



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 10/11/2011

Report Type: Consent

Title: Natomas Central Community Facilities District No. 2006-02

Report ID: 2011-00829

Location: District 1

Recommendation: Adopt 1) a Resolution appropriating \$1.1 million from special taxes collected for Natomas Central Community Facilities District No. 2006-02 (CFD 2006-02) to allow for reimbursement of eligible costs to the developer, K. Hovnanian.

Contact: Mark Griffin, Program Manager, (916) 808-8788, Department of Finance

Presenter: None

Department: Finance

Division: Public Improvement Finance

Dept ID: 06001321

Attachments:

1-Description/Analysis

2-Background

3-Resolution, Appropriation of Special Tax Revenue Natomas Central CFD

City Attorney Review

Approved as to Form
Jeffrey C. Heeren
10/5/2011 10:58:43 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
9/26/2011 6:00:21 PM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 10/3/2011 10:41:27 AM

Description/Analysis

Issue: K. Hovnanian Forecast Homes Northern, Inc. (Developer) has incurred \$11,491,952 in expenses in its Natomas Central project that are eligible for reimbursement under City Agreement Nos. 2008-0683 and 2008-0683-1 (collectively, the Agreement) from special taxes collected within Natomas Central Community Facilities District No. 2006-02 (CFD 2006-02). Eligible public improvements have been constructed, verified, and accepted by the City at a cost to the Developer in excess of the special taxes collected to date. This Council item will appropriate current, available tax revenue to allow reimbursement of eligible expenses from available funds. These taxes are collected solely for the purpose of financing public improvements within CFD 2006-02. As taxes are generated, staff will ask Council to approve additional appropriation authority until the Developer is fully reimbursed.

Policy Considerations: Pursuant to the City Charter, City Council appropriation authority is required to reimburse the Developer under the Agreement. The appropriation request is consistent with available resources and the Agreement terms to reimburse for eligible public improvements.

Environmental Considerations

California Environmental Quality Act (CEQA): Under the California Environmental Quality Act (CEQA) guidelines, continuing administrative activities do not constitute a project and are therefore exempt from review.

Sustainability Considerations: There are no sustainability considerations applicable to administrative activities.

Commission/Committee Action: None

Rationale for Recommendation: Appropriation of funds in CFD 2006-02 will allow the Developer to be reimbursed for a portion of actual improvement costs incurred under the Agreement.

Financial Considerations: Special taxes are collected within CFD 2006-02 solely for the purpose of constructing public facilities and financing development fees within CFD 2006-02. As of July 1, 2011, \$9,053,404 has been collected and \$7,922,777 has been disbursed; with \$7,834,439 reimbursed under the Agreement and \$88,338 reimbursed for collection and accounting expenses. The difference between collections and disbursements is \$1,130,627. Of this amount, \$1.1 million is recommended for disbursement to the Developer. The balance is recommended to be held in reserve for refunds and associated expenses.

Verified eligible expenses to date are \$11,491,952 as shown on Attachments 1, 2, and 3. With the recommended reimbursement, the total distributed under the Agreement will be \$8,934,439. The balance of verified expenditures remaining will be \$2,557,513 and will be recommended for reimbursement from future tax collections and associated interest.

Approval of the attached resolution will release the \$1.1 million in available funds as reimbursement to the Developer.

Emerging Small Business Development (ESBD): None. No goods or services are being purchased.

BACKGROUND

In 2006, in accordance with the Mello-Roos Community Facilities Act (Government Code Section 53311 et seq.), the City formed Natomas Central Community Facilities District No. 2006-02 (CFD 2006-02) for the purpose of financing fees and public improvements that benefit properties within CFD 2006-02. On July 10, 2008, the City and K. Hovnanian Forecast Homes Northern, Inc. (the Developer) entered into an Acquisition and Shortfall Agreement that was designated as City Agreement No. 2008-0683 and was subsequently amended by City Agreement No. 2008-0683-1 (collectively, the Agreement). The Agreement obligates the City to reimburse the Developer for eligible expenses incurred within CFD 2006-02.

Total verified and reimbursable costs under the Agreement are \$11,491,952 to date. The City's engineering consultant, Harris and Associates, has verified costs and compliance with the Agreement in the amounts of \$4,300,000 and \$1,600,000 for El Centro Road and Del Paso Road respectively. Both roads were widened to four lanes and include medians, curbs, gutters, and sidewalks. In addition, the Department of Transportation has verified costs and compliance with the Agreement in the amount of \$3,911,129 for three interior, non-subdivision collector roads: Natomas Central Drive, Hovnanian Drive, and Manera Rica Drive. Finally, the Department of Utilities has verified \$1,680,823 for construction and acquisition of the detention basin, i.e., the lake within CFD 2006-02. All related verifications are provided below as Exhibits A, B, and C respectively.

