DUPLICATE
ORIGINAL

REIMBURSEMENT AGREEMENT WITH QUARRY FALLS, LLC FOR PUBLIC FACILITIES IN THE MISSION VALLEY COMMUNITY

THIS REIMBURSEMENT AGREEMENT FOR THE QUARRY FALLS (CIVITA) DEVELOPMENT PROJECT [Agreement] is for the reimbursement of costs of land acquisition, design, construction, and funding for certain improvements identified in this Agreement, pursuant to the terms and conditions set forth herein. This 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 [Subdivider]. City and Subdivider when referenced herein collectively shall be referred to as Party or Parties. This Agreement is entered into with reference to the following recitals:

RECITALS

A. Subdivider owns approximately 230 acres of real property [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 City, which previously was known as the Quarry Falls development project but currently is known as the Civita development project. A legal description of the Property is attached hereto as **Exhibit A**.

B. The following entitlements granted by City allow Subdivider 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, and approximately 17.5 acres of parks, civic uses, open space and trails, and an optional school site [Development], all as more fully described in the following documents: Quarry Falls Specific Plan [Specific Plan] approved by City Council Resolution No. R-304293 on October 21, 2008, Rezone No. 183191 approved by City Ordinance No. O-19807 on November 10, 2008, Site Development Permit/Master Planned Development Permit No. 183192 [SDP/MPDP] approved by City Council Resolution No. R-304295 on October 21, 2008, and Vesting Tentative Map No. 183196 [VTM] approved by City Council Resolution No. R-304294 on October 21, 2008 [Entitlements].

C. The Property is located within or adjacent to the boundaries of the City's Mission Valley Public Facilities Financing Plan, Fiscal Year 2006, which was adopted on July 19, 2005 by Resolution No. R-300692 [Financing Plan]. The Financing Plan identifies various sources of funding for public facilities including a Development Impact Fee [DIF]. Construction or funding of projects currently identified in the Financing Plan as being funded by the DIF are eligible for a credit against or reimbursement from the DIF in accordance with this Agreement.

D. On October 21, 2008, by Resolution No. R-304292, the City Council certified Program Environmental Impact Report No. 49068 [PEIR] and adopted the Mitigation, Monitoring, and Reporting Program for the Development. The Mitigation Monitoring and Reporting Program includes a Transportation Phasing Plan, a copy of which is attached hereto as **Exhibit B** [Phasing Plan].

DOCUMENT NO. 20219
FILED NOV 27 2012
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

E. Improvement #1 in the Phasing Plan states that the "City may require the [Subdivider] to pay $5,000,000 (2007 dollars) to the City of San Diego in lieu of constructing such local improvements to assist in the funding of a more regional set of improvements," at the State Route 163/Friars Road Interchange, prior "to issuance of any building permits for Phase 1." City has received a payment of Five Million Seventy Five Thousand Five Hundred Dollars ($5,075,500), which was calculated based on the increase (from October 21, 2008 to date of building permit issuance) in the Construction Cost Index in Los Angeles as published monthly in the Engineering News-Record, and agrees that the requirement for Improvement #1 in the Phasing Plan has been fully satisfied. City has deposited the payment into the Mission Valley-Urban Community Development Impact Fee Fund No. 400135 [DIF Fund] and agrees that the payment will be used only for the SR 163/Friars Road Interchange Project (CIP No. S00851).

F. Improvement #15a in the Phasing Plan states that the "City may require the [Subdivider] to pay $14,000,000 (2007 dollars) to the City of San Diego in lieu of constructing such local improvements to assist in the funding of a more regional set of improvements," at the State Route 163/Friars Road Interchange, "prior to issuance of any building permits for Phase 2 that exceeds 23,750 ADT in total development." City has elected to receive the payment of Fourteen Million Dollars ($14,000,000) (2007), which will be calculated based on the increase (from October 21, 2008 to the date the applicable building permit issuance exceeds the 23,750 ADT threshold) in the Construction Cost Index in Los Angeles as published monthly in the Engineering News-Record, and agrees that upon receipt of that payment, the requirement for Improvement #15a in the Phasing Plan will have been fully satisfied. City also agrees that the payment will be used only for the State Route 163/Friars Road Interchange Project (CIP No. S00851).

G. As described in Recitals E and F above, Subdivider has funded and intends to fund a portion of the cost of Financing Plan Project No. MV-16 (CIP No. S00851), a description of which is attached as **Exhibit C**, which is to be funded partially from the DIF Fund. The Parties agree that Subdivider's partial funding of Project No. MV-16 is eligible for a credit against any DIF that becomes due as a result of development of the Property. City and Subdivider have determined that fourteen percent (14%) of Improvements #1 and #15a in the Phasing Plan represents mitigation for the Development's direct traffic impacts and is eligible for RTCIP credit in accordance with the RTCIP Program, as further discussed in Recital I below. Therefore, only eighty-six percent (86%) of the total amount paid to satisfy the requirement for Improvements #1 and #15a will be eligible for a credit pursuant to the terms of this Agreement. The amount of Subdivider's funding toward Project No. MV-16 that is eligible for DIF credit (86% of the payments) and RTCIP credit (14% of the payments) is referred to herein as the SR163 Project.

H. To satisfy the requirements of the Entitlements, Subdivider is entering into a Public Park Development Agreement for the Quarry Falls (Civita) Development with City, on file in the Office of the City Clerk as Document No. OO-20220 [Park Agreement], concerning "acquisition, design, construction, method of reimbursement, and maintenance of all on-site population-based public park acreage" [Park Improvements]. The Park Agreement provides that the process for obtaining a reimbursement or credit with respect to the DIF Fund for the acquisition of land and development of the Park Improvements is to be provided for in

this Agreement. Although the final design of the Park Improvements will be developed consistent with the process described in the Park Agreement, a preliminary description of the Park Improvements are shown in **Exhibit D**. The process for design, approval, cost estimate, schedule, and construction of the Park Improvements will be subject to the provisions in the Park Agreement. Where the terms of this Agreement and the Park Agreement conflict, with respect to the Park Improvements, the more stringent requirement(s) shall apply.

I. The Development is also subject to the Regional Transportation Congestion Improvement Program [RTCIP]. The RTCIP was established with the passage of Proposition A in 2004. The RTCIP requires City to collect $2,000 in exactions from the private sector for each newly-constructed non-exempted residential housing unit within its jurisdiction, subject to annual increases. To meet that requirement, on April 15, 2008 by Resolution No. R-303554, the City Council originally approved and adopted the required RTCIP development impact fee [RTCIP Impact Fee], subject to annual increases on July 1 of each year to be applicable in certain communities. Currently, effective July 1, 2012, the City collects the RTCIP Impact Fee in the amount of $2,523 per single-family unit, and $2,019 per multi-family unit in the Mission Valley community. As of the Effective Date of this Agreement, as required, Developer has paid $725,560 in RTCIP Impact Fees into City's RTCIP Fund No. 400174 [RTCIP Fund] for the building permits it has thus far been issued for the Development. Subject to the terms of this Agreement, this amount constitutes the maximum amount available for potential reimbursement from the RTCIP Fund under this Agreement. The "RTCIP provides for the collection of an RTCIP Impact Fee to ensure that future development contributes its proportional share of the funding needed to pay for the Regional Arterial Systems [RAS] and related transportation facility improvements, as identified and defined in SANDAG's most recently adopted Regional Transportation Plan [RTP]." The adopted TransNet Extension Ordinance and Expenditure Plan (Ordinance 04-01) incorporates the TransNet Extension Regional Transportation Congestion Improvement Program [RTCIP Program] by reference. The RTCIP Program provides that new development shall contribute towards the RAS through the RTCIP, and that "if a developer funds or constructs improvements on the Regional Arterial System and/or that arise out of SANDAG's Congestion Management Program, the developer shall receive credit for the costs associated with the arterial improvements offsetting the revenue requirements of the Funding Program."

J. The Phasing Plan requires Subdivider to construct or fund certain RAS improvements that are described in the RTP and through this Agreement Subdivider seeks reimbursement for the design and construction of Improvement #11 as described in **Exhibit E** and as shown in **Exhibit F** [RTCIP Improvement]. Reimbursement for the RTCIP Improvement is subject to the requirements in City RTCIP Funding Program, on file in the Office of the City Clerk as Document No. R-307401, allowing for reimbursement consistent with this Agreement.

K. The SR163 Project, Park Improvements, and RTCIP Improvement are collectively referred to throughout this Agreement as the Projects.

L. Subdivider understands that it must obtain all permits that are needed to construct the Park Improvements and RTCIP Improvement consistent with the provisions of the Park Agreement and this Agreement. Nothing in this Agreement shall be interpreted to affect City's ability to withhold issuance of permits for any valid reason(s).

M. On April 28, 2008, the City's Planning Commission granted Planned Development Permit No. 212959 and Site Development Permit No. 9430 [Fenton Permit] to H.G. Fenton Company for the Murray Canyon Apartments project. Condition No. 81 of the Fenton Permit required H.G. Fenton Company to "deposit $140,000 into a trust account restricted for the purpose of constructing a signalized intersection at Murray Ridge Road and Mission Center Road or any other traffic improvements, if needed, in the vicinity," and H.G. Fenton Company has since complied with that requirement. The Entitlements required Subdivider to assure "construction of the following improvements at the intersection of Mission Center Road and Murray Ridge Road: the installation of a traffic signal, the restriping of the southbound approach to provide 1 left turn lane, 1 thru lane, and 1 right turn lane; the widening of the westbound approach by 1 left turn lane resulting in 1 shared thru-right lane and 1 left turn lane; and the restriping of the eastbound approach to provide 1 left turn lane and 1 thru-right lane, satisfactory to the City Engineer." In January 2012, Subdivider completed Improvement #7 to the satisfaction of the City Engineer as shown in **Exhibit G** [Murray Ridge Improvement]. Subject to City cost verification of the completed Murray Ridge Improvement (estimated cost is $248,229), Subdivider will seek reimbursement of the $140,000 City holds in a developer trust account for the Murray Ridge Improvement.

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

ARTICLE I

DEFINITIONS

AAA: Shall have the meaning described within Section 24.1 of this Agreement.

ADA: The Americans with Disabilities Act of 1990 and any amendments thereto.

Administrator: Shall have the meaning described within Section 24.3.1 of this Agreement.

Agreement: This Reimbursement Agreement with Quarry Falls, LLC for Public Facilities in the Mission Valley Community.

As-Builts: Project Record Documents that are the plans modified from the original concept of the design to reflect the actual product built.

Bidding Documents: Shall have the meaning described within Section 5.2 of this Agreement.

Calendar Day(s): All days of the week, holidays and weekends included.

Change Order: A written order approved by City from Subdivider or its authorized representative to the contractor performing the work authorizing a change in the work to be performed under the Construction Documents consistent with Section 8.3.3 of this Agreement.

Changed Conditions: Shall have the meaning described within Section 9.1 of this Agreement.

City: The City of San Diego.

City Council: The City Council of the City of San Diego.

City's Administrative Costs: Shall have the meaning described within Section 4.1.6 of this Agreement.

City Representative: The individual selected by the City to act as its representative with respect to this Agreement.

City RTCIP Funding Program: City RTCIP Funding Program, approved and adopted on April 24, 2012.

Construction Documents: Including, but 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, standard plans, standard specifications, reference specifications, and all modifications issued after the execution of the contract.

Construction Obligations: The construction obligations described in the attached **Exhibit W**.

Consultants: A party or third parties hired by Subdivider to provide the services necessary for the design and construction of the Projects as described in Section 6.1 of this Agreement.

Cutoff Date: Shall have the meaning described within Section 4.1.9.2 of this Agreement.

Default: Shall have the meaning described within Section 11.7.1 of this Agreement.

Defective Work: Shall have the meaning described within Section 17.1 of this Agreement.

Design and Construction Standards: Shall have the meaning described within Section 7.3 of this Agreement and those standards described in the attached **Exhibit N**.

Design Consultant: Design consultant selected by Subdivider for the Projects.

Development: Shall have the meaning described within Recital B of this Agreement.

Development Services: The Development Services Department of the City of San Diego.

DIF: Mission Valley Public Facilities Financing Plan Development Impact Fee.

DIF Fund: Shall have the meaning described within Recital E of this Agreement.

Effective Date: Shall have the meaning described within Section 29.1 of this Agreement.

Entitlements: Shall have the meaning described within Recital B of this Agreement.

Estimated Costs: Shall have the meaning described within Section 8.3 of this Agreement.

Extra Work: Shall have the meaning described within Section 8.3.4 of this Agreement.

Facilities Financing: The Facilities Financing Section of the City of San Diego Development Services Department.

Fee Credit Notification: Shall have the meaning described within Section 4.4 of this Agreement.

FF Project Manager: Shall have the meaning described in Section 4.1.10.1.1 of this Agreement.

Final Completion: Shall have the meaning described within Section 19.2 of this Agreement.

Final Inspection: Shall have the meaning described within Section 15.4 of this Agreement.

Financing Plan: The City's Mission Valley Public Facilities Financing Plan, Fiscal Year 2006.

Green Book: The most recent edition of the Standard Specifications for Public Works Construction (including City's standard special provisions).

Hazardous Materials: Shall have the meaning described within Section 29.16.

Holiday: 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):

Holiday	Observed On
New Year's Day	January 1
Martin Luther King Day	Third Monday in January
Presidents Day	Third Monday in February
Caesar 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

Indemnified Parties: Shall have the meaning described within Section 23.1 of this Agreement

Inspection Team: Shall have the meaning described within Section 13.1 of this Agreement.

Maintenance Period: Shall have the meaning described within Section 14.1 of this Agreement.

Meeting Requirements: The Project meeting requirements described in the attached **Exhibit U**.

Murray Ridge Improvement: Shall have the meaning described within Recital M.

Non-Reimbursable Costs: Shall have the meaning described within Section 8.2.1 of this Agreement.

Notice of Completion: Shall have the meaning described within Section 19.1.1 of this Agreement.

Notice of Correction: Shall have the meaning described within Section 15.4 of this Agreement.

Notification of Reimbursable Projects Form: The Notification of Reimbursable Projects Form attached as **Exhibit J**.

Operational Acceptance: Shall have the meaning described within Section 19.1 of this Agreement.

Park Agreement: Shall have the meaning described within Recital H of this Agreement.

Park Improvements: Shall have the meaning described within Recital H of this Agreement.

Park Improvements Cost Estimate: Shall have the meaning described within the Park Agreement.

Party or Parties: Shall mean City and Subdivider when referenced collectively in this Agreement.

Payment Bond: Shall have the meaning described within Section 21.1 of this Agreement.

PEIR: Shall have the meaning described within Recital D.

Performance Bond: Shall have the meaning described within Section 21.2 of this Agreement.

Phasing Plan: Shall mean the Transportation Phasing Plan attached as **Exhibit B**.

Preconstruction, Progress, and Special Meeting Agendas: The agenda for a Project described in **Exhibit V** attached hereto.

Projects: Shall have the meaning described within Recital K of this Agreement.

Projects Contingency: Shall have the meaning described within Section 8.3.2 of this Agreement.

Project Costs: Shall have the meaning described within Section 8.1 of this Agreement.

Project Deliverables: Shall have the meaning described within Section 16.1 of this Agreement and the attached **Exhibit Y**.

Project Manager: Shall have the meaning described within Section 11.3.2 of this Agreement.

Project Obligations: The Project obligations described in **Exhibit T** attached hereto.

Project Schedule: The schedule for completing a Project as described in Section 11.1 of this Agreement.

Property: The real property described in **Exhibit A** attached hereto.

Punch List: Shall have the meaning described within Section 15.2.1 of this Agreement.

RE: The resident engineer designated by City with responsibility concerning the Project.

RAS: Shall have the meaning described within Recital I of this Agreement.

Reimbursable Costs: (i) Funding of the SR163 Project received by the City, (ii) Costs of the Park Improvements, including the acquisition of land, that have been expended and approved by the City through the approval procedures described in the Park Agreement, and (iii) Costs of the RTCIP Improvement that have been expended and approved by the City through the approval procedures described in this Agreement. Reimbursable Costs do not include Non-Reimbursable Costs as set forth in this Agreement.

Reimbursement Request: Shall have the meaning described within Section 4.1.9 of this Agreement.

Reimbursement Request Approval: Shall have the meaning described within Section 4.1.9 of this Agreement.

Required Insurance: Shall have the meaning described within Section 20.2 of this Agreement.

Responsible Department: The department at City designated by City for individual Project approval and/or supervision.

RTCIP: Shall have the meaning described within Recital I of this Agreement.

RTCIP Fund: Shall have the meaning described in Recital I of this Agreement.

RTCIP Impact Fee: Shall have the meaning described within Recital I of this Agreement.

RTCIP Improvement: Shall have the meaning described within Recital J.

RTCIP Improvement Estimated Cost: The cost estimate of the RTCIP Improvement described in **Exhibit Q**.

RTCIP Program: Shall have the meaning described in Recital I of this Agreement,

RTP: Shall have the meaning described within Recital I of this Agreement.

SANDAG: Shall mean the San Diego Association of Governments.

SDP/MPDP: Shall have the meaning described within Recital B of this Agreement.

SDMC: San Diego Municipal Code.

Solicitation of Bids: Shall have the meaning described in Section 5.3 of this Agreement.

Specific Plan: Shall have the meaning described within Recital B of this Agreement.

SR163 Project: Shall have the meaning described in Recital G and **Exhibit C** of this Agreement.

State: State of California.

Subdivider: Quarry Falls, LLC, a California Limited Liability Company.

