



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Consider Approval of Contract to Provide Management Services to Delta College for the Preparation of an Environmental Impact Report for the Delta College Lodi Campus

MEETING DATE: April 18, 2007

PREPARED BY: Community Development

RECOMMENDED ACTION: Approve contract to manage Delta College Lodi Campus Environmental Impact Report.

BACKGROUND INFORMATION: Delta College requested assistance from City Planning staff to manage its contract with its Environmental Consultant to prepare an Environmental Impact Report ("EIR") for the Lodi Campus (letter forthcoming). Delta College has asked for this assistance because it does not have staff with experience managing such contracts. Management by City staff will include review of the document, adhering to the schedule, assuring completeness and legal adequacy. The proposed contract follows the same model as the reimbursement agreements prepared for the Reynolds Ranch, Southwest Gateway and Westside Annexations. Delta College would reimburse the City for all staff time and expenses incurred and provide a deposit and maintain an evergreen balance. We estimate that staff time charges will be \$120,000 including both Community Development and Public Works with an evergreen amount of \$30,000.

While City staff will manage the contract for the EIR, Delta College will remain as the lead agency for CEQA purposes. Delta College will certify the EIR.

FISCAL IMPACT: N/A due to reimbursement.

FUNDING AVAILABLE: Not Applicable.

Peter Pirnejad,
Planning Manager

Randy Hatch,
Community Development Director

RH/kjc

APPROVED: _____
Blair King, City Manager

EIR CONTRACT MANAGEMENT AGREEMENT

This Agreement is made by and between the City of Lodi, a municipal corporation, hereafter referred to as "CITY" and San Joaquin Delta Community College District, a community college district organized under the Education Code of the State of California, hereafter referred to as "PUBLIC AGENCY DEVELOPER".

RECITALS

- A. PUBLIC AGENCY DEVELOPER desires to annex certain real property to the City of Lodi for the purpose of future development ("Project").
- B. The Project consists of a mixed use publicly owned Community College and privately owned community college housing and services development. The property proposed for annexation is shown on Exhibit "A" which is attached hereto and incorporated herein by this reference (the "Master Development Plan Area.") It is understood that the Master Development Plan Area could expand or contract during the planning process.
- C. State Annexation Laws and City policies and procedures require the preparation of a comprehensive area-wide plan for all the area proposed for annexation as currently proposed and as planned for the future. The CITY seeks to obtain said comprehensive area-wide plan via a program level Master Plan and a specific project level Development Plan.
- D. Said Plans will also require an environmental assessment, which will require the preparation of an Environmental Impact Report (EIR) to determine the environmental impact, if any, of the proposed Master Plan and Development Plan. PUBLIC AGENCY DEVELOPER has legal authority to serve as the lead agency for purposes of preparing the EIR and it is the parties intent that PUBLIC AGENCY DEVELOPER exercise that authority and that the CITY manage and provide day to day direction to the EIR consultant on PUBLIC AGENCY DEVELOPER's behalf.
- E. PUBLIC AGENCY DEVELOPER wishes to enter into a Development Agreement to facilitate this project. The parties contemplate that they may enter into a later Development Agreement regarding the construction of the Project pursuant to the authorities set forth in Government Code Section 65864 et seq. However, the parties acknowledge that this agreement is not a development agreement, and does not commit them to enter a development agreement at some later date or provide any land use entitlements.
- G. The total estimated fees for the Contract Management services are \$_____
- I. The Parties further acknowledge that the California Fair Political Practices Act requires that PUBLIC AGENCY DEVELOPER have no direction or control over the response times, selection, supervision, activities, recommendations or decisions of any staff funded under this Agreement.

NOW THEREFORE in consideration of the mutual covenants made herein, the parties agree as follows:

- 1. RECITALS TRUE AND CORRECT. The parties agree that the "RECITALS" contained herein above are true and correct.

