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| DATE SUBMITTED | <u>03/11/16</u> |
| SUBMITTED BY | <u>PLANNING DIRECTOR</u> |
| DATE ACTION REQUIRED | <u>03/16/16</u> |

| | |
|-----------------------------------|-----|
| COUNCIL ACTION | (X) |
| PUBLIC HEARING REQUIRED | (X) |
| RESOLUTION | () |
| ORDINANCE 1 ST READING | () |
| ORDINANCE 2 ND READING | () |
| CITY CLERK'S INITIALS | () |

**IMPERIAL CITY COUNCIL
AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: PUBLIC HEARING: VICTORIA RANCH WATER TANK REIMBURSEMENT AGREEMENT AMENDMENT

- 1. APPROVE REIMBURSEMENT AGREEMENT AMENDMENT

DEPARTMENT INVOLVED:

BACKGROUND/SUMMARY:

Council previously approved a Reimbursement Agreement with Victoria Place LLC for oversizing the Victoria Ranch Water Tank in 2010. The water tank provides excess capacity to provide benefit an additional 2,060 equivalent dwelling units above and beyond what would have been needed for Victoria Ranch. The original agreement clearly outlined the fair share reimbursement of funds but it did not clearly define the benefit area. This amendment establishes the boundaries being an undeveloped area of approximately 812 acres and generally bounded by Dogwood Road on the east, Aten Road on the south, then up Cross Road, including the Sycamore Estates Subdivision, then to Rosarito, then Clark Road on the west and Huston Road to the north. All other terms of the agreement remain the same.

FISCAL IMPACT: None. Each new connection within the Benefit Area will be required to pay an amount of \$1,409.47 per equivalent dwelling unit and will be forwarded to the developer on a quarterly basis.

F.O. INITIALS: _____

STAFF RECOMMENDATION:

Staff recommends approval of the Victoria Ranch Reimbursement Agreement Amendment

MANAGER'S RECOMMENDATION:

MANAGER'S INITIALS

MOTION:

| | | | | |
|-----------|--------------|-----|----------|-----|
| SECONDED: | APPROVED | () | REJECTED | () |
| AYES: | DISAPPROVED | () | DEFERRED | () |
| NAYES: | | | | |
| ABSENT: | REFERRED TO: | | | |

**Recording Requested by and
When Recorded, Return to:**

Debra Jackson
City Clerk
City of Imperial
420 South Imperial Avenue
Imperial, California 92251

Draft

AGREEMENT

This agreement is entered on this _____ day of _____, 2016, between the City of Imperial, a municipal corporation of the State of California, hereinafter referred to as “City,” and James and Shannen Lessley Family Trust, hereinafter referred to as “Developer.”

WITNESSETH

WHEREAS, City and Victoria Place, LLC (“Victoria”) entered an agreement dated March 22, 2010, (“Agreement”) to provide for reimbursement to Victoria for construction of a two million gallon potable water storage facility (“Tank” or “Project”); and

WHEREAS, City has accepted the offer of dedication of the Tank; and,

WHEREAS, the parties hereto acknowledge that the Tank is larger than what would be required to develop Developer’s Property; and

Whereas, there are other properties which may develop in the future and which will benefit by the availability of the Tank (“Benefited Parcels”); and,

WHEREAS, the Benefited Parcels are depicted on Exhibit A; and

WHEREAS, since the entering of the Agreement, additional information has come to light and the parties hereto wish to, among other things, refine the reimbursement schedule called for in Agreement; and

WHEREAS, the purpose of this agreement is to set forth the manner in which Developer will be reimbursed for incremental costs associated with installation of a Tank which benefits other development; and,

WHEREAS, it is contemplated that City will require reimbursement by all Benefited Parcels to reimburse Developer for a fair share of costs associated with construction of the Tank; and,

WHEREAS, Victoria has assigned all of its right, title and interest in the Agreement to the James and Shannen Lessley Family Trust,

WHEREAS, Developer certifies and warrants it is the entity with the sole right to reimbursement.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Recitals. The recitals hereto are correct and are incorporated herein by this reference.
2. Benefited Parcels. For purposes of this agreement, there are 2060 equivalent dwelling units (“EDU’s”) benefited by the Tank. The area benefited by the Tank is depicted on Exhibit A.
3. Cost of Project Eligible For Reimbursement. The portion of the total costs associated with construction of the Tank and eligible for reimbursement is \$2,903,521.39.

4. Reimbursement Amount. The dollar amount per equivalent EDU to be reimbursed to Developer is \$1409.47. Total reimbursement shall not exceed the eligible cost set forth in paragraph 3 above plus interest. Interest shall commence as of the date of approval of this agreement. Commencing one year from the date the addendum setting forth the actual cost of the Project is executed, and annually thereafter for the ensuing year, unpaid reimbursement shall be subject to adjustment commensurate with the Wallstreet Journal Prime on each such annual date plus one percent.

Developer acknowledges and agrees that its actual reimbursement may be less than set forth herein.

5. Payment. Prior to the issuance of the first construction permit for a project in a Benefited Parcel, City shall collect payment of the applicable fair share reimbursement, plus accrued interest and less a 3 percent administrative fee. Reimbursement shall be remitted to Developer on a quarterly basis. Any reimbursement to Developer in accordance with this agreement, shall be considered reimbursement for those costs that are normally borne by the public in accordance with California Labor Code Section 1720(c)(3).

6. Term. This agreement shall be binding until twenty (30) years from the date this agreement is approved or until Developer receives full reimbursement plus interest, whichever occurs first.

7. Binding Agreement. The provisions of this agreement shall be binding upon the parties, their heirs, successors, and assigns.

8. Disputes. The parties further agree that any litigation arising out of this agreement shall be filed and maintained until conclusion in the Superior Court of the County of Imperial, California.

9. No Partnership. Nothing in this agreement shall be interpreted as creating any form of partnership, joint venture, or other relationship between the parties with reference to the ownership, design, development, financing, or other operations or uses proposed for the subject Project.

10. Not a Public Work. Nothing in this agreement shall be interpreted as a finding by City that the Project is a public work, or shall otherwise be interpreted to cause the Project to be determined to be a Public Work within the scope of California Labor Code Section 1720, et seq.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first set forth.

James and Shannen Lessley Family Trust

By _____
James B. Lessley, Trustee

By _____
Shannen Lessley, Trustee

CITY OF IMPERIAL, a municipal corporation
of the State of California

By _____
Mayor

ATTEST:

Debra Jackson,
City Clerk

EXHIBIT A