Subdivider's Administrative Costs: Shall have the meaning described in Section 8.3.1 of this Agreement.

Subdivider's Agents: Subdivider's consultants, contractors, subcontractors, employees, or other agents.

Title 24: California Building Standards Code, California Code of Regulations, Title 24.

VTM: Shall have the meaning described within Recital B of this Agreement.

Walk-Through Inspection: Shall have the meaning described within Section 15.2 of this Agreement.

Warranty Bond: Shall have the meaning described within Section 21.3 of this Agreement.

Working Day(s): Monday through Friday, excluding City holidays.

ARTICLE II

SUBJECT OF THE AGREEMENT

The above-listed recitals are true and correct and are hereby incorporated by this reference. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference.

2.1 Design and Construction of Project. Subdivider agrees to design or construct or design and construct (as applicable) complete and operational Projects fully suited to the purpose for which they were designed and in accordance with this Agreement, the Construction Documents, and the Financing Plan, and within the timeframe established in the Project Schedule, and for the Estimated Costs.

2.2 Transfer of Ownership. After Operational Acceptance of a Project, Subdivider shall, to the extent necessary as determined by the City, transfer fee title to the relevant portion of the Property and the Project to City.

2.3 Park Improvements. Subdivider shall design, construct, and transfer the Park Improvements in accordance with the terms of the Park Agreement, and be eligible for reimbursement or DIF credit pursuant to this Agreement in an amount not to exceed the Park Improvements Cost Estimate attached as **Exhibits H-1 through H-4**.

2.4 City RTCIP Program Amendment. The City Council amended the City's RTCIP Program as set forth in the attached **Exhibit I**. The amendment anticipates that Subdivider will construct or fund RAS improvements valued at an amount greater than the RTCIP Impact Fees that would otherwise be required from the Development. Subdivider agrees to the requirements set forth in that amendment. If Subdivider does not comply with the requirements and assumptions set forth in the RTCIP Program amendment with respect to the Development, then Subdivider shall be subject to payment of the RTCIP Impact Fee for the Development.

2.5 Reimbursement for Murray Ridge Improvement. The Parties agree that Subdivider's cost to design and construct the Murray Ridge Improvement is subject to City cost verification (estimated cost is $248,229). Within ninety (90) Calendar Days of the Effective Date of this Agreement, City shall pay One Hundred Forty-Thousand Dollars ($140,000) from the developer trust account for the Murray Ridge Improvement to Subdivider for its costs associated with the Murray Ridge Improvement. Subdivider agrees that it shall not be entitled to any additional reimbursement for the Murray Ridge Improvement from City.

ARTICLE III

[Intentionally Omitted]

ARTICLE IV

REIMBURSEMENT

4.1 Reimbursement to Subdivider

4.1.1 Notification of Reimbursable Project

4.1.1.1 Prior to the award of any contract after the Effective Date of this Agreement (including consultants contracts involving design, development, monitoring or consultancy service on the Project), the Subdivider, after consultation and approval from the Public Works Department of City, shall submit to Facilities Financing a Notification of Reimbursable Project form. For contracts awarded prior to the Effective Date of this Agreement, Subdivider shall submit to Facilities Financing a Notification of Reimbursable Project Form (attached as **Exhibit J**) within thirty (30) Calendar Days of the Effective Date of this Agreement.

4.1.1.2 Prior to commencement of any construction activity on a Project after the Effective Date of this Agreement, Subdivider shall submit the Notification of Reimbursable Project Form to Facilities Financing, Development Services Department, and the RE of the Responsible Department. For construction activity that has occurred prior to the Effective Date of this Agreement, Subdivider shall submit the Notification of Reimbursable Project Form to Facilities Financing, Development Services Department, and the RE of the Responsible Department within thirty (30) Calendar Days of the Effective Date of this Agreement.

4.1.2 Type of Reimbursement. Subject to the provisions in this Agreement, Subdivider shall be entitled to (i) a DIF credit for funding of the SR163 Project, (ii) a DIF credit or cash reimbursement from the DIF Fund for the Reimbursable Costs of the Park Improvements, and (iii) cash reimbursement from the City's RTCIP Fund for the Reimbursable Costs of the RTCIP Improvement in an amount not to exceed $725,560. Subdivider may choose to receive DIF credits or cash reimbursement for the Park Improvements; however, Subdivider shall not receive cash reimbursement unless and until there are sufficient funds to reimburse Subdivider from the DIF Fund, in whole or in part, in accordance with the Financing Plan. If sufficient funds are unavailable in the DIF Fund, City shall reimburse Subdivider if and as funds accrue in the DIF Fund, or at Subdivider's election, City shall grant DIF credits. Subdivider acknowledges and agrees that in the event there is insufficient money in the DIF Fund and no additional funds are available for collection by City to fund Park Improvements, Subdivider shall not be reimbursed in cash by City for any portion of Subdivider's outstanding costs or expenditures, and Subdivider expressly agrees to fully absorb all such outstanding costs without any cash reimbursement from City, or Subdivider may elect to receive DIF credits. Where a Subdivider requests a DIF credit, the DIF credit shall be granted consistent with the procedures described in this Agreement.

4.1.3 Credits. Subdivider may only use a DIF credit with respect to the SR163 Project or Park Improvements for and within the Development and the DIF credit cannot be converted to cash after it has been granted.

4.1.4 Funds for Cash Reimbursement. Subdivider shall only be entitled to cash reimbursement for Park Improvements as set forth in this Agreement and only from DIF funds collected by City in accordance with the Financing Plan, as it may be amended, in the amount set forth in this Agreement and in the Financing Plan, if and as such funds become available for the Project, after the appropriate deductions and expenditures are made, pursuant to the method of reimbursement described in Section 4.1.8 and 4.1.9 and in the priority of reimbursement described in Section 4.1.11. Subdivider shall only be entitled to a cash reimbursement from City's RTCIP Fund as set forth in this Agreement and only in an amount not to exceed $725,560.

4.1.5 Amount of Reimbursement. Subdivider shall be entitled to a DIF credit for the SR163 Project in a total amount that is consistent with Recitals E, F, and G. Subdivider shall be entitled to a DIF credit or cash reimbursement from the DIF Fund for the construction of the Park Improvements in an amount not to exceed the Park Improvements Cost Estimate, as amended by any Change Orders, as those terms are defined in the Park Agreement. Subdivider shall be entitled to a cash reimbursement from the RTCIP Fund for the construction of the RTCIP Improvement in an amount not to exceed the RTCIP Improvement Estimated Cost or $725,560, whichever is less. Subdivider shall be entitled to only approved Reimbursable Costs for the Projects in accordance with Section 8.2 in an amount not to exceed Estimated Costs in accordance with Section 8.3.

4.1.6 City's Administrative Costs. City's administrative costs shall be paid prior to any cash reimbursement to Subdivider and consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Park Improvements, (ii) review and approve the Construction Documents for the Park Improvements, and (iii) inspect and approve work performed on the Park Improvements during construction until completion and Operational Acceptance of the Park Improvements [City's Administrative Costs].

4.1.7 Interest. Payment of interest is not available under this Agreement.

4.1.8 Method of Reimbursement for SR163 Project. As outlined in Recitals E, F, and G, Subdivider has agreed to fund the SR163 Project. Funds delivered to City to fund the SR163 Project are eligible for DIF credits for the Property under this Agreement. As a result, upon delivery of all or part of the funds for the SR163 Project to City, City shall immediately grant Subdivider DIF credits in the amount of the funds delivered.

4.1.9 Method of Reimbursement for Park Improvements and RTCIP Improvement. Subdivider shall submit to Facilities Financing a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Park Improvements or RTCIP Improvement for which Subdivider was not previously reimbursed or granted DIF or RTCIP Impact Fee credit [Reimbursement Request]. The Reimbursement Request shall include all relevant documents in accordance with this Section. City shall determine if the Reimbursement Request is incomplete and shall notify Subdivider of such deficiencies within sixty (60) Calendar Days of Subdivider's Reimbursement Request submittal. Subdivider shall provide additional documentation within fourteen (14) Calendar Days of City's notification and request. However,

even if City fails to notify Subdivider within sixty (60) Calendar Days regarding Subdivider's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Subdivider until City confirms receipt of all relevant documentation sufficient to support the Reimbursement Request. After all appropriate cost documentation has been received and City approves the Reimbursement Request [Reimbursement Request Approval], City shall reimburse Subdivider for those Reimbursable Costs within seventy-five (75) Calendar Days of the date of Reimbursement Request Approval, provided there are funds in the DIF Fund if the reimbursement is a cash reimbursement for a Park Improvement, or if the cash reimbursement for the RTCIP Improvement does not exceed $725,560.

4.1.9.1 Timing of Submissions of Reimbursement Requests for Park Improvements and RTCIP Improvement. Subject to the limitations of Article IV, Subdivider shall be entitled to cash reimbursement or DIF credits as follows:

4.1.9.1.1 If Subdivider has made an irrevocable offer to dedicate any portion of the Property that is needed for the Park Improvements, an amount equal to one hundred percent (100%) of the agreed upon appraised value (in accordance with the Park Agreement) of the property that is the subject of the irrevocable offer to dedicate.

4.1.9.1.2 Up to twenty-five percent (25%) of the verified cost estimated and soft costs that qualify as Reimbursable Costs then incurred for the individual Project subject to the Subdivider satisfying all of the following requirements:

- All construction plans and drawings for the Project have been approved by the City.
- Any right-of-way required for the Project has been secured and dedicated.
- All required permits and environmental clearances necessary for the Project have been secured.
- Provision of all performance bonds and payment bonds, as described in Article XXI.
- Payment of all City fees and costs.

4.1.9.1.3 Up to fifty percent (50%) of the amount of the construction contract and consultants contract and soft costs that qualify as Reimbursable Costs then incurred for the individual Project subject to the Subdivider satisfying all of the above referenced requirements for the twenty-five percent (25%) reimbursement as set forth in Section 4.1.9.1.2 and provided Subdivider has received valid bids for the Project (as noted in Article V and Article VI of this Agreement), which have been approved by City, and has awarded the construction contract and consultant contract.

4.1.9.1.4 At the time of Operational Acceptance, provided that Reimbursement Requests have been submitted and approved for such amounts, Subdivider shall be entitled to cash reimbursement or DIF credits up to ninety percent (90%) of the Reimbursable Costs for the individual Project.

4.1.9.1.5 The remaining ten percent (10%) of the Reimbursable Costs shall be reimbursed to Subdivider upon the later of: (i) the recordation by Subdivider of the Notice of Completion and delivery of a conformed copy to City, or (ii) City's written acceptance of the Project As-Built Drawings.

4.1.9.2 Cutoff for Submission of Reimbursement Requests. Subdivider shall submit all Reimbursement Requests for each Project within six (6) months after the Final Completion [Cutoff Date]. Any Reimbursement Request submitted after the Cutoff Date shall constitute a Non-Reimbursable Cost and Subdivider shall not be entitled to any reimbursement for those costs or expenses.

4.1.10 Type of Reimbursement Request. On at least a quarterly basis or as otherwise mutually agreed by the Parties, Subdivider shall submit a line item budget summary, line item of all costs submitted, costs previously reimbursed, and the currently requested balance and reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents, showing that payment has been made in connection with the Reimbursement Request in the following manner:

4.1.10.1 Pre-Construction Reimbursement Requests. Subdivider shall submit one (1) copy of a Reimbursement Request (cover letter and documentation) to Facilities Financing for work (such as design development invoices, consultant service invoices, appraisals, consultant contracts and amendments, etc.) performed relative to the Project and leading up to and including the obtaining of permits from City and awarding of construction contracts.

4.1.10.1.1 Within thirty (30) Calendar Days after the submittal of the Reimbursement Request, the City Representative shall review the claim, and prepare a memorandum to Facilities Financing indicating the reimbursement amount and that the invoice is appropriate to pay or to grant a DIF credit. The memorandum shall indicate any costs to be disallowed and the reason for the disallowance. The Reimbursement Request shall be forwarded to the Facilities Financing Project Manager [FF Project Manager] with the memorandum recommending payment and identifying disallowed expenses.

4.1.10.2 Post-Construction Reimbursement Requests. Subdivider shall submit one (1) copy of a Reimbursement Request (cover letter, invoice, and documentation) to the RE for work completed per the approved Construction Documents, approved Change Orders and/or Extra Work and to the City Representative.

4.1.10.2.1 Prior to the approval of the Reimbursement Request for work completed pursuant to the approved Construction Documents, Change Orders and/or Extra Work, the RE shall verify the work for which reimbursement is being requested have been installed and performed as represented in the Reimbursement Request. The RE shall review the Project on-site for quality of material and assurance and adherence to bid list, contract estimates and the approved Construction Documents. The RE shall also review As-Builts and Best Management Practices, and verify that a lien release has been prepared.

4.1.10.2.2 The RE, after consultation with the Senior Civil engineer from City who supervises the RE, shall initial and note as "Reviewed for Recommended Payment" the Reimbursement Request package for work completed per the approved Construction Documents, approved Change Orders and/or Extra Work, noting any disallowed costs. The RE shall maintain a copy on file, and forward a copy to the City Representative for review.

4.1.10.2.3 After review and approval, the City Representative, in coordination and consultation with the RE, shall prepare a memorandum to Facilities Financing indicating the reimbursement amount and that such amount is appropriate to pay or to grant a DIF credit. The memorandum shall indicate any costs to be disallowed and the reason for the disallowance. The Reimbursement Request shall be forwarded to the FF Project Manager with the memorandum recommending payment or granting of credit and identifying disallowed expenses. Subdivider shall then submit an invoice to City for the reimbursement amount approved by the City.

4.1.10.2.4 If Subdivider is requesting a cash reimbursement for a Park Improvement, the FF Project Manager shall verify that DIF funds are available in the DIF Fund for the reimbursement. If Subdivider is requesting cash reimbursement for the RTCIP Improvement, the FF Project Manager shall verify that RTCIP funds are available in the City's RTCIP Fund for the reimbursement.

4.1.11 Priority of Cash Reimbursement. Cash Reimbursement to Subdivider from the DIF Fund for a Project will be subsequent to:

4.1.11.1 Reimbursement of City's equipment purchases, furniture fixtures & equipment, and City's Administrative Costs incurred in connection with the Project.

4.1.11.2 Any State or Federally mandated project.

4.1.11.3 Any capital improvement project identified in a City budget Capital Improvements Program.

4.1.11.4 To the extent Subdivider failed to properly notify City in writing of any actual or anticipated increases in Estimated Costs as required under Sections 8.4 and 11.6, the cash reimbursement for the cost increases, if approved by City, will be subsequent in priority to those projects with agreements approved by the City Council prior to the City Council's approval of increased Estimated Costs.

4.2 Individual Projects. Though the reimbursement of all Projects is covered under this Agreement, each Project shall be accounted for as if it were an individual project subject to a separate agreement, unless bid as one project on the same plan set with City's prior approval.

4.2.1 Invoices. Each Project shall be invoiced separately. An invoice submitted to City shall only have approved costs related to the Project for which the invoice is submitted.

4.2.2 Multiple Projects with Single Contract or Contractor. Where a bid, cost of materials, cost of labor, or other related costs are charged by the contractor on multiple Projects basis in order to reduce costs through efficiencies of scale, such costs shall be allocated to individual Projects either by:

4.2.2.1 Identifying actual costs; or

4.2.2.2 Allocating costs by percentage of labor, materials, or services attributable to each Project. The allocated costs methodologies must be submitted to City for approval prior to submittal of any cost documentation and/or invoice.

4.3 Use of DIF Credits. Subject to the terms of this Agreement, the DIF credits granted pursuant to this Agreement may be used by Subdivider or third parties in connection with development within the boundaries of the Property. Subdivider agrees that once DIF credits are granted, the amount of the credit will not accrue any interest or appreciate in value.

4.4 DIF Credit Notification. City acknowledges that Subdivider has entered into agreements and may enter into additional agreements with third parties in connection with the construction of a portion of the Development within the boundaries of the Property and that such agreements include or may include allowing the third parties to utilize a portion of the DIF credits that Subdivider is entitled to receive pursuant to this Agreement in order to satisfy the DIF obligations of the third parties. In order for such third parties to utilize a portion of Subdivider's DIF credits, Subdivider shall deliver an executed copy of a DIF Credit Notification [Fee Credit Notification], a copy of which is attached hereto as **Exhibit K**, to City. The Fee Credit Notification shall notify City of the amount of the DIF credit Subdivider intends to make available to a third party that is constructing development within the boundaries of the Property. After receipt of the Fee Credit Notification and concurrent with the time that a DIF becomes due from third parties, City shall reduce any DIF that normally would be collected by City for the development of the third party in the amount stated in the Fee Credit Notification. The DIF charged to the third party shall be based on the DIF schedule in effect at the time building permits are issued. Any DIF not collected by City as a result of the receipt of a Fee Credit Notification executed by Subdivider shall be deducted from the total DIF credit available to Subdivider pursuant to this Agreement.

4.5 Fee Credit Balance. City shall maintain a record of Subdivider's DIF credits and shall make such record available to Subdivider within fourteen (14) Calendar Days of Subdivider's request.

