

ORDINANCE NO. 2024-xx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, APPROVING THE FIRST AMENDMENT (DA-20-05) TO DEVELOPMENT AGREEMENT (DA-94-01) BETWEEN THE CITY OF COSTA MESA AND THE INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB

THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA DOES HEREBY FIND AND DECLARE AS FOLLOWS:

WHEREAS, public hearings were held on May 23, 1994 before the Planning Commission pursuant to the Procedures and Requirements for Consideration of Development Agreements set forth in City Council Resolution No. 88-53 and Government Code 65867, regarding the proposed Development Agreement DA-94-01 (hereinafter, the "Agreement"), at which time the Planning Commission considered testimony presented by the public and applicant (hereinafter, "Developer") and thereafter made a recommendation to the City Council; and

WHEREAS, a public hearing was subsequently held before the City Council on June 6, 1994 and June 20, 1994 pursuant to the requirements of Resolution No. 88-53 and Government Code 65867, at which time the City Council considered testimony presented by the public and the Developer and the recommendation of the Planning Commission regarding the proposed Agreement; and

WHEREAS, EIR No. 1045 and Addendum No. 1 were prepared for the project and were certified on June 20, 1994, in accordance with Sections 15090 and 15164 of the CEQA Guidelines; and

WHEREAS, on behalf of the property owner, the applicant, Jennifer J. Farrell of Rutan, submitted application Development Agreement DA-20-05 in August 2023 requesting amendments to several terms of Development Agreement DA-94-01; and

WHEREAS, the proposed First Amendment (DA-20-05) to Development Agreement (DA-94-01) between the City of Costa Mesa and the Interinsurance Exchange of the Automobile Club requests approval of the following:

- A 20-year time extension that would expire on October 31, 2044,
- Update to the rate and methodology for calculating traffic impact fees,
- Update to the setback of a future parking structure, and

WHEREAS, a duly-noticed public hearing was held on July 22, 2024, before the Planning Commission pursuant to the Procedures and Requirements for Consideration of Development Agreements set forth in City Council Resolution No. 88-53 and Government Code Section 65867, regarding the proposed First Amendment (DA-20-05) to Development Agreement (DA-94-01), attached hereto as Exhibit “A” (hereinafter, the “Agreement”), at which time the Planning Commission considered testimony presented by the public and applicant and property owner Interinsurance Exchange of the Automobile Club (hereinafter, “Developer”) and thereafter recommended by a vote of 4-1-2 that the City Council approve the proposed amendments; and

WHEREAS, a duly-noticed public hearing was subsequently held on August 6, 2024, before the City Council pursuant to the Procedures and Requirements for Consideration of Development Agreements set forth in City Council Resolution No. 88-53 and Government Code 65867, regarding the proposed First Amendment (DA-20-05) to Development Agreement (DA-94-01), at which time the City Council considered testimony presented by the public and the Developer and the recommendation of the Planning Commission; and

WHEREAS, the First Amendment to the Development Agreement is:

- (a) Consistent with the objectives, policies, general land uses and programs specified in the General Plan;
- (b) Compatible with the uses authorized in, and the existing land use regulations prescribed for, the zoning district in which the real property is and will be located; and
- (c) Is in conformity with and will promote public convenience, general welfare, and good land use practice.

WHEREAS, the First Amendment to the Development Agreement will not:

- (a) Be detrimental to the health and safety and general welfare; or
- (b) Adversely affect the orderly development of property or the preservation of property values.

WHEREAS, the First Amendment to the Development Agreement will promote and encourage the development of the proposed project and will ensure the public benefits promised therein, by providing stability and certainty to Developer; and

WHEREAS, pursuant to CEQA Guidelines Section 15162 the project is within the scope of the June 20, 1994-certified Final Environmental impact Report (EIR) #1045 (State Clearinghouse No. 94021036) for the Auto Club Expansion project. The effects of the project were examined in the 1994 FEIR, and all feasible mitigation measures and alternatives developed in the 1994 FEIR are incorporated into this project and no new mitigation measures are required. Therefore, the 1994 FEIR for the Automobile Club Expansion project is determined to be adequate to serve as the environmental documentation for this project, that no further environmental review is required, and that all requirements of CEQA are satisfied.

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

Now, therefore, THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Findings and Declarations. The above stated findings and declarations are true and correct.

Section 2: Approval. The City Council hereby approves, adopts, and enters into First Amendment (DA-20-05) to the Development Agreement (DA-94-01) in the form attached hereto as Exhibit "A" and incorporates the First Amendment (DA-20-05) to the Development Agreement (DA-94-01) herein by this reference.

