

RESOLUTION NO. 110-2011

Adopted December 6, 2011

CONDITIONALLY AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE A PERSONAL SERVICES CONTRACT, APPROVAL OF WHICH IS SUBJECT TO A STATE SUPREME COURT DECISION REGARDING THE AUTHORITY OF REDEVELOPMENT AGENCIES, WITH FORSTER & KROEGER LANDSCAPE MAINTENANCE, INC., A CALIFORNIA CORPORATION, TO PROVIDE LANDSCAPE MAINTENANCE SERVICES IN COMMUNITY FACILITIES DISTRICT NO. 1; RINCON POINT-SOUTH BEACH REDEVELOPMENT PROJECT AREA

BASIS FOR RESOLUTION

1. Pursuant to the Mello-Roos Community Facilities Act of 1982, Community Facilities District No. 1 ("CFD 1" or "District") was established in 1988 by the Redevelopment Agency of the City and County of San Francisco (the "Agency") to fund construction and maintenance of certain public improvements (streetscape improvements) in the South Beach sub-area of the Rincon Point-South Beach Redevelopment Project Area. The Agency acts as manager of the District on behalf of the District property owners.
2. For the past six years, the Agency has contracted with Forster & Kroeger Landscape Maintenance, Inc. ("Forster & Kroeger") for landscape maintenance services. The Agency pays for these services using CFD 1 assessment funds. The current contract expires December 31, 2011.
3. On September 21, 2011, the Agency issued a Request for Proposals ("RFP") to provide landscape maintenance services within the District. Proposals were received from Forster & Kroeger and Robert W. Poyas, Inc. The proposals were evaluated in accordance with the criteria set forth in the RFP by a selection panel comprised of Agency staff. The RFP also informed potential applicants of the potential impact of newly-enacted state laws suspending redevelopment agency activities.
4. Forster & Kroeger received the highest score. Staff believes that the Forster & Kroeger proposal reflected the appropriate budget, skill levels and labor hours necessary to improve and maintain the landscape at the high quality level required. The proposed fees represent an 11% reduction in cost from the current contract.
5. Assembly Bill ("AB") 26, passed in June 2011 and codified in relevant part in California's Health and Safety Code Sections 34161-34168, prohibits redevelopment agencies from incurring new or expanding existing monetary or legal obligations, subject to very limited exceptions. Assembly Bill 27, also passed in June 2011 and codified in Health and Safety Code Sections 34192-34196, provides for redevelopment agencies to continue if the city or county in which the agency is located adopts an ordinance committing to make a payment for local education and other taxing entities. The California Supreme Court is currently reviewing the

constitutionality of these laws after recently hearing oral arguments. *California Redevelopment Association v. Matosantos*.

6. In selecting Forster & Kroeger, the Commission's action would not constitute a new monetary or legal obligation. Instead, a new obligation would be incurred only if and when the California Supreme Court resolves the constitutionality of AB 26 and 27 in a decision allowing redevelopment agencies to continue, the City and County of San Francisco adopts -- if necessary -- an ordinance under AB 27, and the Agency Commission subsequently approves a personal services contract ("Personal Services Contract"). Therefore, the current action being considered by the Commission is "conditional." The Commission will only approve a Personal Services Contract at a future date when the Agency's authority is restored by legal or legislative action.
7. Conditionally approving negotiations for a Personal Services Contract with Forster & Kroeger is an Agency administrative activity that is not a "project" as defined by California Environmental Quality Act ("CEQA") Guidelines Section 15378(b)(5). This action allows for negotiations between the Agency and Forster & Kroeger and will not independently result in a physical change in the environment and is not subject to environmental review under CEQA. Subsequent Agency action is required to enter into the Personal Services Contract with Forster & Kroeger.
8. Staff now wishes to negotiate a Personal Services Contract with Forster & Kroeger for landscape maintenance services in the CFD 1 over the next three years. Should the Commission approve this recommendation, staff will return to the Commission at a later date for approval of the Personal Services Contract, subject to a State Supreme Court decision regarding the authority of redevelopment agencies.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is conditionally authorized to negotiate a Personal Services Contract, approval of which is subject to a State Supreme Court decision regarding the authority of redevelopment agencies, with Forster & Kroeger Landscape Maintenance, Inc., a California corporation, to provide landscape maintenance services in Community Facilities District No. 1 in the Rincon Point-South Beach Redevelopment Project Area.

APPROVED AS TO FORM:



James B. Morales 12/1/11
Agency General Counsel