City Council

Date: July 1, 2020

To: Mayor and Council

Through: Christopher J. Brady, City Manager

From: William J. Jabjiniak, Economic Development Director WJJ

JD Beatty, Economic Development Project Manager JB

Subject: Approving and authorizing the City Manager to enter into a First Amendment to the Development Agreement and a First Amendment to the Escrow Holdback Agreement for the Development commonly known as the UNION, a 28.2 acre mixed-use commercial development generally located north and northeast of the intersection of Cubs Way and Riverview Drive. (District 1)

Purpose and Recommendation:

To consider the proposed First Amendments to the Development Agreement ("DA") and corresponding Escrow Holdback Agreement between the City of Mesa ("City") and Union Mesa Holdings, LLC ("Developer"). These amendments pertain primarily to Sections 4.8 and 4.13 of the DA regarding certain existing utility line and facility relocations, and the corresponding Reimbursable Public Improvement Costs associated with Phase 1 and Phase 3 of the Project.

Staff recommends that the City Council approve and authorize the City Manager to sign the following documents:

1. Resolution approving and authorizing the City Manager to enter into the First Amendments to the Development Agreement and Escrow Holdback Agreement with Union Mesa Holdings, LLC, relating to the phased office campus development (UNION) on approximately 28.2 acres of property located north and northeast of the intersection of Cubs Way and Riverview Drive.

Background:

On July 8th, 2019 City Council approved the City Manager to enter into the current Development Agreement, Purchase and Option Agreement, and Ground and Parking Garage Lease with Union Mesa Holdings, LLC, a joint development venture between Lincoln Property Company and Harvard Investments to construct UNION, a 1,350,000 square-foot Class A office campus to be built over four phases. These agreements were subsequently executed and entered into on September 19th, 2019.

As part of these agreements, the City agreed to sell the project site to the Developer in four separate phases, with the City returning a portion of the sale proceeds in phases one and three to the Developer for the actual costs of the design and relocation of certain major utilities and facilities. These relocations were necessary to develop the Class A office campus and allow City infrastructure to continue to operate effectively. As the presence of these large utilities at the site was an obstacle to development, the City agreed to provide Reimbursable Public Improvement

Costs, up to a maximum amount not to exceed $2,400,000 (the “RPIC Cap”). The RPIC Cap would be distributed in two installments, based on actual incurred costs, with a maximum of $1,200,000 per installment. The first installment would be reimbursed with respect to the development of Phase A, with the balance to be reimbursed with the development of Phase C. In order for these costs to be reimbursable, all work must be bid pursuant to Title 34 public bidding.

Since the execution of these documents, the 232,000 square-foot, Phase 1 building of UNION has begun construction, and after complying with the necessary Title 34 procedures, the Developer is nearing completion of their required, corresponding utility relocation work, and expects the Phase 1 building to be substantially complete and ready for a Certificate of Completion by the end of 2020.

Under the current DA, the Developer would be eligible to receive up to $1,200,000 for their actual incurred costs for the utility relocation work completed in Phase A. However, due to a number of unexpected circumstances, the Developer has incurred substantially higher costs for these relocations than initially anticipated.

Thus, the Developer has made a formal request of a single reimbursement of the full RPIC Cap, stating the following hardships:

1. Increased safety measures required because of the public proximity to the utility relocation project and mandatory worker protection issued by the CDC for COVID-19.

2. Alternate sewer piping requirements resulting from original piping material being no longer manufactured.

3. Additional effluent piping was removed, and additional maintenance and corrosion requirements were mandated, which were not initially anticipated.

Thus, under these new amendments, the first half of the RPIC Cap will be dispersed according to the original requirement of Section 4 of the original Escrow Holdback Agreement. The remaining half of the RPIC Cap will then be dispersed upon the issuance of a Certificate of Completion for the Phase 1 building, pursuant to Mesa City Code Section 4-1-6(C). After this, the City will have no further obligation to provide any additional reimbursements related to utility relocations for any subsequent phases. Any relocations required in Phases 2, 3 or 4 will be the sole responsibility and cost of the Developer.

Discussion:

City Staff have been discussing and negotiating with the Developer on these items, and believe their request to be fair and reasonable, especially given the current global and national economic climate. Staff believes it is in the City’s interest to see this first Phase 1 building completed, and by removing the need to follow Title 34 guidelines in subsequent phases, it will accelerate the ability for the Developer to realize the full build-out of UNION’s ensuing phases.

Alternatives:

If Council does not approve the Amendments as drafted and recommended, they may choose one of the alternatives listed below:

<u>Not Approve the Amendments:</u> The Council could choose not to approve the Amendments. In

which case, the Developer may be put under additional financial duress, which may impair their ability to construct subsequent phases of the project.

Direct Staff to Modify the Agreements: Council could direct staff to modify the Amendments and Lease. This would require additional negotiations and discussions with the Developer and could slow down progress on the project.

Take No Action: The Council could choose to take no action or table the item until a future date. The timing of this Project is sensitive and tabling the item could cause a negative impact to the progress of the Project, but exact impact is not known.

Fiscal Impact:

No additional funds are being requested. These amendments will shift an additional $1,200,000 of the RPIC Cap from Phase 3 to Phase 1. Thus, the City will be reimbursing the Developer up to the maximum $2,400,000 sooner than initially contemplated but will have no further obligation to reimburse funds pursuant to the RPIC Cap for any of the following phases.

In addition, it should be noted that the City received $3,940,960.32 for the sale of the Phase A parcel, which covers the full RPIC Cap. The City also expects to receive further land sale revenue as the Developer acquires the additional Phases. The success of the UNION's first phase is important to the overall development, especially at this critical time. The project will also provide additional economic impact benefits from job creation and capital investment, which will continue to increase as the Developer constructs additional phases.

Coordinated With:

The Office of Economic Development has worked closely with the City Attorney's Office on these amendments.