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Summary of Findings, Conclusions and Recommendations Contained in Report of July 12, 2010

The City Council created the Moran Blue Ribbon Committee (MBRC) to review the proposed financial structure for the Moran project and advise the Council regarding whether the structure reasonably protects the City and its taxpayers from risk. The MBRC issued a report to the City Council, dated July 12, 2010. It contains numerous findings, conclusions and recommendations. Because the findings, conclusions and recommendations are scattered throughout the report, what follows is intended to bring them into one place. All of the findings and conclusions below are direct quotes except where words have been added in brackets [ ] to clarify meaning. Many of the recommendations appear in multiple places in the report with somewhat varied language. In what follows most recommendations are not direct quotes. They have been consolidated and rephrased for clarity. This memorandum also briefly summarizes CEDO’s plans for implementing the MBRC’s recommendations.

To *fully* understand the findings, conclusions and recommendations of the MBRC, it is recommended that you read the complete report.

This summary has been prepared by CEDO and its consultants.

Overall Findings and Conclusions

“We hope our findings assist the City in helping Moran become a viable community asset”. (Page 7)

Risk of Inaction

“The Committee realizes that certain funding opportunities may be lost if we don't proceed with Moran since these funding mechanisms are not easily used for other city projects (New Market and Historical Tax Credits, the HUD loan, and certain grants the project have already received). If a suitable redevelopment of Moran does not happen the City will be faced with the demolition of the structure, which we were informed will cost several million dollars. The TIF district has been given a five year extension by the State with regard to the use, by the district, of the additional taxes generated within the TIF district. Recognizing the redevelopment of Moran has been in the works for over twenty years, there is some question as to whether or not the City can develop a new alternative plan within the next five years". (Page 7)

Environmental Risks

"…one area that appears to have the least amount of realistic concern or risk is the environmental issues that surround the proposed Moran Redevelopment project". (Page 8)

"The City and CEDO has done its work to remedy any environmental concerns that resulted from the operation of a Power Plant on this site. Since its decommissioning and over the last decade the risk to future generations has been minimal at best". (Page 9)

Recommendation #1) Don't close on financing until the City's attorney is satisfied that all remediation plans have the appropriate state/federal approvals. (Page 3)

Implementation Plan: Prior to closing on the major project financing, the City will have its attorney review all remediation plans and provide written confirmation that all appropriate state and federal approvals have been obtained.

Permit Risks

"With respect to environmental and land use permits the relative risk exposure to the proposed project is low". (Page 13)

"The project will require a permit from the US Army Corp of Engineers for waterfront improvements associated with the Sailing Center's docking and hoisting operations. Permitting will also be required due the filling of about 12,000 square feet of wetlands to the north of the Moran Plant that were created when the former tank farm ceased operations and was decommissioned. It is possible the project may be required to undertake offsetting improvements to restore or improve water quality protective features on or near the site". (Page 13)

Recommendation #2) Don't commit to construction contracts or close on major financing until all zoning, environmental and land use permits have been secured. (Page 3 and 23)

Implementation Plan: The City will not enter into binding construction contracts or close on the major financing until all required zoning, environmental and land use permits have been obtained.

Construction Risks

"The relative risk exposure for the proposed project, while not substantial, is not low. There is a potential for hidden, or as yet unidentified, conditions to emerge during the demolition, environmental review and renovation processes". (Page 9)

“Several studies have been undertaken to evaluate the existing building’s structure and site and to validate suitability for the proposed adaptive reuse of the building. Other studies have been completed to evaluate the site’s geotechnical features and assess environmental and hazardous materials conditions. None of the studies completed to date have identified any unmanageable risk”. (Page 10)

Recommendation #3) Incorporate three contingencies into budget: 5% Design Development contingency, 7.5% construction contingency and 10% overall project contingency. (Pages 3 and 10)

Implementation Plan: This has been done. It resulted in the explicit contingencies increasing from approximately $1.7million to approximately $2.5million.

Recommendation #4) Incorporate into the budget an escalation allowance be established at 2% of construction costs to compensate for any price increases for commodities, such as steel, copper and other price sensitive construction materials, which may occur prior to securing construction contracts. (Page 11)

Implementation Plan: This has been done. This adds approximately $200,000 escalation allowance to the budget.

Recommendation #5) Have a second independent cost estimate done based on revised Design Development plans and reconcile with estimate being done by Pizzagalli. (Pages 4 and 11)

Implementation Plan: This will be done by the end of August 2010.

Recommendation #6) All contractors and major subcontractors should procure performance and completion bonds for the total value of the contract. (Pages 4 and 12)

Implementation Plan: This requirement will be specified in the construction bid documents.

