



**SPECIAL SOUTH GATE CITY COUNCIL
SPECIAL SOUTH GATE CITY COUNCIL AGENDA**

Monday, February 6, 2023 at 5:30 p.m.

**SOUTH GATE COUNCIL CHAMBERS
8650 CALIFORNIA AVE
SOUTH GATE, CA 90280**

**DIAL-IN-NUMBER: 1 (669) 900-6833
MEETING ID: 871 0058 1131
[HTTPS://US02WEB.ZOOM.US/J/87100581131](https://us02web.zoom.us/j/87100581131)**

Call to Order/Roll Call With Invocation & Pledge

CALL TO ORDER: Maria del Pilar Avalos, Mayor
ROLL CALL: Yodit Glaze, City Clerk

City Officials

MAYOR
Maria del Pilar Avalos

CITY CLERK
Yodit Glaze

VICE MAYOR
Gil Hurtado

CITY TREASURER
Jose De La Paz

COUNCIL MEMBERS
Maria Davila
Joshua Barron
Al Rios

CITY MANAGER
Chris Jeffers

CITY ATTORNEY
Raul F. Salinas

Meeting Schedule

The regular meetings of the City Council are held on the second and fourth Tuesday of each month, closed session business will usually commence at 5:30 p.m., when scheduled, and general business session will commence at 6:30 p.m.

Brown Act

Agendas are drafted to accurately state what the legislative body is being asked to consider.

The legislative body can take action on "all items" listed on the agenda and be in compliance with the open meeting laws. Under the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The governing body may direct staff to investigate and/or schedule certain matters for consideration at a future meeting.

City's Vision Statement

We envision a thriving, safe and inclusive community where everyone has the opportunity to access exceptional services, education and support to be resilient and live full, vibrant lives.

Public Communications

Public Comments on agenda items are limited to three (3) minutes. All comments are to be addressed directly to the Agency Members not to the members of the public.

Emails for public comment received prior to 12pm on the day of the Council Meeting will be summarized by the City Clerk, not read in its entirety. A copy of the email will be provided to the City Council and will also be available at the City Clerk's Office for public review. A copy of each email will be recorded for public record and noted on the official minutes of tonight's meeting.

Meeting Compensation Disclosure

Pursuant to Government Code Section 54952.3: Disclosure of compensation for meeting attendance by City Council Members is \$790 monthly regardless of the amount of meetings.

Closed Session

-

1. CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION

Pursuant to Government Code Section 54956.9(a), 54954.9(b)(3)(c)

a. NR Development Inc., v. City of South Gate

Documents:

[Special Closed Session 020623.pdf](#)

2. CONFERENCE WITH LEGAL COUNSEL - THREATENED LITIGATION

Pursuant to Government Code Section 54956.9(b)(3)(D) & (E)

One (1) - Potential Case

Open Session

1. Resolution declaring an emergency and authorized repair, replacement or maintenance activities of public facilities related to the Urban Orchard Project

without public bidding

The City Council will consider making a finding and adopting a **Resolution _____** declaring an emergency and authorizing repair, replacement or maintenance activities of public facilities related to Urban Orchard, City Project No. 539-PRK, without public bidding, pursuant to the emergency contracting procedures of the South Gate Municipal Code and the California Public Contract Code. (PW)

Documents:

[Item 1 Report 02062023.pdf](#)

2. Resolution terminating Contract No. 2021-66-CC with NR Development, Inc., for the Urban Orchard, Project No. 539-PRK effective February 6, 2023

The City Council will consider: (PW)

- a. Adopting a **Resolution _____** to terminate Contract No. 2021-66-CC with NR Development Inc., effective February 6, 2023 for the Urban Orchard, City Project No. 539-PRK, except for the requirements that NR Development Inc. continue to perform approved maintenance activities until such time as a new contractor is procured to perform those maintenance activities; and
- b. Directing the Mayor to execute a document in a form acceptable to the City Attorney advising NR Development Inc. that the contract has been terminated.

Documents:

[Item 2 Report 02062023.pdf](#)

Adjournment

I, Yodit Glaze, City Clerk, certify that a true and correct copy of the foregoing Meeting Agenda was posted on February 2, 2023, at 12:05 p.m., as required by law.

Yodit Glaze

City Clerk

GENERAL NOTICE TO THE PUBLIC

The City Council adopted new rules relating to the conduct of the public meetings, proceedings, and business in the City of South Gate on July 12, 2022, (Resolution 2022-38-CC) and go into effect on August 1, 2022. Resolution #2022-38-CC is available at the City Clerk's Office.

