

ORDINANCE NO. 2015-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, APPROVING A TEN-YEAR EXTENSION OF THE TERM OF THE EXISTING DEVELOPMENT AGREEMENT BETWEEN JRM-ERTC I, A CALIFORNIA LIMITED PARTNERSHIP, AND THE CITY OF ESCONDIDO FOR THE DEVELOPMENT OF THE ESCONDIDO RESEARCH AND TECHNOLOGY CENTER AND PUBLIC BENEFITS

Planning Case No. PHG 15-0017

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That notice of the public hearing has been given and a public hearing has been held before the City Council on this issue.

SECTION 2. That the City Council previously adopted Ordinance 2002-34(R), approving a Development Agreement for the development of the Escondido Research and Technology Center (Planning Case No. 2001-01-DA/CZ/GPA/SPA,) which will expire December 31, 2015.

SECTION 3. That the City Council previously reviewed and approved on December 11, 2002, the Environmental Impact Report (ER 2001-12) and associated Mitigation Monitoring Program, CEQA Findings, and Findings of Overriding Consideration pertaining to the original Development Agreement, Planning Case No. 2001-01-DA/CZ/GPA/SPA, and related case Tract 834.

SECTION 4. That the application was assessed in conformance with the

California Environmental Quality Act and that a Notice of Exemption for the use of a previous document was issued on October 26, 2015.

SECTION 5. That upon consideration of the staff report and all public testimony presented at the hearing held on this request, the City Council finds that this extension of the Development Agreement and public benefits for an additional ten years is consistent with the General Plan and all applicable specific plans of the City of Escondido.

SECTION 6. That the City Council desires at this time, and deems it to be in the best public interest, to approve the ten-year extension of the Development Agreement with JRM-ERTC I, a California Limited Partnership, which is attached as Exhibit "A" and is incorporated by this reference.

SECTION 7. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 8. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 9. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido

PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 18th day of November, 2015 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MORASCO, ABED

NOES : Councilmembers: NONE

ABSTAIN : Councilmembers: MASSON

ABSENT : Councilmembers: NONE

APPROVED:



SAM ABED, Mayor of the
City of Escondido, California

ATTEST:



DIANE HALVERSON, City Clerk of the
City of Escondido, California

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO : ss.
CITY OF ESCONDIDO)

I, DIANE HALVERSON, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2015-21 passed at a regular meeting of the City Council of the City of Escondido held on the 18th day of November, 2015, after having been read at the regular meeting of said City Council held on the 4th day of November, 2015.



DIANE HALVERSON, City Clerk of the
City of Escondido, California

ORDINANCE NO. 2015-21

RECORDING REQUESTED BY:

CITY CLERK, CITY OF ESCONDIDO

WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF ESCONDIDO
201 N. BROADWAY
ESCONDIDO, CA 92025

THIS SPACE FOR RECORDER'S USE ONLY

RECORDING FEES EXEMPT PER GOVERNMENT CODE SECTION 27383

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT between
CITY OF ESCONDIDO and JRM-ERTC I, a California Limited Partnership
EXTENDING THE TERM OF THE DEVELOPMENT AGREEMENT.**

This First Amendment to Development Agreement ("First Amendment") is entered into by and between the CITY OF ESCONDIDO, a municipal corporation ("City"), and JRM-ERTC I, a California Limited Partnership ("JRM" or "Owner"), collectively the "Parties," on the date the ordinance adopting this First Amendment becomes effective (the "Effective Date").

RECITALS

- A. Whereas, on or about January 10, 2003, City, Owner, and Palomar Energy, LLC entered into a Development Agreement; and
- B. Whereas, Section 3.1 of the Development Agreement terminates a party's interest in the Development Agreement upon the issuance of a certificate of occupancy. Palomar Energy received a certificate of occupancy equivalent issued by the State of California Energy Commission, thus terminating Palomar Energy's interests in the Development Agreement to which this First Amendment applies; and
- C. Whereas, pursuant to Section 3.2 of the Development Agreement, Owner never assigned any rights or obligation under the Development Agreement in conjunction with the transfer of fee title to any of the portions of the property that were the subject of the Development Agreement. Thus, there are no new parties who hold any interests in the Development Agreement to which this First Amendment applies; and
- D. Whereas, Section 3.3 of the Development Agreement provides that the Development Agreement may be amended by the mutual consent of the Parties; and
- E. Whereas, by this First Amendment, City and Owner intend to complete the accomplishment of certain public and private benefits as set forth in the Development Agreement by extending the Development Agreement for a period of 10 years through December 31, 2025.

NOW, THEREFORE, City and Owner agree as follows:

1. Interest of Owners.

Article 1, Section 1.2 of the Agreement, shall be amended and replaced as follows:

1.2 Interest of Owners. Owner directly or through affiliate entities, is the legal and/or equitable owners of certain real property totaling approximately 31 gross acres, located within the southwest edge of the City of Escondido in San Diego County (the "Property") that remains the subject of the Development Agreement to which this Amendment applies; more particularly described as follows:

LOTS 2-5, 10-15, 16-19, 23-26, 37-38 and remainder parcels a-g, INCLUSIVE, OF ESCONDIDO TRACT NO. 834, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14983, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY MARCH 17, 2005.

