

CITY OF FAIRFIELD
IMPROVEMENT AGREEMENT
VILLAGES AT FAIRFIELD –
PORTLAND DRIVE & STRASSBERGER DRIVE SEWER PLANS
Rancho Tolenas Corp.

THIS IMPROVEMENT AGREEMENT ("Agreement"), for purposes of identification dated _____, 2020 is made and entered into by and between the **CITY OF FAIRFIELD**, a municipal corporation, hereinafter referred to as "City," and **RANCHO TOLENAS CORP., a California Corporation**, hereinafter referred to as "RTC."

RECITALS:

A. RTC has presented to City a Development Plan of land for the Villages at Fairfield (the "Development") located within the corporate limits of City, the plan having been prepared in accordance with the requirements of the City Engineer.

B. This Agreement concerns improvements commonly referred to as the **Portland Drive & Strassberger Drive Sewer Plans** (the "Required Improvements"), all of which are incorporated into the plans and specifications of the Development.

C. In accordance with the First Amendment to the Second Amended and Restated Development Agreement between the City and RTC, dated February 20, 2019 ("DA"), the parties agreed to enter into Improvement Agreements for the public improvements to be constructed at the Development.

D. RTC has requested approval of the plans prior to the construction and completion of the Required Improvements, including, but not limited to: upsizing and extending existing sewer mains along Strassberger Drive and Portland Drive, abandoning existing sewer mains within aforementioned streets, connecting the existing Bedford Falls subdivision to new sewer infrastructure, completing utility improvements up to the new Fairfield-Suisun Sewer District ("FSSD") lift station for future connection, and abandoning existing sewer lift station upon activation of the future FSSD lift station, as required by the City Engineer and the Ordinances of the City heretofore approved by the City Council of the City of Fairfield.

AGREEMENTS:

The parties hereto agree as follows:

1. The General Contractor: City acknowledges and agrees that RTC is not a licensed contractor but that RTC will be contracting with a licensed general contractor (the "General Contractor") who will furnish, construct and install the Required Improvements pursuant to this Agreement. The contract between RTC and General Contractor for completion of the Required Improvements is referred to herein as the Construction Contract.

2. Performance of Work: RTC agrees to furnish, construct, and install at their own expense, or cause to be furnished, constructed, and installed, all Required Improvements as shown on the plans and specifications of the Development, a copy of which is on file in the Office of the City Engineer and is incorporated herein by reference, along with any changes and modifications as may be required by the City Engineer due to errors of omission on the plans.

3. Work; Satisfaction of the City Engineer: All of the work on the Required Improvements is to be done at the places, with the materials, and in the manner and at the grades, all as shown upon the approved plans and specifications and the City's Standard Specifications and Details as authorized via Fairfield City Council Resolution 2014-93, and to the satisfaction of the City Engineer. Except as provided in the Development Agreement, no building permits or occupancy will be allowed for any building which fronts on improvements required by this Agreement until those improvements are constructed and approved by the City Engineer and the following conditions are satisfied:

- (a) An all-weather access to the building area within the right-of-way shall be constructed consisting of a minimum six inches of aggregate base rock.

4. Work; Time for Commencement and Performance: City fixes the time for the commencement of the work to be done on the day following approval of this Agreement, and for its completion to be within twelve (12) months thereafter. A pre-construction meeting, to be held prior to start of construction, is required.

5. Time of Essence; Extension: Time is of the essence of this Agreement, but the dates for commencement and completion of the work of construction may be extended as herein provided. The City Engineer may extend those dates for delays in the work actually caused by inclement weather, riots, strikes, lockouts, fires, earthquakes, floods and conditions resulting there from. Extension of the dates for any other cause shall be made only by the City Council. The City Engineer and City Council shall be the sole and final judge as to whether good cause has been shown to entitle RTC to an extension.

6. Request for Extension; Granting: Requests for extension of commencement and completion date shall be in writing, and shall be delivered to City in the manner hereinafter specified for services of notices. Extensions, if granted, shall be in writing; an oral extension shall not be valid for any purpose whatsoever.

