

RESOLUTION NO. 2021-005

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A REIMBURSEMENT AGREEMENT WITH LDMUD, LLC, (WILKINSON'S RESORT) FOR SEWER MAIN REPLACEMENT ON FAIR WAY

WHEREAS, LDMUD, LLC, are the owners (Owners) of the Wilkinson's Resort property located at 1507 Lincoln Ave; and

WHEREAS, the Owners applied for and received a use permit for renovation (Project), allowing for additional guest units and food and beverage service; and

WHEREAS, the Project was conditioned to inspect and mitigate fair share contribution of deficiencies in the public sewer main and private laterals on Fair Way with supplemental City reimbursement; and

WHEREAS, a fair share cost allocation has been negotiated between the Owner and City staff, with Owner constructing the necessary improvements and being responsible for replacement of three private sewer laterals and 150 lineal feet sewer main, with the City reimbursing Owner for 93 lineal feet sewer main, manholes and a portion of the road resurfacing; and

WHEREAS, the total replacement cost is estimated to be \$309,331, with Owner contributing \$163,307 and City contributing \$146,024 (approximately 53%/47% split) as reflected in the Reimbursement Agreement shown on Attachment 2 and Exhibit A; and

WHEREAS, the FY2020/21 Budget includes Capital Improvement Project (CIP) funding for sewer main replacement, Account No. 13-5555-4915 which has sufficient appropriations for the recommended reimbursement, not to exceed \$165,000 which includes a 13% contingency.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CALISTOGA DOES HEREBY find the flowing:

1. The City Council of the City of Calistoga approves the construction plans and Reimbursement Agreement with LDMUD, LLC. and authorizes the City Manager to execute the same, including any minor revisions to carry out construction of the Fair Way sewer main replacement project.

2. The City Council directs at the completion of construction, staff to review actual costs and expenses incurred with Owner and to reimburse Owner for expenses incurred not to exceed the amount of \$165,000.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Calistoga at its regular meeting held this **2nd** day of **February 2021**.

I, Marni Rittburg, City Clerk of the City of Calistoga, hereby certify that the foregoing Resolution was duly adopted by the City Council of the City of Calistoga at a regular meeting held on the **2nd** day of **February 2021**, by the following vote:

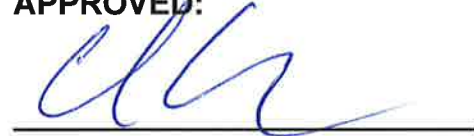
AYES: Councilmembers Gift, Kraus, and Williams, Vice Mayor Lopez-Ortega and Mayor Canning
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Marni Rittburg, CMC, City Clerk

APPROVED:



Chris Canning, Mayor

REIMBURSEMENT AGREEMENT

THIS SEWER REIMBURSEMENT AGREEMENT (the "Agreement") is entered into as of the 2nd day of February, 2021 and between the CITY OF CALISTOGA, a municipal corporation, herein called the "City", and, LDMUD, LLC, the owner of Wilkinson's Resort herein called the "Owner".

Recitals

WHEREAS, Wilkinson's Resort is located at 1507 Lincoln Ave ;

WHEREAS, the Owner applied and received a use permit on February 12, 2020 and June 25, 2019 to allow for three or up to five additional guest units, and additional food and beverage service and renovation;]

WHEREAS, the Wilkinson's project was conditioned to replace or upgrade, if possible, the public sewer main on Fairway with supplemental City reimbursement;

WHEREAS, the Owner agrees to replace approximately 243 lineal feet (lf) of new 12" diameter sanitary sewer main along Fairway Avenue (the "Work") as depicted in the attached **Exhibit A** (the "Improvement Plans"), incorporated herein by this reference, with Owner responsible for the payment of 150lf of the Work and the City responsible for the cost of the remaining 93lf, through reimbursement of those costs to Owner;

WHEREAS, the total replacement cost is \$309,331, with Owner paying \$163,307 and the City reimbursing the Owner \$146,024 (approximately 47%) (the City Reimbursement Amount");

WHEREAS, the FY2020/21 Budget includes Capital Improvement Project (CIP) funding for sewer main replacement, account no. 13-5555-4915 totaling \$374,000 which is sufficient to cover the City Reimbursement Amount;

WHEREAS, the City Reimbursement Amount is a not to exceed amount and the City will not reimburse Owner for any expense over this amount absent increases in cost as a result of unknown conditions arising during the construction of the Work that a reasonably prudent contractor would not have known about upon commencement of the Work; and

WHEREAS, this Reimbursement Agreement is being entered into between the Owner and the City to memorialize the agreement of the parties.

