



CITY COUNCIL AGENDA REPORT



DEPARTMENT: City Manager's Office

MEETING DATE: May 21, 2019

PREPARED BY: Oliver Chi, City Manager
Lauren Vasquez, Deputy City Manager

AGENDA LOCATION: AR-1

TITLE: Debris Basin Construction and Maintenance Easement Agreement with 347 N. Highland Place, LLC, to Facilitate the Development of a Stormwater and Debris Retention Basin Facility

OBJECTIVE: To approve a Surface Water and Debris Basin Construction and Maintenance Agreement (Agreement) with 347 N. Highland Place, LLC, to facilitate the construction of a stormwater and debris retention basin to protect against historical flooding conditions

BACKGROUND: The City has experienced historical flooding, mud slide, and hillside debris overflow issues along Highland Place, and the portion of Hillcrest Boulevard adjacent to Highland Place. These issues were exacerbated following the Madison Fire in 2013, and in recognition of this particular issue, the LA County Flood Control District constructed a large debris retention basin at the terminus of Highland Place to control mud flows and from a large hillside drainage area.

However, in the years following the Madison Fire, the City has continued to experience flooding and debris issues along Highland Place due to hillside runoff from another drainage area that intersects with the public right-of-way at 347 Highland Place. That particular property is around ~7 acres in size, and represents the terminus of another large hillside drainage area off of Highland Place, as illustrated in the graphic below.



AR-1

Since 2014, the City and property owners adjacent to 347 Highland Place have engaged in significant preventative maintenance efforts to address ongoing flooding and debris flow issues. In fact, multiple residents in the area have been significantly impacted by a series of mud flow events, so much so that City public works and public safety personnel have engaged in several large-scale debris clearance activities over the past few years.

In response to these issues, the City has continued to engage a preventative program along Highland Place to protect against possible future flooding and debris flow issues. That plan has involved:

- Maintenance of the k-rail system along Highland Place and Hillcrest Boulevard (which will be removed later this month in coordination with planned Monrovia Renewal street work)
- Installation of a private-property protection system along Highland Place, whereby the City had custom made driveway protection barriers made for every property located on Highland Place between Scenic Drive and Hillcrest Boulevard
- Engagement of contractors, City crews, and neighbors to repeatedly clear mud and debris from the terminus of the drainage area, located at 347 Highland Place

As the City's engineering team has analyzed the situation, the only effective long-term solution to the problem would be the development of a new debris basin at 347 Highland Place. However, given the costs and logistics involved with establishing a flood and debris control facility at the location, the City has been unable to move forward with any long-term project.

Recently, the City was approached by representatives of Bowden Development, which has been contemplating the acquisition of the property at 347 North Highland Place through an entity known as 347 N. Highland Place, LLC (Developer). The Developer has envisioned the construction of a 3-unit residential project on the site, and in order to facilitate the residential project, the City would require that a large flood control and debris basin would have to be constructed on site. Given the overall economics of the transaction, representatives from Bowden Development have been engaged in discussions with the City regarding a way to facilitate this proposed venture.

Based on our discussions to date, we developed for consideration a Surface Water and Debris Construction and Maintenance Easement Agreement (Agreement) pursuant to the following terms and conditions:

- The Developer would be required to build a flood control debris basin on site that meets all City specifications.
- The Developer would be required to establish mechanisms to ensure that the future debris basin is maintained and kept in good working order.
- Upon completion of the flood control facility, the City would reimburse the Developer an amount not to exceed \$300,000.
- That reimbursement would only be issued on the condition that the Developer also facilitates the establishment of a Mello-Roos Community Facility District (CFD).
- Through that CFD, the property would be assessed an extra property tax amount above and beyond the base property tax assessment.
- The Developer would then have to authorize that the additional property tax collected from the CFD to pay the City back its initial investment of up to \$300,000 within a 30-year time period.

