

(O-98-112)

ORDINANCE NUMBER O- 18508 (NEW SERIES)

ADOPTED ON MAY 04 1998

AN ORDINANCE APPROVING THE AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND H. G. FENTON MATERIAL COMPANY [MISSION CITY].

WHEREAS, H. G. Fenton Material Company, a California corporation [Owner], is the owner or equitable owner of that certain real property consisting of approximately 229 acres located within the Mission Valley community planning area [Property]; and

WHEREAS, The City of San Diego, a charter city, is authorized pursuant to Government Code Sections 65864 - 65869.5 to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to establish certainty in the development process. The City further enters into this Development Agreement pursuant to its Charter and self-rule powers and San Diego Municipal Code Sections 111.0901 et seq.; and

WHEREAS, the Property is presently subject to a development agreement dated and filed November 13, 1984 in the Office of the City Clerk as Document No. 00-16324-1 and recorded in the Official Records of the County of San Diego, California on March 1, 1985 as Document No. 85-069266; and

WHEREAS, the property which was subject to the original Development Agreement and the Northside Specific Plan included an additional 17 acres which has been sold to a third party and developed for office purposes and is not part of the "Property" which is the subject of this Agreement; and

WHEREAS, a dispute arose under the original Development Agreement and as a result of the dispute, a lawsuit was filed. The dispute and lawsuit were resolved by a Settlement Agreement dated November 21, 1995 [Settlement Agreement]; and

WHEREAS, this Amended Development Agreement is being submitted and considered in connection with the terms of the Settlement Agreement; and

WHEREAS, the parties desire to enter into this Amended and Restated Development Agreement relating to the Property in conformance with the Settlement Agreement and the provisions of the Government Code in order to achieve the development of residential, commercial, industrial and private recreational uses together with the provision of public services, public uses and urban infrastructure all in the promotion of the health, safety, and general welfare of the City of San Diego; and

WHEREAS, the Property is located within the boundaries of the Mission Valley community planning area. The *Mission Valley Community Plan* was adopted by the Council on June 25, 1985, by Resolution No. R-263536. In conjunction with the adoption of the community plan, the Council certified the information contained in the Environmental Impact Report and approved the findings of the environmental document in compliance with the California Environmental Quality Act of 1970; and

WHEREAS, development of the Property will be in conformance with the *Mission Valley Community Plan*, the *Mission City Specific Plan*, and Tentative Map No. 96-0544. The environmental effects of development permitted pursuant to the Amended and Restated Development Agreement were addressed in Environmental Impact Report No. 96-0544, which has been certified by the City; and

WHEREAS, because of the complexities of financing the urban infrastructure, certainty

in the development process is desirable. The phasing, timing and development of the public infrastructure including, but not limited to, parks, libraries, fire stations, transportation facilities, sewer and water facilities, other utilities, and open space maintenance necessitates a significant commitment of resources, planning and effort by property owners and the City in order for the public facilities financing to be successfully completed. Accordingly, in return for the participation and commitment to provide a pro rata share of public facilities and the significant contribution of private resources for public purposes, the City in return desires to make a commitment for certainty in the development process; and

WHEREAS, pursuant to the terms of the Amended and Restated Development Agreement, Owner will provide substantial public improvements and benefits to the City including participation in the public facilities financing plan for the Mission Valley Community. In consideration of the public improvements and benefits to be provided by Owner pursuant to the Amended and Restated Development Agreement, in consideration of Owner's agreement to finance public facilities, and in order to strengthen the public planning process and reduce the economic costs of development, by the Amended and Restated Development Agreement the City intends to give Owner assurance that Owner can proceed with the development of the subject property for the term of the Amended and Restated Development Agreement pursuant to its provisions; and

WHEREAS, on March 19, 1998, the Planning Commission of The City of San Diego, after giving notice pursuant to Government Code Sections 65854, 65854.5, 65856, and Section 105.0103 of the San Diego Municipal Code held a public hearing on the application for the Amended and Restated Development Agreement; and

WHEREAS, the Council of The City of San Diego, after providing public notice as

required by law, held a public hearing on Owner's application, wherein all persons desiring to be heard were heard, and pursuant to said public hearing the Council recommended approval of the Amended and Restated Development Agreement; and

WHEREAS, the Council finds that the Amended and Restated Development Agreement is consistent with the *Progress Guide and General Plan* and the *Mission Valley Community Plan*, as well as all other applicable policies and regulations of The City of San Diego; and

WHEREAS, the Council has reviewed and considered the Amended and Restated Development Agreement and determined the content of the Amended and Restated Development Agreement to be complete and correct; NOW, THEREFORE,

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

Section 1. The Council finds and determines the facts stated above to be true.

Section 2. The Council further finds with respect to the Amended and Restated Development Agreement that:

A. It is consistent with the objectives, policies, programs and uses specified in the *Progress Guide and General Plan* and the *Mission Valley Community Plan*.

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

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

Section 3. The Council hereby approves the Amended and Restated Development Agreement [Mission City], Case No. 96-0544, a copy of which is on file in the office of the City Clerk as Document No. OO- **18508**, and authorizes and directs the City Manager to

execute the Amended and Restated Development Agreement in the name of The City of San Diego not later than 15 days following the effective date of this ordinance. Failure of Owner to execute the Amended and Restated Development Agreement within 60 days, shall render this action null and void. The City Clerk is directed to record the Amended and Restated Development Agreement and this ordinance with the County Recorder of San Diego County within 10 days after its execution.

Section 4. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Prescilla Dugard
Prescilla Dugard
Deputy City Attorney

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