MEETING SCHEDULE

Regular meetings of the City Council are held on the second and fourth Tuesday of each month, closed session meetings will commence at 5:30 p.m. unless posted otherwise on its agenda. The regular City Council meetings will commence at 6:30 p.m. Agendas are available at the following locations: City Clerk Office, Public Notice Boards at City Hall, and on the City's web page at <https://www.cityofsouthgate.org>

The Public can sign up to receive automatic notices of postings of agendas for the City Council or any other Commission or Board of the City of South Gate. Visit the City webpage and click on the Agenda & Minutes icon. That will take you the page where an individual can enter their email in the "Email Updates" box to register.

PUBLIC COMMENT/PARTICIPATION

Any person may request to address a legislative body during a public meeting. The Presiding Officer will call upon those present in the Council Chambers first. After all speakers in the Chambers have spoken, the Presiding Officer will call upon those participating via zoom or teleconference.

Speakers are limited to three (3) minutes on any item listed on the agenda, including public hearings. Under Comments from the Audience portion, speakers are also limited to a single three (3) minutes time limit. Comments from the Audience is initially limited to 45 minutes at each meeting. Any speaker still wishing to speak, that did not speak, will have an addition Comments from the Audience opportunity after the last business item is finished. The Presiding Officer may extend the time limit as long as there is no objection from the City Council as a body.

To ensure that the public is able to participate, the City provides the opportunity to submit their comments in person, virtually, email, phone call, mail and any other method which may become available. Methods of participation may be subject to change during other such times when a State of Emergency, Health Order or State Executive Order limits in-person participation.

CURFEW

In absence of a motion duly adopted by majority vote of the City Council, the Presiding Officer may adjourn the City Council meetings at 10:30 p.m. The Presiding Officer may ask the City Council if any agenda items listed should be continued or dealt with during the meeting. For those items to be continued, the City Council can direct the item be placed on the next City Council agenda or the current meeting may be adjourned to a time certain at which time the meeting shall be reconvened as an Adjourned Regular Meeting of the City Council and action upon the published agenda continued.

STAFF REPORTS

As a general rule, staff reports. or other written documentation are prepared/organized with respect to each item of business listed on the agenda. Meeting agendas and staff reports are available at least 72-hours prior to the scheduled regular City Council meeting and a minimum of 24-hours prior to a Special City Council meeting. There are times when the City Council receives written material. revised material after the posting of agendas, these materials are become a public record and will be available for public view within 72-hours after the meeting in which they were received. Those materials and any other public document can be inspected in the City Clerk's Office located at 8650 California Avenue, South Gate.

SERVICES TO FACILITATE ACCESS TO PUBLIC MEETINGS

In compliance with the American with Disabilities Act, if you need special assistance to participate in the City Council Meetings, please contact the Office of the City Clerk. Notification 48 hours prior to the City Council Meeting will enable the City to make reasonable arrangements to assure accessibility. For further information, please contact the Office of the City Clerk at (323) 563-9510 or via email at yglaze@sogate.org.

MEMORANDUM

FEB 01 2023

TO: Chris Jeffers, City Manager

FROM: Raul F. Salinas, City Attorney *RS 02*

DATE: February 1, 2023

SUBJECT: **CLOSED SESSION ITEMS FOR THE SPECIAL CITY COUNCIL
MEETING OF FEBRUARY 6, 2023**

The following items should be listed on the Closed Session Agenda for the Special City Council Meeting of the City of South Gate on February 6, 2023, at 5:30 p.m.:

1. **CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION**
Pursuant to Government Code Section 54956.9(a), 54954.9(b)(3)(C)
 - a. NR Development Inc., v. City of South Gate
2. **CONFERENCE WITH LEGAL COUNSEL – THREATENED LITIGATION**
Pursuant to Government Code Section 54956.9(b)(3)(D) &(E)
 - One (1) - Potential Case

If you have any questions, please do not hesitate to contact this office immediately.

CITY MANAGER'S OFFICE

FEB 02 2023

9:30 AM

City of South Gate

CITY COUNCIL

AGENDA BILL

For the Special Meeting of: February 6, 2023Originating Department: Public Works

Department Director:


 Arturo Cervantes

City Manager:


 Chris Jeffers

SUBJECT: RESOLUTION DECLARING AN EMERGENCY AND AUTHORIZING REPAIR, REPLACEMENT OR MAINTENANCE ACTIVITIES OF PUBLIC FACILITIES RELATED TO THE URBAN ORCHARD, CITY PROJECT NO. 539-PRK WITHOUT PUBLIC BIDDING, PURSUANT TO THE EMERGENCY CONTRACTING PROCEDURES OF THE SOUTH GATE MUNICIPAL CODE AND THE CALIFORNIA PUBLIC CONTRACT CODE

PURPOSE: To declare an emergency to authorize the repair, replacement or maintenance activities of public facilities related to the Urban Orchard Project without public bidding. The Los Angeles County Department of Public Health, Solid Waste Division (County) issued a Corrective Action Order requiring construction to stop on the project which is resulting in the recommendation to terminate the construction contract with NR Development Inc. The declaration of emergency is necessary to streamline the process to procure a replacement contractor to provide maintenance activities to preserve the site in a safe condition until the County authorizes construction work on the project to resume.

