

RESOLUTION NUMBER R- 305701  
DATE OF FINAL PASSAGE MAR 29 2010

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING TO EXECUTE A REIMBURSEMENT AGREEMENT AND SECOND AMENDMENT TO IMPROVEMENT AGREEMENT WITH HAZARD CENTER ASSOCIATES FOR THE CONSTRUCTION OF THE WESTERLY EXTENSION OF HAZARD CENTER DRIVE PROJECT.

WHEREAS, the original developer of Hazard Center, R.E. Hazard Construction Company entered into an Improvement Agreement for the Westerly Extension of Hazard Center Drive on November 9, 1987 (Document No. RR-269700); and

WHEREAS, this agreement governed the terms of the developer's responsibility to construct the Westerly Extension of Hazard Center Drive; and

WHEREAS, Hazard Center Associates acquired Hazard Center and became obligated to perform the developer's obligations under the Improvement Agreement; and

WHEREAS, Hazard Center Associates has since sold Hazard Center but remained obligated to construct the portion of Hazard Center Drive from the eastern terminus to the property line between State Road 163 and the Fashion Valley Shopping Center; and

WHEREAS, the City entered into a First Amendment to the Improvement Agreement for the Westerly Extension of Hazard Center Drive on November 8, 1999 (Document No. RR-292418); and

WHEREAS, this First Amendment addressed the liability for potential claims arising from the City's placement of a trunk line sewer in the area of the Westerly Extension of Hazard Center Drive; and

WHEREAS, the City desires that Hazard Center Drive be constructed from the eastern terminus westward to the existing Avenida Del Rio, allowing for enhanced traffic circulation; and

WHEREAS, Hazard Center Drive must be constructed at a lower profile to accommodate Caltrans plans to widen State Road 163; and

WHEREAS, the City desires to execute a Second Amendment to the Improvement Agreement to obligate Hazard Center Associates to construct that portion of Hazard Center Drive for which they were not responsible, to reflect changes in the location of vertical curves along Hazard Center Drive since the First Amendment to the Improvement Agreement, and to reflect changes to design speeds resulting from the location of these vertical curves; and

WHEREAS, the City desires to execute a Reimbursement Agreement whereby Hazard Center Associates will be reimbursed up to \$1,000,000 for constructing the portion of Hazard Center Drive that they were not responsible, and for additional costs encountered due to the Caltrans widening of State Road 163; and

WHEREAS, the \$1,000,000 being provided to Hazard Center Associates under the Reimbursement Agreement was received from the Fashion Walk Development as a permit condition of their development, and was intended to be used to mitigate traffic impacts in Mission Valley including the completion of Hazard Center Drive; NOW, THEREFORE,

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

1. That the Mayor or his designee is hereby authorized and empowered to execute, for and on behalf of said City, a Second Amendment to the Improvement Agreement with Hazard Center Associates, for the construction of the Westerly Extension of Hazard Center

Drive, CIP No. RD-10001 under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR 305701<sup>-1</sup>, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

2. That the Mayor or his designee is hereby authorized and empowered to execute, for and on behalf of said City, a Reimbursement Agreement, for the construction of the Westerly Extension of Hazard Center Drive, CIP No. RD-10001 under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR 305701<sup>-2</sup>, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

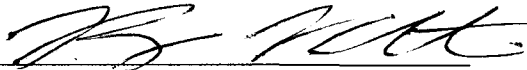
3. That the Fiscal Year 2010 Capital Improvement Program Budget is amended by adding CIP No. RD-10001, Westerly Extension of Hazard Center Drive.

4. That the Fiscal Year 2010 Capital Improvements Program Budget for CIP No. RD-10001, Westerly Extension of Hazard Center Drive, Fund No. 400264, Private and Other Contributions – CIP is amended by increasing the budget amount by \$1,000,000.

5. Authorizing the Chief Financial Officer to appropriate and expend an amount not to exceed \$1,000,000 from CIP No. RD-10001, Westerly Extension of Hazard Center Drive, Fund No. 400264, Private and Other Contributions - CIP is authorized solely and exclusively for the purpose of providing funds for construction of the Westerly Extension of Hazard Center Drive, provided that the Chief Financial Officer first furnishes one or more certificates certifying that the funds necessary for expenditures are, or will be, on deposit with the City Treasurer.

6. That the Chief Financial Officer, upon advice from the administering department, is authorized to transfer excess budgeted funds, if any, to the appropriate reserves.

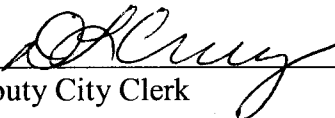
APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Ryan Kohut  
Deputy City Attorney

RK:cfq  
02/18/2010  
Or.Dept:E&CP/ROW  
R-2010-578  
MMS#11594

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 23 2010.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 3-29-10  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

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JERRY SANDERS, Mayor