



DENVER
THE MILE HIGH CITY

Department of Public Works
Permit Operations and Right of Way Enforcement
201 W. Colfax Avenue, Dept. 507
Denver, CO 80202
P: 720-865-2782
F: 720-865-3280
www.denvergov.org/pwprs

REQUEST FOR ORDINANCE TO RELINQUISH EASEMENT

TO: Karen Walton, City Attorney's Office
FROM: Robert J. Duncanson, P.E. *[Signature]*
Manager 2, Development Engineering Services
PROJECT NO: 2011-0297-04 (formerly a part of 2007-0061)
DATE: June 20, 2012
SUBJECT: Request for an Ordinance to relinquish that Easement Indemnity Agreement easement recorded at reception number 2008034585.

It is requested that the above subject item be placed on the next available Mayor Council Agenda.

This office has investigated the request of Dane Harbaugh, dated April 11, 2011, on behalf of 6th and Logan Associates, LLC for the relinquishment of said easements.

This matter has been checked by this office and has been coordinated with Asset Management; Comcast Corporation; Councilperson Jeanne Robb; CPD: Planning Services; Denver Water Board; Fire Department; Metro Wastewater Reclamation District; Office of Telecommunications; PW: DES Engineering, and DES Survey; Qwest Corporation; and Xcel Energy, all of whom have returned our questionnaires indicating their agreement.

As a result of the investigations, it has been determined that there is no objection to relinquishing and canceling said Easement and Indemnity Agreement which was signed by the City and subsequently recorded at reception# 2008034585 on March 12, 2008.

Therefore, you are requested to initiate Council action to relinquish and cancel the Easement Indemnity Agreement recorded at reception# 2008034585 on March 12, 2008.

A copy of the document to be relinquished and canceled is attached.

Attachments

RJD:AS

cc: Asset Mgmt. Steve Wirth City Council, Gretchen Williams
Councilperson Robb and Aides
Department of Law, Karen Aviles
Department of Law, Karen Walton
Department of Law, Arlene Dykstra
Public Works, Alba Castro
Public Works, Christine Downs
Public Works, Stacie Loucks
Public Works Survey-Paul Rogalla
Project File **2011-0297-04**

Property Owner
6th and Logan Associates, LLC
210 University Blvd. Suite 700
Denver, CO 80206-4658

Agent
Forum Real Estate Group
Dane Harbaugh
210 University Blvd. Suite 700
Denver, CO 80206



ORDINANCE/RESOLUTION REQUEST

Please email requests to Daelene Mix at daelene.mix@denvergov.org by **NOON on Monday**.

**All fields must be completed.*
Incomplete request forms will be returned to sender which may cause a delay in processing.*

Date of Request: June 20, 2012

Please mark one: **Bill Request** or **Resolution Request**

1. Has your agency submitted this request in the last 12 months?

Yes **No**

If yes, please explain:

2. Title: *(Include a concise, one sentence description – please include name of company or contractor and contract control number - that clearly indicates the type of request: grant acceptance, contract execution, amendment, municipal code change, supplemental request, etc.)* Request for an Ordinance to relinquish that Easement Indemnity Agreement easement.

3. Requesting Agency: Public Works Plan Review Services

4. Contact Person: *(With actual knowledge of proposed ordinance/resolution.)*

- **Name:** Adam Perkins
- **Phone:** 720-865-3036
- **Email:** adam.perkins@denvergov.org

5. Contact Person: *(With actual knowledge of proposed ordinance/resolution who will present the item at Mayor-Council and who will be available for first and second reading, if necessary.)*

- **Name:** Nancy Kuhn
- **Phone:** 720-865-3911
- **Email:** Nancy.Kuhn@denvergov.org

6. General description of proposed ordinance including contract scope of work if applicable:

To relinquish that Easement Indemnity Agreement.

****Please complete the following fields:** *(Incomplete fields may result in a delay in processing. If a field is not applicable, please enter N/A for that field.)*

- a. **Contract Control Number:** N/A
- b. **Duration:** Permanent
- c. **Location:** 619 Logan St.
- d. **Affected Council District:** District #10, Jeanne Robb
- e. **Benefits:** N/A
- f. **Costs:** N/A

7. Is there any controversy surrounding this ordinance? (Groups or individuals who may have concerns about it?) Please explain. None

To be completed by Mayor's Legislative Team:

SIRE Tracking Number: _____

Date Entered: _____



EXECUTIVE SUMMARY

DENVER
THE MILE HIGH CITY

Project Title: 2011-0297-04, Easement Relinquishment, 619 Logan St. Formerly a part of 2007-0061.

