


REQUEST FOR CITY COUNCIL ACTION

TITLE: RESOLUTION NO. 23-2020 – A RESOLUTION APPROVING THE FIRST AMENDMENT TO A PUBLIC FINANCE AGREEMENT BY AND BETWEEN THE CITY OF WHEAT RIDGE, THE LONGS PEAK METROPOLITAN DISTRICT, AND EVERGREEN-CLEAR CREEK CROSSING, L.L.C.

- PUBLIC HEARING
 BIDS/MOTIONS
 RESOLUTIONS

- ORDINANCES FOR 1ST READING
 ORDINANCES FOR 2ND READING

QUASI-JUDICIAL: YES NO



City Attorney



City Manager

ISSUE:

The City of Wheat Ridge entered into a Public Finance Agreement (PFA) with Evergreen Development Company on July 9, 2018 to assist in the construction of public improvements for the Clear Creek Crossing mixed-use project. The PFA contemplates the City imposing a series of tax credits on sales tax, lodging tax and admissions tax sales. As this project has progressed and in light of the new economic challenges caused by the COVID-19 Pandemic, Evergreen is requesting an amendment to the PFA to allow for a 3.0% tax credit on service sales to capture this additional revenue source to help pay for the public infrastructure required for this project.

PRIOR ACTION:

City Council approved the original Public Finance Agreement on July 9, 2018.

FINANCIAL IMPACT:

- \$20 million in financing is required to fund the public-related infrastructure improvements
- The Longs Peak Metropolitan District will issue a bond in the amount of \$15 million to be serviced by the following public revenues sources totaling approximately \$32 million:

- 1.5% sales tax credit PIF (it is anticipated that after 2 years there will be sufficient excess revenue above debt service to allow the majority of sales tax credit PIF to be refunded to the City (City Surplus) and effectively decrease this credit PIF to around 0.4% for the remainder of the 30 year bond term)
- 5.0% lodgers' tax credit PIF
- 2.5% admissions tax credit PIF
- **3.0% services tax credit PIF (New)**
- 2% of the City's 3.5% use tax on initial vertical building construction (not including medical campus)

In addition, the following District revenue sources totaling approximately \$30 million:

- 35 property tax mill
 - 0.5% sales tax add-on PIF
 - 0.5% lodgers' tax add-on PIF
 - 0.5% admissions tax add-on PIF
- Renewal Wheat Ridge obtained a tax-exempt bank loan in the amount of \$5 million to be serviced by the following revenues sources:
 - 100% of property tax increment (10 year term) – there is a potential risk that the County Assessor will not calculate property tax increment correctly from this project; however, staff believes the risk of receiving less than 50% of the property tax increment is low therefore an adequate revenue source will be available to service a \$5 million bank loan
 - Renewal Wheat Ridge will retain the property tax increment for the remaining life of the TIF (approximately 10 years) once the bank loan is paid off

BACKGROUND:

The Clear Creek Crossing mixed use development will provide the City of Wheat Ridge with a destination development that provides a wide range of uses to help grow the city's commercial, residential and employment bases. Through the use of unifying design elements, including architectural style, landscape design and public spaces, this project is envisioned to be a unique and authentic asset to the community.

Clear Creek Crossing will focus on creating a strong sense of place that protects and projects the cultural heritage of Wheat Ridge using a modern agrarian design aesthetic that blends traditional agrarian forms and materials with modern archetypes and uses. This development will focus on creating physical and emotional connections to the surrounding neighborhoods through intentional branding, curating a dynamic tenant mix and providing integrated automotive, pedestrian and bicycle connectivity that allows neighbors numerous opportunities to shop, live, work and play.

The proposed project is anticipated to include approximately 300 apartment units, 200 hotel rooms and roughly 192,400 square feet of commercial space, which is currently anticipated to include a number of large format entertainment users. In addition, the project is proposed to include a 26.6-

acre SLC-Lutheran medical campus. The complete build-out of the project is estimated to include over \$490 million in private investment in the Wheat Ridge community.