Funds are available from special taxes levied for the purposes of the CFD 2006-02. As funds are received, Council appropriation authority is needed to allow reimbursements.

Funds available are \$1.1 million and will be appropriated to Project Number J22003600 to permit payment to the Developer. The history of Council action on disbursements from CFD 2006-02 is as follows:

- By Resolution No. 2008-814, \$2,244,930 was disbursed representing collections prior to July 1, 2008.
- By Resolution No. 2009-250, \$1,170,672 was disbursed representing the December 2008 tax disbursement.
- By Resolution No. 2009-571, \$1,031,000 was disbursed representing the April 2009 tax allocation.
- By Resolution No. 2010-150, \$1,311,428 was disbursed representing the December 2009 tax allocation of \$1,113,323 plus \$198,105 from interest and penalties through June 30, 2009.
- By Resolution No. 2010-677, \$1,179,104 was disbursed representing April 2010 collections, plus interest and penalties, less refunds and administrative expenses through June 30, 2009, plus a portion (\$206,951) of the December 2010 collection of \$1,114,256.
- By Resolution No. 2011-233, \$897,305 was disbursed representing the balance of the December 2010 collection, plus interest and penalties, less refunds and administrative expenses.

CFD 2006-02, unlike all but one other construction district in the City at this time, is a “pay-as-you-go” district. All others have issued bonds to reimburse the developers, and the special-tax levies are used for debt service. CFD 2006-02 is authorized to issue bonds but has been unable to do so because of the FEMA restrictions and the general economic downturn. The Agreement permits reimbursement from bonds or collected special taxes so long as the total reimbursement does not exceed \$35,000,000 less the cost of issuing bonds.



March 3, 2009

Mr. Mark Griffin
Fiscal Manager
City of Sacramento
Development Services Dept.
915 I Street, Suite 3000
Sacramento, CA 95814

**SUBJECT: Natomas Central Acquisition-and-Shortfall Agreement CFD 2006-02
REVISED**

Dear Mark,

On December 10, 2008, you forwarded us a copy of the Acquisition-and-Shortfall Agreement (A&S Agreement) between the City and K. Hovnanian Homes. Our task was to verify if the submittal for credit verification for Natomas Central improvements was also compliant with the provisions of Exhibit D of the A&S Agreement. On February 3, 2009, we submitted a recommendation letter regarding the developer's compliance with Exhibit D of the A&S Agreement, this letter replaces those recommendations.

On February 18, 2009, Exhibit A of the A&S Agreement was amended to revise the budgeted amounts available. The agreement covers Segment 3 and Segment 12 and not the signals reviewed with the PFFP credit submittal. The request for reimbursement under the A&S Agreement is for \$5,900,000 (\$1,600,000 for Del Paso Road Segment 3 and \$4,300,000 for El Centro Road Segment 12) as summarized in Table 1.1. Based on our review, we recommend release of \$5,900,000.00 for these segments under the A&S Agreement. The request for credits under the PFFP program is \$6,879,230.00 and is being reviewed separately.

Exhibit D of the Acquisition-and-Shortfall agreement outlines requirements that are to be followed in order for the developer to be reimbursed. Our review focused on the requirements set forth in Section 6.0 of Exhibit D. Harris & Associates has a department experienced with labor compliance. Per discussion with this department, we were able to determine what documentation is required for compliance with California prevailing wage statutes. See item #4 below for a discussion of the prevailing wage issues.

On December 17, 2008, we emailed you a list of items required in the agreement that were not submitted with the PFFP reimbursement request. Since that time, more information has been submitted for this review.



DEPARTMENT OF
TRANSPORTATION

ENGINEERING SERVICES DIVISION

CITY OF SACRAMENTO
CALIFORNIA

DEVELOPMENT ENGINEERING
300 RICHARDS BLVD., 2nd FL.
SACRAMENTO, CA 95811-0218

PH (916) 808-8300
FAX (916) 808-1984

Revision No.1

February 25, 2010

Mark Griffin
Program Manager
Planning Department, Public Improvement Financing Division
915 I Street, 3rd Floor
Sacramento, Ca 95814

SUBJECT: Natomas Central CFD No. 2006-02 Submittal # 2
Acquisition and Shortfall Agreement 2008-0683 and 2008-0683-1

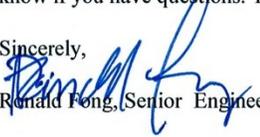
Dear Mark,

This letter is a **revision** to my previous recommendation letter dated July 23, 2009. Costs related to utility improvements have been excluded from this cost validation.

