



8/28/2020
5:50 PM
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BOARD OF ALDERMAN
SPECIAL SESSION AGENDA
TUESDAY, SEPTEMBER 1st, 2020 at 6:30 p.m.

MEETING WILL BE RECORDED AND POSTED ON FACEBOOK - CITY OF BOLIVAR, MISSOURI

ROLL CALL
PLEDGE OF ALLEGIANCE
MOTION TO ADOPT AGENDA

1. Bill No. 2020-32 An Ordinance Authorizing a Contract with DCBC, L.L.C. for a Development Economic Incentive Arrangement.
2. Special Event Application: Curly Q's Fundraiser, September 5th, 2020.

CALL OF A SPECIAL SESSION MEETING
OF THE CITY OF BOLIVAR BOARD OF ALDERMEN.

I, Christopher Warwick, Mayor of the City of Bolivar, Missouri, do hereby call a Special Session Meeting of the Bolivar Board of Aldermen on Tuesday, September 1st, 2020, at 6:30 p.m. for the purpose of transacting any lawful business that might be brought before said Council at said meeting.




Christopher Warwick, Mayor

ATTEST

Paula Henderson, City Clerk

Posted: 8/28/2020 5:50pm

IF UNABLE TO ACCESS FACEBOOK ACCOUNT, PLEASE CONTACT CITY CLERK FOR ADDITIONAL OPTIONS

#wherelibertyflows
If you have a need for special accommodations,
Please contact the City Clerk's office 24 hours prior to the meeting.

ORDINANCE COVER SHEET

Bill No. 2020-32

Ordinance No.

**“AN ORDINANCE AUTHORIZING A CONTRACT WITH DCBC, L.L.C. FOR A
DEVELOPMENT ECONOMIC INCENTIVE ARRANGEMENT.”**

Filed for public inspection on _____.

First reading _____ In Full; _____ By Title on _____.

Second reading _____ In Full; _____ By Title on _____.

Vote by the Board of Aldermen on _____:

_____ **Aye; _____ Nay; _____ Abstain**

_____ **Approved by the Mayor on _____.**

_____ **Vetoed by the Mayor on _____.**

Board of Aldermen Vote to Override Veto on _____.

_____ **Aye; _____ Nay; _____ Abstain**

Bill Effective Date: _____.

Bill No. 2020-32

Ordinance No.

“AN ORDINANCE AUTHORIZING A CONTRACT WITH DCBC, L.L.C. FOR A DEVELOPMENT ECONOMIC INCENTIVE ARRANGEMENT.”

Be it Ordained by the Board of Aldermen of the City of Bolivar, Missouri, as follows:

Section I: The City is hereby authorized to enter into an agreement with DCBC, L.L.C. for a development economic incentive arrangement; with such contract and terms to be in the form attached hereto as Exhibit “A” and made a part hereof by reference.

Section II: The Mayor and Aldermen and City Clerk are and at all relevant times were hereby authorized and directed to enter into an agreement as described above for and on behalf of the City.

Section III: This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor.

Christopher Warwick, Mayor

ATTEST:

Paula Henderson, City Clerk

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement (hereinafter referred to as the “Agreement”) is made and entered into to be effective on the _____ day of _____, 2020, between **the City of Bolivar, Missouri, a Municipal Corporation** (hereinafter referred to as the “City”), and **DCBC, L.L.C.** (hereinafter collectively referred to as the “Developer”).

