

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Engineering
AGENDA DATE: January 22, 2008

CONTACT PERSON/PHONE: R. Alan Shubert, City Engineer (X4423)
DISTRICT (S) AFFECTED: 8
PROJECT NAME/SOLICITATION NO. Resler Canyon Erosion Control Improvements, 2006-173

SUBJECT:

That a change order be issued for Contract Number 2006-173, Resler Canyon Erosion Control Improvements Re-bid, to amend the project scope to include work at Location Number 1, Alto Mesa Drive and Mesa Street. The contract amount will not increase.

BACKGROUND / DISCUSSION:

The Resler Canyon Erosion Control Improvements project was created and funded as a result of a legal settlement agreement. This project assists in the preservation of a cultural resource by controlling some of the water runoff entering Resler Canyon. However, the floods that occurred in El Paso in August 2006 made executing the project as designed in 2005 impossible. Therefore, the project engineer has been working with the existing conditions to ensure that the canyon's erosion issues were repaired in accordance with the project scope. As these erosion issues were addressed significant cost savings were realized at sites 2, 4, & 7. This cost savings freed up funding that will allow more work to be done at site number 1 which was not awarded originally. This approach has been approved by the Frontera Land Alliance and the funding expended will not exceed the maximum amount agreed to in the settlement.

PRIOR COUNCIL ACTION:

Legal agreement reached with Frontera Land Alliance on November 3, 2005.
Award of the project to CK Construction on September 26, 2006.

AMOUNT AND SOURCE OF FUNDING:

This project is funded by, the FY03 Certificates of Obligation and internal capital funding.
Funding is provided in 31260001-PFC06001-60600-508027.

BOARD / COMMISSION ACTION:

N/A

CITY CLERK DEPT.
08 JAN 14 09 41:10

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Financial Services, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO

That a change order be issued for Contract Number 2006-173, Resler Canyon Erosion Control Improvements Re-bid, to amend the project scope to include work at Location Number 1, Alto Mesa Drive and Mesa Street. The contract amount will not increase.

ADOPTED THIS _____ DAY OF _____, 2008.

THE CITY OF EL PASO

John F. Cook, Mayor

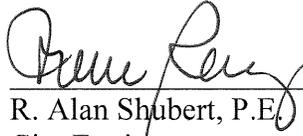
ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Lupe Cuellar
Assistant City Attorney

for 

R. Alan Shubert, P.E.
City Engineer

**CITY OF EL PASO FINANCIAL SERVICES DEPARTMENT
CONTRACT CHANGE ORDER**

AS

DATE: 1/8/2008
 PROJECT: RESLER CANYON EROSION CONTROL IMPROVEMENTS RE-BID
 TO (Contractor): CK CONSTRUCTION, INC.

CHANGE ORDER NO.: 5
 SCOPE CHANGE CONSTRUCTION CHANGE
 BID NO.: 2006-173
 DEPT. ID#: 31260001
 PROJ/GRANT/USER: PFC06001
 FUND: 60600
 ACCOUNT: 508027
 PO NO.: 2007001104

CITY CLERK DEPT.
08 JAN 14 PM 2:08

You are directed to make the following changes to this Contract:

Reduction of bid items on sites 2, 4 & 7 and additional work requested by Frontera Alliance for site no. 1.

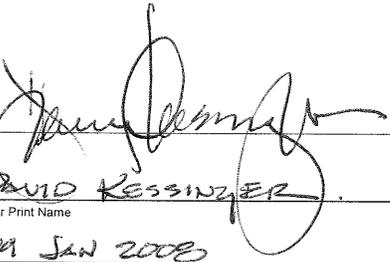
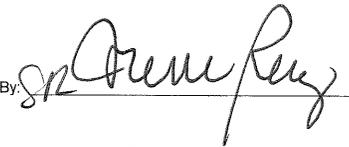
CHANGE ORDER AMOUNT : 1,660.50

Original Contract Sum	357,790.00
Net Change by previous Change Orders	148,068.50
Net Change by previous Construction Quantity Notices	(160,559.50)
Contract Sum prior to this Change Order	345,299.00
Contract Sum will be (increased) (decreased) (unchanged)	By this Change Order 1,660.50
New Contract Sum, including this Change Order	346,959.50
Total Net Value of Change Orders To Date	149,729.00
Total Net Value of Construction Quantity Notices to Date	(160,559.50)

