


To: Members of Dublin City Council
From: Dana L. McDaniel 
Initiated By: Terry Foegler, Director of Strategic Initiatives/Special Projects
Angel L. Mumma, Director of Finance
Date: October 4, 2018
Re: Ordinance No. 70-18 – Amending the Bridge Park Development Agreement between the City of Dublin and Crawford Hoying

Summary

Council authorized the City's Manager's execution of the Bridge Park Development Agreement on August 10, 2015 (Ordinance 44-15). In combination with other related actions taken by City Council, this agreement established the rights, obligations, and terms of the public-private partnership that have allowed the development of the project known as Bridge Park. As was noted at the time of passage, the Agreement was the product of extensive discussions and negotiations between the City and Crawford Hoying Development Partners, LLC. (the Developer) and covered a wide range of both near and longer term issues related to the project and its operations.

The unique nature and complexity of the project, and its associated Development Agreement, were such that the parties expected this lengthy and somewhat complex agreement would likely be amended from time to time. Changes in market conditions and opportunities, increasing construction costs, the refinement of the preliminary development plans, the nature and availability of project financing, and a geographic expansion of the Bridge Park project area, for example, could all trigger a need to revisit and perhaps amend certain provision within the agreement. The original agreement was drafted to accommodate the specific development plans and concepts for the land then owned by Crawford Hoying, as those plans existed at that stage of preliminary planning.

That said, it is rather remarkable that with over \$250 million of private development investments having been made toward the implementation of the Bridge Park project, and with millions of square feet of new buildings and extensive public infrastructure having been built, the original terms of the Development Agreement have served the parties so well, without any needed amendments until now.

The following is a brief summary of each proposed amendment, why it is proposed, and the projected impacts. It is important to note that the amendments do not create any new financial obligations or risk to the City.

Roadway Improvements

The roadway grid within Bridge Park has changed from the grid originally described in the Development Agreement as development plans for each Block have been finalized. The Amendment updates the Development Agreement to reflect these changes, all of which have been previously approved by Council as part of the development review process.

Increased Debt Limits and Optional Redemption

The original Development Agreement set forth a cap on debt that can be issued by the Columbus-Franklin County Finance Authority to fund Bridge Park public improvement costs. The cap took the form of both an absolute dollar amount (\$61 million of costs funded by debt) and “debt service coverage,” which is the ratio of annual TIF and NCA revenue to annual debt service payments (TIF and NCA revenue must be at least 115% of annual debt service payments).

Just as the City has seen cost escalation in its public improvement projections in the three plus years since the Development Agreement was approved, the Developer is also experiencing cost escalation for the Bridge Park public improvements. In addition, construction of the Public Market will require that the Columbus-Franklin County Finance Authority issue more debt. In order to accommodate this reality and to allow the project to continue to develop, it is necessary to increase the debt cap. The Administration recommends that the absolute dollar amount cap be eliminated, and the debt service coverage cap be increased to 120%. Given that private improvement costs, which ultimately create the TIF and NCA revenue, significantly increased from what was originally contemplated in the Development Agreement, additional revenue is expected to be generated to pay debt service on the public improvements without a meaningful financial impact to the City. The 120% coverage requirement (increased from 115%) ensures that there are sufficient revenues available to pay debt service.

The amendment also extends the date of the earliest permitted optional redemption date from 10 years to 15 years for taxable debt. This is in response to current debt market conditions. There are fewer buyers for taxable debt with a 10-year optional redemption date, resulting in higher interest rates. Extending the earliest optional redemption date to 15 years avoids higher interest rates without imposing other financial burdens on the City.

Revenue Waterfalls

The proposed amendment modifies the TIF and NCA revenue waterfall solely for Block D and the Public Market by creating a new waterfall that requires the 0.5% retail sales charge to be collected from retail tenants in Bridge Park and creates a funding mechanism for the operating and maintenance reserve for the Public Market. This waterfall also dedicates 100% of any excess revenue after funding the operating and maintenance reserve to paying down the Block D debt more quickly (currently the Development Agreement provides that 50% of excess revenue is to be used for this accelerated pay-down). This accelerated pay-down creates a more efficient bond structure. While the City will likely have to wait a few additional years before receiving any excess revenue from Block D because the debt will be repaid more quickly, there is less interest cost and the City should receive more excess revenue overall.

Issuance Costs

The Development Agreement currently contains a 2% limitation on public improvement debt issuance costs for each debt issue. As originally proposed, the City and Developer anticipated short-term construction debt with 2% cost of issuance, with long-term debt to refinance the construction debt issued at project stabilization (approximately 3-5 years later) with another 2% cost of issuance, for a total of 4% costs of issuance for each public improvement project. The Developer has been able to secure long-term debt for each of the previous debt issues, and anticipates doing so for the remaining Blocks, and has requested a 3.5% limitation on issuance

costs for any such long-term debt, which will provide a 0.5% savings on issuance costs versus the anticipated costs of issuance at the time of the original Development Agreement.

