

REPORT TO COUNCIL 13

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
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CONSENT
November 21, 2006

Honorable Mayor and Members of the City Council

Title: Waiver of Non-Compliance – Cucamonga Avenue

Location/Council District: Granite Regional Park, District 6

Recommendation: Adopt a **Resolution** (1) waiving non-compliance with a requirement, in City Agreement No. 2001-078, that contracts for construction of Cucamonga Avenue be awarded through formal competitive bidding; (2) approving the costs of \$1,010,169 for the construction of Cucamonga Avenue; (3) authorizing the release of \$877,920 in bond proceeds as compensation for the work on Cucamonga Avenue; and (4) authorizing related financial transactions.

Contact: Mark Griffin, Fiscal Manager, (916) 808-8788, Carol Shearly, Director of Planning, (916) 808-5893

Presenters: Not Applicable

Department: Planning

Division: Public Improvement Financing

Organization No: 4915

Description/Analysis

Issue: The developer of Granite Regional Park, Phase One Regional Park Limited, did not follow the competitive bidding procedures when it awarded contracts for the construction of the Cucamonga Avenue extension as required by the acquisition and reimbursement agreement (City Agreement No. 2001-078). The developer now desires reimbursement from Mello-Roos bonds issued for this purpose in 2001.

The developer has executed a Developer's Representation Regarding Bidding and Prevailing Wages that has been placed on file with the City Clerk. In that document the developer represents that prevailing wage requirements were followed; that an informal bidding procedure was used, with contracts awarded to the lowest bidder; that the bidding procedure was designed to ensure that the contractors who submitted bids did not collude with each other; and that the developer is aware of no such collusion.

Staff has verified that the work was done in accordance with the applicable standards and specifications and has been accepted by the City.

Costs have been verified as reasonable in the amount of \$1,010,169 by an independent consultant to the City. The requested release of \$877,920 is less than the verified amount and represents the remaining bond proceeds.

The City Attorney's Office has concluded that no legal impediment to payment exists if the City Council waives the non-compliance for a failure to competitively bid. The reasoning is further detailed on Attachment 1.

Policy Considerations: Approval would be consistent with the City's Strategic Plan 3-Year Goal to achieve sustainability and enhance livability. Contracts of this type are now supervised more closely, with clear and consistent verbal and written communication with the developer. A recurrence should be avoided.

Environmental Considerations: Under California Environmental Quality Act (CEQA) Guidelines, the recommended actions are administrative and therefore do not constitute a project and therefore are exempt from review.

Committee/Commission Action: None


Rationale for Recommendation: The actions are recommended to allow payment for work performed to the level of all City standards except that for competitive bidding.

Financial Considerations: The reimbursement of \$877,920 will be made from the balance of Mello-Roos bonds issued specifically for the purpose of improvements to Granite Regional Park including the construction of Cucamonga Avenue. Debt service for the bonds is funded through a special tax on properties within the Granite Park Community Facilities District. There is no impact on the General Fund, nor is any obligation placed on any other funds of the City. The developer will absorb all excess costs.

Approval of the attached resolution will add \$158,920 in accrued interest on the bonds to the current project balance of \$719,000 (PN:53AD), for a total of \$877,920.

Emerging Small Business Development (ESBD): Not Applicable

Respectfully Submitted by: 
Mark Griffin
Fiscal Manager, Planning Department

Approved by: 
Carol Shearly
Director, Planning Department

Recommendation Approved:

W. Kerridge

 Ray Kerridge
 City Manager

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BACKGROUND

The City formed the Granite Park Community Facility District (CFD) in May 2001 and sold \$8.86 million in Mello-Roos bonds for the CFD later that same year. Under the formation documents, the bond proceeds were required to be spent on specified public infrastructure, including the extension of Cucamonga Avenue. That extension is now completed, the city has accepted it, and the developer (Phase One Regional Park Limited) wants to be reimbursed from the remaining proceeds. The problem is that the developer did not follow competitive-bidding procedures when it awarded contracts for the work, as required by the Acquisition Agreement (City Agreement No. 2001-078).

