

RESOLUTION 2023-12-01

A RESOLUTION OF THE DOWNTOWN INVESTMENT AUTHORITY (“DIA”) RELATING TO LOANS MADE TO FLORIDA STATE COLLEGE AT JACKSONVILLE (FSCJ) PURSUANT TO THE LOAN AGREEMENT (“AGREEMENT”) DATED JULY 17, 2020, BETWEEN THE DOWNTOWN INVESTMENT AUTHORITY AND THE DISTRICT BOARD OF TRUSTEES OF FSCJ (RELATING TO A COMPLETED PROJECT AT 20 WEST ADAMS STREET); ACKNOWLEDGING A REQUEST BY FSCJ THAT ALL SUCH LOANS MADE PURSUANT TO THE AGREEMENT BE FORGIVEN BY THE DIA; DENYING THE REQUESTED LOAN FORGIVENESS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, FSCJ executed a long-term lease with 20 West Adams Street Development, LLC (the “Developer”) who redeveloped the Lerner Building located at 20 West Adams Street into a mixed use building consisting of student housing providing approximately 58 beds and approximately 5,000 square feet of first floor retail space, an investment of nearly \$6.2 million for the restoration, preservation, and construction of the building and associated improvements; and

WHEREAS, the reuse of the building as student housing and retail space placed back into service a vacant historic structure in the urban core of Downtown Jacksonville; and

WHEREAS, at its November 2015 meeting, the DIA approved DIA Resolution 2015-11-02 authorizing the DIA Chief Executive Officer (CEO) to request legislation providing the project with \$600,000 in grant funds from the Downtown Historic Preservation and Revitalization Trust Fund (the “HPTF”) to the Developer to help pay for the exterior façade restoration and the preservation of significant interior features of the building which were authorized purposes pursuant to Sec. 111.910(e), *Ordinance Code*, and authorized the CEO to negotiate and execute two sequential subsidized loans from the Downtown East Tax Increment District in an amount not exceed \$300,000 each, each with a five-year term and funded in five annual draws of no more than \$60,000 each; and

WHEREAS, upon completion of the building improvements the Developer applied for and received the \$600,000 HPTF grant, but documents for the FSCJ subsidized loan (which included no reference to forgiveness) were never executed prior to the expiration of the term sheet for the same; and

WHEREAS, at its November 2019 meeting, the DIA approved Resolution 2019-11-01 authorizing its CEO to negotiate and execute new Loan Agreements for the two subsidized loans, the terms of which were outlined in a Term Sheet attached thereto which had an expiration date of December 15, 2019; and

WHEREAS, FSCJ failed to execute the Term Sheet attached to Resolution 2019-11-01 by the December 15, 2019 deadline; and

WHEREAS, at its February 2020 meeting, the DIA approved Resolution 2020-02-03 authorizing its CEO to again negotiate and execute new Loan Agreements for the two subsidized loans, the terms of which were outlined in a Term Sheet attached thereto which had an expiration date of May 15, 2020; and

WHEREAS, due to COVID-19 (Covid) Declarations of Emergency, neither DIA nor FSCJ were able to complete the execution of the Loan Documents within the established time frame; and

WHEREAS, at its meeting of June 2020, the DIA adopted Resolution 2020-06-04 authorizing its CEO to again negotiate and execute new Loan Agreements for the two subsidized loans, the terms of which were outlined in a Term Sheet attached thereto which had an expiration date of July 15, 2020; and

WHEREAS, the Loan Documents were prepared and fully executed on July 17, 2020, with no mention of forgiveness, with a first five year term start date retroactive to January 1, 2019 and ending on December 31, 2023; and

WHEREAS, for calendar year 2019, FSCJ met the minimum performance requirements for both student housing occupancy and hours of operation for the retail space and subsequently received a loan in the principal amount of \$60,000; and

WHEREAS, because of impacts from Covid during calendar year 2020, while FSCJ met the minimum performance requirement for hours of operation for the retail space and the minimum student housing occupancy requirement for the Fall 2021 semester, FSCJ did not meet the minimum performance requirements for student housing occupancy and therefore did not qualify for or receive any loan draw; and

WHEREAS, because of lingering impacts from Covid during calendar year 2021, while FSCJ met the minimum performance requirement for hours of operation for the retail space, FSCJ did not meet the minimum student housing occupancy requirement for the Spring 2021 semester and requested a waiver for the same; and

WHEREAS, at its meeting of February 2022, the DIA adopted Resolution 2022-02-03 which granted said waiver and FSCJ subsequently received a second loan in the principal amount of \$60,000; and

WHEREAS, for calendar year 2022, FSCJ met the minimum performance requirements for both student housing occupancy and hours of operation for the retail space and subsequently received a third loan in the principal amount of \$60,000; and

