

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To:	Matthew J. Fertal	From:	William E. Murray
Dept:	City Manager	Dept:	Public Works
Subject:	APPROVAL OF A RIGHT OF ENTRY AGREEMENT WITH THE KNOTT-LAMPSON HOMEOWNERS ASSOCIATION AND AWARD A CONTRACT TO FRAIJO BROTHERS INC. FOR WATER SYSTEM IMPROVEMENTS PROJECT NO. 7370		
		Date:	August 13, 2013

OBJECTIVE

To request Garden Grove City Council to approve a Right of Entry Agreement regarding water system improvements to the Knott-Lampson Homeowners Association, and award a Construction Agreement to Fraijo Brothers, Inc. for Project No.7370 – Stonegate Condominiums Water System Improvement Project for property located at 12583 Knott Street, Garden Grove.

BACKGROUND

The subject property, located at 12583 Knott Street, is presently served by eleven individual 2-inch water services connected off an 8-inch public water main that crosses throughout the property. The 2-inch water services, located within the interior of the site, have ruptured on five separate occurrences and have caused extensive damage to landscaping, irrigation, and hardscape. The entire site, containing a blanket easement, is currently maintained by the City.

DISCUSSION

Water Services has contacted the homeowners association with a proposal to: (1) abandon a section of 8-inch water main crossing through the middle of the site and replace the 8-inch main along a perimeter driveway, (2) install eleven new 2-inch water services at the outer edges of the development, (3) install 2-inch customer lines through the interior of the site to the locations of the original meters where old meters will be removed and the customer lines will be connected together, and (4) all surface condition of trenching will be restored to original condition or better. The construction of the water system improvements will be borne by the City, with the agreement that future maintenance of the interior customer lines, beyond the new 2-inch water meters, on and under the association property, will be the homeowner's sole responsibility. Water Services will maintain the 8-inch water main and 2-inch water services up to and including the new 2-inch meters.

Two (2) bids were received and opened by the City Clerk's Office on July 22, 2013, at 3:00 p.m. (see Bid Summary Sheet). The lowest responsive bidder is Fraijo

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Brothers, Inc., with a total bid of \$265,179. This bid is within the current project budget. The licenses and references of the contractor have been reviewed and verified by staff, and all other documentation is in order. The anticipated contract schedule is as follows:

Award contract	August 13, 2013
Begin construction	September 16, 2013
Complete construction	November 1, 2013

FINANCIAL IMPACT

There is no impact to the General Fund. This project is included in the 2013-14 Capital Improvement Budget, and will be financed with Water Funds in the amount of \$265,179.

RECOMMENDATION

It is recommended that the Garden Grove City Council:

- Approve the Right of Entry Agreement Regarding Water System Improvements with Knott-Lampson Homeowners Association;
- Authorize the City Manager to execute the agreement, including any minor modifications as appropriate thereto, on behalf of the City;
- Award a construction contract to Fraijo Brothers, Inc. for Project No. 7370 – Stonegate Condominium Water System Improvements, in the amount of \$265,179; and
- Authorize the City Manager to execute the agreement, including any minor modifications as appropriate thereto, on behalf of the City.


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


By: David E. Entsminger
Water Services Manager

Recommended for Approval


Matthew Ferial
City Manager

Attachments: 1) Right of Entry Agreement for Water System Improvements
2) Project Location Map
3) Bid Summary Sheet
4) Construction Agreement

RIGHT OF ENTRY AND AGREEMENT REGARDING WATER SYSTEM IMPROVEMENTS

This Right of Entry and Agreement Regarding Water System Improvements ("Agreement") is entered into by and between **KNOTT-LAMPSON HOMEOWNERS ASSOCIATION**, a California nonprofit corporation ("Association"), and the **CITY OF GARDEN GROVE**, a municipal corporation ("City").

RECITALS

A. Association is the association of owners of residential real property commonly known as the Stonegate condominium community, which is located at the southwest corner of Knott Street and Lampson Avenue in the City of Garden Grove, California, and comprised of Lots 1 through 5 of Tract No. 11309 (the "Property"). Association is responsible for the operation, management, maintenance and repair of the "Association Property" and "Common Areas" within the Property, including all water pipes and other utility installations on the Property.

B. City is the owner of the public water system serving the Property and has historically maintained the domestic water system service facilities located on the Property to the point of connection with the water meters.

C. City holds a blanket easement over the Property for public utilities and domestic water system purposes, as shown on Tract Map 11309, recorded May 24, 1984, as Instrument No. 84-216567, Official Records of Orange County (the "Easement").

D. In order to enhance water service to the Property and to avoid future interference with existing landscaping, hardscape and structures associated with maintenance and repair of the water system, Association and City mutually desire that portions of the existing domestic water system on the Property be abandoned in place and that new domestic water lines, meters, and appurtenances be constructed and installed on the Property in accordance with this Agreement. The approximate location of those existing facilities to be abandoned in place and those new improvements and facilities to be installed and constructed are generally depicted on the plans identified as Drawing W-558 attached to this Agreement at **Exhibit "A,"** which is hereby incorporated into this Agreement by reference. All of the improvements, facilities, and activities necessary to accomplish the foregoing are more specifically described in those certain Plans & Specifications and related construction bid and contract documents prepared by City for the "Stonegate Condominiums Water System Improvements – Project No. 7370" (collectively referred to herein as the "Project Documents"). A complete copy of the Project Documents have been provided to Association and are hereby incorporated into this Agreement by reference.

E. Through this Agreement, Association and City desire to set forth their respective rights and obligations regarding the construction, installation, and future maintenance and repair of the new water service improvements and abandonment of the existing water service facilities.

