

STAFF REPORT
City of Lancaster

NB 2
05/14/13
MVB

Date: May 14, 2013

To: Mayor Parris and City Council Members

From: Robert C. Neal, Director of Public Works

Subject: **Agreements with 99 Serenade Lancaster, LLC and CT Capital, LLC for the Construction of Master Planned Drainage Facilities; Located North of Avenue J between 60th and 65th Streets West**

Recommendation:

Approve the Improvement Agreement with 99 Serenade Lancaster, LLC to construct certain Master Planned Drainage Facilities (MPDF) required for the development of Tentative Tract Map Nos. 60294, 61038, and 61118 and terminate the previous Improvement Agreement executed on April 27, 2010, with Global Investment and Development, LLC; approve the Land Exchange Agreement and Joint Escrow Instructions with CT Capital, LLC and 99 Serenade Lancaster, LLC to facilitate the construction of the MPDF.

Fiscal Impact:

The full fiscal impact is yet to be determined but will consist of an Impact Fee Credit Certificate equal to the cost of the Master Planned Drainage Facilities.

Background:

As a condition of approval for Tract Map No. 60294, Matthews Homes dba MC Builders was required to construct the MPDF adjacent to Avenue J, between 60th and 65th Streets West. On August 8, 2006, the City and MC Builders entered into a Funding, Credit, and Reimbursement Agreement. The agreement provided credit against the drainage impact fee for Tract Map Nos. 60294, 61038, and 61118 (the Property) being developed by MC Builders to reimburse the cost of constructing the required MPDF. MC Builders constructed a portion of the required MPDF along with much of the public infrastructure for Tract Map No. 60294.

Due to the downturn in the housing market, construction was stopped. MC Builders lost the property in foreclosure and Global Investment and Development, LLC (Global) subsequently acquired the Property. When construction stopped, the tract improvements fell into disrepair and flooding of the Property occurred. The City and Global entered into an Improvement Agreement on April 27, 2010 (2010 Agreement), to complete the required MPDF and develop the subject tracts. To immediately relieve the flooding, Global built a temporary drainage facility over the property with Tentative Tract Map (TTM) No. 61038 to channel storm waters to the north to a natural flow path along 60th Street West. Construction of the MPDF has yet to occur, and the term of its completion within the 2010 Agreement has passed. Global has also transferred the Property to 99 Serenade Lancaster, LLC (Serenade).

A new agreement with Serenade is, therefore, needed to proceed with the completion of the MPDF. The proposed Improvement Agreement will replace and terminate the 2010 Agreement. Serenade agrees to complete the MPDF and acquire a drainage easement along Avenue J from an adjacent property owner between 60th and 62nd Streets West. The timing and construction of the MPDF will be based on Serenade's projected timeline and schedule but shall commence construction no later than five (5) years from the signing of this Agreement.

Upon commencement of the MPDF construction, the City agrees to issue Serenade a Fee Credit Certificate equal to the cost of the acquisition of the drainage easement plus the cost of the construction of the MPDF. The Fee Credits shall be fully applicable throughout and within the boundary limits of the City of Lancaster. In addition, TTM Nos. 60294, 61038 and 61118 shall be extended five (5) years from their current expiration date in accordance with Government Code Section 66452.6(b).

To acquire the drainage easement, Serenade and the adjacent property owner, CT Capital, LLC (CT) have agreed to exchange a portion of their properties. Within the proposed Land Exchange Agreement and Joint Escrow Instructions (LEA), CT agrees to grant the drainage easement to the City, and in exchange, Serenade will convey the property with TTM No. 61038 to CT. Since this property has a temporary drainage channel constructed across it which cannot be removed until the MPDF is constructed, a development moratorium per Section 66452.6(f) is deemed to exist until the MPDF is removed from the property. There is also a provision in the LEA that it will be null and void if CT's application for a Zone Change and General Plan Amendment to Urban Residential, R-7000 with RPD, for TTM No. 71563 is not approved by the City.

Both the Improvement Agreement and the LEA will provide a means to complete the construction of a critical portion of the Master Plan of Drainage, enable the development of the abandoned tracts, provide flood protection to the future residents, and eliminate a public nuisance.

MC:lcs

Attachments:

Improvement Agreement (available for review in the City Clerk Department)

Land Exchange Agreement and Joint Escrow Instructions (available for review in the City Clerk Department)