



City of Tigard
 Tigard City Council, CCDA and Local Contract
 Review Board Meeting of April 2, 2013



CITY CENTER DEVELOPMENT AGENCY MEETING

- A. At 6:32 p.m. Mayor Cook called the meeting of the City Center Development Agency, City Council and Local Contract Review Board to order.
- B. Deputy City Recorder Krager called the roll.

	Present	Absent
CCDA Director Woodard	✓	
CCDA Chair Cook	✓	
CCDA Director Buehner	✓	
CCDA Director Henderson	✓	
CCDA Director Snider	✓	

- C. Pledge of Allegiance
- D. Council Communications & Liaison Reports – CCDA Director Buehner said she will give a report on earthquake preparation at the end of meeting. CCDA Director Woodard announced he will be meeting with the Clackamas Water Providers next week. CCDA Director Henderson said he will speak about the CDBG grant program. **See Agenda Item No. 9.**

Director Buehner said that regular first Tuesday CCDA meetings were originally scheduled to allow focus on CCDA-related topics only. She requested that City Council items not be scheduled on CCDA agendas.

- E. Call to Council and Staff for Non-Agenda Items – None.

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- **EXECUTIVE SESSION:** At 6:36 p.m. Chair Cook announced that the Tigard City Center Development Agency was entering into an Executive Session to discuss real property transaction negotiations under ORS 192.660(2)(e). The Executive Session ended at 7:05 p.m.

1. RECEIVE URBAN RENEWAL PROJECTS UPDATE

Redevelopment Project Manager Farrelly and Community Development Director Asher were present to give the staff report.

Burnham Street Parking Lot: Redevelopment Project Manager Farrelly said bids will be awarded soon for the Burnham Street parking lot and it should open by July. He said the lot design was reconfigured to accommodate outdoor display space for store owner Jeffrey Allen.

Facade Improvement Program: This popular program has attracted a lot of interest recently. Five businesses have applied since January 1 and all are motivated to start construction soon: Jeffrey Allen, Max's Fanno Creek Brew Pub, Tigard Cleaners, Kepler's Upholstery and Symposium Coffee. Facade project construction nearing completion includes the Diamond property, Sherrie's Jewelry Box, Rojas Market and Gifts, and Wei Li Acupuncture.

Fanno Creek Trail Undercrossing Lighting: Lighting is being designed not only for safety but to highlight architectural features of the viaduct. This is being incorporated into the Fanno Creek Trail project connecting Grant and Main Streets. The undercrossing lights will change color for holidays and festivals.

Downtown Events The Tigard Chamber of Commerce was awarded the contract to coordinate downtown events. Third Friday events continue. Spring will bring more pedestrian activity and customers. The second annual street fair is tentatively scheduled for August 17 and it will not conflict with the Tualatin Crawfish Festival this year. Director Buehner commented that the Third Friday event last year was poorly attended because it was held right after the street fair. Redevelopment Project Manager Farrelly said if the August 17 date is held for this year, it may be a multi-night event and could include the third Friday.

Downtown Art: A public art visioning session was held last week. CCDA Directors Woodard and Henderson attended along with 20 members of the community. Artist Brian Borello collected ideas for Tigard gateway public art pieces. The second public meeting will be May 22 and Redevelopment Project Manager Farrelly will send out a reminder. Council President Henderson said he appreciated the explanation of the different interpretations and Councilor Woodard mentioned he liked the process because the artist developed themes from the information he gathered.

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Tigard Street Trail: Redevelopment Project Manager Farrelly said meetings have been held with Executive Director Wine regarding the Tigard Street Trail project. It has been in limbo due to ODOT Rail inaction and personnel changes, but there are some new ideas on how to reengage the rail contingent. One thing up for discussion is whether to purchase the land or do Rail-to-Trail land banking. Director Buehner encouraged staff to keep pushing this to go forward.

Symposium Coffee: Director Henderson asked about the status of this downtown business. Redevelopment Project Manager Farrelly said they have been awarded \$23,000 for interior improvements and another \$12,000 for façade improvements. They desired a mid-April opening but now it looks more like a May or June opening. He said it has been helpful to have Director Henderson on the review committee as he was involved in constructing the Chamber building.