Nothing in the applicable state law, the Mello-Roos Act Community Facilities Act of 1982, requires competitive bidding on projects financed with bond proceeds or special-tax revenues. The act requires only that improvements acquired with bond proceeds be constructed as if “under the direction and supervision” of the city. Nor do the city’s “goals and policies” for using CFDs require competitive bidding. They require only that improvements acquired with bond proceeds “be constructed in compliance with City standards and specifications” and that the developer enter into an acquisition agreement approved by the City Council. The only question, then, is whether the city may pay the proceeds to the developer notwithstanding the developer’s failure to comply with the acquisition agreement’s bidding requirements.

The City Attorney’s Office has concluded that no legal impediment to payment exists if the City Council waives the breach. This conclusion is based on the following facts: (1) the work was done in accordance with the applicable standards and specifications; (2) prevailing wages were paid; (3) the developer’s costs to extend Cucamonga Avenue are reasonable, as verified by a third-party consultant to the City, Harris & Associates; (4) those costs are greater than the amount of the remaining bond proceeds; and (5) the developer has signed a Developer’s Representation Regarding Bidding and Prevailing Wages, on file with the City Clerk, confirming that it used an informal bidding procedure designed to prevent collusion among the contractors who submitted bids, that it is aware of no such collusion, that the work was awarded to the lowest qualified and responsible bidder, and that each person who performed labor on the Cucamonga Avenue extension was paid not less than the general prevailing rate of wages in private employment for similar work in the City.

RESOLUTION NO.

Adopted by the Sacramento City Council

WAIVER OF NON-COMPLIANCE, APPROVAL OF COSTS FOR THE CONSTRUCTION OF CUCAMONGA AVENUE, AUTHORIZATION FOR THE RELEASE OF BOND PROCEEDS, RELATED FINANCIAL TRANSACTIONS

BACKGROUND

- A. In 2001, the City formed the Granite Park Community Facility District (CFD) for the purpose of funding infrastructure improvements in, and within the vicinity of, Granite Regional Park.
- B. The City issued bonds to fund the improvements, including the construction of the Cucamonga Avenue extension.
- C. The developer of Granite Regional Park, Phase One Regional Park Limited, entered into City Agreement 2001-078, under which it agreed to construct, for the City's acquisition, an extension of Cucamonga Avenue.
- D. The developer did not follow formal competitive-bidding procedures when it awarded contracts for the work, as required by sections 2.0, 3.0, and 4.0 in Exhibit B to City Agreement No. 2001-078.
- E. No legal impediment to payment exists if the City Council waives the breach.
- F. Performance on the contract was not otherwise deficient. The work was done in accordance with the applicable standards and specifications. The cost to extend Cucamonga Avenue was reasonable, as verified by a third party consultant to the City. The developer further represents, in a signed Developer's Representation Regarding Bidding and Prevailing Wages on file with the City Clerk, that prevailing wage requirements were followed; that an informal bidding procedure was used, with contracts awarded to the lowest bidder; that the bidding procedures were designed to ensure that the contractors who submitted bids did not collude with each other; and that the developer is aware of no such collusion.
- G. The City Council is fully advised in this matter.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1.** The statements in paragraphs A through G of the Background are true.
- Section 2.** The failure of Phase One Regional Park Limited to use formal competitive-

bidding procedures when awarding contracts for the extension of Cucamonga Avenue, as required by City Agreement 2001-078, is waived.

Section 3. Costs in the amount of \$1,010,169 are approved for the extension of Cucamonga Avenue.

Section 4. The City Manager is authorized to release, to Phase One Regional Park Limited, \$877,920 in remaining bond proceeds and accrued interest as full compensation to Phase One Regional Park Limited for the construction of Cucamonga Avenue.

Section 4. The City Manager is authorized to adjust the accounts of the capital project for Cucamonga Avenue (53AD) by adding \$158,920 to the project from accrued interest on the bonds, for a total project appropriation of \$877,920.

