

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (hereinafter referred to as the "Settlement Agreement") is made and entered into this 2nd day of October, 2007, by and between the City of Redlands, a municipal corporation and general law city organized under the laws of the State of California ("City") and Redlands Development 102 LLC, a California limited liability company, ("Company"). City and Company are sometimes individually referred to herein as a "Party" and, together, as the Parties.

A. RECITALS

1. Company is the developer of Tract No. 12382 in the City of Redlands.
2. City is the owner of a 24-inch diameter water transmission pipeline commonly known as the "Highline" that delivers water from the Henry Tate surface water treatment plant southerly to the Fifth Avenue Reservoir and the Country Club Reservoir. The Highline is an integral part of City's water transmission system for the higher elevation pressure zones within City's service area.
3. During the course of preparing development requirements for Tract No. 12382, City's Municipal Utilities staff concluded it would be cost effective to coordinate with Company to design and relocate a portion of the Highline, into Wabash Avenue from Sunset Drive to the south of Tract No. 12382, as part of City's overall plan to replace the Highline (hereinafter the "Project").
4. Company proceeded with construction and relocation of the Highline as requested by City for a cost of One Hundred Fifty-Four Thousand Nine Hundred Seventy-Two Dollars (\$154,972).
5. The improvements and relocation of a portion of the Highline undertaken by Company represent a substantial savings to City because such construction was performed concurrently with other utilities, before street paving and improvements, and minimized impacts to citizens.
6. City now wishes to compensate Company for the construction and relocation of the Highline as requested by City.

B. AFFIRMATIVE COVENANTS

Now, therefore, in consideration of the foregoing recitals, all of which are true and correct and incorporated herein by reference, the Parties agree to the following:

1. City shall pay the sum of One Hundred Fifty-Four Thousand Nine Hundred Seventy-Two Dollars (\$154,972) to Company within ten (10) days of the Effective Date of this Settlement Agreement.
2. The Parties shall execute releases as to each other. The releases are more fully set forth in Section "C" below.

C. RELEASES OF CLAIMS

1. In exchange for the consideration set forth in Section "B" above, Company, on behalf of itself and its past, present and future assigns, successors-in-interest, affiliates, and partners hereby releases, relinquishes, waives, discharges, absolves and acquits City, and all past, present and future predecessors, successors, assigns, employees and agents of City, from any and all past, present or future rights, claims, demands, obligations or causes of action for compensatory or punitive damages, equitable relief, costs, losses, expenses and compensation of every kind and nature whatsoever, whether known or unknown, whether past, present or future, whether based in contract, tort, statute or other legal or equitable theory of recovery, which Company has, had or which may later accrue to or be acquired by Company against City arising from or related to the performance of the Project as set forth in Section "A," above.

2. City, on behalf of itself and each of its respective past, present and future assigns, successors-in-interest and affiliates hereby releases, relinquishes, waives, discharges, absolves and acquits Company and all of Company's past, present and future predecessors, successors, assigns, officers, directors, agents and employees, from any and all past, present or future rights, claims, demands, obligations or causes of action for indemnification, contribution, reimbursement, equitable relief, costs, losses, expenses and compensation of every kind and nature whatsoever, whether known or unknown, whether past, present or future, whether based in contract, tort, statute or other legal or equitable theory of recovery, which City has, had, or which may later accrue to or be acquired by City for the amounts paid pursuant to this Settlement Agreement and its acceptance of the Project.

3. Waiver of Civil Code Section 1542 The Parties intend and agree that the foregoing release shall be effective as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, relating to the Project and the Parties each independently and expressly waive any and all rights and benefits conferred upon them by the provisions of section 1542 of the California Civil Code, which reads as follows:

GENERAL RELEASE – CLAIMS EXTINGUISHED

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties hereby acknowledge that the foregoing waiver of the provisions of section 1542 of the California Civil Code was separately bargained for. The Parties expressly agree that the release provisions shall be given full force and effect in accordance with each and all of their express terms and provisions, including those terms and provisions relating to unknown or unsuspected claims, demands and causes of action, if any, to the same extent as those terms and provisions relating to any other claims, demands and causes of action specified above. The Parties to this Settlement Agreement each assume the risk of the subsequent discovery or understanding of any matter, fact or law, which, if now known or understood, would in any respect have affected this Settlement Agreement.

