

1 SEWER REFUNDING AGREEMENT

2 (Sewer Trunk Over-sizing)

3 THIS AGREEMENT, made and entered into this 16<sup>TH</sup> day of  
4 July, 2008, by and between the CITY OF LAS VEGAS, a municipal  
5 corporation of the State of Nevada (hereinafter referred to as the  
6 "City"), and SOUTHWEST COMMUNITIES DEVELOPMENT, LLC (hereinafter  
7 referred to as the "Developer"),

8 W I T N E S S E T H:

9 WHEREAS, the City is the governmental entity to which is delegated  
10 the responsibility of providing sewer service to persons who reside  
11 within its corporate boundaries; and

12 WHEREAS, the Developer is engaged in the development of that  
13 certain parcel of real property which is known as "WHITEHORSE WEST" (the  
14 "Development" herein), which Development has been approved by the City;  
15 and

16 WHEREAS, the limited financial resources of the City prevent the  
17 immediate expansion of its municipal sewer system to the Development;  
18 and

19 WHEREAS, the Administrative Code of the City permits the expansion  
20 of such municipal sewer system through the use of private funds at the  
21 discretion of the City; and

22 WHEREAS, said Code further provides that the City may reimburse a  
23 developer who constructs, at the request of the City, a sewer trunk line  
24 (hereinafter referred to as the Project) of a size which is in excess of

1 the size that would otherwise be required to serve its development for a  
2 portion of the costs which such developer incurs in constructing such  
3 oversized sewer trunk line; and

4 WHEREAS, it is the intent of the Parties hereto to provide for the  
5 reimbursement to the Developer of the costs which the Developer will  
6 incur in constructing and installing the Project at a size which is in  
7 excess of the size that would otherwise be required to serve the  
8 Development;

9 NOW, THEREFORE, for and in consideration of the premises and of  
10 the mutual promises and agreements which are hereinafter set forth, the  
11 parties hereto agree as follows:

12 SECTION I - DEFINITIONS

13 A. "Over-sizing" means the difference between the diameter of  
14 the Project, had the Project been constructed and installed  
15 at the size which would otherwise be required to serve the  
16 Development, and the diameter of the Project, at the request  
17 of the City, that is actually constructed and installed.

18 B. "Plans and specifications" means the engineering designs,  
19 drawings and specifications which give a detailed description  
20 of the complete construction and installation of the Project,  
21 including the over-sizing, which plans and specifications  
22 have heretofore been submitted to, and approved by, the City.  
23 Copies of the plans and specifications are on file with the  
24 City's Department of Public Works.

1 C. "Uniform Standard Specifications" means those publications  
2 entitled, "Uniform Standard Specifications for Public Works  
3 Construction, Off-Site Improvements, Clark County Area,  
4 Nevada, Third Edition" adopted by the City of Las Vegas, June  
5 16, 1993, and "Design and Construction Standards for  
6 Wastewater Collection Systems, 1991" adopted by the City of  
7 Las Vegas, August 21, 1991.

8 SECTION II - OBLIGATIONS OF DEVELOPER

9 A. Covenant of Installation:

10 1. The Developer hereby agrees to construct and install  
11 the entire Project, in accordance with the plans and  
12 specifications, at its sole cost and expense, subject  
13 to the right of the City to designate the type of  
14 appurtenances and any other relevant matter which it  
15 considers is necessary for the construction of its  
16 municipal sewer system provided, however, that the City  
17 agrees to reimburse the Developer for the costs which  
18 the Developer incurs in constructing and installing the  
19 over-sizing. It is acknowledged that the limits of the  
20 Project are designated on Exhibit "A" which is attached  
21 hereto and by this reference made a part hereof.

22 2. The Project shall include all materials and equipment,  
23 such as sewer lines, manholes, lateral stub-outs and  
24 other appurtenances which are constructed and installed

1           between the boundary of the Development which is  
2           nearest to the terminal point of the City's existing  
3           sewer system and such terminal point as is more  
4           particularly shown on Exhibit "A".

