



AGENDA STAFF REPORT

ASR Control 07-002315

MEETING DATE: 10/23/07
LEGAL ENTITY TAKING ACTION: Orange County Flood Control District
BOARD OF SUPERVISORS DISTRICT(S): 3
SUBMITTING AGENCY/DEPARTMENT: Resources and Development Management Department (Approved)
DEPARTMENT CONTACT PERSON(S): Patricia Bigger (714) 834-6069, Josephine Álvarez (714) 834-4133

SUBJECT: Loftus Channel Agreement - California Brea Partners

Table with 3 columns: CEO CONCUR (Concur), COUNTY COUNSEL REVIEW (Approved Agreement(s) and Resolution(s)), CLERK OF THE BOARD (Consent Calendar). Includes note: 3 Votes Board Majority

Budgeted: N/A Current Year Cost: N/A Annual Cost: N/A
Staffing Impact: No # of Positions: Sole Source: N/A
Current Fiscal Year Revenue: N/A
Funding Source: N/A

Prior Board Action: No

RECOMMENDED ACTION(S)

- 1. Approve Agreement D07-24 ("Agreement") between Orange County Flood Control District (District) and California Brea Partners, L.P. (CBP) to construct certain covered channel improvements for the Loftus Diversion Channel.
2. Approve the Lease and the District's Ingress/Egress Easement Deed substantially in the forms attached to the Agreement.
3. Adopt the attached Resolution findings: that the improvements will not impede the Flood Control District's uses and purposes for the Loftus Diversion Channel; that the use of the property conforms with the City of Brea's General Plan; and that the Lease will be compatible with the City of Brea's zoning and building code ordinances, regulations, and policies .
4. Authorize the Chairman of the Board to execute Agreement upon delivery by the Resources and Development Management Department (RDMD)/Real Estate Services.
5. Direct the Clerk of the Board to return an executed copy of the Agreement to RDMD/Real Estate Services for further handling.

6. Authorize the Director of RDMD or designee, to carry out the provisions of the Agreement.
7. Authorize the Director of RDMD or designee, to approve changes to the legal description of the leasehold area to reflect the actual size and location of the surface improvements as constructed.
8. Authorize the Director of RDMD or designee to insert into the Lease, the rent to be paid based on the appraised value of \$20 per square foot times the actual square footage of the leasehold premises when final construction allows this footage to be determined; and to execute the Lease upon fulfillment of the pertinent terms of the Agreement.
9. Authorize the Director, RDMD, or designee, to accept the Ingress/Egress Easement Deed when all pertinent provisions of the Agreement have been fulfilled.
- 10 Find that the proposed project is Categorical Exempt from CEQA per Section 15301 and 15332, Class 1 and 32 of the CEQA Guidelines.

### **SUMMARY:**

Approval of (a) the Agreement with California Brea Partners, L.P. (CBP) allowing CBP to reconstruct and cover a segment of District's Loftus Diversion Channel in the City of Brea; (b) a lease for 20 years, plus three 10-year options to CBP of approximately 102,000 square feet of District property for parking, landscaping, and pedestrian walkway purposes to be utilized in conjunction with CBP's adjacent retail complex; and (c) an ingress/egress easement to District over CBP's retail complex will support reconstructing the existing open channel to make use of the covered area of the channel for parking, landscaping and pedestrian walkway purposes.

### **BACKGROUND INFORMATION:**

CBP currently owns the retail center adjacent to District's Loftus Diversion Channel at the northwesterly intersection of Imperial Highway and Associated Road in the City of Brea. As part of its redevelopment of the retail center, CBP wishes to cover the portion of the Loftus Channel which abuts the retail center and use the surface of the covered area for parking, landscaping, pedestrian walkways, and other ancillary uses.

On October 6, 1992, your Board adopted Resolution F92-33 establishing guidelines for leasing covered channel surfaces. CBP and RDMD staff have negotiated an Agreement for reconstruction of a segment of the Loftus Channel that include specifications for constructing a covered flood channel and to subsequently enter into a lease for CBP's use of the surfaced area. In addition to construction and leasing provisions, the Agreement also provides that CBP will grant the District an easement over CBP's adjacent property for District access to and from the Loftus Diversion Channel.

The term of the proposed Lease is 20 years and at the tenant's option it may be extended for three 10-year periods. Per policy guidelines of Resolution F92-33, initial annual rent is to be based on the greater of 10% of the appraised value of the surface rights or 10% of the estimated construction costs of the channel improvements. The policy also allows the tenant a rent credit equal to the channel improvement construction costs, including plan preparation and specifications costs, plus interest of ten percent compounded annually on the outstanding uncredited balance.

If rental cost was to be based on construction costs (estimated at \$2,600,000), this would result in a higher monthly rent to the District than if based on appraised value and CBP would recover 100% if its construction costs in 15 years through the allowable rent credit. If rent is based on the appraised value of \$2,040,000, rent to District would be lower and CBP would not recover its construction costs until the twenty-first year of the lease. CBP has requested that rent be based on appraised value rather than on the construction costs. RDMD staff recommends the rent be based on the appraised value contingent on the condition that rent credits be allowed only for the first 20 years of the lease, allowing CBP to recover most of its construction costs through rent credits. CBP has agreed to this condition. For the initial lease period, the rental amount will be adjusted every five years based on the cumulative Consumer Price Index (CPI) in accordance with the terms of the Lease. Thereafter, the rental amount will be adjusted at each lease extension based upon a reappraised value of the surface rights at that time.

The initial monthly rent will be based on a \$20 per square foot appraisal factor applied to the actual surface square footage constructed. The actual square footage will not be determined until construction is complete although it will not vary significantly from the initial estimate. The recommended actions authorize the Director of RDMD to determine the initial rent to be inserted into the Lease and execute it when construction is completed.

The segment of the channel that is the subject of this project is currently an open channel that accepts runoff from the upstream watershed. Based on the District's engineering projections, the need for building this segment to withstand the ultimate flood conditions is not forecasted within the District's 7-Year Plan. However, improvement of this segment of the channel to an ultimate covered channel will not only save the District from having to improve this segment in the future when construction costs will be higher, but the proposed leasing arrangement also provides an income stream to the District after expiration of the rent credits in twenty years. Furthermore, the covered channel, with the proposed landscaping and surface improvements, will improve the aesthetic condition of this highly trafficked area in the City of Brea.

#### **LEGAL REQUIREMENTS:**

**Compliance with CEQA:** In accordance with CEQA Guidelines, Section 15301 and 15332, Class 1 and 32, the proposed project is exempt from the provisions of CEQA, which reflects the independent judgment of the lead agency, Orange County and satisfies the requirements of CEQA because the project involves minor alteration of an existing public flood control facility without decreasing the drainage capacity of the channel and because the channel location involves a less than 5 acre site substantially surrounded by urban uses which will not impact natural resources or environmental habitat.

**General Plan:** The proposed project is in conformance with the General Plan of the City of Brea, pursuant to Government Code Section 65402 (b).

**Orange County Flood Control Act:** The Orange County Flood Control Act provides for leasing of District property upon Board adoption of a Resolution making certain findings regarding the proposed lease. The findings are based on evidence that is recited in the attached Resolution.

#### **FINANCIAL IMPACT:**

N/A

#### **STAFFING IMPACT:**

N/A

**EXHIBIT(S):**

Exhibit A - Location Map

Exhibit B - Lease Summary

**ATTACHMENT(S):**

Attachment A - Agreement D07-24 with attached Lease

Attachment B - Resolution