



Legislation Text

File #: 53933, **Version:** 1

Fiscal Note

No additional City appropriation required.

Title

Authorizing an Amendment to RES-17-00664, Authorizing the Execution of a Development Agreement with Garver Feed Mill, LLC, to modify the Closing Conditions for Lot 2 and amend the Environmental Responsibilities. (6th A.D.)

Body

WHEREAS, the Common Council adopted RES-17-00664, File #47354, authorizing the execution of a Development Agreement (“Development Agreement”) with Garver Feed Mill, LLC (“Developer”) for the redevelopment of the Garver site; and

WHEREAS, the Development Agreement called for two projects on the Garver site: rehabilitation of the Garver Building on Lot 1, and a microlodge component on Lot 2; and

WHEREAS, the City closed on the ground lease and financing for Lot 1 on December 6, 2017, which project is being developed; and

WHEREAS, the Development Agreement required that the Developer close on Lot 2 before June 30, 2018; and

WHEREAS, the Development Agreement placed certain requirements on the Developer prior to closing; and

WHEREAS, the Developer did not meet the closing requirements to the satisfaction of the City prior to the June 30, 2018 deadline; and

WHEREAS, on July 2, 2018 the City notified Developer that its rights to Lot 2 were terminated in accordance with the Development Agreement; and

WHEREAS, parties have continued to negotiate the environmental requirements and closing conditions for the Lot 2 microlodge project; and

WHEREAS, the parties seek to amend the Development Agreement in order to provide Developer new terms and conditions for the closing of Lot 2 and placing new requirements on the Lot 2 development to bring further clarification to the project construction, as well as amend the environmental provisions to simplify the working relationship between the City and Developer.

NOW THEREFORE BE IT RESOLVED, that the Mayor and City Clerk are hereby authorized to execute an amendment to the Development Agreement providing for new terms and conditions for Lot 2 closing and environmental requirements substantially on the following terms and conditions:

1. Section 1.2 (b), “Project Description” as it applies to the Lot 2 Component, is hereby deleted and amended as follows:

- (b) The Lot 2 Component will be comprised of at least thirty-five (35) microlodges (the “Microlodge Quantity”), subject to the provisions of Sections 3.4 and 5.2 below, functioning as a

hospitality operation for transient guests and lodging, and only as approved by the Zoning Text as described in Section 4.1 below.

2. Section 3.2, is hereby deleted and amended as follows:

Section 3.2, Closing. The closing of the financing and entitlement phases of the Lot 2 Component (the “Lot 2 Project Commencement Closing”) shall take place at a date, time and location mutually acceptable to the parties but not later than thirteen (13) months from the final approval date by the City of Madison Common Council (it being agreed that this Amendment shall be fully executed within thirty (30) days after such approval date) (the “Lot 2 Project Commencement Closing Deadline”), except as may otherwise be agreed to in writing by the parties.

3. Section 3.4, “Project Development”, paragraph (d), “Reversion” shall be amended to add the following paragraphs:

Following Lot 2 Project Commencement Closing, Developer shall construct not less than the Microlodge Quantity in accordance with Sections 1.2(b) and 5.2. In the event that Developer fails to complete the Microlodge Quantity by the third anniversary of the Lot 2 Project Commencement Closing Deadline, Lot 2 shall revert to the City (the “Lot 2 Reversion”). “Complete” in this paragraph, and in Section 3.4(e), means the issuance of a final Certificate of Occupancy for the Microlodge Quantity. The Lot 2 Reversion shall be suspended if delays in receiving the Certificate of Occupancy are due to: (i) the City’s failure to issue the Certificate of Occupancy despite timely submissions by Developer, unless the City can establish that a Certificate of Occupancy should not be issued based on objective criteria or (ii) force majeure.

Following the Lot 2 Project Commencement Closing, the Developer shall have ninety (90) days to commence construction (the “Construction Deadline”), as determined by the issuance of a building permit and earthwork associated with the site work or infrastructure necessary for the Lot 2 Project. Except as provided in the following sentence, in the event a building permit for the Lot 2 Project expires, the City shall have no obligation to extend, renew or issue a new permit. The Construction Deadline shall be suspended during the period between November 15th, and April 15th, and the Commencement Deadline shall continue after April 15th, with the ninety days minus any days used prior to November 15th. In the event that the terms of this paragraph are not met, the Lot 2 Ground Lease shall terminate and Lot 2 be returned to the City.

4. Section 3.4, “Project Development” shall be amended to add paragraph (e) as follows:

(e) Lot 2 Termination and Pod Phasing. In the event that, upon the Lot 2 Project Commencement Closing Deadline:

(i) Developer does not establish the capability to build the Microlodge Quantity, as described in Section 5.2, then the provisions of this Agreement applicable to Lot 2 shall terminate and Developer shall have no further rights to Lot 2 hereunder.

(ii) Developer establishes the capability to build the Microlodge Quantity, then the Developer shall lease Lot 2, but shall be required to phase installation of the microlodges as described here. Developer expressly agrees that it shall phase and install the microlodges in pods (labeled as Pods 1 through 5 on the attached Exhibit A) (each a “Pod”) containing a minimum of seven (7) microlodges per Pod (the “Pod Quantity”). Only upon completing the installation of the Pod Quantity in a Pod shall the

Developer move to a new Pod, with said new Pod being immediately adjacent to a Pod already developed. For clarity, and by way of example, if the Developer starts by installing the microlodges in Pod 1, upon completion of seven microlodges in Pod 1 the Developer can proceed to install microlodges in Pod 2 or Pod 3. Notwithstanding the foregoing, Developer is permitted to install water mains, sewer mains, and utility infrastructure needed to serve the entirety of Lot 2, but, unless Developer establishes the financial capacity to install two or more Pods with the Pod Quantity simultaneously, Developer shall not be permitted to install the lateral infrastructure needed to serve each individual Pod or the concrete pads upon which the microlodges will be installed until such time as a Pod (or if ready, a group of Pods) is being constructed per the requirements of Section 3.4.,.