2. DISCUSSION ON PROPOSED DOWNTOWN TIGARD ENVIRONMENTAL CLEAN-UP FUND PROGRAM

Redevelopment Project Manager Farrelly said staff is seeking CCDA direction and feedback on a new program in the downtown. It is increasingly apparent that there may be environmental contamination due to historical uses of a number of sites in the downtown. This is a hurdle to redevelopment as developers are reluctant to purchase these properties not knowing the presence or extent of contamination and what their liability might be.

Staff is proposing that the CCDA coordinate a program to maximize the work that can be done. There are programs available through the State of Oregon, Business Oregon, Department of Environmental Quality (DEQ) and the Environmental Protection Agency (EPA). Resources are available to develop a fund to help solve this problem. The CCDA will also be seeking partnerships with developers.

Tonight the Council will be asked to approve, through a resolution, a \$25,000 grant application to the Oregon Business Development Department Brownfields Redevelopment Program. If successful, the grant will be used to perform outreach to property owners, compile an inventory of properties with potential environmental issues and do baseline assessments. This information will be used to apply for substantial amounts of EPA funding. He said he and Community Development Director Asher met with the head of the Oregon office of the EPA and obtained information on available funding and how to access that money.

Director Buehner asked if there was funding available for educating property owners about the complicated process and potential liability when selling or developing their property. She has heard some good presentations on this. Redevelopment Project Manager Farrelly said funding is available for this purpose and requested that Director Buehner pass along to him some names of speakers on this topic.

Director Buehner asked if there were low-interest loan programs for clean-up of properties. Redevelopment Project Manager Farrelly said the State of Oregon has a type of brownfields

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program revolving loan program. Director Buehner said this would be a good tool for a small business owner that may not be able to come up with the entire clean-up amount at one time.

Director Henderson questioned why the grant application approval was scheduled for Council, not CCDA approval. Redevelopment Project Manager Farrelly said the application form required approval from the highest body so Council will be considering this. Director Henderson asked if there would be any time when the CCDA would expend funds for this program and Redevelopment Project Manager Farrelly said there would. Director Buehner cautioned that there are very strict rules regarding tax increment financing.

Community Development Director Asher said the federal grant cycle starts in the fall and by then we will know more. He said the urban renewal district in Tigard was set up with strict parameters but brownfields are a very classic urban renewal activity.

Executive Director Wine said the resolution under consideration is for council support of a grant application. In response to a question from Director Buehner about whether all grant programs require formal council approval, Executive Director Wine said it depends on the program. She said council support lends validation and the city has an internal policy that asks staff to bring grant applications to council for approval. She said she will return to council with a proposed change to internal procedures regarding grant approval thresholds.

SPECIAL CITY COUNCIL MEETING

3. PROCLAMATION – ARBOR MONTH

Mayor Cook proclaimed that April is Arbor Month in Tigard and read the proclamation.

4. CONSENT AGENDA:

Mayor Cook read the items on the consent agenda.

RESOLUTION NO. 13-13 - A RESOLUTION SUPPORTING AN APPLICATION FOR AN INTEGRATED PLANNING GRANT FROM OREGON BUSINESS DEVELOPMENT DEPARTMENT BROWNFIELDS PROGRAM

Mayor Cook asked for a motion to approve the consent agenda. Councilor Buehner moved to approve the consent agenda and Councilor Woodard seconded the motion. Motion passed unanimously.

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	Yes	No
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Buehner	✓	
Council President Henderson	✓	
Councilor Snider	✓	

LOCAL CONTRACT REVIEW BOARD

Mayor Cook announced that Council is meeting as the Local Contract Review Board for the following agenda item.

5. CONSIDER ADOPTING REVISIONS TO THE CITY’S PUBLIC CONTRACTING RULES – LEGISLATIVE PUBLIC HEARING

At 7:35 p.m. Mayor Cook opened the public hearing.

