

Memorandum

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CITY SECRETARY
DALLAS, TEXAS

CITY OF DALLAS

DATE March 6, 2014
TO Rosa Rios, City Secretary
SUBJECT **Correction Memo – CR #11-1756**
Continental Building Conversion Project

This memo transmits information regarding a correction to City Council approved Council Resolution 11-1756 regarding the development of the Continental Building Conversion Project.

During a recent review of the CR#11-1756, a modification is being made to Section 15 of the above referenced Council Resolution.

From: Section 15. That the City Controller is authorized to encumber and disburse loan payments to HUD in accordance with the terms and conditions of the loan documents authorized in Section 2 from Fund 0J52 – Vendor #263304

To: Section 15. *That the City Controller is authorized to encumber and disburse loan payments to HUD in accordance with the terms and conditions of the loan documents authorized in Section 2 from Fund 0J52. The Principal amount to be disbursed from Object Code 3077, and interest amount to be disbursed from Object Code 3076 – Vendor #263304.*

Please include this memo as permanent addition to the Resolution file.

If you have any questions, or if you need additional information, please contact Patrick Inyabri at 670-0681.


Bernadette Mitchell, Interim Director
Housing/Community Services Department

c: Patrick Inyabri, Interim Assistant Director – Finance and Administration
Brenda Sparks, Budget Manager, HOU
Rick Robins, Manager, MAP, HOU

WHEREAS, the City of Dallas seeks to increase the amount of funding available for economic development through making loans that promote activities which contribute to the development of viable communities by providing decent housing and a suitable living environment, and by promoting local economic development to stimulate business and commercial activity in the city of Dallas leading to creation of permanent jobs and provision of goods and services to project areas; and

WHEREAS, on November 17, 2008, the Economic Development Committee and the Housing Committee were briefed and gave favorable approval on CDBG Section 108 Loan Application authorization for the use of Section 108 Guarantee Loan funds to provide project gap financing or mezzanine debt necessary to move projects forward in today's financial market, to minimize, if not eliminate, the risk to the CDBG program revenue and set guidelines by which the funds would be used; and

WHEREAS, on January 5, 2009, the Economic Development Committee and the Housing Committee were briefed and gave favorable approval on CDBG Section 108 Guarantee Loan fund application requirements and proposed Program Guidelines for the City to apply for up to a total of \$75,000,000 in guarantee loans; and

WHEREAS, on January 28, 2009, the City Council adopted CDBG Section 108 Guarantee Loan Program Statement, setting out the program purpose, description, operations and project criteria by Resolution No. 09-0291; and

WHEREAS, on November 2, 2009, the Housing Committee was briefed on the CDBG Section 108 Guarantee Loan Application to HUD for the Continental Building project and voted to favorably recommend that the City apply for Section 108 Guarantee Loan funds for the project; and

WHEREAS, on December 9, 2009, the City Council authorized a public hearing to be held on January 13, 2010, to receive comments on the proposed City of Dallas submission of an application to the U.S. Department of Housing and Urban Development (HUD) for a Community Development Block Grant (CDBG) Section 108 Guarantee Loan Program loan in the amount of \$7,600,000 by Resolution No. 09-2945; and

WHEREAS, on January 13, 2010, the City Council held a public hearing and following the public hearing authorized submission of a Section 108 Guarantee Loan Program loan application to HUD for a Community Development Block Grant Section 108 loan in the amount of \$7,600,000 by Resolution No. 10-0202; and

WHEREAS, on November 2, 2009, the City Council Housing Committee was briefed on the proposed \$2,000,000 Downtown Connection Tax Increment Financing (TIF) District Affordable Housing loan and gave favorable approval for consideration by the full City Council on January 27, 2010; and

WHEREAS, on January 14, 2010, the Downtown Connection TIF District board of Directors reviewed and recommended approval by the City Council of a project loan in the amount of \$2,000,000 from the Downtown Connection TIF District Affordable Housing Funds to FC Continental complex, L.P. for the redevelopment of the Continental Building located at 1810 Commerce Street; and

