A RESOLUTION BY
CITY UTILITIES COMMITTEE

04- R -0615

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SERENBE PHASE 1A HOMEOWNERS ASSOCIATION, INC. PROVIDING FOR THE NON-STANDARD LOCATION OF WATER METERS ON PRIVATE PROPERTY LOCATED UNINCORPORATED FULTON COUNTY, GEORGIA, TO WHICH THE CITY PROVIDES WATER SERVICES; AND FOR OTHER PURPOSES.

WHEREAS, Serenbe Phase 1A Homeowner's Association, Inc. ("Serenbe Phase 1A") wishes to build 42 residential, single-family units in a subdivision located unincorporated Fulton County outside of the municipal boundaries of the City of Atlanta ("City"); and

WHEREAS, the proposed single-family homes would be served with potable water from the City; and

WHEREAS, The City typically requires that water meters be located at the "service connection" location either on City property, in the right-of-way or within an easement or license granted to the City; and

WHEREAS, Section 154-116 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises where the water meter is normally located and where the City's responsibility ends and the water customer's responsibility begins; and

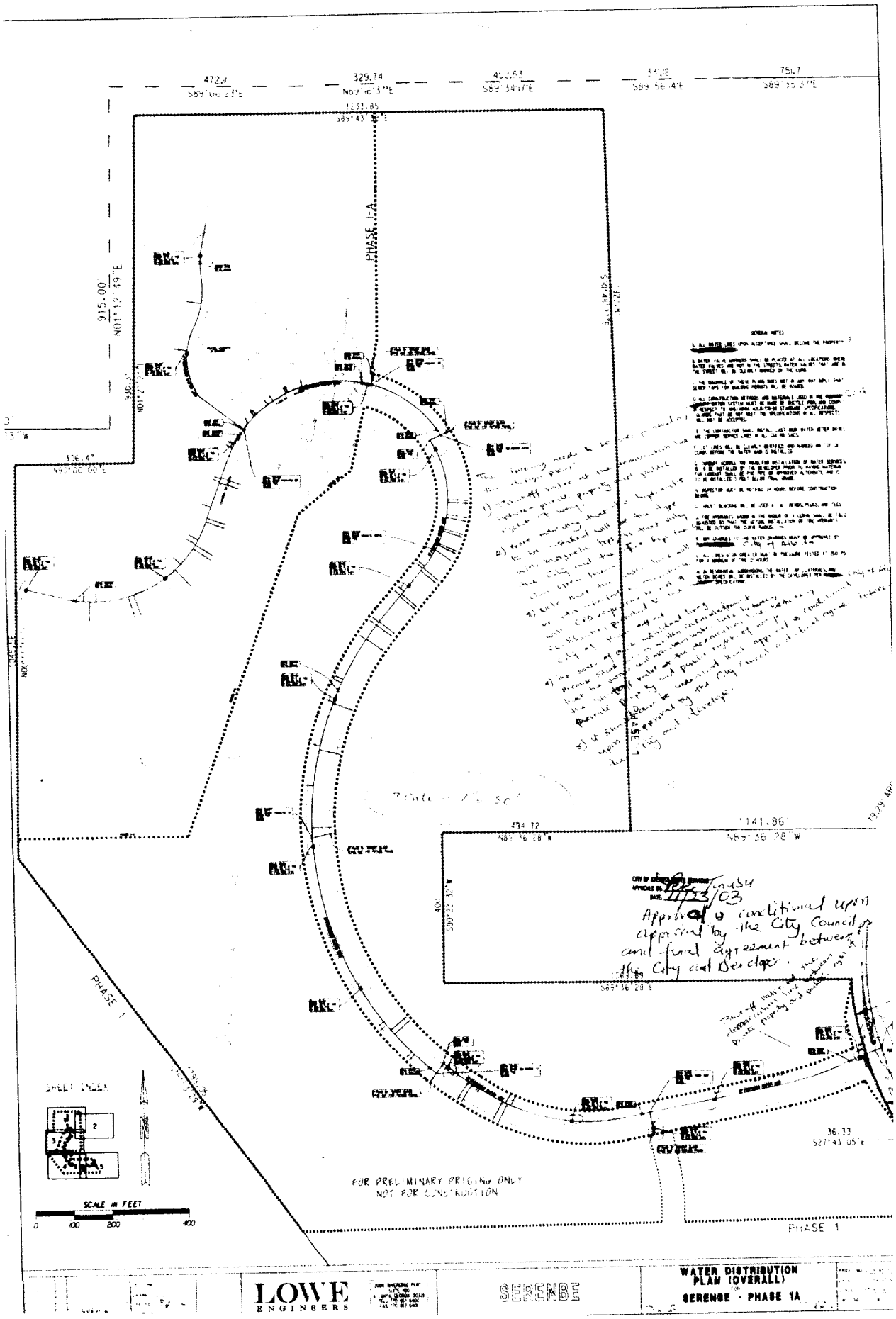
WHEREAS, Serenbe Phase 1A proposes to locate forty two (42) water meters at locations different than the service connection location, to allow each meter to be located on private property on an individual lot in the Subdivision; and

