

SUMMARY
of the
AMENDMENT NO. 1 TO
PROPERTY DISPOSITION AND DEVELOPMENT AGREEMENT
by and between the
TOWN OF PRESTON
and the
MOHEGAN TRIBAL GAMING AUTHORITY

Dated September 20, 2022

INTRODUCTION

This Summary has been prepared by the law firm of Shipman & Goodwin LLP, counsel to the Preston Redevelopment Agency (“PRA”), in connection with the drafting of the proposed Amendment No. 1 (the “First Amendment”) to the Property Disposition and Development Agreement (the “PDDA”) between the Town of Preston (the “Town”) and the Mohegan Tribal Gaming Authority (“MTGA”).

The purpose of this Summary is to assist the PRA in its review and consideration of the First Amendment. As with any summary of an amendment to a lengthy and complex agreement, this Summary is not a complete description of the provisions of the First Amendment or the PDDA, and does not modify, and therefore is qualified in its entirety by reference to, the First Amendment and the PDDA itself. This Summary has been prepared for the convenience of the PRA and does not constitute a legal opinion of Shipman & Goodwin LLP.

BACKGROUND

The Town, the PRA and the MTGA (also doing business as Mohegan Gaming and Entertainment), entered into the PDDA dated as of April 19, 2017 for the environmental remediation and then the transfer to and development of Preston Riverwalk by MTGA. The Town obtained a \$10 million grant and a \$2 million forgivable loan from the State to fund the remediation costs. However, the environmental remediation costs exceeded expectations, thereby preventing the conditions precedent necessary for the remediation to be completed and the transfer to occur. Substantially all of the \$10 million State grant has been expended, but the Town has not incurred or expended the \$2 million forgivable loan.

The current extended term of the PDDA ended on July 17, 2019. At that time the parties mutually agreed to not terminate the PDDA while they worked together to obtain additional State funding to complete the environmental remediation and satisfy the conditions precedent necessary for the transfer of the property to MTGA. As a result of those efforts, the State Department of Economic and Community Development (“DECD”) has agreed to provide an additional \$7 million grant and the \$2 million forgivable loan under certain conditions that require the PDDA to be amended before such funding is made available. The DECD funds will be provided in two Phases - \$5 million of grant funds in Phase A to complete the work necessary to transfer the property to MTGA, and \$4 million (\$2 million grant plus the \$2 million forgivable

loan) in Phase B for MTGA to utilize for further environmental work in connection with its development of the property. This grant and loan are explained in detail below.

The First Amendment has been drafted and negotiated and, upon approval by the PRA and the Board of Selectmen, will be submitted to the voters of the Town at a Town Meeting for approval.

FIRST AMENDMENT PROVISIONS

Article I of the First Amendment provides that the PDDA is amended as shown in a marked version of the full PDDA attached as Annex I. Annex I allows the parties to view the amendments in the form of additions and deletions to the current PDDA. The substantive amendments shown in Annex I are summarized below.

1. **Recitals (Pages 8-10).** New Recitals W through DD give the background information on the project history described above. In particular, Recital Z describes how the parties and the State have worked to identify “Cost Reduction Measures” that will reduce the environmental cleanup costs.
2. **Section 1.01 - Definitions (Pages 11-34).** Shows changes to defined terms. Many of the revised terms reflect changes to State environmental laws or updates on environmental reports. The amendment to “Uncontrollable Circumstances” (Page 33) is important in that it allows for a delay in MTGA’s performance (e.g., starting or completing the development project) if the delay is caused by the Cost Reduction Measures MTGA agreed to accept. After much discussion, the parties agreed to limit these time periods for such delays to a maximum of 12 months, plus an additional 6 months if MTGA certifies that the delay is caused by a delay in obtaining a Governmental Permit. This change may impact these deadlines and is described in Section 5.01 below.
3. **Section 3.01 – Refinements and Revisions of Conceptual RAP (Pages 43-45).** Shows changes to the remedial action plan and the implementation of the environmental use restrictions will be managed and maintained. After conveyance, Phase B funds may be used for implementing those restrictions, but no further Town funds will be required for future compliance of the restrictions.
4. **Section 3.02 – Sources and Uses of Funds (Pages 45-50).** Updates the State funding to be provided as described above, including the “Pass-Through Agreement” that describes how the State funds will be paid to the Town and “passed-through” to MTGA for Phase B work. It, in essence, provides for MTGA to “step into the shoes” of the Town/PRA for requisitioning the Phase B funds. However, the PRA will review and approve those requisitions before they are processed with the State.
5. **Section 3.03 – Obligation to Proceed with On-Site Environmental Work; Extension of Phase I Completion Deadline (Pages 50-52).** Provides that the environmental work be completed within two years after the Amendment is

approved and signed, with possible extensions similar to the current PDDA, and possible extensions due to the amended definition of Uncontrollable Circumstances.

