

Garden Grove Sanitary District

INTER-DEPARTMENT MEMORANDUM

To: Mathew J. Fertal

From: William E. Murray

Dept: General Manager

Dept: Public Works

Subject: APPROVAL OF REIMBURSEMENT
AGREEMENT WITH CERRITOS FAMILY
HOUSING PARTNERS, L.P., FOR
SANITARY SEWER CONSTRUCTION
IN CERRITOS AVENUE

Date: July 9, 2013

OBJECTIVE

To request the Garden Grove Sanitary District (GGSD) Board to approve a reimbursement agreement with Cerritos Family Housing Partners, L.P., (Developer) for sanitary sewer construction in Cerritos Avenue.

BACKGROUND

GGSD and the City of Anaheim are participants of a joint sewer agreement providing for cost sharing for jointly used sewer lines. Currently, one of the joint sewer lines in Cerritos Avenue is capacity deficient between Brookhurst Street and Gilbert Street. Replacement of this sewer line is a priority capital improvement project identified in GGSD's System Evaluation and Capacity Assurance Plan, and the full project is currently anticipated to be completed sometime in 2014.

The Developer desires to redevelop a commercial property (R3) with a 60-unit affordable housing project that will increase the flow in the capacity deficient sewer line. The Developer was given the option to wait until the public sewer line is upsized or to construct the upsized sewer line past their point of connection (with reimbursement from GGSD for its proportionate share (21%) of the cost to design and construct). The Developer will be responsible for collecting Anaheim's proportionate share (79%) for the design and construction of these improvements. The Developer has opted to construct now and obtain reimbursement from GGSD. The project replaces 72 feet of 8-inch vitrified clay pipe (VCP) with 15-inch VCP. The new sewer line requires construction pursuant to GGSD specifications.

DISCUSSION

In accordance with the reimbursement agreement, the Developer has selected the lowest responsible bidder from three proposals; the contractor is required to pay prevailing wages; and GGSD approval of performance and materials and labor bonds and the reimbursement agreement must be in place prior to commencement

of construction. GGSD's cost share (21%) of design and construction is anticipated to be approximately \$30,000, subject to minor adjustments for approved minor field changes.

FINANCIAL IMPACT

There is no impact to the General Fund. Adequate Sewer Funds are budgeted and available to finance this project.

RECOMMENDATION

It is recommended that the GGSD Board:

- Approve the Reimbursement Agreement with Cerritos Family Housing Partners, L.P.; and
- Authorize the General Manager to execute the agreement on behalf of the District, and make minor modifications as appropriate.



WILLIAM E. MURRAY, P.E.
Public Works Director/City Engineer



By: David E. Entsminger
Water Services Manager

Attachment: Reimbursement Agreement

Recommended for Approval



Matthew Feral
General Manager

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (the "Agreement") made and entered into to be effective as of the _____ day of _____, 2013 (the "Effective Date") by and between:

GARDEN GROVE SANITARY DISTRICT, a Subsidiary District of the City of Garden Grove (hereinafter referred to as the "District")

AND

CERRITOS FAMILY HOUSING PARTNERS, L.P., a California limited partnership (hereinafter referred to as the "Developer").

RECITALS

A. District is a duly organized Sanitary District, existing pursuant to the Sanitary District Act of 1923, California Health & Safety Code Sections 6400 et seq., providing for the ownership, acquisition, operation, and maintenance of wastewater collection facilities.

B. Developer is the developer of real property near the intersection of Cerritos Avenue and Gilbert Street in an unincorporated area of the County of Orange within the District's corporate boundaries, for which the Developer has received entitlements and permits from the County of Orange to construct an approximately sixty (60) unit multi-family apartment project (the "Proposed Development").

C. The District's existing sewerage facilities in Cerritos Avenue do not currently have the capacity to serve the Proposed Development, and the nature and extent of the Proposed Development require the upgrade of a portion of the existing eight (8) inch public sewer main and related facilities in Cerritos Avenue.

D. In order to upgrade existing sewerage facilities in a manner sufficient to allow construction of the Proposed Development, a sewer project consisting of construction of a new fifteen (15) inch sewer replacement main in Cerritos Avenue from Gilbert Street to a point immediately upstream of the sewer connection of the Proposed Development, and related work, is required, which project is more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Project").

E. Pursuant to Order No. 2006-0003, Statewide General Waste Discharge Requirements, issued by the State Water Resources Control Board on May 2, 2006, the District has prepared a System Evaluation and Capacity Assurance Plan to address capacity deficiencies in key elements of the District's wastewater collection system (the "Plan").

