



Board of Public Works and Safety

Agenda Item

Cover Sheet

MEETING DATE: March 27, 2018

☒ New Item for Discussion

☐ Previously Discussed Item

☐ Miscellaneous

ITEM #: 5

INITIATED BY: Michael Howard

☒ Information Attached

☐ Bring Paperwork from Previous Meeting

☐ Verbal

☐ No Paperwork at Time of Meeting

MICHAEL A. HOWARD

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and the City of Noblesville, Indiana
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MEMORANDUM

TO: Board of Public Works and Safety of the City of Noblesville

FROM: Michael A. Howard

DATE: March 22, 2018

SUBJECT: Agreement to Terminate Development Agreement with NEXXT Spine
("the Termination Agreement")

In March of 2013, the City entered into a Development Agreement ("the Development Agreement") with NEXXT Spine. NEXXT Spine's facilities are located at 14425 Bergen Boulevard. Because of the substantial investment in new manufacturing equipment and the wages to be paid to the employees, the City entered into an incentive package which primarily consisted of up to a \$320,000 interest free, forgivable loan to the Company. The amount of the loan would be based upon the Company's investments in new manufacturing equipment through December 31, 2017. The Company has provided proof of investments which would qualify for the interest free loan of \$318,363.26.

The Development Agreement also provided for certain benchmarks concerning the hiring of additional employees and additional payroll. If those benchmarks were not met, the amount of the loan which would be forgiven would be decreased based on a blended percentage of the achievement of the total payroll goals and the achievement of additional jobs. In the event the goals were not met, part of the interest free loan, paid to the Company would not be forgiven. That amount would be payable to the City prior to June 1, 2018.

Mr. Chad Sweeney of Ginovus, the Company that helped locate NEXXT Spine in Noblesville, and I agreed that it would more simple to deduct the amount payable to the City on June 1, 2018, from the amount of the loan payable to the Company through 2017. The calculations of the amount of the total loan, the amount to be forgiven under the Development Agreement, and the amount due to the City on June 1st, is included in Paragraph 1 of the Termination Agreement. In Paragraph 2 of the Termination Agreement, Mr. Sweeney and I deducted the amount due to the City from the pending claim due to the Company for investment in 2017. This resulted in a net additional payment to the Company of \$42,843.31.

Mr. Sweeney and I both did the calculations from the Development Agreement and agreed to the numbers included in the Termination Agreement. Mr. Andrew Elsbury of NEXXT Spine, has agreed the net amount due to the Company under the Development Agreement is \$42,843.31, which amount shall be paid from the balance in the Corporate Campus East Economic Development (TIF) Area.

I will present at your meeting to answer any of questions.

AGREEMENT TO TERMINATE DEVELOPMENT AGREEMENT

THIS Agreement to Terminate Development Agreement ("the Termination Agreement") is entered into by and between the City of Noblesville, Hamilton County, Indiana, acting on behalf of the Board of Public Works and Safety of the City of Noblesville ("the City") and NEXXT Spine, LLC ("the Company") on the dates set out herein.

WITNESS THAT:

WHEREAS, the City and the Company entered into a Development Agreement approved by the Board of Public Works and Safety on the 12th day of March, 2013, ("the Development Agreement"); and,

WHEREAS, the Development Agreement had certain terms, conditions, and definitions defining part of the incentive package approved by the City for the Company to locate its manufacturing, engineering, and other facilities at 14425 Bergen Boulevard, Noblesville, Indiana; and,

WHEREAS, the Development Agreement provided terms and conditions, under which the City would loan up to Three Hundred Twenty Thousand Dollars (\$320,000), to the Company, as reimbursement of the cost of new manufacturing equipment made by the Company through December 31, 2017; and,

WHEREAS, the Development Agreement provided that the loan to the Company would be an interest free loan; and all or part of the loan would be forgiven at the end of 2017, depending on various factors, including but not limited to:

- a. The hiring and retention of a certain number of employees in years 2013 through 2017.
- b. The wages paid to the employees of the Company from 2013 to 2017; and,

