

ORDINANCE NUMBER O- 20979

DATE OF FINAL PASSAGE AUG 20 2018

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE FOURTH AMENDMENT TO THE LITIGATION CONSULTING SERVICES AGREEMENT WITH HELFRICH-ASSOCIATES IN CONNECTION WITH THE LAWSUIT ENTITLED *CITY OF SAN DIEGO V. BLACK MOUNTAIN RANCH, LLC, ET AL.*, SAN DIEGO SUPERIOR COURT CASE NO. 37-2014-00019435-CU-CD-DTL.

WHEREAS, on June 10, 2014, the San Diego City Council (City Council) authorized the City Attorney's Office to initiate litigation against Black Mountain Ranch, LLC and other entities related to construction defects observed on Carmel Valley Road from Black Mountain Road east to Wine Creek Road; and

WHEREAS, on June 16, 2014, the City of San Diego filed its lawsuit for construction defects against Black Mountain Ranch, LLC and the contractors responsible for construction of Carmel Valley Road; and

WHEREAS, on August 26, 2014, the City retained Steve Helfrich of Helfrich-Associates to consult as a geotechnical engineering expert under an initial contract not to exceed \$75,000.00 (Agreement); and

WHEREAS, once the scope of the geotechnical investigation was determined, the contract was amended and \$75,000.00 was added into the contract; and

WHEREAS, once the geotechnical investigation was completed and the amount of work that needed to be completed in order to comply with the Case Management Order was determined, the contract was amended a second time and \$90,000.00 was added into the contract; and

WHEREAS, on December 8, 2015, the Third Amendment to the Agreement was approved by the City Council via San Diego Resolution R-310124 (Dec. 16, 2015), which added \$110,000.00 to the Agreement, in order to have funds for Helfrich-Associates to observe destructive testing performed by defendants, review discovery documents, analyze defense expert reports, prepare responses to defense expert reports, attend mediation; and

WHEREAS, the parties have participated in expert presentations, two mediation sessions with a concept for settlement in which the defendants are going to perform repairs; and

WHEREAS, the funds for continued geotechnical expert support for the litigation have been exhausted; and

WHEREAS, the parties desire to amend the Agreement a fourth time by adding \$100,000 in additional funding for expert services to assist with settlement of the case and or to prepare it for trial;

WHEREAS, the extension will extend the term of the agreement beyond five years; and

WHEREAS, under Charter section 99, no contract, agreement or obligation extending for a period of more than five years may be authorized except by Ordinance approved by two-thirds majority vote of the City Council; NOW THEREFORE,

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

1. The Mayor or his designee is authorized to execute, for and on behalf of the City, the Fourth Amendment to the Litigation Consulting Services Agreement with Helfrich-Associates for the geotechnical consulting services being provided to the City for the lawsuit entitled *City of San Diego v. Black Mountain Ranch, LLC, et al.*, San Diego Superior Court Case No. 37-2014-00019435-CU-CD-DTL in an amount not to exceed \$100,000, under the terms and conditions set forth in the Fourth Amendment to Agreement between the City of San Diego and Helfrich-Associates for Litigation

(O-2018-134)

Consulting Services, on file with the City Clerk as Document No. C-16396. This amount increases the total Agreement amount to \$455,000.00.

2. Authorize the Chief Financial Officer to expend an amount not to exceed \$100,000.00 from Fund 100000 - General Fund, Transportation and Storm Water Department (2116), for the purpose of executing this agreement and contingent upon the Chief Financial Officer first furnishing one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By Charles E. Bell Jr. - for -
Jon E. Taylor
Deputy City Attorney

JET:sc:ccm
June 7, 2018
Or.Dept: City Attorney
CC No.
Doc. No.: Helfrich ord.docx

I certify that this Ordinance was passed by the Council of the City of San Diego, at this meeting of AUG 07 2018.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 8/20/18
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on AUG 07 2018, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|-----------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Barbara Bry | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Lorie Zapf | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Chris Ward | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Myrtle Cole | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mark Kersey | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Chris Cate | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Scott Sherman | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| David Alvarez | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Georgette Gomez | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Date of final passage AUG 20 2018

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], 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 24 2018, and on AUG 20 2018

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

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| <p>Office of the City Clerk, San Diego, California</p> <p>Ordinance Number O- 20979</p> |
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