Description of Proposed Project: Relinquishment of Easement Indemnity Agreement

Explanation of why the public right-of-way must be utilized to accomplish the proposed project: N/A

Has a Temp MEP been issued, and if so, what work is underway: N/A

What is the known duration of an MEP: N/A

Will land be dedicated to the City if the vacation goes through: N/A

Will an easement be placed over a vacated area, and if so explain: N/A

Will an easement relinquishment be submitted at a later date: N/A

Additional information: None



2008034585

Page: 1 of 8
03/12/2008 03:30P
R0.00 D0 00

City & County Of Denver

AGR

R0.00

D0 00

STORM SEWER AND PERMANENT UNDERGROUND DETENTION VAULT WITH PUMPS AND DISCHARGE LINES EASEMENT AND INDEMNITY AGREEMENT (DES PROJECT NO. 2007-0061)

08-153

68-04-03.4

THIS EASEMENT AND INDEMNITY AGREEMENT ("Agreement") is made and entered into this 12th day of February, 2008, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, hereinafter referred to as the "City", and Arlington Partners, LLC, a Colorado Limited Liability Company, whose address is 6169 S. Balsam Way, Suite 320, Littleton, CO 80123, hereinafter referred to as the "Owner".

WITNESSETH:

WHEREAS, the Owner is the owner of the property known as Arlington Residences (the "Property"), described in EXHIBIT "A", attached hereto, and by this reference made a part hereof; and

WHEREAS, the Owner is constructing the project (the "Project") known as "Arlington Residences" on the Property in the location as shown on EXHIBIT "B", attached hereto, and by this reference made a part hereof. The Project will contain buildings located within the legal description set forth on Exhibit "A" which will be served by one or more privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facilities, which will render the Owner responsible for the maintenance and service of such privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facilities, or in the event of Owner's failure to do so, by the City at its option; and

WHEREAS, the City is a municipal corporation within which the Property is located and which currently provides emergency and other municipal services to premises within the City using the publicly owned storm sewer facilities; and

WHEREAS, the Owner is desirous of providing ingress and egress to the City to enable the City to provide emergency and other municipal services in, to, and over the said Property and to assure the access of any other owner within the Property to the privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facilities as necessary; and

WHEREAS, the Owner desires to provide that the Owner and the future owners of any interest in the Property (collectively, the "Owner(s)"), shall be bound to perform the obligations set forth herein, on the conditions set forth herein; and

WHEREAS, the Owner will cause this Agreement to be recorded.

NOW, THEREFORE, in consideration of the premises and in consideration of the Owner(s): (1) being excused from the lawful requirement to construct separate connections to publicly owned storm sewer facilities for each individual property, and (2) receiving the benefits of emergency and other municipal services from the City, the Parties hereto agree as follows:

RETURN TO:

MARK D. CARAPELLA, P.E.
PW/ENGINEERING-DES (SURVEY)
201 W. COLFAX AVE., DEPT. 507
DENVER, CO 80202

SECTION ONE – CONVEYANCE OF EASEMENT.

1. The Owner(s) hereby grant(s) and convey(s) a non-exclusive easement to each of the Owner(s) and to the City, for ingress and egress over private property contained within the Project, above referred to, for purposes of providing in the Project emergency privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facility repairs, together with any and all rights-of-way, easements or rights of ingress and egress, necessary or convenient to the Owner(s) and/or the City to accomplish such purposes. PROVIDED, HOWEVER, that in non-dedicated driveways or privately maintained systems existing within the Project, the City shall not be obligated or expected to perform any construction, re-construction, maintenance, repair, cleaning, snow removal, street lighting, traffic control or regulation or any other services on property contained within the Project which it does not or can not perform on any other private property within the City and County of Denver.
2. It is the desire of the Owner(s) that the Owners and/or the City have the use of these private driveways, to provide emergency privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facility repairs within the Project.
3. The term Owner(s) as used herein shall be deemed to include heirs, successors, and assigns of the original Owner(s). All duties and liabilities of the Owner(s) hereunder shall be joint and several among original Owner(s), their successors, and assigns; provided that if an occurrence giving rise to a claim hereunder is proven to be proximately caused by defined action or omission by Owner(s), its agents, servants or employees which occurred during a specific period of time, then only those Owner(s) holding fee title to the Project, or any portion thereof, during such specific period of time shall be jointly and severally liable hereunder.