Terms and Conditions

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby mutually agree as follows:

1. Installation of a New 12" Sewer Main on Fairway. Owner agrees to install or have installed in a good and workmanlike manner the Work in the Improvement Plans pursuant to the terms and conditions of this Agreement. Any deviations from the Improvement Plans, including corrections or revisions made pursuant to Section 3, must be approved in writing by the City.
2. Reimbursement
 - a. Owner agrees to complete the Work. In exchange, the City agrees to reimburse the Owner the City Reimbursement Amount, subject to unknown conditions that a reasonably prudent contractor would not have known prior to the commencement of construction.
 - b. Owner agrees that at the completion of the construction, City staff will review actual costs with the Owner and reimburse them for expenses incurred, not to exceed the City Reimbursement Amount. The City will review and promptly pay the Owner's invoice no later than 30 days after receipt.
 - c. Owner agrees to keep full and accurate books of account and records of the cost of the Work for the term of this Agreement.
 - d. Owner will provide to the City construction invoices, test results (if any), and inspection reports (if any) at the completion of the Work.
 - e. Owner agrees to complete the Work before May 1, 2021.
3. Encroachment Permit. A City Encroachment Permit is required prior to construction.
4. Changes to Plans and Specifications. Any changes to the approved Plan and/or Specifications must be approved by the City Engineer or the City's Senior Civil Engineer. Owner shall be responsible, at its sole cost and expense, for making all requested changes to said plans unless said plans are as a result of unknown conditions that a reasonably prudent contractor would not have known prior to commencing construction.
5. Hiring of Contractor. Owner shall hire a qualified Class A (General Engineering) licensed contractor licensed in the state of California to perform the Work, subject to final approval by the City. City's final approval shall be limited to verifying that the contractor is properly licensed and insured. Owner shall include the terms of this Agreement in its contract with its contractor (the "Construction Contract"), including, but limited to, the requirement to construct the Project in accordance with the terms and conditions of the Encroachment Permit and to accept all responsibility and liability under and comply with all provisions of the Encroachment Permit. Upon final approval of the contractor by City and final

execution of the Construction Contract, Owner's contractor shall be authorized to perform the Work under the Encroachment Permit obtained by Owner. The City shall not be a party to the Construction Contract and Owner shall be solely responsible for any and all obligations to its contractor. Owner has hired, and City hereby approves, Terra Nova Industries as the contractor and they have subcontracted to M3 to perform the Work.

6. Failure to Comply with Encroachment Permit. In the event that Owner or Owner's contractor fails to comply with the terms and conditions of the Encroachment Permit, City shall notify Owner, in accordance with paragraph 11, of such non-compliance Owner or Owner's contractor shall immediately cease the Work and cease operating under the Encroachment Permit. Owner or Owner's contractor may not resume construction until the City's Public Works Director or his or her representative is satisfied that the Work will resume in accordance with the terms and conditions of the Encroachment Permit.
7. Final City Inspection. Prior to the final completion of the Work, City shall perform a final inspection to ensure that the Work was completed in accordance with the terms of this Agreement.
8. Liability of Members and Employees of City. No member of the City and no other officer, agent, employee or contractor of the City shall be personally liable to Owner or their contractor or otherwise in the event of any default or breach of the City, or for any amount which may become due to Owner or their contractor, any successor in interest, or for any obligations directly or indirectly incurred under the terms of this Agreement.
9. Indemnification. To the fullest extent permitted by law, Owner shall defend, indemnify and hold the City, its officers, agents, employees and contractors harmless from and against any and all claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, consultants' fees, expenses, awards, fines, penalties, or judgments of whatsoever kind or nature, whether arising before or after completion of the Work, that are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, through any act, omission, fault or negligence whether active or passive of Owner, or their contractor, or anyone acting under Owner's direction, control, or on its behalf in connection with or incident to the Work or in connection with or incident to the proposed improvements as depicted in the Improvement Plans but only to the extent caused by the Owner, its contractor or anyone for who either are responsible. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons and damage to any property, regardless of where located.
10. Compliance with Laws. Owner shall keep itself fully informed of and shall observe and comply with, and shall cause any and all persons, firms or corporations employed by Owner or under contract with Owner to observe and comply with all federal and state laws, and county and municipal ordinances, regulations, orders and decrees which in any manner affect this Agreement, the

Work performed under this Agreement and those employed or engaged in such Work. Owner shall indemnify and hold harmless City from and against any all claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, consultants' fees, expenses, awards, fines, penalties, or judgments of whatsoever kind or nature arising from Owner's contractor, or the lack of compliance under this section.

