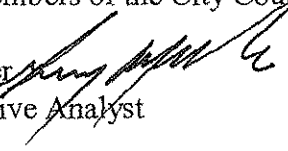


**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: August 7, 2013

TO: Honorable Members of the City Council

FROM: Gerry F. Miller   
Chief Legislative Analyst

Assignment No.: 13-07-0616  
Council File No.: 11-0106

**AMENDMENT TO THE SUBVENTION AGREEMENT  
FOR THE WILSHIRE GRAND HOTEL**

**SUMMARY**

On March 25, 2011, the City Council approved recommendations related to the development of a new hotel and office development at the site of the Wilshire Grand Hotel at 7<sup>th</sup> Street and Figueroa Street in Downtown Los Angeles. The recommendations included approval of a Subvention Agreement (Agreement) between the City and Hanjin International Corporation (Developer) that established terms for the establishment of a Community Taxing District and the provision of transient occupancy tax revenues to support development of the hotel.

In April 2013, the Developer notified the City that they had made changes to their development team. Subsequently, the Developer notified the City that they had made significant advancements in their project design and that they had developed a plan to begin construction of the project in late 2013. Finally, the advancement of the project prompted the Developer to request amendments to the Agreement to reflect the current status of the project.

The Chief Legislative Analyst (CLA) has reviewed the requested amendments to the Agreement and determined that they meet the intent of the Agreement as initially approved by Council. The attached Amendment to the Agreement would implement the requested changes.

**RECOMMENDATIONS**

That the City Council approve the First Amendment to Contract C-118744 between the City of Los Angeles and Hanjin International Corporation for the Wilshire Grand Hotel, and authorize the Mayor to execute the contract amendment on behalf of the City.

**BACKGROUND**

On March 25, 2011, the City Council approved recommendations related to the development of a new hotel and office development at the site of the Wilshire Grand Hotel at 7<sup>th</sup> Street and Figueroa Street in Downtown Los Angeles. The recommendations included approval of a Subvention Agreement (Agreement) between the City and Hanjin International Corporation (Developer) that established terms for the establishment of a Community Taxing District and the provision of transient occupancy tax revenues to support development of the hotel.

The project as proposed at the time included two towers, one with a 650-room hotel, condominiums, and related retail space, and the other with an office tower with as much as 1.5 million square feet of commercial space. This new project was proposed to replace the then-existing 1952 Wilshire Grand Hotel, which included a modest commercial office tower.

### **Updated Status**

Since approval of the project, the Developer initiated demolition of the existing property, changed its project management team, and developed a new design. Demolition of the existing site is nearly complete, with most of the above-ground sections of the old buildings removed. By initiating demolition, the Developer triggered requirements in the Agreement related to a guarantee of existing City site-specific revenues. These provisions of the Agreement seek to ensure that the City's General Fund would not be negatively affected during construction of the new facility. As a result, the Developer paid the first Guarantee payment in compliance with the Agreement.

The Developer has advised that they have also retained Martin Project Management to design and manage construction of the new project. The design of the project remains within the scope of approved entitlements, but includes several important alterations. First, the project will now include only one tower instead of two. The single tower will include approximately 900 hotel rooms, an increase of 250 rooms over the originally proposed development. In addition, the Developer reports that they have reduced the amount of commercial space from 1.5 million square feet to approximately 400,000 square feet.

Such design changes are in keeping with the City's objectives. Analysis conducted for the City on other recent hotel and convention issues indicates that the City needs an additional 5,000 hotel rooms within walking distance of the Los Angeles Convention Center (LACC) in order to become competitive with other convention centers around the nation. The addition of 250 hotel rooms to the Wilshire Grand project supports that City purpose.