F. Pursuant to the Plan, the District has adopted and is implementing a Capital Improvement Program for capacity formulated to eliminate capacity deficiencies in its wastewater collection system in accordance with the District's criteria, and which, in significant part, consists of replacement of portions of the system with larger pipes, diversions to adjacent or nearby Orange County Sanitation District facilities, diversions to other District facilities with adequate capacity, and/or combinations of these options.

G. The Plan identifies and prioritizes capacity improvement projects throughout the District's system, which capital improvement projects are summarized in Table 6 of the Plan.

H. The Project constitutes a portion of a larger capital improvement project identified as "Project No. 28" in the Plan, which is more particularly described in the Plan as "Priority No. 30 (Project No. 28) Cerritos Avenue, Perdido Street to Gilbert Street." Project No. 28 includes the replacement of approximately 1464 feet of eight (8) inch sewer main with a new fifteen (15) inch sewer main in Cerritos Avenue from Perdido Street to Gilbert Street.

I. That portion of the public sewer main in Cerritos Avenue scheduled to be replaced pursuant to Project No. 28 is a "shared sewer" carrying flows contributed by developments within both the District and the City of Anaheim, and it is anticipated that the design and construction costs of Project No. 28 would be apportioned between the District and the City of Anaheim according to the proportionate amount of flow contributed by developments in each jurisdiction, in accordance with an existing agreement between the District and the City of Anaheim. Pursuant to said agreement, if constructed by the District, the District's proportionate share of the design and construction cost for that portion of Project No. 28 constituting the Project would be approximately twenty-one percent (21%).

J. Commencement of construction of Project No. 28 is not anticipated to take place prior to 2014, and the District currently has neither the staff nor funding available to perform the sewer upgrades necessary to accommodate the Proposed Development.

K. Accordingly, in order to facilitate and accommodate the Proposed Development, the Developer is proposing to design and construct that portion of Project No. 28 constituting the Project. Construction of the Project will proportionately reduce the future scope and cost of the remainder of Project No. 28.

L. The Developer will pay for the cost of design and construction of the Project (hereinafter referred to as the "Work"), subject to the provisions of this Agreement.

M. Pursuant to the terms and conditions set forth below, the District agrees to reimburse the Developer for District's proportionate share of the cost of the design and construction of the Project, said reimbursement to be made to the Developer only after both (i) said improvements have been accepted by the District and (ii) a budget is approved by the District Board of Directors containing the funds for Project No. 28, all in accordance with this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, it is hereby agreed by and between the District and the Developer, as follows:

1. DESIGN AND TESTING. The Developer shall engage and pay from its own funds a qualified licensed civil engineer (hereinafter, "Design Consultant") to prepare and design work necessary for the Project, including but not limited to, the necessary plans, specifications, surveying, and soil testing for the Work. The amount paid by the Developer to the Design Consultant pursuant

to this Section 1 shall constitute the "Design Cost" for purposes of determining the "Total Estimated Cost" pursuant to Section 16 below.

2. **APPROVAL OF PLANS AND SPECIFICATIONS.** The design plans and construction plans and specifications for the Work shall be submitted to the District for review and approval. Construction shall not begin without said approval from the District and from any other public agency having jurisdiction over the Project. The District's approval shall not be unreasonably withheld.

3. **BIDDING AND SELECTION OF CONTRACTOR.** The Developer shall obtain a minimum of three bids from licensed, qualified contractors for construction of the Work based on the plans and specifications approved by the District, in accordance with bidding procedures and requirements approved in advance by the District. The Developer and the District understand and agree that the lowest responsible bid received from a qualified contractor shall constitute the estimated cost of construction of the Work ("Estimated Construction Cost") for purposes of determining the Total Estimated Cost. The Developer shall engage the contractor it selects for construction of the work (the "Contractor").

4. **ADMINISTRATION OF CONSTRUCTION CONTRACT.** The Developer shall administer the design and construction of the Work and shall pay for the Work. Any changes in the scope of work or other contract change orders shall be presented in writing by Developer to the District for review and Developer shall obtain District's approval prior to the Contractor commencing the related work. The District's approval shall not be unreasonably withheld. The Developer shall submit to the District supporting information to document the Developer's actual expenditures on the Work, including invoices, billing, and receipts.

5. **INSPECTION.** The District shall have the right, at its sole cost, to demand access to, and perform inspections of, the Work during construction.

