

BEFORE THE METRO COUNCIL CONTRACT REVIEW BOARD
AND MERC CONTRACT REVIEW BOARD AND METRO COUNCIL

RESOLUTION OF METRO COUNCIL, ACTING)	RESOLUTION NO. 07-3882A
AS THE METRO AND MERC CONTRACT)	
REVIEW BOARD, AUTHORIZING EXECUTION)	
OF DEVELOPMENT AGREEMENT WITH)	
PROJECT DEVELOPER; AUTHORIZING)	Introduced by Metro Council President David
NEGOTIATIONS FOR INTERGOVERNMENTAL)	Bragdon and Metro Councilor Rod Park
AGREEMENTS AND PROJECT FUNDING; AND)	
AUTHORIZING USE OF METRO TOURISM)	
OPPORTUNITY AND COMPETITIVENESS)	
ACCOUNT (“MTOCA”) FUNDS)	
)	

WHEREAS, the Metro Council is responsible for the operation of the Metropolitan Exposition and Recreation Commission (MERC), including the Oregon Convention Center (“OCC”); and

WHEREAS, the mission of the OCC is to maximize economic benefits for the metropolitan region and the state of Oregon, while protecting the public investment in the facility; and;

WHEREAS, on February 8, 2007, Metro Council Resolution No. 07-3748A (“Resolution of Metro Council, Acting as the Metro and MERC Contract Review Board, Adopting Findings Granting an Exemption to the Metro and MERC Contracting Rules, Authorizing Acceptance of PDC’s Contracting Process; Authorizing Exclusive Negotiations with the Selected Project Team; and Authorizing Use of Alternative Contracting Methods for Design, Construction, Management, Operation and Financing of the OCC Headquarters Hotel”), accepted the results of the Portland Development Commission’s (“PDC”) public contracting process and authorized Metro and MERC staff to enter into exclusive negotiations with the Development Team identified and recommended by the PDC’s competitive process, the Headquarters Hotel Developer Selection Process and the OCC Headquarters Hotel Evaluation Committee: Garfield Traub Development / Ashforth Pacific Inc., Developer, and the Development Team of the architectural firm Zimmer Gunsul Frasca; the construction firm Turner Construction Inc., and the hotel operator/flag Starwood Hotels/Westin, for the purpose of developing, designing, constructing, and operating the Oregon Convention Center Headquarters Hotel (“Project”), if such agreements can be negotiated that adequately protect Metro’s financial interests and overall purposes in engaging in the Project; and

WHEREAS, on September 27, 2007, in Metro Council Resolution No. 07-3868B (“Resolution of Metro Council Authorizing Negotiations for Funding of and Creating a Financing Plan for the Development of a 600-Room, Publicly Owned, Privately Operated, Convention Center Headquarters Hotel Project; and Authorizing Continued Negotiations for a Development Agreement With the Project Developer”) the Metro Council committed itself, and authorized and directed the Metro Chief Operating Officer, the Metro Chief Financial Officer, and the Office of Metro Attorney, to identify and negotiate with other public entities and Project beneficiaries to secure additional funding for the Project, and directed the Metro Chief Operating Officer to conduct a preliminary evaluation regarding the level of other Project beneficiaries’ apparent willingness to financially contribute to the Project, and directed the Metro Chief Operating Officer to report back to the Metro Council by November 1, 2007; and

WHEREAS, Metro Council Resolution No. 07-3868B authorized the Office of Metro Attorney, Metro and MERC staff, and Metro's economic consultants to continue negotiations with the Project Development Team of the Development Agreement including the costs, terms and conditions for the development of the Project, and directed that the Development Agreement shall be brought back to the Metro Council for review and approval as soon as negotiations were completed; and

WHEREAS, the 2007-08 adopted Metro budget included a transfer of Six Hundred Sixty-Nine Thousand and Seven Hundred Twenty Dollars (\$669,720.00) from the Metro Tourism Opportunity and Competitiveness Account ("MTOCA") in the Metro general fund to the MERC Fund; and on October 24, 2007 the MERC Commission passed Resolution 07-28 recommending the investment of this \$669,720.00 in MTOCA funds in the next phase of development costs for the Project; and

WHEREAS, the Metro Chief Operating Officer has reported to the Metro Council that the preliminary discussions with other public entities and indicate that there is political support by some members of those public bodies and a willingness to negotiate financial contributions to the Project sufficient to encourage the Metro Council to continue forward with the next phase of the Project; and

