

RESOLUTION NUMBER R- 299586

ADOPTED ON AUG 10 2004

WHEREAS, the City and General Dynamics Properties, Inc. entered into a Development Agreement and First Amendment to the Development Agreement (collectively referenced as herein as Development Agreement) on file in the Office of the City Clerk as Document Numbers 00-18848 and 00-18867, respectively, contemplating development of a mixed-use retail, commercial, and industrial/business park project on certain real property in the Kearny Mesa area of the City; and

WHEREAS, various provisions of the Development Agreement, including, but not limited to, Exhibits "B," "C" and "H" obligate LNR Kearny Mesa, Inc. [LNR] as successor-assignee of the Development Agreement to fund, design and/or construct all or a portion of various infrastructure improvements; and

WHEREAS, one of the infrastructure improvements addressed in the Development Agreement is the Clairemont Mesa Boulevard/I-163 Interchange [Interchange]; and

WHEREAS, the Development Agreement requires LNR, subject to a right of reimbursement, to advance fund certain improvements to the Interchange prior to exceeding the Transportation Phasing Plan threshold of 30,800 Average Daily Trips [ADTs]; and

WHEREAS, pursuant to the terms of the Development Agreement, design and construction of certain improvements to the Interchange must be completed in accordance with an approved Project Study Report/Project Report for the Interchange [PSR/PR] and the PSR/PR and associated final Environmental Document [ED] has been approved by the State of California, acting by and through its Department of Transportation [CalTrans] and the Federal Highway Administration [FHWA]; and

WHEREAS, the City and LNR have jointly proposed, and CalTrans has agreed to, the construction of the Interchange improvements in two phases, referenced herein as Phase I and Phase II. Phase I includes ramp and bridge widening on the eastern side of the Interchange and Phase II includes ramp widening on the western side. The scope of work for Phase I and Phase II are defined in the CalTrans approved PSR/PR; and

WHEREAS, in order to comply with its obligations under the Development Agreement pertaining to the Interchange, LNR proposes to advance fund the design and construction of Phase I in accordance with the CalTrans approved PSR/PR. NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, an Agreement to Assure Road Improvements with LNR [Implementation Agreement], in furtherance of LNR's obligations under the Development Agreement, under the terms and conditions set forth in the Implementation Agreement on file in the office of the City Clerk as Document No. RR 299586-1, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

BE IT FURTHER RESOLVED, that the City Manager is authorized to enter into a cooperative agreement with the State of California for Phase I of the Interchange.

BE IT FURTHER RESOLVED, that the addition of CIP No. 52-745.0, Clairemont Mesa Boulevard/SR-163 Improvements Project, to the Fiscal Year 2005 Capital Improvements Program is authorized.

BE IT FURTHER RESOLVED, that the acceptance of \$191,000 into Fund No. 63022, Developer Contribution, from LNR, is authorized.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is authorized to increase the Fiscal Year 2005 Capital Improvements Program budget by appropriating \$191,000 from Fund No. 63022, Developer Contribution, into CIP No. 52-745.0, Clairemont Mesa Boulevard/SR-163 Improvements Project.

BE IT FURTHER RESOLVED, that the expenditure of an amount not to exceed \$191,000 from CIP No. 52-745.0, Clairemont Mesa Boulevard/SR-163 Improvements Project, is authorized for the purpose of City of San Diego to review, oversee and coordinate with Caltrans for Phase I of the Interchange, contingent upon the City Auditor and Comptroller certifying that funds are on deposit with the City Treasurer.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

APPROVED: CASEY GWINN, City Attorney

By



Susan Y. Cola
Deputy City Attorney

Agreement between the City of San Diego and the State of California on file as Document RR-299586-2.

SYC:sc
08/06/04
Aud.Cert.:N/A
Or.Dept:E&CP
R-2005-177