RECOMMENDED ACTIONS: The City Council will consider making a finding and adopting a Resolution declaring an emergency and authorizing repair, replacement or maintenance activities of public facilities related to the Urban Orchard, City Project No. 539-PRK, without public bidding, pursuant to the emergency contracting procedures of the South Gate Municipal Code and the California Public Contract Code.

FISCAL IMPACT: There is no impact to the General Fund. The Urban Orchard Project has received a total of \$25.5 million in grant and other funds for design, construction, operations and maintenance, as summarized below. Service contracts procured pursuant to the subject Resolution will be approved in accordance with City requirements.

ANALYSIS: The Urban Orchard Project is under construction and approximately 80% of construction work has been completed. On December 29, 2022, the City received a Corrective Action Order ("Order") from the Los Angeles County Department of Public Health, Solid Waste Management Program ("County"). The Order required the City to stop all construction activities until such time a Post Closure Land Use Plan (PCLUP) for the Project site was approved by the County. Given the PCLUP approval process and input received to date, it will take at least several months, possibly six or more, to obtain approval.

To avoid the significant delay damages that would be payable by the City to the general contractor during a prolonged suspension of the project pending approval of the PCLUP, staff recommended to the City Council that the general contractor's contract be terminated. Such termination will provide both immediate and long-term cost savings to the City, but will also create an immediate need for the City to retain an interim contractor to perform certain ongoing maintenance and safety activities – a need which must be met sooner than the time necessary to engage in normal public bidding procedures.

The proposed Resolution is pursuant to the authority granted by South Gate Municipal Code § 1.54.470 and California Public Contract Code § 22050. Those Code Sections allow cities, by resolution, to approve the City's entry into contracts without engaging in public bidding, where certain emergency conditions are found to have occurred. Staff believes that the County's Order directing all construction work to be ceased on the Project, and the resulting need to terminate the existing construction contract, constitutes such an emergency. Staff is recommending that the City Council adopt the proposed Resolution so that the City can avail itself of the accelerated contracting procedures authorized by those Code Sections. The Resolution, (1) declares an emergency, (2) authorizes the City's City Manager to take such actions deemed necessary to cause the maintenance activities to be performed and to procure the necessary equipment, services, and supplies therefore, all without giving notice for bids to let contracts, (3) requires that at each regularly scheduled City Council Meeting, that the City Manager present to the Council the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why that action is necessary to respond to the emergency, further, that the City Council review the emergency action to determine, by a four-fifth's vote, that there is a need to continue the emergency action, until the emergency action is terminated.

The City is working diligently to secure the PCLUP approval. The process has been initiated with the submittal of technical documents such as the Workplan for interim measures and a Summary of Site Investigation.

BACKGROUND: The Urban Orchard Project ("Project") is a part of the Capital Improvement Program. The Project located between the Los Angeles River, Firestone Boulevard, the Thunderbird Villa Mobile Home Park, and the I-710 Freeway. Two primary purposes of the Project are to divert and treat storm water run-off from the Los Angeles River and recreation opportunities to South Gate residents.

The Urban Orchard Project is being constructed on a property that was used as an unpermitted landfill until 1949 by an entity known as the Southeastern Disposal and By-Products. The property site is identified in CalRecycle's Solid Waste Information System (SWIS) as an Unpermitted Closed Solid Waste Disposal Site and SWIS No. 19-AA-5545. In 1984, the State of California Department of Health Services, Toxic Substances Control Division concluded that the clean-up work completed effectively mitigated waste constituents to proceed with the Lewis Homes residential development project. The requirements of the PCLUP came into effect in 1988. As such, the project site is subject to State solid waste regulations that require the PCLUP before any change to the current land use, construction or land preparation can occur.

The Los Angeles County Department of Public Health, Solid Waste Management Program, acts as the Local Enforcement Agency (LEA) for the State of California's Department of Resources Recycling and Recovery (CalRecycle). The County is authorized by Division 30 of the Public Resources Code

(PRC), Section 43209 and 45000, Title 14 and 27 of the California Code of Regulations (14 CCR & 27 CCR), to enforce applicable solid waste regulations and to ensure solid waste sites meet the State minimum standards within the County of Los Angeles. As such, the City is working with the LEA to obtain approval of the PCLUP.