5           3.    The Developer agrees to perform all survey and design  
6           work which is necessary for the construction and  
7           installation of the Project, in accordance with the  
8           plans and specifications, at its sole cost and expense  
9           without any right of reimbursement from the City.

10          B.    Basis for Estimated Costs:

11           It is acknowledged that the estimated costs for which the  
12           Developer is entitled to reimbursement for constructing and  
13           installing the over-sizing which is provided for in Section  
14           IV hereof is based upon written bids for the installation of  
15           the Project which the Developer has obtained from at least  
16           three (3) contractors who are duly licensed by the State of  
17           Nevada and are acceptable to the City.  (The City may waive  
18           the requirement of written bids if good cause for such waiver  
19           is shown by the Developer, in which event the estimated costs  
20           of the over-sizing will be established in a manner which is  
21           mutually acceptable to the City and to the Developer.)

22          C.    Installation Standards:

23           The Developer agrees that the Project will be installed in a  
24           good and workmanlike manner according to the plans and

1 specifications, the Uniform Standard Specifications and the  
2 Design and Construction Standards for Wastewater Collection  
3 Systems.

4 SECTION III - RIGHT OF REIMBURSEMENT

5 It is understood and agreed by the Parties hereto that the  
6 Developer shall be reimbursed for the costs which it incurs in  
7 constructing and installing the project, subject to the  
8 limitations which are contained in Section VII hereof. It is  
9 specifically understood, however, that all of the costs and  
10 expenses of installing a sewer system within the Development are  
11 the sole responsibility of the Developer without any right of  
12 reimbursement from the City.

13 SECTION IV - COSTS OF OVERSIZING

14 AND AMOUNT REFUNDABLE

- 15 A. It is agreed by the Parties hereto that the costs of the  
16 construction and installation of the over-sizing which are  
17 subject to reimbursement under the terms of this Agreement  
18 have been determined pursuant to the calculations set forth  
19 on Exhibit "B" which is attached hereto and by this reference  
20 made a part hereof.
- 21 B. It is acknowledged that the estimated costs of the  
22 construction and installation of the over-sizing which are  
23 set forth on Exhibit "B" are based upon estimates which have  
24 been obtained by the Developer and approved by the City and

1 represent, subject to the limitations which are contained in  
2 Section VII hereof, the maximum amount to which the Developer  
3 will be entitled to reimbursement for the construction and  
4 installation of the Project. All other costs and expenses  
5 which the Developer incurs in connection with the Project  
6 shall be the responsibility of the Developer. Additionally,  
7 if the actual costs of the construction and installation of  
8 the extension are less than the estimated costs thereof, the  
9 Developer shall be entitled to reimbursement only for such  
10 actual costs, subject to the limitations which are contained  
11 in Section VII hereof.

12 SECTION V - OBLIGATIONS OF CITY

- 13 A. The City will reimburse the Developer, within thirty (30)  
14 calendar days after the City's acceptance of the Project, for  
15 that portion of the costs thereof which are attributable to  
16 the over-sizing, as the same is determined in accordance with  
17 Section IV above.
- 18 B. As a condition precedent to any such reimbursement, the  
19 Developer must submit to the City a written request for  
20 payment, a statement of completion of the Project (per plans  
21 and specifications), a lien release from the Developer's  
22 contractor(s) and materials suppliers for all materials and  
23 labor, a statement from all subcontractors affirming that  
24 they have received payment in full, an itemized invoice

1 reflecting actual costs paid and a bill of sale transferring  
2 the ownership of the sewer line and appurtenances to the  
3 City.

4 C. The City agrees, by its acceptance of the Project, to be  
5 responsible for the operation and maintenance thereof, except  
6 as is otherwise provided in Section X hereof which pertains  
7 to repairs that are necessitated by any defective material or  
8 faulty workmanship in the construction and installation of  
9 the Project or the faulty design thereof.