Contract Time will be (increased) (decreased) (unchanged)	BY (60) DAYS*	Original Contract Days:	42
		Days by Change Order:	137
		Total Days:	179

* Subject to the terms of the Contract, GENERAL CONDITIONS, SECTION 2.5

Net Change Order Percentage (Not to exceed 25%) -3.03%

CONTRACTOR		CITY OF EL PASO	
CK CONSTRUCTION, INC.		CITY COUNCIL ACTION REQUIRED: <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes _____ Date Approved	
By: 		By: 	
DAVID KESSINGER		R. Alan Shubert, P.E.	
Type or Print Name		City Engineer	
08 JAN 2008		1/14/08	
Date		Date	

**CITY OF EL PASO
REQUEST FOR CHANGE ORDER**

CITY CLERK DEPT.

08 JAN 14 PM 2:08

TO: Contract Compliance

FROM: Robert Shadrick

FIRM: Engineering Department

PHONE No.: X4161

DATE: January 04, 2008

PROJECT: Resler Canyon Erosion Control

BID No: 2006-173

CHANGE ORDER No: 5

TYPE: Construction

CHANGE IN CONTRACT TIME: 60 Days

AMOUNT: \$1,660.50.

ACTION TO P.O.: Increase

JUSTIFICATION:

Reduction of bid items on sites 2, 4 & 7 and additional work requested by Frontera Alliance for site no. 1.

Attachments: Contractor's Cost Proposal

RECEIVED

JAN 8 2008

**ENGINEERING DEPARTMENT
CONTRACT COMPLIANCE**

RESLER CANYON EROSION CONTROL
Bid No. 2006-173
Change Order # 5 Part 1

CITY CLERK DEPT.
08 JAN 14 PM 2:08

Reduce the following bid items.

Location 2.

1. Reduce bid item no. 2. Furnish & install 6-inch concrete curb & gutter (includes saw-cut, excavation, backfill & compact sub grade) (complete in place), 30 linear feet @ \$20.00, (\$600.00).
2. Reduce bid item no. 3. Furnish & install 2 sack cement stabilized backfill (complete in place), 217 cubic yards @ \$95.00, (\$20,615.00).
3. Reduce bid item no. 4. Furnish & install 6"-12" loose rip-rap (complete in place), 9 tons @ \$85.00, (\$765.00).
4. Reduce bid item no. 5. Furnish & install 1' building stone (complete in place), 31 tons @ \$90.00, (\$2,790.00).
5. Reduce bid item no. 9. Furnish & install new fill (complete in place), 964 cubic yards @ \$17.00, (\$16,388.00).

Total location 2: (\$41,158.00)

Location 4.

1. Reduce bid item no. 5. Furnish & install new fill, (complete in place), 794 cubic yards @ \$17.00, (\$13,498.00).
2. Reduce bid item no. 10. Over excavation removal and export, 1,133 cubic yards @ \$18.00 per cubic yard (loose volume), (\$20,394.00).
3. Reduce bid item no. 11. Site cut and fill (existing material), 58.03 cubic yards @ \$13.20 per cubic yard, (\$766.00).

Total location 4: (\$34,658.00)

Location 7.

1. Reduce bid item no. 1. Clear and grub, 1 lump sum @ (\$1,000.00).
2. Reduce bid item no. 2. Remove & replace dead end sign (complete in place), 1 each @ \$1,100.00, (\$1,100.00).
3. Reduce bid item no. 3. Remove and replace guard rail, including footings, 29.4737 linear feet @ \$95.00, (\$2,800.00).
4. Reduce bid item no. 5. Furnish and install new fill (complete in place), 50 cubic yards @ \$17.00, (\$850.00).
5. Reduce bid item no. 7. Furnish and install gabions 3'x 3' x 6' galvanized wire with 3" to 6" rock installed (complete in place, including in place, 6oz. non-woven geotextile fabric), 101.617 each @ \$265.00, (\$26,928.50).
6. Reduce bid item no. 8. Furnish and install silt fence for erosion control, 110 linear feet @ \$17.00, (\$1,870.00).