ANALYSIS: After a thorough analysis and assessment, staff believes that the proposed Agreement with the Developer is advantageous for the City. There are multiple public benefits that would be derived from the overall deal, including:

- The primary public benefit would be the construction of a needed flood and debris control facility at 347 Highland Place to provide added protection for the broader neighborhood from future flooding events.
- Furthermore, at a cost of no more than \$300,000, the flood control facility could be established much more efficiently than if the City were to construct the facility ourselves.
- Finally, given the CFD provision that has been negotiated with the Developer, the City's initial \$300,000 investment would be recouped over time.

Based on a combination of these factors, staff does recommend that the City Council authorize the execution of the proposed Agreement.

ENVIRONMENTAL IMPACT: There is no environmental impact associated with the approval of these agreements.

FISCAL IMPACT: The Agreement calls for the City to reimburse the Developer an amount no to exceed \$300,000 upon completion of the flood control debris basin. Furthermore, pursuant to the Agreement, the Developer would only be able to access the reimbursement upon agreeing to establish a Mello-Roos CFD property tax overlay on the property, and the funds generated from the CFD will be used to pay the City back the full amount of our initial investment towards the establishment of the flood control debris basin.

OPTIONS: The following options are provided for the City Council's consideration:

1. Approve the Surface Water and Debris Basin Construction and Maintenance Easement Agreement with 347 N. Highland Place, LLC.
2. Do not approve the agreement and provide staff with additional direction.

RECOMMENDATION: Staff recommends Option 1, approving the Surface Water and Debris Basin Construction and Maintenance Easement Agreement with 347 N. Highland Place, LLC.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to approve the Surface Water and Debris Basin Construction and Maintenance Easement Agreement with 347 N. Highland Place, LLC, and authorize the City Manager to execute the necessary documents in a form approved by the City Attorney.

Recording Requested by
and when recorded return to:

CITY OF MONROVIA
Attention: City Clerk
415 S. Ivy Avenue
Monrovia, CA 91016

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: 8503-013-004

Documentary Transfer Tax \$0.00

This Instrument is for the benefit of the City of Monrovia and is exempt from Recording Fees (Govt. Code § 27383), Filing Fees (Govt. Code § 6103), and Documentary Transfer Tax (Rev & Tax Code § 11922).

**SURFACE WATER AND DEBRIS BASIN CONSTRUCTION AND MAINTENANCE
AND SURFACE WATER, DEBRIS, AND DRAINAGE FLOW EASEMENT
AGREEMENT**

This Surface Water and Debris Detention Basin Construction and Maintenance and Surface Water, Debris and Drainage Flow Easement Agreement (“Agreement”) is made and entered into between the 347 N. Highland Place, LLC, a California limited liability company in formation (referred to below as the “Developer”) and the City of Monrovia, a municipal corporation (referred to below as the “City”) as of March 29, 2019. This Agreement shall be effective at such time that the Developer entity is formed and in good standing with the California Secretary of State.

RECITALS

A. Developer will be the record fee owner of certain real properties, which are identified as Los Angeles County Tax Assessor’s Parcel Number 8503-013-004. These real properties being acquired by Developer are referred to below collectively as the “Developer Property.” The Developer Property is described on Exhibit “A” hereto and depicted on Exhibits “B1” and “B2” hereto, which Exhibits are incorporated herein by this reference. This obligations of the City under this Agreement shall not become effective until such time that the Developer has completed acquisition of the Developer Property.

B. Developer will apply for, and City will process, a parcel map for the development of three [3] single family residences on Developer Property depicted on Exhibit B1 (the “Residential Property”). As a condition of said approval, Developer will construct a surface water, debris, and drainage detention basin to City specifications (“Basin”) on the parcel of the Developer Property depicted on Exhibit B2. Collectively, the City-approved work for Developer’s project on the Developer Property is referred to herein as the “Project.”

C. City intends to acquire an easement for access to and use of the Basin and obtain a non-exclusive easement in perpetuity for surface water, debris, and drainage flow from City property into the Basin in consideration for Developer's agreement to construct the Basin and Developer's consent to the creation of a Community Facilities District and special tax to pay the City's cost of acquiring the easement.