Release of Developer Obligation to Pay Make-Whole Premium

When the bonds were issued for Block A projects (the garage next to the hotel and the events center), they were sold with what is known as a “make-whole premium,” which could require the Finance Authority to pay a premium if the City required that the bonds be refinanced in the future. The Developer proposed this structure in order to obtain better interest rates for the bonds. The Administration agreed that this make-whole premium could be used to obtain the better interest rates, provided that the Developer agree to pay any make-whole premium should the City require that the bonds be refinanced in the future. The Administration further agreed with the Developer to study the positive financial impact of the make-whole premium and, if the Administration agreed with the Developer’s assessment as to the positive impact of the make-whole premium, recommend to Council that the Developer be released from its obligation to pay any make-whole premium in the future. The Administration has since consulted with its financial advisors and determined that the make-whole premium most likely resulting in lower interest rates for the Block A bonds, and those lower rates likely outweighed the cost of the make-whole premium (which would be in the form of speculative savings from a hypothetical refinancing of the bonds occurring 10 or more years in the future).

Bed Tax Grant

The Development Agreement provides for a bed tax grant in an amount equal to 25% of the bed taxes generated from the H2 Hotel and any hotels within the Bridge Park project, after deducting the 25% bed tax contribution to the Dublin Convention and Visitors Bureau. Subsequent to the Development Agreement, Council increased this contribution to 35%. Since the City cannot deduct the entire 35% contribution when calculating the grant, the 10% difference due to the Convention and Visitors Bureau must be paid out of bed tax dollars that the City would otherwise retain for other programming. The Administration has requested, and the Developer has agreed, to increase the deduction to 35% for hotels other than the H2 hotel and the AC Marriott (which cannot be reduced at this time since the grant funded by bed taxes from those hotels is pledged to repay the Block A bonds).

Recommendation

Staff recommends City Council approve Ordinance No. 70-18 at the second reading/public hearing on Monday, October 22, 2018.

To: Members of Dublin City Council

From: Dana L. McDaniel, City Manager 

Date: October 4, 2018

Initiated By: Terry Foegler Director of Strategic Initiatives/Special Projects
Angel Mumma, Director of Finance

Re: Public Market

Background

At the September 24 Council meeting, representatives from Crawford Hoying and the North Market presented their proposed concept for a Public Market in Block D of Bridge Park. Staff provided a memo, which gave additional context for this proposal as it relates to the Bridge Park Development Agreement. During the Council discussion, a number of questions were raised, many of which were responded to at the meeting. Staff agreed to provide additional information related to the proposal and the issues discussed during the September 24 meeting.

Additionally, staff made Council aware that in order to accommodate the proposed financing for this Public Market concept, an amendment would be required to the existing Bridge Park Development Agreement (DA), designating the public market as a "Community Facility." If Council expressed support for the Market concept, staff indicated it would prepare the appropriate language for such a DA amendment for Council's consideration along with several other pending DA amendments that would be coming before Council in the near future. Ordinance No. 70-18, Amending the Bridge Park Development Agreement between the City of Dublin and Crawford Hoying Development Partners LLC., is on Council's agenda for first reading at the October 8 meeting. The memo accompanying that piece of legislation provides the details related to the DA modifications.

Public Market - Location

During the September 24 meeting, a few questions arose relating to the appropriateness of the location for the proposed Market, and if other locations such as west of the Scioto River should be considered.

In follow-up discussions with representatives of the North Market, the proposed operator of the public market, it has been made clear that the operator only has interest in considering operating such a market in Dublin at the proposed location in Block D of Bridge Park. As they outlined in their presentation, the unique attributes that make this site appealing and feasible for such a market include: the urban densities; the mix of residential, office, hotel, event and restaurant uses; the convenience of parking and the walkability of the site; and the destination qualities that Bridge Park has already exhibited and which are expected to continue to grow. Staff believes that the availability of qualified operators for such unique facilities is extremely limited and that the North Market operators quite likely represent the best and most logical operator for such a facility in Dublin. Given the uniqueness and rarity of Public Markets and their locational requirement, staff agrees that the attributes that would help ensure the success of such a facility (and that would be of any interest to operators of such facilities) are best met at Bridge Park and that this proposal represents the best opportunity for providing such a facility in Dublin.

Another unique capability of the proposed site is its combination of both financial and development readiness to accommodate the proposed development. The building footprint, its access, the available parking, the character and uses of the surrounding development and the existing financing tools all make this site uniquely situated to advance such a project, and to help ensure it will most likely be successful. The site is appropriately zoned, related uses have been planned for the site since its inception, and the development plans for the project have been approved by the Planning and Zoning Commission.

Public Market - Use

The addition of a Public Market to the mix of land uses already in Bridge Park would be very complementary. The City has previously affirmed the desirability of having a supermarket within the development, as outlined with the DA. It was always understood that a supermarket would be desirable to provide a great convenience to the residents, workers and visitors within Bridge Park, and would allow these users to make one of their more frequent "trips" within the project (helping the City achieve its goal for capturing a high percentage of the Bridge Street District trips within Bridge Street). The proposed Public Market location will help achieve that same goal, while also providing a convenient location to serve the broader Dublin community.

Also, the addition of such a use within Bridge Park will provide the precise type of desired service and amenity that will help preserve and enhance the desirability of living and working in this area into the future (helping to protect and enhance property values over time). Also, the Market will provide a year-round venue for local growers, butchers, bakers and other artisans, much like the City has sought on a seasonal basis with its Farmers' Market.