6. **STOP NOTICES.** The Developer shall inform the contractor selected to construct the Work (the "Contractor") that the Work will be subject to the California Civil Code provisions on stop notices for private works (§§ 3158 et seq.). The Developer shall be deemed the "owner" only for purposes of said Stop Notice statutes.

7. **BONDS.** The Developer shall require the Contractor to secure and furnish performance and labor and materials bonds in substantially the forms attached herein as Exhibits "B" and "C" (or other forms reasonably acceptable to the District) executed by a surety authorized to transact surety business within the State of California, for the following purposes and in the sums stated, and shall cause the Contractor to keep the bonds in full force and effect until the work has been completed and accepted by the District and the District authorizes their exoneration in writing:

(A) **Faithful Performance Bond:** To secure the faithful performance of the Work, a faithful performance bond for 100% of the estimated cost of the Work (Exhibit "B").

(B) **Labor and Material Bond:** To secure payment to subcontractors, engineers, surveyors, and to all persons providing equipment or furnishing labor or materials for the Work for 100% of the estimated costs of the Work (Exhibit "C").

Developer shall require its Contractor to obtain bonds which include the obligation to comply with the requirements of Section 14 herein.

8. **ACCEPTANCE OF WORK AND EXONERATION OF BONDS.** Upon completion of construction of the Work, the Developer shall demonstrate through inspection, closed circuit television review and air tests the soundness of the Work and thereafter the District shall promptly accept the Work and record a notice of completion upon its determination that the Work has been satisfactorily completed. The Developer shall exonerate the bonds only upon written approval of the District, which approval shall not be unreasonably withheld.

9. **PREVAILING WAGES.** The District has advised the Developer and the Developer acknowledges that the Prevailing Wages Law applies to the Work. The District has ascertained from the State of California Director of Industrial Relations, the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work in the locality in which the Work is to be performed for each craft or type of work needed to execute this Agreement, and copies of the same are on file in the District's principal office. Developer shall require through agreement with its Contractor that the Contractor comply with the Prevailing Wages Law in performing the Work. Developer shall be responsible for Contractor's compliance in all respects with the prevailing wage rates to all the laborers involved, and with California Labor Code Section 1770 et seq., including but not limited to the keeping of all records required by the provisions of Labor Code Section 1776 and the implementing administrative regulations. In the agreement with its Contractor, Developer shall identify the District as a third party beneficiary of the foregoing covenant with rights to enforce the same as against the Contractor. Notwithstanding the foregoing, should the Developer obtain a determination by the California Director of Industrial Relations (Labor Commissioner) pursuant to Section 16001 of Title 8 of the California Code of Regulations, that the Work is exempt from the Prevailing Wages Law, then the provisions of this subsection (H) shall not apply and the Work Cost shall be adjusted commensurate with any cost savings arising therefrom.

10. **INSURANCE.**

(A) **Design Consultant's Insurance.** At all relevant times, during this Agreement and until the District has accepted the Work, the Developer shall require the Design Consultant to maintain not less than \$1,000,000 in errors and omissions (professional liability) insurance applicable to its work on the Project and to defend, indemnify and hold harmless the City of Garden Grove, the District, and their respective officers, officials, employees, and agents, and volunteers from any and all claims due to the Design Consultant's acts or omissions or intentional wrongful conduct in its performance of work relating to the Project. If the Design Consultant provides errors and omissions insurance on a "claims made" basis, then Developer shall require the Design Consultant to agree in writing either (1) to purchase tail insurance in the amount required by this Agreement to cover claims made within three years of the completion of the Design Consultant's Project work, or (2) to maintain professional liability insurance with the same carrier, or equivalent coverage with another company, in the amount required by this Agreement for at least three years after completion of the Design Consultant's Project work. The Developer shall also require the Design Consultant to provide evidence to the District of the purchase of the required tail insurance or continuation of the professional liability policy. Design Consultant shall also provide insurance for its Project work in accordance with Subsections 10(B)(2)(a), (b), (c), and (f).

(B) Contractor's Insurance.

(1) The Developer shall not permit the Contractor and any of its subcontractors to commence work on the Project until each has obtained all insurance required pursuant to this Section 10(B) and all certificates and endorsements have been received and approved by the District. Developer/Contractor shall be responsible to insure that all subcontractors provide insurance as required under this contract. Developer/Contractor shall collect and maintain all insurance for all subcontractors.

