

Lompoc City Council Agenda Item

City Council Meeting Date: July 19, 2011



TO: Honorable Mayor and City Council

FROM: Laurel M Barcelona, City Administrator
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Joseph W. Pannone, City Attorney
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SUBJECT: Update Regarding Negotiations with Lompoc Valley Park, Recreation and Pool Foundation for the Construction and Maintenance of the Proposed Public Park at 119 South H Street

RECOMMENDATION:

Options:

1. Approve the Draft Memorandum of Understanding ("MOU") as proposed by Staff and direct Staff to transmit two duplicate originals of that agreement to Lompoc Valley Park, Recreation and Pool Foundation ("LVPRPF") for LVPRPF to sign and return to the Chief Administrative Officer within 30 days and if the documents are not signed and returned in that time frame, then the City will discontinue its efforts to have LVPRPF assist with the construction of the proposed public park at 119 H Street and pursue other options for that construction.
2. Approve the Draft MOU as proposed by LVPRPF representatives and direct staff to transmit two duplicate originals of that agreement to LVPRPF for LVPRPF to sign and return to the Chief Administrative Officer within 30 days and if the documents are not signed and returned in that time frame, then the City will discontinue its efforts to have LVPRPF assist with the construction of the proposed public park at 119 H Street and pursue other options for that construction.
3. Provide other direction to Staff regarding seeking assistance from LVPRPF for the construction of the proposed public park at 119 H Street.

BACKGROUND

For many years, the City Council, Redevelopment Agency Board and community members have desired to have a public park and related building constructed and installed at 119 S. H Street to help eliminate blight in the area, revitalize the downtown area and enhance the quality of life in the area and community as a whole. Due to the cost of that project, some community members have suggested such a project would be best completed by a private non-profit organization through qualified volunteers. The purpose of this memo is to provide an update of the efforts of Staff to negotiate an agreement with the LVPRPF to outline responsibilities of the parties for the terms of the final Design and Construction Agreement with LVPRPF for the construction, maintenance and operation of the subject park.

DISCUSSION

On January 5, 2010, Council directed Staff to investigate the capacity of LVPRPF to enter into such a relationship with the City. That investigation was successfully completed and based on Council direction from that same meeting, the City Attorney and City Administrator, with input from the Public Works Director and Community Development Director, have attempted to negotiate an MOU with LVPRPF. Although the City Attorney and Staff responded very promptly whenever LVPRPF provided comments on the MOU, due to LVPRPF's understandable need to reach consensus from its members, there was some lag time in receipt of LVPRPF responses.

Staff and LVPRPF have now agreed on all terms regarding that MOU, except three. Attached to this staff report is the version of the MOU staff recommends.

LVPRPF Three Remaining Concerns

Below is a verbatim version of the last email (9/13/10) Staff received from the LVPRPF representatives:

When the Lompoc Valley Parks, Recreation and Pool Foundation first began discussing the potential to build a Downtown Park we got the impression from the City Council that this was to be a "cooperative effort". As the project evolved, a Memorandum of Understanding was deemed necessary by the City as a mechanism to achieve an understanding between the City and LVPRPF concerning who was going to do what. While we have made progress in resolving some issues with the MOU, others remain.

In our opinion, the MOU has grown into what now appears to be more like a "contract for services" type agreement with legal language, specific performance deadlines and guarantees being imposed upon the LVPRPF. NOTE: I have attached the latest version of the MOU for the benefit of Councilmember's who may not have seen this document.

The LVPRPF Downtown Park Committee has carefully reviewed the City Attorney's response to concerns we expressed on July 21, 2010. The Park Committee has had several internal meetings during the last couple of months to analyze your response and have come to the conclusion that we do not agree with your response to the following:

- Item IV “Evidence of Financing”, it is our intent that any revenue generated through donations by the public would be held in a trust account by the LVPRPF at a bank (TBD) for use at this park. We do not feel that donors would be interested in making donations for pavers (or anything else) that would be deposited into City General Fund coffers. Therefore we have proposed having a separate trust account to manage these funds for exclusive use at the downtown park. Once the operations and maintenance phase begins, funds would be transferred from the LVPRPF trust account to the City as they became available for specific work performed at the park.
- Item IX “Guarantee”, This is totally a volunteer effort and dependent on donated time and materials; how can the LVPRPF guarantee that this project will be completed within a specific timeframe? We understand that everyone involved in this project would like to see it completed in a timely manner, but obtaining donated labor/materials cannot be “scheduled”, therefore the LVPRPF cannot “guarantee” that the project will be completed; we can however predict with some reliability the completion of each phase (e.g. architectural drawings, grading, foundations, etc) immediately following approval of that phase by the City.
- Exhibit B, “Schedule”, please remove from MOU. We can agree to a phased schedule in a less formal manner (e.g. as the project moves forward). To try and predict when certain actions will occur this early in the process is unreasonable in our view. Keep in mind, this is a volunteer effort and it would be difficult to maintain a “hard schedule” of construction activities.

Despite these concerns we are moving forward. Our architect, Schuler Architecture, is working hard on a drawing package that will meet City requirements; considering that he is donating his time this is a slow, methodical process that will result in a set of drawings and a presentation to the City that should meet everyone’s expectations for this park.

The LVPRPF has a strong desire to see this project through to completion, however we simply cannot make commitments that we are not confident that we can fulfill. We urge you to reconsider the conditions proposed in the MOU with the thought in mind that this is a cooperative volunteer effort and that the LVPRPF is not a traditional contractor being hired by the City and paid with taxpayer funds. Keep in mind, NO taxpayers money is being used to design or build this project.

We remain available to discuss the MOU with any Councilmember or City staff.

Staff and City Attorney Response to the Above Concerns:

Ultimately the final decisions regarding the above issues are policy matters for the Council to determine. For assistance with those decisions, Staff and the City Attorney provide the following input:

- Evidence of Financing: Section IV on Page 3 of Exhibit A of the attachment MOU is titled “Evidence of Financing.” Section VI is titled “Use of Completed Park Project.” We asked LVPRPF for clarification as to which section they were discussing since Section IV only requires LVPRPF to have a committed trust account in place to fund the construction project and that money would not be City money. If LVPRPF

continues to sell pavers for placement in the park as a fundraiser, then Section VI requires any net revenue from such sales be given to the City only for use for operation and maintenance of the park. We continue to believe, since the City will be maintaining and operating the park, any donations received after construction of the park should become City property to fund that maintenance and operation obligation.

- Guarantee: Since the park will be a public facility, once commenced we believe the City must be sure it will be completed. Based on that, some form of guarantee would best protect the City from having to deal with a less than complete project in its downtown.

- Schedule of Performance: We believe some "hard schedule" is appropriate. The City should not have this important project started without some certainty it would be completed. If the schedule is not part of the MOU, then it most certainly would need to be part of the actual Design and Construction Agreement which is the next step in this process. If the Council decides to remove the Schedule of Performance from the MOU, then we suggest at least items 1 - 7 should remain as Exhibit B of the MOU and Exhibit B also include provisions identifying the items to be negotiated as part of a Schedule of Performance in the Design and Construction Agreement.

The City Attorney has advised, due to Mayor Linn's and Council Member Starbuck's interest in real property within 500 feet of the subject pocket park, they must abstain from participating in or trying to influence any decision or discussion related to this matter. Notwithstanding that, during the public comment period on this matter, Mayor Linn and Council Member Starbuck may address the Council from the podium. Due to that conflict of interest, this staff report will not be included in their agenda packets, but they may review or retrieve a copy of it in the same manner as any member of the public.

CONCLUSION

This matter was not presented prior to this meeting even though the last email from LVPRPF was received on September 13, 2010, due to other matters that required our and the Council's attention, the change in the Council as a result of the November 2, 2010, election and the focus on the processing and adoption of the City's 2011/2013 budget. Even so, an email was provided to the LVPRPF representatives immediately after receipt of their September email letting them know we determined the negotiations had reached a point where further Council input was required.

After the Council discusses and considers this matter, Staff recommends adoption of Option 1 as noted in the Recommendation section at the beginning of this report.

As a reminder, once the MOU is finalized and signed, that will complete step two of the three-step process outlined and accepted by the Council at its January 5, 2010, meeting. The final procedural step, as outlined in the MOU, is for the City and LVPRPF to work out a final Design and Construction Agreement prior to commencement of any work on the site.

Respectfully Submitted,

Laurel M. Barcelona
City Administrator

Joseph W. Pannone,
City Attorney

Attachment: [MOU proposed by staff](#)