

ORDINANCE NUMBER O- 16015 (New Series)

Adopted on AUG 1 1983

AN ORDINANCE APPROVING THE FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND MBM ASSOCIATES, MISSION VALLEY PARTNERSHIP, MISSION VALLEY I, LTD., DOUGLAS ALLRED, DONALD SAMMIS, CONROCK, R. E. HAZARD CONTRACTING AND MURRAY PROPERTIES, DATED AUG 1 1983, THEREBY AMENDING DEVELOPMENT AGREEMENT NO. 1, ADOPTED DECEMBER 6, 1982, AND REPEALING ORDINANCE NO. 1947 (NEW SERIES), ADOPTED NOVEMBER 1, 1940, ORDINANCE NO. 12191 (NEW SERIES), ADOPTED OCTOBER 26, 1977, AS AMENDED BY ORDINANCE NO. 15662 (NEW SERIES), ADOPTED FEBRUARY 1, 1982, INSOFAR AS THE SAME APPLY TO THE PROPERTIES WHICH ARE SUBJECT TO THE REFERENCED FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT.

WHEREAS, the Planning Commission of The City of San Diego conducted a public hearing regarding the First Amendment to Development Agreement No. 1 by and between The City of San Diego and MBM Associates, Mission Valley Partnership, Mission Valley I, Ltd., Douglas Allred, Donald Sammis, Conrock, R. E. Hazard Contracting and Murray Properties, dated AUG 1 1983, a copy of which is on file in the office of the City Clerk as Document No. OO - 16015 (hereinafter "Development Agreement Amendment"); and

WHEREAS, after due notice the City Council did conduct a public hearing on this matter wherein all persons desiring to be heard were heard; and

WHEREAS, the City Council has reviewed and considered the Development Agreement Amendment and determined the content of the agreement to be complete and correct; and

WHEREAS, the Development Agreement Amendment is in the public interest and is consistent with The City of San Diego Progress Guide and General Plan ("General Plan") and the First San Diego River Improvement Project Specific Plan as amended ("Specific Plan Amendment"); NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego as follows:

Section 1. The City Council finds and determines the facts stated above to be true and certifies the Supplemental Environmental Impact Report EQD No. 83-0092, and adopts the accompanying findings pursuant to the California Public Resources Code.

Section 2. The City Council further finds with respect to the Development Agreement Amendment that:

A. It is consistent with the objectives, policies and programs specified in the General Plan and the Specific Plan Amendment.

B. It is compatible with the uses authorized and regulations prescribed in the Specific Plan Amendment.

C. It will not be detrimental to the public health, safety and general welfare.

D. It will promote the orderly development of property or the preservation of property values in accordance with good land use practice.


Section 3. The City Council hereby approves the Development Agreement Amendment in the form attached hereto, and authorizes and directs the City Manager to enter into said agreement in the name of The City of San Diego, and further

directs the City Clerk to record said agreement and this ordinance with the County Recorder of San Diego County within ten (10) days of its effective date of adoption.

Section 4. Ordinance No. 1947 (New Series), adopted November 1, 1940, Ordinance No. 12191 (New Series), adopted October 26, 1977, as amended by Ordinance No. 15662 (New Series), adopted February 1, 1982, are hereby repealed insofar as such ordinances apply to the property which is the subject of the Development Agreement Amendment.

Section 5. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By 
Frederick C. Conrad
Chief Deputy City Attorney

FCC:ib:404
07/14/83
Or.Dept:Plan.
O-84-3
Form=o.none

DRAFT

FIRST AMENDMENT TO
FIRST SAN DIEGO RIVER IMPROVEMENT PROJECT
DEVELOPMENT AGREEMENT

7/6/83

The First Amendment to the First San Diego River Improvement Project Development Agreement ("Amendment") is made and entered into on this ___ day of _____, 1983, by and between the City of San Diego ("City") and MBM Associates, a California limited partnership, Mission Valley Partnership, a California limited partnership, Mission Valley I, LTD., a California limited partnership, Douglas O. Allred, Donald F. Sammis, Conrock Co., a Delaware corporation, R. E. Hazard Contracting Co., a California corporation, and Murray Properties, Inc., a California corporation, (hereinafter individually referred to as "Owner" or collectively referred to as "Owners").

