

STORM DRAIN DESIGN COST CONTRIBUTION AGREEMENT

THIS STORM DRAIN DESIGN COST CONTRIBUTION AGREEMENT ("Agreement"), is made and entered into this 20 day of May, 2009 (the "Effective Date"), by and between the CITY OF LAS VEGAS, a municipal corporation in the State of Nevada ("City"), and TOSCANA-WYETH RANCH LANDSCAPE MAINTENANCE ASSOCIATION ("LMA"). The City and LMA individually or collectively are referred herein as the "Party" or "Parties."

RECITALS

A. Toscana is located at the southwest corner of Rainbow Boulevard and Farm Road in the City of Las Vegas, State of Nevada. Wyeth Ranch is located at the northwest corner of Rainbow Boulevard and Elkhorn Road in the City of Las Vegas, State of Nevada. Toscana-Wyeth Ranch Landscape Maintenance Association ("LMA") is an organization formed by Toscana and Wyeth Ranch to maintain the grass lined channels shared by the two planned communities; and

B. LMA desires that the existing grass lined channel along the west side of Rainbow Boulevard between Elkhorn Road and the Severance Lane alignment be replaced with an alternative ground cover (the "LMA Improvements") to reduce the channel landscape maintenance cost; and

C. City intends to construct a regional flood control storm drainage facility (the "Regional Improvements") within Rainbow Boulevard between Elkhorn Road and Grand Teton Drive to mitigate flooding of surrounding property, as described in more detail in Exhibit A attached hereto and incorporated herein by reference; and

D. LMA has agreed to contribute the entire cost of designing the LMA Improvements (the "LMA Improvements Design Costs") upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Within thirty (30) calendar days after the Effective Date, LMA shall pay to City the LMA Improvement Design Costs in the amount of Four Thousand Nine Hundred and Twenty Dollars and No Cents (\$4,920.00). By paying the LMA Improvement Design Costs, the LMA shall retain ownership of the design documents and the LMA shall have the right to utilize the plans for future construction should the LMA choose not to proceed with the LMA Improvements or if the City is unable to promptly secure funding for the Regional Improvements.

2. After the completion of the design of the LMA Improvements, City will provide an estimate of the cost to construct the LMA Improvements (the "Estimated LMA Improvement Costs"). The Estimated LMA Improvement Costs will be as follows:

a. Begin at end of the Regional Improvements and end at the Severance Lane alignment for a total length of approximately 404 linear feet.

3. After receipt of the Estimated LMA Improvement Costs, the LMA shall decide, within thirty (30) calendar days, if the LMA desires the City to include LMA Improvements in the Regional Improvements project. If the LMA decides to proceed with the any LMA Improvements, the LMA shall pay to City the Estimate LMA Improvement Costs for the LMA Improvements.

4. City and LMA acknowledge and agree that the actual cost to construct the LMA Improvements may exceed the Estimated LMA Improvement Costs contributed by the LMA. City will determine the final cost of the LMA Improvements after receipt of the construction contractor's bids (the "Actual LMA Improvement Costs") for the LMA Improvements. If the Actual LMA Improvement Costs, which will be part of the bid for the Regional Improvements, exceeds the Estimated LMA Improvement Costs, LMA, at its sole discretion shall have the following options:

a. To contribute to City the difference between the contractor's bid for the Actual LMA Improvements and the Estimated LMA Improvement Costs for construction of the LMA Improvements (the "Additional Cost"). The LMA shall contribute the Additional Cost within ten (10) business days of written notification from City to LMA; or

b. To decide not to construct the LMA Improvements. If the LMA decides not to construct the LMA Improvements, City will reimburse LMA the Estimated LMA Improvement Costs. The LMA shall have the right to use the plans in the future as detailed in Section 1 of this Agreement. **If the LMA decides not to construct the LMA Improvements as part of the Regional Improvements, the LMA shall follow all City policies and procedures for plan submittal, review, approval and construction of the LMA Improvements in the future. The LMA will be required to submit the LMA Improvements plans to the City's Land Development Department for a permit to construct and the LMA will be responsible for all applicable fees and bond costs. The LMA may incur additional costs for design plan revisions and additional necessary design elements, including but not limited to traffic control plans.** LMA Initials CT.

