

RESOLUTION NO. 12-029

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO AUTHORIZING AN AGREEMENT FOR FINANCING OF IMPROVEMENTS FOR MCEUEN PARK, WITH THE URBAN RENEWAL AGENCY d/b/a LAKE CITY DEVELOPMENT CORPORATION ITS PRINCIPAL PLACE OF BUSINESS AT 105 N 1ST STREET, SUITE 100, COEUR D'ALENE, ID 83814.

MOTION: Motion by Kennedy, seconded by Goodlander to adopt Resolution 12-029.

STAFF REPORT: City Administrator Wendy Gabriel reported that this is a contract where the City and LCDC outlines the sharing of design costs and construction costs and noted that LCDC will approve the costs to assure payments to the project are in line with the allowable usage of these funds. She noted that weekly meetings will be held every Thursday morning until the project is complete. City's funding will be taken from the Parks Capital Improvement Fund at \$400,000 and from the Parking Fund.

Councilman McEvers asked if there is staff assigned to review any changes orders to the construction phase. Mrs. Gabriel responded that herself, Gordon Dobler and Doug Eastwood would review any possible change orders prior to LCDC review. Councilman Goodlander asked about the cost of the design contract. Mrs. Gabriel also noted that the contract is not only for the design but also the construction phase of the project.

MOTION TO POSTPONE: Motion by Adams, seconded by Gookin that further action on this agreement for financing of McEuen Park, Coeur d'Alene, Idaho, be postponed until after the Idaho Supreme Court has issued its final judgment in Brannon v. City of Coeur d'Alene, et al, CV-09-10010 and until after the completion of any action directed by that Court's decision.

DISCUSSION: Councilman Adams noted that the 2009 election had been challenged to the Supreme Court and possible results could end with a new election or call for a new trial. This could result in a different make-up of the Council and thus affect the outcome of this project. Councilman Edinger asked if this delay would affect the McEuen Park Project. Administrator Gabriel said the delay would significantly affect the proposed Park Project.

ROLL CALL: Edinger Aye; Adams, Aye; McEvers, No; Goodlander, No; Gookin, No; Kennedy, No. Motion failed.

DISCUSSION: Councilman Gookin asked about the \$11.5 funding from LCDC and what is the basis for this figure since bids have not been conducted. He is concerned that there is no construction plan for this project to determine the actual cost and he also voiced his concern that the normal funding mechanism is through bonds which is placed for a vote of the public. He also questioned the resolution's reference to Ordinance 3337 which amended the Urban Renewal District to include Sorenson School and noted that there is mention of the McEuen Park Project. He noted that the Walker Macy Master Plan calls for a parking structure on Lakeside Avenue. City Attorney Gridley noted that the current Council is not bound by previous Councils and the

previous planning documents for the Walker Macy Plan have been amended to the current plan and the document mentioned by Councilman Gookin does not preclude proceeding with the current plan.

MOTION: Motion by Edinger, seconded by Gookin to delete Section 11- C from the contract which refers to default.

Danielle Quade, attorney for LCDC, explained that clause refers to the situation if the project was determined to be a profit-making venture. Since tax laws provide that only 10% can be used for profit-making endeavors and if more funds were used for this purpose, then the bonds would be taxable and thus this section protects LCDC from this scenario.

Councilman Edinger asked, if the next election results in a different Council and the new Council stops this project, would the City have to repay LCDC for the funds being spent. Ms. Quade responded it would depend on the portion of the project that had been completed and probably the purpose of the project would be met. City Attorney Gridley noted that if a future Council stops this project, the costs would have to be sorted out to determine who owes what. Councilman Edinger asked if the Council changes and they put the project to the vote of the people and the people say quit the project, can this council bind future Council to this agreement. Attorney Gridley said that the Council has previously done multi-year contracts; however, if a new Council wants to breach a contract they would be held liable. City Administrator Gabriel noted that the project has a completion date of November, 2013. Councilman Kennedy noted that he opposes removal of certain language in the contract basically because the members of the Council are not attorneys and believes that this is a maneuver by other Council members to stall this project. Councilman Goodlander noted that the clause on breach of contract refers to the contractor and not the City. Councilman Gookin commented that Ms. Quade had noted the breach could be if the funds are used for a for-profit use but if the City stops the contract the City would have to repay LCDC. Ms. Quade responded that Councilman Gookin is comparing separate provisions of the contract.

MOTION TO AMEND - ROLL CALL: Edinger, Aye; Adams, Aye; McEvers, No; Goodlander, No; Gookin, Aye; Kennedy No. Motion failed with the Mayor voting the negative.

RESOLUTION 12-029 ROLL CALL: Edinger, No; Kennedy, Aye; McEvers, Aye; Adams, No; Gookin, No; Goodlander, Aye. Motion carried with the Mayor's tie-breaking vote in the affirmative.

RECESS: The Council called for a recess from 7:19 p.m. until 7:23 p.m.

POINT OF PERSONAL PRIVILEGE: Councilman Gookin clarified that the current contract is for construction documents and that the City has not previously breached previous contracts and apologized to Councilman Kennedy for not responding to his questioning him regarding his previous comment that the city has previously breached contracts. Councilman Kennedy noted that Councilman Gookin has previously made inflammatory comments, not just tonight, but in the past such as "kicking the kids to the curb" and tonight saying that the City has previously breached contracts and "how far is the City going to bend the law" and he believes Council

needs to start working with facts. Mayor Bloem noted that the 7 community values have been used often in this project.