

**PARK DEVELOPMENT AGREEMENT  
FOR THE QUARRY FALLS (CIVITA) DEVELOPMENT PROJECT**

THIS PARK DEVELOPMENT AGREEMENT FOR THE QUARRY FALLS (CIVITA) DEVELOPMENT PROJECT [Agreement] is made and entered into between the City of San Diego, a municipal corporation [City], and Quarry Falls, LLC, a California limited liability company [Developer]. City and Developer are collectively referred to herein as the "Parties" and individually as a "Party." This Agreement is entered into with reference to the following recitals:

**RECITALS**

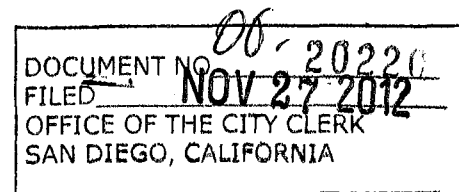
A. Developer owns approximately 230 acres of real property [Developer's Property] located on the north side of Friars Road between I-805 and Mission Center Road in the Mission Valley and Serra Mesa Community Plan areas of the City, which previously was known as the Quarry Falls development project but currently is known as the Civita Development Project.

B. The following entitlements [Entitlements] granted by City allow Developer to construct a maximum of 4,780 residential units, a maximum of 900,000 square feet of combined commercial retail/office use, with the ability to transfer unused trips from residential land use to increase the final commercial development intensity, civic uses, open space and trails, and an optional school site, and approximately 16.54 acres of parks, [Development], all as more fully described in the following documents: Quarry Falls Specific Plan [Specific Plan] approved by City on October 21, 2008, Rezone No. 183191 approved by City on November 10, 2008, Site Development Permit/Master Planned Development Permit No. 183192 [SDP/MPDP] approved by City on October 21, 2008, and Vesting Tentative Map No. 183196 [VTM] approved by City on October 21, 2008.

C. The Specific Plan includes a conceptual description of the park facilities to be included within the Development but also states that the "[a]ctual park uses will be defined as part of the park development process identified in Council Policy 600-33, *Community Notification and Input for City-Wide Park Development Projects*" [Council Policy 600-33].

D. VTM Condition No. 67 [Condition No. 67] states that "[p]rior to recordation of the first Final Map, the Owner/Subdivider shall enter into a park development agreement for the acquisition, design, construction, method of their reimbursement, and maintenance for all on-site population-based public park acreage."

E. SDP/MPDP Condition No. 37 requires that "[p]rior to construction of any public park, or facility receiving population-based park credit, a General Development Plan [GDP] for park uses and design shall be prepared in conformance with Council Policy 600-33."



F. SDP/MPDP Condition No. 38 [Condition No. 38] requires that “[p]rior to recordation of the first Final Map, the Owner/Permittee shall enter into a park development agreement for the acquisition, design, construction and method of reimbursement and maintenance for all on-site population-based park acreage.” On October 28, 2010, the City made a substantial conformance determination that interpreted Condition No. 38 to mean that a park development agreement has to be entered into prior to the recordation of the first Final Map that contains identified park acreage, which is identified on the VTM as a “P” Lot.

G. The Mission Valley Community Plan area will require an additional 80 acres of population-based park land at full community development per the City’s General Plan Guidelines and SANDAG’s 2030 Forecast. Due to the limited opportunities for park land acquisition within the Mission Valley Community Plan area, Developer may, but shall not be required to, provide more on-site, public park acreage than required to meet General Plan Guidelines for the approved Project.

H. SDP/MPDP Condition No. 39 [Condition No. 39] requires that “[b]ased upon a build-out of 4,780 units, the Owner/Permittee shall provide a minimum of 16.54 acres of developed Neighborhood Park within the Quarry Falls project. The Neighborhood Park acreage shall be developed based upon a phasing plan:

(1) “The Owner/Permittee shall design and bond for Creekside and Phyllis Place parks prior to issuance of the 1,251 residential building permit.”

(2) “The Owner/Permittee shall construct the Creekside and Phyllis Place parks prior to the issuance of the 1,860<sup>th</sup> residential final occupancy permit.”

(3) “The Owner/Permittee shall design and bond for the Central Park prior to the issuance of the 2,782<sup>nd</sup> residential building permit.”

(4) “The Owner/Permittee shall construct the Central Park prior to the issuance of the 2,900<sup>th</sup> residential final occupancy permit.”

(5) “The Owner/Permittee shall design and bond for the Franklin Ridge Pocket Park and public portion of the Finger Park Courts prior to the issuance of the 3,290<sup>th</sup> residential building permit.”

(6) “The Owner/Permittee shall construct the Franklin Ridge Pocket Park and public portion of the Finger Park Courts prior to the issuance of the 3,910<sup>th</sup> residential final occupancy permit.”

I. SDP/MPDP Condition No. 40 [Condition No. 40] requires that “[p]rior to bonding for each phase of park development, the Owner/Permittee shall pay the applicable Mission Valley Public Facilities Financing Plan [Financing Plan] Development Impact Fee [DIF] at issuance of residential building permits to fully satisfy the Neighborhood Park requirement. These funds shall be reimbursed to the

Owner/Permittee upon conveyance of land, provision of public easements, and construction of public parks in accordance with the park development agreement. The Owner/Permittee may elect to design and bond for the on-site Neighborhood Park acreage earlier than required by the phasing plan in lieu of payment of the applicable DIF or assure implementation of the park development agreement by any other method satisfactory to the City Planning and Community Investment Department [CPCI] and the Mayor or City Manager.”

J. SDP/MPDP Conditions No. 41 and 42 require that the “Owner/Permittee shall pay the applicable portion of the DIF attributable to the Community Park at issuance of residential building permits to fully satisfy the requirement for 6.73 acres of Community Park” and “the community recreation building and community swimming pool.” In the event that Developer constructs fewer residential units than allowed for in the SDP/MPD, the acreage requirement and DIF for the Community Park shall be reduced proportionally consistent with the methodology used for calculating the population-based park requirements.

K. SDP/MPDP Condition No. 43 requires that “[t]o receive population-based park credit for proposed park acres, the Owner/Permittee shall ensure that design of Lots P1, P3, P4, P6-8, P16-18, P20, P26, P27, P29, P31 and P32 comply with City Council Policy 600-33, *Community Notification and Input for City-wide Park Development Projects*.”

L. To receive credit for population-based park acreage, SDP/MPDP Condition No. 44 requires that the “Owner/Permittee shall design Lot P27 water feature (including the water surface and edge treatment) to not exceed ten percent (10%) of the total parcel area unless an alternative design that exceeds ten percent (10%) is approved as part of the GDP process.”

M. SDP/MPDP Condition No. 45 states that “Lots P4-7 parcel lines may be adjusted subsequent to approval of conceptual design to accommodate uses and ownerships. Any adjustments to the lot lines shall ensure no decrease in total public park acreage.”

N. SDP/MPDP Condition No. 46 requires that the “Park Planning Section of CPCI shall review all Substantial Conformance Review submittals for consistency with the approved VTM. If public park useable acreage is not in conformance with the approved VTM to the detriment of providing required population-based park acreage, park fees as determined by the City in the approved Financing Plan shall be used to fully satisfy Neighborhood Park acreage requirements at building permit issuance.”

O. SDP/MPDP Condition No. 47 requires that the Owner/Permittee shall “design the bioswale within Lots P1, P3, P4, and P32 to be integrated into the public park area and useable to achieve park requirements consistent with the Specific Plan and as determined by the GDP.”

P. SDP/MPDP Condition No. 48 requires “a public access easement over the trail portion of Lots P9-14, P19, P21-25, and any other trail that provides for public access to public park land or open space.”

Q. SDP/MPDP Condition No. 49 provides that the “Owner/Permittee shall be reimbursed from the DIF for the cost of any public park acreage developed on-site that reduces the population-based park requirements in Mission Valley upon City Council approval of a reimbursement agreement.”

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties herein expressed, and for other good and valuable consideration, the Parties agree as follows:

### DEFINITIONS

Notwithstanding other defined terms set forth throughout this Agreement in brackets, the following standard definitions also apply:

**ADA** means the Americans with Disabilities Act of 1990, and any amendments thereto.

**Acceptance** means the final approval by the Project Manager following the Final Inspection (as set forth in Section 15.4) that the Project is complete and Work (as defined herein) required on the Punch List (as defined in Section 15.2) has been completed to the satisfaction of the Inspection Team (as set forth in Section 14.1).

**As-Builts** means the Construction Documents (as defined herein) that are the contract Plans and Specifications (as defined herein) modified from the original design to reflect the actual product built.

**Bidding Documents** means, but is not limited to, general conditions, special provisions, the Plans and Specifications for the Project Improvements (as defined herein), Standard Drawings (as defined herein) and Standard Specifications (as defined herein), reference specifications, and all addenda issued during the bidding process.

**Calendar Day(s)** means all days of the week, Holidays (as defined herein) and weekends included.

**Change Order** means written order, approved by City, from Developer or its authorized representative to the contractor performing the work, authorizing a change in the Work (as defined herein) to be performed.

**City** means the City of San Diego. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the City representative designated by this Agreement.

**City Council** means the City Council of the City of San Diego.

**City's Administrative Costs** means the expenses City incurs to: (i) administer the acquisition of the Project site(s), (ii) facilitate design and public input process, (iii) review and approve the Plans and Specifications for the Project Improvements, and (iv) inspect the Project Improvements during construction, until completion and Acceptance of the Project Improvements.

**Construction Documents** means, but is not limited to, contract addenda, notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to Notice of Award), the bonds, the general conditions, permits from other agencies, the special provisions, the Plans and Specifications, Cost Estimate, and bid documents (consistent with the approved GDP for the design and construction of the Project Improvements), City's Standard Drawings and Standard Specifications, reference specifications, all addenda issued during the bidding process and all modifications issued after the execution of the construction contract.

**Consultant(s)** means a party or third parties hired by Developer in accordance with Council Policy 300-7, titled Consultant Services Selection, to provide the services necessary for the design and construction of the Project Improvements.

**DSD** means the City of San Diego Development Services Department.

**Defective Work** means all work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the approved Construction Documents.

**Developer** means Quarry Falls, LLC and its successors in interest.

**Extra Work** means any City additions, modifications, or deletions to work or Developer obligations under this Agreement not within the original scope of Work contemplated by this Agreement.

**GDP** means the General Development Plan that shall be prepared for all or individual phases of the Project Improvements consistent with the requirements for such GDP as described in Section 4.5 below and the public process outlined in Council Policy 600-33.

**Greenbook** means the most recent edition of the The "Greenbook" Standard Specifications for Public Works Construction.

**Hazardous Materials** means hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Project site, including, without limitation: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code section 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). "Hazardous Materials"

shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule or regulation.

**Holiday** means the City-observed Holidays listed below (if any holiday listed falls on a Saturday, then the Saturday and the preceding Friday are both legal Holidays. If the holiday should fall on a Sunday, then the Sunday and the following Monday are both legal Holidays):

<u>Holiday</u>	<u>Observed On</u>
New Year's Day	January 1
Martin Luther King Day	Third Monday in January
Presidents Day	Third Monday in February
Cesar Chavez Day	March 30
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

**Notice of Completion** means the documents Developer executes and files with the County Recorder prior to Final Completion (as defined in Section 16.2) that stipulate the respective date that the Project Improvements were completed. The respective warranty and stop notice periods commence on the date the Notice of Completion is recorded.

**Notice of Default** means a written notice from City to Developer indicating that Developer has failed to adequately perform any obligation required by this Agreement in accordance with Section 19.6 and Article XXVII.

**Notice to Proceed** means City's written notice authorizing Developer to commence work and/or services on the Project Improvements.

**Notice to Terminate** means a written notice from City to Developer terminating this Agreement in accordance with Section 19.6 and Article XXVII.

**Mission Valley Development Impact Fees (DIF)** means the Development Impact Fees (DIF) collected to mitigate the impact of new development for public facilities identified in the Mission Valley Public Facilities Financing Plan (PFFP).

**Plans and Specifications** means Project-specific plans and specifications, including but not limited to, site layout and staking, grading, irrigation, and landscape plans, and construction details, necessary to construct the Project Improvements in accordance with the approved GDP.

**Project Improvements** means the design and construction of a minimum of 16.54 acres of developed Neighborhood Park within the Development in accordance with this Agreement and in compliance with the Specific Plan, SDP/MPDP, and GDP; all City standard drawings and specifications, including City's Park and Recreation Department's Consultant's Guide to Park Design and Development; all local, state and federal disabled access laws and regulations, including but not limited to the Americans with Disabilities Act [ADA], the Americans with Disabilities Act Accessibility Guidelines [ADAAG], and Title 24 of the California Code of Regulations; and City Council Policy 600-33.

**Project Manager** means City's representative from the Park and Recreation Department or Public Works Department, acting as City's overseer of the Project Improvements.

**Resident Engineer [RE]** means City's representative from the Public Works Department, acting as City's Resident Engineer for construction inspection and oversight.

**Rough Grading Cost** means a pro-rata share of cost paid by Developer to rough grade the entire subdivision, less any savings realized by Developer in balancing the cut and fill soil of the subdivision site.

**Standard Drawings** means City of San Diego Standard Drawings, including all Regional Standard Drawings current at the time construction documents are initiated.

**Standard Specifications** means the most recent edition of The "Greenbook" Standard Specifications for Public Works Construction (Greenbook) and The "Whitebook" Standard Specifications for Public Works Construction (Whitebook).

**Useable Park Acreage** means a graded pad not exceeding two percent (2%) rough grade, as required to provide for structured public recreation programs of an active nature common to parks in the City of San Diego (such as ball games or court games), or gently sloping land not exceeding ten percent (10%) grade, for unstructured public recreational activities, such as children's play areas, picnicking, appreciation of open spaces, or a combination thereof, unconstrained by environmental restrictions that would prevent its use as a park and recreation facility, free of structures, roads or utilities, unencumbered by easements of any kind other than for public access. (The allowable amount of useable acres exceeding two percent (2%) grade at any given park site shall be determined on a case-by-case basis by the Park Planning Section of the Development Services Department.)