WHEREAS, the Development Agreement provides, among other material terms in the Agreement, for a six-month Feasibility Period in which Metro will pay Developer (for allocation among the Development Team) Six Hundred Thousand Dollars (\$600,000.00), and Developer will prepare and deliver to Metro in this phase: a preliminary Project Schedule, conceptual Project drawings, a preliminary Project Budget, and the following agreements in substantially final form: a Design-Build Agreement between Developer and General Contractor; a Design-Build Architect/Engineer Agreement between General Contractor and Architect ("Architect Agreement"); a Pre-Opening and Technical Services Agreement between Metro, Developer, and Operator; a Hotel Operating Agreement between Metro, Developer, and Operator; and a Room Block Commitment Agreement between Metro and Operator ("Developer's Feasibility Period Deliverables"); and

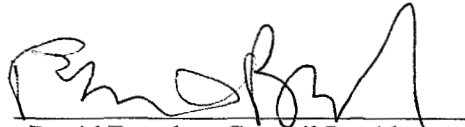
WHEREAS, the Development Agreement provides that at the expiration of the Feasibility Period, Metro will have 60 days to bring to the Metro Council for the Metro Council's review and approval, the Developer's Feasibility Period deliverables, and any Intergovernmental or other agreements that Metro has negotiated, to determine whether, in the Metro Council's sole discretion, to continue on to the next phase of Project development in accordance with the Development Agreement and pay additional fees or to terminate the Development Agreement; and

WHEREAS, the Development Agreement provides that if the Metro Council determines at the end of the 60 days following the six-month Feasibility Period to continue on to the next phase of Project development, that there will follow two additional seven (7) month pre-construction development phases, as set forth in the Development Agreement, in which Developers will deliver for specified fees additional drawings, budget estimates, pro formas, and ultimately a Developer Guaranteed Maximum Price ("DGMP"), and at each successive phase the Metro Council shall have the opportunity to terminate the Project if the updated budgets or DGMP exceed the Project Budget approved in the Feasibility Period; now therefore,

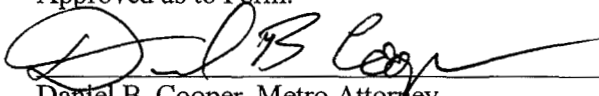
BE IT RESOLVED by the Metro Council that:

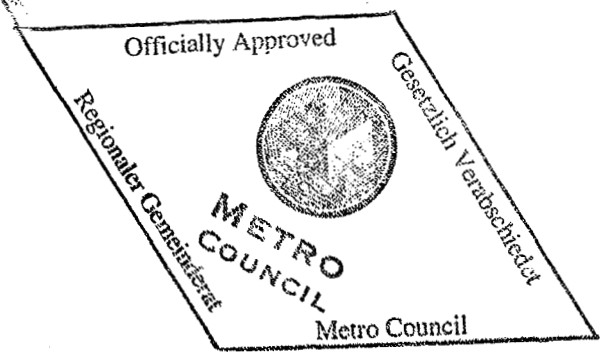
1. **Authorization to Execute Development Agreement with the Developer, Garfield Traub-Ashforth Pacific (GTA):** The Metro Council hereby authorizes and directs the Metro Chief Operating Officer to execute a Development Agreement with the Developer, GTA, in a form substantially similar to that which has been negotiated to date, or in a form approved by the Office of the Metro Attorney, and authorizing an initial Feasibility Period Payment to be paid to Developers (for allocation to the Project Team) in the amount of \$600,000.00 upon execution of the Development Agreement, as well as to follow the other terms and conditions set forth in the Development Agreement; and
2. **Authorization for Metro's Chief Financial officer to Develop Financing Plan for the Project:** The Metro Council hereby authorizes and directs the Metro CFO to work with the Project underwriter, Piper Jaffray, and Metro's financial advisor, Seattle Northwest Securities, to prepare and develop one or more financing plans for the Project, which financing plans shall call for the adequate funding of debt service, capitalized bond interest, bond insurance, sinking fund requirements, and other financing requirements as well as addressing reasonable risk scenarios. At least one of the financing plan options shall hold Metro area taxpayers harmless from the use of taxes of general applicability. The Project financing plans should protect Metros' general fund and existing programs from undue risk; and such Project financing plans shall be contingent upon the future review and specific approval of the Metro Council; and
- ~~2.~~ 3. **Authorization to Negotiate Intergovernmental Agreements ("IGAs") or Other Agreements to Implement Project Financing Plan, Land Transfer, and Formalize Additional Project Funding Sources:** The Metro Council hereby authorizes and directs the Metro Chief Operating Officer and the Office of Metro Attorney to negotiate with other public entities, including the Portland Development Commission, the City of Portland, Multnomah County, the Port, and the state of Oregon, as well as any direct and/or indirect Project or Oregon Convention Center beneficiaries, to secure within the upcoming six-month Development Agreement Feasibility Period funding for the Project as may be determined necessary or beneficial by the Metro Chief Financial Officer and Metro's financial advisors; however, any IGAs or financing or other agreements that may be negotiated under this provision shall be contingent upon the review and specific approval of the Metro Council; and
4. **Authorization to Use Metro Tourism Opportunity and Competitiveness Account ("MTOCA") Funds for the Oregon Convention Center Headquarters Hotel Project Feasibility Period Payment:** The Metro Council hereby authorizes and approves the expenditure of \$669,720.00 in funds from the MTOCA, previously budgeted during the 2007-08 budget process as a transfer of \$669,720.00 from MTOCA in the Metro general fund to the MERC Fund, to fund the Feasibility Period costs associated with the development of the Oregon Convention Center Headquarters Hotel Project.