WHEREAS, the parties agree that up to and including the date of this Termination Agreement, the City has loaned the Company One Hundred Eighty-three Thousand Eight Hundred Thirty-one Dollars and Thirty-three Cents (\$183,831.33) for the cost of acquisition of new manufacturing equipment and further agree that there is due to the Company an additional One Hundred Thirty-four Thousand Five Hundred Thirty-one Dollars and Ninety-three Cents (\$134,531.93), which would result in a total interest free loan of Three Hundred Eighteen Thousand Three Hundred Sixty-three Dollars and Twenty-six Cents (\$318,363.26) to the Company; and,

WHEREAS, the parties further agree that based upon the adjustments detailed in the Development Agreement, the amount of the interest free loan to be forgiven by the City is Two Hundred Twenty-six Thousand Six Hundred Seventy-four Dollars and Sixty-four Cents (\$226,674.64); and,

WHEREAS, the Development Agreement further provided that in the event the amount of the loan to be forgiven is less than the amount loaned to the Company, the Company shall reimburse the City the amount of the loan which was not forgiven prior to June 1, 2018; and,

WHEREAS, the parties are desirous of entering into an Agreement to terminate the Development Agreement under the terms and conditions set out herein.

IT IS THEREBY AGREED by and between the Parties as follows:

1. The parties agree the total amount of the interest free loan due to the Company from the City during the term of the Development Agreement is Three Hundred Eighteen Thousand Three Hundred Sixty-three Dollars and Twenty-six Cents (\$318,363.26) and the amount of the loan which shall be forgiven is Two Hundred Twenty-six Thousand Six Hundred Seventy-four Dollars and Sixty-four Cents (\$226,674.64), resulting an amount payable to the City of June 1st of

Ninety-one Thousand Six Hundred Eighty-eight Dollars and Sixty-two Cents (\$91,688.62),
calculated as follows:

Total loan amount of interest free loan to The Company (including pending claim)	\$318,363.26
Amount of loan to be forgiven under the Development Agreement	<u>\$226,674.64</u>
Amount to be reimbursed to the City by June 1, 2018 (including pending claim)	\$ 91,688.62

2. The parties agree to reduce the amount of the pending claim due to the Company from the City by the amount of Ninety-one Thousand Six Hundred Eighty-eight Dollars and Sixty-two Cents (\$91,688.62), resulting in a final payment from the City to the Company of Forty-two Thousand Eight Hundred Forty-three Dollars and Thirty-one Cents (\$42,843.31), computed as follows:

Balance of interest free loan due to the Company	\$134,531.93
LESS reduction the loan payable to the City on July 1, 2018	<u>\$ 91,688.62</u>
Net additional loan due to the Company	\$ 42,843.31

3. The parties agree that upon the payment of Forty-two Thousand Eight Hundred Forty-three Dollars and Thirty-one Cents (\$42,843.31) from the City to the Company, that all mutual obligations under the Development Agreement, including the amount of the interest free loan from the City to the Company, the amount of the loan forgiven by the City, and the reduction of the loan amount described in the Development Agreement are fully resolved; that the terms of the Development Agreement are terminated; and each party fully releases the party from all future liability to the other party arising out of the Development Agreement.

ALL OF WHICH IS AGREED by the Board of Public Works and Safety of the City of
Noblesville this ____ day of March, 2018.

**BOARD OF PUBLIC WORKS AND
SAFETY**

John Ditslear, Member

Lawrence Stork, Member

Jack Martin, Member

ATTEST:

Evelyn Lees, Clerk

ALL OF WHICH IS AGREED by NEXXT Spine, LLC, this this 19 day of March,

2018.



NEXXT SPINE, LLC

Andrew Elsbury
ANDREW ELSBURY, PRESIDENT

ATTEST:

STATE OF INDIANA)
COUNTY OF Hamilton)SS:

Subscribed and sworn to before me, a Notary Public this 19 day of March, 2018,
personally appeared the within named ANDREW ELSBURY, as
PRESIDENT, and MEMBER, as _____,
of Nexxt Spine, LLC, and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal.

Megan Savage
Notary Public,
Residing in Madison County, IN

My Commission Expires:

MARCH 10, 2024