The staff summary was given by Senior Management Analyst Barrett. He said staff is asking the LCRB to approve revisions to Tigard’s public contracting rules. The city has elected to follow its own public contracting rules rather than follow the Attorney General’s Model Public Contracting Rules and the LCRB adopted the current contracting rules in late 2011. Since then, the State has passed legislation that Tigard is required to put in its rules, and staff also found some efficiencies that need incorporation into the contracting rules.

A matrix of specific changes was included in the packet for this agenda item. They include:

- Incorporating Qualification Based Solicitations (QBS)
- Exempting temporary personnel services from competitive bidding
- Language changes related to surplus property
- Raising the amendment threshold from 25 percent of the contract total to the actual project budget for that fiscal year
- Removing intergovernmental agreements from the public contracting rules

LCRB Member Buehner commented that there seems to be a low threshold for contracts that do not have to go through the process. She asked if Finance Department staff had a recommendation to simplify low level contracts. Senior Management Analyst Barrett said Tigard’s \$10,000 level is higher than most other agencies, although the State is looking at moving the level for the entire state to \$10,000. He said, “Where Tigard tends to “bump up against the ceiling is at the intermediate level. Our level is \$100,000. The state allows us to go up as high as \$250,000.” He said staff would prefer an increase to that level to expedite contracts and move projects ahead more quickly, but noted that small businesses may be unfavorable because it would be more difficult for them to compete.

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Senior Management Analyst Barrett said staff will come before the LCRB next year after the current legislation makes its latest changes. He said staff could bring a recommendation at that time.

Senior Management Analyst Barrett said the QBS level has been raised to \$250,000 but this is only for five services:

- Surveyors
- Engineers
- Architects
- Transportation Planners
- Photogrammetrists

LCRB Member Henderson expressed concerns he has with the QBS process. He said QBS allows the top three consultants to be able to see what the costs are. He said, “We went through this with the Dirksen Nature Park and I have concerns. We could benefit by narrowing it down to three qualified bidders and looking at the prices.”

Senior Management Analyst Barrett replied, “I don’t think you would find very much disagreement from the staff. Unfortunately, in the state of Oregon it truly is the top scoring. You can take the top three and interview them but nowhere in those interviews or any subsequent look, can you ask for price.”

LCRB Member Henderson gave a scenario where the city’s engineered estimate was half of what the most qualified person’s fees were and we cannot agree. Senior Management Analyst Barrett said at that point you could interview the next qualified person. LCRB Member Snider said that is why we agreed at a prior meeting that we would want staff, who are the experts, to make a recommendation that we not move forward or go ahead with the next firm in line.

Senior Management Analyst Barrett said this is not a very popular rule across the state and it may become even less popular if certain bills pass in the legislature. He said proposed legislation would reduce the \$250,000 cap to \$100,000, making even more projects subject to this law.

City Attorney Ramis addressed LCRB Member Henderson’s concerns and said not only would the staff agree with his point but the city attorney’s office does too. He said the difficulty is that this issue is controlled in Salem. The controversy has been battled over several years, and at this point a few specialty professions have been able to secure this particular right through legislation. Local governments that have opposed this have not been successful. He suggested Council talk to their legislators because this is not the direction they are moving and, “that is not especially good for us.”

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LCRB Member Henderson said the current law is extreme and cuts a lot of good consultant groups out of the running. He referred to the Dirksen Nature Park design proposal and said, “In my world that number of \$457,000 is six percent of the project. We can’t afford an \$8 million product. I would rather go back and ask them to design something for \$5 million.” He said the LCRB would then have control. LCRB Board Member Buehner said no one on council was disagreeing with him but the city must follow state law.

City Engineer Stone spoke on the issue of large professional services contracts and said a lot of the work that the engineering profession does is repetitious from one city to the next. Staff has a good idea of what each city is being charged for like services. This basis has been used by staff to determine whether or not we are getting a fair price. He said this is what we can talk to the vendor about. Consultants also know that staff will do a comparison to other jobs, particularly with road projects.

LCRB Member Snider asked if a government body can willingly violate the rule, as a protest. City Attorney Ramis said, “No. It would place our contracts in a position where they might not be enforceable.” He said a contractor could sue because we did not follow the state statutes and the city would have a lot of exposure.