### **Request from Developer**

In April 2013, the Developer notified the City that they had made changes to their development team and project, as noted above. In addition, the Developer indicated that several revisions to the existing Agreement were needed to clarify terms related to those project changes. The revisions requested are:

1. **Recognize that the Guarantee Term begins on September 11, 2012.** The Agreement did not know when the Guarantee Term would begin and therefore set a target date based on the issuance of a building permit. Since that action has occurred, this Amendment recognizes the exact date when the Guarantee Term begins, rather than a date that is established outside the Agreement.
2. **Clarify requirements related to the Letter of Credit to guarantee the Guarantee Payment.** The Agreement required that the Developer obtain a letter of credit (LOC) upon issuance of a building permit to ensure that financial resources would remain available to make the Guarantee Payment. The Guarantee

Payment of approximately \$4 million annually is equivalent to site specific revenues generated at the project location before construction began. The LOC is required through hotel construction. After construction, the LOC can be replaced by another form of financial guarantee acceptable to the City. All forms of guarantee remain in place as long as a Guarantee Payment is required. The Developer has agreed that the City would continue to receive the Guarantee Payment for the length of the Subvention Agreement (up to 25 years) in order to keep the City's General Fund whole.

To support expeditious development of the project and recognize the time required to obtain an LOC in the existing financial markets, the Developer has requested an extension in time to obtain the LOC. Since the LOC was required by the City to back-up the Guarantee Payment (also known as the "Annual Base Period Amount" in the Agreement), and such payment for 2013 was made in a timely manner on April 18, 2013 by the Developer, an extension of the time required to obtain the LOC is acceptable. Under this Amendment, the Developer will obtain an LOC by September 11, 2013.

In addition, the Developer has requested that the amount of the LOC be adjusted to be equal to the amount of the Guarantee Payment. The Agreement requires that the amount of the LOC be two times the Guarantee Payment in the second year, then equal to the Guarantee Payment in the third year. The LOC covers the full amount of funds that would be due, the City has the ability to draw on the full amount of the LOC if necessary, and the Developer is responsible for payment of property taxes under any circumstance. Therefore, based on a review of the Guarantee Payment requirements and these circumstances, the proposed change to the LOC provides an adequate guarantee to the City that the Guarantee Payment would be made and that the City's General Fund would be protected.


3. **Adjust the number of rooms available in the Room Block Agreement.** The Agreement determined that 475 rooms would be available to be reserved for the use of conventions booked into the Los Angeles Convention Center (LACC). That number was based on the early hotel design with 650 rooms. Because the new hotel has approximately 900 rooms, the Agreement should be amended to increase the number of rooms provided in the Room Block Agreement to 660.
4. **Extend deadline to select a Hotel Operator.** The Agreement requires that the Developer select a Hotel Operator within six months of the issuance of a building permit. Due to changes in the hotel design, including the increase in the number of rooms, selection of a Hotel Operator was postponed. The Developer has requested that the Agreement be revised to allow for selection of a Hotel Operator by December 31, 2014.

The main concern with this extension is that a certain portion of the hotel design will occur without input from the Hotel Operator, and any delay in selecting an operator could impact future hotel design and result in delay of hotel construction.

The Developer has indicated that their key staff managing construction of the hotel has extensive experience with hotel operations and that they have access to design specifications for several candidate hotel products. Since the hotel is scheduled to complete construction in December 2016, selection of a Hotel Operator by the end of 2014 will provide ample opportunity for design input and should not hinder completion of construction.

5. **Recognize changes in the Project Management Team.** The Amendment should be revised to recognize that Martin Project Management is now the project manager for the Wilshire Grand project and that all notices regarding the project should be directed to this management team.

These proposed changes do not materially alter the original intent of the Agreement and still protect the City's General Fund. Further, the increase in the number of hotel rooms is a benefit to the City and the Los Angeles Convention Center. The additional room will help alleviate the short-fall in rooms for convention center attendees and increase the opportunity for visitors to stay in the City. Additionally, more rooms will generate more transient occupancy tax revenues, thereby reducing the amount of time required to meet the subvention requirements of the Agreement with the Developer. As such, we recommend approval of the attached First Amendment to the Subvention Agreement between the City and Developer.



