



Procopio, Cory, Hargreaves and Savitch LLP

John J. Lormon
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September 2, 2011

VIA E-MAIL AND U.S. MAIL

Ms. Chiara Clemente
Senior Environmental Scientist
Regional Water Quality Control Board, Region 9
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Re: Tentative Investigative Order No. R9-2011-0033

Dear Ms. Clemente:

The City of San Marcos supports the San Diego Regional Water Quality Control Board's (Regional Board's) issuance of Tentative Investigative Order No. R9-2011-0033 (the "Order") to Citizens Development Corporation (CDC), which is currently scheduled to be heard on September 14, 2011. The Order directs CDC to conduct an investigation of nutrient impairments to Lake San Marcos (the "Lake"). For the reasons set out below, the City urges the Regional Board to issue the Order on September 14th and not to grant a continuance.

Background:

Since April 2009 CDC has known that the Regional Board viewed CDC as legally obligated to address the nutrient impairment in the Lake. For the past two years, CDC has known that they had a choice to either work on a voluntary basis to provide diagnostic information about the Lake's nutrient impairment, or they could provide such information pursuant to the traditional enforcement authority of the Regional Board.

In 2009 CDC was involved with the Public Work Group¹ and private entity dischargers in their effort to gather existing water quality data on the Lake, in the selection and assignment of work to Dr. Michael Anderson to assess the existing Lake data and to identify the gaps in that data.

¹ The Public Work Group consist of the following public entities: the City of San Marcos (San Marcos), the County of San Diego (County), the California Department of Transportation (Caltrans), the San Marcos Unified School District (School District), Vallecitos Water District (Vallecitos), and the City of Escondido ("Escondido"), (collectively the "Public Work Group").

Ms. Chiara Clemente
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As part of a preliminary diagnostic work, all parties agreed to contribute \$1,000 to hire Dr. Anderson. In addition to the contribution by the Public Work Group, a group of Lake San Marcos Community homeowners made the \$1,000 contribution, as CDC promised to do. Yet, CDC was not forthcoming when their commitment to pay became due. It was only after numerous request for payment and approximately 6 months had passed that CDC finally delivered on its promise.

In 2010 CDC had a seat at the table when the Public Work Group selected and retained Armand Ruby Consulting to develop the San Marcos Creek ("Creek") and Lake diagnostic scope of work and CDC fully participated in the development and approval of the budget for that work. The work that CDC is now tentatively ordered to do, is a portion of the very same work that CDC approved. The cost of CDC's scope of work is estimated to be \$459,000, the same amount that they approved more than a year ago.

During the summer of 2010 the Public Work Group along with CDC applied to the State Water Resources Control Board for financial assistance from the Cleanup and Abatement Account. CDC insisted that they be added as a party applicant, and even though inclusion of the private Lake owner as an applicant was detrimental to public entities application. The Public Work Group agreed to include CDC. The application was later denied, inter alia, due to the lack of contribution from the private Lake owner.

In August 2010, CDC filed for Chapter 11 bankruptcy protection. CDC became the Debtor and Debtor in Possession of the Lake and other properties that surround and discharge into the Lake. This change in status caused concern about CDC's ability to bar claims for contribution or indemnity, and about CDC's ability and willingness to perform on a voluntary basis. At that time, the Executive Officer of the Regional Board insisted that all parties join in a unified voluntary work group, so the Public Work Group continued to negotiate in good faith with CDC for approximately nine (9) months after they filed for bankruptcy. When it came time for CDC to enter into the voluntary agreement with the Public Work Group, they reduced their commitment by approximately 87%.

The Voluntary Agreements:

The framework for the Public Work Group's participation in the voluntary nutrient TMDL effort for the Creek and the Lake is established through a coordinated set of agreements that unify the Public Work Group. These agreements are the *Participation Agreement Among the Lake San Marcos Work Group* ("Participation Agreement") and *Addendum B* to the Participation Agreement, an agreement between Members to the Participation Agreement² and the Regional Board. Under Addendum B, the Members promise to conduct work necessary to abate the nutrient impairment in the Creek and Lake in exchange for the Regional Board's agreement to forebear from pursuit of an enforcement action. The City of Escondido entered into a separate *Cooperation Agreement* with the Members to the Participation Agreement to participate with the Public Work Group to fund and conduct the same diagnostic work.

The Public Work Group are paying into a diagnostic fund that will provide more than \$400,000 over the next two years in addition to over \$200,000 the Public Work Group has expended to collect diagnostic data for the past two years for this effort.

² The members of the Participation Agreement are the San Marcos, the County, the CalTrans, the School District, and Vallecitos, (collectively the "Members").

