


AGENDA INFORMATION SHEET

AGENDA DATE: November 19, 2013
DEPARTMENT: City Manager's Office
ACM: Jon Fortune 

SUBJECT

Receive a report, hold a discussion, and give staff direction regarding a proposed Hotel/Convention Center.

BACKGROUND

The City has considered many proposals to construct a convention center over the past few years pursuant to the long standing objective to provide adequate convention center facilities to meet community needs and to encourage and promote economic development through convention and tourism related activity. More recently, staff received a proposal from O'Reilly Hospitality Management (OHM) that we believe has all the necessary elements for a successful project. The major development concepts of the OHM proposal were originally identified in January 2012, in a non-binding Memorandum of Preliminary Agreement (MOPA) between the City, OHM and the University of North Texas (UNT). Since then, staff has been working from the MOPA to negotiate and draft a proposed Development Agreement to build a convention center and convention center hotel.

More recently on September 17, 2013 and October 1, 2013, staff provided the City Council an update on the project to discuss the current status, financial proforma and financing of the convention center. As negotiations of the Master Development Agreement are coming to a close, this agenda item was scheduled to provide the Council an overview of the Master Development Agreement, related leases, sublease, and professional service agreements. Due to the number of lengthy documents attached, staff has provided each Council member a binder with a printed version for your review and reference. Staff will provide the Council an overview of these documents and will highlight specific features and major elements of each during the Work Session discussion. Please note that these are preliminary drafts at this time, and while they are substantially complete, staff is still working to review them for constancy of references and finalizing minor terms with the parties. Prior to final review and consideration, additional modifications may be necessary. During the Work Session, as questions of a legal nature arise, a Closed Session has also been posted on the November 19th agenda should you have the need to seek advice from the City Attorney. Feedback from the Council will be appreciated as the documents are finalized and provided to you for your consideration in early December.

If approved, the convention center and convention center hotel will be built on UNT property which will be leased to the City to build and own the convention center, and to O'Reilly Hotel Partners Denton (OHPD) to build and own the Hotel. The proposal includes plans for the City to lease the convention center to OHPD which would be operated and managed by OHM (same operator as the hotel). It is important to note that the City would be funding the convention center only and not the hotel. The hotel is planned to be an Embassy Suites of approximately 318 rooms (twelve stories tall), but at a minimum will have 275 rooms (nine stories tall) and includes a Houlihan's restaurant. Both would be funded by OHPD and represent an approximate \$60 million investment.

The convention center is currently proposed to be an approximate 100,000 sq/ft facility and includes an approximate 30,000 sq/ft ballroom. It will be designed to handle very large events and be able to accommodate approximately 2,000 for banquet style seating. The City would fund and own the convention center which is estimated to cost \$25 million.

Financing of the convention center is anticipated through the issuance of Certificates of Obligation Bonds which would be self supported from project related revenue, and includes an annual rent from OHPD to the City necessary to satisfy the City's debt obligation. The project also anticipates the creation of a Tax Increment Investment Zone (TIRZ) to capture the growth in appraised value of the project. Both the County and DISD will be invited to participate, though there have been no formal commitments to do so.

The following is the anticipated schedule for final review and approval of the project.

- November 19 - City Council Work Session for discussion of Convention Center Agreements
- December 2 - Presentation to Joint City Council/DISD Trustees (informational only)
- December 3 - Presentation to Economic Development Partnership Board (informational only)
- December 3 - City Council Work Session for discussion of Convention Center Agreements
- December 5 - UNT Board of Regents Meeting for consideration and approval of Agreements
- December 10 - City Council Meeting for consideration and approval of Agreements

PRIOR ACTION/REVIEW

September 2011 – Received proposal from O'Reilly Hospitality Management (OHM)

January 2012 – City, OHM and UNT reach non-binding agreement on guiding principles to negotiate a development agreement (the Memorandum of Preliminary Agreement.)

March 2012 – City and OHM meet with local hotel operators at the Quarterly Convention and Visitor Bureau Hospitality Meeting to present the proposed project.

May 2012 – City Council Work Session to receive overview of proposed project and meet with the prospective developer, Tim O'Reilly.

December 2012 – City and OHM present proposed project to the DISD Trustees during a Trustee Meeting.

March 2013 – City Council Work Session discussion and update on proposed project.

September 2013 – City Council Work Session discussion and update on proposed project.