WHEREAS, on January 27, 2010, the City Council authorized a loan in the amount of 2,000,000 at 2% interest to FC Continental Complex, L.P. for the acquisition and conversion of property located at 1810 Commerce Street by Resolution No. 10-0372; and

WHEREAS, the City of Dallas desires to enter into a loan agreement with HUD to borrow \$7,600,000 under the Community Development Block Grant Section 108 Guarantee Loan Program and to use the Section 108 funds to provide a development loan to FC Dallas TIF, LLC for development of the Continental Building project at 1810 Commerce Street consisting of conversion of a vacant commercial building into 199 rental units with 40 units for individuals and families with incomes at 80% or less of Area Median Family Income as established by HUD and funding interest reserve; and

WHEREAS, the City has sought a waiver from HUD from the requirement that 51% of the newly created residential units be occupied by low and moderate-income households at affordable rents because this project will provide 20% of its units at affordable rents and occupation by low and moderate-income households; and

WHEREAS, the City desires to amend the terms of the loan of \$2,000,000 in Downtown Connection Tax Increment Financing District funds to FC Continental Landlord, LLC as authorized in Resolution 10-0372, for a term coterminous with the senior mortgage 221(d)(4) insured loan and to be paid out of 50% of net surplus cash from the development for the acquisition of property located at 1810 commerce Street and for conversion of the vacant commercial building into 199 residential units and 5,000 square feet of retail space, in accordance with the Downtown Connection TIF District Project Plan & Reinvestment Zone Financing Plan. **NOW THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the City Manager, upon the U.S. Department of Housing and Urban Development's (HUD's) approval of the Continental Building project and the use of Community Development Block Grant Section 108 Guarantee Loan funds (Section 108 Loan funds) for the project, and upon approval as to form by the City Attorney, is hereby authorized to accept \$7,600,000 in Section 108 funds for the Continental Building project for conversion of a vacant commercial building at 1810 Commerce Street into 199 apartment units with 40 units for individuals and families with incomes at 80% or less of Area Median Family Income as established by the U.S. Department of Housing and Urban Development and to fund interest reserve.

SECTION 2. that the City Manager, subject to approval as to form by the City Attorney, is authorized to enter into a Fiscal Agency Agreement with the local fiscal agent selected by HUD, a Contract for Loan Guarantee Assistance with HUD, a Promissory Note for either interim or permanent financing, two letters of agreement with a custodian and establishment of custodial accounts at a financial institution, other documents relating to additional security which are required by HUD when the term of the loan is ten years or more, and if funds are needed immediately, a letter requesting advance funds for interim financing.

SECTION 3. That, in connection with this Section 108 Loan, the City Manager is further authorized to execute any other necessary documents, upon approval as to form by the City Attorney, including, but not limited to, a Funding Approval/Agreement, assignment of lien to HUD, blank endorsement of note to HUD, Co-lenders agreement, a request for project funding, and Community Development Block Grant Contract.

SECTION 4. That the City Manager is authorized to enter into loan agreements and execute, subject to approval as to form by the City Attorney, all necessary loan documents with FC Dallas TIF, LLC (Section 108 Borrower) as to the \$7,600,000 Section 108 Borrower Loan funded with Section 108 Loan funds and with FC Continental Landlord, LLC (TIF Borrower) as to the \$2,000,000 TIF Borrower Loan funded with Downtown Connection TIF District Affordable Housing Loan funds, for the conversion of the vacant commercial building into 199 residential units and 5,000 square feet of retail space, in accordance with the Downtown Connection TIF District Project Plan & reinvestment Zone Financing Plan.

