



Council Memorandum

REPORT TO: Honorable Mayor and City Council

FROM: Chris Kukulski, City Administrator

SUBJECT: Amendment NO. 1 to the Development Plan Agreement between Big Sky Economic Development (BSED) and Landmark Development Services Company, LLC (Landmark)

MEETING DATE: February 25, 2019

AGENDA ITEM TYPE: Action Item

RECOMMENDATION: The City Council pass a motion authorizing BSED Corporation and the City of Billings to sign the attached Amendment to the Development Plan Agreement with Landmark Development Services Company, LLC.

BACKGROUND: June 11, 2018 the City Council authorized BSED to sign a Development Plan Agreement with Landmark. (attached) January 25, 2019 Landmark delivered the completed One Big Sky Plan (Plan) consistent with the requirements of the Agreement. Each of our Strategy Partners (BSED, Billings Chamber of Commerce, Billings Downtown Partnership and City of Billings) approved the original Agreement. Therefore, BSED is asking each strategy partner to consider the enclosed Amendment to the original agreement.

The proposed Amendment increases the potential reimbursement to Landmark from \$1,340,000 to \$2,578,000. This is consistent with one of the key “intents” of the original agreement, which is to “fairly” reimburse Landmark IF Billings develops each of the catalyst projects without a partnership with Landmark.

Our Strategy Partners have raised ~\$400,000 in additional dollars to pay the out of pocket cost for our local share through April 30, 2019. The city did not contribute additional cash towards this additional phase, however we continue providing substantial staff time to the project along with our strategy partners. The Amendment describes work being completed from the delivery date of the Plan through April 30, 2019 increasing the potential reimbursement to Landmark as described above. The reimbursement provision eligibility remains unchanged from the original agreement and states:

The Developer’s Capital Costs are not payable: (1) if one or more Catalyst Projects does not move forward consistent with the Development Plan within five (5) years of the end of the term of this contract; or (2) if the developer is contracted to Develop a Catalyst Project (where “Develop” means to undertake a substantial, material, and significant portion of the additional services necessary to create the definitive building program, determine the design, assemble land, secure approvals, and finance such Catalyst Project

and cause it to be constructed and to manage or transfer such project). The Developer's Capital Costs will be payable to the Developer if one or more Catalyst Projects moves forward and the Developer is not contracted to Develop one or more of them;...

“The end of the term of this contract” referenced in the above quote is January 25, 2019 as determined by the Agreement, therefore the 5 year expiration for eligible reimbursement if NO catalyst is built before January 25, 2024.

If we are successful at attaining legislation for our proposed “value Capture” tool, we do not anticipate any further adjustments to the proposed reimbursement amount. If the State does not approve legislation, the Strategy Partners will need to decide how we implement the Plan and what roll Landmark will play in its implementation. No further costs will be incurred with potential reimbursement, without the City Council and Strategy Partners approval. We would need to agree on how to move forward and with specifically what costs.

UNRESOLVED ISSUES: There are no unresolved issues related to the Contract Revision.

FISCAL EFFECTS: The Contract Revision does not require additional cash from the city. We will continue to provide substantial resources through our staff time on this critical project. I anticipate this phase will primarily affect, Kevin Iffland, Andy Zoeller, the Mayor and I. IF Landmark is not selected to develop at least one of the Catalyst Projects. The Strategy Partners will be responsible for reimbursing Landmark up to \$2,578,000. If this provision were triggered, I would tie this reimbursement to the development agreements the city signs with the different developers.

Attachments: Amendment NO. 1 To Development Plan Agreement; and Development Plan Agreement

Report compiled on: February 22, 2019