7. Reduce bid item no. 16. Asphalt patch to include compaction of sub grade, twelve inches of two sack mix and two inches of type c HMAC, 3.55 square yards @ \$200.00, (\$710.00).

Total location 7: (\$35,258.50)

Total location 2, 4 & 7 (\$111,074.50)

Change Order # 5 Part 2

Frontera Alliance requested that improvements be made to site no. 1 using bid item money not used on sites 2, 4 & 7. Improvements include site access, clearing of site, grading of slopes, stabilization & installation of a concrete flume. Total cost for this work is one lump sum of \$112,735.00. Attached is a copy of the cost proposal submitted by CK Construction.

CITY CLERK DEPT.
08 JAN 14 PM 2:08



CITY CLERK DEPT.
08 JAN 14 PM 2:08

January 2, 2008

City Of El Paso
2 Civic Center Plaza
El Paso, Texas 79901

Post-it* Fax Note	7671	Date	# of pages ▶
To	SAM RODRIGUEZ	From	D KESSINGER
Co./Dept	CITY - ENGRNG	Co.	CK CONSTR.
Phone #	541-4200	Phone #	225-0062
Fax #	541-4016	Fax #	351-1908

Attention: Mr. Sam Rodriguez

Reference: Resler Canyon Erosion Control Improvements
Site No.1 Flume
Contract No. 2006-173

Dear Sam:

Attached is our revised proposal for the drainage structure proposed for the Site No. 1 (Alta Mesa Head Wall) project.

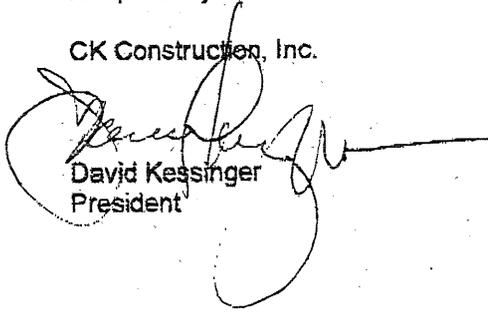
- 1.) We have included the clearing, grubbing and removal of the trees and vegetation at the site, extending a twelve foot wide access road from Site No. 2 (Alta Mesa drainage flume), excavation at the spillway site and placement of rock and grout, concrete flume, thickened rock retaining walls, tree wells and basin fill at Site No. 1 in accordance with the hand sketches dated October 16, 2007 and the topographic plans and sections provided by the City on October 1, 2007 (Clarified 11/16/07 - See attached).

As discussed, this proposal is a lump sum amount of \$112,735.00 with distribution of unit rate quantities from other sites to cover associated costs. The revision includes only 60 of the large base boulders in the basin, two rock masonry retained step walls (in lieu of three), 100 linear feet of 8-inch tall concrete curb at parking above and adding 18-inch deep by 12-inch wide concrete turn down slabs on the sloped sides of the concrete flume in accordance with our field review of December 21, 2007. We anticipate the attached scope of work will require no more than sixty (60) calendar days to complete from notice to proceed. We request the contract period be adjusted to include the period between design and the proposed new construction.

Please advise us to proceed with a "Notice to Proceed" and signed agreement.

Respectfully submitted:

CK Construction, Inc.



David Kessinger
President





CONSTRUCTION

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08 JAN 14 PM 2:08

January 2, 2008
Resler Canyon Drainage
Improvements Site No. 1
Proposal (revised)