SECTION 5. That the terms of the loan documents for the \$7,600,000 Section 108 Borrower Loan fund loan include:

- a. The Section 108 Borrower must execute a Note payable to the City of Dallas for no more than \$7,600,000 for the Continental Building project loan and Deed and/or Use Restrictions or Covenants on the property for a period of fifteen (15) years from the closing date of the loan. The interest payments for the first three years of the loan will be funded out of three years of interest reserve. Downtown Connection Tax Increment Financing District (TIF) reimbursements, to the extent available and as the sole source of repayment of principal and (except for the reserve) interest, to be used to make City Loan payments until the City Loan is paid in full. Both the Section 108 Loan from HUD to the City and the Section 108 Borrower Loan to the Section 108 Borrower will have matching amortization and maturity dates, and such Loan to the Section 108 Borrower will have an interest rate which is 0.5% higher than the Section 108 Loan from HUD. All loan payments by the Section 108 Borrower will, to the extent of availability of the TIF reimbursements, provide adequate funds for City to make its payment on the Section 108 Loan from HUD. The Section 108 Borrower will grant to the City a security interest in the Section 108 Borrower's rights to such TIF reimbursements, as the sole collateral, which reimbursements will be the sole source of Section 108 Borrower's repayment of the Section 108 Borrower Loan (except for the interest reserve). To the extent such TIF reimbursements are not available, or there is a shortfall, then the City's CDBG allocations will be used to fund such deficiencies, subject to the terms of the agreements between the City and HUD described in Section 1- 3 above.
- b. The Section 108 Borrower must use Section 108 Borrower Loan funds to complete conversion of the vacant commercial Continental Building at 1810 Commerce Street into 199 apartment units with 40 units for individuals and families with incomes at 80% or less of Area Median Family Income as established by the U.S. Department of Housing and Urban Development and to fund interest reserve.
- c. Borrower will begin construction no later than twelve (12) months from contract execution and obtain Certificate of Occupancy no later than three (3) years of the closing of the Section 108 Borrower Loan and will expend all of the funds for approved construction line items, except interest reserve funds, within three (3) years of the closing of the Section 108 Borrower Loan.
- d. Borrower will document and report ongoing occupancy requirements on a monthly basis for the commercial and residential tenants and will report on the income of the households residing in the 20% affordable residential units (subject to HUD's waiver of the 51% requirement).
- e. Borrower must provide source documentation for all other sources of funds necessary to complete the Continental Building project.

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SECTION 6. That the City Manager, upon approval as to form by the City Attorney, is authorized to execute loan agreements, co-funding agreements, subordination of lien, intercreditor agreements, HUD regulatory agreement and any other documents necessary to document the Section 108 Borrower Loan and the TIF Borrower Loan.

SECTION 7. That the City Manager, upon approval as to form by the City Attorney is authorized to execute releases of liens on the property and other collateral upon compliance with the terms of the loans.

SECTION 8. That the City Manager is authorized to establish appropriations in the amount of \$7,600,000 in Fund 0J52, Unit 0J5B, Obj 3090 for project costs and those necessary to make repayments to HUD.

SECTION 9. That the City Controller is authorized to accept and deposit Section 108 loan funds in the amount of \$7,600,000 in Fund 0J52, Unit 0J5B, Revenue Source 8449, for project costs and those necessary to make repayments to HUD.

SECTION 10. That the City Controller is hereby authorized to encumber and disburse funds in accordance with the terms and conditions of the loan documents authorized in Section 5 as follows:

FC Dallas TIF, LLC

Vendor # VC0000009922

Fund 0J52, Dept HOU, Unit 0J5B, Obj 3075, Program # ConBldg, CT HOU0J5BI573 – in an amount not to exceed \$7,600,000

SECTION 11. That the City Controller is hereby authorized to set up receivable balance sheet account (033F) and deferred revenue (088M) in Fund 0J52 for the amount of the Section 108 Borrower loan.

SECTION 12. That the City Controller is authorized to accept and deposit TIF reimbursements into Fund 0J52 necessary to make HUD repayments. Principal amounts to be deposited into Revenue Source 8503 and interest amounts of the loan to be deposited into Revenue Source 8556.