RECITALS

1. WHEREAS, the First San Diego River Improvement Project Development Agreement ("Agreement") was made and entered into on January 6, 1983, by and between The City of San Diego and MBM Associates, Mission Valley Partnership, Mission Valley I, Ltd., Douglas O. Allred, Donald F. Sammis, and Conrock Co. A copy of said Agreement is on file in the office of the City Clerk as document number 00-15868 and is incorporated herein by reference.

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2. WHEREAS, R. E. Hazard Contracting Co. and Murray Properties, Inc., (jointly referred to as "Hazard") desire to include certain of their property as described in Exhibit A-1 ("Hazard Property") within the Property, as defined in the Agreement and subject said Hazard Property to the First San Diego River Improvement Project Specific Plan ("Specific Plan") and the Agreement, and Owners agree that said Hazard Property should be included in the Specific Plan and Agreement.

3. WHEREAS, Owners desire to alter the alignment of the flood channel as described in the Specific Plan and amend the Specific Plan to include Hazard Property, and modify the Mission Valley West/MBM Development.

4. WHEREAS, concurrently herewith, the City is adopting the First Amendment to the First San Diego River Improvement Project Specific Plan ("Specific Plan Amendment") to alter the alignment of the flood channel, to include the Hazard Property, and modify Mission Valley West/MBM Development. The Specific Plan as amended is incorporated herein by reference and a copy of the Specific Plan as amended is on file with the City Clerk.

5. WHEREAS, all impacts of the Specific Plan Amendment were addressed in the Supplement to the Environmental Impact Report, Environmental Quality Division No. 83-0092, which was prepared for adoption of this Amendment and the Specific Plan Amendment after thorough study by all appropriate agencies.

6. WHEREAS, Owners desire to amend paragraph 3.(d) of the Agreement to include a provision to increase the length of time for a financing plan to be prepared and approved.

7. WHEREAS, Owners desire to amend paragraphs 14 and 16.

8. WHEREAS, this Amendment has been adopted in the same manner as the Agreement was adopted by an ordinance as set forth in Government Code Sections 65867, 65867.5 and 65868 and San Diego Municipal Code Sections 105.0101 et seq.

9. AND WHEREAS, the City finds that this Amendment is consistent with the City of San Diego's General Plan and Progress Guide and with the Specific Plan as amended and has completed all necessary proceedings in accordance with the City's rules and regulations for its approval.

NOW, THEREFORE, in consideration of mutual promises, obligations and covenants herein contained, the parties hereto amend the Agreement as follows:

1. Owners represent that they have a legal interest in the property described and attributed to them in Exhibits A-1 through A-6.

2. Hazard agrees to be bound by all of the provisions contained in the Agreement as well as the provisions of this Amendment.

3. Owners and City agree to be bound by all of the provisions contained in this Amendment.

4. All notices to Hazard shall be addressed as follows:

Mr. Bruce R. Hazard
R. E. Hazard Contracting Co.
7501 Friars Road
P. O. Box 3217
San Diego, CA 92103

5. Paragraph 3.(d) of the Agreement is hereby amended to read in its entirety as follows:

3. (d) Within five hundred forty-five (545) days of the Effective Date of this Agreement, the Owners shall prepare and submit to the City Manager of the City for his review and approval, a financing plan which shall describe the method and the manner of how financing and payment of the costs and expenses described in paragraph 3.(a) shall occur. Such financing plan shall also include a schedule for the establishment of any assessment district, the sale of any assessment bonds, or the posting of other security as required by this Agreement and dates for the completion of the improvements described in the River Improvement Element. The City Manager shall approve or disapprove such

financing plan on the basis of whether such plan demonstrates whether the financing and payment of the above-described costs and expenses are feasible. Any such approval shall not be unreasonably withheld.

6. Paragraph 14. shall be revised to read in its entirety as follows:

14. Severability of Rights and Obligations of Owners.

The parties agree that the development rights and the right to terminate pursuant to paragraphs 16.(f) & (g) below under this Agreement are severable from the other Owners. If any Owner shall be in default under this Agreement, such rights of the other Owners shall remain in full force and effect and shall not be affected by any such other Owner's default.

7. A new paragraph 16.(e) is hereby added to the Agreement to read in its entirety as follows:

(e) Notwithstanding the provisions of paragraphs 12. and 16.(b) hereof, if the events set forth in paragraph 11.(a) hereof fail to occur, then the sole remedy of the City, subject to paragraph 16.(c), shall be to terminate this Agreement.

