STAFF REPORT

ITEM NO. 11

CITY OF OCEANSIDE

DATE: March 27, 2013

TO: Honorable Mayor and City Council Members

FROM: Property Management

SUBJECT: **APPROVAL OF AMENDMENTS TO THE RECREATIONAL DISPOSITION AND DEVELOPMENT AGREEMENT AND THE DISPOSITION AND DEVELOPMENT AGREEMENT FOR THE COMMERCIAL AREA AND BALANCE OF RECREATIONAL AREA DEVELOPMENT OF EL CORAZON**

SYNOPSIS

Staff recommends that the City Council approve an amendment to the Recreational Disposition and Development Agreement, and an amendment to the Disposition and Development Agreement with Sudberry Development, Inc., for the development of the multi-use athletic fields, and the commercial area and balance of the recreational area at El Corazon; and authorize the City Manager to execute the amendments.

BACKGROUND

In January 2, 2013, the City Council unanimously approved the Recreational Disposition and Development Agreement ("Recreational DDA") with Sudberry Development Inc. ("Sudberry") for the development of multi-use athletic fields at El Corazon. Concurrently, the City Council also approved the Disposition and Development Agreement ("DDA") with Sudberry for the development of the commercial area and the balance of the recreational area at El Corazon ("Commercial DDA").

Per the terms of the Recreational DDA Sudberry has the right to develop 20 multi-use athletic fields and ancillary uses (e.g., maintenance area, retention pond for watering, event staging area, etc.) for tournament use, a parking lot area, and two all-purpose fields for open play by the public together with other public amenities such as a park-like area and a pedestrian walking trail ("Recreational Development"). A condition to Sudberry's obligation to develop requires the City to provide a graded pad and other related improvements ("City Improvements") for the proposed Recreational Development.

Before the City is obligated to provide the City Improvements, the City had until March 2, 2013, to confirm the City Improvements cost and verify available funding; otherwise the City can terminate the Recreational DDA. Upon the City's confirmation of the City Improvement costs, should the City Improvements cost come in higher than what the City is willing to approve, Sudberry has 30 days in which to agree to pay the difference

and offset said amount as a rent credit under the lease agreement set forth in the Recreational DDA.

On January 2, 2013, the City Council approved plans and specifications for the City Improvements and authorized the City Engineer to call for bids. On February 26, 2013, the City opened the bids for the City Improvements. The lowest bid obtained was $1,800,000. At this time staff is only authorized to approve a bid amount of $1,400,000 for the construction of the City Improvements.

In order to develop and construct the City Improvements within the authorized amount of $1,400,000 it will be necessary to revise the grading plans and specifications. Staff is recommending at the March 27, 2013 City Council meeting that the City Council reject the bids for the El Corazon Reclamation Plan grading improvement project, approve the revised plans and specifications, and authorize the City Engineer to call for new bids.

Should the City Council approve the above item, the City would need additional time to confirm the cost of the City Improvements. In order for the City to have such an extension of time, the Recreational DDA needs to be amended. The period of time that the City would have to confirm the City Improvement costs would be extended to May 10, 2013. The time period that Sudberry has to agree to pay any difference, if applicable, would be extended to June 10, 2013.

As a result of an extension of the City's period of time to confirm the cost of the City Improvements, the commencement date of Sudberry's due diligence period under the Recreational DDA is also extended. Additionally, Sudberry's due diligence period under the Commercial DDA was tied to the approval date of the Commercial DDA, which would now expire sooner than the due diligence period under the Recreational DDA. Thus, in order to keep Sudberry's Commercial DDA due diligence expiration date and the Recreational DDA due diligence expiration date concurrent, the Commercial DDA will also be amended accordingly.

FISCAL IMPACT

There is no fiscal impact at this time as a result of the amendments to the Recreational DDA and Commercial DDA.

INSURANCE REQUIREMENTS

Sudberry will comply with the City minimum coverage requirements throughout the term of the agreements.

COMMISSION OR COMMITTEE REPORT

At the March 12, 2013, meeting of the Economic Development Commission ("EDC"), the EDC was advised of this matter.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve an amendment to the Recreational Disposition and Development Agreement, and an amendment to the Disposition and Development Agreement with Sudberry Development, Inc., for the development of the multi-use athletic fields, and the commercial area and balance of the recreational area at El Corazon; and authorize the City Manager to execute the amendments.

PREPARED BY:

Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

George Buell, Development Services Director

Marisa Lundstedt, City Planner

Scott Smith, City Engineer

AMENDMENT NO. 1
TO
RECREATIONAL DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 1 TO RECREATIONAL DISPOSITION AND DEVELOPMENT AGREEMENT (the "Amendment") is entered into this 27th day of March 2013, by and between the City of Oceanside, a public body, corporate and politic (the "City"), and SUDBERRY DEVELOPMENT, INC., a California corporation (the "Developer").

RECITALS

WHEREAS, on January 2, 2013, the City and Developer entered into a Recreational Disposition and Development Agreement ("Agreement") to establish the roles and responsibilities of the City and the Developer pending the close of escrow for the creation and commencement of the leasehold estate for the recreational development of a portion of El Corazon;

WHEREAS, the Agreement provided for a sixty (60) day period for the City to obtain and approve an estimate of the cost to perform the City Improvements required to be performed by the City pursuant to the Lease between City and Developer.

