an artistic flair that complements diverse and successful business development, including: entertainment, professional services, restaurants and retail development. In addition, the downtown will include residential uses consistent with the desired, mixed-use activity.
- Salina will be supportive of life-long learning through all forms of education, including elementary and secondary education, higher education and vocational/technical training.
- Salina will be a town that is respectful of its heritage. Throughout Salina the adaptive re-use of historic and architecturally significant buildings will be encouraged.
- Salina will encourage and be supportive of industrial development, economic expansion, market-driven tax base growth, and home grown entrepreneurialism.

The proposed action is also consistent with the following goals contained in the City's strategic plan:

Goal #1: The city will create a community of mixed-use, quality development and redevelopment.

Goal #3: The city will provide the highest quality of services, consistent with governing body direction, available resources and staff commitment to quality.

Goal #5: The city will maintain a commitment to making downtown Salina a thriving and vibrant center of the community.

Goal #6: The city will work to make Salina a city that has connectivity physically and socially.

FISCAL NOTE:

The proposed amendment is necessitated by the escrow terms of the STAR Bond issuance which are not within the control of the City of Salina. While the amended distribution of funds alters the timing that funds will be provided to various parties, it does not alter the amount of funds to be received by any of the parties and it does not have a material impact on the costs of the project(s).

COMMISSION ACTION OR RECOMMENDED ACTION:

Staff has identified the following options for the City Commission's consideration:

- 1.) Approve Resolution No. **18-7623**
- 2.) Postpone consideration of Resolution No. **18-7623** to a specified date and time and provide staff direction regarding additional information or amendments the City Commission would like to request for their further consideration. NOTE: Postponement beyond November 19th could delay STAR Bond issuance such that the goal of issuance by year-end might not be met.
- 3.) Vote to deny Resolution No. **18-7623** resulting in the City failing to comply with conditions of

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approval of the STAR Bond plan and negating the community's ability to proceed with the STAR Bond project.

Staff recommends Option #1.

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

FOR THE

SALINA DOWNTOWN STAR BOND PROJECT DISTRICT

DATED NOVEMBER 5, 2018

BETWEEN

CITY OF SALINA, KANSAS

AND

SALINA 2020, INC.

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “**Agreement**”), is dated as of November 5, 2018 (the “**Effective Date**”) by and between the **CITY OF SALINA, KANSAS**, a municipal corporation duly organized under the laws of the State of Kansas (the “**City**”); and **SALINA2020, INC.**, a Kansas corporation (the “**Master Developer**”), with the “Master Developer,” and the “City” collectively referred to as the “**Parties**” and each a “**Party**”).

RECITALS

A. On January 23, 2017, the Governing Body of the City approved that certain Development Agreement (the “**Original Development Agreement**”) dated January 23, 2017 by the City and the Master Developer.

B. The Original Development Agreement was amended by a First Amendment to Development Agreement dated January 12, 2018 (the “**First Amendment to Development Agreement**,” and, together with the Original Development Agreement, the “**Development Agreement**”).

C. The Parties desire to amend the Development Agreement to address certain funding matters.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Section 1. Definitions of Words and Terms. For all purposes of this Agreement, except as otherwise provided or unless the context otherwise requires, the words and terms used in this Agreement shall have the meanings set forth in Section 1.01 of the Development Agreement.

Section 2. Amendment of Section 4.06. Section 4.06 of the Development Agreement is deleted and replaced as follows:

Section 4.06 Disbursement of STAR Bond Proceeds. As described in Section 4.03, the net STAR Bond Proceeds shall be disbursed from the funds described in the Bond Documents pursuant to the terms of this Agreement and the Bond Documents for the purpose of funding the STAR Bond Uses.

A. As more fully described in the Bond Documents, upon issuance of the STAR Bonds, \$8,600,000 in STAR Bond Proceeds will be deposited into various funds and accounts described in the Bond Documents. Such \$8,600,000 in STAR Bond Proceeds will be released into such funds and accounts for the following initial uses:

(1) STAR Bond Proceeds in the amount of \$6,600,000 shall be available for reimbursement to the City for Fieldhouse costs pursuant to the terms and process defined in this Agreement and the Bond Documents.

(2) STAR Bond Proceeds in the amount of \$1,642,726 shall be available for reimbursement of costs incurred in developing the Alley Project pursuant to the terms and process defined in this Agreement and the Bond Documents.

(3) STAR Bond Proceeds in the amount of \$357,274 shall be available for reimbursement of costs incurred to acquire real property for development of the Car Museum pursuant to the terms and process defined in this Agreement and the Bond Documents.