10 SECTION VI - TIME OF PERFORMANCE

11 This Agreement shall become effective upon the execution hereof  
12 and the right of the Developer to reimbursement hereunder shall  
13 cease and terminate when the Developer has received full  
14 reimbursement of the costs which are incurred therefor.

15 SECTION VII - LIMITATION ON AMOUNT OF REIMBURSEMENT

16 The right of reimbursement for the over-sizing shall be limited to  
17 the estimated costs of the over-sizing which are set forth on  
18 Exhibit "B" or the actual direct costs which are attributable to  
19 the over-sizing, whichever is the lesser.

20 SECTION VIII - GUARANTEE OF RIGHT OF ACCESS

21 A. In order to guarantee that the City will have access to any  
22 and all portions of the Project for the purpose of  
23 maintaining and repairing the same, the Developer hereby  
24 agrees that:

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1. Except as is otherwise provided in Paragraph 3 hereof the Developer will dedicate to the City an easement over and across, or fee title to, as requested by the City, a strip of land which is twenty (20) feet in width, extending the length of the Project, and which contains the Project;
2. If the Project is installed on privately owned lands, other than lands which are owned by the Developer, the Developer will obtain and dedicate to the City an easement over and across, or fee title to, as requested by the City, a strip of land which is twenty (20) feet in width, extending the length of the Project, and which contains the Project;
3. If the land in which the Project is installed will become part of a street which will be dedicated for public use, as a part of the Development, the right of access shall be included in the dedication of that street; and
4. Any such dedication shall provide therein that no building, structure, tree, shrub or other improvement or obstacle may be placed in or near the area which is dedicated thereby in such a manner as to interfere with the use of such strip of land in accordance with the provisions hereof, and any easement which is conveyed

1 to the City shall additionally provide for the right of  
2 the City to operate, maintain, repair, replace or  
3 relocate the Project or to alter the size, number of  
4 pipelines or other appurtenances which are installed  
5 therein.

6 SECTION IX - RIGHT OF INSPECTION

7 The City shall have the right, but not the obligation, at any time  
8 and from time to time to inspect the construction and installation  
9 of any part of the Project. The Developer agrees that any  
10 inspection of the installation of the Project which is conducted  
11 by the City hereunder or the City's subsequent acceptance of the  
12 Project shall not relieve or release the Developer from its  
13 responsibility to correct any defective material or faulty  
14 workmanship, or both, in the construction and installation of the  
15 Project or any problem which results from the negligent design  
16 thereof as provided in Section X hereof.

17 SECTION X - CORRECTION OF DEFECTIVE MATERIALS,

18 FAULTY WORKMANSHIP AND NEGLIGENT DESIGN

19 The Developer hereby accepts full responsibility for the quality  
20 of the materials and workmanship in the construction and  
21 installation of the Project and for the design thereof and  
22 covenants and agrees, for a period of one (1) year after the  
23 City's acceptance of the Project and upon notification by the  
24 City, to correct any defective material or faulty workmanship, or

1 both, in the construction and installation of the Project and any  
2 problem which results from the negligent design of the Project.  
3 In the event that the Developer fails or refuses to make any such  
4 correction, the City shall have the right, but not the obligation,  
5 to repair the Project and the Developer hereby agrees to reimburse  
6 the City for the costs which it incurs in so doing.

7 SECTION XI: INDEMNITY

8 Notwithstanding any of the insurance requirements hereinabove set  
9 forth or limits of liability set forth therein, Developer shall  
10 protect, indemnify and hold harmless the City, its officers and  
11 employees from any and all claims, damages, losses, expenses,  
12 suits, actions, decrees, judgements, attorney fees and court costs  
13 which the City, its officer or employees may suffer, or which may  
14 be sought against, recovered from or obtainable against the City,  
15 its officers or employees as a result of, by reason of, or arising  
16 out of the negligent acts or omissions of the Developer, its  
17 subcontractors, or agents or anyone employed by the Developer or  
18 its subcontractors or agents, in fulfillment or performance of the  
19 terms, conditions or covenants of this AGREEMENT.

