QUAILWOOD MEADOWS COMMUNITY FACILITIES DISTRICT
REQUEST FOR BOARD ACTION
Date: October 10, 2013

SUBJECT: Approving Issuance of 2013 Refunding Bonds

SUBMITTING DEPARTMENT: District Treasurer

PREPARED BY: Robert Casillas, Stifel, Nicolaus & Company,
Michael Cafiso, Greenberg Traurig, LLP
Ivan Legler, District Legal Counsel
Bill Kauppi, District Treasurer

AGENDA LOCATION: Comments/Communications ☐, Consent ☐, Work/Study☐,
New Business ☒, Public Hearing ☐, Second Reading ☐

ATTACHMENTS: a) Resolution No. 23

SUMMARY/BACKGROUND: On April 10, 2003, the Prescott Valley Town Council approved a Development Agreement with Empire Land, L.L.C., John B. and Deborah Rouwenhorst, and entities related to the Fain family for annexation, zoning and development of a mixed residential and commercial development known as "Quailwood Meadows". In accordance with the Development Agreement, on August 12, 2004, the Council adopted Resolution No. 1294 forming the Quailwood Meadows Community Facilities District and approving a Financing Agreement with QMCFD, Empire and the Rouwenhorsts. The Financing Agreement said that Empire would construct public infrastructure for Quailwood Meadows which QMCFD would then purchase using bond proceeds and convey to the Town for operation and maintenance. Debt service on the bonds would be paid from annual ad valorem taxes levied by QMCFD on property within its boundaries.

To regulate the tax rate, Empire entered into a Standby Contribution Agreement (dated December 1, 2004) with QMCFD and the bond trustee to pay each year amounts needed to keep the rate at no more than $3 per $100 secondary assessed valuation. Empire also agreed to deposit 10% of the bond principal amount as a source of regulating tax rates if the standby contributions were not made. Also, QMCFD agreed to levy each year an additional tax of $0.30 per $100 to pay costs to operate and maintain the infrastructure. If collections were insufficient, Empire would pay the shortfall up to $30,000 per year (until July 1, 2020, or July 1 after the 900th building permit was issued, whichever was earlier). Based on these agreements, QMCFD issued bonds in the amount of $6,940,000 on October 14, 2004.

Quailwood Meadows was very successful for several years. Unfortunately, the world-wide economic recession eventually had an impact and Empire and related entities filed for Chapter 11 bankruptcy protection on April 25, 2008. At that point, Quailwood Meadows was a bit more than half built-out. Later, the bankruptcy was changed to a Chapter 7 liquidation. On August 13, 2008, one group of lenders headed by Wells Fargo Bank obtained an order from the bankruptcy court that would allow it to foreclose on its secured collateral (including undeveloped lots in Units IV and VII and the Townhomes). On January 6, 2009, another group of lenders headed by Central Pacific Bank obtained an order allowing it to foreclose on its secured collateral (including undeveloped lots in Units IV, V, VI and VIII). As of July 1, 2009, the bankruptcy trustee had abandoned all of these lots from the bankruptcy estate. In the meantime, Central Pacific Bank foreclosed on its interests on March 9, 2009. And, Wells Fargo subsequently applied for appointment of a receiver to manage its interests and a receiver was appointed on December 17, 2010.

The lenders eventually entered into discussions with Everest Holdings to purchase the remaining 557 undeveloped lots. In the process, QMCFD/Town staff discussed with the lenders and Everest what the ongoing obligations would be inasmuch as the lenders (and, potentially, Everest) would be successors-in-interest to Empire. After considerable discussion and investigation, Everest formed three special purpose entities to purchase the remaining 557 lots and the lenders assigned their rights and obligations under the original development and financing agreements to these new Everest entities. The Town Council and QMCFD Board took action on January 5, 2012 to approve this assignment. And, the Town Council approved an Amendment to the Development Agreement extending its term from April 10, 2015 to June 30, 2030. The Town Manager also made certain written determinations with regard to the Development Agreement relating to such things as fee credits, development of wells, and repair of existing public improvements. Included in the assignment was an understanding that certain limitations to the burdens of the agreements would apply going forward, including that the contributions under the 2004 Contribution Agreement would be limited to $315 per year per lot (not to exceed a total of $1,000,000 over the term of the 2004 Financing Agreement). And, the requirement to annually pay up to $30,000 towards maintaining infrastructure could terminate upon transfer of all remaining lots to homebuyers. On the other hand, the new Everest entities disclaimed any interest in the remainder of the original $694,000 deposit (then approximately $617,000).