2. EXPENSE REIMBURSEMENT. City may engage outside vendors and in house staff, and purchase supplies and equipment in its sole discretion to perform the contract management services necessary for the Project. PUBLIC AGENCY DEVELOPER will reimburse City for all in house and outside costs associated with the Contract Management services for the Project. The fees listed herein are estimates. Should the actual fees and costs exceed the estimates PUBLIC AGENCY DEVELOPER shall pay the difference. Likewise should the actual costs be less than the estimated costs, the PUBLIC AGENCY DEVELOPER's obligation shall be reduced accordingly.
3. EIR CONSULTANT. PUBLIC AGENCY DEVELOPER will contract with its chosen EIR consultant and CITY'S staff will provide contract management of PUBLIC AGENCY DEVELOPER'S EIR consultants on PUBLIC AGENCY DEVELOPER's behalf. As used in the Agreement, "Contract Management" shall mean to maintain the schedule; coordinate and attend meetings; proof documents; ensure completeness, and monitor budget and progress payments, provide GIS services; and coordinate with other public agencies as necessary. PUBLIC AGENCY DEVELOPER will be solely responsible for payment of the consultant's invoices.
4. PUBLIC AGENCY DEVELOPER'S COOPERATION. PUBLIC AGENCY DEVELOPER will cooperate with City in performing the legal, environmental and planning work required of the City to advance the PROJECT.
5. PUBLIC AGENCY DEVELOPER'S DEPOSIT AND PAYMENT OF COSTS. Upon execution of the Agreement, PUBLIC AGENCY DEVELOPER shall deposit \$__,000.00 cash (or other equivalent security in a form approved by the City Manager) with the City. The City will hold the deposit and charge application fees, invoices received, and in house expenses incurred against the deposit. In the event that the deposit is drawn down to a balance of less than \$__,000.00, PUBLIC AGENCY DEVELOPER shall deposit additional funds in such amount as directed by CITY (minimum \$__,000 increments) to maintain an evergreen balance of at least \$__,000.00("Evergreen Deposit"). PUBLIC AGENCY DEVELOPER shall deposit the Evergreen Deposit within 15 days of receiving notice from the City. In the event that funds remain on deposit at the conclusion of the services contemplated by this agreement; they shall be refunded to PUBLIC AGENCY DEVELOPER.
6. PAYMENT OF COSTS NOT CONTINGENT ON PROJECT APPROVAL/NO ENTITLEMENTS GRANTED. The payment of the fees and costs identified herein is not contingent upon the approval of the proposed annexation. PUBLIC AGENCY DEVELOPER understands that the proposed annexation requires the approval of LAFCO and the Lodi City Council, and although City staff anticipates that such approval will be granted, approval cannot be guaranteed. The PUBLIC AGENCY DEVELOPER fully accepts all risks associated with the approval process. Nothing in this Agreement shall provide PUBLIC AGENCY DEVELOPER with any right to secure approval of any development plan or other entitlement. In addition, PUBLIC AGENCY DEVELOPER agrees that they will have no rights to select the contract staff; or direct the work, response times, recommendations or approvals of the contract staff.
7. PUBLIC AGENCY DEVELOPER'S FAILURE TO PAY. Should PUBLIC AGENCY DEVELOPER fail to make any of the payments in the amounts and at the times stated in Section 4 DEPOSIT AND PAYMENT OF COSTS, the CITY may, at its option, stop all further work on the project and not proceed until the sums due are paid. Should PUBLIC

AGENCY DEVELOPER abandon the project, PUBLIC AGENCY DEVELOPER shall be responsible for the payment to CITY of all fees and costs incurred by the CITY at the time the project is abandoned, including such fees and costs for all work in progress but not yet billed to the CITY by its contract consultants.

8. NO DAMAGES FOR DELAY. The City, its officers, agents, or employees shall not be responsible or liable to PUBLIC AGENCY DEVELOPER for any damages of any type or description which may result from any delays associated with the processing of the project whether caused by the negligence of the CITY, its officers, agents, employees, or otherwise.
9. CALIFORNIA LAW. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Joaquin, State of California, or any other appropriate court in such county, and PUBLIC AGENCY DEVELOPER covenants and agree to submit to the personal jurisdiction of such court in the event of such action.
10. WAIVER. No delay or omission in the exercise of the right or remedy by a non- defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party or any default must be in writing and shall not be a waiver of any other default concerning the same and any other provision of this Agreement.
11. ATTORNEY FEES. If either party to this Agreement is required to initiate or defend or is made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees. Attorneys' fees shall include attorneys' fees on any appeal, and in addition a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.
12. INTERPRETATION. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
13. INTEGRATION: AMENDMENT. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
14. SEVERABILITY. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its validity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

15. CORPORATE AUTHORITY. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

16. Indemnification, Defense and Hold Harmless.

- a. PUBLIC AGENCY DEVELOPER agrees to and shall indemnify, defend and hold the City, its council members, officers, agents, employees and representatives harmless from liability for damage or claims of damage, for personal injury, including death, and claims for property damage which may arise from this Agreement.
- b. With respect to any action challenging the validity of this Agreement or any environmental, financial or other documentation related to approval of this Agreement and any subsequent approvals, certifications or actions related to the Project, PUBLIC AGENCY DEVELOPER further agrees to defend, indemnify, hold harmless, pay all damages, costs and fees, if any incurred to either the City or plaintiff (s) filing such an action should a court award plaintiff(s) damages, costs and fees, and to provide a defense for the City in any such action.

ATTEST:

THE CITY OF LODI
A Municipal Corporation

By: _____
Randi Johl, City Clerk

By: _____
Blair King, City Manager

APPROVED AS TO FORM:

DELTA

By: _____
Stephen Schwabauer, City Attorney

By: _____

Name: _____

Title: _____

Address: _____

MASTER PLAN AND ANNEXATION AREA

EXHIBIT A