Public Market - Financial

Public Markets are not easy to operate and maintain their financial viability. If that were not the case, they would be more abundant. As noted in the presentation, historically these have been owned by cities, though increasingly the operational responsibilities have been transferred to dedicated not-for-profit entities. These operations are often challenged in generating sufficient revenues to cover the operational cost, due in part to the nature of the operating expenses and the financial limitations associated with the many small entrepreneurs (often start-ups) being housed within the public markets.

To Crawford Hoying's credit, they have developed an approach to provide a significant, well-adapted space to accommodate such a Market within a parking structure, and to help fund the fit-out of this space, its start-up and other related costs via a sales charge levied only on Bridge Park's retail tenants (and without any meaningful financial impact on the City). Additionally, space that was originally planned for grocery and in more square footage is now going to be office space.

Recommendation

After much consideration and as discussed above, the Administration believes the Public Market, as proposed, meets the desired intent of a "Community Facility" and recommends City Council approve the proposed amendment to the Bridge Park Development Agreement via Ordinance No. 70-18.

RECORD OF ORDINANCES

Ordinance No. 70-18 Passed , 20

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AMENDMENT NO. 1 TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF DUBLIN AND CRAWFORD HOYING DEVELOPMENT PARTNERS, LLC RELATING TO THE BRIDGE PARK DEVELOPMENT.

WHEREAS, the City has prepared a strategy for comprehensive development within an area of the City known as the Bridge Street District (which area is referred to herein as the "District") and has endeavored to work collaboratively with public entities, including but not limited to the Dublin City School District, the Tolles Career and Technical Center, Columbus-Franklin County Finance Authority, Bridge Street New Community Authority, and private entities to plan for and facilitate the development of the District; and

WHEREAS, the City's strategy for development within the Bridge Street District is primarily focused on creating a new, more urban, walkable core for the City, including a dynamic mix of commercial and residential development types generally not currently available within the City; and

WHEREAS, the City has determined that the successful implementation of the City's strategy for the Bridge Street District is vital to the long term economic health of the City and that the portions of the District located along the Scioto River should be among the highest priority redevelopment areas; and

WHEREAS, Crawford Hoying Development Partners, LLC (the "Developer") has acquired certain real property within the Scioto River Corridor portion of the District (along both sides of the Scioto River) and is in the process of redeveloping that real property with its Bridge Park development, which development is consistent with that intended by the City for the District and to provide for the construction of various related public infrastructure improvements; and

WHEREAS, to facilitate the private development and to provide for the construction of the various related public infrastructure improvements that are or will be part of the Bridge Park development, this Council passed Ordinance No. 44-15 authorizing a Development Agreement between the City and the Developer as well as various related agreements; and

WHEREAS, in order to accommodate changing market conditions and the desired scope of public improvements that are part of the Bridge Park development, including the addition of a Community Market to the Community Facilities that will be constructed at Bridge Park, this Council has determined that it is necessary and appropriate and in the best interests of the City to amend the Development Agreement and amend the related agreements as needed to implement the amendments to the Development Agreement;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Dublin, State of Ohio, of the elected members concurring, that:

Section 1. Authorization of Amendment No. 1 to the Development Agreement. Amendment No. 1 to Development Agreement for the Bridge Park development by and between the City and the Developer in the form presently on file with the Clerk of Council, is hereby approved and authorized with such changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute that Amendment, provided that the approval of changes to the Amendment by that official, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. In order to facilitate the issuance of CFCFA/NCA Debt as provided in that Amendment, this Council hereby confirms that it has expressly waived any rights to dissolve the Bridge Park NCA prior to the repayment of all CFCFA/NCA Debt as provided in the Development Agreement.

RECORD OF ORDINANCES

Ordinance No. 70-18

Page 2 of 2
Passed, 20

Section 2. Further Authorizations. This City Council further hereby authorizes and directs the City Manager, the Director of Finance, the Director of Law, the Director of Development, the Clerk of Council or other appropriate officers of the City to prepare and sign all documents and instruments and to take any other actions as may be appropriate to implement this Ordinance and the Amendment No. 1 to Development Agreement, including, without limitation, amendments to the Infrastructure Agreement, Cooperative Agreement and other agreements related to the Bridge Park development.

Section 3. Open Meetings. This City Council finds and determines that all formal actions of this City Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Council or any of its committees, and that all deliberations of this City Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Ohio Revised Code Section 121.22.

Section 4. Effective Date. This Ordinance shall be in full force and effect on the earliest date permitted by law.

Signed:

Mayor - Presiding Officer

Attest:

Clerk of Council

Passed: , 2018

Effective: , 2018

AMENDMENT NO. 1

to

DEVELOPMENT AGREEMENT

by and between

CITY OF DUBLIN, OHIO

and

CRAWFORD HOYING DEVELOPMENT PARTNERS, LLC

relating to

BRIDGE PARK DEVELOPMENT

dated as of

_____, 2018

**AMENDMENT NO. 1
TO
DEVELOPMENT AGREEMENT**

This AMENDMENT NO.1 TO DEVELOPMENT AGREEMENT (this “*Amendment*”) is made and entered into as of _____, 2018 (the “*Effective Date*”), by and between the CITY OF DUBLIN, OHIO (the “*City*”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter, and CRAWFORD HOYING DEVELOPMENT PARTNERS, LLC (the “*Developer*”), an Ohio limited liability company, for itself and its permitted successors and assigns and any Affiliates (the capitalized terms not defined in this Amendment are being used therein as defined in Section 1 of the Development Agreement dated as of August 14, 2015, by and between the City and the Developer (the “*Agreement*”)).