7. Extension; No Release of Obligations: In the event it is deemed necessary by the City to extend the time of commencement or completion of the work to be done under this Agreement beyond the dates specified herein, such extension as shall be granted shall in no way release any guarantee given by RTC pursuant to this Agreement, or to relieve or release those providing improvement security pursuant to this Agreement. The sureties in executing the bonds shall be deemed to have expressly agreed to any such extension of time.

8. Extension; Conditions: The granting of any extension may be conditioned upon RTC providing City with new or amended surety bonds in amounts increased to reflect increases in the costs of constructing the Required Improvements that have occurred prior to the granting of the extension or are likely to occur prior to the completion of work.

9. Improvement Security: Concurrently with the execution hereof, RTC shall furnish City:

- (a) Improvement security in the sum of \$1,950,000, which sum is equal to one hundred ten percent (110%) of the estimated cost of constructing the Required Improvements, rounded up, and the cost of any other obligation to be performed by RTC hereunder, securing the faithful performance of this Agreement.
- (b) Separate improvement security in the sum of \$975,000, which sum is equal to fifty-five percent (55%) of the estimated cost of constructing the Required Improvements, securing payment to the General Contractor, its subcontractors, and to persons furnishing labor, materials, or equipment to them for the construction of the Required Improvements.

The form of the improvement security shall be subject to the approval of the City Attorney. Improvement security shall be reduced or released by City only in the manner provided by the Ordinances of the City. No change, alteration, or addition to the terms of this Agreement or the plans and specifications accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this Agreement.

10. Engineering and Inspection Fee: RTC shall:

- (a) Pay to the City an engineering plan check fee of 1.35% of the total cost of the Required Improvements, as estimated by the City Engineer, less the initial plan check fee of one percent (1%) of the total cost paid upon submittal of improvement plans. The total amount of this fee still due is

$$(1.35\% \times \$1,767,874) - \$12,662.00 = \underline{\$11,204}.$$

- (b) Pay to the City an inspection fee of five and a half percent (5.5%) of the total cost of the Required Improvements, as estimated by the City Engineer, being:

$$5.5\% \times \$1,767,874 = \underline{\$97,233}$$

Fee includes only items of work to be inspected by the City. It is understood that such fee covers only those inspections and engineering work performed by the City during the normal working hours of the City.

- (c) Deposit sixty-four dollars (\$64.00) for each street sign to be installed in accordance with the attached plans, being $\$64.00 \times \text{N/A} = \N/A .
- (d) Pay to the City forty-nine dollars (\$49.00) for each stop sign to be installed in accordance with attached plans, being $\$49.00 \times \text{N/A} = \N/A .
- (e) Deposit twenty-two dollars (\$22.00) for each end-of-street barricade sign to be installed in accordance with the attached plans, being $\$22.00 \times \text{N/A} = \N/A .

11. Hold Harmless Agreement: RTC will indemnify, hold harmless and assume defense of, in any actions of law or in equity, the City of Fairfield, its officers, employees, agents, and elective and appointive boards from all claims, losses, damage, including property damage, personal injury, including death, and liability of every kind, nature and description, directly or indirectly arising from the operations of RTC, General Contractor or any subcontractor, or of any person directly or indirectly employed by, or acting as agent for RTC, General Contractor or any subcontractor, but not including the sole or active negligence or willful misconduct of the City of Fairfield. This indemnification shall extend to claims, losses, damages, injury and liability for injuries occurring after completion of the work as well as during the work's progress.

Acceptance of insurance certificates required under this Agreement does not relieve RTC from liability under this indemnity and hold harmless clause. This indemnity and hold harmless clause shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of RTC's, its General Contractor's or any subcontractor's operations regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

12. Contractor's Insurance: RTC shall not commence work under this Agreement or permit its General Contractor or any subcontractor to commence work thereunder until RTC shall have obtained or caused to be obtained all insurance required under this paragraph and such insurance shall have been approved by the City Engineer of City as to form, amount, and carrier. The insurance shall be maintained in force and effect until the completion of work under this Agreement and the acceptance thereof by City. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements, and shall specifically bind the insurance carrier.

