City Council Agenda

Regular Meeting

Bell City Council

Tuesday, September 4, 2012

6:15 P.M. Closed Session
7:00 P.M. Regular Meeting

Bell Community Center
6250 Pine Avenue

Ali Saleh
Mayor

Violeta Alvarez
Vice-Mayor

Danny Harber
Council Member

Ana Maria Quintana
Council Member

Nestor E. Valencia
Council Member

Welcome to the City Council Meeting

The Bell City Council and staff welcome you. This is your City Government. Individual participation is a basic part of American Democracy and all Bell residents are encouraged to attend meetings of the City Council. Regular City Council meetings are held the first and third Wednesday of the month at 7:00 p.m., Bell Community Center, 6250 Pine Avenue. For more information, you may call City Hall during regular business hours 8:00 a.m. to 4:00 p.m., Monday through Friday at (323) 588-6211 Extension 217.

City Council Organization

There are five City Council members, one of whom serves as Mayor and is the presiding officer of the City Council. These are your elected representatives who act as a Board of Directors for the City of Bell. City Council members are like you, concerned residents of the community who provide guidance in the operation of your City.

Addressing the City Council

If you wish to speak to the City Council on any item which is listed or not listed on the City Council Agenda, please complete a *Request to Speak Card* available in the back of the City Council Chambers. Please submit the completed card to the City Clerk prior to the meeting. The Mayor will call you to the microphone at the appropriate time if you have filled out a *Request to Speak Card*. At that time, please approach the podium, clearly state your name and address, and proceed to make your comments.

Compliance with Americans with Disabilities Act

The City of Bell, in complying with the Americans with Disabilities Act (ADA), request individuals who require special accommodation(s) to access, attend, and or participate in a City meeting due to disability. Please contact the City Clerk's Office, (323) 588-6211, Ext. 217, at least one business day prior to the scheduled meeting to insure that we may assist you.

Statement Regarding Compensation for Members of the Bell City Council

Compensation for the members of the Bell City Council is $673 a month. In accordance with Government Code Section 54952.3, Councilmembers will not receive any additional compensation or stipend for the convening of the following regular meetings: Successor Agency to the Bell Community Redevelopment Agency, the Bell Community Housing Authority, the Bell Public Finance Authority, the Bell Surplus Property Authority, the Bell Solid Waste Authority, and the Planning Commission.

CITY OF BELL, CALIFORNIA

MEETING OF THE

Bell City Council

September 4, 2012

6:15 P.M. Closed Session
7:00 P.M. Regular Meeting

Bell Community Center
6250 Pine Avenue

Call to Order

Roll Call of the City Council in their capacities as Councilmembers/Members of all Related Agencies: Harber, Quintana, Valencia, Alvarez, and Saleh

Communications from the Public on Closed Session Items

This is the time for members of the public to address the City Council and related Authorities and Agencies only on items that are listed under Closed Session.

Closed Session

1. The City Council and the related Authorities and Agencies will recess to a closed session to confer with legal counsel regarding the following matters:

   a) PUBLIC EMPLOYMENT pursuant to Government Code Section 54957 (b) (1)
   Title: Finance Director

Reconvene Regular Meeting

Pledge of Allegiance

City Attorney Report

The City Attorney will report out on any action(s) to be taken by the City Council/Agencies on Closed Session matters.

Communications from the Public

This is the time members of the public may address the City Council, Bell Community Housing Authority the Successor Agency to the Bell Community Redevelopment Agency and the Planning Commission. The public may speak on items that are on the agenda and on non-agenda items that are under the subject matter jurisdiction of City Council and/or its related authorities and agencies.

Persons wishing to address the Council/Agencies on the Consent and/or Business Calendars should identify the items they wish to speak on at this time and provide a completed "blue" speaker card to the City Clerk. Request to Speak forms must be submitted prior to the beginning of the public comment period on Agenda Items. Speaker cards shall not be accepted by the City Clerk after the first speaker begins his/her comments.

Speakers will be called to speak by the Mayor/Chair at the appropriate time. Comments are limited to three minutes on all items. When addressing the Council/Agencies, please address the Council through the Mayor/Agency Chair.

State law prohibits the Council and/or its related authorities and agencies from taking action on a matter not on this Agenda. Any matter may be referred to the Interim Chief Administrative Officer for follow up.