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As part of the voluntary agreement negotiations with the Public Work Group, CDC promised to pay what it considered to be its fair share of the diagnostic work in the amount of \$150,000 for the first two years. That offer was confirmed by declarations filed in the CDC's Bankruptcy proceedings, first by CDC's Chief Operating Officer, Robert J. Hilber, and then in a declaration filed by CDC's special environmental counsel, S. Wayne Rosenbaum.³ In explaining to the bankruptcy court why it was not necessary to segregate and account for the lease money being paid by the homeowners, Mr. Hilber noted that CDC was already dealing responsibly with its responsibilities including those related to the Lake:

The City further requests that the Court issue a directive to the Debtor "to cooperate with the Regional Board in working to resolve the contamination and apportionment of responsibility and costs in an efficient manner." This is a wholly unnecessary request, as the Debtor is already cooperating with all constituencies regarding water contamination issues as the Debtor has offered to sign a "Participation Agreement" and commit up to \$75,000 per year for the next two years in order to conduct the necessary investigation to determine the causes and remedies for the Lake's condition as requested by the Regional Board.

When it came time to sign the Participation Agreement, CDC changed their contribution from \$150,000 to \$5,000 the first year and \$15,000 for the second year of the diagnostic work.⁴ As a result CDC reduced what they offered to pay by approximately 87%. The Public Work Group felt betrayed and that they had wasted substantial time listening to hollow promises.

Now that the Order has been set for a hearing, CDC would have this Regional Board delay adoption of that Order on that same promise. It is hard to trust CDC since just a few months ago they told the Public Work Group that they did not have \$150,000 to pay us over the next two years, but now CDC wants us to believe that they really do have the money and that "this time they mean it".

Need for Parallel Development of Lake and Watershed Diagnostic Data:

It is important that CDC conduct the Lake diagnostic work at the same time that the Public Work Group performs the watershed diagnostic work because both sets of data are needed to run the predictive models that will allow for source identification and proposal for remedial action. Because the watershed diagnostic work is already in progress any further delay on the Lake work will result in overall project delay.

Risk to Promised Financial Assistance:

In cooperation with the Executive Officer, the Public Entities have obtained a grant from the U.S. EPA. The Public Entities are concerned that they will lose that money if it is not spent within the next 20 months. Granting CDC a delay may result in the loss of that money.

³ See Exhibit A, Declaration of Robert J. Hilber In Support of Debtor's Response to Motion for Adequate Protection by Segregation of Funds and For Accounting, dated February 7, 2011, at p. 7. See Exhibit B, Declaration of S. Wayne Rosenbaum, Esq. In Support of Debtor's Response to Motion for Adequate Protection by Segregation of Funds and For Accounting, dated February 7, 2011, at p. 2.

⁴ See Exhibit C, CDC's revised offer to fund voluntary agreement for diagnostic work, May 9, 2011.

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Due Process:

In February 2010, Dr. Anderson completed his work and reported his findings during a public meeting at the Regional Board. His report noted that the dam impounding the water that forms the Lake also traps sediment and nutrients that are retained in the Lake. This trap creates an enriched sediment bed that results in recycling of nutrients from the sediment into the water column. This process can account for more than 95% of the overall annual nutrient loading to the Lake water column. For the past 18 months CDC has been aware of Dr. Anderson's report and the fact that the Public Work Group and the Executive Officer believe that the dam is perhaps the most significant cause contributing to the nutrient impairment of the Lake.

CDC's contribution to the Lake nutrient impairment is not limited to the impact of the dam on the water quality. CDC has not maintained nor properly operated the Lake to assure bypass and circulation necessary to avoid stagnant water conditions. CDC does not have a viable Lake water quality management plan, nor has it implemented appropriate actions to protect against the nutrient impairment in the Lake. CDC has abused the water rights license granted by the State Water Resources Control Board because it cannot show that it has limited the impoundment of the Creek to a maximum of 480 acre feet a year, nor that it only impounds water during the six wettest months of the year (i.e., between November and April). We know that it does not limit the use of the impounded waters to irrigation, which is the only use that it was licensed to make of the impounded water. Furthermore, CDC collects \$108,000 a year in dock fees for private use of the Lake, thus it has source funding to support the activities that it has neglected.

Conclusion:

For the reasons set out above, we urge that the Regional Board adopt the Order on September 14, and that it not continue this matter to a later date. The City will be present on September 14th for the scheduled hearing and plans to address the Board at that time.