A review and analysis of the developer’s pro forma by staff and the City’s consultant, Economic & Planning Systems, Inc., indicated the need for a \$20 million subsidy in order for the project to be financially feasible. The City is also providing \$10 million from 2E Bond funds to contribute towards the construction of the Interstate 70 on and off hook ramps.

Securing a public-private-partnership (“PPP”) with the City of Wheat Ridge and the City’s Urban Renewal Authority, Renewal Wheat Ridge, for the financing of Clear Creek Crossing’s necessary infrastructure is critical because the property lacks basic access and utility service and is challenged topographically. Without a PPP the project cannot move forward financially, despite strong tenant interest, because of these extraordinary costs. With a PPP commitment from City Council and Renewal Wheat Ridge, Evergreen can move forward and finalize deals with tenants, commence construction on the necessary infrastructure and deliver pad sites and buildings to end users.

RECOMMENDED MOTION:

“I move to approve Resolution No. 23-2020, a resolution approving the first amendment to a public finance agreement by and between the City of Wheat Ridge, the Longs Peak Metropolitan District, and Evergreen-Clear Creek Crossing, L.L.C.”

Or,

“I move to postpone indefinitely Resolution No. 23-2020, a resolution approving the first amendment to a public finance agreement by and between the City of Wheat Ridge, the Longs Peak Metropolitan District, and Evergreen-Clear Creek Crossing, L.L.C, for the following reasons_____.”

REPORT PREPARED/REVIEWED BY:

Gerald Dahl, City Attorney

Patrick Goff, City Manager

ATTACHMENTS:

1. Resolution No. 23-2020
2. First Amendment to PAF

**CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 23
Series of 2020**

TITLE: A RESOLUTION APPROVING THE FIRST AMENDMENT TO THE PUBLIC FINANCE AGREEMENT BETWEEN THE CITY OF WHEAT RIDGE, THE LONGS PEAK METROPOLITAN DISTRICT AND EVERGREEN-CLEAR CREEK CROSSING, L.L.C.

WHEREAS, pursuant to Charter Section 14.2 and C.R.S. § 29-1-203, the City of Wheat Ridge is authorized to enter into cooperative agreements with other governmental entities; and

WHEREAS, pursuant to C.R.S. § 31-15-101(1)(c), the City may enter into contracts with any person; and

WHEREAS, the City, the Longs Peak Metropolitan District (“District”), and Evergreen-Clear Creek Crossing, L.L.C. (“Evergreen”) have entered into a Public Finance Agreement (the “Agreement”), to finance the construction of public improvements to serve a mixed-use development known as Clear Creek Crossing (the “Project”);

WHEREAS, the Public Finance Agreement was approved by Resolution of the City Council of the City dated July 9, 2018; and

WHEREAS, the City, District, and Evergreen have negotiated an agreement to the Agreement to add certain definitions and adjust certain general provisions; and

WHEREAS, the City, the District and Evergreen desire to amend the Agreement on the terms and conditions set forth on the attached **Exhibit A**; and

WHEREAS, the City Council wishes to approve the Amendment.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado:

Section 1: Amendment Approved

The First Amendment to the Public Finance Agreement by and among the City, the Longs Peak Metropolitan District and Evergreen-Clear Creek Crossing, L.L.C., as set forth on the attached **Exhibit A**, is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

Section 2: Effective Date

This Resolution shall be effective upon adoption.

DONE AND RESOLVED this 27th day of April 2020, at Wheat Ridge, Colorado.