W I T N E S S E T H:

WHEREAS, the City and the Developer previously entered into the Agreement to provide for the construction of the Roadway Improvements, the Parking Facilities and the Community Events/Conference Facility, the development of the Project, the collection of the Service Payments, Minimum Service Payments and the NCA Charges, and to memorialize their mutual understandings with regard to the manner in which the Development Site, the Commercial Improvements and the Public Improvements would be developed; and

WHEREAS, the City and the Developer have determined that certain terms of the Agreement should be amended in order to allow the continued redevelopment of the Development Site, which will continue to confer substantial benefits, including additional jobs and revenues, upon the City and its constituents, while encouraging significant redevelopment in the surrounding area; and

WHEREAS, the City Council passed Ordinance No. ____-18 on _____, 2018, approving the form of this Amendment and authorizing the City Manager to execute this Amendment on behalf of the City and to take or cause to be taken all necessary and proper actions to effectuate the intent of this Amendment;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties acknowledge and affirm the foregoing and agree as follows:

Section 1. Representations and Warranties of the Parties.

1.1. City Representations and Warranties. The City represents and warrants as of the date of delivery of this Amendment that:

1.1.1. It is a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State and its Charter.

1.1.2. It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to City which would impair its ability to carry out its obligations contained in the Agreement, as amended by this Amendment.

1.1.3. It is legally empowered to execute, deliver and perform the Agreement, as amended by this Amendment, and to enter into and carry out its obligations contemplated by the Agreement, as amended by this Amendment. Execution, delivery and performance by the City of its obligations under the Agreement, as amended by this Amendment, do not and will not violate or conflict with any provision of law applicable to City, including its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which City is a party or by which it is bound wherein a violation, conflict or default would materially and adversely affect the City's ability to carry out its obligations under the Agreement, as amended by this Amendment.

1.1.4. This Amendment has, by proper action, been duly authorized, executed and delivered by City and all steps necessary to be taken by City have been taken to constitute this Amendment, and the obligations of City contemplated herein are legal, valid and binding obligations of City, enforceable in accordance with their terms, except as limited by applicable relief, liquidation, conservership, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time, to the applicable of equitable principles, whether considered in a proceeding at law or in equity, to the exercise of judicial discretion, and to limitations on legal remedies against public entities.

1.1.5. To the knowledge of the individuals signing this Amendment on behalf of the City, there is no litigation pending or threatened against or by the City wherein an unfavorable ruling or decision would materially and adversely affect the City's ability to carry out its obligations under the Agreement, as amended by this Amendment.

1.2. Developer Representations and Warranties. The Developer represents and warrants as of the date of delivery of this Amendment that:

1.2.1. It is a limited liability company duly organized and validly existing and in full force and effect under the laws of the State, and has power to do business in the State.

1.2.2. It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer that would impair its ability to carry out its obligations contained in the Agreement, as amended by this Amendment.

1.2.3. It is legally empowered to execute, deliver and perform the Agreement, as amended by this Amendment, and to enter into and carry out the transactions contemplated by this Agreement, as amended by this Amendment. That execution, delivery and performance by the Developer of its obligations under the Agreement, as amended by this Amendment, do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound. The Developer has obtained all necessary consents for its execution and delivery of this Amendment, and neither the execution and delivery of this

Amendment, nor consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof will contravene the organizational documents of the Developer, Block Owner or any Affiliate, nor any laws to which Developer or its Affiliates are subject, or any judgment, decree, license, order or permit applicable to the Developer, or will conflict with or be inconsistent with, or result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of a lien upon any of the property or assets of the Developer, Block Owner or its Affiliates pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which the Developer, Block Owner or any of its Affiliates is a party or by which Developer or any Affiliate is bound, or to which Developer, Block Owner or any Affiliate is subject.

1.2.4. This Amendment has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Amendment, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms. The individual executing this Amendment on behalf of the Developer has been duly authorized to act for and to bind the Developer to its terms. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party, is required for the execution, delivery and performance by Developer of this Amendment.

1.2.5. To the knowledge of the Developer, there is no litigation pending or threatened against or by the Developer, Block Owner or any Affiliate wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under the Agreement, as amended by this Amendment.

1.2.6. It is in compliance with State of Ohio campaign financing laws contained in Ohio Revised Code Chapter 3517.

1.2.7. No event has occurred and no condition exists with respect to it that would constitute a Developer Default under the Agreement, as amended by this Amendment, or that, with the lapse of time or with the giving of notice or both, would constitute a Developer Default under the Agreement, as amended by this Amendment.

1.2.8. Developer is currently in compliance with, and not currently in violation of, any provisions of Ohio Revised Code Section 2921.42 that may be applicable to it, and will take no action inconsistent with those laws, as any of them may be amended or supplemented from time to time.

