



STAFF REPORT

DATE: October 4, 2016

CONSENT

ITEM #: 13

MOTION

TO: Mayor and City Council

FROM: Kristina Handt, City Administrator

AGENDA ITEM: Royal Golf Club Escrow Agreement

BACKGROUND:

Staff met with representatives of HC Golf Development LLC to discuss the next steps in the development process for the Tartan Park property (Royal Golf Club) after concept plan approval was granted. In order to facilitate the needed work and not place any financial risk on the city an escrow agreement was discussed.

ISSUE BEFORE COUNCIL:

Should the Council approve an escrow agreement with Royal Golf Club?

PROPOSAL DETAILS/ANALYSIS:

A copy of the agreement is included in your packet.

This process will allow the developer to get feedback from staff on items that are needed or of concern before a preliminary plat is submitted so that the developer will have the opportunity to produce an application that addresses staff concerns ahead of submittal. The developer will reimburse the city for all costs by first depositing an escrow of \$20,000. Once the escrow goes below \$5,000, the developer will be notified to replenish it.

FISCAL IMPACT:

All city costs will be covered by the developer.

OPTIONS:

- 1) Approve the escrow agreement with HC Golf Course Development LLC
- 2) Do not approve the escrow agreement with HC Golf Course Development LLC

RECOMMENDATION:

If removed from the consent agenda:

Motion to approve the escrow agreement with HC Golf Course Development LLC

REIMBURSEMENT AND ESCROW AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____, 2016 by and between H C Golf Course Development, LLC, a Minnesota limited liability company (the “Developer”) and the City of Lake Elmo, a Minnesota municipal corporation (the “City”).

RECITALS

- A. The Developer has filed an application with the City to amend the City’s Comprehensive Plan to allow for property that the Developer owns in the City of Lake Elmo to be developed that was previously known as “Tartan Park” (the “Property”); and
- B. Assuming that the Developer’s request to amend the Comprehensive Plan is approved, the Developer intends to file applications for preliminary plat, PUD and a conditional use permit; and
- C. In order to develop the Property as proposed by the Developer, it will be necessary for the City to extend municipal water service to the Property; and
- D. The Developer has requested the City to undertake a study that will determine what improvements will need to be constructed in order to extend municipal water service to the Property (the “Water Study”); and
- E. The City proposes to engage Focus Engineering, Inc. (“Focus”) and other consultants, if needed, to complete the Water Study; and
- F. The Developer has also requested that prior to the Developer submitting its applications for preliminary plat, PUD and a conditional use permit for the Property that City staff and consultants informally review and comment on the Developer’s proposed plans and other proposed submittals as requested by the Developer on an as-needed basis (“Informal Plan Review”); and
- G. The Developer is willing to reimburse the City for its out-of-pocket costs and expenses in completing the above engineering, legal and other work regardless of whether the Property is developed as planned; and
- H. The Developer and the City desire to enter into an agreement to provide for the prompt reimbursement of the professional costs the City incurs related to the Water Study and Informal Plan Review and to provide the City with an escrow amount to secure the reimbursement payments.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. Reimbursement of Costs. The Developer agrees to promptly reimburse the City in full for the City's reasonable and necessary legal, engineering, staff, and administrative costs directly related to the Water Study and Informal Plan Review of the Project (collectively the "Professional Costs").
2. Deposit and Use of Escrow. Within five days of the execution of this Agreement by both parties, the Developer agrees to provide the City cash escrow in the amount of \$20,000 (the "Escrow"). The City shall deposit the Escrow in its official bank and keep a separate accounting of the deposited amount. The City shall withdraw funds from the Escrow as needed to reimburse itself for the actual Professional Costs it incurs related to the Water Study and the Informal Plan Review. The City shall notify the Developer if the Escrow amount is reduced to less than \$5,000 and the Developer will be required to, within 10 days of receipt of such notice, deposit additional funds with the City in the amount indicated in the notice. The Developer is responsible for reimbursing the City for all Professional Costs the City reasonably incurs related to the Water Study and the Informal Plan Review regardless of whether the Developer receives all the required approvals to proceed with the development of the Property or if it withdraws its requests. If the Developer fails or refuses to fully reimburse the City for the City's Professional Costs, or if the Developer fails to provide the required additional funds in Escrow, the City reserves the right to suspend the Water Study or any Informal Plan Review until it is fully reimbursed for its costs and sufficient additional funds are provided to ensure the reimbursement of additional costs. Failure or refusal to fully reimburse the City its Professional Costs may also result in the City's denial of the requests made to it by the Developer for the development of the Property. Furthermore, the Developer expressly agrees that any amount it fails to reimburse the City for the City's Professional Costs constitutes a service charge collectable as provided in Minnesota Statutes Section 366.012 together with property taxes on property the Developer owns in the State.
3. Understandings. The parties to this Agreement understand and agree that plans and other documents submitted to the City by the Developer in order for City staff and consultants to review pursuant to this Agreement do not constitute an "application" by the Developer for preliminary plat, PUD or a conditional use permit for purposes of Minnesota Statutes Section 15.99 and 462.358, subdivision 3b. The Developer understands and agrees that in the event that it wishes to make an application for any these items, it will be required to submit a formal application to the City on the City's application form, provide the required application materials and pay the respective application fees. The Developer understands that approval by the City Council of the Comprehensive Plan amendment will be required before any preliminary plat, PUD or conditional use permit application will be allowed to proceed.
4. Accounting. The City shall provide the Developer with an accounting of the deductions made from the Escrow on a monthly basis.
5. Unused Funds. Any portion of the Escrow remaining after the City has been fully reimbursed for its Professional Costs shall be returned to the Developer without interest within 30 days.
6. Miscellaneous Provisions.

- a. Amendments. No modification of the terms of this Agreement is effective unless reduced to writing and signed by both parties.
- b. Binding. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.
- c. Recitals. The recitals contained herein are incorporated in and made part of this Agreement.
- d. Governing Law. This Agreement shall be governed by the laws of the State of Minnesota.
- e. Authority. The parties each represent that it has the authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Reimbursement and Escrow Agreement the day and year first above written.

**H C GOLF COURSE DEVELOPMENT,
LLC**

CITY OF LAKE ELMO

By:_____

By:_____

Mike Pearson

Its:_____

Its: Mayor

By:_____

Julie Johnson

Its: City Clerk