CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: March 18, 2024

ITEM: Termination of Development Agreement for the Property Improvement Fund (PIF) and Regulatory Compliance Fund (RCF) approved by City Council on March 6, 2023, and amended on July 17, 2023, between the City of West Des Moines, PREAM, LLC and Junction Development Catalyst, LLC.

RESOLUTION: Termination of the Development Agreement for the PIF and RCF Fund Programs originally approved by City Council on March 6, 2023, and amended on July 17, 2023.

FINANCIAL IMPACT: No funds allocated from the PIF and RCF program were disbursed from the City to the Developer or Tenant for this project, as renovation work has not commenced.

BACKGROUND: On March 6, 2023, the City Council adopted a resolution authorizing the execution of a Development Agreement between the City, PREAM, LLC and Junction Development Catalyst, LLC for the construction and tenant finish of a restaurant space within the building located at 304 5th Street. PREAM, LLC was approved for $56,250 from the Property Improvement Fund (PIF), and $37,500 from the Regulatory Compliance Fund (RCF). On July 17, 2023, the City Council adopted a resolution to amend the completion date in the Development Agreement from July 31, 2023, to July 1, 2024.

The Property Owner and the Tenant have notified city staff that they are not pursuing the planned improvements for the building for the Tenant to finish a restaurant space, and the initial restaurant concept will not proceed. Without the restaurant fixtures and equipment being installed, the tenant cannot meet the agreed upon minimum improvements as outlined in the agreement.

Because of the change of scope to the development and tenant space, the City of West Des Moines, PREAM, LLC and Junction Development Catalyst, LLC have mutually agreed to terminate the Development Agreement.

If circumstances change in the future, Community and Economic Development staff are receptive to negotiations for utilization of future funds, which would require the approval of the City Council in the form of a new agreement.

OUTSTANDING ISSUES: There are no outstanding issues.

RECOMMENDATION: Adopt the resolution terminating the Development Agreement for the PIF and RCF Fund Programs approved by the City Council March 6, 2023, and amended on July 17, 2023 between the City of West Des Moines, PREAM, LLC and Junction Development Catalyst, LLC.

Lead Staff Member: J. Bradley Munford, Business Development Coordinator, Community and Economic Development

STAFF REVIEWS

Department Director	Ryan Moffatt, Community and Economic Development Director
Appropriations/Finance	Tim Stiles, Finance Director
Legal	

Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	N/A	
Date(s) Published	N/A	
Letter sent to surrounding property owners		N/A

SUBCOMMITTEE REVIEW (if applicable)

Committee	N/A		
Date Reviewed	N/A		
Recommendation	Yes ☐	No ☐	Split ☐

ATTACHMENTS:

Exhibit I - Vicinity Map
Exhibit II - Resolution
Exhibit III - Signed Termination of PIF & RCF Agreement

EXHIBIT I

305 5th St

West Des Moines.

NOT TO SCALE

https://wdmiowa.sharepoint.com/sites/CEDCommEcDev/CED Library/4 - Projects/^Specialty Funding Programs/Valley Junction Redevelopment Funding Programs/Round 7 - 2022/304 5th Street Des Moines Culinary/DSM Culinary_304 5th Street_RCF Amendment/DSM Culinary City Council Report-Termination- 03-18-2024/Termination of PIF RCF for 304 5th Street- 03-18-2024.docx

RESOLUTION NO. _____

RESOLUTION TERMINATING THE MARCH 6, 2023, AGREEMENT AND THE JULY 17, 2023, AMENDED AGREEMENT FOR PRIVATE DEVELOPMENT BETWEEN THE CITY OF WEST DES MOINES, PREAM, LLC AND JUNCTION DEVELOPMENT CATALYST, LLC

WHEREAS, on March 6, 2023, the City of West Des Moines ("City"), PREAM, LLC ("Tenant") and Junction Development Catalyst, LLC, (the "Property Owner"), entered into a Development Agreement (the "Agreement") under the Property Improvement Fund (PIF) and Regulatory Compliance Fund (RCF) programs; and

WHEREAS, on July 17, 2023, the City, Tenant and Property Owner agreed to amend the project completion date from July 31, 2023, to July 1, 2024; and

WHEREAS, the Property Owner has informed the City that the Tenant at 304 5th Street no longer expects to be able to complete the Project as described in the Original Agreement, and therefore the City funds through the PIF and RCF redevelopment funds are not necessary; and

WHEREAS, no funds from the PIF and RCF were disbursed to the Property Owner or Tenant for this project; and

WHEREAS, the Property Owner and Tenant desire to be released from its obligations under the March 6, 2023 Agreement, and to terminate said Agreement; and

WHEREAS, termination of said Agreement does not have any effect on other active Agreements between Junction Development Catalyst, LLC and the City of West Des Moines; and

WHEREAS, it is in the best interests of the City of West Des Moines to terminate the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA THAT:

1. The Private Development Agreement approved by City Council on March 6, 2023 and Amended on July 17, 2023 between the City of West Des Moines, PREAM, LLC and Junction Development Catalyst, LLC is hereby terminated.

PASSED AND ADOPTED this 18th day of March 2024.

_____
Russ Trimble, Mayor

Attest:

_____
Ryan T. Jacobson, City Clerk

TERMINATION AGREEMENT
CONCERNING
PROPERTY IMPROVEMENT FUND
&
REGULATORY COMPLIANCE FUND
AGREEMENT FOR PRIVATE DEVELOPMENT
(304 5th Street)

Pursuant to the terms and conditions of this termination agreement ("Termination Agreement"), on or as of 2/23/24, 2024, the CITY OF WEST DES MOINES, IOWA, a municipality ("City"); PREAM, LLC, an Iowa limited liability company (the "Tenant"); and JUNCTION DEVELOPMENT CATALYST, LLC, an Iowa limited liability company (the "Property Owner") mutually agree to terminate that certain Agreement for Private Development executed by and between the City, Tenant, and Property Owner March 6, 2023 (the "Original Agreement"), that concerns the development of certain property legally described as follows (the "Development Property"):

Street address: 304 5th Street, West Des Moines, IA

Legal description: All of Lot 8, Block 19, 1st Add to Valley Junction, An Official Plat Located Within the City of West Des Moines, Polk County, Iowa.

