



Agenda Report

File #: 19-0241

AGENDA REPORT REQUEST FOR CITY COUNCIL ACTION

DATE: 3/20/2019

TO: Honorable Mayor and City Council Members

FROM: Public Works Department

SUBJECT:

City Council consideration of a Grading Agreement for 4140 Temescal Canyon Road - Dos Lagos Office LLC, a California Limited Liability Company.

RECOMMENDED ACTION:

That the City Council authorize the Mayor to execute a Grading Agreement for precise grading between the City and Dos Lagos Office LLC, a California Limited Liability Company.

ANALYSIS:

Dos Lagos Office, LLC is the owner of 4140 Temescal Canyon Road, one of four parcels within Parcel Map 34890 (PM34890), Lakeshore Plaza originally approved by Council on August 16, 2006, as shown on Exhibit "A." The owner is proposing to construct a 153,541 square-foot commercial office building on Parcel 1 of PM34890, in the Business Park Zone.

In compliance with Grading Ordinance No. 2568, the owner will enter into a Grading Agreement to secure the precise grading operations, which include drainage improvements. A cash deposit has been posted to guarantee grading activities and erosion control. The grading design conforms to the Grading Ordinance and is consistent with sound engineering standards and practices. The elevation design minimizes significant height and slope differentials from surrounding properties, while maintaining the City's obligation to protect the health and safety of citizens and property.

The owner has completed all public improvements related to PM34890, in accordance with the Conditions of Approval, approved by Planning Commission on July 24, 2006. Said improvements were accepted by the City on March 19, 2008. Securities have been posted as detailed below:

PWPR2018-0036	Faithful Performance		Erosion Control	
	Security No.	Amount	Security No.	Amount
Precise Grading& Drainage Improvements	Cash Deposit (Receipt No. R12487)	\$ 30,824.54	Cash Deposit (Receipt No. R12486)	\$ 2,500.00

COMMITTEE ACTION:

Not applicable.

STRATEGIC PLAN:

Not applicable.

FISCAL IMPACT:

All applicable fees have been paid by the developer as follows:

	Fee Type	Amount
4140 Temescal Canyon Road Precise Grading and Erosion Control Revision (1 sheet) - PWPR2018-0035	Plan Check	\$1,365.00
4140 Temescal Canyon Road Precise Grading and Erosion Control Revision (4 sheets) - PWPR2018-0036	Plan Check	\$5,460.00

ENVIRONMENTAL ANALYSIS:

This action is exempt from further review under the California Environmental Quality Act (CEQA), because the Dos Lagos Specific Plan was evaluated in an Environmental Impact Report that was certified by the City Council on June 21, 2000. Parcel Map 34890 involved the subdivision of 25.22 acres into four condominium parcels that complies with the Business Park land use designation approved for the project area in the Specific Plan. Additionally, this action is exempt pursuant to Section 15061(b)(3) of the Guidelines for CEQA, which states that a project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This action merely approves agreements that provide security to guarantee completion of grading improvements that are required in connection with a ministerial permit, and there is no possibility that approving these agreements will have a significant effect on the environment. Therefore, no environmental analysis is required.

PREPARED BY: MICHELE HINDERSINN, P.E., SENIOR CIVIL ENGINEER

REVIEWED BY: TOM KOPER, P.E., ASSISTANT PUBLIC WORKS DIRECTOR

REVIEWED BY: NELSON D. NELSON, P.E., PUBLIC WORKS DIRECTOR

File #: 19-0241

REVIEWED BY: KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

SUBMITTED BY: MICHELE NISSEN, ACTING CITY MANAGER

Attachments:

1. Exhibit "A" - Location Map
2. Grading Agreement

Owner:

Dos Lagos Office, LLC
4160 Temescal Canyon Road, Corona, CA 92883

Civil Engineer:

Hunsaker & Associates
3 Hughes Irvine, CA 92618

**AGREEMENT FOR ROUGH GRADING, EROSION CONTROL, AND DRAINAGE
IMPROVEMENTS FOR 4140 TEMESCAL CANYON ROAD – (LAKESHORE PLAZA) –
DWG. # 06-098R – (PWPR2018-0036)**

This Agreement is entered into as of this **20th day of March, 2019**, by and between the **City of Corona**, a municipal corporation (hereinafter referred to as "City") and **Dos Lagos Office, LLC**, a **California limited liability company**, with its principal offices located at, **4160 Temescal Canyon Road, Corona, CA 92883**, (hereinafter referred to as "Developer").