Business Calendar

2. Consideration of Approving the $182,556 Repayment to State Department of Parks & Recreation for Bell Community Health and Wellness Grant Project UP-19-018. *(Council)*

Recommendation:

a) Approve a Fiscal Year 2011/12 appropriation n Fund 50 for $422,924; and

b) Approve the repayment of $152,566 for grant project UP-19-018 to the State Department of Parks & Recreation.

Mayor and City Council Communications

Pursuant to Assembly Bill 1234, this is the time and place to provide a brief report on Meetings, Seminars and Conferences attended by the Mayor and City Councilmembers

Adjournment

Special Meeting, Wednesday, September 12, 2012

I, Rebecca Valdez, CMC, City Clerk of the City of Bell, certify that a true, accurate copy of the foregoing agenda was posted on August 31, 2012, at least seventy-two hours prior to the meeting as required by law.

Rebecca Valdez, CMC
City Clerk

City of Bell
Agenda Report

DATE: September 4, 2012

TO: Mayor and Members of the City Council

FROM: Anita Lawrence, Interim Finance Director

APPROVED BY: _____
Doug Willmore, City Manager

SUBJECT: $182,556 Repayment to State Department of Parks & Recreation for Bell Community Health and Wellness Grant Project (UP-19-018)

Recommendation:
That the City Council approve:

1. A Fiscal Year 2011/12 appropriation in Fund 50 for $422,924, and
2. Repayment of $152,566 for grant project UP-19-018 to the State Department of Parks & Recreation.

Background:
On August 9, 2012, the City received a letter from the State of California Department of Justice requesting repayment of several grants totaling $481,176. One of the grants was for the Bell Community Health and Wellness Project. The City designed the project at a cost of $152,566, but the project was never built. In addition to the incompleteness of the project, the State claims that the City of Bell did not follow purchasing guidelines when contracting for the design of the project. A copy of the August 9, 2012 letter is attached.

The City has been working for many months toward a solution to avoid having to repay the money for these grants and has made some headway, but clearly believes that in this instance the State is entitled to reimbursement. Even if the City had followed purchasing guidelines, the project was never built and completion of the project was a condition of the grant.

On January 25, 2012, a letter from the State Department of Justice to the City Attorney (copy enclosed) also makes the claim for the return of funds for the grant projects for various reasons which will provide the City Council with some additional background regarding the projects in question.

The City has exhausted its search for backup documentation that may help the City avoid repayment. So far documentation has been located that will result in the City avoiding repayment of $58,252 and is working with the State Department of Parks and Recreation towards eligibility of those costs.

As the City was tendering and defeasing the 2007 General Obligation Bonds, it became clear that the projects in question qualified for the use of GOB proceeds. $500,000 was set aside to cover the costs and refund the grant money to the State of California. To the extent that additional documentation can be located to negate the allegations, the City could avoid additional repayments, however, as more time is spent searching for these documents, it has become less and less likely that they will be located or that they even exist. Most of the allegations are because the previous administration did not follow proper purchasing procedures.

Fiscal Impact:
Because the City Council had the foresight to set aside some of the General Obligation Bond proceeds to repay the State Department of Parks and Recreation, there will be no impact to the City's General Fund. The City's 2012/13 Budget includes a $500,000 balance in Fund 50, the Capital Projects Fund, which remained in the fund for the purpose of providing funding for this payback. It is further recommended that the City Council approve an appropriation of $422,924 in Fund 50 for the Fiscal Year ended June 30, 2012 to allow for an accrued expenditure for this project and the remaining projects in question and approve a $182,556 payment to the State of California Department of Parks and Recreation for Project UP-19-018.

Attachments:
August 9, 2012 Letter from the State Department of Justice to the City
January 25, 2102 Letter from the State Department of Justice to the City Attorney

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

300 SOUTH SPRING STREET, SUITE 1702
LOS ANGELES, CA 90013

Public: (213) 897-2000
Telephone: (213) 897-2706
Facsimile: (213) 897-2801
E-Mail: Terry.Fujimoto@doj.ca.gov

RECEIVED
AUG 13 2012
City Clerk's Office
City of Bell

August 9, 2012

Dave Willmore, City Manager
City of Bell
6330 Pine Avenue
Bell, CA 90201

RE: Audit Results for 2000 Parks Bond Act and 2002 Resources Bond Act Projects for the City of Bell

Dear Mr. Willmore:

I represent the California Department of Parks and Recreation ("Department") in the above-entitled matter. As you may know, a Department audit disclosed that the City violated the terms and conditions of five grant contracts it was awarded under the 2000 Park Bond Act and the 2002 Resources Bond Act. The Department had been working diligently with your predecessor, Arne Croce, to reach a resolution of these exceptions. Unfortunately, the parties have reached an impasse. The City appears unwilling or unable to provide the documents that the Department has requested that would verify that the City has satisfied the grant contract requirements. Unless, we are able to resolve this matter soon, the Department will have no other choice but to pursue other options to recover the bond funds.

