

BOS LETTERHEAD

June 25, 2013

West Valley, LLC
c/o AKT Development Corporation
7700 College Town Drive, Suite 101
Sacramento, CA 95826
Attention: Angelo K. Tsakopoulos

AKT West Valley Investors, LLC
c/o AKT Development Corporation
7700 College Town Drive, Suite 101
Sacramento, CA 95826

Lennar Communities, Inc.
1420 Rocky Ridge Drive
Roseville, CA 95661
Attention: Larry Gualco

Lennar West Valley, LLC
Lennar Renaissance, Inc
1420 Rocky Ridge Drive
Roseville, CA 95661
Attention: Larry Gualco

Lennar Communities, Inc.
1075 Creekside Ridge Drive
Suite 110
Roseville, CA 95678
Attention: Larry Gualco

Lennar West Valley, LLC
c/o Lennar Renaissance, Inc.
1073 Creekside Ridge Drive, Suite 110
Roseville, CA 95678

Lennar West Valley, LLC
Lennar Renaissance, Inc
25 Enterprise
Aliso Viejo, CA 92656

Gentlemen:

The Board of Supervisors is pleased to inform you that they have authorized staff to put the Silva Valley Parkway Interchange Project, Project # 71328 ("Project") contract out to bid. Although there remain certain right of way proceedings to complete, the land rights to allow for construction have been obtained, right-of-way has been certified, and utilities are currently being relocated, allowing the County to bid and award the Project and to commence construction this year.

The Conditions of Approval for the West Valley Village Tentative Map, TM99-1359R¹, provide that West Valley, LLC fund in cash the difference between cost for the construction of the improvement and the amount that has been collected in the Silva Valley Parkway Interchange Set-aside Account ("Set-aside Account") at such time as the County is prepared to put the project contract out to bid. Set forth in Attachment 1 to this letter is an updated accounting of the current Silva Valley Set-aside Account, and the engineers estimate for construction of the Project, together with an accounting of other Project costs and estimates incurred to date or projected as part of the overall cost of delivering the Project. In summary, Project Costs are

¹ West Valley Village Conditions of Approval, TM99-1359, Condition 26, which is also attached to, and incorporated as though fully set forth in the Funding, Credit and Reimbursement Agreement Between West Valley, LLC and The County of El Dorado.

estimated to be \$48,617,927.00, minus the existing Set-aside funds of \$29,786,886.00², leaving a funding shortfall estimated at \$18,831,041.00. The County previously sought a SLPP grant of \$1,000,000.00 conditioned upon the construction award by June 30, 2013. The County has turned in a request to extend the grant set to be heard by California Transportation Commission in accordance with the State of California Caltrans recommendation. In the event that the SLPP conditions are modified and the grant extended, that \$1,000,000.00 would be reimbursed to the County thereby reducing the Project Costs and the resulting shortfall.

In accordance with Conditions of Approval for the West Valley Village Tentative Map, TM99-1359R, Condition No. 26, the County formally requests that West Valley, LLC deposit with the County \$18,831,041.00 (hereinafter the "Shortfall") in cash funds for the construction and completion of the Silva Valley Parkway Interchange.

Notwithstanding the above, West Valley, LLC has requested the County alternatively accept a letter of credit for the Shortfall together with cash funds of \$1,000,000.00 for immediate deposit into the Set-aside Account to be executed by West Valley, LLC, AKT Development, Inc., and Lennar Corporation. The County is concerned that the engineer's estimate of direct construction costs may exceed the cash position of the Set-aside Account at time of bid. The County is also concerned that taking a letter of credit on the back-end of the construction project, after the Set-aside Account is exhausted, will lead to cash flow and processing difficulties given the limited time to pay a contractor under the prompt pay statutes and the complications that monthly presentments under a letter of credit within that limited time frame would cause. Failure to pay construction costs within the required statutory time frames is unacceptable and can lead to additional interest and penalty costs and increased project costs.

In order to address these cash flow issues and to assure that there are sufficient funds available to the Project throughout the construction and until completion of all facets of the Project, the County would consider accepting an irrevocable letter of credit for soft project costs such as construction management, unresolved right-of-way costs, and project delivery as well as project contingencies, so long as the Set-aside Account is dedicated exclusively first for direct construction costs, and the letter of credit is available for the other costs as they become due. We have included with our letter as Attachment 2 an Agreement Re Posting of Letter of Credit that contains the substantive terms that the County requires in order for us to accept the irrevocable letter of credit in lieu of West Valley, LLC's obligation to deposit the Shortfall in cash. The Agreement Re Posting of Letter of Credit, and the irrevocable letter of credit, would need to meet the following conditions and be in the form attached:

1. No later than July 11, 2013, West Valley, LLC shall deliver the fully executed agreement in the form attached hereto, executed by West Valley, LLC, AKT Development Inc., and Lennar Corporation (hereinafter cumulatively referred to as the "Pledges") pledging that

² The County has open escrows for right of way pursuant to existing acquisition agreements as well as utility relocation agreements that are existing obligations of the Set-aside Account. Those obligations are segregated to be funded prior to or at the time of bid award, reducing the cash position of the Set-aside by approximately \$6.4 million dollars.

no later than 10 days after bid opening, the Pledges will deposit with the County the sum of \$1,000,000.00 in cash for deposit into the Set-aside Account and provide in the Pledges names an irrevocable letter of credit in the sum of the Shortfall, less the \$1,000,000.00 cash payment, currently estimated to be \$17,831,041.00, issued from a bank organized under the laws of the United States or a state having a rating by Standard and Poors of not lower than A/A-1 or Moody's or Fitch equivalent with a Northern California office for presentment acceptable to the County.

2. If Project bids are less than the current engineer's estimate, the letter of credit may be decreased to account for the lower bid price, but the \$1,000,000.00 cash deposit will not be adjusted.
3. If project bids are more than the current engineer's estimate, the letter of credit will be adjusted upwards to account for the higher bid price, alone, or in combination with additional cash deposits.
4. County will dedicate the Set-aside Account for use first to fund current right of way acquisition agreements, utility contracts, and the direct construction contract. The letter of credit will be used for the remaining project soft costs, right-of-way, contingencies, and other Project costs, and will be drawn down as those obligations come due. The letter of credit may also be drawn down for direct construction costs once the Set-aside Account is paid down to \$5,000,000.00. The remaining \$5,000,000.00 Set-aside Account balance will be used for Project close out costs and claims.
5. Upon completion and acceptance of the Project (including but not limited to project delivery, bridge and road construction and landscape mitigation and monitoring), the resolution of any construction claims and right-of-way claims, and where no further payments are contemplated by the County, any remaining balance in the Set-aside Account will be reimbursed to West Valley, LLC and the letter of credit released.

We look forward to working with you to deliver this important project for the benefit of the County and its residents.

Sincerely,

By: _____
Ron Briggs
Chairman, Board of Supervisors

Attachments

cc: Timothy D. Taron
Hefner, Stark & Marois, LLP
2150 River Plaza Drive, Suite 450
Sacramento, CA 95833-4136