WITNESSETH:

FIRST: Developer, for and in consideration of the approval by the City of the final map of that certain land division, or that certain other land development project, known as **4140 Temescal Canyon Road** (hereinafter referred to as "Project") has submitted to the City for its approval grading, erosion control and drainage plans (hereinafter referred to as "Plans") completed in accordance with Chapter 15.36 of the City of Corona Municipal Code or as required by conditions of approval for Project. Developer desires to commence grading, erosion control and drainage improvements an estimate of which is listed in "Exhibit A" attached hereto and made a part hereof (hereinafter referred to as the "Grading Work") The Grading Work listed in Exhibit "A" is understood to be only a general designation of the work and improvements to be done, and not a binding description thereof. All work shall be done and completed as shown on approved Plans. If during the course of Grading Work it is determined that alterations from the approved Plans are necessary, the Developer shall undertake such design and construction changes as may be reasonably required by City at Developers own expense.

SECOND: Developer and City desire to enter into this Agreement for the completion of the Grading Work and the furnishing of security for the performance of this Agreement in accordance with the City Ordinances and the conditions of approval for Project.

THIRD: Upon the execution of this Agreement, Developer shall provide City with a surety bond in the amount of **Thirty Thousand Eight Hundred Twenty-Four Dollars and Fifty-Four Cents (\$30,824.54)** to guarantee the faithful performance of all of the provisions of this Agreement. The surety shall have a current A.M. Best's rating of no less than "A", shall be licensed to do business in California, and shall be satisfactory to the City. Upon request of the City, the amount of the bond shall be subject to adjustment at the sole and absolute discretion of the City if the estimated cost of the Grading Work changes. As part of the obligation secured by the surety and in addition to the face amount of the bond, the surety shall also secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by City in enforcing the obligations of this Agreement. These expenses, fees and costs shall be taxed as costs and included in any judgment rendered. The surety stipulates and agrees that no change, extension of time, alteration or addition to the terms of this Agreement, the Grading Work, or the plans shall in any way affect its obligation on the bond. In addition, the surety waives notice of any change, extension of time, alteration or addition to the terms of this Agreement, the Grading Work, or the plans.

FOURTH: Developer shall complete or have completed at its own cost and expense all Grading Work and other associated improvements required by the City as part of the approval of Project within 18 months from the date of this agreement. The City may, either before or after the expiration of the time provided herein and in its sole and absolute discretion, provide Developer with additional time within which to complete the Grading Work and Improvements. It is understood that by providing security for this Agreement, Developer's surety consents in advance to any extension of time as may be given by City to Developer, and waives any and all right to notice of such extension(s). The granting of an extension of time by City shall constitute a waiver by Developer and its surety of all defense of laches, estoppels, statutes of limitations, and other

limitations of action in any action or proceeding filed by City following the date on which the Grading Work was to have been completed hereunder.

FIFTH: Developer and its contractors, if any, shall perform all work necessary to complete the Grading Work under this Agreement in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

SIXTH: If Grading Work or construction of any Improvements has commenced prior to execution of this Agreement, Developer shall warranty that the Grading Work and Improvements is in compliance with the approved Plans and with this Agreement. If found not to be in compliance with the approved Plans or this Agreement, Developer shall remove and repair at Developers sole expense such Grading Work and Improvements to the satisfaction of the City.

SEVENTH: Upon default of any obligation hereunder, and at any time after any such default, City may make written demand upon Developer or its surety, or both, to immediately remedy the default or complete the Grading Work and Improvements. If the required work is not substantially commenced within ten (10) days of such demand, or if it is not thereafter diligently prosecuted to a completion acceptable to City within the time frame contained in the demand, City may then complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required. All such work or remedial activity shall be at the sole and absolute expense and obligation of Developer and its surety, without the necessity of giving any further notice to Developer or surety. City's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the required Grading Work and Improvements at the time of City's demand for performance. In the event City elects to complete or arrange for completion of the remaining work and improvements, City may require all work by Developer or its surety to cease in order to permit adequate coordination by City.