5. LMA shall be solely responsible for any and all maintenance and repair of the Improvements and for the repair of any structural elements of the drainage facilities within the vicinity of the LMA Improvements.

6. If LMA Improvements are constructed with the Regional Improvement project, City shall be solely responsible for the construction of the LMA Improvements and hereby indemnifies and holds the LMA harmless from and against any and all claims, liabilities, causes of action, judgments, costs, damages, losses and expenses of any kind or description asserted against the LMA by any third parties associated with the construction of the LMA Improvements, except as a result of any negligent act by the LMA which results in a claim, liability, cause of action, judgment, costs, damages, losses and expenses of any kind or description asserted against the LMA by any third parties associated with the construction of the LMA Improvements.

7. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally, by facsimile with simultaneous regular U.S. mail, or certified U.S. mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth below:

To LMA: Toscana Wyeth Ranch LMA
Chris Zwiefel, President
c/o Platinum Community Services, LLC
3360 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89102
Phone: (702) 942-2500
Fax: (702) 942-2510

To City: Jorge Cervantes, P.E., P.T.O.E.
Public Works Director
City of Las Vegas
400 E. Stewart Avenue
Las Vegas, Nevada 89101
Phone: (702) 229-6906
Fax: (702) 382-0848

8. Failure of either party to perform any obligation of this Agreement shall be deemed a material breach if any such failure to perform has not be cured within ten (10) days after delivery of written notice of such failure. In the event of any such material breach, each nonbreaching party shall be entitled to any remedy at law or in equity, including, but not limited to, actual damages and specific performance. The prevailing party in any dispute concerning this Agreement shall be entitled to reasonable attorney's fees and costs. **However, the LMA expressly acknowledges that construction of the Regional Improvements is dependent upon the City obtaining funding from various sources, including the Clark County Regional Flood Control District. Should the City be unable to obtain appropriate funding for the Regional Improvements, the City will promptly return all design drawings and any Estimate LMA Improvements Costs to the LMA. LMA Initials**

CA.

9. Failure to declare a breach or the actual waiver of any particular breach of the Agreement by another party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

10. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for whatever reason, the remaining provisions not so declared shall, nevertheless, continue in full force and effect, without being impaired in any manner whatsoever.

11. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party.

12. This Agreement shall be deemed to have been executed and delivered within the State of Nevada, and the rights and obligations of the Settling Parties hereto shall be construed and enforced in accordance with and governed by the laws of the State of Nevada. Claims to enforce this Agreement are subject to arbitration in accordance with the rules of the American Arbitration Association.

13. This Agreement constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. No modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

14. Each of the parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

15. The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.

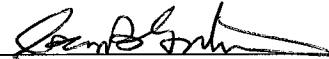
16. Counterparts; Electronic Delivery. This Contract may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

17. Pursuant to Resolution R-105-99 adopted by the City Council effective October 1, 1999, the Parties warrant that they has disclosed, on the form attached hereto as Exhibit "B", all board members of their respective organizations Throughout the term hereof, the Parties shall notify City in writing of any material change in the above disclosure within fifteen days of any such change.

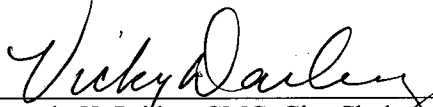
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

THE CITY

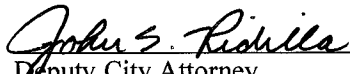
CITY OF LAS VEGAS

By: 
Oscar B. Goodman, Mayor

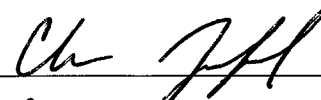
ATTEST:


~~Beverly K. Bridge, CMC, City Clerk~~
~~City Clerk~~ By **Vicky Darling, CMC**
Acting City Clerk

APPROVED AS TO FORM:

 5/4/09
Deputy City Attorney Date

TOSCANA-WYETH RANCH LANDSCAPE
MAINTENANCE ASSOCIATION

By: 
Name: Chris Zwiemel
Title: President

RON CARL - DIRECTOR


4 BRAD TYLER - DIRECTOR
