



Monterey County

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Board Report

Legistar File Number: 15-0616

Consent
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Approve and authorize the Chair to sign an Advanced Funding Agreement with BMC EG Courtyard, LLC funding County costs for monitoring and reporting on compliance with prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Approve and authorize the Chair to sign an Advanced Funding Agreement with BMC EG Courtyard, LLC relating to the provision of funds to cover County costs for monitoring and reporting on prevailing wage obligations in construction of the East Garrison project in the former Fort Ord area of the County.

SUMMARY:

The recommended action will provide for the vertical developer of the Courtyard product type in the East Garrison Project to provide funding to cover the County's costs of monitoring and reporting on the developer's responsibilities to pay prevailing wages for construction, consistent with the terms of the East Garrison Disposition and Development Agreement.

DISCUSSION:

In 2006, the County's Redevelopment Agency entered into a Disposition and Development Agreement ("DDA") and the County entered into a Development Agreement ("DA") with East Garrison Partners I, LLC ("EGP") for a development (the "East Garrison Project") of up to 1470 dwelling units, some 34,000 square feet of commercial, retail and community uses, and the rehabilitation of the Historic District. The entire area has been graded, a final subdivision map for Phase I was recorded, and Phase I infrastructure for "wet" utilities (e.g., water, sewer and storm drain) has been installed.

During the "Great Recession", the East Garrison Project was acquired by Union Community Partners ("UCP"), which became the new Master Developer pursuant to a First Implementation Agreement approved in June, 2011. UCP has been working to fulfill the terms of the DDA and DA since that time and has reached a point where it is ready to transfer certain parcels for sale to affiliated entities for the actual construction and sale of homes.

Under the DDA, the Master Developer is allowed to transfer portions of the Project to third party builders, including affiliated entities, for the actual construction of residences ("vertical developers"). In order to do so, the vertical developers must agree to assume obligations of the DDA with respect to the parcels transferred. One of the obligations to be assumed by vertical

developers is the payment of prevailing wages as required by the FORA Master Resolution. There has already been a legal determination that all initial development in the East Garrison Project (including the residences to be developed by the vertical developers) is subject to the requirement to pay prevailing wages.

In recent months FORA has been discussing prevailing wage enforcement practices by the various jurisdictions in the County in response to concerns that have been expressed by labor representatives about prevailing wage practices on some former Fort Ord projects. Similar concerns have not been brought to County staff's attention.

Through various approval and agreements, the County has obligated the developers of the housing units, Benchmark Communities (a fully owned subsidiary of Union Community Partners, UCP), to pay prevailing wage for all work related to the construction of structures on lots developed and owned by Benchmark Communities. To comply, Benchmark Communities retained a private consultant to collect and analyze the wage data on all construction activity and to resolve complaints, address instances of non compliance, and file monthly reports with County staff.

Prior to finalizing for occupancy any individual structure constructed in East Garrison, the County requires a letter from Benchmark Communities certifying that the unit was built in accordance with prevailing wage requirements. These letters are kept on file by County staff.

The County requires the submittal of a monthly report by UCP's compliance consultant. County staff or a consultant retained by the County reviews the monthly reports and follows up as needed. All work done by County staff or the County's consultant is reimbursed by Benchmark Communities.

Periodically (quarterly), County staff or the County retained consultant visits the office where the records are kept and verifies that all records are being retained and are available for inspection. Currently, those records are kept at UCP's consultant offices in San Jose, CA. Benchmark Communities has authorized its prevailing wage compliance consultant to release redacted certified payroll information when requested by a union.

This procedure was reviewed and approved by County Counsel.

Pursuant to Section 321 of the DDA, vertical developers have the obligation to pay prevailing wages for all construction on the parcels as well as the obligation to bear the County's costs of monitoring and reporting to ensure compliance with prevailing wage requirements. The recommended Agreement formalizes that obligation by requiring the vertical developer to make a deposit in the amount of Twenty-five Thousand Dollars (\$25,000) to cover the County's costs. If the deposit goes below a certain amount, the vertical developer must replenish the deposit.

The County retains the flexibility to perform these monitoring and reporting tasks with existing staff or by hiring appropriate consultants. It is currently anticipated that consultants will be used, although some initial monitoring may be conducted in house.

OTHER AGENCY INVOLVEMENT:

The Office of County Counsel has reviewed the Advanced Funding Agreement and approved it as to form. RMA-Planning, Building, Public Works and the CAO, are involved in monitoring compliance with the conditions of the East Garrison project and implementations of the DDA.

FINANCING:

The recommended action will have no impact on the County General Fund. Pursuant to the East Garrison DDA and this Agreement, the vertical developer is required to provide funding for the County's obligations to monitor and report on the developers' prevailing wage obligations.

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Reviewed by: John Guertin, Acting Deputy Director, Resource Management Agency

Approved by: Carl P. Holm, AICP, Acting Director, Resource Management Agency

Attachment: Advanced Funding Agreement with BMC EG Courtyard, LLC (On file with the Clerk of the Board)