

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # B-12

Urgent

Routine

AGENDA DATE August 28, 2012

CEO Concur with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Continuation of Item to Consider and Provide Direction Whether to Terminate the Cost Reimbursement, Deposit and Forfeiture Agreement and the Developer Relationship with West Park Holdings, LLC, or Direct Staff to Develop a Request for Proposals (RFP) Based Upon the Core Project Elements as Identified Through the West Park Holdings, LLC Master Development Experience or Waive the Breach of the Cost Reimbursement, Deposit and Forfeiture Agreement between West Park Holdings, LLC and Stanislaus County Allowing the Continuance of a Development Time Extension Through January 31, 2013

STAFF RECOMMENDATIONS:

1. Select options for proceeding with the development of the Crows Landing Air Facility project, including either:

- (a) Terminate the Cost Reimbursement, Deposit and Forfeiture Agreement between West Park Holdings, LLC and Stanislaus County, dated June 19, 2012, based upon the failure to deposit the Escrow Funds on or before July 10, 2012; terminate the relationship with the Master Developer - West Park Holdings, LLC and direct staff to return with strategic alternatives for proceeding with the development of the County-owned former Crows Landing Air Facility; or

- Continued on Page 2 -

FISCAL IMPACT:

A Cost Reimbursement, Deposit and Forfeiture Agreement was signed and committed to as part of the developer request for time extension on June 19, 2012 requiring the Master Developer to deposit \$2,750,000, of which \$2,000,000 would be used during the extension period (through January 2013) to defray costs associated with completion of the Draft EIR with the remainder \$750,000 to be utilized on airport facility improvements upon completion of CEQA certification and the land entitlement process. These monies have not been deposited in the County Treasury as of publication of this item.

BOARD ACTION AS FOLLOWS:

No. 2012-445

On motion of Supervisor O'Brien, Seconded by Supervisor Chiesa

and approved by the following vote,

Ayes: Supervisors Chiesa, De Martini and Chairman O'Brien

Noes: Supervisors Monteith

Excused or Absent: Supervisors: None

Abstaining: Supervisor: Withrow

1) _____ Approved as recommended

2) _____ Denied

3) X Approved as amended

4) _____ Other:

MOTION: Approved Staff Recommendations Nos. 1(b) and 2; and, amended the item to require that that the terms located on Pages 4 through 8 of the 8/28/2012 Staff Report to the Board must be considered and incorporated into a new RFP process seeking a Master Developer for the County owned Crows Landing Air Facility property; in addition, the sewer requirement must be based on the original RFP; the rail component is optional; require an Escrow Fund in the amount of \$2.0 million with a Forfeiture Agreement in place; allow that lawsuits can delay the overall timeframe; and, anyone who meets these requirement is eligible to submit a proposal in response to the RFP

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

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Page 2

STAFF RECOMMENDATIONS (Continued):

- (b) Terminate the Cost Reimbursement, Deposit and Forfeiture Agreement between West Park Holdings, LLC and Stanislaus County, dated June 19, 2012, based upon the failure to deposit the Escrow Funds on or before July 10, 2012; terminate the relationship with the Master Developer - West Park Holdings, LLC and direct staff to develop a new Request for Proposal (RFP) process consistent with the core project elements as identified through the West Park Holdings, LLC Master Developer experience; or
 - (c) Waive the breach of the Cost Reimbursement, Deposit and Forfeiture Agreement and proceed with the preparation of the Draft Environmental Impact Report (DEIR), Draft Specific Plan components to support the EIR, and draft land use documents and ground leases January 31, 2013.
2. If the Board elects to terminate the Cost Reimbursement, Deposit and Forfeiture Agreement dated June 19, 2012, direct the County Treasurer to promptly return to West Park Holdings, LLC all of the Escrow Funds on deposit with the County Treasury, less any bank fees and/or costs incurred by the County in returning the Escrow Funds, and any unused funds owed to the County by West Park Holdings, LLC for staff, consultant and legal fees as of August 29, 2012.

DISCUSSION:

On June 19, 2012 the Stanislaus County Board of Supervisors authorized a time extension through January 31, 2013, for the Master Developer, West Park Holdings, LLC, to complete the following: preparation of a complete Draft Environmental Impact Report (DEIR), Draft Specific Plan, Draft Development Agreement (DA), and Draft Ground Leases; and approved the associated draft Reimbursement, Deposit and Forfeiture Agreement (see **Attachment 1**).

West Park Holdings, LLC and the County entered into a Cost Reimbursement, Deposit and Forfeiture Agreement dated June 19, 2012 (Agreement). Section 4 of the Agreement required the Master Developer, on or before July 10, 2012, to deposit with the County Treasury the following funds: (1) \$2,000,000 in the CEQA (California Environmental Quality Act) Escrow Account and (2) \$750,000 in the Airport Improvement Escrow Account (hereafter collectively referred to as "Escrow Funds"), both of which are held by the County and the funds are to be applied to specified tasks

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Page 3

and activities related to continued economic development of the Crows Landing Air Facility project (Project) and preparation of a Draft Environmental Impact Report (DEIR).

On July 10, 2012, the Master Developer failed to deposit the Escrow Funds into the County Treasury. The Stanislaus County Chief Executive Officer sent Developer Principal, Gerry Kamilos, West Park Holdings, LLC, notification on July 11, 2012 of the failure to deposit the Escrow Funds by July 10, 2012, which is grounds for termination of the Agreement and that the Stanislaus County Board of Supervisors may elect to terminate that agreement unless the Escrow Funds are deposited into the County Treasury by July 11, 2012 (see **Attachment 2**). Pursuant to the Agreement, the County could not take action to terminate the Agreement before 30-days after notice of default was given to the Developer. The 30-day period expired on August 10, 2012, and as of that date, the Escrow Funds had not been received.

