

**CITY OF TEMECULA  
AGENDA REPORT**

**TO:** City Manager/City Council

**FROM:** Patrick Thomas, Director of Public Works/City Engineer

**DATE:** February 14, 2023

**SUBJECT:** Approve Agreement with Rancon Commerce Center Phases 2, 3 & 4, Inc. in Connection with Overland Drive Extension Project – PW16-06

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**PREPARED BY:** Amer Attar, Engineering Manager  
Paula Gutierrez Baeza, City Attorney’s Office

**RECOMMENDATION:** That the City Council:

1. Adopt a resolution entitled:

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEMECULA APPROVING AGREEMENT BETWEEN CITY OF TEMECULA AND RANCON COMMERCE CENTER PHASES 2, 3 & 4, INC. IN CONNECTION WITH OVERLAND DRIVE EXTENSION PROJECT, PW16-06

2. Authorize the City Manager to approve and execute the agreement between City of Temecula and Rancon Commerce Center Phases 2, 3 & 4, Inc. in Connection with Overland Drive Extension Project, PW16-06 in substantially the form attached to the agenda report, and take all necessary actions to effectuate the transactions described in the agreement.

**BACKGROUND:** The City previously acquired certain property interests from five parcels in connection with the Overland Drive Extension Project, PW16-06 (Project). The Project extended Overland Drive from Commerce Center Drive to Enterprise Circle West. It included the demolition of two buildings, construction of the roadway, curb, gutter, sidewalks, handicap access ramps, storm drains, adjustment of utilities, signing, striping, landscaping, and irrigation. The Project improved traffic circulation and access to Overland Drive. At the December 10, 2019 meeting, the City Council accepted the improvements and directed the City Clerk to file the Notice of Completion. On January 15, 2020, the Notice of Completion was recorded as Document Number 2020-0019782 of Official Records of the County of Riverside.

The City acquired three entire parcels in fee, and permanent easements and temporary construction easements on the remaining two parcels. Specifically, the City acquired the following real property interests in fee for the construction of the Project (referred to below collectively as the “Subject Property Interests”):

- Real property commonly known as 27499 Commerce Center Drive, Temecula, and identified as Riverside County Tax Assessor’s Parcel Number (APN) 921-480-031 pursuant to a Grant Deed recorded on October 15, 2013 as Document No. 2013-0491640 of Official Records of the County of Riverside.
- Real Property commonly known as 27495 Enterprise Circle West, Temecula, and identified as APN 921-480-013 pursuant to a Grant Deed recorded on August 29, 2012 as Document No. 2012-0412158 of Official Records of the County of Riverside.
- Real property commonly known as 27498 Enterprise Circle West, Temecula, and identified as APN 921-480-020 pursuant to a Grant Deed recorded on June 8, 2012 as Document No. 2012-0264726 of Official Records of the County of Riverside.

The Subject Property Interests are subject to a Declaration of Protective Covenants for Rancon Commerce Center, Phases 2, 3 & 4, Inc. recorded on October 14, 1986 as Instrument Number 254851 of Official Records of the County of Riverside, and any and all amendments and or modifications to said Declaration of Protective Covenants (collectively referred to as “Declaration of Protective Covenants”). The only outstanding items in connection with the Project are the de-annexation of the Subject Property Interests from the Declaration of Protective Covenants and the compensation due to the Association for the impact of said removal, landscape improvement costs, landscape maintenance costs, and related matters.

The Rancon Commerce Center Phases 2, 3 & 4, Inc., a California non-profit mutual benefit corporation (“Association”) has certain interests in the Subject Properties pursuant to the Declaration of Protective Covenants. The Association also has certain maintenance easement rights over the Landscape Maintenance Areas, Common Areas, and Storm Drain System described in the Declaration of Protective Covenants.

The City’s acquisition of the Subject Property Interests and construction of the Project impacted assessments received by the Association for the Subject Properties and certain Landscape Maintenance Areas. Accordingly, on September 5, 2013, the City extended a written offer to the Association to compensate the Association for the impact to the Association of the City’s acquisition of the Subject Properties in connection with the Overland Drive Extension Project. The offer included compensation to the Association for the impacts in connection with the City’s acquisition of the Subject Properties and construction of the Overland Drive Extension Project, including compensation relating to the assessments for the Subject Properties and landscape improvement and maintenance costs. The Declaration of Protective Covenants does not contain a provision that allows the Association’s Board of Directors to de-annex or remove properties from the Declaration of Protective Covenants in situations where said properties are acquired by a public

entity for a public use, such as the construction of public street improvements for the Overland Drive Extension Project. Accordingly, the City and Association discussed that it was necessary to enter into an Agreement to set forth the compensation to the Association and terms and obligations of the Parties and to set forth the procedures necessary to de-annex the Subject Properties from the Declaration of Protective Covenants in connection with the City's construction of the Project.