ARTICLE V

COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

5.1 Compliance. Subdivider shall bid and award contracts to complete Projects in accordance with the Charter of the City of San Diego and rules, regulations, and laws promulgated there under, including, but not limited to, the San Diego Municipal Code and current City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations [Required Contracting Procedures]. Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's small and local business program for public works contracts, and the City's Equal Benefits Ordinance. Prior to bidding the Project, Subdivider shall consult with City's Public Works Department. Subdivider shall work with City's Public Works Department to ensure that all Required Contracting Procedures are met. Subdivider understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a material breach of this Agreement, and any contract awarded not in accordance with the Required Contracting Procedures shall be ineligible for reimbursement. City acknowledges that Subdivider may have entered into certain construction contracts prior to the Effective Date of this Agreement. Provided that Subdivider complied with the Required Contracting Procedures and the other requirements set forth in this Agreement with respect to those contracts, Subdivider shall be eligible for reimbursement for those contracts. City agrees that, to its knowledge, Subdivider has complied with the Required Contracting Procedures and the requirements of Sections 5.1, 5.2, 5.3, and 5.4 of this Agreement with respect to those Construction Documents, bidding documents, and contracts awarded for the RTCIP Improvement prior to the Effective Date of this Agreement. However, nothing in this Section shall be interpreted to affect Subdivider's obligations under Article XXIII, Indemnification and Duty to Defend.

5.2 Bidding Documents. Subdivider, following City review of the Construction Documents, shall prepare final, corrected Construction Documents to be submitted to City for review and approval, in accordance with City's standard review procedures prior to solicitation of bids.

5.2.1 Submission of Bidding Documents. Subdivider shall submit bidding documents to City for approval before soliciting bids for work on the Projects. Subdivider may elect to prepare bidding documents requesting bids based on Lump Sum or Firm-Fixed prices or unit costs as applicable for each Project. City retains the right to notify Subdivider of necessary corrections and will notify Subdivider of corrections within fifteen (15) Working Days of submittal date.

5.2.2 Obtain all Permits and Approvals. Subdivider shall obtain all necessary permits, including but not limited to, environmental, grading, building, mechanical, electrical, and plumbing. City approval of Bidding Documents will be evidenced by City's issuance of a letter indicating Subdivider may proceed with competitive bidding.

5.3 Solicitation of Bids. For each Project, Subdivider shall solicit sealed bids for the construction of the Project in accordance with all Required Contracting Procedures. With notice of at least five (5) Working Days, Subdivider shall notify City of the time and place of each bid opening. Subdivider shall work with City's Public Works Department to ensure that bids are solicited in the manner required in accordance with the Required Contracting Procedures. Subdivider shall require its contractor(s) to identify any subcontractors that are providing work on the Project described in the bidding documents.

5.4 Bid Opening and Award of Contract. Subdivider shall open bids and award contracts in accordance with all the Required Contracting Procedures. Subdivider shall work with City's Public Works Department to ensure that bids are opened and contracts are awarded in the manner required in accordance with the Required Contracting Procedures. Subdivider shall publicly open sealed bids in the presence of City's authorized representative. The bidding contractors shall be permitted to be present at the bid opening. City Representative(s) shall be provided with a copy of the tabulation of bid results upon Subdivider's completion. Contract(s) for the construction of the Projects shall be awarded by Subdivider to the lowest responsible and reliable bidder in accordance with Required Contracting Procedures

5.4.1 In the event that the contract to be awarded exceeds the applicable Estimated Cost, any reimbursement for said increase shall be subject to approval by Change Order pursuant to Section 8.3.3 following award of contract.

5.4.1.1 In the event City Council does not approve the increased cost, Subdivider may award the bid and assume responsibility for the costs in excess of the Estimated Cost. If Subdivider does not elect to award the bid and assume responsibility for the additional costs, at the City's option:

5.4.1.1.1 City may terminate this Agreement as to the involved Project. In the event the Agreement is terminated, Subdivider's obligations pursuant to this Agreement for the construction of the involved Project shall be released without further liability. This release shall in no way affect the obligations of Subdivider with respect to any other Project or the terms or conditions of the Entitlements, including VTMs, Tentative Map(s), Development Agreements, or other approvals and agreements with City. However, prior to termination of this Agreement as to the involved Project, City shall reimburse Subdivider (at City's option with either DIF credits or cash reimbursement) for the engineering and design costs reasonably incurred and expended by Subdivider for the involved Project in accordance with this Agreement and within the applicable Estimated Cost in accordance with Section 8.3. Subdivider shall provide City with copies of all executed contracts; or

5.4.1.1.2 City may work with Subdivider to rebid and/or redesign the Project.

5.5 Nondiscrimination Requirements.

5.5.1 Compliance with the City's Equal Opportunity Contracting Program. Subdivider shall comply with City's Equal Opportunity Contracting Program. Subdivider shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Subdivider shall provide equal opportunity in all employment practices. Subdivider shall ensure that their consultants, subconsultants, prime contractors and their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold Subdivider or a prime contractor liable for any discriminatory practice of its consultants, subcontractors, vendors and suppliers.

5.5.2 Nondiscrimination Ordinance. Subdivider shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors, or suppliers. Subdivider shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Subdivider understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. The language of this Subsection shall be inserted in contracts between Subdivider and any consultants, subcontractors, vendors, contractors and suppliers.

5.5.3 Compliance Investigations. Upon City's request, Subdivider agrees to provide City, within sixty (60) Calendar Days a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors, and suppliers Subdivider has used in the past five (5) years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Subdivider for each contract, subcontract or supply contract. Subdivider further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance (San Diego Municipal Code [SDMC] sections 22.3501-22.3517). Subdivider understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Subdivider further understands and agrees the procedures, remedies and sanctions provided for in the Nondiscrimination in Contracting Ordinance apply only to violations of said Nondiscrimination in Contracting Ordinance.

5.6 Equal Benefits. This Agreement is with a sole source and therefore, Subdivider is not subject to the City's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the SDMC. However, the Equal Benefits Ordinance is applicable to contracts that Subdivider enters into with respect to the Projects that are the subject of this Agreement. Therefore, Subdivider shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Subdivider shall include in each of its contracts with its contractor(s) and consultant(s) provisions (1) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (2) stating that failure to maintain equal benefits is a material breach of those agreements; and (3) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. SDMC § 22.4304(e)-(f). In addition, Subdivider's contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notify employees of the equal benefits policy at the time of hire and

during open enrollment periods during the performance of the contract. SDMC § 22.4304(a)-(b). Subdivider's contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the EBO's requirements. SDMC § 22.4304(c). Additionally, Subdivider's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the EBO. SDMC § 22.4304(d). Subdivider shall ensure that its contractor(s) and consultant(s) complete the Equal Benefits Ordinance Certification of Compliance included herein as **Exhibit L**.

ARTICLE VI

CONSULTANTS

6.1 Selection of Consultant. Subdivider's hiring of an appropriate third party to perform services related to each Project [Consultant] is subject to prior approval by City. Subdivider shall cause the provisions in **Exhibit M** "Consultant Provisions" to be included in its consultant contract(s) for the Projects. The selection of any consultant is subject to all applicable public contract laws, rules, and regulations, including but not limited to, the City Charter, the San Diego Municipal Code, City Council Policies, and the City's Administrative Regulations. Subdivider shall work with City's Public Works Department to ensure that City's consultant selection procedures are met. Subdivider understands that it must comply with all consultant selection procedures applicable to the City unless a waiver of those procedures is obtained. Failure to adhere to all applicable consultant selection procedures is a material breach of this Agreement, and any contract awarded not in accordance with the City's consultant selection procedures shall be ineligible for reimbursement. City hereby grants a waiver to such City selection procedures with respect to the selection of consultants for the RTCIP Improvement.

6.2 Equal Benefits and Equal Opportunity. The requirements of City's Equal Benefits Ordinance set forth in Section 5.6 apply to Subdivider's consultant contracts. The nondiscrimination requirements set forth in Section 5.5 apply to Subdivider's consultant contracts.

6.3 Estimated Budget. Subdivider shall require its consultant to prepare an estimated budget for the Project (as appropriate).

6.4 Schematic Drawings. Subdivider shall require its consultant to prepare schematic drawings for the Project for City approval (as appropriate).

ARTICLE VII

DESIGN AND CONSTRUCTION STANDARDS

7.1 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 Subdivider during its design and construction of the Projects and the Murray Ridge Improvement. If Subdivider 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 Subdivider 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 XXIII of this Agreement. This Section shall not act to limit the remedies otherwise available to City under law.

7.2 Standard of Care. For each Project, Subdivider agrees that the professional services provided as part of this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional architectural, engineering, landscape architecture, 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. For the Murray Ridge Improvement, Subdivider certifies that the professional services provided as part of this Agreement were performed in accordance with the standards customarily adhered to by experienced and competent professional architectural, engineering, landscape architecture, 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.

7.3 Compliance with all Laws, Design Standards, and Construction Standards. In all aspects of the design and construction of Project, Subdivider shall comply with all laws and the most current editions of the Green Book, the City's Standard Drawings and Design and Construction Standards, including those listed in **Exhibit N** [Design and Construction Standards]. It is the sole responsibility of Subdivider to comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. The Subdivider shall certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit O** "Certificate for Title 24/ADA Compliance." For the Murray Ridge Improvement, Subdivider certifies that it complied with Design and Construction Standards and complied with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations.

7.4 Subdivider shall comply with all laws, including but not limited to:

7.4.1 Imputed Knowledge. Subdivider shall be responsible for all amendments or updates to Design and Construction Standards and knowledge of all amendments or updates to Design and Construction Standards, whether local, state, or federal, and such knowledge will be imputed to Subdivider to the fullest extent allowed by law.

7.4.2 City Approval. Subdivider shall be required to obtain City approval of design, plans, and specifications in the manner required in **Exhibit P** unless specifically provided otherwise. Whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the duly authorized City Representative designated by this Agreement.

7.4.3 City Approval Not a Waiver of Obligations. Where approval by City, the Mayor, or other representatives of City is required, it is understood to be general approval only and does not relieve Subdivider of responsibility for complying with all applicable laws, codes, regulations and good consulting, design, or construction practices.

ARTICLE VIII

PROJECT COSTS AND CHANGE ORDERS AND EXTRAS

8.1 Project Costs. Project costs are Subdivider's reasonable costs of materials or design and development or construction or combination thereof necessary for the Project as approved by the City. Project Costs do not include Subdivider's Administrative costs (as defined in Section 8.3.1) [Project Costs].

8.2 Reimbursable Costs. Subdivider may seek reimbursement only for Reimbursable Costs. Reimbursable Costs shall consist only of the applicable Estimated Costs (as defined in Section 8.3) reasonably expended by Subdivider and approved for reimbursement in the Financing Plan and approved by City under the terms of this Agreement.

8.2.1 Non-Reimbursable Costs. Non-Reimbursable Costs include: (1) any cost in excess of the Estimated Costs not approved in accordance with Section 8.3.3; (2) any cost identified in this Agreement as a Non-Reimbursable Cost; (3) any cost to remedy Defective Work (as defined in Section 17.1); (4) any cost incurred as a result of Subdivider's or Subdivider's Agents' negligence, omissions, delay, or Default; (5) any cost of substituted products, work, or services not necessary for completion of the Project, unless requested and approved by City in writing; (6) any cost not approved by City in the manner required by this Agreement or the Charter of the City and rules, regulations, or laws promulgated there under; (7) any cost not supported by proper invoicing or other documentation as reasonable and necessary; (8) the fair value as reasonably determined by City of any property that is destroyed, lost, stolen, or damaged rendering it undeliverable, unusable, or inoperable for City; (9) refundable deposits, such as utility deposits; (10) any cost that qualify as overhead and daily operational cost; (11) any legal or attorney fees associated with the Project; and (12) any costs associated with utilities, maintenance and cleanup of on-site office trailers. This list is not inclusive of all other possible Non-Reimbursable Costs.

8.3 Estimated Costs. Subdivider's RTCIP Improvement Estimated Cost (attached as **Exhibit Q**) shall consist only of: (1) Project Costs as identified in this Reimbursement Agreement; (2) Subdivider's Administrative Costs (as defined in Section 8.3.1), and (iii) the Project Contingency (as defined in Section 8.3.2). The RTCIP Improvement Estimated Cost shall not be increased. The Park Improvements Cost Estimate is described in and subject to the provisions of the Park Agreement. The Park Improvements Cost Estimate, as shown in the Park Agreement, is attached as **Exhibits H-1 through H-4**.

8.3.1 Subdivider's Administrative Costs. Subdivider's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures totaling a flat five percent (5%) of Subdivider's direct Project Costs.

8.3.2 Project Contingency. A Project Contingency of ten percent (10%) of estimated construction costs is included in each Estimated Cost. The Project Contingency will not be available for: (i) work required due to Subdivider's or Subdivider's Agents' failure to perform work or services according to the terms of this Agreement or in compliance with the Construction Documents; or (ii) uninsured losses resulting from the negligence of Subdivider or Subdivider's Agents.

8.3.3 Change Orders and Adjustments to Park Improvements Cost Estimate and RTCIP Improvement Estimated Cost. The "Procedure for Processing Change Orders" is attached as **Exhibit R**. RTCIP Improvement Estimated Cost may be increased only through properly processed and approved Change Orders in accordance with **Exhibit R**. Park Improvements Cost Estimate may only be increased pursuant to the change order provisions of the Park Agreement. RTCIP Improvement Estimated Cost may only be increased if Subdivider provides documentation showing the increase is reasonable in nature and amount, and is due to causes beyond Subdivider's control or otherwise not the result of unreasonable conduct by Subdivider which may, based on actual impact on Project, include but not be limited to: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider's work; concealed conditions encountered in the completion of Project; adverse soil conditions; inability to reasonably obtain materials, equipment, labor, or additional required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Subdivider. Subdivider shall not be reimbursed, and no Change Order may be approved, for costs or expenses resulting from a design error or omission (unless such a design error or omission is the direct result of a City request for such design or omission), or Subdivider's or Subdivider's Agents' negligence. Subdivider shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order.

8.3.4 Extra Work. Any City additions or modifications to work or Subdivider obligations under this Agreement not described within City-approved Construction Documents [Extra Work] may be ordered by City prior to completion pursuant to the terms and conditions listed in **Exhibit S** "Extra Work Provisions." Estimated Costs may be increased due to Extra Work only through properly processed and approved Extra Work in accordance with **Exhibit S**. The Estimated Cost may only be increased if Subdivider provides documentation showing that the Extra Work increase was initiated and approved by City and is reasonable in nature and amount. Subdivider shall not be reimbursed, and no Extra Work may be approved, for costs or expenses resulting from a design error or omission (unless such a design error or omission is the direct result of a City request for such design or omission), or Subdivider's or Subdivider's Agents' negligence. Subdivider shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve Extra Work.

8.4 Notification of Increased Estimated Costs. If Subdivider anticipates or has reason to believe the cost of a Project will exceed the Estimated Costs, Subdivider shall within fourteen (14) Calendar Days of becoming aware of the potential increase notify City in writing. If Subdivider fails to timely notify City in writing, Subdivider agrees to absorb any increase in

Estimated Costs and any interest thereon not accounted for in the Financing Plan or this Agreement. This written notification shall include an itemized cost estimate and a list of recommended revisions Subdivider believes will bring the construction cost to an amount within the Estimated Costs. In accordance with Section 8.3.3, City may approve an increase in Estimated Costs and/or delineate a Project which may be constructed within Estimated Costs. If City chooses not to pursue the above options, Subdivider may elect to construct the Project and forgo any reimbursement in excess of Estimated Cost.

ARTICLE IX

CHANGED CONDITIONS

9.1 Changed Conditions. Changed conditions shall have the meaning as defined in the Green Book [Changed Conditions]. The Parties acknowledge and agree that even if Changed Conditions are found to be present, the Project shall not exceed the Estimated Cost without express City Council approval of an increase to the Estimated Cost in accordance with Section 8.3.3. Absent such express approval of additional funds, Subdivider shall provide City with value engineering and Parties shall return the Project to within the Estimated Cost.

ARTICLE X

[Intentionally Omitted]

ARTICLE XI

PROJECT SCHEDULE

11.1 Project Schedule. For each Project, Subdivider shall perform and complete the work under this Agreement according to the Phasing Plan and the requirements set forth in the Entitlements and the Park Agreement. At the beginning of each Project that has not started construction prior to the Effective Date of this Agreement, the Parties shall mutually agree on a project schedule for that Project, and Subdivider shall perform and complete that Project according to that project schedule, the Project Schedule Obligations and Components attached as **Exhibit T**, the Meeting Requirements in **Exhibit U**; and Preconstruction, Progress, and Special Meeting Agendas in **Exhibit V**. For Projects for which Subdivider already began construction prior to the Effective Date of this Agreement, Subdivider shall provide a project schedule acceptable to the City for those Projects within thirty (30) Calendar Days of the Effective Date of this Agreement and shall perform and complete that Project according to that project schedule, the Project Schedule Obligations and Components attached as **Exhibit T**, the Meeting Requirements in **Exhibit U**; and Preconstruction, Progress, and Special Meeting Agendas in **Exhibit V**.

11.2 Project Completion. Subdivider agrees that all work on the Project under this Agreement will be complete and ready for operational use according to the Project Schedule, and the Project Schedule Obligations and Components.

11.3 Changes in Project Schedule.

11.3.1 Changes in Project Schedule that increase the Estimated Cost must be approved by City in writing in accordance with Section 8.3.3.

11.3.2 Changes in Project Schedule that do not increase the Estimated Cost may be approved by the City Representative selected to manage the Project on behalf of City [Project Manager] during the design and development process. During the construction phase, changes in Project Schedule that do not increase the Estimated Cost may be approved by the RE; provided, however, that the Project is still completed in accordance with the Phasing Plan (including any associated phasing plans) and the Financing Plan and all conditions of approval including, but not limited to the Entitlements requirements.