Recommendation #7) Retain a qualified Construction Manger (CM) for “pre-construction services” prior to the completion of the construction documents and final cost estimates. (Page 12)

Implementation Plan: CEDO has issued an RFP for preconstruction services. Proposals are due July 29, 2010.

Recommendation #8) Put in place a process to review and manage document coordination within the construction documents. (Page 12)

Implementation Plan: CEDO will work with the selected Construction Manager to establish an effective process.

Recommendation #9) As a part of the Construction Management Contract it is recommended that the CM assume all risk associated with coordinating bid documents. (Page 12)

Implementation Plan: This requirement will be included in the Construction Management contract.

Recommendation #10) Construction contract award(s) should be contingent upon bids coming in within budget. (Page 12)

Implementation Plan: This contingency will be included in all appropriate documents.

Overall Financing Risks

"As to the risk of the financing mechanisms and their combination to the taxpayers, it should be known that the financing formula involves multiple sources that must align in order for the package to come together. While none of the sources can be judged as "risky" unto itself it is this sequential complexity that must be considered and carefully monitored…. As is also stated, there are risks inherent in the escalation of costs, as there may be with any project of this nature". (Page 16)

Recommendation #11) Close on all major components of financing concurrently. (Page 4 and elsewhere)

Implementation Plan: The major components of the financing are: New Market Tax Credits, Historic Preservation Tax Credits and City debt to be financed through the TIF district. There may be two closings for the tax credit components to allow the tenants more time to raise their necessary capital. The first closing will be concurrent for the three major components and will not be undertaken unless all contingencies are fulfilled and unless the closing will generate sufficient financing to proceed with the project regardless of the degree to which the tenants participate in a second closing. The City will not close on any debt (other than the approved Section 108 loan) that is to be paid from the TIF district except concurrently with closing on the NMTC and Historic Preservation Tax credits.

Recommendation #12) Carefully monitor the sequential complexity of the financing structure. (Page 16)

Implementation Plan: This will continue to be monitored closely by CEDO staff and outside consultants, including, but not limited to David G. White, Thomas Melloni and Steve Weems.

Sources & Uses Budget

"The budget for soft costs appears adequate…." (Page 11)

"There is a potential shortfall between sources and uses of $344K over the life of the project. This is not judged to be a significant gap as it could be absorbed by various identified sources, including an applied for and not yet awarded State of Vermont Historic preservation tax credits of up to $510,000". (Page 15)

Recommendation #13) Obtain funding to cover current estimated $344K shortfall before proceeding with binding construction commitments. (Page 5)

Implementation Plan: CEDO is currently seeking funds to fill this gap, including but not limited to Vermont historic preservation tax credits. The City Council may be asked to allow all of the funds already expended on the project to remain in the project.

Recommendation #14) Review and verify whether the budgets for owner testing and inspections fully reflect the needed testing and inspection requirements. These expenses should be included in the owner's budget. (Page 11)

Implementation Plan: This will be reviewed and if appropriate adjustments will be made.

Recommendation #15) In order to determine if a Moran Project Labor Agreement (PLA) is financially feasible and in the public's interest, conduct a feasibility study based on the use of local labor and other minimum working conditions, such as contractors who work with affiliated apprenticeship training programs. (Page 14)

Implementation Plan: CEDO has issued an RFP for a PLA feasibility study and proposals are due July 23, 2010. This analysis should take into account any advantages and/or disadvantages to the use of a PLA for the Moran Center Project, as well as relevant market conditions, and an evaluation as to whether a PLA will facilitate economical project delivery and serve the best interests of the government owner and taxpayers.

Tax Increment Financing

"…with the passage of legislation at the state level in the 2010 **[Note: was actually in 2009]** session that authorized the City to incur new debt in the TIF district, the need for tenants to participate in the redevelopment of the shell of the building and be "quasi partners" in development was removed, a very positive development for the project. This opportunity to pursue TIF borrowing is a game changer that makes the funding formula viable…." (Page 15)

"The Committee determined that the total current borrowing capacity of the TIF (once the Marriott expansion and the new Cherry St. hotel have been fully taxed) could support the additional borrowings". (Page 4)

"…it is calculated that the TIF district could sustain and carry $7.5M more debt [in addition to the previously approved Section 108 loan] over the course of its debt repayment schedule through 2025". (Page 20)

Recommendation #16) Should delays to the project extend beyond December 31, 2014, TIF will not be available and the project will be unable to proceed using the current plan. (Page 21)

Implementation Plan: The schedule calls for the project to proceed well before the date the ability of the TIF district to incur new debt expires.