WHEREAS, it is desirable and in the best interests of the City to enter into an Agreement with Serenbe Phase 1A setting forth the terms between the parties concerning the installation of and responsibility for water system infrastructure, including meters, within the Subdivision.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, THAT, the Mayor is authorized to execute with Serenbe Phase 1A an Agreement for the non-standard location of water meters on private property located within the Subdivision.

BE IT FURTHER RESOLVED, that the City Attorney is authorized to prepare an Agreement with Serenbe Phase 1A for this transaction, as deemed necessary and appropriate or as required by law.

BE IT FURTHER RESOLVED, that the Agreement will not become binding upon the City and the City will not be liable or obligated under it until it has been duly executed by Serenbe Phase 1A, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to Serenbe Phase 1A.



PHASE I-A
PHASE 1
SHEET INDEX
SCALE IN FEET
0 100 200 400
FOR PRELIMINARY PRICING ONLY
NOT FOR CONSTRUCTION
Approval is conditioned upon approval by the City Council and final agreement between the City and Developer.
LOWE ENGINEERS
SERENBE
WATER DISTRIBUTION PLAN (OVERALL)
SERENBE - PHASE 1A

AGREEMENT

This AGREEMENT ("Agreement") is entered into this ____ day of _____, 2004, between Serenbe Phase 1A Home Owner's Association, Inc. ("Serenbe Phase 1A"), a Georgia corporation, and the City of Atlanta ("City"), a Georgia municipal corporation.

BACKGROUND:

Section 154-116 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises where the water meter is normally located and where the City's responsibility ends and the water customer's responsibility begins; and

The City, typically requires that water meters be located at the "service connection" location; and

Serenbe Phase 1A is a residential subdivision ("Subdivision") consisting of forty two (42) residential units located in unincorporated Fulton County, Georgia, and in which area water service is provided by the City; and

Serenbe proposes to locate forty two (42) water meters at locations different than the service connection location, to allow each meter to be located on an individual lot; and

Accordingly, the City and Serenbe agree as follows:

1. **Construction of Water System; Location of Meters.** The water system for the Subdivision will be constructed in accordance with the Plans attached as Exhibit 2. The water system for the Subdivision will contain individual water meters at the locations shown on Exhibit 2. The City agrees that each individual water meter will be read by the City or its representatives at the locations set forth on Exhibit 2 for the purposes of rendering bills to each individual property owner for its respective and independent water use. Serenbe Phase 1A agrees that, to the extent that the City or its representatives have to enter private property to read any meter, this Agreement constitutes a license and agreement by Serenbe Phase 1A that the City or its representatives are authorized to enter such private property and that entry will not constitute a trespass. Serenbe Phase 1A agrees to obtain, in writing, from any owner of any residence in the Subdivision, prior to water service to the residence being established, an acknowledgement of the City's or its representatives' license to enter private property to read meters, an acknowledgement of the applicability of the City's Code of Ordinances to the residence with respect to water services provided to it and water infrastructure located within the Subdivision, an acknowledgement that water services provided to the Subdivision are governed, in addition to the City's Code of Ordinances and applicable law, by this Agreement, an acknowledgment that the water lines between the meter and the residence and between the meter and the Cutoff Valves must be maintained by the resident or Serenbe Phase 1A, an appropriate

easement in favor of the City for the location of the specific water meter serving the residence and an indemnification agreement indemnifying the City from all damage claims resulting from the installation, maintenance and access to the meter located on private property.