Construction is currently at the 80% completion stage. Improvements that have substantially completed include but are not limited to rough grading, drop inlet for storm water diversion structures in the Bandini Channel, a wetland overlook area, the stream adjacent to the education/flexible space building and wetland, south bio swale, construction of 18 raised planters, planting of 75 trees, installation of the prefabricated education center and the restroom/maintenance building, two shade structures, a water element at the playground, installation of multi-use walking and bicycle pathways, exercise equipment located at various stages along the walking and bicycle paths, benches, picnic tables, drinking fountains, trash cans, and pathway lighting. The total estimated cost of improvements completed to date is over \$12 Million.

The Urban Orchard Project has received the listed grants:

Grants	Amount	Grant Recipient
State Water Resource Control Board (Prop 1)	\$7,975,100	City
Land and Water Conservation Fund (LWCF)	\$3,000,000	
Los Angeles County Flood Control District	\$530,000	
Safe Clean Water- Municipal Funds	\$1,435,401	
Safe Clean Water- Regional Funds	\$5,438,000	
State Parks- Prop. 68 Grant	\$1,919,847	
Conservation Corp of Long Beach	\$713,015	
Rivers and Mountains Conservancy Funds	\$4,404,798	TPL
Private Donations	\$90,000	
Total	\$25,506,161	

ATTACHMENTS: A. Proposed Resolution
B. South Gate Municipal Code 1.54.470
C. Public Contract Code Section 22050

GD:lc

RESOLUTION NO. 2023-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH GATE, STATE OF CALIFORNIA, DECLARING AN EMERGENCY AND AUTHORIZING REPAIR, REPLACEMENT OR MAINTENANCE ACTIVITIES OF PUBLIC FACILITIES RELATED TO THE URBAN ORCHARD PROJECT WITHOUT PUBLIC BIDDING, PURSUANT TO THE EMERGENCY CONTRACTING PROCEDURES OF THE SOUTH GATE MUNICIPAL CODE AND THE CALIFORNIA PUBLIC CONTRACT CODE

WHEREAS, the City of South Gate ("**City**") is in the process of constructing a major public works project identified as the Urban Orchard Project, City Project No. 539-PRK (the "**Project**"); and

WHEREAS, construction activities at the Project site began on August 2, 2021 and have reached the eighty percent completion stage, but the Project will require several more months of work before it is complete; and

WHEREAS, the City has received notice from the Los Angeles County Department of Public Health, Solid Waste Management Program ("**County**"), demanding that the City immediately cease all construction work on the Project until such time that a Post Closure Land Use Plan (PCLUP) is submitted to the County for approval before any change to the current land use, construction or land preparation can occur to comply with the requirements of the California Code of Regulations, Title 27 (27 CCR), Section 21190 (the "**Cease and Desist and Corrective Action Order**"); and

WHEREAS, the City has directed its general contractor to cease all construction activities at the Project site, and the City is working with the County to address the County's concerns regarding the Project; and

WHEREAS, because the City estimates that it may take several months before the County will permit or allow construction work on the Project to resume, the City has determined that it is in its best interest to terminate its contract with the general contractor, and the City is in the process of terminating that contract in accordance with termination rights reserved to the City therein; and

WHEREAS, although no construction activities will occur at the Project site until the County issues its PCLUP, it will be necessary in the interim for certain minimal maintenance activities to be performed at the site for the protection of the existing improvements and/or for public safety (collectively, the "**Maintenance Activities**"); and

WHEREAS, at a special meeting of the South Gate City Council ("**Council**") held on Monday, February 6, 2023, the Council received information provided by the City's Public Works Department establishing that the City does not have sufficient manpower to perform the

Maintenance Activities with its own forces, and that the immediate need for the performance of the Maintenance Activities does not permit a delay that would result from a competitive solicitation for bids.

NOW, THEREFORE, BASED ON THE FACTS SET FORTH ABOVE, THE COUNCIL HEREBY MAKES THE FOLLOWING FINDINGS:

1. The County's issuance of the Cease and Desist and Corrective Action Order at the current stage of the Project work, coupled with the immediate and ongoing need to perform the Maintenance Activities, has created an emergency for the City with respect to the Project; and
2. The emergency will not permit a delay resulting from a competitive solicitation for bids to perform the Maintenance Activities; and
3. The actions to be taken pursuant to the Resolutions set forth below are necessary to respond to the emergency.