11.4 Notification of Delay. If Subdivider anticipates or has reason to believe that performance of work under this Agreement will be delayed, Subdivider shall immediately notify the Project Manager during the design and development process. Subdivider shall immediately notify the RE during the construction phase of Project. Unless City grants Subdivider additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) Calendar Days of the initial notification and shall include: an explanation of the cause of the delay, a reasonable estimate of the length of the delay, any anticipated increased costs due to the delay, all supporting data, and a written statement that the time adjustment requested is the entire time adjustment Subdivider needs as a result of the cause of the delay. If Subdivider anticipates or has reason to believe the delay will increase the Estimated Cost, Subdivider shall also give notice to City in accordance with Section 8.4. A copy of the "Notification of Delay" shall be forwarded to FF Project Manager.

11.5 Delay. If delay in the performance of work required under this Agreement is caused by unforeseen events beyond the control of the Parties, such delay may entitle Subdivider to a reasonable extension of time. Any such extension of time must be approved in writing by City, and will not be unreasonably withheld. A delay in the performance of work or any activity by City or Subdivider that affects a deadline to perform imposed on the other party by this Agreement will entitle the other party to the number of days City or Subdivider failed to complete performance of the work. The following conditions may justify such a delay depending on their actual impact on Project: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider's work; concealed conditions encountered in the completion of Project, including soil conditions; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Subdivider. Any delay claimed to be caused by Subdivider's inability to obtain materials, equipment, labor, or additional required services shall not entitle Subdivider to an extension of time unless Subdivider furnishes to City, in accordance with the notification requirements in Section 11.4, documentary proof satisfactory to City of Subdivider's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Subdivider shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Subdivider or Subdivider's Agents. A change

in Project Schedule does not automatically entitle Subdivider to an increase in Reimbursable Costs. If City determines that the delay materially affects the Project, City may exercise its rights under Section 11.7 of this Agreement.

11.6 Costs of Delay. City and Subdivider acknowledge delays may increase the cost of Project. Unless Subdivider informs City pursuant to Sections 8.4 and 11.4 of cost increases due to delay and such cost increases are determined by City to be reasonable and are fully recovered through collected fees in the DIF Fund or RTCIP Fund, funding will be insufficient to cover the cost increase. Notwithstanding that City may periodically update the Financing Plan to reflect changes in Estimated Costs of Projects (including potentially increasing Estimated Costs of Projects based upon actual and reasonable costs as appropriate), Subdivider agrees to absorb any increase in Estimated Costs and/or interest thereon not accounted for in the Financing Plan (or future updates of the Financing Plan).

11.7 City's Right to Terminate for Default.

11.7.1 If Subdivider fails to adequately perform any obligation required by this Agreement concerning a Project, Subdivider's failure constitutes a default [Default]. Unless within thirty (30) Calendar Days of receiving written notice from City specifying the nature of the Default Subdivider undertakes all reasonable efforts to ensure the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement with respect to the involved Project, including all rights of Subdivider and any person or entity claiming any rights by or through Subdivider under this Agreement. A delay shall not constitute a Default if Subdivider has made good faith and reasonable efforts to adhere to the Project Schedule, has provided notice of delay in accordance with Section 11.4 and such delay was caused by unforeseen events that justify the delay as set forth in Section 11.5.

11.7.2 If City terminates the Agreement with respect to the involved Project due to Subdivider's Default, City shall have the option to assume all of the rights of any and all vendors or contracts or subcontracts entered into by Subdivider or Subdivider's Agents for the involved Project. Subdivider shall include, and require its vendors or 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.

11.7.3 The rights and remedies of City enumerated in Section 11.7 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 Subdivider, including any claims for damages against Subdivider that City may assert as a result of the Default.

11.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors. If Subdivider 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 Subdivider, immediately cancel and/or terminate this Agreement, and terminate each and every right of Subdivider under this Agreement, and any person claiming any rights by or through Subdivider. The rights and remedies of City

enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights under any other provision of this Agreement.

ARTICLE XII

CONSTRUCTION

12.1 Compliance with Project Schedule. For each Project, Subdivider shall commence construction in accordance with the Project Schedule and Phasing Plan, and be subject to the obligations in **Exhibit W** "Construction Obligations." Subdivider shall diligently pursue construction to completion. Failure to maintain the Project Schedule (as set forth in Section 11.1) constitutes a Default subject to Section 11.7. The rights and remedies of this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under any other provision of this Agreement or those available at law or in equity.

12.2 Preconstruction Meeting. For each Project, Subdivider shall conduct a preconstruction meeting with its officers, agents and employees and City. The purpose of this meeting is to discuss: (i) the Agreement conditions, (ii) scope of work clarifications, and (iii) City policies, inspection requirements, and procedures.

12.2.1 Attendance. Subdivider shall ensure that the preconstruction meeting is attended by Subdivider's construction contractor, the DIF Project or RTCIP Improvement City project manager, all Subdivider's major subcontractors, City Inspection Team as set forth in Section 13.1, and all other persons necessary as determined by Subdivider or City.

12.2.2 Agenda. The preconstruction meeting agenda shall at a minimum address the topics described in the Meeting Requirements.

12.2.3 Minutes. Subdivider shall take corresponding meeting minutes and distribute copies to all attendees.

12.3 Progress Meetings. For each Project, Subdivider shall conduct progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: the City project manager for DIF Projects or RAS Improvements, Subdivider's design consultant, City representatives, including Responsible Department and RE.

12.3.1 Agenda. Agenda shall include items as defined in the attached **Exhibit U**.

12.3.2 Special Meetings. Special meetings shall occur at Projects phases as outlined in the Meeting Requirements.

12.3.3 Rescheduling. Progress and special meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Subdivider has given no less than five (5) Calendar Days prior written notice of the rescheduled meeting.

12.4 Drug-Free Workplace. Subdivider agrees to comply with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. The Subdivider shall certify to City that it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace in form and content of **Exhibit X** attached hereto. Subdivider shall include in its contracts for the Projects language which indicates the contractor's agreement to abide by the Council Policy provisions.

ARTICLE XIII

PROJECTS INSPECTION

13.1 Inspection Team. The Project shall be inspected by a team composed of representatives from the following: (i) City's Engineering and Capital Projects Department; (ii) the Responsible Department; (iii) Subdivider's Representative; and (iv) Subdivider's Consultant(s [Inspection Team].

13.2 Inspection Stages. The Projects shall be inspected by the Inspection Team at minimum during the following stages: (i) Rough grading and drainage certification; (ii) Mainline irrigation pressure test; (iii) Hardscape (staking and layout); (iv) Finish grading and soil preparation; (v) Irrigation coverage test; (vi) Selection of plant material at nursery; (vii) Plant placement approval; (viii) Pre-assembled equipment and/or on-site construction facilities.

ARTICLE XIV

MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

14.1 Maintenance Period. If Subdivider is required to install or maintain landscaping and/or irrigation, Subdivider shall provide a maintenance period, which shall begin on the first day after all landscape and irrigation work on the Project is complete, checked, approved by City, and City has given written approval to begin the maintenance period, and shall continue thereafter for ninety (90) Calendar Days. The maintenance period shall be 120 Calendar Days for turf that is seeded.

14.2 Maintenance Area. Subdivider shall require its contractor(s) to maintain at no additional cost to the City all involved areas of a Project, including areas impacted or disturbed by the project until Final Completion.

14.3 Maintenance Required. Subdivider or Subdivider'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. Subdivider or Subdivider'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: (i)

Filling and replanting of any low areas which may cause standing water; (ii) Adjusting of sprinkler head height and watering pattern; (iii) Filling and recompaction of eroded areas; (iv) Weekly removal of trash, litter, clippings and foreign debris; (v) Inspecting plants at least twice per week; (vi) Protecting all planting areas against traffic or other potential causes of damage.

14.4 Landscape and Irrigation Inspection. At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be scheduled with two (2) weeks' notice, a minimum of ninety (90) Calendar Days after the plant maintenance period commencement, or when Subdivider or Subdivider's Contractor notifies City that they are ready for the final inspection, whichever comes last. City will notify Subdivider of all deficiencies revealed by the inspection within forty-five (45) Calendar Days.

14.5 Extension of Maintenance Period. Subdivider shall extend completion of the maintenance period when, in City's opinion, improper maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period based on the City landscaping and irrigation inspection described in Section 14.4. Subdivider shall be responsible for additional maintenance of the work until all of the work is completed and acceptable. Additional costs for failure to maintain landscaping during the Maintenance Period are not Reimbursable Costs.

14.6 Replacement. Plants found to be dead or not in a vigorous condition, or if root balls have been damaged, within the installation, maintenance and guarantee periods, shall be replaced within fourteen (14) Calendar Days of notification by City. Subdivider shall include, at Subdivider's or Subdivider's Contractor's expense, a timely written diagnosis of plant health by a certified Arborist, should a dispute arise. Arborist's report shall indicate reason for lack of vigor, potential remedies, if any, and estimate of time required to regain vigor and specified size.

14.6.1 Same Kind and Size. Plants used for replacement shall be same kind and size as specified and shall be furnished, planted, and fertilized, as originally specified, unless otherwise directed in writing by City. Cost of all repair work to existing improvements damaged during replacements shall be borne by Subdivider and shall not be Reimbursable Costs.

ARTICLE XV

PROJECTS COMPLETION

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

15.2 Walk-Through Inspection. A preliminary Walk-Through Inspection shall be conducted by City within ten (10) Working Days following Subdivider's notice to City of

completion [Walk-Through Inspection]. The Walk-Through Inspection will be conducted by the Inspection Team.

15.2.1 Punch List. A punch list, if necessary, shall be prepared by City during the Walk-Through Inspection [Punch List]. The Punch List shall be presented to Subdivider by the RE within three (3) Working Days of the Walk-Through Inspection. Subdivider 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. City's Final Inspection of the Project shall be conducted within ninety (90) Calendar Days of written notification by Subdivider to City that Subdivider has corrected all items identified on the Punch List.

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 Subdivider's obligations under this Agreement and City will maintain all remedies available under this Agreement, at law, or in equity.

15.3 Equipment Demonstration. Prior to Final Inspection and where applicable, Subdivider shall demonstrate to City the operation of each system in the Project, and instruct City personnel in operation, adjustment and maintenance of equipment and systems, using the operation and maintenance data.

15.4 Final Inspection. Provided Subdivider has corrected the Punch List items and notified City of the correction [Notice of Correction], the final inspection for the Project shall be scheduled and conducted within ninety (90) Calendar Days of the Notice of Correction [Final Inspection].

ARTICLE XVI

PROJECT DELIVERABLES

16.1 Project Deliverables. Prior to Final Completion, Subdivider shall deliver to City "As-Builts" and related Construction Documents, operating manuals, warranty materials, and all other materials required by City in the format requested [Project Deliverables]. Documents shall include those listed in **Exhibit Y**. For the Murray Ridge Improvement, Subdivider shall deliver Project Deliverables to City within thirty (30) Calendar Days of the Effective Date of this Agreement.

16.2 Ownership of Project Deliverables. Upon Final Completion or termination, Project Deliverables shall become the property of City. Subdivider and City mutually agree that this Agreement, Construction Documents, and Project Deliverables for the Projects and the Murray Ridge Improvement shall not be used on any other work without the consent of each Party.

ARTICLE XVII

DEFECTIVE WORK

17.1 Correction, Removal, or Replacement. All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the Construction Documents is defective [Defective Work]. If within the designated warranty period, or such additional period as may be required by law or regulation, a Project or the Murray Ridge Improvement is discovered to contain Defective Work, Subdivider shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.

17.2 City's Right to Correct. If circumstances warrant, including but not limited to an emergency or Subdivider's failure to adhere to Section 17.1, City may correct, remove, or replace the Defective Work. In such circumstances, Subdivider shall not recover costs associated with the Defective Work and shall reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.

17.3 Defects Constitute Non-Reimbursable Costs. All costs incurred by Subdivider or Subdivider's Agents to remedy defects are Non-Reimbursable Costs. If City has already reimbursed Subdivider for the Defective Work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a set off against the amount, or to make a claim against Subdivider's bond if Subdivider has been paid in full.

17.4 Extension of Warranty. When Defective Work, or damage there from, has been corrected, removed, or replaced during the warranty period, the one (1) year, or 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.

17.5 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 law, or in equity.

17.6 Resolution of Disputes. If Subdivider and City are unable to reach agreement on disputed work, City may direct Subdivider to proceed with the work and compensate Subdivider for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation, if City and Subdivider agree thereto, or as fixed in a court of law. Subdivider shall maintain and keep all records relating to disputed work in accordance with Article XXII.

17.7 Prior to Operational Acceptance and Reimbursement to Subdivider. Where Defective Work has been identified prior to the Final Acceptance of the Project, Subdivider shall:

17.7.1 Correct, Remove, or Replace. Subdivider shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work. Costs incurred to remedy Defective Work are Non-Reimbursable Costs. Where Defective Work is not remedied, City is entitled to an

appropriate decrease in Reimbursable Costs, to withhold a set off against the amount paid, or make a claim against the construction contractor's bond.

ARTICLE XVIII

WARRANTIES

18.1 Warranties Required. For each Project and the Murray Ridge Improvement, Subdivider 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. All such warranties shall be enforceable by and inure to the benefit of City.

18.1.1 Materials and Workmanship. Subdivider shall guarantee, and shall require its agents to guarantee, all work on the Projects and the Murray Ridge Improvement against defective workmanship and materials furnished by Subdivider for a period of one (1) year from the date of Final Completion. Subdivider shall replace or repair any such defective work in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.

18.1.2 New Materials and Equipment. Subdivider shall warrant and guarantee, and shall require its agents to warrant and guarantee, to City that all materials and equipment incorporated into the Projects are new unless otherwise specified and agreed to by City.

18.1.3 Design, Construction, and Other Defects. Subdivider shall warrant and guarantee, and shall require its agents to warrant and guarantee to City that all work is in accordance with the Construction Documents 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 Subdivider's and Subdivider'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 Durable Binder. Subdivider shall obtain warranties, executed in triplicate by Subdivider, Subdivider's Agents, installers, and manufacturers, and assemble the warranties in a binder with durable plastic cover.

18.2.2 Table of Contents. All warranties shall be listed and typewritten in the sequence of the Table of Contents of the Projects manual, with each item identified with the number and title of the specification section in which specified, and the name of product or work item.

18.2.3 Index Tabs. Subdivider shall separate each warranty with index tab sheets keyed to the Table of Contents listing.

18.2.4 Detail. Subdivider shall provide full information, using separate typewritten sheets, as necessary, and list Subdivider's Agents, installer, and manufacturer, with name, address and telephone number of responsible principal.

18.2.5 Warranty Start Date. Except for items put into use with Subdivider's permission with date mutually agreed upon in writing, Subdivider shall leave date of beginning of time of warranty open until the date of Final Completion for the RTCIP Improvement or Murray Ridge Improvement or compliance with Section 16.1 of the Park Agreement for the Park Improvements, as applicable.

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

18.3 Term of Warranties. Unless otherwise specified or provided by law, all warranties, including those pertaining to plants, trees, shrubs and ground cover shall extend for a term of ninety (90) Calendar Days from the date of Final Completion.

18.4 Meetings. During the warranty period described in Section 18.3, Subdivider shall meet, and shall require its Design Consultant, construction contractor, and key subcontractors to meet, with City Representatives, including the DIF Projects Manager or RAS Improvements project manager and one or more Responsible Department representatives, on a monthly basis, if requested by City in order to address any problems associated with the Projects. This meeting shall be held to discuss and resolve any problems that City discovers in design, construction, or furnishing, fixtures, and equipment of the Projects during the warranty period.

ARTICLE XIX

PROJECTS ACCEPTANCE AND FINAL COMPLETION

19.1 Acceptance. City's acceptance of Project shall occur upon Subdivider's receipt of a letter of acceptance from City after Subdivider complies with the Punch List and passes Final Inspection (as defined in Section 15.4) confirming that Project is substantially complete and operational [Operational Acceptance]. Upon Operational Acceptance, Subdivider shall do all of the following:

19.1.1 Notice of Completion. Subdivider shall execute and file with the San Diego County Recorder documentation indicating that the Project has achieved Final Completion and identifying the date of Project completion [Notice of Completion]. Subdivider shall provide the City Engineer with a conformed copy of the recorded Notice of Completion.

19.1.2 Lien and Material Releases. Subdivider shall cause all contractors and subcontractors to provide lien and material releases as to the Project 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.

19.1.3 Transfer Ownership. Subdivider shall transfer ownership of the Project and any associated easements or property rights to City, pursuant to Section 2.2.

19.2 Final Completion. Final completion of a Project shall be deemed to occur on the later of: (i) recordation by Subdivider of the Notice of Completion with a conformed copy to City; or (ii) submission of all documents required to be supplied by Subdivider to City pursuant to this Agreement, including As-Built Drawings, warranties, warranty bonds, and operating and maintenance manuals, and other deliverables identified in **Exhibit Y**; or (iii) if applicable, the issuance of a final Certificate of Occupancy for the Project [Final Completion].

19.2.1 As-Builts. City, including, but not limited to, Engineering and Capital Projects Department, will evaluate the submitted As-Builts for accuracy and completeness and may return comments. Subdivider shall meet with City until all issues are resolved. Upon issue resolution, in accordance with disputed work procedures in Section 17.6, Subdivider shall submit a Mylar set, a digital copy, and three (3) final blue line sets of As-Builts stamped by the architect/engineer of record as required by law.