SECTION TWO – CONSTRUCTION AND MAINTENANCE.

4. It shall be the duty of the Owner(s) to construct, reconstruct, repair and maintain all private driveways and privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facilities contained within the Project in such condition so as to be usable by the other Owner(s) and/or the City for provisions of services as set out herein.
5. If, in the sole opinion of the City, the private driveways or privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facilities are not properly maintained or are closed, blocked or vacated, the City shall give notice to the Owner(s) and if repairs or corrections are not made within the time designated in such notice, the City is authorized to make or have made repairs or corrections and will charge and collect the cost thereof from the Owner(s).

6. The Owner(s) shall in no way consider or hold the City or its personnel guilty of trespass in the performance of any of the municipal services, duties or responsibilities referred to herein.
7. The Owner(s) shall neither (a) alter the Project nor (b) close, block or vacate the private driveways or privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facilities contained within the Project so that as a result of (a) or (b) the provision of the above-stated services to the Project is rendered impassible or materially impaired.
8. The Owner(s) shall pay for and be responsible for all costs of installation and maintenance of the privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facilities and their access fittings and associated facilities contained within the Project as determined necessary by and according to the specifications of the Department of Public Works of the City and County of Denver. While the City assumes no obligation for the maintenance or operation of such privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facilities, in the event of a malfunction of such privately owned storm sewer and permanent underground detention vault with pumps and discharge lines facilities and the failure of the Owner(s) to correct the malfunction, the Owner(s) authorizes the City to make or have made the corrections or repairs and to charge and collect the cost thereof from the Owner(s), jointly and severally pursuant to Section Two, Article 5 hereof.

SECTION THREE – INDEMNITY AGREEMENT.

9. The Owner(s) agree to: defend, indemnify, and hold harmless the City, its officers, agents, and employees against any and all claims for damage to property or injuries to or death of any person or persons which may result from the City service operations at the Project, provided, however that Owner(s) need not indemnify, defend, or hold harmless the City, its officers, agents, and employees from their own negligence, recklessness, or willful misconduct. By all claims for damages this Agreement specifically includes, but it is not limited to:
 - (A) Any driveway deterioration or damage on the Project.
 - (B) Any structural damage to buildings contained within the Project caused by City vehicle weight or size, by vibrations generated by City vehicles, or by any other cause not specifically described.
 - (C) Any damage to utilities such as water pipes, sewer pipes, gas pipes, electrical power lines, and any other communication lines, conduits, or cables.
 - (D) Any damage to landscaping including but not limited to shrubbery, trees and lawn.
 - (E) Any bodily injury to any person except a City employee, which is caused directly or indirectly by City service operations at the Project, or by delays or complication or prevention of provision of such services due to closure, blocking, vacation, disrepair of the private driveways or privately owned storm sewer and

permanent underground detention vault with pumps and discharge lines facilities referred to herein.

10. The Owner(s) further agrees jointly and severally to reimburse the City for any bodily injury to City personnel, or damages to the City property caused by defective and dangerous condition of the Project.
11. It is understood that the Owner(s) intends to cause the formation of one or more Property Owner's Associations to hold title to and/or administer the use and maintenance of the private roads and streets and other common facilities contained within the Project. IT IS FURTHER UNDERSTOOD THAT THE "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS" OR ANY SIMILAR INSTRUMENT FOR ANY SUCH PROPERTY OWNER'S ASSOCIATION SHALL CLEARLY STATE THAT THE PROPERTY OWNER'S HAVE JOINT AND SEVERAL FINANCIAL RESPONSIBILITY FOR THE MAINTENANCE AND REPAIR OF SUCH PRIVATE ROADS, STREETS, SEWERS, OR OTHER DRAINAGE FACILITIES, AND THE INDEMNITY PROVISIONS OF THIS AGREEMENT. THE OWNER(S) SHALL HAVE A COPY OF SUCH DECLARATION READILY AVAILABLE IN ITS SALES FACILITY AND SHALL PROVIDE A COPY TO EACH PURCHASER AT THE TIME OF EXECUTION OF EACH SALES AGREEMENT. THE OWNER(S) SHALL ALSO RECORD THE PROPERTY OWNER'S DECLARATION WITH THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, AND PROVIDE SATISFACTORY EVIDENCE OF SUCH RECORDATION TO THE CITY.

