



Legislation Text

File #: R-18-111, Version: 3

CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

COUNCIL BILL NO. F/S R-18-111 ENACTMENT NO. _____

SPONSORED BY: Patrick Davis

RESOLUTION

F/S Consenting To The Assignment Of The Master Development Agreement For Mesa Del Sol Public Improvement Districts 1 Through 5, By And Among The City Of Albuquerque, New Mexico, Mesa Del Sol, LLC, And The Districts Recorded In The Bernalillo County, New Mexico Real Estate Records On March 3, 2008, As Amended And Supplemented, And Certain Other Related Agreements, In Connection With The Purchase Of The Property Underlying The Districts By MDS Investments, LLC, For The Purpose Of Financing Public Infrastructure Improvements Within The Districts (Davis)

CONSENTING TO THE ASSIGNMENT OF THE MASTER DEVELOPMENT AGREEMENT FOR MESA DEL SOL PUBLIC IMPROVEMENT DISTRICTS 1 THROUGH 5, BY AND AMONG THE CITY OF ALBUQUERQUE, NEW MEXICO, MESA DEL SOL, LLC, AND THE DISTRICTS RECORDED IN THE BERNALILLO COUNTY, NEW MEXICO REAL ESTATE RECORDS ON MARCH 3, 2008, AS AMENDED AND SUPPLEMENTED, AND CERTAIN OTHER RELATED AGREEMENTS, IN CONNECTION WITH THE PURCHASE OF THE PROPERTY UNDERLYING THE DISTRICTS BY MDS INVESTMENTS, LLC, FOR THE PURPOSE OF FINANCING PUBLIC INFRASTRUCTURE IMPROVEMENTS WITHIN THE DISTRICTS.

WHEREAS, the Boards of Directors of the Mesa Del Sol Public Improvement Districts 1 through 5 (the "Districts"), being public improvement districts established and existing pursuant to NMSA Sections 5-11-1 et seq., previously have approved, executed and delivered the Master Development Agreement by and among the Districts, the City of Albuquerque, New Mexico (the

“City”) and Mesa del Sol, LLC (the “Original Developer”), recorded in the Bernalillo County, New Mexico Real Estate Records on March 3, 2008, as amended and supplemented (the “Development Agreement”; capitalized terms used in this Resolution and not otherwise defined herein shall have the meanings provided in the Development Agreement); and

WHEREAS, the Original Developer (and/or its successors in interest with respect to the real property underlying the Districts, referred to herein as the “Seller”) was named as the Defendant in a certain court proceeding in the Second Judicial District Court of New Mexico known as Case No. D-202-CV-2015-05944 (the “Foreclosure”), in which the Court appointed a receiver to convey the real property underlying the Districts together with all rights and interests in the Master Development Agreement Mesa del Sol Public Improvements Districts 1 Through 5 By and Among the City of Albuquerque, New Mexico, Mesa del Sol, LLC, and Mesa del Sol Public Improvement Districts 1 through 5, with an Effective Date of March 3, 2008, pursuant to the Mesa del Sol Public Improvement Districts 1-5 Notice of Formation Resolution, recorded in the Bernalillo County, New Mexico real estate records on April 13, 2009, as Document No. 2009038714 (the “Master Development Agreement”) and all rights and interests in that certain related Bond Anticipation Reimbursement Agreement by and between Mesa del Sol, LLC and Mesa del Sol Public Improvement Districts 1-5 dated December 23, 2008 (collectively, the “Development Agreements” attached hereto as Exhibit A) (see Third Amendment to Emergency Order Appointing Receiver filed 2/19/2018); and

WHEREAS, through the Foreclosure and a series of transactions (the “Transaction”) the underlying real property and the rights under the Development Agreements were conveyed from Seller to MDS Investments, LLC (the “Purchaser”); and

WHEREAS, Section 9.H of the Master Development Agreement provides that the Master Development Agreement shall not be assigned without the written consent of the City; and

WHEREAS, the Purchaser has presented a form of a Consent to Assignment of the Development Agreements acceptable to the City (the form of Consent to Assignment is attached hereto as Exhibit B); and

WHEREAS, the Purchaser has provided satisfactory evidence to the City that each entity comprising the Seller has disclaimed any interest in the real property underlying the District and any rights under the Development Agreements and other due diligence materials and related studies (collectively the “Due Diligence Documents” attached hereto as Exhibit C).

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF

ALBUQUERQUE:

Section 1. Consent to Assignment of the District Agreements. Pursuant to the promises and the acceptance of the obligations referenced in the Consent to Assignment, the City consents to the assignment of the Development Agreements to the Purchaser and the Chief Administrative Officer of the City will execute the Consent to Assignment.

Section 2. Repealer. All ordinances or resolutions, or parts thereof in conflict with the provisions of this Resolution, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

Section 3. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provisions of this Resolution.

x:\city council\share\cl-staff_legislative staff\legislation\23 council\r-111fsfinal.doc.docxEXHIBIT A

MASTER DEVELOPMENT AGREEMENT,
AND BOND ANTICIPATION REIMBURSEMENT AGREEMENT

EXHIBIT B
CONSENT TO ASSIGNMENT AGREEMENT

EXHIBIT C
30 THREE SIXTY PUBLIC FINANCE STUDY, AND
PRO FORMA