



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Approving Second Supplemental Agreement to Pixley Park Property Exchange Agreement and Improvement Agreement with G-REM, Inc., to Provide Time Extension

MEETING DATE: November 4, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution approving Second Supplemental Agreement to Pixley Park Property Exchange Agreement and Improvement Agreement with G-REM, Inc., to provide time extension.

BACKGROUND INFORMATION: The City and the developer, G-REM, Inc., entered into a land exchange agreement in December 2004 (Resolution No. 2004-248) per City Council's direction. As shown on Exhibits A and B, the land exchange agreement adjusts the property lines to reconfigure the Pixley Park C-Basin to allow development of the park site per the approved Pixley Park Conceptual Plan.

As part of the land exchange agreement, the developer agreed to construct all the required frontage improvements fronting the proposed park site on Auto Center Drive and to excavate the basin to conform to the final grading of the future park layout. The executed agreement gave the developer until December 2007 to complete the obligations of the agreement.

The developer entered into a Supplemental Agreement with the City on January 23, 2008, to extend the completion of the basin excavation to December 2009, due to problems with the ability of the developer's contractor to move and sell the excavated soil.

The developer's contractor has completed the majority of the public improvements and has excavated half of the basin. Due to the current economic climate, the grading of the basin will not be completed by the agreed upon date. The developer's contractor anticipated being able to sell dirt to be used as fill on other projects. These projects have not materialized as expected.

The developer is requesting to extend the completion date of the improvement agreement and the original land exchange agreement to December 31, 2011, to complete all the required improvements and grading of the park site. Since the City does not currently have funds to construct the proposed features at the park site, staff supports an extension to the completion date of the basin excavation and land exchange.

The developer has executed the supplemental agreement and paid the document preparation fees.

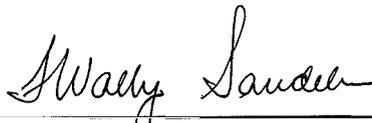
FISCAL IMPACT: There will be no direct fiscal impact on the extension of the basin excavation and land exchange completion date. The developer/contractor

APPROVED:

Blair King, City Manager

is responsible for the basin maintenance during the extension period;
hence the City's part of the Maintenance cost will be reduced.

FUNDING AVAILABLE: Not applicable.



F. Wally Sandelin
Public Works Director

Prepared by Lyman Chang, Senior Civil Engineer

RCP/LC/pmf

Attachments

cc: City Attorney
G-REM, Inc.
Park Superintendent
Streets and Drainage Manager

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City Clerk)
City of Lodi, City Hall)
221 Pine Street)
Lodi, CA 95241)

APN: 049-250-72

(Space Above for Recorder's Use Only)

**SECOND SUPPLEMENTAL AGREEMENT
to the
PIXLEY PARK
PROPERTY EXCHANGE AGREEMENT
AND
IMPROVEMENT AGREEMENT**

This Second Supplemental Agreement to the Pixley Park Property Exchange Agreement and the Improvement Agreement for The Public Improvements of Pixley Park Site Grading ("Second Supplemental Agreement") is made and entered into this ____ day of _____, 2009, by and between the City of Lodi, a municipal corporation ("CITY") and GFLIP III, L. P., a California Limited Partnership ("DEVELOPER"), (collectively the "Parties")

RECITALS:

WHEREAS, the Parties entered into the Pixley Park Property Exchange Agreement, dated November 29, 2004 ("Exchange Agreement"), to address the responsibilities of CITY and DEVELOPER for the Pixley Park property exchange; and

WHEREAS, the Parties have entered into the Addendum to the Pixley Park Property Exchange Agreement dated March 29, 2006 ("Addendum to Exchange Agreement"), to address the grading of the Pixley Park Site (described more fully in Item No. 2 of the Addendum to the Exchange Agreement); and

WHEREAS, the Parties have entered into an Improvement Agreement for the Public Improvements of Pixley Park Site Grading ("Improvement Agreement"), to address public improvements and grading of the Pixley Park Site; and

WHEREAS, the Parties have entered into a Supplemental Agreement to the Pixley Park Property Exchange Agreement and Improvement Agreement ("Supplemental Agreement") dated January 23, 2008, to extend the basin excavation and the land exchange completion date to December 31, 2009; and

WHEREAS, Developer desires to extend the terms of the Exchange Agreement and Improvement Agreement to allow additional time for the basin excavation at the Pixley Park Site.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, it is hereby agreed by and between the Parties as follows:

1. This Second Supplemental Agreement supplements the Exchange Agreement, Addendum To Exchange Agreement, the Improvement Agreement, and Supplemental Agreement previously executed by the Parties.