By way of background, on June 30, 2011, the Department notified the City of Bell ("City") that it was out of compliance with five grant contracts awarded under the 2000 Parks Bond Act and the 2002 Resources Bond Act and ordered the City to return $481,176 in grant funds to the State. (See attached Exhibit A.) On October 31, 2011, the City's counsel proposed a resolution of the City's alleged violations involving repayment of approximately $100,000 of bond funds and "corrective action" by the City to ensure that future contracts are approved through a "competitive bidding process in compliance with all federal state and local laws." In response, the Department advised the City that before a settlement can be reached the City must make available all documents relevant to the five disputed projects and provide additional materials requested in the June 30, 2011 demand letter. (See Exhibit B.) Based upon the auditor's review of the materials, the Department could then make a final determination of the amount, if any, that the City must repay to the State.

Interim City Manager, Arne Croce agreed to the Department's request and designated Dave Bass[1] to act as the City's representative in this matter. Anita Lawrence and Pam Easter were also assigned to assist in collecting the necessary documentation. The parties entered into a Tolling Agreement that suspended the statute of limitations for any claims against the City to give the parties time to negotiate a settlement. Since that time, the City has turned over some materials but has not provided the majority of the documents needed to complete the Department's review.

In March 2012, Mr. Bass proposed refunding the entire amount the State paid to the City for the Bell Community Health and Wellness Project (UP-19-018) or $182,556, and in return the State would effectively waive the City's non-compliance with the remaining projects (based on the fact that the projects had largely been completed), and reimburse the City for its construction costs ($75,670) related to the Veteran's Memorial Park Single-Use Children's Restroom (No. 02-19-218). (See Exhibit C.)

In a conference call later that month, the Department advised Mr. Bass that it does not have the legal authority to waive the City's non-compliance without good cause. Staff explained that the Department is accountable for all funds expended under its grant programs and its failure to properly monitor and oversee the grant agreements may subject the Department itself to an audit of its practices and procedures. Therefore, before the Department can recommend options other than full repayment to the State, it must conduct a methodical and exhaustive review of the grantee's expenditures to ensure that it properly spent public monies. The Department advised Mr. Bass that the burden is on the grantee to provide written documentation verifying that it has satisfied the grant requirements. The Department further informed Mr. Bass that if the City has not complied with the grant requirements or is unable to produce documentation of its compliance, it should inform the Department of its findings immediately so the Department can render a decision based on the information before it.

Since the March 2012 conference call, the parties have made only minor progress. The City has yet to locate and produce the bulk of the documents the Department requested. The Department needs to resolve this matter as soon as possible. If the City has exhausted every avenue to obtain the materials and is unable to locate them, or determines that the materials do not exist, it should confirm its findings in writing to the Department. The Department can then conclude its audit review and evaluate its options, including the City's March 2012 proposal. If the City is unwilling to cooperate, the Department will have to consider other measures to

[1] It is my understanding that Mr. Bass was serving in an interim capacity and is also no longer with the City.

recover the bond funds. I look forward to discussing these matters further at our August 21, 2012 conference call and our in-person meeting thereafter.

Sincerely,

TERRY T. FUJIMOTO
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

cc: J. Lacher, OGALS, D. Wiseman, DPR

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE

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January 25, 2012

David J. Aleshire
Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612

RE: Audit Results for 2000 Parks Bond Act and 2002 Resources Bond Act Projects for the City of Bell

Dear Mr. Aleshire:

The Office of Grants and Local Services (OGALS) for the Department of Parks and Recreation (Department) has reviewed the City's October 31, 2011 response to the audit findings and OGALS' demand for return of $481,176 in grant funds. Although the City's responses address some of OGALS' concerns, they fail to address others and raise new questions regarding the City's compliance with the grant contract requirements. The City also seeks an adjustment of OGALS' demand based upon its contention that the City's costs were, for the most part, eligible for reimbursement and consistent with the terms and conditions of the five disputed grant contracts. In reviewing the City's contentions, OGALS assumes the following. First, each grant contract must be reviewed independently from the other disputed contracts. Second, all grant monies must be accounted for and must be returned to OGALS in the absence of evidence that the projects for which the monies were obtained were eligible for reimbursement and completed to OGALS' satisfaction. Third, there must be adequate documentation to support the City's claims. It is in this context that OGALS addresses the City's response to its June 30, 2011 letter terminating five grant projects and demanding the return of all grant monies it paid the City.