Right of Entry and Agreement
Regarding Water System Improvements

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, Association and City agree as follows:

AGREEMENT

I. Right of Entry and Construction of Improvements.

A. Association hereby agrees that City and any contractor, subcontractor, agent or employees engaged by City, shall have the right to enter upon and to pass and repass over and along the Property, and to deposit tools, implements, and other materials thereon, for the purpose of completing and, as appropriate, thereafter maintaining, the capital improvements and related activities generally depicted on Exhibit "A" and described in the Project Documents (collectively, the "Improvements" or the "Work"). City shall use only contractors and subcontractors who are insured and properly licensed in the State of California. The Improvements generally include, without limitation, the following:

- i. installation of approximately 900 linear feet of eight-inch diameter C900 PVC Class 200 water main pipe, including valves, thrust blocks, fittings, and couplings, modification of fire hydrant tie-in, and related trenching and asphalt replacement / pavement resurfacing;
- ii. installation of 11 two-inch copper water services and related boxes and meters;
- iii. installation of approximately 1300 linear feet of two-inch diameter Type K rigid copper house lines / laterals up to the point of connection;
- iv. removal and replacement of all sidewalks, driveway approaches, curbs and gutters of the Association's Property that are damaged by the installation of the Improvements;
- v. removal and/or abandonment in place of existing water lines, fittings, and valves;
- vi. removal and replacement of concrete flatwork, as needed, to accommodate construction of Improvements;
- vii. complete replacement and/or restoration of irrigation systems and landscaping (including turf, shrubs, and trees) with those of a like species, which become damaged beyond salvage in connection with construction of the Improvements; and
- viii. full-width slurry seal of those portions of all asphalt streets and drives where excavation occurs.

B. All the Improvements shall be constructed and installed at City's sole cost and expense.

Right of Entry and Agreement
Regarding Water System Improvements

C. The City will not permit any mechanics', materialmen's or similar liens or claims to stand against the Property in connection with any work, services or materials furnished in connection with the Improvements or any other work performed by the City at the Property.

D. City shall make necessary provisions to protect existing building improvements, and upon completion of the Work, repair any damage which occurs during the performance of the Work. City shall ensure that the Property and any materials are secured by its contractors, subcontractors, agents and/or employees upon leaving the Property at the end of each Work day.

The City shall defend, indemnify and hold the Association and its directors, officers, members, employees, and agents harmless from any claims, damages, injuries or liabilities for personal injury, death or property damage arising out of the City's negligence or willful misconduct in conjunction with its construction and installation of the Improvements. Notwithstanding the foregoing, Association acknowledges and agrees that the City shall have no obligation to indemnify, defend, or hold Association or its directors, officers, members, employees, and agents harmless from any claims, damages, injuries or liabilities arising out of personal injury, death or property damage associated with that portion of the Improvements for which Association is responsible pursuant to Section 2.B., below, which occurs after completion and construction of the Improvements.

E. Association understands and acknowledges that water service may be temporarily interrupted and parking and access to the Property will be impaired during the period of construction and installation of the Improvements. City shall coordinate all work with Association's property manager / management agent, and will perform and complete construction and installation of the Improvements on Mondays through Friday, from the hours of 8:00 a.m. to 5:00 p.m., excluding federal holidays. Association shall be responsible for ensuring that the Property is not being used in a manner that interferes with City's construction and installation of the Improvements during the mutually agreed upon period, including, but not limited to, ensuring that impacted streets are not used and no vehicles are parked in a manner that interferes with City's construction and installation of the Improvements.

F. Association acknowledges that the Property is occupied by multiple condominium unit owners ("Unit Owners"). Association hereby warrants and represents that it possesses the authority to grant the Right of Entry provided for in this Agreement and to authorize construction and installation of the Improvements by City.

G. Association shall be solely responsible for providing all required advance notice to the Unit Owners of City's work and ensuring that the Unit Owners, their tenants, and guests do not interfere with City's construction and installation of the Improvements.

H. Association agrees to defend, indemnify, and hold the City and its elected officials, officers, employees, and agents harmless from any and all claims of any nature by the Unit Owners, relating to (i) City's exercise of its rights pursuant to this Agreement, (ii) City's construction and installation of the Improvements, except as set forth in Section 1(D), above, or (iii) the resulting

Right of Entry and Agreement
Regarding Water System Improvements

temporary interruption of water service to the Property and/or impairment of parking on and access to the Property, but excluding such claims arising out of the negligence or willful misconduct of City.

I. City agrees that timely completion of the Work is of the essence. Accordingly, subject to excusable delays and/or unanticipated extra work or changes in the scope of the Work, City shall require its contractor(s) to complete the Work within forty-five (45) calendar days of issuance of a Notice to Proceed by City. City shall coordinate with Association's management agent to determine a mutually convenient date for commencement of the Work prior to issuing a Notice to Proceed to its contractor(s) and will provide the Association with a copy of the contractor's construction schedule once it is finalized.

2. Future Ownership, Maintenance and Repair of Improvements.

A. Facilities for Which City is Responsible. Upon completion of the Improvements and related activities described herein, the 8-inch diameter water main pipe and meters, including that portion of the service lines from the water main to the meters, shall be the property of the City, and the City shall be responsible for future maintenance and repair thereof.

B. Facilities for Which Association is Responsible. Upon completion of the Improvements and related activities described herein, all water lines and appurtenances other than those for which the City is responsible pursuant to Section 2.A., above, including, without limitation, the two-inch "laterals" or "house lines" and connections extending from the back of the meters, shall become the property of Association, and subject to the one-year warranty period described below, Association shall assume all responsibility and liability for the future maintenance and repair thereof, and City shall have no responsibility or liability for future maintenance or repair thereof. Notwithstanding the foregoing, the City hereby warrants to the Association that the Improvements shall be free from failures or defects for a period of one (1) year from their completion and agrees to make any and all repairs and replacements that shall become necessary, whether due to the Work, the materials and/or labor, as the result of such failures or defects during such one (1) year warranty period.

C. Abandoned Facilities. The Parties acknowledge and agree that a portion of the existing water system facilities will be abandoned in place. Upon completion of the Improvements and related activities, such abandoned in place facilities shall become the property and responsibility of the Association, and the City shall have no future or ongoing responsibility or liability for such abandoned in place facilities.

3. Future Rights Pursuant to Easement and Agreement. The Association acknowledges and agrees that, in accordance with the Easement and this Agreement, for so long as the City is providing domestic water service to the Property:

- i. the City shall have an easement and right of entry over, on, in, through, and across the Property for the purposes operating, using, inspecting, maintaining, repairing, rehabilitating, refurbishing, enlarging, constructing, and/or reconstructing those water pipelines and related appurtenances comprising the portion of the domestic water system

Right of Entry and Agreement
Regarding Water System Improvements

on the Property for which the City is responsible, including a right of ingress and egress to the Property and the right of the City and any of its contractors, agents, and employees to enter upon and pass and repass over and along the Property to deposit tools, implements, and other materials thereon for such purposes;

- ii. the Easement and this Agreement reserve unto the Association only such landscaping, walkway and roadway rights as will not interfere or prohibit the free and complete use and enjoyment by the City, its successors and assigns, of the rights granted pursuant to the Easement and this Agreement; and
- iii. the Association shall not construct or place any landscaping, hardscape, structures, or other things on the Property that will interfere with the rights granted the City pursuant to the Easement and this Agreement; and
- iv. following five (5) days prior written notice to the Association (except in the case of an emergency, in which case no prior written notice is required), the City shall have the right to permanently remove, and shall have no obligation or liability to replace, any landscaping, hardscape, structures, or other things on the Property that interfere with the City's maintenance, repair, or reconstruction of the water pipelines and related appurtenances comprising the portion of the domestic water system on the Property for which the City is responsible.

