



# REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE: DECEMBER 13, 2005

TITLE: EXTENSION OF TIME: CONCRETE RECYCLING AGREEMENT

  
\_\_\_\_\_  
Chief Executive Officer  
Orange County Great Park

  
\_\_\_\_\_  
City Manager

## RECOMMENDED ACTION:

Approve second letter agreement between the City of Irvine and Heritage Fields, LLC, extending the date for completion of a concrete recycling agreement until April 30, 2006.

## EXECUTIVE SUMMARY:

Section 12.2 of the Great Park Development Agreement between the City of Irvine ("City") and Heritage Fields, LLC ("HF") allows the parties to enter into agreement for HF to assume control over the removal and recycling of the runways and other hardscape on both the City and HF portions of the former USMCAS El Toro, if the parties are able to agree on the terms of such an agreement by September 10, 2005. On September 13, 2005, the City Council approved a letter agreement extending until December 31, 2005 the date for completion of that concrete recycling agreement, and the City and HF subsequently signed the letter agreement. Although parties have made progress toward the development of the concrete recycling agreement, that agreement will not be completed by December 31, 2005. Approval of the proposed second letter agreement will extend the time for completion of the concrete recycling agreement to April 30, 2006, which the parties believe is sufficient time either to complete the negotiation and documentation for that agreement or to determine that an agreement cannot be reached and the City will oversee the concrete recycling program in accordance with Section 12.1 of the Development Agreement.

## COMMISSION/ADVISORY BOARD RECOMMENDATION:

Not applicable.

## STATEMENT OF THE ISSUES:

Concurrent with HF's close of escrow for the purchase of the former USMCAS El Toro on July 12, 2005, HF and the City entered into the Great Park Development Agreement

which the City had previously approved by the adoption of Ordinance No. 05-10 on May 24, 2005. The Great Park Development Agreement provides for the dedication of lands, the payment of \$200 million in development agreement fees, and the commitment to finance \$200 million in Community Facility District bond revenues, for the development, operation and maintenance of the Orange County Great Park and the backbone infrastructure serving the former Marine Base.

Section 12 of the Great Park Development Agreement addresses the recycling of runways and other hardscape within the former military base. Section 12.1 acknowledges that the City intends to create a mandatory sustainability program to encourage the reuse of hardscape and other materials, requires HF to participate in the recycling program developed and administered by the City or its designee, and authorizes the establishment of a fee for the removal and recycling of concrete and other hardscape. Section 12.2 of the Development Agreement creates an alternate process for the recycling of runways and other hardscape on the former base property, with HF serving as the lead agency for the recycling project. Section 12.2 provides as follows:

“Notwithstanding Section 12.1, Developer [HF] and City may enter into an agreement under which Developer shall assume direct responsibility for and control over the removal and recycling of hardscape and other materials from the entirety of the Property. In the event the parties enter into such an agreement, that agreement shall supersede the provisions of Section 12.1 above. If Developer and the City are unable to agree on the terms of such an agreement within sixty (60) days following the Effective Date, the City or City’s Designee shall assume responsibility for such hardscape removal and recycling.”

Beginning shortly after the July 12, 2005 signing of the Great Park Development Agreement, representatives of the City, HF and the Orange County Great Park Corporation met a number of times, both by themselves and with the preferred concrete removal and recycling contractor, Recycled Materials Company (RMC). The purpose of these meetings was to determine whether the management and administration of the concrete removal and recycling project should be delegated to HF and, if so, the terms and conditions of that delegation. The representatives of the parties determined that transferring responsibility for the concrete recycling to HF is in the best interest of all of the parties, and is consistent with the intent of the Development Agreement that HF assume the role of a “master developer” at the former USMCAS El Toro. The representatives of the parties then began developing the scope of the agreement delegating this responsibility from the City to HF, as well as the terms and conditions of that agreement.

