

COUNCIL DOCKET OF		<u>5/6/08</u>	
<input type="checkbox"/> Supplemental	<input type="checkbox"/> Adoption	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Unanimous Consent
			Rules Committee Consultant Review

R -

O -

Participation Agreement with DMH Lindo Paseo, LLC, for Replacement of Cast Iron Water Mains in Lindo Paseo and Campanile Drive

Reviewed Initiated By NR&C On 2/27/08 Item No. 2

RECOMMENDATION TO:

Approve.

VOTED YEA: Frye, Faulconer, Peters, Atkins

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Water Department's February 11, 2008, Executive Summary Sheet; Water Department's February 27, 2008, PowerPoint

COUNCIL COMMITTEE CONSULTANT 

000413

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: February 11, 2008 REPORT NO: N/A
 ATTENTION: Natural Resources and Culture Committee
 Agenda of February 27, 2008
 ORIGINATING DEPARTMENT: Water Department
 SUBJECT: Participation Agreement with DMH Lindo Paseo, LLC, for
 Replacement of Cast Iron Water Mains in Lindo Paseo and
 Campanile Drive
 COUNCIL DISTRICT(S): Council District 7, Jim Madaffer
 CONTACT/PHONE NUMBER: Marsi Steirer / (619) 533-4112
 Leonard Wilson / (619) 533-4287

REQUESTED ACTION: Council authorization via a Resolution to execute an agreement with Lindo Paseo, LLC for the replacement of the existing cast iron water mains in Lindo Paseo and Campanile Drive and to authorize the funding.

STAFF RECOMMENDATION: Adopt the resolutions and approve the Agreement.

EXECUTIVE SUMMARY: DMH Lindo Paseo, LLC, a California Limited Liability Company, is the owner of certain property known as the Paseo at SDSU within the College Area Community Planning Area.

As a condition of approval for construction of new condominiums and retail space, and in order to provide adequate fire protection for the new project, the developer is required to replace the existing cast iron water mains in Lindo Paseo from 55th Street to Campanile Drive and in Campanile Drive from Lindo Paseo to Montezuma Road with 12-inch PVC water mains, a distance of approximately 1,665 linear feet. The replacement of this cast iron water main is within the Department of Public Health (formerly Department of Health Services) Compliance Order (Amendment No. 11 to Compliance Order 04-14-96CO-022). The City's pro rata share for replacement of the existing 6-inch cast iron main is \$320,000.00. The Developer's share is for the incremental cost of upsizing the 8-inch diameter water main to 12 inches at a cost to the Developer of \$72,000.00.

The City finds that the public interest is served by the completion of the water facilities required to improve the water system. Construction of the water facilities will be expedited by entering into a participation agreement allowing the Developer to construct the required water facilities. The estimated cost of the project is \$392,000.00, but the City's reimbursement cost shall not exceed a Maximum Cost of \$320,000.00. The Developer is responsible for any costs in excess of that amount. Failure to replace these aging and undersized water mains could result in disruption of water service and possible hardship to the impacted community.

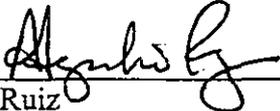
000414

FISCAL CONSIDERATIONS: The total cost to the City for this project is \$320,000.00 and the City's participation will not exceed \$320,000.00. Funding is available in Water Fund 41500, CIP No. 73-083.0.

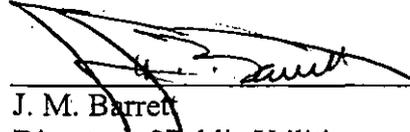
PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Water Department customers in the project area and the Department of Public Health.



Alex Ruiz
Assistant Water Department Director



J. M. Barrett
Director of Public Utilities

2/4/00

000415

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:

February 21, 2008

SUBJECT: Participation Agreement for the Lindo Paseo Water Main Upgrade

GENERAL CONTRACT INFORMATION

Recommended Contractor: Del Mar Heritage Construction, Inc.

Amount of this Action: \$ 320,000.00

Funding Source: City of San Diego

SUBCONTRACTOR PARTICIPATION

Subcontractor Participation is not known at this time.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Del Mar Heritage Construction submitted a Work Force Report for their San Diego employees dated, February 12, 2008. The Administrative Work Force Report reflects less than fifteen employees and is, therefore, exempt from analysis.

ADDITIONAL COMMENTS

The *Work Force Analysis Report* is attached.

by MM-J

000417

File: Admin WOFO 2000

Date WOFO Submitted: 2/12/2008
 Input by: SH

Goals reflect statistical labor force availability for the following: 2000 CLFA
 San Diego, CA

City of San Diego/Equal Opportunity Contracting
WORK FORCE ANALYSIS REPORT
 FOR
 Company: Del Mar Heritage Construction, Inc.

I. TOTAL WORK FORCE:

	Black		Hispanic		Asian		American Indian		Filipino		White		Other					
	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F	CLFA Goals	M	F			
Mgmt & Financial Professional	3.3%	0	0	11.9%	0	0	6.2%	0	0	0.4%	0	0	6.2%	0	0	0	0	
A&E, Science, Computer Technical	4.0%	0	0	12.6%	0	0	6.5%	0	0	0.5%	0	0	6.5%	0	0	0	0	
Sales	2.8%	0	0	7.3%	0	0	16.2%	0	0	0.3%	0	0	16.2%	0	0	1	0	
Administrative Support Services	6.6%	0	0	14.8%	0	0	17.2%	0	0	0.4%	0	0	17.2%	0	0	0	0	
Crafts	3.9%	0	0	19.5%	0	0	6.8%	0	0	0.6%	0	0	6.8%	0	0	0	2	
Operative Workers	7.0%	0	0	20.8%	0	0	8.8%	0	0	0.8%	0	0	8.8%	0	0	0	1	
Transportation Laborers	5.5%	0	0	36.9%	1	0	9.7%	0	0	0.8%	0	0	9.7%	0	0	0	0	
	4.5%	0	0	25.8%	1	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0	
	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0	
	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0	
	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0	
TOTAL		0	0		2	0		0	0		0	0		3	3		0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial Professional
 A&E, Science, Computer Technical
 Sales
 Administrative Support Services
 Crafts
 Operative Workers
 Transportation Laborers

TOTAL

TOTAL EMPLOYEES		
ALL	M	F
2	2	0
0	0	0
1	1	0
0	0	0
2	0	2
1	0	1
1	1	0
0	0	0
0	0	0
0	0	0
8	5	3

Female Goals
 39.8%
 59.5%
 22.3%
 49.0%
 49.4%
 73.2%
 62.3%
 8.6%
 36.7%
 15.2%
 11.1%

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

This firm has fewer than 15 employees and is, therefore, exempt from the employment category goals.

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ONLY) 100
2800705 05/06

000419

TO: CITY ATTORNEY 2. FROM (ORIGINATING DEPARTMENT): WATER DEPARTMENT 3. DATE: January 14, 2008

4. SUBJECT: Participation Agreement for the Lindo Paseo Water Main Upgrade

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.): Marsi Steirer / Leonard Wilson 6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.): 533-4112 / 533-4287 7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

Table with columns: FUND, DEPT., ORGANIZATION, OBJECT ACCOUNT, JOB ORDER, C.I.P. NUMBER, AMOUNT, 9. ADDITIONAL INFORMATION / ESTIMATED COST: Total Request: \$320,000.00

10. ROUTING AND APPROVALS

Table with columns: ROUTE (#), APPROVING AUTHORITY, APPROVAL SIGNATURE, DATE SIGNED. Includes handwritten signatures and dates for routes 1-11.

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

Authorizing the Mayor to enter into an Agreement with DMH Lindo Paseo, LLC, in the amount of \$320,000 in Water Fund 41500, CIP No. 73-0830, for the design and construction of the water main improvements in Lindo Paseo and Campanile Drive. (See following page)

11A. STAFF RECOMMENDATIONS: Adopt the resolutions.

12. SPECIAL CONDITIONS: COUNCIL DISTRICT(S): COUNCIL DISTRICT 7, Jim Madaffer; COMMUNITY AREA(S): College Area; ENVIRONMENTAL IMPACT: This project is exempt from CEQA pursuant to State CEQA Guidelines Section 15301; HOUSING IMPACT: NONE; OTHER ISSUES: NONE

CITY CLERK INSTRUCTIONS: Please return a copy of the 1472 and ordinances to Tammy Ferguson, 533-4109, MS 904. Please return 2 original copies of the Agreement, a copy of the 1472 and all ordinances and resolutions to Alice Vaughan, 533-5142, MS 910.

ATTACHMENTS: 4 signed originals and 3 copies

000420

11. (Cont'd.)

2. Authorizing the expenditure of \$320,000 from Water Fund 41500, CIP No. 73-083.0, Lindo Paseo Water Main Upgrade, for the purpose of executing this Agreement contingent upon the City Auditor and Comptroller first furnishing a certificate certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer and authorizing the Auditor and Comptroller to return excess budgeted funds to the appropriate reserve.

000421

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: January 14, 2008 REPORT NO: N/A
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Water Department
SUBJECT: Participation Agreement for the Lindo Paseo Water Main Upgrade
COUNCIL DISTRICT(S): Council District 7, Jim Madaffer
CONTACT/PHONE NUMBER: Marsi Steirer / (619) 533-4112
Leonard Wilson / (619) 533-4287

REQUESTED ACTION: Council authorization via a Resolution to execute an agreement with Lindo Paseo, LLC for the replacement of the existing cast iron water mains in Lindo Paseo and Campanile Drive and to authorize the funding.

STAFF RECOMMENDATION: Adopt the resolutions and approve the Agreement.

EXECUTIVE SUMMARY: DMH Lindo Paseo, LLC, a California Limited Liability Company, is the owner of certain property known as Plaza Lindo Paseo within the College Area Community Planning Area.