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John Wickham  
Analyst

Attachment: First Amendment to the Subvention Agreement between  
the City of Los Angeles and Hanjin International Corporation

**FIRST AMENDMENT TO CONTRACT C-118744  
BETWEEN THE  
CITY OF LOS ANGELES  
AND  
HANJIN INTERNATIONAL CORPORATION**

THIS First Amendment to Contract No. C-118744 is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation, (the "City") and HANJIN INTERNATIONAL CORPORATION, a California corporation; (the "Developer"); with reference to the following facts:

WHEREAS, on March 25, 2011, the Council of the City approved recommendations related to the development of a new hotel and office development at the site of the Wilshire Grand Hotel at 7<sup>th</sup> Street and Figueroa Street in Downtown Los Angeles, including the approval of a Subvention Agreement related to the City's effort to assist the development of the hotel portion of this project to advance the creation of new hotel rooms to support the tourism and convention industries, and

WHEREAS, the City and the Developer entered into that certain Subvention Agreement dated March 29, 2011 and designated as Contract No. C-118744 of City Contracts (the "Subvention Agreement"), and

WHEREAS, in April 2013, the Developer notified the City that it has made changes to its development team, the design of the project has been modified to place the hotel and office uses in a single tower, the number of hotel rooms has been increased, and the amount of office space has been reduced, and

WHEREAS, in light of these changes, the Developer has requested that the Subvention Agreement between the City and the Developer be modified to facilitate development of the project, and;

WHEREAS, the City believes amending the Subvention Agreement to reflect these changes is appropriate and would facilitate development of the replacement hotel rooms, which are vital to the tourism and convention industries in the City;

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. The Guarantee Term described in Section 3.4(a) of the Subvention Agreement commenced on September 11, 2012.
2. Section 3.4(f) of the Subvention Agreement is replaced in its entirety with the following:
  - f. During the Guarantee Term, Developer or its affiliate shall provide a direct pay, "evergreen" letter of credit that shall renew automatically each year, shall name the City as the beneficiary (the "Letter of Credit") and shall be provided by a bank ("LOC Bank") proposed by Developer and approved by the City (which approval shall not be unreasonably withheld, conditioned or delayed) as additional security for Developer's obligation to pay the Annual Base Period Amount pursuant to this Section 3.4. The City shall respond to such request for approval within thirty (30) days after receipt of the request. The Letter of Credit shall be provided and become effective no later than September 11, 2013 and shall be reissued annually. The Letter of Credit shall be in an amount equal to the Annual Base Period Amount. The City may draw on the full amount of the Letter of Credit until the date the provisions of Section 3.4(g) are implemented, if, after notice and an opportunity to cure as set forth in Section 7.4(b), the Developer defaults in its obligation to pay amounts due under the Developer Guarantee. In the event the LOC Bank's credit rating falls below "A," or such credit rating is suspended or withdrawn by two of the three primary rating agencies, Fitch Ratings, Moody's Investor's Service, and Standard and Poor's Rating Services, the Developer shall procure a Letter of Credit from another bank pursuant to the terms of this Section 3.4(f) within thirty (30) days of such credit rating event.
3. Section 3.6. and Section 4.4(b) of the Subvention Agreement is hereby modified to provide that the number of hotel rooms reserved for the Room Block Agreement shall be increased from 475 to 660.
4. The first sentence of Section 3.7 of the Subvention Agreement is revised to provide:

No later than December 31, 2014, the Developer shall submit the Hotel Operating Agreement executed by the Developer and the Hotel Operator and shall obtain the approval of the City for the Hotel Operator and the Hotel Operating Agreement pursuant to the criteria specified in this Section 3.7, which approval shall not be unreasonably withheld.

5. Section 8.2 of the Subvention Agreement is amended to remove Thomas Properties as a party to receive copies of formal notices, demands, submittals and communications on behalf of the Developer, and instead provide that copies of formal notices, demands, submittals and communications on behalf of the Developer be sent to Martin Project Management, 444 South Flower Street, Suite 1210, Los Angeles, CA 90071, Attention: Kenneth Aspis.
6. Except as amended hereby, all other provisions of the Agreement shall remain in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed by their respective duly authorized representatives.

CITY OF LOS ANGELES

HANJIN INTERNATIONAL  
CORPORATION, a California corporation

BY \_\_\_\_\_  
Eric Garcetti  
Mayor

BY \_\_\_\_\_  
S. Christopher Park  
Vice President and General Manager

DATE \_\_\_\_\_

DATE \_\_\_\_\_

ATTEST: CITY CLERK

APPROVED AS TO FORM

BY \_\_\_\_\_

MICHAEL FEUER  
City Attorney

DATE \_\_\_\_\_

BY \_\_\_\_\_  
Assistant City Attorney

DATE \_\_\_\_\_

This Amendment is No. 1 to Contract No. C-118744 of City Contracts.