On March 8, 2012, the Town and the Board took the same actions again because one of the parties involved in creating the new Everest entities had changed. And, on April 12, 2012 the Town and the Board took the same actions yet again in order to approve minor amendments to the documents requested by one of the parties. Since then, standby contributions have been paid to QMCFD as it has set its tax rate each year. And, one of the entities (EH Quailwood Homes) no longer owns any lots in Quailwood Meadows.

Since the discussions in 2011 about sale of the unfinished lots to Everest, there has been hope that the 2004 Bonds might eventually be refunded to capitalize on lower interest rates. Recently, other CFDs have been successful in refinancing their bonds through bank private bond offering. And, the Colorado Business Bank has now made such a proposal to QMCFD. If approved, this proposal should result in a present value debt service savings (net of costs associated with the Bonds) of not less than 3.40%. The total aggregate outstanding amount of the Bonds will not exceed 60% of the aggregate of the estimated market value of the real property and improvements in QMCFD.

Subsection 1.12 in the original Contribution Agreement would generally provide for termination of said agreement upon full payment of the 2004 Bonds. But, the limited contributions under the original Contribution Agreement assignment remain an important part of any refunding and are needed to help secure the refunding bonds. Also, the 2012 assignment of the original development and financing documents to the Everest entities was consideration for the Town's commitments in the Manager's January 5, 2012 letter. Therefore, in accordance with the Indenture for the 2004 bonds between QMCFD and the bond trustee, it is understood by QMCFD and the Everest entities that all of the original obligations will remain in full force and effect notwithstanding any refunding of the bonds. In other words, the 2013 refinancing is not expanding the Everest entities liabilities (i.e., payments under the 2004 documents and the 2013 documents by Everest both apply to the aggregate $315 per year per Lot and $1,000,000 aggregate cap). It is also understood that what remains of the original deposit will be applied toward the refunding.

Attached now for Board consideration is Resolution No. 23 which approves issuance of QMCFD general obligation refunding bonds, Series 2013. The purpose is to replace the Series 2004 bonds (totaling $6,940,000) with bonds at a lower interest rate. It should be noted that, because the market can fluctuate, Resolution No. 23 delegates certain final decisions to the QMCFD Manager (similar to earlier bond issues by CFDs and the Town). For example, Resolution No. 23 delegates to the Manager authority to designate the final principal amount, maturities, interest rates and yields. The anticipated final interest rate is approximately 4.30%. Stifel Nicolaus & Co. will serve as the Placement Agent with a form of Placement Agent Agreement included as Exhibit E to Resolution No. 23. The purchaser of the bonds will be identified in the final executed Placement Agent Agreement. It is anticipated that the bond rate will be locked on October 11, 2013 and closing should occur near the end of the month.

OPTIONS ANALYSIS: The QMCFD Board may adopt this Resolution No. 23 authorizing issuance of the Series 2013 Refunding Bonds OR decline to adopt Resolution No. 23.

ACTION OPTION: Motion to authorize the Chairman (or, in his absence, the Vice Chairman) to sign Resolution No. 23 which (a) authorizes issuance of QMCFD General Obligation Refunding Bonds, Series 2013, and (b) delegates certain authority in relation thereto to the QMCFD Manager, **OR** Motion not to approve Resolution No. 23. **VOTE**.

RECOMMENDATION: Staff recommends authorizing signature of Resolution No. 23 approving issuance of the Series 2013 Refunding Bonds.

FISCAL ANALYSIS: It is believed that refinancing the Series 2004 bonds will benefit the Quailwood Meadows project and its property owners by reducing the interest rate for the borrowing.

REVIEWED BY:

Quailwood Meadows CFD Treasurer ______________________________

Quailwood Meadows CFD Clerk _________________________________

Quailwood Meadows CFD Legal Counsel ______________________________

Quailwood Meadows CFD Manager ______________________________

BOARD ACTION: