



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY AGENDA

February 28, 2006 – SPECIAL MEETING

Yuba County Government Center

Board of Supervisors' Chambers

915 Eighth Street, Suite 109A

Marysville, California

Unless otherwise indicated

No other business shall be conducted at this meeting. The public shall have an opportunity to address the Board only with respect to items set forth in this agenda. Each individual or group will be limited to no more than five minutes. Prior to this time, speakers must fill out a "Request to Speak" card and submit it to the Secretary.

1:30 P.M. I **CALL TO ORDER**

II **ROLL CALL** – Directors Rick Brown, Mary Jane Griego, Dan Logue, Richard Webb

III **CLOSED SESSION**

Threatened litigation pursuant to Government Code §54956.9(b) – One Case

IV **ACTION ITEMS**

Approve Pump Station 6 Funding Agreement with Lennar Renaissance, Inc. and authorize Executive Director to execute same.

V **CLOSED SESSION**

2:00 P.M. Personnel pursuant to Government Code §54957 – Public Appointment/Executive Director Interviews

VI **RECESS TO 2:00 P.M., MARCH 1, 2006**

VII **CLOSED SESSION**

Personnel pursuant to Government Code §54957 – Public Appointment/Executive Director Interviews


VIII **ADJOURN**



THREE RIVERS LEVEE IMPROVEMENT AUTHORITY

Government Center
915 Eighth Street, Suite 115
Marysville, CA 95901-5273

Telephone: (530) 749-7575 Fax: (530) 749-7312

Date: February 28, 2006
To: Board of Directors
From: 
Charles K. McClain, Executive Director
Subject: Pump Station 6 Funding Agreement

Recommended Action:

Authorize the Executive Director to execute the Pump Station 6 Funding Agreement between Three Rivers Levee Improvement Authority and Lennar Renaissance, Inc. and authorize the Executive Director to execute future change orders associated with the terms and conditions of the agreement.

Background:

TRLIA is pursuing a multi-phase levee improvement program including strengthening, raising, and in some sections rebuilding of the Bear River levee located within Reclamation District 784. As part of its program, TRLIA must make improvements to Pump Station 6, a pump station designed to pump interior drainage out of RD 784 and into the Bear River.

Lennar Renaissance, Inc. is constructing the River Oaks East project within RD 784. The River Oaks East project will increase the drainage within RD 784. As a result, Lennar seeks to fund expanded capacity within Pump Station 6 to accommodate the increased drainage flows.

Discussion

The attached funding agreement provides Lennar will pay all incremental costs associated with TRLIA's expansion of capacity at Pump Station 6. In addition to \$160,000 already paid for design work, the Agreement calls for Lennar to pay \$1.1 million on March 2 with a final payment to be made once the total incremental costs are known. The Agreement explicitly provides that because TRLIA is undertaking this work on a limited and tight time schedule, Lennar is responsible for the total costs, whether or not Lennar changes its mind on the necessity the improvements.

The expanded capacity for Pump Station 6 is a temporary solution for the increased drainage created by the River Oaks East project. RD 784 intends to construct the Ella Basin Pump Station as a permanent solution to accommodate increased drainage from within RD 784. In addition to the funds to be provided by Lennar to TRLIA under this Agreement, Lennar will be subject to any drainage impact fees paid to RD 784 for the Ella Basin Pump Station. TRLIA cannot provide any guarantee as to the period of time during which Pump Station 6 will be permitted to

Lennar's River Oaks East project is or may be subject to certain approvals from, and meeting certain conditions imposed by, RD 784 and Yuba County. While this Agreement may address some of the issues associated with these approvals and conditions, it is not intended to bind RD 784 or the County of Yuba or to provide any assurances on their behalf.

Lennar desires to enter into this Agreement with TRLIA to memorialize the understanding as to the conditions under which Lennar will provide funding to expand the capacity of Pump Station 6 and as to the conditions under which TRLIA will construct the upgraded Pump Station 6. Due to the tight time schedule, the Executive Director may have already executed this contract at the time of the Board meeting under previously delegated authority.

Fiscal Impact

Because the Agreement calls for Lennar to cover all costs associated with the incremental costs of expanding the pumping capacity of Pump Station 6, this Agreement should have no fiscal impact.