Sincerely,

John J. Lorman

cc: David Gibson, Executive Officer, Regional Water Quality Control Board, San Diego Region
Catherine Hagan, Esq., Senior Staff Counsel, State Water Resources Control Board
Laurie Walsh, Water Resource Control Engineer, Regional Board
Jessica Newman, Staff Counsel, State Water Board
S. Wayne Rosenbaum, Esq.
Paul Malone, City Manager, City of San Marcos
Erica Ryan, Stormwater Program Manager, City of San Marcos

Enclosures

EXHIBIT A

1 RON BENDER (SBN 143364)
2 BETH ANN R. YOUNG (SBN 143945)
3 KRIKOR J. MESHEFEJIAN (SBN 255030)
4 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
5 10250 Constellation Boulevard, Suite 1700
6 Los Angeles, California 90067
7 Telephone: (310) 229-1234
8 Facsimile: (310) 229-1244
9 Email: rb@lnbyb.com; kjm@lnbyb.com

10 Counsel for Chapter 11 Debtor and Debtor in Possession

11 **UNITED STATES BANKRUPTCY COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 In re:) Case No. 10-15142-LT11
14 CITIZENS DEVELOPMENT CORP.,) Chapter 11
15 Debtor and Debtor in Possession.)

16) **DECLARATION OF ROBERT J.**
17) **HILBER IN SUPPORT OF DEBTOR'S**
18) **RESPONSE TO MOTION FOR**
19) **ADEQUATE PROTECTION BY**
20) **SEGREGATION OF FUNDS AND FOR**
21) **ACCOUNTING**

22) **[Response and Declaration of Wayne S.**
23) **Rosenbaum Filed Concurrently Herewith]**

24) Date: March 1, 2011
25) Time: 2:00 p.m.
26) Place: 325 West F. Street
27) Dept. 3 – Room 129
28) San Diego, CA

) Judge: Hon. Laura S. Taylor

1 I, Robert J. Hilber, hereby declare as follows:

2 1. I am over the age of 18 and a resident of California. The facts stated herein are
3 within my personal knowledge and if called upon to testify to the same I could and would testify
4 competently thereto.

5 2. I am the Chief Operating Officer of Citizens Development Corp., the Chapter 11
6 debtor and debtor in possession in the above-captioned Chapter 11 bankruptcy case. I have served
7 in that capacity since 2006.

8 3. I have access to the books and records of the Debtor and entities related to the
9 Debtor. I am familiar with the history, organization, operations and financial condition of the
10 Debtor. The records and documents referred to in this Declaration constitute writings taken, made,
11 or maintained in the regular or ordinary course of the Debtor's business at or near the time of act,
12 condition or event to which they relate by persons employed by the Debtor who had a business duty
13 to the Debtor and its affiliates to accurately and completely take, make, and maintain such records
14 and documents. I am a custodian of the Debtor's books and records.

15 4. Upon filing for bankruptcy protection, the Debtor established debtor in possession
16 bank accounts and the Debtor has filed with the Court monthly operating reports on a monthly basis
17 which detail the Debtor's revenues and expenses. (See Request for Judicial Notice filed
18 concurrently herewith for all monthly operating reports filed in the Debtor's case.)

19 5. The budget upon which the Debtor has operated its Chapter 11 case is a budget that
20 has been approved by the Court. Attached hereto as Exhibit "1" is the Debtor's budget which has
21 been approved by the Court which budget extends through February 28, 2011. LSMCA has not
22 opposed the Debtor's proposed budgets which have been approved by the Court.

23 6. Since the Debtor filed for bankruptcy, the Debtor has spent approximately \$63,800
24 on repairs & maintenance services, materials and supervision for its facilities. Specifically, the
25 Debtor has undertaken the following repairs:

26 a. Recreation Center: Walkway cover has been completely rebuilt, doors have
27 been repaired/replaced, interior of the pavilion has been painted, the podium and projection
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1 screen have been replaced, and all landscaping has been cleaned out, thinned, and shaped.

2 b. The Debtor has removed debris and trash from the Lake, via the San Marcos
3 Creek, over several weeks, as a result of heavy December storms.

4 c. The Debtor has repaired or replaced several docks and walkways as a result
5 of those same storms.

6 d. The Debtor has patched and painted exterior portions of the facilities.

7 e. The Debtor has conducted a survey of all docks to assess repair and
8 maintenance needs of all docks in order to prepare a budget and calendar repairs.

9 f. The Debtor has collected bids for work on pool decks (when seasonal
10 weather allows for replacement of decking) and tennis courts.

11 7. Since 2004, the Debtor has expended in excess of \$1,082,712 for capital
12 improvements as well as repairs and maintenance of the facilities. Specifically, of that amount,
13 \$656,500 has been spent on capital improvements, \$327,767 is related to repair and maintenance
14 payroll expenditures, and \$98,445 for materials related to repairs and maintenance. This accounts
15 for 27.2% of all revenue of the Debtor related to the facilities.

