

## **NEW HAVEN CITY PLAN COMMISSION ADVISORY REPORT**

**RE:** 100 COLLEGE STREET, Development and Land Disposition Agreement by and between the City of New Haven, New Haven Parking Authority and WE Route 34, LLC accepting the conveyance of land from the State of Connecticut and incorporating the implementation of the first phase of the Downtown Crossing Project and the development of a portion of the existing Route 34 Connector (Economic Development Administrator).

**REPORT:1464-04**

**ADVICE: Approval**

### **BACKGROUND**

A Development and Land Disposition Agreement between the City of New Haven (City), Parking Authority (NHPA) and WE Route 34, LLC (Developer) for implementation of the project known as 100 College Street, incorporating Phase I of the Downtown Crossing Project has been communicated by the Economic Development Administrator to the Board of Aldermen. 100 College Street is a 2.4 acre parcel immediately to the east of the Air Rights Garage and west of College Street in the Route 34 Right of Way where the Developer proposes to construct a new 225,000 and probably closer to 400,000 SF building to house offices, laboratories, and other medically related facilities, with retail or other “activated uses” along College Street and parking and loading underneath and to the west of the building. The building will be designed and built at least to the equivalent of LEED silver standard for sustainability.

A Development Agreement sets out the arrangements for the accomplishment of a complex physical development project. It usually states the sources and uses of the funds for the project, including public funds. It describes the City’s obligations and the developer’s obligations and sets up schedules or milestones, as well as procedures to resolve disputes and procedures to allow for non-substantive changes in the project. New Haven Development Agreements also typically set out community benefits such as the Developer’s obligations to comply with City resident and minority hiring requirements for the construction workforce. Other community benefits included in this agreement are the Developer’s commitment of \$150,000 funding for training in biotechnology and laboratory employment career ladders, a commitment to participate in the established ACE mentoring program for New Haven students, enhanced public open space on the development site and development of a Demand Management Plan to help reduce demand for parking spaces at work and encourage walking, biking and transit use. It also describes what happens if either party is unable to meet their obligations. In addition to the City and the Developer, this agreement is a three party agreement because the New Haven Parking Authority operates and maintains the Air Rights Parking Facility, owned by the City, which is the westerly site boundary.

A Land Disposition Agreement is a contract between the City and a purchaser of City-owned land (and/or structure). It details the timing and condition of the land at transfer as well as other pertinent conditions and City requirements. In this case the land is currently owned by the State of Connecticut and will be transferred first to the City (pursuant to State legislation) and then transferred from the City to the Developer, subject to the Development and Land Disposition Agreement which in this case have been combined into one document.

**[A summary of the major points in the Development Agreement and the Land Disposition agreement is attached]**

This project is the first in the “Downtown Crossing” area. Downtown Crossing is the City’s plan to discontinue use of the limited access below grade Route 34 highway stub that currently funnels traffic from Interstate’s 95 and 91 into New Haven; and replace it with regular city streets. The City has obtained a TIGER II grant from USDOT to implement the first Phase of the Downtown Crossing project, and this grant will be matched by state, city and developer funds. The Development Agreement “incorporates” the TIGER II improvements because they are necessary to provide access to the development site while maintaining mobility in the surrounding area for the existing uses. It is worth noting that the reverse is not true, i.e. the TIGER II improvements can be carried out without the WE Route 34 LLC development. This is a requirement of the TIGER II program, that the improvements have “independent utility”.

The 100 College Street Project is expected to generate new real estate and personal property tax revenue for the City, as well as new payroll taxes for the state and federal governments from up to 600-960 new jobs housed in the development. Construction jobs are estimated at 2000. The area to be developed is currently used only for transportation and does not produce any jobs or any taxes.

Previous to submission of the Development and Land Disposition Agreement, the Board received (October 2011) a Text and Map Amendment to the New Haven Zoning Ordinance for a new zone (BD-3) for the 11.4 acre area of the Downtown Crossing project which is the current Route 34 Right of Way between the Air Rights Garage on the west and South Orange Street to the east (See CPC Reports 1459-11 and 1459-12 (December 21, 2011) on the proposed new zone and map amendment. The Board of Aldermen subsequently (April 2, 2012) received a request to modify the map portion of the Zoning Ordinance amendment, and the proposed addition to the map amendment (see CPC Report 1464-03) is the subject of a public hearing on the current meeting’s agenda.