Request for reimbursement/credit for the construction of Natomas Central Detention Basin and collector streets Natomas Central Drive, Hovnanian Drive and Manera Rica Drive has been submitted by K. Hovnanian Homes, Inc. Supporting documents as required per A & S Agreement 2008-0683 and 2008-0683-1 between City and K Hovnanian Homes has been reviewed and validated.

Based on our review, K. Hovnanian is eligible for reimbursement/credit in the amount of **THREE MILLION NINE HUNDRED ELEVEN THOUSAND - ONE HUNDRED TWENTY NINE & 37/100 DOLLARS (\$3,911,129.37).**

Detailed cost summary table and Notices of Completion are hereby enclosed for your reference. Let me know if you have questions. Thank you.

Sincerely,

Ronald Fong, Senior Engineer

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Department of
TRANSPORTATION
City of Sacramento

**TABLE 1.0
COST SUMMARY
COLLECTOR ROAD FACILITIES
NATOMAS CENTRAL DRIVE, HOVNANIAN DRIVE, MANERA RICA DRIVE**

| | |
|---|-----------------------|
| Acquisition and Shortfall Agreement 2008-0683-1 (Budgeted Amount) | \$5,200,000.00 |
| Construction Cost Submitted | 3,940,927.57 |
| Verified Construction Cost | 3,911,129.37 |
| Reimbursement Requested | 3,940,972.57 |
| Eligible for Reimbursement/Credit Amount | \$3,911,129.37 |

**TABLE 1.1
DETAILED COST TABLE
NATOMAS CENTRAL COLLECTOR ROAD FACILITIES
(NATOMAS CENTRAL DRIVE, HOVNANIAN DRIVE, MANERA RICA DRIVE)**

| INVOICE NUMBER | AMOUNT REQUESTED | AMOUNT INVOICED | RETENTION | DISALLOWED AMOUNT | VERIFIED AMOUNT |
|--------------------|-----------------------|-----------------------|---------------------|--------------------|-----------------------|
| 1376907 | \$ 222,811.26 | \$247,568.07 | \$24,756.81 | | \$222,811.26 |
| 1415784 | 2,961,909.87 | 3,291,010.97 | 329,101.10 | | 2,961,909.87 |
| 1454476 | 235,833.58 | 262,037.31 | 26,203.73 | | 235,833.58 |
| 1454476® | 304,049.31 | 304,049.31 | (304,049.31) | | 304,049.31 |
| 1497854 | 62,073.20 | 63,340.00 | 1,266.80 | | 62,073.20 |
| 1534362 | 41,031.00 | 45,950.00 | 4,559.00 | | 41,031.00 |
| 1586361 | 13,032.04 | 13,298.00 | 265.96 | | 13,032.04 |
| 1608737 | 9,723.78 | 9,922.22 | 198.44 | | 9,723.78 |
| 1354404 | 8,041.88 | 8,206.00 | 164.12 | | 8,041.88 |
| 1654404® | 78,819.45 | 78,819.45 | (78,819.45) | | 78,819.45 |
| CO#5 P#1169295 | | | | \$10,500.00 | |
| CO#11 P#1169213 | | | | 7,490.00 | |
| CO# 7 P#1169407 | | | | 8,206.00 | |
| TOTAL | \$3,937,325.37 | \$4,323,841.33 | \$386,515.96 | \$26,196.00 | \$3,911,129.37 |

| | |
|--------------------------|-----------------|
| Contract # 201169125 A-C | |
| Contract Amount | \$ 3,933,351.35 |
| Change Orders | 36,968.22 |
| Total Project Cost | \$ 3,970,319.57 |



Department of Utilities
Office of the Director

CITY OF SACRAMENTO
CALIFORNIA

1395 35th Avenue
Sacramento, CA 95822-2911
phone (916) 808-1400
fax (916) 808-1497/1498

January 7, 2010
092577

Rich Alexander
c/o K. Hovnanian Homes
1375 Exposition Blvd., Ste. 300
Sacramento, CA 95815

SUBJECT: Reimbursement Submittals #2 and #3 for Natomas Central CFD No. 2006-02

Dear Mr. Alexander;

This letter summarizes Department of Utilities' (DOU's) review of the sewer and drainage facilities included in the subject submittals. DOU has not reviewed the Collector Roads portion of the submittals. DOU reviewed the sewer facilities at your request, even though they are Sacramento Area Sewer District (SASD) facilities.

