



Meeting Date: 12/14/10

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Dean Yamamoto, Park Maintenance Supervisor Agenda Item No. I-6

Reviewed By: City Manager [Signature] City Attorney SMF Finance [Signature] Other (Specify) _____

DATE: December 6, 2010

TO: City Council

FROM: Michael Henderson, General Services Superintendent
City Manager's Office [Signature]

SUBJECT: RiverPark Community Facilities District (CFD No. 5) License Agreement

RECOMMENDATION

That City Council approve and authorize the Mayor to execute Agreement No. A-7375 with RiverPark A, LLC and RiverPark B, LLC in the amount of \$1.00 for the maintenance of areas within the RiverPark Community Facilities District (CFD) not currently accepted by the City.

DISCUSSION

The RiverPark CFD was established in fiscal year 2005 - 2006 with the understanding that as public improvements were made the CFD would be able to fund the maintenance of these areas. Some landscaped medians and turf parkway improvements have been completed. Normally, the City does not accept dedication of property for maintenance until the final asphalt cap on the public streets is applied. Typically this is done after the development is completely built out. The RiverPark CFD No.5 is the largest CFD area within the City and has a large highly visible commercial component. The slow down in the economy caused the RiverPark development build out to slow as well, leaving a patch work of improved landscaped areas within the CFD development. In order to maintain the quality and consistency of the development, it is in the City's best interest to acquire these improved landscaped areas as they become completed within the development and build out of the development continues.

In December 2007, the original License agreement (4216-07-PW) was created to give the City the ability to maintain these public areas within the RiverPark CFD that had been improved but that the City had not yet officially accepted. This license agreement would continue to allow the City to maintain areas within the CFD prior to officially accepting dedication of the property and the entire CFD area.

The City currently maintains approximately 8 acres of landscaped medians and 5.8 acres of turf parkways. In addition to these landscaped areas the City is also responsible for approximately 3,100

Subject/Permit
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street trees. The maintenance cost of these areas is being funded by existing RiverPark CFD assessments. Cost for this additional maintenance is approximately \$310,000 and is included in the current assessments being collected.

FINANCIAL IMPACT

There is no financial impact to the City and there will be no increased in CFD assessments.

MH/ch

Attachment #1 - License Agreement

LICENSE AGREEMENT

This License Agreement ("License") is entered into effective this ____ day of _____, by and between the City of Oxnard ("Licensee" or "City") and RiverPark A, LLC, and RiverPark B, LLC (collectively "Licensor").

WHEREAS, Licensor owns the property shown on the attached Exhibit A (the "Property") consisting of landscaped areas, medians and parkways; and

WHEREAS, Licensor has irrevocably dedicated the Property to the City for public purposes; and

WHEREAS, the City, upon application of Licensor, has formed Community Facilities District No. 5 to, among other things, levy and collect taxes to fund maintenance of the Property; and

WHEREAS, the City is not prepared to accept dedication of the Property as of the date of this License because the Property also includes public streets which are not ready for acceptance at this time; and

WHEREAS, Licensor desires to make the Property available to Licensee in order for Licensee to conduct maintenance activity on portions of the Property that are complete, available for public use and otherwise ready for acceptance (the "Activity").

NOW, THEREFORE, Licensee and Licensor agree:

1. License Granted.

- A. On the conditions and as provided in this License, Licensor grants to Licensee a license to conduct the Activity on the Property.
- B. The fee for this License is \$1.00, receipt of which is acknowledged.

2. License Area.

Exhibit A attached hereto identifies the streets and areas of the Property where maintenance shall be conducted. Exhibit B identifies areas where tree maintenance within the Property shall be conducted.

3. Term of License.

The term of this License shall begin on the date this License is executed by all parties, and shall terminate when the City accepts dedication of the Property, but no later than three (3) years from the date of this License. This License may be renewed upon mutual written agreement.

4. Maintenance Activity Acceptance and Phasing.

Specific portions of the Property shall be identified and made subject to the license and the City's conduct of the Activity as follows:

- A. Licensor shall identify areas approximately ninety (90) days in advance of the date upon which Licensor believes that the areas will be complete and ready to turn over to Licensee for maintenance and so notify Licensee.
- B. The areas to be turned over will be identified by maps labeled with Agreement No. A-7375, and with signature blanks for the City and Licensor. Signature by the City Manager, who may act through a designee, shall indicate the City's acknowledgement of additional completed property that will become subject to maintenance pursuant to this License agreement.. When the map is signed by the City, the areas shall become subject to maintenance by the City. The map(s) for each area shall be attached to this License and maintained as part of this License in the files of the City Clerk of the City of Oxnard.