### **PLANNING CONSIDERATIONS**

New Haven is a mature City with little easily developable land; this is particularly true in central New Haven where more than half of the jobs in the City are concentrated. The area around Yale New Haven Hospital and the Yale University School of Medicine, directly south of downtown is home to a great number of research laboratories which spin off commercial ventures in the pharmaceutical, medical device and bio-technology fields. The availability of laboratory and office space nearby in buildings such as 300 George Street (owned by an affiliate of the Developer) has allowed some of this spin-off economic development to remain in New Haven. There is very little available space for expansion of these types of entrepreneurial businesses.

While the medical institutions themselves are exempt from real estate taxes, the commercial laboratory space is not. Instead of letting this type of development spin off into other towns in the region, New Haven can capture some of the value of the new jobs in this growing sector of the economy. In addition to adding to the competitive advantage of New Haven’s medical district, and the increased property taxes, each principal researcher generates many additional jobs at differing skill levels, some within the new companies and some at material suppliers and other service companies. If New Haveners acquire the necessary skill they can be ready for the full range of newly created jobs. The Board of Aldermen has recently turned its attention to workforce readiness issues and is working on plans to connect residents with employment.

In the last ten years the Economic Development group of departments has continually pointed to the need to increase density in certain specific areas of New Haven, the alternative being to cut off the growth of entrepreneurs, businesses and institutions and to stop the resultant growth in jobs. The Future Forward and initial Downtown Crossing concept plans pointed to the opportunities to develop new buildings in the Route 34 corridor without displacing any current residents or businesses. They have also pointed to the need to re-connect the central business district and the medical district in a more seamless single downtown that can be far more accommodating to pedestrians, bicyclists and transit. The development of 100 College Street along with the implementation of the first phase of the conversion of this portion of Route 34 from highway back to city streets or boulevards is the first of many steps needed to achieve this goal.

**ADVICE: The Commission recommends approval of the Development Agreement and the Land Disposition Agreement.**

**ADOPTED:** April 18, 2012  
Edward Mattison  
Chair

**ATTEST:**

  
Karyn M. Givarg, AIA  
Executive Director

**EXECUTIVE SUMMARY OF THE DEVELOPMENT AND LAND DISPOSITION AGREEMENT AMONG WE ROUTE 34, LLC, THE CITY OF NEW HAVEN AND THE NEW HAVEN PARKING AUTHORITY**



The following Executive Summary provides an overview of the key points of the proposed Development and Land Disposition Agreement (the “Development Agreement”) between the City of New Haven, WE Route 34 LLC (the “Developer”) and the New Haven Parking Authority (the “Parking Authority”). The Development Agreement establishes the rights, duties and obligations of the parties concerning the construction and operation of a new building to be known as 100 College Street within the current Route 34 right-of-way.

The Development Agreement will allow the Developer to construct a medical/laboratory/office building immediately adjacent to Yale-New Haven Hospital and the Yale School of Medicine. This strategic location will greatly strengthen New Haven’s life sciences industry and allow New Haven to compete at a global level for future jobs in an increasingly significant sector of the economy. Involving at least \$100 million in private investment, this project represents a unique opportunity to leverage the removal of Route 34 and convert much of the right of way into an economic engine designed to generate future growth, increase the tax base and create hundreds of new jobs, both during construction and permanently thereafter.

Because of the dual nature of the Development Agreement, being designed to both facilitate the construction of a new building and ancillary parking garage and plaza and to provide the necessary infrastructure to achieve the same, it is a very complex document, and this Executive Summary is designed solely as a “road map” as to the key provisions. However, it should not be relied upon as exhaustive, in and of itself, and for full details concerning any provision of the Development Agreement, reference should be made to the full text and exhibits of the Development Agreement.

## 1. Downtown Crossing Project

The Downtown Crossing Project is a long term project whereby the City of New Haven (the "City") is seeking to reconnect the medical district and Hill neighborhood with the City's central business district by converting a portion of the existing limited access highway Route 34 connector into urban boulevards adjacent to four development parcels. From an infrastructure perspective, the work also includes the reconstruction of the existing cross streets at Church and College, as well as the reconnecting of Temple Street and Orange Street across the former highway connector. The more basic objectives of Downtown Crossing are to create jobs by building on the economic strengths of the City; decrease our energy footprint; retain a unique, livable and authentic sense of place; enhance the local economy and improve transportation in part by incorporating Complete Streets for all road users.

This Development Agreement is designed to accomplish the 100 College Street project by obtaining an initial 2.4 acre site from the State of Connecticut (the "State"), which is bounded by the Air Rights Garage, MLK Boulevard, College Street, and South Frontage Road (the "Site"). The Site will be used as a medical laboratory/office building together with an ancillary parking garage and supporting infrastructure. The remaining portions of the Route 34 connector to be incorporated into the Downtown Crossing Project (up to Orange Street) will be acquired from the State as part of the future "Full Build" phases.