LCRB Member Woodard referred to the exemptions and said he did not have an issue with the rules because we must follow the statutes. He said he had a concern about contracts being amended without LCRB approval. It was his impression that they could be amended up to ten percent but it appears now that threshold is higher and he asked for the reasoning behind it, saying he would be concerned if there was a 30 percent change. City Engineer Stone replied that a 30 percent change would get everyone’s attention. He said an amendment of that amount would clearly indicate that the project scope has changed. He said in that case, it would be staff’s obligation to tell the LCRB that the scope has changed and either the budget needs to be approved or the project needs to be dialed back. He said the advantage is that staff can continue to move a project forward as long the approved project budget is not exceeded.

Senior Management Analyst Barrett said this rule applies to all contracts. The LCRB raised it to 25 percent last year. He said the real push behind this is that a project cannot be stopped if staff didn’t have the ability to sign that amendment. He clarified that it is the approved project budget for the fiscal year.

LCRB Member Buehner used the example of building something for the upcoming water project and said it would cost the millions in lost time and wages if every change order had to come to Council.

Public Works Director Koellermeier clarified that when selecting professional consulting staff we want the very best we can get. Having good design and oversight can save the city money because a good design can save money at the construction end. He said, “The premise of this rule as promulgated by the state is to allow us to find the very best contractor that is qualified to do the work for us, so we can save the big money at the

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construction end of the project. Please don't lose sight of that. That is the goal we are trying to accomplish.”

LCRB Member Snider referred to the practice mentioned by City Engineer Stone of keeping an eye on what other cities are paying for similar services and said there is a major weakness in this approach. Everyone could be paying twice as much as they should be paying, if there is collusion involved. City Engineer Stone said he understood LCRB Member Snider's issue with this but noted that there is a check in the process and that is the federal government. Many of these professionals also do business with the federal government and are only allowed to charge the federally audited rate. So if our costs are in line with federal audited rates, the theory is that we are supposed to be getting a good rate.

LCRB Member Henderson said he is concerned that the city cannot afford the Dirksen Nature Park design. LCRB Chair Cook asked staff if the QBS included a project scope and our budget. City Engineer Stone said there was a project scope that listed the acreage and outlined what we wanted to see in a park design, but the budget was not discussed. City Engineer Stone said part of the process is that as they bring us designs, we can say, “No, this is too much. Redesign it and bring it back. It all depends on what we tell them we want the park to look like.”

LCRB Member Woodard said the Dirksen Nature Park design and planning occurred within the PRAB and included street improvements, trail design and two fields. He said the product of the QBS is a master plan that is good for twenty years and we can phase out the building and use it to apply for grants for the life of the plan. City Engineer Stone said as long as we have a master plan, we can build it out. We can only do what we can afford and can choose to build certain portions of it whenever we want.

City Manager Wine used the Dirksen Nature Park as an example, and said if the City of Tigard spends \$457,000 for a master plan product, then that is the investment we are making. If design constitutes eight percent of construction, we will have this question before us with each park we are investing in with park bond funds. But we will have in place a design and a master plan for the investments we will eventually make in that park.

LCRB Member Snider said, “I'm still back to the QBS. How do you end up spending only \$250,000?” City Engineer Stone said what we asked the consultant to do is give us the ideal master plan for the ideal park. We can decide during the process to limit the scope of work and then it would be cost less. LCRB Member Snider asked, and City Engineer Stone confirmed, if the consultant completes it more quickly than estimated, it could cost less. LCRB Member Snider said a QBS contract does seem different than a paving contract and is not boxing us in the way he first thought.

LCRB Member Buehner said she wanted to return to discussing the larger contracts, which are not park designs. She said with contracts for the water plant design her primary concern is to get the best designs, and in this case 30-35 percent of the project cost may be spent on design. She said she did not want the LCRB to lose sight of the fact that most of the QBS contracts will be for large construction projects.

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Senior Management Analyst Barrett said there will also be changes to how we handle smaller contracts for these five professions. The direct appointment ceiling is now \$100,000.