Section 3: Recordation. Upon execution of the Agreement by all parties, the City Clerk is directed to record the First Amendment (DA-20-05) pursuant to Resolution No. 88-53.

Section 4: Environmental Compliance. Pursuant to the provisions of CEQA and State CEQA guidelines, a Final EIR, State Clearing House No. 94021036, including a mitigation monitoring program and statement of overriding consideration, was certified for the project on June 20, 1994, and the City has determined that the effects of this project were examined in the 1994 FEIR, and all feasible mitigation measures and alternatives developed in the 1994 FEIR are incorporated into this project and no new mitigation measures are required. Therefore, the 1994 FEIR for the Automobile Club Expansion project is determined to be adequate to serve as the environmental documentation for this project, that no further environmental review is required, and that all requirements of CEQA are satisfied.

Section 5: Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this ordinance, to the extent of such inconsistencies

and or further, is hereby repealed or modified to the extent necessary to affect the provisions of this ordinance.

Section 6: Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 7: Effective Date. This Ordinance shall take effect 30 days after adoption.

Section 8: Certification. The City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner as required by law.

PASSED AND ADOPTED this ____ day of _____, 2024.

John Stephens
Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing Ordinance No. 2024-xx was duly introduced for first reading at a regular meeting of the City Council held on the ___ day of _____ 2024, and that thereafter, said Ordinance was duly passed and adopted at a regular meeting of the City Council held on the ___ day of _____, 2024, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this ___ day of _____, 2024.

Brenda Green, City Clerk

EXHIBIT A

FINDINGS

DA-20-05 is a request for 20-year time extension that would expire on October 31, 2044, and to also amend provisions of Development Agreement DA-94-01 pertaining to the rate and methodology for calculating Traffic Impact Fees and the setback for a future parking structure. The requested amendments do not change the previously approved project plans. Therefore, the findings, and the facts in support of those findings, contained in the Ordinances and Resolutions for Final Environmental Impact Report #1045, General Plan Amendment (GP-94-01A), Rezone (R-94-01), Planning Action (PA-94-15), Tentative Parcel Map (S-94-120), and Development Agreement (DA-94-01) remain true and in effect. The following findings, and facts in support of those findings, pertain only to the scope of the proposed amendments.

Pursuant to City Council Resolution No. 88-53, Development Agreement Procedures and Requirements, and Government Code Section 65865(c), staff recommends approval of the requested amendments, based on the following assessment of facts and findings:

- The Development Agreement between the City of Costa Mesa and Developer is:
 - Consistent with the objectives, policies, general land uses and programs specified in the General Plan and with the General Plan as a whole;
 - Compatible with the uses authorized in, and the existing land use regulations prescribed for, the zoning district in which the real property is and will be located; and
 - Is in conformity with and will promote public convenience, general welfare, and good land use practice.

The proposed amendment to the DA is consistent with General Plan policies and objectives, primarily objective LU-6C, in that the long-term build-out of the AAA office campus will support the retention and expansion of the City's employment base with diverse and quality employment opportunities. Additionally, the City's Land Use Element specifies that the "Urban Center Commercial" Land Use District is intended to "allow for high-intensity mixed-use commercial development within a limited area", and identifies that one of the four major developments located within the Urban Center Commercial Land Use District is the "Automobile Club of Southern California". The proposed development is also compatible with the existing land uses located North of Interstate 405 which includes larger developments such as The South Coast Plaza, Metro Pointe, IKEA and the Segerstrom Center for the Arts. Lastly, AAA has operated from this site since 1980 without any impacts to surrounding uses, including the nearby residential developments.

- The Development Agreement between the City of Costa Mesa and Developer will not:
 - Be detrimental to the health, safety and general welfare; and

- Adversely affect the orderly development of property or the preservation of property values.

This AAA headquarters has operated at the site since 1980 and there have been no incompatibilities with the surrounding uses. The proposed use, size, and intensity of the project is consistent with the existing development within the general area located north of the 405 freeway, and would not be detrimental to the health, safety, and general welfare of the community. There are no modifications proposed to the site's previously entitled development intensity and only minor considerations are proposed to improve the site's physical layout to avoid potential impacts to nearby residential development. As such, the extension of the DA will not be detrimental to the health, safety and general welfare, or adversely affect the orderly development of property or the preservation of property values.