Site No. 1 – Alto Mesa - Head Wall

Excavation and Road Access Extension (Reduced Cost)	\$ 13,000.00
Clear & Grubb (trim trees and remove debris) (Reduced Cost)	\$ 8,000.00
Excavation and Grading at Basin Slopes	\$ 4,000.00
1' to 2' Rock Fill at Basin (Approx. 16 x 60, 132 tons) (Reduced Cost)	\$ 8,560.00
3' to 4' Square (Angular) Boulders at Basin (60 Ea.) (Reduced Quantity)	\$ 12,000.00
Concrete Flume with 24"sidewalls & 18"turndowns (Increased Cost)	\$ 24,246.00
Grouted Rock Foundations at Side of Basin (Approx. (40+60) x 6 x 2.5 avg. width, 1500CF)	\$ 13,500.00
Grouted Rock Retaining Steps (Approx. 80x1x4 + 30x2x6.5, 710 CF) (Reduced Quantity)	\$ 5,929.00
Grouted Stepped Rock Paving at Flume Side (Approx. 45 x 15 x 1.5', 1012.5 CF)	\$ 9,100.00
Tree Well at Concrete Flume (1 LS)	\$ 3,800.00
Tree Well at Retaining Wall Section at Basin (1 LS)	\$ 3,400.00
Place Rubble between Rock Step Walls (4x6.6x70) 68 CY (Reduced Quantity)	\$ 1,700.00
Fine Grading above Stepped Rock Walls	\$ 4,000.00
Add Approximately 100 LF of Concrete Curb at parking above	\$ 1,500.00

Subtotal Site No. 1 (revised)

\$112,735.00

Proposal Lump Sum Total**\$ 112,735.00**

Construction Phase Steps

1. Build access road to site from Site No. 2
2. Trim trees and remove debris
3. Fill basin bottom with 1' to 2' boulders
4. Form, place, finish concrete flume
5. Place stair step rock to left side of concrete flume
6. Construct tree well to upper right side of concrete flume
7. Excavate benches and construct curved retaining walls right of basin
8. Place left side of sloped face retaining rock foundation walls at basin
9. Place right side of sloped face retaining rock foundation walls at basin
10. Construct tree well at upper right side of basin
11. Place large 3' to 4' rock boulders on floor of basin
12. Backfill rubble between curved rock walls
13. Fine grade canyon to left and above curved rock walls and basin

Resler Canyon Erosion Control Improvements-Rebid Solicitation No. 2006-173

Scope of Work

The Resler Canyon Erosion Control Improvements consist of providing all labor, equipment, material and incidentals.

The demolition work for all sites consists of, but is not limited, to removing and disposing off-site, clearing and grubbing.

Location 1 (Alto Mesa Drive & Mesa Street)

The project will consist of removal of debris and vegetation along a portion of the arroyo and at the existing concrete outlet structure. The proposed work will include excavation and then placement of erosion control material consisting of boulders and loose rock riprap, per the plans.

Location 2 (Parking Area at 200 Alto Mesa Drive)

The project will consist of repairs to an existing concrete spillway at 200 Alto Mesa Drive. Repairs will consist of injecting cement stabilized backfill under the existing concrete spillwall, as well as adding concrete curb at the upstream side of the flume adjacent to the parking area, and adding boulders with cement stabilized backfill along both sides and bottom of existing concrete spillway. Improvements will also include loose rock rip rap, as per the plans.

Location 3 (300 Alto Mesa Drive)

The project will consist of anchoring metal straps to an existing exposed corrugated metal pipe and installing loose rock rip rap at the outlet structure, as per the plans.

Location 4 (Concrete Drainage Flume at Pizarro Cul-De-Sac)

The project will consist of placing rock rip rap at end of an existing concrete flume to control erosion problems at end of the flume located at the end of the Pizarro Cul-De-Sac.

Location 5 (Pizarro Drive)

The project will consist of removing an existing corrugated metal pipe storm sewer system and replacing it with a new eighteen-inch reinforced concrete pipe, along with an inlet. Installation of rock rip rap, and curb will also be included.

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Location 6 (Marcena Street)

The project will consist of removal and reinstallation of guardrail and dead end sign and installing new gabions at end of Marcena Street, as per the plans.

Location 7 (El Cajon Drive)

The project will include the construction of a new concrete flume, as well as placing gabions. Improvements also include the installation of guardrail and dead end sign on El Cajon Drive.

The owner has the right to choose none, one, or more locations, but only one contractor shall be selected for all work.

NOTE. Contractor shall utilize existing access only to each site. If no existing access exists, the equipment and material shall be transported by crane, or in a method approved in writing by the Director of Engineering.

