

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

RECORDED AT REQUEST OF
AND WHEN RECORDED RETURN TO:

City Clerk
City of Lake Forest
25550 Commercentre Drive
Lake Forest, CA 92630



NO FEE

2011000302797 09:58am 06/22/11

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Fee Exempt - Govt. Code §6103

**AGREEMENT FOR IMPLEMENTATION AND MODIFICATION
OF DEVELOPMENT AGREEMENT**

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR
RECORDING INFORMATION

**AGREEMENT FOR IMPLEMENTATION AND MODIFICATION
OF DEVELOPMENT AGREEMENT**

This Amendment to Development Agreement (“Amendment”), dated as of APRIL 25, 2011 (“Effective Date”), is entered into by between the CITY OF LAKE FOREST, a California municipal corporation (“City”), and IRVINE RANCH WATER DISTRICT, a California water district (“IRWD”). City and IRWD are sometimes referred to in this Agreement as “Party” and “Parties.”

RECITALS

A. City and IRWD have entered into that certain Development Agreement, recorded in the Orange County Clerk-Recorder’s Office on October 22, 2008, as document No. 2008000486878 (“Development Agreement”), for the development of residential and possible government, park, and recreational uses on 82 acres (“Project”) of certain property (“Property”) identified in the Development Agreement.

B. Section 5.30 of the Development Agreement permits the City and IRWD to enter into Implementing Agreements related to the obligations established by the Development Agreement, and Section 7.5 of the Development Agreement permits the Development Agreement to be amended by the written consent of both City and IRWD.

C. Paragraph A.2 of Exhibit F of the Development Agreement obligates IRWD, subject to terms and conditions as therein stated, to dedicate to the City land for a civic center site, and Section 9.4.1 of the Development Agreement permits IRWD to be reimbursed for the fair market value of the land dedication by a financing district, if one is created to finance the Project’s public improvement costs and “Owner’s Facilities Obligations” (as that term is defined in the Development Agreement), subject to the availability of funds from the Financing District to do so.

D. The Parties desire to provide for the future implementation of IRWD’s land dedication obligation and reimbursement right, by modifying Section 9.4.1 regarding the date of valuation for reimbursement purposes. The Parties do not intend in any way to modify IRWD’s land dedication obligation and reimbursement right except as specifically provided herein.

E. Pursuant to Section 9.4.1, IRWD may be reimbursed for the fair market value of the land dedicated for the civic center site, as calculated no more than 120 days prior to the City’s acceptance of IRWD’s dedication of the land.

F. The Parties desire to modify Section 9.4.1 to provide that reimbursement will be calculated no more than 120 days prior to the date of reimbursement.

G. Due to the volatility in the real estate market, and because the calculation of fair market value is being made solely for the purpose of reimbursement, the proposed modification of Section 9.4.1 will benefit the City and IRWD by providing a more accurate assessment of fair market value at the date of the reimbursement. Moreover, the proposed modification of Section 9.4.1 will afford IRWD greater flexibility in developing the Project under the Development

Agreement, thereby providing the City with greater assurance of timely access to the benefits of the Development Agreement.

H. The proposed implementation and modification of Section 9.4.1 of the Development Agreement has been agreed to by the City and IRWD in light of the consideration listed in Paragraph G above, in addition to the consideration contained in the Development Agreement. Moreover, the proposed implementation and modification of Section 9.4.1 mirrors the reimbursement timing offered to other Opportunities Study participants required to dedicate land to the City.

I. As required by Government Code Section 65865(c), the City Council has adopted City Council Resolution No. 2006-10, establishing procedures for the consideration and adoption of development agreements. Resolution No. 2006-10 provides for Planning Commission review of the following planning-related aspects of a Development Agreement: (1) the permitted uses of the property; (2) the density or intensity of use; (3) the maximum height and size of proposed buildings; and (4) provisions for reservation or dedication of land.

J. Because the modification at issue relates only to the timing of valuation for reimbursement through a financing district, it is not related to the planning aspects of the Development Agreement and therefore not within the reviewing purview of the Planning Commission.

AGREEMENT

NOW, THEREFORE, based upon the foregoing facts, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and IRWD hereby agree as follows:

1. Implementation and Modification. Section 9.4.1 of the Development Agreement is hereby amended in its entirety to read as follows (deletions noted by ~~strike through~~ and additions noted by underline):

At the City's discretion, Owner's Facilities Obligations and other public improvement costs may be financed through the use of a Financing District, to the extent permitted by the City's Financing District Policy. If a Financing District is established, the timing, procedure, and other details of Owner's participation in the Financing District shall be addressed in a separate agreement between the City and Owner to be approved concurrently with the formation of the Financing District. Owner is obligated under paragraph A.2 of Exhibit "F" to dedicate land to the City for City Facilities. Subject to the availability of funds from the Financing District to do so, Owner may, at its election, be reimbursed by the Financing District for land so dedicated in an amount equal to Fair Market Value of such land, as calculated no more than 120 days prior to the date of reimbursement~~City's acceptance of dedication of such land~~. Owner's status as a governmental agency will require statements and determinations pursuant to Government Code Sections 53340 and 53317(f), to allow the use of Financing Districts.

2. Effect on Development Agreement. With the exception of the modification to

Section 9.4.1 detailed in Section 1, this Agreement shall have no effect on the Development Agreement, and the terms of the Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

IRWD:

IRVINE RANCH WATER DISTRICT a
California water district

By: 
PAUL D. JONES II

Attest:

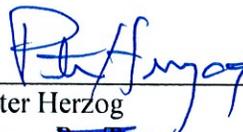
By: 
Leslie Bonkowski
District Secretary

Approved as to form:

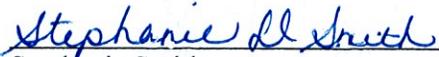
By: 
Joan C. Arneson
Bowie, Arneson, Wiles & Fiannone
District Legal Counsel

CITY:

CITY OF LAKE FOREST,
a California municipal corporation

By: 
Peter Herzog
Mayor ~~Pro Tem~~

Attest:

By: 
Stephanie Smith
City Clerk

Approved as to form:

By: 
Best, Best & Krieger LLP
City Attorney