The Master Developer breached the Agreement when it failed to deposit the Escrow Funds on July 10, 2012. The Agreement provides that "This Agreement may be terminated for cause at any time by any Party". It is the opinion of County Counsel that failure to deposit the funds by the deadline is cause to terminate the agreement because the timely deposit of the Escrow Funds by the July 10, 2012 deadline was a material part of the Agreement and a significant inducement to the Board of Supervisors in approving the extension to complete a Draft Environmental Impact Report (DEIR). In addition on June 19, 2012, Mr. Kamilos represented to the Board of Supervisors that he understood the deadline and that if West Park Holdings, LLC did not meet the July 10, 2012 deadline, the Master Developer could no longer proceed and that the Board of Supervisors may seek other alternatives. The timely deposit of the Escrow Funds was critical to produce a Project Draft EIR by the January 31, 2013 deadline, and the failure to deposit the Escrow Funds by July 10, 2012, is cause to terminate the Agreement.

On August 21, 2012 the Board initially heard this item and received an update from staff. In addition, the Board considered comments from both the Master Developer and interested community members. During that discussion the Board Chairman and members requested an additional week to make a final determination regarding this action item. Staff was asked to prepare additional information regarding the possible development of a new RFP and time table based upon the existing core project elements as identified through the West Park Holdings, LLC master development experience.

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Page 4

The following term elements represent the core approach to date and are based upon Board member comments and the currently negotiated deliverables born out of the West Park relationship. These terms may be considered and incorporated into a new Request for Proposals (RFP) process seeking a Master Developer for the County owned Crows Landing Air Facility property.

RFP LOGISTICS [180 Days]

- RFP prepared and ready for publication on or before November 1, 2012
- RFP response window 120 days (through February 2013)
- These timeframes are consistent with normal business practice and are considerably longer than the original Crows Development RFP process in 2006
- RFP process to include the following steps:
 - Issuance of RFP
 - Pre-bid Meeting (mandatory)
 - Review and selection of top responders
 - Interviews/Presentations by top responders
 - Staff Analysis and Recommendation to Board of Supervisors
 - Board of Supervisors selection of Master Developer

DEVELOPER BACKGROUND/EXPERIENCE

- Developer will have relevant experience with large public/private and quasi-public enterprise, such as:
 - Rail Roads
 - Union Pacific Railroad (UPRR)
 - Sea Port Logistics
 - Inland Port development experience
 - Airport Development and Management
 - General Aviation/Corporate Air development
 - NOTE: This was not a recognized development experience in the initial Crows Development RFP process
- Proven track record of development project success of this size with a focus on industrial and logistics developments and job generating projects.

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Page 5

CORE PROJECT COMPONENTS TO CEQA ANALYSIS [12-14 Months]

The CEQA development process including all requisite reports and analysis will take approximately 12 – 14 calendar months. Core elements to this analysis will include:

- **Aviation Use and Development (required element)**
 - Ability to identify and develop current and future needs of a general aviation operation. This to include runway, taxiways, and airport identified property and other facilities required for airport operations.
 - NOTE: County of Stanislaus has completed an Airport Layout Plan and Airport Land Use Compatibility Plan for this location – approximately 372 acres.

- **Rail Facility (Inland Port Concept)**
 - Approximately 90-160 acres are available in the northwest corner of the site for the development of an inter-modal rail facility. A rail spur could be constructed to connect the northern site boundary to the existing California Northern Railroad.

- **Industrial / Business Park**
 - Dedicated uses to include warehouse, distribution, logistics, light manufacturing, airport/aviation support services, and AG import/exporter functions along with high job density business park uses.

SUPPORT FACILITIES / COMMUNITY

- **Water and Sewer Improvements for Unincorporated Crows Landing**
 - Consistent with the Board of Supervisor's identified Guiding Principles¹ (principle #7) the developer will fund water system and sewer improvements for the unincorporated community of Crows Landing adjacent to the project site.

- **On Site Fire Protection**
 - Developer will work closely with the West Side Fire Protection District to develop a fire suppression strategy to include facility construction,

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Page 6

equipment and subsidized staffing until such time that development interests/tenants to the Job Center can fully absorb the cost of these services via a Community Facilities/Services District or similar self-maintaining fiscal mechanism.

DEVELOPMENT FOCUS

- **County Property**
 - Developer acknowledges that the County owned Crows Landing Development area will not be sold. The entitlement relationship will be based upon a series of long term lease arrangements only.
 - Developer will focus specifically on the 1,527 acre County owned property. Should a project proposal include adjacent, contiguous lands, the developer will be required to develop the County owned property as first priority before off site development efforts.
 - Should a project proposal include contiguous off base land holdings the County will require specific language in the development agreement and leases that paces/measures off site development vs. on-site development consistent with a phasing strategy (see speculation construction/seed development).

- **Speculation Construction/Seed Development [690,000 sq. ft. total]**
 - Master Developer will be required to provide 345,000 square feet of speculation building construction complete with all support infrastructures within 12 months of successful entitlement process completion. NOTE: This speculation development may be waived if developer secures construction ready business of 345,000 square feet or more within the 12 month speculation window.
 - Master Developer will be required to provide an additional 345,000 square feet of speculation building construction complete with all support infrastructures within 24-48 months of successful entitlement date. NOTE: This second speculation development may not be “banked” with a large initial tenant development.