There shall be no additional damage to the arroyo.

The project will be accomplished as shown on the plans or as approved by the City of El Paso Engineering Department. All work shall begin at issuance of written Notice to Proceed, and must be completed within the indicated time frame.

- The contractor shall include an approved traffic control plan for construction where required.
- The Contractor acknowledges that this Project consists of Locations and the Contractor agrees that each Location work must be completed and accepted by the Owner before a written Notice to Proceed is issued for the next Location of the Project.
- Mobilization should be consider as part of the base bids

Prior to commencement of any work, the contractor should submit and obtain approval from El Paso Engineering Department for the Sequence of Construction, Schedule of Work, Traffic Control Plan, and Haul/Waste Route to an approve disposal site. The contractor shall provide written approved documentation from the owner or operator of the waste site.

The descriptions of the scopes of work, as shown above, are only a general overview Contractor shall refer to the project plans and specifications for further information.

This is a Unit Price Project.

CITY CLERK DEPT.

08 JAN 14 PM 2:08

MOTION
SEPTEMBER 26, 2006

PFC06001
60600
31260001

Motion made by Representative O'Rourke, seconded by Representative Byrd, and carried to **AWARD** Bid Solicitation No. 2006-173, Resler Canyon Erosion Control Improvements Re-bid

508024

Award to: CK Construction Inc.
El Paso, Texas
Location: Alto Mesa Dr., Pizzaro Dr., and Marcena St.
Department: N/A
Account No.: PFC06001/60600/31260001/508027 and PFC06001/27503/04102010/508027
Funding Source: FY 2003 Certificates of Obligation and Internal Capital Funding
Item(s): Location 4: Concrete Drainage Flume at Pizarro Cul-DeSac \$14,800.00
Location 7: El Cajon Drive \$282,915.00
Location 2: Parking Area at 200 Alto Mesa Dr. \$60,075.00

31000

Maximum Amount of Award: \$357,790.00
Estimated Completion Date: Mid-December 2006
District(s): 8

The Engineering Department, in consultation with Frontera Land Alliance, recommends the award of Contract No. 2006-173, Resler Canyon Erosion Control Improvements Re-bid, to CK Construction, Inc., the low responsible, responsive bidder. This unit priced contract is for the total amount of \$357,790.00. The Resler Canyon Erosion Control Improvements project was created and funded as a result of a legal agreement as documented by a letter of understanding, dated December 20, 2005, wherein the City agreed to pay \$347,500.00 for repair maintenance and/or stabilization projects located in or appurtenant to Resler Canyon. The City authorizes the additional expenditure of \$10,290.00.

It is requested that the City Manager of the City of El Paso be authorized to execute contracts and any other necessary documents relating to this Solicitation which are necessary to carry out the intent of this award, to include working with Frontera Land Alliance to establish mutually agreed routes and filing of such agreed routes with the Real Property Records of the El Paso County, Texas.

Work under the unit price component is only an estimated value and will be ordered, performed, invoiced, and paid by measured quantity. The actual cost of the unit price component will be the sum total of unit prices at the end of the contract term. In no event shall the total contract amount paid under this contract exceed \$357,790.00 without further authorization of City Council.

[Engineering Department, Rick Conner, (915) 541-4423]

AYES: Representatives Lilly, Byrd, Presi Ortega, Jr., Steve Ortega, and O'Rourke
NAYS: Representatives Lozano, Castro, and Holguin

Richarda Duffy Momsen, City Clerk

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THE FRONTERA LAND ALLIANCE

*A private, non-profit organization dedicated to preserving significant lands
that maintain and enhance the natural environment, wildlife and cultural heritage
of the Northern Chihuahuan Desert Region.*



Mr. Rick Corner
Director of Engineering
City of El Paso
2 Civic Center Plaza
El Paso, TX 79901

VIA HAND DELIVERY

8 August 2006

RE: Resler Canyon Erosion Control Improvements – Rebid, Bid No. 2006-173

Dear Rick,

I'd like to update you on the condition of Resler Canyon following the flood events of last week and the bearing this may have on the above referenced project.