NOW, THEREFORE, THE COUNCIL HEREBY RESOLVES AS FOLLOWS:

Section 1. The foregoing recitals and findings are true and correct and constitute a substantive part of this Resolution.

Section 2: Pursuant to the authority granted by South Gate Municipal Code § 1.54.470 and California Public Contract Code § 22050, the Council hereby authorizes and directs the City's City Manager and his designees to take such actions as the City Manager deems necessary to cause the Maintenance Activities to be performed, and to procure the necessary equipment, services, and supplies therefore, all without giving notice for bids to let contracts, and without regard to the dollar amounts of the contracts for such activities, equipment, services and supplies.

Section 3: At each regularly scheduled meeting of the Council after the date of this Resolution until further notice from the Council, the City Manager shall present to the Council the reasons justifying the emergency, that the emergency declaration will reduce delays and associated costs that would otherwise result from the competitive solicitation for bids and why that action is necessary to respond to the emergency.

Section 4. At each such regularly scheduled meeting until the emergency action is terminated, the Council shall review the emergency action to determine, by a four-fifth's vote, that there is a need to continue the emergency action.

Section 5. The Council shall terminate the emergency action at the earliest possible date that conditions warrant, so that the remainder of the Maintenance Activities may be completed by giving notice for bids to let contracts.

Section 6. In accordance with the provisions of California Public Contract Code § 22050, this Resolution shall only be effective if passed by a vote of four-fifths of the Council Members.

RESOLUTION NO. 2023-__ | 2

Section 7. The City Clerk shall certify to the adoption of this Resolution, which shall be effective upon its adoption.

APPROVED AND ADOPTED this 6th day of February, 2023.

CITY OF SOUTH GATE

Maria del Pilar Avalos, Mayor

ATTEST:

Yodit Glaze, City Clerk

APPROVED AS TO FORM:



Raul F. Salinas, City Attorney

South Gate Municipal Code

Search Code

Go

+ Advanced Search

Contents

Click the **plus (+)** or **minus (-)** symbols to expand or collapse the entries. Click the **checkboxes** to select sections for saving or printing.

Print/Save Selections

Title 1 ADMINISTRATION AND PERSONNEL

Ch. 1.54 PURCHASING SYSTEM AND BIDDING RULES

Help

Text Size: - A + A

SHARE

1.54.470 Exceptions to bidding requirements for public projects, maintenance work, and similar construction-related activities in case of emergencies.

SHARE

In case of emergency when repair or replacements are necessary, the city may proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts. The work may be done by day labor under the direction of the public works director, by contractor, or by a combination of the two. In any such emergency, if notice for bids will not be given, the city shall comply with the procedures in Public Contract Code Section [22050](#) (Emergency Contracting Procedures). These procedures require, before any emergency action is taken, that the city council authorize the action by a four-fifths vote and make a finding based on substantial evidence that: (a) the emergency will not permit a delay resulting from the competitive solicitation for bids; and (b) the action is necessary to respond to the emergency. The city council must also review the action at every regular meeting until the action is terminated to determine, by a four-fifths vote, that there is a need to continue the action.

(Ord. 2191 § 1 (part), 3-9-05)

Attachment B

13

Code:

Section: 1 or 2 or 1001



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PUBLIC CONTRACT CODE - PCC

DIVISION 2. GENERAL PROVISIONS [1100 - 22355] (*Division 2 enacted by Stats. 1981, Ch. 306.*)

PART 3. CONTRACTING BY LOCAL AGENCIES [20100 - 22178] (*Part 3 added by Stats. 1982, Ch. 465, Sec. 11.*)

CHAPTER 2.5. Emergency Contracting Procedures [22050- 22050.] (*Chapter 2.5 added by Stats. 1994, Ch. 803, Sec. 88.*)

22050. (a) (1) In the case of an emergency, a public agency, pursuant to a four-fifths vote of its governing body, may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.

(2) Before a governing body takes any action pursuant to paragraph (1), it shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency.

(b) (1) The governing body, by a four-fifths vote, may delegate, by resolution or ordinance, to the appropriate county administrative officer, city manager, chief engineer, or other nonelected agency officer, the authority to order any action pursuant to paragraph (1) of subdivision (a).

(2) If the public agency has no county administrative officer, city manager, chief engineer, or other nonelected agency officer, the governing body, by a four-fifths vote, may delegate to an elected officer the authority to order any action specified in paragraph (1) of subdivision (a).

(3) If a person with authority delegated pursuant to paragraph (1) or (2) orders any action specified in paragraph (1) of subdivision (a), that person shall report to the governing body, at its next meeting required pursuant to this section, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency.