ADOPTED by the Metro Council and the Metro and MERC Contract Review Board this 5th
day of November 2007.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney
Alison Kean Campbell, Metro Senior Assistant Attorney



BEFORE THE METRO COUNCIL CONTRACT REVIEW BOARD
AND MERC CONTRACT REVIEW BOARD AND METRO COUNCIL

RESOLUTION OF METRO COUNCIL, ACTING)	RESOLUTION NO. 07-3882
AS THE METRO AND MERC CONTRACT)	
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OF DEVELOPMENT AGREEMENT WITH)	
PROJECT DEVELOPER; AUTHORIZING)	Introduced by Metro Council President David
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WHEREAS, the Metro Council is responsible for the operation of the Metropolitan Exposition and Recreation Commission (MERC), including the Oregon Convention Center (“OCC”); and

WHEREAS, the mission of the OCC is to maximize economic benefits for the metropolitan region and the state of Oregon, while protecting the public investment in the facility; and;

WHEREAS, on February 8, 2007, Metro Council Resolution No. 07-3748A (“Resolution of Metro Council, Acting as the Metro and MERC Contract Review Board, Adopting Findings Granting an Exemption to the Metro and MERC Contracting Rules, Authorizing Acceptance of PDC’s Contracting Process; Authorizing Exclusive Negotiations with the Selected Project Team; and Authorizing Use of Alternative Contracting Methods for Design, Construction, Management, Operation and Financing of the OCC Headquarters Hotel”), accepted the results of the Portland Development Commission’s (“PDC”) public contracting process and authorized Metro and MERC staff to enter into exclusive negotiations with the Development Team identified and recommended by the PDC’s competitive process, the Headquarters Hotel Developer Selection Process and the OCC Headquarters Hotel Evaluation Committee: Garfield Traub Development / Ashforth Pacific Inc., Developer, and the Development Team of the architectural firm Zimmer Gunsul Frasca; the construction firm Turner Construction Inc., and the hotel operator/flag Starwood Hotels/Westin, for the purpose of developing, designing, constructing, and operating the Oregon Convention Center Headquarters Hotel (“Project”), if such agreements can be negotiated that adequately protect Metro’s financial interests and overall purposes in engaging in the Project; and

WHEREAS, on September 27, 2007, in Metro Council Resolution No. 07-3868B (“Resolution of Metro Council Authorizing Negotiations for Funding of and Creating a Financing Plan for the Development of a 600-Room, Publicly Owned, Privately Operated, Convention Center Headquarters Hotel Project; and Authorizing Continued Negotiations for a Development Agreement With the Project Developer”) the Metro Council committed itself, and authorized and directed the Metro Chief Operating Officer, the Metro Chief Financial Officer, and the Office of Metro Attorney, to identify and negotiate with other public entities and Project beneficiaries to secure additional funding for the Project, and directed the Metro Chief Operating Officer to conduct a preliminary evaluation regarding the level of other Project beneficiaries’ apparent willingness to financially contribute to the Project, and directed the Metro Chief Operating Officer to report back to the Metro Council by November 1, 2007; and