1.2.9. Developer is not aware of any finding for recovery having been issued against it or any Block Owner or Affiliate by the Auditor of the State of Ohio which is "unresolved".

Section 2. Roadway Improvements. The City and the Developer acknowledge that the scope of the Roadway Improvements has changed as a result of further traffic planning and input by both the City and the Developer. Accordingly, the City and Developer agree that **Exhibit C** of the Agreement is hereby amended and restated in its entirety with **Exhibit C** attached to this

Amendment. The City and Developer further acknowledge that costs of the Roadway Improvements have been and are expected to be higher than originally anticipated in the Agreement due to the changes in the scope of the Roadway Improvements and industry-wide increases in labor and construction material costs, and agree that the CFCFA/NCA Roadway Funding shall include CFCFA/NCA Debt sufficient to fund up to \$_____ of Phase 2 Roadway Improvements and \$_____ of Phase 3 Roadway Improvements¹.

Section 3. Public Improvement Costs; CFCFA/NCA Debt. (a) The City and Developer acknowledge that the Public Improvement Costs for the Community Facilities for Block A and Block Z have been higher than projected under Section 7.2 of the Agreement, and that the Public Improvement Costs for the Community Facilities for Block D, Block F and Block G are also expected to exceed those projected costs. As a result of the changes in scope and increased costs of the Community Facilities and the Roadway Improvements, the City hereby approves an increase in funding by the CFCFA/NCA Debt from \$61,000,000 to an amount equal to the sum of the following: (a) the current amount funded by the outstanding CFCFA/NCA Debt issued for the parking garages located on Block A and Block Z, the Events Center located on Block A, and Phase 2 Roadway Improvements, plus (b) the Public Improvement Costs for the Phase 3 Roadway Improvements, as approved by the City, plus (c) the Public Improvement Costs for the Community Facilities to be located on each of Block D, Block F and Block G, in each case as approved by the City.

(b) The City and Developer agree that **Exhibit E** of the Agreement is hereby amended and restated in its entirety with **Exhibit E** attached to this Amendment in order to modify the use of Service Payments and NCA Charges from Blocks D, F and G.

(c) The Developer agrees that, prior to the issuance of the CFCFA/NCA Debt for the Community Facilities for Block D and the Phase 3 Roadway Improvements (the “*Block D Debt*”), the NCA Declaration will be modified for Block D to provide that the Bridge Park NCA will levy and collect NCA Charges from Block D in an amount such that the Service Payments and NCA Charges from Block D in any year that are available for payments of principal and interest due on the Block D Debt in that year under Section 5, paragraph (4) of **Exhibit E** to this Amendment will be at least 1.2 times the amount of such principal and interest payments. The foregoing does not modify the requirements otherwise applicable to the NCA Charge and the NCA Declaration under Section 9 of the Agreement.

(d) The Developer agrees that, prior to the issuance of the CFCFA/NCA Debt for the Community Facilities for Block F (the “*Block F Debt*”), the NCA Declaration will be modified for Block F to provide that the Bridge Park NCA will levy and collect NCA Charges from Block F in an amount such that the Service Payments and NCA Charges from Block F in any year that are available for payments of principal and interest on the Block F Debt due in that year under Section 4, paragraph (4) of **Exhibit E** to this Amendment will be at least 1.2 times the amount of such principal and interest payments. The foregoing does not modify the requirements otherwise applicable to the NCA Charge and the NCA Declaration under Section 9 of the Agreement.

¹ Note: revised Exhibit C should show up to \$100,000 of costs for the west plaza retaining wall as part of the Phase 3 Roadway Improvements.

(e) The Developer agrees that, prior to the issuance of the CFCFA/NCA Debt for the Community Facilities for Block G (the “*Block G Debt*”), the NCA Declaration will be modified for Block G to provide that the Bridge Park NCA will levy and collect NCA Charges from Block G in an amount such that the Service Payments and NCA Charges from Block G in any year that are available for payments of principal and interest due on the Block G Debt in that year under Section 4, paragraph (4) of **Exhibit E** to this Amendment will be at least 1.2 times the amount of such principal and interest payments. The foregoing does not modify the requirements otherwise applicable to the NCA Charge and the NCA Declaration under Section 9 of the Agreement.

(f) In recognition of the advantageous long-term financing terms that the Developer has been able to secure for the CFCFA/NCA Debt that were not originally contemplated by the Parties on the Effective Date of the Agreement, the City agrees that Issuance Costs for each issue of the CFCFA/NCA Debt may be up to 3.50% of the principal amount of that issue, and that any CFCFA/NCA Debt that is issued as debt the interest on which is subject to federal income taxation shall permit optional redemption at a redemption price of par plus accrued interest no later than 15 years after the date of issuance.

(g) In consideration of the amendments contained in the foregoing paragraphs (b)-(e), the City hereby releases the Developer from the Developer’s obligation as described in Section 5 of the Amendment to Open-End Mortgage, Service Agreement and Agreement as to Imposition of Continuing Priority Lien, dated as of January 20, 2017, by and between the City, Bridge Park Events Center, LLC, an Ohio limited liability company, Bridge Park Hotel, LLC, an Ohio limited liability company, KW Dublin Investments, LLC, an Ohio limited liability company, and the Developer.

