

MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER

To: **BOARD OF SUPERVISORS**

Date: **NOVEMBER 8, 2011**

From:  **JAMES DURFEE / MARK RIDEOUT**

Subject: **EXCLUSIVE RIGHT TO NEGOTIATE – PLACER COUNTY GOVERNMENT CENTER**

ACTION REQUESTED / RECOMMENDATION: It is recommended that your Board, by Resolution, authorize the Director of Facility Services, or his designee, to execute an Exclusive Right to Negotiate Agreement between the County and Conkey Real Estate Development LLC (Conkey), in accordance with the Material Terms described in Exhibit A.

BACKGROUND: Over the last year the Department of Facility Services has provided your Board with a number of updates on the department's efforts to update the Comprehensive Facilities Master Plan that was originally prepared in 1993. Efforts to date include development of projections for County space needs; evaluation of alternatives including identification of the holding capacity of County owned properties; development of budget models for future capital projects; and assessment of infrastructure needs. As a result of this analysis, staff has identified that the Placer County Government Center (PCGC) has sufficient development capacity through at least 2035 for County functions. These studies also identified that there is additional capacity for private commercial development of the vacant property south of Home Depot in addition to the areas of the Government Center that are currently leased to private businesses in the vicinity of First Street and F Avenue. See Exhibit B.

Recently, Facility Services received an unsolicited request from Conkey to develop a Costco Warehouse store over approximately 16 acres of PCGC property. Conkey, a construction management firm with commercial development experience in the Auburn and greater Sacramento area since 1979, indicates that the Costco Wholesale Corporation has interest in locating its store on PCGC if the development and business points prove beneficial. Consequently, Conkey has requested an Exclusive Right to Negotiate Agreement (Agreement) to establish an exclusive contractual relationship with the County for a set period while it investigates the feasibility and terms for the use of the County's property. The County undertook a similar process back in 1995 when Home Depot requested an Agreement to investigate the feasibility of its development. Consistent with the Home Depot process, the Agreement would establish an exclusive contractual relationship between the County and Conkey for a one year period to investigate the feasibility and terms for the use of the County's property. While the Agreement would not pre-determine the feasibility of developing the project or the advisability of leasing the property, it would provide Conkey assurances that the County will not entertain other development proposals over the PCGC commercial development area while Conkey expends resources to comply with the performance objectives set forth in the Agreement. It would likewise provide the County assurance that Conkey would not entertain negotiations with other parties with respect to a Costco development within a 5-mile radius of the PCGC. The performance objectives include the preparation of schematic drawings showing the proposed project's relationship to the adjacent PCGC properties and preliminary analysis and studies (e.g., grading,

topography, utility, traffic and circulation plans) that are considered most critical to the County's and Conkey's decision making process.

To allow the commencement of the analysis and studies relative to the proposed development, staff recommends that your Board approve the attached Resolution delegating authority to the Director of Facility Services to finalize and execute the Agreement, in accordance with the Material Terms described in Exhibit A. Following completion of the deliverables, staff will return to your Board with recommendations related to the feasibility of this proposed development. This Agreement would not bind either party to proceed with negotiations for an Option to Ground Lease or to the development. The ultimate decision as to the advisability of entering into such Option is at the sole discretion of your Board.

ENVIRONMENTAL CLEARANCE: This action is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15306. Information Collection which exempts basic data collection, research, and resource evaluation activities not resulting in a serious or major disturbance to an environmental resource.

FISCAL IMPACT: In consideration of the Exclusive Right to Negotiate, Conkey is required to pay \$15,000 initially and then \$5,000 upon the exercise of each six-month extension. Monies paid are intended to offset staff and legal costs associated with the negotiation and development of the Option to Ground Lease.

ATTACHMENT: RESOLUTION
EXHIBIT A: MATERIAL TERMS
EXHIBIT B: SITE PLAN

cc: COUNTY EXECUTIVE OFFICE
COUNTY COUNSEL

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Before the Board of Supervisors County of Placer, State of California

Resol. No: _____

In the matter of: A Resolution authorizing the Director of Facility Services, or his designee, to finalize and execute an Exclusive Right to Negotiate Agreement between the County and Conkey Real Estate Development LLC for the development of a Costco Warehouse Store on Placer County Government Center property.

The following RESOLUTION was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held _____, by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:
Clerk of said Board

Chairman, Board of Supervisors

WHEREAS, the County of Placer (County) is the owner of over 200 acres of property known as the Placer County Government Center (PCGC) in the Auburn, California; and,

WHEREAS, through the Comprehensive Facilities Master Plan (CFMP) activities, it has been determined that the PCGC has sufficient development capacity for County functions; and,

WHEREAS, through this CFMP process, it has also been determined that there is additional capacity for private commercial development south of Home Depot and in the vicinity of First Street and F Avenue; and,

WHEREAS, Conkey Real Estate Development LLC (Conkey) has approached the County requesting an Exclusive Right to Negotiate Agreement (Agreement) to provide both the County and Conkey time to perform analysis and studies necessary to determine the feasibility of the proposed Costco store, pursuant to the attached Material Terms; and,

WHEREAS, the deliverables from the proposed Agreement will provide the County with critical information from which to make an informed decision related to the proposed development; and,

NOW THEREFORE, BE IT RESOLVED, that the Placer County Board of Supervisors does hereby authorize the Director of Facility Services, or his designee, to finalize and execute an Exclusive Right to Negotiate Agreement pursuant to the Material Terms attached hereto.