October 2013 - City Council Work Session discussion and update on proposed project.

FISCAL IMPACT

The proposed Hotel and Restaurant are estimated to cost \$60 Million and will be funded and owned by OHPD. The Convention Center, which will be owned by the City, is estimated to cost \$25 Million and will be funded through the issuance of Certificates of Obligation Bonds. Project related revenue (Hotel Occupancy Taxes, TIRZ revenue and sales taxes) plus rent payments by OHPD will be dedicated to meet the required annual debt obligations to fund the Convention Center.

EXHIBITS

PowerPoint Presentation
Master Development Agreement
Preliminary Site Plan
City-UNT Land Lease
City-OHPD Sublease
OHPD-UNT Land Lease
Professional Services Agreement – Construction Manager Agent
Professional Services Agreement - Design

Respectfully Submitted:



Jon Fortune
Assistant City Manager

Proposed Hotel and Convention Center Document Review

City Council Meeting
November 19, 2013

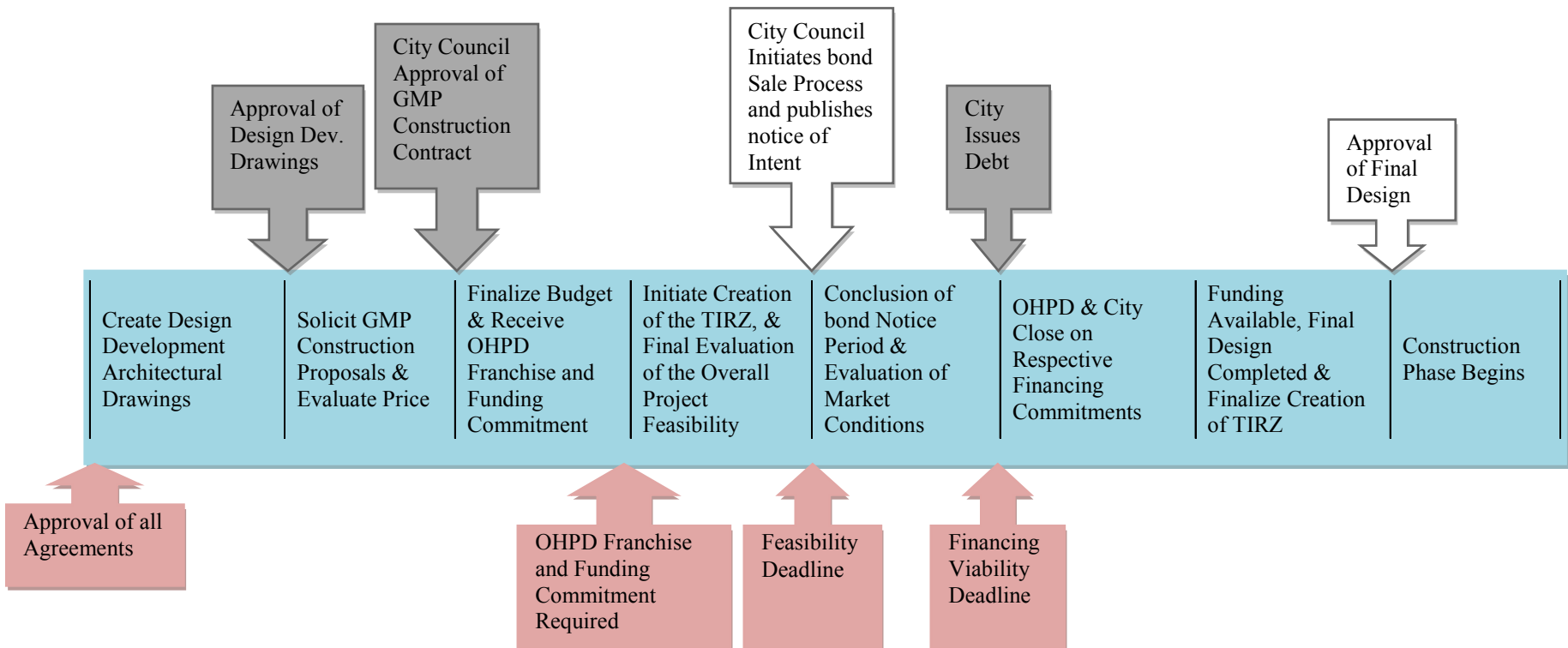
Agenda

- ▶ **Process Feasibility and Timeline**
- ▶ **Document Review**
 - ▶ Master Development Agreement
 - ▶ Preliminary Site Plan
 - ▶ City-UNT Land Lease
 - ▶ City-OHPD Convention Center Sublease
 - ▶ UNT-OHPD Land Lease
 - ▶ Professional Service Agreements
- ▶ **Pending Items**
- ▶ **Schedule for Consideration of Approval**