6. **Section 4.02(b) – Purchase Notice; Closing (Page 57).** Provides that the Town obtain the necessary release of the State’s encumbrance on the property (i.e., its negative pledge) before closing. The State has agreed to do that in the State Financial Assistance Agreement described below.
7. **Section 5.01 – Obligation to Proceed; Project Components and Development Parcels (Page 66).** The deadlines for starting and completing the development project after conveyance are unchanged – three and five years, respectively. However, those deadline can be extended due to “Uncontrollable Circumstances” as described under Section 1.01 above.
8. **Section 6.03 – Future Tax Fixing Agreements (Pages 89-90).** Adds language allowing the parties to agree to larger or longer tax fixing agreements for any portion of the development project, provided that any such revisions would be subject to approval by the PRA, the Town’s Board of Finance and any other approvals required by law.
9. **Section 9.03(b) – SPE Affiliates (Page 102).** Adds a provision that, as a result of MTGA accepting the Cost Reduction Measures, only MTGA’s affiliates, not MTGA, are liable for the environmental conditions of the property prior to conveyance and for environmental use restrictions on the property after conveyance.
10. **Section 14.04 – Uncontrollable Circumstances (Page 121).** Adds a “knowledge” requirement to the change to “Uncontrollable Circumstances” caused by MTGA’s agreement to the Cost Reduction Measures, so that MTGA must know of the delay caused by an Uncontrollable Circumstances not just be given written notice as provided in the PDDA.
11. **Exhibits E, F and Schedule 2A.** Inserts revised Proposed Consolidation Areas, Project Cost Report and a RAP Addendum to the Conceptual RAP included in the original PDDA.

EFFECTIVE DATE OF AMENDMENT

Article II of the First Amendment provides that the amendments are not effective until MTGA and the Town have obtained all necessary approvals, the PRA has authorized its Chairman to sign the First Amendment and act on behalf of the PRA, and the State funding agreement for the \$7 million grant and \$2 million loan has been approved and signed by the Town and the State. If those conditions have not been met within 90 days of signing the First Amendment, the PDDA would remain in its current form, and either party could terminate it with notice to the other parties.

FURTHER EXPLANATION OF STATE GRANT AND LOAN. The State and the Town have entered into a Financial Assistance Proposal indicating the State's intent to provide the grant and loan, and that the \$2 million forgivable loan be drawn and used after the \$7 million grant. A new Financial Assistance Agreement ("FAA") with DECD (the binding commitment by the State to provide the funding) has been drafted and is ready for execution by the State and the Town after the Town approvals are in place. The new loan is consistent with the "Town Environmental Contingency" in the current PDDA which provides that the \$2 million loan be drawn and used after the State grant.

1. Scope of Work. Under the original PDDA, the Property was to be remediated to residential standards. The FAA and the First Amendment provide that those standards will be met, where applicable, but other methods, defined in the First Amendment as "Cost Reduction Measures," would be employed (environmental use restrictions, variances, engineered controls and capping) in connection with the remaining environmental work and MTGA's development activities.
2. Phase A Funding. Pre-Conveyance Remediation and Verification. \$5 million grant. This is for the work needed to achieve "Phase I Completion," which is Interim Verification or Verification (the site has been investigated and remediation completed in accordance with certain State law standards) and either a Letter of No Audit has been received from the State Department of Energy and Environmental Protection (that the State will not audit the Interim Verification or Verification) or 180 days have elapsed. If this occurs, MTGA is required to take title to the Property (same as in the current PDDA). Any funds remaining unspent after Phase A completion will be added to the Phase B budget. DECD will hold back the last 5% of the grant funds for Phase A, and the last 5% of the grant and loan funds for Phase B, until all required closeout documentation for the remediation and other work is submitted to DECD.
3. Phase B Funding. Post-Conveyance. \$4 million consisting of \$2 million grant plus \$2 million forgivable loan. This is for additional remediation and abatement work to be performed in connection with MTGA's development after it takes title to the Property. These funds would be held by the State and released through the PRA and Town to MTGA under a Pass-Through Agreement to be entered into by the State, the Town, the PRA and MTGA. An anticipated 4 foot Direct Exposure Criteria layer of soils (i.e., a "cap") will be placed on the Property's developed parcels (Parcels 4 and 6) as part of the Phase A work. Disturbance of the cap during the Phase B work is expected to be minimal. This should provide MTGA flexibility to use the Phase B funds on the Phase B work even if there is minimal disturbance of the cap.

