

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO: Honorable City Council**

**FROM: Teri Davis, Senior Management Analyst**

**DATE: December 10, 2014 (CC Meeting of 12/17/14)**

**SUBJECT: Consider Release of All Claims with Nearon Enterprises, LLC (formerly Carlsberg Ranch Owners Association) for Reimbursement of Erroneously Charged Water Bills**

**BACKGROUND**

Two water meters were installed in the Carlsberg Specific Plan between 1999 and 2000 by Simi-Conejo Construction, Inc. (Simi-Conejo) to supply irrigation water to City Assessment District (Zone 12) areas. In May 2000, the City made an arrangement with Simi-Conejo, for the property owner association to pay the median and slope maintenance cost provided by the City, and in exchange, the City would pay for the utility costs of certain parkways on the east side of Science Drive. In June 2012, the City received a letter (Attachment 1) from Heather White with Carlsberg Ranch Owners Association (Carlsberg) stating that Carlsberg had paid water bills erroneously, between 2006 and 2012, on two water meters (numbers 61135942 and 65869402), servicing the parkways on the east side of Science Drive. The letter requested a reimbursement in the amount of \$16,896.89. When the billing error was realized, the water bills were changed to designate the City as the customer and Carlsberg is not seeking reimbursement for any water bills after June 2012. Carlsberg did not file a claim.

**DISCUSSION**

Before the referenced water meters were installed, the City agreed to pay the water bills for these two meters, but the water bills erroneously identified Carlsberg as the customer and Carlsberg paid the water bills for approximately six years. While staff agreed that portions of the water bills should have been paid by the City, staff calculated the amount due to Carlsberg to be \$6,860.64 rather than \$16,896.89 requested.

Staff replied to Carlsberg's letter on September 19, 2012, supporting and discussing a reimbursement in the amount of \$6,860.64. Nearly two years later, in July 2014, staff received an email from Ms. White (Attachment 2) informing the City that Carlsberg is now Nearon Enterprises, LLC (Nearon) and providing an affirmative response from Nearon, not Carlsberg, accepting \$6,860.64 as a reimbursement. The attached

Release of All Claims (Attachment 3) states that Nearon will accept the \$6,860.64 and forever release the City from future claims.

**FISCAL IMPACT**

The cost to the City is \$6,860.64.

**STAFF RECOMMENDATION**

Authorize the City Manager to sign the Release and direct staff to process a reimbursement to Nearon.

Attachments:

1. Letter from Carlsberg to City
2. Email from Nearon to City
3. Draft Release of All Claims

## CARLSBERG RANCH OWNERS ASSOCIATION

June 21, 2012

Deborah S. Traffenstedt  
Deputy City Manager  
**City of Moorpark**  
799 Moorpark Avenue  
Moorpark, California 93021

**Re: Water Services**

Dear Deborah:

We represent the Carlsberg Ranch Owners Association ("the Association"). The Association has been paying for two water meters, A and B, and we have confirmed the location of the two meters which service land areas owned by the City of Moorpark. The locations and land areas the meters service are included in the attached map and identified as Meter A and Meter B. The Association has been inadvertently paying for these two meters for almost six years. There are photos of the locations of the meters as well.

The meters service the areas described below:

**Meter "A" - Located at the south east corner of Miller Parkway and Patriot Drive.**

Our landscaper indicated that the water came on in the street medians along Miller Parkway, just north and south of Patriot Drive.

**Meter "B" - Located at the south east corner of Miller Parkway and Stagecoach**

Our landscaper indicated that the water came on along the slope near Stagecoach and further up Miller Parkway towards the park.

Since these two meters do not service the Association's property we are requesting reimbursement in the amount of \$16,896.89. We have included documentation for your review including meter locations, maps, summary of invoices, copies of invoices and checks. Please remit payment, payable to "Carlsberg Ranch Owners Association" 500 La Gonda Way, Suite 210, Danville, California, at your earliest convenience.

If you have any questions or concerns, please feel free to contact me at (925) 743-3300.

