



**Date:** May 6, 2014

**To:** Thomas J. Bonfield, City Manager  
**Through:** Keith Chadwell, Deputy City Manager  
**From:** Kevin Dick, Director- Office of Economic and Workforce Development (OEWD)

**Subject:** 2nd Amendment to Ninth Street Infrastructure Project Development Agreement between the City of Durham and CPGPI Regency Development, LLC

**Executive Summary**

This item has been prepared to recommend an amendment to a public-private redevelopment agreement between the City of Durham and CPGPI Regency Development LLC (Regency) for a redevelopment project, involving both private investment and public infrastructure improvements. The agreement will require an amendment to extend the amount of time to complete construction of the Ninth street infrastructure project.

**Recommendation**

Staff recommends that City Council authorize the City Manager to

1. Execute a second amendment to the Agreement for the Redevelopment and Renovation of the Durham Ninth Street Commercial District extending the completion of the work to January 31, 2015;
2. Accept a final Guaranteed Maximum Price (GMP) for the streetscape construction work based upon final design and cost estimates in the amount of \$657,907.40;
3. Establish a project contingency fund for the streetscape project in the amount of \$204,695.07; and,
4. Negotiate and execute change orders to the agreement so long as the total cost of the streetscape improvements including construction, engineering, lighting and other streetscape related work does not exceed the total project budget of \$1,039,687.32.

**Background**

On June 17, 2013, the Durham City Council approved a public-private redevelopment agreement with Regency so that its engineer and contractor would complete certain public infrastructure improvements along Ninth Street to coincide with the private development and redevelopment being made by Regency. The project includes

engineering design and administration, sidewalk reconstruction, asphalt milling and paving work, material testing, streetlight replacement and the addition of certain sidewalk amenities (benches, trashcans and trees).

The public-private redevelopment agreement with Regency was amended on November 4, 2013 to approve an ordinance for funding and to establish a total project budget of \$1,039,687.32 for scope of work and design services described in the agreement. Final design approval and establishment of a final construction GMP was delayed until Regency obtained the necessary approval and encroachment agreement from NCDOT. The NCDOT encroachment agreement authorizing the work was issued in early May 2014.

### Issues and Analysis

Regency has prepared final plans and estimates for the streetscape work based upon comments from City staff and in response to the encroachment agreement issued by NCDOT. Staff has determined that the Guaranteed Maximum Price (GMP) of \$657,907.40 presented by Regency for the streetscape construction work (including sidewalk reconstruction, milling and paving and pedestrian amenities) is consistent with the city's estimates to perform the work. In addition to the streetscape construction work, the Ninth Street project includes pre-construction services, material testing, street lighting replacement, and engineering design and administration. Completion of the project may also include power-washing of the sidewalk on the eastside of Ninth Street, which is not being reconstructed as part of the project. A revised summary of the project budget is as follows:

1. Duke Lighting cost --	\$	137,084.85
2. Engineering costs ---	\$	40,000.00
3. Streetscape Construction GMP	\$	657,907.40
4. <u>Total Project Contingencies (~ 25%)</u>	\$	<u>204,695.07</u>
	Total Budget	\$ 1,039,687.32

The proposed contingency is intended to address all project related contingencies including construction, material testing, engineering, street lighting replacement, and possible power washing or cleaning of the eastside of Ninth Street. It is also assumed that many unforeseen construction issues may arise from the sidewalk reconstruction based on past experience with similar work performed in the downtown area. The total project budget of \$1,039,687.32 was previously approved by City Council with the first amendment.

The Ninth street site planning approval process has been extensive and more time was required than anticipated to receive a final encroachment approval from NCDOT. This has impacted the ability of Regency to finalize the Ninth Street Infrastructure plans resulting in a delay of the construction work. The developer has requested a time extension until January 31, 2015. It is anticipated that the streetscape construction activities will be completed by this fall; however, additional time will be necessary for Duke Energy to install the permanent street lighting after the construction work has

been completed. No additional monies will be required to add to the development agreement.

**Alternatives**

The City Council could choose not to amend the development agreement and therefore, the City may be required to undertake completion of the streetscape work using internal contracting procedures and pay Regency for the work it has already performed. This could further the delay the project because it would likely take a longer period of time beyond January 31, 2015 to bid out the work and mobilize contractors.

**Financial Impact**

Funds for Ninth Street Infrastructure Redevelopment project are paid with FY13-14 General Capital Improvement Project monies in the amount of \$1,039,687.00.

**SDBE Requirements**

The Department of Equal Opportunity/Equity Assurance did not review this item for compliance with the Ordinance to Promote Equal Business Opportunity in City Contracting. The agreement includes provisions for the Durham Workforce Plan to be implemented for sub-contractors with contract values of \$200,000.00 or greater, which stipulates good faith efforts to use the Durham JobLink Career Center System to recruit construction workers.

**Attachments:**

1. 2nd Amendment to Development Agreement.