EIGHTH: City shall not be responsible or liable for the maintenance or care of any Grading Work or Improvements. Developer shall maintain all of the Grading Work and Improvements in a state of good repair until they are completed by Developer and approved by City, and until the security for the performance of this Agreement is released. If Developer fails to properly maintain the Grading Work and Improvements, City may do all necessary work and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Grading Work and Improvements or their condition. Developer shall be responsible for maintaining all Grading Work and Improvements including onsite drainage improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement for a period of one (1) year following completion of the work and acceptance by City. Upon completion of any public drainage improvements by Developer and approval and acceptance by City, twenty-five percent (25%) of the original face value of the surety shall continue in full force and effect for the purpose of guaranteeing repair of defective workmanship and materials of the Improvements for the one (1) year period.

NINTH: Developer agrees that any and all Grading Work done or to be done in conjunction with the Project shall conform to all state and local laws, ordinances, regulations and other requirements, including City's Grading Ordinance. In order to prevent damage to Public Improvements by improper drainage or other hazards, the grading shall be completed in accordance with the above time schedule and prior to City's approval and release of surety. If City determines that there is a violation of applicable federal, state or local laws, ordinances, regulations or other requirements, or the terms and conditions of this Agreement, it may issue a cease and desist order. Developer hereby acknowledges irreparable harm and injury to City for the purposes of an application by City to the courts for a restraining order hereunder.

TENTH: Developer and its surety shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any and all liability from loss, damage, or injury to property or persons, including wrongful death, in any manner arising out of or incident to any acts, omissions or willful misconduct of Developer, its officers, employees or agents arising out of or in connection with Developer's performance of this Agreement, including without limitation the payment of attorneys' fees. Further, Developer and its surety shall defend at their own expense, including attorneys' fees, City, its officials, officers, employees, and agents in any legal action based upon such acts, omissions or willful misconduct

ELEVENTH: If Developer fails to complete all or any part of the Grading Work required by this Agreement within the time set forth herein, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

TWELVETH: Developer shall procure and maintain, and shall require its contractors to procure and maintain, for the duration of this Agreement, insurance of the types and in the amounts and in a form and from insurers satisfactory to the City. Developer and its contractors shall furnish the City with original certificates of insurance and endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City. All certificates and endorsements must be received and approved by the City before work pursuant to this Agreement can begin. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

THIRTEENTH: Should either party bring a legal action for the purpose of protecting or enforcing its rights and obligations under this Agreement, the prevailing party shall be entitled, in addition to other relief, to the recovery of its attorney's fees, expenses and costs of suit.

FOURTEENTH: All notices to be given hereunder shall be in writing and may be made either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties listed at the addresses listed below, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

CITY:	DEVELOPER:
City of Corona	Dos Lagos Office, LLC
Public Works Dept.	4160 Temescal Canyon Road
400 South Vicentia Avenue	Corona, CA 92883
Corona, CA 92882	

FIFTHTEENTH: This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, written or oral, express or implied. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

SIXTEENTH: This Agreement shall be binding on the successors and assigns of the parties

**Dos Lagos Office, LLC,
a California limited liability company**

By: Thomas P Harris
Signature
Thomas P. HARRIS
Print Name
CFO
Title

By: David Mudgett
Signature
DAVID Mudgett
Print Name
BVP
Title

ATTEST:

**CITY CLERK
OF THE CITY OF CORONA**

CITY OF CORONA

By: _____
(City Clerk)

By: _____
(Mayor)

(SEAL)

NOTE: TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS UNLESS CORPORATE DOCUMENTS ARE PROVIDED THAT INDICATE OTHERWISE.

SIGNATURES OF DEVELOPER MUST BE EXECUTED AND ACKNOWLEDGED BEFORE A NOTARY
ORIGINAL - CITY CLERK; COPIES - DEVELOPER AND PUBLIC WORKS PROJECT FILE

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of RIVERSIDE

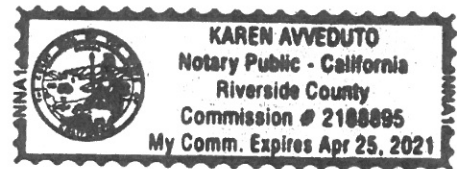
On FEBRUARY 13, 2019 before me, KAREN AVVEDUTO-NOTARY PUBLIC
(insert name and title of the officer)

personally appeared DAVID ERNEST MUDGETT,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Karen Avveduto* (Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of RIVERSIDE