20 It is expressly agreed that the City and the Developer shall each  
21 initially pay their respective costs in defending themselves in  
22 any and all suits or actions which may be brought against them,  
23 their officers or employees because of, or by reason of, the  
24 negligent act or omission of either of them unless such suit or

1 action is defended on their behalf by the PROJECT contractor.  
2 However, the parties hereto agree that in the event the suit or  
3 action is reduced to judgment then the cost of such defense shall  
4 be ultimately divided or distributed between the parties in the  
5 following manner:

6 A. An adjudication by the court or trier of fact that neither  
7 the City nor the Developer is responsible or liable for the  
8 plaintiffs' injuries or damages, then each party shall bear  
9 its own costs and expenses of litigation.

10 B. An adjudication by the court or trier of fact that the  
11 Developer is solely or partly responsible and liable for the  
12 plaintiffs' injuries or damages while the City is relieved of  
13 any responsibility and liability, then the Developer shall  
14 reimburse the City for all of its costs and expenses of  
15 litigation;

16 C. An adjudication by the court or trier of fact that the City  
17 is solely or partly responsible for the plaintiffs' injuries  
18 or damages while the Developer is relieved of any  
19 responsibility and liability, then the City shall reimburse  
20 the Developer for its costs and expenses of the litigation;

21 D. An adjudication by the court or trier of fact which  
22 determines responsibility and liability on a comparative  
23 basis between the parties, then the City and the Developer  
24 shall share in the total costs and expenses of litigation in

1           that amount determined by multiplying the total percentage of  
2           fault or liability attributable to the respective parties by  
3           the total costs and expenses of litigation.

4           In the event that the suit or action is settled between the  
5           litigants, each party shall be responsible for all of its costs  
6           and expenses of litigation, unless the settlement agreement  
7           provides otherwise.

8                               SECTION XII - OWNERSHIP OF PROJECT

9           A.   Upon the completion of the Project, and as a condition  
10           precedent to the acceptance thereof by the City, the  
11           Developer agrees to furnish to the City a good and sufficient  
12           Bill of Sale which (i) includes all of the sewer lines and  
13           appurtenances which are components of the Project, (ii)  
14           attests to the fact that all of such components are free and  
15           clear of all liens and other encumbrances and (iii) conveys  
16           to the City all right, title and interest in and to the  
17           Project.

18           B.   It is understood and agreed that the Project shall  
19           thereafter, upon its acceptance by the City, become and  
20           remain the exclusive property of the City.

21                               SECTION XIII - RIGHT OF TERMINATION

22           A.   Except for the obligation of the City which is provided for  
23           in subsection B of this Section XII, the City shall have the  
24           right to terminate this Agreement at any time, with or

1 without cause, upon thirty (30) days' prior written notice to  
2 the Developer. Such notice shall be deemed to have been  
3 given on the date on which it is delivered in person to a  
4 representative of the Developer or is deposited with the  
5 United States Postal Service, postage prepaid and certified -  
6 return receipt requested, and addressed to the Developer at  
7 6750 VIA AUSTI PARKWAY, SUITE 400, LAS VEGAS, NEVADA 89119 or  
8 such other address as the Developer may hereafter, from time  
9 to time, designate to the City in writing.

10 B. Any funds which have been expended by or on behalf of the  
11 Developer for the construction and installation of the  
12 Project as of the date of the Developer's receipt of such  
13 written notice shall be reimbursed to the Developer as  
14 hereinabove provided.