Sincerely,



Heather White  
Investment Manager

Enclosures

C: CM, ACM, PLM, FD, FI

RECEIVED

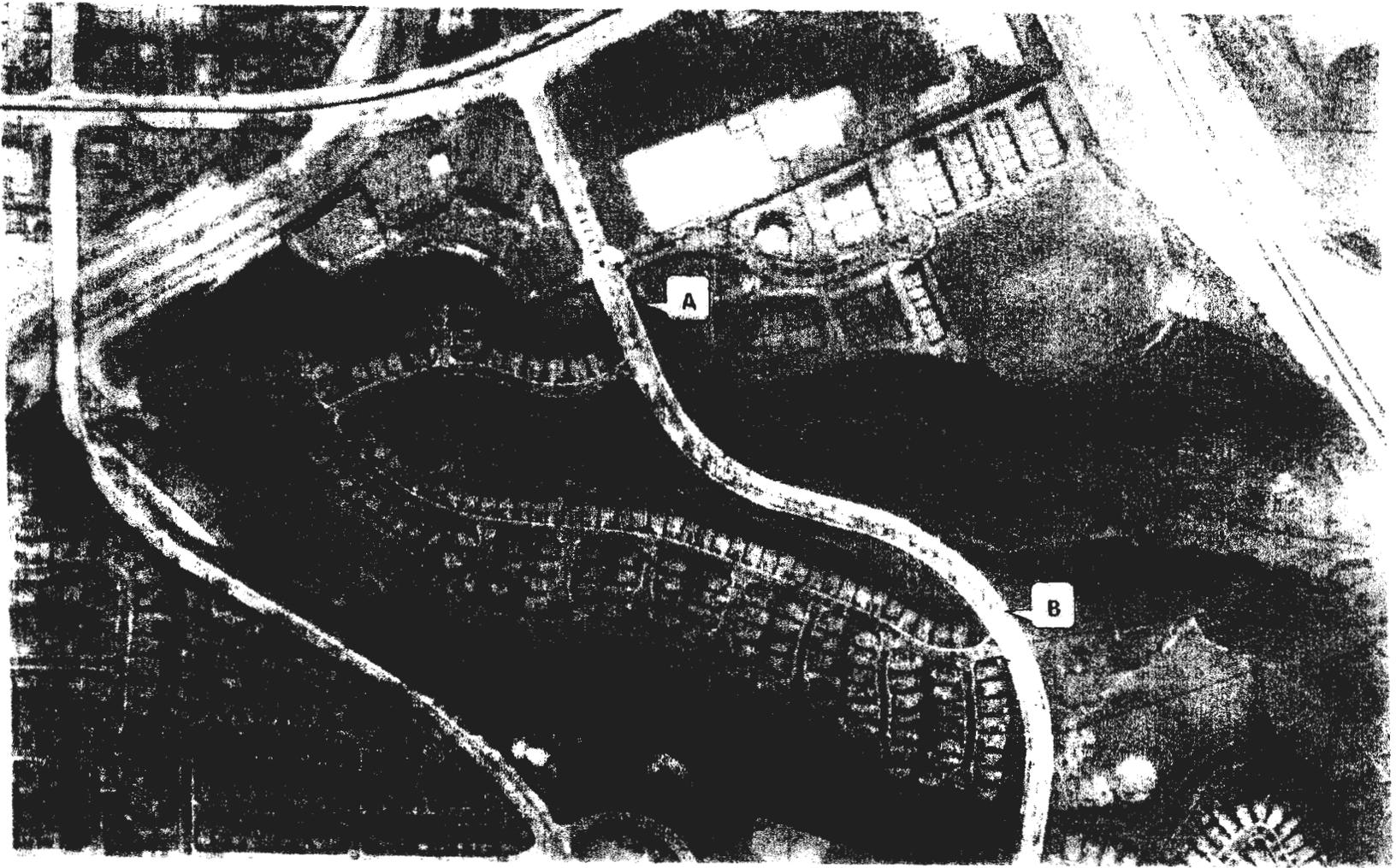
JUN 21 2012

CITY CLERK'S DIVISION  
CITY OF MOORPARK

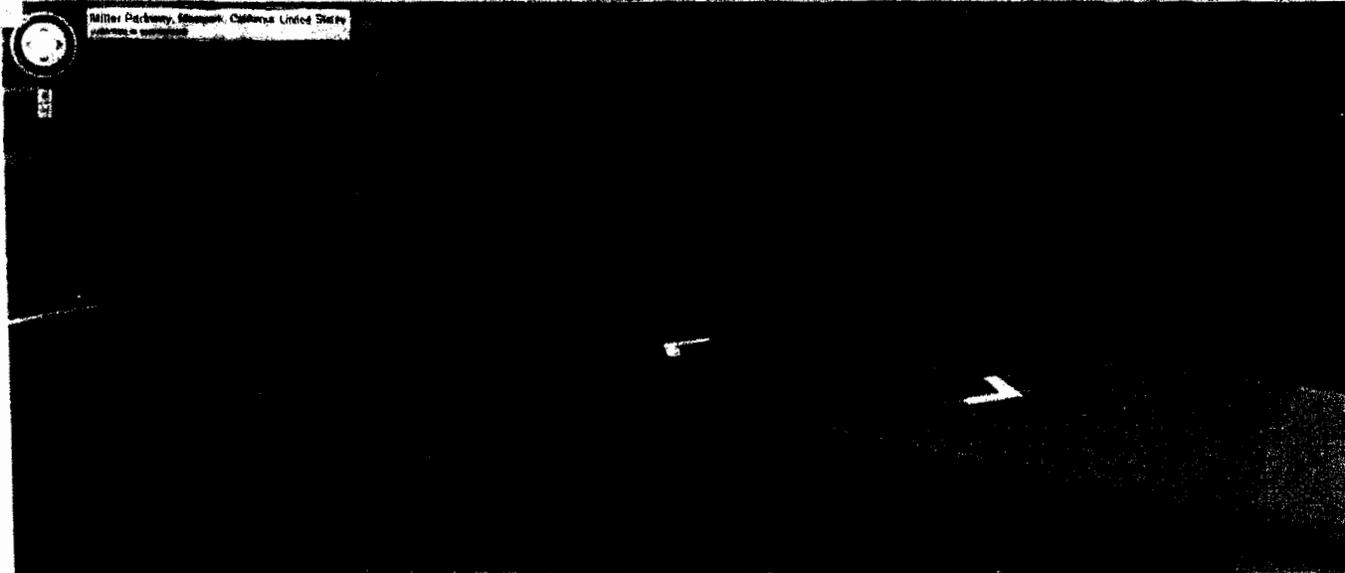
**WATER AND SANITATION SERVICES**

<b>Meter A</b>	
Account No.	0140996001
Meter No.	61435942
4850 1/2 Miller Parkway	
8/26/98 - Jan 2012	
Non-Active	
2006 -	\$553.52
2007 -	\$469.92
2008 -	\$495.72
2009 -	\$513.41
2010 -	609.60
2011 -	\$640.28
2012 -	\$38.68
<b>Total:</b>	<b>\$3,321.13</b>

<b>Meter B</b>	
Account No.	0140996001
Meter No.	65869402
4628 1/2 Miller Parkway	
09/10/98 - Jan 2012	
Non-Active	
2006 -	\$2,868.95
2007 -	\$4,887.22
2008 -	\$760.72
2009 -	\$3,284.84
2010 -	\$348.00
2011 -	\$1,396.06
2012 -	\$29.97
<b>Total:</b>	<b>\$13,575.76</b>



Account open from 08/26/98 - 01/2012 A. 4850 1/2 Miller Parkway - Acct 014130001 (Closed) Meter No. 61135942



Account open from 09/07/07 - 09/17/11 (City of Moorpark)  
Meter No. 65869403 Opened 11/16/11 - Current (Carlsberg Assoc.) Account Open from 09/10/98 - 01/2012 Meter No. 65869402

