

(R-89-27)

RESOLUTION NUMBER R- 272184

ADOPTED ON OCT 25 1988

WHEREAS, in connection with the construction of the Montgomery Airport Hotel on land leased from the City, certain delays resulted in the failure to complete construction by the time specified in the lease; and

WHEREAS, the penalty for such delay in completion of construction is specified in the lease as \$300 per day; and

WHEREAS, said penalty commenced to accrue on July 1, 1985, and continued to accrue until actual completion of construction on April 30, 1987; and

WHEREAS, said late penalties total \$200,700; and

WHEREAS, for reasons specified in the attached Manager's Report the Public Facilities and Recreation Committee has recommended the waiver of \$136,200 of said penalties; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that \$136,200 of late construction penalties as described in the attached Manager's Report is hereby waived in consideration of past payment to the City of \$61,500.


BE IT FURTHER RESOLVED, that as additional consideration for such waiver and as a condition to such waiver, the lessee shall, for the one (1)-year period following adoption of this resolution:

- 1) employ not less than 75% of its work force from City residents;
- 2) allow free City usage of meeting rooms for conducting City business on a subject-to-availability basis; and
- 3) discount the rate for City-sponsored lodging on a space-available basis,

all in accordance with the letter agreement signed by the lessee attached hereto and by this reference incorporated herein.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Deputy City Attorney

HOV:ps
09/26/88
Or.Dept:PF&R
R-89-27
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Passed and adopted by the Council of The City of San Diego on OCT 25 1988,
 by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
 Mayor of The City of San Diego, California.

(Seal)

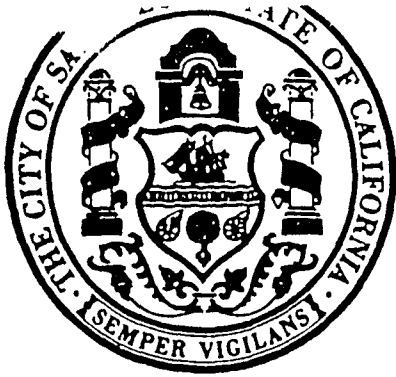
CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

By Ina Martin, Deputy.

Office of the City Clerk, San Diego, California	
Resolution Number <u>R-272184</u>	Adopted <u>OCT 25 1988</u>

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MANAGER'S REPORT

DATE ISSUED: July 8, 1988

REPORT NO.: 88-359

ATTENTION: Public Facilities and Recreation Committee,
Agenda of July 13, 1988

SUBJECT: Montgomery Airport Hotel, Ltd., Request for
Waiver of Construction Penalties

REFERENCE: CMR 81-405 issued October 30, 1981
CMR 82-403 issued September 29, 1982
CMR 82-467 issued November 10, 1982
CMR 83-387 issued September 16, 1983
Memo Reports - 9/21/87, 3/16/87, 10/20/86, 3/5/86

SUMMARY

Issue - Should the City waive the construction penalties due in accordance with the lease to Montgomery Airport Hotel, Ltd., totalling \$136,200?

Manager's Recommendation - Waive a portion of the construction penalties in the amount of \$91,200.

Other Recommendations - None.

Fiscal Impact - \$64,500 has been deposited to the Airports Enterprise Fund. An additional \$45,000 remains to be paid.

BACKGROUND

The Montgomery Airport Hotel (Holiday Inn) completed construction on May 1, 1987. Prior to its completion, Montgomery Airport Hotel, Ltd., the Lessee, accumulated construction penalties under the terms of the lease at the rate of \$300 per day past the scheduled date of completion (July 1, 1985). Penalty payments have been made for the periods July 1, 1985 through December 31, 1985 and December 1986 totalling \$64,500, leaving a balance due of \$136,200.

The former majority interest owner and general partner of the Lessee, H.L. Longcrier & the Longcrier Company, filed bankruptcy in April 1985. Michael Fletcher, Sr., a local partner in the Hotel project, was then able to obtain a new majority interest owner, Landmark Hotel Corporation; and after a series of complex negotiations with the bankruptcy court and the bonding company, the newly constituted partnership bought out Longcrier's interest in mid June 1986 and proceeded with the completion of the hotel.

The new partnership is requesting waiver of all outstanding construction penalties, citing that (1) if it had not bought out Longcrier's interest, the City would have been required to litigate with the bonding company to complete the project and accept the determination of the bankruptcy court, (2) the new partnership did not have control of the project until mid June 1986, and (3) it was the impetus for completing the hotel.

The new partnership experienced numerous delays in the completion of construction caused by necessary design and structural changes resulting from inadequate work performed by the former contractor. These changes cost approximately \$2,300,000 more than the new partnership expected to pay when taking over the project.

Normally, these types of penalties would not be waived. However, this is a unique situation where someone has come in, taken over a project, and done a good job in completing it. If they had not taken over, the hotel would probably still not be completed. The lessee has requested waiver of all outstanding penalties even though they have no legal right to such a waiver. We feel, however, that this proposed compromise is fair to the City and the lessee, whereby approximately forty-five percent of the penalties would be waived.