WHEREAS, the DIA has disbursed no-interest loans to FSCJ totaling \$180,000 to date, the principal balance of which, along with any qualified loan disbursed for calendar year 2023, is due and payable by June 30, 2024; and

WHEREAS, although the Term Sheet for the original Resolution 2015-11-02 included language that “The Note may be forgiven, in part or in whole, by the DIA Board at its sole discretion”, no such or similar language appeared in the Term Sheet of any subsequent resolution approved by the DIA as referenced above or in any of the loan documents; and

WHEREAS, in a letter dated December 17, 2019, the DIA CEO advised FSCJ that the absence of such language did not preclude the authority of the DIA Board to consider and/or grant such forgiveness in the future; and

WHEREAS, in the Loan Documents, Section 2(j) of the executed Loan Agreement states “Principal and interest under the Note shall be due and payable as provided for in the Note” and the executed Promissory Note states “The outstanding principal balance of this Note shall be due and payable in full on June 30, 2024”; and

WHEREAS, the FSCJ outstanding balance and expected repayment has been reported annually by the DIA pursuant to generally accepted accounting principles (GAAP) and Governmental Accounting Standards Board (GASB) principals and included in the annual audited financial statements for the city as well as other required reports; and

WHEREAS, the source of funds used for the loan advances was budgeted by the City Council for Northbank CRA Downtown Loan Funds, as opposed to Forgivable Loans which is a different budget item; and

WHEREAS, the repayment of the outstanding loan balance by FSCJ would return funds to the Downtown East Tax Increment District making such fund available to the DIA for further investment in Downtown; and

WHEREAS, in a letter dated November 13, 2023, FSCJ has requested the DIA Board to grant forgiveness of all loans made pursuant to the Loan Documents even though an additional advance is available and an additional \$300,000 loan is authorized upon repayment of the first note, but provided no specific basis as to why the loan should be forgiven.

NOW THEREFORE, BE IT RESOLVED, by the Downtown Investment Authority:

Section 1. The DIA finds that the recitals set forth above are true and correct and are incorporated herein by this reference.

Section 2. The DIA hereby denies any forgiveness of the repayment of all loans made to FSCJ, in an amount equal to the current total outstanding principal balance of one hundred, eighty thousand dollars (\$180,000).

Section 3. By complying with the repayment of the loan, funds would then be available if FSCJ should choose to enter into a Loan Agreement and Promissory Note for the second five-year term.

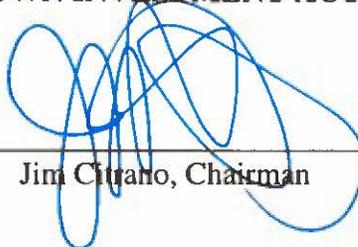
Section 4. The Effective Date of this Resolution is the date upon execution of the Resolution by the Chairman of the DIA Board.

WITNESS:

DOWNTOWN INVESTMENT AUTHORITY



Witness



Jim Citrano, Chairman

VOTE: In Favor: 7 Opposed: 0 Abstained: 0 DATE: 12/20/23



Downtown Investment Authority

November 30, 2023

MEMORANDUM

To: DIA Strategic Implementation Committee

From: John R. Crescimbeni
Contract and Regulatory Compliance Manger

RE: DIA Resolution 2023-12-01 (FSCJ Loan Forgiveness request)

Background:

In November 2015, Florida State College of Jacksonville (FSCJ) proposed to execute a long-term lease with 20 West Adams Street Development, LLC (the "Developer") to redevelop the Lerner Building located at 20 West Adams Street into a mixed-use building consisting of student housing providing approximately 58 beds and 5,000 square feet of first floor retail space. With an investment of nearly \$6.2 million, a historic structure located in the urban core of Downtown Jacksonville would be placed back in service.

To assist with the project, the DIA approved Resolution 2015-11-02 authorizing the DIA Chief Executive Officer (CEO) to request legislation providing \$600,000 in grant funds from the Downtown Historic Preservation and Revitalization Trust Fund (the "HPTF") to the Developer to help pay for the exterior façade restoration and the preservation of significant interior features of the building, and authorized the CEO to negotiate and execute two sequential \$300,000 subsidized loans to FSCJ from the Downtown East Tax Increment District in an aggregate amount not exceed \$600,000, each with a five year term and funded in five annual draws of no more than \$60,000 each.

Upon completion of the building improvements the Developer applied for and received the \$600,000 HPTF grant, but documents for the subsidized loan were never executed prior to the expiration of the term sheet for Resolution 2015-11-02.

At its November 2019 meeting, the DIA approved Resolution 2019-11-01 authorizing its CEO to negotiate and execute new Loan Agreements for the two subsidized loans, the terms of which were outlined in a Term Sheet attached thereto which had an expiration date of December 15, 2019. Unfortunately, FSCJ failed to execute the Term Sheet by the December 15, 2019 deadline.