4. Failure to Achieve Phase A Completion

As in the current PDDA, if Phase I Completion cannot be achieved due to the insufficiency of the Phase A funding, the Town has no obligation to make any further moneys available.

In that event, also as currently provided in the PDDA, MTGA then has the option to either (a) fund the insufficiency to achieve Phase I Completion, or (b) take title to the Property notwithstanding that Phase I Completion has not been achieved. If it does either, MTGA then will have to complete any remaining work to achieve Phase I Completion with its own funds, but will then have access to the Phase B funding of \$4 million to complete the Phase B work.

If Phase I Completion is not achieved, and MTGA makes neither election, the PDDA is subject to termination by either party with notice to the other party.

Consistent with the prior \$10 million State grant, the \$5 million State grant for Phase A and, if applicable, the \$2 million grant for Phase B, remain grants so long as the Town has properly expended the grant proceeds toward remediation and abatement costs. There is no obligation on the Town to reimburse the State for the expended grant proceeds (i.e., to “claw back” the grants from the Town) if the Property is not conveyed to or developed by MTGA.

Since the Phase A costs are payable from the State grant before the forgivable loan, the Town will not have drawn on the loan before the Property is conveyed to MTGA. MTGA can then, and likely will, access and draw on the loan in connection with its Phase B work, after the remaining \$2 million grant for Phase B is expended by MTGA.

5. New Forgivable Loan. The new \$2 million forgivable loan (the “2021 Loan”) will be available to MTGA for Phase B remediation costs. The terms of the loan are substantially the same as contemplated for the Town Environmental Contingency loan currently in the PDDA, except as follows.

Since the 2021 Loan will be drawn after conveyance and during the Phase B work, it is not contingent on obtaining Phase I Completion as in the current PDDA. Also, repayment of the 2021 Loan is to begin on the later of June 1, 2026 or the fifth anniversary of the conveyance of the Property to MTGA, and is forgivable if MTGA either invests at least \$200 million in the Property by that date or creates at least 200 jobs at the site by that date.

The 2021 Loan is in addition to the prior (2013) forgivable loan (the “2013 Loan”) described in the PDDA. The 2013 Loan is secured by the

Jobs Creation Letter of Credit to be provided by MTGA at the time of conveyance. The 2013 Loan is forgivable if MTGA creates at least 200 jobs at the site by that date. The 2013 Loan documents and the Jobs Creation Letter of Credit provisions in the PDDA will be amended so that the forgiveness provisions are the same as the 2021 Loan.

Like the former Town Environmental Contingency loan, the 2021 Loan is not secured by a letter of credit. In the current PDDA there is a \$9 million Project Completion Letter of Credit that MTGA must provide upon conveyance. Draws are not allowable under the Project Completion Letter of Credit until five years after conveyance, which coincides with the required repayment of the 2021 Loan. Therefore, if MTGA is unable to satisfy the investment or jobs creation forgiveness thresholds by that time and the Town must start repaying the 2021 Loan, the funds from the Project Completion Letter of Credit will be available to do so.

OTHER FINANCIAL ISSUES

Town Soft Costs - There are no amendments to the Town Soft Costs provisions. Under the current PDDA, MTGA pays up to \$500,000 of Town costs for attorneys, environmental consultants and other advisers from the Effective Date through the Conveyance Date. Costs incurred from July 17, 2017 (the Effective Date of the current PDDA) through August 31, 2022 total approximately \$290,000. Under the current PDDA, if building permit fees are paid, Town repays the Town Soft Costs advances to MTGA at rate of 50% of building permit fees paid.

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