WHEREAS, Metro Council Resolution No. 07-3868B authorized the Office of Metro Attorney, Metro and MERC staff, and Metro's economic consultants to continue negotiations with the Project Development Team of the Development Agreement including the costs, terms and conditions for the development of the Project, and directed that the Development Agreement shall be brought back to the Metro Council for review and approval as soon as negotiations were completed; and

WHEREAS, the 2007-08 adopted Metro budget included a transfer of Six Hundred Sixty-Nine Thousand and Seven Hundred Twenty Dollars (\$669,720.00) from the Metro Tourism Opportunity and Competitiveness Account ("MTOCA") in the Metro general fund to the MERC Fund; and on October 24, 2007 the MERC Commission passed Resolution 07-28 recommending the investment of this \$669,720.00 in MTOCA funds in the next phase of development costs for the Project; and

WHEREAS, the Metro Chief Operating Officer has reported to the Metro Council that the preliminary discussions with other public entities and indicate that there is political support by some members of those public bodies and a willingness to negotiate financial contributions to the Project sufficient to encourage the Metro Council to continue forward with the next phase of the Project; and

WHEREAS, the Development Agreement provides, among other material terms in the Agreement, for a six-month Feasibility Period in which Metro will pay Developer (for allocation among the Development Team) Six Hundred Thousand Dollars (\$600,000.00), and Developer will prepare and deliver to Metro in this phase: a preliminary Project Schedule, conceptual Project drawings, a preliminary Project Budget, and the following agreements in substantially final form: a Design-Build Agreement between Developer and General Contractor; a Design-Build Architect/Engineer Agreement between General Contractor and Architect ("Architect Agreement"); a Pre-Opening and Technical Services Agreement between Metro, Developer, and Operator; a Hotel Operating Agreement between Metro, Developer, and Operator; and a Room Block Commitment Agreement between Metro and Operator ("Developer's Feasibility Period Deliverables"); and

WHEREAS, the Development Agreement provides that at the expiration of the Feasibility Period, Metro will have 60 days to bring to the Metro Council for the Metro Council's review and approval, the Developer's Feasibility Period deliverables, and any Intergovernmental or other agreements that Metro has negotiated, to determine whether, in the Metro Council's sole discretion, to continue on to the next phase of Project development in accordance with the Development Agreement and pay additional fees or to terminate the Development Agreement; and

WHEREAS, the Development Agreement provides that if the Metro Council determines at the end of the 60 days following the six-month Feasibility Period to continue on to the next phase of Project development, that there will follow two additional seven (7) month pre-construction development phases, as set forth in the Development Agreement, in which Developers will deliver for specified fees additional drawings, budget estimates, pro formas, and ultimately a Developer Guaranteed Maximum Price ("DGMP"), and at each successive phase the Metro Council shall have the opportunity to terminate the Project if the updated budgets or DGMP exceed the Project Budget approved in the Feasibility Period; now therefore,

BE IT RESOLVED by the Metro Council that:

- 1. Authorization to Execute Development Agreement with the Developer, Garfield Traub-Ashforth Pacific (GTA):** The Metro Council hereby authorizes and directs the Metro Chief Operating Officer to execute a Development Agreement with the Developer, GTA, in a form substantially similar to that which has been negotiated to date, or in a form approved by the Office of the Metro Attorney, and authorizing an initial Feasibility Period Payment to be paid to Developers (for allocation to the Project Team) in the amount of \$600,000.00 upon execution of the Development Agreement, as well as to follow the other terms and conditions set forth in the Development Agreement; and
- 2. Authorization to Negotiate Intergovernmental Agreements (“IGAs”) or Other Agreements to Implement Project Financing Plan, Land Transfer, and Formalize Additional Project Funding Sources:** The Metro Council hereby authorizes and directs the Metro Chief Operating Officer and the Office of Metro Attorney to negotiate with other public entities, including the Portland Development Commission, the City of Portland, Multnomah County, the Port, and the state of Oregon, as well as any direct and/or indirect Project or Oregon Convention Center beneficiaries, to secure within the upcoming six-month Development Agreement Feasibility Period funding for the Project as may be determined necessary or beneficial by the Metro Chief Financial Officer and Metro’s financial advisors; however, any IGAs or financing or other agreements that may be negotiated under this provision shall be contingent upon the review and specific approval of the Metro Council; and
- 3. Authorization to Use Metro Tourism Opportunity and Competitiveness Account (“MTOCA”) Funds for the Oregon Convention Center Headquarters Hotel Project Feasibility Period Payment:** The Metro Council hereby authorizes and approves the expenditure of \$669,720.00 in funds from the MTOCA, previously budgeted during the 2007-08 budget process as a transfer of \$669,720.00 from MTOCA in the Metro general fund to the MERC Fund, to fund the Feasibility Period costs associated with the development of the Oregon Convention Center Headquarters Hotel Project.

