

DARDENNE



PRAIRIE

CITY OF DARDENNE PRAIRIE
2032 HANLEY ROAD
DARDENNE PRAIRIE, MO 63368

BOARD OF ALDERMEN
MEETING AGENDA
March 22nd, 2023
6:00 p.m.

CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

Mayor Gotway
Alderman Costlow
Alderman Johnson
Alderman Reilly
Alderman Sansone
Alderman Ungerboeck
Alderman Wandling

CONSENT AGENDA

1. None

ITEMS REMOVED FROM CONSENT AGENDA

OPEN FORUM

NEW BUSINESS

1. Resolution #368

A RESOLUTION OF THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DIRECTING THE CITY ADMINISTRATOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF DARDENNE PRAIRIE, MISSOURI, AND KALECO, LLC

STAFF COMMUNICATIONS

1. City Attorney
2. City Engineer
3. City Administrator
4. Aldermen
5. Mayor

CLOSED SESSION

Roll call vote to hold closed session pursuant to RSMo 610.021 section _____

Litigation and Privileged Communications (1)

Real Estate (2)

Personnel (3)

Labor (9)

Bid Specs (11)

Audit (17)

RETURN TO REGULAR MEETING AGENDA

ADJOURNMENT

RESOLUTION NO. 368

A RESOLUTION OF THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, DIRECTING THE CITY ADMINISTRATOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BY AND BETWEEN THE CITY OF DARDENNE PRAIRIE, MISSOURI, AND KALECO, LLC

WHEREAS, KaLeCo, LLC (together with its successors and assigns) (the “Developer”), has acquired or has contracts to acquire land generally located at the Northwest intersection of Feise Road and Bryan Road in the City of Dardenne Prairie, Missouri, upon which it proposes to construct, or cause to be constructed, a mixed-use development consisting of approximately 190 residential rental apartments and approximately 25,000 square feet of commercial/retail space, together with necessary site improvements and public infrastructure (the “Development”); and

WHEREAS, to facilitate the Development, the Developer wishes to have the City of Dardenne Prairie, Missouri, consider certain economic incentives; and

WHEREAS, The City of Dardenne Prairie, Missouri, and the Developer desire to set forth the general agreement of the parties regarding the incentives for the Development, with the understanding that such matters will be set forth in additional detail in the documents relating to the Development;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

Section 1. That the form, terms, and provisions of the Memorandum of Understanding attached hereto, marked as **Exhibit A**, and incorporated by reference herein (the “MOU”), by and between the City of Dardenne Prairie, Missouri and the KaLeCo, LLC (together with its successors and assigns) be and they hereby are approved and the City Administrator shall be and is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer, on behalf of the City, such MOU in substantially the form attached hereto.

Section 2. Effective Date. This Resolution shall be in full force and effect immediately upon its adoption.

Approved this _____ day of _____, 2023.

Mayor

Attest: _____
City Clerk

Exhibit A

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “Memorandum”) is entered into this _____ day of March, 2023, between the **CITY OF DARDENNE PRAIRIE, MISSOURI** (the “City”) and **KALECO LLC** (together with its successors and assigns, the “Developer”);

RECITALS:

A. The Developer has acquired or has contracts to acquire approximately 17.25 acres of land generally located at the northwest intersection of Feise Road and Bryan Road in the City (the “Project Site”), upon which it proposes to construct, or cause to be constructed, a mixed-use development consisting of approximately 190 residential rental apartments and approximately 25,000 square feet of commercial/retail space in two phases (and within each phase, one or more sub-phases), together with necessary site improvements and public infrastructure (the “Project Improvements” and together with the Project Site, the “Project”).

B. To facilitate the Development, the Developer wishes to have the City consider certain incentives to induce the Developer to (1) acquire the Project Site, and (2) construct the Project Improvements thereon.

C. The City and the Developer desire to set forth herein the primary agreements of the parties regarding incentives for the Project, with the understanding that such matters will be set forth in additional detail in the documents relating to the Project.

NOW, THEREFORE, in consideration of the premises and mutual agreements herein contained, and subject to the conditions herein set forth, the City and the Developer agree as follows:

1. **Tax Abatement; Issuance of Chapter 100 Bonds.**

(a) *General.* In accordance with the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri (collectively, the “Act”), the City will issue approximately \$66,000,000 aggregate principal amount of taxable industrial revenue bonds in several series (collectively, the “Chapter 100 Bonds”) in connection with the development of the Project or separate portions thereof (*i.e.*, a separate series for various phases and sub-phases of the Project). Each series of Chapter 100 Bonds will be issued pursuant to a Trust Indenture (the “Indenture”) between the City and a bank or trust company, as trustee (the “Trustee”), to be designated by the Developer. With respect to each phase of the Project, the City will initially obtain a leasehold interest in the applicable portion of the Project Site pursuant to a Base Lease (the “Base Lease”) between the City and the Developer and, subsequently, acquire fee title to the applicable phase of the Project. The City will, pursuant to a Lease Agreement (the “Lease”), lease the applicable phase of the Project to the Developer in consideration of rental payments that are sufficient to pay the principal of and interest on the applicable series of the Chapter 100 Bonds. At the end of the lease term for the applicable phase of the Project, the City will convey the applicable phase of the Project to the Developer for nominal consideration.

