
AGENDA REPORT

Meeting Date: January 15, 2025

Item Number: 1

Prepared By: Jason Greiner

Subject

Consider and act upon issues surrounding the Performance Agreement between the WEDC and Phoenix Ascending Investments, LLC.

Recommendation

Motion to approve a First Amendment to the Performance Agreement between the WEDC and Phoenix Ascending Investments, LLC.

Discussion

As the Board will recall, the WEDC approved a Performance Agreement with Phoenix Ascending Investments, LLC on June 21, 2023. The Performance Agreement became effective on November 2, 2023.

This item is being brought back to the Board for consideration due to the delays in the construction timeline.

According to Section 2. (a) of the Performance Agreement, the CO deadline for this project is 15 months after the effective date of November 2, 2023, which would be February 2, 2025.

The proposed First Amendment modifies Section 2. (a) of the Performance Agreement to delete the reference to “15 months” and replace it with “18 months”.

2. Performance Obligations. The WEDC’s obligation to provide Company with the Economic Assistance stipulated above is expressly contingent upon Company completing the following items (the “Performance Obligations”) by the due dates set forth below:

(a) Year One. Economic Assistance will be provided to the Company in the form of forgiveness of a portion of the Seller Note in an amount not to exceed One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00), plus any accrued interest, upon completion of the following Performance Obligations for Year One;

i. Company shall supply documentation to the WEDC proving completion of the Facility, as evidenced by a Certificate of Occupancy or letter from the City's Chief Building Official (a "Certificate of Occupancy") for the Facility, no later than 15 months after the Effective Date of this Agreement (a "CO Deadline"); The issuance date of the Certificate of Occupancy for the Facility will become the "Facility Completion Date";

ii. Company shall supply documentation to the WEDC supporting a minimum Project Cost of Six Hundred Fifty Thousand Dollars (\$650,000.00) as evidenced by paid invoices, no later than the CO Deadline; and

iii. Company shall supply documentation to the WEDC that the Qualified Infrastructure for the Facility has been completed and that the total cost of constructing the Qualified Infrastructure for the Facility was at least Four Hundred Fifty Thousand Dollars (\$450,000.00) no later than the CO Deadline; and

iv. Company shall be current on all ad valorem taxes and other property taxes due on the Property through the CO Deadline and provide written notice and evidence of such payment to WEDC in a form satisfactory to WEDC; and

v. Company shall supply documentation to the WEDC on or before the CO Deadline that Company has paid on time all fees associated with construction of the Facility including, but not limited to, Building Permit Fee, Plumbing, Mechanical, and Electrical Permit Fees, Fire Inspection Fee, Fire Department Plan Review Fee, Fire Development Fee, Thoroughfare Impact Fee, Water & Sewer Impact Fees, third party review of Fire Sprinkle and Fire Alarm plans, and all other inspection fees not specifically named that may be applicable to the construction of the Facility.

Attachments

- Performance Agreement
- First Amendment to the Performance Agreement