B. As more fully described in the Bond Documents, upon issuance of the STAR Bonds, \$10,000,000 in STAR Bond Proceeds will be deposited into various funds and accounts described in the Bond Documents. Upon release of all or any portion of such \$10,000,000 of escrowed STAR Bond Proceeds, the priority of uses of such STAR Bond Proceeds shall be as follows:

(1) First, the Master Developer may utilize STAR Bond Proceeds to reimburse direct costs for land planning for the Project (the “**Land Planning Costs**”) in the amount of \$182,854, provided that all work product related to such Land Planning Costs, and the right to own and use such work product, has been assigned to the City. The Land Planning Costs shall be reimbursed to the Master Developer in accordance with the provisions of Article VI.

(2) Second, STAR Bond Proceeds shall be utilized to pay or reimburse costs incurred by a Third Party Developer to develop the Hotel Project up to a maximum of \$442,274.

(3) Third, STAR Bond Proceeds shall be utilized to pay or reimburse costs incurred by the City for costs to acquire and construct the Fieldhouse and Fieldhouse Off-Street Parking Components up to a maximum of \$3,025,000.

(4) Fourth, STAR Bond Proceeds shall be utilized to pay or reimburse costs incurred by a Third Party Developer to develop the Car Museum up to a maximum of \$4,337,726.

(5) Fifth, the City may utilize STAR Bond Proceeds to pay or reimburse costs to design and construct the Streetscape and Public Infrastructure Improvements tied to the STAR Bond Project Components as depicted and described within Exhibit F-4 to the STAR Bond Project Plan up to a maximum of \$2,017,146.

G. The balance of the STAR Bond Proceeds, if any, may be utilized for any other Project Costs eligible to be funded with STAR Bond Proceeds pursuant to the STAR Bond Act and with the prior written approval of the City, the Secretary of Commerce and the Master Developer. In order for such balance of STAR Bond Proceeds to be utilized for other Project

Costs, one of the following must apply to all Project Components within the STAR Bond Project Plan identified in A.(1)-(3) and B(1)-(5). above:

(1) such Project Component must be completed (as evidenced by a Certificate for Full Completion for such Project Component jointly accepted by the City and the Master Developer); or

(2) the maximum amount of STAR Bond Proceeds allocated to such Project Component (as described above) has been disbursed for financing such Project Component; or

(3) the Parties agree that such excess STAR Bond Proceeds are necessary to allocate to any such STAR Bond Project Component in order to facilitate completion of such STAR Bond Project Component; or

(4) such Project Component or will not be developed within a reasonable period of time as agreed by the City and Master Developer.

Section 3. Amendment of Section 4.09. Section 4.09 of the Development Agreement is deleted and replaced as follows:

Section 4.09 Additional City Funds Expenditures.

A. Initial City Funds for Stiefel Improvements and Hotel Project. Subject to satisfaction of the conditions precedent established in the Transferee Agreements for the Stiefel Improvements and Hotel Project, upon issuance of the STAR Bonds and an initial release of \$6,600,000 in STAR Bond Proceeds that are paid to the City for reimbursement of Fieldhouse costs as a portion of the Fieldhouse STAR Bond Allocation, the City shall, within ten (10) days of such issuance, deposit City Funds into two separate accounts for the following purposes:

(1) The City shall deposit \$950,000 of City Funds into a segregated account under the Bond Documents for purpose of paying or reimbursing costs required for completion of the Stiefel Improvements. The terms governing the provision of such funds and the improvements to be completed utilizing same shall be as described in a Transferee Agreement between the City, the Master Developer, and the Historic Fox Theater of Salina Foundation; and

(2) The City shall deposit \$950,000 of City Funds into a segregated account under the Bond Documents for purpose of reimbursing costs required for completion of the Infrastructure Improvements for the Hotel Project exclusive of the sanitary sewer relocation and construction and connection of water service to be performed by the City as provided in Section 3.03. The terms governing the provision of such funds and the improvements to be completed utilizing same shall be as described in a Transferee Agreement between the City, the Master Developer, and the Third Party Developer of the Hotel Project.

B. Subsequent City Funds for Stiefel Improvements and Hotel Project. Subject to satisfaction of the conditions precedent established in the Transferee Agreements for the Stiefel

Improvements and Hotel Project, upon issuance of the STAR Bonds and the release from escrow of \$3,025,000 in STAR Bond Proceeds that are paid to the City as a portion of the Fieldhouse STAR Bond Allocation, the City shall, within ten (10) days of such release, deposit City Funds into two separate accounts for the following purposes:

(1) The City shall deposit \$1,050,000 of City Funds into a segregated account under the Bond Documents for purpose of paying or reimbursing costs required for completion of the Stiefel Improvements. The terms governing the provision of such funds and the improvements to be completed utilizing same shall be as described in a Transferee Agreement between the City, the Master Developer, and the Historic Fox Theater of Salina Foundation; and

(2) The City shall deposit \$50,000 of City Funds into a segregated account under the Bond Documents for purpose of reimbursing costs required for completion of the Infrastructure Improvements for the Hotel Project exclusive of the sanitary sewer relocation and construction and connection of water service to be performed by the City as provided in Section 3.03. The terms governing the provision of such funds and the improvements to be completed utilizing same shall be as described in a Transferee Agreement between the City, the Master Developer, and the Third Party Developer of the Hotel Project.