D. REPRESENTATIONS AND WARRANTIES

The Parties to this Settlement Agreement represent and warrant to, and agree with, each other as follows:

1. Except as expressly stated in this Settlement Agreement, neither of the Parties have made any statement or representation to the other Party regarding any fact which is relied upon by such other party entering into this Settlement Agreement. No Party to this Settlement Agreement relies upon any statement, or representation or promise of the other Party, not contained in this Settlement Agreement, in executing this Settlement Agreement or in making the settlement.

2. This Settlement Agreement is the result of a compromise of disputed claims and shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of the Parties herein released. This Settlement Agreement is made solely to avoid the expenses of possible litigation and risks attendant thereto.

3. The Parties represent and warrant to each other that each Party is the sole and lawful owner of all right, title and interest in and to every claim which it purports to release and that each Party will not and has not committed or permitted or agreed to any sale, encumbrance, hypothecation or transfer, whether by operation of law or otherwise, of any claim, right or cause of action to be released, discharged or assigned, or which otherwise would have been affected pursuant to the provisions of this Settlement Agreement.

4. The Parties to this Settlement Agreement have thoroughly investigated the facts related to the Project. The Parties warrant that they freely entered into this Settlement Agreement and are not entering into the Settlement Agreement because of any duress or fear and are fully authorized to enter into the terms and conditions set forth herein, to execute the Settlement Agreement, and to legally bind the Parties. The Parties hereto further warrant that they have read this Settlement Agreement, have consulted with their attorneys and understand and agree to the provisions herein.

E. ADDITIONAL PROVISIONS

1. **Drafting Agreement.** The Parties to this Settlement Agreement shall be deemed to have cooperated in the negotiation and drafting of this Settlement Agreement, such that no ambiguity in this Settlement Agreement may be construed against any Party.

2. **Successors, Assigns, and Beneficiaries.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties, and their respective employees, agents, successors, assigns and insurance carriers.

3. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement between the Parties as to the matters contained herein and it is expressly understood and agreed that this Settlement Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed and authorized by each of the Parties. The Parties hereby agree and acknowledge that they will not claim at any time or place that this Settlement Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

4. **Applicable Law.** This Settlement Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by and construed and enforced in accordance with the laws of the State of California.

5. **Authority.** Each person and entity executing this Settlement Agreement on behalf of any other person or entity does hereby personally represent and warrant to the other Party that he, she or it has the authority to execute this Settlement Agreement on behalf of, and fully bind, such purported principal.

6. **Anti-Waiver.** The failure of any Party to enforce any of its rights arising by reason of any breach of covenant on the part of the other Party will not constitute a waiver of such breach. No custom or practice which may arise between the Parties in the course of administering this Settlement Agreement will be construed to waive any Party's right to (i) insist upon the performance by the other Party of any covenant in this Settlement Agreement or (ii) exercise any rights given it on the account of any breach of such covenant. A waiver of a particular breach will not be deemed to be a waiver of the same or any other subsequent breach.

7. Independent Advice of Counsel. The Parties to this Settlement Agreement represent and declare that in executing this Settlement Agreement they rely solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof, and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by any representations, statements or omissions pertaining to any of the foregoing matters by any party or by any persons representing any Party to this Settlement Agreement.

8. Survival. All representations and agreements set forth in this Settlement Agreement shall be deemed continuing and shall survive the effective date of this Settlement Agreement.

9. Further Assurances. The Parties agree to execute such other documents and to take such other actions as may reasonably be necessary to further the purpose of this Settlement Agreement.

10. Headings. The descriptive headings of the several articles and paragraphs contained in this Settlement Agreement are inserted for convenience only and shall not control or affect the meaning of construction of any of the provisions hereof.

11. Attorneys' Fees. If either Party to this Agreement incurs costs or attorney fees to enforce any of the provisions of this Agreement, the prevailing Party in any such action, including any lawsuit or arbitration, shall be entitled to recover all costs and its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.

Redlands Development 102, LLC

DATED: _____

By: *[Signature]* *JM*
Title: President of the ultimate
Managing Member

DATED: October 2, 2007

CITY OF REDLANDS

By: *[Signature]*
Title: Jon Harrison, Mayor

ATTEST: *[Signature]*
Lorrie Poyzer, City Clerk