


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



Glen R. Googins for Michael Shirey
City Attorney

Dated: 9/2/14

FIRST AMENDMENT TO RESTATED AND AMENDED
PRE-ANNEXATION DEVELOPMENT AGREEMENT
BETWEEN
OTAY LAND COMPANY, LLC AND
THE CITY OF CHULA VISTA

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF CHULA VISTA
276 Fourth Ave.
Chula Vista, CA 91910

Attention: City Clerk

(Space Above For Recorder's Use)

**FIRST AMENDMENT TO RESTATED AND AMENDED PRE-ANNEXATION
DEVELOPMENT AGREEMENT**

This FIRST AMENDMENT TO RESTATED AND AMENDED PRE-ANNEXATION DEVELOPMENT AGREEMENT (First Amendment) is entered into and effective as of September 9, 2014, by and between Otay Land Company, LLC, a Delaware limited liability company (Owner) and the City of Chula Vista, a political subdivision of the State of California (City).

RECITALS

A. On or about May 12, 1997, City and The Otay Ranch, L.P., a California Limited Partnership (the "Original Owner") entered into that certain Restated and Amended Pre-Annexation Development Agreement (Development Agreement) recorded in the San Diego County Recorder's Office on May 12, 1997, as Document No. 2008-0218696.

B. Pursuant to section's 2.6, 15.1 and 16.1 of said Development Agreement, Owner acquired its interest in portions of the property subject to the Development Agreement, said property being described on Exhibit A, Exhibit B and Exhibit C attached hereto and incorporated herein by this reference.

B. On or about April 9, 2008, City and Owner entered into that certain Land Offer Agreement (LOA) recorded in the San Diego County Recorder's Office on April 24, 2008, as Document No. 2008-0218696 and subsequently amended on or about February 26, 2013, recorded in the San Diego County Recorder's Office on March 20, 2013, as Document No. 2013-0176117.

C. City and Owner wish to amend the Development Agreement in accordance with the terms and provisions of the LOA.

D. Unless otherwise defined herein, capitalized terms as used herein shall have the same meaning as given thereto in the Development Agreement.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and City agree as follows:

1. Term. The following language shall be added to the end of the last sentence of the first full paragraph of Section 3 of the Development Agreement:

"from May 28, 2013, the date upon which the City may accept the Offers of Dedication in Sections 3.3 of that certain "Land Offer Agreement" by and between the City and Otay Land Company, LLC, a Delaware limited liability company, approved by the City Council on or about May 12, 2008."

2. Tentative Map/Permit Duration. Section 6.2 of the existing Development Agreement, entitled "Length of Validity of Tentative Subdivision Maps," is hereby deleted in its entirety and replaced with the following:

"6.2 Tentative Map/Permit Duration." Pursuant to California Government Code section 66452.6, any tentative subdivision map, parcel map or other map authorized by the State Subdivision Map Act that is approved for the Project shall remain valid for a period of time equal to a term of this Agreement. In addition, notwithstanding any condition or provision to the contrary, every permit and approval for the Project other than ministerial approvals shall remain valid for a period of time equal to "the term of this Agreement."

3. Growth Management. The second full paragraph of Section 5.2 appearing at page 8 of the existing Development Agreement, entitled "Development of Property," which begins "Notwithstanding the foregoing," shall be deleted in its entirety and replaced with the following:

"Notwithstanding any provision of this Agreement to the contrary, the City's Growth Management program, as set forth in the Growth Management Element of the City General Plan, applicable to the Project shall be those in effect on the date the City approves the Land Offer Agreement referenced in Section 3 hereof "

4. Modifications to Existing Project Approvals. The following sentence shall be added to the end of Section 5.2.3 of the existing Development Agreement:

"The parties agree that they accept the modifications to the Existing Project Approvals approved by the City Council on December 17, 2013 and June 3, 2014."

5. Reimbursement. At the end of the first sentence of Section 7.5 of the existing Development Agreement, entitled "Facilities Which are the Obligations of Another Party, or are of Excessive Size, Capacity, Length or Number," a new sentence shall be inserted as follows: "City shall not require such monies or improvements unless City provides reasonable assurance of funding or reimbursement in accordance with State law and/or the City's ordinances."

6. No Further Modification. Except as set forth in this First Amendment, all of the terms and provisions of the Development Agreement shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, this Amendment has been executed as of the day and year first above written.

CITY OF CHULA VISTA, a political
subdivision of the State of California

OTAY LAND COMPANY, LLC,
a Delaware limited liability company

EXECUTED BY:

EXECUTED BY:

Cheryl Cox, Mayor



Erin N. Ruhe, Vice President

ATTESTED BY:

Donna Norris, City Clerk

APPROVED AS TO FORM

Glen R. Googins, City Attorney