EXHIBIT B

**FIRST AMENDMENT (DA-20-05) TO THE DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF COSTA MESA AND INTERINSURANCE EXCHANGE OF THE AUTOMOBILE
CLUB (DA-94-01)**

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

City of Costa Mesa
PO Box 1200
Costa Mesa, CA 92628-1200
Attn: City Clerk

Space Above This Line for Recorder's Use (Exempt
from Recording Fee per Gov't Code §6103 and §27383)

**FIRST AMENDMENT TO
DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF COSTA MESA
AND
THE INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB**

698/037947-0002
19250070.11 a05/30/24

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to Development Agreement (the “Amendment”) is entered into as of the _____ day of _____, 2024 (“First Amendment Effective Date”), by and between the CITY OF COSTA MESA (“City”), and the INTERINSURANCE EXCHANGE OF THE AUTOMOBILE CLUB, formerly known as the Interinsurance Exchange of the Automobile Club of Southern California (“Owner”). Each party may be referred to individually as “Party” or together as the “Parties”.

RECITALS

A. WHEREAS, pursuant to Section 65864 *et seq.* of the Government Code and the City’s adopted rules and procedures, the Parties entered into that certain Development Agreement dated October 5, 1994 and recorded in the official records of Orange County, California on November 1, 1994, as instrument number 94-0641379 (the “Development Agreement”); and

B. WHEREAS, among other purposes, the City entered into the Development Agreement in furtherance of the City’s policy to support the retention and expansion of businesses located in the City in order to increase employment, maintain a stable tax base, attract new businesses, and promote a diversified, stable, and healthy local economy; and

C. WHEREAS, the assurances provided by the Development Agreement were and remain necessary to provide the certainty which will allow the Owner to make the long-term commitments involved in consolidating its facilities and operations in the City; and

D. WHEREAS, the Project on the Property (as defined and described in the Development Agreement) has not been completed based, in part, by the interruption starting in early 2020 in the Owner’s development and planning caused by the COVID-19 pandemic, uncertainty in space needs caused by the changing trends in remote and hybrid work, uncertainty in the configuration of spaces in buildings due to safety protocols and other changing trends, and the evolving business needs of the Owner, all of which merit additional time to complete the development of the Project; and

E. WHEREAS, extending the term of the Development Agreement and updating specified City fees, with all of the terms and conditions in the Development Agreement otherwise remaining the same, continue to further the City’s policy to support the retention and expansion of businesses located in the City in order to increase employment, maintain a stable tax base, attract new businesses, and promote a diversified, stable, and healthy local economy; and

F. WHEREAS, the best interests of the citizens of Costa Mesa, and the public health, safety and welfare, are served by extending the term of the Development Agreement as provided herein; and

G. WHEREAS, the Amendment and the Project are consistent with the City’s General Plan; and

H. WHEREAS, pursuant to Section 65868 of the Government Code and the City’s adopted rules and procedures, this Amendment has been reviewed by City Staff, the Planning Commission, and the City Council; and

I. WHEREAS, the City and Owner have a mutual interest, based on the Recitals in the Agreement and as set forth herein above, to extend the term of the Development Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for good and valuable consideration, the Parties do hereby agree as follows:

1. Except as expressly defined in this Amendment, all capitalized words and phrases shall have the same meaning ascribed to them in the Development Agreement.

2. The term of the Development Agreement shall be extended for an additional twenty (20) years (“Extension Term”), commencing on November 1, 2024, which is the first day after the last day of the 30-year term set forth in Section 2.3 of the Development Agreement. For purposes of the Agreement, the “term” or “Term” of the Agreement shall include the entire period for which the Development Agreement is operative, including the initial 30-year term and Extension Term.

3. To correct duplicative numbering in Article 2 of the Development Agreement, the second Section numbered “2.4” shall be renumbered to “2.5”, and the Section numbers thereafter in Article 2 shall likewise be renumbered, so that the Sections numbered “2.5” and “2.6” shall be renumbered to “2.6” and “2.7”, respectively.

4. The Owner notice addresses in the Development Agreement in Section 2.7(b), as modified by this Amendment, shall be deleted in their entirety and replaced with the following:

“If to OWNER:

Interinsurance Exchange of the Automobile Club
3333 Fairview Road, A410
Costa Mesa, California 92626
Attn: Vice President, Administrative Services

with copies to:

Interinsurance Exchange of the Automobile Club
3333 Fairview Road, A491
Costa Mesa, California 92626
Attn: General Counsel”

5. The proposed Phase II parking structure location shall be addressed in Section 3.7 of the Development Agreement, relating to changes to the Existing Development Approvals which

shall be deemed “minor,” by adding a new clause as clause (e) and renumbering clause (e) to (f) in the last sentence of Section 3.7, to read as follows:

“Unless otherwise required by law, a change to the Existing Development Approvals shall be deemed ‘minor’ and not require an amendment to this Agreement provided such change does not:

(e) Decrease the setback distance requirements for the proposed Phase II parking structure from the northern property boundary, as set forth in Item #5 (Shade and Shadows) of the Inventory of Mitigation Measures, attached as part of Exhibit “B” to City Council Resolution No. 94-54. (Relocation of the Phase II parking structure shall be proposed further away from the existing residential uses north of the smaller parcel to improve compatibility and to minimize potential adverse impacts of the parking structure proximate to residential units); or,

(f) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code.”