8. A new paragraph 16.(f) is hereby added to the Agreement to read in its entirety as follows:

(f) (i) In addition to the City's right to terminate under paragraph 16.(e) and subject to subsection (ii) below Owners may, at their option, terminate this Agreement if the City is in default of this Agreement.

(ii) Such right of termination by Owners shall not affect contractual obligations of one Owner to another Owner.

9. A new paragraph 16.(g) is hereby added to the Agreement to read in its entirety as follows:

(g) (i) In addition to the right to terminate under paragraph 16(f) and subject to subsections (ii) and (iii) below, Hazard may, at its option, terminate this Agreement if:

- (1) Hazard deems it reasonably infeasible to obtain all necessary governmental approvals to permit the tasks required of Hazard hereunder; or
- (2) Hazard deems it reasonably infeasible to timely perform the tasks required of Hazard hereunder; or
- (3) Hazard deems it reasonably infeasible to proceed with any one or more of the private improvements hereunder.

(ii) Such right to termination by Hazard shall not affect contractual obligations between Hazard and any other Owner or Owners, nor shall it affect any obligation to the City by Hazard where the performance of such obligation pursuant to the provisions of the "Additional Offsite Transportation Facilities for Hazard Center" subsection of Section VI of the Specific Plan dated July, 1983 is then required; provided, however, such termination shall be permitted as to the Hazard Center:

- (1) up to the date on which permits for the construction of private developments in the Hazard Center have been issued which would generate 10,000 ADT or more; or
- (2) up to the date on which one or more final subdivision maps have been approved, which could generate upon development of the land covered thereby 10,000 ADT or more, provided that any one or more tentative subdivision maps which could in the aggregate generate 10,000 ADT or more shall have as a condition of becoming final the right of the City to call for the improvements described within said subsection entitled "Additional Offsite Transportation Facilities for Hazard Center".

(iii) It is the intent of the City and Hazard that Hazard shall have the discretion to undertake the tasks described in paragraph 3. (a) but if Hazard undertakes any of

such tasks, it shall be completed in accordance with the terms and conditions of this Agreement, and upon Hazard undertaking any such tasks, the City shall then have such remedies at law as are necessary to compensate the City for Hazard's failure to comply, and to the extent equitable remedies, such as injunctive relief or specific performance are appropriate to protect the City's interests, such remedies shall be available to the City.

10. A new paragraph 28. is hereby added to the Agreement to read in its entirety as follows:

28. Law Applicable to Development Agreements

In the event that state or local law applicable to development agreements is repealed, or for any reason held to be invalid, this Agreement shall nevertheless remain in full force and effect under principles of applicable law.

11. The environmental impacts for the alteration of the alignment of the flood channel, and the amendments to the private improvement element to include the Hazard Property and modify Mission Valley West/MBM Development and the mitigation measures for such impacts are set forth in the Supplement to the Environmental Impact Report for the Specific Plan Amendment Environmental Quality Division No. 83-0092.

12. Except as amended hereby, the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date and year first above written.

City:

City of San Diego,
a municipal corporation

By: _____

Approved As To Form:
John C. Witt, City Attorney

By: _____
Frederick C. Conrad
Chief Deputy City Attorney

Owners:

MBM Associates,
a California limited partnership

By: _____
C. Dennis Marteeny
General Partner

By: May Centers, Inc.
General Partner

By: _____
Gregory R. Glass
President

Mission Valley Partnership,
a California limited partnership

By: May Centers, Inc.

By: _____
Gregory R. Glass
President

Mission Valley One,
a California general partnership

By: _____
Donald F. Sammis
General Partner

Allred:

By: _____
Douglas O. Allred

Sammis:

By: _____
Donald F. Sammis

Conrock Co.,
a Delaware corporation

By: _____

By: _____

R. E. Hazard Contracting Co.,
a California corporation

By: _____

Murray Properties, Inc.,
a California corporation

By: _____

Passed and adopted by the Council of The City of San Diego on AUG 1 1983,
 by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William Jones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksmas	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uvaldo Martinez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Roger Hedgecock	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY: ROGER HEDGECOCK
 Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

(Seal)

By Barbara Berridge, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 19 1983, and on AUG 1 1983.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
 City Clerk of The City of San Diego, California.

(Seal)

By Barbara Berridge, Deputy.

Office of the City Clerk, San Diego, California	
Ordinance Number	<u>0 - 16015</u> Adopted <u>AUG 1 1983</u>