Section 4. Bed Tax Grant. In order to accommodate the City’s desire to provide additional funding to the Dublin Convention and Visitor’s Bureau, Section 7.3 of the Agreement is hereby amended and restated in its entirety as follows:

7.3. **Bed Tax Grant.** The City will provide an annual grant (the “*Annual Grant*”) to the Bridge Park NCA in an amount equal to 25% of the lodging tax generated by the City from the operation of any hotel in the Development Site and the hotel located at 5000 Upper Metro Place in the City, after deducting such amount as determined by the City Council to be paid to the Dublin Convention & Visitor’s Bureau from time to time from all lodging taxes collected by the City (the “*DCVB Amount*”). The City acknowledges that the Annual Grant generated from the hotels located on Block A and the hotel located at 5000 Upper Metro Place has been pledged to the currently outstanding CFCFA/NCA Debt issued in 2017 to finance the Community Facilities for Block A and the Phase 2 Roadway Improvements, and the City agrees that the DCVB Amount for those two hotels shall not exceed 25% of the lodging taxes collected from those two hotels for so long as that currently outstanding CFCFA/NCA Debt remains outstanding and the Annual Grant is pledged to that debt. The Annual Grant will be used by the Bridge Park NCA to pay a portion of the operating, maintenance and capital expense costs of the Community Facilities or debt service on the CFCFA/NCA Debt. The City may re-evaluate the Annual Grant and choose not to make the Annual Grant at any time after all CFCFA/NCA Debt has been repaid or defeased.

Section 5. Public Market. The public market described and depicted on **Exhibit 5** attached to this amendment (the “*Public Market*”) is hereby approved and is added to the definition of “*Community Facilities*” and “*Public Improvements*” for all purposes of the Agreement. The Public Market shall at all times be owned by the CFCFA or the Bridge Park NCA and operated by a not-for-profit operator approved by the City.

The Operation and Maintenance Agreement for the Public Market shall be in a form mutually agreed by City, CFCFA or Bridge Park NCA (as applicable). The Developer (until completion of the Commercial Improvements to all Blocks) hereby agrees, and shall cause the Block Owner of D Block to agree, that it will keep and maintain, or cause to be kept and maintained, the Public Market in good, operable, and usable condition and repair, normal wear and tear excepted, but, in any event, consistent with the North Market in Columbus, Ohio, and shall make or cause to be made any and all repairs or replacements as may be required to maintain such standards. Specifically, the Developer and applicable Block Owner shall perform the specific maintenance with respect to the Public Market generally in accordance with a maintenance standards manual prepared by Developer or Block Owner and approved by City. The form of Operation and Maintenance Agreement for the Public Market must be approved by Developer, Block Owner and City prior to construction of the Public Market.

In order to assist in the funding of the Public Market, the Bridge Park NCA shall levy the 0.5% Retail Charge on all Blocks as described in the NCA Declaration. The Retail Charge shall be used as provided in Section 5 of **Exhibit E** to this Amendment

Section 6. Miscellaneous.

6.1. Binding Effect. The provisions of this Amendment shall be binding upon the successors and/or assigns of the Parties.

6.2. Captions. The captions and headings in this Amendment are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Amendment.

6.3. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State without regard to its principles of conflicts of laws. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the Developer, its employees and agents, arising out of or relating to this Amendment or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

6.4. Continued Effectiveness of Agreement; Interpretation. The Agreement, as amended by this Amendment, shall remain in full force and effect in accordance with its terms except as expressly amended herein. The rules of interpretation set forth in Section 1.2 of the Agreement shall also apply to this Amendment.

6.5. Executed Counterparts. This Amendment may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Amendment to produce

or account for more than one of those counterparts. Signatures transmitted by facsimile or electronic means are deemed to be original signatures.

6.6. Exhibits. All exhibits to this Amendment are incorporated herein by reference and made a part hereof, to the same extent as if set out in full herein.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, the City and the Developer have caused this Amendment No. 1 to Development Agreement to be executed in their respective names by their duly authorized officers as of the last date set forth below.

CITY OF DUBLIN, OHIO

By: _____

Printed: _____ Dana L. McDaniel _____

Title: _____ City Manager _____

Date: _____

Approved as to Form and Correctness:

By: _____

Printed: _____ Jennifer D. Readler _____

Title: _____ Law Director _____

Date: _____

**CRAWFORD HOYING DEVELOPMENT
PARTNERS, LLC**

By: _____

Printed: _____

Title: _____

Date: _____

Roadway Improvements



Exhibit E

Application of Service Payments and NCA Revenues

Section 1. Definitions. As used in this **Exhibit E**, the following terms have the meanings set forth in this Section. Capitalized terms not defined in this Section or elsewhere in this **Exhibit E** have the meanings set forth in Section 1 of the Agreement.

“City Debt” means any debt issued by City to finance the City Parking Facility Funding.