(2) The Developer shall require the Contractor and each of its subcontractors to obtain and maintain during the life of this Agreement the following insurance coverage:

(a) Workers' compensation insurance in an amount not less than the minimum amounts required under California Law. The insurer shall waive its right of subrogation against the City of Garden Grove, the District and their respective directors, officers, officials, employees, agents, engineers, consultants, volunteers, and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the District.

(b) Commercial general liability insurance in an amount not less than \$5,000,000 per occurrence, and not excluding XCU; **(claims made and modified occurrence policies are not acceptable)**

(c) Automobile liability insurance, including mobile equipment, (if applicable,) in an amount not less than \$1,000,000 combined single limit; **(claims made and modified occurrence policies are not acceptable).**

(d) Environmental/pollution/asbestos insurance (if applicable), including remediation (if applicable,) in an amount not less than \$5,000,000; **(claims made and modified occurrence policies are not acceptable).**

(e) Course of Construction in an amount not less than 100% of the completed value of the project with no coinsurance penalty provisions **(claims made and modified occurrence policies are not acceptable).**

(f) Excess liability insurance, follows form coverage, shall be provided for any underlying policy that does not meet the insurance requirements set forth herein **(claims made and modified occurrence policies are not acceptable).**

(C) Additional Insurance Endorsements. The Developer shall require its Design Consultant, and Contractor and each of its subcontractors, as appropriate, to obtain and provide to District an Additional Insured Endorsement for each of the policies providing the above insurance (except for worker's compensation insurance and errors and omissions insurance) designating the City of Garden Grove, the District and their respective directors, officers, officials employees,

agents, engineers, consultants, volunteers, and all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the District, as additional insureds for liability arising out of the work or operations performed by or on behalf of the Design Consultant, the Contractor, or its subcontractors, as applicable

The Additional Insured Endorsement for the policy required by Subsection (B)(2)(b), above, Commercial general liability, shall include coverage for ongoing and products-completed operations. The Additional Insured Endorsement for the policy required by Subsection (B)(2)(c), above, Automobile Liability, shall include coverage for automobile liability, including mobile equipment (if applicable.) The Additional Insured Endorsement for the policy required by Subsection (B)(2)(d), above, Environmental/pollution/asbestos liability, shall include coverage for ongoing and products-completed operations and remediation (if applicable.) The Additional Insured Endorsement for the policy required by Subsection (B)(2)(e), above Course of construction, shall include coverage for 100% of the completed value of the project with no coinsurance penalties. The Additional Insured Endorsement for the policy required by Subsection (B)(2)(f), Excess liability, above, shall include an additional insured endorsement for ongoing and products-completed operations. The certificate of insurance shall state that the excess policy follows form, and a schedule of underlying policies from the Excess liability policy shall be provided.

(D) Policy Requirements. The Developer shall require its Design Consultant, its Contractor, and all subcontractors to provide to the District proof of insurance and endorsement forms that conform to District's requirements, as approved by the District. Developer/Contractor shall be responsible to insure that all subcontractors provide insurance for each policy as required under this contract, and shall collect and maintain all insurance for all subcontractors.

Each insurance policy required to be maintained pursuant to this Section 10 shall be issued by a company admitted in California and having an **A.M. Best's Guide Rating of "A-", Class VII or better**, and shall be acceptable to the District. Except as otherwise specifically provided in Section 10(A), above, claims made and/or modified occurrence policies are not acceptable. Each policy shall contain a Statement of Obligation on the part of the carrier to provide 30 days advance notice to the District of any cancellation, termination, or material modification of the policy. Each policy shall be endorsed to waive any right of subrogation against the District and the City of Garden Grove. For any claims related to this Agreement or the Project, the insurance coverage of Developer's Design Consultant, Contractor, or its subcontractors, (as applicable,) shall be **primary insurance** as respects the City of Garden Grove, the District and their respective directors, officers, officials, employees, agents, engineers, consultants, volunteers, and all public agencies from whom permits will be obtained and their directors, officers, officials, agents, and employees, as determined by the District. Any insurance or self-insurance maintained by the City of Garden Grove, the District and/or their respective directors, officers, employees, agents, engineers, consultants, volunteers, and/or all public agencies from whom permits will be obtained and their directors, officers, agents, and employees, as determined by the District, shall be excess of the insurance coverage of Developer's Design Consultant, Contractor, or its subcontractors, as applicable, and shall not contribute to it.