LCRB Member Buehner asked if the Finance Department could keep council informed of potential legislation. She suggested being proactive and getting the League of Oregon Cities involved. She wants Tigard to take a leadership role as one of the larger cities in Oregon. City Manager Wine said Assistant City Manager Newton will add this to our state legislative committee and help convey council's concerns.

City Attorney Ramis confirmed that there are circumstances where QBS works pretty well but in other circumstances it does not.

LCRB Member Woodard asked about exemptions. Senior Management Analyst Barrett said the only new one is for temporary personnel services. He said we will use them but instead of calling three different agencies we would call one agency and get three resumes and do interviews.

As no one signed up to give public testimony, LCRB Chair Cook asked if anyone in the room wished to testify. There was none.

Senior Management Analyst Barrett said the staff recommendation is for the LCRB to approve the revisions to the public contracting rules.

LCRB Chair Cook closed the public hearing at 8:18 p.m.

LCRB Member Buehner moved to approve the LCRB Resolution No. 13-01 and LCRB Member Snider seconded the motion. The motion passed unanimously.

A RESOLUTION ADOPTING REVISED PUBLIC CONTRACTING RULES

	Yes	No
LCRB Member Woodard	✓	
LCRB Chair Cook	✓	
LCRB Member Buehner	✓	
LCRB Member Henderson	✓	
LCRB Member Snider	✓	

Mayor Cook announced that the City Council is reconvening for the remaining items on the agenda.

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6. RECEIVE BRIEFING ON A LOCAL AGENCY AGREEMENT WITH ODOT TO PARTIALLY FUND MAIN STREET PHASE I IMPROVEMENTS FROM PACIFIC HIGHWAY TO THE RAILROAD CORRIDOR

City Engineer Stone said this briefing will cover the changes in the intergovernmental agreement with ODOT which will move funding for Phase II of the Main Street Green Street project into Phase I to pay for additional design and testing costs in the finalization of construction plans and specifications. The agreement will come before Council at a future business meeting.

Mayor Cook asked City Engineer Stone for details on the changes and asked if the changes were initiated by Council or if there were issues discovered by contractors. He noted the project increased by \$425,000 which is more than ten percent of the project. He asked if taking this amount from Phase II means that phase will have to be backfilled. City Engineer Stone said a concern was expressed by businesses about access across the water feature. There were access issues at the Diamond building and also with the “eye” in the road. He noted that each time we ask a consultant to change something on this project, ODOT adds their own fee.

City Engineer Stone said the goal for this project is to design a roadway that handles storm water in a different way. With these water features, water is diverted as much as possible from the roads and sidewalks into a planter area where the water is partially treated before going into the storm water system. We have already done this on Burnham and along Main Street from Scoffins to 99W.

Councilor Buehner said the city received complaints from some businesses along Main Street about the designs after initially approving them. She wanted people to understand that most of this extra work is redesign related to the city being “business friendly.” She expressed concern that some businesses caused the city to go back and redesign because they couldn’t get relevant driveway information to us. She said this is a policy discussion to talk about later.

City Engineer Stone said ODOT requires a certain level of certainty as to what the project is estimated to cost and wants the funding in place before they award the construction contract.

City Engineer Stone showed a diagram illustrating the money movement between project phases. He said the original project estimate was \$3 million and now it is estimated at \$3.4 million so \$400,000 is being moved from Phase II to Phase I. He said the actual cost could be lower than anticipated. In that case, because this is a grant, the money could be moved back into Phase II.

Councilor Snider asked about the impact on Phase II and City Engineer Stone said if the entire \$400,000 is needed in Phase I, the city’s match for the grant will increase by \$425,000

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for Phase II. Mayor Cook noted that once we figure out what the actual cost is for Phase I, we will know the impact on Phase II well before we start design.

7. RECEIVE BRIEFING ON A LOCAL AGENCY AGREEMENT WITH ODOT TO PARTIALLY FUND MAIN STREET PHASE II IMPROVEMENTS FROM THE RAILROAD CORRIDOR TO SCOFFINS STREET

(This item was discussed at the same time as Agenda Item 6.)