2. **"Service Connection; Infrastructure Responsibilities.** The "service connection" location for the Subdivision will not be located where any water meter is located. Instead, the "service connection" location will be at the point of the water system saddle tap w/valves ("Valves"), as shown on Exhibit 2, so that the City's responsibility for the public portions of the water system includes the Cutoff Valves. Serenbe Phase 1A agrees that it is entirely responsible, at its expense, for the construction, operation, maintenance and repair of all water services infrastructure located immediately after the "cutoff valve" and throughout the Subdivision. Further, the City's approval of Exhibit 2 does not encompass an approval that the materials proposed to be installed in the Subdivision in the form of water services infrastructure, except for materials identified on the Exhibit as being installed per City, or County requirements or regulations, are fit or appropriate for their intended use (e.g. non-standard pvc pipe, etc.).

3. **Miscellaneous:**

3.1. **Binding Effect.** This Agreement will inure to the benefit of and be binding upon Serenbe and the City, their legal representatives and permitted successors and assigns.

3.2. **Severability.** In the event any provision in this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, that will not effect the remainder of this Agreement, and the remaining provisions of this Agreement will continue in force and effect to the extent as would have been the case had the invalid or unenforceable provisions of this Agreement had never been a part of this Agreement.

3.3. **Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Georgia.

3.4. **Forum Selection Clause.** The City and Serenbe Phase 1A agree that any judicial review of any claim arising under or concerning this Agreement must be brought in Fulton County, Georgia. Accordingly, the parties fix venue and jurisdiction for any claim concerning this Agreement in Fulton County, Georgia.

3.5. **Ethics: Gratuities And Kickbacks.**

3.5.1. **Gratuities and Kickbacks.** The right of Serenbe Phase 1A to proceed under this Agreement may be terminated if, after notice and hearing, City determines that Serenbe Phase 1A:

3.5.1.1. offered or gave a gratuity or kick-back (e.g. an entertainment, fee, commission, compensation of any kind or gift) to an officer, official, or employee of City; and

3.5.1.2. intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

3.5.2. **Rights and Remedies.** The rights and remedies of City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

3.6. **Contingent Fees.** Serenbe Phase 1A warrants that it has not employed or retained any company or person, other than a bona fide employee working for it to solicit or secure this Agreement; and that Serenbe Phase 1A has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for it, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, and upon a finding after notice and hearing, City will have the right to terminate this Agreement, and collect from Serenbe Phase 1A the full amount of such fee, commission, percentage, gift or consideration.

3.7. **Further Acts.** Serenbe Phase 1A agrees to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

CITY:

SERENBE-PHASE-1A HOMEOWNERS' ASSOCIATION, INC.

_____
MAYOR

_____
Name:_____
Title:_____

ATTEST:

ATTEST:

_____
MUNICIPAL CLERK (Seal)

_____
SECRETARY/ASSISTANT SECRETARY (Seal)

APPROVED:

APPROVED AS TO FORM:

_____
COMMISSIONER, DEPARTMENT OF WATERSHED MANAGEMENT

_____
CITY ATTORNEY

APPROVED:

RECOMMENDED:

_____
CHIEF FINANCIAL OFFICER

_____
DIRECTOR, BUREAU OF PURCHASING AND REAL ESTATE

_____
CHIEF OPERATING OFFICER

TRANSMITTAL FORM FOR LEGISLATION

TO: **MAYOR'S OFFICE** **Greg Pridgeon**
(For review & Distribution to Execution Management)

Commissioner's Signature: Jack Ravan SCP Director's Signature: _____

From: Origination Dept. Watershed Management Contact (name): Melinda Langston

Committee(s) Purview: CUC Committee Deadline: ___

Committee Meeting Date(s): March 30,2004 City Council Meeting Date: April 5, 2004

CAPTION:

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SERENBE PHASE 1A HOMEOWNERS ASSOCIATION, INC. PROVIDING FOR THE NON-STANDARD LOCATION OF WATER METERS ON PRIVATE PROPERTY LOCATED UNINCORPORATED FULTON COUNTY, GEORGIA, TO WHICH THE CITY PROVIDES WATER SERVICES; AND FOR OTHER PURPOSES.

BACKGROUND/PURPOSE/DISCUSSION:

This paper allows for the installation of individual meters for subdivision. It gives city easements on private streets to install, read and maintain the installed meters.

FINANCIAL IMPACT (If Any):
None

Mayor's Staff Only

Received by Mayor's Office: 3.19.03 (date) (initials) Reviewed by: _____

Submit to Council: _____
(date)

Action by Committee: _____Approved _____ Adverse _____Held _____Amended

_____Substitute _____Referred _____Other