11. CONTRACT WARRANTY. The Developer shall include in its agreement with the Contractor the following provision:

The contractor warrants to [Developer] and to the Garden Grove Sanitary District that all materials used in the work and all labor performed shall be in conformity with the plans and specifications and with the standards and specifications set forth in the most current edition of Standard Specifications for Public Works Construction, published by Building News, Inc., Los Angeles, California, popularly known as "The Green Book." The contractor shall, at its own expense, make any and all repairs and replacements that shall become necessary as the result of any failure of the work to conform to the aforementioned plans, specifications, and standard specifications; provided, however, that the contractor shall be obligated under this provision only to the extent of those failures or defects of which it is given notice within a period of twelve (12) months from the date that the notice of completion is recorded.

Promptly upon the District's acceptance of the Work, the Developer shall execute and deliver to the District an undivided interest in the Work with Developer assignment of all warranties and guarantees of the Contractor with respect to the work. Such assignment shall be in a form approved by the District.

12. COMPLIANCE WITH LAWS. All work, labor, and materials shall be in strict conformity with all laws, ordinances, rules, regulations applicable to the Project, and the standard specifications of the District and other governmental agencies having jurisdiction therefor, and in strict conformity with the plans and specifications. The Developer shall require its Design Consultant, Contractor and all subcontractors to comply with all such requirements. Said requirements include, but are not limited to, all of the provisions of the Workers' Compensation Insurance and Safety in Employment Laws of the State of California, including the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto, and all similar state, federal, or local laws applicable to the Project.

13. COMPLETION OF IMPROVEMENTS AND FORCE MAJEURE. Developer covenants that its completion of the design and construction of the Project shall take place on or before December 31, 2014 (the "Completion Date"). Approvals for any extensions as to the Completion Date must be obtained by Developer in advance, in writing, from the District. However, the Completion Date shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Developer and/or Developer's Contractor, including, but not restricted to, acts of God or of a public enemy, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, acts of any governmental agency other than the District, and unusually severe weather, if Developer shall within ten (10) days of the commencement of such delay notify the District in writing of the causes of the delay. Upon such written notice, the District shall ascertain the facts and the extent of the delay, and extend the Completion Date for the period of the forced delay when and if in its judgment such delay is justified, which determination shall be final and conclusive upon the Parties.

14. LIQUIDATED DAMAGES UPON FAILURE OR REFUSAL OF COMPLETION. District and Developer agree that the determination of actual damages that would be suffered by the District in the event that the Developer fails or refuses to effect completion of the Project by the Completion Date would be extremely difficult or impractical to determine. In

the event of such a failure or refusal by the Developer, the Developer and the sureties referred to in Section 7 herein shall be liable for and shall pay to the District liquidated damages in the sum of one thousand dollars (\$1,000.00) per day for every day subsequent to the Completion Date required by the Developer to effect completion of the Project (in the aggregate, the "Liquidated Damages"). Liquidated Damages shall be due to the District and payable by the Developer in addition to the indemnification agreed to in this Agreement. Liquidated Damages may, at the District's option, be subtracted and withheld from the reimbursement due to the Developer pursuant to Section 4 hereof.

15. OWNERSHIP BY DISTRICT. Any and all improvements installed pursuant to this Agreement shall be completed to the satisfaction of the District, and shall become the sole property of the District when finally accepted, and the Developer shall thereafter have no ownership interest therein whatsoever.

16. REIMBURSEMENT BY DISTRICT.

(A) The District shall reimburse the Developer for twenty-one percent (21%) the actual cost of the design and construction of the Project in an amount not to exceed twenty-one percent (21%) of the total of the Design Cost plus the Estimated Construction Cost (together, the "Total Estimated Cost") adjusted for any amount(s) provided for in contract change orders approved by the District pursuant to Section 4 above. The Developer shall be entitled to reimbursement from the District only upon occurrence of both of the following events: (i) the Work is accepted by the District and (ii) a budget is approved by the District Board, in its sole discretion, appropriating funds for Project No. 28. The District shall pay said reimbursement to the Developer within sixty (60) days of the occurrence of the later of these two events to occur.

(B) No interest shall be due to the Developer for any monies reimbursed to the Developer pursuant to this Agreement.

(C) It is specifically understood by the Developer and the District that the District will reimburse the Developer only when the District is legally permitted to do so and the District Board has appropriated the necessary funds.