Polk County Parcel No.: 320/04596-000-000

WHEREAS, the City awarded Property Improvement Fund Program and Regulatory Compliance Fund Program incentives to the Tenant for redevelopment of the Development Property, pursuant to the terms and conditions of the Original Agreement, a memorandum of which was recorded in Book 19419 at Page 622 in the records of the Polk County, Iowa Recorder; and

WHEREAS, the City, Tenant, and Property Owner previously amended the Original Agreement pursuant to an Amendment No. 1 dated July 17, 2023, a copy of which was recorded in Book 19545 at Page 932 in the records of the Polk County, Iowa Recorder; and

WHEREAS, the Tenant no longer expects to be able to complete the Project described in the Original Agreement, as amended and, accordingly, the City, Tenant, and Property Owner (collectively, the "Parties") desire to terminate the Original Agreement pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and the mutual obligations of the Parties hereto, the receipt and sufficiency of which is hereby acknowledged, each of them does hereby covenant and agree with the other as follows:

Section 1. Termination. The Parties hereby agree that the Original Agreement, as previously amended, is hereby terminated and shall have no further effect of any kind.

Section 2. Mutual Release. The Parties hereby waive any claims against one another related to rights or obligations under the Original Agreement, as amended, and hereby agree to release their rights to pursue any remedies under the Original Agreement, as amended. The Parties agree that the release set forth in this Section 2 shall be construed to be and shall remain in effect in all respects as a complete general release as to the matters herein related.

Section 3. Definitions, Titles of Sections. Terms used herein and not otherwise defined shall have the meaning assigned to them in the Original Agreement, as amended. Any titles of the several parts and Sections of this Termination Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 4. Counterparts. This Termination Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 5. Governing Law. This Termination Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

Section 6. Entire Agreement. This Termination Agreement reflects the entire agreement among the parties regarding the subject matter hereof, and supersedes and replaces all prior agreements, negotiations or discussions, whether oral or written. This Termination Agreement may not be amended except by a subsequent writing signed by all parties hereto.

Section 7. Authority to Execute.

a. Tenant represents and warrants that Tenant has not assigned any of its rights or interests in the Original Agreement. Tenant represents and warrants that it has duly obtained all necessary approvals and consents for the execution and delivery of this Termination Agreement, and has full power and authority to execute and deliver this Termination Agreement.

b. Property Owner represents and warrants that Property Owner has not assigned any of its rights or interests in the Original Agreement. Property Owner represents and warrants that it has duly obtained all necessary approvals and consents for the execution and delivery of this Termination Agreement, and has full power and authority to execute and deliver this Termination Agreement.

Section 8. Successors and Assigns. This Termination Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 9. Recording. Once this Termination Agreement has been executed by all Parties, the Parties agree that the City shall record this Termination Agreement in the office of the Recorder of Polk County, Iowa.

IN WITNESS WHEREOF, the City has caused this Termination Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested

by its City Clerk, and the Tenant and Property each have caused this Termination Agreement to be duly executed in its name and on its behalf by its authorized representative(s), all on or as of the day first above written.

CITY OF WEST DES MOINES, IOWA,
an Iowa municipal corporation

_____
Russ Trimble
Mayor

ATTEST:

_____
Ryan T. Jacobson
City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2024, before me a Notary Public in and for said County, personally appeared Russ Trimble and Ryan T. Jacobson, to me personally known, who being duly sworn, did say that they are the Mayor and City Clerk, respectively of the City of West Des Moines, Iowa, a municipal corporation, created and existing under the laws of the State of Iowa and that said record was signed on behalf of said municipal corporation by authority and resolution of its City Council as contained in Roll Call No. _____, passed on the _____ day of _____, 2024, and said Mayor and City Clerk acknowledged said record to be the free act and deed of said municipal corporation by it voluntarily executed.

_____
Notary, State of Iowa

[Signature pages to Termination Agreement – City of West Des Moines]

TENANT:
PREAM, LLC, an Iowa limited liability company

By: _____
Ryan Cooper, its owner

STATE OF IOWA)
)SS
COUNTY OF POLK)

This record was acknowledged before me on this 22nd day of Feb, 2024, by Ryan Cooper, as Owner of PREAM, LLC, on behalf of whom the record was executed.

NOTARIAL SEAL IOWA
JASON KEIGLEY
Commission Number 803644
My Commission Expires
April 5, 2026

_____
Notary Public in and for said State

My commission expires: April 5th, 2026

[Signature page to Termination Agreement – Tenant]

PROPERTY OWNER:
JUNCTION DEVELOPMENT CATALYST, LLC,
an Iowa limited liability company

By: _____
Scott Cutler, Manager

STATE OF IOWA)
)SS
COUNTY OF POLK)

This record was acknowledged before me on this 22 day of Feb, 2024, by Scott Cutler, as Manager of Junction Development Catalyst, LLC, on behalf of whom the record was executed.

NOTARIAL SEAL IOWA
JASON KEIGLEY
Commission Number 803644
My Commission Expires
April 5, 2026

_____
Notary Public in and for said State

My commission expires: April 5th, 2026

[Signature page to Termination Agreement – Property Owner]

023074871133-424