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Page 7

- The speculation development phasing as proposed has been modified to reflect the smaller, County owned, base footprint (1,527 total acres as compared to the 2,900 acre West Park proposal. In that larger West Park scenario, the developer was prepared to provide up to 1 million square feet of speculation building space in two 500,000 square foot phases. Given the footprint reduction (County owned airbase only), the available development acres have been reduced from 1,180 total acres including off site properties to 810 total on-base acres. This is approximately 69% of the former available footprint. 69% of 1,000,000 square feet equate to 690,000 square feet of speculation building.)

DEVELOPMENT FUNDING

There are several ways to ensure that a future master developer is prepared to fiscally deliver a project of this magnitude. Requiring a new developer to establish escrow funding in the County Treasury may not be the most flexible or necessary approach moving forward. Fiscal ability and solvency may be established by requiring a letter of credit or other tangible agreement.

- **CEQA Escrow Fund Establishment – County Treasury**
 - \$2 million dollar cash on deposit with the County of Stanislaus Treasurer for use related to the development of a defensible Environmental Impact Report in accordance with California CEQA law.
- **Legal Challenge Cost Coverage**
 - Developer must agree to defend and indemnify the County (be full cost accountable) should any legal challenges occur.
- **Airport Escrow Fund Established – County Treasury**
 - \$750,000 cash on deposit for developer contribution to general aviation air facility improvements. NOTE: The County will not utilize these funds until such time that CEQA process has been certified and land entitlements have been secured. Given that intent, this requirement may not be an appropriate requirement. Requiring the master developer to appropriate

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Page 8

this funding at entitlement may provide more flexibility (and a better use of monies) during the initial planning, environmental analysis and pre-entitlement stages.

CEQA REVIEW AND CERTIFICATION [90 Days]

Following the preparation of a Draft Environmental Impact Report (DEIR) agency and public comments (typically a 30 day window), all comments must be responded to and the documentation aligned to address all related concerns. This is typically a 60 day process. An additional 30 days has been added to this RFP timeline scenario to allow for preparation of Board reports, presentation materials and Board member briefings.

TIMELINE

Activity	Timeline
RFP Preparation	60 Days
RFP Publication, Request for Proposals, Developer Selection	120 Days
CEQA Preparation/Analysis	12-14 Months
CEQA Agency and Public Comment/Review	90 Days
CEQA Certification	30 Days
TOTAL	22-24 Months

Finally, the Board of Supervisors may also elect to waive the breach of the Agreement and allow the Developer to proceed with the preparation of the Draft EIR under the terms of the existing Agreement.

CONCLUSION

The former Crows Landing military air facility continues to present a tremendous opportunity for Stanislaus County and the Central Valley as a whole. Its location near Interstate 5, existing infrastructure (including runways), and potential regional connections to both Sacramento and the San Francisco Bay Area present economic development opportunities that continue to support the County in its vision to “create a regional job center that provides good paying job opportunities for Stanislaus County residents and for the region.”

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Page 9

POLICY ISSUES:

The development of the Crows Landing property supports the Board's priority of promoting A Strong Local Economy through business park development and job creation objectives for the community.

STAFFING IMPACT:

Existing County staff, facilitated through the Chief Executive Office and including the Department of Planning and Community Development, Public Works' Department, Department of Environmental Resources, and County Counsel (County Crows Landing development team) will continue to support and oversee the County's day-to-day interests in the development process for the Crows Landing property.

CONTACT PERSON:

Keith D. Boggs, Assistant Executive Officer. Telephone: (209) 652.1514

Attachments:

1. Cost Reimbursement, Deposit and Forfeiture Agreement
2. Letter from Stanislaus County CEO dated July 11, 2012

¹ In 2005, to further the development of Master Development Planning, the County Board of Supervisors identified eight guiding principles to help reflect the goals and objectives of the Crows Landing Development area:

- Protect air facility from incompatible land uses;
- Set aside land for runway expansion;
- Look toward multi-modal transportation and distribution options;
- Integrate ground distribution;
- Capitalize on proximity to Interstate 5;
- Maintain sensitivity to surrounding communities;
- Improve infrastructure and services for the community of Crows Landing; and
- Develop attractive entrance/presence that creates a positive statement for area.

6/12/2012

COST REIMBURSEMENT, DEPOSIT AND FORFEITURE AGREEMENT

THIS COST REIMBURSEMENT, DEPOSIT AND FORFEITURE AGREEMENT (this "**Agreement**"), dated and made effective as of June __, 2012 (the "**Effective Date**"), is entered into by and between the County of Stanislaus, a political subdivision of the State of California ("**County**") and West Park Holdings, LLC, a Delaware limited liability company ("**Developer**"). County and Developer are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. County is or will be the owner of one thousand five hundred twenty eight (1,528) acres of real property located in the County of Stanislaus and known as the Crows Landing Naval Air Facility as shown on the map attached hereto as Exhibit A and incorporated herein by this reference ("**County Property**"). Developer is the owner or has the legal right to acquire approximately one thousand two hundred forty (1,240) acres of real property adjacent to the **County Property** as shown on Exhibit A ("**Developer Property**").

B. On February 27, 2007, the Board of Supervisors of the County authorized an exclusive negotiation with Developer regarding the master development of the Property. County and Developer entered into a Pre-Development Agreement dated June 5, 2007 ("**Pre-Development Agreement**"), which set forth the respective roles and obligations of County and Developer and the procedures for developing a project description for master development of the Property.

