

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **MAY 13, 2008**

From:  **JAMES DURFEE / ALBERT RICHIE** 

Subject: **DRY CREEK COMMUNITY PARK — SATISFACTION OF OBLIGATIONS**

ACTION REQUESTED / RECOMMENDATION: Approve the attached Agreement of Satisfaction of Obligations Relating to Park Acquisition and Improvement Agreement (Satisfaction Agreement) with the Dry Creek West Placer Community Facilities District No. 2001-1 (CFD) participating property owners (Developer) providing for reimbursement to the Developer in the amount of \$169,786.27 and authorize the Chairman to execute the Agreement.

BACKGROUND: The Dry Creek Community Park is a planned 34-acre active recreation park to be constructed east of Walerga Road between Baseline Road and PFE Road in the Dry Creek area. Amenities include baseball and soccer fields, tennis courts, horseshoe pits, volleyball courts, tot lots, snack bar, group and family picnic facilities, and an equestrian arena. The park also includes a staging area which connects to a regional trail system, a 77 space parking lot and a maintenance building. On May 29, 2001, Placer County entered into a Park Acquisition and Improvement Agreement (PAIA) with the Developer. The PAIA obligated the Developer to acquire the park site, provide improvement plans for park construction and construct \$250,000 worth of early stage improvements to the park. The Developer has fulfilled its obligations under the PAIA and incurred out of scope costs in the amount of \$89,615.45 for professional services and \$80,170.82 for grading, for a total of \$169,786.27, and is entitled to be reimbursed by the County.

The PAIA identified rough grading as the priority improvement to be constructed by the Developer. Following consultation with County Parks' staff, the Developer incurred design costs that exceeded the requirements of the PAIA, including architectural design of the maintenance and restroom buildings, payment of fees, geotechnical oversight of the rough grading and redesign of the irrigation system to eliminate a holding pond following recent changes in the City of Roseville's commitment of water capacity through their recycled water system. The additional water capacity from Roseville, while necessitating additional design costs, will result in lower construction costs and on-going maintenance costs of the holding pond thereby benefiting the County. Staff has reviewed the various invoices of actual costs incurred and determined that the Developer incurred \$89,615.45 in out-of-scope professional service costs. Staff recommends the Developer be reimbursed for these costs.

In addition, to take advantage of efficiencies in the work, the Developer agreed to rough grade the entire park site. Staff has reviewed invoicing and determined the cost of grading improvements attributable to the park site is \$330,170.82. The PAIA only required the Developer to perform work in the amount of \$250,000. Staff recommends the Developer be reimbursed for \$80,170.82 for these costs incurred.

ENVIRONMENTAL CLEARANCE: A Negative Declaration has been prepared for the Dry Creek Community Park Project (EIAQ 3432), and the Planning Commission approved a Conditional Use Permit (CUP) on May 25, 2000. The Satisfaction Agreement provides reimbursement for work within the scope of the approved CUP.

FISCAL IMPACT: The total anticipated cost of Dry Creek Community Park is estimated at \$6,000,000. There is currently \$2,500,000 appropriated in the Capital Projects Final Budget for this project. This amount is a combination of County Service Area Zone of Benefit reserves of \$500,000 and Area 13 Park Dedication Fees of \$2,000,000. There are funds available to reimburse the Developer from this project account.

AVAILABLE FOR REVIEW AT THE CLERK OF THE BOARD OF SUPERVISORS: PARK ACQUISITION AND IMPROVEMENT AGREEMENT, DATED MAY 29, 2001

ATTACHMENT: AGREEMENT

CC: COUNTY EXECUTIVE OFFICE

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DRY CREEK WEST PLACER COMMUNITY FACILITIES DISTRICT NO. 2001-1

**AGREEMENT OF SATISFACTION OF OBLIGATIONS
RELATING TO PARK ACQUISITION AND IMPROVEMENT AGREEMENT**

THIS Agreement of Satisfaction of Obligations Relating to the Park Acquisition and Improvement Agreement (“Satisfaction Agreement”) is made and entered into by and between the County of Placer, a political subdivision of the State of California (“County”), and the Dry Creek West Placer Community Facilities District No. 2001-1 (“CFD”) participating property owners, Morgan Creek Residential L.L.C.; Riolo Greens Partnership; Doyle Family Trust; and Forecast Group, L.P., (hereinafter collectively referred to as “Developer”).

WITNESSETH

WHEREAS, on May 29, 2001, the County and Developer entered into the Park Acquisition and Improvement Agreement (“Park Agreement”) pertaining to the establishment and construction of improvements for the County’s Dry Creek Community Park (“Park”), and

WHEREAS, County agrees Developer has fulfilled its obligations under the Park Agreement to acquire the Park property, provide Park improvements, and prepare and provide the County with Park improvement plans, and

WHEREAS, County agrees Developer has performed additional work pertaining to the Park improvements and to plan preparation in excess of that required under the Park Agreement and that additional work provides value to County and Developer is entitled to be reimbursed for said expenditures, and

WHEREAS, County and Developer wish to memorialize their agreement as to the reimbursement due to Developer for said work as provided in this Satisfaction Agreement,

NOW, THEREFORE, IT IS HEREBY AGREED:

AGREEMENT

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated by reference.
2. **Park Improvement Obligation.** County agrees that Developer has satisfied its obligations to provide Park Improvements with a total cost of at least two hundred fifty thousand dollars (\$250,000.00) (the “Improvement Obligation”) as described in Sections 2 and 6 of the Park Agreement. County agrees that Developer has performed additional work to improve the Park property in excess of the requirements under the Park Agreement, and that the additional work has added value to the Park. County has verified the costs thereof and agrees to pay Developer the sum of Eighty Thousand One Hundred Seventy Dollars and Eighty-Two Cents (\$80,170.82) to reimburse it for said additional work. Developer accepts said amount as full satisfaction of any amount due for said work.