Bell Community Health and Wellness Project (UP-19-018)

OGALS' Audit Report ("Report") found that City's vendor contracts for this project violated section B(4)[1] of the grant contract on three separate bases. First, the Report found that

[1] Section B(4) of the grant contract provides that in relevant part that "[t]he [City] shall comply with all applicable current laws and regulations affecting Development Projects,

(continued...)

the City Council did not approve vendor contracts with MBH Architects and SMS Architects in violation of City Charter section 519. Second, the Report concluded that the MBH Architects and SMS Architects contracts did not comply with City Charter section 1111 which requires that contracts involving expenditures of more than $25,000 for the construction of public improvements be competitively bid and "let to the lowest responsible bidder." Third, the Report found that the City's vendor contracts with D&J Engineering and TD Urban Planners were in violation of City Charter section 708 and Government Code section 1090, which prohibit City employees from being financially interested in contracts in which the City is a party. When the City executed the vendor contracts, the City's Director of Planning Services owned D&J Engineering and TD Urban Planners. Based upon these findings, OGALS determined that the City was in breach of Section B(4) of the grant contract, and, pursuant to section E(3),[2] suspended the grant contract and demanded the return of $182,556 paid to the City. (See June 30, 2011 letter Patti Keating to Pedro Carrillo, pp. 1-2.) ***Any one of these violations would have authorized OGALS to suspend the entire grant contract under Section E(3).***

In response to these findings, the City asserts that the contracts with MBH Architects and SMS Architects did not violate City Charter section 1111 because under Government Code sections 4526 and 37103, a local agency may contract for professional services with a private architectural firm without having to award the contract to the lowest bidder. The City also contends that in the absence of a "determination by a competent court finding a conflict of interest in the contracts with D&J Engineering and TD Urban Planners," there is no violation of Section B(4). The City asserts that because the Report found that the vendor contract with Ralph J. Stone, Inc., in the amount of $5,200.00, was an eligible use of funds, the City is not obligated to return those monies to the State. Significantly, the City does not dispute that the City Council failed to approve the vendor contracts with MBH Architects and SMS Architects.

The City's arguments are not convincing. First, even assuming the competitive bidding requirements set forth in City Charter section 1111 do not apply to professional services such as architectural work, the City ignores other relevant language in Government Code section 4526. That section provides in relevant part that "[n]otwithstanding any other provision of law, selection by a . . . local agency head for professional services . . . . shall be on the basis of demonstrated competence and on the qualifications necessary for the satisfactory performance of the services required." In order to implement this method of selection, section

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(...continued)

including but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and law and codes pertaining to individuals with disabilities."

[2] Section E(3) of the grant contract provides in relevant part, "failure by the Grantee to comply with the terms of [the contract] or any other Contract under the Act may be cause for suspension of all obligations of the State hereunder."

4526 also requires that local agencies "adopt by ordinance, procedures that assure that [professional services] are engaged . . . at a fair and reasonable prices to the public agencies." The purpose of these "procedures" is to prohibit practices that might result in unlawful activity including but not limited to, rebates kickbacks or other unlawful consideration. . . ." (Gov. Code, § 4526.) There is no evidence that the City has ever adopted such measures or that there are any safeguards to prevent the types of abuses section 4526 indentifies. Nor is there evidence that the vendor contracts were fair and equitable. To the contrary, the State Controller's Office's audit of the City's administrative and internal accounting controls identified questionable contracting practices, conflicts of interest and the use of purchase requisitions to illegally circumvent grant program contracting requirements. Further, the City appears to acknowledge that there were no procedures in place at the time to prevent and address abuses with respect to professional services contracts. (City's response, pp. 4-5). Finally, the City does not dispute that it failed to obtain City council approval of vendor contracts with MBH Architects and SMS Architects. That omission was a clear violation of City Charter section 519 and Section B(4) of the grant contract. Thus, regardless of whether the vendor contracts with MBH Architects and SMS Architects were exempt from the City's competitive bidding requirements, OGALS was authorized to terminate the grant contract and seek recovery of all monies paid to the City.