On 3 August 2006 members of Frontera's board of directors conducted a site inspection of the canyon and examined each location listed in the City's RFP. Based on this examination we have re-assessed priorities for repair work and therefore request that you disregard the listing given in my letter to you of 26 July 2006. Our new selection in order of descending priority is now:

- Location No. 4
- Location No. 7
- Location No. 2

Severe erosion at the alley leading off the Pizarro Road cul-de-sac (Location No. 4) has created, in our opinion, an imminent public safety hazard and threatens to undermine structures on adjacent properties. For this reason we feel it is the most pressing concern.

We understand the amount bid for work at the pour-off from El Cajon Drive (Location No. 7) represents the lion's share of the \$347,500 committed by the City for repairs at Resler Canyon. However, we estimate that as a result of last week's storms the distance from the

Rick Conner
8 August 2006
page two.

CITY CLERK DEPT.
08 JAN 14 PM 2:09

barrier at the end of El Cajon to the rim of the canyon has decreased by approximately 10 feet and the cut into the canyon wall widened by approximately 20 to 30 feet. These dramatic changes have underscored the need to retard excessive erosion at this site. If at all possible, we would favor a revised approach that would direct water away from the canyon to avoid the unnatural concentration of runoff from this street.

Frontera's manager of the arroyo, Scott Cutler, reported these items to the hotline that was established by the City after the flooding events. Therefore, we hope these sites will be included in damage reports forwarded to state and federal officials determining financial aid for the cleanup and that additional funds can be added to the \$347,500 to help pay for the increased repair costs resulting from the flooding.

We know that this is a very busy time for you and the City in assessing damage throughout town and guiding recovery efforts. Our only request is that you keep us informed when attention turns to Resler Canyon and let us know if we can assist in any way. Thanks again for all your help.

Sincerely,



Maria Trunk
President

cc: Scott Cutler

COPY



JOHN R. COOK
MAYOR

JOYCE WILSON
City Manager

CHARLIE McNABB
City Attorney

ANN MORGAN LILLY, DISTRICT 1
SUSANNAH M. BYRD, DISTRICT 2
JOSE ALEXANDRO LOZANO, DISTRICT 3
MELINA CASTRO, DISTRICT 4
PRESI ORTEGA, DISTRICT 5
EDDIE HOLGUIN, JR., DISTRICT 6
STEVIE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

OFFICE OF THE CITY ATTORNEY

December 20, 2005

The Frontera Land Alliance
Attn: Maria Trunk, President
2626 N. Mesa, Suite 258
El Paso, Texas 79902

Re: Resler Canyon Repair Expenditures

Dear Ms. Trunk:

Pursuant to our agreement reached on November 3, 2005, this letter of understanding confirms that:

A. The City of El Paso ("City") is aware that the purchase transaction between The Frontera Land Alliance, a Texas nonprofit corporation ("Frontera") and Resler Interstate 10 Development Co., Inc., a Texas corporation and Hunt Building Corporation, a Delaware corporation (collectively the "Hunt Entities") with respect to the 91 acres known as Resler Canyon must close on or before December 21, 2005, and that this letter of understanding is a condition precedent to such closing; and

B. The City has agreed and is fully committed to contribute the sum of \$347,500 in City funds for repair, maintenance and/or stabilization projects (individually, a "Project" and collectively, the "Projects") located in or appurtenant to Resler Canyon, which consists of the 91 acres described on the attached Exhibits A-1 and A-2, all located in the City of El Paso, El Paso County, Texas. The Projects are generally as described on the attached Exhibit G; and

C. ~~The City Engineering Department, under the leadership and direction of the City Engineer, or his designee, will provide all usual and customary engineering and design work together with cost estimates that are necessary for all of the Projects on Exhibit G to be put out for offer or bid to private contractors by the City on an item-by-item basis, all at no cost to Frontera, and~~

D. ~~The City will then provide such engineering and design work and cost estimates on all of the Projects on Exhibit G to representatives of Frontera, who will within 10 days of~~

El Paso

receipt of same: (i) review the various Projects to select and prioritize the work at the sole discretion of Frontera, with the cost of the selected and prioritized work not to exceed the \$347,500 contributed by the City; and (ii) notify the City of the particular Projects that Frontera wants the City to bid out and have performed by private contractors; and