ADOPTED by the Metro Council and the Metro and MERC Contract Review Board this _____ day of November 2007.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney
Alison Kean Campbell, Metro Senior Assistant Attorney

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 07-3882, RESOLUTION OF THE METRO COUNCIL, ACTING AS THE METRO AND MERC CONTRACT REVIEW BOARD, AUTHORIZING EXECUTION OF DEVELOPMENT AGREEMENT WITH PROJECT DEVELOPER; AUTHORIZING NEGOTIATIONS FOR INTERGOVERNMENTAL AGREEMENTS AND PROJECT FUNDING STRUCTURES; AND AUTHORIZING USE OF METRO TOURISM OPPORTUNITY AND COMPETITIVENESS ACCOUNT (“MTOCA”) FUNDS

Date: October 31, 2007

Prepared by: Tony Andersen

BACKGROUND

Metro owns and operates the Oregon Convention Center (“OCC”) as a public asset. The mission of the OCC is to “maximize economic benefits for the metropolitan region and the State of Oregon while protecting the public investment in the facility.”

Large-scale, national conventions generate the greatest revenue for the OCC and provide the greatest economic benefit to the region. In recent years, bookings for high-impact national conventions at the Oregon Convention Center have leveled off. In February 2007, the Metro Council asked MERC and Metro staff to investigate alternatives that could ameliorate this situation. A series of reports by independent consultants were completed to analyze the causes of the decrease in national conventions and also to analyze suggested alternatives. The consulting firm ECONorthwest was commissioned to review the methodology and conclusions of the reports.

At its September 27, 2007 public meeting the Metro Council formally selected the 600-room, publicly funded and privately operated Headquarters Hotel alternative, and the Council committed itself and directed Metro and MERC staff to identify and begin negotiations with other public entities and Project beneficiaries to begin to secure additional funding for the Project. To that end, the Metro Council, by Resolution, directed the Metro Chief Operating Officer to conduct a preliminary evaluation regarding the level of other Project beneficiaries’ apparent willingness to financially contribute to the Project, and directed the Metro Chief Operating Officer to report back to the Metro Council by November 1, 2007. Also at the September 27, 2007 public meeting, the Metro Council authorized the Office of Metro Attorney and Metro and MERC staff to continue negotiating the Development Agreement with the Project Development Team, and directed that the Development Agreement be brought back to the Metro Council for review and approval as soon as negotiations were completed.

STAFF RECOMMENDATION

As a result of the work and the meetings conducted by members of the Metro Council and Metro and MERC staff with other governmental entities in the metropolitan area, Metro has received positive preliminary reactions to the OCC Headquarters Hotel Project. The Metro Chief Operating Officer reports that, based on these preliminary discussions with other public entities, there is political support by a majority of members of those other public bodies sufficient to encourage Metro to move forward with the

next phase of the Project development, and enter into a Development Agreement with the Project Developer.

Due to the previously-identified need to secure additional funding for the Project, staff also recommends that simultaneous with moving forward with the next phase of Project development as set forth in the Development Agreement, that Metro continue to secure from other sources than those that are currently available, a Project financing plan that adequately funds debt service, risk scenarios, capitalized bond interest, bond insurance, and sinking fund requirements, while protecting Metro's general fund and existing programs from undue risk.