B. 4628 1/2-A Miller Parkway - Acct 0149998002 (Active) & 4628 1/2- Miller Parkway - Acct 0140996001 (Closed)



**From:** Heather White [<mailto:hwhite@nearon.com>]  
**Sent:** Monday, July 07, 2014 10:57 AM  
**To:** Allen Walter  
**Subject:** Water Services with the Carlsberg Ranch Owners Association

Mr. Walter,

I am responding to the attached letter from you dated September 19, 2012. We are ready to move forward and accept the City of Moorpark's reimbursement for a portion of the water costs we incurred from 2009-2012. You requested in the attached letter that I send you back a letter, an invoice and a signed copy of the Release of Claims. Before I can do that, can you send me a soft copy of the Release of Claims because I need to make a couple of changes to it?

Here are the changes I want to make to the agreement:

First, the \$6,860.64 should be paid to Nearon Enterprises, LLC not to Carlsberg Ranch Owners Association.

Second, we want to make this more specific to this situation so I want to change the following: The last two lines of the first paragraph replace the words "the accident, casualty or event . . ." with "the undersigned's overpayment or incorrect payment of water meter charges during calendar years 2009 through 2012, as described in that certain letter dated September 19, 2012 from Mr. Allen M. Walter, Landscape and Parks Superintendent, to Carlsberg Ranch Owner's Association."

If you want to make the above changes to the document you can and send me a revised hard copy instead.

Let me know if you have any questions.

Regards,  
Heather

Heather White  
Nearon Enterprises  
500 La Gonda Way, Suite 210  
Danville, CA 94526  
925-743-3300 (Phone)

**RELEASE OF ALL CLAIMS**

KNOW ALL MEN BY THESE PRESENTS:

That the Undersigned, being of lawful age, for sole consideration of **Six Thousand Eight Hundred Sixty and 64/100 Dollars (\$6,860.64)** to be paid to **Nearon Enterprises, LLC** do/does hereby and for my/our/its heirs, executors, administrators, successors and assigns release, acquit and forever discharge **the City of Moorpark** and his, her, their, or its agents, servants, successors, heirs, executors, administrators and all other persons, firms, corporations, associations or partnerships of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which the undersigned now has/have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and property damage and the consequences thereof resulting or to result from the accident, casualty or event which **is described in a reimbursement request letter from Carlsberg Ranch Owners Association to the City of Moorpark dated June 21, 2012 (Attachment 1), and in a subsequent email from Nearon Enterprises dated July 7, 2014 (Attachment 2).**

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said releases deny liability therefor and intend merely to avoid litigation and buy their peace.

It is further understood and agreed that all rights under Section 1542 of the Civil Code of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

“1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

The undersigned hereby declare(s) and represent(s) that the injuries sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release it is understood and agreed, that the undersigned rely(ies) wholly upon the undersigned’s judgment, belief and knowledge of the nature, extent, effect, and duration of said injuries and liability therefor and is made without reliance upon any statement or representation of the party or parties hereby released or their representatives or by any physician or surgeon by them employed.

The undersigned further declare(s) and represent(s) that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

I hereby represent that at the time I sign this Release I am not hospitalized in a medical facility nor was I admitted to a medical facility within the past 15 days.

**THE UNDERSIGNED HAS READ THE ABOVE AND FULLY UNDERSTANDS IT TO BE A FULL AND FINAL RELEASE OF ALL CLAIMS.**

Signed, sealed and delivered this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Witness to signature

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness to signature

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Signature

**For your protection California law requires the following to appear on this form.**

Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**ACKNOWLEDGMENT UNDER OATH**

State of \_\_\_\_\_

County of \_\_\_\_\_

Before me this \_\_\_\_\_ day of \_\_\_\_\_ came \_\_\_\_\_

known to me to be the individual who executed this release, and acknowledged that \_\_\_\_\_ fully understood its contents and freely executed same for the sole consideration therein expressed.

\_\_\_\_\_  
Notary Public  
CW072