SECTION 13. That the City Controller is authorized to accept and deposit repayments from the Section 108 Borrower into Fund 0J52 necessary to make HUD repayments. Principal amounts to be deposited into Revenue Source 8503 and interest amounts to be deposited into Revenue Source 8556.

SECTION 14. That the City Controller is hereby authorized to reverse the receivable balance sheet account (033F) and deferred revenue (088M) in Fund 0J52 for repayments of all principal amounts of loans.

SECTION 15. That the City Controller is authorized to encumber and disburse loan payments to HUD in accordance with the terms and conditions of the loan documents authorized in Section 2 from Fund 0J52 - Vendor # 263304.

SECTION 16. That the terms of the loan documents set out in Section 2 of Resolution No. 10-0372 for the \$2,000,000 Downtown Connection TIF District Affordable Housing loan (the TIF Borrower Loan) include:

- a. The Downtown Connection TIF Borrower must execute a Promissory Note on HUD form 92223M payable to the City of Dallas for no more than \$2,000,000 for the Continental Building project loan, and will execute a Subordinate (2nd priority) Deed of Trust for a period coterminous with the period of the \$28,100,000 Senior Loan, and Deed Restrictions on the property for a period of fifteen (15) years from the closing date of the loan.
- b. The loan shall accrue interest only for the first 79 months of the term and thereafter the loan balance, including accrued interest, shall fully amortize over the remaining 35 years of the term. The Downtown Connection TIF Borrower shall be obligated for annual payments of principal and interest based on the loan balance at the end of the 79 months; provided, however, that such annual payment shall be payable only from up to 50% of surplus cash as defined by HUD in HUD Form 92466 Regulatory Agreement Multifamily Projects.
- c. The Downtown Connection TIF Borrower must use downtown Connection TIF District Affordable Housing Loan funds to complete conversion of the vacant commercial Continental Building at 1810 Commerce Street into 199 apartment units with 40 units for individuals and families with incomes at 80% or less of Area Median Family Income as established by the U.S. Department of Housing and Urban Development and into approximately 5,000 square feet of retail space.
- d. Borrower will begin construction no later than twelve (12) months from contract execution and obtain Certificate of Occupancy no later than three (3) years of the closing of the City loan and will expend all of the funds except interest reserve funds within three (3) years of the closing of the City loan.
- e. Borrower will document and report ongoing occupancy requirements on a monthly basis for the commercial and residential tenants and will report on the income of the households residing in the 20% affordable residential units.
- f. Borrower must provide source documentation for all other sources of funds necessary to complete the Continental Building project.

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SECTION 17. That the City Controller is hereby authorized to encumber and disburse funds in accordance with the terms and conditions of the loan documents authorized in Section 6 as follows:

FC Continental Landlord, LLC

Vendor # VC0000009912

Fund 0044, Dept ECO, Unit P305, Obj 3015, Act. DTTI, CT ECOP305D071 – in an amount not to exceed \$2,000,000

SECTION 18. That the City Controller is hereby authorized to set up receivable balance sheet account (033F) and deferred revenue (0898) in Fund 0044 for the amount of the TIF Borrower loan.

SECTION 19. That the City Controller is authorized to accept and deposit repayments from the TIF Borrower into Fund 0044. Principal amounts to be deposited into Revenue Source 847G and interest amounts to be deposited into Revenue Source 847H.

SECTION 20. That the City Controller is hereby authorized to reverse the receivable balance sheet account (033F) and deferred revenue (0898) in Fund 0044 for repayments of all principal amounts of loan.

SECTION 21. That nothing in this resolution shall be construed as a binding contract or agreement upon the City; that it is subject to HUD approval of the Continental Building project, compliance with all HUD regulations and requirements, and available HUD funding; approval of the final loan terms and loan documents by the City manager and City Attorney; and there will be no liability or obligation on the City until the final contract documents are approved, executed, and final closing completed.

SECTION 22. That this resolution shall take effect immediately from and after its passage in accordance with the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED BY
CITY COUNCIL

JUN 22 2011

Deborah Martinez
City Secretary