Bud Starker, Mayor

ATTEST:

Steve Kirkpatrick, City Clerk

Exhibit A
Amendment to Public Finance Agreement
[attached]

FIRST AMENDMENT TO PUBLIC FINANCE AGREEMENT

THIS FIRST AMENDMENT TO PUBLIC FINANCE AGREEMENT (this “Amendment”) dated as of the ___ of _____, 2020 (“Amendment Date”), is made by and among the CITY OF WHEAT RIDGE, a home rule city of the State of Colorado (“City”), LONGS PEAK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”), and EVERGREEN-CLEAR CREEK CROSSING, L.L.C., an Arizona limited liability company (“Developer”). The City, the District, and the Developer are collectively referred to as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, the City, the District, and Developer entered into that certain Public Finance Agreement, as approved by Resolution of the City Council of the City dated July 9, 2018 (the “Agreement”), with respect to the Property and the Project more specifically described in the Agreement; and

WHEREAS, the Parties desire to amend the Agreement on the terms and conditions set forth below. Initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the Parties contained in this Agreement, and other valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the terms and conditions of this Amendment.

AGREEMENT

1. Commencement of Public Improvements. The Parties acknowledge the commencement of the construction of the Public Improvements.

2. Definition of PIFs. The definition for “PIFs” in Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

“PIFs” means the Admissions Add-On PIF, Admissions Credit PIF, Lodging Add-On PIF, Lodging Credit PIF, Retail Add-On PIF, Retail Credit PIF, and Services PIF.

3. Definition of PIF Covenants.

“PIF Covenants” means the Admissions Add-On PIF Covenant, Admissions Credit PIF Covenant, Lodging Add-On PIF Covenant, Lodging Credit PIF Covenant, Retail Add-On PIF Covenant, Retail Credit PIF Covenant, and Services PIF Covenant

4. Definition of Credit PIF Bond Cap. The definition for “Credit PIF Bond Cap” in Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

“Credit PIF Bond Cap” means \$20,000,000 plus any additional amount necessary to pay the Hook Ramp Reimbursement and complete work pursuant to the Hook Ramp IGA.

5. Additional Definitions. The following definitions are hereby added to Section 2 of the Agreement:

“Financial Services” means professional services provided by banks, thrifts, credit unions, savings institutions, and lending institutions.

“Medical Services” means medical and health care services provided to a Person by a licensed medical provider for a valid and proper medical or health purpose.

“Occupancy Agreement” means any deed, lease, sublease, license, concession or other occupancy agreement between an Owner or an Occupant and a Service Provider under which the Service Provider is given the right to possess or occupy any portion of the Owned/Leased Property owned or occupied by the Owner or the Occupant.

“Occupant” means any Owner or other Person who has the legal right, pursuant to any agreement of any type or nature, to possess or occupy any portion of the Property, including, without limitation, any space within or without any building constructed on any Property; provided, however, that a mortgagee, a trustee or a beneficiary of a deed of trust, or any other Person who has such a right of possession primarily for the purpose of securing a debt or other obligation owed to such Person will not constitute an “Occupant,” unless and until such Person becomes a mortgagee in possession or otherwise possesses or occupies a portion of the Property pursuant to such right by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary, or other Person will be an “Occupant” hereunder.

“Owned/Leased Property” means with respect to any Owner, the portion of the Property to which such Owner owns fee title and with respect to any Occupant, the portion of the Property which such Occupant has the right to possess or occupy pursuant to an Occupancy Agreement.

“Owner(s)” means an individual or entity that owns a fee interest in any portion of the Property, during the period of such ownership.

“PIF Service Sales” means any exchange of labor or services by a Service Provider for money or other media of exchange initiated, consummated, conducted, transacted or otherwise occurring from or within the Property, which is not otherwise subject to Sales Tax pursuant to Chapter 22, Article 1 of the Wheat Ridge Code of Laws or any amendment thereto or replacement thereof, but in no event to include Medical Services or Financial Services. PIF Service Sales explicitly include any transaction resulting in payment of dues or fees for membership in or the privilege of having access to or the use of fitness facilities whether on a regular basis or for individual classes. The sale by a Service Provider of labor or services initiated, consummated, conducted, transacted or otherwise occurring from or within the Property will constitute a PIF Service Sale

notwithstanding the fact that the subject labor or services may be delivered to the Purchaser outside the Property.