4. No Obligation to Construct Improvements. The City and the Association acknowledge and agree that this Agreement authorizes, but does not obligate, the City to construct the Improvements contemplated herein and that if, for any reason, the City does not commence the construction of the Improvements, neither the City nor the Association shall have any rights or obligations under this Agreement.

5. Entire Agreement; Modification. This instrument represents the complete and entire agreement between the parties hereto with respect to the subject matter herein. This Agreement may be modified only by a writing signed by both City and Association.

6. Severability. If any section, phrase or term of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that section, phrase or term shall be stricken and all other provisions of this Agreement shall remain in full force and effect.

7. California Law. Interpretation of this Agreement shall be governed by the laws of the State of California.

8. Authority. 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.

Right of Entry and Agreement
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9. Counterparts. This Agreement may be executed in one or more identical counterparts, all of which when taken together shall constitute one and the same instrument.

10. Alternative Dispute Resolution / Legal Proceedings. If any dispute arises concerning the Work hereunder, any provision or breach of this Agreement, or the validity of this mediation provision, the dispute will first be submitted to non-binding mediation held in the County in which the Work is performed hereunder. Any party to the dispute may serve a demand for mediation on the other party, which such demand shall be in writing. In any action or proceeding to enforce this Agreement, the City and the Association shall each bear their own attorneys' fees and costs and expenses incurred in the prosecution or defense of the action or proceeding.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

[SIGNATURES ON FOLLOWING PAGE]

Right of Entry and Agreement
Regarding Water System Improvements

"Association"
Knott-Lampson Homeowners Association

By: Knott-Lampson Homeowners Association, a
California nonprofit corporation

Date: _____

Date: 3/6/13

By: _____
Bruce Britton, President

By: Allison Bergeron
Allison Bergeron, Secretary

"City"
City of Garden Grove

Date: _____

By: _____
Matthew J. Fertal, City Manager

ATTESTED:

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Garden Grove City Attorney

Date: _____

Right of Entry and Agreement
Regarding Water System Improvements

"Association"
Knott-Lampson Homeowners Association

By: Knott-Lampson Homeowners Association, a
California nonprofit corporation

Date: 8/6/13

By: Bruce Britton
Bruce Britton, President

Date: _____

By: _____
Allison Bergeron, Secretary

"City"
City of Garden Grove

Date: _____

By: _____
Matthew J. Fertal, City Manager

ATTESTED:

By: _____
City Clerk

Date: _____

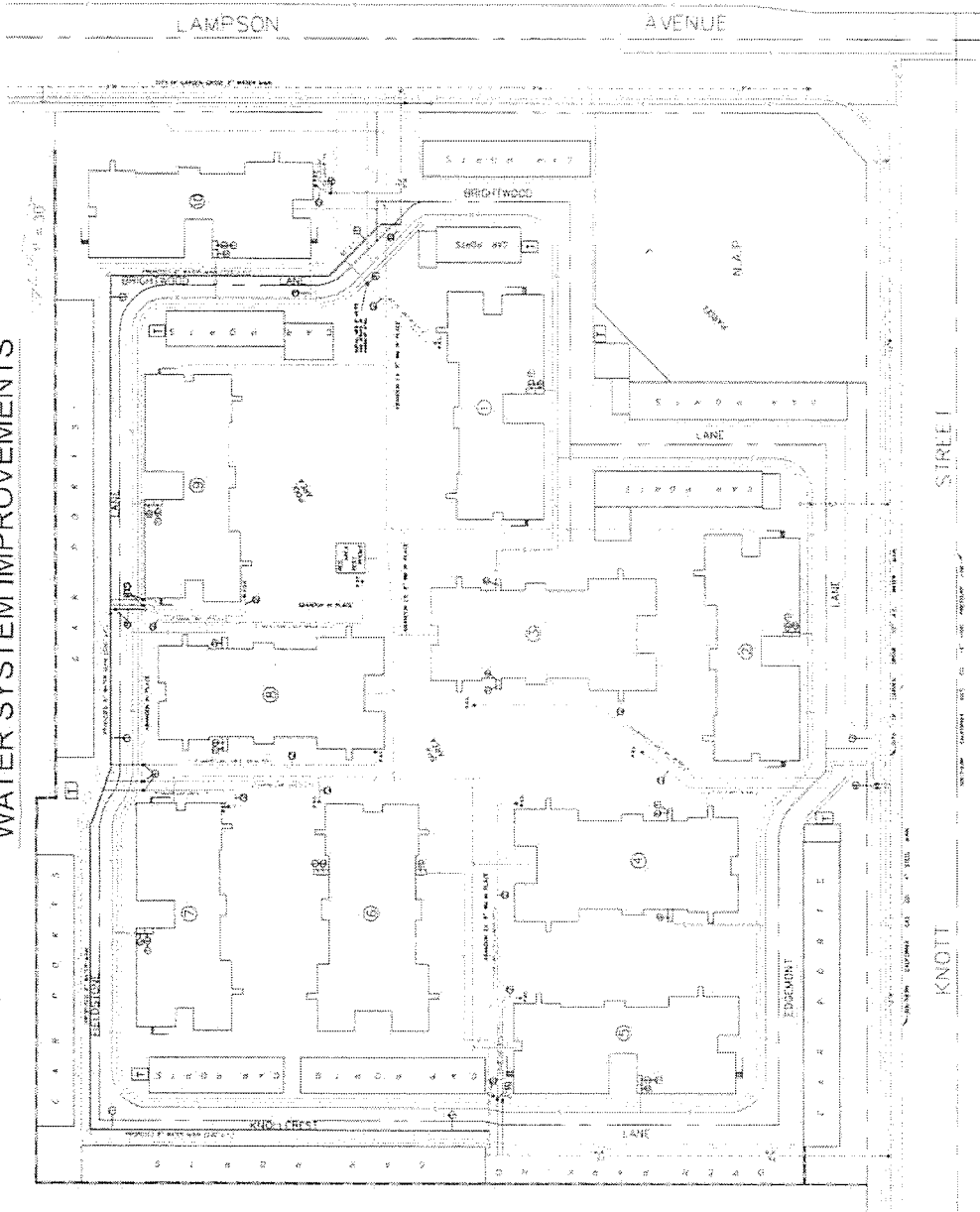
APPROVED AS TO FORM:

By: _____
Garden Grove City Attorney

Date: _____

EXHIBIT "A"
DRAWING W-558
PLANS FOR IMPROVEMENTS

STONEGATE CONDOMINIUMS WATER SYSTEM IMPROVEMENTS



NOTES:

1. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 12" DUCTILE IRON PIPE.
2. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 8" DUCTILE IRON PIPE.
3. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 6" DUCTILE IRON PIPE.
4. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 4" DUCTILE IRON PIPE.
5. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 3" DUCTILE IRON PIPE.
6. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 2" DUCTILE IRON PIPE.
7. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 1.5" DUCTILE IRON PIPE.
8. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 1" DUCTILE IRON PIPE.
9. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 0.75" DUCTILE IRON PIPE.
10. ALL EXISTING WATER LINES TO BE REMOVED AND REPLACED WITH 0.5" DUCTILE IRON PIPE.

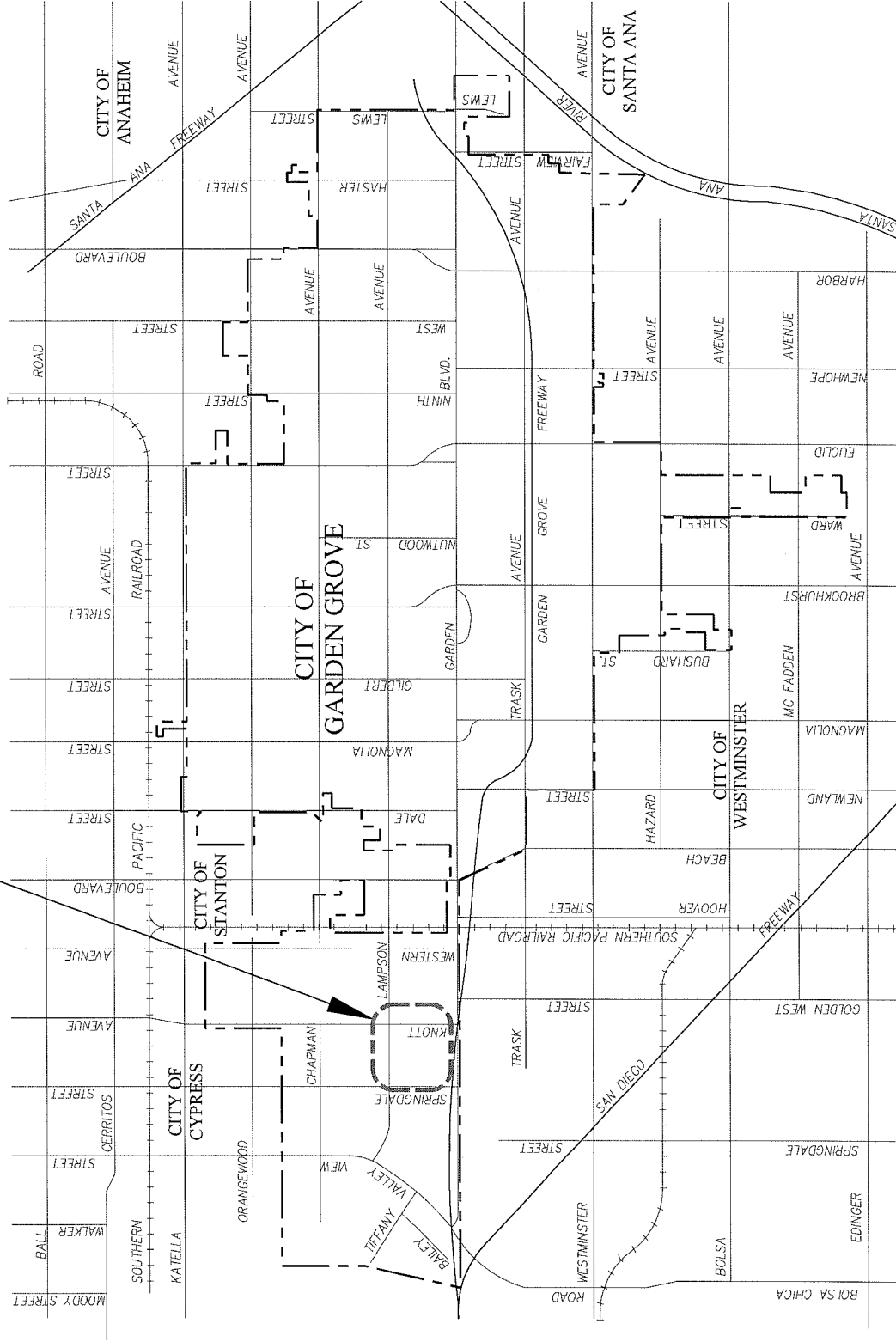
LEGEND

EXISTING WATER LINES
NEW WATER LINES
WATER VALVES
WATER METER



TOTAL LINEAR FOOTAGE OF PRIVATE 2" HOUSE LINES APPROXIMATELY 1000 FT

PROJECT LOCATIONS

ATTACHMENT NO. 2



PROJECT LOCATION MAP

		CHECKED BY: D.E.E.	SCALE: N.T.S.	PROJECT NO. 7370	DRAWING NO.
City Of Garden Grove Department Of Public Works		PREPARED BY: M.C.	CITY OF GARDEN GROVE PROJECT #7370 STONEGATE CONDOMINIUMS WATER SYSTEM IMPROVEMENTS		
		DRAWN BY: M.C.			