WHEREAS, the City obtained estimates of the cost to perform the City Improvements and on February 28, 2013, the City provided Developer written notice of its disapproval of the estimates obtained to perform the City Improvements and the maximum that the City is willing to approve;

WHEREAS, Developer has within thirty (30) days of City's written notice to agree in writing to pay the difference between the City's approved amount and the actual estimates;

WHEREAS, the parties are desirous of the City revising the plans and specification of the City Improvements in order to obtain lower estimates and provide for and additional period of time for the City to obtain and approve a revised estimate of the cost to perform the City Improvements; and

WHEREAS, the parties are also desirous of changing the Developer's Due Diligence Period, and the Close of Escrow date as a result of the extension of the period of time that the City has to approve the cost to perform the City Improvements.

NOW THEREFORE, in consideration of the mutual covenants, conditions and provisions contained herein, the parties hereto agree as follows:

AGREEMENT

1. Section 100.10 Escrow Closing Date. shall be amended by deleting "(b) the date that is 210 days following the Effective Date." and replaced with "(b) August 15, 2013."

2. Section 500.7 Due Diligence. shall be amended by deleting the words "...up to one hundred (100) days, commencing on the City Improvements Cost Deadline (as defined in Section 6.6.10 below)..." in the first sentence and replaced with the words "...until August 5, 2013...".

3. Section 600.6.10 City Improvement Costs. shall be amended by deleting the words "On or before 60 days after the Effective Date..." in the first sentence and replaced with the words "Before May 10, 2013..." and by deleting the words "...within 30 days..." in the third sentence and replaced with the words "by June 10, 2013,...".

4. Except as set forth in this Amendment all other terms and conditions of the Agreement shall remain in full force and effect. Should there be a conflict between this Amendment and the Agreement the terms of this Amendment shall prevail.

CITY OF OCEANSIDE
a public body, corporate and politic

BY: _____
Peter Weiss, City Manager

Dated: _____

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
JOHN P. MULLEN
Attorney

DEVELOPER:

SUDBERRY DEVELOPMENT, INC.
a California corporation

BY: _____

NAME: Colton T. Sudberry

TITLE: President

Dated: March 12, 2013

NOTARY ACKNOWLEDGEMENT OF DEVELOPER'S SIGNATURE MUST BE ATTACHED

State of California)
)ss.
County of San Diego)

On March 12, 2012 before me, Christa M. Swanson, a Notary Public, personally appeared Colton T. Sudberry who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

ST01 CHRISTA M. SWANSON ST01
COMM. #1981765
NOTARY PUBLIC • CALIFORNIA
SAN DIEGO COUNTY
Commission Expires Jun 11, 2016

AMENDMENT NO. 1
TO
DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 1 TO DISPOSITION AND DEVELOPMENT AGREEMENT (the "Amendment") is entered into this 27th day of March 2013, by and between the City of Oceanside, a public body, corporate and politic (the "City"), and SUDBERRY DEVELOPMENT, INC., a California corporation (the "Developer").

RECITALS

WHEREAS, on January 2, 2013, the City and Developer entered into a Disposition and Development Agreement ("Agreement") to establish the roles and responsibilities of the City and the Developer pending the close of escrow for the creation and commencement of the leasehold estate for the recreational development of a portion of El Corazon;

WHEREAS, on January 2, 2013, the City and Developer also entered into a Recreational Disposition and Development Agreement ("Recreational DDA") to establish the roles and responsibilities of the City and the Developer for the development of the commercial components and the balance of the recreational components of El Corazon;

WHEREAS, the parties are desirous of amending the Recreational DDA to provide for an extension of time for the City to perform certain obligations as set forth therein, which extension of time affects the Developer's Due Diligence Period therein; and

WHEREAS, the parties are desirous of amending the Agreement to have the Due Diligence Period of the Agreement coincide with the Developer's Due Diligence Period as amended in the Recreational DDA.

NOW THEREFORE, in consideration of the mutual covenants, conditions and provisions contained herein, the parties hereto agree as follows:

AGREEMENT

1. Section 500.14 Due Diligence. shall be amended by deleting the words "...up to one hundred twenty (120) days from the Effective Date..." in the first sentence and replaced with the words "...until August 5, 2013...".

3. Except as set forth in this Amendment all other terms and conditions of the Agreement shall remain in full force and effect. Should there be a conflict between this Amendment and the Agreement the terms of this Amendment shall prevail.

CITY OF OCEANSIDE
a public body, corporate and politic

BY: _____
Peter Weiss, City Manager

Dated: _____

APPROVED AS TO FORM
OCEANSIDE CITY ATTORNEY
JOHN P. MULLEN
City Attorney

DEVELOPER:

SUDBERRY DEVELOPMENT, INC.
a California corporation

BY: _____

NAME: Colton T. Sudberry

TITLE: President

Dated: March 12, 2013

NOTARY ACKNOWLEDGEMENT OF DEVELOPER'S SIGNATURE MUST BE ATTACHED

State of California)
)ss.
County of San Diego)

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

CHRISTA M. SWANSON
COMM. #1981765
NOTARY PUBLIC • CALIFORNIA
SAN DIEGO COUNTY
Commission Expires Jun 11, 2016