MATERIAL TERMS

- A. Parties. The Agreement will be between the County of Placer (County) and Conkey Real Estate Development LLC (Conkey).
- B. Agreement Term. One-year term with two six-month extensions upon mutual consent of the Parties.
- C. Purpose. The purpose of the Agreement is as follows:
1. For the sole purpose of establishing the feasibility and terms for the use of the property to be for development of a Costco Wholesale Corporation store (Costco) only.
 2. To provide sufficient time to perform studies, evaluate site alternatives and layouts and to determine the feasibility for the development of a Costco on a site approximately 16 acres in size located in the south east quadrant of the PCGC, generally described as: south of Willow Creek Drive and east of 1st Street; and west of 1st Street, south of D Avenue, east of 2nd Street and north of the County's Corporate Yards (hereinafter the "Commercial Development Area").
 3. To allow for County consideration of the proposed site alternatives and layouts for a potential Costco on the Commercial Development Area, and to consider the affect of such development proposal on the PCGC.
 4. Subject to the County's acceptance of a site development concept alternative, to provide sufficient time for negotiation of an Option to Ground Lease and Ground Lease with respect to the proposed site.

The County will not negotiate directly or indirectly with any other person or entity regarding the ground lease for development of all or any portion of the Commercial Development Area. Conkey agrees not to negotiate, directly or indirectly, with any other parties concerning the acquisition or lease of land for, or feasibility studies with respect to, the development of a Costco in any other area within a five (5) mile radius of the PCGC.

- D. Consideration: As consideration for the Agreement, Conkey will pay to the County \$15,000 upon execution of the Agreement by the parties. In the event Conkey exercises one or both of the extensions, then Conkey shall pay County \$5,000 upon exercising each extension. The Consideration for this Agreement shall not be applicable to any future consideration, fee or payment pursuant to an Option to Ground Lease.
- E. Termination: Parties have the right to terminate the Agreement as follows:
1. If Conkey decides not to pursue the development of a Costco on the Commercial Development Area, the Agreement shall immediately terminate upon Conkey's written notice to County.
 2. Should the County, in its sole discretion, determine that development proposal(s) or proposed Option and Ground Lease terms are not in the County's best interest, the County has the right to terminate the Agreement by not agreeing to an extension.
 3. If Costco provides notice that it is no longer interested in the Commercial Development Area, Conkey shall have 60-days from such notice to propose an alternate user. The County Board of Supervisors shall have 60-days thereafter to, in its sole discretion, accept such alternate user or terminate the Agreement.
 4. If in its sole discretion County determines that Conkey has failed to perform pursuant to the requirements set forth in the Agreement, if such failure to perform continues for 30-days following County's written notice specifying such failure, County shall have the right to provide Conkey a notice of termination.

- F. Performance by Conkey: Conkey at its sole cost and expense shall deliver the following identified deliverables pertinent to the feasibility of the proposed development. At a minimum the performance objectives shall include:
1. Preparation of a timeline and schedule detailing the delivery of the performance objectives 2, 3, and 4 below.
 2. Preparation of site concepts and development plans. Such plans shall include schematic drawings of the proposal(s), showing how the project connects to and integrates with existing roadways and facilities in the PCGC and adjacent properties; and showing how adjacent PCGC properties can be utilized after development of the proposed project. The schematics shall show expected project improvements including anticipated grading, cut and fill sections, required demolition, and on-site facilities such as detentions basins.
 3. Performance of project feasibility analysis and studies. The analysis and studies that are mutually determined to be the most critical to the County and Conkey's decision making process shall be performed first. These include preliminary grading and topography plans, preliminary utility and infrastructure demand analysis, drainage investigations, traffic and circulation analysis, Phase 1 environmental site assessment, and economic impact analysis.
 4. Preparation of proposed business terms for an Option to Ground Lease and the Ground Lease.
- G. Option to Ground Lease (Option) and Ground Lease (Ground Lease) Negotiation. Following completion of the agreed upon Performance by the Parties, Conkey and County may enter into negotiations for and Option and Ground Lease. Determination of the advisability of Conkey entering into and Option shall be in the sole discretion of Conkey. Determination of the advisability of the County entering into any Option shall be in the sole discretion of the County, and any Option to Ground Lease and Ground Lease negotiated during the term of the Agreement shall not become binding until it has been considered at a public meeting and formally approved by the Placer County Board of Supervisors. In the event the Parties are unable to agree upon mutually acceptable terms for the Option and Ground Lease, the Agreement shall terminate.
- H. Use Rights. Any proposed use must take into account Section 8.2 of the Ground Lease Agreement between the County of Placer and Home Depot.
- I. Right of Entry: During the term of the Agreement, Conkey and its agents, employees, contractors, engineers and consultants shall have the right and are authorized to enter the site in order to perform any investigations including but not limited to surveys, environmental assessments, soils tests, borings, ground water tests and other test regarding the physical condition of the sites which may be necessary to determine the suitability of the property for the intended development. Conkey and its representatives must work with County to obtain access to leased facilities for the purposes of conducting studies and agree to indemnification for its actions.
- J. Assignment: Conkey may not assign this Agreement, or any of its rights and duties hereunder, to any third party without the prior written consent of the County, which consent may be withheld in the sole discretion of the County; provided, however, such prior written consent shall not be required in the event Conkey assigns this Agreement to Costco Wholesale Corporation, and such assignment shall be effective upon receipt by the County of a fully executed Assignment and Assumption Agreement between Conkey and Costco Wholesale Corporation.
- K. General Provisions. The Agreement will include provisions regarding proper notification, legal jurisdiction, counterparts, etc.

COMMERCIAL DEVELOPMENT AREA

Area defined as "Commercial Development Area" is consistent with PGCG 2035 Capacity projections as presented during Comprehensive Facilities Master Plan Update to the Board of Supervisors on July 25, 2011

Commercial Development Area