C. The Parties have engaged and continue to engage in discussions and studies related to the infrastructure costs, fiscal impacts and economic feasibility of the Project.

D. County and Developer intend to negotiate a Development Agreement ("**DA**") and Ground Leases ("**Leases**"), which, following completion of an environmental impact report and all required public hearings would be considered by the Board of Supervisors. The **DA** and **Leases** will set forth terms and conditions relating to the development of the **County** and **Developer Property**. Developer's project application includes the proposed development of an intermodal inland port facility, commercial, industrial and business park improvements, and a solar energy facility, together with related infrastructure improvements (all of the foregoing, collectively, the "**Project**").

E. The County has determined that an Environmental Impact Report ("**EIR**") is required for processing the **Project** application pursuant to the California Environmental Quality Act ("**CEQA**"). This Agreement is intended to express the Parties' agreement regarding Developer's indemnification obligation and its obligation to pay costs incurred by the County and any consultants or attorneys retained by the County.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The Parties agree that the Recitals constitute the factual basis upon which the County and Developer have entered into this Agreement. County and Developer each

acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. No Obligation to Certify EIR or Approve Project. Nothing in this Agreement creates a binding obligation to approve or develop the **Project**. Each Party expressly acknowledges and agrees that this Agreement creates no obligation on the part of any Party to: (i) enter into a **DA**, (ii) certify any **CEQA** document, (iii) grant any approvals or authorizations required for the **Project**, (iv) agree to any specific terms or obligations, (v) provide financing for the **Project**, or (vi) proceed with the development of the **Property**. The Parties acknowledge that the **Project** may be revised as the environmental, financial and planning processes proceed. No promises, representations, or warranties have been made, expressly or implicitly, by the County, its officials, agents, or employees and, it is specifically agreed that no person has any authority to make such representation, promise, or warranty, to Developer that the Agreement will in any way influence the actions of the County with respect to the approval or denial of such applications, agreements, permits, or entitlements. The provisions of this section are hereby incorporated into each and every section of this Agreement as though set forth in their entirety in each such section.

3. Term. The term of this Agreement (the "**Term**") shall commence on the Effective Date, and shall terminate on January 31, 2013, unless earlier terminated as provided herein, but the provisions of Sections 4, 6 and 7 shall survive termination of this Agreement and remain in effect until the obligations therein have been fully satisfied.

4. Deposit of Escrow Funds; Use of Funds. On or before July 10, 2012, Developer will deposit with the County Treasury the following funds:

4.1 **CEQA Escrow Account.** Developer shall deposit two million dollars (\$2,000,000) in a separate account to be held by the County ("**CEQA Escrow Account**"). Funds in this **CEQA Escrow Account** shall be used by the County to pay Consultant expenses incurred for the **Project** services provided to Developer by Consultants under this Agreement. Such **Project** services may include, but are not limited to:

(1) Completion of a Draft **EIR** pursuant to the California Environmental Quality Act, Public Resources Code § 21000 et seq., including all scientific, engineering, technical, and other analyses contained therein; and

(2) Developer's Consultant, financial and legal services related to the **EIR** and the **Project**, including airport and short-haul railroad consultants, above and beyond those services for which the Developer has already provided a deposit.

(3) Public outreach activities related to the Draft **EIR**.

Developer has entered into contracts with the consultants identified in Exhibit B ("Consultants") to prepare the **EIR**. With funding solely from the **CEQA Escrow Account**, County will pay **Consultant** invoices related to preparation of the **EIR** and upon submission by Developer of a complete copy of the **Consultant** invoice and written authorization by the Developer to pay the invoice. Under no circumstances, shall County be obligated to pay any amount that exceeds the available balance in the **CEQA Escrow Account**. County shall make such payments within fifteen (15) days of receipt of such written request from Developer. In the event that any portion of the funds deposited in the **CEQA Escrow Account** are subject

to any subsequent court order or lien and not available for use by the County, the County may suspend payments to **Consultants** until such time as the court order is no longer in effect and/or the lien is no longer effective.

Developer further acknowledges the **CEQA Escrow Account** payment does not include any additional fees and charges as required by law, ordinance, or resolution to be paid to County by Developer, such as application fees, inspection fees, and other processing fees for entitlements or permits that may be required for the **Project** generally including staff processing costs, county-retained consultants (including but not limited to short haul, **CEQA** peer review, and/or financial consultants) and legal services related to the Draft **EIR** and the **Project** entitlements which shall be the subject of a separate agreement between the County and Developer.

In the event that the Board of Supervisors certifies the **EIR**, any funds remaining in the **CEQA Escrow Account** shall be retained by the County for on-going **Project** expenses, including staffing costs. Use of such funds shall be in the complete discretion of the County.

4.2 Airport Improvement Escrow Account. Developer shall deposit seven hundred and fifty thousand dollars (\$750,000) in a separate account to be held by the County ("**Airport Improvement Escrow Account**"). In the event that the Board of Supervisors certifies the **EIR** and approves the **Project**, these funds shall be credited against any financial obligation the Developer has for the general aviation airport.

5. Draft EIR Deadline. Developer has advised the County that Draft **EIR** can be completed by **Consultants** prior to January 31, 2013. Based on this representation, Developer either by itself or in association with **Consultants** shall deliver to the County a hard copy and an electronic file of the Draft **EIR** in a form adequate for commencement of the public review period required by **CEQA**, as determined in the sole and reasonable discretion of the County Executive Director or her designee, no later than January 31, 2013. The electronic file of the Draft **EIR** shall be provided in its original and modifiable form. In the event Developer fails to satisfy its obligations under this Section, the provisions of Section 6 shall take effect.