16 8. The Debtor has also committed to establishing a separate reserve account for funds
17 to be used specifically for improvement of the Debtor's facilities. I have assisted the Debtor in
18 preparing a 2011 budget for the facilities, which includes \$72,731 allocated towards repair and
19 maintenance expenses, \$75,000 for participation in a "Participation Agreement" with surrounding
20 constituencies related to investigating causes and solutions to water quality issues at the Lake, as
21 well as a \$52,791 capital reserve for capital improvements. The 2011 proposed budget for the
22 facilities is attached hereto as Exhibit "2."

23 8. While we have been, and always are, agreeable to working with the HOA's in
24 addressing fee allocation issues, we are not willing to provide absolute control, or veto power, to the
25 HOA's or LSMCA with respect to the Debtor's use of its funds, as that is not the Debtor's
26 agreement with the HOA's. And despite the fact that the Debtor is not required to do so by
27 contract, the Debtor already shares its financial information with HOA presidents and residents who
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1 actually have agreements with the Debtor.

2 9. Prior to LSMCA filing the Motion, the Debtor submitted to all residents which have
3 contracts with the Debtor a letter explaining the capital improvements that have been made to the
4 facilities, as well as providing a six year breakdown of revenue and expense allocations for the
5 Debtor. That letter is attached hereto as Exhibit "3" and includes a specific description of all repairs
6 undertaken for the facilities and the cost of such repairs.

7 10. LSMCA states that it represents nine Home Owners' Associations which allegedly
8 have agreements with the Debtor. LSMCA itself does not have any agreement with the Debtor, and
9 has not even disclosed which HOA's it represents, nor provided any documentation regarding the
10 nature of its representation. The Debtor has agreements with twelve home owners' associations –
11 Hunter Valley, Lions Gate, Mall I, Mall II, Mall III, Mall IV, Panorama, Sunrise Point, The Chateau
12 Lake San Marcos, The Colony, The Fairways, and Varadero. Attached hereto as Exhibits "4"
13 through "15" are those agreements. LSMCA is not a party to any of these, or any other agreement,
14 with the Debtor. These agreements with the HOA's are not assignable without the Debtor's express
15 written consent.

16 11. LSMCA has presented a "Community Master Lease Agreement" to various HOA
17 presidents, indicating that:

18 "CDC seems to be anxious to be on good terms with the
19 community at this time prior to their appearance in bankruptcy
20 court. We think there is a small chance that they would be
21 receptive to signing a Community Master Lease Agreement which
22 would rebalance the power between CDC and our community. If
23 agreed to, the contract would establish high level financial and
24 management controls over how Lake and Lodge funds are used for
25 maintenance If the bankruptcy goes well we may be dealing
26 with CDC for many years in the future. This agreement would
27 make working with them more palatable. In the event they do not
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1 succeed in Chapter 11 and were to go into Chapter 7 dissolution,
2 this lease would be binding on their successors. The terms and
3 conditions we are asking for are very demanding and unlikely to be
4 agreed to by CDC.”

5 12. Attached hereto as Exhibit “16” is a copy of the draft Master Community Lease
6 Agreement that LSMCA has submitted to HOA presidents. Included in Exhibit “16” is
7 correspondence from a member of LSMCA to various HOA presidents. There, LSMCA states as
8 follows: “HOA Presidents, as you may know CDC has requested a meeting with the Community
9 Association to see if any kind of arrangement could be worked out which would assist CDC in
10 their problems with the bankruptcy court. John Andrews has agreed to meet with CDC on
11 Tuesday to offer them a very unfavorable contract. It is termed a “Community Master Lease
12 Agreement”. It would not alter any existing Lake and Lodge agreements, but it would establish
13 strict high level financial and management controls over how Lake and Lodge funds could be
14 spent. We don’t believe they will agree to these demands, but feel there is little to lose by
15 presenting our demands for them to accept or reject.”

16 13. LSMCA has not revealed the contracts under which it argues that breaches have
17 occurred, and instead merely arguing that “each such agreement requires CDC to properly
18 maintain the Facilities in a manner making then fit for use by the Members” is that such a
19 representation does not accurately portray the Debtor’s, or the residents’, obligations under the
20 agreements. In reality, the contracts are more specific. For example, the contract between the
21 Debtor and Lake San Marcos Mall IV Property Owners Association dated December 30, 1986,
22 provides that “Lessor shall maintain said premises in substantially the same condition as when
23 leased hereunder, *reasonable wear and tear and damage by the elements excepted*, and at all
24 times in a neat, clean and sanitary condition and in full compliance with all public rules,
25 regulations, laws and ordinances as may from time to time be applicable thereto.” A more recent
26 contract, dated January 1, 2010, between the Debtor and The Fairways at Lake San Marcos
27 Owners Association provides that “CDC shall maintain the Premises in substantially the same or
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1 improved condition as when leased, reasonable wear and tear by elements excepted, and at all
2 times in a neat, clean and sanitary condition and in full compliance with all public rules,
3 regulations, laws and ordinances as may from time to time be applicable.”