(c) (1) If the governing body orders any action specified in subdivision (a), the governing body shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action. If the governing body meets weekly, it may review the emergency action in accordance with this paragraph every 14 days.

(2) If a person with authority delegated pursuant to subdivision (b) orders any action specified in paragraph (1) of subdivision (a), the governing body shall initially review the emergency action not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action, unless a person with authority delegated pursuant to subdivision (b) has terminated that action prior to the governing body reviewing the emergency action and making a determination pursuant to this subdivision. If the governing body meets weekly, it may, after the initial review, review the emergency action in accordance with this paragraph every 14 days.

(3) When the governing body reviews the emergency action pursuant to paragraph (1) or (2), it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

(d) As used in this section, "public agency" has the same meaning as defined in Section 22002.

(e) A three-member governing body may take actions pursuant to subdivision (a), (b), or (c) by a two-thirds vote.

(f) This section applies only to emergency action taken pursuant to Sections 20134, 20168, 20205.1, 20213, 20223, 20233, 20253, 20273, 20283, 20293, 20303, 20313, 20331, 20567, 20586, 20604, 20635, 20645, 20682, 20682.5, 20736, 20751.1, 20806, 20812, 20914, 20918, 20926, 20931, 20941, 20961, 20991, 21020.2, 21024, 21031, 21043, 21061, 21072, 21081, 21091, 21101, 21111, 21121, 21131, 21141, 21151, 21161, 21171, 21181, 21191, 21196, 21203, 21212, 21221, 21231, 21241, 21251, 21261, 21271, 21290, 21311, 21321, 21331, 21341, 21351, 21361, 21371, 21381, 21391, 21401, 21411, 21421, 21431, 21441, 21451, 21461, 21472, 21482, 21491, 21501, 21511, 21521, 21531, 21541, 21552, 21567, 21572, 21581, 21591, 21601, 21618, 21624, 21631, 21641, and 22035.

(Amended by Stats. 2017, Ch. 387, Sec. 16. (SB 205) Effective January 1, 2018.)

FEB 02 2023
9:30 AM**City of South Gate**
CITY COUNCIL

AGENDA BILL

For the Special Meeting of: **February 6, 2023**Originating Department: **Public Works**

Department Director:


Arturo Cervantes

City Manager:


Chris Jeffers**SUBJECT: RESOLUTION TERMINATING CONTRACT NO. 2021-66-CC WITH NR DEVELOPMENT, INC. FOR THE URBAN ORCHARD, CITY PROJECT NO. 539-PRK**

PURPOSE: To terminate Contract No. 2021-66-CC with the general contractor NR Development, Inc. for the construction of the Urban Orchard Project effective February 6, 2023. Although construction is not yet complete, the City is forced to suspend construction activities at the project site after receiving a notice from the Los Angeles County Department of Public Health, Solid Waste Division (County) on December 14, 2022, to immediately stop work at the site until a Post Closure Land Use Plan (PCLUP) for the site is approved by the County. Suspension of the work entitles the general contractor to receive "delay damages" from the City as compensation for additional costs incurred by the general contractor which result from the suspension. A prolonged suspension of the project will result in substantial delay damages owing by the City. These damages can be minimized by terminating Contract No. 2021-66-CC as soon as possible, and resuming the project under a new construction contract once the PCLUP has been approved. Staff is recommending terminating the contract now so as to reduce the financial impacts to the project by minimizing those daily damages.

RECOMMENDED ACTIONS: The City Council will consider:

- a. Adopting a Resolution to terminate Contract No. 2021-66-CC with NR Development Inc., effective February 6, 2023 for the Urban Orchard, City Project No. 539-PRK, except for the requirements that NR Development Inc. continue to perform approved maintenance activities until such time as a new contractor is procured to perform those maintenance activities; and
- b. Directing the Mayor to execute a document in a form acceptable to the City Attorney advising NR Development Inc. that the contract has been terminated.

FISCAL IMPACT: There is no impact to the General Fund. Termination of the contract will require the City to compensate NR Development Inc. in an amount that has not been fully determined, but which is likely to be much lower than the amount of delay damages that the City will be obligated to pay to NR Development Inc. if the contract is not terminated and project work is instead suspended until the PCLUP has been approved by the County. Terminating the contract will reduce the potential costs associated with having to comply with the Los Angeles County stop work order and obtaining a PCLUP. The amount will be presented to the City Council after it has been fully calculated. Additional costs will be incurred to hire a contractor to maintain the site until construction may proceed. Costs will also be incurred for professional services such as to develop a bid package to re-bid the project at a future time and to pay for additional construction management and support services. The Urban Orchard Project has received a total of \$25.5 Million in grant funds which will be utilized to fund projects costs associated with terminating the contract, maintaining the site pending

approval of the PCLUP, and rebidding the project for completion of construction under a new construction contract.