6. Forfeiture. In the event the Draft **EIR** is not complete in a form adequate, as determined in the sole and reasonable discretion of the County Executive Director or her designee, for commencement of the public review period required by **CEQA** by the deadline identified in Section 5, the following forfeiture terms shall be implemented and govern disbursement of the escrow funds deposited pursuant to Section 4. Developer further agrees that all **EIR** drafts, technical studies and related materials will be forfeited to the County. County may use such drafts, studies and related materials for any purposes County desires, including a subsequent and separate proceeding related to the **County Property**.

6.1 CEQA Escrow Account. All unused funds in the **CEQA Escrow Account** shall be forfeited by Developer and retained by County. Developer will receive no reimbursement. County will use the funds for any further environmental, engineering, legal and financial analysis applicable to the County obtaining land use entitlements for development on the **County Property**.

6.2 Airport Improvement Escrow Account. Fifty percent (50%) of the **Airport Improvement Escrow Account** funds (\$375,000) shall be forfeited by Developer and retained by County. Fifty percent (50%) of the **Airport Improvement Escrow Account** funds (\$375,000) shall be returned to Developer.

County will use the funds for any further environmental, engineering, legal and financial analysis applicable to proposed general aviation airport proposed to be located on the **County Property**.

7. **No Liability.**

7.1 **Project Costs.** Developer hereby acknowledges and agrees that County has no obligation whatsoever to approve of any general plan amendment, zone change, **DA, Leases** or related land use entitlements for the **Project**. County has no obligation whatsoever to reimburse Developer for any costs incurred by Developer during the term of this Agreement, including reimbursement costs for County retained consultants.

7.2 **Indemnification.**

(a) Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend County and its elected and appointed officers, officials, employees, agents and representatives ("**Indemnitees**") from and against all Claims and liability, arising out of or in connection with this Agreement provided however, Developer shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee.

(b) Developer specifically agrees to indemnify, hold harmless and defend Indemnitees from any and all administrative, legal or equitable actions or other proceedings instituted by any person not a party to this Agreement challenging the validity of this Agreement, "arising from" the County's processing of the application or implementation of this Agreement, the approval of any entitlement following certification of an **EIR**, and/or certification of the **EIR** for the **Project**. As used herein, "arising from" shall include any Claim regarding County's processing of the application brought before such time as the processing is complete as well as any liabilities for personal injury or death, or property damage, resulting from the planning, field analyses and approval of the **Project** or of operations by Developer, its officers, employees, agents or consultants under this Agreement. Prior to issuance of a Final **EIR**, Developer shall provide the County with a letter of credit with the County named as the payee in an amount approved by the County Executive Director and the County Counsel sufficient to pay the costs of a defense of any lawsuit filed challenging any potential action of the Board of Supervisors to certify the **EIR** or approve any related land use approvals or the **Leases**. Developer shall take all actions necessary to maintain the letter of credit in effect through the later of the applicable statute of limitations for any legal challenge to certification of the **EIR** or approval of the land use approvals for the **Project** or the **Leases** or the completion of any litigation challenging any potential action of the Board of Supervisors to certify the **EIR** or approve any related land use approvals or the **Leases**.

(c) The obligations of Developer under this indemnification shall survive the termination of this Agreement, regardless of whether any approvals, permits or entitlements are granted by County.

(d) County will promptly notify Developer of any Claim that is or may be subject to this indemnification and will cooperate fully in the defense.

(e) County may, in its respective unlimited discretion, participate in the defense of any Claim if the County defends the Claim in good faith. To the extent that the County uses any of its resources responding to a Claim, Developer shall reimburse County its respective reasonable expenses upon

demand. Such expenses include, but are not limited to, staff time, court costs, legal fees (County Counsel's time at their regular rate for external or non-County agencies or retained outside counsel), and any other direct or indirect cost associated with responding to the Claim. Managerial staff time shall not be reimbursable. Developer shall not pay or perform any settlement by the County of the Claim unless the settlement is approved in writing by Developer, which approval shall not be unreasonably withheld.

(f) Developer shall pay all court ordered costs and attorney fees.

(g) Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend **Indemnitees** from and against all claims from any person or entity that may claim an interest or lien on the funds in the **CEQA Escrow Account** or the **Airport Improvement Escrow Account**, provided however, Developer shall have no indemnification obligation with respect to the gross negligence or willful misconduct of any Indemnitee.

8. Termination: Effect of Termination. This Agreement may be terminated for cause at any time by any Party. Upon thirty (30) days prior written notice and upon a showing of cause, each Party shall have the right to terminate this Agreement in its sole discretion. Upon termination as provided herein, or upon the expiration of the **Term**, this Agreement shall forthwith be void, and there shall be no further liability or obligation on the part of each Party or their respective officers, employees, agents or other representatives; provided, however, the provisions of Section 4 (Deposit of Escrow Funds; Use of Funds), Section 6 (Forfeiture) and Section 7.2 (Indemnification) shall survive such termination.