3. **Acquisition of Park Property.** County agrees that Developer has satisfied its obligation to acquire and dedicate to County the Park property as described in Section 3 of the Park Agreement.

4. **Improvements Security.** County agrees that the Improvements Security required under Section 4 of the Park Agreement may be released

5. **Improvement Plans/Construction Drawings.** County agrees that Developer has satisfied its obligation to prepare and provide County with Park improvement plans and construction drawings as described in Section 5 of the Park Agreement. County agrees that Developer has performed additional work to prepare the Park improvement plans in excess of the requirements under the Park Agreement and that the additional work has value to the County. County has verified the costs thereof and agrees to pay Developer the sum of Eighty-Nine Thousand Six Hundred Fifteen Dollars and Forty-Five Cents (\$89,615.45) to reimburse it for said additional work and associated permit fees. Developer accepts said amount as full satisfaction of any amount due for said work. Developer agrees to provide to County all of the documents pertaining to the Park improvement plans and construction drawings and hereby transfers and assigns to County any and all ownership and use rights thereto.

6. **Notice.** Any notice to this Agreement, including change of address of either party shall be in writing and may be personally served, or sent by prepaid first class mail to, the respective parties as follows:

COUNTY
Department of Facility Services
11476 C Avenue
Auburn, CA 95603
Attn: Andy Fisher

DEVELOPER
Dry Creek-West Placer CFD Owners
c/o Dave Cook
Towne Consulting, LLC
1512 Eureka Road, Suite 205
Roseville, Ca 95661

7. **Entire Agreement.** This Agreement and any attachments hereto constitute the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties concerning the subject matter addressed herein, and supercedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

8. **Construction and Interpretation.** It is agreed and acknowledged by the parties that the provisions of this Agreement have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

9. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

10. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties.

11. **Authority to Execute Agreement.** Each party represents that it has the legal authority to enter into this Agreement and to perform its obligations hereunder.

12. **Counterpart.** This Agreement may be signed in counterpart and all counterparts together constitute one document.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date and year executed by County.

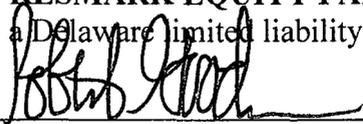
“DEVELOPER”

MORGAN CREEK RESIDENTIAL, LLC
a Delaware limited liability company

By: **OMCR MANAGER, LLC**
a Delaware limited liability company, its manager

By: **ORA CALIFORNIA II, LLC**
a Delaware limited liability company, its manager

By: **RESMARK EQUITY PARTNERS, LLC**
a Delaware limited liability company, its manager

By: 
Robert N. Goodman
President

Dated: April 8, 2008

RIOLO GREENS PARTNERSHIP

By: **TOWNE DEVELOPMENT OF SACRAMENTO, INC.**
a California corporation, its successor in interest

By: _____
Jeff Pemstein
General Manager

Dated: _____

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“DEVELOPER”

MORGAN CREEK RESIDENTIAL, LLC
a Delaware limited liability company

By: **OMCR MANAGER, LLC**
a Delaware limited liability company, its manager

By: **ORA CALIFORNIA II, LLC**
a Delaware limited liability company, its manager

By: **RESMARK EQUITY PARTNERS, LLC**
a Delaware limited liability company, its manager

By: _____
Robert N. Goodman
President

Dated: _____

RIOLO GREENS PARTNERSHIP

By: **TOWNE DEVELOPMENT OF SACRAMENTO, INC.**
a California corporation, its successor in interest

By: _____
Jeff Penstein
General Manager

Dated: 2-8-01

DOYLE FAMILY TRUST, THOMAS E. DOYLE, ROBERT DOYLE, AND KATHERINE SREDNICK, TENANTS IN COMMON

By: Kirk Doyle, Attorney in fact Dated: 2/11/08
Kirk Doyle
Attorney in Fact

FORECAST GROUP, LP

By: **K HOVANIAN FORECAST HOMES NORTHERN, INC.**
a California corporation

By: _____ Dated: _____
Richard Balestreri
Senior Vice President

"COUNTY"

PLACER COUNTY BOARD OF SUPERVISORS

_____ Dated: _____
Jim Holmes, Chair, Board of Supervisors

APPROVED AS TO FORM

Sally Gray Dated: 4-15-08
Deputy County Counsel

Dry Creek CFD Park Satisfaction Agt

DOYLE FAMILY TRUST, THOMAS E. DOYLE, ROBERT DOYLE, AND KATHERINE SREDNICK, TENANTS IN COMMON

By: _____
Kirk Doyle
Attorney in Fact

Dated: _____

FORECAST GROUP, LP

By: **K HOVANIEN FORECAST HOMES NORTHERN, INC:**
a California corporation

By: _____

Richard Balestreni
Senior Vice President

Dated: March 19, 2008

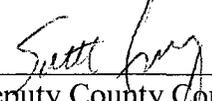
"COUNTY"

PLACER COUNTY BOARD OF SUPERVISORS

Jim Holmes, Chair, Board of Supervisors

Dated: _____

APPROVED AS TO FORM



Deputy County Counsel

Dated: 4-15-08

Dry Creek CFD Park Satisfaction Agt