ANALYSIS: The Urban Orchard Project is under construction and is approximately 80% complete. Major aspects of construction have been completed and are described on the following page. On December 14, 2022, the City received a Cease and Desist notice from the County to stop construction until a PCLUP was approved. Staff has been in communications with the County, CalRecycle and other stakeholder to resolve the issue as timely as possible. Given the PCLUP approval process and input received to date, it will take at least several months, possibly six or more, to obtain approval.

Accordingly, the City directed NR Development Inc. to stop all construction activities, proceed with maintenance activities needed to preserve and protect the site. Such stop work orders impose significant delay costs upon the City when placed upon any contractor for actions not caused by the contractor. The project budget would be significantly impaired if the costs continue to accrue as we work to obtain the PCLUP approval from the County. As such, staff is recommending terminating the contract now to avoid further accrual of such costs.

The City has the right to terminate the contract for convenience according to the contract's terms. The City Council may exercise this contract termination right if it becomes impossible or impractical to proceed with the project or if conditions or events arise beyond the control of the City. The order from the County represents a circumstance and compliance schedule that is beyond the City's control and that justified termination of the contract for convenience.

BACKGROUND: The Urban Orchard Project ("Project") is a part of the Capital Improvement Program. The Project located between the Los Angeles River, Firestone Boulevard, the Thunderbird Villa Mobile Home Park, and the I-710 Freeway. The primary purposes of the Project is to divert and treat storm water run-off from the Los Angeles River and to provide recreational facilities to South Gate residents.

The Project improvements include storm water diversion structures from the Bandini Channel to an underground reservoir, an education garden with raised planters, an orchard of 200 trees, a wetland with emergent vegetation, a flowing stream, a knoll overlooking the wetland, an education building/flexible space to promote environmental education, restroom/maintenance building, shade structures, security cameras, a nature-based playground with a water element, several multi-use walking and bicycle pathways, exercise equipment located at various stages along the walking and bicycle paths, benches, picnic tables, drinking fountains, trash cans, public art, native shade trees, drought tolerant landscape, irrigation system, replacement of Bandini Channel fence and pathway lighting. Construction of the project began on August 2, 2021 and is approximately 80 percent complete.

The Los Angeles County Department of Public Health, Solid Waste Management Program, acts as the Local Enforcement Agency (LEA) for the State of California's Department of Resources Recycling and Recovery (CalRecycle). The County is authorized by Division 30 of the Public Resources Code (PRC), Section 43209 and 45000, Title 14 and 27 of the California Code of Regulations (14 CCR & 27 CCR), to enforce applicable solid waste regulations and to ensure solid waste sites meet the State minimum standards within the County of Los Angeles.

The Urban Orchard Project is being constructed on a property that was used an unpermitted landfill, until 1949 by an entity known as the Southeastern Disposal and By-Products. As a result the Project

site (or portion of it) is identified in CalRecycle's Solid Waste Information System (SWIS) as an Unpermitted Closed Solid Waste Disposal Site and SWIS No. 19-AA-5545. In 1984, the State of California Department of Health Services, Toxic Substances Control Division concluded that the clean-up work completed effectively mitigated waste constituents to proceed with the Lewis Homes residential development project. The requirements of the PCLUP came into effect in 1988. The County issued the Order to stop work because the State solid waste regulations required the PCLUP to be approved before any change to the current land use, construction or land preparation can occur. The LEA must approve the PCLUP before work can begin. Staff is working diligently to obtain approval from the LEA. Technical documents have been submitted to begin the review and approval process.

The Project is currently at 80% completion. Construction will be completed after the PCLUP approval is obtained from the County. That completion will be conducted pursuant to a new contract procured through competitive bidding and awarded to the lowest responsive and responsible bidder.

The Urban Orchard Project has received the listed grants for design, construction and operations and maintenance:

Grants	Amount	Grant Recipient
State Water Resource Control Board (Prop 1)	\$7,975,100	City
Land and Water Conservation Fund (LWCF)	\$3,000,000	
Los Angeles County Flood Control District	\$530,000	
Safe Clean Water- Municipal Funds	\$1,435,401	
Safe Clean Water- Regional Funds	\$5,438,000	
State Parks- Prop. 68 Grant	\$1,919,847	
Conservation Corp of Long Beach	\$713,015	
Rivers and Mountains Conservancy Funds	\$4,404,798	TPL
Private Donations	\$90,000	
Total	\$25,506,161	