As a condition of approval for construction of new condominiums and retail space, and in order to provide adequate fire protection for the new project, the developer is required to replace the existing cast iron water mains in Lindo Paseo from 55th Street to Campanile Drive and in Campanile Drive from Lindo Paseo to Montezuma Road with 12-inch PVC water mains, a distance of approximately 1,665 linear feet. The replacement of this cast iron water main is within the Department of Health Services Compliance Order (Amendment No. 11 to Compliance Order 04-14-96CO-022). The City's pro rata share for replacement of the existing 6-inch cast iron main is \$320,000.00. The Developer's share is for the incremental cost of upsizing the 8-inch diameter water main to 12 inches at a cost to the Developer of \$72,000.00.

The City finds that the public interest is served by the completion of the water facilities required to improve the water system. Construction of the water facilities will be expedited by entering into a participation agreement allowing the Developer to construct the required water facilities. The estimated cost of the project is \$392,000.00, but the City's reimbursement cost shall not exceed a Maximum Cost of \$320,000.00. The Developer is responsible for any costs in excess of that amount. Failure to replace these aging and undersized water mains could result in disruption of water service and possible hardship to the impacted community.

FISCAL CONSIDERATIONS: The total cost to the City for this project is \$320,000.00 and the City's participation will not exceed \$320,000.00. Funding is available in Water Fund 41500, CIP No. 73-083.0. The Water Fund total project cost of \$320,000.00 may be reimbursed approximately 80% by current or future debt financing.

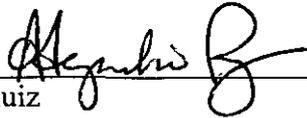
000422

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

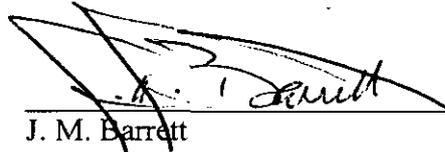
The Participation Agreement was approved 4-0 by the NR&C Committee on 2/27/08.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Water Department customers in the project area and the Department of Public Health.



Alex Ruiz
Assistant Water Department Director



J. M. Barrett
Director of Public Utilities

4/10/08

000423

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800705
ORIGINATING DEPT. NO.: 760

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$320,000.00

Vendor: DMH Lindo Paseo, LLC

Purpose: Authorizing the expenditure of funds for Participation Agreement for the Lino Paseo Water Main Upgrade, CIP 738701.

Date: April 9, 2008

By: *Yeshi Bezuneh*
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	41500	760	391040	4278	189434				\$320,000.00
TOTAL AMOUNT										\$320,000.00

AC-361 (REV 2-92)

FUND OVERRIDE

Purchase Order Line of Accounting 41500 760 391040 4240 189434 \$320,000.00 AC 2800705

000425

PROJECT COST ESTIMATE

Lindo Pase Water Main Upgrade Agreement X Prepared by: Alice Vaughan
 Advertise _____ Date: January 14, 2008
 Award/Amend _____ W.O. No. 189430

ACTIVITY	% OF E	CIP NO. OR OTHER SOURCE OF FUNDS			TOTALS	% OF E
		CIP 73-870.1 PREVIOUS	CIP 73-870.1 This Request	TOTALS		
A. Planning/Design/Administration						
4114 Preliminary Engineering	0.0%			\$0.00		
4115 Outside Engineering - Tasks	0.0%			\$0.00		
4116 Construction Engineering	0.0%			\$0.00		
4118 Engineering Design	0.0%			\$0.00		
41181 Engineering Design #2	0.0%			\$0.00		
4119 Environ. Impact Studies	0.0%			\$0.00		
4151 Professional Services	0.0%			\$0.00		
4159 Construction Management	0.0%			\$0.00		
4222 Misc Contractual Services	0.0%			\$0.00		
4240 Reimbursement Agreements	100.0%		\$320,000.00	\$320,000.00		
	0.0%			\$0.00		
Total Planning/Design/Administration		\$0.00	\$320,000.00	\$320,000.00	\$320,000.00	100.0%
B. Construction						
4150 Safety	0.0%			\$0.00		
4220 Prime Construction Contract	0.0%			\$0.00		
42201 Construction Contract #2	0.0%			\$0.00		
42220 GRC	0.0%			\$0.00		
4226 City Forces Work	0.0%			\$0.00		
4810 OCIP / Professional Liability	0.0%			\$0.00		
4981 SDDPC Support	0.0%			\$0.00		
	0.0%			\$0.00		
Total Construction		\$0.00	\$0.00	\$0.00	\$0.00	0.0%
C. Equipment and Furnishings						
3316 Pipe Fittings	0.0%			\$0.00		
4922 Construction Related	0.0%			\$0.00		
Total Equipment and Furnishings		\$0.00	\$0.00	\$0.00	\$0.00	0.0%
D. Contingencies						
4905 Contingencies	0.0%			\$0.00		
4909 Pooled Contingencies	0.0%			\$0.00		
Total Contingencies		\$0.00	\$0.00	\$0.00	\$0.00	0.0%
SUBTOTAL						
		\$0.00	\$320,000.00	\$320,000.00	\$320,000.00	100.0%
E. Equipment & Furnishings						
4922 Equipment & Furnishings				\$0.00	\$0.00	
F. Land Aquisition						
4638 Land Acquisition				\$0.00	\$0.00	
TOTAL PROJECT COST		\$0.00	\$320,000.00	\$320,000.00	\$320,000.00	

(When Applicable)		
SAVINGS BY USE OF CITY FORCES		
	City Forces	Contract
Labor		
Material		
Equip.		
Profit		
TOTAL	\$0.00	\$0.00

Prev. Auth. Res. # _____
 Prev. Auth. Res. # _____

Previous Authorized \$0.00

ADDITIONAL AUTH. REQUIRED \$320,000.00

FUNDING:	41500			
CIP NO. [XX-XXX.X]	<u>73-083.073-870.1</u>			
Programmed	<u>320,000.00</u>			
Uncom. Balance	<u>0.00</u>			
THIS REQUEST	<u>320,000.00</u>	<u>0.00</u>	<u>0.00</u>	<u>\$320,000.00</u>

COMMENTS:

000427

RESOLUTION NUMBER R- _____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING EXECUTION OF PARTICIPATION AGREEMENT; AUTHORIZING THE EXPENDITURE OF FUNDS; AND TAKING RELATED ACTIONS.

WHEREAS, The City of San Diego [City] has determined that it would be economical, efficient, and in its best interests to install certain improvements to the public water system concurrently with the construction of public improvements on certain property in the City; and

WHEREAS, DMH Lindo Paseo, LLC [DMH] has agreed to design and construct certain improvements to the public water system, consisting of the replacement of cast iron water mains with the installation of PVC water pipe and other improvements [Improvements]; and

WHEREAS, The Improvements are necessary and is for the benefit of the City as a whole and both the City and DMH find it in their best interest to expedite the Improvements;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of San Diego:

1. That the Mayor or his designee is authorized to award and execute, for and on behalf of said City, an Agreement with DMH for the design and construction of the Improvements in Lindo Paseo and Campanile Drive, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR _____.

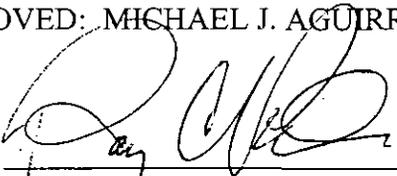
2. That the expenditure of an amount not to exceed \$320,000.00 is hereby authorized, solely and exclusively for the purpose of executing this Agreement, contingent upon the City Auditor and Comptroller first furnishing one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer.

3. That the expenditure of an amount not to exceed \$320,000.00 from Water Fund 41500, CIP No. 73-083.0, Lindo Paseo Water Main Upgrade, is authorized for the purpose of providing funds for the Improvements in the above referenced Agreement.

4. That the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

5. That this activity is exempt from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15301.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Raymond C. Palmucci
Deputy City Attorney

RCP:js
04/15/2008
Or.Dept: Water
Aud. Cert. 2800705
R-2008-901

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

**PARTICIPATION AGREEMENT
FOR DESIGN AND CONSTRUCTION OF THE
LINDO PASEO WATER MAIN UPGRADE**

This Participation Agreement for Design and Construction of the **Lindo Paseo Water Main Upgrade** [Agreement] is made and entered into between the City of San Diego, a municipal corporation, [City], and DMH Lindo Paseo, LLC, a California Limited Liability Company, [Developer], with reference to the following:

RECITALS

- A. Developer is the Owner/Developer of certain real property located in the College area of the City of San Diego, County of San Diego, State of California, commonly known as Plaza Lindo Paseo [Property]. The legal description of the Property is attached hereto as Exhibit A. As part of the development of the Property, Developer will be constructing a private building containing forty-seven (47) condominiums and 3,345 square feet of retail space, along with certain public improvements adjacent to the Property.
- B. The City has determined that it would be economical, efficient, and in its best interests to install certain improvements to the public water system concurrently with Developer's construction of public improvements on the Property.
- C. Developer has agreed to design and construct improvements to the public water system. Those improvements consist of installation of approximately 1,665 linear feet of 12" diameter PVC water pipe, including connections and appurtenances, asphalt repair, and traffic control [Project].
- D. The Project is necessary and is for the benefit of City as a whole and City agrees to reimburse Developer for the costs of the Project as described in this Agreement.
- E. Both City and Developer find it in their best interest to expedite the Project.

ARTICLE I. GENERAL

- 1.1. **Recitals and Exhibits Incorporated.** The above-listed recitals are true and correct and are hereby incorporated by this reference. All Exhibits referenced in this Agreement are incorporated into this Agreement by this reference.
- 1.2. **Definitions.** For the purposes of this Agreement, the following general definitions apply:
 - 1.2.1 "Agents" means employees, consultants, subconsultants, construction managers, contractors, subcontractors, and all others retained and/or authorized by Developer to perform under this Agreement.
 - 1.2.2 "County" means the County of San Diego.

000430

1.2.3 "Services" means all professional services, including design and construction management of the Project, that are required to design and construct the Project in accordance with this Agreement.

1.2.4 "State" means the State of California.

