

Meeting Date: 7/16/2013

Report Type: Consent

Report ID: 2013-00552

Title: Suspension of Competitive Bidding for Certain Projects in Natomas Central Community Facilities District (CFD) [Two-Thirds Vote Required]

Location: District 1

Issue: Facilities constructed by K. Hovnanian Forecast Homes and compliant with acquisition agreements have been fully reimbursed. Additional facilities are compliant with the agreements except for the requirement for competitive bidding supervised by the City. These facilities are in service but non-compliant due to changed circumstances brought about by the "Great Recession." Reimbursement for these facilities would result in total reimbursements that are well under the total allowed in the subject special tax district.

Recommendation: Pass a Motion suspending competitive bidding requirements for construction of certain public improvements under an acquisition-and-shortfall agreement with K. Hovnanian Forecast Homes Northern, Inc. — Natomas Central Community Facilities District.

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-Verification

City Attorney Review

Approved as to Form
Michael W. Voss
7/9/2013 9:48:48 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Russell Fehr
6/27/2013 5:26:00 PM

Approvals/Acknowledgements

Department Director or Designee: Dennis Kauffman - 7/3/2013 11:05:00 AM

Description/Analysis

Issue Detail: To finance the construction of public facilities by private developers, the City often forms a community facilities district, or CFD, under the Mello-Roos Community Facilities Act of 1982. Through the CFD, the City levies a special tax and issues bonds to raise funds needed to finance the acquisition of public facilities constructed by the development of land within the CFD. On occasion, the City also uses those funds to reimburse a developer for various development-impact fees.

In connection with the acquisition of facilities, the City and the developer enter into a standard acquisition-and-shortfall agreement that prescribes how the developer is to construct the facilities and specifies how the City will reimburse the developer from special-tax revenues and bond proceeds. Among other things, the standard agreement requires that construction contracts be awarded through competitive bidding under the City's supervision. It also requires that all public facilities be constructed in compliance with the City's standards and specifications and that the contractors pay prevailing wages.

K. Hovnanian Forecast Homes Northern, Inc. (Developer) is the developer of the Natomas Central project in North Natomas. To finance public improvements needed to serve this project, in 2006 the City formed Natomas Central Community Facilities District No. 2006-02 (District) with a maximum reimbursement amount of \$35 million. Because of the circumstances described in the attached Background, the Developer has been unable to utilize the District as planned, leading to the substitution of planned reimbursements with reimbursements for improvements that are not fully compliant with requirements. As a consequence, the Developer has requested that the City Council suspend the bidding requirement for storm-drain facilities that were constructed at a verified cost of \$6,670,902 and are now in service, but did not comply with the requirement for competitive bidding. Suspension will allow the City to reimburse the Developer for these facilities using special-tax revenues collected from the District. All other requirements of the acquisition-and-shortfall agreement for these improvements have been satisfied, including the requirement that prevailing wages be paid.

The developer has been fully reimbursed for verified, eligible expenses to date. Suspension of competitive bidding will permit the Developer to continue to receive reimbursements. Thus far, periodic reimbursements totaling \$12,857,991 have been made, beginning in 2008. This includes a prior suspension of the bidding requirement for \$9,394,967 in facilities approved by the City Council by Motion on December 18, 2007. Approval will permit continued reimbursements and the associated special tax rate, which

will result in a total reimbursement of \$19,528,893.

Policy Considerations: Section 3.60.170 of the Sacramento City Code authorizes the City Council to suspend competitive bidding by a two-thirds vote if the City Council determines that suspension is in the best interests of the City. Although it was initially envisioned that the District would be used chiefly to reimburse the Developer for various development fees, the circumstances changed considerably since 2006. Suspending competitive bidding in this case will provide the flexibility to continue using the District to reimburse the Developer for facilities that meet all requirements of its acquisition-and-shortfall agreement other than competitive bidding.

The Mello-Roos Community Facilities Act of 1982 does not require competitive bidding.

Economic Impacts: This report does not have direct economic impacts.

Environmental Considerations

California Environmental Quality Act (CEQA): Continuing administrative activities do not constitute a "project" as defined in Section 15378 of the CEQA Guidelines and are therefore exempt from review.

Sustainability Considerations: There are no sustainability considerations applicable to the formation or renewal and administration of an assessment district.