ANTICIPATED EFFECTS

If the Metro Council accepts the staff recommendation to proceed with this Project and enter into the Development Agreement, then Project development will move forward in earnest once the Development Agreement is signed. The initial six-month Feasibility Period activities set forth in the Development Agreement will be undertaken, including the following Developer's Feasibility Deliverables to be provided by Developer to Metro within five (5) months of executing the Development Agreement: a preliminary Project Schedule, conceptual Project drawings, a preliminary Project Budget, and the following agreements in substantially final form: a Design-Build Agreement between Developer and General Contractor; a Design-Build Architect/Engineer Agreement between General Contractor and Architect ("Architect Agreement"); a Pre-Opening and Technical Services Agreement between Metro, Developer, and Operator; a Hotel Operating Agreement between Metro, Developer, and Operator; and a Room Block Commitment Agreement between Metro and Operator. In addition, during the Feasibility Period Metro will simultaneously be negotiating with the other Project beneficiaries, both public and private, to secure funding for the Project, as well as negotiating an agreement with the Portland Development Commission for transfer of the land upon which the hotel will be located. At the end of the six-month Feasibility Period, Metro will have up to 60 days to review the preliminary Project budget and other Developer Deliverables, as well as all the agreements with Project partners, in order to determine whether to terminate the Project and Metro's continued financial obligations for it, or to continue on to the next phase of Project development.

BUDGET IMPACTS

The Development Agreement, if executed, calls for an initial Feasibility Period payment from Metro to Developer (for allocation among the Development Team) of Six Hundred Thousand Dollars (\$600,000.00) for the Feasibility Period Developer Deliverables, which will be initially paid for out of the OCC Operating Fund via the MTOCA funds. If the Metro Council decides to terminate the Development Agreement and the Project at the end of the 60-day review period after receipt of the Feasibility Period Developer Deliverables, then there will be no other financial obligation to Metro (other than for the limited architectural work that will have proceeded during Metro's review period).

After the Feasibility Period, the Development Agreement provides for several additional "off ramps" and decision points based on the continuing refinement of the Project drawings and Project budget estimates. During each phase that is authorized, additional specified development, architectural, and construction fees will be due for additional services and deliverables rendered to Metro and the Project. For example, the Development Agreement provides that if the Metro Council determines, at the end of the 60 day post-Feasibility Period review period, to go forward to the next stage of Project development, there will follow two additional seven (7)-month pre-construction development phases, in which Developers will deliver for specified fees additional drawings, budget estimates, pro formas, and ultimately a Developer

Guaranteed Maximum Price (“DGMP”), and at each successive phase the Metro Council shall have the opportunity to terminate the Project if the updated budgets or DGMP exceed the Project Budget approved during the previous development phase. These fees will ultimately be recouped from any Bond proceeds that are issued for the Project, unless the Project is terminated prior to bonding.

Additional costs associated with this project include a temporary project manager, financial advisor fees and impact on staff time. Project management and advisor fees are estimated to be \$69,000. The impact on staff time, during the 6-month period, includes 1 FTE from the Office of Metro Attorney, .5 FTE from the Office of the Metro Chief Operating Officer, .4 FTE from the Office of the Metro Chief Financial Officer and .2 FTE from the Public Affairs Department. Assuming a 6-month phase, this equals .875 Metro FTE committed to this Project.

KNOWN OPPOSITION

Some hoteliers have expressed concern that the proposed Oregon Convention Center Headquarters Hotel will negatively impact their businesses. Some individuals have expressed opposition to the public sector undertaking a development of this size and scope. Some individuals have expressed an opinion that the project is too risky.

LEGAL ANTECEDENTS

On February 8, 2007 the Metro Council passed two resolutions and one ordinance regarding the Oregon Convention Center Headquarters Hotel Project: Resolution No. 07-3772 “A Resolution Designating the Oregon Convention Center Headquarters Hotel as a Council Project and Assigning a Lead Councilor and Council Liaison,” Resolution No. 07-3748A “Adopting Findings Granting an Exemption to the Metro and MERC Contracting Rules, Authorizing Exclusive Negotiations with the Selected Project Team; and Authorizing Use of Alternative Contracting Methods for Design, Construction, Management, and Operations and Financing of the OCC Headquarters Hotel,” and Ordinance 07-1140 “For the Purpose of Amending the FY 2006-07 Budget and Appropriations Schedule Amending the Metropolitan Exposition Recreation Commission (MERC) Operating Fund and Declaring an Emergency.” On September 27, 2007 the Metro Council passed Resolution 07-3868A “A Resolution of Metro Council Authorizing Negotiations for Funding of and Creating a Financing Plan for the Development of a 600-Room, Publicly Owned, Privately Operated, Convention Center Headquarters Hotel Project; and Authorizing Continued Negotiations for a Development Agreement With the Project Developer.”

RECOMMENDED ACTION

Staff recommends the adoption of Resolution No. 07-3882.