

71-79
Recorded at 348 NOV 18 1971
MARJORIE PAGE, Recorder

BOOK 1972 PAGE 502

ARCHIVES COPY

AGREEMENT

Do Not Remove From Files

THIS AGREEMENT is made this 24th day of May, 1971, by and between THE CITY OF AURORA, a municipal corporation of the State of Colorado, hereinafter called the "City", and MISSION VIEJO COMPANY, a California corporation, hereinafter called "Mission Viejo".

WHEREAS, Mission Viejo has entered into an option contract with the owners of certain real property located in the County of Arapahoe, State of Colorado, more particularly described as Section 5, Township 5 South, Range 66 West of the 6th Principal Meridian, hereinafter called the "Property";

WHEREAS, Mission Viejo and the present owners of the Property have filed a petition to annex the Property to the City;

WHEREAS, the annexation petition raises certain questions regarding the rights and obligations of the City and Mission Viejo;

WHEREAS, both parties herein desire to execute a contract specifically defining the rights and obligations of each, all as is contemplated by the ordinances of the City and the Municipal Annexation Act of the State of Colorado;

NOW, THEREFORE, the City and Mission Viejo agree as follows:

1. The City recognizes that it is the intent of Mission Viejo to develop the Property in a manner generally consistent with the preliminary plan attached hereto as Exhibit "A", incorporated herein by this reference. Exhibit "A" contemplates the construction of 4,416 dwelling units contained within the boundaries of the Property. The City and Mission Viejo acknowledge that Exhibit "A" is a schematic

drawing of development plans for the Property, and that variations in the plan design and amenities shall be allowed as subdivision plats for the property are processed. Any substantial variation from Exhibit "A" shall be subject to approval of the City. The City and its Planning Office hereby agree to support and assist Mission Viejo in achieving final approval of the plan depicted on Exhibit "A", all as is more fully set forth herein.

2. The City and Mission Viejo shall immediately undertake to accomplish the following:

A. The City agrees to immediately amend its existing zoning ordinance to adopt as a separate land use category the Planned Community District Ordinance attached hereto as Exhibit "B" and incorporated herein, or an ordinance substantially similar to Exhibit "B".

B. Immediately following passage of a resolution finding substantial compliance with its annexation petition with law, Mission Viejo shall petition the City for rezoning of the Property to the Planned Community District, consistent with Exhibit "B".

C. The City shall finally consider and adopt in the same ordinance, Mission Viejo's petition for annexation and Mission Viejo's petition for rezoning the Property to the Planned Community District, subject to the provisions of subparagraph D.

D. The rezoning of the Property to the Planned Community District shall be subject only to the filing of subdivision plats for the Property in compliance with the subdivision

ordinance of the City. When subdivision plats are filed, Mission Viejo may make variations in the land uses depicted on Exhibit "A", but any material modification of such land use shall be subject to concurrence by the City.

3. Mission Viejo agrees to dedicate to the City not less than thirty acres for utilization for public park and recreation facilities. Mission Viejo shall cause to be spent at least the equivalent of its acquisition cost per acre for the dedicated property, and any additional amounts which Mission Viejo, in its discretion, deems adequate, for park improvements and landscaping. Within thirty-six months after recordation of a plat reflecting the dedication of such park and recreation area, the City shall reimburse Mission Viejo either its acquisition cost per acre for the property dedicated, or the amount spent for park improvements and landscaping, whichever amount is less, without interest. The City agrees to maintain the public park and recreation facilities in a first-class condition after completion of improvements and landscaping by Mission Viejo.

4. Mission Viejo agrees to commit not less than ten acres for the utilization of private recreation facilities.

5. Mission Viejo agrees to dedicate to the City, in addition to the thirty acres dedicated for public park and recreation facilities, at least five acres upon which the City shall construct at least one fire station or police sub-station, or at least one branch public library. If the City does not contract to commence construction of such facilities within three years from the date when subdivision plats are recorded showing locations, no dedication shall be required. If the dedication is not made, or if the

dedication is made, but improvements are not completed by the City within three years, as required by contract, then the locations shall be deemed City parks, improvements made thereon in accordance with procedures contained in paragraph 3 above, and the acreage comprising the location credited toward the thirty acre commitment of Mission Viejo for public park and recreation areas.

6. Mission Viejo agrees to dedicate to the City, and the City agrees to accept for maintenance, those highways designated on Exhibit "A" and falling within the Property. In regard to the construction of said highways, Mission Viejo and the City agree to the following:

A. In regard to East Hampden Road, Chambers Road and Quincy Avenue, Mission Viejo agrees to install curbs, gutters and sidewalks on the south, east and north sides of said streets, respectively, falling within the Property, and to pave sixteen feet contiguous to the above referred to curb and gutter. The City agrees to construct, landscape, (including the installation of irrigation facilities), and maintain median strips and to pave the adjacent lanes on each side of the median strips.

