



**TO:** Elizabeth Pauli, City Manager  
**FROM:** Elly Walkowiak, Business Development Manager, Community and Economic Development Department  
Ricardo Noguera, Director, Community and Economic Development Department  
**COPY:** City Council and City Clerk  
**SUBJECT:** **Resolution – Amended and Restated Agreement Between the City of Tacoma and Yareton Investment & Management (Washington) L.L.C. for Development of the Convention Center Hotel and Mixed Use Project Located at 1538 Commerce Street – July 18, 2017**  
**DATE:** July 12, 2017

**SUMMARY:**

Yareton Investment & Management (Washington) L.L.C. is requesting additional amendments to the Development Agreement that the City Council approved on November 18, 2014 related to construction of a four-star, 300-room hotel and mixed use project on an approximate two-acre City-owned site adjacent to the Greater Tacoma Convention Center (GTCC) in the downtown at 1538 Commerce Street. The proposed Amended and Restated Agreement primarily involves fine-tuning development requirements, purchasing structured parking, refining conditions prior to property conveyance, extending performance deadlines, assessing liquidated damages for delays in project completion, strengthening the City’s reacquisition rights to the site and ensuring that additional value is delivered to the public.

Council is asked to (1) Approve the proposed Amended and Restated Agreement, which includes final closing and development requirements for the hotel and mixed use project, and (2) Authorize execution of a Quit Claim Deed to convey this Tier 1 property located at 1538 Commerce Street (Revised Parcels B and C referenced in Boundary Line Adjustment LU-17-0054) to Yareton for \$6,470,475 upon meeting the Development Agreement requirements for property conveyance.

This estimated \$150 million hotel and mixed use project will contribute to Downtown Tacoma’s renaissance significantly. It is one of the first major foreign direct investments on publicly-owned land in Tacoma. The project will generate substantial tax revenue, create about 1,000 construction and at least 200 full-time jobs, and enable the GTCC to attract larger conventions to enhance Tacoma’s economic vitality.

**STRATEGIC POLICY PRIORITY:**

This project that will result in new investment, job creation and increased revenue will align best with the following Council priorities:

- Foster a vibrant and diverse economy with good jobs for all Tacoma residents.
- Assure outstanding stewardship of the natural and built environment.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

**BACKGROUND:**

In 1999-2000, the City acquired title to properties located between South 15<sup>th</sup> and South 17<sup>th</sup> Streets from Market to Commerce Streets (except the Regence Building) to develop a publicly-owned Convention Center and attract investment into a privately-owned 4-star hotel on the site. In 2004, the City completed construction of the Greater Tacoma Convention Center but was unable to realize the hotel. On August 21, 2012 by Resolution No. 38529, the City created the *Policy for Sale/Disposition of City-Owned General Government Real Property*. As a result, the above-referenced property became classified as a



Tier 1 site, which is one of the priority properties the City Council has deemed appropriate for disposition in the downtown to facilitate economic development. On January 21, 2014, City staff issued a Request for Interest (RFI) to develop the property. On April 15, 2014 by Resolution No. 14-0299, the City Council authorized staff to negotiate a Development Agreement with Yareton Investment & Management (Washington) L.L.C.

On November 18, 2014 by Resolution No. 14-0922, the City Council approved the Development Agreement with Yareton Investment & Management (Washington) L.L.C. to develop a hotel and mixed use project on an approximate two-acre City-owned site adjacent to the Greater Tacoma Convention Center (GTCC) in the downtown at 1538 Commerce Street. This agreement has been extended three times. The first extension, dated April 13, 2015, added one-month to the initial due diligence period. The second extension, dated October 19, 2015, clarified the City's intent regarding the purchase of parking stalls in the garage proposed to be constructed. The third extension, dated September 11, 2016, allowed seven additional months to commence construction.

Key provisions of the Amended and Restated Agreement are as follows:

1. The definition of "Development Plan" is fine-tuned. Due to Marriott's programming of the interior use of space associated with its new Marriott modern concept, at least 9,100 square feet (instead of 10,000 square feet) of street level retail and 8,900 net square feet (instead of 9,000 square feet) of other function rooms will be required.
2. Yareton will purchase the property on the projected closing date of July 31, 2017 for \$6,470,475. In accordance with the Tacoma Municipal Code, one-half of the estimated \$540,000 associated with the vacation of Broadway Street will be deposited into the Open Space account and the other half into the Right-of-Way fund. Approximately \$5.4 million will be allocated to restore up to 160 parking stalls on site with the balance of funds to be used to cover other project-related costs.
3. Yareton will be responsible for paying all costs of the environmental assessment and remediation of the property, together with the cost of dewatering and costs related to or arising from any soil conditions on the property, except for the City's cost-share as outlined below. The City will be responsible for contaminated soil disposal fees of up to \$500,000 at a Subtitle D landfill, supported by invoices and analytical reports required by the Tacoma Pierce County Health Department for a Waste Disposal Authorization. The City's cost-share of up to \$500,000 will be calculated as follows. The City will pay the difference in the soil disposal fees per cubic yard between what Yareton would have had to pay to dispose of excavated clean soils at an inert landfill and the soil disposal fees at a Subtitle D landfill.
4. The development project will displace 160 stalls. The City agrees to purchase and Yareton agrees to sell the entirety of Levels 4 and 5 of the parking garage that will be constructed as part of the project for \$33,361 per stall, inclusive of all hard and soft costs, taxes and fees. Payment will be made according to a schedule to be determined in writing by the parties no later than December 31, 2017. The City will pay \$4,136,764 for a total of 124 stalls on Levels 4 and 5, which will be accessed directly from Court C. In addition, the City will retain an option until June 30, 2018, to purchase up to 40 additional stalls on Level 6 of the garage at the same per stall purchase price as Levels 4 and 5. If the City exercises its option, it will be able to buy 38 stalls for \$1,267,718 and apply the remaining \$25,993 (total of \$1,293,711) to purchase more parking should other project-related expenses, such as environmental remediation, cost less.



5. To promote the efficiency of parking operations, the City and Yareton agree to exchange the right to use and operate 31 stalls on Level 6 of the new garage with 31 equivalent stalls on Level 2 in the existing Convention Center parking structure at no net cost to either party. The final terms and conditions of this exchange and use will be memorialized in a Parking Use, Operation and Maintenance Agreement to be entered into near the completion of project construction.
6. Conditions precedent to property conveyance are enhanced. Evidence of financing required prior to property conveyance, including a financing plan, is refined. Yareton will be required to demonstrate that it has access to funds equal to 100% of the project financing for the \$85 million Phase One hotel project. Substantiation from U.S. banks and other sources, including foreign capital, will be allowed. Furthermore, Yareton must have entered into a Room Block Agreement with the City.
7. Performance deadlines will be extended by nearly one year due to project complexity. Vertical construction must commence on or before August 15, 2017 (instead of June 15, 2017) and be completed by May 31, 2020 (instead of June 14, 2019).
8. Yareton is required to complete construction of the hotel by May 31, 2020, but will be allowed a seven-month final completion period until December 31, 2020 within which it will not have to pay liquidated damages as long as it is diligently working toward obtaining a Certificate of Occupancy. In the event that Yareton has not obtained a Certificate of Occupancy on or before December 31, 2020, Yareton will pay the City liquidated damages of \$6,000/day (\$180,000/month on average) for failure to complete the improvements.
9. To further mitigate the City's risk, Yareton will be required to take the following action(s). In the event the Developer fails to commence construction by August 15, 2017, Yareton will re-convey the property to the City within 90 calendar days of property conveyance in return for a refund of the purchase price. Should the Developer halt construction for longer than 60 calendar days and there is no acceptable problem resolution, Yareton will be required to work with the City to find another buyer to assume its contractual obligations. The City must approve property transfer to a third party. Furthermore, if Yareton fails to complete construction of the Phase One project by May 31, 2020 and Phase Two of the project has not begun construction, Yareton will be required to sell the southwest corner of the property (Phase Two area) at the pro-rated price per square foot for which it purchased the property if the City exercises its option to acquire it within 90 days of May 31, 2020.
10. Yareton paid a \$125,800 fee for the third extension, which the City will retain because it did not meet the performance deadlines. As consideration for the fourth extension and other revisions, Yareton will contribute a \$200,000 Extension Fee. These fees will be nonrefundable and non-applicable to the Purchase Price of the property. A total of \$325,800 in fees will go toward the City's repair of the south wall of the Convention Center.

**ISSUE:**

If the Amended and Restated Development Agreement and the sale are not approved, the City's long-term goal of a quality hotel on the site will be delayed for an indefinite period, and the property will continue to be underutilized. If the Agreement is approved, there is potential for a residual irreducible risk that the Developer will not commence construction or will start but not complete the project. As a result, the City would be compelled to reacquire the property or participate in securing another entity to construct the hotel and mixed use development.



**ALTERNATIVES:**

The City Council may elect not to approve the Amended and Restated Development Agreement nor sell the property. However, this action will act to terminate the relationship with Yareton, thereby delaying development and downtown revitalization which will negate investment, job creation and revenue generation.