4 14. LSMCA has submitted the report prepared by James Courtney which I finally
5 received a copy of on or about November 16, 2010 and reviewed shortly thereafter. Mr. Courtney
6 never contacted me or any other officer of the Debtor (nor did anyone from LSMCA) when he
7 apparently inspected the facilities. Mr. Courtney has not requested from me any information
8 related to the facilities, our repair budget, or any estimates we have received in connection with
9 repairs and maintenance. Mr. Courtney makes a number of questionable, and in some instances,
10 completely false, statements regarding the status and condition of the facilities. For instance, Mr.
11 Courtney suggests that the Debtor’s facilities are not ADA compliant. This is completely false, as
12 the Debtor’s facilities are in total compliance with all ADA requirements. Mr. Courtney also
13 completely overestimates the costs of various repairs. For instance, Mr. Courtney indicates that
14 the parking lot at the recreation center requires \$58,000 worth of repairs. This repair item can be
15 completed for less than \$20,000. That is but one example of Mr. Courtney’s inflated estimates.

16 15. LSMCA also asserts that “Dr. Anderson concludes that the Debtor has allowed the
17 Lake to become polluted and that its condition must be remediated.” However, Dr. Anderson
18 does not so state in his declaration, and his report also does not so state. In fact, nowhere in the
19 report does Dr. Anderson ascribe liability or any fault to the Debtor. In any event, the Debtor has
20 always applied its revenues from operations, not only from fees received from residents, but also
21 from its Resort operations as a whole, on Lake maintenance. Indeed, the Debtor paid its agreed
22 upon share of the cost of preparing the Anderson Lake Report. On the other hand, the HOA’s
23 have always shirked their duties and taken the position that they do not have any obligation with
24 respect to the Lake, and that they do not have any liability exposure with respect to the Lake,
25 despite the fact that many of them own private storm drainage systems that directly drain into the
26 Lake.

27 16. LSMCA also takes the position that the Members it purports to represent are not
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1 receiving the benefit of their bargain under their agreements with the Debtor because the Lake has
2 been classified an impaired body of water. (See Motion, page 8, lines 10-11.) What is ludicrous
3 about this assertion is that the Lake was designated an impaired body of water in 2008, and a
4 number of the agreements with Members, and HOA's, were either entered into, or renewed,
5 subsequent to when the Lake was designated an impaired body of water.

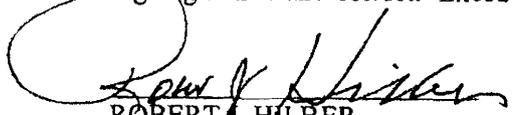
6 17. The assertions by the City of San Marcos are even more misplaced. The City
7 argues that "none of [LSMCA's] funds are being directed to or set aside for the homeowner's
8 entitlement from CDC" but that is simply not true, as discussed above, and the City has provided
9 no evidence whatsoever in connection with its joinder to support any of the assertions that the
10 City has made. The City further requests that the Court issue a directive to the Debtor "to
11 cooperate with the Regional Board in working to resolve the contamination and apportionment of
12 responsibility and costs in an efficient manner." This is a wholly unnecessary request, as the
13 Debtor is already cooperating with all constituencies regarding water contamination issues as the
14 Debtor has offered to sign a "Participation Agreement" and commit up to \$75,000 per year for the
15 next two years in order to conduct the necessary investigation to determine the causes and
16 remedies for the Lake's condition as requested by the Regional Board.

17 18. The \$75,000 yearly commitment is *pari passu* with the commitments required of
18 other constituencies subject to the Participation Agreement which is being negotiated. The
19 Debtor has agreed to share expenses equally through the Participation Agreement despite the fact
20 that the Debtor owns less than one percent (<1%) of the total acreage within the watershed that
21 makes up the Lake. The City owns and is responsible for 56% of all of the acreage within the
22 watershed that makes up the Lake.

23 19. On January 27, 2011, the Court ordered the substantive consolidation of the Debtor
24 with LSM Hotel, LLC and LSM Country Club, LLC. The Court has also required the Debtor to
25 file a plan of reorganization and disclosure statement describing the Debtor's plan, on or before
26 March 31, 2011, and to include in such filing evidence of financial commitment. The Debtor is in
27 the process of formulating such a plan and will include in such plan a description of the Debtor's
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1 proposed treatment of all executory contracts and unexpired leases to which the Debtor is a party.
2 The Debtor will be required to show its ability to comply with all of the terms of the Debtor's
3 plan of reorganization, in order for the Debtor to be able to confirm its plan. The Debtor will
4 provide further long-term financial information related to its proposed expenditure of funds for
5 repairs and maintenance of the Debtor's facilities.