B. In regard to Buckley Road, Mission Viejo agrees to install curbs, gutters and sidewalks along the westerly side of said street falling within the Property, and to pave sixteen feet contiguous to the above referred to curbs and gutters. The City agrees to pave the middle two lanes of said street.

C. The City agrees to grade and apply a dust-free surface to those portions of the highways referred to in A and B above, to be

constructed by the City by June 1, 1972.

D. Mission Viejo and the City agree to perform the construction obligations provided for in A and B above in increments, at such time as the adjoining portions of the Property are developed. The City agrees to use its best efforts to perform its construction obligations concurrent with Mission Viejo's construction, and in the event at any time the City is financially unable to comply with this obligation, Mission Viejo shall have the option to perform said construction, and the City shall reimburse Mission Viejo within thirty-six months from completion of construction, without interest.

E. Mission Viejo shall be responsible for the construction of all additional highways designated on Exhibit "A" and falling within the Property, at a construction schedule within the discretion of Mission Viejo, except that the City shall reimburse Mission Viejo for one-half the cost of installation of all water, sewer, curbs, gutters, sidewalks, and pavement of all streets contiguous to property committed for public use. Said reimbursement shall be paid within thirty-six months from completion of construction, without interest.

7. Mission Viejo may develop a lake or series of lakes and waterways which, if constructed, shall thereafter be donated to the City, a non-profit association, a public entity, or a private corporation for the benefit of the residents of the Property. If the lakes and waterways are dedicated to the City, they shall be included in determining Mission Viejo's compliance with its obligation

to dedicate at least thirty acres for public park and recreation facilities. In addition, if the lakes and waterways are dedicated to the City, the City shall reimburse Mission Viejo its costs of developing and improving said lakes and waterways in a manner consistent with the reimbursement provisions of paragraph 3 above. In the event such lakes and waterways are not dedicated to the City, they shall be included in determining Mission Viejo's compliance with its obligation to dedicate at least ten acres for private recreation facilities.

8. In the event Mission Viejo does not construct a series of lakes and waterways, it shall nevertheless cause the construction of storm drainage facilities within the Property adequate to collect storm drainage water originating within the Property boundaries to the approximate low point of the Property on its northerly boundary. The City shall contribute the expense of any enlargement of such storm drainage facilities necessary to transmit storm drainage attributable to property beyond the boundaries of the Property. In the event the discharge point on the northerly boundary of the Property is consistent with a collection point provided for in the City's Master Drainage Plan, Mission Viejo shall not be obligated to pay any additional fees for the construction of facilities adequate to accept the increased runoff caused by the development of the Property. In the event the discharge point is not consistent with a collection point, Mission Viejo shall have the option of either constructing adequate holding ponds within the Property to prevent an increase in the volume of runoff, or to contribute to the City a reasonable fee to assist the City in expanding the lower drainage facilities. Mission Viejo agrees to dedicate, for public use, such land as may

be necessary to transmit storm drainage water on the surface, provided such dedicated areas, if usable for recreation purposes, shall be deemed part of the area which Mission Viejo is required to dedicate for public park and recreation utilization pursuant to paragraph 3, and provided, further, that such storm drainage water courses shall not comprise more than four acres of land.

9. As a statement of intent, Mission Viejo and the City recognize that neither entity has the right or obligation to contract for or on behalf of the school districts within the City. Irrespective of this, both City and Mission Viejo recognize the importance of insuring adequate facilities for the education of the prospective population within the area proposed for annexation. Mission Viejo recognizes that the City will realize that Mission Viejo, in its planning, will allocate an appropriate number of acres for two elementary school sites and one intermediate school site as part of its planning, as required by the Planned Community Development Ordinance. Mission Viejo agrees that, in its dealings with the applicable school district or districts, it shall donate, or cause to be donated, limited use funds in an amount equal to the purchase price paid by said District to Mission Viejo for any such land so allocated. Such funds so paid shall be for the limited use of providing landscaping, school equipment, visual aid equipment, or the like, for use in the school constructed upon such Property, and such funds will be paid over to the school district upon completion of the school facilities on such Property.

10. The parties agree to the following with regard to the construction of facilities for the collection and transportation of sewage:

A. The City agrees to make available, at a point on Hampden Avenue, approximately 3,500 feet east of Chambers Road, and on the north boundary of the Property, an outfall sewage line adequate to receive and transport sewage generated by the land use contemplated in Exhibit "A" to this Agreement. Such outfall facility shall be available when required by Mission Viejo to serve the Property. In any event, the City shall impose no moratorium on tap connections within the Property. Further, the City agrees to develop adequate transportation facilities so that the use of sanitary sewer treatment lagoons may be discontinued prior to becoming a nuisance and detrimental to public health, and, in any event, no later than December 31, 1973.