- (a) **WORKER'S COMPENSATION INSURANCE**: RTC shall obtain and maintain (or cause to be obtained and maintained) workers' compensation insurance for all RTC and General Contractor employees employed at the site of improvement. Proof of a qualified self-insurance program is acceptable. RTC shall require any sub-contractor similarly to provide workers' compensation insurance for all of the subcontractor's employees, unless such employees are covered by the protection afforded by RTC or the General Contractor. In case any class of employees engaged in work under this Agreement at the site of the project is not protected under any workers' compensation law, RTC shall provide, and shall cause General Contractor and each subcontractor to provide, adequate insurance for the protection of employees not otherwise protected. RTC hereby agrees to indemnify City for any damage resulting to it from failure of General Contractor or any subcontractors to take out or maintain such insurance. RTC shall provide the City Engineer with a certificate of insurance indicating workers' compensation coverage prior to engaging in any activity required by this Agreement.
- (b) **LIABILITY INSURANCE**: RTC, at its sole expense, shall obtain and maintain (or cause to be obtained and maintained) an insurance policy or policies, issued by an insurer or insurers as defined by the California Insurance Code with an A.M. Best rating of B+/XII or A-/VII or better, providing the City, its officers, employees, and agents, named as additional insureds under the policy, broad form property damage, personal injury,

automobile, employers', and comprehensive form liability insurance in the amount of not less than \$3 million per occurrence. By the terms of the insurance policy or policies, such insurance shall be deemed primary insurance, and no other insurance effected by the City or other named insureds will be called upon to cover a loss covered thereunder.

In the event that any of the insurance policies provided for in this Section 12 insures any entity, persons, boards, or commissions other than those mentioned in this paragraph, such policy shall contain a standard form of cross-liability endorsement, insuring on such policy City, its elective and appointive boards, commissions, officers, agents, and employees, RTC, General Contractor and any subcontractor performing work covered by this Agreement. All stated minimum levels of insurance may be met by a combination of primary, excess, and umbrella insurance, including any fronting or captive insurance, provided Indemnatee is endorsed as an additional insured with regard to all such excess coverage.

City agrees that the insurance requirements in this Section 12 may be satisfied with insurance furnished by the General Contractor that meets such insurance requirements. In its contract with the General Contractor, RTC agrees to require the General Contractor to agree to include in their(its) subcontracts with all of its subcontractors (a) the same requirements and provisions of this Agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the subcontractors' work, and (b) the requirement that the subcontractors include such provisions in the subcontracts, if any, that such subcontractors enter into with their subcontractors.

13. Evidence of Insurance: RTC shall furnish the City Engineer prior to commencement of any work hereunder, with satisfactory evidence of the insurance required, and evidence that each carrier is required to give City at least thirty days prior notice of the cancellation or reduction in coverage of any policy during the effective period of this Agreement.

14. Title to Improvements: Title to and ownership of all improvements constructed hereunder shall vest absolutely in City upon completion and acceptance of such improvements by City.

15. Repair or Reconstruction of Defective Work: If, within a period of one year after final acceptance of the work performed under this Agreement, any improvement or part of any improvement furnished and/or installed or constructed, or caused to be installed or constructed by RTC, or any of the work done under this Agreement fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, RTC shall without delay and without any cost to City, repair or replace or reconstruct, or cause to be repaired or replaced or reconstructed, any defective or otherwise unsatisfactory part or parts of the work or structure. Should RTC fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before RTC can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work, and RTC shall pay to City the actual cost of such repairs plus fifteen percent (15%) within thirty (30) days of the date of billing for such work by City.

16. Neither RTC nor General Contractor Are Agent of City: Neither RTC nor General Contractor nor any of RTC's or General Contractor's agents or subcontractors are or shall be considered to be agents of City in connection with the performance of the obligations under this Agreement.