6 I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th
7 day of February, 2011.

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9 ROBERT J. HILBER

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EXHIBIT B

1 RON BENDER (SBN 143364)
 2 BETH ANN R. YOUNG (SBN 143945)
 3 KRIKOR J. MESHEFEJIAN (SBN 255030)
 4 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
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 6 Los Angeles, California 90067
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 Facsimile: (310) 229-1244
 Email: rb@lnbyb.com; kjm@lnbyb.com

7 Counsel for Chapter 11 Debtor and Debtor in Possession

8 **UNITED STATES BANKRUPTCY COURT**
 9 **SOUTHERN DISTRICT OF CALIFORNIA**

11 In re:
 12 CITIZENS DEVELOPMENT CORP.,
 13 Debtor and Debtor in Possession.

) Case No. 10-15142-LT11
)
) Chapter 11

) **DECLARATION OF S. WAYNE**
) **ROSENBAUM, ESQ. IN SUPPORT OF**
) **DEBTOR'S RESPONSE TO MOTION**
) **FOR ADEQUATE PROTECTION BY**
) **SEGREGATION OF FUNDS AND FOR**
) **ACCOUNTING**

) **[Response, Request For Judicial Notice,**
) **and Declaration of Robert J. Hilber Filed**
) **Concurrently Herewith]**

) Date: March 1, 2011
) Time: 2:00 p.m.
) Place: 325 West F. Street
) Dept. 3 – Room 129
) San Diego, CA

) Judge: Hon. Laura S. Taylor

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I, S. WAYNE ROSENBAUM, ESQ., HEREBY DECLARE AS FOLLOWS:

1. I have personal knowledge of the facts set forth below and, if called to testify, would and could competently testify thereto.

2. I am a partner of the law firm of Foley & Lardner LLP. I am an attorney licensed to practice law in the State of California, in the United States District Court and the Bankruptcy Court for the Southern District of California. Foley is special counsel to Citizens Development Corp. (the "Debtor"). Foley represents the Debtor in connection with water quality and environmental issues related to Lake San Marcos (the "Lake").

3. The Lake was deemed by the Regional Water Quality Control Board to be an "impaired" body of water in 2008. Since that time and since the Debtor employed my firm, I have been involved in countless meetings, conversations, and negotiations regarding investigative and remediation efforts with respect to the Lake.

4. There has been no determination of liability with respect to any environmental laws regarding the Lake. The Debtor has not been issued a clean-up and abatement order by the Regional Board.

5. The Debtor is cooperating and always has cooperated with all constituencies regarding environmental issues related to the Lake. The Debtor has offered to sign a "Participation Agreement" and commit up to \$75,000 per year for the next two years in order to conduct the necessary investigation to determine the causes and remedies for the Lake's condition as requested by the Regional Board. The Regional Board has made very clear that it does not want to see any remedial action taken until the investigation is complete. The \$75,000 yearly commitment is *pari passu* with the commitments required of other constituencies subject to the Participation Agreement which is being negotiated. The Debtor has agreed to share expenses equally through the Participation Agreement despite the fact that the Debtor owns a half

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percentage of the total acreage within the watershed that makes up the Lake. (See id.) The City owns and is responsible for 56% of all of the acreage within the watershed that makes up the Lake. (See id.)

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of February, 2011, at San Diego, California.


S. WAYNE ROSENBAUM

In re: CITIZENS DEVELOPMENT CORP., Debtor(s).	CHAPTER 11 CASE NO. 10-15142-LT11
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the attached document will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On **February 7, 2011**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- Ron Bender rb@lnbyb.com
- Judith A. Descalso descalso@pacbell.net
- Philip J Giacinti pjg@procopio.com, caw@procopio.com;laj@procopio.com
- Haeji Hong Haeji.Hong@usdoj.gov,
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- Andrew S. Pauly apaul@gpfm.com
- Richard J. Pekin rpekin@foxjohns.com
- Wayne R. Terry wterry@hemar-rousso.com, mgranzow@hemar-rousso.com
- Kelly Ann Mai Khanh Tran ktran@mkblaw.com, ssandbeck@mkblaw.com
- United States Trustee ustp.region15@usdoj.gov
- Dennis J. Wickham wickham@scmv.com, havard@scmv.com
- Alan Steven Wolf wdk@wolffirm.com;faxes@wolffirm.com

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL: On **February 7, 2011**, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service and/or by attorney service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

By Overnight Mail

Hon. Laura S. Taylor
U.S. Bankruptcy Court
Jacob Weinberger U.S. Courthouse
325 West F Street, Room 129
San Diego, CA 92101-6998

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, _____, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

February 7, 2011
Date

Krikor J. Meshefejian
Type Name

/s/ Krikor J. Meshefejian
Signature

EXHIBIT C

Kozlak, Mary K.