## 2. Structure of Development Agreement

The essential key to understanding the Development Agreement is to recognize that it provides for both the construction a large scale private development and the installation of the public infrastructure necessary to sustain such a large scale development project in a coordinated fashion. Accordingly, both public and private funds are involved. The Developer, a wholly owned subsidiary of Winstanley Enterprises, LLC which has developed over one million square feet of laboratory and office space in New Haven, including 300 George Street, 25 Science Park, 275 Winchester Avenue, and 344 Winchester Avenue, will be using private funds for the Developer's private development and the City will be using public funds (the sources and amounts of which are shown on Exhibit S and summarized in greater detail in section #4 for the infrastructure work). However, for practical reasons, certain portions of the infrastructure work will be undertaken by the Developer, most notably, the Tunnels and Driveways to be located underneath the Site. In such circumstances, the Developer will be reimbursed out of the public funds for carrying out the work in question, in accordance with the procedures described in Exhibit L to the Development Agreement. In addition to the activities of the City and the Developer, the Parking Authority will be using its own capital funds to carry out the necessary alterations to the Air Rights Garage.

3. 100 College Street

Section 5.1(A) on page 70 of the Development Agreement requires the Developer to construct a building containing not less than 225,000 square feet (the "Building") together with a parking garage (the "Parking Garage") and outdoor space in the form of a public plaza (the "Public Plaza"). The capacity of the Parking Garage will depend upon the size of the Building. The precise limits as to parking spaces are set out in detail in Section 5.3 of the Development Agreement on page 74. A Building containing 400,000 square feet would permit a Parking Garage containing 850 parking spaces. A Building containing 225,000 square feet would permit a Parking Garage containing approximately 730 parking spaces. Even if a larger building is constructed, in no circumstances can the Parking Garage contain more than 1000 spaces. (weekday evenings,) The Developer will be required to make the Parking Garage available for public parking during for five years after the Garage opens.

The Developer also has the option to construct a pedestrian connection between the Site and the Air Rights Garage within ten years of the date of closing as detailed in Section 5.2 (D)(E) on pages 72 - 74.

The overall cost of the Developer's private improvements, all of which will be privately financed, will be in excess of \$100 million. The construction of the Building, the Parking Garage and the Public Plaza is described in this Executive Summary as the "100 College Street Project".

In regards to the design of the Building and the Parking Garage, there will be an architectural review by an independent architect chosen from a list of architects supplied by the City as described in Section 5.1(C) on page 70 of the Development Agreement. In addition, the City's Economic Development Administrator and Executive Director of the City Plan Department will participate in the design process. The Building must be designed and built to meet the Silver Standard level under Leadership In Energy and Environmental Design (LEED) as detailed in Section 6.3(A) on page 90. Portions of the ground floor of the Building must be devoted to "activated uses," meaning uses which can be seen when viewed from the sidewalks, such as retail, restaurants, coffee shops, art galleries, and fitness centers. In addition to the main entrance to the Building on College Street, there must be two additional openings to the Building on the sides of the Building which face streets according to Section 5.2(B) on page 71-72 and Exhibit P.

The Developer has conducted a Phase I/Phase II environmental assessment of the Site which does not show any environmental conditions that would require remediation in order to commence and complete construction of the 100 College Street Project. Under Section 7.4(E) on pages 108-112 of the Development Agreement, the possibility of the existence of an unknown

environmental condition and/or the possibility of an environmental condition arising after the Effective Date of the Development Agreement is dealt with by a requirement that the City purchase environmental insurance. The Developer is required to pay any portion of the premium which is in excess of \$30,000.

The Developer will also be responsible for carrying out certain streetscape improvements, and certain landscaping, lighting and similar public improvements, using a portion of the public funds described in Exhibit S.

#### 4. Public Improvements

The City will be responsible for carrying out certain traffic improvements which are described in part in Exhibits D and F of the Development Agreement (the "Traffic Improvements"). In essence, these improvements will consist of (i) the conversion of MLK Boulevard and South Frontage Road into urban boulevards; (ii) the closing of the westbound off-ramps at Exits 2 and 3 and the modification and relocation of Exits 1 and 2 from Route 34; (iii) the removal of the College Street bridge and the creation of two culverts; (iv) the removal of the roundabout currently located to the east of the Air Rights Garage; (v) the reconstruction of College Street at grade; and (vi) the removal of the pavement for the Exit 3 off ramp. When the State is satisfied that the total improvements have been satisfactorily completed so that the Developer can commence construction of the 100 College Street Project, then the State will convey the Site to the City and, subject to the preconditions in Section 7.3 on pages 94-103 of the Development Agreement being met or waived, the City will then quit claim the Site to the Developer for \$1.00 in an "as is" condition.