**Whitebook** means the most recent edition of The "Whitebook" Standard Specifications for Public Works Construction.

**Work** means all labor, materials, supplies, and equipment necessary to construct the Project Improvements in accordance with the Construction Documents.

**Working Day(s)** means Monday through Friday, excluding Holidays.

## ARTICLE I. SUBJECT OF THIS AGREEMENT

- 1.1 **Recitals and Exhibits.** The above recitals are true and correct, and are hereby fully incorporated herein by reference. All exhibits to this Agreement are hereby fully incorporated herein by reference.
- 1.2 **Developer to Provide Park Land and Project Improvements.** City requires population based park acreage and development of park infrastructure to accommodate the Development and Developer is required to fulfill the obligations within this Agreement and the Entitlements. City agrees to accept performance of Developer's obligations under this Agreement as satisfaction of Developer's obligations relating to the provision of population based park land and the design, construction, and development of park facilities under VTM Condition No. 67, and SDP/MPDP Conditions 37 through and including 49, subject to the terms of this Agreement.
- 1.3 **Individual Phases of Project Improvements.** As set forth in Condition No. 39, the locations of the individual phases where the Developer shall assure or cause Project Improvements to be designed and constructed are Creekside Park, Phyllis Place Park, Central Park, Franklin Ridge Pocket Park, and the public portion of the Finger Park Courts, as depicted in the attached **Exhibit A** "Property Depiction".
- 1.4 **Conveyance of Project.** Within ninety (90) Calendar Days of City's Acceptance of an individual phase of the Project Improvements, Developer shall transfer fee title to the City the real property and any required public easements on which the individual phase of the Project Improvements that were accepted by City are situated in accordance with the terms and conditions of this Agreement [Conveyance].
- 1.5 **City's Administrative Costs Recovery.** Within ten (10) Working Days following City Council approval of this Agreement, Developer shall establish a deposit account for the initial phase of the Project Improvements by depositing Twenty Five Thousand Dollars (\$25,000.00) with City to reimburse City for City's Administrative Costs. City's Administrative Costs as defined in Exhibits B-1 through B-4 "Preliminary Cost Estimate" for each Park Phase, are estimated amounts in FY 2012 dollars for the individual park phases of the Project Improvements and for which individual accounts, or a combined account subject to the approval of City, will be established prior to City's review of any GDP or



Plans and Specifications for an individual phase. Thereafter, upon request by City, Developer shall make deposits in Twenty Five Thousand Dollars (\$25,000) increments to the individual or combined accounts to be drawn upon by City for administrative and inspection purposes. Any unused amount will be refunded to Developer consistent with City's accounting practices. If City costs exceed the estimated costs for the individual phases of the Project Improvements due to extraordinary assistance required by consultant or contractor beyond that which is customary, Developer shall be solely responsible for payment of such City costs.

- 1.6 **Project Improvements Cost Reimbursement.** The payment of any cash reimbursement or granting of any credit against the DIF as a result of the bonding, construction, and/or conveyance of property associated with the Project Improvements shall be determined pursuant to the terms and conditions of the Reimbursement Agreement for the Quarry Falls (Civita) Development Project, on file in the Office of the City Clerk as Document No. OO- 20219 [Reimbursement Agreement], between Developer and City, which establishes the terms and conditions for reimbursement for all applicable public facilities, including public parks. Where the terms of this Agreement and the Reimbursement Agreement conflict, the more stringent requirements shall apply.
- 1.7 **Condition Precedent to Reimbursement or Credit.** City's approval of the Reimbursement Agreement is a condition precedent to City's obligation to provide cash reimbursement or grant credits against the DIF for Project Improvements. City shall not be required to provide cash reimbursement or grant credits against the DIF unless and until the condition precedent has occurred.
- 1.8 **Additional Park Acreage.** Subject to the prior written approval by the Park Planning and Facilities Finance Divisions of DSD, Developer may, consistent with the City General Plan standards, elect to construct additional Neighborhood Park acreage within the Development and shall receive a credit against the DIF or cash reimbursement from the DIF subject to the terms of the Reimbursement Agreement for such additional acreage provided such additional acreage is included within the approved GDP.

## ARTICLE II. DURATION OF THIS AGREEMENT

- 2.1 Following the adoption of the City Council Ordinance authorizing this Agreement and the subsequent execution of the same by the Parties, this Agreement shall be effective upon the date it is executed by the City Attorney in accordance with San Diego Charter section 40 [Effective Date]. Unless otherwise terminated, the Agreement shall be effective until the earlier of 20 years or (1) one year after the final Warranty Bond issued after Acceptance of the last phase of the Project Improvements terminates; (2) when the insurance obligations set forth in Article XXV terminate; or (3) the final reimbursement is made to Developer or its assigns as described in the Reimbursement Agreement.

### ARTICLE III. PROJECT COSTS

- 3.1 **Project Improvements Cost Estimate.** The cost estimate [Cost Estimate] for each individual park phase of the Project Improvements and approved land value shall be calculated in accordance with **Exhibits B-1 through B-4** “Preliminary Cost Estimate” for each Park Phase. The Cost Estimate is set forth for reimbursement purposes as described in the Reimbursement Agreement and for bond purposes as required under Article XXIII.
- 3.2 **Project Improvements Costs.** The Project Improvements Costs include, but shall not be limited to, the following:
- 3.2.1 Professional services for preparation of the GDP, design and engineering drawings and construction documents;
  - 3.2.2 Rough Grading Cost based on acreage, final grading in accordance with the approved GDP and ½ width street improvements at Central Park and Creekside Park to be Conveyed to the City;
  - 3.2.3 Construction of landscaping, irrigation systems, and other park amenities and facilities as described in the GDP and as shown on the approved Plans and Specifications;
  - 3.2.4 Costs associated with provision of required utilities, including potable water, storm drains, electricity, and sanitary sewer, if any, to serve the Project Improvements from the closest point of public connection;
  - 3.2.5 Other improvements as may be required by City during City’s review and approval process as described and permitted in this Agreement;
  - 3.2.6 An erosion control and storm water protection plan;
  - 3.2.7 Insurance premiums, bonds, and all other fees and charges (e.g., permit fees, City processing fees, etc.) associated with actual construction of Project Improvements;
  - 3.2.8 The City’s Administrative Costs; and
  - 3.2.9 Land conveyed to City with the Project Improvements. The Project Improvements Costs shall not include any infrastructure that is required for the Development as a whole or any infrastructure not required solely for implementation of the GDP, such as storm drains, water and sewer lines, bioswale improvements, or any other utilities.

## ARTICLE IV. PROJECT DESIGN AND BUDGET

- 4.1 **Project Improvements.** Developer agrees to complete all Project Improvements in accordance with all the provisions of this Agreement.
- 4.2 **Plans and Specifications.** This Agreement has been prepared precedent to the completion of a GDP and preparation of Plans and Specifications for the Project Improvements.
- 4.3 **Selection of Consultant.** City and Developer agree that Schmidt Design Group shall be the Consultant who will design the Project Improvements in accordance with the GDP and prepare the Cost Estimate and the Plans and Specifications for Project Improvements. Developer may direct the Consultant to prepare a Cost Estimate and Plans and Specifications for individual phases of the Project Improvements rather than the entirety of the Project consistent with Condition No. 40. City and Developer also agree Rick Engineering shall be the Consultant for civil engineering, and Geocon, Inc. shall be the Consultant for soils engineering. City hereby waives the requirements of Council Policy 300-07, Council Policy 100-10, and Administrative Regulation 25.60 relating to the consultant selection process. If Developer deems it necessary, Developer may select another Consultant to design the Park Improvements, prepare landscape plans, civil engineering documents, or lighting in accordance with the Consultant Services Selection requirements of Council Policy 300-07. Developer's Consultants shall be subject to all State and City laws, including regulations and policies applicable to consultants retained directly by City. Developer shall cause the provisions in **Exhibit C** "Consultant Provisions" to be included in its Consultant contract(s) for Project Improvements.
- 4.4 **Selection of Project Manager.** Within sixty (60) Calendar Days after the Effective Date, City shall select a Project Manager for the purposes of fulfilling the functions of the Project Manager described in City Council Policy 600-33, COMMUNITY NOTIFICATION AND INPUT FOR CITY-WIDE PARK DEVELOPMENT PROJECTS and this Agreement, and shall notify Developer in writing of the name and contact information of Project Manager. In the event City elects to assign a new Project Manager, City shall select a new Project Manager and make the new Project Manager available to perform all duties of the previous Project Manager at the time the previous Project Manager is reassigned. City shall minimize turnovers in the Project Manager position to the extent practicable and shall assign a new Project Manager within ten (10) Working Days of City's determination that a current Project Manager will soon no longer be available to perform the functions of Project Manager under this Agreement.
- 4.5 **Preparation of General Development Plan and Cost Estimate.** The Project Manager shall complete all tasks described in the Community Input Process section of City Council Policy 600-33 to facilitate the Consultant in preparing a GDP that includes one or all of the individual phases of the Project Improvements

and a Cost Estimate that includes one or all of the individual phases of the Project Improvements, and any alternatives considered, consistent with all local, state, and federal disabled access laws and requirements, as well as City's Park and Recreation Department's Consultant's Guide to Park Design and Development, dated November 2011. Developer may elect to prepare a GDP for all or several of the individual phases of the Project Improvements. If Developer elects to prepare a GDP for all or several of the individual phases of the Project Improvements, the Project Manager shall review and determine if the Plans and Specifications prepared for each individual phase are substantially consistent with the GDP. If the Project Manager determines the Plans and Specifications are substantially consistent with the GDP, no amendment to the GDP shall be required. Subject to Park and Recreation Board approval and the requirements of the individual phases included in the GDP, the GDP shall generally include, but not be limited to, the following type of amenities: (1) open turf area for unstructured activities; (2) children's play area; (3) paved pedestrian and maintenance vehicle circulation system; (4) on-site, disabled accessible parking, if required; (5) disabled accessible path of travel from the nearest proposed bus stop within the public right-of-way; (6) site furnishings, such as benches, trash receptacles, picnic tables, shade structures, drinking fountains, etc.; (7) security and activity lighting; (8) comfort stations, kiosks, food services if allowed by Park and Recreation Department lease or permit; and (9) ornamental and structural landscaping. The GDP also shall demonstrate how the bioswale located within Lots P1, P3, P4, and P32 will be integrated into the public park area in order to satisfy the park requirements as described in the Specific Plan. In connection with the preparation of the GDP and/or the Plans and Specifications, Developer may adjust the parcel lines of Lots P4 through and including P7 and/or Lots 37, 38, and 39 (Civic Center Parcels) to accommodate uses and ownerships provided there is no decrease in the total useable public park acreage, subject to approval of a lot line adjustment or amendment to the Final Map. Additionally, Project Improvements naming shall be pursued with GDP approval in conformance with Park and Recreation Board Policy No. 1001.

- 4.6. **Final Approval of GDP and Cost Estimate.** Within ten (10) Working Days of receipt of the GDP and the Cost Estimate for all or individual phases of the Project Improvements, the Project Manager shall diligently pursue approval or conditional approval of the GDP and the Cost Estimate through such committees, commissions, and/or council as have jurisdiction to approve the Project Improvements [Discretionary Bodies], and the Consultant shall present the GDP and the Cost Estimate that includes some or all individual phases of the Project Improvements to the Discretionary Bodies. As a result of any presentation to, or any suggestion of, any Discretionary Body, City may request changes in the GDP, if applicable, and Developer shall direct the Consultant to make those changes where the estimated cost of such changes does not exceed ten percent (10%) of the Cost Estimate for all or any individual phase of the Project Improvements. Upon final approval, the GDP shall be formatted as identified in the current

version of the Consultant's Guide to Park Design and Development and submitted to the Project Manager.

## ARTICLE V. PROJECT SCHEDULE

- 5.1 **Project Schedule.** Developer shall perform and complete the work under this Agreement according to a project phasing schedule [Project Schedule] that shall be prepared for each individual phase of the Project Improvements substantially in the form attached as **Exhibit D** "Project Schedule for each Park Phase" and prior to the start of construction, or any subsequently revised form or Project Schedule approved by the Project Manager in writing, except that all Project Improvements shall be completed by Developer in accordance with SDP/MPDP Conditions No. 37 through and including 49 and VTM Conditions 67 and 68.
- 5.1.1 *Developer's Obligation.* Developer shall maintain the Project Schedule, and any subsequently revised Project Schedule approved by Project Manager in writing pursuant to Section 5.3 below, for all phases of the Project Improvements.
- 5.1.2. During the Project Improvements initiation and design phases, Developer shall submit an updated Project Schedule on a quarterly basis, four (4) times per year, to the City for written approval.
- 5.1.3 During construction, Developer shall submit an updated Project Schedule monthly to the City for written approval.
- 5.1.4 *Detail and Format.* Project Schedules shall be dated and submitted to the City on a computer disk in substantially similar detail and form as Exhibit D, or any form subsequently agreed to by the Parties in writing.
- 5.2 **Project Completion.** All Project Improvements shall be completed consistent with the Project Schedule, unless mutually extended by written agreement, subject to any approval that may be required by the Project Manager.
- 5.3 **Changes in Project Schedule.** All changes in the Project Schedule, including dates and substance, must be approved by the Project Manager in writing.

## ARTICLE VI. COMPETITIVE BIDDING AND EQUAL OPPORTUNITY

- 6.1 **Compliance.** Developer shall comply with the Competitive Bidding and Equal Opportunity requirements from Article V of the Reimbursement Agreement.

## ARTICLE VII. PREVAILING WAGE

- 7.1 **Prevailing Wage.** The Developer shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code section 1720 relating to the payment of prevailing wages during the design and preconstruction phases of the Project Improvements, including inspection and land surveying work.

