

EXHIBIT D

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OCT 21 2016

Imperial County  
County Administration Center

**TAX AND FISCAL IMPACT AGREEMENT FOR LOTUS RANCH  
ANNEXATION EC 3-05**

THIS TAX AND FISCAL IMPACT AGREEMENT ("this Agreement") is made and entered into by and between the COUNTY OF IMPERIAL, a political subdivision of the State of California ("the County") and the CITY OF EL CENTRO, a municipal corporation and charter city ("the City") (individually, "Party;" collectively, "Parties").

WHEREAS, Revenue and Taxation Code §99 provides that in case of a jurisdictional change, the governmental bodies of all agencies whose service areas or responsibilities would be altered by such jurisdictional change must agree, by resolution, to accept the negotiated exchange of property tax revenues; and

WHEREAS, Government Code §56668 requires certain factors be considered in the review of any proposal before the Local Agency Formation Commission ("LAFCO"), including "the effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local government structure of the county"; and

WHEREAS, Government Code §56069 defines "proposal" as a desired change of organization or reorganization initiated by a petition or by resolution of application of a legislative body or school district for which a certificate of filing has been issued; and

WHEREAS, Government Code §56021 defines "Change of organization" to mean any of the following: (a) a city incorporation; (b) a district formation; (c) an annexation to, or detachment from, a city or district; (d) a disincorporation of a city; (e) a district dissolution; (f) a consolidation of cities or special districts; (g) a merger or establishment of a subsidiary district; or (h) the exercise of new or different functions or classes of services, or divestiture of the power to provide particular functions or classes of services, within all or part of the jurisdictional boundaries of a special district; and

WHEREAS, LAFCO requires a written agreement between the affected governmental bodies prior to the approval of any annexation to offset any negative fiscal impacts; and

WHEREAS, ANNEXATION EC 3-05 involves the annexation of approximately ±213 acres of vacant ground (APN's 052-280-012 and 052-380-030) and approximately ±3.87 acres of improved land, consisting of two dwelling units (APN's 052-380-028 and 052-380-029) that are not a part of the Lotus Ranch Subdivision, but that also will be annexed into the City of El Centro.

WHEREAS, the purpose of ANNEXATION EC 3-05 to the City is for the purpose of developing 574 single-family residential lots, three (3) stormwater detention basins, one ±10.8-acre park site, and one proposed ±8.13-acre school site; and

WHEREAS, in order to offset the “negative fiscal impacts” to the County and the City for LOTUS RANCH ANNEXATION EC 3-05, the County and the City are entering into this Agreement; and

WHEREAS, through this Agreement, the City agrees to pay the County a designated amount to offset the negative impacts created through an annexation of territory to the City, and;

WHEREAS, the Parties have negotiated this Agreement for the exchange of property tax revenues and to offset negative impacts from the LOTUS RANCH ANNEXATION EC 3-05 to the City.

WHEREAS, the current assessed value for the territory within the LOTUS RANCH ANNEXATION EC 3-05, including improvements, is two million six hundred eighty-one thousand sixty-six dollars \$2,681,066.00 (APN’s 052-280-012, 052-380-030, 052-380-028, 052-380-029).

NOW, THEREFORE, the County and the City agree as follows:

1. DEFINITIONS.

a. “Base year revenues” means property tax revenues accruing to the County and the City in the current fiscal year, being defined as the fiscal year in which the annexation is accepted by the State Board of Equalization.

b. “Tax increment” means that the amount of property tax revenues in excess of base year revenues accruing to each agency (by tax rate area) and resulting from the increase in assessed valuation from one year to the next.

c. “Project development” means the period commencing when the first building permit is issued by the City for the Lotus Ranch Subdivision and ending upon the issuance of the last certificate of occupancy for the Lotus Ranch Subdivision.

2. APPORTIONMENT.

a. When a special district, including County fire and library districts, gives up its service responsibility in a territory, upon annexation of such territory to a city, the affected special districts shall transfer to the City all of its base year revenues and tax increment attributable

to the annexed territory, effective as of the fiscal year following the calendar year in which annexation is completed.

b. For jurisdictional changes where the proposed area is agreed to by the County and the City to be substantially developed, no transfer of the base year revenues is required. The aggregate amount of the tax increment that would accrue to the County, as a result of the aforesaid base year revenue apportionment, shall be distributed in the amount of fifty percent (50%) of the increment to the City and fifty percent (50%) of the increment to the County.

c. For all other jurisdictional changes, the County shall transfer to the City forty percent (40%) of the base year revenues. The aggregate amount of the tax increment that would accrue to the County and the City, as a result of the aforesaid base year revenue apportionment, shall be distributed in the amount of fifty percent (50%) of the increment to the City and fifty percent (50%) of the increment to the County.