From: Rosenbaum, S. Wayne [SRosenbaum@foley.com]
Sent: Monday, May 09, 2011 1:53 PM
To: Lormon, John J.; James Dodson Esq.
Subject: Addendum G
Attachments: DOCS-#1342592-v1-Addendum_G_(CDC) (2).doc

John,

Per your request, attached please find a red line version of Addendum G for consideration by the members. Other than the need to add signature blocks for the other members, my client is ready to execute this document as attached hereto. Please review, and if acceptable I will put this into final form for circulation and signature.

Wayne

The preceding email message may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Foley & Lardner LLP client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.

Internal Revenue Service regulations require that certain types of written advice include a disclaimer. To the extent the preceding message contains advice relating to a Federal tax issue, unless expressly stated otherwise the advice is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer, for the purpose of avoiding Federal tax penalties, and was not written to support the promotion or marketing of any transaction or matter discussed herein.

DRAFT

ADDENDUM G
TO THE PARTICIPATION AGREEMENT

CITIZENS DEVELOPMENT CORP.

DRAFT

ADDENDUM G
TO THE PARTICIPATION AGREEMENT

Citizens Development Corp. Provisions

The Participation Agreement (the "Agreement") is hereby amended by this Addendum G (the "Addendum"). This Addendum is entered into this ___ day of May, 2011 by and between the undersigned political subdivisions of the State of California, municipalities, other organizations, and individuals (collectively, the "Members"), and the CITIZENS DEVELOPMENT CORP., currently Chapter 11 Debtor and Debtor in Possession ("CDC" or "Debtor"), Bankruptcy Case No. _____, 10-bk-15142-LT11, to provide the following conditions:

1. CDC shall be joined as a Member pursuant to Section 5.2 of the Agreement, vested in all the rights and obligations of a Member under the Agreement; and, subject to the provisions of this Addendum, CDC agrees to be bound by and to fully comply with all the terms and conditions of the Agreement.

2. Because CDC is a debtor-in-possession under the United States Bankruptcy Code and because CDC is currently in the process of developing and seeking United States Bankruptcy Court confirmation of a Plan of Reorganization, CDC agrees to incorporate CDC's promises, duties, and obligations contained in this Addendum and the Agreement into the CDC Plan of Reorganization.

3. Notwithstanding anything in the Agreement to the contrary, CDC's status as a Member under the Agreement shall terminate automatically, without further action of CDC, upon completion of the Diagnostic Work, as the Diagnostic Work is described in Section 6.14 of the Agreement and in Addendum B provided however that the provisions of Paragraphs 7 and 8 of this Addendum shall survive such termination. For purposes of this Agreement, the Diagnostic Work shall be deemed complete upon the Members receiving written notice from the RWQCB that all such Diagnostic Work has been satisfactorily completed. Whether the termination of CDC's status as a Member under the Agreement shall occur before or after the Final Allocation, or any modification thereof, as described in Section 8.4 of the Agreement, CDC shall remain liable for its Shared Costs for the Diagnostic Work assessed pursuant to the Interim and Final Allocations provided under Sections 8.2, 8.4, and 8.8 of the Agreement and for its reasonable share of Incurred Transaction Costs provided under Section 8.14 of the Agreement. ~~CDC shall pay its portion of any Shared Costs and Incurred Transactional Costs for which they are liable pursuant to this Agreement no later than sixty (60) days following receipt of the~~

~~Members' assessment therefore.~~—Provided CDC shall have fully paid its portion of the Shared Costs for the Diagnostic Work ~~and Incurred Transactional Costs~~, and otherwise met its obligations under the Agreement in respect of such Diagnostic Work, CDC may again join the Agreement for subsequent phases of the Work as a New Member under Section 5.2 thereof.