“CPI Index” means, for any year, the product of (a) the average annual Consumer Price Index for the immediately preceding year minus the average annual Consumer Price Index for the second preceding year, divided by (b) the average annual Consumer Price Index for the second preceding year (ie the CPI Index for calendar year 2015 equals the 2014 Consumer Price Index (237.897) minus the 2013 Consumer Price Index (233.806), divided by the 2013 Consumer Price Index (233.806) = 0.017). As used in this definition, “Consumer Price Index” means the “Consumer Price Index for All Urban Consumers (not seasonally adjusted) – All Items Less Food and Energy” as published by the U.S. Bureau of Labor Statistics.

“Maximum O&M Deposit” means an amount equal to \$300,000, increased for each calendar year, beginning calendar year 2016, by an amount equal to the product the O&M Deposit amount for the previous year multiplied by the CPI Index. The O&M Deposit for any Community Facility shall not be made until such facility is complete, and shall be prorated for the first year based on the number of months during the year that such facility is expected to be operational at the time of the O&M Deposit (i.e. if a Parking Facility is expected to be operational beginning in October 2016, the O&M Deposit made in calendar year 2016 for that Parking Facility will be equal to 25% of the otherwise applicable O&M Deposit). The O&M Deposit for the Community Events/Conference Facility shall be determined in the Operation and Maintenance Agreement for the Community Events/Conference Facility. The O&M Deposit for the Public Market shall be determined in the Operation and Maintenance Agreement for the Public Market.

“Maximum O&M Reserve Amount” means an amount equal to \$600,000, increased for each calendar year, beginning calendar year 2016, by an amount equal to the product the Maximum O&M Reserve Amount for the previous year multiplied by the CPI Index. The Maximum O&M Reserve Amount for the Community Events/Conference Facility shall be determined in the Operation and Maintenance Agreement for the Community Events/Conference Facility. The Maximum O&M Reserve Amount for the Public Market shall be determined in the Operation and Maintenance Agreement for the Public Market.

“Trustee” means the indenture trustee for the applicable issue of CFCFA/NCA Debt.

Section 2. Payment of NCA Revenue to City. The Cooperative Agreement shall provide that the Bridge Park NCA will retain all NCA Revenue it receives from Blocks B and C (other than NCA Revenue that would otherwise be collected as part of the Minimum Service Payment described in clause (ii) of Section 8.3 of the Development Agreement, which shall be paid to City) and apply that NCA Revenue first to costs of operating, maintaining and performing capital repairs for the Parking Facilities and second to paying administrative expenses of the

Bridge Park NCA unless otherwise approved by City. For all other Blocks, the Cooperative Agreement shall provide that the Bridge Park NCA will pay over all NCA Revenue it receives to City within 30 days of its receipt, less a deduction of up to \$45,000 annually (unless otherwise approved by City) to restore the account maintained by the Bridge Park NCA to pay its administrative expenses to a maximum of \$45,000. The deduction for administrative expenses will be prorated across the NCA Revenue from all Blocks (including Blocks B and C) based on the total NCA Revenue from all Blocks.

Section 3. Application of Service Payments from Block B and Block C. The Cooperative Agreement shall provide that the City will retain all Service Payments from Block B and Block C to pay for its costs of providing the City Parking Facility Funding and the City Roadway Funding. If the City collects Minimum Service Payments from Block B and Block C pursuant to clause (i) of Section 8.3 of the Development Agreement (i.e. if the NCA Charge is not paid when due), the City will remit all such amounts (other than amounts collected to satisfy the obligations described under clause (ii) of Section 8.3 of the Development Agreement) to or at the direction of the Bridge Park NCA for the Bridge Park NCA to apply first to costs of operating, maintaining and performing capital repairs for the Parking Facilities and second to paying administrative expenses of the Bridge Park NCA unless otherwise approved by City.

Section 4. Application of Service Payments and NCA Revenue from Blocks A, F, G, H and Z. The Cooperative Agreement shall provide that the City will apply on each May 15 and November 15, or such later date that the City receives the semi-annual distributions of Service Payments and NCA Charges, all Service Payments and NCA Revenue from Block A, Block F, Block G, Block H and Block Z that it has received since the prior application of such funds in the following order of priority, provided that, unless otherwise approved by City, Service Payments resulting from the 5709.40(C) TIF Ordinance shall be applied first, NCA Revenues shall be applied second, and Service Payments resulting from the 5709.41 TIF Ordinance shall be applied last, and provided further, no Service Payments resulting from the 5709.40(C) TIF Ordinance shall be applied to reimburse or pay debt charges on CFCFA/NCA Debt to the extent that proceeds of that debt were used to pay costs of reserved parking spaces:

- (1) If and to the extent that Service Payments are collected pursuant to the 5709.40(C) TIF Ordinance, to Franklin County for the payment of any compensation due to the County as a result of such exemption pursuant to Ohio Revised Code Section 5709.40(E) or any compensation agreement between City and County with respect to such exemption.
- (2) If Service Payments are collected pursuant to the TIF Ordinance, to the City for payment to the Dublin City School District and the Tolles Career and Technical Center the amount due pursuant to Section 1(a) of the Bridge Street District Cooperative Agreement between such school district and City (generally being an amount equal to 10% of the taxes each school district would have otherwise received absent the exemptions provided by the TIF Ordinance in years 16-30 of each such exemption).