**RECOMMENDATION:**

Staff recommends that the City Council approve the Amended and Restated Development Agreement as well as authorize execution of a Quit Claim Deed under the terms of the Agreement to convey this Tier 1 property located at 1538 Commerce Street (Revised Parcels B and C referenced in Boundary Line Adjustment LU-17-0054) to Yareton for \$6,470,475. The \$150 million Convention Center hotel and mixed use project will serve as a catalytic development in the downtown core. It will generate significant direct and indirect revenue, create jobs, potentially increase downtown residential density to support shops and services, add to the liveliness of the University of Washington retail corridor, attract diversified foreign investment and enhance the City's international image.

**FISCAL IMPACT:**

The purchase price of the property is \$6,470,475. One-half of the estimated \$540,000 associated with the vacation of Broadway Street will be deposited into the Open Space account and the other half into the Right-of-Way fund at closing, projected to occur on July 31, 2017. Proceeds in the amount of \$5,930,475 from the sale of the balance of the property must be used to satisfy Development Agreement obligations related to restoring displaced parking and addressing environmental contamination. Of the \$5,930,475 in land sales proceeds, up to \$500,000 will be used to cover environmental remediation costs and \$4,136,764 will be used to purchase a total of 124 parking stalls on Levels 4 and 5 of the new parking garage. The City will retain an option until June 30, 2018, to purchase up to 40 additional stalls on Level 6 of the garage at the same purchase price per stall. If the City exercises its option, it will be able to buy 38 stalls for \$1,267,718 and apply the remaining \$25,993 (total of \$1,293,711) to purchase more parking should other project-related expenses cost less. In addition, a \$125,800 non-refundable deposit for delaying construction after June 15, 2017 (Third Extension Fee) and a \$200,000 non-refundable deposit (Fourth Extension Fee) will be retained by the City to repair the south wall of the Convention Center.



**EXPENDITURES:**

<b>FUND NUMBER &amp; FUND NAME *</b>	<b>COST OBJECT (CC/WBS/ORDER)</b>	<b>COST ELEMENT</b>	<b>TOTAL AMOUNT</b>
Fund 4140—Parking Enterprise Fund (Land Sales Proceeds – Broadway Street Vacation – Open Space)	532100		\$270,000
Fund 4140—Parking Enterprise (Land Sales Proceeds – Broadway Street Vacation – Right-of-Way)	532100		\$270,000
Fund 4140—Parking Enterprise (Land Sales Proceeds – Remediation)	532100		Up to \$500,000
Fund 4140—Parking Enterprise (Land Sales Proceeds – Parking: 124 total stalls - Levels 4 and 5)	532100		\$4,136,764
Fund 4140—Parking Enterprise (Land Sales Proceeds – Parking: 38 of 40 stalls - Option on Level 6)	532100		\$1,293,711
Fund 4140—Parking Enterprise (Non-refundable Deposit and Extension Fees - Repair of Convention Center South Wall)	532100		Up to \$325,800
<b>TOTAL</b>			<b>\$6,796,275</b>

\* General Fund: Include Department

**REVENUES:**

<b>FUNDING SOURCE</b>	<b>COST OBJECT (CC/WBS/ORDER)</b>	<b>COST ELEMENT</b>	<b>TOTAL AMOUNT</b>
Fund 4140 – Parking Enterprise (Land Sales Proceeds - Broadway Street Vacation – Open Space)	532100		\$270,000
Fund 4140 – Parking Enterprise (Land Sales Proceeds - Broadway Street Vacation - Right-of-Way)	532100		\$270,000
Fund 4140 - Parking Enterprise (Land Sales Proceeds)	532100		\$5,930,475
Fund 4140 – Parking Enterprise (Third Extension Fee)	532100		\$125,800
Fund 4140 – Parking Enterprise (Fourth Extension Fee)	532100		\$200,000
<b>TOTAL</b>			<b>\$6,796,275</b>



**POTENTIAL POSITION IMPACT:**

POSITION TITLE	PERMANENT/ PROJECT TEMPORARY POSITION	FTE IMPACT	POSITION END DATE
<b>TOTAL</b>			

*This section should only be completed if a subsequent request will be made to increase or decrease the current position count.*

**FISCAL IMPACT TO CURRENT BIENNIAL BUDGET:** Funds will need to be appropriated to meet the contractual obligations identified in the Amended and Restated Development Agreement by December 31, 2017.

**ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED?** No.

**IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.**

Land sales proceeds will be used to cover the costs related to environmental remediation and purchasing at least 124 parking stalls with potential to acquire up to 40 additional stalls. In addition, extension fees will be invested into repairing the south wall of the Convention Center.