15  
16 SECTION XIV - ASSIGNMENT

17 This Agreement shall be binding upon, and shall inure to the  
18 benefit of, the Parties hereto and their respective successors, legal  
19 representatives and assigns.  
20  
21  
22  
23

1 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement  
2 to be executed by their duly authorized representatives the day and year  
3 first above written.

4  
5 APPROVED AS TO FORM:

6 John S. Ridilla 5/14/08

7 CITY ATTORNEY

8 John S. Ridilla  
Deputy City Attorney

9 ATTEST:

10 Beverly K. Bridges  
11 BEVERLY K. BRIDGES, CITY CLERK

CITY OF LAS VEGAS

12 BY: Oscar B. Goodman  
13 OSCAR B. GOODMAN, MAYOR

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SOUTHWEST COMMUNITIES DEVELOPMENT LLC

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BY: Robert Johnson

22 ATTEST:

ROBERT JOHNSON, VICE PRESIDENT

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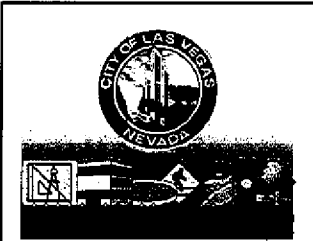
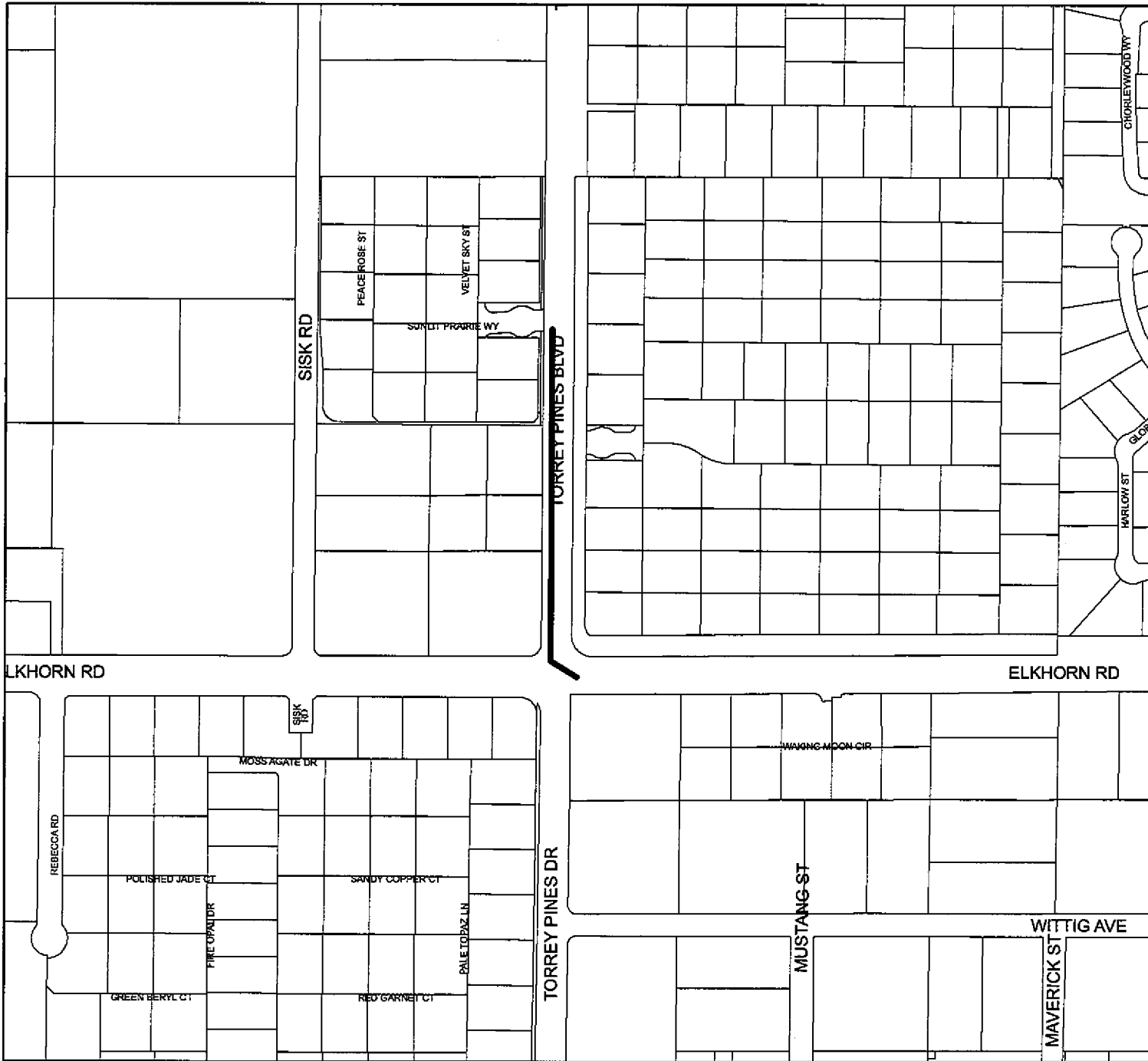
Marnie Hoffman

