



CITY OF CONCORD

REPORT TO MAYOR AND THE CITY COUNCIL

FROM: Matthew R. Walsh, Director of Redevelopment, Downtown Services, and Special Projects

DATE: July 7, 2021

SUBJECT: Development Agreement with Interchange Development LLC and CIP #30 Hoit Road / Whitney Road Improvement Project

Recommendation:

- 1) Accept the following report; and,
- 2) Approve the attached consent resolution authorizing the City Manager to execute a Development Agreement Amendment with Interchange Development L.L.C. concerning de minimis modifications to the May 11, 2021 Development Agreement.

Background:

On April 12, 2021 the City Council approved Resolution #9360, which authorized the City Manager to enter into a Development Agreement with Interchange Development L.L.C. concerning a public private partnership regarding design, permitting, and construction of certain improvements to Hoit Road and Whitney Road, known as CIP #30, in order to facilitate development of 43 acres of land located at 1 Whitney Road. The Agreement was executed on May 11, 2021. An executed copy of the Development Agreement is attached.

Discussion:

Over the past three months, the City and Interchange Development have been working diligently on their respective obligations, as set forth in the Agreement. Important updates are as follows:

- 1) Developer's Project: Interchange Development and Demoulas Super Markets, Inc. have received building permits for their project. As of the date of this report, walls for the new liquor store were erected and roof trusses were schedule to be installed next week. The foundation for the grocery store and attached retail tenant were substantially complete. Construction is progressing well for both projects. In addition, the Developer is receiving steady interest from prospective tenants for future phases of the development.

- 2) Closing & Potential Development Agreement Amendment: The City and Developer are currently working to finalize a variety of items to perfect the Development Agreement. Such items include outstanding permits and approvals, easements and maintenance agreements for roadway improvements, covenants related to property taxes for the Developer's Project, and other similar items.

This process is progressing well, and a closing on these items is anticipated within the next 30+/- days.

During the course of this process, it has become apparent that minor, de minimis changes to the Development Agreement might be required, or desired, before closing. Examples of minor items that need to be addressed are as follows:

- 1) In accordance with Section 1.4.3 of the Agreement, Concord Area Transit is to receive an easement for a public transit bus stop on the Developer's property. Upon review, it has been determined that it would be appropriate for said easement to be held by the Community Action Program Belknap-Merrimack Counties, Inc. as they are the operator of Concord Area Transit.
- 2) Per Section 1.2.3 of the Development Agreement, the Developer is responsible for providing winter maintenance of certain sidewalks on Whitney Road, as well as landscaping and irrigation improvements associated with the forthcoming roundabout to be constructed at the intersection of Concord Crossing's driveway, Whitney Road, and Merchant's Way. Upon review, it has been determined that it might be more advantageous if said obligation were to reside with the forth coming condominium association for the Developer's Project, or a specific unit within said condominium. This review is ongoing.
- 3) Clarification that the Developer shall install the proposed irrigation system within the forthcoming roundabout at the intersection of Concord Crossing, Whitney Road and Merchants Way at its cost. However, the City shall, in accordance with project plans, install the water service for said system at the City's cost. This amendment is necessary to formalize a verbal understanding between the Parties.

For these reasons, City Administration requests that the City Council approve the attached resolution authorizing the City Manager to execute amendments to the May 11, 2021 Development Agreement to address these, as well as any other similar de minimis issues that might arise during the closing process.

- 3) Roadway Improvements: The City received bids for construction of CIP #30 Hoit Road / Whitney Road Improvement Project on May 11, 2021. A total of three bids were received. The low bidder is F.L. Merrill Construction of Pembroke, New Hampshire in the amount of \$3,795,484.75. The bid, which is within budget, is valid for 60 days. The 60 days period expires on July 10, 2021.

To avoid losing F.L. Merrill's advantageous pricing and to protect the project's schedule, the City has engaged F.L. Merrill for this project. However, because certain key items required for construction are still pending, it is anticipated that F. L. Merrill will not mobilize to the site until late July. In the interim, the contractor will be working to finalize various submittals for construction, including bonds, phasing plans, traffic control plans, and schedule.

The City is not obligated to commence construction of the roadway improvements until all items in Section 2.3.8 of the Development Agreement are satisfied. However, recognizing that the construction season is rapidly waning, that the process of preparing documents for closing with the Developer is progressing well, and that the Developer has provided the City with its \$575,314 cost share for those portions of CIP #30 located in Canterbury, the City Manager intends to provide F. L. Merrill with an unrestricted notice to proceed pending receipt of the following:

- An Alteration of Terrain Permit from the NH Department of Environmental Services for the roadway improvements;
- A Driveway Permit from the NH Department of Transportation for the roadway improvements;
- Executed easement deeds and rights-of-way dedications for roadway improvements from the Developer and other private property owners; and,
- Executed general taxability / payment in lieu of taxes ("PILOT") covenant for the Developer's property, as well as Minimum and Supplemental Payment Covenants for Condominium Units #3 (Market Basket) and #4 (Liquor Store); all of which shall be held in escrow pending closing with the Developer.
- Executed Performance Mortgage from Interchange Development.