PUMP STATION 6 FUNDING AGREEMENT

This Pump Station 6 Funding Agreement ("Agreement"), dated for convenience this 23rd day of February, 2006, is by and between the Three Rivers Levee Improvement Authority ("TRLIA"), and Lennar Renaissance, Inc., a California corporation ("Lennar").

1. **Recitals.** This Agreement is made in regard to the following facts:

a. TRLIA is pursuing a multi-phase levee improvement program including strengthening, raising, and in some sections rebuilding of the Bear River levee located within Reclamation District 784 ("RD 784") Yuba County, California. As part of its program, TRLIA must make improvements to Pump Station 6, a pump station designed to pump interior drainage out of RD 784 and into the Bear River.

b. Lennar is constructing the River Oaks East project within RD 784. The River Oaks East project will increase the drainage within RD 784. As a result, Lennar seeks to fund expanded capacity within Pump Station 6 to accommodate the increased drainage flows.

c. The Parties acknowledge that the expanded capacity for Pump Station 6 is a temporary solution for the increased drainage created by the River Oaks East project. In particular, RD 784 intends to construct the Ella Basin Pump Station as a permanent solution to accommodate increased drainage from within RD 784. Lennar acknowledges that in addition to the funds provided under this Agreement, it will be subject to drainage impact fees paid to RD 784 for the Ella Basin Pump Station. Lennar also acknowledges that TRLIA cannot provide any guarantee as to the period of time during which Pump Station 6 will be permitted to operate with capacity expanded to 200 cfs.

d. The Parties further acknowledge that Lennar's River Oaks East project is or may be subject to certain approvals from, and meeting certain conditions imposed by, RD 784 and Yuba County. While this Agreement may address some of the issues associated with these approvals and conditions, it cannot and is not intended to bind RD 784 or the County of Yuba.

e. The Parties now desire to enter into this Agreement to memorialize their understanding as to the conditions under which Lennar will provide funding to expand the capacity of Pump Station 6 and as to the conditions under which TRLIA will construct the upgraded Pump Station 6.

NOW, THEREFORE, in consideration of the mutual promises herein made, the Parties agree as follows:

2. **Obligations of Lennar.**

a. Lennar has previously paid the sum of \$160,000, which amount funded the design of the expanded Pump Station 6.

b. Lennar agrees to provide \$1,100,000 (\$1.1 million) to TRLIA on or before Thursday, March 2, 2006.

c. Lennar agrees to provide a final payment in an amount as yet unknown. Upon execution of this Agreement, TRLIA will work to obtain from its various consultants and contractors change orders which identify the incremental cost of the increased capacity at Pump Station 6 sought by Lennar. Once the change orders have been received, TRLIA shall present to Lennar an accounting of the change orders and costs to date, and an invoice reflecting the actual incremental cost of the expanded capacity, minus any payments previously made. If Lennar has any questions regarding the invoice and accounting, the Parties shall work in good faith for a period of up to two weeks from receiving the invoice and accounting to resolve the questions. Following the end of this two week period, Lennar shall, within a further two week period, make a payment to TRLIA of the amount of the invoice, or any revised invoice mutually agreed to by the Parties.

d. Lennar shall have no further obligation to pay to TRLIA for drainage improvements that are associated with drainage from the River Oaks East project.

e. Lennar agrees to clean the culverts upstream of the pump station at Feather River Blvd with the purpose of allowing the culverts to pass a design flow of 200 cfs to Pump Station 6.

f. Lennar agrees to fund any necessary environmental or regulatory permits specifically associated with the expanded capacity of Pump Station 6.

3. **Obligations of TRLIA.**

a. TRLIA agrees to proceed with construction of the upgraded Pump Station 6, consistent with the plans prepared using the funding provided by Lennar, as memorialized in an October 11, 2005 letter from Lennar to TRLIA. The upgraded Pump Station 6 shall provide temporary pumping capacity of 200 cfs.

b. TRLIA has been told by the staff of the State Reclamation Board that the staff will recommend a term of use for the expanded Pump Station 6 encroachment permit for two years. TRLIA agrees to use its best reasonable efforts to achieve a longer period of use for the expanded Pump Station 6.