3. APPLICATION.

The provisions of this Agreement shall apply to the apportionment of all secured and unsecured property tax revenues, due to the LOTUS RANCH ANNEXATION EC 3-05 to the City.

4. FISCAL IMPACT PAYMENT.

a. To offset the negative impact to County from LOTUS RANCH ANNEXATION EC 3-05, City shall require developer, as compensation for the discounted negative impacts for the first twenty (20) years of project development, to pay the County the County Impact Fees, which are described on the *Schedule of Fiscal Impact Fees Per Unit (residential) and per Square Foot (nonresidential) – Countywide* attached hereto as **EXHIBIT "A"** ("Fee Schedule"). Said Fee Schedule is pursuant to the Impact Fee Study prepared for the County of Imperial, California, by Tischler Bise dated August 17<sup>th</sup>, 2006. A copy of said Impact Fee Study is available upon request.

b. In the event that the developer fails to pay the County the applicable County Impact Fees required to be paid in respect of any building permits related to the LOTUS RANCH ANNEXATION EC 3-05 for which the developer is making application to the City, City shall deny the application for the said building permits until such time as the developer pays the required

County Impact Fees applicable to such building permits as provided for pursuant to the Fee Schedule.

c. Said payment of County Impact Fees shall be made by the developer to the County in the appropriate and applicable amount depending upon the number of building permits for which the developer is making application to the City at any given time. Upon payment by the developer of the County Impact Fees applicable to any building permits for which the developer is making application to the City as provided for above, the County shall issue a receipt and/or other form of documentation evidencing that the developer has made the required payment and the City shall be entitled to rely upon such receipt and/or other documentation issued by the County that the required County Impact Fees in respect of such building permits have been paid for the purposes of this Agreement.

d. In the event that 1) the developer fails to pay the County the applicable County Impact Fees required to be paid in respect of any building permits related to the LOTUS RANCH ANNEXATION EC 3-05 for which the developer is making application to the City and 2) the City approves the application for the said building permits despite the failure of developer to pay the applicable County Impact Fees, then City shall pay County the applicable County Impact Fees. Such payment shall be due within thirty (30) days of the approval of the application for building permits.

5. TERM OF AGREEMENT.

a. This Agreement shall be in effect from the date of execution of this Agreement by the County and the City. The terms and conditions for the LOTUS RANCH ANNEXATION EC 3-05 shall remain in full force and effect until each term or condition is completely and fully satisfied.

6. ADVERSE PROPERTY TAX IMPACTS.

a. Prior to the City including any portion of the LOTUS RANCH ANNEXATION EC 3-05 in the next twenty (20) years covered by this Agreement into any program which adversely fiscally impacts the County, the City and County shall renegotiate and enter into a new and separate agreement which addresses said negative fiscal impacts.

7. INTENT OF AGREEMENT.

a. By entering into this Agreement, the Parties mutually assume the continuation of a statutory scheme for the distribution of tax revenues that is compatible with the provisions contained herein, and such assumption is a basic intent of this Agreement.

b. If any term or provision of this Agreement is held by a court of competent jurisdiction to be void, invalid or otherwise unenforceable, the remaining terms and provisions shall continue in full force and effect.

c. This Agreement is made and entered into in Imperial County, California. This Agreement shall be construed and enforced in accordance with the laws of the State of California, except that the Parties agree that any action brought by either party regarding this Agreement shall be brought in a court of competent jurisdiction in Imperial County, or if appropriate, in the Federal District Court serving Imperial County.

d. The Parties hereto agree to act in good faith and deal fairly with the other Party in the performance of this Agreement.

e. Notices required hereunder shall be in writing and may be given either personally or by registered or certified mail, postage prepaid, return receipt requested. If given by registered or certified mail, such notice shall be addressed as indicated below and shall be deemed given and received upon the earlier of actual receipt by the Party to whom the notice was sent or return of the requested receipt to the Party giving notice. Notice personally given shall be deemed given when delivered to the Party to whom the notice is addressed. Any Party may upon ten (10) days written notice to the other Party, change the address where notices are to be sent.