Second, OGALS does not believe that a "determination by a competent court finding a conflict of interest in the contracts with D&J Engineering and TD Urban Planners," is required before OGALS can invoke section B(4). That section simply provides that the grantee "shall comply with all applicable current laws and regulations. . . ." Based on the evidence before it, OGALS could reasonably conclude that City's Director of Planning Services' ownership of businesses contracting with the City did not comply with the City's conflict of interest provisions. (See City Charter, § 708; Gov. Code, § 1090.) OGALS is further skeptical of this claim given the City's stated intention to file a cross-complaint against D&J Engineering for violating Government Code section 1090 (conflict of interest). (See City's Response, p. 6.)

Third, although the vendor contract to Ralph J. Stone, Inc., would have been eligible had the project not been terminated, once the City breached the grant contract, OGALS, pursuant to section E(3), was authorized to terminate or rescind its obligations and seek recovery of all monies paid to the City, including the $5,200.00 payment made to Ralph J. Stone, Inc..

Accordingly, OGALS does not believe there is a basis for reducing the amount ($182,566.00) the City must return underthe Bell Community Health and Wellness Project (UP-19-018) grant. Indeed, it appears that the City does not dispute its obligation to return this amount to the State. (City's response, p. 6.)

Veteran's Memorial Park Single-Use Children's Restroom (02-19-218)

The Audit Report concluded that the $23,043.00 the State reimbursed the City for architectural design costs for the project was eligible for grant funding. However, a grant project for architectural services alone is not eligible for payment under the 2002 Per Capita program. Although the City has constructed the single-use handicapped accessible children's restroom, it has not, prior to its October 31, 2011 letter, sought reimbursement from OGALS for its

construction costs. Pursuant to Section G(1) of the grant contract, during its audit and field review of the project, OGALS' auditors asked to inspect the City's construction records for the project. The City was unable to produce the documents. The Report found that the City's failure to produce the records was a violation of Section G(1) of the grant contract which provides that "the Grantee shall maintain satisfactory financial . . . records for the Project and make them available to the State for auditing . . . ." Section G(1) also states "[t]he Grantee shall maintain and make available for inspection by the State accurate records of all of its costs . . . ." Based upon this finding, OGALS concluded that the City violated Section B(4) of the grant contract and, pursuant to Section E(3), terminated the contract and demanded the return of the $23,043.00 paid to the City.

The City concedes that it did not provide the relevant documents for inspection to the auditors during the field review and thus violated Section G(1). The City states that the reason it was unable to provide the records was because over "600,000 pages of documents were removed from City Hall by the Office of the District Attorney of Los Angeles County, which may have included documents relevant to the Veterans Memorial Park." (City's Response, p. 3.) Apparently, the City has since recovered the relevant documents from the District Attorney or located the records from its files and has submitted them to OGALS for review. The City contends that "[w]ith this additional documentation the $23,403 becomes an eligible expenditure as does the construction costs." (City's response, p. 3.)

There appears to be insufficient evidence to support the City's claim that it is not at fault for failing to produce the relevant records to the auditors, or that it was not in violation of Section G(1). The City only acknowledges that the records the District Attorney removed, "*may* have included the relevant documents." (City's response, p. 3; emphasis added.) The City fails to explain how it was able to now produce the construction costs records if they were in the District Attorney's possession. The City's conflicting statements and uncertainty regarding the location of, and control over, the documents demonstrates that the records were not adequately maintained as Section G(1) requires.

Further, the City's assertion that "[w]ith this additional documentation the $23,403 becomes an eligible expenditure as does the construction costs," is premature. (City's response, p. 3.) Before OGALS can determine whether the City is eligible for reimbursement of its construction as well as its architectural design costs, the City must submit the necessary documentation, including but not limited to a Payment Request Form, Project Certification Form, Grant Expenditure Form, Labor Costs Summary Form, Equipment Costs Summary Form and other supporting materials.[3] Further, OGALS anticipates that auditors will need to consider additional source materials before they can complete their review.

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[3] In its October 31, 2011 letter, the City states that it is "submitting documents related to the bathroom construction costs [including]. . . a "completed grant reimbursement request." (City's response, p. 3.) OGALS has reviewed those materials and was unable to locate or identify a "completed granted reimbursement request."