19.3 No Waiver. Subdivider's obligation to perform and complete the Projects in accordance with this Agreement and the Construction Documents shall be absolute. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to Subdivider under this Agreement, nor any use or occupancy of a Project or any part thereof by City, nor any act of acceptance by City, nor any failure to do act, nor any review of a shop drawing or sample submittal, will constitute an acceptance of work, which is not in accordance with the Construction Documents.

19.4 Assignment of Rights. Upon Final Completion of a Project, Subdivider shall, to the extent allowed by law, assign its rights under its contracts with all contractors, subcontractors, design professionals, engineers, and material suppliers associated with the Project to City. Subdivider shall be required to obtain written approval and acknowledgement, whether in the form of a contract provision or separate document, of such assignment from its contractors, subcontractors, design professionals, engineers, and material suppliers. This assignment of rights shall not relieve Subdivider of its obligations under this Agreement, and such obligations shall be joint and several.

ARTICLE XX

INSURANCE

20.1 General. Subdivider shall not begin work on a Project after the Effective Date of this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in Section 20.2; (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. For work on the Projects which began prior to the Effective Date of this Agreement, Subdivider must comply with the requirements of this Article XX, other than the requirement that it do so prior to commencement of construction; rather, Subdivider must comply with the requirements of this Article XX within five (5) business days of the Effective Date of this Agreement.

20.2 Type and Amount of Insurance. For each Project, the City Attorney shall confer with Risk Management and determine the appropriate dollar amount and type of insurance, including any endorsements or specific clauses, necessary for the Project [Required Insurance]. Subdivider shall obtain the Required Insurance prior to the commencement of construction. City's standard insurance provisions are attached as **Exhibit Z**. If Subdivider is not informed otherwise in writing of Required Insurance, City's standard insurance provisions included in **Exhibit Z** shall be the Required Insurance for the Project.

20.2.1 Written Notice. Except as provided for under California law, any Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) Calendar Days prior written notice by Subdivider to City by certified mail, except for non-payment of premium, in which case ten (10) Calendar Days' notice shall be provided.

20.2.1.1 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.

20.3 Rating Requirements. Except for State Compensation Insurance Fund, all insurance required by express provision of this Contract 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.

20.3.1 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.

20.4 Additional Insurance. Subdivider may obtain additional insurance not required by this Agreement.

20.5 Obligation to Provide Documents. Prior to performing any work on a Project after the effective date of this Agreement, Subdivider 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. City reserves the right to require complete, certified copies of all insurance policies required herein.

20.6 Deductibles/Self Insured Retentions. All deductibles and self-insurance retentions on any policy shall be the responsibility of Subdivider. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.

20.7 Policy Changes. Subdivider shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.

20.8 Reservation of Rights. City reserves the right, from time to time, to review the Subdivider's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to City. City will reimburse the Subdivider 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.

20.9 Not a Limitation of Other Obligations. Insurance provisions under this Section shall not be construed to limit Subdivider's obligations under this Agreement, including indemnity.

20.10 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 up to ten (10) years from the Effective Date of this Agreement, may be treated by City as a material breach of this Agreement.

ARTICLE XXI

BONDS AND OTHER ACCEPTABLE SECURITIES

21.1 Payment Bond. For each Project for which a subdivision improvement bond has not already been provided to City, Subdivider shall provide or require its construction contractor to provide City with a payment (material and labor) bond, LOC, cash, or other acceptable security for material and labor in favor of City for one hundred percent (100%) of the proposed construction costs, as determined by competitive bidding [Payment Bond].

21.2 Performance Bond. For each Project for which a subdivision improvement bond has not already been provided to City, Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing performance in favor of City for 100% of the proposed construction costs, as determined by competitive bidding [Performance Bond].

21.3 Warranty Bond. For each Project for which a subdivision improvement bond has not already been provided to City, Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing Project during the warranty period in favor of City [Warranty Bond]. Subdivider shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.

21.4 Term. The Payment Bond or other security accepted by City shall remain in full force and effect at least until Final Completion of the Project with which it is associated and all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond or other security accepted by City shall remain in full force and effect until

Operational Acceptance of the Project by City. Upon Operational Acceptance, City shall follow procedures outlined in California Government Code section 66499.7 and release the Performance Bond for the Project. The Warranty Bond or other security accepted by City shall remain in full force and effect until the end of all warranty periods set forth in this Agreement provided no claims are made under the warranties.

21.5 Certificate of Agency. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

21.6 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.

21.7 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 is located, Subdivider shall within thirty (30) Calendar Days thereafter substitute or require the substitution of another bond and surety or other security acceptable to City.

ARTICLE XXII

RECORDS AND AUDITS

22.1 Retention of Records. Subdivider, contractors, and subcontractors shall maintain data and records related to this Agreement for a period of not less than five (5) years following receipt of final reimbursement under this Agreement.

22.2 Audit of Records. At any time during normal business hours and as often as City deems necessary, Subdivider and any or all contractors or subcontractors shall make available to City for examination at reasonable locations within City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Subdivider and all contractors or subcontractors shall 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 City/County of San Diego, then Subdivider shall pay all City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained. Such costs are not Reimbursable Costs.

22.2.1 Costs. Subdivider and Subdivider's Agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Agreement.

ARTICLE XXIII

INDEMNITY & DUTY TO DEFEND

23.1 Indemnification and Hold Harmless Agreement. Other than in the performance of design professional services which shall be solely as addressed in Sections 23.2 and 23.3 below, to the fullest extent permitted by law, Subdivider shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the 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 Subdivider or Subdivider's Agents), 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 Subdivider, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Subdivider'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.

23.2 Indemnification for Design Professional Services. 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, Subdivider shall require its design professional to indemnify and hold harmless the City, its officers, and employees, from all claims, demands, or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Subdivider's design professional or design professional's officers or employees.

23.3 Design 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 design professional or design professional's officers or employees.

23.4 Insurance. The provisions of this Article are not limited by the requirements of Article XX related to insurance.

23.5 Enforcement Costs. Subdivider agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.

23.6 Indemnification for Liens and Stop Notices. Subdivider shall keep the Projects and the Murray Ridge Improvement, and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. Subdivider 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. Subdivider shall be responsible for payment of all persons entitled to assert liens and stop notices.

ARTICLE XXIV

MEDIATION

24.1 Mandatory Mediation. If dispute arises out of, or relates to the Projects or the Murray Ridge Improvement 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.

24.2 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, 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.

24.3 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.

24.3.1 If AAA is selected to coordinate the mediation [Administrator], within fourteen (14) 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.

24.3.2 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.

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

24.4 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.

24.4.1 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.

24.4.2 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 XXV

PRODUCTS

25.1 Product Submittal and Substitution. To the extent product specification is not addressed by the most recent edition of the Green Book or Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding process, Subdivider shall obtain City approval of products and substitution of products in the manner provided in **Exhibit AA** "Product Submittal and Substitution."

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

ARTICLE XXVI

PREVAILING WAGE

26.1 Prevailing Wage. The Subdivider shall pay Prevailing Wage to the extent required by the California Labor Code, Charter of the City of San Diego and the rules, regulations, and laws promulgated there under, including, but not limited to, the San Diego Municipal Code, City of San Diego Resolutions and Ordinances, City Council Policies, or if otherwise required by the City Council or any other law.

ARTICLE XXVII

PROJECT PUBLIC RELATIONS

27.1 Presentations. Subdivider's and Subdivider's Agents' responsibilities shall include all presentations required to be made to City Council, Council Committees, associated

Boards or Commissions, applicable Area Committee, Design Review Committee, Responsible Department, and citizen groups to provide them with information about the Projects as well as presentations to any governing or regulatory body or agency for other approvals as may be required.

27.2 Primary Contact. Subdivider agrees that City is the primary contact with the media regarding the Projects and Subdivider shall forward all questions regarding the Projects' status to the Responsible Department's Senior Public Information Officer within 24 hours. However, Subdivider may respond to questions specifically directed to Subdivider so long as Subdivider specifies that such response is solely from the Subdivider and does not represent the views, opinions, or polices of the City.

27.3 Advertising. Subdivider acknowledges that advertising referring to City as a user of a product, material, or service by Subdivider and/or Subdivider's Agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval.

27.4 Recognition. Subdivider shall place a sign, placard, or other similar monument on the Projects site during construction, which shall acknowledge Subdivider's and City's joint efforts in designing and constructing the Project, and identifying that the Project is funded with DIF or RTCIP funds. Subdivider shall properly recognize City and include the Responsible Department's logo on permanent and temporary signs, invitations, flyers, or other correspondence. Any recognition of City shall be reviewed and approved by the Responsible Department's Public Information Officer. For assistance with proper recognition, or if Subdivider is contemplating a dedication or ground breaking ceremony, Subdivider shall contact the Responsible Department's Public Information Officer.

27.5 Dedication Ceremony. City or Subdivider shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on a Project site at any reasonable time following the Operational Acceptance of the Project, provided Subdivider receives prior approval from the Engineering and Capital Projects Department for the ceremony and provides an opportunity for appearances by the Mayor, Council members and other appropriate City officials. Subdivider shall contact the Responsible Department's Public Information Officer to arrange a mutually acceptable date and time for any ceremony. Invitations shall not be sent out or a date set until the Responsible Department's Public Information Officer has approved the time and date for the ceremony.

27.5.1 Cleanup. Subdivider shall be responsible for the cleanup of the Project site and the restoration and repair of any damage to the Project site attributable to a Subdivider-sponsored ceremony.

ARTICLE XXVIII

NOTICES

28.1 Writing. Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.

28.2 Effective Date. Except in relation to Change Orders as provided for in Section 28.4 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: (i) on personal delivery, (ii) on the second business day after mailing by certified or registered U.S. Mail, return receipt requested, (iii) 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 (iv) upon documented successful transmission of facsimile.

28.3 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:

28.3.1 Director, Engineering & Capital Projects Department
City of San Diego
City Administration Building
202 C Street, M.S. #9B
San Diego, California 92101
Facsimile No: (619) 533-4736

28.3.2 Facilities Financing Manager
Development Services Department
City of San Diego
1010 Second Avenue, Suite 600 M.S. #606F
San Diego, California 92101
Facsimile No.: (619) 533-3687

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

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

28.3.5 Allen Haynie
Haynie Law Group
17140 Bernardo Center Drive, Suite 354
San Diego, CA 92128
Facsimile No.: (858) 485-7707

28.4 Recipients of Change Orders.

28.4.1 Director, Engineering & Capital Projects Department
City of San Diego
City Administration Building
202 C Street, M.S. #9B
San Diego, California 92101
Facsimile No: (619) 533-4736

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

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

ARTICLE XXIX

MISCELLANEOUS PROVISIONS

29.1 Term of Agreement. 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, this Agreement shall be effective until the earlier of 20 years or (i) the final reimbursement payment is made; or (ii) one year after the final Warranty Bond for the last Project terminates.

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

29.3 Gender & Number. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.

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

29.5 Incorporation of Recitals. All Recitals herein are true and correct to the Parties' best knowledge and belief, and are fully incorporated into this Agreement by reference and are made a part hereof.

29.6 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of City or the Subdivider shall be deemed to be both covenants and conditions.

29.7 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings 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.

29.8 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.

29.9 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 of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

29.10 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.

29.11 Prompt Performance. Time is of the essence of each covenant and condition set forth in this Agreement.

29.12 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.

29.13 Further Assurances. City and Subdivider each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.

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

Exhibit A	-	Legal Description of Property
Exhibit B	-	Transportation Phasing Plan (without Phyllis Place)
Exhibit C	-	SR163 Project

Exhibit D	-	Park Descriptions
Exhibit E	-	RTCIP Improvement Description
Exhibit F	-	RTCIP Improvement Figure
Exhibit G	-	Murray Ridge Improvement
Exhibit H-1	-	Preliminary Cost Estimate for Central Park
Exhibit H-2	-	Preliminary Cost Estimate for Creekside Park
Exhibit H-3	-	Preliminary Cost Estimate for Franklin Ridge Pocket Park
Exhibit H-4	-	Preliminary Cost Estimate for Phyllis Place Park
Exhibit I	-	Amendment to RTCIP Program
Exhibit J	-	Notification of Reimbursable Project
Exhibit K	-	Fee Credit Notification
Exhibit L	-	Equal Benefits Ordinance Certification of Compliance
Exhibit M	-	Consultant Provisions
Exhibit N	-	Design and Construction Standards
Exhibit O	-	Certification of Title 24/ADA Compliance
Exhibit P	-	Approval of Design, Plans, and Specifications
Exhibit Q	-	RTCIP Improvement Estimated Cost
Exhibit R	-	Procedure for Processing Change Orders
Exhibit S	-	Extra Work Provisions
Exhibit T	-	Project Schedule Obligations and Components
Exhibit U	-	Meeting Requirements
Exhibit V	-	Preconstruction, Process, and Special Meeting Agenda
Exhibit W	-	Construction Obligations
Exhibit X	-	Certification of Drug Free Workplace
Exhibit Y	-	Project Deliverables
Exhibit Z	-	Typical Insurance Provisions
Exhibit AA	-	Product Submittal and Substitution

29.15 Compliance with Controlling Law. Subdivider shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement (and if expressly made applicable by the City Council, California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of Project), including inspection and land surveying work. In addition, Subdivider shall require its consultants, contactors, subcontractors, agents, and employees comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, resolutions, ordinances, rules, regulations or policies.

29.16 Hazardous Materials. Hazardous Materials means any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 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 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. Subdivider agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

29.17 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. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the 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.

29.18 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.

29.19 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 Subdivider's contracts, purchase orders and other contracts between Subdivider and third party services. Subdivider shall incorporate this provision into its contracts, supply agreements and purchase orders.

29.20 Non-Assignment. Except with respect to Permitted Transfers, the Subdivider 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 Subdivider'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 Subdivider 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. If 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.

29.21 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.

29.22 Independent Contractors. Subdivider, any consultants, contractors, subcontractors, and any other individuals employed by Subdivider shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Subdivider concerning the details of performing the services under this Agreement, or to exercise any control over such performance, shall mean only that Subdivider shall follow the direction of City concerning the end results of the performance.

29.23 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; however, nothing in this Section shall in any way bind or limit any future action of the City Council pertaining to this Agreement or Project.

29.24 No Waiver. No failure of either City or the Consultant 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 and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

29.25 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 or Parties hereto harmless if it is later determined that such authority does not exist.

29.26 Remedies. Notwithstanding any other remedies available to City at law or in equity, Subdivider understands that its failure to comply with the insurance requirements or other obligations required by this Agreement, and/or submitting false information in response to these requirements, may result in withholding reimbursement payments until Subdivider complies and/or may result in suspension from participating in future city contracts as a developer, prime contractor or consultant for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three (3) years.

29.27 Mortgagee Rights and Obligations. The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Project 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 Subdivider under this Agreement which has not been cured within thirty (30) Calendar Days following the date of the default. Notwithstanding Subdivider's default, and provided that City's prior written approval is obtained for any assignment of the obligations under this Agreement in accordance with Section 29.20, 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:

- The mortgagee or beneficiary cures any default by Subdivider within thirty (30) Calendar Days after notice of default; or

- 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 thirty (30) Calendar Days after receipt from City of the written notice of default, to perform Subdivider's obligations under this Agreement; (ii) the mortgagee/beneficiary commences foreclosure proceedings to reacquire title to the Project 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.

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

XXX

PRIORITY OF PROJECTS DOCUMENTS

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

30.1.1 Order of Precedence. The following documents shall be followed in the following order of precedence, with the document listed first controlling as to any inconsistency with documents listed thereafter:

30.1.1.1	Permits from other agencies as may be required by law.
30.1.1.2	Project Special Provisions
30.1.1.3	Project Plans
30.1.1.4	Agency Standard Drawings
30.1.1.5	Regional Standard Drawings
30.1.1.6	Agency Supplement Amendments.
30.1.1.7	Regional Supplement Amendments
30.1.1.8	"Green Book" Standard Specifications for Public Works Contracts
30.1.1.9	Standard Specifications.
30.1.1.10	Reference Specifications.

IN WITNESS WHEREOF, this Agreement is executed by City of San Diego acting by and through its City Manager pursuant to Ordinance No. O-20219, authorizing such execution, and by Quarry Falls, LLC.

This Agreement is dated NOV 27 2012, 2012 and this date shall constitute the effective date of this Agreement.

THE CITY OF SAN DIEGO,
A Municipal Corporation

By: _____
[Chief Operating Officer]

Quarry Falls LLC,
A California Limited Liability Company

By: _____
Marco Sessa
Vice President

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

By: _____
Hilda Mendoza
Deputy City Attorney

O- 20219

Exhibit A

Property Description

PARCEL 1: (677-220-07)

THE EAST HALF OF THE SOUTHEAST QUARTER OF LOT 1182 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36.

EXCEPTING THEREFROM THE NORTHERLY 760 FEET THEREOF.

PARCEL 2: (677-360-01, 05, 07 & 16)

THE SOUTH HALF, THE NORTHWEST QUARTER, THE SOUTH HALF OF THE NORTHEAST QUARTER, THE EAST HALF OF THE SOUTH HALF OF THE NORTH 20 ACRES OF THE NORTHEAST QUARTER AND THE WEST HALF OF THE SOUTH HALF OF THE NORTH HALF OF THE NORTHEAST QUARTER OF PUEBLO LOT 1183 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921 AND IS KNOWN AS MISCELLANEOUS MAP NO. 36.