**CITY OF GARDEN GROVE
PUBLIC WORKS DEPARTMENT
WATER SERVICES DIVISION**

BID SUMMARY SHEET

PROJECT: Stonegate Condominiums Water System
Improvements Project No. 7370

BID OPENING:
DATE: **July 22, 2013**
TIME: **3:00 p.m.**

Facility Name	Engineer's Estimate	Contract Amount
Stonegate Condominiums	\$223,000	\$223,000

Bidder's Name	Total Bid	% Under/Over Engineer's Estimate
1. Fraijo Brothers, Inc.	\$265,179	+18.9%
2. Valverde Construction, Inc.	\$297,380	+33.4%

SECTION 5 - AGREEMENT**CONSTRUCTION AGREEMENT**

THIS AGREEMENT is made this ____ day of _____, 201____, by the CITY OF GARDEN GROVE ("CITY"), and _____, hereinafter referred to as ("CONTRACTOR")

RECITALS:

The following recitals are a substantive part of this Agreement:

This Agreement is entered into pursuant to City of Garden Grove Council Authorization dated _____

2. CITY desires to utilize the services of CONTRACTOR to furnish material, equipment, and labor for the **Stonegate Condominiums Water System Improvements - Project No. 7370.**

3. CONTRACTOR is qualified by virtue of experience, training, education, and expertise to accomplish services.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

- 5.1 **General Conditions.** CONTRACTOR certifies and agrees that all the terms, conditions and obligations of the Contract Documents as hereinafter defined, the location of the job site, and the conditions under which the work is to be performed have been thoroughly reviewed, and enters into this Contract based upon CONTRACTOR'S investigation of all such matters and is in no way relying upon any opinions or representations of CITY. It is agreed that this Contract represents the entire agreement. It is further agreed that the Contract Documents including the Notice Inviting Bids, Special Instructions to Bidders, if any, Plans, Specifications and CONTRACTOR's Proposal, are incorporated in this Contract by reference, with the same force and effect as if the same were set forth at length herein, and that CONTRACTOR and its SUBCONTRACTORS, if any, will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly, to the work covered by this Contract.

"Project" as used herein defines the entire scope of the work covered by all the Contract Documents. Anything mentioned in the Specifications and not indicated in the Plans, or indicated in the Plans and not mentioned in the Specifications, shall be of like effect as if indicated and mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to CITY'S Engineer, without whose decision CONTRACTOR shall not adjust said discrepancy save only at CONTRACTOR's own risk and expense. The decision of the Engineer shall be final.

- 5.2 **Materials and Labor.** CONTRACTOR shall furnish, under the conditions expressed in the Plans and Specifications, at CONTRACTOR'S own expense, all labor and materials necessary, except such as are mentioned in the Specifications to be furnished by the CITY, to construct and complete the project, in good workmanlike and substantial order. If CONTRACTOR fails to pay for labor or materials when due, CITY may settle such claims by making demand upon the surety to this Agreement. In the event of the failure or refusal of the surety to satisfy said claims, CITY may settle them directly and deduct the amount of payments from the Contract price and any amounts due to CONTRACTOR. In the event CITY receives a stop notice from any laborer or material supplier alleging non-payment by CONTRACTOR, CITY shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.
- 5.3 **Project.** The PROJECT is described as: **Stonegate Condominiums Water System Improvements - Project No. 7370.**
- 5.4 **Plans and Specifications.** The work to be done is shown in a set of detailed Plan and Specifications entitled: **Stonegate Condominiums Water System Improvements - Project No. 7370.**

SECTION 5 - AGREEMENT (Continued)

Said Plan and Specifications and any revision, amendments or addenda thereto are attached hereto and incorporated herein as part of this Contract and referred to by reference. The work to be done must also be in accordance with the General Provisions, Standard Specifications and Standard Plans of the CITY, which are also incorporated herein and referred to by, reference.

- 5.5 Time of Commencement and Completion.** CONTRACTOR shall have **twenty-one (21) calendar days from the award of the Contract** to execute the Contract and supply CITY with all of the documents and information required by the Instruction to Bidders and the other Contract Documents, including but not limited to, the necessary bonds and insurance certificates and endorsements. Once the CITY receives the executed Contract and all of the other properly drafted and executed documents and information, it may issue a Notice to Proceed to the CONTRACTOR. If CONTRACTOR refuses or fails to execute the Contract or refuses or fails to provide the required documents and information within the twenty-one (21) calendar days, the CITY may then rescind the award of the Contract and then award the Contract to the next lowest responsive and responsible bidder.

Upon receipt of the Notice to Proceed, CONTRACTOR agrees to submit, materials storage and staging area designation (construction yard), and the construction schedule plans **within fourteen (14) calendar days**. Further, upon receipt of the Notice to Proceed the CONTRACTOR shall diligently prosecute the work to completion for **forty five working (45) calendar days** excluding delays caused or authorized by the CITY as set forth in Sections 5.7, 5.8 and 5.9 hereof.

- 5.6 Time is of the Essence.** Time is of the essence of this Contract. As required by the Contract Documents, CONTRACTOR shall prepare and obtain approval of all shop drawings, details and samples, and do all other things necessary and incidental to the prosecution of CONTRACTOR'S work in conformance with an approved construction progress schedule. CONTRACTOR shall coordinate the work covered by this Contract with that of all other CONTRACTORS, SUBCONTRACTORS and of the CITY, in a manner that will facilitate the efficient completion of the entire work in accordance with Section 5.5 herein. CITY shall have complete control of the premises on which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other SUBCONTRACTORS, and, in general, all matters representing the timely and orderly conduct of the work of CONTRACTOR on the premises.

- 5.7 Excusable Delays.** CONTRACTOR shall be excused for any delay in the prosecution or completion of the Project caused by acts of God; inclement weather; damages caused by fire or other casualty for which CONTRACTOR is not responsible; any act of negligence or default of CITY; failure of CITY to make timely payments to CONTRACTOR; late delivery of materials required by this CONTRACT to be furnished by CITY; combined action of the workers in no way caused by or resulting from default or collusion on the part of CONTRACTOR; a lockout by CITY; or any other delays unforeseen by CONTRACTOR and beyond CONTRACTOR's reasonable control.

CITY shall extend the time fixed in Section 5.5 herein for completion of the Project by the number of days CONTRACTOR has thus been delayed, provided that CONTRACTOR presents a written request to CITY for such time extension within fifteen (15) days of the commencement of such delay and CITY finds that the delay is justified. CITY'S decision will be conclusive on the parties to this Contract. Failure to file such request within the time allowed shall be deemed a waiver of the claim by CONTRACTOR.