9. Notices. All notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery; or

(ii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

County: County of Stanislaus
1010 Tenth Street, Suite 6800
Modesto, CA 95354
Attn: Chief Executive Officer
Telephone: (209) 525-6333
Facsimile: (209) 525-6226

with a copy to: The Office of County Counsel
1010 Tenth Street, Suite 6400
Modesto, CA 95354
Attention: County Counsel
Telephone: (209) 525-6376
Facsimile: (209) 525-4473

Developer: West Park Holdings, LLC
111249 Gold Country Blvd, Suite 190
Gold River, CA 95670
Attn: Gerry Kamilos
Phone: (916) 631-8440
Facsimile: (916) 631-8445

with a copy to: Trainor Fairbrook
980 Fulton Avenue
Sacramento, CA 95825
Attn: Charles W. Trainor
Phone: (916) 929-7000
Facsimile: (916) 929-7111

10. Developer Expenses. Developer shall pay for its own third-party costs and expenses (including, without limitation, all employee compensation and operational/project expenses) incurred in connection with processing the **Project** and related requested permits or approvals.

11. Severability. If any term or provision of this Agreement or the application thereof shall, to any extent, be held to be invalid or unenforceable, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

12. Entire Agreement; Amendments in Writing; Counterparts. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This Agreement may be amended only by a written instrument executed by the Parties or their successors in interest. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

13. Successors and Assigns; No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided however, that neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, and any such transfer or assignment without such consent shall be void. Subject to the immediately preceding sentence, this Agreement is not intended to benefit, and shall not run to the benefit of or be enforceable by, any other person or entity other than the Parties and their permitted successors and assigns.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15. Relationship of Parties. The Parties agree that nothing in this Agreement is intended to or shall be deemed or interpreted to create among them the relationship of buyer and seller, or of partners or joint venturers.

6/12/2012

16. **Captions.** The captions used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.


SIGNATURES ON THE NEXT PAGE

6/12/2012

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

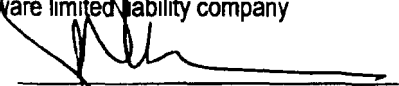
COUNTY

COUNTY OF STANISLAUS, a political subdivision of the State of California

By: 
William O'Brien
Chair of the Board of Supervisors

DEVELOPER

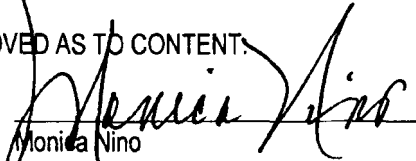
WEST PARK HOLDINGS, LLC,
a Delaware limited liability company

By: 
Gerry M. Kamilos, co-Trustee of the
Gerry and Karen Kamilos Family Trust u/t/a
dated August 31, 1998, sole Member

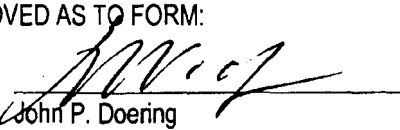
ATTEST:

By: 
Christine Ferraro Tallman
Clerk of the Board of Supervisors

APPROVED AS TO CONTENT:

By: 
Monica Nino
Chief Executive Officer

APPROVED AS TO FORM:

By: 
John P. Doering
County Counsel



CHIEF EXECUTIVE OFFICE

Monica Nino
Chief Executive Officer

Patricia Hill Thomas
**Chief Operations Officer/
Assistant Executive Officer**

Stan Risen
Assistant Executive Officer

Keith D. Boggs
Assistant Executive Officer

1010 10th Street, Suite 6800, Modesto, CA 95354
Post Office Box 3404, Modesto, CA 95353-3404

Phone: 209.525.6333 Fax 209.544.6226

July 11, 2012

Gerry Kamilos
West Park Holdings, LLC
111249 Gold Country Blvd., Suite 190
Gold River, CA 95670

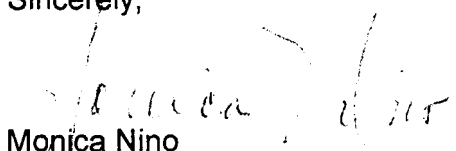
**RE: Cost Reimbursement, Deposit and Forfeiture Agreement dated
June 19, 2012**

Dear Mr. Kamilos:

Section 4 of the above-referenced Agreement requires West Park Holdings to deposit on or before July 10, 2012 a total of \$2.75 million into the County Treasury for costs associated with the contemplated logistics center project at the Crows Landing Air Facility. As you know, the required funds were not deposited into the County Treasury as required on July 10, 2012. We understand that West Park Holdings is working to remedy this technical breach of the subject Agreement. The purpose of this letter is to notify West Park Holdings pursuant to Section 8 of the Agreement that the failure to deposit the required funds is ground for termination of the agreement, and that the Board of Supervisors may elect to terminate the Agreement unless funds are promptly deposited into the County Treasury by today, July 11, 2012.

Thank you for your anticipated cooperation in resolving this matter.

Sincerely,


Monica Nino
Chief Executive Officer

cc: Board of Supervisors
John P. Doering, County Counsel
Charles W. Trainor, Esq.

✓ 8-28-12 Hem B-12

P.O. Box 1208
Patterson, CA 95363
August 23, 2012

BOARD OF SUPERVISORS

Dear Supervisor Chairman O'Brian, and Supervisors Chiesa, DeMartini, Montieth, and Withrow,

2012 AUG 27 A 1 31

I address this letter to all of you since you each have an equal vote in what happens to the West Side of Stanislaus County concerning the development of the Crows Landing Naval Base.

I have attended all the meetings that have extended Gerry Kamilos's time extensions. I have involved myself in knowing what his project would do to the West Side and for the county of Stanislaus. Jobs no matter what number you chose 37,000 down to 13,000 sound wonderful on the surface. But they must be good paying jobs which most of them wouldn't be as all management jobs would be for people imported by the businesses at hand. The project itself must be an extension of what the West Side is, and not be an aberration of our way of life as I will point out. If you supervisors had taken time to meet with us over here to find out who we are and how we live, you would know that this project is not what we needed as Mr. Kamilos has presented.

