

**RECORDING FEES  
EXEMPT PURSUANT TO  
GOVERNMENT CODE §27383**

**RECORDING REQUESTED BY:  
CITY OF VACAVILLE**

**WHEN RECORDED MAIL TO:**

**KATHLEEN M. DUSSAULT  
CITY CLERK  
CITY OF VACAVILLE  
650 MERCHANT STREET  
VACAVILLE, CA 95688**

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT  
BY AND AMONG THE CITY OF VACAVILLE,  
THE REDEVELOPMENT AGENCY OF THE CITY OF VACAVILLE  
AND GENENTECH, INC.**

FIRST AMENDMENT TO DEVELOPMENT  
AGREEMENT BY AND AMONG THE CITY OF VACAVILLE,  
THE REDEVELOPMENT AGENCY OF THE CITY OF VACAVILLE  
AND GENENTECH, INC.

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "First Amendment") is entered into as of January 14, 2003, by and among GENENTECH, INC. a Delaware corporation ("Developer"), the CITY OF VACAVILLE, a municipal corporation ("City"), and the CITY OF VACAVILLE REDEVELOPMENT AGENCY, a public agency created pursuant to the California Redevelopment Law ("Agency").

RECITALS

A. City, Agency, and Developer previously entered into an agreement dated May 23, 1995, entitled "Development Agreement by and Among the City of Vacaville, the Redevelopment Agency of the City of Vacaville and Genentech, Inc." ("Agreement").

B. The parties to the Agreement wish to make certain amendments thereto.

C. Section 10.1 of the Agreement provides that the Agreement may be amended from time to time by mutual consent of the parties or their successors in interest, in accordance with the provisions of Government Code Sections 65867 and 65688 and Chapter 15.60 of the Vacaville Municipal Code.

D. The parties wish to amend certain portions of the Agreement pertaining to the method of calculating financial incentives provided for in Section 5.6 of the Agreement and the reservation of sewer treatment capacity in City's wastewater treatment facility provided for in Article VI of the Agreement.

AGREEMENT

Section 1. Section 5.6(a) Amended. Section 5.6(a) of the Agreement is amended to read in full as follows:

Section 5.6 ) Future Financial Incentives of City and Agency. Subject to Section 5.1 above and the remainder of this Section 5.6, City and Agency shall provide a corresponding package of incentives for Project facilities constructed by Developer subsequent to Phase 1 as follows:

(a) For each tax year during the Term of this Agreement, beginning with the 2000/2001 tax year, the Agency shall rebate to Developer the full "net property tax increment" (as defined below) with respect to each "Annual Assessment" (as defined below) as provided in clauses (i) through (iv) below.

For purposes hereof, "net property tax increment" with respect to any Annual Assessment means all property taxes paid with respect to such Annual Assessment, less (1) the pass-through of funds to Solano County and other agencies (currently set at 36% of the tax increment), (2) the low-income and moderate-income housing set aside (currently set at 20% of the tax increment), (3) the City's Paramedic/Ambulance Program Fund (currently set at 0.03% of assessed value), (4) the City's North Bay Aqueduct/Napa

Make Whole Program Fund (currently set at 0.001349% of assessed value), (5) the Vacaville Unified School Bonds Fund (currently set at 0.057407% of assessed value), and (6) the Solano Community College Bond Fund (currently estimated at 0.018% of assessed value). It is understood that the percentages set forth in items (1) through (6) are the percentages currently in effect and that such percentages may change in the future and that other property tax amounts for which the Agency does not receive tax increment revenue may be added in the future. In the event of such future change, the parties agree to work cooperatively to ensure Developer receives the level of benefits anticipated by this Agreement while minimizing the outlay by Agency of amounts greater than that received as pass through of property tax paid by Developer.

For purposes hereof, Annual Assessment means the then-current assessed value of property for each calendar year listed on the assessment roll (for example, as shown on the Solano County Integrated Property System - Auditor's Roll Inquiry which identifies the assessed value by year for the tax year) for which the rebate applies, as prepared by the Solano County Office of the Assessor/Recorder.

(i) Beginning with the 1999 Annual Assessment, Agency will rebate to Developer all or a portion of the full net property tax increment paid by Developer for a period of ten (10) years, commencing with the date determined pursuant to clause (iii) below. For each of the years one (1) through five (5) of any ten (10) year period, Agency will rebate to Developer one hundred percent (100%) of the full net property tax increment. For each of the years six (6) through (10) of any ten year period, Agency will rebate to Developer fifty percent (50%) of the full net property tax increment.