Preliminary designs for the Traffic Improvements are shown on Exhibit F, Proposed modifications to Exhibit F, which will be implemented, subject to obtaining the approval of the Connecticut Department of Transportation, ("ConnDOT") and the Federal Highway Administration ("FHWA") are shown on Exhibit F1. These modifications were made to reflect the comments of the Board of Aldermen arising from the previous submission of the thirty (30%) percent drawings for the Traffic Improvements in 2011. The City's Complete Streets Design Manual is expressly embraced by the Developer. However, if there are changes in the Traffic Improvements drawings due to requirements of ConnDOT and/or FHWA which the Developer reasonably believes would have a negative impact on the Development or the State Traffic Commission application and the City is unwilling to redesign the Traffic Improvements to accommodate both ConnDOT and/or FHWA requirements and the Developer's objections, then the Developer may terminate the Development Agreement as detailed in Section 3.1(A) on pages 40-42.

The Developer will construct tunnels and driveways (the "Tunnels and Driveways") which will carry traffic under the Site into the Parking Garage and into the Air Rights Garage, so that the Building, when constructed, will be at

ground level on College Street. The Tunnels and Driveways, once constructed and approved by the City Engineer will become City streets. The Air Rights Implementation Guidelines were prepared by City staff and the City's professional consultants for all of Downtown Crossing. The guidelines are attached as Exhibit V-1 (as slightly modified by Exhibit V-2 to ensure conformity with the Development Agreement). They are specifically designed to ensure that the Tunnels and Driveways are constructed properly, in accordance with all specifications and safety regulations and successful completion of all of the tests described in Section 11.3.3 of Exhibit V-1 will be required prior to acceptance of the Tunnels and Driveways by the City Engineer.

The Parking Authority agrees to make certain improvements to the Air Rights Garage, including the construction of a new ramp, in order to accommodate traffic flow from the Tunnels and Driveways in accordance with Section 3.2 on pages 47-54. In part, these improvements will allow entry and access to any level of the Air Rights Garage directly from Route 34.

Because the Developer, the City and the Parking Authority will each be performing their work in close proximity to each other, each has agreed to grant to the other parties construction easements required for the construction of the party's improvements. Each party has also agreed to grant permanent easements required by another party to maintain and operate the improvements that will be owned by such other party. These easements are described in greater detail in Article 9 (pages 123-128) of and Exhibits T and U to the Development Agreement.

Pursuant to Section 5.5(A) on page 77 of the Development Agreement, the City, the Developer and the Parking Authority are required to develop a working group which will be responsible for the coordination of construction activities, the development of a construction logistics plan (which will include, amongst other things, plans with respect to traffic flow and access to the Site and to the construction areas for the Traffic Improvements) and the resolution of other problems during construction as they may arise. Each party is required to provide the other parties with periodic construction progress reports. The Development Agreement expressly recognizes the importance of maintaining access to the Air Rights Garage and the loading docks for Yale-New Haven Hospital and 55 Park Street during construction (page 130). Additionally, the Developer, the Parking Authority and each party's contractors are required to maintain appropriate insurance (pp.131-158).

Exhibit S to the Development Agreement details the sources of funding for the public improvements which are estimated to cost \$35.05 million and includes the \$16 million TIGER II Grant; State grants totaling \$10.35 million; City funds (to be provided by way of bonding) in the amount of \$7.0 million; \$1.2 million from the New Haven Parking Authority and a Developer contribution of \$500,000. Of note, the Parking Authority contribution is specific to the construction of



improvements within the Air Rights Garage. Although the City and the Developer have carefully studied the work involved and agree that the funding described in Exhibit S should be sufficient, if it proves to be insufficient then the City must seek to close the gap, subject to a \$3.0 million ceiling.

5. Jobs and other Community Benefits

It is anticipated that the 100 College Street Project will create 2,000 construction jobs. The Developer will be subject to the provisions of Section 12 ¼ of the City's General Ordinances concerning minority business enterprise utilization goals. In addition to the requirements of the Ordinance, under Section 6.2(B) on pages 85 - 90 of the Development Agreement the Developer is required to undertake a mentoring program for MBE/SBE contractors which will include "backstopping" with respect to insurance requirements, payrolls and/or credit related issues to the extent needed.

The Developer will also be subject to the provisions of Section 12 ½ of the City's General Ordinances concerning workforce utilization goals, including 25% New Haven residents, 25% minority and 6.9% women workforce utilization. The Developer's compliance will be monitored by the City staff through the Small Business Development Program and the Commission on Equal Opportunity.