At its February 2020 meeting, the DIA approved Resolution 2020-02-03 authorizing its CEO to again negotiate and execute new Loan Agreements for the two subsidized loans, the terms of which were outlined in a Term Sheet attached thereto and had an expiration date of May 15, 2020. However, with the onset of COVID-19, neither DIA nor FSCJ were able to complete the execution of the Loan Documents within the established time frame.

At its meeting of June 2020, the DIA adopted Resolution 2020-06-04 authorizing its CEO to again negotiate and execute new Loan Agreements for the two subsidized loans, the terms of which were outlined in a Term Sheet attached thereto which had an expiration date of July 15, 2020. The Loan Documents were prepared and fully executed on July 17, 2020, with a five-year term start date retroactive to January 1, 2019 and ending on December 31, 2023.

For calendar year 2019, FSCJ met the minimum performance requirements for both student housing occupancy and hours of operation for the retail space and subsequently received a loan in the principal amount of \$60,000.

However, because of impacts from Covid during calendar year 2020, while FSCJ met the minimum performance requirement for hours of operation for the retail space, FSCJ did not meet the minimum performance requirements for student housing occupancy and therefore did not qualify for or receive any loan draw.

Because of lingering impacts from Covid during calendar year 2021, while FSCJ met the minimum performance requirement for hours of operation for the retail space and the minimum student housing occupancy requirement for the Fall 2021 semester, FSCJ did not meet the minimum student housing occupancy requirement for the Spring 2021 semester and requested a waiver for the same. At its meeting of February 2022, the DIA adopted Resolution 2022-02-03 which granted said waiver and FSCJ subsequently received a second loan in the principal amount of \$60,000.

For calendar year 2022, FSCJ met the minimum performance requirements for both student housing occupancy and hours of operation for the retail space and subsequently received a third loan in the principal amount of \$60,000.

To date, the DIA has disbursed no-interest loans to FSCJ totaling \$180,000, the principal balance of which along with any qualified loan disbursed for calendar year 2023, is due and payable by June 30, 2024.

Although the Term Sheet for the original Resolution 2015-11-02 included language that "The Note may be forgiven, in part or in whole, by the DIA Board at its sole discretion", no such or similar language appeared in Term Sheets of subsequent resolutions approved by the DIA as referenced above or in any version of the Loan Documents.

In a letter dated December 17, 2019 (attached), the DIA CEO advised FSCJ that the removal of such language did not preclude the authority of the DIA Board to consider and/or grant such forgiveness in the future but cautioned against making any decision based on presumed forgiveness in the future.

In a letter dated November 13, 2023 (attached), FSCJ requested the DIA Board to grant forgiveness of all loans made pursuant to the Loan Documents even though one more advance is available on the current note and a second loan is authorized upon repayment of the first Note. However, the letter provides no specific basis as to why the loan should be forgiven. Subsequent to the initial approval, and change of FSCJ leadership, to our knowledge, FSCJ has not actively engaged in the provision of any additional programs to encourage students to live, work, or play within the Downtown boundaries.

Analysis

DIA Resolution 2020-06-04 and the Term Sheet attached thereto (from which the Loan Documents were prepared) did not contemplate any scenario for loan forgiveness. As a result, the Loan Agreement and the Promissory Note as executed by FSCJ contain no such language. In fact, Section 2(j) of the Loan Agreement states: "Principal and interest under the Note shall be due and payable as provided for in the Note" and the Promissory Note states "The outstanding principal balance of this Note shall be due and payable in full on June 30, 2024."

As a result, the FSCJ outstanding balance and expected repayment has been reported annually by the DIA pursuant to generally accepted accounting principles (GAAP) and Governmental Accounting Standards Board (GASB) principals and included in the annual audited financial statements for the city as well as other required reports.

Furthermore, the source of funds used for loan advances was budgeted by the City Council for Northbank CRA Downtown Loan Funds, as opposed to Forgivable Loans which is a different line item. To convert the loan to forgivable will require a budget transfer by the Board of Forgivable Loan Funds.

Finally, the repayment of the outstanding loan balance by FSCJ would return funds to the Downtown East Tax Increment District making such funds available to the DIA for further investment in Downtown.

Recommendation:

While the DIA Board has the sole authority to consider and/or grant loan forgiveness, DIA staff does not.

The loan documents requiring the outstanding principal balance of this Note to be due and payable in full on June 30, 2024, the annual disclosure pursuant to GAAP and GASB principals that the outstanding balance would be repaid by June 30, 2024, and the source of funds budgeted from a loan account requiring repayment, have consistently treated the advances as a true loan and FSCJ has made no persuasive case regarding additive programs or activities that encourage the relationship of its students to Downtown or further Downtown activations. It is therefore the recommendation of staff to approve Resolution 2023-12-01, version B to deny forgiveness.