## ARTICLE VIII. PLANS AND SPECIFICATIONS

- 8.1 **Preliminary Review of Plans and Specifications and Preliminary Cost Estimate.** Developer shall obtain City approval via the Public Works/Engineering & Capital Projects Department and Park & Recreation Department, in writing, of the preliminary GDP and the Plans and Specifications prior to the solicitation of bids for construction of the Project Improvements. Developer may request approval of preliminary Plans and Specifications and a preliminary Cost Estimate for individual phases of the Project Improvements prior to bidding. Project Manager will notify Developer in writing within thirty (30) Calendar Days following receipt of the preliminary Plans and Specifications and preliminary Cost Estimate of any City request for modifications. If modifications are requested, Developer shall modify and resubmit the preliminary Plans and Specifications and preliminary Cost Estimate for Project Manager's approval.
- 8.1.1 *Condition Precedent.* City approval of the Plans and Specifications and Final Cost Estimate is a condition precedent to authorization to proceed with subsequent Work on the Project Improvements.
- 8.1.2 *Sixty Percent (60%).* At sixty percent (60%) completion, Project Manager will notify Developer in writing within the timeframe established in the Project Schedule, following receipt of the Plans and Specifications for approval, of request for modifications. If modifications are requested, Developer shall modify and resubmit the Plans and Specifications for City approval within the timeframe established in the Project Schedule.
- 8.1.3 *Ninety Percent (90%).* At ninety percent (90%) completion, Project Manager will notify Developer in writing within the timeframe established in the Project Schedule, following receipt of the Plans and Specifications for approval, of request for modifications. If modifications are requested, Developer shall modify and resubmit the Plans and Specifications for Project Manager approval within the timeframe established in the Project Schedule.
- 8.2 **Final Review of Plans and Specifications and Final Cost Estimate.** Upon final approval of the Plans and Specifications by the Project Manager, Developer shall deliver to DSD complete Plans and Specifications for permit issuance. Developer shall also require its Consultant to prepare a final Cost Estimate [Final Cost

Estimate] for the Project Improvements based on the approved Plans and Specifications, which shall be subject to Project Manager's approval. Approval shall not be unreasonably withheld. Final Plans and Specifications shall include City's Standard Drawings and Specifications as described in Section 9.4. If requested by DSD, Developer shall cause the Consultant to make only such changes to the Plans and Specifications that are necessary to bring them into conformance with all applicable local, state, and federal regulations. If such changes would exceed fifteen percent (15%) of the approved Final Cost Estimate, Developer may elect to include additive alternates in the Bidding Documents, bid and construct, rebid or redesign the individual phase of the Project Improvements, with the Project Manager's approval. Any redesign must be in substantial conformance with the final approved GDP or the redesign shall require community input per Council Policy 600-33.

## ARTICLE IX. DESIGN AND CONSTRUCTION STANDARDS

- 9.1 **Purpose of Certification.** There exist and have existed certain requirements that City includes in its design and construction contracts for public improvements. These requirements are intended to protect City and the public, who benefit from these public improvements, from harm, including physical and monetary, as well as to ensure that the consultant and contractor involved in design and construction of the public improvement follows all laws related to such contracts and construction. Certification is intended to act as a guarantee to City that such requirements were met by Developer during its design and construction of the Project Improvements. If Developer has certified that an action has occurred, omission not made, a standard met, or a law followed and such action did not occur, omission happened, such standard was not met, or such law was not followed, then Developer shall indemnify and hold harmless the City from any claim, demand, cause of action, cause, expense, losses, attorney fees, injuries, or payments arising out of or related to the act not done, the omission which occurred, the standard not met, or the law not followed in accordance with Article XXIV of this Agreement. This Section shall not act to limit the remedies otherwise available to City under law.
- 9.2 **Standard of Care.** Developer agrees to use reasonable efforts to ensure that the professional services its subcontractors provide as part of this Agreement shall be performed in accordance with the standards customarily adhered to by licensed, experienced and competent professionals (e.g., architectural, engineering, landscape architectural, and construction firms) using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.
- 9.3 **Compliance with all Laws.** Developer shall comply with all laws, including but not limited to:

- 9.3.1 All applicable local, city, county, state, and federal laws, codes and regulations, ordinances, and policies, including but not limited to, DSD permits, hazardous material permits, site safety, state and local building codes, storm water regulations, etc.
  - 9.3.2 The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code. It is the sole responsibility of Developer to comply with all ADA and Title 24 regulations. (Developer Certification for Title 24/ADA Compliance is attached as **Exhibit E** “Developers Certificate for Title 24/ADA Compliance”.)
  - 9.3.3 The Clean Air Act of 1970, the Clean Water Act (33 USC 1368)- Executive Order 11738, and the Storm water Management and Discharge Control-Ordinance No. 0-17988.
  - 9.3.4 The Essential Services Building Seismic Safety Act, SB 239 & 132.
  - 9.3.5 All directives issued by City’s Mayor or Chief Operating Officer under authority of any laws, statutes, ordinances, rules, or regulations.
- 9.4 **Compliance with Design and Construction Standards.** Developer shall comply with the most recent edition of design and construction standards.
- 9.4.1 *Standard Specifications.* Developer shall comply with the most recent edition of the following reference specifications when designing and constructing the Project Improvements, including:
    - 9.4.1.1 The Standard Specifications.
    - 9.4.1.2 California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
  - 9.4.2 *City Standards.* Developer’s professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following: City of San Diego’s Drainage Design Manual; City of San Diego’s Landscape Technical Manual; City of San Diego’s Consultant’s Guide to Park Design and Development produced by the Park and Recreation Department; City of San Diego’s Street Design Manual; City of San Diego’s Manual of Preparation of Land Development and Public Improvement Plans; City of San Diego’s Technical Guidelines for Geotechnical Reports; City of San Diego Standard Drawings including all Regional Standard Drawings; City of San Diego Data Standards for Improvement Plans; and City of San Diego Stormwater Pollution Prevention Regulations.



- 9.4.3 *Green Building.* The Project Improvements design and construction shall comply with the City Council Policy 900-14, "SUSTAINABLE BUILDING POLICY." Any building over 5,000 square feet included in the Project Improvements shall be designed and constructed to achieve fifteen percent (15%) less total building energy consumption than the minimally code compliant building as modeled following the Title 24 requirements. An average pay-back period of less than ten (10) years shall be used as a guide for the aggregate of all energy efficiency measures. Developer shall submit and obtain LEED Silver Rating Certification from the United States Green Building Council for any building over 5,000 square feet included in the Project Improvements. Notwithstanding any of the above, Developer shall not be required to exceed any of the green building or energy conservation standards contained within the Entitlements.
- 9.4.4 *Energy Conservation Standards.* Technological advances in energy conservation devices such as lighting and Heating Ventilation and Air Conditioning [HVAC] enable additional energy savings over that required by the State of California Title 24 Energy Standards. If requested by City, Developer shall be responsible for preparing a cost savings comparison of such devices for City review for any building over 5,000 square feet included in the Project Improvements. The purpose of the comparison would be to identify the additional initial cost of such devices, versus their long-term energy savings. If requested by City, Developer shall prepare a cost savings matrix for any building over 5,000 square feet that lists each device being considered and 1, 3, 5 and 10-year projected savings. The comparison shall include, but not be limited to lighting, HVAC, water, heating, and motors.
- 9.4.5 *Materials Standards.* Developer acknowledges that this facility is for public use and shall use industrial grade, not residential grade, equipment and accessories for all facets of design and construction. Developer agrees to follow all City standards and requirements specific to park and recreation improvements while working on the Project Improvements.
- 9.4.6 *Architectural Compatibility.* Developer shall design the Project Improvements in a fashion which is architecturally compatible with the design guidelines for the Development.
- 9.4.7 *Child Safety standards.* Developer shall provide a certification from a third party independent National Playground Safety Institute (NPSI) certified playground inspector that the installed equipment is compliant with all applicable codes. Surfacing shall be tested on-site to determine

that the Head Impact Criteria (HIC) rating meets minimum safety specifications per the latest version of the American Society of Testing Material (ASTM) F1951.

- 9.5 **Imputed Knowledge.** Developer shall be responsible for all amendments or updates to standards and knowledge of all amendments or updates to standards, whether local, state, or federal, and such knowledge will be imputed to Developer to the extent allowed by law.
- 9.6 **City Approval Not a Waiver of Obligations.** Where approval by City, City's Mayor or Chief Operating Officer is required, it is understood to be general approval only and does not relieve Developer of responsibility for complying with all applicable laws, codes, and good consulting, design, or construction practices.

## ARTICLE X. CONSTRUCTION

- 10.1 **Compliance with Project Schedule.** Developer shall commence construction of the Project Improvements in accordance with the Project Schedule, as described in Article V. Developer shall use its best efforts to adhere to the Project Schedule, diligently pursue construction to completion, and shall promptly notify City of any delay.
- 10.2 **Preconstruction Meeting.** Developer shall conduct a preconstruction meeting with its officers, agents and employees and City. The purpose of this meeting is to discuss: (i) conditions of this Agreement, (ii) scope of work clarifications, and (iii) City policies, inspection requirements, and procedures.
- 10.2.1 *Attendance.* Developer shall ensure that the preconstruction meeting is attended by Developer's construction contractor, Developer's superintendent, all Developer's major subcontractors, City Inspection Team as set forth in Article XIV, and all other persons necessary as determined by Developer or City.
- 10.2.2 *Agenda.* The preconstruction meeting agenda shall at a minimum address the topics described in **Exhibit F** "Preconstruction Meeting Agenda" attached hereto and incorporated herein.
- 10.2.3 *Minutes.* Developer or its consultant shall take corresponding meeting minutes and distribute copies to all attendees.
- 10.3 **Progress Meetings.** Developer shall conduct progress meetings at standing dates and times scheduled at the preconstruction meeting with the following necessary parties: Developer's construction superintendent, Developer's project manager,

Developer's Consultant, City representatives including Park and Recreation Department representatives, Project Manager and Resident Engineer (RE).

10.3.1 *Agenda.* Agenda shall include items as defined during the preconstruction meeting.

10.3.2 *As-Builts.* Developer shall bring updated As-Builts and verify that the latest changes have been made.

10.3.3 *Special Meetings.* Meetings to address issues which are not progress related [Special Meetings] shall occur as needed.

10.3.4 *Rescheduling.* Progress and Special Meetings may be rescheduled if meeting times are convenient for all necessary Parties, and Developer has given no less than five (5) Calendar Days prior written notice of the rescheduled meeting.

10.4 **Access to Site.** Other than Project Manager and RE, City officers, agents and employees with project related business shall have the right to enter the Development site with reasonable notice to Developer, not less than forty-eight (48) hours, except where necessitated by a bona-fide emergency, or if the nature of their work requires unannounced notice, in which case, they shall be accompanied by an employee of Developer while at the Development site. Project Manager and RE shall have the right to access the site at any time for Development related purposes provided they comply with all safety standards adopted by Developer.

## ARTICLE XI. PRODUCTS

11.1 **Submittals.** Prior to the bidding process, Developer shall submit for City approval a list of products intended for use in the Project Improvements. Project Manager will review and approve products specified therein, and Developer shall make modifications to Plans and Specifications, if required by City. Developer shall provide City with a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Developer's receipt of submittal. Approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations.

11.2 **Substitutions.** Developer shall submit all requests for product substitutions to City in writing within thirty (30) Calendar Days after the date of award of the construction contract. After expiration of the thirty (30) Calendar Days, City will allow substitutions only when a product becomes unavailable due to no fault of Developer's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. Developer agrees that City

requires Consultant's input and, as such, Developer shall coordinate a simultaneous five (5) Working Day review by its Consultant.

11.2.1 *Substitution Request.* Developer shall include with each substitution request complete data which substantiates that the proposed substitution conforms to requirements of the Construction Documents.

11.2.2 *Developer Representations.* By submitting a substitution request, Developer is representing to City all of the following: (i) Developer has investigated the proposed product and determined that in all respects the proposed product meets or exceeds the specified product; (ii) Developer is providing the same or better warranty for the proposed product as was available for the specified product; (iii) Developer shall coordinate installation and make any other necessary modifications which may be required for work to be complete in all respects; and make any other necessary modifications which may be required for work to be complete in all respects; and (iv) Developer shall waive any claims for additional costs related to the substituted product.

11.2.3 *Separate Written Request.* City will not consider either substitutions that are implied in the product data submittal without a separate written request or substitutions that will require substantial revision of Construction Documents.

### 11.3 **Samples.**

11.3.1 *Postage.* Samples shall be sent to Developer's office, carriage prepaid.

11.3.2 *Review.* Developer shall furnish to City for review, prior to purchasing, fabricating, applying or installing, two (2) samples (other than field samples) of each required material with the required finish.

11.3.2.1 Where applicable, all samples shall be 8" x 10" in size and shall be limited in thickness to a minimum consistent with sample analysis. In lieu thereof, the actual full size item shall be submitted.

11.3.2.2 Developer shall assign a submittal number. Developer shall include with each submission a list of all samples sent, a statement as to the usage of each sample and its location in the project, the name of the manufacturer, trade name, style, model, and any other necessary identifying information.

11.3.2.3 All materials, finishes, and workmanship in any complete building shall be equal in every respect to that of the reviewed sample.

11.3.2.4 City will return one submitted sample upon completion of City review identifying approval or denial.

11.3.2.5 Developer's, or Developer's agent's, field samples shall be prepared at the site. Affected finish work shall not commence until Developer or its agents have been given a written review of the field samples.

11.3.3 *Not a Release of Liability.* City's review of samples in no way relieves Developer of responsibility for construction of Project Improvements in full compliance with all Construction Documents.

## ARTICLE XII. CHANGE ORDERS

- 12.1 **Forms Required.** All Changes Orders must be approved or rejected by City in writing as provided in Section 12.3, and delivered to City in accordance with Article XXVII. Developer shall produce a tabulated sheet which itemizes the changes to the Project Improvements, including but not limited to, the date of approval or disapproval, cost associated with each item, and the reason for any disapproval. Updated Change Order tabulation sheets shall be provided at regularly scheduled progress meetings or when requested by the RE. Standing progress meetings shall be scheduled at a preconstruction meeting.
- 12.2 **Written Approval of Change Orders.** Change Orders which will not result in an increase in the construction cost, affect the design, the quality of materials, intended use and the final deliverable product according to the approved GDP and Plans and Specifications may be approved by the RE who is the person responsible for overseeing construction of the Project Improvements.
- 12.3 **Process for Approval of Change Orders.** Developer shall notify the RE in writing, of the need for a Change Order. The Change Order must indicate whether the change will affect, in any way, the construction cost, Project Schedule, or Project quality established by the GDP, and Plans and Specifications.
- 12.3.1 *Resident Engineer Approval.* All changes and or substitutions proposed during construction by Developer must be submitted to the RE for review. If the requested change does not affect, in any way, the construction cost, Project Schedule, or Project Improvements quality established by the GDP, and Plans and Specifications, the RE shall either approve or reject the Change Order in writing within five (5) Working Days of receiving Developer's written notice, provided Developer has submitted complete documentation substantiating the need for such Change Order. If the RE fails to respond to Developer's written request within the five (5) Working Days, the Change Order request shall be deemed denied.