(D) The Developer expressly acknowledges and agrees (i) that reimbursement under this Agreement shall be limited to the amount set forth in subsection 16(A), above; (ii) that this Agreement does not entitle the Developer to reimbursement from the District for any portion of the Project design and/or construction cost that is or may be attributable to the City of Anaheim pursuant to any agreement between the District and the City of Anaheim; and (iii) that reimbursement from the City of Anaheim to the Developer for the Project, if any, shall be governed by a separate agreement between the Developer and the City of Anaheim.

17. ASSIGNMENTS. It is understood and agreed that the Developer shall have the right to assign its interest in this Agreement to others that the District reasonably assents, in writing, thereto, provided that said assignment is in writing and an executed copy thereof is delivered to the District, and the District is at all times kept fully informed of the name and address of the assignee to whom the reimbursement payments are to be made.

18. PAYMENT OFFSETS. The District shall have the right to offset any money due to the Developer under this Agreement, notwithstanding any assignment, if at the time funds become

available, the Developer, or its successors in interest, owes the District any sums of money for any reason. Only the net money due to the Developer, after offset by the District, will be paid pursuant to this Agreement.

19. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is made only for the benefit of the parties hereto; it is not intended that any rights under this Agreement shall accrue to any third person.

20. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, delivered or sent by electronic transmission, and shall be deemed received upon the earlier of (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications shall be addressed as follows:

DEVELOPER: Payne Development, LLC
 Attn: Eric Halter
 31920 Del Obispo Street, Ste. 260
 San Juan Capistrano, CA 92675

DISTRICT: Garden Grove Sanitary District
 Attn.: General Manager
 11222 Acacia Parkway
 Garden Grove, CA 92840

Any Party may, by written notice to the others, designate a different address, which shall be substituted for that specified above.

21. **HOLD HARMLESS.**

(A) To the maximum extent authorized by law and except for claims arising out of the sole negligence or willful misconduct of the District, its officers, employees, or agents or the violation of any obligation of the District under the terms of this Agreement, including, without limitation, the failure of the District to make any reimbursement due pursuant to this Agreement, the Developer agrees to protect, defend, indemnify and hold harmless the City of Garden Grove, the District and their respective officers, agents and employees (1) from any and all claims, liabilities, expenses, stop notices, or damages of any nature, including attorneys' fees and expert costs, for injury to, or death of, any person, for injury to any property, including consequential damages, and for any other monetary damage of any nature resulting from, arising out of or in any way connected with the performance of this Agreement by or on behalf of the Developer, (2) from violation of any statute, law, regulation or other legal requirement applicable to the Project; and (3) from any claim, liability, expense, judgment or damages, including attorneys fees and expert costs, relating to any contention that the Project constitutes, in whole or in part, a "public works project" or is otherwise subject to public bidding requirements.

(B) The District does not, and shall not, waive any rights against the Developer which it may have by reason of the aforesaid hold harmless agreements because of the acceptance by the District of any insurance policies or certificates of insurance purporting to indemnify for the aforesaid losses. The aforesaid hold harmless stipulations shall apply to all liabilities, claims, expenses and damages of every kind including but not limited to attorneys' fees, suffered or alleged to have been suffered, by reason of the aforesaid operations of the Developer or any contractor, subcontractor or others performing on behalf of the Developer, regardless whether or not such insurance policies are applicable.

(C) In the event competing demands are made for the fees collected hereunder pursuant to Paragraph 4, the District may retain such funds until such dispute is resolved, or may, at its discretion, interplead such funds. The Developer agrees to pay the District the reasonable costs and attorneys fees incurred by the District, including District staff time, related to any such action or proceeding.

(D) Anything to the contrary in this Agreement notwithstanding, the Developer shall not have any liability for the Work, or with respect to the terms of this Section 21, to the extent that such liability arises ten (10) or more years after the date of the completion of the Work.

(E) The obligations set forth in this Section 21 shall survive the termination of this Agreement until all such obligations are fully and finally resolved.

22. TERMINATION.

(A) The District may terminate this Agreement in whole or in part in writing in the event of substantial failure by the Developer to fulfill its obligations under this Agreement through no fault of the District, provided that the District shall give the Developer: (1) Not less than thirty (30) calendar days' written notice (sent by certified mail) of the District's intent to terminate; and (2) An opportunity for consultation with the Developer prior to termination.

(B) If termination for default is effected by the District, an equitable adjustment in the price provided for in this Agreement shall be made, but any payment due to the Developer at the time of termination may be adjusted to cover any additional costs to the District because of the Developer's default.

(C) Upon receipt of a termination notice, the Developer shall (1) promptly cause all contractors to discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the District all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Developer in performing this Agreement whether completed or in progress.