(ii) Subject to Agency's receipt of the notice required under clause (iii) below and its concurrence with the information set forth therein, Agency shall rebate to Developer any or all of the full net property tax increment paid by Developer and required to be rebated to Developer pursuant to clause (i) above, within 30 days of the respective property tax payment delinquency dates (delinquency dates currently set at December 10 and April 10). With respect to rebates due beginning with the 2002/03 tax year, if any payment of such rebate is not made within said 30 day period, Agency shall also pay an interest charge on such unpaid sum at Agency's average rate of return on investment commencing from the date of delinquency.

(iii) With respect to any particular Annual Assessment, payments to Developer by Agency hereunder shall commence upon written notice from Developer to Agency, and continue for a period of ten (10) years as set forth in clause (i) above, provided such notice (not including those for the 2000/01 and 2001/02 tax years) is received by Agency on or before June 30<sup>th</sup> of the year following the year for which the rebate applies. The written notice shall, at a minimum, contain a calculation of the rebate amount in sufficient detail and with such supporting documentation (such as the Solano County Integrated Property System - Auditor's Roll Inquiry for the year in which the rebate applies), in order to allow Agency's review and verification of the rebate amount. If such notice and supporting documentation is not received by Agency by such date, Developer's right to a rebate for any portion of the Annual Assessment for the subject year shall be waived. For tax years 2000/01 and 2001/02, Agency's obligations to pay

the rebates shall not commence until 60 days after it receives the respective notice from Developer.

(iv) The parties recognize that an audit by the Solano County Assessor may result in a recalculation of Developer's Annual Assessment for any previous tax year. In the event any such audit results in an increase (or decrease) in the original Annual Assessment, Agency shall rebate to Developer (or Developer shall refund to Agency) the difference between the amount previously rebated to Developer with respect to such Annual Assessment and the amount that should have been rebated based upon the recalculated Annual Assessment (the "True-Up"). Such rebate shall be subject to Agency's receipt of written notice of the True-Up from Developer and Agency's concurrence with the information set forth therein. If a rebate becomes due and payable under this clause (iv), City shall pay such rebate to Developer within 30 days of Agency's receipt of both payment from Solano County and written notice of the True-Up from Developer. If such rebate is not paid within such 30-day period, Agency shall also pay an interest charge on such unpaid sum at Agency's average rate of return on investment commencing upon the expiration of that 30-day period. In the event there is any decrease in assessed value resulting in a refund of property taxes paid by Developer, Developer shall, within 30 days of receipt of payment from Solano County, provide a notice to Agency containing a calculation of the True-Up. Developer shall pay to Agency the amount of any True-Up within 30 days from the date of Agency's concurrence with the information set forth in the notice. If such payment is not made within such 30-day period, Developer shall also pay an interest charge on such unpaid sum in an amount equal to Agency's average rate of return on investment.

Section 2. Subsection 6.5(b)(iv) Added. Subsection 6.5(b)(iv) is added to the Agreement to read in full as follows:

(iv) It is understood and agreed that any portion of the wastewater treatment capacity for the Future Proposed Buildout which is reserved by Developer under this Section 6.5 is non-transferable and may not be transferred, sold, conveyed, or assigned to any other parcel or party except that:

a. If Developer transfers, sells, or conveys any portion of the Project Site, some or all of the reserved capacity may be included as part of such transfer, sale, or conveyance; and

b. Developer may, at any time, sell-back all or any portion of such reserved capacity to the City as provided in this Subsection b. The sell-back price shall be the same price paid by Developer without interest unless City chooses to pay over time, in which case interest shall be paid on the unpaid principal from the date of sale-back. The rate of interest shall be the three-month LIBOR rate plus ten (10) basis points calculated on an actual/360 day basis, compounded quarterly on the unpaid balance, from the date of sale-back until paid. All principal and interest shall be paid not later than five (5) years from the date of sale-back.

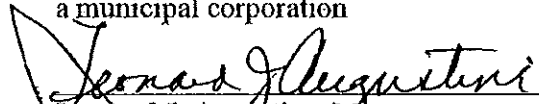
Section 3. Section 4.1 Amended. Section 4.1(b) of the Agreement is amended in full to read as follows:

(b) Not in limitation of the foregoing, Applicable Law shall include, without limitation, (i) all of the terms and provisions of the General Plan, the Zoning Ordinance in force and effect on the Approval Date, (ii) the provisions of the Redevelopment Plan (and any rules of Agency implementing the Redevelopment Plan) in force and effect on the Approval Date; (iii) the provisions of the Policy Plan in force and effect on the Approval Date and (iv) the terms and conditions of the Project Approvals in force and effect on the Approval Date. Applicable Law also shall include City's subdivision ordinance as it existed on the Approval Date and as it may be amended from time to time to the extent necessary to comply with the Subdivision Map Act, provided that City shall not apply to the Project any provision of such amended subdivision ordinance that materially is more burdensome than the requirement of the Subdivision Map Act. Applicable Law also includes all laws, codes and regulations of the federal and state governments applicable to Developer's development and use of the Project Site, including, if applicable, laws relating to the payment of prevailing wages on publicly-assisted construction projects as required by Labor Code §§1720 et seq. and implementation regulations of the California Department of Industrial Relations, including requirements that records of payment of prevailing wages be kept and maintained by Developer and its contractors and subcontractors

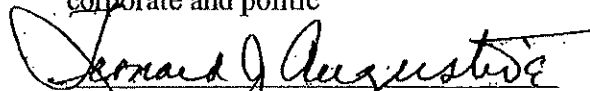
Section 4. Other Terms and Conditions to Remain in Effect. All other provision, terms, and conditions of the Agreement not expressly amended by this First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the day and year first above written.