4. **Hold Harmless and Waiver/Release.**

Lennar agrees to defend, indemnify and hold TRLIA, including its member agencies, officers, agents, employees, successors and assigns, safe and harmless from all claims and damages arising out of the operation of those aspects of the Pump Station 6 expansion that would not be part of TRLIA's construction plan but for Lennar's request to expand the pumping capacity of Pump Station 6.

5. **Liquidated Damages.**

Lennar acknowledges that, due to the limited time in which TRLIA may make the required improvements as part of its levee improvement program, once TRLIA orders materials and pumps to implement the requested expansion of capacity to Pump Station 6, it may no longer have time to construct improvements to Pump Station 6 at a capacity less than 200 cfs. As a result, the parties agree the payments to be made by Lennar under this Agreement represent the incremental cost to TRLIA and shall constitute liquidated damages, the amount of which shall be due to TRLIA even if Lennar seeks to breach or has breached its obligations under this Agreement.

6. **Standard Provisions.**

a. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of California, without regard to conflicts of laws principles. Any action to compel arbitration or to enforce an arbitrator's decision shall be venued in Sacramento Superior Court.

b. **Arbitration.** All disputes arising out of this Agreement shall be submitted to final and binding arbitration. A Party seeking to arbitrate a dispute arising out of this Agreement must notify the other Parties to the dispute in writing of its intent to arbitrate any claim for breach or enforcement of any provision of this Agreement within 30 days of discovery of the last event giving rise to the claim for breach or enforcement. Any such timely and properly noticed claim for breach or enforcement of any provision of this Agreement shall be submitted to binding arbitration through the American Arbitration Association in accordance with the National Rules for Commercial Disputes. Before arbitration commences, the Parties shall each pay half of the expected cost of the arbitration. At the conclusion of the arbitration, the arbitrator may award the prevailing Party some or all of the arbitration costs including attorneys fees. The decision of the arbitrator shall be final and conclusive, and the Parties waive the right to a trial de novo or appeal excepting only for the purpose of enforcing the arbitrator's decision

c. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings of the Parties regarding the subject matter hereof. This Agreement may not be amended except by the mutual written consent of all of the Parties.

d. **Waiver.** Any provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof, but only by a writing signed by such Party stating that it waives such provision. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision nor shall any waiver constitute a continuing waiver.

e. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the other provisions of this Agreement shall remain in full force and effect provided that the severance of the invalid or unenforceable provisions does not result in a material failure of consideration under this Agreement to any party hereto.

f. **Headings.** The headings of this Agreement are included for convenience only and shall not affect the construction or interpretation of the Agreement.

g. **Counterparts and Facsimile.** This Agreement may be executed in one or more counterparts, including facsimile, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

h. **Authority.** The undersigned certify that they are fully authorized by the Party or Parties whom they represent to enter into the terms and conditions of this Agreement and able to legally bind such Party or Parties hereto.

i. **Interpretation.** This Agreement shall be deemed to have been prepared equally by all of the Parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for any one Party on the basis that another Party prepared it.

j. **Third Party Beneficiaries.** This Agreement is not intended to, and shall not be construed to, create any right on the part of a third party to bring an action to enforce any of the terms of this Agreement.

k. **Successors and Assigns.** The provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of, all successors and assigns of the Parties. Lennar's right of assignment shall be subject to approval by TRLIA, which approval shall not be unreasonably withheld

l. **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (1) on the date delivered by hand; (2) the next business day following the date sent by overnight delivery service or sent by facsimile; or (3) on the third day after mailing if deposited in the U.S. mail. Any notice to be given to TRLIA should be addressed as follows:

Executive Director
Three Rivers Levee Improvement Authority
915 Eighth Street, Suite 115
Marysville, California 95901-5273

or to such other addresses as TRLIA may specify from time to time. Any notice to be given to Lennar should be addressed as follows:

person
title
address
address

or to such other addresses as Lennar may specify from time to time.

IN WITNESS WHEREOF, the Parties agree to the provisions set forth herein as evidenced by the signature of their authorized representatives below:

Date: _____

THREE RIVERS LEVEE

IMPROVEMENT AUTHORITY

Attest:

by: _____

by: _____
Executive Director

Lennar Renaissance, Inc.,
a California corporation

By: _____
Larry Gualco, Vice President