(b) *Tax Exemption; Payments in Lieu of Taxes.* The City expects each phase of the Project to be exempt from ad valorem real property taxes so long as the City owns title thereto. Accordingly, the parties acknowledge that no property tax exemption will exist until the transfer to the City of fee title to the applicable phase of the Project is completed (each a “Transfer Date”). The Developer shall be entitled to

12 years of partial property tax abatement as described herein. The Developer understands that it will be responsible for any taxes on the applicable phase of the Project until the Transfer Date for such phase. The Developer agrees that, during each year that all or any portion of the Project is exempt from ad valorem taxes by reason of the City's ownership, the Developer will make payments in lieu of taxes ("PILOT") in the amounts set forth below:

(i) Pursuant to Section 100.050 of the Act, certain emergency service districts may elect to be reimbursed up to 100% of the taxes they would have otherwise received, but for the tax abatement. The O'Fallon Fire Protection District (the "Fire District") and the St. Charles County Ambulance District (the "Ambulance District") are two such emergency service districts. In each year that the Project or any portion thereof is exempt from real property taxation, the Developer will make PILOT payments equal to 100% of the real property taxes that the Fire District, the Ambulance District and any other applicable emergency service provider would have otherwise received; plus

(ii) In addition to the PILOT Payments to Fire District, the Ambulance District and any other applicable emergency service provider, as described above, the Developer will make the following PILOT payments with respect to the Project:

(A) For each year up to and including the year in which the Transfer Date of the applicable phase of the Project occurs, the Developer will make PILOT payments equal to 100% of the real property taxes that would otherwise be due (less any PILOT Payments paid to the Fire District, the Ambulance District and any other applicable emergency service provider), notwithstanding the City's leasehold ownership of the applicable phase of the Project under the Base Lease.

(B) For each of the 12 calendar years following the Transfer Date (i.e., those years the applicable phase of the Project is owned by the City), the Developer will make PILOT payments equal to 0% of the real property taxes that would otherwise be due (excluding any PILOT Payments paid to the Fire District, the Ambulance District and any other applicable emergency service provider), but for the City's ownership of the applicable phase of the Project.

Notwithstanding the foregoing, if the Fire District, the Ambulance District or any applicable emergency service provider agree to a PILOT payment under subsection (ii)(A) above that is less than 100% of the taxes it would have otherwise received but for the tax abatement, the PILOT payments paid by the Developer under subsection (ii)(B) above will be modified to result in substantially the same economic benefit to the Developer without the Fire District, the Ambulance District or any applicable emergency service's agreement.

(c) *No Abatement on Special Assessments, Personal Property Taxes, Licenses or Fees.* The property tax exemptions described in this Memorandum shall not apply to special assessments or ad valorem personal property taxes and shall not serve to reduce or eliminate any other licenses or fees owing to the City or any other taxing jurisdiction with respect to the Project. The Developer and any subsequent owners of the Project will make payments with respect to all special assessments, personal property taxes, licenses and fees that would otherwise be due with respect to the Project as if such Project or any applicable portion thereof were not owned by the City.

(d) *Sales Tax Exemption on Construction Materials.* The City will, upon the Developer's agreement (in form and substance satisfactory to the City) to fully indemnify and protect the City from any judgments or actions in connection therewith and the repayment of sales taxes should the City not issue the Chapter 100 Bonds for any reason, furnish the Developer a project exemption certificate that

will enable the Developer's purchase of construction materials for the Project to be exempt from sales taxes, to the extent provided by law.

2. Creation of a Community Improvement District and a Transportation Development District.

(a) *Community Improvement District.*

(i) The Project Site is currently located in boundaries of the Cora Marie Community Improvement District (the "Cora Marie CID"), a community improvement district created by the City pursuant to the Community Improvement District Act, Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the "CID Act") and Ordinance No. 1701, adopted on December 4, 2013. The parties understand that the current record owner of all real property located in boundaries of the Cora Marie CID has submitted a petition to the City to amend the boundaries of the Cora Marie CID to remove the Project Site from the Cora Marie CID. The City agrees to duly consider the petition to amend the boundaries of the Cora Marie CID.

(ii) Pursuant to the CID Act, the Developer shall, following acquisition of the Project Site, (A) petition the City for the creation of a community improvement district (the "CID") and (B) submit a ballot proposition to the CID's qualified voters to authorize the imposition of a one percent (1%) community improvement district sales tax to be imposed by the CID for twenty-seven (27) years from the date of imposition on all retail sales made in the boundaries of the CID that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525, inclusive, of the Revised Statutes of Missouri, with certain exceptions listed in the CID Act (the "CID Sales Tax"). The CID's boundaries shall cover, at a minimum, all portions of the Project Site used for commercial/retail uses. The City agrees to cooperate with and assist the Developer in all proceedings and duly consider the petition relating to the creation and certification of the CID.

(b) *Transportation Development District.* Pursuant to the Missouri Transportation Development District Act, Sections 238.200 through 238.280 of the Revised Statutes of Missouri (the "TDD Act"), the Developer shall, following acquisition of the Project Site, (i) petition the Circuit Court of St. Charles County, Missouri for the creation of a transportation development district (the "TDD") and (ii) submit a ballot proposition to the TDD's qualified voters to authorize the imposition of a one percent (1%) transportation development district sales tax to be imposed by the TDD for forty (40) years from the date of imposition on all retail sales made in the boundaries of the TDD that are subject to taxation pursuant to the provisions of Sections 144.010 to 144.525, inclusive, of the Revised Statutes of Missouri, with certain exceptions listed in the TDD Act (the "TDD Sales Tax"). The TDD's boundaries shall cover, at a minimum, all portions of the Project Site used for commercial/retail uses. The City agrees to cooperate with and assist the Developer in all proceedings relating to the creation and certification of the TDD.

(c) The parties acknowledge and agree that the creation of the CID and the TDD shall be solely for the purpose of providing additional tax revenues for funding a portion of the Project Improvements consisting of public infrastructure (the "CID/TDD Projects"). The Developer shall cause the CID and the TDD, promptly following their formation and constitution of their respective board of directors, to authorize and enter into a district project agreement (in a form satisfactory to the City), which provides terms related to (1) the Developer's agreement to advance all funds for and complete the CID/TDD Projects, (2) the issuance of notes, bonds or other obligations (the "CID/TDD Obligations") to reimburse the Developer to the extent necessary for the costs incurred in completing the CID/TDD Projects, subject to limits contained therein, (3) the term of and limitations on the use of the CID Sales Tax and the TDD Sales Tax, and (4) the operation and governance of the CID and the TDD. The petitions for creating the CID and the TDD shall provide that the applicable district's continued existence shall be conditioned upon the applicable district entering into such district project agreement.

(d) The City may have additional capital expenses in the future related to the maintenance of the public infrastructure dedicated to the City in connection with the CID/TDD Projects. In order to offset such costs, the Developer shall make a community benefit payment to the City in the amount of \$71,000 on December 1 each year for 5 years beginning December 1, 2023 (the “Community Benefit Payment”). The City may use the Community Benefit Payment for any proper governmental purpose.

3. Costs and Expenses. The Developer shall be responsible for paying all fees for professional services and expenses in connection with consideration by the City of the legality and appropriateness of the Developer’s use of the incentives described herein including, but not limited to, all reasonable and customary costs of implementing the incentives, creating the CID and the TDD and issuing the Chapter 100 Bonds and the CID/TDD Obligations. The Developer may seek reimbursement of the costs of creating the CID and the TDD and issuing the CID/TDD Obligations costs from the CID or the TDD, as applicable.

4. Other Terms. The parties agree that the intent of this Memorandum is to set forth in principle the primary terms relating to certain incentives for the Project. The final terms of such incentives will be set forth in the Trust Indenture, the Lease, the Base Lease and other documents, including a master development and performance agreement and the district project agreement(s), which are subject to further approval by the governing bodies of the City, the CID and the TDD and by appropriate representatives of the Developer in their sole discretion. Such provisions will include, but are not limited to, indemnification to the City, events of default, remedies upon default, and early termination provisions. The City agrees to, in good faith, consider the application of the incentives described herein, and to negotiate in good faith and use reasonable efforts to agree upon mutually acceptable documents pertaining thereto; provided, however, that, nothing in this Memorandum shall be deemed to obligate the City to approve the incentives described herein, and the parties acknowledge and agree that such decisions and determinations shall remain within the sole discretion of the governing body of the City, pursuant to the applicable enabling legislation respecting the applicable incentive.

5. Termination of this Memorandum. Upon the execution of documents containing the substantive terms hereof, the provisions of this Memorandum shall have no further effect. If there are any inconsistencies between the terms hereof and the terms of any of the documents pertaining to the incentives described herein, the terms of such other documents shall control.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Developer have caused this Memorandum to be executed in their respective names as of the date first above written.

CITY OF DARDENNE PRAIRIE, MISSOURI

By: _____
Name: James W. Knowles, III
Title: City Administrator

KALECO LLC

By: _____
Name: _____
Title: _____