

**Formal Agenda
Missoula City Council Special Meeting**

October 16, 2019, 2:10 PM

City Council Chambers

140 W. Pine Street, Missoula , MT

If anyone attending this meeting needs special assistance, please provide 48 hours advance notice by contacting the City Clerk at 406-552-6079 or cityclerk@ci.missoula.mt.us.

Pages

1. CALL TO ORDER AND ROLL CALL

2. PUBLIC COMMENT

(Public comment from citizens on items that are not on the agenda)

3. NEW BUSINESS

3.1 Fox Hotel Amended Agreements

John Engen, Ellen
Buchanan

1

Recommended motion:

I move the City Council: Approve the resolution relating to the development of the Fox site; approving modifications to the project; authorizing changes to the collateral agreements and delegating authority to approve, execute and deliver amended collateral documents as recommended by the Missoula Redevelopment Agency Board of Commissioners.

4. ADJOURNMENT

**City of Missoula, Montana
New Business Item**

Item: **Fox Hotel Amended Agreements**

Council Meeting

Date: October 16, 2019

Sponsor(s): **John Engen; Ellen Buchanan**

Prepared by: Ellen Buchanan

Ward(s) Affected:

- | | |
|--|---------------------------------|
| <input checked="" type="checkbox"/> Ward 1 | <input type="checkbox"/> Ward 4 |
| <input type="checkbox"/> Ward 2 | <input type="checkbox"/> Ward 5 |
| <input type="checkbox"/> Ward 3 | <input type="checkbox"/> Ward 6 |
| | <input type="checkbox"/> N/A |

Action Required:

Approve a resolution approving modifications to the Hotel Fox project, authorizing changes to the collateral agreements and delegating authority to approve, execute and deliver amended collateral documents.

Recommended Motion(s):

I move the City Council:

I move the City Council: Approve the resolution relating to the development of the Fox site; approving modifications to the project; authorizing changes to the collateral agreements and delegating authority to approve, execute and deliver amended collateral documents as recommended by the Missoula Redevelopment Agency Board of Commissioners.

Background and Alternatives Explored:

Please refer to the memo from Chris Behan to the MRA Board dated October 10, 2019 and the Resolution relating to the development of the Fox Site.

Financial Implications:

There are no financial implications to the City as a result of this action.

Links to external websites:

Click or tap here to enter text.



MEMORANDUM

TO: Missoula Redevelopment Agency Board of Commissioners

FROM: Chris Behan, Assistant Director

DATE: October 10, 2019

SUBJECT: Amendments to Fox Site Collateral Agreements

Recent History:

After several years of negotiations, in February 2017 the City Council approved the “Fox Site Master Development Agreement”. That Agreement formalized the relationship between the City, MRA, and Hotel Fox Partners as selected developers of the Fox Site. The Master Development Agreement required several distinct actions to occur, each essential to completion of the project. It outlines the structure of six collateral agreements to address those actions.

In November 2017, upon recommendation of the MRA Board, the City Council adopted Resolution 8223 entitled “Resolution Relating to the Development of the Fox Site; Approving the Project and the Forms of Certain Collateral Agreements in Connection Therewith; and Authorizing the Execution and Delivery of the Collateral Agreements”. The Resolution approves four of the six collateral agreements that MRA had previously approved:

- Conference Center and Parking Facility Development Agreement
- Conference Center Lease/Management Agreement
- Land Disposition Agreement (Purchase Agreement)
- Parking Facility Lease Agreement

The Resolution also directed the Mayor and senior City staff to negotiate and complete the Condominium Documents (fifth collateral agreement) in two stages. The first stage was completed in December 2017, and the second to be finalized when the design of the structures is complete. The sixth collateral agreement, the “Land Use Agreement”, followed a different procedural path. It was negotiated through the Development Services and Parks and Recreation Departments and approved by the City Council prior to the remainder of the agreements in June 2017. In addition to zoning changes and conditions for vacating portions of West Front and Owen Streets, the Land Use Agreement provides minimum site and architectural design standards for the Hotel/Conference Center and the rest of the development in the Riverfront Triangle. These standards are augmented or superseded by the Design Excellence Standards. The Conference Center and Parking Facility Development Agreement was amended earlier this year to set deadlines for submission of evidence of “sufficient progress towards financing” (November 22, 2019), for submitting plans to the City for “architectural engineering or land use review and written approvals” (May 22, 2020), and application for building permits (November 22, 2020).