**NOTICES TO COUNTY**

County of Imperial  
County Executive Office  
Attention: County Executive Officer  
940 West Main Street, Suite 208  
El Centro, CA 92243

**WITH COPIES TO**

Imperial County LAFCO  
Attention: Executive Officer  
1122 State Street, Suite D  
El Centro, CA 92243

**NOTICES TO CITY OF EL CENTRO**

City of El Centro  
Attention: City Manager  
1275 West Main Street  
El Centro, CA 92243

8. EXECUTION OF AGREEMENT


a. The Parties herein agree that this Agreement may be executed in counterparts.

b. The Parties herein each warrant and represent that they are authorized to execute this Agreement and bind the City or the County to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement in El Centro, California, on the 18<sup>th</sup> day of October, 2016.

COUNTY OF IMPERIAL

By

  
Jesus J. Terrazas, Chairman  
Board of Supervisors

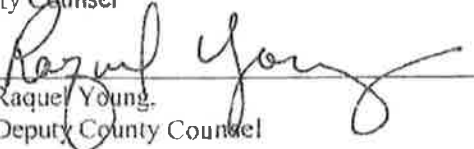
ATTEST:

  
Blanca Acosta, Clerk of the Board  
County of Imperial


APPROVED AS TO FORM:

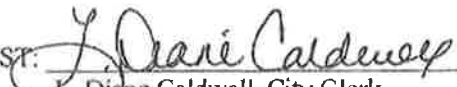
Katherine Turner  
County Counsel

By


  
Raquel Young,  
Deputy County Counsel

CITY OF EL CENTRO

By   
Ruben A. Duran, City Manager

ATTEST:   
L. Diane Caldwell, City Clerk

APPROVED AS TO FORM:

By   
Elizabeth L. Martyn, City Attorney



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# Exhibit “A”

COUNTY OF IMPERIAL  
FISCAL IMPACT FEES  
EFFECTIVE JANUARY 20, 2007

Exhibit A

Units	Total Impact Fee Per Unit	Per Fiscal Impact Studies	Surcharge for Developable Land	Total
Residential		Per Housing Unit		
Single Family	\$2,420	\$225	\$72.60	\$2,718
Multi Family	\$1,895	\$276	\$56.85	\$2,228
Mobile Home	\$1,624		\$48.72	\$1,673
	Countywide Impact Fee Per 1,000 Square Foot			
<b>Non-Residential</b>				
Com/Shop Ctr (50,000 or less sq ft)	\$671.00	\$80.00	\$20.00	\$771
Com/Shop Ctr (50,001-100,000 sq ft)	\$587.00	\$80.00	\$17.00	\$684
Com/Shop Ctr (100,001-200,000 sq ft)	\$513.00	\$80.00	\$15.00	\$608
Com/Shop Ctr over (200,000 sq ft)	\$449.00	\$80.00	\$13.00	\$542
Office/Inst (25,000 or less sq ft)	\$549.00	\$80.00	\$16.00	\$645
Office/Inst (25,000-50,000 sq ft)	\$502.00	\$80.00	\$15.00	\$597
Office/Inst (50,001-100,000 sq ft)	\$461.00	\$80.00	\$13.00	\$554
Medical-Dental Office	\$700.00	\$80.00	\$21.00	\$801
Hospital	\$470.00	\$80.00	\$14.00	\$564
Business Park	\$407.00	\$80.00	\$12.00	\$499
Light Industrial	\$276.00	\$80.00	\$8.00	\$364
Manufacturing	\$199.00	\$80.00	\$5.00	\$284
Warehousing	\$162.00	\$80.00	\$4.00	\$246
Elementary School	\$216.00	\$80.00	\$6.00	\$302
<b>Other Non-Residential</b>				
Lodging (per room)	\$91.00		\$2.00	\$93
Day Care (per student)	\$55.00		\$2.00	\$57
Nursing Home (per bed)	\$54.00		\$1.00	\$55

Prepared 11/14/2006

Based on TischlerBise Fiscal Impact Fee Study dated August 17, 2006 &  
Proposed Fiscal Impact Fee Ordinance

County of ...

Date: 10-20-16

10-18-16 316

County of ...

By: *Andrew*