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Name, Title  
Marnie Hoffman, Assistant Secretary

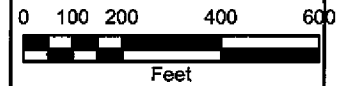
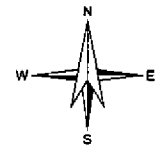
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WHITEHORSE WEST SEWER REFUNDING AGREEMENT



## Exhibit A

### Whitehorse West Oversize Agreement



**EXHIBIT "B"**  
**COST OF CONSTRUCTION**

1. Developer: Southwest Communities Development LLC  
6750 Via Austi Pkwy, Suite 400  
Las Vegas, NV 89119

2. Development: Whitehorse West

3. Engineer: Wood Rodgers  
9900 Covington Cross Drive, Suite 102  
Las Vegas, NV 89144

4. Basis for Over-sizing Costs - Prices for the over-sizing portion of this agreement are based upon the lowest cost differential as submitted by:

American Asphalt & Grading Company  
2690 N. Decatur Blvd  
Las Vegas, NV 89108

Over-sizing Portion of the Project - 8-inch to 12-inch

Mobilization	LS	1	\$2,000.00	\$2,000.00
24-inch SDR35	LF	900	\$142.00	\$127,800.00
18-inch SDR35 PVC	LF	85	\$118.00	\$10,030.00
8-inch SDR35 PVC	LF	20	\$70.00	\$1,400.00
60-inch SSMH Deep to 18	EA	2	\$6,350.00	\$12,700.00
72-inch SSMH #15 Depth = 20.03'	EA	1	\$15,759.13	\$15,759.13
72-inch SSMH #16 Depth = 18.73' w/ Cana	EA	1	\$26,591.19	\$26,591.19
Ring and Collar Manhole	EA	4	\$400.00	\$1,600.00
Flowable Fill per CCUSD 504.1	CY	245	\$105.00	\$25,725.00
Traffic Control	LS	1	\$10,000.00	\$10,000.00

Total Over-Size Item Costs \$233,605.32

Project Costs without Over-sizing

Mobilization	LS	1	\$1,800.00	\$1,800.00
8-inch SDR 35	LF	940	\$50.55	\$47,517.00
48-inch SSMH D to 18'	EA	2	\$6,500.00	\$13,000.00
Locate & Tie into existing MH	EA	1	\$4,650.00	\$4,650.00
Ring and Collar Manhole	EA	3	\$350.00	\$1,050.00
Flowable Fill per CCUSD 504.1	CY	245	\$105.00	\$25,725.00
Traffic Control	LS	1	\$10,000.00	\$10,000.00

Total Costs without Over-Sizing \$103,742.00

Pipe Oversizing Reimbursable Amount \$129,863.32

# CERTIFICATE DISCLOSURE OF OWNERSHIP/PRINCIPALS

**1. Definitions**

"City" means the City of Las Vegas.