12.3.2 *Project Manager Approval.* If the requested change does affect in any way, the construction cost, Project Schedule, or Project Improvements quality established by the GDP, and Plans and Specifications, the RE shall solicit input from the Project Manager. Project Manager shall either recommend approval or rejection of the Change Order request in writing within ten (10) Working Days. If the Project Manager fails to respond to RE's request for input within the ten (10) Working Days, the Change Order request shall be approved or denied by the RE. If the RE fails to respond to Developer's written request within the ten (10) Working Days, the Change Order request shall be deemed denied. Developer shall be obligated to bear the costs of Change Orders made necessary by physical conditions of the Property or errors in the Plans and Specification. If Change Orders are not made necessary by physical conditions of the Property or errors in the Plans and Specifications, but requested by City, then Developer may elect to construct, rebid or redesign the Project Improvements, with the Project Manager's approval, to accommodate the request within the Project Improvements construction budget. Any redesign must be in substantial conformance with the final approved GDP or the redesign shall require community input per Council Policy 600-33.

#### ARTICLE XIII. PRIORITY OF DOCUMENTS

13.1 **Conflict, Priority, and Precedence of Documents.** If there is a conflict between Construction Documents, the document highest in precedence shall control.

13.1.1 *Order of Precedence.* The following documents are incorporated into this Agreement by this reference and are hereinafter collectively referred to as Contract Documents. The Contract Documents shall follow the order of precedence listed below, with the document listed first controlling as to any inconsistency with documents listed thereafter:

- 13.1.1.1 Permits from other agencies as may be required by law
- 13.1.1.2 Project Special Provisions
- 13.1.1.3 Project Plans
- 13.1.1.4 Project Technical Specifications
- 13.1.1.5 City Standard Drawings
- 13.1.1.6 Standard Specifications
- 13.1.1.7 Reference Specifications

#### ARTICLE XIV. INSPECTION

14.1 **Inspection Team.** The Project Improvements shall be inspected by a team composed of representatives from the following at the appropriate minimum Inspection Stages identified in Section 14.2:

- (a) City's Resident Engineer – Stages 1 – 12
- (b) City's Project Manager – Stages 1 – 12
- (c) Developer's construction superintendent – Stages 1, 5, 10 & 12
- (d) Developer's Consultant(s) – Stages 1, 4 – 10 & 12
- (e) Park and Recreation Representative – Stages 1–12
- (f) Contractor(s) – Stages 1–12

14.2 **Inspection Stages.** The Project Improvements shall be inspected by the Inspection Team at the following minimum stages:

- 1. Preconstruction meeting;
- 2. Irrigation Mainline pressure test;
- 3. Irrigation Lateral line pressure test;
- 4. Wiring prior to backfilling trenches;
- 5. Hardscape at time of finished staking and layout;
- 6. Finish grading and soil preparation;
- 7. Irrigation coverage test;
- 8. Plant material (when delivered) and plant placement approval;
- 9. Playground inspection, if applicable;
- 10. Pre-assembled equipment and/or on-site construction facilities;
- 11. Preliminary Walk-Through Inspection at 90% construction (develop list of incomplete or Defective Work [Punch List] and submit as-built drawings);
- 12. 90-day plant maintenance period to begin when Punch List items are complete (120 days plant maintenance period if lawn is seeded); and
- 13. Final Inspection (contractor to submit final approved as-built drawings to City).

## **ARTICLE XV. PROJECT COMPLETION**

15.1 **Notice to City.** When Developer determines that the Project Improvements are complete, Developer shall notify City in writing of the Project Improvements' status within seven (7) Calendar Days of Developer's determination. The notice shall certify to City that the Project Improvements have been completed in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project Improvements.

15.2 **Walk-Through Inspection.** A preliminary Walk-Through Inspection shall be conducted by City within ten (10) Working Days following Developer's notice to City of completion [Walk-Through Inspection]. The Walk-Through Inspection will be conducted by the Inspection Team identified in Section 14.1

- 15.2.1 *Punch List.* A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to Developer by the RE within three (3) Working Days of the Walk-Through Inspection. Developer shall correct the items listed on the Punch List within thirty (30) Calendar Days of receipt of the Punch List and prior to the Final Inspection.
- 15.2.2 *Failure to Identify Items.* As to any items not included on the Punch List or later discovered, nothing in this section is intended to limit Developer's obligations under this Agreement and City will maintain all remedies available under this Agreement and the law.
- 15.3 **Equipment Demonstration.** Prior to Final Inspection, Developer shall demonstrate to City the operation of each system in the Project Improvements, and instruct City personnel in operation, adjustment and maintenance of equipment and systems, using the operation and maintenance data.
- 15.4 **Final Inspection.** Provided Developer has corrected the Punch List items and notified City of the correction [Notice of Correction] and the Plant Maintenance Period is complete as described in Section 21.2, the Final Inspection for the Project Improvements shall be scheduled and conducted within ninety (90) Calendar Days of the Notice of Correction [Final Inspection].

## ARTICLE XVI. PROJECT ACCEPTANCE AND FINAL COMPLETION

- 16.1 **Acceptance.** Upon approval by the Inspection Team during the Final Inspection that Project Improvements are complete and that work required on the Punch List has been finished, City shall accept the Project Improvements [Acceptance]. Upon Acceptance, Developer shall do all of the following:
- 16.1.1 *Notice of Completion.* Developer shall execute and file a Notice of Completion with the County Recorder of San Diego County and shall provide the RE and the Facilities Financing Section of CPCI with a conformed copy of the recorded Notice of Completion pursuant to Section 27.5.
- 16.1.2 *Lien and Material Releases.* Developer shall cause all contractors and subcontractors to provide lien and material releases as to the Project Improvements and provide copies of such lien and material releases to the RE or, upon approval of City, which shall not be unreasonably withheld, provide bonds in lieu of lien and material releases in a form reasonably acceptable to City for all such work.



16.1.3 *Conveyance of Project Improvements.* Developer shall convey the Public Improvements to City within ninety (90) Calendar Days of Acceptance as required by Section 1.4.

16.2 **Final Completion.** Final Completion of the Project Improvements shall be deemed to occur on the last date of the following events: (a) recordation of the Notice of Completion with a conformed copy to City; and (b) submission of all documents required to be supplied by Developer to City pursuant to this Agreement, including As-Built Drawings, warranties and operating and maintenance manuals.

16.2.1 *As-Built Drawings.* Developer shall submit As-Built Drawings to City within five (5) Working Days of Final Completion. City, including but not limited to, Public Works/Engineering & Capital Projects Department, will evaluate the submitted As-Built Drawings for accuracy and completeness and may return them to Developer with comments. Developer shall meet with City until all issues are resolved. Upon issue resolution in accordance with disputed work procedures in Section 19.5, Developer shall submit a mylar set and three (3) final sets of As-Built Drawings stamped by the architect/engineer of record as required by law within thirty (30) Calendar Days.

## ARTICLE XVII. PROJECT DELIVERABLES

17.1 **Project Deliverables.** Prior to Acceptance, Developer shall deliver all of the following to City in the format required, if applicable:

17.1.2 *Plans and Specifications Quality and Format.* Developer shall prepare Plans and Specifications in accordance with City's most current drawing format as outlined in the City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.

17.1.2.1 *Quality.* Developer shall make Plans by one of the following methods: permanent ink, Computer Aided Drafting, a permanent photographic reproduction process, or with pencil made for use on drafting film and permanently fixed with spray coating. Scale and clarity of detail shall be suitable for half-size reduction.

17.1.2.2 *Font and Contents.* Specifications shall be typewritten with one type face, using carbon ribbon or equivalent on bond paper utilizing Greenbook format. Developer will furnish only the technical "Special Provisions" section of the Specifications to supplement or modify the Greenbook standards as needed.

- 17.1.3 *Survey.* Developer shall provide all surveying services required for the design of the Project Improvements in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title “A Guide to Professional Surveying Procedures,” and the City of San Diego Public Works/Engineering & Capital Projects Department’s “Data Standards for Improvement Plans,” August 2004.
- 17.1.4 *General Development Plan.* Developer shall consult with Project Manager to ascertain requirements of the Project Improvements and to prepare a GDP.
- 17.1.4.1 The GDP shall conform to the Park Recreation Board Policy No. 1011, the Consultant’s Guide to Park Design and Development, and include, but not be limited to the following, if applicable:
- 17.1.4.1.1 Sketches with sufficient detail to illustrate the scale and location of Project Improvements components.
  - 17.1.4.1.2 Floor plans with sufficient detail to illustrate the scale and relationship of building components, exterior elevations and exterior colors, textures and materials.
  - 17.1.4.1.3 Analysis of parameters affecting design and construction for each alternative considered.
  - 17.1.4.1.4 Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.
  - 17.1.4.1.5 Probable construction costs for the base Project Improvements and all additive alternates considered.
  - 17.1.4.1.6 Summary of Project Improvements requirements and a recommendation.
- 17.1.5 *Design Development Documents.* Developer shall prepare from the approved GDP, for approval by the Project Manager, sixty percent (60%) and ninety percent (90%) Design Development Documents to fix and describe the size and character of all or individual phases of the Project Improvements. These documents shall contain, at a minimum, the following, consistent with the Consultant’s Guide to Park Design and Development:
- 17.1.5.1 Site Plan, indicating the nature and relational location, via dimensions, of all proposed Project Improvements components.

- 17.1.5.2 Traffic circulation and landscaping should also be indicated at this stage, if applicable.
  - 17.1.5.3 Plans, elevations, cross-sections, and notes as required to fix and describe the Project Improvements components.
  - 17.1.5.4 Proposed construction schedules.
  - 17.1.5.5 Technical ‘Special Provisions’ section of the Specifications.
  - 17.1.5.6 Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
  - 17.1.5.7 Probable construction costs, for each component of the Project Improvements being considered in this phase.
  - 17.1.5.8 Color board with material samples.
- 17.1.6 *Construction Documents.* Developer shall provide, based on the approved Design Development Documents, final plans and contract specifications setting forth in detail the requirements for construction of all or individual phases of the Project Improvements, including the necessary Bidding Documents.
- 17.1.7 *Utility Location Request.* Along with initial submission of Construction Documents, Developer shall furnish copies of the Service and Meter Location Request and all utility companies’ verifications.
- 17.1.8 *H, G, & E Reports.* Developer shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports as requested by City.
- 17.1.9 *As-Built Drawings.* Developer shall provide As-Built Drawings as follows:
- 17.1.9.1 As-Built Drawings shall show by dimension accurate to within one (1) foot, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Developer shall clearly identify the item by accurate note such as “cast iron drain,” “galvanized water,” etc. Developer shall clearly show, by symbol or note, the vertical location of the item (“under slab”, “in ceiling”, “exposed”, etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Developer shall thoroughly coordinate all changes on the As-

Built Drawings making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.

17.1.9.2 Developer shall include all of the following on the As-Built Drawings, as applicable: depth of foundation in relation to finished first floor; horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements; locations of internal utilities and appurtenances, with references to visible and accessible features of the structure; field change of dimensions and details; changes authorized by approved proposal requests, construction Change Orders, discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials; details not issued with original Construction Documents, design/built plans, deferred approvals, etc.; upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information; show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes; the title "PROJECT RECORD" in 3/8" letter.

17.1.9.3 Developer shall maintain a set of As-Built Drawings at the Project Improvements site for reference. Developer shall ensure that changes to the As-Built Drawings are made within twenty-four (24) hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil), shall clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.

17.2 **Ownership of Project Deliverables.** Upon Acceptance or termination, Project deliverables shall become the property of City. Developer and City mutually agree that the Construction Documents for the Project Improvements shall not be used on any other work without the consent of each Party.

## ARTICLE XVIII. WARRANTIES

18.1 **Warranties Required.** Developer shall provide and require its agents to provide the warranties listed below. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law.

18.1.1 *Materials and Workmanship.* Developer shall warrant and guarantee, and shall require its agents to warrant and guarantee, all work on the Project Improvements against defective workmanship and materials furnished by Developer for a period of one (1) year from the date of the City's Acceptance of the Project Improvements. Provided that Developer has received written notice of defective workmanship or materials within one (1) year of the date of the City's Acceptance of the Project Improvements, Developer shall replace or repair any such defective work in a manner satisfactory to the City, after notice to do so from the City, and within the time specified in the notice.

18.1.2 *New Materials and Equipment.* Developer shall warrant and guarantee, and shall require its agents to warrant and guarantee, to City that all materials and equipment incorporated into the Project Improvements are new unless otherwise specified.

18.1.3 *Design, Construction, and Other Defects.* Developer shall warrant and guarantee, and shall require its agents to warrant and guarantee to City that all work is in accordance with the Plans and Specifications and is not defective in any way in design, construction or otherwise.

18.2 **Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Developer's and Developer's agent's material, supplier's, installer's or manufacturer's own letterhead, addressed to City. All warranties shall be submitted in the format specified in this section, modified as approved by City to suit the conditions pertaining to the warranty.

18.2.1 *Warranty Format.* All warranty information shall be provided to the City in digital format (provide three CD's), including warranties from Developer, Developer's agents, installers, and manufacturers and should include a Table of Contents, All warranties shall be listed and typewritten in the sequence of the Table of Contents of the Project Improvements manual, with each item identified with the number and title of the specification section in which specified, and the name of the product or work item. Full information shall be provided, using separate sheets, as necessary, listing the Developer's agents, installers, and manufacturers, with name, address, and telephone number of responsible principal.