RECOMMENDATION

The purpose of construction penalties is to prompt required actions. Since the new partnership proceeded diligently after taking control of the project in June 1986, it is recommended that construction penalties be waived for the period July 1, 1986 through April 30, 1987 totalling \$91,200. The new partnership was aware of the previously accumulated construction penalties required by the lease when it took over the interest of H.L. Longcrier and the Longcrier Company in June 1986. Therefore, it is recommended that the lessee be responsible only for those construction penalties for the period July 1, 1985 through June 30, 1986 totalling \$109,500. (Schedule Attached).

ADDITIONAL INFORMATION

In return for waiver, the lessee has agreed for the one-year period following execution of an agreement to: (1) employ not less than 75% of its work force from City residents, (2) allow free City usage of meeting rooms for conducting City business on availability basis and two weeks advance notice, and (3) discount the rate for City-sponsored lodging on a space-availability basis.

Because of the additional costs and time delays, the new partnership has had some cash flow problems in its start-up period. To accommodate the situation, a 6-year payment plan was established for the minimum annual rent plus late charges for the period November 1, 1985 through October 31, 1986 in the amount of \$243,400. If the City Council requires the payment of all or a portion of the construction penalties, the lessee has requested that the amount assessed be included in the existing payment plan.

The lessee, as it is currently established, has been a good operator and is making excellent progress. It is anticipated that percentage rents will exceed the \$230,000 minimum annual rent in the hotel's first full lease year and that revenue to the City will be substantial over the expected long-term relationship with the lessee.

ALTERNATIVES

1. Waive all outstanding construction penalties.
2. Do not waive any outstanding construction penalties.

Respectfully submitted,



Maureen A. Stapleton
Deputy City Manager

MAS:SPOTTS:FLYNN:CAB:jn
(06/27/88)

Attachments:

Memorandum Reports dated 9/21/87, 3/16/87, 10/20/86, 3/5/86
Schedule of Recommended Penalties

P- 272184

SCHEDULE OF RECOMMENDED PENALTIES

Total Construction Penalties (7/1/85-4/30/87) (\$300 per day x 669 days)	\$200,700	\$200,700
Partial Penalties Paid to City (7/1/85 - 12/31/85 & 12/86)	<u>-64,500</u>	
Construction Penalties Outstanding	\$136,200	
Recommended Waiver of Penalties (7/1/86-4/30/87) (181 days x \$300 per day)		<u>-91,200</u>
Penalties Recommended to be Lessee Responsibility (7/1/85 - 6/30/86)		\$109,500
Penalties Paid to City (7/1/85-12/31/85 & 12/86)		<u>-64,500</u>
Penalties Due with Manager's Recommendation (1/1/86-6/30/86 minus payment for 12/86 or \$54,300 - \$9,300)		<u>\$45,000</u>

R- 272184

Landmark Hotel Corporation

October 4, 1988

Oct 5 9 23 AM '88

OFFICE ATTORNEY

Hal Valderhaug, Esquire
City of San Diego
202 "C" Street
MS 3A
San Diego, CA 92101

Re: Montgomery Airport Hotel, Ltd., Consideration for
Waiver of Construction Penalties

Dear Mr. Valderhaug:

As you are aware, the Public Facilities and Recreation Committee voted 3-1 on September 14, 1988, to waive construction penalties of \$136,200 under the lease to Montgomery Airport Hotel, Ltd. ("Hotel"). It is our understanding that the San Diego City Council will meet on October 10, 1988, to hear the PFR committee recommendation and to vote regarding this matter.

As consideration for the City of San Diego agreeing to waive the construction penalties, the Hotel is offering the following items:

A. Meeting Space. The Hotel will make meeting rooms available on a space-available basis with two weeks advance notice by the City of their intention to utilize a room. The Hotel will agree to allow City-sponsored lodging on a space-available basis for one year from November 1, 1988, on these matters.

B. Special City Rate. The Hotel will offer, again on a space-available basis, a room rate of \$58.00 for City Sponsored lodging on a normal \$80.00 room rate. For the rate to be effective, the City must reserve the room within one week of the arrival date. This special room room rate will be available for one year from November 1, 1988.

C. Hotel Employees Residents of City of San Diego. The Hotel will employ at least 75% of personnel who are residents of the City of San Diego, as long as said employment is not in contravention of any state, local, or federal rule relating to fair and equal employment.

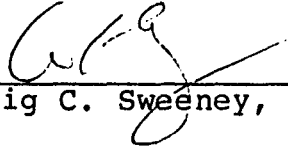
Hal Valderhaug, Esquire
October 4, 1988
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The Montgomery Airport Hotel, Ltd., appreciates the fairness and cooperation of the City of San Diego in this matter and looks forward to a continuing long term mutually beneficial relationship.

Very truly yours,

Montgomery Airport Hotel, Ltd.

By: Landmark Hotel Corporation
General Partner

By: 
Craig C. Sweeney, Vice President

CCS:kk
cs8:hv

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