17. Notice of Breach and Default: If RTC refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will ensure its completion within the time specified, or any extension thereof, or fails to obtain completion of the work within such time, or if RTC should be adjudged a bankrupt, or RTC should make a general assignment for the benefit of RTC's creditors, or if a receiver should be appointed in the event of RTC's insolvency, or if RTC or its General Contractor or any of their subcontractors, agents, or employees should violate any of the provisions of this Agreement, City Engineer may serve written notice upon RTC and RTC's surety of breach of this Agreement, or of any portion thereof, and of default of RTC hereunder.

18. Breach of Agreement: Performance by Surety or City: In the event of any such notice, RTC's surety shall have the duty to take over and complete the work and the improvement herein specified; provided, however, that if the surety within fifteen (15) days after the serving of such notice of breach upon it does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within fifteen (15) days after notice to City of such election, City may take over the work and prosecute the same to completion by contract, or by any other method City may deem advisable, for the account and at the expense of RTC, and RTC's surety shall be liable to City for any excess cost of damages occasioned City thereby; and in such event, City, without liability for so doing, may take possession of and utilize in completing the work, such materials, appliances, plant and other property belonging to RTC or its General Contractor as may be on the site of the work and necessary therefor. RTC shall cause the Construction Contract to include a provision implementing the rights of City pursuant to this Section 18.

19. Notices: All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

Fairfield City Hall, Attn: City Engineer

1000 Webster Street

Fairfield, CA 94533

Notices required to be given to RTC shall be addressed as follows:

Rancho Tolenas Corp., Attn: Douglas V. Mull

9216 Kiefer Blvd., Suite #4

Sacramento, CA 95826

(To be completed by RTC)

Notices required to be given surety of RTC shall be addressed as follows:

Rancho Tolenas Corp., Attn: Douglas V. Mull

9216 Kiefer Blvd., Suite #4

Sacramento, CA 95826

(To be completed by Surety)

Any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

20. Oversizing: Public improvement oversizing and/or reimbursement as defined in City Code Chapter 6B, Chapter 10, Article IV, Sections 10.56 through 10.65; and Chapter 25, Article III, Section 25.166.79 through 25.166.81 is not applicable.

21. Additional Terms and Conditions: This Agreement is subject to the following additional terms and conditions (except as specifically provided otherwise):

- a) Approval of this Improvement Agreement shall not obligate the City to subsequently accept improvements which strictly conform to the plans referenced by this Agreement. All costs associated with modifications resulting from subsequent improvement plan changes required by the City shall be borne by RTC.
- b) Northeast Area Impact Fee Credits: In consideration for the construction of the Required Improvements, and in accordance with the requirements of Section 4(c) of the DA, RTC shall accrue a total of \$1,818,436 in fee credits ("Fee Credits"), rounded up to the nearest dollar, effective upon 1) the execution of this Agreement, and 2) the submission of the Improvement Security required by this Agreement, to the City. Fee Credits are derived as follows: In accordance with City of Fairfield Resolution No. 2013-69, the Fee Credits are escalated from a total of \$1,475,187.55 (in 2013 dollars), which represents the cost of Segment #5 sewer improvements, being a portion of Northeast Area Fee Credit as assessed by Item #23D "Infrastructure Matrix," Exhibit H of from the DA (see Exhibit 1).

c) **Updated Citywide AB1600 and Northeast Area Impact Fee Credits:**

Pursuant to Section 4(c)(i) of the DA, City intends to commence an update of the Citywide AB1600 and Northeast Area Fee programs to reflect updated Engineer's Estimates of the engineering and construction costs for the overall Northeast Area. Upon City Council approval of the update, RTC's fee credits will be adjusted accordingly.

d) **Fairfield-Suisun Sewer District:** RTC is subject to the terms and conditions as outlined in the agreement entitled "Amendment No. 1 to Amended and Restated Agreement between Rancho Tolenas Corps. and the Fairfield-Suisun Sewer District Concerning Construction of Pump Station to Serve the Villages at Fairfield Development" ("FSSD Agreement"), signed and dated May 22, 2017. RTC shall comply with Fairfield-Suisun Sewer Pump Station and Collection System Standards, dated January 2016, for the construction of all FSSD sewer facilities and shall provide annual flushing of such facilities as reasonably required by FSSD on an interim basis until the completion of construction of the Northeast Fairfield Pump Station, or an earlier date as acceptable to FSSD.