18.2.2 *Warranty Start Date.* Except for items put into use with Developer's permission with date mutually agreed upon in writing, the date of beginning of time of warranty shall be the date of Acceptance.

18.2.3 *Signature and Notarization.* All warranties shall be signed and notarized. Signatures shall be required from Developer's construction contractor and where appropriate, the responsible subcontractor.

- 18.3 **Term of Warranties.** Unless otherwise specified by law, warranties shall extend for a term of one (1) year from the date of Acceptance.
- 18.3.1 *Trees, shrubs and groundcover.* Notwithstanding the above, all shrubs and groundcover shall have a ninety (90) Calendar Day warranty period, and trees shall have a one (1) year warranty period. All plant warranties shall commence from the date of Acceptance.
- 18.3.1.1 Any trees, shrubs or groundcover replaced during the warranty period shall be replaced in accordance with Sections 21.7 and 21.8.
- 18.4 **Meetings.** During the one (1) year warranty period described in Section 18.3, Developer shall meet, and shall require its design Consultant, construction contractor, and key subcontractors to meet with City representatives, including the Project Manager and one or more Park and Recreation Department representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems that City discovers in design, construction, or furnishing, fixtures, and equipment of the Project Improvements during the one (1) year warranty period.

#### ARTICLE XIX. DEFECTIVE WORK & DEFAULT

- 19.1 **Correction, Removal, or Replacement.** If within the designated warranty period, or such additional period as may be required by law or regulation, the Project Improvements are discovered to contain Defective Work, Developer shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or remove it from the site and replace it with non-defective and conforming work.
- 19.2 **City's Right to Correct.** If circumstances warrant, including but not limited to an emergency or Developer's failure to adhere to Section 19.1, City may correct, remove, or replace the Defective Work. In such circumstances, Developer shall reimburse City for all of City's costs, whether direct or indirect, associated with the correction or removal and replacement.
- 19.3 **Extension of Warranty.** When Defective Work, or damage there from, has been corrected, removed, or replaced during the warranty period, the one year relevant warranty period will be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.
- 19.4 **No Limitation on other Remedies.** Exercise of the remedies for defects pursuant to this Article shall not limit the remedies City may pursue under this Agreement or the law.

19.5 **Disputes.** If Developer and City are unable to reach agreement on disputed Work, City may direct Developer to proceed with the disputed Work. Reimbursement to City of disputed amounts expended by City pursuant to Section 19.2, or resolution of any other dispute, shall be as later determined by mediation pursuant to Article XXVIII, or as subsequently fixed in a court of law. Developer shall maintain and keep all records relating to disputed Work for a period of five (5) years.

19.6 **City's Right to Terminate for Default and Mortgagee Rights and Obligations.**

19.6.1 If Developer fails to adequately perform any obligation required by this Agreement, Developer's failure constitutes a default [Default]. Unless within thirty (30) Calendar Days of receiving a written notice of default [Notice of Default] from City specifying the nature of the Default Developer undertakes all reasonable efforts to ensure the Default is completely remedied within a reasonable time period to City's reasonable satisfaction, City may terminate this Agreement upon a thirty (30) Calendar Day written notice to terminate [Notice to Terminate] to Developer (including all rights of Developer and any person or entity claiming any rights by or through Developer under this Agreement except for a mortgagee's or beneficiary's right to cure as provided for in Section 19.8), and call upon the Bonds posted in accordance with Article XXIII.

19.6.2 If City terminates the Agreement due to Developer's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by Developer or its agents for the construction of the Project Improvements. Developer shall include, and require its contractors and subcontractors to include provisions in their contracts and subcontracts, that City is a third party beneficiary of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.

19.6.3 The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or waive or deny any right or remedy at law or in equity available to City against Developer, including any claims for damages against Developer that City may assert as a result of the Default.

19.7 **City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.** If Developer files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the

benefit of creditors, City may at its option and without further notice to or demand upon Developer immediately terminate this Agreement, and terminate all rights of Developer under this Agreement and any person or entity claiming any rights by or through Developer under this Agreement. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

19.8 **Mortgagee Rights and Obligations.** The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Project Improvements site or any part thereof and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any Default by Developer under this Agreement which has not been cured within thirty (30) Calendar Days following the Developer's receipt of the Notice of Default. Notwithstanding Developer's Default, this Agreement shall not be terminated by City as to any mortgagee or beneficiary to whom notice is to be given and to which either of the following is true:

19.8.1 The mortgagee or beneficiary cures any Default by Developer within sixty (60) Calendar Days after receipt from City of the written notification of any Default by Developer; or

19.8.2 As to Defaults requiring title or possession of the Project site or any portion thereof to effectuate a cure: (i) the mortgagee/beneficiary agrees in writing, within sixty (60) Calendar Days after receipt from City of the written notification of any Default by Developer, to perform Developer's obligations under this Agreement; (ii) the mortgagee/beneficiary commences foreclosure proceedings to reacquire title to the Project Improvements site or any part thereof within said sixty (60) Calendar Days and thereafter diligently pursues such foreclosure to completion; and (iii) the mortgagee/beneficiary promptly cures such Default after obtaining title or possession.

19.8.3 No mortgagee or beneficiary shall have an obligation or duty under this Agreement to perform the obligations of Developer or to guarantee such performance. In the event that a mortgagee or beneficiary elects to construct the Project Improvements in accordance with this Agreement, the mortgagee or beneficiary shall be required to assume and perform the obligations or other affirmative covenants of Developer under this Agreement.

## ARTICLE XX. PUBLIC RELATIONS

20.1 **Presentation.** Developer's and Developer's agents' responsibilities shall include all presentations required to be made to City Council Committees, the local



Recreation Council, any applicable Area Committee, any Design Review Committee, City's Park and Recreation Board, and citizen groups to provide them with information about the Project Improvements, as well as presentations to any governing or regulatory body or agency for other approvals as may be required.

- 20.2 **Primary Contact.** Developer agrees that City is the primary contact with the media regarding the Project Improvements and Developer should forward all questions regarding Project Improvements status to the Responsible Department's Senior Public Information Officer. However, Developer may respond to questions directed to Developer so long as Developer specifies that such response is solely from the Developer and does not necessarily represent the views, opinions, or policies of the City.
- 20.3 **Advertising.** Developer acknowledges that advertising referring to City as a user of a product, material, or service by Developer and/or Developer's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval. City agrees not to advertise or publicize the Project Improvements prior to Acceptance without first obtaining Developer's written consent. Any advertising referencing Project Improvements name shall be consistent with Park and Recreation Board Policy and approval pursuant to Section 4.5 of this Agreement.
- 20.4 **Recognition.** Developer shall place a sign, placard, or other similar monument on the Project Improvements during construction, which shall acknowledge Developer's and City's joint efforts in designing and constructing the Project Improvements. Developer shall properly recognize City and include the Park and Recreation Department's logo on permanent and temporary signs, invitations, flyers, or other correspondence. Any recognition of City shall be reviewed and approved by the Project Manager. For assistance with proper recognition, or if Developer is contemplating a dedication or ground breaking ceremony, Developer shall consult with the Project Manager, who is equipped to provide guidelines and examples.
- 20.5 **Dedication Ceremony.** City or Developer or both shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on the Project Improvements site at any reasonable time following the Acceptance of the Project Improvements, provided Developer receives prior approval from the Park and Recreation Department for the ceremony and provides an opportunity for appearances by the Mayor, Council members and other appropriate City officials. Developer shall contact the Project Manager to arrange a mutually acceptable date and time for any ceremony. Invitations shall not be sent out or a date set until the Project Manager has approved the time and date for the ceremony.
- 20.6 **Cleanup.** Developer, or City as applicable, shall be responsible for the cleanup of the Project Improvements site and the restoration and repair of any damage to the

Project Improvements attributable to a Developer-sponsored, or City-sponsored, as applicable, dedication or ground-breaking ceremony under Section 20.5 of this Agreement.

**ARTICLE XXI. MAINTENANCE OF PROJECT  
IMPROVEMENTS PRIOR TO CITY ACCEPTANCE AND CONVEYANCE OF  
PROJECT IMPROVEMENTS SITE**

- 21.1 **Maintenance Prior to City's Acceptance and Conveyance of Project Improvements Site.** Developer shall maintain and be responsible for the Project Improvements, including without limitation erosion control measures, until Acceptance of the Project Improvements pursuant to Section 16.1 and Conveyance of the Project Improvements site pursuant to Section 1.4 [Acceptance and Conveyance].
- 21.2 **Ninety (90) Day Plant Maintenance Period.** Developer shall provide a maintenance period which shall begin on the first day after all landscape and irrigation work on the respective Project Improvements is complete, checked, approved by the Project Manager, and the Project Manager has given written approval to begin the maintenance period, which written approval may be given prior to the Walk-Through Inspection described in Section 15.2, and shall continue thereafter for ninety (90) Calendar Days, or one hundred twenty (120) Calendar Days if lawn is seeded, until Acceptance and Conveyance [Plant Maintenance Period].
- 21.3 **Maintenance Area.** Developer or Developer's contractor shall maintain the Project Improvements until Acceptance and Conveyance.
- 21.4 **Maintenance Required.** Developer or Developer's contractor shall conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy, growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Developer or Developer's contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) Calendar Days. Maintenance shall also include the following: (a) filling and replanting of any low areas which may cause standing water; (b) adjusting of sprinkler head height and watering pattern; (c) filling and recompaction of eroded areas; (d) weekly removal of trash, litter, clippings and foreign debris; (e) inspecting plants at least twice per week; and (f) protecting all planting areas against traffic or other potential causes of damage.
- 21.5 **Landscape and Irrigation Inspection.** At the conclusion of the maintenance period and prior to Acceptance by the City, City shall inspect the landscaping and irrigation to determine the acceptability of the Work, including maintenance.

This inspection shall be scheduled subject to a fourteen (14) Calendar Days advance notice, a minimum of ninety (90) Calendar Days after the plant maintenance period commencement, or when the Developer or Developer's contractor notifies City that they are ready for the Final Inspection, whichever comes last. City will notify Developer of all deficiencies revealed by the Final Inspection before Acceptance.

- 21.6 **Extension of Maintenance Period.** Developer shall extend completion of the maintenance period when, in City's reasonable opinion, improper maintenance and/or possible poor or unhealthy condition of planted material is evident at or near the conclusion of the scheduled maintenance period. Developer shall be responsible for additional maintenance of the Work until all of the Work is completed and acceptable.
- 21.7 **Replacement.** Plants found to be dead or not in a vigorous condition, or if root balls have been damaged within the installation, maintenance and warranty periods, shall be replaced within fourteen (14) Calendar Days of notification by City. Developer shall include, at Developer's or Developer's contractor's expense, a timely written diagnosis of plant health by a certified arborist or horticulturist. Should a dispute arise, the arborist's or horticulturist's report shall indicate reason for lack of vigor, potential remedies, if any, and estimate of time required to regain vigor and specified size.
- 21.8 **Same Kind and Size.** Plants used for replacement shall be the same kind and not less than the size specified and shall be furnished, planted and fertilized as originally specified, unless otherwise directed by City in writing. Cost of all repair work to existing improvements damaged during replacement shall be borne by Developer.

## **ARTICLE XXII. MAINTENANCE OF PROJECT IMPROVEMENTS AFTER CITY ACCEPTANCE AND CONVEYANCE**

- 22.1 **Post-Conveyance Maintenance for Phyllis Place Park.** Upon Conveyance of Phyllis Place Park to the City, depicted as P31 on **Exhibit G**, the City shall be solely responsible for maintenance and operation of the Project Improvements for Phyllis Place Park. Following Conveyance of Phyllis Place Park, Developer shall not be responsible for the operation and maintenance of any of the Project Improvements for Phyllis Place Park, or the replacement of any plant material as a result of the City not performing its irrigation and maintenance responsibility, or for any damage resulting from the public's access to Phyllis Place Park site. Notwithstanding the above, all defective work and warranty provisions set forth in this Agreement shall remain in full force and effect.
- 22.2 **Post-Conveyance Maintenance for Designated Areas of Central Park and Franklin Ridge Pocket Park to be Conveyed to the City and Maintained by a**

**MCA/HOA through a MAD.** Upon Conveyance to the City of the Project Improvements for the designated areas of Central Park and Franklin Ridge Pocket Park, depicted as P6, P7, P8, P16, P17, P18, P20, P26, P27, and P29 on **Exhibit G** [MAD Park Improvements], the Parties intend that the responsibility for maintenance and operation of the MAD Park Improvements, shall be allocated to a Master Community Association/Home Owners Association (MCA/HOA) through a Maintenance Assessment District (MAD). In the event that a MAD is not formed, the City shall be responsible for the operation and maintenance of the MAD Park Improvements upon their Conveyance to the City consistent with City standards. Following Conveyance to the City, Developer shall not be responsible for the operation and maintenance of those MAD Park Improvements Conveyed to the City, or the replacement of any plant material as a result of MCA/HOA or MAD not performing their respective operation and maintenance responsibility, or for any damage resulting from the public's access to the MAD Park Improvements that were Conveyed to the City. Notwithstanding the above, all defective work and warranty provisions set forth in this Agreement shall remain in full force and effect. Subsequent to GDP approval and prior to Conveyance of the MAD Park Improvements to the City, the MCA/HOA and the City shall enter into an Agreement that is consistent with Park Maintenance Standards/Specifications and San Diego Municipal Code section 65.0212 et.seq.

22.3 Notwithstanding Section 22.2, if subsequent to GDP approval and prior to Conveyance of the MAD Park Improvements to the City, an MCA/HOA and MAD have not been formed for operation and maintenance of any MAD Park Improvements Conveyed to the City, then the Developer, or its successor or assigns, shall operate, maintain and be responsible for those MAD Park Improvements consistent with the Park Maintenance Standards/Specifications. Prior to Conveyance, Developer, or its successor or assigns, shall enter into a Maintenance Agreement with City for said operation and maintenance until such time that a MCA/HOA and MAD are formed and have assumed all responsibilities for operation and maintenance of the MAD Park Improvements.