The Current Deal: The collateral agreements are complex and intricate legal documents due in large part to the interrelated public and private ownerships within the future structure as well as the community's high expectations for the highly visible riverfront location. Although complex in detail within the various agreements, the basic deal is straightforward and flexible enough to allow for innovative and creative ideas. The deal as structured is:

1. Hotel Fox Partners:

- Hotel Fox Partners purchase the Fox Site from the City and construct a multi-floor, up to a 200-room hotel with associated restaurants, bars, etc. Payment of the purchase price is financed over time by the City.
- Hotel Fox Partners construct a conference center attached to the hotel with approximately 60,000 - 75,000 square feet that includes a large hall able to be divided into smaller rooms and related "back of house" areas for storage, food preparation, etc. Hotel Fox Partners would construct and retain at least 10,000 square feet of breakout meeting rooms to be used in conjunction with the larger conference center.
- Under the hotel and conference center, Hotel Fox Partners construct a two-level, approximately 405-space parking facility that will include some privately owned spaces, spaces leased to the hotel, and general public spaces.
- On top of the hotel, up to three floors of residential condominiums may be constructed.

2. The City:

- Using Tax Increment Financing Revenue Bonds based on the new taxes created by the development, the City purchases the conference center (exclusive of the 10,000 square feet of meeting rooms which remain in hotel ownership).
- Using parking revenue bonds (perhaps augmented with Tax Increment Financing funds), the City purchases the public portions of the parking facility. 48 spaces will be retained by the developer to be used as parking for the residential condominiums.
- A credit toward the purchase price is allowed equivalent to the value of the land assigned to the City-owned conference center and public parking. Another credit may be extended for the value of land under a future parking structure nearby but not on the Fox Site.

3. The City (After Construction):

- The City leases the conference center to Hotel Fox or its assigned manager entity who will manage all facets of the conference center.
 - In addition to management, the lessee assumes all maintenance, repair and replacement responsibilities of conference center furniture, fixtures and equipment as well as the structural systems such as the roof, HVAC system, etc.
- The City enters into a parking management agreement with the Missoula Parking Commission or other third party operator who will be compensated through parking revenue for managing leased and general public parking spaces in the parking facility.

Amended Deal:

Because of the size, scope, and interdependence of the hotel and conference center, Hotel Fox Partners have always been looking for ways to increase use of the main large room of the conference center. That room's focus on meeting and dining space as well as its being dividable into separate functions limits its use for many events such as music and other performances, trade shows, etc. At the same time, Stonefly, LLC (Nick and Robin Checota), owner and operator of the Wilma Theater, Top Hat, and Kettlehouse Amphitheater music and event venues, has been searching for an urban location for an indoor venue to host larger events (but smaller than those that may be located at the Civic Stadium). Discussions between the two entities, MRA, and the Mayor's Office has resulted in an amended deal that seems to be much more financially feasible, viable in the long term, and likely has even more economic impact to downtown and the entire community.

The modification to the basic deal would be that the focus on large conferences would change to other events such as music, lectures, trade shows, other performing arts like traveling Broadway plays, ballet, etc. Changing the main hall to a 60,000 square foot facility (plus other ancillary uses) accommodating an audience of up to 6,000 on the main floor and balconies would be a significant expansion of the variety of possible events that would greatly improve the sustainability of both the center and hotel. Currently, during popular concerts held at the Wilma and the Amphitheater, most hotel rooms in downtown are full. Larger events will spread that success to other area hotels and services. The variety of events that the center will be designed to feature will include types which do not have an adequate venue in Missoula such as traveling Broadway shows and other performing arts which require a large, appropriately equipped stage. Art and trade shows would also be accommodated, filling part of a need identified and promoted by the Missoula Chamber of Commerce for years.

There are very few amendments in the documents necessary to complete the changes. The hotel is scheduled to be about the same number of rooms and include amenities like restaurants and outdoor seating. As in the previous scenario, there will be up to 48 condominium units on top of the structure and the total underground parking numbers are the same. The Lessee will continue to assume all repair and maintenance costs of the City-owned facility. Much of the break-out meeting capability is planned to be relocated and retained within the Hotel.