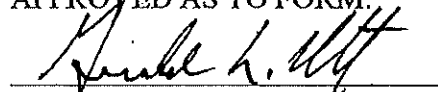
CITY: CITY OF VACAVILLE  
a municipal corporation

  
Leonard J. Augustine, Mayor


AGENCY: REDEVELOPMENT AGENCY OF  
CITY OF VACAVILLE, a public body  
corporate and politic

  
Leonard J. Augustine, Chair

APPROVED AS TO FORM:

  
Gerald L. Hobrecht, City Attorney

DEVELOPER: GENENTECH, INC.  
a Delaware corporation

  
Name: F. JACKSON  
Its: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California  
 County of SOLANO } ss.

On MARCH 12, 2004 before me, CAROL J. YOUNT, Notary Public  
Date Name and Title of Officer (e.g., Jane Doe, Notary Public)  
 personally appeared LEONARD J. AUGUSTINE  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/het/their authorized capacity(ies), and that by his/het/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Carol J. Yount  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of SOLANO } ss.

On MARCH 16, 2004, before me, LORI A. KENT, NOTARY PUBLIC,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared FRANK JACKSON  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Lori A. Kent  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

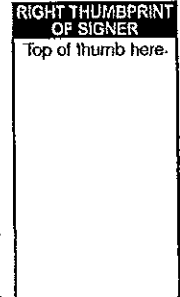
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_



ORDINANCE NO. 1682

ORDINANCE APPROVING FIRST AMENDMENT TO DEVELOPMENT AGREEMENT BY AND AMONG THE CITY OF VACAVILLE, THE REDEVELOPMENT AGENCY OF THE CITY OF VACAVILLE, AND GENENTECH, INC. REGARDING TERMS OF FINANCIAL INCENTIVES FOR SUBSEQUENT PROJECTS, SALE BACK OF WASTE WATER TREATMENT CAPACITY, AND PAYMENT OF PREVAILING WAGES

THE CITY COUNCIL OF THE CITY OF VACAVILLE DOES ORDAIN AS FOLLOWS:

SECTION ONE: The City Council finds the Mitigated Negative Declaration previously prepared by the City for the Genentech project in 1995 will be used to satisfy the requirements of the California Environmental Quality Act and that no new environmental document is needed.

SECTION TWO: The purpose of the ordinance is to approve an amendment to the Development Agreement between Genentech and the City of Vacaville regarding the terms of financial incentives for subsequent projects.

SECTION THREE: The City Council of the City of Vacaville finds that the foregoing amendment to the Development Agreement, attached hereto as Attachment "1," is in the public interest.

SECTION FOUR: If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more section, subsection, phrases or clauses be declared unconstitutional.

SECTION FIVE: A summary of this ordinance shall be published one time in the Vacaville Reporter, a newspaper of general circulation, printed and published in the City of Vacaville.

I HEREBY CERTIFY that this ordinance was introduced at a regular meeting of the City Council of the City of Vacaville, held on the 10<sup>th</sup> day of December, 2002, and ADOPTED and PASSED at a regular meeting of the City Council of the City of Vacaville held on the 14<sup>th</sup> day of January, 2003 by the following vote:

AYES: Council members Hardy, Slade, Wilkins, Vice Mayor Clancy and Mayor Augustine

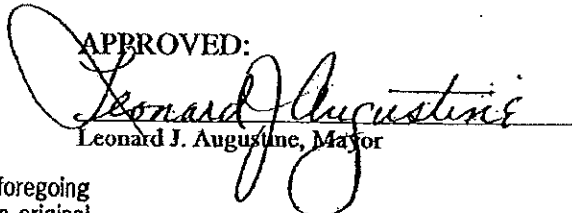
NOES: None

ABSENT: None

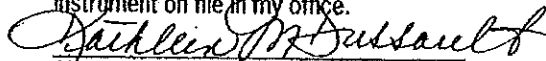
ATTEST:

  
Kathleen M. Dussault, City Clerk

APPROVED:

  
Leonard J. Augustine, Mayor

I hereby certify that the foregoing instrument is a true copy of the original instrument on file in my office.

  
Kathleen M. Dussault  
City Clerk of the City of Vacaville, California