4. Notwithstanding anything in the Agreement to the contrary, CDC's Interim Allocation of the Shared Costs for the Diagnostic Work under Section 8.2 of the Agreement shall equal the fixed sum of ~~\$75,000~~\$15,000 per year for the first two years that CDC is a Member under the Agreement, provided however that CDC shall be entitled to expend up to \$10,000 of the first year allocation to install a siphon at the dam as part of the Lake Management Program described below. To meet such Interim Allocation obligations CDC shall make two payments of ~~Seventy Five Thousand Dollars~~ Five Thousand Dollars (\$75,000) the first year and Fifteen Thousand Dollars (\$15,000) the second year~~each~~ to the City of San Marcos, the Program Manager under the Agreement, the first of which payments shall by certified check or money order payable upon execution of the Agreement, Addendum G, and Addendum H. The second such payment shall be due on or before March 1, 2012. These payments shall constitute CDC's Interim Allocation of the Shared Costs for the Diagnostic Work incurred by the Members for the first two years CDC is a Member under the Agreement. CDC's obligation to make future payments of Shared Costs, whether made under an Interim Allocation or Final Allocation, in the third year of CDC's membership in the Agreement shall be determined in accordance with all the terms and conditions of the Agreement including, without limitation, Section 8 thereof.

5. Section 8.14 of the Agreement defines "Incurred Transactional Costs" as "substantial resources" contributed to "the solicitation of Members and the negotiation and development of this Agreement, the Administrative Agreement with the Regional Board, and Common Interest Agreement," by a Member. By executing this Addendum, the Members agree that such cost, subject to vote of the Members, may be reimbursed to the Members by cash payment or credit as provided in Section 8.14.

6.—Section 2.1(o) of the Agreement defines "Shared Costs" as "all costs authorized by the Members in accordance with the provisions of this Agreement, including but not limited to the Work as [defined] in Section 6.14, legal, technical, administrative and other costs reasonably necessary to achieve the Purpose of the Agreement." By executing this Addendum, the Members agree that the scope of the "Shared Costs" may, inter alia, include the reasonable costs necessary to develop the scope of work or provide diagnostic data that can be usable for the scope of work. Such costs, subject to vote of the Members, may be subject to reimbursement to the Members by cash payment or credit as provided in Section 2.1(o) of the Agreement.

6.

7. CDC has participated in good faith negotiations with the Members and the Regional Water Quality Control Board in the development of the Agreement and the Addendum. CDC has participated in the development of Diagnostic Work Plan. As such, the Members agree that CDC has incurred both Shared Costs and Incurred Transactional Costs for which it may seek either credit or reimbursement pursuant to the terms of Sections 8.14 and 6.14 of the Agreement.

7.8. CDC holds a water rights license issued by the Water Rights Division of the SWRCB permitting a certain measure of impoundment of San Marcos Creek and certain uses of such waters. The waters of San Marcos Creek that have been so impounded are commonly known as Lake San Marcos. Such license and permit are subject to certain conditions and legal obligations assumed by CDC. CDC is legally bound to comply with those conditions and obligations, including but not limited to providing for the proper maintenance of the impoundment and the monitoring of incoming and bypassed waters, and required reporting. Because maintenance of the impoundment and impounded waters is critical to the protection of lake water quality, including the avoidance and/or minimization of nutrient impairment of the lake, CDC, as a condition of this Addendum, agrees to establish and fund a Lake Management Plan. CDC will develop the Lake Management Plan within ~~sixty (60)~~ one hundred twenty (120) days of signing this Addendum to the reasonable satisfaction of the State Water Resources Control Board. CDC agrees to allow the Members to review the Lake Management Plan and reasonably consider any comments thereto. CDC will submit and obtain the approval of the Plan from the San Diego Regional Water Quality Control Board ("Regional Board") and the State Water Resources Control Board within 120 days of signing this Addendum. CDC will allow the Members to comment on the draft and final Lake Management Plan and to reasonably consider and include such comments in the Plan. CDC agrees to provide such funding as is necessary to develop and implement the Plan and include the Plan and the necessary funding mechanism therefore in the Plan of Reorganization. The Members agree that the development and implementation of the Lake Management Plan benefits all the Members and as such, all expenditures necessary to develop and implement the Lake Management Plan shall be deemed Incurred Transactional Costs or Shared Costs as defined above and CDC shall be entitled to recover a reasonable amount of such expenditures from the other Members and New Members as more fully described in Section 8.14 of the Agreement.

8.9. CDC executes this Addendum and joins the Agreement as a Member provided the RWQCB Executive Officer executes Addendum B; and, the execution of Addendum B by the RWQCB is a condition precedent to the enforceability of the Agreement against CDC.

IN WITNESS WHEREOF, the Members hereto, or through their appointed counsel, enter into this Addendum.

CITY OF SAN MARCOS

CITIZENS DEVELOPMENT CORP.

By: _____
Paul Malone
Its: City Manager
Address: 1 Civic Center Drive
San Marcos, CA 92069

By: _____
Bob Hilber
Its: Chief Operating Officer
Address: _____

Dated: _____, 2011

Dated: _____, 2011