

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: May 15, 2012

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Council File No. 12-0525

Council District: 6

To: The Council
The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Energy and Environment Committee Meeting for Wednesday, May 16, 2012

Subject: **PROP O – ELMER AVE PASEO PROJECT - PROPOSED MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LOS ANGELES AND THE COUNCIL FOR WATERSHED HEALTH**

SUMMARY

The Board of Public Works and the Bureau of Sanitation are requesting approval of a Proposed Memorandum of Understanding (MOU) between the City of Los Angeles (City) and the Council for Watershed Health (CWH) for implementation of the Elmer Avenue Paseo Project (Project). The Elmer Avenue Paseo Project is a Proposition O (Prop O) Project designed to clean stormwater runoff and increase recharge of local groundwater supplies in the San Fernando Valley.

We were not requested to review the Proposed MOU by the Board, the Bureau, the Mayor or Council. However, upon seeing the request placed on the Agenda for the May 16, 2012 meeting, we reviewed the request and found multiple issues worthy of the attention of the Council and Mayor. The issues are as follows:

Insufficient Oversight of Proposition O Funds.

The MOU obligates the City to provide \$129,000 of Prop O General Obligation (GO) Bond funds to CWH in support of the Project. However, the MOU Scope of Work lists maintenance activities which are not legal to fund from GO Bond funds as defined (Article 2, Page 3, Scope of Work, 7th, 8th and 9th Bullets). To provide for the proper stewardship of public funds, the MOU must be modified to clarify that the Prop O funds must be used for construction or improvement of real property (Article 2, Page 3, Scope of Work, First Six Bullets). Any Prop O funds received by the CWH and not expended on construction or improvement must be returned to the City. Approval of expenditures for optimization of the Project should be approved by the Prop O Administrative Oversight Committee and/or the City Council based upon the specific activities required to establish specific elements of the Project. In addition, Prop O Bond funds are limited to paying for clean water facilities. Project elements that have a green space or community benefit but do not provide for clean water must be supported from a funding source other than Prop O.

Recommendation:

That the Council approve the MOU, subject to the inclusion of the following language in Article 2, Page 3, Scope of Work:

“Proposition O funds provided by the City shall only be used to fund construction and improvement of real property, consistent with the use of General Obligation Bond funds, as described in the first six bullets in this Article. Prop O Bond funds are limited to paying for clean water facilities. Project elements that have a green space or community benefit but do not provide for clean water must be supported from a funding source other than Prop O. Approval of expenditures for optimization of the Project shall receive separate prior approval by the Prop O Administrative Oversight Committee and City Council based upon the specific activities required to establish specific elements of the Project. Any Prop O funds received by the CWH and not expended on construction or improvement of clean water facilities on real property must be returned to the City.”

Insufficient Invoicing and Payment Process.

The MOU provides the Bureau of Sanitation the ability to pay CWH “either on a lump sum basis, or deliverables basis...”. To provide good stewardship and a strong audit trail over these public funds, the MOU should specify one method or another. Ideally, release of the funds will be contingent upon specific deliverables that provide for clean water (not simply 50% or 100% of construction).

However, the MOU does not detail specific deliverables (i.e. # of swales at # locations, # acres of permeable pavement, # of retention basins with # capacity) nor limit payment to only those deliverables that legally qualify for Prop O funds.

Recommendation:

That the Council approve the MOU, subject to the complete replacement of the language in Article 8 – Invoicing and Payment, Section 1, Page 5 of the Proposed MOU with the following language:

“Compensation: The City shall reimburse the Council upon the completion of project deliverables that comply with Article 2, Scope of Work and are eligible for Prop O funds. Should a project deliverable be partially eligible for Prop O funds, the appropriate Prop O eligible portion will be determined by the City in writing and the amount of payment shall be based upon that determination. Total compensation under this Agreement will be limited to \$129,000.”

Insufficient Information Regarding the Impact on the Project Budget.

The Prop O Project Budget approved by the Council, the Mayor and the Prop O Administrative Oversight Committee (AOC) is \$829,000. It was anticipated that \$446,000 in funding from other sources would be provided for a total Budget of \$1,275,000.

The MOU references other sources of funding totaling \$546,806 and a City Prop O contribution of \$129,000 for a total Budget of \$675,806.

This suggests that the overall Project is \$599,194 under budget. Such a large difference also suggests a Project Scope that may be significantly less than approved by the Council, Mayor and AOC. However, the MOU lacks detail on project scope elements and any potential difference can not be easily ascertained.

This also suggests \$700,000 in Prop O savings that could be moved to the Program Contingency or otherwise reprogrammed. However, the Board report neglects to address these issues.

Recommendation:

That the Council instruct the Bureau of Sanitation to report on the Project Status to the Proposition O Administrative Oversight Committee and provide a reason for the large discrepancy in the Project Budget. If warranted, the Administrative Oversight Committee will then report to Council.

RECOMMENDATIONS

That the Council and Mayor:

1. Approve the MOU, subject to the inclusion of the following language in Article 2, Page 3, Scope of Work:

“Proposition O funds provided by the City shall only be used to fund construction and improvement of real property, consistent with the use of General Obligation Bond funds, as described in the first six bullets in this Article. Prop O Bond funds are limited to paying for clean water facilities. Project elements that have a green space or community benefit but do not provide for clean water must be supported from a funding source other than Prop O. Approval of expenditures for optimization of the Project shall receive separate prior approval by the Prop O Administrative Oversight Committee and City Council based upon the specific activities required to establish specific elements of the Project. Any Prop O funds received by the CWH and not expended on construction or improvement of clean water facilities on real property must be returned to the City.”

2. Approve the MOU, subject to the complete replacement of the language in Article 8 – Invoicing and Payment, Section 1, Page 5 of the Proposed MOU with the following language:

“Compensation: The City shall reimburse the Council upon the completion of project deliverables that comply with Article 2, Scope of Work and are eligible for Prop O funds. Should a project deliverable be partially eligible for Prop O funds, the appropriate Prop O eligible portion will be determined by the City in writing and the amount of payment shall be based upon that determination. Total compensation under this Agreement will be limited to \$129,000.”

3. Instruct the Bureau of Sanitation to report on the Project Status to the Proposition O Administrative Oversight Committee and provide a reason for the large discrepancy in the Project Budget.

FISCAL IMPACT STATEMENT

Approval of the Proposed Memorandum of Understanding as modified with the Recommendations contained in this report will result in the expenditure of \$129,000 in Proposition O General Obligation Bond funds. There is no General Fund impact.

MAS:DHH:06120103