

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 17-4810, FOR THE PURPOSE OF AMENDING THE DEVELOPMENT AND FINANCE AGREEMENT FOR THE CONVENTION CENTER HOTEL PROJECT

Date: June 29, 2017

Prepared by: Scott Cruickshank

BACKGROUND

Purpose of action

The purpose of this resolution is to approve general terms of an amendment to the 2014 Development and Finance Agreement (the “DFA”) with Mortenson Development, Inc. (“Developer”) related to the Oregon Convention Center hotel and authorizes the Metro Chief Operating Officer to execute the final terms.

Proposed Seventh Amendment to the DFA

The DFA was initially approved and signed in Spring of 2014, and has been amended multiple times over the last three years. The parties now desire to revise the DFA for a variety of reasons, including most notably to reflect, (1) that the Developer has now secured a Lender to provide the majority of the project financing; (2) that significant time has elapsed and the project has evolved such that some terms have been changed and or satisfied/waived, many to the mutual benefit of both parties; and (3) the structure and detailed events of “closing”.

Overview of Amendment Terms:

1. Adapting agreements to the satisfaction of Developer’s lender.
 - a. Updates the Project Funding Agreement, identifying the Lender (Fortress Credit Co LLC) and the Disbursing Agent
2. Salient conditions revised, satisfied, and/or waived.
 - a. Inclusion of Direct Access Agreement, whereunder Developer and the Design-Builder grant certain rights to Metro under the Design-Build Agreement (a contract to which Metro is not a party);
 - b. Inclusion of a Prevailing Wage Compliance Agreement, where under Developer recognizes the Hotel project as a “public works” and is obligated to comply with Oregon prevailing wage law;
 - c. Removal of Payment and Performance Bond, acknowledging that pursuant to the Hyatt Purchase Agreement terms (between Mortenson and Hyatt), design and development has advanced significantly further than the original project development plan; the Lender and Hyatt have also not required a payment and performance bond;
 - d. Inclusion of a \$300,000 Developer contribution towards an Apprenticeship Development program; The program is currently being created by Metro and is intended to create and support apprenticeship opportunities for women and people of color;
 - e. Acknowledgment of Metro’s receipt and satisfaction of certain closing conditions, including (for example) 30% construction drawings and a Property appraisal.
3. Events of Closing.
 - a. Phase 1: All DFA Related Agreements (forms of which have been attached to the DFA’s approved by the Metro Council) are executed and placed into escrow, Developer/Lender Loan

Documents executed and placed into Escrow, Pricing of Bonds and Bond Purchase Agreement Executed with Metro's Underwriter (Piper Jaffray);

- b. Phase 2: Bond Closing & Loan Closing, Funding by all parties, and Property Acquired/Deed Restriction Recorded and Memorandum of Room Block Agreement recorded.

Resolution No. 17-4810 is before the Metro Council for consideration to provide authority to the COO to enter into the seventh amendment to the Hotel project.

Project status

Project is progressing toward financial close estimated to be mid-July, 2017. Construction would begin immediately thereafter, with completion estimated for December, 2019.

KNOWN OPPOSITION

NONE

RECOMMENDED ACTION

Staff recommends Metro Council's approval of Resolution 17-4810, providing authority for the COO to enter into the Seventh Amendment to the Development and Finance Agreement under the general terms outlined above, which will allow the project to proceed. The executed Seventh Amendment and all exhibits will be made available to the Council, and also to the public on the Metro website, as soon as they are finalized.