11. Failure to Comply with Terms of this Agreement. If Owner or Owner's contractor fails to comply with the terms of this Agreement, City may provide Owner with written notice that Owner is not in compliance with this Agreement and that Owner must be in compliance within 14 days after receipt of said written notice. City may also condition approval of any permits for the Property upon compliance with the terms of this Agreement.
12. Covenants Run with the Land. This Agreement shall run with the land and shall be binding on any heirs, successors in interests or assigns.
13. Amendment. This Agreement constitutes the complete and exclusive agreement between City and Owner regarding the Work and Improvement Plans. This Agreement may be amended or extended from time to time by written agreement of the parties.
14. Mediation – The City and Owner mutually agree to mediation if either party becomes involved in a claim arising out of this Agreement or the performance thereof. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate regarding the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.
15. Time of the Essence. Time is of the essence of this Agreement.

16. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally, sent by prepaid, first class mail, or via e-mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth hereinbelow. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calistoga
1232 Washington Street
Calistoga, CA 94515
Attn: Public Works Director

If to Owner: Maki Nakamura Bara
6045 Montemalaga Drive
Rancho Palos Verdes, CA 90275

With copy via e-mail to:
maki.bara@chartreslodging.com

17. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

IN WITNESS WHEREOF, the City and Owner have executed this Agreement as of the date first above written.

CITY:

OWNER

CITY OF CALISTOGA

LDMUD, LLC

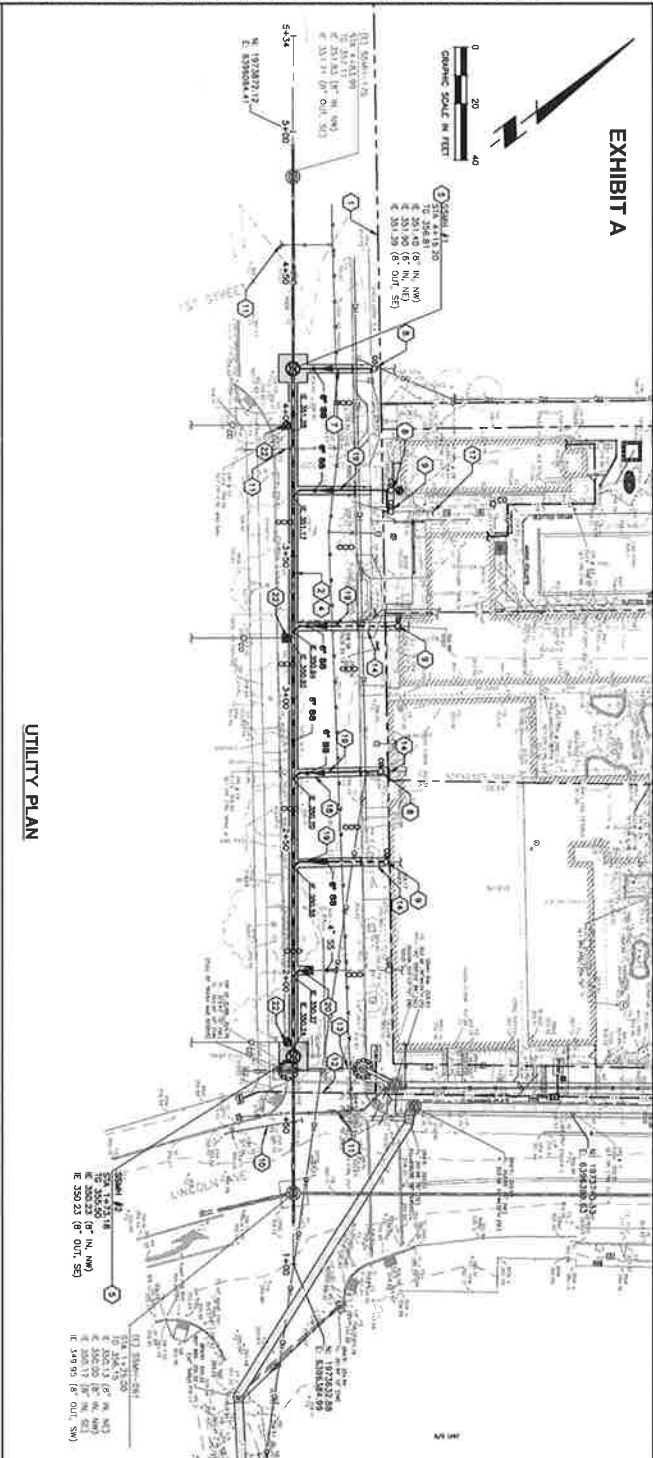
By: _____
Michael T. Kirn, City Manager

By: _____
Maki Nakamura Bara
Authorized Signatory

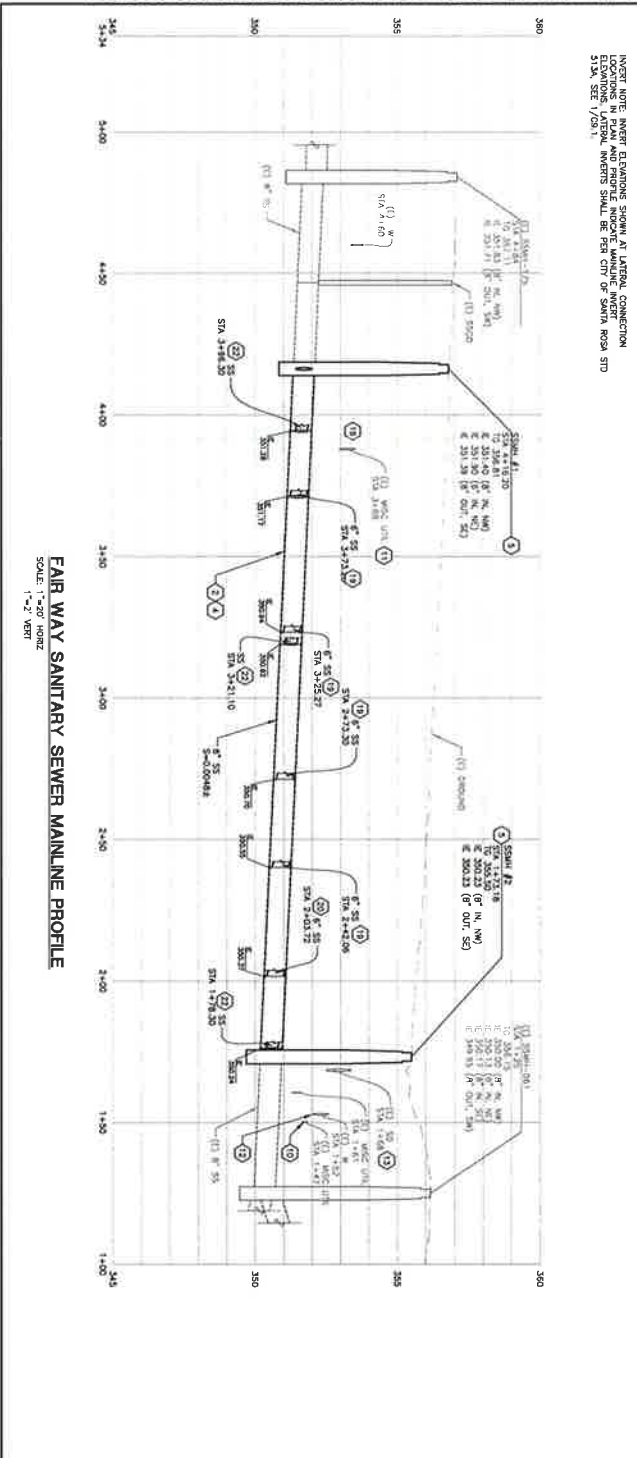
EXHIBIT A

Improvement Plans

EXHIBIT A



UTILITY PLAN



FAIR WAY SANITARY SEWER MAINLINE PROFILE
SCALE: 1"=20' HORIZ
1"=2' VERT

INSERT NOTE: INSERT ELEVATIONS SHOWN AT LATERAL CONNECTION LOCATIONS IN PLAN AND PROFILE INDICATE MAINLINE INVERT ELEVATIONS. ALL LATERAL INVERTS SHALL BE PER CITY OF SANTA ROSA STD 513A, SEE 7/29.1