It is also anticipated that upon completion of the 100 College Street Project, between 600-960 new jobs at all skill levels will be created by the tenants at 100 College Street.

Section 6.1(A) on page 78 of the Development Agreement requires that the Developer contribute \$150,000 to a program which will develop a career ladder for New Haven residents interested in working in the biotech, life sciences and medical research fields.

Section 6.1(B) on page 78 of the Development Agreement requires the Developer to actively participate in the ACE Mentoring Program which provides mentoring opportunities to New Haven students interested in these fields.

As a State highway, the Site is currently tax exempt. Following conveyance of the Site to the Developer, the Site will be taxable. In order to protect the City's investment, Section 11.1 of the Development Agreement provides that in the event that any portion of the 100 College Street Project is transferred to a tax exempt entity during any time that the bonds issued by the City are outstanding, then the City must first receive an appropriate percentage of the outstanding balance due on the bonds, based upon the percentage of the 100 College Street Project transferred and the overall level of development within the Downtown Crossing area at that time. The precise definition of the "Bond Repayment Sum" can be found in the Definitions section of the Agreement.

The Developer is required to develop and maintain the Public Plaza which will contain artistic objects including posters, banners, graphic art, mixed media, decorative screening, photographs, statues, sculptures and/or a water element.

Section 6.3(B) on page 90 of the Development Agreement requires the Developer to develop a parking Demand Management Plan with respect to parking ("DMP"), with the aim to reduce traffic congestion and thereby help to improve the livable environment and improve air quality in New Haven due to the consequent reduction in emissions. The DMP will be designed to promote the use of forms of transportation other than single occupancy vehicles, with a goal to encourage, at minimum, 20% of the Building occupants to use public transportation, Yale University shuttle buses, bicycling, car pooling or other means which would have the effect of reducing use of the Parking Garage. The Developer is required to provide a shuttle bus stop and bus shelter at a location reasonably satisfactory to the City, and to provide bicycle racks, showers and planned spaces for electric charging of electrically powered vehicles in the Parking Garage.

## 6. Schedule

The Project Schedule (Exhibit G to the Development Agreement) provides that the Site will be conveyed to the Developer on June 1, 2013. Section 7.3 on pages 94-103 of the Development Agreement contains a number of preconditions to the conveyance of the Site, including the City's acquisition of the Site from the State, the termination and/or modification of certain existing agreements concerning the Site, the acquisition of various permits and approvals, the completion of those traffic improvements required to convey the Site (as described below), and the creation of easements and other agreements with respect to the Site. All of the preconditions are set out in detail in Section 7.3 of the Development Agreement. Some of these preconditions are waivable by the Developer, others are waivable with the consent of the City and others are not waivable.

Under the Project Schedule, the Traffic Improvements required to convey the Site to the Developer are scheduled to be completed by May 1, 2013 and the remaining Traffic Improvements are scheduled to be carried out by the City by June 30, 2014. The Developer must complete the Tunnels and Driveways by August 1, 2014.

The Project Schedule requires the Developer to commence construction of its private improvements (the Building and the Parking Garage) by May 1, 2013 and to complete such construction by May 1, 2015. When these improvements are completed, the City will inspect them to make sure that they comply with the Development Agreement and the City Plan Commission Site Plan review before issuing a Certificate of Completion, pursuant to Section 10.6 (pages 159-161). The Developer is permitted to mortgage the Site to finance the

project, and in the event of a foreclosure, the mortgage holder must comply with the Development Agreement. (Pages 167-172.)

It is anticipated that satisfaction of the preconditions can be achieved in accordance with the timeline set forth in Exhibit G of the Development Agreement. However, if the preconditions are not met or waived by the anticipated closing date, the Developer can extend the closing date or terminate the Development Agreement. Further, under Article 13 of the Development Agreement, if a precondition has not been met or waived within five years from the effective date of the Development Agreement, the City can terminate the Agreement. Under such circumstances, the Developer can purchase the Site for the fair market value less the Developer's investment in the 100 College Street Project up to the date of termination and is required to construct a building of not less than 100,000 square feet. If the situation has not been resolved within seven years of the Effective Date of the Development Agreement, then the Developer can terminate the Development Agreement and purchase the Site on the same terms.

#### 7. Disputes

Article 12 of the Agreement provides that prior to any party commencing litigation with respect to any alleged default, the parties must submit the dispute to a dispute resolution procedure. Article 12 also provides for alternative dispute resolution procedures such as mediation and the obtaining of an advisory opinion.