- (3) To the Trustee for payment of any rebate liability to the federal government with respect to the CFCFA/NCA Debt.
- (4) To the Trustee the amount necessary for the payment of interest and principal on the next payment date (to the extent not already funded) plus, for CFCFA/NCA Debt with annual principal payments, one-half of the scheduled principal amount due on the next principal payment date on the CFCFA/NCA Debt (subject to the interest rate restrictions on the CFCFA/NCA Debt described in Section 7.2.2 of the Agreement), plus any fixed fees of the Trustee and the CFCFA as issuer of the CFCFA/NCA Debt.
- (5) To the Trustee an amount equal to 90% of the Service Payments and NCA Revenues from each Block for deposit into the debt service reserve fund for the CFCFA/NCA Debt until the amount on deposit in that fund equals 10% of the outstanding principal amount of the CFCFA/NCA Debt.
- (6) To the Trustee, solely from NCA Revenues, the amount necessary, not to exceed the Maximum O&M Deposit, to restore to the Maximum O&M Reserve Amount the operating and maintenance reserve fund for the Community Facilities (except for the Public Market) held under the trust indenture for the CFCFA/NCA Debt.
- (7) To the City, an amount equal to the shortfall, if any, in Minimum Service Payments due for Blocks B and C and the City's annual debt service payment for the City Parking Facility Funding and the City Roadway Funding.
- (8) To the Trustee, 50% of the amount remaining after application of paragraphs 1-7 to be used for optional redemption of the CFCFA/NCA Debt at the next earliest optional redemption date (provided that such use of revenue from Block F and Block G shall be at the option of the City).
- (9) To the City, all remaining amounts.

Section 5. Application of Service Payments and NCA Revenue from Block D and the Retail Charge. The Cooperative Agreement shall provide that the City will apply on each May 15 and November 15, or such later date that the City receives the semi-annual distributions of Service Payments and NCA Charges, all Service Payments and NCA Revenue from Block D plus all NCA Revenue from the Retail Charge that it has received since the prior application of such funds in the following order of priority, provided that, unless otherwise approved by City, Service Payments resulting from the 5709.40(C) TIF Ordinance shall be applied first, NCA Revenues shall be applied second, and Service Payments resulting from the 5709.41 TIF Ordinance shall be applied last, and provided further, no Service Payments resulting from the 5709.40(C) TIF Ordinance shall be applied to reimburse or pay debt charges on CFCFA/NCA Debt to the extent that proceeds of that debt were used to pay costs of reserved parking spaces:

- (1) If and to the extent that Service Payments are collected pursuant to the 5709.40(C) TIF Ordinance, to Franklin County for the payment of any compensation due to the

County as a result of such exemption pursuant to Ohio Revised Code Section 5709.40(E) or any compensation agreement between City and County with respect to such exemption.

- (2) If Service Payments are collected pursuant to the TIF Ordinance, to the City for payment to the Dublin City School District and the Tolles Career and Technical Center the amount due pursuant to Section 1(a) of the Bridge Street District Cooperative Agreement between such school district and City (generally being an amount equal to 10% of the taxes each school district would have otherwise received absent the exemptions provided by the TIF Ordinance in years 16-30 of each such exemption).
- (3) To the Trustee for payment of any rebate liability to the federal government with respect to the CFCFA/NCA Debt.
- (4) To the Trustee the amount necessary for the payment of interest and principal on the next payment date (to the extent not already funded) plus, for CFCFA/NCA Debt with annual principal payments, one-half of the scheduled principal amount due on the next principal payment date on the CFCFA/NCA Debt (subject to the interest rate restrictions on the CFCFA/NCA Debt described in Section 7.2.2 of the Agreement), plus any fixed fees of the Trustee and the CFCFA as issuer of the CFCFA/NCA Debt.
- (5) To the Trustee, solely from NCA Revenues, the amount necessary, not to exceed the Maximum O&M Deposit, to restore to the Maximum O&M Reserve Amount the operating and maintenance reserve fund for the Public Market held under the trust indenture for the CFCFA/NCA Debt issued for the Public Market.
- (6) To the City, an amount equal to the shortfall, if any, in Minimum Service Payments due for Blocks B and C and the City's annual debt service payment for the City Parking Facility Funding and the City Roadway Funding.
- (7) To the Trustee, the amount remaining after application of paragraphs 1-6 to be used for special redemption of the CFCFA/NCA Debt issued for D Block at the next earliest special redemption date.
- (8) To the City, all remaining amounts.

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Exhibit 5

Description and Depiction of the Public Market

The proposed Public Market includes approximately 34,000 square feet of floor space and is located in the ground floor of the Block D Garage, on Longshore Street between Tuller Ridge Drive and John Shields Parkway. The Public Market will be operated by a non-profit entity and be similar in operations and business model to the North Market located in the City of Columbus Ohio.

Public Market can be primarily defined as:

1. The primary sales of food, typically including meat, fish, dairy, produce, baked goods, unique beverages, prepared foods, but also sales of other non-food items made by local artisans.
2. Open seven days per week, year round, unlike farmer's markets which typically only operate seasonally one day per week.
3. Collection of independent, small businesses that are owner operated on site daily.
4. Fulfilling a public purpose beyond sales of food and other goods; it provides residents an experience and public gathering place which is a civic resource to all.