D. In consideration of approval of the Project and the monetary consideration described herein, Developer is willing to grant City this non-exclusive Easement and accept the responsibilities and obligations hereunder, on behalf of Developer, its heirs and assigns, in consideration of City's contribution to the cost of constructing the Basin.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE DEVELOPER AND THE CITY AGREE AS FOLLOWS:

1. Prior to the recording of the Final Subdivision Map for the Project, Developer shall fully construct and obtain all applicable permits and approvals for the Basin.

2. Every covenant, commitment and agreement of the Developer set forth herein is intended to, and does, bind the Developer, its heirs and assigns including, without limitation, the buyers of the Developer Property, or any portion, parcel or unit thereof, and any Homeowners' Association formed to manage the Developer Property. Developer shall provide notice to all persons buying or receiving the Property or portions of the Property of the existence and terms of this Agreement.

3. Upon Developer's completion of the construction of the Basin and the issuance of all necessary permits and approvals, Developer shall provide to City documentation reasonably satisfactory to City's City Manager or his designee of Developer's actual cost of constructing the Basin. Within thirty (30) calendar days following City's receipt of such satisfactory documentation, City shall reimburse Developer for Developer's actual costs of constructing the basin in an amount not to exceed three hundred thousand dollars (\$300,000.00). Costs of construction to be reimbursed to Developer shall not include any of Developer's overhead, management fees, profit or any other compensation for Developer.

4. Developer hereby consents to the creation of a Community Facilities District ("CFD") and special tax applicable to the Developer Property to, among other costs, repay the City's costs of acquiring the easement. Developer shall cooperate and participate in the process of forming the CFD including, without limitation, casting any necessary vote in favor of such formation and the imposition of a special tax or assessment, and hereby agrees that the complete formation of the CFD shall be a condition precedent to any obligation on the part of City to pay any amounts under this Agreement.

5. Developer hereby grants and conveys to the City, and to its successors and assigns, a perpetual, non-exclusive, storm water, debris, and drainage flow easement upon, through, under, over and across the Developer Property described on Exhibit "A" and depicted

on Exhibit "B2" hereto for the natural flow of surface water, debris, and drainage from City properties into the Basin ("Flow Easement").

6. The Flow Easement shall run with the land. The Developer Property is the land burdened by the covenants contained in this Agreement. Surrounding properties owned by the City are benefitted by the covenants contained in this Agreement.

7. Developer shall design, construct and maintain the Basin so that it (a) has sufficient capacity to accommodate surface water runoff from the Developer Property, as improved, together with public and private property that shall drain into the Basin, without overflow, backup or flood in the event of a ten-year storm event; and (b) accepts surface water runoff from the Developer Property and adjacent City properties.

8. Developer, or a Homeowners Association to be formed by Developer as Developer's successor in interest, shall be solely responsible for maintaining the Basin in good working order and free of excess debris. After ninety (90) day written notice to Developer or Developer's assigns, City may enter the Developer Property to clear, repair or maintain the Basin, if it is reasonably necessary in City's sole discretion to protect public health, safety and welfare as an Emergency Action to Abate an Imminent Hazard as permitted in Monrovia Municipal Code Section 8.12.170, as the same may be amended from time to time. City may charge its actual costs of such clearing, repair or maintenance to Developer, its heirs or assigns, and if such charges remain unpaid after sixty (60) days following written demand from City, as provided in Monrovia Municipal Code Section 8.12.170(G) or such other State or local law as may be applicable. Unpaid City costs shall become a lien upon each of the parcels in the Residential Property, jointly and severally, until paid.

9. Prior to the sale of any parcel in the Residential Property, Developer shall create and cause to be recorded legally adequate Declarations of Covenants, Conditions and Restrictions ("CCR") applicable to the Developer Property and each purchaser that, among other requirements, incorporate the provisions of this Agreement and extend Developer's obligations hereunder to purchasers and any Homeowners Association. Developer shall submit a draft of the CCR document to City for review and approval prior to recordation.