23. SEVERABILITY. If any term, provision, covenant, or condition set forth in this Agreement is held by the final judgment of a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, covenants, and conditions shall continue in full force and effect to the extent that the basic intent of the Parties as expressed herein can be accomplished. In addition, in such event the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of the invalidated or voided provision, covenant, and condition can be accomplished to the maximum extent legally permissible; provided, however, that

in no event shall either Party be required to agree to an amendment or modification of this Agreement that materially adversely impacts its rights or materially increases its obligations or risks as set forth herein.

24. **TIME OF ESSENCE.** Time is of the essence in the performance of each provision of this Agreement as to which there is a time element.

25. **SUCCESSORS AND ASSIGNS.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

26. **FURTHER ACTIONS AND INSTRUMENTS.** Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent necessary to implement this Agreement.

27. **INDEPENDENT CONTRACTOR.** It is expressly understood and agreed by the Parties that the Developer, while engaged in carrying out the terms and conditions of this Agreement, is an independent contractors and not an employee of the District.

28. **SECTION HEADINGS.** All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

29. **APPLICABLE LAW.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

30. **AMENDMENTS AND WAIVERS.** No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in a writing signed by duly authorized representatives of both Parties. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect to any occurrence or event shall be deemed a waiver of any right or remedy in respect to any other or subsequent occurrence or event.

31. **AUTHORITY TO EXECUTE.** The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement and represent that they have the authority to bind the Parties for which they are signing to the performance of the obligations hereunder.

32. **ENTIRE AGREEMENT.** This Agreement (including the Exhibits hereto) constitutes the entire understanding and agreement of the Parties and supercedes all previous negotiations, discussions and agreements between the Parties with respect to all or part of the subject matter hereof. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

33. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

34. **RECITALS.** The Recitals above are hereby incorporated into this section as though fully set forth herein and each party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

IN WITNESS WHEREOF, the undersigned Developer and the undersigned District have caused this Agreement to be executed by their duly authorized officers.

“DISTRICT”

GARDEN GROVE SANITARY DISTRICT

ATTEST:

By: _____
Kathleen Bailor,
Board Secretary

By: _____
Matthew J. Fertal
General Manager

APPROVED AS TO FORM:

By: _____
Thomas F. Nixon
District Counsel

“DEVELOPER”

CERRITOS HOUSING PARTNERS, L.P, a
California limited partnership

By: Las Palmas Foundation, a California nonprofit
public benefit corporation,

Its: Managing General Partner

By: _____
Joseph M. Michaels

(Name Typed or Printed)

Its: President
(Title)

By: _____

(Name Typed or Printed)

Its: _____
(Title)

By: Payne Properties II, LLC, a California limited liability company

Its: Administrative General Partner

By: 
Kevin P. Payne

Its: Managing Member

EXHIBIT "A"

PROJECT DESCRIPTION

Payne Development Cerritos Avenue GGSD Sewer Improvements

Modify existing sewer manhole base in the street intersection of Cerritos Avenue and Gilbert Street. Modifications include: coring into the easterly wall to increase opening to accept insertion of 15-inch VCP through the existing manhole wall, concrete plug existing 10-inch southerly inlet to manhole, re-configure/enlarge channel invert to accommodate larger pipe connection on the easterly side and accommodation of the plugged pipe connection on the southerly side. Manhole base work shall conform to SPPWC Std. Plan 208-1. Manhole shaft, cone, frame, and cover are to be protected in place.

Abandon approximately 103 feet of 10-inch sewer main in Gilbert Street south of the existing manhole. Construct a cleanout per GGSD Std. Plan No. S-105 that is approximately 104 feet south of the manhole at the end of the protected 10-inch VCP.

Remove approximately 76 feet of existing 8-inch VCP and install 72 feet of 15-inch extra strength VCP (compression joints) and 48-inch diameter manhole, GGSD Std. Plans. Construction shall include protection of existing utilities or replacement in kind, including traffic loops and survey monuments. Construction shall also include a concrete beam support beneath an existing storm drain that crosses over the new sewer construction.

EXHIBIT "B"
PERFORMANCE BOND

FAITHFUL PERFORMANCE BOND

Bond No. _____
Premium _____

NOTICE: TO WHOM IT MAY CONCERN: that we, _____

as Principal, and _____
as Surety, are held and firmly bound unto the Garden Grove Sanitary District,
(DISTRICT) in the sum of _____ Dollars (\$_____),
lawful money of the United States, for the payment of which we bind our heirs,
executors, administrators, successors, assigns and ourselves jointly and severally.