B. Mission Viejo agrees to construct, subject to the approval and inspection of the City, outfall, interceptor and collection lines within the annexed Property, adequate to collect all sewage generated within the Property, and to transport the same to the point referred to in paragraph 10.A. above.

C. Further, Mission Viejo agrees to construct within the Property an outfall sewage line of adequate size to receive and transport sewage generated by other lands tributary to the outfall line; provided, however, that the City shall contribute to Mission Viejo that portion of the construction costs caused by said increase in the size of the outfall line, payable upon completion and receipt of invoices from Mission Viejo.

D. The City agrees to contribute its proportionate share, based upon flow ratios, of the cost of construction of sewage facilities to service the public facilities contemplated by this Agreement, except schools.

11. The parties agree to the following in regard to the construction of water facilities:

A. The City agrees to construct, by January 1, 1972, those delivery and storage facilities necessary to make available along the north boundary of the annexed Property, adequate potable water to service all of the annexed Property when finally developed as contemplated in Exhibit "A" to this Agreement.

B. Mission Viejo shall construct water facilities within the annexed Property, (except along the north boundary), subject to the approval and inspection of the City.

C. Mission Viejo agrees to construct, consistent with the increment construction provisions at paragraph 6.D., a water transmission line in Chambers Road sufficient to serve the Property, based upon Hardy-Cross analysis, and the City shall pay the cost of any required oversizing of said line upon receipt of invoice from Mission Viejo.

D. The City agrees to pay its proportionate costs, based upon flow ratios, for the construction of water lines which serve the public facilities contemplated herein, except schools.

E. Mission Viejo acknowledges that the City will shortly relocate water storage tanks known as the Smokey Hill Tank Farm. The relocated storage tanks will serve approximately 7,000 acres. Mission Viejo agrees to pay toward the expense of such

relocation, at the time of platting of portions of the Property, a per acre charge computed as follows: the cost of relocating the water storage tanks shall be divided by the total acreage in the "high zone" area, as determined by the City. In no event shall the per acre charge assessed Mission Viejo exceed \$90.00 per acre.

12. The City agrees that neither the annexed Property nor its owners shall be subjected to any additional or different fee, assessment or tax than that imposed upon any other property, or its owners, located within the City limits. Consistent with existing agreements between the City and East Cherry Creek Valley Water and Sanitation District, the City agrees to provide the Federal Housing Administration those assurances required by that agency regarding the maintenance of the existing mill levy of ten mills in the East Cherry Creek Valley Water and Sanitation District for the foreseeable future, and the ultimate reduction of said mill levy when revenues and ad valorem taxes derived from said District are sufficient to meet its operation and maintenance costs and debt service.

13. It is the intent of the parties herein, by the execution of this Agreement, to nullify that Agreement entered into between the City and Jess Kortz, Bernard J. Schaffner, Harold Dinken and Beatrice J. Dinken on January 29, 1968, relating to this same Property.

14. This Agreement is intended by the parties herein to be the complete memorial of the obligations and responsibilities of both parties in regard to the annexation, rezoning and development of this Property. The rights derived and the obligations assumed by Mission Viejo by the

terms of this Agreement may not be assigned without the prior written consent of the City.

15. This Agreement, when executed, shall inure to the benefit of and be binding upon the successors in interest or the legal representative of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

MISSION VIEJO COMPANY

By [Signature]
President



ATTEST:

[Signature]
Secretary

THE CITY OF AURORA

By [Signature]
Mayor



[Signature]
Clerk

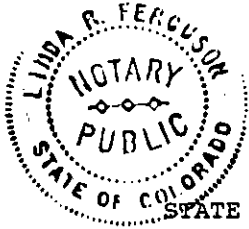
By [Signature]
City Manager

By [Signature]
Director of Planning

STATE OF Colorado)
Windsor County) SS.

The foregoing instrument was acknowledged before me this _____ day of May, 1971, by James V. [unclear], as President, and by Paul S. [unclear], as Secretary, of MISSION VIEJO COMPANY, a California corporation.

WITNESS my hand and official seal.



Linda R. Ferguson
Notary Public

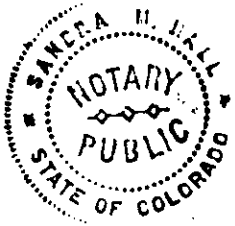
My commission expires: April 1, 1975

STATE OF Colorado)
Aurora County) SS.

The foregoing instrument was acknowledged before me this 25 day of May, 1971, by Paul C. [unclear], as Mayor, by Paul A. [unclear], as City Manager, and by [unclear], as Director of Planning of THE CITY OF AURORA.

WITNESS my hand and official seal.

My Commission expires Sept. 23, 1972



Sandra M. Hall
Notary Public