



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
November 4, 2009**

TO: Mayor and City Council

FROM: Veronica Nebb, Sr. Assistant City Attorney

SUBJECT: Consideration of Agreement with Richfield Development Relating to the Tolling of Time to File Legal Action Regarding the Alhambra Highlands Subdivisions

DATE: October 23, 2009

RECOMMENDATION:

Consideration of Agreement with Richfield Development Relating to the Tolling of Time to File Legal Action Regarding the Alhambra Highlands Subdivisions and Processing of Resubmitted Applications Relating Thereto and Authorizing the Mayor to Execute Same.

BACKGROUND:

As Council is aware, in July 1990, the City conditionally approved a Vesting Tentative Map, Planned Unit Development and Design Review for Alhambra Highlands Units I and II. Thereafter, in September 1993, the City conditionally approved a Vesting Tentative Map, Planned Unit Development and Design Review for the adjacent Images Subdivision. These subdivisions are collectively hereafter referred to as the "Alhambra Highlands Project I".

From 1991 through 1999, the project developer applied for and was conditionally granted several extensions of the terms of the Vesting Tentative Maps relating to the Alhambra Highlands Project I. In 2000, the project developer submitted to the City documents which it asserted were the documents necessary to be filed with the City in order for the City to initiate the process to determine whether or not the Final Maps for the Alhambra Highlands Project I ("Final Maps") should be approved. Thereafter, the City submitted a letter with attachments to the developer relating to the Final Maps. At this point in time, no Final Maps have yet been approved.

Richfield has agreed to stay the City's processing of the Final Maps, and on December 8, 2008, filed applications for approval of a resubmitted vesting tentative map, a Use Permit application for an amendment to and extension of, the resubmitted Alhambra Highlands Project I PUD approvals, resubmitted design review, and a conditional use permit for a water tank required by the Alhambra Highlands Project I approvals. These applications are collectively hereafter referred to as the "Alhambra Highlands Project II".

The attached Agreement operates to “stay” any action between the City and Richfield regarding the Alhambra Highlands Project I and addresses the processing of the Alhambra Highlands Project II. In this regard, the Agreement:

- a. tolls the statute of limitations for any claims that either party may have against the other regarding the Alhambra Highlands Project I during the life of the agreement;
- b. does not operate to approve or deny or guarantee approval or denial of the Alhambra Highlands Project II, but rather imposes on the city a "good faith" obligation to process the Alhambra Highlands Project II in accordance with the City’s applicable rules and procedures; and
- c. it sets forth the consequences of Richfield terminating the agreement, withdrawing the Alhambra Highlands Project II applications and/or requesting that the city go back to processing the Final Maps for the Alhambra Highlands Project I.

With the approval of this Agreement, the Alhambra Highlands Project II will go through all of the normal process applicable to any development project in the City including, but not limited to, notice and public hearings.

ACTION:

Motion authorizing the Mayor to execute Agreement with Richfield Development relating to the tolling of time to file legal action regarding the Alhambra Highlands subdivisions and processing of resubmitted applications relating thereto.

ATTACHMENTS:

- A. Agreement

AGREEMENT

This Agreement (“Agreement”) is entered into by Richfield Investment Corporation (d.b.a. “Richfield Development”), a Texas corporation and the developer (“Richfield”) of the Alhambra Highlands Project and the City of Martinez, a general law city of the State of California (“City”).

This Agreement is entered by and through the parties’ respective counsel, and representatives or agents, who certify that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and bind his or her respective party to this document. Richfield also certifies that it is fully authorized by the landowners of the Subject Property (defined below) to enter into this Agreement. Counsel for the parties have discussed the terms of this Agreement with their respective clients and parties hereto, who understand the Agreement’s terms and implications.

The effective date of this Agreement is August 13, 2009, (the “Effective Date”).

RECITALS

A. In May 1987 the City adopted the Alhambra Hills Specific Plan. The Alhambra Highlands Project is comprised within the Specific Plan.

B. In July 1990, the City conditionally approved a vesting tentative map for Tract No. 7245 (“Tract Map 7245”), Planned Unit Development No. 89-5 and Design Review No. 89-42 for Alhambra Highlands Unit I. Concurrently, the City conditionally approved a vesting tentative map for Tract No. 7244 (“Tract Map 7244”), Planned Unit Development No. 89-6 and Design Review No. 89-41 for Alhambra Highlands Unit II.

C. In September 1993, the City conditionally approved a vesting tentative map for Tract No. 7606 (the “Briar Rose” or “Images” subdivision) (“Tract Map 7606”), Planned Unit Development No. 91-4 and Design Review No. 91-64.

D. Tract Maps 7245, 7244 and 7606, Planned Unit Development Nos. 89-5, 89-6 and 91-4 and Design Review Nos. 89-41, 89-42 and 91-64 and the development and activities they depict, describe and/or contemplate shall sometimes collectively be referred to herein as the “Alhambra Highlands Project I”. The land and real property encompassed by and included in Tract Maps 7244, 7245 and 7606 shall sometimes be referred to herein as the “Subject Property”.

E. From 1991 through 1999, Richfield’s predecessor in interest, Richland Development Corporation (“Richland”) applied for and was conditionally granted several extensions of the terms of Tract Maps 7244, 7245, and 7606 in order to provide more time for Richland to (i) satisfy the conditions of approval made part of said Tract Maps and (ii) file final maps for said Tract Maps (“Final Maps”). By letter dated November 16, 2000 (“Waiver

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Letter”), Richland’s attorney, Mark Armstrong, waived all time periods which the State Subdivision Map Act imposed upon the City to process and act upon, among other things, Richland’s request for Tract Map extensions and for Final Maps approval; provided, however, Richland did not waive the time periods specified in Cal. Gov’t Code §66458 which the parties hereto acknowledge and agree have not begun to run with respect to said Final Maps.

F. Prior to the expiration of Tract Maps 7244, 7245 and 7606, and in 2000, Richland submitted to the City documents which Richland asserted were the documents necessary to be filed with the City in order for the City to initiate the process to determine whether or not Richland’s Final Maps should be approved. On February 7, 2001, the City submitted a letter with attachments to Richland signed by James Zumwalt relating to same.

G. A dispute has arisen between Richfield and the City concerning the processing of said Final Maps. In order to assist in resolving said dispute and at the request of the City, Richfield has agreed to stay the City’s processing of said Final Maps, and on December 8, 2008, filed applications for approval of a resubmitted vesting tentative map, a Use Permit application for an amendment to and extension of, the resubmitted Alhambra Highlands Project I PUD approvals (Permit Nos: 89-5, 89-6 and 91-4) and resubmitted design review (D.R. #89-41, 89-42, and 91-64), and a conditional use permit for a water tank required by the Alhambra Highlands Project I approvals. Each of these individual applications cover and concern all or a portion of the Subject Property, including the resubmitted vesting tentative map application, and either reflect or were required by the Alhambra Highlands Project I approvals (collectively, hereinafter referred to as the “2008 Applications”). The City has agreed to process said 2008 Applications.

AGREEMENT

In consideration of the foregoing Recitals (which are incorporated by this reference) and the promises and agreements set forth below, the parties agree to the following:

1. Richfield shall refrain from filing any action or proceeding challenging the City’s acts or omissions concerning the Alhambra Highlands Project I, including the Final Maps, so long as the City works to process the 2008 Applications in accordance with this Agreement. Any and all statutes of limitation and repose that may apply to any action, suit, claim (actual or potential) or proceeding (“Lawsuit”) which Richfield may bring or have the right to bring to challenge any of the City’s acts or omissions concerning the Alhambra Highlands Project I, including but not limited to the Final Maps, shall be tolled as of the Effective Date. Except as is provided hereinafter, the parties expressly reserve any and all claims and defenses that either party may have or may have had as of midnight of the day before the Effective Date, pertaining to any statute of limitations or repose, or to any other matter, and said claims and defenses shall be entirely unaffected by this Agreement. This Agreement is intended to satisfy California Code of Civil Procedure §360.5 and any other provision of law necessary to extend the statute of limitations as specified herein.

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2. By letter dated August 13, 2009, Richfield’s attorneys requested that the City Planning Commission and City Council take certain actions concerning the Final Maps and related matters by September 8, 2009 and October 7, 2009, respectively. Additionally, by said letter, Richfield withdrew the waiver of time set forth in the Waiver Letter. The parties agree that this Agreement supersedes and replaces (i) said August 13, 2009, letter, and (ii) any requests of Richfield that the City complete the processing of and act upon the Alhambra Highlands Project I, the Final Maps and related matters by a date certain. Furthermore, the parties agree that as of the Effective Date and as regards Alhambra Highlands Project I and the Final Maps, the time waivers described in the Waiver Letter shall be re-instated. And Richfield withdraws its August 13, 2009, withdrawal of the waiver of time limits set forth in the Waiver Letter.

3. The City agrees to process the 2008 Applications. Richfield and the City shall work in good faith to process the 2008 Applications. By letter dated April 24, 2009, the City determined that in certain particulars, said 2008 Applications were incomplete. The City agrees to withdraw that April 24, 2009, letter and to work and cooperate with Richfield in determining the items and information that need to be provided by Richfield in order to complete its 2008 Applications. Thereafter, the City shall issue a new letter (“New Completeness Letter”) describing the items and information that Richfield will need to submit to the City in order to make the former’s 2008 Applications complete. The parties agree that as long as said New Completeness Letter is delivered to Richfield by October 1, 2009, it shall be deemed timely within the meaning of Cal. Gov’t Code §65943 and Richfield shall comply with its terms.

4. In light of the fact that the 2008 Applications reflect Richfield’s revisions to the Alhambra Highlands Project I and the requirements of state and federal agencies having jurisdiction over the Alhambra Highlands Project I, the City agrees that the 2008 Applications are designed to further lessen potential, significant environmental impacts of the originally approved Alhambra Highlands Project I. Accordingly, the City will exercise its best efforts to prepare any subsequent environmental documentation for the 2008 Applications and complete the process under the California Environmental Quality Act (“CEQA”) within the timeframes specified in Exhibit A attached hereto and incorporated by reference. The development project depicted, described and envisioned in the 2008 Applications shall sometimes be referred to herein as the “Alhambra Highlands Project II.”

5. The parties agree that as of the Effective Date, the City shall use the funds in the “Richfield Account” (the account maintained by the City for receipt of monies paid by Richfield or Richland to be used to pay for the costs of processing the Alhambra Highlands Project I) for the processing of the 2008 Applications at no additional cost to Richfield up to a total of three hundred eighteen thousand dollars (\$318,000.00) (the “Maximum Amount”). The costs the City incurs, including City staff costs and “Professional Costs” consisting of outside consultant, professional, outside attorneys and contract planner costs, in processing the 2008 Applications commencing as of the Effective Date shall be referred to as the “Application Costs”.

a. Commencing on October 1, 2009, and continuing on the first day of each month thereafter, the City shall provide Richfield a written (i) accounting of the

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Application Costs incurred pursuant to this Agreement by the City during the prior month and (ii) estimate of the Application Costs which the City anticipates incurring during the following month.

b. Although the parties expect that all Application Costs associated with the 2008 Applications will be funded by the Richfield Account, in the unlikely event the written accounting or estimate in Section 5.a indicates the Application Costs have exceeded or will exceed the Maximum Amount (the "Excess Costs"), the City agrees that it shall not charge Richfield nor charge against the Richfield Account any costs associated with the work City employees or Outside Professionals perform after the date Application Costs exceed the Maximum Amount (the "Exceedance Date"), provided and until such time as the City Manager and Mr. Ricardo Sabella meet and confer in good faith for the purpose of mutually agreeing to (i) the Excess Costs and (ii) an allocation of Excess Costs between the parties.

c. If following such determination and allocation of Excess Costs, Richfield fails to timely pay the City Richfield's allocated share of the Excess Costs and as long as said share remains unpaid, the parties agree that the City shall have the right to stop processing the 2008 Applications and/or deny them, and Richfield waives the provisions of any laws which may otherwise preclude the City from taking said actions in response to Richfield's failure to pay its share of the Excess Costs; provided however, the City has continued to fund its share of the Excess Costs up to the point of said suspension or denial; and provided, further, that prior to suspending the processing of or denying the 2008 Applications, the City gives to Richfield twenty one (21) days notice of the City's intention ("Notice of Intent") to suspend or deny same, along with copies of all documents evidencing the accounting of the receipts posted to and expenditures charged against the Richfield Account from the Exceedance Date to the date of the Notice of Intent, and during said twenty-one day period (the "Meet and Confer Period"), the parties meet and confer in good faith for the purpose of determining and agreeing upon the outstanding amount of Excess Costs which Richfield is required to pay to the City. In the event no such agreement is reached during said Meet and Confer Period, on the day immediately following the Meet and Confer Period, the City shall have the right to stop processing or deny the 2008 Applications.

6. Any adjustments or modifications to the Alhambra Highlands Project II requested by the City should be requested through the processing of the 2008 Applications and environmental review (and should not be a pre-condition to starting the CEQA process).

7. The City Manager will remain involved to monitor the progress of the 2008 Applications and will meet monthly with Mr. Ricardo Sabella or his authorized representative to provide a progress report and discuss the status of the 2008 Applications.

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8. Because the 2008 Applications are, in part, resubmittals of the originally approved Tract Maps 7244, 7245 and 7606 (with revisions), the City agrees that the nature and amounts of development impact fees (initiated and adopted by the City) Richfield will be required to pay as conditions to any approval of the 2008 Applications shall be those specified by the City Council in November 1999, when it granted extensions of the expiration dates of Tract Maps 7244, 7245 and 7606. Except as specified in the immediately preceding sentence or as is required or permitted by the Regional Water Quality Control Board in its 401 Certification, if any, applicable to the 2008 Applications, the 2008 Applications shall be subject to those ordinances, policies and standards in effect at the date the City determines that the 2008 Applications are complete, in accordance with and as qualified by Cal. Gov't Code §66474.2. Without limiting the generality of the foregoing sentence, Richfield shall be required to indemnify the City in accordance with Cal. Gov't Code §66474.9 and in accordance with Martinez Municipal Code Chpt. 22.54.

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9. Except as otherwise expressly provided in this Agreement, the City shall process the 2008 Applications in accordance with the applicable time periods specified in the Permit Streamlining Act ("PSA") and the State Subdivision Map Act ("SMA"), and as to performance time periods specified in this Agreement that differ from the PSA and/or SMA (specifically, those time periods set forth in Exhibit A, attached hereto and incorporated herein by reference), the City shall be required to exercise its best efforts to comply with said performance time periods. The City shall exercise its best efforts to (i) complete the processing of the 2008 Applications and (ii) take action on said applications on or before June 10, 2010.

10. The City agrees to cooperate and assist Richfield in its efforts to process any necessary revisions or modifications to any approvals already granted by state or federal agencies with jurisdiction over the Alhambra Highlands Project I or Alhambra Highlands Project II, which said revisions or modifications are consistent with the 2008 Applications.

11. a. Richfield has the right to terminate this Agreement if (i) the City fails to perform an obligations this Agreement requires the City to perform; (ii) Richfield delivers written notice of said termination such that the effective date of the termination occurs prior to the City taking final action on the first of the 2008 Applications to be acted upon by the City; (iii) Richfield serves written notice of termination of this Agreement within fifteen (15) days of the date Richfield becomes aware of the City's default hereunder; and (iv) the written notice of termination is delivered to the City at least fifteen (15) days before the effective date of the termination. At Richfield's election, within 48 hours of Richfield becoming aware of the City's default hereunder, the parties may meet and confer to resolve whether the City has failed to perform under this Agreement as asserted by Richfield and how the City intends to cure its default. For purposes of this Agreement, a "final action" of the City is any action taken by the City for which there is no administrative appeal or review.

b. The City has the right to terminate this Agreement if (i) Richfield fails to perform an obligations this Agreement requires Richfield to perform; (ii) the City serves written

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notice of termination of this Agreement within fifteen (15) days of the date the City becomes aware of Richfield's default hereunder; and (iii) the written notice of termination is delivered to Richfield at least fifteen (15) days before the effective date of the termination. At the City's election, within 48 hours of the City becoming aware of Richfield's default hereunder, the parties may meet and confer to resolve whether Richfield has failed to perform under this Agreement as asserted by the City and how Richfield intends to cure its default

c. Without limiting the foregoing, at any time prior to the City taking final action on all of the applications which are part of the 2008 Applications, Richfield shall have the right to withdraw all said applications, provided that:

- 1) the withdrawal is written;
- 2) all of the applications included within the 2008 Applications are withdrawn;
- 3) the written withdrawal is delivered to the City at least fifteen (15) days before the effective date of the withdrawal; and
- 4) the effective date of the withdrawal has to occur prior to the City taking final action on the first of the 2008 Applications to be acted upon by the City.

d. In the event of termination under Paragraphs 11.a or 11.b or withdrawal under Paragraph 11.c, then:

- 1) the tolling provisions set forth in Paragraph 1, above, shall terminate as of the same date that the withdrawal or termination becomes effective;
- 2) all of the 2008 Applications shall be deemed withdrawn as of the date they were filed, *nunc pro tunc*;
- 3) the City shall refund Richfield all funds remaining in the Richfield Account less any amounts which are required to be paid by Richfield (if any) for unpaid Application Costs and Excess Costs. And Richfield shall remain liable for and shall timely pay all Application Costs and Excess Costs (if any) in accordance with Paragraph 5, above;
- 4) any action taken by the City with respect to any or all of the 2008 Applications shall be deemed rescinded *nunc pro tunc* as of December 8, 2008;
- 5) Richfield shall have no right to and waives all rights to challenge in any action or proceeding any of the City's acts or omissions concerning the

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2008 Applications and except for any challenges or claims, actions, injuries, damages, expenses, and liabilities of any nature arising out of the City's actions related to an alleged breach of this Agreement (as further set forth herein), Richfield shall release the City from and indemnify and hold the City harmless from any and all claims, actions, injuries, damages, expenses, and liabilities of any nature arising out of the City's acts or omissions concerning the 2008 Applications; provided, however, the parties reserve all rights to pursue remedies for alleged breach of this Agreement, including a claim that the other party wrongly asserted a 'failure to perform' and hence a right to terminate under either paragraph 11.a or 11.b, or all claims tolled by the tolling provisions of this Agreement;

- 6) upon the date of termination of this Agreement all the statutes of limitations and repose specified in Paragraph 1, above, shall commence or re-commence running, as the case may be, and, in such event, the said statutes of limitations and repose shall be deemed not to have run from the Effective Date through the date of termination of this Agreement;
- 7) the Waiver Letter shall be deemed withdrawn as of the termination date; and
- 8) within the time periods prescribed by law, the City shall reject, accept for filing with the City Council, deny or approve the Final Maps.

12. a. Richfield Enforces Agreement Prior to Approval of 2008 Applications

Except as otherwise provided in this Agreement, if Richfield files any action or proceeding in which Richfield seeks to enforce this Agreement prior to the City's action on the 2008 Applications, then the 2008 Applications and all of the applications submitted to the City pertinent to the Alhambra Highlands Project I, including those applications that were previously approved by the City as part of the Alhambra Highlands Project I, shall not be deemed withdrawn.

b. City Approves 2008 Applications

If the City takes a final action with respect to all of the 2008 Applications and in doing so approves the 2008 Applications, then within 10 working days of such action by City (during which 10 day period the City shall post the Notice of Determination described in CEQA)(the "10-Day Election Period"), Richfield shall notify ("Notice of Election") the City of its decision to either proceed with the implementation of the approved 2008 Applications or request the City to process and approve the Final Maps.

1) Richfield Accepts Approvals of 2008 Applications

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If Richfield elects to proceed with the implementation of the 2008 Applications approvals, then

i.) Richfield shall have no right to and waives all rights to challenge in any action or proceeding any of the City's acts or omissions concerning the Alhambra Highlands Project I;

ii.) Richfield shall release the City from and indemnify and hold the City harmless from any and all claims, actions, injuries, damages, expenses, and liabilities of any nature arising out of the City's acts or omissions concerning the Alhambra Highlands Project I, including the Final Maps; and

iii.) Richfield shall be deemed to have waived and shall waive any and all rights to process, to seek to process or obtain any final action by City (including approval of the Final Maps) with respect to the Alhambra Highlands Project I and all City applications submitted in connection therewith.

2) *Richfield Initially Rejects 2008 Applications Approvals and Seeks Council Reconsideration*

i.) If Richfield determines that the conditions of approval imposed on the 2008 Applications make implementation of the Alhambra Highlands Project II infeasible, within the 10-Day Election Period, Richfield shall submit a Notice of Election to the City Manager (i) informing the City Manager that Richfield does not intend to implement the 2008 Applications approvals on the basis that Richfield has determined, in its sole discretion, that the imposition of certain conditions of approval on the 2008 Applications makes the Alhambra Highlands Project II infeasible, and (ii) seeking reconsideration of the Council's action on the 2008 Applications ("Request for Reconsideration"). For purposes of this Agreement, "infeasible" shall mean that in Richfield's sole discretion, the Alhambra Highlands Project II as constituted in the 2008 Applications approvals will not be capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. Such a determination by Richfield shall in no way bind the City nor in any way constitute or be deemed to constitute an admission on the part of the City as to the truth and/or accuracy of any such determination.

ii.) Following receipt of Richfield's Request for Reconsideration by the City Manager, the City shall consider Richfield's Request for Reconsideration in accordance with the City's standard procedures related to motions for reconsideration. In this connection, Richfield expressly acknowledges that in order for a Council action to be reconsidered by the City

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Council, (1) a Councilmember constituting part of the majority voting in support of the action sought to be reconsidered must, at a properly noticed and agendized meeting of the Council, make a motion to reconsider that action, and (2) that motion must be made at the meeting at which the challenged action has been taken or at the next, regular meeting of the City Council. If said two conditions are not met, then reconsideration does not lie and the underlying action remains in effect and constitutes the final action of the City Council. Within ten (10) working days of the City Manager's delivery to Mr. Ricardo Sabella of a notice describing the decision of the City concerning the Request for Reconsideration (including the situation where one or more of the two conditions described above are not met, thus foreclosing reconsideration altogether), Richfield shall notify the City Manager of Richfield's final election ("Final Election") to proceed with the implementation of the approved 2008 Applications or request the City to process and approve the Final Maps.

iii.) If in its Final Election, Richfield elects to proceed with the implementation of the 2008 Applications approvals, then

aa. Richfield shall have no right to and waives all rights to challenge in any action or proceeding any of the City's acts or omissions concerning the Alhambra Highlands Project I;

bb. Richfield shall release the City from and indemnify and hold the City harmless from any and all claims, actions, injuries, damages, expenses, and liabilities of any nature arising out of the City's acts or omissions concerning the Alhambra Highlands Project I, including the Final Maps; and

cc. Richfield shall be deemed to have waived and shall waive any and all rights to process, to seek to process or obtain any final action (including approval of the Final Maps) with respect to the Alhambra Highlands Project I and all applications submitted in connection therewith.

iv.) If in its Final Election, Richfield requests the City to process and approve the Final Maps, then

aa. Richfield shall retain all the rights it possessed as of midnight of the day before the Effective Date to challenge in any action or proceeding any of the City's acts or omissions concerning the Alhambra Highlands Project I;

bb. Richfield shall accompany its Final Election with a writing withdrawing all of the applications included within the 2008 Applications,

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which said withdrawal shall be deemed effective *nunc pro tunc* as of December 8, 2008;

cc. as of the date the Final Election is delivered to the City, the Waiver Letter shall be deemed withdrawn;

dd. Richfield shall have no right to and waives all rights to challenge in any action or proceeding any of the City's acts or omissions concerning the 2008 Applications; and

ee. Richfield shall release the City from and indemnify and hold the City harmless from any and all claims, actions, injuries, damages, expenses, and liabilities of any nature arising out of the City's acts or omissions concerning the 2008 Applications.

c. City Denies 2008 Applications

If the City takes a final action with respect to all of the 2008 Applications and in doing so denies the 2008 Applications, then within the longest statute of limitations period applicable to initiating any challenge to such final action, Richfield may take one of the following actions with the following consequences:

1) If Richfield requests in writing that the City process and take action on the Final Maps, then the provisions of Paragraph 12.b.2.iv shall control the parties' rights and responsibilities; or

2) If Richfield initiates an action or proceeding to challenge the City's denial of the 2008 Applications, then the provisions of Paragraph 12.b.2.iii shall control the parties' rights and responsibilities.

Notwithstanding the above, if within the longest statute of limitations period applicable to initiating any challenge to such final action, Richfield neither requests the City to process and take action on the Final Maps nor initiates an action or proceeding to challenge the City's denial of the 2008 Applications, then the provisions of Paragraph 12.b.2.iii shall control the parties' rights and responsibilities.

d. Waiver of Section 1542

As to any claims being released herein, the party(ies) releasing the claim waives the provisions of Civil Code section 1542 which provide:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

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13. Under no circumstances may this Agreement, its provisions, terms or conditions, or the fact that it was entered into (a) be admissible in evidence in any action or proceeding for any purpose, (b) be used for any purpose in any action or proceeding, (c) be referred to in any action or proceeding, or (d) be attempted to be introduced or used in any action or proceeding in which the City or Richfield is a party, except for any action or proceeding brought to enforce this Agreement's terms and conditions.

14. This Agreement is the product of negotiations and preparation by and among the parties and the parties hereto acknowledge and agree that this Agreement shall not be deemed prepared or drafted by any party to this Agreement, or the attorneys for one party or the other, and shall be construed accordingly. The parties represent that they have voluntarily executed this Agreement and that they have been represented and advised by counsel concerning the terms and conditions of this Agreement.

15. This Agreement shall be interpreted in accordance with and governed in all respects by the laws of the State of California.

16. Neither the existence, nor the terms of this Agreement, shall constitute an admission of liability on the part of the parties for any claims related to the Final Maps, Alhambra Highlands Project I or Alhambra Highlands Project II.

17. This Agreement is intended solely for the benefit of the parties to this Agreement and shall not be construed to create any rights in any other person or entity.

18. The terms of this Agreement may only be amended by written agreement of all the parties.

19. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, and representatives.

20. This Agreement may be executed in counterparts, and all such counterparts together shall constitute but one agreement. Signatures transmitted by facsimile shall be binding; provided, however, that any person transmitting his or her signature by facsimile shall promptly send an original signature to the other parties in accordance with Paragraph 22 of this Agreement.

21. This Agreement contains the entire understanding among the parties to this Agreement with regard to the matters herein set forth, and is intended to be and is a final integration thereof. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between or among the parties hereto relating to the terms and conditions of this Agreement that are not fully expressed herein.

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22. Those provisions of this Agreement which contemplate performance, the discharge of obligations and/or the waiver of rights occurring upon and/or after the termination of this Agreement shall survive the termination of this Agreement.