EXCEPTING THEREFROM THAT PORTION OF THE SOUTH THREE/QUARTERS OF THE NORTHEAST QUARTER OF SAID PUEBLO LOT 1183 LYING WITHIN THE FOLLOWING DESCRIBED LAND:

BEGINNING AT A FOUND SAN DIEGO CITY ENGINEER'S MONUMENT MARKING THE NORTHWEST CORNER OF SAID PUEBLO LOT 1184; THENCE (1) ALONG THE NORTH LINE OF SAID PUEBLO LOT 1184, SOUTH 89° 47' 02" EAST, 840.15 FEET TO THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 1184; THENCE (2) ALONG SAID NORTHEASTERLY LINE SOUTH 26° 45' 39" EAST, 2151.95 FEET TO THE SOUTHERLY LINE OF SAID PUEBLO LOT 1184; THENCE (3) ALONG SAID SOUTHERLY LINE SOUTH 76° 22' 43" WEST, 656.90 FEET; THENCE (4) LEAVING SAID SOUTHERLY LINE NORTH 10° 07' 00" EAST, 245.95 FEET; THENCE (5) NORTH 31° 03' 00" WEST, 302.68 FEET; THENCE (6) ALONG A TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 3858.00 FEET, THROUGH AN ANGLE OF 11° 25' 15", A DISTANCE OF 769.02 FEET; THENCE (7) NORTH 41° 14' 25" WEST, 241.82 FEET; THENCE (8) FROM A TANGENT WHICH BEARS NORTH 46° 16' 13" WEST, ALONG A CURVE TO THE LEFT OF 768.55 FEET TO THE NORTH LINE OF THE SOUTH THREE/QUARTERS OF THE NORTHEAST QUARTER OF SAID PUEBLO LOT 1183; THENCE (9) ALONG SAID NORTH LINE SOUTH 89° 45' 03" EAST, 182.45 FEET TO THE WEST LINE OF SAID PUEBLO LOT 1184; THENCE (10) ALONG SAID WEST LINE NORTH 0° 32' 15" WEST, 328.92 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION DEEDED FROM RUSSELL GRANT, TRUSTEE TO CALMAT CO., A DELAWARE CORPORATION BY DEED RECORDED JULY 13, 1990 AS FILE NO. 90-0379939 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF PUEBLO LOT 1183 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY PASCOE FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, LYING SOUTHERLY AND SOUTHEASTERLY OF THE SOUTHERLY AND SOUTHEASTERLY LINE OF FRIARS ROAD, 80.00 FEET IN WIDTH AS DESCRIBED IN THAT CERTAIN DEED RECORDED NOVEMBER 5, 1937 AS FILE NO. 67111 IN BOOK 718, PAGE 196 OFFICIAL RECORDS.

PARCEL 3: (677-370-07)

ALL OF PUEBLO LOT 1184, OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY NOVEMBER 14, 1921 AND IS KNOWN AS MISCELLANEOUS MAP NO. 36.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE FOLLOWING DESCRIBED LAND:

BEGINNING AT A FOUND SAN DIEGO CITY ENGINEER'S MONUMENT MARKING THE NORTHWEST CORNER OF SAID PUEBLO LOT 1184; THENCE (1) ALONG THE NORTH LINE OF SAID PUEBLO LOT 1184, SOUTH 89° 47' 02" EAST, 840.15 FEET TO THE NORTHEASTERLY LINE OF SAID PUEBLO LOT 1184; THENCE (2) ALONG SAID NORTHEASTERLY LINE SOUTH 26° 45' 39" EAST, 2151.95 FEET TO THE SOUTHERLY LINE OF SAID PUEBLO LOT 1184; THENCE (3) ALONG SAID SOUTHERLY LINE SOUTH 76° 22' 43" WEST, 656.90 FEET; THENCE (4) LEAVING SAID SOUTHERLY LINE NORTH 10° 07' 00" EAST, 245.95 FEET; THENCE (5) NORTH 31° 03' 00" WEST 302.68 FEET; THENCE (6) ALONG A TANGENT CURVE TO THE LEFT, WITH A RADIUS OF 3858.00 FEET, THROUGH AN ANGLE OF 11° 25' 15", A DISTANCE OF 769.02 FEET; THENCE (7) NORTH 41° 14' 25" WEST, 241.82 FEET; THENCE (8) FROM A TANGENT WHICH BEARS NORTH 46° 16' 13" WEST, ALONG A CURVE TO THE LEFT, WITH A RADIUS OF 2933.00 FEET, THROUGH AN ANGLE OF 15° 00' 49", A DISTANCE OF 768.55 FEET TO THE NORTH LINE OF THE SOUTH THREE/QUARTERS OF THE NORTHEAST QUARTER OF SAID PUEBLO LOT 1183; THENCE (9) ALONG SAID NORTH LINE SOUTH 89° 45' 03" EAST, 182.45 FEET TO THE WEST LINE OF SAID PUEBLO LOT 1184; THENCE (10) ALONG SAID WEST LINE NORTH 0° 32' 15" WEST, 328.92 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF PUEBLO LOT 1109 DISTANCE THEREON NORTH 76° 22' 19" EAST -RECORD NORTH 75° 54' 30" EAST- 75.11 FEET FROM THE NORTHWEST CORNER THEREOF; THENCE NORTH 0° 32' 33" WEST 39.96 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 190 FEET A RADIAL LINE TO THE CENTER OF SAID CURVE BEARS SOUTH 78° 52' 57" EAST; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81° 31' 15" A DISTANCE OF 270.39 FEET TO THE BEGINNING OF A COMPOUND CURVE HAVING A RADIUS OF 2137.03 FEET, A RADIAL LINE TO THE CENTER OF SAID CURVE BEARS SOUTH 2° 39' 18" WEST; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 8° 39' 08" A DISTANCE OF 324.22 FEET; THENCE TANGENT TO SAID CURVE SOUTH 78° 41' 34" EAST TO THE NORTHERLY LINE OF SAID PUEBLO LOT 1109; THENCE ALONG SAID NORTHERLY LINE SOUTH 76° 22' 19" WEST TO THE TRUE POINT OF BEGINNING.

PARCEL 3A:

ALL THAT PORTION OF PUEBLO LOT 1109 OF THE PUEBLO LANDS OF SAN DIEGO ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY (Exhibit A-2 WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921 AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, LYING WESTERLY OF THE WESTERLY RIGHT OF WAY LINE OF THE STATE HIGHWAY, SAID PORTION HEREBY CONVEYED DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHERLY LINE OF SAID PUEBLO LOT 1109, DISTANT ALONG SAID NORTHERLY LINE NORTH 76° 22' 43" EAST, 1181.80 FEET FROM A LEAD AND TACK IN A CONCRETE MONUMENT, ACCEPTED AS MARKING THE SOUTHWEST CORNER OF PUEBLO LOT 1184 OF SAID PUEBLO LANDS; THENCE -1- SOUTH 10° 07' 00' WEST, 89.40 FEET; THENCE -2- SOUTH 75° 37' 09" EAST 42.66 FEET TO THE NORTHERLY LINE OF THAT STRIP OF LAND 50 FEET WIDE DESCRIBED IN DEED TO THE CITY OF SAN DIEGO, RECORDED APRIL 19, 1916 IN BOOK 708, PAGE 183 OF DEEDS OF SAID COUNTY; THENCE -3- ALONG LAST SAID NORTHERLY LINE SOUTH 86° 46' 13" WEST, 24.39 FEET; THENCE -4- CONTINUING ALONG LAST SAID NORTHERLY LINE SOUTH 86° 29' 13" WEST, 301.54 FEET; THENCE -5- CONTINUING ALONG LAST SAID NORTHERLY LINE NORTH 77° 30' 47" WEST, 101.23 FEET TO SAID NORTHERLY LINE OF SAID PUEBLO LOT 1109; THENCE -6- ALONG LAST SAID NORTHERLY LINE NORTH 76° 22' 43" EAST 410.07 FEET TO THE POINT OF BEGINNING.

PARCEL 4A: (677-220-13)

PARCEL 1 OF PARCEL MAP NO. 12442, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, BEING A DIVISION OF A PORTION OF LOTS 2, 4 AND 5 AS SHOWN ON PARTITION MAP OF PUEBLO LOT 1182 PER SUPERIOR COURT CASE NO. 6481. ALSO, THAT PORTION OF SAID PARCEL MAP NO. 12442, SHOWN THEREON AS MISSION CENTER ROAD, LYING SOUTHERLY OF THE WESTERLY PROLONGATION OF THE MOST SOUTHERLY LINE OF PARCEL 2 OF SAID PARCEL MAP NO. 12442.

EXCEPTING THEREFROM ALL OF THE MINERALS, MINERAL DEPOSITS, MINERAL OILS AND NATURAL GASES OF EVERY KIND AND NATURE CONTAINED IN OR UPON THAT PORTION OF SAID PARCEL MAP NO. 12442 WHICH LIES WITHIN THE SOUTHWEST QUARTER OF SAID PUEBLO LOT 1182, TOGETHER WITH THE RIGHT TO ENTER UPON AND OCCUPY SAID PREMISES FOR THE PURPOSES OF PROSPECTING, DRILLING FOR, MINING OR REMOVING MINERALS, MINERAL OILS AND GASES AS CONVEYED TO HARRY R. MOORE BY DEED RECORDED JANUARY 21, 1925, DOCUMENT NO. 3115, IN BOOK 1067, PAGE 106 OF DEEDS.

PARCEL 5: (438-012-01)

ALL OF LOT 3 OF THE PARTITION OF A PORTION OF PUEBLO LOTS 1173 AND 1174, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO LICENSED SURVEYOR'S MAP THEREOF NO. 170 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON MAY 2, 1913.
EXCEPTING THEREFROM ANY PORTION OF SAID LOT LYING WESTERLY OF THE EASTERLY LINE OF LAND DESCRIBED IN DEED FROM RUSSELL GRANT, TRUSTEE TO H. G. FENTON MATERIAL COMPANY, A CALIFORNIA CORPORATION IN DEED RECORDED APRIL 15, 1983 AS FILE NO. 83-120065 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Exhibit A-3

THAT PORTION OF LOTS 3 AND 4 OF THE PARTITION OF A PORTION OF PUEBLO LOTS 1173 AND 1174, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO LICENSED SURVEYOR'S MAP THEREOF NO. 170, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 2, 1913.

COMMENCING AT THE SOUTHEAST CORNER OF PUEBLO LOT 1182 OF THE PUEBLO LANDS OF SAN DIEGO; THENCE ALONG THE NORTHERLY LINE OF SAID PUEBLO LOT 1173, SOUTH 89° 43' 48" WEST 1310.06 FEET TO POINT "X"; THENCE SOUTH 14° 52' 29" EAST TO THE SOUTH LINE OF SAID LOT 3 AND THE TRUE POINT OF BEGINNING; THENCE RETRACING NORTH 14° 52' 29" WEST TO SAID POINT "X"; THENCE WESTERLY ALONG SAID NORTHERLY LINE OF PUEBLO LOT 1173 TO THE NORTHWESTERLY CORNER OF SAID LOT 3; THENCE IN A SOUTHWESTERLY DIRECTION ALONG THE NORTHWESTERLY BOUNDARY OF SAID LOT 3 TO A POINT DISTANT NORTH 33° 26' 37" EAST 28.29 FEET FROM THE SOUTHWESTERLY TERMINUS OF THAT COURSE IN SAID BOUNDARY SHOWN AS "NORTH 32° 53' EAST 600.00 FEET" ON SAID LICENSED SURVEYOR'S MAP NO. 170, BEING THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED DECEMBER 9, 1969 FILE NO. 223434 OF OFFICIAL RECORDS; THENCE ALONG THE BOUNDARY OF SAID LAND AS FOLLOWS:

SOUTH 47° 34' 18" EAST 299.40 FEET; EASTERLY ALONG A TANGENT CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 69° 23' 38", A DISTANCE OF 24.22 FEET; NORTHEASTERLY ALONG A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 110.00 FEET, THROUGH A CENTRAL ANGLE OF 8° 30' 38", A DISTANCE OF 16.34 FEET TO THE NORTHWESTERLY BOUNDARY OF THAT LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED JUNE 23, 1964 FILE NO. 112416; THENCE ALONG LAST SAID NORTHWESTERLY BOUNDARY NORTHEASTERLY ALONG A 450 FOOT RADIUS CURVE THROUGH AN ANGLE OF 12° 36' 24" A DISTANCE OF 99 FEET MORE OR LESS TO THE NORTHWESTERLY LINE OF FRIARS ROAD, AS SAID NORTHWESTERLY LINE IS DESCRIBED IN DEED TO THE CITY OF SAN DIEGO, RECORDED NOVEMBER 5, 1937, IN BOOK 718, PAGE 196 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG LAST SAID NORTHWESTERLY LINE AS DESCRIBED IN LAST SAID DEED AND AS ALSO DESCRIBED IN DEED RECORDED OCTOBER 28, 1943, IN BOOK 1582, PAGE 160 OF SAID OFFICIAL RECORDS, FROM A TANGENT WHICH BEARS SOUTH 29° 39' 21" WEST NORTHEASTERLY ALONG A CURVE TO THE LEFT WITH A RADIUS OF 3039.96 FEET THROUGH AN ANGLE OF 0° 37' 39", A DISTANCE OF 33.29 FEET; THENCE LEAVING SAID NORTHWESTERLY LINE, RADIAL TO SAID CURVE SOUTH 60° 58' 18" EAST TO THE SOUTHEASTERLY LINE OF SAID LOT 3 BEING THE NORTHWESTERLY LINE OF LOT 4 OF SAID LICENSED SURVEY MAP NO. 170; THENCE ALONG SAID SOUTHEASTERLY LINE NORTH 34° 18' 13" EAST (RECORD NORTH 33° 47' EAST) TO A POINT DISTANT SOUTH 34° 18' 13" WEST 165 FEET FROM THE NORTHWESTERLY CORNER OF SAID LOT 4 BEING A POINT IN THE NORTHWESTERLY LINE OF FRIARS ROAD AS ESTABLISHED BY RESOLUTION NO. 189560 OF THE COUNCIL OF THE CITY OF SAN DIEGO RECORDED FEBRUARY 17, 1967 FILE NO. 22410, VACATING THE EXCESS PORTION OF FRIARS ROAD; THENCE ALONG SAID NORTHWESTERLY LINE OF FRIARS ROAD NORTH 57° 30' 00" EAST 209.37 FEET TO A TANGENT 625 FOOT RADIUS CURVE, CONCAVE SOUTHEASTERLY; AND NORTHEASTERLY ALONG SAID CURVE THROUGH AN ANGLE OF 05° 50' 37" A DISTANCE OF 63.73 FEET TO THE NORTHERLY LINE OF SAID LOT 4; THENCE ALONG SAID NORTHERLY LINE, NORTH 86° 51' 13" EAST TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LOT DESCRIBED IN DEED FROM RUSSELL GRANT, TRUSTEE TO CALMAT CO., A DELAWARE CORPORATI(Exhibit A-4 RECORDED SEPTEMBER 13, 1990 AS FILE NO. 90-0499845 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 1 OF PARCEL MAP NO. 16146, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 12, 1990. ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND, IF ANY, LYING SOUTHERLY OF THE NORTHERLY LINE OF RIO VISTA WEST UNIT NO. 1 ACCORDING TO MAP THEREOF NO. 13148 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON SEPTEMBER 20, 1994.

PARCEL 6: (438-012-02)

ALL THAT PORTION OF PUEBLO LOT 1173 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF BY JAMES PASCOE IN 1870, LYING EAST OF THE SOUTHERLY EXTENSION OF THE DIVIDING LINE BETWEEN PUEBLO LOTS 1182 AND 1183 OF SAID PUEBLO LANDS. EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS FOLLOWS:

(A) ALL THAT PORTION OF PUEBLO LOT 1173 OF PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, LYING EASTERLY AND SOUTHEASTERLY OF SOUTHEASTERLY LINE OF THE TRACT OF LAND CONVEYED TO CITY OF SAN DIEGO FOR STREET PURPOSES BY DEED FROM MINNIE G. STOCKTON, DATED MARCH 29, 1916, RECORDED APRIL 19, 1916 IN BOOK 708, PAGE 182 OF DEEDS, WHICH LINE IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PUEBLO LOT 1108 OF SAID PUEBLO LANDS, RUNNING THENCE NORTH 75° 21' 30" EAST ALONG THE SOUTHERLY LINE OF SAID PUEBLO LOT 1173, A DISTANCE OF 1365.31 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 48° 14' EAST 309.22 FEET; THENCE NORTH 31° 56' EAST 125.78 FEET; THENCE NORTH 49° 34' EAST 19.20 FEET TO INTERSECTION WITH THE NORTHERLY LINE OF SAID PUEBLO LOT 1173.