2. The Parties agree to extend the completion date of the required improvements and property exchange as set forth in the various agreements entered into by the parties and described in paragraph 1 above, to and including December 31, 2011.
3. DEVELOPER shall provide and keep current the necessary securities and insurance as specified in the Exchange Agreement, Addendum to Exchange Agreement and Improvement Agreement.
4. All other terms and conditions of the Exchange Agreement, Addendum to Exchange Agreement Improvement Agreement, and Supplemental Agreement shall remain unchanged, except as modified hereinabove.
5. DEVELOPER agrees to pay all additional costs for preparation and execution of this Second Supplemental Agreement.
6. This Second Supplemental Agreement shall run with the land and be binding on the DEVELOPER, its heirs, successors or assigns.
7. A copy of this Second Supplemental Agreement shall be recorded in the office of the San Joaquin County Records, P. O. Box 1968, Stockton, California 95201-1968.
8. Any notice required to be given by the terms of this Second Supplemental Agreement shall be in writing signed by an authorized representative of the sender and shall be deemed to have been given when the same is personally served or upon receipt by express or overnight delivery, postage prepaid, or in three (3) days from the time of mailing if sent by first class or certified mail, postage prepaid, addressed to the respective parties as follows:

Notices required to be given to CITY shall be addressed as follows:

Wally Sandelin
Public Works Director
City of Lodi
P. O. Box 3006
Lodi, CA 95240-1910

Notices required to be given to DEVELOPER shall be addressed as follows:

GFLIP III L. P., a California Limited Partnership

IN WITNESS WHEREOF, the Parties hereto have set their hands the day, month and year appearing opposite their names.

CITY OF LODI, a municipal corporation

Dated: _____ 2009

By: _____
Blair King, City Manager

Attest: _____
Randi Johl, City Clerk

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF SAN JOAQUIN)

On _____ before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public)

Seal

GFLIP III, L. P., a California Limited Partnership

Dated: _____ 2009

By _____
Name: _____
Title: _____

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF SAN JOAQUIN)

On _____ before me, _____, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public)

Seal

Approved as to form:

JANICE D. MAGDICH
Deputy City Attorney



RESOLUTION NO. 2009-156

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING SECOND SUPPLEMENTAL AGREEMENT TO
PIXLEY PARK PROPERTY EXCHANGE AGREEMENT AND
IMPROVEMENT AGREEMENT

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WHEREAS, the City of Lodi and the developer, G-REM, Inc., entered into a land exchange agreement in December 2004 to reconfigure the Pixley Park C-Basin to allow development of the park site per the approved Pixley Park Conceptual Plan. As part of the land exchange agreement, the developer agreed to construct all the required frontage improvements fronting the proposed park site on Auto Center Drive and to excavate the basin to conform to the final grading of the future park layout. The executed agreement gave the developer until December 2007 to complete the obligations of the agreement; and

WHEREAS, the developer entered into a Supplemental Agreement with the City on January 23, 2008, to extend the completion of the basin excavation to December 2009, due to difficulties in moving and selling the excavated soil; and

WHEREAS, the developer requested to extend the completion date of the improvement agreement and the original land exchange agreement to allow extra time to complete all the required improvements and grading of the park site. Since the City does not currently have funds to construct the proposed features at the park site, staff supports an extension to the completion date of the basin excavation and land exchange to December 31, 2011; and

WHEREAS, the developer has executed the supplemental agreement and paid the document preparation fees.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Second Supplemental Agreement to the Pixley Park Property Exchange Agreement and Improvement Agreement with G-REM, Inc.; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager and City Clerk to execute the agreement on behalf of the City.

Dated: November 4, 2009

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I hereby certify that Resolution No. 2009-156 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 4, 2009, by the following vote:

- AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katzakian, and Mayor Hansen
- NOES: COUNCIL MEMBERS – None
- ABSENT: COUNCIL MEMBERS – Mounce
- ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk

CITY COUNCIL

LARRY D. HANSEN, Mayor
PHIL KATZAKIAN,
Mayor Pro Tempore
SUSAN HITCHCOCK
BOB JOHNSON
JOANNE L. MOUNCE

CITY OF LODI

PUBLIC WORKS DEPARTMENT

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6706
FAX (209) 333-6710
EMAIL pwdept@lodi.gov
<http://www.lodi.gov>

BLAIR KING
City Manager
RANDI JOHL
City Clerk
D. STEVEN SCHWABAUER
City Attorney
F. WALLY SANDELIN
Public Works Director

October 22, 2009

G-REM, Inc.
P. O. Box 1210
Lodi, CA 95241

SUBJECT: Adopt Resolution Approving **Second** Supplemental Agreement to Pixley Park Property Exchange Agreement and Improvement Agreement with G-REM, Inc., to Provide Time Extension

Enclosed is a copy of background information on an item on the City Council agenda of Wednesday, November 4, 2009. The meeting will be held at 7 p.m. in the City Council Chamber, Carnegie Forum, 305 West Pine Street.

This item is on the consent calendar and is usually not discussed unless a Council Member requests discussion. The public is given an opportunity to address items on the consent calendar at the appropriate time.

If you wish to write to the City Council, please address your letter to City Council, City of Lodi, P. O. Box 3006, Lodi, California, 95241-1910. Be sure to allow time for the mail. Or, you may hand-deliver the letter to City Hall, 221 West Pine Street.

If you wish to address the Council at the Council Meeting, be sure to fill out a speaker's card (available at the Carnegie Forum immediately prior to the start of the meeting) and give it to the City Clerk. If you have any questions about communicating with the Council, please contact Randi Johl, City Clerk, at 333-6702.

If you have any questions about the item itself, please call Lyman Chang, Senior Civil Engineer, at 333-6800, extension 2665.



for: F. Wally Sandelin
Public Works Director

FWS/pmf

Enclosure

cc: City Clerk