

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

881



FROM: Transportation and Land Management - TLMA

SUBMITTAL DATE:
September 18, 2013

SUBJECT: First Amendment to Project Agreement; Roads, Bridges, Major Improvements for Development Impact Fee (DIF) Credit for "A" Street in Woodcrest

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the First Amendment to Project Agreement; Roads, Bridges, Major Improvements for Development Impact Fee (DIF) Credit for "A" Street in Woodcrest, and;
2. Authorize the Director of Transportation and Land Management to approve Administrative Amendments to this Agreement and take all necessary actions to implement the terms of the Agreement.

BACKGROUND: The Amendment of SP 325 and its associated tracts is coming before the Board for consideration as a separate Item on this same agenda. A necessary infrastructure component of this project is "A" Street, a new road that will extend from McAllister Parkway to Van Buren Boulevard. "A" Street is not only necessary for this project but also a critical circulation and emergency access link for the communities of The Orchard, Victoria Grove and other developments located East of La Sierra Avenue, and North of El Sobrante. The "A" Street Project is approximately 40% within County jurisdiction and 60% within the City of Riverside jurisdiction.



 Juan C. Perez, Director of
 Transportation and Land Management

JCP:dlp

SEWED BY EXECUTIVE OFFICE

DATE 9/10/13
Tina Grande

FORM APPROVED COUNTY COUNSEL

BY [Signature] DATE 9/18/13
DALE A. GARDNER
Departmental Concurrence

Dept't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref. 10/16/12, 3.55

District: 1/1

Agenda Number:

3-67

The Honorable Board of Supervisors

RE: First Amendment to Project Agreement; Roads, Bridges, Major Improvements for
Development Impact Fee (DIF) Credit for "A" Street in Woodcrest

September 18, 2013

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On October 16, 2012 the Board entered into an agreement with CV Communities, the Developer of this project, whereby the Developer will provide the County with \$1,200,000 in funding towards the construction of the road upon County approval of the entitlements, and another \$400,000 within 6 months of the County awarding a construction contract. This Amendment accelerates the payment of the \$400,000 and provides a vehicle for the Developer to contribute additional funding, in exchange for additional DIF credits, and also a mechanism for the Developer to receive DIF credits if they have to construct the road project. This amendment therefore helps facilitate the construction of "A" Street.

The County is in the process of acquiring the needed right-of-way for "A" Street, and working with the City of Riverside on a funding plan for the construction phase of the project.

**FIRST AMENDMENT TO PROJECT AGREEMENT
ROADS, BRIDGES, MAJOR IMPROVEMENTS
FOR DEVELOPMENT IMPACT FEE (DIF) CREDIT
"A" Street**

This First Amendment ("Amendment") to Project Agreement, Roads, Bridges, Major Improvements for Development Impact Fee (DIF) Credit ("Agreement") is entered into this ____ day of _____, 2013, by and between the County of Riverside, a public subdivision of the State of California (the "County"), CV Inland Investments 1, L.P., a Delaware limited partnership, and CV Communities, LLC, a Delaware limited liability company (collectively, "Developer"). County and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, the Parties wish to modify the Developer's obligations created in the Agreement;
and

WHEREAS, the Parties desire to enter into this Amendment.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Purpose and Effect.** The purpose and effect of this Amendment shall be to modify and supplement the provisions of the Agreement. Except as explicitly modified or supplemented herein, the provisions of the Agreement that are not inconsistent with the provisions of this Amendment shall remain in full force and effect.

2. **Developer.** The "Developer" now is CV Communities, LLC and CV Inland Investments 1, L.P.

3. **Developer's Obligations.** Section 3 of the Agreement is hereby amended in its entirety to read as follows:

Section 3. Developer's Obligations. Developer shall be obligated to pay Seventy-Five Percent (75%), estimated to be One Million Two Hundred Thousand Dollars (\$1,200,000) of the County Payment ("75% Payment") following the County approval of the Entitlements and after thirty-five (35) days have expired from the posting of the Notice of Determination by the County Clerk and no litigation contesting the Entitlements ("Final Entitlements Date") has been filed by a third party and shall immediately deposit the 75% Payment in an escrow account ("Escrow Account"), with the escrow holder to be mutually agreed upon by the Parties. The remaining twenty-five percent (25%) of the County Payment, estimated to be Four Hundred Thousand Dollars, or (\$400,000) ("25% Payment"), shall be paid one hundred eighty (180) days after the 75% Payment is made. The County shall be authorized to withdraw both Payments from the Escrow Account upon the County's issuance of written notice to Developer and the escrow holder that the County has awarded the contract to a licensed contractor who shall construct the Capital Project. If County fails to award the contract for the Capital Project within one year of when

the Payments are deposited into the Escrow Account, then Developer may request the escrow holder to release the Payments to Developer, unless both Parties mutually agree otherwise. The Developer, at its sole expense, shall dedicate the road right-of-way for the Capital Project ten (10) days after the Final Entitlement Date.