Submittal #2 requested reimbursement for construction of the Detention Basin and the Common Drainage (pipeline) facilities. As indicated in separate correspondence, only \$1,680,823 is presently eligible for construction of these drainage facilities. This is the amount exempted from competitive bidding per City Agreement #2008-0683-1 (the amended Acquisition & Shortfall Agreement, a.k.a. the 'Agreement'). The pipelines were not competitively bid.

Submittal #3 requested reimbursement for construction of two facilities (the Trunk and Collector Sewer, and the Sewer Lift Station), plus 10-percent for approved facility design expenses. 'Agreement' article 3(b) allows separate reimbursement for engineering costs as a percentage of the construction, and your requested 10% amount is reasonable. DOU presupposes, however, that design costs are eligible for reimbursement only if the facility designed is also eligible. The Trunk Sewer is a budgeted facility in the 'Agreement', and thus should be eligible, but it appears that it was not competitively bid and Council did not exempt it. The Sewer Lift Station was not a listed facility. Thus neither of the Submittal #3 facilities is considered eligible at this time. Therefore, only \$168,082 of the design expense amount requested in Submittal #3 (10% of the Detention Basin costs) is currently eligible for reimbursement.



CITY OF SACRAMENTO
DEPARTMENT
OF UTILITIES

Making a Difference in Your Neighborhood

Rich Alexander Letter
Reimbursement Submittals #2 and #3 for Natomas Central CFD No. 2006-02
January 7, 2010
Page 2

As indicated in the July 21, 2008 letter to you from Mark Griffin, City staff may request Council to amend the 'Agreement' thereby permitting additional facilities not competitively bid to be reimbursed. If Council were to waive all competitive bidding requirements, then submittal #2 and #3 contain sufficient documentation to approve reimbursements up to \$8,351,724.28 for constructed and accepted drainage facilities; \$835,172 for design of the drainage facilities; and up to \$4,058,619.40 for design and construction of the Trunk and Collector Sewer. Prior to approving full Trunk Sewer reimbursement, however, additional documentation for the two change orders and certification from SASD that they've approved and accepted construction of the sewer is required.

Please let me know if you require additional clarification of the items discussed herein.

Sincerely,



Marty Hanneman
Director of Utilities

cc: Dave Brent, Engineering Services Manager
Mark Griffin, Program Manager
Stu Williams, Senior Engineer
File



RESOLUTION NO.

Adopted by the Sacramento City Council

APPROPRIATION OF SPECIAL-TAX REVENUE NATOMAS CENTRAL COMMUNITY FACILITIES DISTRICT NO. 2006-02

BACKGROUND

- A. Under City Agreement No. 2008-0683 as amended by City Agreement No. 2008-0683-1, K. Hovnanian Forecast Homes Northern, Inc. (the “Developer”) is entitled to reimbursement for eligible expenses incurred within Natomas Central Community Facilities District No. 2006-02 (the “CFD”), subject to the availability of funds.
- B. To date, the City has received \$9,053,404 in interest and Mello-Roos special taxes levied for the purpose of financing eligible expenses within the CFD, with \$7,834,439 disbursed in increments of \$2,244,930, \$1,170,672, \$1,031,000, \$1,311,428, \$1,179,104, and \$897,305 under Resolution Nos. 2008-814, 2009-250, 2009-571, 2010-150, 2010-677, and 2011-233 respectively, leaving a balance of \$1,218,965.
- C. Of the \$1,218,965 balance, \$88,338 has been expensed for accounting and collection costs and \$30,627 is being held in reserve for any refunds, associated expenses and contingency, leaving \$1.1 million available for disbursement to the Developer.
- D. The City has verified eligible expenses of the Developer in the amount of \$11,491,952 to date.
- E. The appropriation of available funds of \$1.1 million will permit partial reimbursement to the Developer, totaling \$8,934,439 with this action, leaving a balance of verified, unreimbursed expenses of \$2,557,513.

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

Section 1. The City Manager’s designee is authorized to appropriate \$1.1 million from revenues of the CFD (i.e., special taxes and interest) to Project J22003600 to reimburse the Developer for eligible expenses.