22. **Prohibited Interest:** No employee of the City shall have any direct financial interest in this Agreement. This Agreement shall be voidable at the opinion of the City if this provision is violated.

23. **Local Employment Policy:** The City of Fairfield desires, wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County.

The City encourages an active affirmative action program on the part of its contractors, consultants, and RTCs.

When local projects require, subcontractors, contractors, consultants, and RTCs will solicit proposals from qualified local firms where possible.

24. **Qualified Bids:** Both the City and RTC acknowledge and agree that the contractor chosen as the General Contractor will satisfy the City's bidding requirements applicable to reimbursements for the improvements to be constructed under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Improvement Agreement on the day and year set forth below

Dated: _____

City of Fairfield,
a municipal corporation

ATTEST:

By: _____
City Clerk

By: _____
City Manager

Rancho Tolenas Corp.,
a California Corporation

By:  _____

Name: Douglas Moul

Title: Authorized Agent

EXHIBIT 1

DATE	SF CC Index		
December 1, 2010	10120.29	Annual	Running
December 1, 2011	10204.79	0.835%	
December 1, 2012	10355.09	1.473%	
December 1, 2013	10898.84	5.251%	5.251%
December 1, 2014	10915.84	0.156%	5.415%
December 1, 2015	11155.41	2.195%	7.729%
December 1, 2016	11609.44	4.070%	12.113%
December 1, 2017	12014.72	3.491%	16.027%
December 1, 2018	12115.37	0.838%	16.999%
December 1, 2019	12764.52	5.358%	23.268%

*NOTE: Northeast Fee Update was adopted with Resolution 2013-69

*NOTE: Fees escalated per the Engineering News Record Construction Cost Index as outlined in Fairfield Resolution 2013-69

Escalation of Adopted Portland Sewer Cost Estimate		
Fee Credit per DA, Exhibit H -	Item #23D (NE Fee Credit)	Item #23D (AB1600 Fee Credit)
First date of Northeast adoption (April 1, 2013):	\$1,475,187.55	\$0.00
April 1, 2014	\$1,552,650.25	\$0.00
April 1, 2015	\$1,555,072.07	\$0.00
April 1, 2016	\$1,589,201.25	\$0.00
April 1, 2017	\$1,653,882.43	\$0.00
April 1, 2018	\$1,711,618.67	\$0.00
April 1, 2019	\$1,725,957.28	\$0.00
April 1, 2020	\$1,818,435.28	\$0.00
2020 Fee Credit Sum:	\$1,818,435.28	

*NOTE: Fee credit amount is based on a cost to construct the Segment #5 portion of Exhibit H, Line Item #23D, of the First Amendment to the Second Amended and Restated Development Agreement, recorded February 20, 2019.

*NOTE: Fee credit amount (2013) is equal to a summation of values under the "Reimb. Amount" Column for Item No.5, sub-items #1 through 9, of the "NE Fee ~ Sewer Facilities" section of the 2013 Northeast Fee Update. Total fee credit amount includes the 10% contingency and 17% engineering, plan check, and geotechnical values as outlined in the report.

*NOTE: Escalation Formula

Current Year Value = (Previous Year Value) x (1+ CCI Annual % Increase)

Item #23D (NE Fee Credit): April 1, 2020 = \$1,725,957.28 x (1 + 5.358%)
April 1, 2020 = \$1,818,435.28

*NOTE: An average margin of error of less than 0.1% is expected due to rounding

Margin of Error = (Value Escalated from Year-By-Year) - (2013 Value x 1+[CCI Running Percentage]) / (2013 Value x 1+[CCI Running Percentage])
Item #23D (NE Fee Credit): April 1, 2020 = \$1,818,435.28 - (\$1,475,187.55 x [1 + 23.268%]) / (\$1,475,187.55 x [1 + 23.268%])
Error < 0.001%

*NOTE: % Increase is based on change at year-end