Except as amended above, all of the terms and conditions set forth in Section 3.7 of the Development Agreement shall remain in full force and effect.

6. The Development Exactions in Section 3.9(b), clauses (i) and (iii), of the Development Agreement shall be amended as follows:

(a) During the Extension Term as defined above, the first sentence of clause (i) of Section 3.9(b) is amended such that the ADT generated by the second phase of development shall be calculated by multiplying .00989 times the number of square feet of building area to be constructed under the building permit, to read as follows:

“The ADT generated by new development shall be calculated by multiplying .00718 times the number of square feet of building area to be constructed under the building permit; provided, however, that during the Extension Term, the ADT generated by the second phase of development shall be calculated by multiplying .00989 times the number of square feet of building area to be constructed under the building permit.”

Except as amended above, all of the terms and conditions set forth in clause (i) of Section 3.9(b) of the Development Agreement shall remain in full force and effect.

(b) During the Extension Term as defined above, clause (iii) of Section 3.9(b) of the Development Agreement shall be amended by adding the following sentences at the end of the paragraph, to read as follows:

“Commencing on the Extension Term, the traffic impact fee shall be adjusted to two hundred thirty-five dollars (\$235.00) per ADT. For any building permit issued during the Extension Term, the traffic impact fee shall be the lesser of either \$235 per ADT or the amount per ADT then in effect in accordance with Section 13-274 of the CITY Planning, Zoning and Development Code or any successor CITY ordinance.”

Except as amended above, all of the terms and conditions set forth in clause (iii) of Section 3.9(b) of the Development Agreement shall remain in full force and effect.

7. The Development Exactions in Section 3.9(c), clauses (ii) and (iii), of the Development Agreement shall be amended as follows:

(a) During the Extension Term as defined above, the last sentence of clause (ii) of Section 3.9(c) shall be amended so that the modified traffic impact fee of two hundred thirty-five dollars (\$235.00) and provisions applicable during the Extension Term are incorporated into this clause (ii), to read as follows:

“Any such payment by OWNER or refund by CITY shall be made within thirty days of submittal of such traffic study and shall be based on the lesser of either two hundred twenty-eight dollars (\$228.00) (or, during the Extension Term, two hundred thirty-five dollars (\$235.00)) per ADT or the amount per ADT then in effect under Section 13-326 (or, during the Extension Term, Section 13-274) of the CITY Planning, Zoning and Development Code or any successor CITY ordinance.”

Except as amended above, all of the terms and conditions set forth in clause (ii) of Section 3.9(c) of the Development Agreement shall remain in full force and effect.

(b) During the Extension Term as defined above, the last sentence of clause (iii) of Section 3.9(c) of the Development Agreement shall be amended so that the modified traffic impact fee of two hundred thirty-five dollars (\$235.00) and provisions applicable during the Extension Term are incorporated into this clause (iii), to read as follows:

“Any such payment by OWNER or refund by CITY shall be made within thirty (30) days of submittal of such second traffic study and shall be based on the lesser of two-hundred twenty-eight dollars (\$228.00) (or, during the Extension Term, two hundred thirty-five dollars (\$235.00)) per ADT or the amount per ADT then, in effect under Section 13-326 (or, during the Extension Term, Section 13-274) of the CITY Planning, Zoning and Development Code or any successor CITY ordinance.”

Except as amended above, all of the terms and conditions set forth in clause (iii) of Section 3.9(c) of the Development Agreement shall remain in full force and effect.

8. Except as expressly modified by this Amendment, all of the terms and conditions set forth in the Development Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, Developer and City have executed this Amendment as of the First Amendment Effective Date.

“CITY”
CITY OF COSTA MESA

Dated: _____

By: _____

Name: _____

Its: _____

ATTEST:

CITY CLERK

By: _____

Name: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Its: _____

“OWNER”
INTERINSURANCE EXCHANGE OF
THE AUTOMOBILE CLUB

Dated: _____

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Its: _____