WHEREAS, the Developer or one or more of Developer’s Affiliates will acquire and expects to develop certain real property located within the City of Bolivar, Missouri as generally set forth in Exhibit “A” attached hereto and made a part hereof by reference (the “Subject Property”) and has plans to make commercial improvements that will include public benefits/infrastructure improvements on the Subject Property. The commercial improvements will provide a valuable catalyst for development in the City and increased tax revenues for the City; and

WHEREAS, in order to maximize the economic benefits that the commercial improvements can bring to the City, the City and Developer desire to enter into this Agreement; and

WHEREAS, the City desires to offer certain development incentives to the Developer as allowed by Missouri law to promote the local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the Board of Alderman for the City has determined that by entering into this Agreement, the potential economic benefits that will accrue to the City under the terms and conditions of this Agreement are consistent with the City’s economic development objectives and that construction and continuous operation of the commercial improvements will further the goals for positive growth in the City. In addition, the Board of Aldermen has determined that the incentives as set forth herein are appropriate means to achieve the construction and operation of the commercial improvements, which the Board of Aldermen has determined are necessary and desirable, and that the potential economic benefits that will accrue to the City pursuant to the terms and conditions of this Agreement are consistent with the City’s economic development objectives.

THE CITY AND THE DEVELOPER MUTUALLY AGREE TO THE FOLLOWING TERMS AND CONDITIONS

1. Definitions: The following terms are hereby defined for purposes of this Agreement:

- a. **“Affiliate”** means all entities, incorporated or otherwise, under common control with, controlled by or controlling the Developer. For purposes of this definition, “control” means fifty percent (50%) or more of the ownership determined by either value or vote.
- b. **“Agreement”** means this Economic Incentives Development Agreement, together with all exhibits or schedules attached to the Agreement from time to time.
- c. **“Commercial Improvements”** means any improvements housing a commercial enterprise generating sales tax revenues and located on the Subject Property as shown Exhibit “A” attached hereto and made part hereof by reference.
- d. **“Construction Costs”** means construction costs (including materials and labor) directly expended by the Developer for the Public Benefits Improvements, and additionally will include amounts equal to the finance charges (interest and fees), if any, paid by the Developer

to service any financing obtained by the Developer to cover the costs of the Public Benefits Improvements.

- e. “Developer” means DCBC, L.L.C., or their successor or assigns.
- f. “Local Sales Tax” means the City’s local portion, allocated to the City’s general fund, that is received on all taxable sales occurred from the Commercial Improvements.
- g. “Public Benefits Improvements” means: (i) extensions of water lines as necessary to serve the Subject Property; and (ii) extensions of sewer lines as necessary to serve the Subject Property; and (iii) a one-time extension and improvement to @@@@ avenue as deemed necessary by the Developer; provided that said improvements are constructed to completion during the term of this Agreement to City required specifications as exist at the time of construction of the same and that are ultimately accepted by the City.
- h. “Sales Tax Revenue” means the available Local Sales Tax, such as that presently in effect, as may be amended, resulting from sales taxes received by the City and collected by the commercial enterprises on sales transacted on the Commercial Improvements.

2. Term of Agreement: The term of this Agreement will begin on the date that this Agreement has been executed by all parties hereto, and will continue for a term of one (1) year thereafter; provided that this Agreement may be renewed for additional terms by the agreement of both parties for successive periods of no longer than one (1) year at a time, and further provided that in any event this Agreement will not be renewed more than twenty-four (24) times after the initial term.

3. Developer Obligations:

- a. Construction of Commercial Improvements: Developer will commence (or cause to be commenced) the construction of the Commercial Improvements at the Subject Property and will have obtained a building permit for the same on or before @@@@, 20@@. Developer in good faith represents that the anticipated completion of the Commercial Improvements and application for certificate of occupancy will be on or before @@@, 20@@, subject to normal construction delays and delays that are not yet anticipated by the Developer.
- b. Construction of Mandatory Public Benefits Improvements: Developer will, in conjunction with and contemporaneously with the construction of the Commercial Improvements (and any other future construction at the Subject Property during the term of this Agreement that will be built by the Developer), construct the Public Benefits Improvements at Developer’s cost. Upon payment of such costs, the Developer will itemize and certify the Construction Costs for such improvements and will deliver the same to the City Clerk. Upon filing of the itemized and certified Construction Costs with the City Clerk, and upon the acceptance of the completed Public Benefits Improvements by the City, such costs will be eligible for repayment through Sales Tax Revenues to the extent as provided for in this Agreement. It is understood by the parties that Public Benefits Improvements may be done in phases, and that any single Public Benefits Improvement will be “complete” upon completion of construction and acceptance by the City.
- c. Consideration of Optional Public Benefits Improvements: Developer may, at any time during the term of this Agreement, propose for construction additional Public Benefits Improvements at the Subject Property for consideration by the City for acceptance (“Optional Public Benefits Improvements”). In order for the costs of any Optional Public Benefits Improvements to be eligible for repayment through Sales Tax Revenues, the Developer must notify the City of its

