

**SR-004 - 2370 PRESSURE ZONE REFUNDING AREA AGREEMENT BETWEEN
MACDONALD PROPERTIES AND THE CITY OF HENDERSON FOR
FOR P-6 PUMP STATION, P-6 TO R-13 PIPELINE AND ACCESS ROAD, AND
R-13 RESERVOIR**

THIS AGREEMENT made and entered into this 20th day of April, 2006, by and between the CITY OF HENDERSON, a Nevada Municipal Corporation, hereinafter referred to as CITY, and THE FOOTHILLS PARTNERS, ¹⁷³⁰~~1700~~ WEST HORIZON RIDGE PARKWAY, SUITE ¹⁰⁰~~200~~, HENDERSON, NEVADA, 89012, hereinafter referred to as OWNER (S).

WHEREAS, OWNER(S) in accordance with and pursuant to Henderson Municipal Code Sections 13.18.010 through 13.18.080 have constructed and/or installed P-6 PUMP STATION, P-6 TO R-13 PIPELINE AND ACCESS ROAD, AND R-13 RESERVOIR (2370 PRESSURE ZONE) in the City of Henderson, Nevada; and

WHEREAS, the CITY pursuant to said Henderson Municipal Code Sections 13.18.010 through 13.18.080, or current section of the Henderson Municipal Code, has agreed to refund the cost of certain eligible portions of the construction of said facilities to the extent allowed and as provided in said Henderson Municipal Code; and

WHEREAS, OWNER(S) are willing to and does hereby dedicate said improvement(s) to the City of Henderson, Nevada; and

WHEREAS, OWNER(S) has complied with the provisions of Henderson Municipal Code Sections 13.18.010 through 13.18.080 and has sought at least three (3) bids for the project and the CITY has determined that the original estimated cost of \$2,669,179.65 represents a reasonable value of the costs of construction;

In consideration of the foregoing dedication, it is hereby agreed as follows:

W I T N E S S E T H:

The CITY shall refund to OWNER(S) the eligible costs of construction as follows:

1. Over a twenty (20) year period up to a maximum equivalent dwelling unit (EDU) of 648.8 EDU for the R-13 Reservoir and 1413.8 EDU for the P-6 to R-13 Pipeline and P-6 Pump Station. Said EDU amount shall be paid only from participation and refunding fees collected by the CITY from other third party developments participating in the 2720 Pressure Zone Refunding Area except for those developments that the CITY has prepaid to the OWNER(S). Under no circumstances shall the CITY be required to refund any amount except out of fees collected from other developers and participants in the SR-004 - 2370 Pressure Zone Refunding Area.

OWNER(S) acknowledges and agrees that if for any reason whatsoever the CITY is unable to collect said refunding fees from said developments, then upon the expiration of the twenty (20) year period, the refund set forth herein is extinguished.

OWNER(S) acknowledges the fees and expenses due and owing the CITY prior to the execution of this document; and that collection and reimbursement fees will be withheld pursuant to Henderson Municipal Code as amended. Currently:

A. Initiation, Engineering, and Auditing Expenses and Fees

- (1) An initiation fee of \$200.00 for the administrative, legal, utility services and financial departments to review and set up the agreement and administer it.

- (2) An engineering review and auditing fee, *excluding services covered by plan checking and inspection fees*, is \$39,200, including CITY administrative fees and expenses. This amount will be collected prior to the execution of this agreement. Any additional fees required to cover the actual cost of the agreement or audit will be deducted from any future refunds.

B. Collection and Reimbursement Expenses and Fees

- (1) A \$50.00 collection fee will be charged for each collection transaction processed and the fee will be withheld from reimbursements under the agreement to cover collection and reimbursement costs of the CITY.

C. Additional Matters

- (1) All the above fixed monetary amounts shall be indexed to the calendar year gross national product implicit price deflator and shall be adjusted each July 1st to maintain fee equity through the years.
- (2) All fees and expenses shall be added to the basic refunding amount to permit the OWNER(S) to have an opportunity to be reimbursed for all costs and fees.
- (3) CITY administrative fees and expense are charged on a time and material basis. CITY staff time will be valued at 150% of the CITY employees' hourly earnings.

2. The amount refundable shall be paid quarterly from fees collected by the CITY from properties participating in the SR-004 2370 Pressure Zone Refunding Area, subject of

this Agreement and the exception set forth in paragraph 1 above, until the total amount refundable has been paid or for a period of twenty (20) years, whichever occurs first. The twenty (20) year period during which refunds are due shall commence on the date that the infrastructure covered by this Agreement is completed, tested and accepted by the CITY, which is agreed to be JANUARY 20, 2000.