23. All notices to be delivered from one party to the other shall be given when actually received in writing and delivered by personal messenger as evidence by a signed receipt, by registered or certified mail, overnight mail courier, or facsimile transmission (simultaneously accompanied by U.S. first class mail, postage prepaid) and addressed to the party as follows:

City of Martinez
Mr. Phil Vince
City Manager
525 Henrietta Street
Martinez, CA 94553
Fax: 925 229 5012
Phone: 925 372 3505

City of Martinez
Jeffrey Walter
City Attorney
Walter & Pistole
670 W. Napa St. Suite F
Sonoma, CA 95476
Fax: 707 996 9603
Phone: 707 996 9690

Richfield Investment Corp.
dba Richfield Development
Mr. Ricardo Sabella
President
10001 Westheimer Rd., Suite 2888
Houston, Texas 77042
Phone: 713 975 6288
Fax: 713 975 1002

Ms. Alicia Guerra

Mr. John Briscoe
Briscoe, Ivester & Bazel, LLP
155 Sansome St., 7th Fl.
San Francisco, CA 94104
Phone: 415 402 2700
Fax: 415 395 5630

IN WITNESS WHEREOF the parties hereto execute this Agreement on the date written below.

City of Martinez

By: _____
Rob Schroder, Mayor

Dated: _____

By: _____
Phil Vince, City Manager

Dated: _____

Approved as to form:

Deleted: Martinez - Alhambra Highlands - Agreement Final 10-30-09
Deleted: Martinez - Alhambra Highlands - Agreement Clean 10-28-09

By: _____
Jeffrey Walter, City Attorney

Dated: _____

Richfield Investment Corporation

By: _____
Ricardo Sabella, President

Dated: _____

Approved as to form:

By: _____
Alicia Guerra, Attorney for
Richfield

Dated: _____

Deleted: Martinez - Alhambra
Highlands - Agreement Final 10-30-09

Deleted: Martinez - Alhambra
Highlands - Agreement Clean 10-28-09

**Alhambra Highlands VTM, PUD, UP
 Entitlement Schedule – Tentative (1)
 Assumes CEQA Determination of MND**

Prepared 10/21/09
 Revised 10/23/09
 Revised 10/28/09

Task/Milestone	Weeks/ Days	Cumulative Weeks	Note
Completeness letter out (revised)	2 weeks	09/28/09	Completed task
Team site visit	1 day	9	Optional task -- tentative/weather permitting
Revision period / re-submittal *	8 weeks	10	Current task -- begin CEQA
Team meeting	1 day	14	Takes place within 30 day review
Completeness review / letter	30 days	15	Permit Streamlining Act
Departmental routing/ review/ comments	5 weeks	20	Obtain comments from internal departments
Outside agency review	5 weeks	20	Fire, sanitary, water, EBRP?
Draft conditions of approval	2 weeks	22	CEQA 30 day review begins 01/22
Team meeting	1 week	22	Tentative
Revise conditions of approval	2 weeks	24	Based on cumulative conditions of approval
Planning Commission Workshop	1 week	26	NOTICE req. / during CEQA review per.
Prepare draft staff report	3 weeks	29	Should have CEQA comments
Public notice	10 days	33	¼ mile radius. Final MND in 04/19/09 **
Planning Commission hearing(s) ^^	4 weeks	36	1st mtg. 05/11-PC meets 2 nd and 4 th Tuesday
Appeal period	10 days	37	If no appeal, project complete
City Council public hearing(s)*^	4	42	1 st and 3 rd Wednesdays 10 day notice req.

(1) This is a very aggressive schedule and does not include any tasks and/or time for potential disruptions that commonly occur in the entitlement process.

* Two weeks after tentative date for Council to consider tolling agreement

** Add 3-4 months if CEQA determination requires EIR

^^ Assumes 2 PC hearings

*^ Includes 1 CC hearings