The Association wished to defer final negotiations until the construction was completed to confirm the final impacts of the acquisition of the Subject Properties and construction of the Project on the interests of the Association. The City completed the construction of the Project in fall of 2018. The City Council accepted the improvements for the Project and directed the City Clerk to file the Notice of Completion on December 10, 2019. On January 15, 2020, the Notice of Completion was recorded as Document Number 2020-0019782 of Official Records of the County of Riverside.

The City and the Association continued their good faith negotiations after the City completed the construction of the Project. The Association recently received final comments from its landscape contractor regarding the Project and its impact on the Landscape Maintenance Areas. The Parties have reached an agreement, subject to approval of the City Council, to resolve all issues relating to the de-annexation of the Subject Properties from the Declaration of Protective Covenants, the total just compensation that the City will pay to the Association in connection with the Association's interests in the Subject Properties pursuant to the Declaration of Protective Covenants, impacts to the assessments the Association will receive based on the de-annexation or removal of the Subject Properties from the Declaration of Protective Covenants, and costs and obligations relating to the Landscape Maintenance Areas; and regarding the transfer from the City to the Association of certain remnant parcels that were created as a result of the construction of the Project.

#### **Total Consideration Pursuant to Agreement**

Pursuant to the Agreement, the City will pay to the Association the Total Compensation of \$112,439.16 (One Hundred Twelve Thousand Four Hundred Thirty-nine Dollars and Sixteen Cents) ("Total Compensation"). The Total Compensation of \$112,439.16 consists of the following:

1. \$41,800 (Forty-One Thousand Eight Hundred Dollars) as the total monetary compensation for the Association's interests pursuant to the Declaration of Protective Covenants recorded against the Subject Properties acquired by the City in connection with the present value calculations of the quarterly assessment fees for the Subject Properties.
2. \$31,000 as the reasonable replacement costs of the monument signs impacted by the Project based on the estimate provided by Miko Mountainlion, Inc.
3. \$39,639.16 for replacement of damaged landscaping and the landscape improvement costs.
4. The Agreement also provides that the City will pay up to \$10,000 towards the reasonable administrative and legal costs of the Association relating to the removal or de-annexation of subject properties from Declaration of Protective Covenants. Under the Agreement, the City will issue a warrant payable to the Rancon Commerce Center Phases 2, 3 & 4 Inc. for

the reasonable administrative and legal costs within 14 business days of receiving an invoice itemizing said costs.

The Association conducted a meeting of the members of the Association to conduct a vote to amend the Declaration of Protective Covenants to facilitate de-annexation or removal of the Subject Properties from the Declaration of Protective Covenants. Section 9.2.1 of the Declaration of Protective Covenants provides that the Declaration of Protective Covenants “may be terminated, extended, modified or amended, with the written consent of the property owners of Lots comprising 66 2/3% (Sixty-Six and Two-Thirds Percent) of the Net Acres contained in the Rancon Commerce Center business park.” The Association informed the City that at least 66 2/3% of the membership voted to approve the Second Amendment to the Declaration of Protective Covenants, which authorizes the Board of Directors to de-annex certain properties from said Declaration of Protective Covenants in accordance with the amended Sections 18.2, 18.3, and 18.4. The Second Amendment to Declaration of Protective Covenants for Rancon Commerce Center Phases 2, 3 & 4, Inc. was recorded on March 16, 2021 as Document Number 2021-0166996 of Official Records of the County of Riverside. Accordingly, the Agreement provides that the Association and Board of Directors will take necessary actions, including recording an Amendment to the Declaration of Protective Covenants to remove or de-annex the Subject Properties from said Declaration of Protective Covenants within 60 days of the Effective Date of the Agreement.

The Agreement also provides that as part of the consideration, the City will transfer to the Association pursuant to Quitclaim Deeds the Remnant Areas on the remainder portions of two of the Subject Properties that were created as a result of the construction of the Project. The Remnant Areas are approximately 10,776 square feet in size and are comprised of (i) an approximate 6,859 square foot portion of Lot 25 of Tract Map 16178 and (ii) an approximate 3,917 square foot portion of Lot 14 of Tract Map 16178, which are described more particularly in the Quitclaim Deeds attached as Exhibit “B-3” and Exhibit “B-4” to the Agreement.

**FISCAL IMPACT:** The Overland Drive Extension Project is identified in the City’s Capital Improvement Program (CIP) Budget for Fiscal Year 2023-27. It is funded with Development Impact Fees (DIF) Street Improvements, and the General Fund. The total compensation the City will pay to the Association under this Agreement is \$112,439.16 plus an amount not to exceed \$10,000 towards the reasonable administrative and legal costs of the Association in connection with the de-annexation of the Subject Properties from the Declaration of Protective Covenants. Sufficient funds are available in the Project accounts to cover these costs.

- ATTACHMENTS:**
1. Resolution
  2. Agreement with Exhibits
  3. Project Description
  4. Property Location Map