2. Extension of the Term of the Agreement.

Article 3, Section 3.1, paragraph 1 of the Agreement, shall be amended as follows:

3.1 Term of Agreement. The term of the Agreement (the "Term") shall commence on the Effective Date of this First Amendment and shall continue until December 31, 2025, unless terminated, modified, or extended as permitted by the Agreement.

3. Conflict of State or Federal Laws.

Article 3, Section 3.8 of the Agreement shall be amended and replaced as follows:

3.8 Conflict of State or Federal Laws. If state or federal laws or regulations enacted after the Effective Date prevent compliance with any provision of this Agreement or require changes in the Entitlements or any Future Entitlements, the federal or state law or regulation shall be controlling and the Parties shall make a good faith and objectively reasonable attempt to modify this Agreement to comply both with the intent of this Agreement and with the new law or regulation.

Specifically, the City anticipates that the California Regional Water Quality Control Board, San Diego Region ("RWQCB") will amend Order R9-2013-0001 to further define the term prior lawful approval. Based on current proposed language by the RWQCB, projects on this Property may not be eligible for the prior lawful approval exception. Owner acknowledges that Owner will likely have to comply with the requirements of Order R9-2013-0001 and that the City makes no representations as to the ability for projects on this Property to qualify for the prior lawful approval exception. Owner agrees not to bring a suit or claim against the City for any interpretation of the prior lawful approval exception by the City.

The City shall assist Owners in securing any permits, including permits from other public agencies, which may be required as a result of the modifications, suspensions, or alternate course of action.

4. Permitted Fees.

Article 4, Section 4.6 of the Agreement shall be amended and replaced as follows:

4.6 Permitted Fees. Owner shall pay all fees in effect on a City wide basis at the time payment of those fees become due. Specific development impact fees otherwise payable upon issuance of building permits for the industrial park, shall be deferred to issuance of a certificate of occupancy.

5. Enhancement of recreation, open space habitat preservation, and public multi-use trails.

Article 5, Section 5.8 of the Agreement shall be added as follows:

5.8. Enhancement of recreation, open space, and public multi-use trails. Owner has constructed an existing ERTC business park trail consisting of an approximately 12-foot wide decomposed granite multi-use path ("Existing Trail"). Owner agrees to dedicate easements where the Existing Trail may need minor realignment or slight modification to better accomplish the trail extension.

5.8.1 Multi-use trail. Owner agrees to dedicate easements to the City over Owner's property for a matching extension of the Existing Trail as generally described and depicted on Exhibit "1," attached hereto ("Trail Extension"). Owner agrees to either (i) fund the cost of construction or (ii), at Owner's election, construct the Trail Extension.

In connection with the proposed Trail Extension above, City shall be responsible at its sole cost and expense for obtaining all necessary permits, environmental compliance, and the acquisition of rights of way and/or easements required, if any, for the Trail Extension (collectively "City's Obligations"), other than those rights of way or easements dedicated by Owner.

Upon City's completion of the City's Obligations, City shall give notice to Owner to either (i) make payment of the Owner's Trail Obligation or (ii) to construct the Trail Extension in lieu of payment. If Owner elects to construct the Trail Extension, Owner and City shall meet and confer for the purpose of agreeing upon a schedule; whereafter, Owner shall diligently pursue completion of the improvements in accordance with the schedule. Owner shall start construction within one (1) year from the City's completion of the City's Obligations and finish within three (3) years thereafter, unless a different schedule is agreed upon by both Parties in writing. If Owner elects to pay the Owner's Trail Obligation, payment shall be made ninety (90) days after the notice.

If the City is unable to obtain necessary right of way within three-years of the Effective Date, then the Owner shall make payment of ½ of the Owner's Trail Obligation, which amount

shall fulfill Owner's Trail Obligation in full. The Owner's Trail Obligation payment below shall be in an amount equal to the cost estimate prepared by the Engineer of Work and approved by the City and Owner, exclusive of any direct or indirect costs of City fees, staff time, design, permits, environmental compliance, and the acquisition of rights of way and/or easements required; provided, however, the Owner's Trail Obligation payment shall not exceed \$100,000 ("Owner's Trail Obligation").

5.8.2 Park Enhancements. Owner agrees to contribute \$30,000 to the City for improvements to facilities at Kit Carson Park in the City of Escondido within ninety (90) days from the Effective Date of this First Amendment.

[SIGNATURES ON FOLLOWING PAGE]

This First Amendment to the Development Agreement has been executed by the parties as of the dates set forth below:

CITY OF ESCONDIDO, a municipal corporation

DATED: _____

By: _____
Sam Abed, Mayor

DATED: _____

By: _____
Diane Halverson, City Clerk

JRM-ERTC I, a California limited partnership

DATED: _____

By: _____
JRM-Holding, Inc., G.P.
James R. McCann

APPROVED AS TO FORM AND CONTENT:

By: _____
Jeffrey R. Epp, Esq.
City of Escondido

APPROVED AS TO FORM AND CONTENT:

By: _____
Jeffrey A. Chine, Esq.
Legal Counsel, JRM-ERTC I
A California Limited Partnership

| | | |
|-------------------|-------------|-----------------------|
| CITY OF ESCONDIDO | Project No. | 8' D. G. Hiking Trail |
| | SHEET | |

THIS GRAPHIC DEPICTS A GENERAL ALIGNMENT OF THE PROPOSED TRAIL. A DETAILED TRAIL ALIGNMENT SHALL BE DETERMINED PRIOR TO CONSTRUCTION

EXHIBIT 1