5. Section 4.1, "Land Use Approvals" is hereby amended to add the following at the end of paragraph (c):

(c) City Cooperation. The City will, prior to Lot 2 Project Commencement Closing, seek approval from the Common Council and Landmarks Commission to approve and acknowledge the Lot 1 and Lot 2 legal descriptions set forth on CSM 14664 and, upon approval from said bodies, the City will cause the formal removal of the Landmark designation currently affecting Lot 2 (so that only Lot 1 shall remain subject to the Landmark designation.)

6. Section 5.2, "Conditions Precedent Lot 2" is hereby amended to delete paragraphs (a) - (e) and replaced them with the following:

- (a) Receipt of all Land Use Approvals necessary to construct the Lot 2 Component of the Project, as set forth in Sections 1.2 and 4.1.
- (b) Delivery of the fully-executed Lot 2 Ground Lease, to be recorded by the parties at the Lot 2 Project Commencement Closing, as set forth in Section 3.2.
- (c) The issuance of a leasehold title policy for Lot 2, for the benefit of the Developer and its lender, if necessary, subject only to the Permitted Exceptions and zoning.
- (d) Evidence of sufficient private debt and equity: (i) expended to date, and (ii) required on a going forward basis to finance the completion of the Microlodge Quantity and site work sufficient to support Microlodge Quantity (the "Minimum Closing Amounts"). Such "expended to date" evidence shall be established by submission of paid invoices or other documentation of prepaid project costs paid by Developer demonstrating the funding expended as of the Lot 2 Project Commencement Closing Deadline used towards the completion of the Minimum Closing Amounts. Such "going forward" funding evidence demonstrating the availability of funds to complete the Minimum Closing Amounts, all of which the City agrees to keep strictly confidential to the extent allowed by law, may include, but is not limited to bank commitment letters (it being agreed that such bank commitment letters shall not be contingent on any Developer specific item, but may contain usual and customary bank contingency language such as compliance with laws, insurance, title, and survey requirements), non-contingent investor commitment letters, and/or cash available in a separate bank account, to establish capacity of the Developer to finance the Minimum Closing Amounts. Developer has an affirmative obligation to meet the requirements of this paragraph and deliver such documentation to the City not less than sixty (60) days (the "City Review Period") prior to the Lot 2 Project Commencement Closing Deadline.
- (e) Developer shall phase the Lot 2 Component in accordance with Section 3.4(e)(ii)

7. Section 8.3 is hereby created as follows:

Section 8.3. Notwithstanding the foregoing, and as related to Lot 2, the parties agree that the City's responsibilities under this Section 8.3 shall be limited by the site work associated with the Lot 2 Development based on the number of microlodges Developer shows financial capacity to complete at the

time of Lot 2 Project Commencement Closing (and subsequent Lot 2 Remainder if timely exercised). If the Lot 2 Remainder is not acquired by Developer in accordance with the above, it shall remain the City's responsibility to cap in accordance with Section 8.2

The City and Developer shall share responsibilities as related to the soil excavation required for the microlodges based upon the following:

City responsibilities:

1. Payment for excavation oversight and selection of disposal sites for Contaminated Soil.
2. Payment for costs related to WDNR "case closure" as described in Section 8.2.
3. Payment of disposal fees for all Contaminated Soil.
4. Reimbursement for hauling off site of Contaminated Soil based on the Reimbursement Rate defined below.

Developer manages:

1. Logistics of hauling including, but not limited to, selection and hiring of trucking companies.
2. Payment for hauling and disposal of Clean Soil.
3. Payment for hauling of Contaminated Soil in any amount exceeding the Reimbursement Rate.

Reimbursement Rate. The City's reimbursement for hauling of Contaminated Soil shall be \$9.50 per ton for soils hauled to the Waste Management Madison Prairie Landfill (6002 Nelson Rd, Sun Prairie, WI) and \$17.50 per ton for soils hauled to Deer Track Park Landfill (N6756 Waldmann Ln, Watertown, WI). Site selection may be subject to the discretion of Waste Management. In the event Waste Management or the City chooses a site not listed here, the Reimbursement Rate will be commensurate with the distance of the site from the Property.

Furthermore, the City's responsibilities shall be limited to work completed within thirty-six (36) months of Lot 2 Project Commencement Closing. Any additional construction related remediation activities shall be at the sole cost of the Developer.

For the purposes of this Section 8.3, designation of "Clean Soil" shall be consistent with the Material Management Plan submitted by the City of Madison for this Property, and approved by the WDNR on May 23, 2018. All soil not meeting the "Clean Soil" definition shall be considered "Contaminated Soil".

8. Section 12.1, "Termination" is hereby amended to delete paragraph (d) and replace it with the following:

(d) In the event Closing on the Lot 2 Project Component does not occur on or before the Lot 2 Project Commencement Closing Deadline, then the provisions of this Agreement applicable to the entirety of Lot 2 shall terminate.

9. Sections 11.5, "Living Wage", and 11.6, "Equal Benefits", are hereby deleted as nonconforming to State of Wisconsin law.

BE IT FURTHER RESOLVED, that the Common Council has previously approved amending the Development Agreement in order to provide a new stormwater location in Legistar File #53362, and hereby authorizes the amendments to be combined in the discretion of the City Attorney.

BE IT FINALLY RESOLVED, that the Mayor and City Clerk are authorized to take any further action including executing and recording documents as required to carry out the terms of this resolution in a form to be approved by the City Attorney.