The City's submission of the construction costs records also raises new issues regarding the City's compliance with the grant contract. First, did the City Council, as City Charter section 519 requires, approve the vendor contract with Facility Builders & Erectors, Inc.("FB&E")? The City Council "accepted" the project as complete on November 1, 2010, but there is no evidence that it authorized the construction contract with FB&E. Second, in awarding the construction contract to FB&E, did the City comply with City Charter section 1111 which requires that contracts involving expenditures of more than $25,000 for the construction of public improvements be competitively bid and "let to the lowest responsible bidder"? Again, there is no evidence that the City utilized a competitive bidding process or that the contract to FB&E was exempt from that process.

Accordingly, based on the information before OGALS, there is insufficient evidence that the City is entitled to reimbursement for any costs it incurred in the Veteran's Memorial Park Single-Use Children's Restroom Project. Once the City submits the necessary documentation, OGALS will make a final determination whether the City's costs are reimbursable under the grant contract. OGALS staff is available to assist the City in identifying the necessary forms and additional source materials.

Little Bear Park Improvement Project (00-19-368)

The Audit Report found that a vendor contract with FB&E, in the amount of $52,500.00 for the installation of a "rubberized surface material" on park property, for which the State reimbursed the City, was not competitively bid and therefore the City failed to comply with City Charter section 1111, which requires the City to award contracts exceeding $25,000 to the lowest bidder. Based upon this finding, OGALS concluded that the City was in violation of Section B(4) of the grant contract and, pursuant to Section E(3) terminated the contract and demanded the return of the $52,500.00 paid to the City.

The City contends that FB&E was exempt from the competitive bidding process because the contract was for "construction management services," and under Government Code section 4526, such services are not subject to competitive bidding. As discussed above, notwithstanding any exemption, the burden is on the City to demonstrate that it has put in place procedures that "assure that [such] services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable prices to the public agencies." (Gov. Code, § 4526.) There is no evidence the City has complied with section 4526, nor that the FB&E contract was fair and equitable. To the contrary, the City appears to acknowledge in its correspondence that there were no procedures in place at the time to prevent and address abuses with respect to professional services contracts. (City's response, pp. 4-5). In the absence of such a showing, the City is in violation of Section B(4) of the grant contract, and OGALS was authorized under Section E(3) to terminate the contract and demand a return of all funds it paid the City. OGALS has a fiduciary responsibility to ensure that public funds are spent in a manner that provides the greatest public benefit and avoids the kinds of abuses section 4526 was designed to prevent. (*Ibid.*) Upon the City's submission of its procedures for awarding professional service contracts, OGALS will determine whether the FB&E contract is eligible for reimbursement.

Ernst Debs Park Improvement Project (RZ-19-250)

The Audit Report found that the City's vendor contract with Great Western Park and Playground ("Great Western") in the amount of $101,815.00, for which the State reimbursed the City, violated three separate provisions of City law. First, the City Council did not approve its vendor contract with Great Western in violation of City Charter section 519, which requires that the City Council approve all contracts for the contract to be binding on the City. Second, the Great Western contract did not comply with City Charter section 1111, which requires that the City award contracts exceeding $25,000 to the lowest bidder. Third, the City's purchase of equipment form Great Western violated the City Department of Administrative Services Procedures Manual's requirement that the City Council approve any purchase exceeding $50,000. Based on these findings, OGALS found that the City was in breach of Section B(4) of the grant contract and pursuant to Section E(3), terminated the grant contract and demanded the City return all monies paid ($101,815.00).

Significantly, the City does not dispute that it failed to obtain City Council approval or that the contract was not exempt from the competitive bidding process. Rather, the City contends it was not required to competitively bid the project because "there were no other known vendors that supplied the type of equipment that was required by the City." (City Response, p. 4.) The City has not submitted any evidence to support this allegation. For example, there is no evidence that the City made any effort to determine whether there were other vendors who supplied the same equipment or whether there were procedures to address this issue. Nor is there evidence that the City sought to elicit bids from vendors other than Great Western, or that other vendors declined to submit bids. Further, there is no evidence that the City complied with its own competitive bidding requirements. (See City Charter, section 1111.) In the absence of such a showing, OGALS was authorized to terminate the contract and demand return of monies it paid the City.