10. Developer agrees to hold the City harmless from any liabilities or damage to the Developer Property arising from said natural flow of surface, storm waters and drainage from any portion of the City onto said Developer Property and into the Basin.

11. To the maximum extent permitted by law, Developer shall indemnify, defend, protect, and hold harmless City, and its officers, agents, City Council members, and employees ("Indemnitees"), from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including, without limitation, attorneys' fees), to property or persons including wrongful death, arising from or in connection with, or incident to the encroachment, including (i) the approval of this Agreement, (ii) any act, omission or negligence of Developer or Developer's assigns, contractors, licensees, invitees, agents, servants or employees, or (iii) as a result of or in any way arising from the design, construction, operation, maintenance, use or failure of the Basin, and shall further indemnify and hold harmless City from and against any and all claims arising from any breach or default in the performance of any

obligations on Developer's part to be performed under the terms of this Agreement including, without limitation, the payments of any applicable prevailing wage by Developer's contractors. In case any action or proceeding is brought against Indemnitees by reason of any such claim, Developer, upon notice from any Indemnitee, shall defend the same at Developer's expense by counsel satisfactory to City, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses and Developer shall pay and satisfy any judgment, award, or decree that may be rendered against any Indemnitee. Developer shall reimburse Indemnitees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Developer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Developer or Indemnitees. Developer's duty to defend, indemnify and hold harmless hereunder shall not extend to acts or omissions which are the result of gross negligence or intentional actions of any Indemnitee. All duties of Developer in this paragraph shall survive termination of this Agreement and shall be binding upon the Developer's heirs and assigns including, without limitation, any buyer of the Developer Property, or any portion or unit thereof, and any Homeowners' Association formed to manage the Developer Property.

12. Developer shall obtain and maintain at all times Commercial General Liability insurance with a limit of at least \$2,000,000 per occurrence for bodily injury and property damage and \$2,000,000 general aggregate including premises-operations, contractual liability, personal injury and products completed operations; and Commercial Automobile Liability insurance covering all owned non-owned and hired vehicles with a limit of \$2,000,000 each accident for bodily injury and property damage. The Commercial General Liability insurance policy shall name the City, its council members, commission members, officers, and employees as additional insured as respects any covered liability arising out of Developer's performance of work under this Agreement, and the continuing maintenance and operation of the Basin. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Upon receipt of notice from its insurer Developer shall use its best efforts to provide City with thirty (30) days prior written notice of cancellation. Developer shall be responsible for notifying the City of such change or cancellation. Developer shall ensure that each contract and subcontract for the construction of the Basin includes all insurance requirements from this Agreement.

Developer and Developer's contractors shall obtain and maintain at all times during the term of this Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

Any insurance policy hereunder shall be provided by an insurer or insurers admitted and authorized to do business in the State of California and shall carry a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A" Overall and a Financial Size Category of "VII."

(a) Prior to the commencement of any work pursuant to this Agreement, Developer shall file with City the required certificate(s) of insurance with blanket additional insured endorsements, which shall state:

1. the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

2. that the Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that Developer may possess, including any self-insured retentions City may have;

3. that any other insurance the Developer does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

13. This Agreement shall not affect Developer's ownership of the Developer Property in any manner whatsoever, and City shall not acquire any rights or obligations as to the Developer Property except those specifically set forth in this Agreement. No partnership, agency or joint venture is created by this Agreement.

14. All notices and demands shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by personal delivery. Notices shall be considered given upon the earlier of (a) personal delivery, (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one (1) business day following deposit with an overnight carrier service. Notices shall be addressed as provided below for the respective party. The parties agree, however, that if any party gives notice in writing of a change of name or address to the other party, notices to such party shall thereafter be given as demanded in that notice:

CITY: City of Monrovia
415 S. Ivy
Monrovia, California 91016
Attention: City Manager

Copy to: Richards, Watson & Gershon
Attention: Craig A. Steele, City Attorney
355 South Grand Avenue
40th Floor
Los Angeles, California 90071-3101

Developer: 347 N. Highland Place, LLC
Attention: T. Bowden

Copy to: Byrne & Associates, PLC
Attention: Steven P. Byrne
139 E Olive Ave.
2nd Floor
Monrovia, CA 91016

15. City will cause this Agreement to be recorded in the Official Records of the County of Los Angeles when City accepts the Easement pursuant to a Certificate of Acceptance, and Developer hereby consents to such recording.

