QUAILWOOD MEADOWS COMMUNITY FACILITIES DISTRICT
REQUEST FOR BOARD ACTION
Date: April 12, 2012

SUBJECT: Quailwood Meadows Development Agreements

SUBMITTING DEPARTMENT: District Manager

PREPARED BY: Larry Tarkowski, District Manager

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

ATTACHMENTS: (a) Assignment and Assumption of District Development, Financing Participation and Intergovernmental Agreement, (b) Assignment and Assumption of Payment Agreement, and (c) Assignment and Assumption of Contribution Agreement

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SUMMARY/BACKGROUND: On January 5, 2012, the QMCFD Board took actions to approve an amendment to and certain assignments of the underlying development agreement and related bond agreements for the Quailwood Meadows subdivision. On March 8, 2012, the Board took the same actions again because one of the entities involved earlier was no longer involved and had been replaced by another entity. Each was a single-purpose entity created for the sole purpose of entering into the transactions. Now, the Board is being asked to take the actions once again in order to approve minor amendments to the documents as requested by one of the parties which, among other things, reflect a staged closing among the Assignors and the Assignee.

Prior Summary: On April 10, 2003, the Town Council for the Town of Prescott Valley 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 Quailwood Meadows.

In accordance with the Development Agreement, the Town Council subsequently adopted Resolution No. 1294 (August 12, 2004) creating the Quailwood Meadows Community Facilities District ("QMCFD") and approving a District Development, Financing Participation and Intergovernmental Agreement with QMCFD, Empire, and the Rouwenhorsts. This Financing Agreement provided (among other things) 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 QMCFD. To regulate the tax rate, Empire would enter into a (1) Series 2004 Standby Contribution Agreement with QMCFD (and the bond trustee) to pay each year amounts needed to keep the rate at no more than $3.00 per $100 secondary assessed valuation, and (2) Series 2004 Payment Agreement with QMCFD to deposit 10% of the bond principal to supplement tax revenues if amounts available under the Contribution Agreement were insufficient. QMCFD would also levy each year an additional ad valorem tax of $0.30 per $100 to pay costs to operate and maintain the infrastructure. If those collections were insufficient, Empire would pay the shortfall up to $30,000 (until July 1, 2020, or July 1 after the 900th building permit was issued, whichever is earlier). Based on these agreements, the QMCFD Board issued $6,940,000 in General Obligation Bonds, Series 2004, on October 14, 2004.

In the course of developing Quailwood Meadows, Empire entered into its own security agreements with various banks to secure development loans. Quailwood Meadows was very successful for a number of

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. Quailwood Meadows was just one of many developments in Arizona and California adversely affected by this bankruptcy.

On August 13, 2008, one group of banks (led by Wells Fargo) obtained an order from the bankruptcy court granting its motion for relief from the bankruptcy stay relative to its secured collateral (including undeveloped lots in units IV and VII and the Townhomes). On January 6, 2009, another group of banks (led by Central Pacific Bank) obtained an order granting relief in order to foreclose its interests in lots in units IV, V, VI and VIII. As of July 1, 2009, the bankruptcy trustee abandoned all of these lots from the bankruptcy estate. CPB eventually foreclosed its interests on March 9, 2009. Wells Fargo eventually applied to a California court to appoint a receiver to manage its interests, and a receiver was actually appointed on December 17, 2010. Per ARS §9-500.05(D) and Section 14 of the Development Agreement, CPB and the Receivership Estate are now successors-in-interest to Empire under the Development Agreement.

The banks and the Receiver have since been working to sell these remaining undeveloped lots (557) in Quailwood Meadows. In the process, staff for QMCFD/Town has discussed with potential purchasers what the QMCFD/Town requirements would be. After considerable discussion and investigation, single-purpose entities have now been formed by Everest Holdings or related entities to purchase these lots from CPB and the Receivership Estate. In the process, CPB, the Receiver, and these new entities have asked the QMCFD Board and the Town Council to approve assignments to the Development Agreement, the Financing Agreement, and the related Payment and Contribution Agreements. They have also asked that the Town approve an Amendment to the Development Agreement extending its term from April 10, 2015 to June 30, 2030. Finally, they have asked the Town Manager to make 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 (which he did by letter dated January 5, 2012).

It should be noted that, after consultation with bond counsel, these assignment documents propose for the new entities to fully assume the benefits and burdens of the Development Agreement, Financing Agreement, Payment Agreement and Contribution Agreement, then apply certain limitations to the burdens going forward. For example, the contributions under the 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 Financing Agreement). Any contributions not made to-date by Empire would not be applied retroactively to the new entities. And, the requirement to annually pay up to $30,000 towards maintaining infrastructure could terminate upon transfer of all remaining lots to homebuyers. The entities would not be required to meet the net worth test that previously applied to Empire. On the other hand, the entities would be disclaiming any interest in the remainder of the original $694,000 deposit (currently about $617,000).

Going forward, the QMCFD Board and staff would make decisions about QMCFD tax rates based on these contribution limitations and on the amount still available in the deposit.

OPTIONS ANALYSIS: The QMCFD Board may approve these assignments and amendment as drafted, suggest revisions prior to approval, or decline to approve these assignments and amendment.

ACTION OPTION: (A) Motion to approve the Assignment and Assumption of District Development, Financing Participation and Intergovernmental Agreement. **VOTE.**

(B) Motion to approve the Assignment and Assumption of Payment Agreement. **VOTE.**

(C) Motion to approve the Assignment and Assumption of Contribution Agreement. **VOTE.**

RECOMMENDATION: District staff recommends approval of the revised Assignment and Assumption of District Development, Financing Participation and Intergovernmental Agreement, Assignment and Assumption of Payment Agreement, and Assignment and Assumption of Contribution Agreement.

FISCAL ANALYSIS: The bankruptcy filing by Empire and related entities in 2008 has had a number of negative impacts on the Quailwood Meadows development, including cessation of new development and some degradation of public infrastructure. In addition, the lack of Standby Contributions has resulted in a drawdown of the deposit made under the Payment Agreement to help make Bond payments. Finally, there has been no annual contribution towards maintenance costs for the public infrastructure. Although that bankruptcy has not been resolved, the efforts by groups of lenders to remove from the bankruptcy estate the remaining undeveloped lots and to sell them to a new developer has provided an opportunity for new growth in the area, repair of public infrastructure by the new developer, and Standby Contributions towards bond payments and annual contributions towards infrastructure maintenance by the new developer. The new developer has insisted that these obligations be capped, and has also insisted that the Town commit to certain fee credits and certain fixes of accepted infrastructure as a condition. On the whole, however, District staff believes that these assignments and amendment are ultimately beneficial for QMCFD/Town and for area residents.

REVIEWED BY:

District Treasurer _____

District Clerk _____

District Counsel _____

District Manager _____

BOARD ACTION:

☐ Approved ☐ Denied ☐ Tabled/Deferred ☐ Assigned to _____