

CHICO UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Special Meeting

Wednesday, April 10, 2013

Chico Unified School District, Large Conference Room

1163 East 7th St.

Chico, CA 95928

ADDENDUM

The following item will be added to the top of the Discussion/Action Calendar:

5. DISCUSSION/ACTION CALENDAR

5.0. BUSINESS SERVICES

5.0.1. Discussion/Action: Canyon View Mitigation Measures (Michael Weissenborn)

Elizabeth Griffin, President
Board of Education
Chico Unified School District

Posted: April 5, 2013

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AGENDA ITEM: Canyon View Mitigation Measures

Prepared by: Michael Weissenborn, Director of Facilities & Construction

☐ Consent

Board Date April 10, 2013

☐ Information Only

☒ Discussion/Action

Background Information

The District has obtained all of the appropriate permits, authorizations, and CEQA approvals to develop the Canyon View High School site. The original Army Corps of Engineers permit was issued on April 17, 2003 and the District obtained one permit extension. The current permit expires on April 17, 2013. It is our intent to request another permit extension. There are several measures to meet the conditions required by the permit. These mitigations include paying an in-lieu fee to a mitigation fund administered by the U.S. Fish and Wildlife Service. This option is not currently available. In its place is the option of buying "credits" in an approved mitigation bank. These mitigation banks are certified to meet certain requirements such as the preservation and/or creation of vernal pools, preservation of Butte County Meadow Foam and intermittent drainage preservation. The available credits will vary over time as there are a finite number in each bank. It is the District's intent to satisfy the Army Corps of Engineers permit requirements by purchasing appropriate available credits from one or more of these mitigation banks.

At this time we would like to satisfy all measures except Butte County Meadow Foam with the attached agreement, in substantially final form, which details the purchase of:

- (1) \$260,610.10 for 1.02 Acres of Wetland-Vernal Pool Creation (i.e. Vernal Pool Restoration) credits; and
- (2) \$138, 984.25 for 2.24 acres of Group-Vernal Pool Preservation + Fairy Shrimp Only (i.e. Vernal Pool Preservation) credits; and
- (3) \$36,135.00 for 0.33 acres of Stream-Preservation (i.e. Intermittent Streams) credits, at the Bank.

The total purchase price is \$435,729.35.

Educational Implications

The District's Strategic Plan states: "A safe, nurturing and inspiring environment is essential for individuals to thrive."

Fiscal Implications

This has no impact on the General Fund and will be funded out of Developer Fees.

Recommendation

It is requested that the Board of Education authorize the Superintendent or designee, to enter into the final agreement to purchase these credits from the Shauna Downs Mitigation Bank contingent upon approval by the appropriate agencies, U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife, and the extension of the existing Army Corps of Engineers permit. It is also requested that the Board authorize the Superintendent or designee to take action necessary to extend the current permit.

Shauna Downs Mitigation Bank Credit Agreement

This MITIGATION BANK CREDIT AGREEMENT ("Agreement") is made and entered into this __ day of _____, 2013, by and between I G Properties Limited, LLC ("Seller") and Chico Unified School District ("Purchaser").

WITNESSETH:

WHEREAS, Purchaser has applied to the U.S. Army Corps of Engineers ("COE") for, and has obtained, a permit under Section 404 of the Clean Water Act and to the Regional Water Quality Control Board for a permit under Section 401 of the Clean Water Act for the Canyon View High School Project, in Butte County, California ("Project"), and has further received a Biological Opinion (1-1-02-F-0298) from the U.S. Fish and Wildlife Service ("USFWS") for take of a federally protected species. The project number assigned by the COE is SPK 2001-00162.

WHEREAS, Seller entered into a Mitigation Bank Implementation Agreement for the Shauna Downs Mitigation Bank ("Bank") on _____, 20__ with the California Department of Fish and Wildlife ("CDFW") and the USFWS to establish a mitigation bank on the property owned by Seller and identified generally as the Shauna Downs Mitigation Bank. Seller has established with the COE the Bank which compensates for impacts under Section 404 and Section 401 of the Clean Water Act, the federal Endangered Species Act, and/or the California Environmental Quality Act. Such application resulted in the so-called Mitigation Bank Implementation Agreement, which provides for conservation in perpetuity of certain portions of the Bank, the use of such land as mitigation and the sale of mitigation bank credits to third parties, such as Purchaser, in need of such mitigation. The Bank is chartered under the terms of the COE, permit number 200200475.

WHEREAS, as a condition to the issuance of permits for its Project, Purchaser is required to compensate for certain environmental impacts, and elects to do so through the purchase of credits in the Bank.

WHEREAS, the COE has represented that the Purchaser may acquire a total of 1.02 acres of Vernal Pool Restoration/Creation, 2.14 acres of Vernal Pool Preservation, and 0.33 acres of Intermittent Streams credits from the Bank as Purchaser's effort in satisfaction of the mitigation of the environmental impacts referred to above, and upon notification of such purchase, the COE shall deem that the Purchaser has satisfied certain mitigation requirements of Permit number SPK -2001-00162.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed as follows:

1. RECITALS: The recitals are hereby incorporated by this reference.
2. DESCRIPTION OF CREDITS TO BE ACQUIRED; PURCHASE PRICE:
 - a. Purchaser shall, subject to the terms and conditions hereinafter provided, pay to the Seller the sum of four hundred, thirty five thousand, seven hundred and twenty nine dollars and thirty five cents (\$435,729.35) for the mitigation credits as described in detail below:
 - (1) Two hundred sixty thousand, six hundred ten dollars and ten cents (\$260,610.10) for 1.02 Acres of Wetland-Vernal Pool Creation (i.e. Vernal Pool Restoration) credits; and
 - (2) One hundred thirty eight thousand, nine hundred eighty four dollars and twenty five cents (\$138,984.25) for 2.14 acres of Group-Vernal Pool Preservation + Fairy Shrimp Only (i.e. Vernal Pool Preservation) credits; and
 - (3) Thirty six thousand, one hundred thirty five dollars (\$36,135.00) for 0.33 acres of Stream-Preservation (i.e. Intermittent Streams) credits, at the Bank.
 - b. The total Purchase Price shall be four hundred, thirty five thousand, seven hundred and twenty nine dollars and thirty five cents (\$435,729.35) assuming that all three mitigation requirements identified above have been met, as further described in section 2(a)(1) through 2(a)(3) above. If portions of the mitigation credits are not available, the Purchase Price shall be reduced accordingly and as further described in section 6(b) below.
 - c. Purchaser, in its sole discretion, may elect to purchase one or more categories of credits listed above in sections 2(a)(1) through 2(a)(3) at a time, rather than purchasing all three together.
3. SELLER'S OBLIGATIONS: Seller shall maintain the qualification of the Bank by performing its obligations under the Mitigation Bank Implementation Agreement and any other approvals or agreements required for the creation, restoration, and sustainment of the Bank with any applicable agencies responsible therefore. Seller shall provide for the long-term maintenance of the Bank in accordance with the Mitigation Bank Implementation Agreement and any other approvals or agreements for the Bank. Seller shall be fully and completely responsible for satisfying any and all conditions placed on the Bank by the applicable agencies.
4. COMPENSATION: Purchase Price, as described in section 2 above, is to be paid in the manner following:
 - a. DEPOSIT: Upon signing this Agreement Purchaser will pay a deposit of 50% of the Purchase Price, or two hundred seventeen thousand eight hundred sixty-four dollars

and sixty-eight cents (\$217,864.68) to the account at Mid Valley Title, 601 Main Street, Chico, CA 95928 ("Escrow Account"). If Agreement is terminated by either Seller or Purchaser, the Deposit shall be returned to Purchaser from the Escrow Account, except as noted below in section 6(e).

- b. BALANCE OF PURCHASE PRICE: Upon Purchaser's review and determination that (i) Seller's Bank is a fully approved and qualified mitigation bank capable of selling mitigation credits to satisfy Purchaser's mitigation needs as identified above, (ii) the credits to be provided by the Seller satisfy Purchaser's mitigation requirements for Purchaser's Project and Permit number SPK 2001-00162, and (iii) Purchaser has received the final amended biological opinion from COE, Purchaser will deposit the remaining 50% of the Purchase Price as stated herein, specifically two hundred seventeen thousand eight hundred sixty-four dollars and sixty-seven cents (\$217,864.67), to the Escrow Account with written escrow instructions for the release of said funds.
- c. PURCHASE IN STAGES: Purchaser, at its sole discretion, may elect to deposit any portion of the remaining Purchase Price into the Escrow Account in order to purchase one or more types of credits, as contemplated above in section 2(c). Notwithstanding the purchase in stages, Purchaser will be obligated to purchase the full amount of credits as stated in section 2, subject to section 4(d) below.
- d. INCREASE OR DECREASE IN REQUIRED AMOUNT OF CREDITS: Should the credits required by the COE be increased or decreased from the time of Agreement execution to the time Purchase Price has been paid in full, the Purchaser shall be entitled to, but not required to, buy the increased amount of credits from Seller at the same price per unit as originally set out in this Agreement, if Seller has such credits available. Should the credits required by the COE be decreased, Purchaser shall not be required to purchase the amount initially determined and shall be entitled to a refund of any unpurchased credits where applicable.