No claims by CONTRACTOR for additional compensation or damages for delays will be allowed unless CONTRACTOR satisfies CITY that such delays were unavoidable and not the result of any action or inaction of CONTRACTOR and that CONTRACTOR took all available measures to mitigate such damages. Extensions of time and extra compensation as a result of incurring undisclosed utilities would be determined in accordance with SPECIAL PROVISIONS and Section 3-

SECTION 5 - AGREEMENT (Continued)

3 of the Standard Specifications for Public Works Construction Latest Edition (GREEN BOOK). The CITY'S decision will be conclusive on all parties to this Contract.

- 5.8 Extra Work.** The Contract price includes compensation for all work performed by CONTRACTOR, unless CONTRACTOR obtains a written change order signed by a designated representative of CITY specifying the exact nature of the extra work and the amount of extra compensation to be paid all as more particularly set forth in Section 5.9 hereof.

CITY shall extend the time fixed in Section 5.5 for completion of the Project by the number of days reasonably required for CONTRACTOR to perform the extra work, as determined by CITY'S Engineer. The decision of the Engineer shall be final.

5.9 Changes in Project.

- 5.9.1 CITY may at any time, without notice to any surety, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes:

- a. In the Specifications (including drawings and designs);
- b. In the time, method or manner of performance of the work;
- c. In the CITY -furnished facilities, equipment, materials, services or site; or
- d. Directing acceleration in the performance of the work.

If CONTRACTOR believes that the written order issued as part of this Section 5.9.1 has caused an increase in costs or time, the CONTRACTOR shall submit a written request for equitable adjustment to the CITY that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the CITY to analyze the request. Said notice shall be submitted via certified mail within twenty (20) calendar days of the CONTRACTOR'S receipt of the written order. CONTRACTOR'S failure to submit the written request for equitable adjustment within the required twenty (20) calendar days shall constitute a waiver of any potential change order or claim for said alleged change. The CITY shall review CONTRACTOR'S request and shall provide a written response within thirty (30) calendar days of receipt of the request either approving or denying the request.

- 5.9.2 A change may also be any other conflict, difficulty or issue which the CONTRACTOR believes caused any change to the CONTRACTOR'S costs or project schedule, provided CONTRACTOR gives the CITY written notice and a request for equitable adjustment that includes a detailed cost breakdown and time impact analysis in sufficient detail to allow the CITY to analyze the request. The notice shall also state the date the CONTRACTOR became aware of the issue, circumstances and source of the issue and that CONTRACTOR regards the issue as a change order. Said written notice shall be delivered to the CITY via certified mail within twenty (20) calendar days of CONTRACTOR'S first notice of the issue. CONTRACTOR'S failure to submit the notice, which includes the written request for equitable adjustment within the required twenty (20) calendar days shall constitute a waiver of any potential change order or claim for said alleged change. The CITY shall review CONTRACTOR'S request and shall provide a written response within thirty (30) calendar days of receipt of the request either approving or denying the request.
- 5.9.3 Except as provided in this Section 5.9, no order, statement or conduct of the CITY or its representatives shall be treated as a change under this Section 5.9 or entitle CONTRACTOR to an equitable adjustment.

SECTION 5 - AGREEMENT (Continued)

- 5.9.4 Except for claims based on defective specifications, no claim for any change under paragraph 5.9.1 or 5.9.2 above shall be allowed for any work performed more than 20 days before the CONTRACTOR gives written notice as required in paragraphs 5.9.1 and 5.9.2. In the case of defective specifications for which the CITY is responsible, the equitable adjustment shall include any increased direct cost CONTRACTOR reasonably incurred in attempting to comply with those defective specifications.
- 5.9.5 If CONTRACTOR intends to assert a claim for an equitable adjustment under this Section 5.9, it must, within thirty (30) days after receipt of a denial of a request for equitable adjustment under paragraphs 5.9.1 and 5.9.2, submit a written statement to the CITY setting forth the general nature and monetary extent of such claim. The CITY may extend the 30-day period. CONTRACTOR'S failure to submit the notice of a claim, within the required thirty (30) days shall constitute a waiver of the claim by the CONTRACTOR.
- 5.9.6 No claim by CONTRACTOR for an equitable adjustment shall be allowed if made after final payment under this Agreement.
- 5.9.7 CONTRACTOR hereby agrees to make any and all changes, furnish the materials and perform the work that CITY may require without nullifying this Contract. CONTRACTOR shall adhere strictly to the Plans and Specifications unless a change there from is authorized in writing by the CITY. Under no condition shall CONTRACTOR make any changes to the Project, either in additions or deductions, without the written order of the CITY and the CITY shall not pay for any extra charges made by CONTRACTOR that have not been agreed upon in advance in writing by the CITY. CONTRACTOR shall submit immediately to the CITY written copies of its firm's cost or credit proposal for change in the work. Disputed work shall be performed as ordered in writing by the CITY and the proper cost or credit breakdowns therefore shall be submitted without delay by CONTRACTOR to CITY.
- 5.10 **Liquidated Damages for Delay.** The parties agree that if the total work called for under this Contract, in all parts and requirements, is not completed within the time specified in Section 5.5 herein, plus the allowance made for delays or extensions authorized under Sections 5.7, 5.8 and 5.9 herein, the CITY will sustain damage which would be extremely difficult and impractical to ascertain. The parties therefore agree that CONTRACTOR will pay to CITY the sum of **Five Hundred dollars (\$500.00) per day** for each and every calendar day during which completion of the Project is so delayed. CONTRACTOR agrees to pay such liquidated damages and further agrees that CITY may offset the amount of liquidated damages from any monies due or that may become due CONTRACTOR under the Contract.
- 5.11 **Contract Price and Method of Payment.** CITY agrees to pay and the CONTRACTOR agrees to accept as full consideration for the faithful performance of this Contract, subject to any subsequent additions or deductions as provided in approved change orders, the sum of TWO HUNDRED SIXTY FIVE THOUSAND, ONE HUNDRED SEVENTY NINE Dollars and 00/100 (\$ 265,179.00) as itemized in the bid proposal.

Progress payments shall be made to the CONTRACTOR on a monthly basis for each successive month as the work progresses. The CONTRACTOR shall be paid such sum as will bring the total payments received since the commencement of the work up to ninety-five percent (95%) of the value of the work completed, less all previous payments, provided that the CONTRACTOR submits the request for payment prior to the end of the day required to meet the payment schedule. The CITY will retain five percent (5%) of the amount of each such progress estimate and material cost until 30 days after the recordation of the Notice of Completion.