22.4 **Post-Acceptance Maintenance for Designated Areas of Central Park and Creekside Park to Remain in Private Ownership and Maintained by a MCA/HOA through a MAD.** Upon Acceptance of the Project Improvements for the designated areas of Central Park and Creekside Park that will remain in private ownership, depicted as P1, P3, P4, and P32 on **Exhibit G** [HOA Park Improvements], the responsibility for maintenance and operation of the HOA Park Improvements shall be allocated to a Master Community Association/Home Owners Association (MCA/HOA) through a Maintenance Assessment District (MAD). In the event that a MAD is not formed, the MCA/HOA shall be responsible for the operation and maintenance of the Project Improvements for the HOA Park Improvements upon their Acceptance. Following the City's Acceptance, (except as provided in Section 22.5 of this Agreement), Developer shall not be responsible for the operation and maintenance of any of the HOA Park Improvements, or the replacement of any plant material as a result of

MCA/HOA or MAD not performing their respective operation and maintenance responsibility, or for any damage resulting from the public's access to the HOA Park Improvements. Notwithstanding the above, all defective work and warranty provisions set forth in this Agreement shall remain in full force and effect. Subsequent to GDP approval and prior to City Acceptance of HOA Park Improvements, the MCA/HOA and the City shall enter into an Agreement that is consistent with the Park Maintenance Standards/Specifications and San Diego Municipal Code section 65.0212 et.seq.

- 22.5 Notwithstanding Section 22.4, if subsequent to GDP approval and prior to City Acceptance of the HOA Park Improvements, an MCA/HOA and MAD have not been formed for operation and maintenance of any such HOA Park Improvements, then the Developer, or its successor or assigns, shall operate, maintain and be responsible for those HOA Park Improvements consistent with the Park Maintenance Standards/Specifications. Prior to City Acceptance, Developer, or its successor or assigns, shall enter into a Maintenance Agreement with City for said operation and maintenance until such time that a MCA/HOA and MAD are formed and have assumed all responsibilities for operation and maintenance for the HOA Park Improvements.

### ARTICLE XXIII. BONDS AND SECURITY

- 23.1 **Payment Bond.** Developer shall provide, or require its construction contractor to provide City with a Payment (material and labor) Bond, or other form of security acceptable to City, in favor of City for one hundred percent (100%) of the proposed construction costs, as determined by competitive bidding.
- 23.2 **Performance Bond.** Developer shall provide, or require its construction contractor to provide City with a Faithful Performance Bond, or other form of security acceptable to City, in favor of City for one hundred percent (100%) of the proposed construction costs, as determined by competitive bidding.
- 23.3 **Maintenance Bond.** Developer shall provide a bonded maintenance agreement, or other form of security acceptable to City, assuring maintenance of landscaping and appurtenances within the population-based park land until such time when a maintenance assessment district, property owners association, or other such mechanism is established for maintenance of all landscaping and appurtenances.
- 23.4 **Warranty Bond.** Shall be provided in accordance with section 21.3 of the Reimbursement Agreement.
- 23.5 **Term.** The bond terms shall be as provided in section 21.4 of the Reimbursement Agreement.
- 23.6 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

- 23.7 **Licensing and Rating.** The bonds shall be duly executed by responsible surety companies admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the project is located to issue bonds for the limits required by this agreement, secured through an authorized agent with an office in California, and have a minimum AM Best rating of “A-” to an amount not to exceed ten percent (10%) of its capital and surplus.
- 23.8 **Insolvency or Bankruptcy.** If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project Improvements are located, Developer shall within thirty (30) Calendar Days thereafter substitute or require the substitution of another bond and surety, acceptable to City.

#### ARTICLE XXIV. INDEMNITY & DUTY TO DEFEND

- 24.1 **Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 24.2 and 24.3 below, to the fullest extent permitted by law, Developer shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Developer or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any performance under this Agreement by Developer, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Developer’s duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.
- 24.2 **Indemnification for Design Professional Services.** Developer shall include in its contract with its design professional an obligation that the design professional, to the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, design professional shall indemnify and hold harmless City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of design professional or design professional’s officers or employees. Developer shall also include in its contract with its design professional an obligation that the design professional, to the fullest extent permitted by law, agrees to pay any and

all costs City incurs enforcing the indemnity and defense provisions set forth in this Section.

- 24.3 **Design Professional Services Defense.** The Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of design professional or design professional's officers or employees.
- 24.4 **Insurance.** The provisions of this Article are not limited by the requirements of Article XXV related to insurance.
- 24.5 **Enforcement Costs.** Other than in enforcing the indemnity and defense provisions against the design professional which is solely as addressed in Section 24.2 above, Developer agrees to pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in this Article.
- 24.6 **Indemnification for Liens and Stop Notices.** Developer shall keep the Project and underlying property free of any mechanic's liens and immediately take all reasonable steps to secure the release of any stop notices. Developer shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Developer shall be responsible for payment of all persons entitled to assert liens and stop notices.

## ARTICLE XXV. INSURANCE

- 25.1 **General.** Developer shall not begin work on Project Improvements under this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Article.
- 25.2 **Type and Amount of Insurance.** Prior to the commencement of construction, Developer shall obtain insurance in the form (including all endorsements, specific clauses, and types of coverage) and in dollar amounts as set forth in **Exhibit H** "City Standard Insurance Provisions".
- 25.3 **Written Notice.** Except as provided for under California law, the Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) Calendar Days prior written notice by Developer to City by certified mail, except for non-payment of premium, in which case ten (10) Calendar Days notice shall be provided.
  - 25.3.1 Where the words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the

company, its agents, or representatives” are present on a certificate, they shall be deleted.

- 25.4 **Rating Requirements.** Except for the State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an “A” or “A-” and “VI” rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.
- 25.5 **Non-Admitted Carriers.** City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers.
- 25.6 **Additional Insurance.** Developer may obtain additional insurance not required by this Agreement.
- 25.7 **Obligation to Provide Documents.** Prior to performing any work on the Project Improvements, Developer shall provide copies of certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.
- 25.8 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Developer. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.
- 25.9 **Policy Changes.** Developer shall not modify any policy or endorsement thereto which increases City’s exposure to loss for the duration of this Agreement.
- 25.10 **Reservation of Rights.** City reserves the right, from time to time, to review the Developer’s insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to City. City will reimburse the Developer for the cost of the additional premium for any coverage-requested by City in excess of that required by this Agreement without overhead, profit, or any other markup.
- 25.11 **Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Developer’s obligations under this Agreement, including indemnity.
- 25.12 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal of required insurance during the term of this Agreement and for a period of ten (10) years following Conveyance of the Project Improvements site pursuant to Section 1.4 may be treated by City as a material breach of this Agreement.



## ARTICLE XXVI. RECORDS AND AUDITS

- 26.1 **Retention of Records.** Developer, consultants, contractors, and subcontractors shall maintain data and records related to Project Improvements and this Agreement for a period of not less than five (5) years following the Effective Date of this Agreement.
- 26.2 **Audit of Records.** At any time during normal business hours and as often as City reasonably deems necessary, Developer and all contractors or subcontractors shall make available to City for examination at reasonable locations within the City or County of San Diego all of the data and records with respect to all matters covered by this Agreement. Developer and all contractors or subcontractors will permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City or County of San Diego, then Developer shall pay all City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained.

## ARTICLE XXVII. NOTICES

- 27.1 **Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 27.2 **Effective Date.** Except in relation to Change Orders as provided for in Section 12.1 or as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (a) on personal delivery, (b) on the succeeding business day after mailing by certified or registered U.S. Mail, return receipt requested, (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (d) upon successful transmission of facsimile.
- 27.3 **Recipients.** Except in relation to Change Orders, all demands or notices required or permitted to be given shall be sent to all of the following:
- 27.3.1 Deputy Director, Architectural Engineering and Parks Division  
Public Works/Engineering & Capital Projects Department  
City of San Diego  
202 "C" Street, MS. #908A  
San Diego, CA 92101  
Facsimile No.: (619) 533-5176
- 27.3.2 Marco A. Sessa  
Quarry Falls, LLC  
5465 Morehouse Drive, Suite 260  
San Diego, CA 92121-4714

Facsimile No.: (858) 546-3009

Mark Radelow  
Quarry Falls, LLC  
5465 Morehouse Drive, Suite 260  
San Diego, CA 92121-4714  
Facsimile No.: (858) 546-3009

27.4 **Recipients of Change Orders.**

27.4.1 Deputy Director, Field Engineering Division  
Public Works/Engineering & Capital Projects Department  
City of San Diego  
202 "C" Street, M.S. #18  
San Diego, CA 92101  
Facsimile No.: (619) 627-3297

27.4.2 Deputy Director, Architectural Engineering and Parks Division  
Public Works/Engineering & Capital Projects Department  
City of San Diego  
202 C Street M.S. # 908A  
San Diego, CA 92101  
Facsimile No.: (619) 533-5176

27.4.3 Marco A. Sessa  
Quarry Falls, LLC  
5465 Morehouse Drive, Suite 260  
San Diego, CA 92121-4714  
Facsimile No.: (858) 546-3009

Mark Radelow  
Quarry Falls, LLC  
5465 Morehouse Drive, Suite 260  
San Diego, CA 92121-4714  
Facsimile No.: (858) 546-3009

27.5 **Recipients of Notice of Completion.**

27.5.1 Deputy Director, Field Engineering Division  
Public Works/Engineering & Capital Projects Department  
City of San Diego  
202 "C" Street, M.S. #18  
San Diego, CA 92101  
Facsimile No.: (619) 627-3297

27.5.2 Program Manager, Facilities Financing Section

Development Services Department  
City of San Diego  
202 "C" Street, M.S. #608  
San Diego, CA 92101  
Facsimile No.: (619) 533-3187

- 27.6 **Change of Address(es)**. Notice of change of address shall be given in the manner set forth in this Article.

## ARTICLE XXVIII. MEDIATION

- 28.1 **Mandatory Mediation**. If dispute arises out of, or relates to the Project Improvements or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.
- 28.2 **Mandatory Mediation Costs**. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.
- 28.3 **Selection of Mediator**. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.
- 28.3.1 If AAA is selected to coordinate the mediation [Administrator], within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating

Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

28.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

28.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

28.4 **Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

28.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

28.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

## ARTICLE XXIX. MISCELLANEOUS PROVISIONS

29.1 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.

29.2 **Gender & Number.** Whenever the context requires, the use herein of (a) the neuter gender includes the masculine and the feminine genders and (b) the singular number includes the plural number.

29.3 **Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.

29.4 **Incorporation of Recitals.** All recitals herein are incorporated into this Agreement and are made a part hereof.

- 29.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of City or Developer shall be deemed to be both covenants and conditions.
- 29.6 **Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understanding of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 29.7 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 29.8 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor or against either Party by reason of the extent to which each Party participated in the drafting of this Agreement.
- 29.9 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 29.10 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 29.11 **Good Faith Performance.** The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 29.10 **Further Assurances.** City and Developer each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.

29.11 **Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:

- Exhibit "A" Property Depiction
- Exhibit "B-1" Preliminary Cost Estimate for Central Park 14.28 Acres
- Exhibit "B-2" Preliminary Cost Estimate for Creekside Park 1.30 Acres
- Exhibit "B-3" Preliminary Cost Estimate for Franklin Ridge  
Pocket Park 0.20 Acre
- Exhibit "B-4" Preliminary Cost Estimate for Phyllis Place Park 1.33 Acre
- Exhibit "C" Consultant Provisions
- Exhibit "D" Project Schedule for each Park Phase
- Exhibit "E" Developer Certification for Title 24/ADA Compliance
- Exhibit "F" Preconstruction Meeting Agenda
- Exhibit "G" Park Maintenance Responsibilities
- Exhibit "H" City Standard Insurance Provisions

29.12 **Compliance with Controlling Law.** Developer shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local government applicable to this Agreement, including California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of the Project Improvements, including inspection and land surveying work. In addition, Developer shall comply immediately with all directives related to this Agreement that are reasonably issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

29.13 **Jurisdiction, Venue, and Attorney Fees.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

29.14 **Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State of California.

29.15 **Third Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third party beneficiary of all Developer's contracts, purchase orders and other contracts between Developer and third party services. Developer shall incorporate this provision into its contracts, supply agreements and purchase orders.

- 29.16 **Non-Assignment.** Except with respect to Permitted Transfers, the Developer shall not assign any or all of the obligations under this Agreement, nor any monies due or to become due, without City's prior written approval, which approval shall not be unreasonably withheld. Permitted Transfers include assignments to affiliates that are under Developers's control. The term "control" as used in the immediately preceding sentence, means the power to direct the affiliate's management or the power to control the appointment or election of the board of directors or other governing body of the affiliate. Upon notification by Developer to City, Permitted Transfers are subject to the reasonable approval of documentation, by the Mayor or his designee, substantiating that the assignment is a Permitted Transfer within ten (10) Working Days. City reserves the right to require where deemed appropriate by the City, as a condition precedent to the completion of any Permitted Transfer, and any other assignment or transfer approved by the City, an executed assignment and assumption agreement confirming that the assignee has assumed the obligations under this Agreement. Any assignment in violation of this Section shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.
- 29.17 **Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 29.18 **Independent Contractors.** Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Developer concerning the details of performing the services under this Agreement, or to exercise any control over such performance, shall mean only that Developer shall follow the direction of City concerning the end results of the performance.
- 29.19 **Approval.** Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld.
- 29.20 **No Waiver.** No failure of either City or Developer to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

29.21 **Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party hereto harmless if it is later determined that such authority does not exist.

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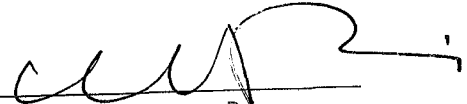
IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by the through its Mayor, pursuant to Ordinance No. \_\_\_\_\_, authorizing such execution, and by Developer, acting as Quarry Falls, LLC, as well as their respective counsel.



This Agreement was approved as to form and content by the City Attorney this 3 of ~~NOV 27 2012~~ 2012 and this date shall constitute the Effective Date of this Agreement.