plans for such improvements along with the reasonably anticipated and estimated costs for such improvements and the City must affirmatively vote to accept such improvements by ordinance. Optional Public Benefits Improvements may or may not be approved at the sole discretion of the City. Thereafter, the Developer may construct the Optional Public Benefits Improvements at the Developer's cost. Upon payment of such costs, the Developer will itemize and certify the Construction Costs for such improvements and will deliver the same to the City Clerk. Upon filing of the itemized and certified Construction Costs with the City Clerk, and upon the acceptance of the completed Optional Public Benefits Improvements by the City, such costs will be eligible for repayment through Sales Tax Revenues to the extent as provided for in this Agreement. It is understood by the parties that Optional Public Benefits Improvements may be done in phases, and that any single Optional Public Benefits Improvement will be "complete" upon completion of construction and acceptance by the City.

- d. Performance Bond or Letter of Credit for Public Benefits Improvements: As to all Public Benefits Improvements that will be accepted by the City (either because they are required by this Agreement or optional by ordinance), the Developer will post a Performance Bond or provide a Letter of Credit (LOC) (or both) in a total amount approved by the City's Public Works Director, with performance bonds to be in a form approved by the City Attorney that will be conditioned upon the Developer's completion of the improvements described therein and within time limits therein imposed.

If a LOC is issued in conjunction with a Performance Bond; and further if the term for the LOC is initially less than the time for performance of the Developer's obligations (whether as stated herein or by extension, if any, agreed upon by the parties); and further if it appears to the City that the LOC cannot or will not be renewed by the issuing party, then the City reserves the right to require the issuance of a new Performance Bond secured by a separate Surety (to be approved by the City) prior to the expiration of the LOC. In the event that the Developer fails to provide such new Performance Bond upon the demand of the City and with sufficient time to allow the City to collect on the LOC, then the City may accelerate the deadline for Developer's performance under this Agreement to five (5) days prior to the last date that the City can collect on the LOC; and the City may thereafter collect on the LOC as though the Developer has defaulted on this Agreement in the event that the Developer fails to complete its obligations under this Agreement prior to the accelerated deadline.

- e. Completion of Public Benefits Improvements: The City may withhold any permits (including occupancy permits) for any improvement on the Subject Property (including the Commercial Improvements) until all then scheduled Public Benefits Improvements / Optional Public Benefits Improvements have been completed.

4. City's Obligations – Local Sales Tax Rebate:

Local Sales Tax Rebate: Subject to the annual appropriations limitations and the possibility of early termination by the City's Board of Aldermen as set forth below, the City will provide a rebate to the Developer equivalent to 100% of Sales Tax Revenues generated, and actually received by the City, from the Commercial Improvements for the sole purpose of reimbursement to the Developer of the Construction Costs of Public Benefits Improvements / Optional Public Benefits Improvements at the Subject Property. The City will pay the rebates quarterly based upon the actual Sales Tax Revenues received by the City as reflected in the sales tax reports received from the State of Missouri, and the City will be solely responsible for determining and confirming the amount of the rebate, subject to cooperation from the Developer if necessary to obtain such information. The rebate will be paid within sixty (60) days of the last report being provided to the City Clerk for the preceding applicable quarter. The total

value of the rebate in this paragraph may equal but will not exceed the amount of Construction Costs for the said Public Benefits Improvements actually expended by the Developer during the term of this Agreement.