Payments shall be made on demands drawn in the manner required by law, accompanied by a certificate signed by the CITY'S Engineer, stating that the work for which payment is demanded has

SECTION 5 - AGREEMENT (Continued)

been performed in accordance with the terms of the Contract. Partial payments of the Contract price shall not be considered as an acceptance of any part of the work.

- 5.12 Substitution of Securities in Lieu of Retention of Funds.** Pursuant to Public Contract Code § 22300, the CONTRACTOR will be entitled to post approved securities with the CITY or an approved financial institution in order to have the CITY release funds retained by the CITY to ensure performance of the Contract. CONTRACTOR shall be required to execute an addendum to this Contract together with escrow instructions and any other documents in order to effect this substitution.
- 5.13 Completion.** Within 10 days after the contract completion date of the Project, CONTRACTOR shall file with the CITY'S Engineer its affidavit stating that all workers and persons employed, all firms supplying materials, and all SUBCONTRACTORS upon the Project have been paid in full, and that there are no claims outstanding against the Project for either labor or material, except those certain items, if any, to be set forth in an affidavit covering disputed claims, or items in connection with Stop Notices which have been filed under the provisions of the statutes of the State of California. CITY may require affidavits or certificates of payment and/or releases from any SUBCONTRACTOR, laborer or material supplier.
- 5.14 CONTRACTOR's Employees Compensation**
- 5.14.1 General Prevailing Rate.** CITY has ascertained that State prevailing wage requirements of the California Labor Code including Sections 1770, 1771.5, 1773, 1777.5, and 1776 are required to execute this Contract. A copy of the prevailing rate of per diem wages shall be posted at the job site.
- 5.14.2 Forfeiture for Violation.** CONTRACTOR shall, as a penalty to the CITY, forfeit one hundred dollars (\$100.00) for each calendar day or portion thereof for each worker paid (either by the CONTRACTOR or any SUBCONTRACTOR under it) less than the State minimum wage rate associated with the duties of the employee in question, in accordance with the State prevailing wage requirements of the California Labor Code, including Sections 1770, 1771.5, 1773, 1777.5, and 1776.
- 5.14.3 Travel and Subsistence Pay.** Section 1773.8 of the Labor Code of the State of California, regarding the payment of travel and subsistence payments, is applicable to this Contract, and CONTRACTOR shall comply therewith.
- 5.14.4 Apprentices.** Section 1777.5, 1777.6 and 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices is applicable to this Contract and the CONTRACTOR shall comply therewith if the prime contract involves thirty thousand dollars (\$30,000.00) or more or twenty (20) working days, or more; or if contracts of specialty CONTRACTORS not bidding for work through the general or prime CONTRACTOR are two thousand dollars (\$2,000.00) or more for five (5) working days or more.

SECTION 5 - AGREEMENT (Continued)

- 5.14.5 **Workday.** In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and CONTRACTOR shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in paragraph (5.14.2) above. CONTRACTOR shall conform to Article 3, Chapter 1, Part 7 (Sections 1810 et seq.) of the Labor Code of the State of California, and shall forfeit to the CITY as a penalty, the sum of twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by CONTRACTOR or any SUBCONTRACTOR for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one week in violation of said Article. CONTRACTOR shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by CONTRACTOR in connection with the Project.
- 5.14.6 **Record of Wages: Inspection.** CONTRACTOR agrees to maintain accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual State prevailing wage paid to each journeyman, apprentice, worker or other employee employed by it in connection with the Project and agrees to require that each of its SUBCONTRACTORS does the same. The applicable CONTRACTOR or SUBCONTRACTOR or its agent having authority over such matters shall certify all payroll records as accurate. CONTRACTOR further agrees that its payroll records and those of its SUBCONTRACTORS shall be available to the employee or employee's representative, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards and shall comply with all of the provisions of Labor Code Section 1776, in general. The CONTRACTOR shall submit copies of certified payroll reports **and cancelled checks** for laborers, every week to the CITY. Certified payroll and cancelled checks submittals are due one month after start of construction and every week thereafter. *If the certified payroll and cancelled checks are not submitted, the CONTRACTOR will be notified that compliance is required within five (5) working days or contract work must cease. The CITY will not be responsible for any delay or acceleration charges or any incurred costs or damages as a result of the work stoppage due to CONTRACTOR's failure to comply.* Work shall be cease in an orderly, safe fashion with all vehicle access restored, should this not occur, CITY will correct the deficiencies and deduct the cost from funds due to the CONTRACTOR. In addition, no progress payment shall be made until the copies of certified payroll reports and cancelled checks are submitted.
- 5.15 **Surety Bonds.** CONTRACTOR shall, upon entering into performance of this Agreement, furnish bonds in the amount of one hundred percent (100%) of the Contract price bid, to guarantee the faithful performance of the work, and the other in the amount of one hundred percent (100%) of the Contract price bid to guarantee payment of all claims for labor and materials furnished. This Contract shall not become effective until such bonds are supplied to and approved by the CITY.
- 5.16 **Insurance.**
- 5.16.1 CONTRACTOR is also aware of the provisions of Section 3700 of the Labor Code, which requires every employer to be insured against liability for Workers' Compensation or undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Contract.
- 5.16.2 CONTRACTOR and all SUBCONTRACTORS shall carry workers' compensation insurance for the protection of its employees during the progress of the work. The insurer shall waive its rights of subrogation against the CITY, its officers, agents and employees and shall issue a certificate to the policy evidencing same.
- 5.16.3 CONTRACTOR shall at all times carry, on all operations hereunder, bodily injury, including death, and property damage liability insurance, including automotive operations bodily injury and property damage coverage; and builders' all risk insurance. All insurance coverage shall be in amounts specified by the CITY in the Insurance Requirements and shall be evidenced by the issuance of a certificate and additional insured endorsement in forms

SECTION 5 - AGREEMENT (Continued)

prescribed by the CITY and shall be underwritten by insurance companies satisfactory to the CITY for all operations, subcontract work, contractual obligations, product or completed operations, all owned vehicles and non-owned vehicles. Said insurance coverage obtained by the CONTRACTOR, excepting workers' compensation coverage, shall name the CITY, its Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their Directors, Officers, Agents and Employees, as determined by the CITY, as additional insured on said policies. Additional insured status shall be evidenced in the form of an Additional insured Endorsement (CG 20 10 1185). A sample is included in the appendix of the specifications for reference.