THE CITY OF SAN DIEGO, a  
Municipal Corporation

Dated: 3/14/13

By:   
W. Downs Prior  
Principal Contract Specialist  
Public Works Contracting

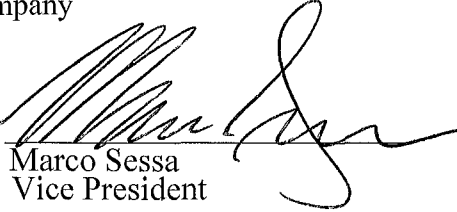
Approved as to form and content:  
JAN I. GOLDSMITH, City Attorney

Dated: March 18, 2013

By:   
Hilda Mendoza, Deputy City  
Attorney

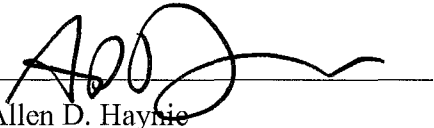
Quarry Falls, LLC  
A California Limited Liability  
Company


Dated: 10/17/2012

By:   
Marco Sessa  
Vice President

Approved as to form and content:

Dated: 10/17/2012

  
Allen D. Haynie  
Attorney for Subdivider

 20220

Phyllis Place Park: P31

Franklin Pocket Park: P26

Central Park: P6, P7, P8, P16,  
P17, P18, P20, P27 and P29

Central Park: P4 and P32

Creekside Park: P1 and P3

(Note: Lot numbers are based  
on the approved Vesting Tentative Map)

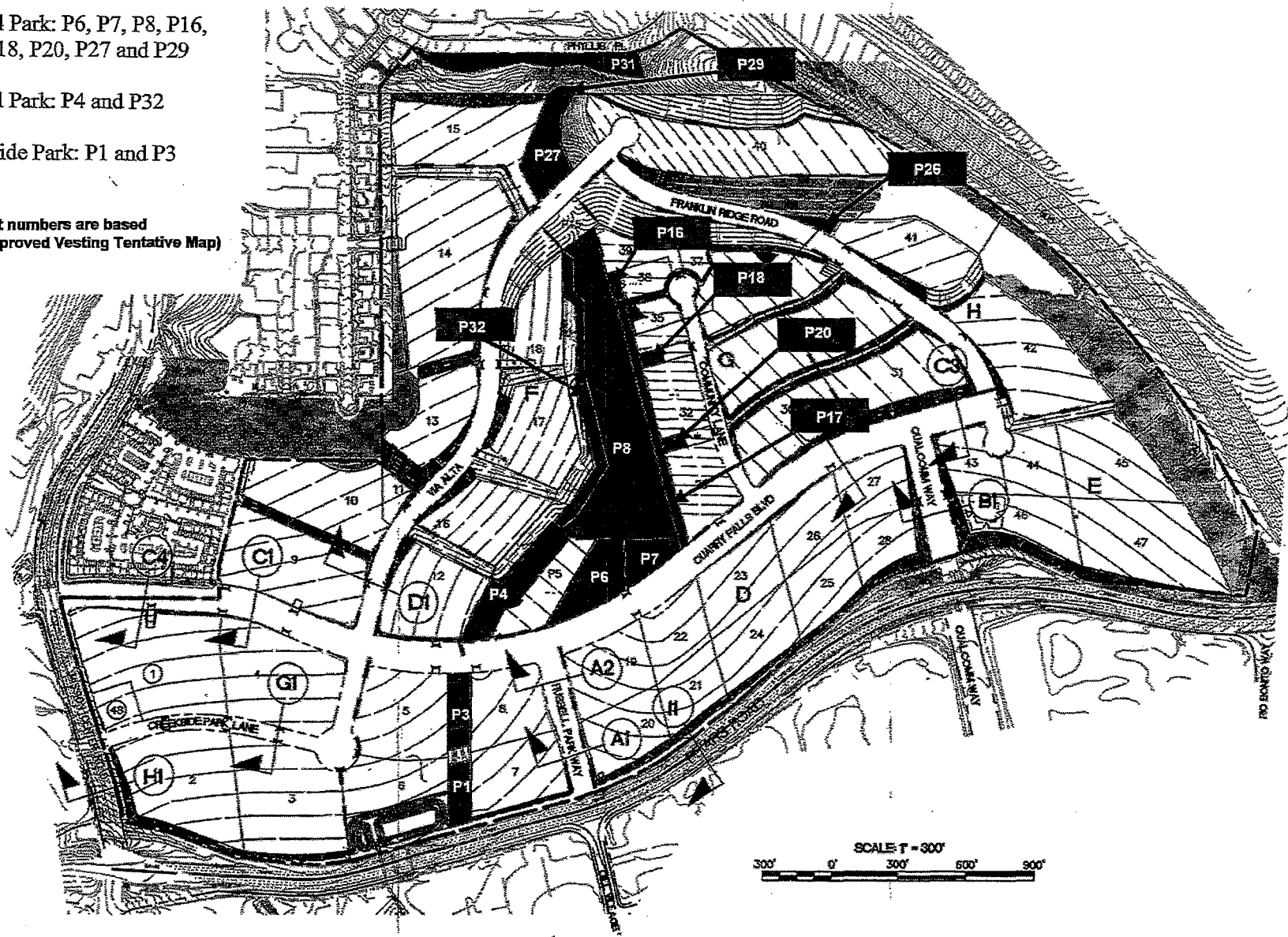


Exhibit "A" - Property Depiction

## Exhibit B-1

### Preliminary Cost Estimate for Central Park 14.28 Acres (11.78 acres park and 2.5 acres park equivalency)

<b>I.</b>	<b>Design:</b>		
	<b>A.</b>	<b>Consultant Fees (12% of Construction)</b>	<b>\$1,610,545</b>
<b>II.</b>	<b>Construction (1) (2):</b>		<b>\$13,421,212</b>
		<b>Subtotal Design/Construction:</b>	<b>\$15,031,757</b>
<b>III.</b>	<b>Construction Contingencies (10% of Construction Costs)</b>		<b>\$1,342,121</b>
<b>IV.</b>	<b>Administration:</b>		
	<b>A.</b>	<b>City Administration (20% of Design/Construction Costs)</b>	<b>\$3,006,351</b>
	<b>B.</b>	<b>Developer Administration (5% of Design/Construction Costs)</b>	<b>\$751,588</b>
<b>V.</b>	<b>Land (3):</b>		
	<b>A.</b>	<b>Acquisition</b>	<b>11.78 ac. x \$584,000/ac. = \$6,879,520</b>
	<b>B.</b>	<b>Equivalency Credit</b>	<b>(2.5 x 50%) x \$584,000/ac. = \$730,000</b>
		<b>Total Costs (4)</b>	<b>\$27,741,338</b>

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(1) Construction costs include Rough Grading which is defined as, "Net rough grading cost means a pro-rata share of cost paid by Developer to rough grade the entire subdivision, less any savings realized by Developer in balancing the cut and fill soil of the subdivision site." Park Amenities, Half-width Street Improvements, and Utilities are also major components included in cost of construction.

(2) Park Amenities, per the Quarry Falls Specific Plan, may include but not limited to: active and passive recreation elements such as volleyball and basketball courts, a fitness course, children's playgrounds, turf amphitheater, picnic areas with tables and barbecues, sitting areas, gazebo, several comfort stations, pathways and trails, children's model boat basin, an interpretive signage network along the bio-swales, Grand Steps/Rose Garden along the east boundary, lawn play area, overlook plazas, lighting, irrigation, and landscaping. Final amenities will be determined and identified through the General Development Plan and community input process.

## Exhibit B-1

### Preliminary Cost Estimate for Central Park 14.28 Acres (11.78 acres park and 2.5 acres park equivalency)

(3) 11.78 acres to be conveyed to the City is 100% reimbursable; park equivalency acreage (2.5 acres) to remain in private ownership covered by Recreation Easement is 50% reimbursable.

(4) In accordance with Section 4.6 of the Park Development Agreement for the Quarry Falls (Civita) Development Project, the total estimated cost may be increased in an amount not to exceed ten percent (10%).

#### **Vesting Tentative Map:**

Lot P29 - .06 acre

Lot P27 - 1.44 acres

Lot P18 - .14 acre

Lot P20 - .14 acre

Total to be conveyed to City = 1.78 acres

#### **Final Map, Unit F:**

Lot S - .8 acre

Lot T - 1.5 acres

Lot R - 6.7 acres

Lot Q - 1.0 acre

Total to be conveyed to City = 10.00 acres

Lot V - 1.4 acres (private)

Lot O - 1.1 acres (private)

Total to remain private = 2.5 acres

**Total for Central Park = 14.28 Acres**

## Exhibit B-2

### Preliminary Cost Estimate for Creekside Park 1.30 Acres

<b>I. Design:</b>		
<b>A. Consultant Fees (12% of Construction</b>		<b>\$199,560</b>
<b>II. Construction (1) (2):</b>		<b>\$1,663,004</b>
	<b>Subtotal Design/Construction:</b>	<b>\$1,862,564</b>
<b>III. Construction Contingencies (10% of Construction Costs)</b>		<b>\$166,300</b>
<b>IV. Administration:</b>		
<b>A. City Administration (20% of Design/Construction Costs)</b>		<b>\$372,513</b>
<b>B. Developer Administration (5% of Design/Construction Costs)</b>		<b>\$93,128</b>
<b>V. Land (3):</b>		
<b>A. Equivalency Credit</b>	<b>(1.30 x 50%) x \$584,000/ac. =</b>	<b>\$379,600</b>
	<b>Total Costs (4)</b>	<b>\$2,874,106</b>

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(1) Construction costs include Rough Grading which is defined as, "Net rough grading cost means a pro-rata share of cost paid by Developer to rough grade the entire subdivision, less any savings realized by Developer in balancing the cut and fill soil of the subdivision site." Park Amenities, Half-width Street Improvements, and Utilities are also major components included in cost of construction.

(2) Park Amenities, per the Quarry Falls Specific Plan, may include but not limited to: active and passive recreation elements such as children's playgrounds, turf amphitheater, picnic areas with tables and barbecues, sitting areas, gazebo, comfort station, pathways and trails, an interpretive signage network along the bio-swales, lawn play area, lighting, irrigation, and landscaping. Final amenities will be determined and identified through the General Development Plan and community input process.

(3) Park equivalency acreage (1.30 acres) to remain in private ownership covered by Recreation Easement is 50% reimbursable. Final Map: Lot E - .7 acres and Lot B - .6 acres

(4) In accordance with Section 4.6 of the Park Development Agreement for the Quarry Falls (Civita) Development Project, the total estimated cost may be increased in an amount not to exceed ten percent (10%).

## Exhibit B-3

### Preliminary Cost Estimate for Franklin Ridge Pocket Park 0.20 Acre

<b>I. Design:</b>		
<b>A. Consultant Fees (12% of Construction)</b>		<b>\$56,237</b>
<b>II. Construction (1) (2):</b>		<b>\$468,640</b>
	<b>Subtotal Design/Construction:</b>	<b>\$524,877</b>
<b>III. Construction Contingencies (10% of Construction Costs)</b>		<b>\$46,864</b>
<b>IV. Administration:</b>		
<b>A. City Administration (20% of Design/Construction Cos</b>		<b>\$104,975</b>
<b>B. Developer Administration (5% of Design/Construction Costs)</b>		<b>\$26,244</b>
<b>V. Land (3):</b>		
<b>A. Equivalency Credit</b>	<b>0.20 ac. x \$584,000/ac. =</b>	<b><u>\$116,800</u></b>
	<b>Total Costs (4)</b>	<b><u>\$819,760</u></b>

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(1) Construction costs include Rough Grading which is defined as, "Net rough grading cost means a pro-rata share of cost paid by Developer to rough grade the entire subdivision, less any savings realized by Developer in balancing the cut and fill soil of the subdivision site." Park Amenities, Half-width Street Improvements, and Utilities are also major components included in cost of construction.

(2) Park Amenities, per the Quarry Falls Specific Plan, may include but not limited to: passive recreation elements such as picnic areas, sitting areas, ½ court multi-purpose courts, pathways and lawn area, lighting, irrigation, and landscaping. Final amenities will be determined and identified through the General Development Plan and community input process.

(3) 0.20 acre to be conveyed to the City is 100% reimbursable.  
Vesting Tentative Map: Lot P26 – 0.20 acre

(4) In accordance with Section 4.6 of the Park Development Agreement for the Quarry Falls (Civita) Development Project, the total estimated cost may be increased in an amount not to exceed ten percent (10%).

## Exhibit B-4

### Preliminary Cost Estimate for Phyllis Place Park 1.33 Acre

<b>I. Design:</b>		
<b>A. Consultant Fees (12% of Construction)</b>		<b>\$165,953</b>
<b>II. Construction (1) (2):</b>		<b>\$1,382,940</b>
	<b>Subtotal Design/Construction</b>	<b>\$1,548,893</b>
<b>III. Construction Contingencies (10% of Construction Costs)</b>		<b>\$138,294</b>
<b>IV. Administration:</b>		
<b>A. City Administration (20% of Design/Construction Costs)</b>		<b>\$309,779</b>
<b>B. Developer Administration (5% of Design/Construction Costs)</b>		<b>\$77,445</b>
<b>V. Land (3):</b>		
<b>A. Acquisition</b>	<b>1.33 ac. x \$584,000/ac. =</b>	<b>\$776,720</b>
	<b>Subtotal</b>	<b>\$2,851,131</b>
	<b>Mission Valley pro rata share (4) 62% x \$2,851,131 =</b>	<b>\$1,767,701</b>
	<b>Total Costs (5)</b>	<b>\$1,767,701</b>

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(1) Construction costs include Rough Grading which is defined as, "Net rough grading cost means a pro-rata share of cost paid by Developer to rough grade the entire subdivision, less any savings realized by Developer in balancing the cut and fill soil of the subdivision site." Park Amenities, Half-width Street Improvements, and Utilities are also major components included in cost of construction.

(2) Park Amenities, per the Quarry Falls Specific Plan, may include but not limited to: passive recreation elements such as children's play area, picnic tables and overlooks, sitting areas, pathways and trails, turf area lighting, irrigation, and landscaping. Final amenities will be determined and identified through the General Development Plan and community input process.

(3) 1.33 acres to be conveyed to the City is 100% reimbursable.  
Vesting Tentative Map: Lot P31 – 1.33 acre

(4) Phyllis Place Park is located in Serra Mesa Community. Due to its location it will be physically and financing shared by Serra Mesa (38%) and Mission Valley (62%) Community based on population percentages.