UTILITY KEYNOTES

1. APPROXIMATE PROPERTY LINE/ROW TYPE
2. REMOVE EXISTING SANITARY SEWER BETWEEN SSMH-081 AND SSMH-175
3. NOT USED
4. INSTALL 48" PVC SANITARY SEWER MAIN, SEE 1/29.9
5. INSTALL 12" PVC SANITARY SEWER MAIN, PER CITY OF SANTA ROSA STD 513A, SEE 7/29.1. CONSTRUCTION FROM EXISTING MAIN INFORMATION AT EXISTING MANHOLES, VERIFY INVERT OF EXISTING MAIN PRIOR TO OBSERVING ANY PREVIOUS MAINLINE SECTIONS.
6. CONNECT NEW SEWER MAIN TO EXISTING SANITARY SEWER MAINLINE
7. REMOVE AND REPLACE EXISTING SANITARY SEWER LATERAL, EXISTING 36" DIA. PER CITY OF SANTA ROSA STD 513A, SEE 7/29.1, SEE NOTE 7
8. INSTALL SANITARY SEWER TWO-WAY CLEANOUT PER CITY OF SANTA ROSA STD 513A, SEE 7/29.1
9. SET BEHIND EXISTING 36" CLEANOUT AND CONNECT TO EXISTING MAINLINE, PER CITY OF SANTA ROSA STD 513A, SEE 7/29.1
10. EXISTING ONE LINE, PER VERIFY SIZE AND ELEVATION PRIOR TO CONSTRUCTION
11. EXISTING WATER LINE, PER VERIFY SIZE AND ELEVATION PRIOR TO CONSTRUCTION
12. EXISTING STORM DRAIN, PER VERIFY SIZE AND ELEVATION PRIOR TO CONSTRUCTION
13. EXISTING ONE LINE, PER VERIFY SIZE AND ELEVATION PRIOR TO CONSTRUCTION
14. HATCH REPRESENTS LIMITS OF CONCRETE SURFACING, REPLACE SIDEWALK TO NEAREST JUNCT.
15. NOT USED
16. EXISTING SMALL, PP
17. NEW SS, SEE CIVIL SITE DIMENSIONS, REPAIR R800-2, SEE PLUMBING DIMENSIONS FOR CONNECTIONS AND BELIEVING HATCH REPRESENTS LIMITS OF REPAIR/WORK, MATCH EXISTING AC SECTION
18. REMOVE AND REPLACE EXISTING SANITARY SEWER LATERAL, EXISTING 36" DIA. PER CITY OF SANTA ROSA STD 513A, SEE 7/29.1
19. REPLACE LATERAL FROM MAIN TO 3 FEET FROM MAIN TO EXISTING EXISTING MAIN LATERAL WITH 1.5, 54-0.0Z PER NEW SEWER LATERAL, PER CITY OF SANTA ROSA STD 513A, SEE 7/29.1
20. NEW SEWER LATERAL, PER CITY OF SANTA ROSA STD 513A, SEE 7/29.1
21. IF LATERAL IS ACTIVE, CONNECT TO EXISTING LATERAL, AT LATERAL, 54-0.0Z MIN. PER CITY OF SANTA ROSA STD 513A, SEE 7/29.1
- 22.

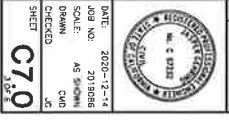
STORMWATER MANAGEMENT

DESCRIPTION	SYMBOL
CONCRETE MANSUET, SEE 3/29.1*	
STORM DRAIN INLET PROTECTION, SEE 4/29.1*	
TEMPORARY STORMWATER LOCATION, SEE 2/29.1*	
GRAVEL DWD CHECK DAM, SEE 3/29.1*	