5. [Intentionally Omitted].

6. Indemnity.

- A. Licensee agrees to indemnify, hold harmless and defend the Licensor from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this License performed by Licensee or its agents, employees, or other persons acting on Licensee's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which Licensee or its agents, employees or other persons acting on Licensee's behalf would be held strictly liable.
- B. Licensor agrees to indemnify, hold harmless and defend the Licensee from any and all liability, claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this License performed by Licensor or its agents, employees, or other persons acting on Licensor's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which Licensor or its agents, employees or other persons acting on Licensor's behalf would be held strictly liable.

- C. Both parties believe that it is proper and appropriate for Licensee to maintain the Property, despite the fact that Licensor owns the Property, subject to the irrevocable dedication, since Community Facilities District No. 5 was funded for the stated purpose of maintaining the Property among other facilities. In any event, however, Licensor specifically agrees to indemnify, defend and hold harmless Licensee against and from any claim that Licensee may not use Facilities District No. 5 funds to maintain the Property or that Licensee cannot or should not maintain the Property.

7. Governing Law.

The construction and interpretation of this License and the right and duties of the Licensee and Licensor hereunder shall be governed by the laws of the State of California.

8. Notices.

- A. Any notices to Licensee may be delivered by mail addressed to City Manager's Office, 300 W. Third Street, Fourth Floor, Oxnard, California 93030, with a copy to: City Attorney's Office, Attention: Alan Holmberg, 300 W. Third Street, Suite 300, Oxnard, California 93030.
- B. Any notice to Licensor may be delivered by mail addressed to: Riverpark Legacy, LLC 1250 Corona Pointe Court, Suite 600, Corona, CA 92879, Attention: John Vander Velde.

9. Assignment.

Licensee may not delegate its rights or duties under this License without the written consent of Licensor, which consent may not be unreasonably withheld for any reason, provided, Licensee may use contractors to perform work.

10. Successors and Assigns.

This License shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Licensee and Licensor, for the benefit of the Property.

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ATTACHMENT NO. 1

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11. Entire Agreement.

This License constitutes the entire agreement of Licensee and Licensor regarding the subject matter hereof and supercedes all prior communications, agreements and promises, either oral or written.

CITY OF OXNARD

Dr. Thomas E. Holden, Mayor

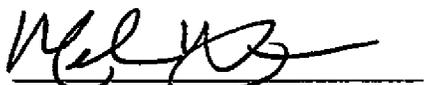
ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:


Alan Holmberg, City Attorney

APPROVED AS TO INSURANCE:


Mike More, Risk Manager

APPROVED AS TO CONTENT:


Michael Henderson,
General Services Superintendent

RIVERPARK A:

RIVERPARK A, L.L.C.,
a Delaware limited liability company

BY: RiverPark Development, LLC, a
Delaware limited liability company,
its Sole Member

By: Riverpark Legacy, LLC,
a Delaware limited liability company,
its Sole Member

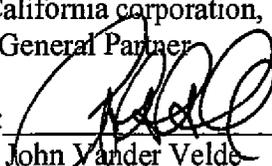
By: Shea Riverpark Developers, LLC,
a Delaware limited liability company,
its Manager

By: Shea Homes Limited Partnership,
a California limited partnership,
its Managing Member

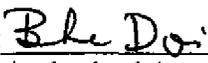
By: J.F. Shea, L.P.,
a Delaware limited partnership,
its General Partner

By: JFS Management, L.P.,
a Delaware limited partnership,
its General Partner

By: J.F. Shea Construction Management, Inc.,
a California corporation,
its General Partner

By: 

John Vander Velde
Authorized Agent

By: 

Blake Doi
Authorized Agent

RIVERPARK B:

RIVERPARK B, L.L.C.,
a Delaware limited liability company

BY: RiverPark Development, LLC, a
Delaware limited liability company,
its Sole Member

By: Riverpark Legacy, LLC,
a Delaware limited liability company,
its Sole Member

By: Shea Riverpark Developers, LLC,
a Delaware limited liability company,
its Manager

By: Shea Homes Limited Partnership,
a California limited partnership,
its Managing Member

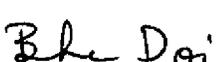
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its General Partner

By: 

John Vander Velde
Authorized Agent

By: 

Bala Doi
Authorized Agent

ATTACHMENT NO. 1

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