That the Surety's office is located at _____,
telephone no. _____; the Surety is licensed to do business in the State of
California; and the California Insurance Agent's License No., address, and telephone
no. are as follows:

License No.: _____

Address: _____

Telephone No.: _____

That the following clause must be completed if, in fact, a non-resident agent for
the Surety is a party to the transaction:

Name of non-resident agent: _____

Non-resident agent's office address: _____

Telephone No.: _____

THE CONDITION OF THIS OBLIGATION IS SUCH, that:

1. The Principal and the DISTRICT have entered into a contract entitled

which is attached hereto and incorporated herein by reference, dated the
day of _____, 20____. for the purpose of:

2. If the Principal shall well and truly perform, or cause to be performed, each
and all of the requirements and obligations of the contract, which is incorporated
herein by reference, to be performed by the Principal, as set forth in the contract,
then this bond shall be null and void; otherwise, it shall remain in full force and
effect. In the event that suit is instituted to recover on this bond, the Surety will pay
the DISTRICT'S reasonable attorneys' fees.

3. Further, the Surety, for value received, hereby stipulates and agrees that no
change, extension of time, alteration, or modification of the contract documents or of
work performed shall in any way affect its obligation on this bond, and it does hereby
waive notice of any change, extension of time, alteration, or modification of the
contract documents, or of work to be performed.

Executed this ____ day of _____, 20__

Principal

Principal

By

:

Surety

By

:

Attorney-in-Fact

California Resident Agent

By

:

Non-resident Agent - Attorney-in-Fact

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, 20__, before me, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Witnessed by my hand and official seal.

(Acknowledgment by Non-resident Agent as Attorney-in-Fact must be attached.)

Notary Public in and for said County and State
My Commission expires: _____

EXHIBIT "C"

LABOR AND MATERIALS BOND

LABOR AND MATERIAL BOND

Bond No. _____
Premium _____

NOTICE: TO WHOM IT MAY CONCERN: that we, _____

_____,
as Principal, and _____, as Surety,
are held and firmly bound unto the GARDEN GROVE SANITARY DISTRICT ("DISTRICT")
in the sum of _____ Dollars (\$
) , lawful money of the United States, for the payment of the sum, we bind our heirs,
executors, administrators, successors, assigns and ourselves jointly and severally.

That the Surety's office is located at _____,
_____ telephone no. _____; the Surety is licensed to
do business in the State of California; and the California Insurance Agent's License No.,
address, and telephone no. are as follows:

License No.: _____
Address: _____
Telephone No.: _____

That the following clause must be completed if, in fact, a non-resident agent for
the Surety is a party to the transaction:

Name of non-resident agent: _____
Non-resident agent's office address: _____

Telephone No.: _____

THE CONDITION OF THIS OBLIGATION IS SUCH, that:

1. The Principal and the DISTRICT have entered into a contract entitled
_____, which is
attached hereto, dated ____ day of _____, 20____, for the purpose
of: _____.

2. If the Principal, its heirs, executors, administrators, successors, or assigns, or
subcontractors, shall fail to pay for any materials, provisions, provender, or other
supplies or teams, implements, or machinery used in, upon, for, or about, the
performance of the improvement, or for any work or labor thereon of any kind, or for
amounts due under the Unemployment Insurance Code with respect to work or labor,
and provided that the claimant shall have complied with the provision of the code, the
Surety or Sureties will pay for same in the amount not exceeding the sum specified in
this bond; otherwise, the above obligation shall be void. In case suit is brought upon
this bond, the Surety will pay the DISTRICT'S reasonable attorneys' fees.

3. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the contract documents, or of work performed, shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration, or modification of the contract documents, or of work to be performed.

4. This bond shall inure to the benefit of any and all persons, companies, and corporations entitled to the claims under Civil Code 9100, so as to give a right of action to them or their assignees in any suit brought upon this bond.

Executed this ____ day of _____, 20____.

_____ Principal	_____ Principal
	By : _____ Surety
	By : _____ Attorney-in-Fact
	_____ California Resident Agent
	By : _____ Non-resident Agent - Attorney-in-Fact

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, 20____, before me, a Notary Public in and for said County residing therein, duly commissioned and sworn, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Witnessed by my hand and official seal.

(Acknowledgment by Non-resident Agent as Attorney-in-Fact must be attached.)

Notary Public in and for said County and State
My Commission expires: _____