16. Developer hereby represents and warrants to the City that:

- a. Developer owns fee title to the Developer Property.
- b. Developer has the legal capacity to enter into this Agreement.
- c. Developer is entitled to enter into this Agreement and that all other persons, including without limitation, lenders, who may have some interests with respect to the Developer Property have approved this Agreement as may be required by applicable law or agreements to which the Developer or its predecessors may be a party, and that by entering into this Agreement the Developer is not in violation or breach of any other agreement to which such Developer may be a party.
- d. All persons who hold a deed of trust or other security interest on the Property have duly executed a Lender's Consent form satisfactory to the City Attorney and said Lender's Consents shall be attached to this Agreement.
- e. The individuals who have signed this Agreement on behalf of Developer have the legal power, right, and authority make this Agreement and bind the Developer.
- f. Developer further warrants and represents to City that there is no litigation currently pending or threatened concerning the Developer Property.
- g. This Agreement is legally valid in all respects and binding against Developer and its successors and assigns.

17. Miscellaneous Terms.

- a. *Governing Law.* This Agreement will be governed by and interpreted under the laws of the State of California.
- b. *Severability.* If any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of said Agreement will in no way be affected thereby.
- c. *Headings.* Headings are provided for convenience only and are not to serve as a basis for interpretation or construction of this Agreement or as evidence of the intention of the parties.
- d. *No Drafting Presumption.* Developer and City agree that each party has reviewed this Agreement and that each party has had the opportunity to have its counsel review and revise this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or any amendments or exhibits thereto.

e. *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and as a complete and final statement of the terms and conditions of said agreement, and will supersede any and all prior agreements or understandings relating to the same subject matter.

f. *Amendments.* No addition to, amendments to, or modification of any provision of this Agreement will be effective unless set forth in writing by Developer and City, or their respective successors and assigns.

g. *Attorneys Fees.* If either party hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions or conditions of this Agreement because of a breach of said Agreement by the other party, the prevailing party, whether by suit, negotiation, arbitration or settlement will be entitled to recover reasonable attorneys' fees from the other party.

h. *Counterparts.* Developer and City may execute this Agreement in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

i. *Successors and Assigns.* This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

j. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

IN WITNESS WHEREOF, Developer and City have entered into this Agreement as of the date set forth above.

DEVELOPER

CITY

By:_____

Oliver Chi, City Manager

By:_____

ATTEST:

Alice D. Atkins, MMC, City Clerk

APPROVED AS TO FORM:

Craig A. Steele, City Attorney

**CERTIFICATE OF ACCEPTANCE OF STORM WATER, DEBRIS,
AND DRAINAGE FLOW EASEMENT**
(Govt. Code § 27281)

This is to certify that the Storm Water, Debris and Drainage Flow Easement on portions of Assessor's Parcel Numbers 8503-013-004, in the records of Los Angeles County, California] granted to the City of Monrovia, a municipal corporation, pursuant to the attached Storm Water, Debris, and Drainage Flow Easement dated _____, is hereby accepted pursuant to Resolution No. _____ of the City Council of the City of Monrovia, adopted on _____, 201_, and the City consents to recordation thereof by its duly authorized officer.

Dated: _____, 2019

CITY OF MONROVIA

By: _____
Alice D. Atkins, MMC
City Clerk

APPROVED AS TO FORM:

By: _____
Craig A. Steele
City Attorney

DRAFT

**EXHIBIT A
LEGAL DESCRIPTION**

DRAFT

EXHIBIT B1
Residential Property

DRAFT

EXHIBIT B2
Basin Property

DRAFT

DRAFT