

City of Scottsbluff, Nebraska

Monday, June 2, 2014

Regular Meeting

Item Reports4

Council to consider the Developers Agreement with C & T Holdings, LLC, for the Five Oaks project and authorize the Mayor to execute the agreement.

Staff Contact: Annie Folck, City Planner

Agenda Statement

Item No.

For meeting of: June 2, 2014

AGENDA TITLE: Developers Agreement/Contract, Five Oaks Drive – Lots 1-3, & Tract 2, Block 6, Lot 8, & Tract 1, Block 14, Lot 7, Block 13, Five Oaks Subdivision and Lots 9A-12A, Block 4, amended Five Oaks Subdivision replat, and Lots 7-8, Block 5, Five Oaks Subdivision.

SUBMITTED BY DEPARTMENT/ORGANIZATION: Development Services Department

PRESENTATION BY: Rick Kuckkahn, City Manager

SUMMARY EXPLANATION: Council may authorize the Mayor to execute a contract that guarantees the improvements that will be installed as part of the Five Oaks development Paving District No. 311, which includes Five Oaks Drive – Lots 1-3, & Tract 2, Block 6, Lot 8, & Tract 1, Block 14, Lot 7, Block 13, Lots 9A-12A, Block 4, amended Five Oaks Subdivision replat, and Lots 7-8, Block 5, Five Oaks Subdivision.

BOARD/COMMISSION RECOMMENDATION: N/A

STAFF RECOMMENDATION: Staff recommends Council authorize the Mayor to execute the documents to allow for infrastructure improvements in the Five Oaks Subdivision.

EXHIBITS

Resolution ☐ Ordinance ☐ Contract ☒ Minutes ☐ Plan/Map ☐

Other (specify) ☐ _____

NOTIFICATION LIST: Yes ☐ No ☐ Further Instructions ☐

APPROVAL FOR SUBMITTAL: _____
City Manager

CONTRACT FOR PUBLIC IMPROVEMENTS

This contract is made this 29th day of March, 2014, between the City of Scottsbluff, Nebraska, a Municipal Corporation, hereafter called "City", and C & T Holdings, LLC, a Nebraska limited liability company, hereafter called "Owner".

RECITALS

1. Owner owns real estate described as follows:

Lots 1-3 and tract 2 of Block 6, Lot 8 and tract 1 of Block 14, Lot 7 of Block 13, and Lots 7-8 of Block 5, Five Oaks Subdivision and Lots 9A, 10A, 11A, 12A, of Block 4, Amended Five Oaks Subdivision replat all situated in the Northwest Quarter of Section 14, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska, known as Five Oaks Subdivision.

This real estate will hereafter be called C & T Property.

2. Certain improvements in the area which are required by the Scottsbluff Municipal Code to be constructed by the property owner have not been constructed. The parties desire to memorialize their agreement with respect to the construction of these improvements. For that purpose, Owner desires to bind itself and its successors in interest to construct the improvements in accordance with the Scottsbluff Municipal Code as hereinafter provided.

AGREEMENTS OF THE PARTIES

In consideration of the mutual promises of the parties, it is agreed as follows:

3. By November 1st, 2014 Owner shall cause to be constructed, all in accordance with the plans and specifications to be approved by the City, which approval will not be unreasonably withheld, the following:

Plug and abandon, at their current location, the water and sewer utilities previously constructed and located in Lot 3 of Block 6 of Five Oaks Subdivision. Then construct 160 feet of water and 130 feet of sewer utilities which will extend west of Five Oaks Drive in the future right-of-way of Pine Circle. The water main shall be .5' or 6" in diameter and sewer main shall be .67' or 8" in diameter and are estimated to cost \$10,320.

The parties recite their understanding that the quantities described above may change when the final plans and specifications are approved. The cost of these improvements shall be paid by the Owner.

4. All improvements described in this agreement shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and

codes adopted by the City. All the improvements shall become the property of the City immediately upon acceptance of the improvements by the City Council. Owner warrants such improvements for a period of one year from the date of the acceptance of the improvements.