Third Party Grants and Subsidies

"There is relatively no risk associated with these instruments…." (Page 15)

City of Burlington Funds

"There is no risk in these funding sources". (Page 15)

Tax Credit Equity Instruments

"While not determined to present high levels of risk, they are complex and critical to the success of the funding formula". (Page 15)

New Market Tax Credits

"This should be recognized as the predominant go/no go factor for the project". (Page 16)

"The risk of participation in the [NMTC] facility would be deemed low, the complexity considerable". (Page 18)

Recommendation #17) If New Market Tax Credits are not available, the project should not move forward. Replacing this source with debt financing is not advised. (Page 5 and 18)

Implementation Plan: Agreed.

Recommendation #18) Monitor the pricing of the amount offered by investors for the New Market Tax Credits. Should the rate be below 67% of the face value of the tax credits, evaluate whether the financing remains viable based on the most current budgets and other financing then in place. Do not proceed with the project if not deemed not viable. (Page 18)

Implementation Plan: This will be closely monitored and evaluated as appropriate if pricing falls below the threshold.

Recommendation #19) Monitor the amount of funds available to run through the New Market Tax Credit structure. If it falls below $20M evaluate whether the financial plan remains viable before proceeding. (Page 18)

Implementation Plan: This will be closely monitored and evaluated as appropriate if total NMTC eligible funds falls below the threshold.

Historic Preservation Tax Credits

"There is little risk associated with these other than a required 5 year compliance period which may run concurrent with the 7 year NMTC holding period". (Page 18)

Recommendation #20) The property must be on the National Register of Historic Places to be eligible for the federal historic tax credits. (Page 18)

Implementation Plan: The Nomination has been drafted and the property has been determined to be eligible for listing on the National Register of Historic Places. It is anticipated that the property will be listed on the National Register.

Recommendation #21) Should federal historic preservation tax credits not be obtained, acquire replacement funding source before proceeding with project. (Page 5)

Implementation Plan: CEDO has received notification that the projects design has been approved for the tax credits subject to three conditions which are being evaluated. Should any of these conditions or any other factor cause the project not to obtain the tax credits the project will not proceed unless substitute financing is obtained.

Tenant Performance Risk

"The area that is the most tenuous is the projected performance of the tenants. Although the Committee met in executive session to determine the viability of the proposed tenants, we could not determine the tenants' ability to raise adequate capital to meet their obligations for startup and fit-up expenses based on the information we reviewed". (Page 5)

"The City has structured this project so that the tenants' success is not critical to the project's success". (Page 6)

Recommendation #22) Monitor the two non-profits' fundraising goals and performance of the fundraising campaigns to gauge their ability to raise the required capital for their portions of the project. (Page 6)

Implementation Plan: At appropriate times, CEDO will continue to work closely with the two non-profits on a confidential basis to evaluate the strength of their fundraising plans.

Recommendation #23) Continue to review and evaluate the reasonableness of the non-profits' business plans for their operations at Moran. (Page 6)

Implementation Plan: At appropriate times, CEDO will continue to work closely with the two non-profits on a confidential basis to evaluate the strength of their business plans.

Recommendation #24) Request financial information from Ice Factor adequate to establish its capacity to raise the capital necessary for its startup and fit-up costs and the reasonableness of their business plan. In the event adequate information is

not forthcoming require a Letter of Credit from qualified financial institution or other financial surety sufficient to guarantee financial performance of the tenant during the redevelopment/construction phase of the project and ability to fund operating losses during their initial start-up sufficient to meet its lease obligations. (Pages 6, 7 and 21)

Implementation Plan: CEDO and its consultants will discuss this requirement with Ice Factor and make a recommendation to the City Council with regard to appropriate measures. CEDO will continue to work closely with the Ice Factor on a confidential basis to evaluate the strength of its business plan.

Recommendation #25) Complete the due diligence on the tenants before entering into binding lease agreements and prior to closing the major components of the financing or committing to the construction. (Page 6)

Implementation Plan: This will be done.

Building Ownership During Tax Credit Compliance Period

"The risks to the taxpayer at every point in the ownership of the building seem to remain the same regardless of the actual ownership of the building. The revenues generated by the tenants will pay for maintenance of the property". (Page 8)

Operating Income and Expense After Construction

"The lease income required to reach breakeven seemed reasonable for the available leased square footage of the building. In conclusion the Committee is confident that the building can generate sufficient revenue to cover its expenses provided that the tenants have the capacity to meet their lease obligations". (Page 6)

Recommendation #26) Establish a robust reserve fund. (Page 18)

Implementation Plan: A more detailed plan for the reserve fund will be developed and brought to the City Council (or an appropriate City Council committee) for review and approval.