

Business Operations
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SUBJECT: AUTHORIZATION TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH SHOMA DEVELOPMENT CORPORATION FOR THE CONSTRUCTION OF A PRIMARY LEARNING CENTER (PLC "E") AS A CONTRIBUTION IN-LIEU-OF EDUCATIONAL FACILITIES IMPACT FEES

COMMITTEE: FACILITIES MANAGEMENT

Introduction

At its March 22, 1995 meeting, the Board authorized the Superintendent to negotiate a Declaration of Restrictions (Declaration) with Old Cutler Estates Limited (Old Cutler), in order to mitigate the impact of a proposed 525-unit development. Old Cutler proffered to construct a Primary Learning Center (PLC "E") on approximately two acres of land located at the northeast corner of S.W.196 Street and Old Cutler Road and convey the PLC and the land to the Board as a contribution in-lieu-of impact fees. Acceptance by the District of the PLC building and land will release the developer from any obligation to pay educational facilities impact fees for the 525-unit development.

Background

At the time the Declaration was proffered, the adoption of the Educational Facilities Impact Fee Ordinance (Ordinance) was imminent. In addition, the estimated cost of a PLC as used by the District in determining the value of a contribution in-lieu-of impact fees was established at \$1,500,000 plus the fair market value of the land. This value was based on the District's projected cost of a prototypical PLC (approximately 15,000 square feet), since at the time of the enactment of the Ordinance no actual cost data existed for PLC construction. However, at its February 5, 1997 meeting, based on the District's newly established standard PLC (approximately 18,000 square feet), and actual construction cost data, the Board re-established this value as \$1,800,000, plus the fair market value of the land. Additionally, the Board recognized that five developer agreements entered into prior to February 5, 1997, including Old Cutler, which contained similar provisions and costs for PLC construction, would need to be individually amended to reflect the difference in value of a PLC from \$1,500,000 to \$1,800,000, and to include a reimbursement provision, as appropriately allowed by the Ordinance.

Although Old Cutler provided a Declaration, and is obligated to construct the PLC, an Agreement was not entered into with the Board to finalize a number of terms and conditions. In addition, the Declaration, as originally approved by the Board, required construction of the PLC to begin prior to the issuance to Old Cutler of its 263rd building permit, with occupancy to occur prior to Old Cutler obtaining the 400th permit, or within twelve months of commencement of PLC construction, which ever occurs earlier.

However, at the time of zoning approval, the Miami-Dade Board of County Commissioners (Commission) imposed a more restrictive timeframe for the construction of the PLC in an effort to provide immediate relief to area schools. The Commission required the owner to commence construction of the PLC prior to the 100th permit, or within three years from the date of issuance of the first building permit, whichever occurs earlier. PLC construction must be completed within 12 months and prior to issuance of the 199th permit.

Shoma Development Corp. (Shoma), as the new owner of the Old Cutler property, has obtained plat approval for the subject property and started construction of the development. Prior to beginning construction of the PLC, Shoma is requesting that the District and Shoma enter into an Agreement reflecting the increased value of the PLC of \$1,800,000. In addition, the Ordinance permits reimbursement to Shoma for District-approved differences or changes that increase the cost of the PLC as compared to the facility upon which the contribution in-lieu-of impact fee value is based. As the Ordinance and Declaration are silent as to when reimbursements are to be made, the Agreement will also establish a timeline for payment of the reimbursement amount.

Shoma has already received the Board approved school impact fee credit in the amount of \$1,500,000. The County distributed the total \$1,500,000 credit on a per unit basis over the entire development, averaging \$2,857 per unit. However, the per unit credit amount does not cover the total school impact fees owed by Shoma on recently pulled permits. Thus far, Shoma has been paying approximately \$600 for each permit pulled over the \$2,857 credit allocated. Should the Board approve the Agreement, which establishes the total impact fee credit at \$2,063,000 (value of the PLC at \$1,500,000 plus value of the land at \$563,000), it is expected that Shoma will have sufficient school impact fee credit to fully cover the payment of school impact fees on a per unit basis. As such, and in anticipation of the acceptance of the Agreement, Shoma has requested that the District reimburse Shoma approximately \$600 per permit for each permit pulled by Shoma prior to the Agreement being finalized. These funds will be reimbursed to Shoma out of the Impact Fee East Benefit District, utilizing school impact fees that may be collected by the County during the period of time prior to the Agreement being finalized. It is anticipated that a maximum of 40 permits will be generated, with District reimbursement to average \$600 per permit, for a total reimbursement to Shoma of approximately \$24,000.