“Purchaser” or “Purchasers” means the purchaser or recipient of membership in or the privilege of having access to or the use of Service Providers in a PIF Services Sale.

“Services PIF” means the public improvement fee imposed on the Property in the amount of 3.0% on PIF Service Sales within the Property (including without limitation all PIF Service Sales made online, by email, or by phone, or otherwise initiated, consummated, conducted, or transacted outside of the Property), which will be collected in accordance with the terms of the Services PIF Covenant and the PIF Collection Agreement, and will be accounted for and spent in accordance with the terms of this Agreement and the District Bond Documents.

“Services PIF Covenant” means a declaration of covenants by Developer imposing and implementing the Services PIF within the Property.

“Services PIF Revenue” means all revenue collected by the PIF Collection Agent pursuant to the Services PIF Covenant.

“Service Provider” means any Person who:

(i) has the legal right, pursuant to a deed, lease, sublease, license, concession, easement or other Occupancy Agreement of any type or nature, to possess or occupy all or any portion of the Property, including, without limitation, any space within any building constructed on all or any portion of the Property; provided that a mortgagee, a trustee under or beneficiary of a deed of trust, or any other Person who has such right of possession primarily for the purpose of securing a debt or other obligation owed to such Person, will not constitute a “Service Provider” unless and until such Person becomes an Owner or a mortgagee in possession or otherwise possesses or occupies all or any portion of the Property pursuant to such right by an intentional or voluntary act of its own, whereupon the subject mortgagee, trustee, beneficiary or other Person will be a “Service Provider” hereunder; and

(ii) engages in any PIF Service Sales initiated, consummated, conducted, transacted or otherwise occurring from or within the Property.

6. Definition of Approval Delays. The definition for “Approval Delays” in Section 2 of the Agreement is hereby deleted in its entirety.

7. Subsection 5.6. Subsection 5.6 of the Agreement is hereby deleted in its entirety and replaced with the following:

5.6 Developer shall have the right, in its sole discretion, to increase the Admissions Add-On PIF, Lodging Add-On PIF, Retail Add-On PIF, Services PIF or a combination of the foregoing, after written notice to the City. After the Bonds have been paid in full or

deceased, the Developer shall have the additional right, in its sole discretion, to continue, discontinue, increase, decrease, or otherwise modify the Admissions Add-On PIF, Lodging Add-On PIF, Retail Add-On PIF, and Services PIF.

8. General Provisions. The following provisions shall apply with respect to this Amendment:

(a) Agreement in Full Force and Effect. Except as modified herein, the Agreement is in full force and effect and is hereby ratified by the Parties. In the event of any conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall control.

(b) Counterparts. This Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. This Amendment may be executed by .pdf signatures which shall be binding on the Parties, with original signatures to be delivered as soon as reasonably practical thereafter.

(c) Successors and Assigns. This Amendment will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this subparagraph permits the assignment of this Amendment except as set forth in Section 23 of the Agreement.

(d) Applicable Law and Venue. Exclusive venue for the trial of any action arising out of any dispute arising out of or related to this Agreement shall be in the district court in the State of Colorado serving Jefferson County. The laws of the State of Colorado govern this Amendment and the relationship of the Parties hereunder without regard to principles of conflicts of laws.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Amendment is executed by the Parties as of the Amendment Date.

CITY OF WHEAT RIDGE

By: _____
Bud Starker, Mayor

ATTEST:

Office of City Clerk

APPROVED AS TO FORM:

Gerald E. Dahl, City Attorney

**LONGS PEAK METROPOLITAN
DISTRICT**

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
Name: _____
Title: _____

EVERGREEN-CLEAR CREEK CROSSING, L.L.C.,
an Arizona limited liability company

By: Evergreen Development Company-2016, L.L.C.,
an Arizona limited liability company,
Its Manager

By: Evergreen Devco, Inc.,
a California corporation,
Its Manager

By: _____
Name: _____
Title: _____