- ATTACHMENTS:** A. Proposed Resolution
B. Aerial Photograph of the Project Site

GD:lc

RESOLUTION NO. 2023-__-CC**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOUTH GATE, STATE OF CALIFORNIA, TERMINATING CONTRACT NO. 2021-66-CC WITH NR DEVELOPMENT INC. FOR THE CONSTRUCTION OF THE URBAN ORCHARD, CITY PROJECT NO. 539-PRK**

WHEREAS, the Urban Orchard Project is a part of the Capital Improvement Program and has received over \$25 Million in grant funds; and

WHEREAS, on May 25, 2021, the City Council approved Contract No. 2021-66-CC with NR Development Inc. in the amount of \$15,870,853 for the construction of the Project (“**Contract**”). The initial approved construction schedule required construction to begin in August of 2021 and to be completed by January of 2023.

WHEREAS, construction began on August 2, 2021, and has now reached the 80 percent completion stage. Six change orders have been approved for a total of \$1,035,626. The revised contract amount is \$16,906,479; and

WHEREAS, the Los Angeles County Department of Public Health, Solid Waste Management Program, acts as the Local Enforcement Agency (“**County**”) for the State of California’s Department of Resources Recycling and Recovery (CalRecycle). The City received notice from County demanding that the City immediately cease all construction work on the Project until such time that a Post Closure Land Use Plan (PCLUP) is submitted to the County for approval before any change to the current land use, construction or land preparation can occur to comply with the requirements of the California Code of Regulations, Title 27 (27 CCR), Section 21190 (the “**Cease and Desist and Corrective Action Order**”); and

WHEREAS, to comply with the County Order, the City has directed NR Development Inc. to cease all construction activities at the Project site, with the exception of maintenance activities required to preserve the site and make it safe; and

WHEREAS, the City is incurring significant delay costs resulting from the suspension of construction activities. Prolonged incurrence of these delay costs will threaten the available source of funding for the regionally significant project; and

WHEREAS, because the City estimates that it may take several months before the County will lift their stoppage directive and allow construction work on the Project to resume, the City has determined that it is in its best interest to terminate Contract No. 2021-66-CC as soon as possible, to mitigate the financial impact of that order on the project by stopping the daily incurrence of those delay costs; and

WHEREAS, although no construction activities will occur at the Project site until the County lifts its Order, it will be necessary in the interim for certain minimal maintenance

activities to be performed at the site for the protection of the existing improvements and/or for public safety (collectively, the “**Maintenance Activities**”); and

WHEREAS, at a special meeting of the South Gate City Council (“**Council**”) held on Monday, February 6, 2023, the Council received information provided by the City’s Public Works Department establishing that the City does not have sufficient manpower to perform the Maintenance Activities with its own forces; and

WHEREAS, the City has the authority to terminate some portions of the Contract’s scope of work immediately, while continuing to require NR Development Inc. to perform Maintenance Activities under the terms of the Contract until such time that a new contractor is secured to perform those Maintenance Activities.

NOW, THEREFORE, BASED ON THE FACTS SET FORTH ABOVE, THE COUNCIL HEREBY MAKES THE FOLLOWING FINDINGS:

1. The County’s issuance of the Cease and Desist and Corrective Action Order to stop all construction activities on the Urban Orchard Project until such time a Post Closure Land Use Plan (PCLUP) is approved by the County will delay the construction of the project several months beyond the City’s control.
2. The financial impact of stopping construction can be lessened by terminating Contract No. 2021-66-CC with NR Development Inc.

NOW, THEREFORE, THE COUNCIL HEREBY RESOLVES AS FOLLOWS:

Section 1. The foregoing recitals and findings are true and correct and constitute a substantive part of this Resolution.

Section 2: Pursuant to the authority provided by Contract No. 2021-66-CC, the Council hereby terminates Contract No. 2021-66-CC for convenience, except for the requirements that NR Development Inc. continue to perform the Maintenance Activities until such time as a new contractor is procured to perform those Maintenance Activities, and authorizes the Mayor to execute a document in a form acceptable to the City Attorney advising NR Development Inc. of such termination.

Section 3: The City Clerk shall certify to the adoption of this Resolution, which shall be effective upon its adoption.

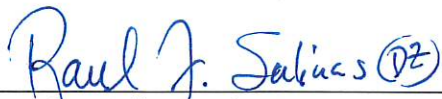
APPROVED AND ADOPTED this 6th day of February, 2023.

CITY OF SOUTH GATE

Maria del Pilar Avalos, Mayor

Yodit Glaze, City Clerk

APPROVED AS TO FORM:



Raul F. Salinas, City Attorney