4. **Additional Developer Contribution.** The following provision is added to the Agreement:

Section 3.1. Additional Developer Contribution. Within thirty (30) days of the issuance of the Notice to Proceed for the construction of the Capital Project, the DIF owed by Developer, due to issuance of the Entitlements, if the County approves the Entitlements, excluding the Transportation Fee, shall be deposited in the Escrow Account ("Advance DIF Payment"). In exchange for the Developer's deposit of the Advance DIF Payment, the County shall issue DIF credits ("Other DIF Credits") for Developer's costs incurred for constructing the Capital Project, if the County does not construct the Capital Project and if Developer constructs the Capital Project. The Other DIF Credits may be used by Developer for any projects which would otherwise be subject to DIF, including, without limitation, TTM Nos. 36390 and 36475. If County fails to award the contract for the Capital Project within one year of when the Advance DIF Payment is deposited into the Escrow Account, then Developer may request the escrow holder to release the Advance DIF Payment to Developer, unless both Parties mutually agree otherwise.

5. **Affordable Housing.** Section 5 of the Agreement is hereby amended in its entirety to read as follows:

Section 5. Affordable Housing. The County currently does not have an inclusionary housing ordinance or an affordable housing fee established by ordinance. Should the County exercise its sole discretion to approve fast track authorization, it would be solely on the basis of approval by a vote of the majority of the Board of Supervisors under Board Policy A-32, Eligibility Criteria No. 5. Should the Board, in its sole discretion, approve the Entitlement on or before December 1, 2013, and approve the Other Entitlements on or before December 1, 2014, no affordable housing fee or regulation will be imposed by the County on the Property or the Other Property.

6. **Agreement Null and Void.** Section 6 of the Agreement is hereby amended in its entirety to read as follows:

Section 6. Agreement Null and Void. This Agreement shall be null and void and shall have no force and effect, except for the Indemnification Provisions of Section 10, if the County, in its sole discretion, does not approve the Entitlements within one year of the date of approval of this Amendment by the County. In such event, the condition and obligation of the Developer to construct or cause the Capital Project to be constructed will remain intact and the amount of DIF Credit will be determined pursuant to Ordinance No. 659. Notwithstanding the foregoing, all the timeframes and deadlines specified in this Agreement shall be tolled or extended for the period of days during the pendency of any litigation filed by a third party contesting the approval of this Agreement, the Entitlements, or the Other Entitlements.

7. **Miscellaneous.** Except as modified by this Amendment, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the day and year first above written.

COUNTY OF RIVERSIDE

RECOMMENDED FOR APPROVAL:

By: [Signature] Date: 9/13/13
JUAN C. PEREZ
Director, Transportation and Land Management Agency

DEVELOPER

CV INLAND INVESTMENTS 1, LP, a Delaware limited partnership

By: CV INLAND INVESTMENTS 1, INC., its general partner
By: _____
August Belmont
President

APPROVED AS TO FORM:

PAMELA J. WALLS, COUNTY COUNSEL

By: [Signature] Date: 9/18/13
Dale A. Gardner
PRINTED NAME

CV COMMUNITIES, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

APPROVAL BY THE BOARD OF SUPERVISORS

By: _____ Date: _____
John Benoit
Chairman, Riverside County Board of Supervisors

ATTEST:

By: _____ Date: _____
Kecia Harper-Ihem
Clerk of Board (SEAL)

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ROADS, BRIDGES, MAJOR IMPROVEMENTS
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COUNTY OF RIVERSIDE

DEVELOPER

RECOMMENDED FOR APPROVAL:

CV INLAND INVESTMENTS 1, LP, a Delaware limited partnership

By:  Date: 9/18/13
JUAN C. PEREZ
Director, Transportation and Land Management Agency

By: CV INLAND INVESTMENTS 1, INC., its general partner

By: _____
August Belmont
President

APPROVED AS TO FORM:

CV COMMUNITIES, LLC, a Delaware limited liability company

PAMELA J. WALLS, COUNTY COUNSEL

By:  Date: 9/18/13
Pamela A. Gardner
PRINTED NAME

By: _____
Name: _____
Title: _____

APPROVAL BY THE BOARD OF SUPERVISORS

By: _____ Date: _____
John Benoit
Chairman, Riverside County Board of Supervisors

ATTEST:

By: _____ Date: _____
Kecia Harper-Ihem
Clerk of Board (SEAL)