Committee/Commission Action: None.

Rationale for Recommendation: Suspension of the competitive bidding requirement will allow the city the flexibility to reimburse the Developer up to \$19.5 million of an estimated \$35 million in slated improvements and fees using special-tax revenues and/or bond proceeds generated through the CFD. All other requirements of the acquisition-and-shortfall agreement, including the requirement that prevailing wages be paid, have been satisfied.

Financial Considerations: Developers who enter into an acquisition-and-shortfall agreement will construct public improvements with their own funds and be reimbursed at a later time with available special-tax revenues or bond proceeds generated through a CFD. Payment of principal and interest on any bonds is secured and funded exclusively by the special-tax lien on land within the CFD. The City is not obligated.

Emerging Small Business Development (ESBD): There are no ESBD considerations as there are no goods or services being purchased.

Background

When the City forms a CFD to finance the construction of public improvements, the developer of land within the CFD must sign an acquisition-and-shortfall agreement before any reimbursements can be made to the developer for eligible improvements. Exhibit D of the standard acquisition-and-shortfall agreement (titled "Guidelines for Special District Acquisition Projects") requires, among other things, that the developer use competitive bidding to award all construction contracts for the improvements that will be financed through the CFD. Other requirements include compliance with City standards and specifications, payment of prevailing wages, and verification of costs.

K. Hovnanian Forecast Homes Northern, Inc. (Developer) is the developer of the Natomas Central subdivision, which is bounded by Fisherman's Lake on the west and south, Del Paso Road on the north, and El Centro Road on the east. The subdivision consists of approximately 398 gross developable acres divided into several components: residential, parks, open space, fire station, and schools. In particular, it comprises approximately 1,693 single-family lots, 4 parcels for multi-family development, a 5-acre park, a 6-acre park, a 13-acre joint park/school site, a 7-acre private recreation center, a 26-acre detention basin/lake, a 2-acre fire station, and 28 acres of open space.

In October 2004, the Developer asked Public Improvement Financing in the Department of Finance to begin proceedings to form the Natomas Central CFD (the District). Various complications ensued, however, and as a result formation was delayed for over two years. First was the controversy over a buffer along Fisherman's Lake. Following that, in late 2006, FEMA announced that it intended to revise the Flood Insurance Rate Maps for Natomas, an event that renders the sale of new bonds problematic until the municipal-bond market knows what building restrictions will apply. Finally, the severe downturn in residential development began in the summer of 2007.

In late summer 2006—after the Fisherman's Lake matter was resolved but before FEMA's announcement—the Developer faced a dilemma. To complete the public improvements before the winter rains, it had to award construction contracts immediately, without bidding in some cases. This was a calculated risk. By City policy, competitive bidding is required for reimbursement from any CFD. But, unwilling to lose another construction season, the Developer decided to award a construction contract to Teichert Construction, which was already on site to perform mass grading. The strategy made sense at the time because the Developer intended to use the District primarily to finance fees, not improvements. The Developer further believed that bonds could be issued immediately, with the majority of the

proceeds used for fee reimbursements in 2007, but then the FEMA restrictions and the housing slump occurred, which combined to preclude the sale of bonds.

The Developer cannot predict when it will be able to resume constructing houses and paying development fees; nor can it predict when the District will begin issuing bonds. Meanwhile, it has invested approximately \$27 million for public improvements in the District that are now in service (\$22.2 million where the cost has also been verified).

To accommodate the situation, the City has taken the following actions:

- Converted the District from a bond-only district to a “pay-as-you-go” district so that reimbursements can be made from the District’s special taxes as they are collected;
- Entered into an acquisition-and-shortfall agreement with Forecast Homes that focuses on reimbursements for public improvements rather than for development fees — City Agreement No. 2008-0683, as amended by City Agreement No. 2008-0683-1 (collectively, the Agreement);
- Suspended competitive bidding on \$9,394,967 in projects (item 30 by Motion on the agenda for December 18, 2007) so that the City could use special-tax revenues to reimburse Forecast Homes for those projects;
- Began reimbursing in July 2008 from special taxes that had been levied at the maximum amount in the District in the 2007-08 tax year for projects that met all requirements of the Agreement, or all requirements except competitive bidding where that requirement had been suspended;
- Maintained the special tax at the maximum amount for each tax year; and
- Used special taxes for nine reimbursements totaling \$12,857,991 through June 2013.