1.2.5 "Work" means all labor, materials, supplies, and equipment that are necessary to construct the Project in accordance with this Agreement.

1.3 **Developer Obligations.** Developer agrees to provide all Work and Services necessary to complete the Project in accordance with the terms of this Agreement. The Project Scope of Work, Location Map, and Cost Loaded Schedule are set forth in Exhibits B, C, and D, respectively.

1.4 **Time is of the Essence.** Time is of the Essence for this Agreement. Developer shall provide a complete and functional Project to the City in accordance with the Project Schedule set forth in Exhibit E.

1.5 **Reference Specifications.** Developer shall comply with, and shall require its Agents to comply with, the most current editions of the following referenced specifications when designing and constructing the Project and when performing any other obligations required by this Agreement:

1.5.1 **Standard Specifications:**

1.5.1.1 The Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments [Greenbook].

1.5.1.2 California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.

1.5.2 **Standard Drawings:** The City of San Diego Standard Drawings including all Regional Standard drawings.

1.6 **Design Standards.** Developer shall perform, and shall require that all Work and/or Services relating to this Project be performed, in conformance with the design standards established by City, including all amendments and revisions to the standards as adopted by City prior to completion of the Project [Design Standards], unless City in writing approves otherwise. The Design Standards include, but are not limited to, the following:

1.6.1 Water Department Capital Improvements Program Guidelines and Standards.

1.6.2 City of San Diego's Drainage Design Manual.

1.6.3 City of San Diego's Landscape Technical Manual produced by the Planning Department.

- 1.6.4 City of San Diego's Street Design Manual.
- 1.6.5 City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.
- 1.6.6 City of San Diego's Technical Guidelines for Geotechnical Reports.
- 1.7 **Special Provisions.** Developer shall comply, and shall require its Agents to comply, with any and all contract specifications supplied by City specifically for this Project [Special Provisions], unless City approves otherwise in writing.
- 1.8 **Priority of Documents:**
 - 1.8.1 If there is a conflict between this Agreement and any documents or Exhibits referenced in or required by this Agreement, the document highest in priority shall control. The priority shall be:
 - 1.8.1.1 Agreement including the Exhibits.
 - 1.8.1.2 Permits from government agencies as may be required by law.
 - 1.8.1.3 Special Provisions
 - 1.8.1.4 Design Standards.
 - 1.8.1.5 Plans.
 - 1.8.1.6 Standard Drawings.
 - 1.8.1.7 Standard Specifications.
 - 1.8.2 Change orders, revisions to plans and specifications approved by City, and amendments to the Agreement may supersede existing documents. However, the priority among documents remains the same.
- 1.9 **Compliance with Law.** Developer shall comply with, and shall require its Agents to comply with, all applicable laws, including but not limited to:
 - 1.9.1 The Americans with Disabilities Act of 1990 [ADA], Americans with Disabilities Act Accessibility Guidelines [ADAAG] requirements, and the California Building Standards Code, California Code of Regulations, Title 24 [Title 24]. It is the sole responsibility of Developer and its Agents to comply with the ADA, ADAAG, and Title 24. Developer shall certify and warrant that the plans and specifications and completed construction documents, meet all current Title 24 and ADAAG requirements, and are in compliance with the ADA. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed.

- 1.9.2 The Clean Air Act of 1970, the Clean Water Act (33 USC 1368)-Executive Order 11738, and the Stormwater Management and Discharge Control-Ordinance No. 0-17988.
- 1.9.3 All environmental measures required by the California Environmental Quality Act, located in the California Public Resources Code at sections 21000 et seq., NEPA (Federal Requirements), and the local environmental laws, including but not limited to mitigation measures and site monitoring.
- 1.9.4 All local City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including but not limited to, Planning Department and Development Services Department permits, hazardous materials permits, site safety, etc.
- 1.10 **Effect of City Approval.** Where approval by the City, the Mayor, or other representatives of the City is required, it is understood to be general approval only, and does not relieve Developer of responsibility for complying with all applicable laws, codes, and regulations.
- 1.11 **City Act or Approval.** Whenever an act or approval is to be performed by City in accordance with this Agreement, that act or approval shall be performed by the Mayor, Water Department Director, or designee, unless specifically provided otherwise.
- 1.12 **Examination of Records:**
- 1.12.1 At any time during normal business hours and as often as City deems necessary, Developer and its Agents shall make available to the City for examination at reasonable locations within the City of San Diego all of the data and records with respect to all matters covered by this Agreement. Developer and its Agents shall permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. Developer and its Agents shall maintain such data and records for a period of not less than three years following receipt of final payment under this Agreement. If Developer and its Agents do not make all records available within the City of San Diego, then Developer shall pay all of the City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained.
- 1.12.2 Developer and its Agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs, of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for additional Work and/or Services has been submitted.
- 1.13 **Incorporation of Agreement.** Developer shall incorporate all provisions of this Agreement into Developer's contracts with its Agents.

ARTICLE II. DESIGN OBLIGATIONS

- 2.1 **General.** Developer agrees to provide the Services necessary to provide a completed Project in accordance with this Agreement.
- 2.2 **Design Professional Required.** Developer shall ensure that all Services are performed by an architect or engineer, duly licensed in the State. Developer shall ensure that the Services provided shall be performed in accordance with the standards customarily adhered to by experienced and competent professional engineering and/or architecture firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State.
- 2.3 **Ownership of Documents.** Once Developer has received any compensation for Services, all documents, including but not limited to, original plans, studies, sketches, drawings, computer printouts and disk files, and specifications prepared in connection with or related to the Services, including the design of the Project, shall be the property of City. City's ownership of these documents includes use of, reproduction or reuse of and all incidental rights, whether or not the work for which they were prepared has been performed. City's ownership entitlement arises upon payment or any partial payment for work performed and includes ownership of any and all work product completed prior to that payment. This Section shall apply whether this Agreement is terminated by the completion of the Project, or in accordance with other provisions of this Agreement. Notwithstanding any other provision of this Section or Agreement, the Developer and Developer's Services consultant shall have the right to make copies of all such plans, studies, sketches, drawings, computer printouts and disk files, and specifications. Developer and Developer's Services consultant shall not be responsible for damage caused by subsequent changes to or uses of the plans or specifications, where the subsequent changes or uses are not authorized or approved by Developer's Services consultant, provided that the service rendered by Developer's Services consultant was not a proximate cause of the damage.
- 2.4 **Final Design Documents.** Prior to construction, the Developer shall provide the City's Authorized Contract Representative (refer to Article V) with two sets of the final design documents including two full-size sets of final drawings and one set of 8 ½ by 11-inch final Specifications, including all charts, graphs, tables, data sheets, and similar inserts required for a complete and camera ready copy suitable for photocopying. Upon Final Acceptance (refer to Article VIII), the Developer shall provide City's Authorized Contractual Representative with one complete full size final as-built drawings.

ARTICLE III. CONSTRUCTION OBLIGATIONS

- 3.1 **Time for Completion.** Developer shall commence construction of the Project within twelve (12) months of execution of this Agreement. Developer may petition City for up to two (2) additional no-cost twelve (12) month extensions (an additional 24 months), approval of which shall not be unreasonably withheld by City. Developer shall diligently pursue such construction to completion. The Project shall be deemed complete when it is Fully Complete as defined in Article VIII.

- 3.2 **Compliance with Standards.** Developer shall comply with, and shall require its Agents to comply with all standards referenced in Article I.
- 3.3 **Permits.** Developer shall be responsible for obtaining all permits required to construct the Project. City will cooperate in expeditiously processing and issuing all permits under its jurisdiction that are necessary for the Project. Developer agrees to follow and to require all of its Agents to follow all City standards and regulations while working in the public right of way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.
- 3.4 **Project Site Responsibility.** Developer is responsible for the Project, the Project site, materials, Project site security, equipment, personnel and all other incidentals until Final Acceptance of the Project by City, unless otherwise provided in this Agreement. Developer shall be fully responsible for the safety of its officers, Agents, employees, and third parties. City officers, agents and employees shall have the right to enter the Project site at any time, however, City will endeavor to coordinate any entry with Developer.
- 3.5 **Materials Tests.** Developer shall pay for and coordinate with City to have all material tests within the public right of way and any asphalt paving completed by City's Material Testing Laboratory.
- 3.6 **Award of Contracts.** Developer shall competitively bid and award all contracts to complete the Project in accordance with all applicable public contract laws, rules, and regulations including those set forth in the San Diego City Charter and San Diego Municipal Code. All bid and award documents shall be submitted to City for review and approval, in accordance with City's standard review procedures. City's review and approval of the bid and award documents shall not be unreasonably withheld. Developer shall provide City with copies of all bids received. Developer shall award the contract or contracts for construction of the Project to the lowest qualified responsible bidder for each contract. Developer shall provide City with copies of all executed contracts.
- 3.7 **Manner of Construction.** The construction of the Project shall be performed in a professional manner to the satisfaction of the City Engineer. Developer is responsible for ensuring that the Project is constructed in accordance with all applicable laws, regulations, and codes. In addition, Developer shall comply, and shall require its Agents to comply, immediately with all directives issued by City or its Authorized Representatives under authority of any laws, statutes, ordinances, rules, or regulations.
- 3.8 **Defective Work.** All Work that is unsatisfactory, faulty, incomplete, or does not conform to the Agreement is defective. If the Work, or any part thereof, is found to be defective, whether or not manufactured, fabricated, installed, completed or overlooked and accepted by City, Developer shall, promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct such defective Work or, if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.

- 3.9 **As-Built Information.** Accurate and legible records shall be kept on a set of Project drawings of all changes of Work that occur during Project construction. All information necessary to maintain and/or service any concealed Work shall be noted on the record drawings. Records shall be kept up to date with all entries checked by the City Engineer before the Work is buried or covered up. Prior to acceptance, Developer shall deliver this "as-built" information to the City Engineer. City or its authorized agent's review of documents, plans, and specifications does not constitute an approval or establish a basis for liability on the part of City.