SECTION FOUR – DISPUTES.

12. Disputes regarding any aspect of this Agreement shall be resolved by administrative hearing pursuant to D.R.M.C. Section 56-106.

SECTION FIVE – AGREEMENT TO RUN WITH THE LAND.

13. The grant of easement and duties contained herein shall run with the land and shall be binding upon, jointly and severally, and shall inure to the benefit of, the parties hereto, their heirs, successors, or assigns, and the Owner(s) agrees to that upon sale of any portion of the above-described Property a copy of this Agreement will be given to the purchaser.
14. The Owner(s) agrees to the terms of this Agreement and gives evidence of its voluntary agreement by having the individual(s) below sign their name to this Agreement. The person or persons signing and executing this Agreement on behalf of the Owner(s) do hereby warrant and guarantee that he, she or they have been fully authorized by the Owner(s) to execute this Agreement on behalf of the Owner(s) and to validly and legally bind the Owner(s) to all terms, performances, provisions and conditions herein set forth.
15. This Agreement shall become effective upon its execution by the parties hereto.

16. This Agreement shall be binding upon any and all heirs, successors, assigns, or transferees of the Parties hereto and shall be considered a covenant running with the land.

SECTION SIX – NO DISCRIMINATION IN EMPLOYMENT: NO THIRD PARTY BENEFICIARIES.

17. In connection with the performance of work under this Agreement, the Owner(s) agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, and further agrees to insert the foregoing provision in all subcontracts hereunder.

18. It is expressly understood and agreed upon that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Owner(s), and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including but not limited to subcontractors, sub-consultants, and suppliers. It is the express intention of the City and Owner(s) that any person other than the City or the Owners receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:

CITY AND COUNTY OF DENVER

By: *Stephanie Orally*
Clerk and Recorder, Ex-Officio
Clerk of the City and County of
Denver



Joe Hill
Mayor

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:

By: *[Signature]*
Manager of Public Works

DAVID R. FINE, Attorney for the City and
County of Denver

By: *[Signature]*
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: *Claudio J. Ramirez*
Manager of Finance
Contract Control No. *XC 8AD14*

By: *Doris B. [Signature]*
Deputy Auditor

ARLINGTON PARTNERS, LLC

James C. Dill manager
By: James C. Dill
Manager

FOR FORECLOSURE AND INDEMNITY AGREEMENT DATED 1-15-2008

STATE OF COLORADO)

CITY OF LITTLETON)

COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 15TH day of JANUARY,
2008, by James C. Dill, as "Owner".

Witness my hand and official seal.