Convention Center Feasibility & Timeline

DESIGN DEVELOPMENT PHASE

CONSTRUCTION PHASE



Master Development Agreement

- ▶ **Definitions (Article I)**
 - ▶ Approved Franchise/Approved Franchisor
 - ▶ Comparable Convention Centers
 - ▶ Comparable Hotel Properties
 - ▶ Convention Center
 - ▶ Hotel
 - ▶ Upscale Condition
- ▶ **Project Overview (Article II)**
- ▶ **Design Development Activities (Article III)**
 - ▶ OHPD Service – Hotel (3.1)
 - ▶ OHM Services to the City (3.2 & 3.3)
 - ▶ Project Feasibility (3.3.2)
 - ▶ Financing Viability (3.3.3)
 - ▶ Hotel Franchise Agreement (3.6)
 - ▶ Tax Increment Reinvestment Zone (3.11)

Master Development Agreement (Continued)

- ▶ **Construction Activities** (Article IV)
 - ▶ Payment and Performance Bonds (4.3)
 - ▶ Construction Phase (4.5)
- ▶ **Financing of the Project** (Article V)
 - ▶ Private Financing Contribution (5.1.3)
 - ▶ Feasibility & Viability Deadlines (5.1.4 & 5.1.5)
 - ▶ City Financing Contribution (5.1.6)
 - ▶ City Financing Contribution Limitation (5.3)
- ▶ **Purchasing Services** (Article VI)
 - ▶ Purchasing Services (6.1)
 - ▶ Payment for FF&E (6.2)

Master Development Agreement (continued)

- ▶ **Additional Obligations of OHPD (Article VII)**
 - ▶ Assignment, Transfer Lease (7.1)
 - ▶ Conditions to Transfers (7.1.1)
- ▶ **Maintenance and Insurance (Article VIII)**
- ▶ **Conditions, Representations & Warranties (Articles IX & X)**
- ▶ **Termination Provisions (Article XI)**
- ▶ **Defaults and Remedies (Article XII)**
- ▶ **Cost Savings and Expense Requirements (Article XIII)**
 - ▶ Cost Savings (13.1)
 - ▶ Shared Costs and Expenses (13.2)
- ▶ **Miscellaneous (Article XIV)**
 - ▶ Naming Rights (14.1)
 - ▶ Signage on Hotel (14.2)
 - ▶ Coordination with UNT College of Merchandising, Hospitality and Tourism (14.3)

Preliminary Site Plan



City-UNT Land Lease

- ▶ **Definitions (Article I)**
- ▶ **Grant and Term of Lease (Article II)**
 - ▶ Term (2.2)
- ▶ **Lease Payment (Article III)**
 - ▶ City-UNT Base Rent (3.1)
- ▶ **Imposition and Utilities (Article IV)**
- ▶ **Improvements (Article V)**
 - ▶ Convention Center and Related Infrastructure (5.1)
- ▶ **Use of Premises (Article VI)**
 - ▶ Maintenance and Casualty (6.3.5)
 - ▶ Off-Site parking (6.6)
- ▶ **Insurance and Indemnity (Article VII)**
- ▶ **Assignment and Subletting (Article VIII)**
- ▶ **Defaults & Remedies (Article IX)**
 - ▶ Limitation of Remedies (9.3)
- ▶ **Miscellaneous (Articles X – XIII)**

City-OHPD Convention Center Sublease

- ▶ **Definitions (Article 1)**
 - ▶ Base Rent (f)
 - ▶ Capital Repair (h)
 - ▶ Maintenance (aa)
 - ▶ Term (1.4)
- ▶ **Sublease Payments (Article 2)**
 - ▶ Base Rent (2.1)
 - ▶ Security (2.7)
- ▶ **Impositions (Article 3)**
- ▶ **Use of Subleased Premises (Article 4)**
 - ▶ Reserved Naming Rights (4.6)
- ▶ **Operations, Management, and Maintenance (Article 5)**
 - ▶ Exclusive Rights and Obligations (5.1)
 - ▶ Repair and Maintenance Obligations (5.4)
 - ▶ Capital Repairs (5.5)
 - ▶ City Facilities FF&E (5.6)