For any claims related to this Project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the CITY, its Officers, Agents, Employees, Engineers, and Consultants. Any insurance or self-insurance maintained by the CITY, its Officers, Agents, Employees, Engineers, and Consultants shall be excess of the CONTRACTOR's insurance and not contribute with it.

5.16.4 Before CONTRACTOR performs any work at, or prepares or delivers materials to, the site of construction, CONTRACTOR shall furnish:

- Certificates of insurance evidencing the foregoing insurance coverage and such certificates shall provide the name and policy number of each carrier and policy.
- Additional insured endorsements evidencing CITY, its Officers, Agents, Employees, Engineers, and Consultants, are additional insured on CONTRACTOR's general liability and auto policies and an additional insured endorsement giving the CITY thirty (30) days written notice of cancellation of such policies.

CONTRACTOR shall maintain all of the foregoing insurance coverage in force until the work under this Contract is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of CITY by CONTRACTOR under Section 5.17 of this Contract. Notwithstanding nor diminishing the obligations of CONTRACTOR with respect to the foregoing, CONTRACTOR shall subscribe for and maintain in full force and effect during the life of this Contract, the following insurance in amounts not less than the amounts specified and issued by a company admitted and licensed in California and having a Best's Guide Rating of A-Class VII or better (claims made and modified occurrence policies are not acceptable):

Workers' Compensation	As required by the State of California.
Employer's Liability	\$1,000,000 per accident for bodily injury or disease.
Commercial General Liability (including operations, products and completed operations)	\$5,000,000 per occurrence for bodily injury, personal injury and property damage.
Automobile Liability, including non-owned and hired vehicles	\$1,000,000 per accident for bodily injury and property damage.
Course of Construction	Completed value of the project with no coinsurance penalty provisions.

CITY or its representatives shall at all times have the right to inspect and receive the original or a certified copy of all said policies of insurance, including certificates. CONTRACTOR shall pay the premiums on the insurance hereinabove required.

5.17 **Risk and Indemnification.** All work covered by this Contract done at the site of construction or in preparing or delivering materials to the site shall be at the risk of CONTRACTOR alone. CONTRACTOR agrees to save, indemnify and keep the CITY, its Officers, Agents, Employees, Engineers, and Consultants for this Contract, and all public agencies from whom permits will be obtained and their directors, Officers, Agents and Employees harmless against any and all liability, claims, judgments, costs and demands, including demands arising from injuries or death of persons (CONTRACTOR'S employees included) and damage to property, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by CONTRACTOR, save and

SECTION 5 - AGREEMENT (Continued)

except claims or litigation arising through the sole negligence or sole willful misconduct of CITY and will make good to reimburse CITY for any expenditures, including reasonable attorneys' fees CITY may incur by reason of such matters, and if requested by CITY, will defend any such suits at the sole cost and expense of CONTRACTOR.

5.18 Termination.

- 5.18.1 This Contract may be terminated in whole or in part in writing by the CITY for its convenience, provided that the CONTRACTOR is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party prior to termination.
- 5.18.2 If termination for default or convenience is effected by the CITY, an equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONTRACTOR at the time of termination may be adjusted to cover any additional costs to the CITY because of the CONTRACTOR'S default.
- 5.18.3 Upon receipt of a termination action under paragraph (5.18.1) or (5.18.2) above, the CONTRACTOR shall (1) promptly discontinue all affected work (unless the notice directs otherwise), and (2) deliver or otherwise make available to the CITY all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONTRACTOR in performing this Contract whether completed or in process.
- 5.18.4 Upon termination under paragraphs (5.18.1) and (5.18.2) above, the CITY may take over the work and may award another party an agreement to complete the work under this Contract.

5.19 Warranty. The CONTRACTOR agrees to perform all work under this Contract in accordance with the CITY 's designs, drawings and specifications.

The CONTRACTOR guarantees for a period of one (1) year from the date of the notice of completion of the work that the completed work is free from all defects due to faulty materials, equipment or workmanship and that he shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs or any damage to other parts of the system resulting from such defects. The CITY shall promptly give notice to the CONTRACTOR of observed defects. In the event that the CONTRACTOR fails to make adjustments, repairs, corrections or other work made necessary by such defects, the CITY may do so and charge the CONTRACTOR the cost incurred. The performance bond shall remain in full force and effect through the guarantee period.

The CONTRACTOR'S obligations under this clause are in addition to the CONTRACTOR'S other express or implied assurances of this Contract or state law and in no way diminish any other rights that the CITY may have against the CONTRACTOR for faulty materials, equipment or work.

5.20 Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, each shall bear its own attorneys' fees, costs and necessary disbursements. Notwithstanding the foregoing, if any action is brought against the CONTRACTOR or any SUBCONTRACTOR to enforce a Stop Notice or Notice to Withhold, which named the CITY as a party to said action, the CITY shall be entitled to reasonable attorneys' fees, costs and necessary disbursements arising out of the defense of such action by the CITY. The CITY shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

SECTION 5 - AGREEMENT (Continued)

- 5.21 **Notices.** Any notice required or permitted under this Contract may be given by ordinary mail at the address set forth below. Any party whose address changes shall notify the other party in writing.

To CITY:

City of Garden Grove
Public Works Department
Attention: Samuel Kim, P.E.
13802 Newhope Street
Garden Grove, CA 92843
(714) 741-5534
(714) 638-9906 Fax

TO CONTRACTOR:

Fraijo Brothers Inc.
Attn: Rick Fraijo
1580 W. San Bernardino Rd Ste.B
Covina, CA 91722
626-967-7600
626-967-7668 FAX

SIGNATURE ON NEXT PAGE

SECTION 5 - AGREEMENT (Continued)

IN WITNESS THEREOF, these parties have executed this Construction Agreement on the day and year shown below.

"CITY"
CITY OF GARDEN GROVE

Date: _____

By: _____
Matthew J. Fertal
City Manager

ATTEST:

City Clerk

Date: _____

"CONTRACTOR"

FRAIJO BROTHERS INC.

CONTRACTOR'S State License No. 758387
(Expiration Date: 04/30/2014)

By: *Rob Fraijo*

Title: Vice President

Date: August 5, 2013

APPROVED AS TO FORM:

City of Garden Grove
City Attorney

Date: _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required.