The Developer has been reimbursed for all expenses that are eligible to date. Although the Developer has no other facilities that were completed in full compliance with the City’s requirements, it does have additional public facilities totaling \$6,670,902 that it completed in full compliance with all requirements except for competitive bidding. Staff recommends that the competitive bidding for these additional facilities be suspended. If suspension is approved, then the District’s special tax would continue to be levied at the maximum allowed rate, estimated as follows:

	<u>Tax Rate FY2013-14</u>
Tax Zone 1 (per Res Unit)	\$1,316
Tax Zone 2 (per Res Unit)	\$1,108
Tax Zone 3 (per Res Unit)	\$970
Tax Zone 4 (per Acre)	\$9,243
Other Taxable Property (per Acre)	\$12,246
Undeveloped Property (per Acre)	\$12,246

Because the District is a “pay-as-you-go” CFD without bonds, staff would return periodically for appropriation authority as tax revenues are received. All expenses would be fully reimbursed in the 2015-16 tax year. Total reimbursements would then be \$19,528,893 in a district authorized to reimburse \$35 million for eligible facilities and fees.

A table showing the reimbursement status of all public facilities covered by the Agreement is included on the following page. Not shown is a reimbursement of \$1,366,039 for the Air Quality Mitigation Fee of the Sacramento Air Quality Management District.

TABLE 1

K. Hovnanian Forecast Homes Northern, Inc. (Natomas Central)
 Reimbursement Status of All Improvements Under the Agreement
 As of July 24, 2012

5,591,932

Improvement	A	B	C	D	E	F	G
	Construction Estimates (1)	Competitively Bid or Waived from Bidding (2)	Fully Compliant To Date (3)	Compliant Except for Bidding (Waiver Recommended) (4)	Cost Verified but with Documentation and Bidding Issues (5)	Verified Cost of Improvements In Service (Cols. C+D+E)	Estimated Total In Service
1. Detention Basin							
(a) Construction & Design Trunk Drainage and Outfall Structure	10,100,559 691,847	1,680,823	1,680,823	6,670,902		8,351,725	8,351,725 691,847
(b) Basin Supply Wells							
(c) Land Acquisition (See Note 1)							
2. Collector Roadways							
(a) Off-site							
(1) Public Utilities in Roadways	3,000						3,000
(2) Del Paso Road	1,600,000	1,600,000	1,600,000			1,600,000	1,600,000
(3) El Centro Road	4,300,000	4,300,000	4,300,000			4,300,000	4,300,000
(b) On-site Internal Backbone							
(1) Hovnanian, Natomas Central, and Manera Drives	5,200,000	3,805,274	3,911,129			3,911,129	3,911,129
(2) Poe River Drive	1,200,000						
(3) Trunk Sewer (Unpaid Difference)	1,400,000				4,058,620	4,058,620	4,058,620
3. Traffic Signals and Intersection Widening (El Centro & Del Paso Roads; Del Paso Road & Hovnanian Drive)	2,112,000	2,112,000					2,112,000
4. Landscaping, Equipment, and Facilities for Nature Park & Open Space	1,796,870 28,404,276	1,796,870 15,294,967	11,491,952	6,670,902	4,058,620	22,221,474	1,796,870 26,825,191

Notes:

- (1) per CA 2008-0683-1. Land acquisition was a part of this agreement at an estimated cost of \$10,329,800 but has been paid through the North Natomas Finance Plan Land Acquisition Program.
- (2) Projects compliant with Agreement requirements except cost verification. The Del Paso and El Centro Roads were competitively bid. The remainder had the requirement suspended per Item 20, December 18, 2007.
- (3) Costs verified by Professional Engineers either employed or contracted by the City.
- (4) The costs shown have also been verified at this amount.
- (5) Missing additional documentation on 2 change orders and an acceptance certification from SASD.

In the letter below, the total recommended for suspension of \$6,670,902 is the \$8,351,725 on page 2 less the \$1,680,823 exempted from competitive bidding pursuant to City Agreement 2008-0683-1 identified on the page below and on Table 1.



Department of Utilities
Office of the Director

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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