City-OHPD Sublease (Continued)

- ▶ **Alterations (Article 6)**
- ▶ **Replacement Forecast and Asset Repair & Replacement Fund (Article 7)**
 - ▶ Capital Repair and City Facilities FF&E Forecast (7.1)
 - ▶ AR&R Fund (7.2)
- ▶ **Insurance & Environmental Provisions (Article 8)**
- ▶ **Casualty (Article 9)**
- ▶ **Assignment & Subletting (Article 10)**
 - ▶ Assignment and Subletting (10.1)
 - ▶ Permitted Assignments (10.2)
- ▶ **Surrender (Article 11)**
- ▶ **Defaults (Articles 12 & 13)**
- ▶ **Miscellaneous (Articles 14 - 17)**

UNT-OHPD Land Lease

- ▶ **Definitions** (Article I)
- ▶ **Grant and Term of Lease** (Article II)
- ▶ **Lease Payment** (Article III)
 - ▶ **Base Rent** (3.1)
- ▶ **Imposition and Utilities** (Article IV)
- ▶ **Improvements** (Article V)
- ▶ **Use of Premises** (Article VI)
- ▶ **Insurance & Indemnity** (Article VII)
- ▶ **Assignment & Subletting** (Article VIII)
- ▶ **Defaults & Remedies** (Articles IX & X)
- ▶ **Miscellaneous** (Articles XI – XIII)

Professional Service Agreements

- ▶ **Design Services**

- ▶ Phase I - Design Development Drawings Capped at \$200,000
- ▶ Phase II-IV – Final Design/Construction Documents
- ▶ Cost Determined Upon Election to Proceed

- ▶ **Construction Manager - Agent**

- ▶ 3% of Convention Center Construction Cost

Pending Items

- ▶ Need receipt of OHPD-OHM Convention Center Management Agreement
- ▶ Reviewing dates and time requirements for accuracy
- ▶ Reviewing references and definitions
- ▶ Review of insurance and default provisions for consistency
- ▶ Finalize minor elements based on continue discussions

Schedule for Consideration of Approval

- ▶ Nov 19 – City Council Review
- ▶ Nov 26 – UNT Regents Facility Committee Review
- ▶ Dec 2 – Joint Presentation to City Council/DISD Trustees
- ▶ Dec 3 – Presentation to EDBP (informational only)
- ▶ Dec 3 – City Council Review
- ▶ Dec 5 – UNT Regents Consider Approval
- ▶ Dec 10 – City Council Consider Approval

SECTION III
ADDITIONAL SERVICES

Additional services to be performed by the Design Professional, if authorized by the Owner, which are not included in the above-described Basic Services, are described as follows:

- A. During the course of the Project, as requested by Owner, the Design Professional will be available to accompany Owner's personnel when meeting with the Texas Commission on Environmental Quality, U.S. Environmental Protection Agency, or other regulatory agencies. The Design Professional will assist Owner's personnel on an as-needed basis in preparing compliance schedules, progress reports, and providing general technical support for the Owner's compliance efforts.
- B. Assisting Owner or contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by Design Professional on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- C. Sampling, testing, or analysis beyond that specifically included in Basic Services.
- D. Preparing copies of computer aided drafting (CAD) electronic data bases, drawings, or files for the OWNER's use in a future CAD system.
- E. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- F. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the Owner.
- G. Providing geotechnical investigations for the site, including soil borings, related analyses, and recommendations.
- H. The Design Professional shall assist the Owner in reviewing proposed construction changes to the original design, denying or approving of proposed changes, communicating with the Owner of such approvals or denials, and ensuring compliance with Attachment I to the Master Development Agreement # _____ (Payment Applications and Payments to Contractors).
- I. The Design Professional shall assist the Owner with the evaluation of the respondents (General Contractors) to the solicitation for the construction of the Convention Center, in an advisory capacity. The Owner shall procure the construction services of a general contractor or trade contractor in accordance with the provisions of Texas Government Code 2267.206.
- J. Other services within the scope of this project as requested by the Owner.