Ernst Debs Park Project (02-19-156)

The Audit Report found that the City's vendor contract with Great Western in the amount of $97,713.00, for which the State reimbursed the City, failed to comply with City Charter section 1111, which requires the City to award contracts exceeding $25,000 to the lowest bidder as well as the City Department of Administrative Services Procedures Manual's requirement that the City Council approve any purchase exceeding $50,000. Based on these findings, OGALS found that the City breached Section B(4) of the grant contract and pursuant to Section E(3), terminated the grant contract and demanded return of all monies paid.

As discussed above, the City effectively concedes that it was in violation of Section B(4) of the grant contract. However, the City argues that it was not required to competitively bid the project because "there were no other known vendors that supplied the type of equipment that was required by the City." (City Response, p. 4.) The City has not submitted any evidence to support this allegation. In the absence of such a showing, OGALS was authorized to terminate the contract and demand return of monies paid to the City.

The City's Proposed Workout Plan

The City proposes the following resolution of its grant contract violations. First, the City proposes returning $106,886.00 to the State. (City's response, pp. 5-6.) This figure is based on the repayment of all monies reimbursed to the City for the Community Health and Wellness Center Project (UP-19-018) ($182,556.00) minus the City's construction costs for the Children's Restroom Project (02-19-218) ($75,670.00) which the City contends are eligible for funding. (City's response, pp. 5-6.) Second, the City proposes that "if the State desires to further analyze the grants where the State believes the competitive bidding process was not followed . . . an independent verification process or survey be conducted to determine whether the goods provided or services performed . . . were competitively priced." (*Id.* at p. 6.) The City agrees that if the price the City paid is higher than the survey results it will repay the difference. (*Ibid.*) Third, the City invites the Department to join in a lawsuit against D&J Engineering and agrees to "share any recovery it obtains." (*Id.* at p. 7.) Fourth, the City requests that the unspent portion of the grant for the Community Health & Wellness Project be "re-issued [and] reallocated to another park project in the City." (*Ibid.*) Finally, the City agrees to "take . . . corrective actions the Department deems necessary to ensure compliance with all applicable laws." (*Ibid.*)

Unfortunately, the City's proposal does not fulfill the requirement that all grant monies be accounted for and returned, or that the project has been completed to the Department's satisfaction in accordance with the terms and conditions of the grant contracts. Specifically, while the Department agrees that the City must fully reimburse the State for monies for the Community Health and Wellness Center Project (UP-19-018) ($182,556.00), there is insufficient evidence to support the City's assertion that costs relating to the Children's Restroom Project (02-19-218) are eligible for funding. As stated above, once the City submits the necessary documentation, OGALS' auditors will make a final determination whether the City's costs are reimbursable under the grant contract.

Further, the City's offer to verify that its vendor contracts were fair and reasonable, demonstrates the absence of any real controls in the City's contract procedures. A process should have already been in place to determine whether the services and goods provided were "competitively priced." (City's response, pp. 5-6.) The City's belated offer is further evidence that the Department is justified in terminating the grant contracts and seeking repayment.

As to the the City's offer to join in the lawsuit against D&J Engineering and share in any recovery, the Department respectfully declines. The State is neither a necessary nor indispensable party and therefore it would be inappropriate for it to intervene. Further, the grant contract is with the City, not D&J Engineering. It was the City's obligation to ensure that contracts with its vendors did not violate the conflict of interest laws. Having abdicated its responsibilities, the City, not D&J Engineering, is responsible for repaying the State for violating Section B (4) of the Community Health and Wellness Center Project (UP-19-018) grant contract.

Finally, the Department has no authority to re-issue and reallocate the unspent portion of the grant for the Community Health & Wellness Project to another City park project. The grant was specific to that project and cannot be spent elsewhere without obtaining further approval

pursuant to the State Urban Parks and Healthy Communities Program. Unfortunately, the time to submit applications to that program has long expired.

In summary, for the reasons stated above, OGALS does not believe that the City's proposed Workout Plan adequately addresses the Department's concerns. OGALS proposes that City make available to the Department all documents relevant to the five disputed projects and provide the information requested in this letter. Once OGALS' auditors have an opportunity to review the materials, the Department will make a final determination whether all or a portion of the City's expenditures for those five projects are reimbursable or must be repaid. Further, OGALS staff would like to visit the now-completed project sites to ensure that the finished project is consistent with the requirements set forth in the grant contracts. Following that process, OGALS would be available to meet with City representatives. Please call if you have any questions. OGALS looks forward to your reply and a successful resolution to these audit exceptions.

Sincerely,

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