E. The City will then use reasonable diligence to request offers or bids from private contractors to perform the work selected by Frontera by putting these Projects out for offer or bid on an item-by-item basis in accordance with routine and normal City bid work procedures. Upon receipt of offers or bids, and after the City has determined which bidders are responsible and responsive, the City will review the offers or bids with representatives of Frontera, then proceed to award City contracts for each of the Projects selected by Frontera; and

F. Before the work on any Project commences, the City Engineering Department will designate the impact areas for each work site within or adjacent to Resler Canyon and will consult with representatives of Frontera to allow them to comment on such designations. The Engineering Department will make every effort to minimize any environmental impact as a result of the work to be performed, and will notify representatives of Frontera at least 20 days before the work begins in order that they may be aware of the commencement of the work and coordinate as needed with the bidders doing the work. As each Project proceeds, the City Engineering Department will supervise and inspect the work related thereto by the contractors in accordance with its usual and routine procedures for such matters.

Frontera understands that some or all of the Projects described on Exhibit G will change the natural landscape of Resler Canyon where the work is performed, and that the process described in this letter of understanding will likely take between 9 and 12 months to complete.

The City hereby commits to use its best efforts to fully perform all of these actions in a timely manner according to the following schedule:

1. Complete all engineering and design work and cost estimates and deliver same to Frontera for selection and prioritization at its sole discretion by a date not later than four (4) months from the closing of Frontera's purchase of Resler Canyon;

2. Complete the contractor offer/bidding and contract award process by a date not later than six (6) months from the time that Frontera has returned the final prioritized list of Projects;

3. Supervise the performance by the successful bidders/contractors of the work on each Project selected by Frontera, and make reasonable efforts to facilitate completion of all such work according to all City plans and specifications, in a timely manner.

4. Nothing in this letter shall require that the City be responsible for any impact to time schedules or delay due to unforeseen conditions or circumstances beyond the control of the City.

5. The City commits to exercise reasonable diligence to complete all the Projects selected by Frontera in a timely manner but shall incur no obligation or liability in the event the Projects are delayed for any reason whatsoever.

The parties agree and understand that the total monetary contribution to the Projects in question is limited to the sum of \$347,500 only. The City shall incur no other liability whatsoever in connection with the Projects, except for the specific repair and maintenance of City facilities and City infrastructure as set forth below and to honor the City's obligations related to access and revegetation as set forth in the Non-Exclusive Easement by and between the Hunt Entities and the City and to which Frontera is entitled as a successor owner of Resler Canyon (the "Easement"). The parties agree and acknowledge that the City shall incur no liability in connection with the engineering services or supervision of the construction of the Projects, provided, however, the City will instruct all contractors to jointly assign any material and workmanship warranties to Frontera and the City with respect to each Project. In addition, to the extent that the City requires the contractors to carry liability insurance and/or provide payment and performance bonds on any one or more of the Projects, the City will require that each policy of insurance and each bond name Frontera as an additional insured or beneficiary of the bond, as applicable. To the extent that the Projects completed with the funds contributed by the City do not relate to any City facility or City infrastructure, the parties intend that the City will have no further obligation to correct or maintain such Projects and will incur no liability in connection with them whatsoever. Any Project or portion of a Project that is not related to a City facility or City infrastructure and that is located on the land owned by Frontera and any future maintenance or repairs required thereto, shall become the sole responsibility of Frontera. Notwithstanding the foregoing, maintenance of any City facility or infrastructure located in or adjacent to Resler Canyon shall continue to be the responsibility of the City in the future and shall be conducted solely in the discretion of the City in compliance with the City's maintenance policies applicable to the maintenance of City facilities in general, provided, however, that with respect to such maintenance, the City will notify representatives of Frontera at least 20 days before maintenance work begins in order that they may be aware of the commencement of the work and coordinate as needed with the City and any contractors doing the work as required under the Easement.

Please call me if you have any questions about these matters.

Sincerely,



Charlie McNabb
City Attorney

cc: Mr. Frank Ainsa
Mr. Bernard Felsen