On September 13, 2005, the City Council approved a letter agreement with HF, extending until December 31, 2005 the date for completion of the concrete recycling agreement. Since that date, drafts of the agreement have been circulating between the

parties, and they have met a number of times to address specific issues. Among the outstanding issues that could affect the final decision are:

- 1) HF seeks the flexibility to use a recycler other than RMC. Staff is concerned that another recycler will not be familiar with the application engineering techniques described by RMC and, therefore, the opportunity for high value recycled materials may be lost.
- 2) HF desires that the agreement be focused on only runway recycling within the Base property, with each party separately contracting to remove hardscape structures and other materials within the Base property that are not defined as "runway". The Board of Directors of the Great Park Corporation has directed staff to ensure that all materials are reused on site to the maximum extent feasible. The HF approach at present does not address the overall sustainable program for the property contemplated in Section 12.1 of the Development Agreement or the direction of the Great Park Board.
- 3) Draft language in the agreement does not guarantee that HF will be responsible for the performance of the recycler. As currently proposed by HF, if the work is not performed properly, the City and/or the Great Park Corporation will only have recourse against the contractor hired by HF, not HF. Staff is concerned that this approach is no different than if the recycling program was directly under the purview of the City and/or the Great Park Corporation.
- 4) The coordination of work efforts has been addressed but as currently proposed by HF, it will not accept responsibility to guarantee that the first phase of the Great Park will not be hampered by the recycling operation.

In addition, the nature of the design of the Great Park, the extent of recycled material that may be needed for its construction, and the extent to which any existing runway material may be retained as an element of the park are all additional elements that need to be considered in the final agreement. Selection of the park designer by the Orange County Great Park Corporation in the next few weeks may provide some insights into these issues.

Based on the progress to date, and assuming that the Orange County Great Park Corporation selects a park designer in the next several weeks, it is likely that a final concrete recycling agreement can be developed for consideration by the City Council in the spring of 2006 or that staff will recommend that the City or the Great Park Corporation oversee the concrete recycling program in accordance with Section 12.1 of the Development Agreement.. The purpose of the attached Second Letter Agreement is to extend the time, from December 31, 2005 until April 30, 2006, to allow the representatives of the City, Corporation and HF to complete the negotiations.

#### ALTERNATIVES CONSIDERED:

The City Council could determine not to enter into the Second Letter Agreement. Should this occur, Heritage Fields, LLC would not take the lead in managing and

administering the runway and hardscape removal and recycling agreement, and the obligation to manage and administer this contract would fall on either the City or the Orange County Great Park Corporation.

Report prepared by: Glen Worthington, Manager of Planning and Environmental Services, Orange County Great Park

Attachments:

1. Proposed Letter Agreement between the City of Irvine and Heritage Fields, LLC

cc: Bob Santos, Lennar, 25 Enterprise, Aliso Viejo, CA 92656  
William Devine, Allen Matkins, 1900 Main Street, 5<sup>th</sup> Floor, Irvine,  
CA 92614-7321

December 14, 2005

Robert I. Santos, Division President  
Lennar Homes of California, Inc.  
25 Enterprise  
Aliso Viejo, CA 92646

Re: Extension of Time to Complete Concrete Recycling Agreement

Dear Mr. Santos:

The staffs of the City of Irvine (the "City"), the Orange County Great Park Corporation (the "Corporation") and Heritage Fields LLC ("HF") have all proceeded diligently and vigorously to implement the various requirements of the Great Park Development Agreement ("Development Agreement") entered into between the City and HF on July 12, 2005. In particular, we acknowledge the hard work of all of our staffs in developing the Concrete Recycling Agreement authorized under Section 12.2 of the Development Agreement.

The parties have made considerable progress to date; however, I am informed that, because of the complexity of the issues, and in order to ensure the maximum potential recycling and reuse of former runways and other hardscape at the former USMCAS El Toro, the Concrete Recycling Agreement will not be completed and presented to the Irvine City Council for its consideration by the December 31, 2005 date anticipated in the extension of time previously granted. Accordingly, the purpose of this letter is to extend the date for completion of the Concrete Recycling Agreement between the City, the Corporation and HF from September 10, 2005 until April 30, 2006. Please evidence your agreement to this extension by counter-signing this letter below.

The City of Irvine appreciates HF's cooperative approach to the implementation of the Orange County Great Park project. I will look forward to working with you to complete the Concrete Recycling Agreement in the near future.

Very truly yours,

Sean Joyce, City Manager

cc: William R. Devine, Esq.  
Joel D. Kuperberg, Esq.

ATTACHMENT 1

**ACCEPTANCE**

Heritage Fields LLC agrees to extend the date for completion of the Concrete Removal Agreement referenced in Section 12.2 of the Development Agreement from September 10, 2005 to April 30, 2006, as set forth above.

DATED: December \_\_\_\_, 2005

LENNAR HOMES OF CALIFORNIA, INC.

By: \_\_\_\_\_  
Robert L. Santos, Division President