

CITY CLERK - CONTRACTS SCAN SHEET

CONTRACT #: 11275

CONTRACTING PARTY: RANCHO SAN JOAQUIN HOMEOWNER
ASSOCIATION

CONTRACT DATE: 02/28/2021

EXPIRATION DATE:

DESCRIPTION: AGREEMENT AND RELEASE - UNIVERSITY
DRIVE WIDENING PROJECT BETWEEN SAN
JOAQUIN ROAD AND CULVER DRIVE

AMOUNT: \$17,887.50

DEPARTMENT: CITY MANAGER

ITEM #:

MEETING DATE:

AGREEMENT AND RELEASE

This Agreement and Release (the “**Agreement**”) is entered into as of February 28, 2021 (the “**Effective Date**”), by and between the Rancho San Joaquin Homeowner Association (“**RSJ HOA**”) and the City of Irvine (“**Irvine**”). RSJ HOA and Irvine are referred to herein collectively as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. Irvine is constructing a roadway widening project that includes, but is not limited to, the portion of University Drive between San Joaquin Road and Culver Drive (the “**Project**”).

B. RSJ HOA is the homeowners’ association for a tract of homes that is generally adjacent to and north of University Drive in the area of the Project. Within that tract of homes, the roadways that are closest to University Drive are Montanas Sud and Vista. RSJ HOA is the owner of certain real property that is (i) between the homes on the south side of Montanas Sud/Vista and University Drive, and (ii) between the homes east of Rana and Culver Drive (collectively the “**HOA Property**”).

C. The residential community served by the RSJ HOA was constructed in 1974, when University Drive was a four lane road with no left-turn lanes, bike lanes, or traffic lights. Over the years, University Drive has expanded to three lanes in each direction, plus additional left-turn lanes, bike lanes, and a traffic light. A June 2020 LS Associates traffic study forecast that the current volume of average daily trips on University Drive will increase from 46,800 to 61,500 by 2025.

D. RSJ HOA claims that the impacts of the University Drive roadway expansion has had, and will have, adverse impacts on the community that RSJ HOA serves, and that the RSJ HOA can avoid those impacts through both (i) construction of an enhanced landscape privacy screen planted along the top of the landscaped berm behind the homes at 2-16 Montanas Sud and 2-6 Vista; and (ii) continuation of the landscaped buffer/screening behind 16 Vista north along Culver Drive for approximately another 250 feet, to provide further protection for homes at 16 Vista and 16-20 Rana.

E. RSJ HOA has requested that the Irvine contribute seventeen thousand eight hundred eighty-seven dollars and fifty cents (\$17,887.50) toward the Private Improvements (the “**Payment**”). Without admitting liability or responsibility for the Private Improvements, the City has agreed to provide the Payment to RSJ HOA, in exchange for RSJ HOA’s (i) agreement to expeditiously complete the Private Improvements, and (ii) waive and release any claims RSJ HOA has, or may have, against the City with regard to the Project.

AGREEMENT

NOW, THEREFORE, based upon the foregoing Recitals, and the terms, conditions, and covenants herein, the Parties hereto agree as follows:

FINAL

1. **Confirmation of Recitals.** The Parties hereby represent and warrant that the factual statements made in the above Recitals are true and accurate.

2. **Settlement Payment.** Within ten (10) business days of the full execution of this Agreement, Irvine shall pay and RSJ HOA shall accept the total lump sum Payment from Irvine, in full consideration and settlement of all claims that were made or could have been made by RSJ HOA against Irvine and any other Irvine officials, officers, employees, agents, and representatives arising from or relating to the Project. The Payment shall be made available for pick up to a RSJ HOA board member at Irvine City Hall (1 Civic Centr Plaza, Irvine), and shall be made made payable to "Rancho San Joaquin Homeowners Association", 22 Arboles, Irvine, CA 92612.

3. **Private Improvements.** RSJ HOA shall diligently and expeditiously complete the Private Improvements.

4. **General Release.** In consideration for this Agreement and the Payment, RSJ HOA hereby releases and forever discharges the Irvine and all other former and current Irvine officials, officers, employees, agents, representatives, attorneys, insurance companies, joint powers authorities of which they are a part, and divisions or affiliated organizations, whether previously or hereafter affiliated in any manner (the "**Released Parties**"), from any and all claims, demands, causes of action, obligations, damages, attorneys' fees, costs, expenses, and liabilities of any nature whatsoever, whether or not now known, suspected, or claimed, which RSJ HOA ever had, now has, or ever may claim to have as of the date of this Agreement against the Released Parties (whether directly or indirectly), or any of them, by reason of any act or omission, arising from or relating to the Project ("**Claims**").

5. **Discovery of Different or Additional Facts.** RSJ HOA acknowledges that it may hereafter discover facts different from or in addition to those it now knows or believe to be true with respect to the Claims that are the subject of the release set forth in Paragraph 4 of this Agreement, and it expressly agrees to assume the risk of the possible discovery of such additional or different facts, and agrees that this Agreement shall remain effective in all respects regardless of such additional or different facts.

6. **Release of Unknown Claims.** The release set forth above in Paragraph 4 of this Agreement is a general release of ALL Claims that are described in the release, and is intended to encompass all known, unknown, foreseen, and unforeseen claims that RSJ HOA had, has, or may have against Irvine and any other Irvine officials, officers, employees, agents, and representatives with regard to the Project. RSJ HOA expressly agrees to waive and relinquish all rights and benefits it may have under Section 1542 of the Civil Code of the State of California, and any law of similar effect. Section 1542 of the Civil Code of the State of California reads as follows:

§ 1542. [General release; extent] A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.



RSJ HOA Initials

7. **Non-Admission of Liability.** The Parties to this Agreement acknowledge and agree that this Agreement resolves potential Claims. Neither the fact that the Parties have entered into the Agreement nor the terms of this Agreement shall be construed in any manner as an admission of any fault, wrongdoing, or liability or responsibility by Irvine, or any other Irvine officials, officers, employees, agents, and representatives.

8. **No Assignment of Claims.** RSJ HOA warrants that it has made no assignment, and will make no assignment, of any claim, chose in action, right of action, or any right of any kind whatsoever, embodied in any of the Claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the Claims referred to herein.

9. **Successors and Assigns.** This Agreement, and all of the terms and provisions hereof, shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, legal representatives, successors, and assigns.

10. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that, prior to signing this Agreement, they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment. The Parties further specifically represent that, prior to signing this Agreement, they have conferred with their counsel to the extent desired concerning the legal effect of this Agreement.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement, or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the Parties to this Agreement. Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each Party hereto in order to become effective.

12. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

13. **Severability.** Should any portion, word, clause, phrase, sentence, or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

14. **Governing Law.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced, and governed under the laws of said State without giving effect to conflicts of laws principles.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) set forth below.

Date: ~~February~~, 2021
Mar 2, 2021

CITY OF IRVINE

Marianna Marysheva

By: Marianna Marysheva
Its: Interim City Manager

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP
Jeffrey T. Melching

Jeffrey Melching
Attorney for City of Irvine

Date: February 28, 2021

RANCHO SAN JOAQUIN HOMEOWNER
ASSOCIATION

Mari Fujii

By: Mari Fujii
Its: Rancho San Joaquin HOA Board Member