A. Six trains or two trains (which doubles the number on the return trips) running thorough Patterson would cut the community emergency services dangerously. Emergency support would be hindered in getting to events on the east side of the rails and be likewise hindered in getting westside emergencies to the east that demanded services provided in Turlock or Modesto. Kamilos's estimate of the time it would take a train to pass a given point is phoney. Each train would be carrying a different weight, number of cars, and engine which all goes into figuring passing time. The train tracks demand slow movement and since the stopping destination is not that far from Patterson, the speed would be slowing down for the stopping process. Highway 33 would be blocked for long periods of time with the trains coming to a complete stop within the complex.

B. His plan to make an over or underpass to alleviate the above situation in Patterson would dump traffic within a few feet of our unique circle in the middle of our town. It would divide our city park in two sections.

C. In his first plan he was going to have present two lane roads ie. Sycamore, Elm, Las Palmas and connecting roads turned into four lane roads to accommodate all the traffic coming and going to the complex. On his scalded down version he said all traffic would be diverted to I-5 which would mean that any workers coming from Turlock and Modesto areas would have to go five miles out of their way to get to I-5 to reach their job destination. More car pollution would ensue, a point which seemed to be important to Mr. Kamilos in getting trucks off the road, but didn't enter his mind in this instance. Nobody at the county level questioned him as to how his rail plan of removing diesel trucks from the Altamont would eliminate pollution from the Westside when everything hauled in on the rail would have to be hauled out on trucks on Westside roads.

D. The West Side is a farming area which does a good job of doing just that. We don't need a monstrous project that would completely change what we do best.

I won't get into detail how Kamilos conducted his informational meetings other than to state that I went to five different presentations over the past few years. They consisted of his using most of the time presenting his plans with little time left for questions before one of his henchmen would declare that time was up. I noticed that he did listen to the wants expressed by people because at the next meeting his diatribe would include them. Mr. Sabitino tried to show you that aspect of how Mr. Kamilos tried to please everyone for support of his plan. If one analyzed the requests, many would be deemed unsustainable and never should have been considered for presentation anywhere.

Now to the point of what is happening to you supervisors. I have to give you each credit for good business sense and intelligence or you wouldn't be at your present station in life. But I can guarantee that you wouldn't be where you are now had you hired someone with no experience in running your business, that had a bad credit rating, a record of poor or no performance, and a gift of gab to make you think he could turn your business into a pie in the sky dream using your and other people's resources (tax money) to so do.

I speak to you with some business sense. I had to fire a management person which I inherited with my business who didn't perform to reasonable expectations. When I hired a replacement, I checked the background of the person in areas of past performance, financial stability, and compatibility with my expectations for my interests. Firing was a tough thing for me to do, but it was the smartest thing I did for my business. I feel you are at that point in your decision in handling the West Park problem. Steady yourself, grit your teeth, straighten your back bone and say, "No thank you Mr. Kamilos". End of saga and torment for you all as well as for us on the West Side.

I am for developing the Crows Landing Naval Base on land that the county owns with no developer having to consider all the grandiose plans of Kamilos. Something will come along that will be compatible for all and make everyone pleased with a decision to look elsewhere.

Sincerely,

Berta Houk Herger



STRATEGY FORWARD:
Development at Crows Landing Air Facility
August 28, 2012



RECOMMENDATIONS

Options to Proceed: #1

- (a) Terminate the Cost Reimbursement, Deposit and Forfeiture Agreement,
Terminate the relationship with the Developer;
Direct staff to return with strategic alternatives for proceeding with development of the Crows Landing Air Facility;
- (b) Terminate the Cost Reimbursement, Deposit and Forfeiture Agreement,
Terminate the relationship with the Developer;
Direct staff to develop a new Request for Proposal (RFP) consistent with the core elements identified through the West Park experience;
- (c) Waive the breach of the Cost Reimbursement, Deposit and Forfeiture Agreement.
Proceed with the preparation of the Draft Environmental Impact Report and Draft Specific Plan due January 31, 2013.

RECOMMENDATIONS

RECOMMENDATION #2


[should the Board take action on either 1(a) or 1(b)]

If termination – promptly return to West Park Holdings, LLC all Escrow Funds on deposit less any bank fees or costs incurred by the County along with any unused funds owed to the County by West Park for staff, consultant and legal fees.



RECOMMENDATION 1(b)

RFP core elements as related to the West Park development proposal.

- Airport (mandatory)
 - Community Improvements for Crows Landing (mandatory)
 - Fire Protection Infrastructure and Early Subsidy (mandatory)
 - Speculation Construction in 2 Phases (mandatory)
 - Shuttle Rail (optional)
- 
- An aerial photograph of an airport runway and taxiway, showing the layout of the pavement and surrounding areas. The image is faded and serves as a background for the text.

RECOMMENDATION 1(b) continued...

RFP DEVELOPMENT

RFP Logistics (180 Days)

- 60 day RFP preparation period
- 120 day RFP response window (through February 2013)
- RFP Process to include:
 - Issuance of RFP
 - Pre-bid Meeting (mandatory)
 - Review and Selection of Top Responders
 - Staff Analysis and Recommendations to Board of Supervisors
 - Board of Supervisors selection of Master Developer Candidate

Developer Background/Experience

- Relevant Experience with large public/private and quasi-public enterprise development.
 - Airport Development/Management
 - Sea Port Logistics (Inland Port Development)
 - Rail

Proven Track Record of Development Project Success of this Size.