(B) THAT PORTION OF LOT 1173 OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY PASCOE IN 1870, BOUNDED ON THE NORTHWEST BY THE SOUTHEASTERLY LINE OF THE 80 FOOT RIGHT OF WAY FOR PUBLIC HIGHWAY, GRANTED TO THE CITY OF SAN DIEGO BY DEED FROM MABEL S. ECKHART DATED FEBRUARY 10, 1941, RECORDED APRIL 16, 1941 IN BOOK 1181, PAGE 184 OF OFFICIAL RECORDS, THE CENTER LINE OF SAID 80 FOOT HIGHWAY BEING DESCRIBED AS FOLLOWS:

"COMMENCING AT A POINT ON THE SOUTHERLY LINE OF PUEBLO LOT 1183, ACCORDING TO SAID PASCOE MAP, DISTANT THEREALONG 990.90 FEET WESTERLY FROM THE WESTERLY LINE OF PUEBLO LOT 1109, ACCORDING TO SAID PASCOE MAP, SAID POINT OF COMMENCING BEING ALSO A POINT ON A NORTHERLY LINE OF SAID P Exhibit A-5 1173; THENCE SOUTHWESTERLY ON A DIRECT LINE MAKING AN ANGLE OF 43 42 TO THE LEFT FROM THE SOUTHERLY LINE OF SAID PUEBLO LOT 1183, A DISTANCE OF 148.07 FEET TO THE POINT OF A TANGENT CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1150.00 FEET; THENCE SOUTHWESTERLY AND WESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 549.62 FEET TO A POINT OF TANGENCY" AND BOUNDED ON THE SOUTH BY THE SOUTH LINE OF PUEBLO LOT 1173, AND ON THE SOUTHEAST BY THE SOUTHEASTERLY LINE OF THE PARCEL OF LAND CONVEYED TO THE CITY OF SAN DIEGO FOR STREET PURPOSES BY DEED DATED MARCH 29, 1916, RECORDED APRIL 19, 1916 IN BOOK 708, PAGE 182 OF DEEDS, WHICH SOUTHEASTERLY LINE IS DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT 1108 OF SAID PUEBLO LANDS; RUNNING THENCE NORTH 75° 21' 30" EAST ALONG THE SOUTHERLY LINE OF SAID LOT 1173, A DISTANCE OF 1365.31 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 48° 14' EAST 309.22 FEET; THENCE NORTH 31° 56' EAST 120 FEET, MORE OR LESS, TO INTERSECT WITH THE SOUTHEASTERLY LINE OF THE AFORESAID 80 FOOT RIGHT OF WAY.

(C) THAT PORTION OF PUEBLO LOT 1173 OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO MAP THEREOF MADE BY PASCOE IN 1870, BOUNDED ON THE WEST BY THE SOUTHERLY EXTENSION OF THE DIVIDING LINE BETWEEN PUEBLO LOTS 1182 AND 1183 OF SAID PUEBLO LANDS, BOUNDED ON THE SOUTHEAST BY THE MOST SOUTHERLY SOUTHEAST LINE OF SAID PUEBLO LOT 1173, BOUNDED ON THE EAST BY THE PORTION OF THE WEST LINE OF PUEBLO LOT 1108 THAT IS THE DIVIDING LINE BETWEEN PUEBLO LOTS 1108 AND 1173, AND BOUNDED ON THE NORTHWEST BY THE SOUTHEASTERLY LINE OF PUBLIC ROAD CONVEYED BY MINNIE G. STOCKTON TO THE CITY OF SAN DIEGO, BY DEED RECORDED APRIL 19, 1916 IN BOOK 708, PAGE 182 OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SAID ROAD BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF PUEBLO LOT 1108; THENCE NORTH 75° 21' 30" EAST ALONG THE SOUTHERLY LINE OF SAID PUEBLO LOT 1173, 1365.31 FEET; THENCE NORTH 48° 14' EAST 309.22 FEET; THENCE NORTH 31° 56' EAST 125.78 FEET; THENCE NORTH 49° 34' EAST 19.20 FEET TO AN INTERSECTION WITH THE NORTH LINE OF SAID PUEBLO LOT 1173; THENCE SOUTH 89° 53' WEST ALONG THE NORTH LINE OF SAID PUEBLO LOT 1173, 66.32 FEET, SAID POINT BEING NORTH 89° 53' EAST 1626.40 FEET FROM THE SOUTHWEST CORNER OF PUEBLO LOT 1183; THENCE SOUTH 31° 56' WEST 101.62 FEET; THENCE SOUTH 48° 14' WEST 344.83 FEET TO A POINT DISTANT 25 FEET AND AT RIGHT ANGLES TO THE SOUTHERLY LINE OF SAID PUEBLO LOT 1173; THENCE SOUTH 75° 21' 30' WEST ON A LINE PARALLEL TO AND DISTANT 25 FEET NORTHERLY FROM THE SOUTHERLY LINE OF SAID PUEBLO LOT 1173, 1216.98 FEET; THENCE CURVING TO THE LEFT WITH A RADIUS OF 205 FEET THROUGH AN ANGLE OF 45° 56' 15", A DISTANCE OF 164.37 FEET TO A POINT ON THE WEST LINE OF THE LAND OWNED BY THE GRANTORS;

THENCE SOUTH 0° 53' EAST ALONG SAID WEST LINE 118.36 FEET; THENCE NORTH 23° 31' 30" EAST 86.73 FEET; THENCE CURVING TO THE RIGHT WITH A RADIUS OF 155 FEET THROUGH AN ANGLE OF 16° 53' 40", A DISTANCE OF 45.70 FEET TO AN INTERSECTION WITH THE WESTERLY LINE OF PUEBLO LOT 1108; THENCE NORTH 15° 11' WEST ALONG THE WESTERLY LINE OF PUEBLO LOT 1108, 52.94 FEET TO THE POINT OR PLACE OF BEGINNING.

ALSO EXCEPTING THEREFROM ANY PORTION OF SAID LAND LYING SOUTHE NORTHERLY LINE OF RIO VISTA WEST UNIT NO. 1 ACCORDING TO MAP T 13148 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON SEPTEMBER 20, 1994.

Exhibit A-6

PARCEL 7: (677-360-11)

THAT PORTION OF LOTS 5, 6 AND 7 OF PUEBLO LOT 1186 OF THE PUEBLO LANDS OF SAN DIEGO, ACCORDING TO PARTITION MAP THEREOF MADE IN THE ACTION ENTITLED "HAROLD
M. SCHILLER VS. O. J. STOUGH, ET AL" IN SUPERIOR COURT CASE NO. 1532 ON FILE IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY DESCRIBED AS FOLLOWS:
BEGINNING AT A CONCRETE MONUMENT WITH BRASS CAP SET FOR THE SOUTHWEST CORNER OF
SAID PUEBLO LOT 1186; THENCE ALONG THE FOLLOWING NUMBERED COURSES:

-1- NORTH 41°09'31" EAST, -RECORD NORTH 40°39'18" EAST-, 32.88 FEET TO THE SOUTHEASTERLY CORNER OF MISSION VILLAGE HEIGHTS, UNIT NO. 1, ACCORDING TO MAP THEREOF NO. 5009 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JULY 6, 1962;

-2- ALONG THE BOUNDARY OF SAID MISSION VILLAGE HEIGHTS UNIT NO. 1, NORTH 41°09'31" EAST, 192.51 FEET;

-3- LEAVING SAID BOUNDARY SOUTH 63°50'29" EAST, 8.04 FEET;

-4- SOUTHEASTERLY ALONG A TANGENT CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 280 FEET, THROUGH AN ANGLE OF 26°19'47" A DISTANCE OF 128.67 FEET;

-5- NORTH 89°49'44" EAST, 539, 24 FEET TO A POINT DESIGNATED AS POINT "A";

-6- NORTH 89°49'44" EAST, 224.99 FEET;

-7- NORTHEASTERLY ALONG A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 393 FEET; THROUGH AN ANGLE OF 36°06'33" A DISTANCE OF 247.68 FEET;

-8- NORTH 61°52'18" EAST, 60.26 FEET;

-9- SOUTH 62°11'27" EAST, 540.27 FEET TO THE SOUTHERLY LINE OF SAID PUEBLO LINE OF SAID PUEBLO LOT 1166;

-10- ALONG SAID SOUTHERLY LINE NORTH 89°45'21" WEST, 1806.47 FEET TO THE POINT OF BEGINNING.
PARCEL 8: (677-360-09)

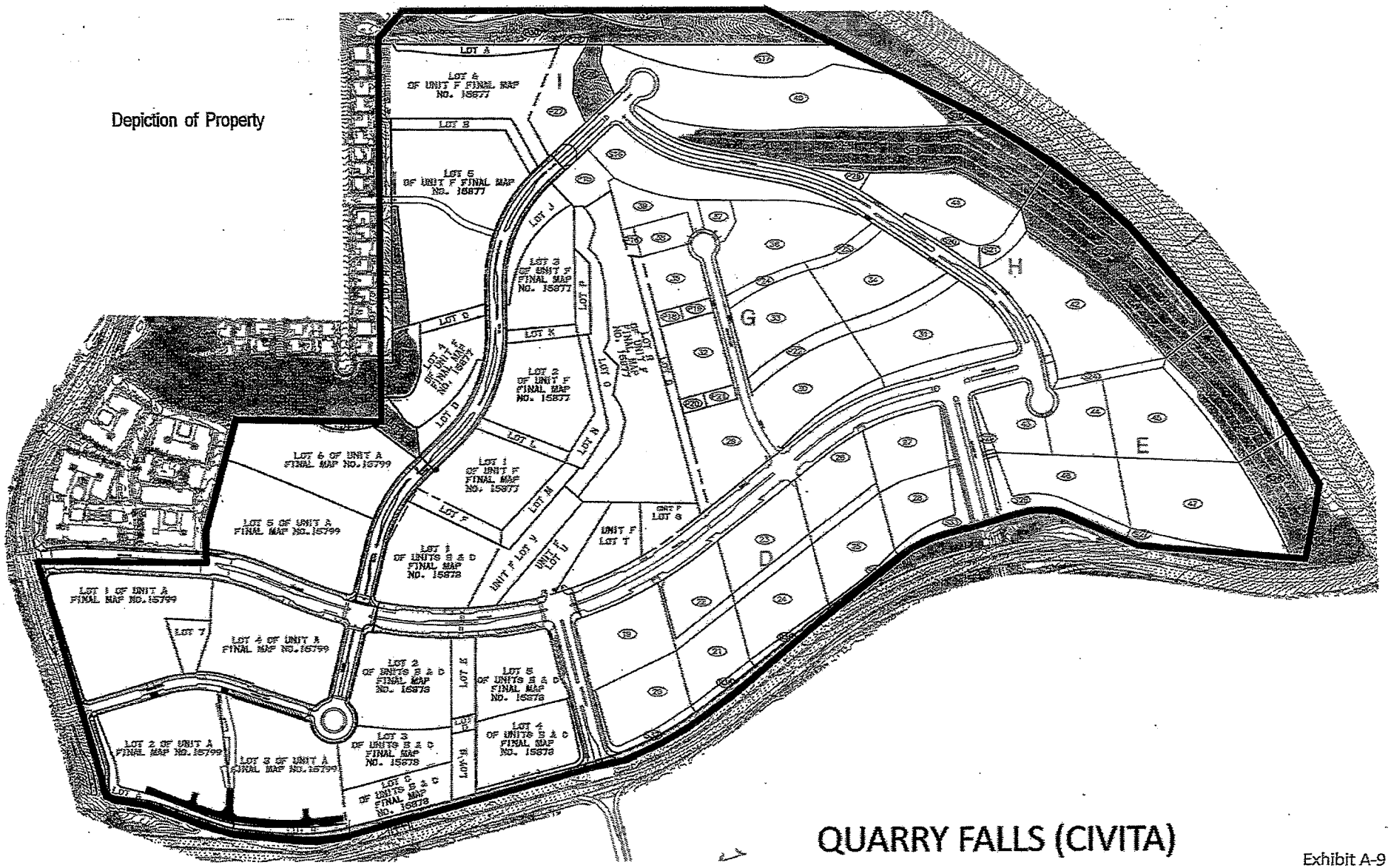
THE NORTH QUARTER OF THE NORTHEAST QUARTER OF PUEBLO LOT ELEVEN HUNDRED EIGHTY-THREE IN THE CITY OF SAN DIEGO, COUNTY OF SAN DI[illegible] OF CALIFORNIA, ACCORDING TO PASCOE MAP THEREOF, FILED IN THE OFI Exhibit A-7 COUNTY RECORDER OF SAN DIEGO.

EXCEPTING THEREFROM THEREFORM THE FOLLOWING DESCRIBED LAND:

BEGINNING AT A FOUND SAN DIEGO CITY ENGINEER'S MONUMENT MARKING THE NORTHEAST CORNER OF SAID PUEBLO LOT 1183; THENCE (1) ALONG THE EAST LINE OF SAID PUEBLO LOT 1183, S.0°32'15" E., 328.92 FEET TO THE SOUTH LINE OF SAID NORTH QUARTER; THENCE (2) ALONG SAID SOUTH LINE N. 89°45'03" W., 182.45 FEET; THENCE (3) LEAVING SAID SOUTH LINE FROM A TANGENT WHICH BEARS N.61°17'02" W., ALONG A CURVE TO THE LEFT, WITH A RADIUS OF 2933.00 FEET, THROUGH AN ANGLE OF 00°54'25", A DISTANCE OF 46.43 FEET; THENCE (4) N. 62°11'27" W., 264.58 FEET; THENCE (5) N.64°09'16" W., 350.21 FEET; THENCE (6) N.62°11'27" W., 71.98 FEET TO THE NORTH LINE OF SAID PUEBLO LOT 1183; THENCE (7) ALONG SAID NORTH LINE S. 89°45'21" EAST., 833.13 FEET TO THE POINT OF BEGINNING.

END OF LEGAL DESCRIPTION

Depiction of Property



QUARRY FALLS (CIVITA)

Exhibit A-9

11.3 TRAFFIC CIRCULATION

11.3.1 Impacts

The project would result in significant direct and cumulative impacts to street segments, intersections, freeway segments, and freeway ramps. Impacts to freeway segments and ramps would remain significant and unmitigated

11.3.2 Mitigation Measures

The project shall implement the improvements contained in the *Transportation Phasing Plan* (Table 11-1) to mitigate traffic impacts.

Table 11-1.
Transportation Phasing Plan

#	Location	Responsible Party[1]	Improvement[2]
Phase 1			
1	Friars Road/ SR-163 Interchange	Project[2]	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, construction of the following local improvements at Friars Road and SR-163 interchange: the widening of the northbound approach of the SR-163 southbound off-ramp at Friars Road by 1 right turn lane resulting in 1 left turn lane, 1 thru left and 1 right turn lane; the reconfiguring of the southbound approach of Friars Road and SR-163 northbound ramps to provide 2 right-turn lane; the widening of westbound Friars Road from Frazee Road to SR-163 northbound ramps by 1 thru lane and 1 right turn lane resulting in 3 thru lanes and 2 right-turn lanes; the widening of eastbound Friars Road at Frazee Road by 1 thru lane (with widening to accept the thru lane) and 2 right turn lanes resulting in dual left turn lanes, 4 thru lanes and 2 right turn lanes, satisfactory to the City Engineer. The City may require the project to pay $5,000,000 (2007 dollars) to the City of San Diego in lieu of constructing such local improvements to assist in the funding of a more regional set of improvements at this same location, satisfactory to the City Engineer.
2	Mission Center Road/Quarry Falls Boulevard	Project[2]	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, construction of the following improvements at the intersection of Mission Center Road and Quarry Falls Boulevard: the widening of the northbound approach by 1 right turn trap lane resulting in 2 left turn lanes, 2 thru lanes, and 1 right turn lane; the widening of the westbound approach by 2 left turn lanes resulting in 2 left turn lanes and 1 shared thru-right lane; and the widening of the eastbound approach by 1 right turn lane resulting in 1 left turn lane, 1 thru lane and 1 right-turn lane, satisfactory to the City Engineer.
3	Mission Center Road from Quarry Falls Boulevard to Friars Road	Project[2]	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, construction of the following improvement on Mission Center Road from Quarry Falls Boulevard to Friars Road; the widening of northbound Mission Center Road to add one additional lane for a total of three thru lanes, satisfactory to the City Engineer.
4	Friars Road from Qualcomm Way to Mission Center Road	Project[2]	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, construction of a westbound auxiliary lane by widening Friars Road from Qualcomm Way to Mission Center Road, resulting in a total of three thru lanes and one auxiliary lane, satisfactory to the City Engineer.