ARTICLE IV. COMPENSATION

- 4.1 **Maximum Cost.** City will reimburse Developer for all costs for performance under this Agreement, in an amount not to exceed \$320,000.00 [Maximum Cost], as set forth in Exhibit D, the Cost Loaded Schedule. City shall not reimburse Developer in an amount that exceeds the Maximum Cost, regardless of whether the actual costs incurred by Developer are higher than the Maximum Cost, unless an increase in the Maximum Cost is approved by the San Diego City Council and this Agreement is amended in writing.
- 4.2 **Reimbursement Requests.** Developer shall submit monthly reimbursement requests with respect to all Work and Services performed for which Developer was not previously reimbursed. The amount requested for reimbursement shall be for all authorized costs described in the Cost Loaded Schedule incurred during the period for which reimbursement is requested. Developer shall supply invoices, paid receipts or canceled checks, and an updated spreadsheet in connection with each reimbursement request. Developer shall include with the monthly reimbursement request a cash flow report based on the latest approved Cost Loaded Schedule.
- 4.3 **Time of Reimbursement.** City will reimburse Developer within thirty (30) calendar days after Developer submits a reimbursement request, provided that City's inspector has verified that the Work and Services for which reimbursement is being requested have been installed and performed as represented in the reimbursement request, which verification shall occur during the thirty (30) calendar days described above, and subject to the retention provided for in this Agreement.
- 4.4 **Retention.** Monthly reimbursements by City for construction costs will be subject to a ten (10) percent retention; there will be no retention for design services. The ten (10) percent retention shall be released to Developer after City receives as-built drawings for the Project and after Final Acceptance (refer to Article VIII). In no event shall the ten (10) percent retention be required to be released prior to thirty (30) calendar days after Final Acceptance.
- 4.5 **Final Payment.** Developer shall submit its request for final payment for Work or Services after Final Acceptance of the Project as defined in Article VIII and within thirty (30) calendar days of Final Acceptance. Developer shall include with its request for final payment a fully executed release of claims in the form set forth in Exhibit F, Release of Claims.

- 4.6 **Effect of Delay.** Developer shall immediately notify City in a detailed writing of any delays in the Project that may affect the Project Schedule. Developer shall not be entitled to additional payment for delays attributable to Developer and/or its Agents' negligent acts or omissions or willful misconduct.
- 4.7 **Eighty Percent Notification.** Developer shall promptly notify City in writing if, at any time, Developer has reason to believe that the performance of authorized Work in the next succeeding sixty (60) calendar days, when added to all costs previously incurred, will exceed eighty (80) percent of the Maximum Cost, or if, at any time, Developer has reason to believe that the total cost for performance of the authorized Work will be greater or less than the Maximum Cost.

ARTICLE V. CONTRACT REPRESENTATIVES

5.1 Technical and Contractual Representative.

The following representatives for City and Developer [Authorized Representative(s)] are hereby designated for this Agreement:

Developer: Pat Millay Del Mar Heritage, LLC 12400 High Bluff Drive, Suite 650 San Diego, CA 92130	City: Leonard L. Wilson 600 B Street, Suite 1000 San Diego, CA 92101-4588
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- 5.2. **Contractual Representative Contact.** Developer shall contact City's Authorized Contractual Representative with respect to all matters that may affect the Agreement's cost, schedule, scope of work, and/or terms and conditions.
- 5.3 **Technical Representative Contact.** The Work and Services performed in accordance with this Agreement shall be performed under the technical direction of City's Authorized Technical Representative.
- 5.4 **Change Authorization.** When, in Developer's opinion, City's technical direction constitutes a change to the Agreement, Developer's Authorized Representative shall immediately notify City's Authorized Contractual Representative for authorization of such change. Until such authorization is granted, Developer shall perform in accordance with the Agreement as written.
- 5.5 **Certain Representative Decisions Binding.** All decisions and other actions of Developer's Authorized Representative shall be binding on Developer, and City shall be entitled to rely thereon.

ARTICLE VI. CHANGES IN WORK

- 6.1 **Notice of Changes to Plans and Specs.** Developer shall obtain, and shall require its Agents to obtain, prior written City approval of any and all changes made by Developer in the plans and specifications that may: a) materially affect the Work; b) require use of contingency funds; c) exceed the Maximum Cost of the Project; d) affect the quality or standards established by the City; e) affect the Project Schedule; or f) affect any other material obligation under this Agreement.
- 6.2 **Change Orders.** A Change Order is a written order authorizing items of work not covered by the scope of this Agreement. If a Change Order is desired by either party, Developer shall submit to the City's Authorized Contractual Representative a change order request setting forth the desired change and the amount of the adjustment to the Agreement, if any. Developer may proceed with any change in the Project requested upon receipt of written approval by the City's Authorized Contractual Representative provided that the City's obligation for reimbursement for the Project shall not exceed the Maximum Cost. Developer shall not have the right to refuse a change order request by City if such Change Order: a) does not require a corresponding adjustment to the Maximum Cost; or b) causes a delay in the Project Schedule. If any change in the Project, as described in any change order request, would likely result in the Maximum Cost being exceeded, then such change order request must be reviewed and approved by the City Council and this Agreement duly amended accordingly. By executing the Change Order, Developer and its contractor agree that no additional compensation or claims for items of work listed in the Change Order will be allowed. Change Orders shall carry a ten (10) percent mark-up for subcontractor work plus fifteen (15) percent for overhead and profit by the Developer or its contractor(s).
- 6.3 **Field Orders.** A Field Order is a written order by Developer to compensate its contractor for items of work not covered by the scope of this Agreement. Field Order items of work may be paid for under this Section provided that the dollar value of the Field Order does not exceed \$5,000, and the cumulative total of Field Orders does not exceed \$25,000. The procedure for Developer's use of Field Orders is as follows:
- 6.3.1 The work being recommended is in fact additional work not covered by the scope of this Agreement and is performed in accordance with the terms and conditions of this Agreement; and
- 6.3.2 Developer's contractor concurs that the additional work is necessary and signs the Field Order; and
- 6.3.3 Developer receives City's approval of the Field Order. In order to comply with this Section, Developer must prepare a justification statement for each Field Order and provide three copies of the Field Order and justification to City's Resident Engineer for approval. City's Resident Engineer will send a copy of the Field Order, if approved, to City's Authorized Contractual Representative. Payment to Developer and its contractor for Field Order items shall provide full compensation for all equipment, materials, labor, field and home office overhead, mark-ups and profit

necessary to complete the work. By executing the Field Order, Developer and its contractor agree that no additional compensation or claims for items of work listed in the Field Order will be allowed.

- 6.4 **Non-Reimbursable Change and Field Orders.** Developer shall not be reimbursed for any costs and expenses of a Change Order or Field Order resulting from a design error or omission, Developer's negligence or willful misconduct, or the negligence or willful misconduct of any of Developer's Agents or their agents.

ARTICLE VII. DISPUTES

- 7.1 **Disputed Work.** If Developer and City are unable to reach agreement on disputed Work and/or Services, City may direct Developer to proceed with the Work and/or Services and compensate Developer for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation, or as determined in a court of law. Developer shall maintain and keep all records relating to disputed Work and/or Services for a period of three (3) years following City's acceptance of the Project.
- 7.2 **Mandatory Mediation.** If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if the dispute cannot be resolved by the parties, the parties agree to mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association or any other neutral organization agreed upon before having recourse in a court of law. All costs for the mediation shall be borne equally by the parties except each party shall pay their own witness costs. A single mediator agreed upon by the parties shall be used. Mediation hearings shall be informal and confidential and discovery shall not be allowed. The parties must have a representative authorized to recommend a settlement attend the mediation. Any agreements resulting from mediation shall be documented in writing by all parties. All mediation results shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE VIII. ACCEPTANCE

- 8.1 **Acceptance Procedure.** Acceptance of the Project shall be in writing by City's inspector and the Water Department's Water Operations Division. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by City of any defects in the Project.
- 8.1.1 **Substantial Completion.** For purposes of this Agreement, the Project shall be deemed "Substantially Complete" when (a) the Developer notifies the City that Property has been completed in accordance with this Agreement, (ii) City's Resident Engineer has inspected the Project, prepared a final "punch list" and determined that the only punch list items required to be completed are items not required for the safe operation of the Project and can therefore be completed after the Project has been occupied by City.

- 8.1.2 **Final Completion.** The Project shall be deemed "Fully Complete" when (a) Developer has prepared and recorded a Notice of Completion for the Project; (b) City has received from Developer a release of any and all stop notices and other liens; (c) all items listed on the punch list have been completed; and (d) Developer has submitted all required documents in accordance with this Agreement, including but not limited to, as-built drawings, warranties, and operating manuals.
- 8.1.3 **Final Acceptance.** Final Acceptance shall occur when the Project is Fully Complete. From and after Final Acceptance, the Project shall be owned and operated by City.

ARTICLE IX. GUARANTEES

- 9.1 **Warranty.** Developer warrants and guarantees all Work for a period of one (1) year after the date of Final Acceptance of the Project by City even if City's Beneficial use or occupancy occurred at an earlier date, or for a longer period if prescribed by laws, regulations, or by the terms of any applicable special guarantee. Developer shall repair and replace any and all Work that may prove defective in workmanship and/or materials within that one-year period or applicable longer warranty period, together with any other Work which may be displaced in so doing, without expense whatsoever to City, ordinary wear and tear and unusual abuse or neglect by City excepted. If Developer fails to comply with the above mentioned conditions within one (1) week after being notified in writing, City may repair any defects or take other corrective action at the expense of Developer who hereby agrees to pay the costs and charges therefore immediately upon demand.
- 9.2 **New Materials and Equipment.** All materials and equipment used in the Project shall be new and of industrial quality. Developer shall warrant and guarantee, and shall require its Agents to warrant and guarantee, that all materials and equipment incorporated into the Project are new and of industrial quality unless otherwise authorized in writing by City. Further, Developer shall warrant and guarantee, and shall require its Agents to warrant and guarantee, that all Work and Services are in accordance with this Agreement and the plans and specifications and is not defective in any way in design, construction or otherwise.
- 9.3 **Form of Warranties.** Written warranties, except manufacturer's standard printed warranties, shall be on Developer's, Developer's Agent's, material supplier's, installer's or manufacturer's own letterhead, addressed to City. All warranties shall be submitted in the format specified in this section, modified as approved by City to suit the conditions pertaining to the warranty.