Summary of Requested Amendments to Existing Agreements:

- The rights under all agreements are assigned by Hotel Fox Partners to Clark Fork Riverfront Properties, LLC.
 - Like Hotel Fox Partners, Clark Fork Riverfront Properties is a sole-purpose ownership and development entity. Its sole member at this time is Stonefly, LLC who will be the manager entity similar to that described in the original deal above. Like the previous deal, this arrangement allows for Clark Fork Riverfront Properties to add development investors without changing the ownership of the event booking and center management entity (Stonefly).
- All references to a conference center are changed to event center.

- The term of the Center lease is extended from potentially 50 years in the initial agreement to a potential of 75 years (50 years plus two 12.5 years extensions). This facilitates financing and equity investment.
- Removes the City's obligation to help identify funding sources for marketing and booking the center.
- The submittal date for final construction documents is extended from May 22, 2020 to July 22, 2020.
- The method of financing the land costs over time with several potential credits will become more straightforward. Like in the previous purchase agreement, there will still be an adjustment, discount, or credit equivalent to the percentage of City ownership in structures (public parking and center). This is detailed in the existing purchase agreement but will be adjusted to fit the simplified payment process.

Through adoption of the Resolution entitled Resolution Relating to the Development of the Fox Site; Approving Modifications to the Project; Authorizing Changes to the Collateral Agreements and Delegating Authority to Approve, Execute and Deliver the Amended Documents (draft attached), the City Council would approve the assignment of the project from Hotel Fox Partners to Clark Fork Riverfront Properties, LLC and approves changes in the overall terms of all the collateral agreements described above and within the Resolution. Furthermore it authorizes the MRA Director, City Chief Administrative Officer, City Attorney, and other City staff to complete amendments to the Collateral Agreements that specifically enact the described terms, and authorizes the Mayor and other necessary City officers or staff to execute the agreements listed above as well as any other directly related documents, certificates, etc. that are required to implement the agreements.

Both MRA and City are signatories to the Conference Center and Parking Facility Development Agreement so MRA Board must approve the assignment of the project from Hotel Fox Partners to Clark Fork Riverfront Properties, LLC as well as the basic amendments described above.

Staff recommends the MRA Board:

- 1. Approve assignment of the Developer's rights and responsibilities within the Conference Center and Parking Facility Development Agreement from Hotel Fox Partners, LLC to Clark Fork Riverfront Properties, LLC and authorize the MRA Chair's to execute the amendment to that Agreement.**
- 2. Approve the related changes to the overall project related to MRA's role in the other Collateral Agreements conditional to the MRA Staff participating with the Mayor's Office and City Attorney in assuring all the Collateral Agreements reflect and enact those changes.**
- 3. Recommend the City Council adopt the Resolution entitled Resolution Relating to the Development of the Fox Site; Approving Modifications to the Project; Authorizing Changes to the Collateral Agreements and Delegating Authority to Approve, Execute and Deliver Amended Collateral Documents in essentially its current form.**

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Missoula, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. _____, entitled: **"Resolution Relating to the Development of the Fox Site; Approving Modifications to the Project; Authorizing Changes to the Collateral Agreements and Delegating Authority to Approve, Execute and Deliver Amended Collateral Documents"** (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a meeting on October 21, 2019, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____; voted against the same: _____; abstained from voting thereon: _____; or were absent: _____.

WITNESS my hand and seal officially this 21st day of October, 2019.

(SEAL)

City Clerk

RESOLUTION NO. _____

**Resolution Relating to the Development of the Fox Site;
Approving Modifications to the Project; Authorizing Changes
to the Collateral Agreements and Delegating Authority to
Approve, Execute and Deliver Amended Collateral Documents**

BE IT RESOLVED by the City Council (the “Council”) of the City of Missoula, Montana (the “City”), as follows:

Section 1. Prior Action; Proposed Modifications; Authorization.