RECOMMENDATION 1(b) continued...

CORE ELEMENTS

Aviation Use and Development (required)

-Ability to identify current needs and develop future successes of a General Aviation Air Facility;

Rail Facility (Inland Port Concept)

-Approximately 90-160 acres are available in the northeast corner of the site for the development of an inter-modal rail facility.

-An Existing Rail Spur at the Northern Corner of the site boundary could be utilized in conjunction with existing California Northern Railroad;

Industrial/Business Park Development

-Dedicated uses to include:

- Distribution
- Warehouse
- Logistics
- Light Manufacturing
- Airport/Aviation Support Services
- AG Import/Export Functions
- High Job Density Business Park Uses

RECOMMENDATION 1(b) continued...

SUPPORT FACILITIES/COMMUNITY

Water and Sewer Improvements – Unincorporated Crows Landing (required)

- Consistent with the Board's identified Guiding Principles (Principle #7)
Developer to fund water systems and sewer improvements for the unincorporated community of Crows Landing;

On Site Fire Protection (required)

- Developer will work closely with the West Stanislaus Fire Protection District to develop a fire suppression strategy to include:
 - Facility Construction;
 - Equipment Purchases;
 - Subsidized Staffing (initially) until such time that tenant development can fully absorb the cost of these services (Community Facilities/Services District) or similar self maintaining fiscal mechanism;

RECOMMENDATION 1(b) continued...

DEVELOPMENT FOCUS

County Property

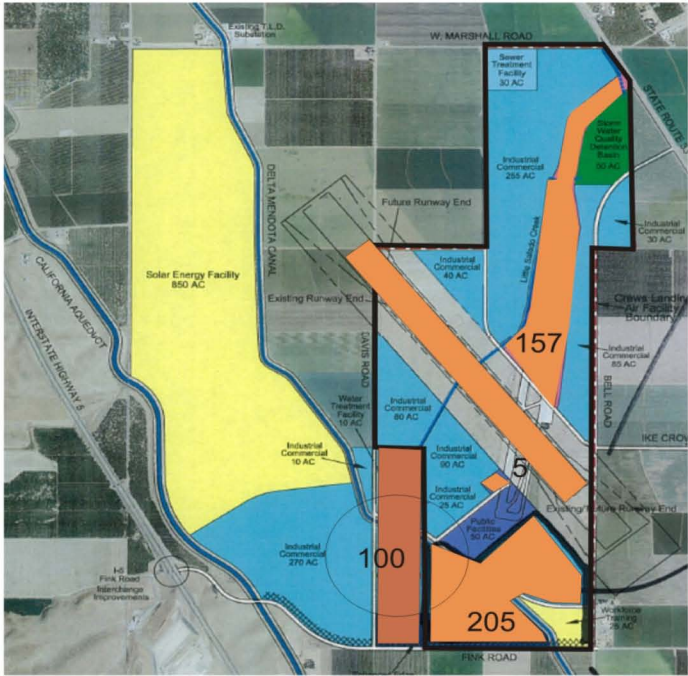
- Developer acknowledges Long Term Lease Approach.
- County Owned Development Area will NOT be sold.
- Developer will focus on County owned Property (1,527 acre Air Facility)
- Should Proposals include off site/contiguous lands the Developer will be REQUIRED to develop County owned property as first Priority.

Speculation Construction/Seed Development (690,000 Sq. Ft.)

- Developer will be REQUIRED to provide 345,000 sq. ft. of speculation building construction (complete with all support infrastructures) within 12 months of successful entitlement process completion;
- Master Developer will be REQUIRED to provide an additional 345,000 sq. ft. of Speculation Building Construction (complete with all support infrastructures) within 24-48 months of successful entitlement date.

WEST PARK CORE ELEMENTS

- 1,180 Developer Acres
- 1M Sq Ft Speculation Development
- 500k in 2 phases



COUNTY ONLY PROPERTY COMPARISON

810 Developer Acres



$$\frac{810}{1,180} = .69 \times 1\text{M Sq Ft} = 690,000 \text{ Sq Ft}$$

- 690k Sq Ft Speculation Development
- 345k in 2 phases

RECOMMENDATION 1(b) continued...

DEVELOPMENT FUNDING

Legal Challenge Cost Coverage

- Developer must agree to defend and indemnify the County (be full cost accountable) should ANY legal challenges occur;

CEQA Escrow Fund Established – County Treasury

- \$2M dollar cash on deposit with County Treasury of Stanislaus County for use related to the development of an defensible Environmental Impact Report in accordance with California CEQA law;

Airport Escrow Fund Established – County Treasury

- \$750,000 cash on deposit for developer contribution to general aviation Air Facility Improvements.
- NOTE: The County WILL NOT UTILIZE these funds until such time that the CEQA process has been certified and land entitlements have been secured.
- Given that intent, this requirement MAY NOT be an appropriate requirement.

TIME LINE

Activity	Timeline
RFP Preparation	60 Days
RFP Publication, Request for Proposals, Developer Selection	120 Days
CEQA Preparation/Analysis	12-14 Months
CEQA Agency and Public Comment/Review	90 Days
CEQA Certification	30 Days
TOTAL	22-24 Months



QUESTIONS...



STRATEGY FORWARD:
Development at Crows Landing Air Facility
August 28, 2012