C. Certification of Expenditures for City Funds. Payment or reimbursement of Project Costs for the Stiefel Improvements and reimbursement of Project Costs for the Hotel Project through City Funds shall occur pursuant to the Certification of Expenditures process as provided in Article VI herein.

D. City Funds for Fieldhouse Off-site Parking Components. In the event STAR Bond Proceeds are released from escrow and paid to the City for reimbursement of Fieldhouse costs in an amount no less than \$3,025,000, the City shall, within ten (10) days of such release, deposit \$1,625,000 of City Funds into a separate account under the Bond Documents (the “**Fieldhouse Off-site Parking Account**”). The priority of uses of the Fieldhouse Off-site Parking Account shall be as follows:

(1) First, funds in the Fieldhouse Off-site Parking Account shall be utilized to pay or reimburse costs incurred by the City for long-term lease payments for the parking lot located on parcel number 085081120301400500001 and to improve and integrate the parking lot located on parcel number 085081120301400500001 and adjoining city parking lots located on parcel numbers 085086130200500100001 and 085086130200501300001.

(2) Second, the balance of the Fieldhouse Off-site Parking Account, if any, shall be utilized to pay or reimburse costs incurred by the City to purchase fee title to the Bennett parking lot. The City shall use best efforts to enter into a contract for the purchase of fee title to the Bennett parking lot, with such terms and conditions of the purchase contract, including the purchase price, to be described in a supplemental purchase agreement between the City and the applicable property owner. The City shall have no obligation to purchase the Bennett parking lot if the negotiated purchase price for

the Bennett parking lot exceeds the balance of funds in the Fieldhouse Off-site Parking Account.

Section 4. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

Section 5. Recordation of Agreement. The Parties agree to execute and deliver a memorandum of this Agreement in proper form for recording in the real property records of Saline County, Kansas, upon the request of a Party.

Section 6. No Other Changes. Except as otherwise stated in this Agreement, the Development Agreement, as amended herein, shall continue in full force and effect.

[Remainder of page intentionally left blank. Signature pages immediately follow.]

IN WITNESS WHEREOF, the City and the Master Developer have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF SALINA, KANSAS

Karl Ryan, Mayor

[SEAL]

ATTEST:

Shandi Wicks, CMC, City Clerk

APPROVED AS TO FORM:

Greg A. Bengtson, City Attorney

STATE OF KANSAS)
)ss.
COUNTY OF SALINE)

Appeared before me today, this _____ day of November, 2018, Karl Ryan, personally known to me and after first being sworn did state that he is the Mayor of the City of Salina, State of Kansas, and that the seal affixed to the foregoing instrument is the official Seal of the City of Salina, and that said instrument was signed and sealed on behalf of the City, and that the matters set forth herein are true and correct to the best of his and the City's knowledge, information and belief, and acknowledge that he executed the same on behalf of the City as its free act and deed.

Notary Public

My Commission Expires:

MASTER DEVELOPER:

SALINA2020, INC.,
a Kansas corporation

By: _____
Trace Walker, Secretary/Treasurer

STATE OF KANSAS)
) ss.
COUNTY OF SALINE)

On this 5th day of November, 2018, before me personally appeared Trace Walker, to me personally known, who being by me duly sworn did say that he is the Secretary/Treasurer of Salina2020, Inc., and that said instrument was signed and delivered on behalf of said corporation and acknowledged to me that he executed the same as the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]

RESOLUTION NUMBER 18-7623

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SECOND AMENDMENT TO DEVELOPMENT AGREEMENT WITH SALINA 2020, INC.

BE IT RESOLVED by the Governing Body of the City of Salina, Kansas:

Section 1. The Mayor is authorized to execute the attached Second Amendment to Development Agreement with Salina 2020, Inc., subject to the terms and conditions of the agreement.

Section 2. The City Clerk is directed to file the original agreement and retain according to the City of Salina Records Management Policy.

Section 3. This resolution shall be in full force and effect from and after its adoption.

Adopted by the Board of Commissioners and signed by the Mayor this 5th day of November, 2018.

Karl F. Ryan, Mayor

(SEAL)

ATTEST:

Shandi Wicks, CMC, City Clerk