ARTICLE X. INDEMNIFICATION

- 10.1 **Scope of Indemnity.** Developer agrees to indemnify the City as follows:
- 10.1.1 Developer agrees to defend, indemnify, protect, and hold the City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees"), harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to

Developer's employees, Agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Developer, its Agents, officers, or employees in performing the Work or Services herein, including all expenses of investigating and defending against same. To the extent that it is established that the Indemnitees and Developer or Developer's Agents are held to be comparatively negligent, City shall pay only for the percentage of damages attributable to Indemnitees comparative negligence and Developer shall pay for the percentage of damage attributable to Developer's and/or Developer's Agents' comparative negligence. Nothing in this Paragraph shall be construed as limiting any right of Developer to recoup such damages from its Agents. Developer shall not be obligated to indemnify and hold Indemnitees harmless as a result of any willful misconduct by Indemnitees.

- 10.1.2 **Indemnification.** To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), any Design Professional performing Work or Services under this Agreement shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, representatives and employees from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Design Professional or its Subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of Design Professional, any Subcontractor, anyone directly or indirectly employed by them, or anyone that they control.

The provisions of this ARTICLE X are not limited by the provisions of ARTICLE XII related to insurance.

- 10.1.3 **Enforcement Costs.** The Design Professional agrees to pay any and all costs the City incurs enforcing the indemnity and defense provisions set forth in Section 10.1.2 and the indemnity provision in Section 10.1.3.
- 10.1.4 Developer shall require that each and every one of Developer's Agents defend and indemnify City on the same terms as Developer is required to do by this Article.
- 10.1.5 Developer and each and every one of Developer's Agents' duty to defend associated with enforcement of these indemnification provisions and defense of any claims arising from the Project, includes the duty to defend City and pay all costs for the defense of City and its officers, agents and employees regarding any action or proceeding for which Developer has agreed to hold City harmless. Developer may select legal counsel to represent City in any such proceeding subject to the City Attorney's approval, which approval will not be unreasonably withheld. City may make all reasonable decisions with respect to its representation in any legal

proceeding. Developer's obligation for legal fees and costs shall be limited to the legal fees and costs of only one legal counsel other than the City Attorney's Office should it elect to participate in such litigation.

ARTICLE XI. BONDS

11.1 **Bond Requirements.** Prior to beginning any Work under this Agreement, Developer shall provide City with the following bonds:

11.1.1 **Payment Bond.** A payment (material and labor) bond in favor of City for not less than 50% of the construction contract price, as determined by competitive bidding, to satisfy claims of material suppliers, mechanics, and laborers employed on the Project [Payment Bond]. The Payment Bond shall be maintained by Developer in full force and effect until Final Acceptance of the Project and until all claims for materials and labor have been paid, and shall otherwise comply with the Government Code.

11.1.2 **Performance Bond.** A faithful performance bond in favor of City [Performance Bond] shall be in the amount of not less than 100% of the construction contract price, as determined by competitive bidding, to guarantee faithful performance of all Work, in a manner satisfactory to City, and that all materials and workmanship will be free from original or developed defects. The Performance Bond shall be maintained by Developer in full force and effect at least until thirty (30) calendar days after expiration of all Developer's warranty obligations under this Agreement, except as otherwise provided by law or regulation or by this Agreement.

11.2 **Bond Requirements.** The Payment and Performance Bonds [Bonds] shall incorporate this Agreement by reference and shall be signed by both Developer and the surety. The Bonds shall be from surety companies admitted to do business in the State of California and have a minimum AM Best rating of "A" and "V."

ARTICLE XII. INSURANCE

12.1 **General.** Developer shall not begin Work or Services under this Agreement until it has: a) obtained insurance certificates and endorsements reflecting evidence of all insurance required, however, City reserves the right to request, and Developer shall submit, copies of any policy upon reasonable request by City; b) obtained City approval of each company or companies; c) confirmed that all policies contain the specific provisions required below. Further, Developer shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.

12.2 **Types of Insurance.** At all times during the term of this Agreement, Developer, Developer's Contractor, and subcontractor(s) shall maintain insurance coverage as follows:

12.2.1 **Commercial General Liability.** For all of Developer's operations, including contractual, property damage, completed operations, and independent Developer's

liability, Developer, Developer's Contractor, and subcontractor(s) shall keep in full force and effect, during any and all Work and Services on this Project, all applicable insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of \$1 million per occurrence, subject to an annual aggregate of \$2 million for general liability, completed operations and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

- 12.2.2 **Auto Liability.** For all of Developer's automobiles used to conduct the Work or Services, including owned, hired and non-owned automobiles, Developer shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of \$1 million per occurrence. Insurance certificate shall reflect coverage for any automobile [any auto]. City shall be named as an additional insured, but only for liability arising out of use of Developer's automobiles and only arising out of Work or Services performed under this Agreement.
- 12.2.3 **Professional Liability.** For all of Developer's Agents who are subject to this Agreement, Developer shall keep in full force and effect, and Developer shall require that its architect/engineer(s) of record keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of \$1 million per claim and \$2 million annual aggregate. Developer shall ensure both that: (1) this policy retroactive date is on or before the date of commencement of the Project; and (2) this policy has a reporting period of three years after the date of completion or termination of this Agreement. Developer agrees and shall require its architect/engineer(s) of record to agree that for the time period defined above, there will be no changes or endorsements to the policy that increases City's exposure to loss.
- 12.2.4 **Workers' Compensation.** For all of Developer's employees who are subject to this Agreement and to the extent required by the State, Developer shall keep in full force and effect, a workers compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Developer shall provide an endorsement that the insurer waives the right of subrogation against City and its respective elected officials, officers, employees, agents and representatives.
- 12.2.5 **Builder's Risk.** Developer shall keep in full force and effect until Final Acceptance of the Project an "All Risk" Builders Risk Policy. The insurance shall be in an amount equal to the replacement cost of the completed work (without deduction for depreciation) including the cost of excavations, grading, and filling. The policy limits shall be 100% of the construction contract value of the work plus 15% to cover inspections and construction management. The policy shall provide that all proceeds thereunder shall be payable to City as Trustee for the insureds, and shall

name City, Developer, contractors, subcontractors, and suppliers of all tiers as named insureds.

- 12.3 **Ratings.** All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "V" rating by AM BEST, are licensed to do business in the State of California, and have been approved by City.
- 12.4 **Deductibles.** All deductibles on any policy shall be the responsibility of Developer or its Agents.
- 12.5 **Endorsements.** Each policy required under this Agreement shall expressly provide, and an endorsement shall be submitted to City, that:
- 12.5.1 Except as to Architects and/or Engineers professional liability insurance and workers compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. City's additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent.
- 12.5.2 The policies are primary and non-contributing to any insurance that may be carried by City.
- 12.5.3 The policies cannot be canceled, non renewed or materially changed except after thirty (30) calendar days prior written notice by Developer to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days notice will be provided.
- 12.6 **Contractor and Subcontractor Insurance.** Developer shall require that Developer's Agents maintain in full force and effect all insurance policies required by this Article, except as specifically modified in this Section.
- 12.6.1 Developer's architect/engineer of record and its subconsultants shall be the only Agents required to provide the professional liability coverage set forth in Section 12.2.3. Further, the architect/engineer of record's subconsultants may retain their current coverage limits and are not required to increase those limits to higher levels.
- 12.6.2 Developer's Agents are not required to obtain the builder's risk coverage set forth in Section 12.2.5.
- 12.6.3 The City in its sole discretion may authorize decreased coverage amounts for lower tier Agents.
- 12.7 **Additional Insurance.** Developer may obtain additional insurance not required by this Agreement.

13.1. Equal Opportunity Nondiscrimination.

- 13.1.1 Compliance with the City's Equal Opportunity Contracting Program.** The Developer and each of its subconsultants/subcontractors shall comply with the City's Equal Opportunity Contracting Program Developer Agreement Requirements which is attached hereto as Exhibit G and incorporated herein by this reference.
- 13.1.2 Equal Employment Opportunity Nondiscrimination.** Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure that their prime contractors and their subcontractors comply with this program. Nothing in this Article shall be interpreted to hold Developer or a prime contractor liable for any discriminatory practice of its subcontractors.
- 13.1.3 Equal Employment Opportunity Duty to Submit Reports.** Developer shall submit to the Equal Opportunity Contracting Program a Work Force Report or an Equal Employment Opportunity Plan approved by the project manager prior to tendering the signed contract documents to the City for signature.
- 13.1.4 Equal Opportunity Contracting Nondiscrimination.** Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Developer understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. The language of this Subsection shall be inserted in contracts between Developer and any design consultants, contractors, subcontractors, vendors, or suppliers.
- 13.1.5 Local Contracts/Investigation.** Upon City's request, Developer agrees to provide the City, within sixty (60) calendar days, a truthful and complete list of the names of all design consultants, contractors, subcontractors, vendors, and suppliers the Developer has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Developer for each contract. Developer further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (Municipal Code sections 22.3501-22.3517). Developer understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment or other sanctions.

ARTICLE XIV. TERMINATION OF AGREEMENT

- 14.1 Termination for Default.** In the event of a default by Developer, City shall give written notice of City's intent to terminate the Agreement for default. Developer shall have ten (10)

working days from the written notice, or a longer period if both parties mutually agree to an extension, for Developer to: (a) fully and completely remedy, to City's satisfaction, the conditions constituting the default; or (b) make reasonable progress to remedy the conditions constituting the default if the default cannot reasonably be cured within ten (10) working days, provided that Developer diligently completes remediation of the default. If Developer fails to remedy the conditions constituting default as required by this Agreement, City may terminate this Agreement by issuing a Notice of Termination.