Section 1.01 Prior City Acts. Pursuant to Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”) and Ordinance No. 3380 enacted by the City Council on July 21, 2008, the City created the Riverfront Triangle Urban Renewal District (the “District”) as an urban renewal district, directed the Missoula Redevelopment Agency (“MRA”) to exercise the City’s urban renewal powers under the Act, and approved the Riverfront Triangle Urban Renewal Plan (the “Plan”) as an urban renewal plan in accordance with the provisions of the Act, which Plan provides for the segregation and collection of tax increment revenues with respect to the District.

The City owns certain real property, commonly known as the Fox Site, located within the boundaries of the District. On November 13, 2017, the City Council approved Resolution No. 8223, pursuant to which it approved a large scale redevelopment project for the Fox Site and related public improvements, and approved the forms of certain collateral agreements documenting the transaction (as further described in Resolution No. 8223, the “Collateral Agreements”). Following such approval, and pursuant to delegation from the City Council in Resolution No. 8223, the City Attorney, Chief Administrative Officer, the Director and Assistant Director of the Missoula Redevelopment Agency (the “MRA”) and other officers of the City negotiated and finalized the Collateral Agreements. On November 22, 2017, the Collateral Agreements were executed and delivered by all parties thereto.

Section 1.02 The Project, the Public Improvements and the Proposed Modifications. As provided in the Collateral Agreements, the expectation was that Hotel Fox Partners, LLC (“HFP”) would undertake the construction and operation of a hotel with approximately 200 hotel rooms and approximately 48 residential condominium units (the “Hotel Fox Building”); a conference center capable of attracting regional conferences (the “Conference Center”); approximately 96 parking spaces for the use of the residential condominiums and any parking spaces acquired by HFP in connection with the Hotel Fox Building (the “Private Parking Spaces”); a public parking facility with approximately 309 spaces sufficient to accommodate parking needs of the hotel, conference center, and other public uses, of which HFP would lease approximately 200 parking spaces (the “Parking Facility” and, collectively with the Hotel Fox Building, the Conference Center and the Private Parking Spaces, the “Project”); and related public improvements and public infrastructure at and adjacent to the Fox Site (the “Public Improvements”).

HFP now desires to assign all of its right, title and interest in and to and all of its obligations under the Collateral Agreements to a new developer, Clark Fork Riverfront Project, LLC and/or Stonefly Capital, LLC (together with successors, assigns, and any parent or subordinate entities, “Clark Fork”).

In addition, Clark Fork proposes various modifications to the structure of the transaction, which include, but are not limited to, the following:

- Clark Fork proposes to modify the Project such that instead of constructing and operating the Conference Center, Clark Fork would construct and provide for the operation of a City-owned civic event center capable of serving multipurpose events and activities, including hosting musical, cultural and community events as well as conferences and banquets (the “Civic Event Center”).
- Clark Fork proposes reducing the number of Private Parking Spaces from 96 to 48, and increasing the size of the public Parking Facility from 309 spaces to 357 spaces.
- The Lease/Management Agreement providing for the lease and management of the Conference Center provides for a term of 25 years, with two renewal terms of 10 years each. Clark Fork proposes modifying the Lease/Management Agreement to provide for the lease and management of the Civic Event Center for an initial term of 50 years, with two renewal terms of 12.5 years each.
- The Land Disposition Agreement currently provides for payment of the purchase price for the Fox Site with a promissory note secured by a subordinate trust indenture. Clark Fork proposes paying the purchase price for the Fox Site in cash or immediately available funds, eliminating the need for a promissory note or trust indenture.
- The purchase price for each of the Civic Event Center and the Parking Facility will be negotiated and mutually agreed by the parties, provided that in no event would the purchase price of the Civic Event Center exceed the City’s bonding capacity based on projected tax increment revenues and that in no event would the purchase price of the Parking Facility exceed the City’s bonding capacity based on projected net parking revenues from the Parking Facility and, if necessary and available, tax increment revenues.

Based on the detailed and complex nature of the Collateral Agreements, replacing the Conference Center with the Civic Events Center would also require other amendments and modifications throughout the Collateral Agreements to harmonize and conform the Collateral Agreements to the proposals described above.