Proposed Agreement

Recommended terms and conditions of the proposed Agreement are, substantially, as follows:

- The value of the contribution in-lieu-of impact fees is established at \$1,500,000 for the PLC plus the fair market value of the 2 acre parcel, appraised by a District-commissioned appraiser at \$563,000, for a combined total value of \$2,063,000;

- Prior to the Board revising the school impact fee credit amount from the current \$1,500,000 to \$2,063,000, the Board shall reimburse Shoma for additional school impact fees collected by the County at the time Shoma pulls permits for its development. The additional school impact fees collected are estimated at \$600 per permit, for approximately 40 permits, for a total of approximately \$24,000;
- Based on the Board's February 5, 1997 action, the District will reimburse to Shoma, the amount of \$300,000, reflecting the difference between the original PLC value of \$1,500,000, and the newly established value of \$1,800,000;
- School Board staff, insofar as is feasible and allowed by School Board Rule and/or law, will provide assistance to Shoma in obtaining reviews, waivers and approvals from the County's Developmental Impact Committee (DIC) and/or other agencies for the PLC project, to which the District would be entitled, if the District was constructing the PLC;
- Pursuant to the Ordinance, reimbursement will be paid to Shoma for District-approved differences or changes that increase the cost of the PLC above the current contribution in-lieu-of impact fee value of \$1,800,000. PLC "E", due to code and program changes, will consist of an additional 413 square feet. This additional work is estimated by the Office of Capital Improvement Projects to cost between \$46,000 and \$65,000;
- District reimbursement to Shoma, consisting of the \$300,000 difference in PLC value, approximately \$24,000 for building permits and approximately \$65,000 for District-approved changes to the PLC design (for a total cost of approximately \$389,000), will be made by the District as one payment, subsequent to acceptance of the PLC and site by the District. In compliance with the Impact Fee Ordinance, the \$65,000 reimbursement for District-approved changes will be made from impact fee monies collected from the Impact Fee East Benefit District. Other reimbursements will be made from the Impact Fee East Benefit District and/or other capital budget sources;
- Upon conveyance of the PLC and site to the District, the Board shall release a Letter of Credit in the amount of \$1,980,000, which is being held by the District to assure construction of the PLC;
- At the time the District releases the \$1,980,000 Letter of Credit, Shoma shall provide a \$90,000 Letter of Credit to the District that provides the financial guarantees for payment of any warranty/facility compliance issues, which Shoma fails to resolve. If Shoma fails to correct deficiencies after 60 days from the date of final occupancy acceptance by the District, this Letter of Credit may be drawn upon in an amount sufficient to cover all costs related to the correction of any warranty/compliance issues; and

- The \$90,000 Letter of Credit shall be retained by the District for a period of twelve months following the issuance of a Certificate of Final Occupancy for the PLC. At the end of this twelve month period, the District shall release the Letter of Credit upon receipt of written acknowledgement that the reimbursements and Letter of Credit, less adjustments made for costs related to the correction of any warranty/compliance issues, represents final payment and releases the Board from any and all obligations to Shoma. If the \$90,000 Letter of Credit is insufficient to address warranty items and compliance issues, Shoma agrees to reimburse the District any outstanding balance within 90 days of written notification that a balance is due.

Additionally, although Shoma will be constructing PLC "E", the District will still incur the following estimated capital costs: furnishing the facility (\$180,225); providing code review and inspection (\$32,000); testing services (\$21,000); lock shop (\$5,000), Office of Information Technology (\$23,000); communication tower (\$18,000), off-site work (\$55,000); and traffic signalization (\$215,000), for an estimated total of \$549,225. The Board-approved Five-Year Capital Work Program (Program) includes an \$800,000 reimbursement budget category for PLC "E". Since the amount to complete the other capital work is only an estimate, when actual costs are known, the Five-Year Facilities Work Program will be amended to reflect the actual amount.

The Agreement will be reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management prior to execution.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize the Superintendent or his designee to negotiate and execute an Agreement with Shoma Development Corporation for the construction of a Primary Learning Center (PLC "E") under the terms and conditions set forth above, and including:

1. establish a revised contribution in-lieu-of impact fee credit to Shoma of \$2,063,000, based on a value for PLC "E" at \$1,500,000, plus the fair market value of the land at \$563,000;
2. reimburse Shoma in the amount of \$300,000, representing the difference between the original PLC contribution in-lieu-of impact fee value (\$1,500,000) and the current established value (\$1,800,000);
3. reimburse Shoma for additional school impact fees collected by the County through the issuance of residential building permits, in an amount estimated at \$24,000;
4. reimburse Shoma for District-approved changes that will increase the construction cost of PLC "E" by an estimated \$46,000 to \$65,000; and
5. authorize the amendment of the Five-Year Facilities Work Program, if necessary, to provide sufficient funding for the stipulated capital improvements for PLC "E" (program 2816), from impact fee reserves (program 2801) and/or contingency (program 0001).

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