



CITY OF CONCORD

REPORT TO MAYOR AND CITY COUNCIL

FROM: Matthew R. Walsh, Director of Redevelopment, Downtown Services
& Special Projects

DATE: August 12, 2019

SUBJECT: Former New Hampshire Employment Security Redevelopment Project
Supplemental Revisions to Proposed Purchase and Sales Agreement Amendment
#8

Recommendation:

- Accept this report.
- Substitute the attached amended and restated Purchase and Sales Agreement Amendment #8 for final approval on August 12, 2019.

Background:

The purpose of this report is to present proposed revisions to the supplemental Seller incentives and associated clawback provision, as set forth in Purchase and Sales Amendment #8 between the City and Dol-Soul Properties L.L.C., concerning redevelopment of the former NH Employment Security site.

Discussion:

As outlined in a previous staff report, dated June 10, 2019, concerning redevelopment of the former NH Employment Security site, the Developer's Project has a \$7 million gap between estimated total project costs (\$30.4M) and supportable project costs (\$23.4M). In accordance with proposed Purchase and Sales Agreement Amendment #8, the parties will each provide \$3.5 million to resolve the gap, thus allowing the project to move forward.

To protect the City's financial interests, the Parties negotiated a clawback provision regarding the City's \$3.5 million in supplemental City support.

During public testimony on July 8th, and subsequent public input received thereafter, members of the community expressed support for the clawback concept, but expressed concerns about how the provision was drafted.

Upon review, City Administration and the Developer concurred that P&S Amendment #8, as originally drafted, did not adequately articulate the Parties' intentions regarding resolution of the project gap or related clawback provision.

Therefore, City Administration and the Developer felt it was prudent to revisit these provisions in order to bring the document in line with the Parties' intentions.

As such, Section 3 of Amendment #8 has been revised. The attached revised document is an improvement as it:

- 1) Clarifies that the City and Developer will each provide \$3.5 million to bridge the \$7 million gap on an equal, 50% contribution basis.
- 2) Stipulates how the Developer intends to provide its \$3.5 million share of the gap.
- 3) Includes a revised clawback provision. Specifically, in accordance with the proposed revisions, in the event the final total project cost for the Developer's project is less than \$30.4 million (rather than \$23.4 million), the City shall receive reimbursement in the amount of 50% of the difference between \$30.4 million and the actual total project cost.

This revision to the clawback provision is appropriate for many reasons:

- a. It accurately articulates the intentions of the parties regarding resolution of the \$7 million gap.
- b. It is easier to interpret and enforce, as it now defines how "total actual final actual cost" of the Developer's project is calculated, and what is included in said costs.
- c. The revised clawback provision better protects the City's financial interests given it is significantly more likely that the project will be completed at a final actual total cost closer to \$30 million rather than \$23.4 million, thus improving the taxpayers' chances of potentially receiving a partial reimbursement of its \$3.5 million in supplemental Seller incentives provided for the project.
- d. Lastly, in the event the Developer's Project is completed at a cost of \$23.4M or less, the revised clawback provision ensures that the City would receive a full refund of its \$3.5 million of supplemental financial support.