Section 1.03 Authorization. Under the provisions of Montana Code Annotated, Title 7, Chapter 14, Part 45, as amended, the City is authorized to construct and maintain on any land owned or leased by the City suitable parking facilities for the use of the public and for general

traffic control and to charge for the use of such facilities, and to issue bonds payable in whole or in part from parking revenues to pay the costs of parking facilities.

In addition, under the provisions of the Act, the City is authorized to create urban renewal areas, prepare and adopt an urban renewal plan therefor and amendments thereto, undertake urban renewal projects therein, provide for the segregation and collection of tax increment with respect to property taxes collected in such areas, issue its bonds to pay the costs of such projects and pledge to the repayment of the bonds all or a portion of the tax increment and other revenues derived from projects undertaken within the urban renewal area. Pursuant to Montana Code Annotated, Title 7, Chapter 16, Part 41, the City is authorized to procure, construct, establish, maintain, and operate various cultural, social and recreational facilities, including civic centers.

Section 2. Findings.

It is hereby found, determined and declared that the Project, modified as described in Section 1.02 hereof, will provide to the City the same substantial public benefits as the originally conceived Project, including but not limited to the removal of blight; significant economic benefit to the City and the public; the transformative and iconic effect of a large-scale redevelopment of the riverfront area; increased numbers of new visitors to the City; substantial job creation; spin-off development; increased possibilities for community marketing and intangible benefits such as improvements to quality of life in the City, improved community reputation and opportunities to experience or participate in cultural, social and recreational events.

Section 3. Approval of Modification to Project; Approval to Negotiate Assignment and Assumption of Collateral Agreements. The Project, modified as described in Section 1.02 hereof, is hereby approved.

The City Attorney, Chief Administrative Officer and Director and/or Assistant Director to the MRA are authorized and directed to negotiate and approve instruments effecting the assignment to and assumption by Clark Fork of HFP's rights and obligations, respectively, under the Collateral Agreements. Such instrument or instruments to be executed by the City are directed to be executed in the name and on behalf of the City by the Mayor and the City Clerk. In the absence or disability of the Mayor, any of the documents authorized by this resolution to be executed may be executed by the acting Mayor and in the absence or disability of the City Clerk, by the Deputy City Clerk.

Section 4. Changes to Collateral Agreements. The City Attorney, Chief Administrative Officer and Director and/or Assistant Director to the MRA are authorized and directed to negotiate and approve such changes and modifications to the Collateral Agreements as may be necessary to conform and harmonize the Collateral Agreements with the modifications to the Project approved herein. The Collateral Agreements to be executed by the City are directed to be executed in the name and on behalf of the City by the Mayor and the City Clerk. In the absence or disability of the Mayor, any of the documents authorized by this resolution to be executed may be executed by the acting Mayor and in the absence or disability of the City Clerk, by the Deputy City Clerk.

The Mayor, the City Clerk and, as appropriate, other officers of the City are also authorized and directed to execute and deliver such other instruments and miscellaneous transactional documents as may be required to give effect to the transactions contemplated in the Collateral Agreements and this resolution. Their signatures or his or her signature thereon will conclusively evidence approval thereof.

The approval hereby given to the various documents referred to above includes an approval of such modifications thereto, deletions therefrom and additions thereto as may be necessary and appropriate and approved by the Mayor or the Chief Administrative Officer and the City Attorney. The execution of any instrument, agreement, or document by the appropriate officer or officers of the City herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof and thereof.

In addition, the Chief Administrative Officer, the City Attorney, the Director and/or Assistant Director of the MRA and other appropriate officers of the City or MRA are hereby authorized and directed to negotiate and complete the various exhibits, schedules and addenda in the Collateral Agreements, at the time or times set forth in the applicable Collateral Agreement, and such completed exhibits, schedules, and addenda are authorized to be executed and delivered on behalf of the City by the Mayor, the City Clerk, or other appropriate officer of the City. The execution of any exhibit, schedule or addendum by the appropriate officer or officers of the City herein authorized shall be conclusive evidence of the approval of such exhibit, schedule or addendum in accordance with the terms hereof and thereof.

Section 5. Effective Date. This resolution shall become effective immediately upon its passage and approval.

PASSED AND APPROVED by the City Council of Missoula, Montana, this 21st day of October, 2019.

Mayor

Attest: _____
City Clerk

(SEAL)