"City Council" means the governing body of the City of Las Vegas.

"Contracting Entity," means the individual, partnership, or corporation seeking to enter into a contract or agreement with the City of Las Vegas.

"Principal" means, for each type of business organization, the following: (a) sole proprietorship – the owner of the business; (b) corporation – the directors and officers of the corporation; but not any branch managers of offices which are a part of the corporation; (c) partnership – the general partner and limited partners; (d) limited liability company – the managing member as well as all the other members; (e) trust – the trustee and beneficiaries.

**2. Policy**

In accordance with Resolution 79-99 and 105-99 adopted by the City Council, Contracting Entities seeking to enter into certain contracts or agreements with the City of Las Vegas must disclose information regarding ownership interests and principals. Such disclosure generally is required in conjunction with a Request for Proposals (RFP). In other cases, such disclosure must be made prior to the execution of a contract or agreement.

**3. Instructions**

The disclosure required by the Resolutions referenced above shall be made through the completion and execution of this Certificate. The Contracting Entity shall complete Block 1, Block 2, and Block 3. The Contracting entity shall complete either Block 4 or its alternate in Block 5. Specific information, which must be provided, is highlighted. An Officer or other official authorized to contractually bind the Contracting Entity shall sign and date the Certificate, and such signing shall be notarized.

**4. Incorporation**

This Certificate shall be incorporated into the resulting contract or agreement, if any, between the City and the Contracting entity. Upon execution of such contract or agreement, the Contracting Entity is under a continuing obligation to notify the City in writing of any material changes to the information in this Certificate. This notification shall be made within fifteen (15) days of the change. Failure to notify the City of any material change may result, at the option of the City, in a default termination (in whole or in part) of the contract or agreement, and/or a withholding of payments due the Contracting Entity.

<b>Block 1</b>	<b>Contracting Entity</b> Southwest Communities Development, LLC
<b>Name</b>	6750 Via Austi Pkwy, Ste 400 Las Vegas, NV 89119
<b>Address</b>	702-458-7700
<b>Telephone</b>	20-3035981
<b>Block on DUNS</b>	

<b>Block 2</b>	<b>Description</b> Subject Matter of Contract/Agreement
	Sewer Refunding Agreement
<b>Block 3</b>	

<b>Block 4</b>	<b>Type of Business</b>
<input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Other:	

# CERTIFICATE – DISCLOSURE OF OWNERSHIP/PRINCIPALS (CONTINUED)

**Block 4 Disclosure of Ownership and Principals**

In the space below, the Contracting Entity must disclose all principals (including partners) of the Contracting Entity, as well as persons or entities holding more than one-percent (1%) ownership interest in the Contracting Entity.

	<b>FULL NAME/TITLE</b>	<b>BUSINESS ADDRESS</b>	<b>BUSINESS PHONE</b>
1.	Land Source Holding Company, LLC	25 Enterprise, Aliso Viejo, CA 92656	949-349-8224
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

The Contracting Entity shall continue the above list on a sheet of paper entitled "disclosure of Principals – Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: \_\_\_\_\_

**Block 5 DISCLOSURE OF OWNERSHIP AND PRINCIPALS – ALTERNATE**

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this Certificate in lieu of providing the information set forth in Block 4 above. A description of such disclosure documents must be included below.

Name of Attached Document: \_\_\_\_\_

Date of Attached Document: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

I certify under penalty of perjury, that all the information provided in this Certificate is current, complete and accurate. I further certify that I am an individual authorized to contractually bind the above named Contracting Entity

  
Name

5-6-08  
Date

Subscribed and sworn to before me this 6<sup>th</sup> day of

May, 2008  
Marnie K. Hoffman  
Notary Public