8. RECEIVE BRIEFING ON AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR THE WALNUT STREET IMPROVEMENT PROJECT

City Engineer Stone reported that he is not sure when this work will start because there have not been any meetings yet. Mayor Cook said that might be a good thing because it may mean there is more time to give input. He noted that there are two Walnut Street projects.

Councilor Buehner said the design for the Tiedeman to 116th Avenue work was done years ago and the right of way was purchased so she did not think there was much that needed to be done to get this started.

Council President Henderson noted that each time an amendment is passed it affects the budget, and asked if we are paying attention to this. City Engineer Stone said this particular project is being funded by Washington County, except for utility work that will be funded out of public works enterprise funds (sewer and utility underground fund). City Manager Wine responded to Council President Henderson's question and said that when we approve IGAs it means there is probably a commitment to using funds. She said that as members of the Budget Committee, Council will see the Capital Improvement Plan and this will be listed. Councilor Buehner said the \$680,000 is what the city will pay rather than the millions it would have cost if Washington County was not doing the project.

Councilor Woodard asked about residential concerns in these two areas of Walnut Street. City Engineer Stone said there will be impacts to some properties and acknowledged that this project has been planned for so long, residents may have forgotten about it. He said Washington County will be notifying residents of construction work in their area.

Councilor Buehner requested that side street residents be notified of work on Walnut too (Tiedeman, Fonner, and 112th Avenue) because the side street residents were not notified the last time Walnut was under construction.

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City Engineer Stone said there will be also be message boards at major intersections prior to construction, advertising public hearings to let people know when they can come and comment on the project.

Councilor Woodard asked about the Fanno Creek Trail under the Scholls Ferry Road Bridge. He said it often floods and asked if there was a way to construct something to keep water off of the trail. He said citizens have been sending photographs of the flooding. City Engineer Stone said the repair would be easy but the permits would be difficult to secure from Clean Water Services. He said attempts are being made to control the water elevation downstream. Councilor Woodard replied that it still floods. City Manager Wine said the city has received extensive communication on this and she will report back to Council.

9. COUNCIL LIAISON REPORTS – Councilor Buehner reported on a briefing received at the Water Consortium meeting on earthquake damage and mediation focused on water. It was a compelling presentation because citizens have always been told to have enough food and water for 72 hours but in the event of a major earthquake we will more likely be looking at three months where roads and infrastructure will be destroyed. Supplies would be delivered from eastern Oregon.

She said it is likely that in such an event a tsunami would arrive on the coast. The earthquake would measure 7 or 8 in the Willamette Valley and probably 5 in the Bend/Redmond area. The speaker said there are zero infrastructure projects of sufficient stability to survive such a quake. Our water plant will be the first. But we need to get water to the plant. One thing we need to do is upgrade infrastructure. She said at the legislature, House Resolution 3 was proposed to motivate local governments to start revamping emergency infrastructure and emergency management processes designed for three-day emergencies to three-month periods. She suggested that Council get online and read the entire report. She said the city needs to get the word out to our citizens. Councilor Woodard said he supports preparation and recommended that Mike Lueck take the lead.

- to Council President Henderson said the CDBG grant program has \$3 million in HUD funds distribute to the cities in the county. Tigard is in a group of eight cities that pool their money to do larger projects. Money is provided for low-income housing and infrastructure. He said there is twice as much need as they are able to fund. Five percent may be lost due to sequestration. Councilor Buehner mentioned the need for disabled veteran housing. She said it is an important program and she appreciated Council President Henderson's involvement on the grant committee.

10. NON AGENDA ITEMS - None

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11. ADJOURNMENT

At 9:02 p.m. Councilor Buehner moved for adjournment. The motion was seconded by Councilor Henderson. All voted in favor.

	Yes	No
Councilor Woodard	✓	
Mayor Cook	✓	
Councilor Buehner	✓	
Council President Henderson	✓	
Councilor Snider	✓	

Carol A. Krager, Deputy City Recorder

Attest:

Chair, Tigard City Center Development Agency

Date: _____

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