On FEBRUARY 13, 2019 before me, KAREN AVVEDUTO-NOTARY PUBLIC
(insert name and title of the officer)

personally appeared THOMAS PERRY HARRIS,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Karen Avveduto (Seal)

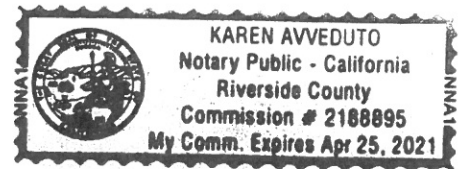


EXHIBIT "A"
LIST OF GRADING WORK

(Engineer's Cost Estimate Attached)

Quantity of Grading	\$30,824.54
Erosion Control	\$2,500.00

BOND ESTIMATE SHEET

(Use for Grading Work, Erosion Control, or Survey & Monumentation Bond Only)

Project: T34890 Delta 4, Lakeshore Plaza
 Location: 4140 Temescal Canyon Road
 Drawing No: 06-098R

	<u>Construction Cost</u> (See Note 1)	<u>Bond Estimate</u> (Round to nearest \$100)	
1 GRADING SECURITY			
(a) Grading Work	\$102,748.48	\$30,824.54	Note 2
(b) Erosion Control, See Note 3		\$2,500.00	Note 4
TOTAL GRADING BOND ESTIMATE		\$30,800.00	Note 6
EROSION CONTROL CASH BOND		\$2,500.00	Note 5
2 SURVEY & MONUMENTATION BOND			
Attach Engineer's or PLS letter of Monumentation Cost, signed & stamped by the Engineer or PLS.		N/A	

NOTES:

- All construction cost estimates should be attached to this form
- Grading Bond Estimate shall be calculated at 30% of the grading construction cost
- Security for erosion control shall be 100% of the erosion control cost, but not less than \$2500
For Erosion Control cost exceeding \$2500, a minimum of 25% shall be in cash and not less than \$2500;
the remainder can be added to the grading bond.
- A maximum of 75% of the erosion control cost may be added to the grading bond
- A minimum of 25% of the erosion control cost shall be posted in cash and not less than \$2500
- Sum of 30% of 1(a) & 75% max of 1(b)
- City staff shall review all estimates and may change the amount of the engineer's
estimated bonds. No arrangements for bonds or fees should be made until you
receive the City's completed Bond and Fee Letter.
- A current title report shall be submitted for bonding purposes.**

PREPARED BY:



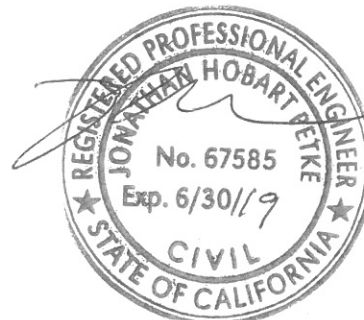
Engineer's Name & Signature

Hunsaker & Associates

Company

 (949) 458-5440 jpc@hunsaker.com
 Tel No/Email

WET STAMP & DATE





Cash Register Receipt

City of Corona

Receipt Number
R12487

DESCRIPTION	ACCOUNT	STATUS	PAID
ProjectTRAK			
PWPR2018-0036 Address: P34890 APN:			
FAITHFUL PERFORMANCE BOND – GRADING	11000000 22002	ORIGINAL	\$30,824.54
TOTAL FEES PAID BY RECEIPT:R12487			\$30,824.54

Date Paid: Wednesday, February 13, 2019

Paid By: DOS LAGOS

Cashier: MLE2

Pay Method: CHECK 006336



Cash Register Receipt

City of Corona

Receipt Number
R12486

DESCRIPTION	ACCOUNT	STATUS	PAID
ProjectTRAK			
PWPR2018-0036 Address: P34890 APN:			
EROSION CONTROL BOND	11000000 22002	ORIGINAL	\$2,500.00
TOTAL FEES PAID BY RECEIPT:R12486			\$2,500.00

Date Paid: Wednesday, February 13, 2019

Paid By: DOS LAGOS LLC

Cashier: MLE2

Pay Method: CHECK 006337