Subject to the annual appropriations limitations and the possibility of early termination by the City's Board of Aldermen as set forth below, the terms of this paragraph will survive the final renewal term of this Agreement until such time as the Developer has recouped the amount of Construction Costs for the said Public Benefits Improvements actually expended by the Developer during the term of this Agreement.

The Developer agrees to cooperate with the City and to otherwise complete (or obtain from commercial entities within the Subject Property) any documentation, if any, necessary for the State of Missouri to release sales tax information pertaining to the Commercial Improvements before operations begin at the Commercial Improvements and during the term of this Agreement.

NOTWITHSTANDING ANY OF THE FOREGOING PROVISIONS, IT IS UNDERSTOOD THAT THE CITY'S OBLIGATION TO REBATE SALES TAX REVENUE AS SET FORTH ABOVE IS FROM YEAR-TO-YEAR ONLY, AND THE CITY'S OBLIGATION IS SUBJECT TO AND CONTINGENT UPON ANNUAL APPROVAL AND APPROPRIATION BY THE CITY'S BOARD OF ALDERMEN, AND SUCH ANNUAL APPROVAL AND APPROPRIATION MAY BE WITHHELD BY THE BOARD OF ALDERMAN IN ANY GIVEN YEAR WITHOUT RECOURSE. THE DEVELOPER ASSUMES ALL RISK ASSOCIATED THE POSSIBILITY OF THE DISCONTINUATION OF SALES TAX REVENUE REBATES AFTER ANY GIVEN YEAR BY THE BOARD OF ALDERMEN NOTWITHSTANDING THE FACT THAT THE DEVELOPER MAY NOT HAVE RECAPTURED ALL OF ITS CONSTRUCTION COSTS.

5. Compliance with Government Regulations: Developer will at all times fully comply with all applicable state, county and municipal codes and regulations, and with all federal codes and regulations, including but not limited to, all regulations from the U.S. Department of Labor Occupational Safety and Health Organization (OSHA).

6. Relationship Between City and Developer: It is expressly understood and agreed that the Developer (and Developer's employees, agents, and contractors) will not operate as an independent contractor or as an agent, representative or employee of the City. Developer will have the exclusive right to control all details and day-to-day operations relative to the Commercial Improvements, Subject Property and improvements thereon and will be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees and invitees in connection therewith. Developer acknowledges that the doctrine of *respondeat superior* will not apply as between the City and Developer, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Developer further agrees that nothing in this Agreement will be construed as the creation of a partnership or joint enterprise between the City and Developer.

7. Indemnification: Developer, at no cost to the City, agrees to defend, indemnify and hold the City, its officers, agents 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 Developer's business and any resulting lost profits) and/or personal injury, including death, that may relate to, arise out of or be occasioned by (i) Developer's breach of any of the terms or provisions of this Agreement; or (ii) any act or omission or intentional misconduct of Developer, its officers, agents, associates, employees, contractors (other than the City, or its employees, officers, agents, associates, contractors or subcontractors), or subcontractors due or related to or arising from the Commercial Improvements and any operations and activities on the Subject Property or otherwise to the performance of this Agreement.

8. Notices: Any notices authorized or required to be given hereunder may be personally delivered to the person or persons whose names appear below, or by depositing the same in the United States mail, postage fully prepaid, certified, return receipt requested, and if intended for the City addressed as follows:

City of Bolivar
ATTN: City Administrator
P.O. Box 9
Bolivar, Missouri 65613

and if intended for the Developer addressed as follows:

Either party will notify the other party as soon as is practicable upon the change of address for notification purposes. If properly addressed and mailed pursuant to the terms of this paragraph, delivery of notices will conclusively be deemed to have been made two days after mailing.

9. Breach and Early Termination: Unless specified otherwise in this Agreement, a party will be in default of this Agreement if such party breaches any term or condition of this Agreement and such breach remains uncured after thirty (30) calendar days following receipt of written notice from the other party of such breach (or such additional amount of time as the parties have mutually agreed to in writing), the non-breaching party will have the right to terminate this Agreement immediately by providing written notice to the breaching party.