5. TERMINATION:

- a. If, after one hundred and twenty (120) days from the date of this Agreement, Purchaser has not received the Project Permit extension or final amended biological opinion, then, at any time thereafter until Purchaser receives the Project Permit, either party may terminate this Agreement by thirty (30) days' written notice to the other party. In such event, the Deposit shall be returned to Purchaser.
- b. If Seller cannot deliver some or all of the credits, Purchaser is entitled to a proportional reduction in Purchase Price, as discussed in section 4(d) above. If Seller cannot deliver the credits, it shall inform Purchaser within thirty (30) days of receipt of that information. If Seller cannot deliver any of the credits, then Seller shall be considered in default and this agreement shall be terminated, and Purchaser shall be refunded all moneys theretofore deposited, including any and all of the Deposit.
- c. If Seller is adjudged bankrupt or determined to no longer satisfy any of the mitigation bank requirements set forth in the Mitigation Bank Implementation Agreement or any other approvals or agreements required for the creation and sustainment of the Bank, then Seller shall be considered in default and this agreement shall be terminated and

Purchaser shall be refunded all moneys theretofore deposited, including any and all of the Deposit.

- d. If Purchaser fails to receive approval of its Project, Purchaser shall be refunded all moneys theretofore deposited, including any and all of the Deposit.
 - e. Except as provided above, the Deposit shall be paid to Seller from the Escrow Account only in the event that Purchaser elects not to proceed with the acquisition of credits through no fault of Seller.
6. SELLERS PERFORMANCE: In consideration of the Purchase Price, Seller affirms that it has sufficient credits released in the Bank to satisfy the credits required by Purchaser and agrees to sell such credits to Purchaser. It is understood and agreed that Purchaser shall have no obligation to perform any of the responsibilities now or hereafter as set forth in the permits for the Bank.
7. INDEMNIFICATION: Purchaser shall indemnify, defend and hold harmless Seller and its successors and assigns, its officers, members, agents and employees from and against any claims, damages, costs, expenses, including reasonable attorneys' fees, and liabilities arising from all negligent or intentional acts or omissions of Purchaser or its officers, agents, consultants, or employees, with respect to Purchaser's performance of Purchaser's obligations under this agreement. Seller shall indemnify, defend and hold harmless Purchaser, its officers, consultants, agents and employees from and against any claims, damages, costs, expenses, including reasonable attorneys' fees, and liabilities arising from the negligent or intentional acts or omissions of Seller or its officers, agents, employees, contractors or subcontractors with respect to Seller's obligations under this agreement.
8. NOTICES: Any notices required or permitted hereunder shall be sufficiently given if delivered by overnight courier, by United States mail, return receipt requested, or by facsimile to the parties hereto as follows:

1. If to Seller: I G Properties Limited LLC
Box 5373
Incline Village, NV 89450
E-Mail garlandcanv@msn.com
Fax 916 484-5650

2. If to Purchaser: Chico Unified School District
Attn: Superintendent
1163 7th Street
Chico, CA 95928

3. With a copy to: Gallaway Enterprises Inc.

Jody Gallaway, Agent

e-mail jody@gallawayenterprises.com

Phone 530 332-9909

Any notice given pursuant hereto by overnight courier shall be effective as of delivery; any notice given pursuant hereto by United States mail, return receipt requested, shall be effective as of the third business day following its posting and any notice given pursuant hereto by facsimile shall be effective as of receipt of confirmation by the sending party.

9. ENTIRE AGREEMENT: This Agreement represents the entire agreement between the parties with respect to the matters set forth therein. This Agreement shall supersede any and all prior understandings and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written instrument executed by or on behalf of both Seller and Purchaser.
10. COUNTERPARTS: This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
11. AMENDMENTS: This Agreement may be amended, waived or modified only by a writing executed by both parties hereto. This Agreement may not be assigned without prior written consent of the other party, consent not to be unreasonably withheld.
12. APPLICABLE LAW: Purchaser shall be contractually bound to this Agreement, which shall be governed by the laws of the State of California and subject to the requirements of any applicable federal law or regulation. Changes in federal, State, or local laws, however, which might have otherwise impacted this Agreement, shall not be enforced retroactively after execution of this Agreement. Seller shall be held harmless for damages sustained by Purchaser as a result of changes in federal, State, or local laws or their interpretation or enforcement.
13. CONTRACT ACCEPTANCE: This Agreement is null and void if not executed within sixty (60) days of the effective date on the first page of this Agreement.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the
day and year first above written.

By: _____
Albert Garland
Managing Member
I G Properties Limited, LLC.

By: _____
Kelly Staley
Superintendent
Chico Unified School District