3. In the event any expense is incurred by the CITY due to defective materials or workmanship on any improvement installed by the OWNER(S) within a period of one (1) year after completion of such improvement, the amount of such expense shall be deducted from any refunds which may become due thereafter.
4. The benefit area(s) and improvement locations are generally described and delineated on the attached Exhibit A. However, although a property may fall within the boundaries of the refunding area, it shall remain the City's sole discretion to determine in the interest of public safety and well being and the orderly development of the City's system where developments will receive their service from.
5. Table 1 identifies the various costs incurred by the OWNER(S).
6. Table 2 identifies refunding amounts due by various participants.
7. Table 3 is a sample of the appreciation/depreciation calculation that will be done for each project pursuant to applicable portions of Henderson Municipal Code. The calculations will be made effective twelve (12) months after the completion and acceptance of the infrastructure.
8. Said costs are not a part of any Local Improvement District, or any other refunding agreement presently in place with the CITY. The OWNER(S) acknowledges that these tables represent their accounting of costs associated with this project, and are

subject to audit by the CITY for confirmation of eligible costs prior to making final payment. Included with this agreement are sufficient documents and backup that allowed for a thorough audit of the construction costs of this project. Those documents include, but are not limited to, the following:

- A. as-built drawings
- B. certified payroll or confirmation of payment of prevailing wage
- C. bid tabs
- D. inspection reports, materials test, city acceptance letter, and related construction

IN WITNESS WHEREOF, the CITY and OWNER(S) have executed or caused to be executed by their duly authorized representatives, this Agreement, in duplicate, the day and year first above written:

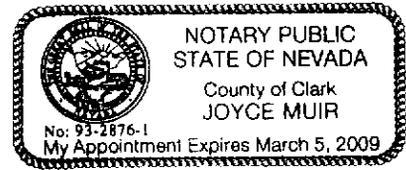
OWNER (S):

Richard C. MacDonald
The Foothills Partners

On this 20 day APRIL of, 2006, before me personally appeared RICHARD C. MACDONALD whose identity was proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed in this instrument, and acknowledged that he (she) executed the same.

Notary Public

(SEAL)



My Commission Expires on 3-5-09

CITY OF HENDERSON, NEVADA:

Philip D. Speight
City Manager

ATTEST:

Monica M. Simmons, CMC
City Clerk

APPROVED AS TO AMOUNT:

Dennis B. Porter, P.E.
~~Acting~~ Director of Utility Services

APPROVED AS TO FORM:

per Shauna Hughes
City Attorney

Exhibit A

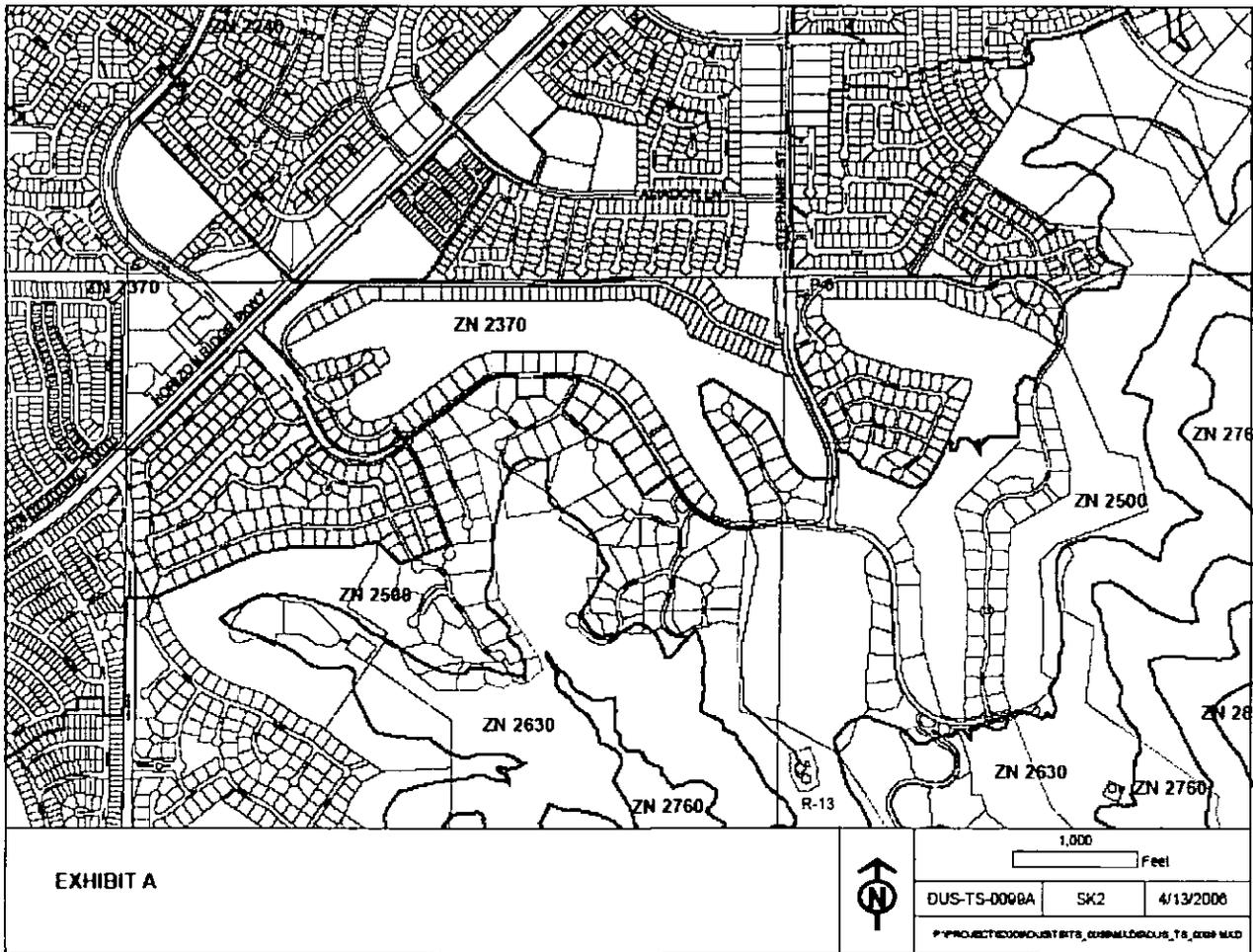


Table 1

**Distribution Facility Costs
2370 Zone Water System Improvement Project**

PROJECT	DESIGN (1)	CONSTRUCTION COST	RELATED COST (2)	PROJECT COST
P-6 Pump Station (Actual)	\$12,749	\$1809,300	\$27,140	\$1,849,188
P-6 to R-13 Pipeline (Actual)	\$5,923	\$316,650	\$-0-	\$322,573
R-13 Reservoir (Actual)	\$4,675	\$459,721	\$28,985	\$493,381
TOTALS	\$23,347	\$2,585,671	\$28,985	\$2,665,142

Table 2

**Equivalent Dwelling Unit (EDU) Cost Share Summary
2370 Zone Water System Improvement Project**

		COST SHARE PER EDU (1657.8 Total Estimated EDU's)	
DEVELOPER PROJECTS CONSTRUCTED	COST	Foothill Properties (1009)	Others in the Zone (648.8)
P-6 Pump Station (Actual)	\$1,220,464	\$736	\$736
P-6 to R-13 Pipeline (Actual)	\$212,898	\$128	\$128
R-13 Reservoir (Actual)	\$493,381	\$298	\$298
TOTALS	\$1,926,743	\$1,162	\$1,162

		COST SHARE PER EDU HIGHER ZONES (765 Total Estimated EDU's)	
DEVELOPER PROJECTS CONSTRUCTED	COST		Higher Zone (765 EDU's)
P-6 Pump Station (Actual)	\$628,724		\$822
P-6 to R-13 Pipeline (Actual)	\$109,675		\$143
R-13 Reservoir (Actual)	\$-0-		\$0
TOTALS	\$738,399		\$965

Table 3

APPRECIATION/DEPRECIATION SAMPLE CALCULATION

Refunding Amount \$500,000
Facility Service Life 25 Years
Number of EDU's (estimated) 2700

Year	Quarter	Straight Line Depreciation	*Quarterly Interest Rate	Index	Refunding Amount	Value per EDU
0	1	\$500,000.00	1.5	1.0000	\$500,000.00	\$185.19
	2	\$495,000.00	1.5	1.0150	\$500,000.00	\$185.19
	3	\$490,000.00	1.5	1.0302	\$500,000.00	\$185.19
	4	\$485,000.00	1.5	1.0457	\$500,000.00	\$185.19
1	1	\$480,000.00	1.5	1.0614	\$509,454.50	\$188.69
	2	\$475,000.00	1.5	1.0773	\$511,709.90	\$189.52
	3	\$470,000.00	1.5	1.0934	\$513,918.33	\$190.34
	4	\$465,000.00	1.5	1.1098	\$516,077.88	\$191.14
2	1	\$460,000.00	1.5	1.1265	\$518,186.59	\$191.92
	2	\$455,000.00	1.5	1.1434	\$520,242.44	\$192.68
	3	\$450,000.00	1.5	1.1605	\$522,243.37	\$193.42
	4	\$445,000.00	1.5	1.1779	\$524,187.28	\$194.14
3	1	\$440,000.00	1.5	1.1956	\$526,072.00	\$194.84
	2	\$435,000.00	1.5	1.2136	\$527,895.31	\$195.52
	3	\$430,000.00	1.5	1.2318	\$529,654.96	\$196.17
	4	\$425,000.00	1.5	1.2502	\$531,348.63	\$196.80
4	1	\$420,000.00	1.5	1.2690	\$532,973.93	\$197.40
	2	\$415,000.00	1.5	1.2880	\$534,528.44	\$197.97
	3	\$410,000.00	1.5	1.3073	\$536,009.66	\$198.52
	4	\$405,000.00	1.5	1.3270	\$537,415.05	\$199.04
5	1	\$400,000.00	1.5	1.3469	\$538,742.00	\$199.53
	2	\$395,000.00	1.5	1.3671	\$539,987.84	\$200.00
	3	\$390,000.00	1.5	1.3876	\$541,149.84	\$200.43
	4	\$385,000.00	1.5	1.4084	\$542,225.20	\$200.82

*Appreciation index used for City of Henderson is the Merrill Lynch Bond Index per Ordinance 1495

Appreciation/Depreciation are shown to start immediately however are not effective until year one