10. Authorized Employees: Developer acknowledges that Section 285.530 RSMo. prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Developer therefore covenants that it is not knowingly in violation of Subsection 1 of Section 285.530 RSMo., and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens, and that its employees are lawfully eligible to work in the United States.

11. Prevailing Wages: To the extent required under the State of Missouri's prevailing wages laws for public works contracts, §§ 290.210 *et seq.*, the parties stipulate that the Developer is responsible for ensuring that not less than the prevailing hourly rate of wages shall be paid to all workmen performing work on the Subject Property for any work for which such prevailing wages would be applicable, if any.

12. Assignment: Developer 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 the Developer, the Affiliate and the City (which approval will not be unreasonably withheld or denied), first execute an agreement under which the Affiliate agrees to assume and be bound by all covenants and obligations of Developer under this Agreement. The Developer may also assign its rights and obligations under this Agreement to a financial institution or other lender for purposes of granting a security interest in the Commercial Improvements or Subject Property, provided that such financial institution or other lender first executes a written agreement with the City governing the rights and obligations of the City, Developer and the financial institution or other lender with respect to such security interest. Otherwise, the Developer 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's Board of Aldermen, which consent will not be unreasonably withheld, conditioned or delayed, so long as: (i) the prior approval of the assignee or successor and a finding by the City's Board of Aldermen 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 Developer under this Agreement. Any attempted assignment without the City's Board of Aldermen prior consent will constitute a breach and be grounds for termination of this Agreement following receipt of written notice from the City to Developer. Any lawful assignee or successor in interest of Developer of all rights under this Agreement will be deemed "Developer" for all purposes under this Agreement.

13. Waiver: All parties to this Agreement agree that the failure of any party to this Agreement to strictly enforce any term of this Agreement will not ever result in a waiver of such party to subsequently enforce the conditions of this Agreement.

14. Severability: In the event that any provision, paragraph, sub-paragraph, or sentence of this Agreement is declared to be invalid for any reason, it will not affect the validity of any other provision of this Agreement, and all other provisions, paragraphs, sub-paragraphs, and sentences will remain in full force and effect.

15. Complete Agreement: It is agreed and understood by all parties to this Agreement that this instrument constitutes the entire agreement between the parties, and that the terms and provisions of this Agreement are contractual and not mere recitals. No additional promises, agreements, and conditions have been entered into other than those expressly set forth in this Agreement. This Agreement may not be modified or amended without the written, signed consent of all parties to this Agreement.

16. Choice of Law and Venue: This instrument will be construed and enforced under the laws of the State of Missouri. Any Dispute Resolution or legal action arising hereunder will be handled in Polk County, Missouri, and all parties consent to the venue of such Court.

17. No Third-Party Beneficiaries: There are no third-party beneficiaries to this Agreement. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either party.

18. Binding Effect: This Agreement will be binding upon and will inure to the benefit of the City, and their respective successors and assigns, and upon the Developer, and their heirs, personal representatives, successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

THIS IS A BINDING LEGAL DOCUMENT. BEFORE SIGNING BELOW, THE PARTIES TO THIS AGREEMENT DECLARE THAT THEY ARE OF SOUND MIND AND ARE OTHERWISE LEGALLY CAPABLE OF ENTERING INTO THIS AGREEMENT, THAT THEY HAVE COMPLETELY READ THIS INSTRUMENT, AND THAT THEY FULLY UNDERSTAND ALL OF THE TERMS CONTAINED HEREIN.

City of Bolivar, Missouri

Christopher Warwick, Mayor

DATE

ATTEST

City Clerk

DATE

Signature of Developer, or Developer's Agent

@@@@@@@@@@@@

DATE

By, @@@@

@@@@@@@@@@@@

DATE

By, @@@@

@@@@@@

DATE