My commission expires: 1-5-2010

Dennis M Dawson
Notary Public

8441 W. Bowler AVE, LITTLETON, CO
Address 80123

DENNIS M DAWSON
NOTARY PUBLIC
STATE OF COLORADO

My Commission Expires January 5 2010

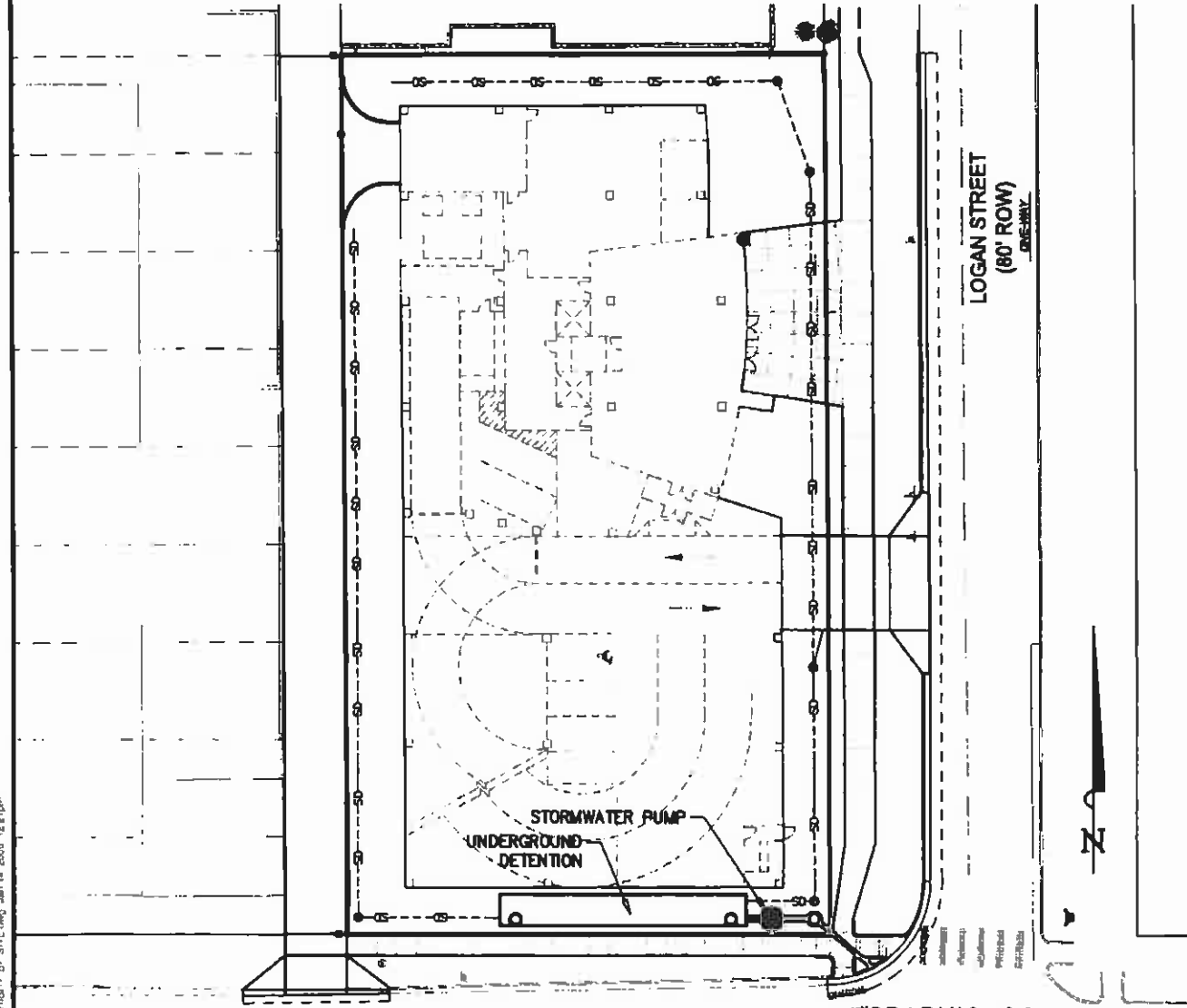
EXHIBIT "A"
Property Legal Description
ARLINGTON RESIDENCES

601 Logan Street
Southeast Quarter of Section 3, T4S, R68W of the 6th P.M.
City and County of Denver, Colorado 80203

LEGAL DESCRIPTION:
LOTS 22 THROUGH 30, INCLUSIVE, BLOCK 26,
ARLINGTON HEIGHTS ADDITION TO DENVER,
CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

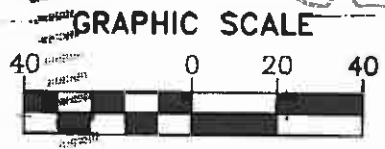


EXHIBIT "B"
Project Site Plan
ARLINGTON RESIDENCES
 601 Logan Street
 Southeast Quarter of Section 3, T4S, R68W of the 6th P.M.
 City and County of Denver, Colorado 80203



LOGAN STREET
 (60' ROW)
 ONE-WAY

E. 6TH AVENUE
 (ROW VARIES)
 ONE-WAY



1" = 40 FEET

K:\103_01\PROJECTS\CA\103_01\EXHIBIT B - SITE.dwg, Jan 14, 2008, 12:31:00pm

DATE: 1/14/08

 **Kimley-Horn
 and Associates, Inc.**