5. Should Owner fail to construct the improvements, the City may do so. Owner shall reimburse the City for all costs expended by the City in constructing such improvements. All improvements described in this agreement shall be constructed in accordance with plans and specifications approved by the City and in accordance with all ordinances and codes adopted by the City. The City may at its option, assess all or any part of the unreimbursed cost of the improvements against the properties benefitted by the improvements. When any installment of special assessments is unpaid for a period of six (6) months after the same is delinquent, the City may mail written notice to Owner of that fact and demand that Owner pay such installment. If Owner fails to do so within thirty (30) days after such notice is mailed, the City may proceed by appropriate action to enforce Owner's liability as described in this paragraph. In any such action the City shall not be limited to the installments which are currently due but shall be entitled to collect the entire cost of the improvements, plus interest, less sums previously paid. Any forbearance by the City to exercise any right granted to it in this contract shall not be considered a waiver of the City's rights. Any notice under this paragraph shall be deemed properly sent if sent by certified U.S. mail, postage prepaid, to Owner at the following address:

1310 Circle Drive, Scottsbluff, Nebraska

6. To secure Owner's liability, Owner agrees to provide security consistent with the policies established by the City. The estimated cost of the improvements contemplated by Owner are agreed to be \$298,237. The parties recite their understanding that this is an estimate only and that the actual cost of the improvements may differ from the estimate. The security furnished by Owner will be in the amount of the actual cost of the improvements. It is contemplated that Owner will enter into a contract for the construction of the improvements. The actual cost of the improvements will be determined by the provisions of such contract. If the security furnished by Owner is a bond or letter of credit, the bond or letter of credit shall provide that upon demand by the City the City shall be paid all sums which the City is entitled to collect from Owner under this agreement. If the sums collected by the City under the bond or letter of credit are not sufficient to satisfy Owner's liability to the City, Owner will remain liable for the balance. The City may, at its option, assess all or any part of the amounts owed for the improvements described in paragraph 3 hereof and not covered by the bond or letter of credit and not paid for by Owner.

7. Owner agrees to participate in and not object to the creation of any special improvement districts that may be subsequently created to construct and improve the C & T Property. This paragraph will not be deemed a waiver of Owner's right to contest the extent to which it is benefitted by such special improvement district, or to contest the amount of any assessments levied against the Owner's property.

8. This agreement shall run with the land and shall bind, in addition to the parties, the successors and assigns of the respective parties.

9. The parties agree to execute a Memorandum of Contract suitable for filing in the Office of the Register of Deeds of Scotts Bluff County, Nebraska, to give notice of the fact that this Contract has been executed. Owner shall reimburse the City for the costs of filing this Memorandum of Contract.

IN WITNESS WHEREOF, the parties have set their hands the day and year first herein written.

CITY OF SCOTTSBLUFF, NEBRASKA

By _____
Mayor

Dated _____

Attest:

City Clerk

C & T Holdings, LLC, a Nebraska limited
liability company, Owner

Seal

By _____
(Title)

Dated _____

MEMORANDUM OF CONTRACT

The City of Scottsbluff, Nebraska and C & T Holdings, LLC, a Nebraska limited liability company, hereafter called Owner, give notice that they have executed an agreement dated March 29th, 2014. This agreement involves the following described real estate:

Lots 1-3 and tract 2 of Block 6, Lot 8 and tract 1 of Block 14, Lot 7 of Block 13, and Lots 7-8 of Block 5, Five Oaks Subdivision and Lots 9A, 10A, 11A, 12A, of Block 4, Amended Five Oaks Subdivision replat situated in the Northwest Quarter of Section 14, Township 22 North, Range 55 West of the 6th P.M., Scotts Bluff County, Nebraska.

The contract generally provides for the development of the real estate described above including the construction of appropriate public improvements. It describes the improvements to be constructed, contains other provisions regarding the development, and describes the rights and duties of the parties.

Parties interested in the real estate described above should inform themselves concerning the details of this contract.

Dated _____, 2014

CITY OF SCOTTSBLUFF, NEBRASKA

Mayor

Attest:

City Clerk

C & T Holdings, LLC, a Nebraska limited
liability company, Owner

By _____
(Title)