## **Exhibit B-4**

### **Preliminary Cost Estimate for Phyllis Place Park 1.33 Acre**

(5) In accordance with Section 4.6 of the Park Development Agreement for the Quarry Falls (Civita) Development Project, the total estimated cost may be increased in an amount not to exceed ten percent (10%).



**EXHIBIT “C”**  
**CONSULTANT PROVISIONS**

1. “Third Party Beneficiary. The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design, the City will become the owner of the Project design and work products, and the City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.”
2. “Competitive Bidding. Consultant shall ensure that all design plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.”
3. “General Indemnification. Other than in the performance of design professional services which shall be solely as addressed in section 4 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [the “Indemnified Parties”] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by the Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone that they control. The Consultant’s duties to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.”
4. “*Professional Services Indemnification and Defense.*”
  - 4.1. “Professional Services Indemnification. To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), with respect to the performance of professional services, Consultant shall indemnify and hold harmless the City, its officers, or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant’s officers or employees.”
  - 4.2. “Professional Services Defense. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Consultant or Consultant’s officers or employees.”
  - 4.3. “Insurance. The provisions of this section are not limited by the requirements of section 6 below related to insurance.”
5. “Enforcement Costs. Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.”
6. “Professional Liability Insurance. For all of Consultant’s employees who are subject to this agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing

## EXHIBIT "C"

### CONSULTANT PROVISIONS

coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. Consultant shall ensure both that: (i) this policy's retroactive date is on or before the date of commencement of the work to be performed under this Agreement; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City of San Diego's exposure to loss."

7. "Commercial General Liability [CGL] Insurance. Consultant shall keep in full force and effect, during any and all work performed in accordance with this agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable."
8. "Insurance Policy Requirements. Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) Calendar Days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement which shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) Calendar Days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements."
9. "Workers Compensation. For all of the Consultant's employees who are subject to this agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives."
10. "Compliance Provision. Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 [ADA] and Title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code [Title 24]. Further, Consultant is responsible as designer and employer to comply with all parts of the ADA and Title 24."
11. "Maintenance of Records. Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence at all reasonable times. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and project cost estimate."

**Exhibit “D”**  
**Project Schedule for Each Park Phase**

1. The General Development Plan Phase for Phyllis Place Park, Central Park, Franklin Ridge Pocket Park and Creekside Park to be completed and approved by the Park and Recreation Board by December 2013.
2. Creekside and Phyllis Place Parks shall be designed (construction plans approved by the City) and bonded for prior to the issuance of the 1,251<sup>st</sup> residential building permit.
3. Creekside and Phyllis Place Parks shall be constructed, as-builts approved, maintenance period completed and park accepted by the City prior to the issuance of the 1,860<sup>th</sup> residential building permit.
4. Central Park shall be designed (construction plans approved by the City) and bonded for prior to the issuance of the 2,782<sup>nd</sup> residential building permit.
5. Central Park shall be constructed, as-builts approved, maintenance period completed and park accepted by the City prior to the issuance of the 2,900<sup>th</sup> residential building permit.
6. Franklin Ridge Pocket Park shall be designed (construction plans approved by the City) and bonded for prior to the issuance of the 3,209<sup>th</sup> residential building permit.
7. Franklin Ridge Pocket Park shall be constructed, as-builts approved, maintenance period completed and park accepted by the City prior to the issuance of the 3,910<sup>th</sup> residential building permit.
8. Transfer of Fee Title to be completed as stated in the Park Development Agreement.

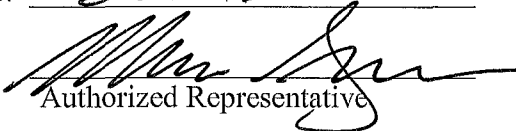
**EXHIBIT "E"**

**DEVELOPER'S CERTIFICATION FOR TITLE 24/ADA COMPLIANCE**

**QUARRY FALLS PARKS**

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for **Quarry Falls Parks** by **Schmidt Design Group**, Consultant, shall meet all current Title 24 of the California Building Code Standards, California Code of Regulations, and Americans with Disabilities Act Accessibility Guidelines and requirements, in compliance with The Americans with Disabilities Act of 1990.

Date: 2-20-13

By:   
Authorized Representative

Marco Sessa, V.P.  
(Print Name and Title)

## EXHIBIT "F"

### Preconstruction Meeting Agenda

Project Name: QUARRY FALLS

Date: \_\_\_\_\_ Time: \_\_\_\_\_

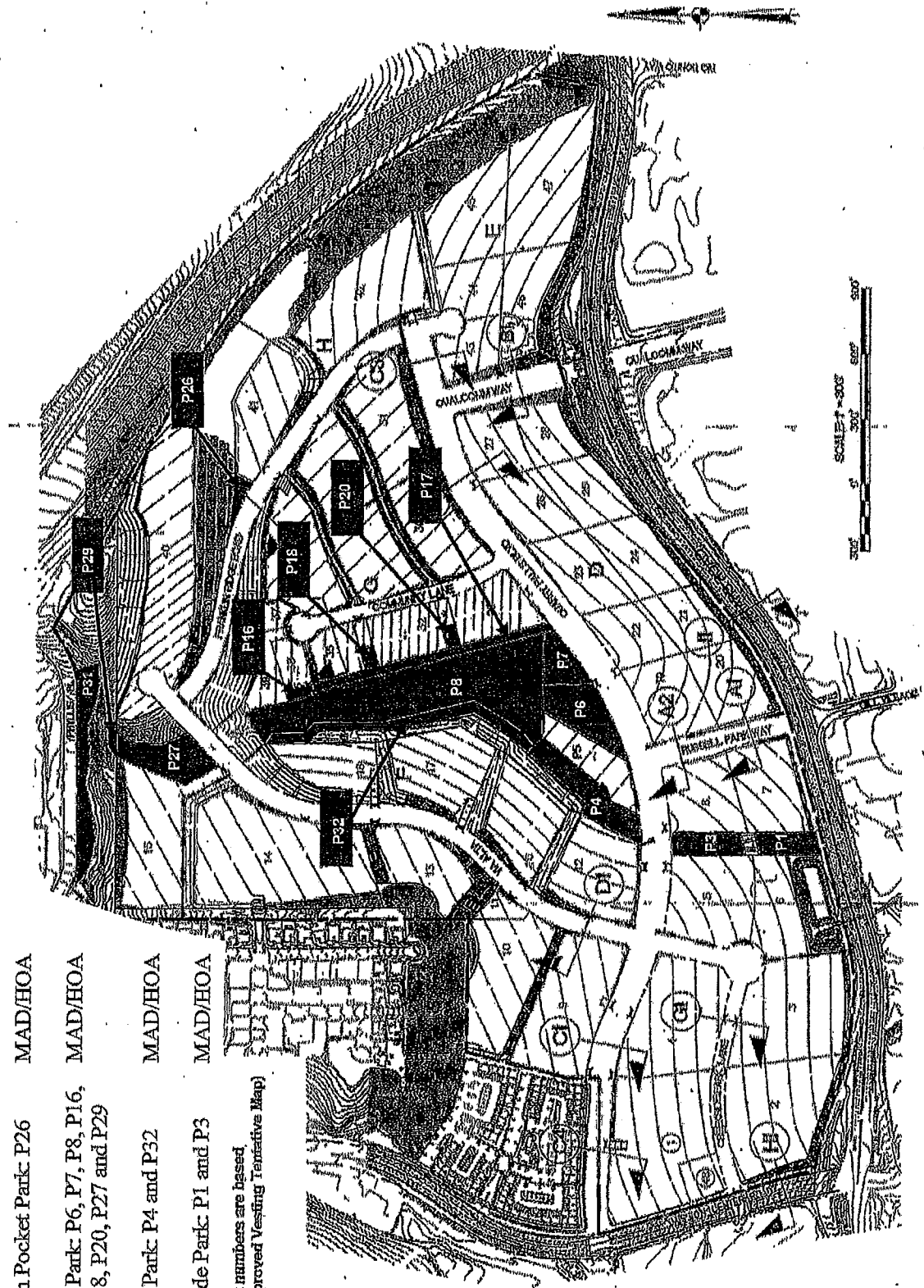
Work Order No. \_\_\_\_\_ Bid No. \_\_\_\_\_

1. Circulate Attendance Sheet
2. Introductions
3. City District Engineer Comments
4. Resident Engineer Comments
5. Quarry Falls Superintendent Comments
6. Equal Opportunity Contracting Program Comments
7. Survey Comments
8. City Materials Test Lab Comments
9. SDG&E Comments
10. City Water Department Comments
11. SBC Telephone Comments
12. City Traffic Engineering Comments
13. City Communications and Electrical Comments
14. City Landscape Advisor Comments
15. Consultant Comments
16. City Project Manager Comments
17. Items Specific to the Contract
18. Project Construction Schedule
19. Questions and Answers
20. Closing Remarks

# Exhibit "G" Park Maintenance Responsibilities

PARK	MAINTENANCE RESPONSIBILITY
Phyllis Place Park: P31	City General Fund
Franklin Pocket Park: P26	MAD/HOA
Central Park: P6, P7, P8, P16, P17, P18, P20, P27 and P29	MAD/HOA
Central Park: P4 and P32	MAD/HOA
Creekside Park: P1 and P3	MAD/HOA

(Note: Lot numbers are based on the approved Vesting Tentative Map)



## EXHIBIT "H"

### City Standard Insurance Provisions

- 24.1 **General.** Developer shall not begin work under this Agreement until it has: (i) obtained, and upon the City's request provided to the City, insurance certificates reflecting evidence of all insurance required in section 24.2; (ii) obtained the City approval of each company or companies; and (iii) confirmed that all policies contain the specific provisions required by section 24.4.
- 24.2 **Types of Insurance.** At all times during the term of this Agreement, Developer shall maintain insurance coverage as follows:
- 24.2.1 *Commercial General Liability.* Contractor shall provide at its expense a policy or policies of Commercial General Liability [CGL] Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Contractor shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars (\$2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars (\$2,000,000); (iii) Personal Injury Limit one million dollars (\$1,000,000); and (iv) Each Occurrence one million dollars (\$1,000,000).
- 24.2.2 *Commercial Automobile Liability.* For all of Developer's automobiles used in conjunction with the Park Improvements including owned, hired and non-owned automobiles, Developer shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ("Any Auto"). All costs of defense shall be outside the policy.
- 24.2.3 *Architects and Engineers Professional Liability.* For all of Developer's employees who are subject to this Agreement, Developer shall keep in full force and effect, or Developer shall require that its architect/engineer(s) of record keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate. Developer shall ensure both that: (i) this policy retroactive date is on or before the date of commencement of the Park Improvements; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Developer agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.
- 24.2.4 *Worker's Compensation.* For all of Developer's employees who are subject to this Agreement and to the extent required by the State of California, Developer shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Developer against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Developer to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars (\$1,000,000) for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit. Developer shall

provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

24.2.4.1 Prior to the execution of the Agreement by the City, Developer shall file the following signed certification:

“I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker’s compensation or to undertake self-insurance, in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Contract.”

24.2.5 *Builder's Risk.* To the extent commercially available, Developer shall provide a policy of “all risk” Builders Risk Insurance and shall add the City and its respective elected officials, officers, employees, agents, and representatives to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. Developer shall also add its Construction Contractor, and the Construction Contractor’s subcontractors to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. The insurance may provide for a deductible which shall not exceed fifty thousand dollars (\$50,000). It shall Developer be responsibility to bear the expense of this deductible. The Builders Risk coverage shall expire at the time such insured property is conveyed to the City, or a Notice of Completion is filed, whichever occurs first.

24.3 **Rating Requirements.** Except for State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an “A” or “A-” and “VI” rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by the City.

24.3.1 *Non-Admitted Carriers.* The City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers [LESLI list].

24.4 **Endorsements Required.** Each policy required under section 24.2 of this Agreement shall expressly provide, and an endorsement shall be submitted to the City, that:

24.4.1 *Additional Insureds.* Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.

24.4.1.1 *Commercial General Liability.* The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for projects for which the engineer’s estimate is two million dollars (\$2,000,000) or more shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, (iii) Your work, including but not limited to your completed operations performed by you or on your behalf, or (iv) premises owned, leased, controlled, or used by you; the coverage for projects for which the engineer’s estimate is less than two million dollars (\$2,000,000) shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, or (iii) premises owned, leased, controlled, or used by you; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials,



officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

24.4.1.2 **Commercial Automobile Liability Insurance.** Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

24.4.2 *Primary and Non-Contributory.* The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City of San Diego, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Garden Communities' insurance and shall not contribute to it.

24.4.3 *Project General Aggregate Limit.* The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the Work performed under this Agreement. Claims payments not arising from the Work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.

24.4.3 *Written Notice.* Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) Calendar Days prior written notice by Garden Communities to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) Calendar Days notice shall be provided.

24.4.3.1 The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

24.4.4 *Additional Insurance.* Developer may obtain additional insurance not required by this Agreement.

24.4.5 *Prior to Starting Work.* Before performing any work, Developer shall provide the City with all Certificates of Insurance accompanied by all endorsements.

24.5 **Obligation to Provide Documents.** Developer shall provide copies of documents including but not limited to certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of

insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all insurance policies required herein.

- 24.6 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Developer. Deductibles and self-insurance retentions shall be disclosed to the City at the time the evidence of insurance is provided.
- 24.7 **Policy Changes.** Developer shall not modify any policy or endorsement thereto which increases the City's exposure to loss for the duration of this Agreement.
- 24.8 **Reservation of Rights.** The City reserves the right, from time to time, to review the Contractor's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to the City. The City will reimburse the Contractor for the cost of the additional premium for any coverage requested by the City in excess of that required by this Agreement without overhead, profit, or any other markup.
- 24.9 **Not a Limitation of Other Obligations.** Insurance provisions under this article shall not be construed to limit Developer obligations under this Agreement, including Indemnity.
- 24.10 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal during the term of this Agreement may be treated by the City as a material breach of contract.