14.1.1 It shall be considered a default by Developer when Developer:

- 14.1.1.1 Declares bankruptcy, becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due;
- 14.1.1.2 Fails to provide materials or workmanship that meet the requirements of the Agreement and fails to correct any Defective Work as required by City;
- 14.1.1.3 Disregards or violates provisions of this Agreement;
- 14.1.1.4 Fails to execute the Project according to the approved Project Schedule;
- 14.1.1.5 Fails to provide competent management and supervision, competent workmen, or materials or equipment meeting the requirements of this Agreement;
- 14.1.1.6 Disregards laws or regulations of any Public body having jurisdiction over the Project;
- 14.1.1.7 Commits continuous or repeated serious violations of approved or legislated safety program requirements.

14.1.2 **Rights and Remedies.** Where the Agreement has been defaulted by City under this provision, the default will not affect any rights or remedies of City against Developer, then existing or which may thereafter accrue. Any retention or payment of moneys paid Developer by City shall not release Developer from liability.

14.2 **Termination for Convenience.** City may terminate all or any portion of this Agreement by written Notice of Termination to Developer, at City's own discretion, when conditions encountered during performance of the Work or Services make it impossible or impracticable to proceed, or when City is prevented from proceeding with the Agreement by act(s) of God, by law, or by official action of a public authority. City shall terminate by delivering to Developer a written Notice of Termination specifying the extent of termination and the effective date.

14.2.1 Upon termination of this Agreement, Developer and Developer's Agents shall stop Work and Services immediately or at a later date as specified in the Notice of

Termination. Developer will be entitled to a fair and reasonable compensation for Work and Services performed by Developer prior to the effective date of termination.

14.2.2 Within a reasonable time after the effective date of termination, Developer shall deliver to City all drawings, plans, calculations, specifications, and other documents related to both the Project and to Developer's Work and Services on the Project. Upon receipt of these documents, City will pay Developer fair and reasonable compensation as described above. By accepting City's payment for Work and Services performed, Developer discharges City of all of City's payment obligations and liabilities under this Agreement.

ARTICLE XV. MISCELLANEOUS

15.1 **Notice.** Any demands or notice required or permitted under this Agreement may be personally served on the other party, by the party giving notice, or may be served by certified mail, return receipt requested, to the following addresses:

If to City, to:
 Water Department Director
 City of San Diego
 600 "B" Street, Suite 400
 San Diego, CA 92101-4588

If to Developer, to:
 DMH Plaza Lindo Paseo, LLC
 12400 High Bluff Drive
 Suite 650
 San Diego, CA 92130

15.2 **Third Parties.** Nothing in this Agreement shall create a contractual relationship between City and any third party; however, the parties understand and agree that City, to the extent permitted by law, is an intended third party beneficiary of all Developer's contracts, purchase orders and other contracts between Developer and third party Work and Service providers. Developer shall incorporate this provision into its contracts, including supply agreements and purchase orders.

15.3 **Waiver.** No failure of either City or Developer to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

15.4 **Whole Agreement.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both

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parties or an amendment to this Agreement agreed to by both parties. All prior negotiations and agreements are merged into this Agreement.

- 15.5 **Consent.** Where the consent or approval of a party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld.
- 15.6 **Cooperation.** The parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 15.7 **Force Majeure.** If the performance of any act required of City or Developer is directly prevented or delayed by reason of strikes, lockouts, labor disputes, unusual governmental delays, acts of God, fire, floods, epidemics, freight embargoes, or other causes beyond the reasonable control of the party required to perform an act, that party shall be excused from performing that act for the period of time equal to the period of time of the prevention or delay. In the event City or Developer claims the existence of such a delay, the party claiming the delay shall notify the other party in writing of that fact within ten (10) calendar days after the beginning of any such claimed delay.
- 15.8 **Assignment.** Except as to a lending institution with substantial experience making and/or holding loans secured by commercial real estate and who is in good standing under the laws of the jurisdiction of its formation and the laws of the state, to a company of equal or greater ability to fulfill Developer's obligations as set forth in this Agreement, or to an affiliate of Developer, with prior written notice to City of assignment, Developer shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this Subsection shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.
- 15.9 **Successors-in-Interest.** This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Agreement have been succeeded by another entity, and all rights and obligations of the parties signatory to this Agreement shall be vested and binding on their successors-in-interest.
- 15.10 **Laws and Venue.** This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. Venue for actions arising out of the Agreement shall be in the City of San Diego, California.
- 15.11 **Negotiated Agreement.** The parties agree that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement, and the decision whether to seek advice of counsel with respect to this Agreement is the sole responsibility of each of the parties. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of this Agreement.

- 15.12 **Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.
- 15.13 **Authority to Sign.** Each party signing on behalf of a corporation, partnership, joint venture, limited liability company, or governmental entity hereby declares that he or she has the authority to sign on behalf of his or her respective corporation, partnership, joint venture, limited liability company, or other entity and agrees to hold the other party or parties hereto harmless if he or she does not have such authority.
- 15.14 **Term of Agreement.** The term of this Agreement shall be for a period of five (5) years commencing on the date of adoption of the City Council Resolution authorizing execution of this Agreement, unless this Agreement is earlier terminated in accordance with its provisions.
- 15.15 **Media Contacts.** Developer should consult with the City before making contact with, or responding to questions from, the media regarding the Project.
- 15.16 **Advertising.** Developer acknowledges that advertising referring to the City as a user of a product, material, or service by Developer and/or Developer's agents, material suppliers, vendors, or manufacturers is expressly prohibited without the City's prior written approval.
- 15.17 **Section Headings.** All captions and section headings are for convenience only and shall not affect the interpretation of this Agreement.

REMAINDER OF PAGE DELIBERATELY LEFT BLANK

15.18 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and its Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement

IN WITNESS WHEREOF, the Agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Resolution No. _____ authorizing such execution, and by _____.

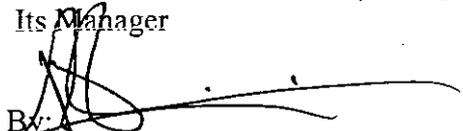
Dated this ____ day of _____, 2008.

THE CITY OF SAN DIEGO,
a municipal corporation

DMH LINDO PASEO, LLC,
a California limited liability company

By: _____
J. M. Barrett
Director of Public Utilities

By: Del Mar Heritage, LLC,
a California limited liability company
Its Manager


By: _____
John Sarkisian, Member

By: _____
Tammy Rimes
Acting Director of Purchasing and Contracting

APPROVED AS TO FORM AND LEGALITY:
MICHAEL J. AGUIRRE, City Attorney

By: _____
Raymond C. Palmucci
Deputy City Attorney

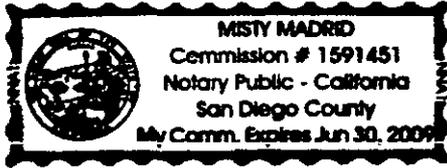
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Diego } ss.

On June 27, 2007 before me, Misty Madrid, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared John Sarkisian
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.

Misty Madrid
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: _____

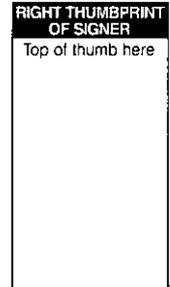
Signer(s) Other Than Named Above: _____

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: _____



EXHIBITS

Exhibit A – Legal Description

Exhibit B – Scope of Work

Exhibit C – Location Map

Exhibit D – Cost Loaded Schedule

Exhibit E – Project Schedule

Exhibit F – Release of Claims

Exhibit G – City’s Equal Opportunity Contracting Program Consultant Requirements

(Attachment AA) Work Force Report

(Attachment BB) Contract Activity Report

(Attachment CC) Subconsultants List

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 11, 12, 13 AND 14 OF COLLWOOD GARDENS, IN THE CITY OF SAN DIEGO,
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF
NO. 2620, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO
COUNTY, FEBRUARY 3, 1950.

000456

EXHIBIT B
SCOPE OF WORK

Description	Qty.	Units	Rate	Amount
Construction Documents:				
Preliminary Design	1	LS	2,500.00	2,500.00
Plans & Specifications	1	LS	14,000.00	14,000.00
Permit Processing	1	LS	4,000.00	4,000.00
Contract Administration	4	MO	1,000.00	4,000.00
As-Builts	1	LS	4,000.00	4,000.00
Permits & Fees	1	LS	7,500.00	7,500.00
Survey & Staking	1	LS	4,000.00	4,000.00
Mobilization	1	LS	10,000.00	10,000.00
Traffic Control	4	MO	1,500.00	6,000.00
Install/Remove Temporary High-line	1,665	LF	20.00	33,300.00
Connect Existing Services to High Line	40	EA	200.00	8,000.00
Sawcut Existing Paving	3,330	LF	4.00	13,320.00
Remove Existing Water Main	1,665	LF	8.00	13,320.00
Remove Existing Paving	3,330	SF	2.00	6,660.00
Connection to Existing 12" Water Main	1	EA	1,060.00	1,060.00
Connection to Existing 8" Water Main	1	EA	1,060.00	1,060.00
12" Gate Valves	4	EA	3,700.00	14,800.00
8" Gate Valves	3	EA	1,800.00	5,400.00
12" PVC Water Main	1,665	LF	70.00	116,550.00
Connect Existing Fire Hydrants to New Main	3	EA	2,000.00	6,000.00
Connect Existing Service to New Main	40	EA	350.00	14,000.00
Materials Testing & Inspection	1	LS	2,500.00	2,500.00
Trench Re-surfacing	1,665	LF	25.00	41,625.00
Re-striping	1,665	LF	0.65	1,082.00
Payment & Performance Bonds	1	LS	5,200.00	5,200.00
15% Contingency	1	LS	51,762.00	50,982.00

GRAND TOTAL

390,859.00

000457



Szytel Engineering and Surveying, Inc.