* REMOVE UPON COMPLETION OF CONSTRUCTION

- NOTES:
1. UTILITY LINE AND STRUCTURE ELEVATIONS BASED ON SURVEY BY O&E DATED JUNE 21, 2018. (E) ONE & WATER LINE ELEVATIONS VERIFY SIZES AND ELEVATIONS PRIOR TO CONSTRUCTION.
 2. SS MAIN INVERT ELEVATIONS ARE BASED ON RM ELEVATIONS FROM THE SURVEY BY O&E DATED JUNE 21, 2018, AND SEWER MAINLINE INVERT ELEVATIONS FROM THE SURVEY BY O&E DATED FEBRUARY 25, 2016.
 3. CONTROL TO CITY OF SANTA ROSA STANDARD 517 RISE
 4. SE LATERAL CONNECTING TO SS MAINLINE ARE BASED ON PROPOSED VIDEO SURVEY, DATED JUNE 24, 2020, AND SURVEYED AT THE LOCATION OF THE LATERAL CONNECTION AND DEPICTS ARE ALL HOISTING PIPE BENDS ARE 45 OR 90° UNO.
 5. ALL HOISTING PIPE BENDS ARE 45 OR 90° UNO.
 6. SS PIPE TO BE 12", SEE 28 AND CONFORMING TO CITY OF SANTA ROSA STD 513A, SEE 7/29.1.
 7. FOR LATERALS WITHIN RESIDENTIAL AREA, COMPARE TO CITY OF SANTA ROSA STD 513A, SEE 7/29.1.
 8. PROVIDE TEMPORARY MEASURING TRENCH PROTECTORS TO PROTECT EXISTING UTILITY LINES FROM DAMAGE TO CITY OF SANTA ROSA STD 513A, SEE 7/29.1.

<p>FAIR WAY SEWER LATERAL REPLACEMENT</p> <p>UTILITY PLAN & PROFILE</p>	<p>DR. WILKINSON'S RESORT 1607 LINCOLN AVENUE CALISTOGA, CA 94515 APN01-062-008, 009, 010, 011, 012, 018, 016, 017</p>	<p>SUMMIT Summit Engineering, Inc. 463 Aviation Blvd., Suite 200 • Santa Rosa, CA 95403 707-527-0775 • www.summit-sr.com</p>
<p>DATE: 2020-12-14 JOB NO: 2018088 SCALE: AS SHOWN CHECKED: CAG SHEET: C70</p>	<p>PROJECT NO: 2020-12-14 JOB NO: 2018088 SCALE: 1"=20' HORIZ 1"=2' VERT CHECKED: CAG</p>	<p>PROJECT NO: 2020-12-14 JOB NO: 2018088 SCALE: 1"=20' HORIZ 1"=2' VERT CHECKED: CAG</p>



	QTY	Unit	Unit Cost	Total	Developer Cost	City
Main R&R (less bypass)	243	LF	\$ 369	\$ 89,559	\$ 55,283	\$ 34,276
bypass costs	1	LS		\$ 10,800	\$ 8,100	\$ 2,700
Laterals (Excluding Trailer Park)	144	LF	\$ 392	\$ 56,448	\$ 51,448	\$ 5,000
Lateral (Trailer Park)	36	LF	392	\$ 14,112	-	\$ 14,112
Manhole Replacement	2	EA	\$ 17,625	\$ 35,250	-	\$ 35,250
3" AC overlay with Fabric	1	LS	\$ 12,836	\$ 12,836	-	\$ 12,836
Change SS from 8" to 12"	1	LS	\$ 5,202	\$ 5,202	-	\$ 5,202
Subtotal:				\$ 224,207	\$ 114,831	\$ 109,376
Allocation:				51%		49%
Other Costs						
Traffic Control Plan	1	LS	\$ 2,100	\$ 2,100	\$ 1,076	\$ 1,024
Traffic Control	1	LS	\$ 15,000	\$ 15,000	\$ 7,682	\$ 7,318
Proprietary clean and Camera	1	LS	\$ 13,485	\$ 13,485	\$ 6,907	\$ 6,578
Sidewalk Repair	1	LS	\$ 10,000	\$ 10,000	\$ 10,000	\$ -
Prime Overhead Fee	1	LS	\$ 26,479	\$ 26,479	\$ 13,562	\$ 12,917
City Review Cost	1	LS	\$ 7,060	\$ 7,060	\$ 3,616	\$ 3,444
Design	1	LS	\$ 11,000	\$ 11,000	\$ 5,634	\$ 5,366
Subtotal:				\$ 85,124	\$ 48,476	\$ 36,648
TOTAL COST:				\$ 309,331	\$ 163,307	\$ 146,024