GARY M. SZYTEL
Registered Civil Engineer
Licensed Land Surveyor
Off. (760) 741-6979
FAX (760) 741-3722

ENGINEER'S COST ESTIMATE LINDO PASEO WATER MAIN UPGRADE

Item	Quantity	Unit	Unit Cost	Total
Construction Documents				
Preliminary Design	1	LS	2,500.00	2,500
Plans and Specifications	1	LS	14,000.00	14,000
Permit Processing	1	LS	4,000.00	4,000
Contract Administration	4	MO	1,000.00	4,000
As-Builts	1	LS	4,000.00	4,000
Permits and Fees	1	LS	7,500.00	7,500
Survey and Staking	1	LS	4,000.00	4,000
Mobilization	1	LS	10,000.00	10,000
Traffic Control	4	MO	1,500.00	6,000
Install/Remove Temporary High Line	1665	LF	20.00	33,300
Connect Existing Services to High Line	40	EA	200.00	8,000
Sawcut Existing Paving	3330	LF	4.00	13,320
Remove Existing Water Main	1665	LF	8.00	13,320
Remove Existing Paving	3330	SF	2.00	6,660
Connection to Existing 12" Water Main	1	EA	1,060.00	1,060
Connection to Existing 8" Water Main	1	EA	1,060.00	1,060
12" Gate Valves	4	EA	3,700.00	14,800
8" Gate Valves	3	EA	1,800.00	5,400
12" PVC Water Main	1665	LF	70.00	116,550
Connect Existing Fire Hydrants to New Main	3	EA	2,000.00	6,000
Connect Existing Services to New Main	40	EA	350.00	14,000
Materials Testing and Inspection	1	LS	2,500.00	2,500
Trench Re-surfacing	1665	LF	25.00	41,625
Re-striping	1665	LF	0.65	1,082
Payment and Performance Bonds	1	LS	5,200.00	5,200

Total \$ 339,877
15% Contingency \$ 50,982

Grand Total \$ 390,859

This estimate is based upon the criteria given in the "Participation Agreement for Design and Construction of the Lindo Paseo Water Main Upgrade". It is also based upon items and quantities provided by the project administrator. Construction plans have not yet been prepared for this project. Therefore this estimate is approximate and will change subject to final design. Unit costs for most items were taken from the City of San Diego Unit Price List dated January 2006.

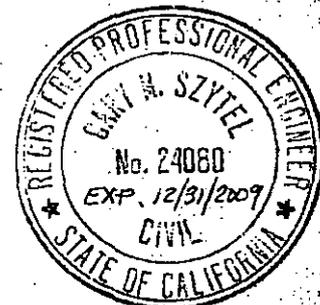
Szytel Engineering & Surveying, Inc.

By:

Gary M. Szytel
Gary M. Szytel, RCE 24080, President

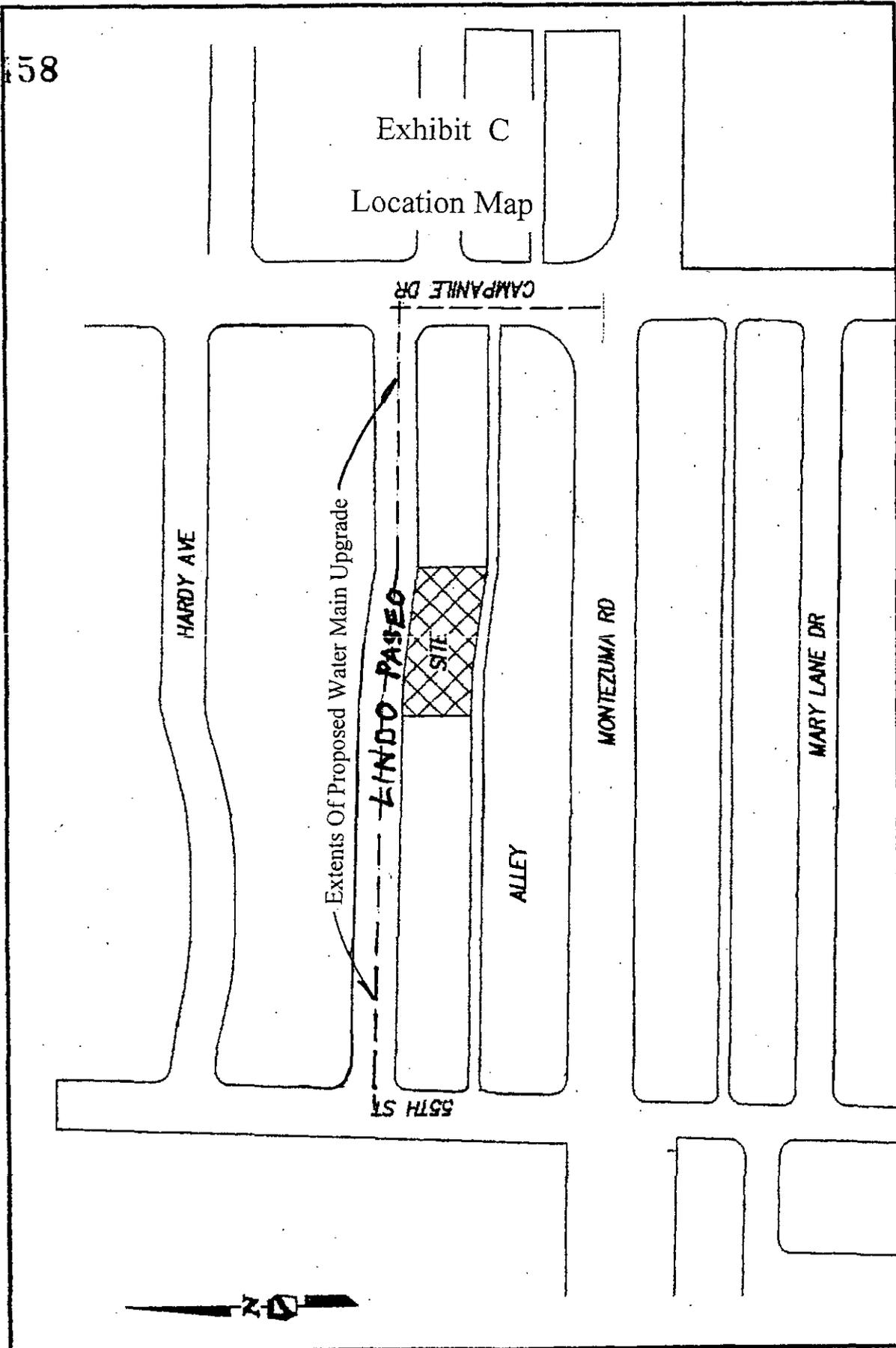
12/12/2007

Date



000458

Exhibit C
Location Map



Plaza Lindo Paseo – Water Main Improvements

Not To Scale

000459

EXHIBIT D
COST LOADED SCHEDULE

Description	2008												Total
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Construction Documents:													
Preliminary Design	2,500												2,500
Plans & Specifications		10,000	4,000										14,000
Permit Processing			2,000	2,000									4,000
Contract Administration							500	500	500	500	500	500	3,000
As-Builts													
Permits & Fees				7,500									7,500
Survey & Staking								4,000					4,000
Mobilization								10,000					10,000
Traffic Control									1,500	1,500	1,500	1,500	6,000
Install/Remove Temporary High-line								16,650					16,650
Connect Existing Services to High Line								8,000					8,000
Sawcut Existing Paving									13,320				13,320
Remove Existing Water Main									4,440	4,440	4,440		13,320
Remove Existing Paving								6,660					6,660
Connection to Existing 12" Water Main									1,060				1,060
Connection to Existing 8" Water Main									1,060				1,060
12" Gate Valves											14,800		14,800
8" Gate Valves											5,400		5,400
12" PVC Water Main									11,655	34,965	34,965	34,965	116,550
Connect Existing Fire Hydrants to New Main											3,000	3,000	6,000
Connect Existing Service to New Main									3,500	3,500	3,500	3,500	14,000
Materials Testing & Inspection									750	750	500	500	2,500
Trench Re-surfacing												41,625	41,625
Re-striping													0
Payment & Performance Bonds								5,200					5,200
15% Contingency			5,089	5,089			5,089	5,089	5,089	5,089	5,089	5,089	40,712
	2,500	10,000	11,089	14,589	0	0	5,589	56,099	42,874	50,744	73,694	90,679	357,857

EXHIBIT D
COST LOADED SCHEDULE

000460

Description	2009												Total	
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
Construction Documents:														
Preliminary Design													0	
Plans & Specifications													0	
Permit Processing													0	
Contract Administration	500	500											1,000	
As-Builts		4,000											4,000	
Permits & Fees													0	
Survey & Staking													0	
Mobilization													0	
Traffic Control													0	
Install/Remove Temporary High-line	16,650												16,650	
Connect Existing Services to High Line													0	
Sawcut Existing Paving													0	
Remove Existing Water Main													0	
Remove Existing Paving													0	
Connection to Existing 12" Water Main													0	
Connection to Existing 8" Water Main													0	
12" Gate Valves													0	
8" Gate Valves													0	
12" PVC Water Main													0	
Connect Existing Fire Hydrants to New Main													0	
Connect Existing Service to New Main													0	
Materials Testing & Inspection													0	
Trench Re-surfacing													0	
Re-striping	1,082												1,082	
Payment & Performance Bonds													0	
15% Contingency	5,089	5,181											10,270	
	23,321	9,681	0	0	0	0	0	0	0	0	0	0	33,002	
													TOTAL	390,859

EXHIBIT F

RELEASE OF CLAIMS

WHEREAS, on the _____ day of _____, 20____, the undersigned Developer [Developer] entered into and executed a certain contract with the City of San Diego [City}, a municipal corporation, whereby the Developer agreed to furnish and deliver to City the design and construction of Plaza Lindo Paseo, a copy of which is on file in the Office of the City Clerk as Document No. _____; and

WHEREAS, the Contract has been completed to the satisfaction of the Mayor and the Plaza Lindo Paseo Project was operationally accepted by the City on _____.

NOW THEREFORE, in consideration of the payment by City to Developer of the sum of _____, which is paid to and accepted by Developer as payment in full of all sums which may be due Developer under the terms of the Contract, and in further consideration of the sums previously paid to Developer under the terms of the Contract, Developer does hereby release and forever discharge City and its officers, employees and agents, from al claims and demands now existing or hereafter arising under or by virtue of the Contract or any part thereof.

Dated this _____ day of _____, 20_____.

Developer

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT:

STATE OF: _____

COUNTY OF: _____

On this _____ day of _____, 20____, before the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the foregoing Release and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the Release, the person executed the Release.

WITNESS my hand and official seal.

EXHIBIT G

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP) DEVELOPER AGREEMENT REQUIREMENTS

TABLE OF CONTENTS

I. City's Equal Opportunity Commitment...1
II. Nondiscrimination in Contracting Ordinance...1
III. Equal Employment Opportunity...2
IV. Equal Opportunity Contracting...4
V. List of Subcontractors and Subconsultants...4
VI. Definitions...4
VII. Certification...5
VIII. List of Attachments...5

I. City's Equal Opportunity Commitment. The City of San Diego (City) is strongly committed to equal opportunity for employees and subcontractors and subconsultants of developers doing business with the City. The City encourages its developers to share this commitment. Prime developers are encouraged to take positive steps to diversify and expand their subcontractor and subconsultant solicitation base and to offer consulting opportunities to all eligible subcontractors and subconsultants.

II. Nondiscrimination in Contracting Ordinance. All developers and professional service providers doing business with the City, and their subcontractors and Subconsultants, must comply with requirements of the City's Nondiscrimination in Contracting Ordinance San Diego Municipal Code Sections 22.3501 through 22.3517.

A. Proposal Documents to include Disclosure of Discrimination Complaints. As part of its bid or proposal, Proposer shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Proposer in a legal or administrative proceeding alleging that Proposer discriminated against its employees, subcontractors, subconsultants, vendors, or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

- B. Contract Language.** The following language shall be included in contracts for City projects between the developer and any subcontractors, subconsultants, vendors, and suppliers:

Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for subcontractors and subconsultants to participate in subcontracting and subconsulting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions.

- C. Compliance Investigations.** Upon the City's request, Developer agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, subconsultants, vendors, and suppliers that Developer has used in the past five years and any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Developer for each subcontract or supply contract. Developer further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's *Nondiscrimination in Contracting Ordinance*, Municipal Code Sections 22.3501 through 22.3517. Developer understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Developer up to and including contract termination, debarment and other sanctions for violation of the provisions of the *Nondiscrimination in Contracting Ordinance*. Developer further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of the Ordinance.

- III. Equal Employment Opportunity.** Developers shall comply with requirements of San Diego Ordinance No. 18173, Section 22.2701 through 22.2707, Equal Employment Opportunity Outreach Program. Developers shall submit a Work Force Report or an Equal Employment Opportunity (EEO) Plan to the Program Manager of the City of San Diego Equal Opportunity Contracting Program (EOCP) for approval.

- A. Work Force Report.** If a Work Force Report (Attachment AA) is submitted, and an EOCP staff Work Force Analysis determines there are under representations when compared to County Labor Force Availability data, Developer will be required to submit an Equal Employment Opportunity Plan.
- B. Equal Employment Opportunity Plan.** If an Equal Employment Opportunity Plan is submitted, it must include at least the following assurances that:
1. The Developer will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites, and in all facilities at which the Developer's employees are assigned to work;

2. A responsible official is designated to monitor all employment related activity to ensure the Developer's EEO Policy is being carried out and to submit reports relating to EEO provisions;
3. The Developer disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination, review and posting with a written record to identify the time, place, employees presents, subject matter, and disposition of meetings;
4. The Developer reviews at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Developer discusses its EEO Policy Statement with subcontractors and subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Developer documents and maintains a record of all bid solicitations and outreach efforts to and from subcontractors and subconsultants, consultant associations and other business associations;
7. The Developer disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Developer disseminates its EEO Policy to union and community organizations;
9. The Developer provides immediate written notification to the City when any union referral process has impeded the Developer's efforts to maintain its EEO Policy.
10. The Developer maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Developer maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources,

or community organizations with a description of the employment action taken;

12. The Developer encourages all present employees, including people of color and women employees, to recruit others;
13. The Developer maintains all employment selection process information with records of all tests and other selection criteria;
14. The Developer develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Developer's employment needs;
15. The Developer conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Developer ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to ensure privacy between the sexes;
17. The Developer establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Developer is encouraged to participate in voluntary associations which assist in fulfilling one or more of its non-discrimination obligations. The efforts of a consultant association, consultant/community professional association, foundation or other similar group of which the Developer is a member will be considered as being part of fulfilling these obligations, provided the Developer actively participates.

IV. Equal Opportunity Contracting. Prime developers are encouraged to take positive steps to diversify and expand their subcontractor and subconsultant solicitation base and to offer contracting opportunities to all eligible subcontractors and consultants. To support its Equal Opportunity Contracting commitment, the City has established voluntary participation levels.

A. Participation Level

1. Projects valued at \$25,000 or more have a voluntary Subcontractor Participation Level of 20% and a voluntary Subconsultant Participation level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), or Other Business Enterprise (OBE) level.
2. Attainment of the participation level goal is strongly encouraged but strictly voluntary.

B. Contract Activity Reports – To permit monitoring of the successful Developer's commitment to achieving compliance, *Contract Activity Reports* (Attachment BB) reflecting work performed by subcontractors and subconsultants shall be submitted quarterly for any work covered under an executed contract.

V. **List of Subcontractors and Subconsultants.** – Developers are required to submit a *Subcontractors and Subconsultants List* with their proposal.

VI. **Definitions.**

Certified "**Minority Business Enterprise**" (MBE) means a business which is at least fifty one (51%) owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.

Certified "**Women Business Enterprise**" (WBE) means a business which is at least fifty-one percent (51%) owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, one or more women.

Certified "**Disadvantaged Business Enterprise**" (DBE) means a business which is at least fifty-one percent (51%) owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.

Certified "**Disabled Veteran Business Enterprise**" (DVBE) means a business which is at least fifty-one percent (51%) owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).

“Other Business Enterprise” (OBE) means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

VII Certification

- A. The City of San Diego is a signatory to a Memorandum of Agreement (MOA) in the statewide California Unified Certification Program, and therefore has adopted a policy regarding certification of DBE firms. Pursuant to the MOA, a DBE can be certified by any participating government agency in the State of California.
- B. The City will accept a current certification by the State of California Department of Transportation (CALTRANS) or any other participating government agency in the State of California as an MBE or WBE: or

IX. List of Attachments

- AA – Work Force Report
- BB – Contract Activity Report
- CC – Subcontractors List
- DD – Subconsultants List

DETERMINATION OF

ENVIRONMENTAL EXEMPTION

000469 Pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO

Project No.: N/A

Date: December 6, 2007

Action/Permit(s): Approval of a Participation Agreement

Description of Activity: The approval of a Participation Agreement for replacement of sub-standard cast iron water mains in Lindo Paseo Drive and Campanile Drive. It entails the installation of approximately 1,665 linear feet of 12-inch PVC water main. The main will be installed at the standard depth per the City's Design Guide which is no less than 3 feet or greater than 5 feet, with a trench width of no more than 3 feet. All work will be confined to previously disturbed areas in the public right-of-way.

Location of Activity: The project areas are located in the City of San Diego (District 7), in the College community planning area, within the public right-of-way. The projects are at Lindo Paseo Drive from 55th Street to Campanile Drive and Campanile Drive from Lindo Paseo Drive to Montezuma Road..

1. This activity is **EXEMPT FROM CEQA** pursuant to:
- Section 15060(b) (3) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
2. This project is **EXEMPT FROM CEQA** pursuant to State CEQA Guidelines Section checked below:

ARTICLE 19 of GUIDELINES CATEGORICAL EXEMPTIONS (Incomplete list)		ARTICLE 18 of GUIDELINES STATUTORY EXEMPTIONS (Incomplete list)	
Section	Short Name	Section	Short Name
<input checked="" type="checkbox"/> 15301	Existing Facilities	<input type="checkbox"/> 15261	Ongoing Project
<input type="checkbox"/> 15302	Replacement or Reconstruction	<input type="checkbox"/> 15262	Feasibility and Planning Studies
<input type="checkbox"/> 15303	New Construction or Conversion of Small Structures	<input type="checkbox"/> 15265	Adoption of Coastal Plans and Programs
<input type="checkbox"/> 15304	Minor Alterations to Land	<input type="checkbox"/> 15268	Ministerial Projects
<input type="checkbox"/> 15305	Minor Alteration in Land Use	<input type="checkbox"/> 15269	Emergency Projects
<input type="checkbox"/> 15306	Information Collection	<input type="checkbox"/> Other	
<input type="checkbox"/> 15311	Accessory Structures		
<input type="checkbox"/> 15312	Surplus Government Property Sales		
<input type="checkbox"/> 15315	Minor Land Divisions		
<input type="checkbox"/> 15317	Open Space Contracts or Easements		
<input type="checkbox"/> 15319	Annexation of Existing Facilities and Lots for Exempt Facilities		
<input type="checkbox"/> 15325	Transfer of Ownership of Interest in Land to Preserve Open Space		
<input type="checkbox"/> Other			

It is hereby certified that the City of San Diego has determined the above activity to be exempt:

Distribution: Chris Gascon, Water Exemption or Project file


 NICOLE A. MCGINNIS, SENIOR PLANNER
 Water Resources & Planning Division

Responsible Departments: Water Department
 Development Services

Analyst: Brennecke