R-304292

	Location	Responsible Party[1]	Improvement[2]
5	Phyllis Place/ I-805 SB ramp	Project	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, construction of a traffic signal at the intersection of Phyllis Place and I-805 southbound ramp with the appropriate traffic signal interconnect, satisfactory to the City Engineer.
6	Phyllis Place/ I-805 NB ramp	Project	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, construction of a traffic signal at the intersection of Phyllis Place and I-805 northbound ramp with the appropriate traffic signal interconnect, satisfactory to the City Engineer.
7	Murray Ridge Road/ Mission Center Road	Project	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, construction of the following improvements at the intersection of Mission Center Road and Murray Ridge Road: the installation of a traffic signal, the restriping of the southbound approach to provide 1 left turn lane, 1 thru lane, and 1 right turn lane; the widening of the westbound approach by 1 left turn lane resulting in 1 shared thru-right lane and 1 left turn lane; and the restriping of the eastbound approach to provide 1 left turn lane and 1 thru-right lane, satisfactory to the City Engineer.
8a	Murray Ridge Road from NB Interstate 805 ramps to Pinecrest Avenue	Project	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, the following improvements on Murray Ridge Road from the southbound I-805 ramps to Pinecrest Avenue: the restriping of Murray Ridge Road to a 4-lane collector or the contribution of $100,000 (2007 dollars) in funding for traffic calming to be determined by the Serra Mesa community , satisfactory to the City Engineer.
8b	Murray Ridge Road Bridge over I-805	Project	Prior to the issuance of any building permits for Phase 1, the applicant shall assure by permit and bond the restriping of the Murray Ridge Road/Phyllis Place, between the northbound and southbound ramps of I-805 ramps, to 5 lanes, satisfactory to the City Engineer.
9	Murray Ridge Road/ Pinecrest Ave.	Project	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, the construction of a traffic signal at the intersection of Murray Ridge Road and Pinecrest Avenue, satisfactory to the City Engineer.
10	Friars Road/ Avenue De Las Tiendas	Project	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, the lengthening of westbound dual left-turn lanes at the intersection of Friars Road and Avenida De Las Tiendas to approximately 450 feet, satisfactory to the City Engineer.
11	Texas Street from Camino del Rio South to El Cajon Boulevard	Project	Prior to the issuance of any building permits for Phase 1, applicant shall assure by permit and bond, the implementation of the following traffic calming measures on Texas Street from El Cajon Boulevard to Camino Del Rio South: provide pedestrian lighting and a new sidewalk from Camino Del Rio South to Madison Avenue (per item T4 in the Greater North Park Planning Committee's Priority List on page 13 of the Public Facility Financing Plan, 2002), and contribute $100,000 (2007 dollars) in funding for traffic calming to be determined by the community from Madison Avenue to El Cajon Boulevard.
12	Transportation Demand Management measures	Project	Prior to the issuance of any building permits for Phase 1, applicant shall develop a comprehensive demand management plan that includes information kiosks in central locations, bike lockers, priority parking spaces for carpools, a shuttle system for residents and employees that connects to nearby LRT stations, transit passes for local residents and employees, an on-site shared car program utilizing hybrid veicles, and coordination with MTS for potential public or private bus service in Quarry Falls, satisfactory to the City Engineer.
Phase 2			
13	Mission Center Road from I-	Project	Prior to the issuance of any building permits for Phase 2 that exceeds 23,750 ADT in total development,

Exhibit B-2

#	Location	Responsible Party	Improvement
	805 to Murray Ridge Road		applicant shall assure by permit and bond, the construction of an additional eastbound thru lane on Mission Center Road by roadway widening from I-805 to Murray Ridge Road resulting in a total of 2 eastbound lanes and 1 westbound lane, satisfactory to the City Engineer.
14	Friars Road/ Fashion Valley Road	Project[2]	Prior to the issuance of any building permits for Phase 2 that exceeds 23,750 ADT in total development, applicant shall assure by permit and bond, the restriping of the westbound approach at the intersection of Friars Road and Fashion Valley Road by 1 left turn lane resulting in 2 left-turn lanes, 1 thru lane and 1 shared thru-right turn lane, satisfactory to the City Engineer.
15a	Friars Road/SR-163 Interchange	Project[2]	Prior to the issuance of any building permits for Phase 2 that exceeds 23,750 ADT in total development, applicant shall assure by permit and bond, construction of the following local improvements at Friars Road and SR-163 interchange: the widening and lengthening of the Friars Road bridge from 6 lanes to 8 thru lanes from Frazee Road to Ulric Street and providing 2 left turn lanes across the bridge; the reconfiguration of the SR-163 northbound off ramp (by removing the free right turn lane and widening the existing loop off-ramp to provide 3 left turn and 1 right turn lanes); and the widening of the southbound approach at Friars Road and Frazee Road intersection by 1 right turn lane resulting in 2 left turn lanes, 1 shared thru right and 2 right turn lanes. The City may require the project to pay $14,000,000 (2007 dollars) to the City of San Diego in lieu of constructing such local improvements to assist in the funding of a more regional set of improvements at this same location, satisfactory to the City Engineer.
15b	Mission Center Road/I-8 Interchange	Project[4]	Prior to the issuance of any building permits for Phase 2 that exceeds 23,750 ADT[3] in total development, applicant shall provide $1 million (2007 dollars) for the Mission Center Road and I-8 interchange Project Study Report, satisfactory to the City Engineer.
16	Pedestrian Bridge across Friars Road	Project[2]	Prior to the issuance of any building permits for Phase 2 in the area represented by parcels 21, 24, or 25 of the Quarry Falls Vesting Tentative Map 183196 and that exceeds 23,750 ADT[3] in total development, applicant shall assure by permit and bond, the construction of a pedestrian bridge over Friars Road to connect Quarry Falls to Rio Vista West shopping center and provide access to Rio Vista West trolley station, satisfactory to the City Engineer.
17	Friars Road EB ramp/ Qualcomm Way	Project[2]	Prior to the issuance of any building permits for Phase 2 that exceeds 23,750[3] ADT in total development, applicant shall assure by permit and bond, construction of the following improvement on Friars Road eastbound ramp and Qualcomm Way; the widening of eastbound approach by 1 left turn lane resulting in 1 right turn lane, a 1 shared left-thru lane and 1 left turn lane; the restriping of the southbound approach within the existing bridge abutments resulting in 2 thru lanes and 2 left turn lanes; and the widening of the northbound approach by 2 thru lanes resulting in 4 thru lanes and 1 right turn lane, satisfactory to the City Engineer.
18	Friars Road WB ramp/ Qualcomm Way	Project[2]	Prior to the issuance of any building permits for Phase 2 that exceeds 23,750 ADT in total development, applicant shall assure by permit and bond, construction of the following improvement on Friars Road westbound ramp and Qualcomm Way; the widening of the southbound approach by 1 thru lane and 1 right turn lane for 1 right turn lane and 2 thru lanes; and the restriping of the northbound approach resulting in 2 thru lanes and 2 left turn lanes, satisfactory to the City Engineer.
19	Friars Road/I-15 SB off-ramp	Project[2]	Prior to the issuance of any building permits for Phase 2 that exceeds 23,750 ADT[3] in total development, applicant shall assure by permit and bond, the widening of southbound approach at Friars Road and I-15 southbound off-ramp by 1 left turn lane resulting in 2 left turn lanes, 1 shared thru-left turn lane, and 2 right turn lanes, satisfactory to the City Engineer.

Exhibit B-3

R 304292

#	Location	Responsible Party[1]	Improvement[2]
Phase 3			
15b	Mission Center Road/I-8 Interchange	Project[2]	Prior to the issuance of any building permits for Phase 3 that exceeds 51,180 ADT[3] in total development, applicant shall assure by permit and bond, construction of the following improvements at Mission Center Road and I-8 interchange (unless built by others): the widening of the eastbound off ramp to provide 1 additional left turn lane resulting in 3 left turn lanes, 1 right turn lane; the widening of Mission Center Road over I-8 bridge by one northbound thru lane resulting in 2 southbound thru lanes and 3 northbound thru lanes; the widening of the southbound approach at Mission Center Road and I-8 eastbound ramp by 1 left turn lane resulting in 2 left turn lanes and 2 thru lanes; the restriping of the eastbound approach at Mission Center Road and Camino Del Rio North to provide a 350-foot long right turn lane; the widening of the westbound approach at the intersection of Mission Center Road and Camino Del Rio North by 1 right turn lane resulting in 2 left turn lanes, 2 thru lanes and 1 right turn lane; the widening of the eastbound approach at Camino Del Rio North and I-8 westbound ramp by 1 right turn lane resulting in 2 thru lanes and 2 right turn lanes; at Camino Del Rio South and Mission Center Road, the widening of the southbound approach resulting in 2 left turn, 1 thru, and 2 right turn lanes, the restriping of the eastbound approach resulting in 2 left turn, 1 thru, and 1 shared thru-right lanes; and the widening of the westbound approach resulting in 1 left, 1 thru and 1 right turn lane, satisfactory to the City Engineer.
20	Texas Street/El Cajon Boulevard	Project[2]	Prior to the issuance of any building permits for Phase 3 that exceeds 51,180 ADT[3] in total development, applicant shall assure by permit and bond, the widening of eastbound approach at the intersection of Texas Street and El Cajon Boulevard by 1 right turn lane for 1 left turn, 3 thru lanes and 1 right turn lane, satisfactory to the City Engineer.
21	Qualcomm Way / I-8 WB off-ramp	Project[2]	Prior to the issuance of any building permits for Phase 3 that exceeds 51,180 ADT[3] in total development, applicant shall assure by permit and bond, the widening of westbound approach at the intersection of Qualcomm Way and I-8 westbound off-ramp by 1 right turn lane resulting in 1 shared left-thru lane and 2 right turn lanes, satisfactory to the City Engineer.
Phase 4			
22	Friars Road/Santo Road	Project[2]	Prior to the issuance of any building permits for Phase 4 that exceeds 59,040 ADT[3] in total development, applicant shall contribute a fair share of 16% toward the cost of restriping southbound approach at the intersection of Friars Road and Santo Road to provide dual left turn lanes and dual right turn lanes, satisfactory to the City Engineer.
23	Mission Gorge Road/Zion Avenue	Project[2]	Prior to the issuance of any building permits for Phase 4 that exceeds 59,040 ADT[3] in total development, applicant shall contribute a fair share of 23% toward the cost of the installation of an additional westbound left turn lane (requiring widening of the west-leg of the intersection) resulting in dual left turn lanes and 1 shared thru-right turn lane at the intersection of Mission Gorge Road and Zion Avenue, satisfactory to the City Engineer.
24	Mission Center Road/Camino De La Reina	Project[2]	Prior to the issuance of any building permits for Phase 4 that exceeds 59,040 ADT[3] in total development, applicant shall contribute a fair share of 15% toward the cost of widening the eastbound approach at the intersection of Mission Center Road and Camino De La Reina by 1 right turn lane resulting in 2 left turn lanes, 2 thru lanes and 1 right turn lane, satisfactory to the City Engineer.
25	Qualcomm Way/Camino De La Reina	Project[2]	Prior to the issuance of any building permits for Phase 4 that exceeds 59,040 ADT[3] in total development, applicant shall contribute a fair share of 38% toward the cost of widening the westbound approach at the

Exhibit B-4

#	[illegible]	Responsible Party[1]	Improvement[2]
			intersection of Qualcomm Way and Camino De La Reina by 1 right turn lane resulting in 2 left turn lanes, 2 thru lanes and 2 right turn lanes, satisfactory to the City Engineer.
26	Texas Street/Camino Del Rio South	Project[4]	Prior to the issuance of any building permits for Phase 4 that exceeds 59,040 ADT[3] in total development, applicant shall contribute a fair share of 21% toward the cost of the following improvements at the intersection of Texas Street and Camino Del Rio South: the widening of the northbound approach by a shared thru-right lane resulting in 1 left turn lane, 1 shared thru right turn lane and 2 thru lanes; the restriping of the eastbound approach resulting in 2 left turn lanes and 1 shared thru-right turn lane; widening of southbound approach by 1 left turn lane, for 2 left turn lanes, 2 thru lanes and 1 right turn lane; and the widening of the westbound approach by 1 right turn lane resulting in 1 left turn lane, 1 thru lane and 2 right turn lanes, satisfactory to the City Engineer.
27	Texas Street/Madison Street	Project[4]	Prior to the issuance of any building permits for Phase 4 that exceeds 59,040 ADT[3] in total development, applicant shall contribute a fair share of 30% toward the cost of restriping the eastbound approach (which will require the widening of the north-leg of the intersection) at the intersection of Texas Street and Madison Street resulting in 2 left turn lanes and 1 shared thru-right turn lane, satisfactory to the City Engineer.
28	Rio San Diego Drive/Fenton Parkway	Project[4]	Prior to the issuance of any building permits for Phase 4 that exceeds 59,040 ADT[3] in total development, applicant shall contribute a fair share of 11% toward the cost of widening northbound approach at the intersection of Rio San Diego Drive and Fenton Parkway by 1 left turn lane resulting in 2 left turn lanes, 1 thru lane and 1 shared thru-right turn lane, satisfactory to the City Engineer.
Project shall maintain a trip generation monitoring report and parking table that will be provided with every building permit submitted to the City of San Diego within the Quarry Falls development.			
Project shall be in conformance with the proposed Transportation Phasing plan included in the Quarry Falls Traffic Impact analysis.			
All transportation improvements shall be constructed and completed in accordance with the approved Transportation Phasing Plan included in the Quarry Falls traffic analysis.			

[1] Construction and/or funding may also be the responsibility of others. Project may be eligible for DIF credits and/or reimbursement for construction of the improvement.
[2] Appendix I of the Quarry Falls Traffic Impact Study contains conceptual designs for each of these improvements
[3] Each development threshold is based upon driveway trip generation rates.
[4] Assurance to the satisfaction of the City Engineer shall not be required until construction of the Village Walk District commences.

R-304292

Exhibit B-5

Exhibit "C"

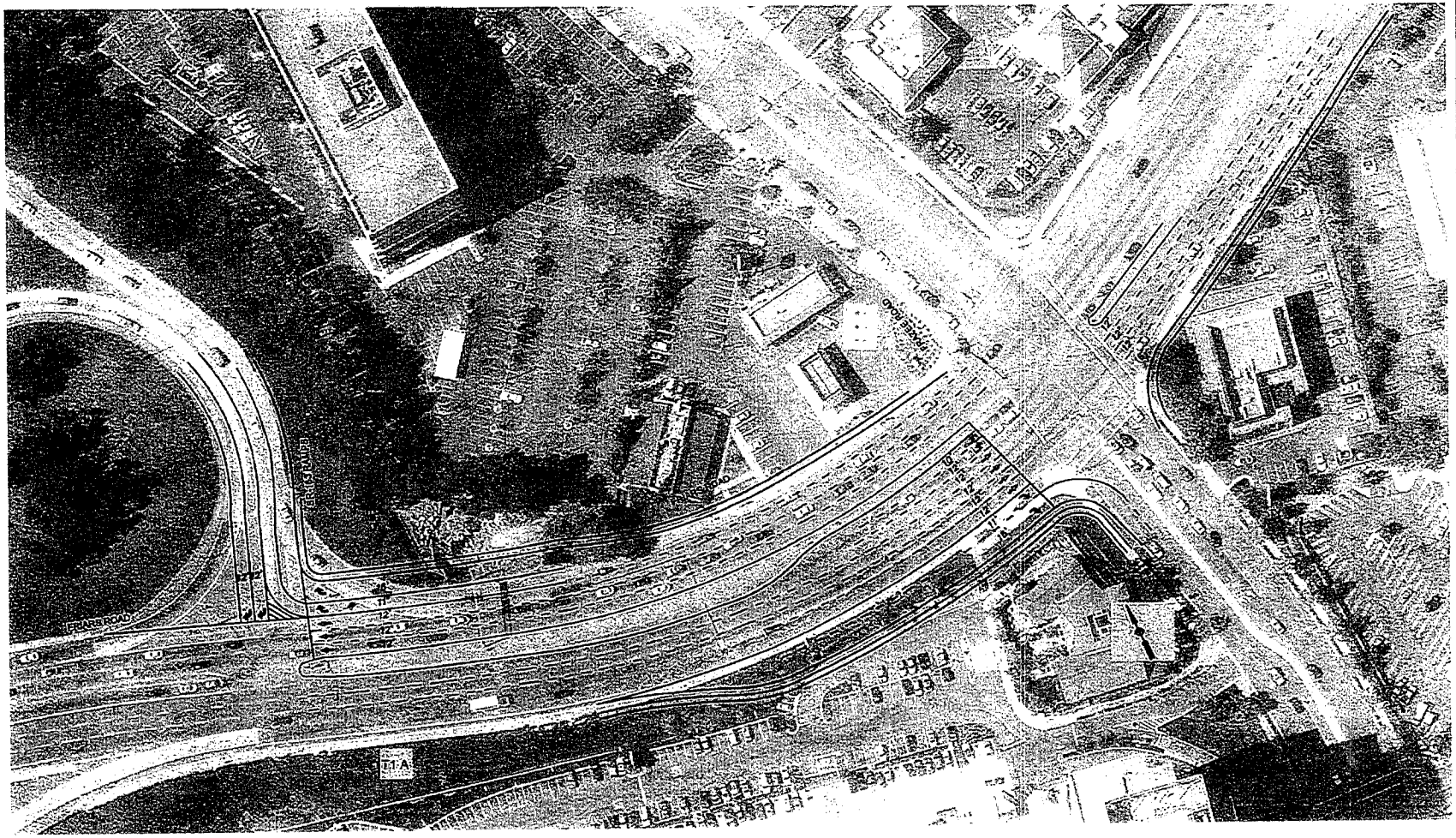
SR-163 Project Descriptions

(Project #1 from Phasing Plan)

"The widening of the northbound approach of the SR-163 southbound off-ramp at Friars Road by 1 right turn lane resulting in 1 left turn lane, 1 thru left and 1 right turn lane; the reconfiguring of the southbound approach of Friars Road and SR-163 northbound ramps to provide 2 right-turn lane; the widening of westbound Friars Road from Frazee Road to SR-163 northbound ramps by 1 thru lane and 1 right turn lane resulting in 3 thru lanes and 2 right-turn lanes; the widening of eastbound Friars Road at Frazee Road by 1 thru lane (with widening to accept the thru lane) and 2 right turn lanes resulting in dual left turn lanes, 4 thru lanes and 2 right turn lanes, satisfactory to the City Engineer.

(Project #15a from Phasing Plan)

"The widening and lengthening of the Friars Road bridge from 6 lanes to 8 thru lanes from Frazee Road to Ulric Street and providing 2 left turn lanes across the bridge; the reconfiguration of the SR-163 northbound off ramp (by removing the free right turn lane and widening the existing loop offramp to provide 3 left turn and 1 right turn lanes); and the widening of the southbound approach at Friars Road and Frazee Road intersection by 1 right turn lane resulting in 2 left turn lanes, 1 shared thru right and 2 right turn lanes."

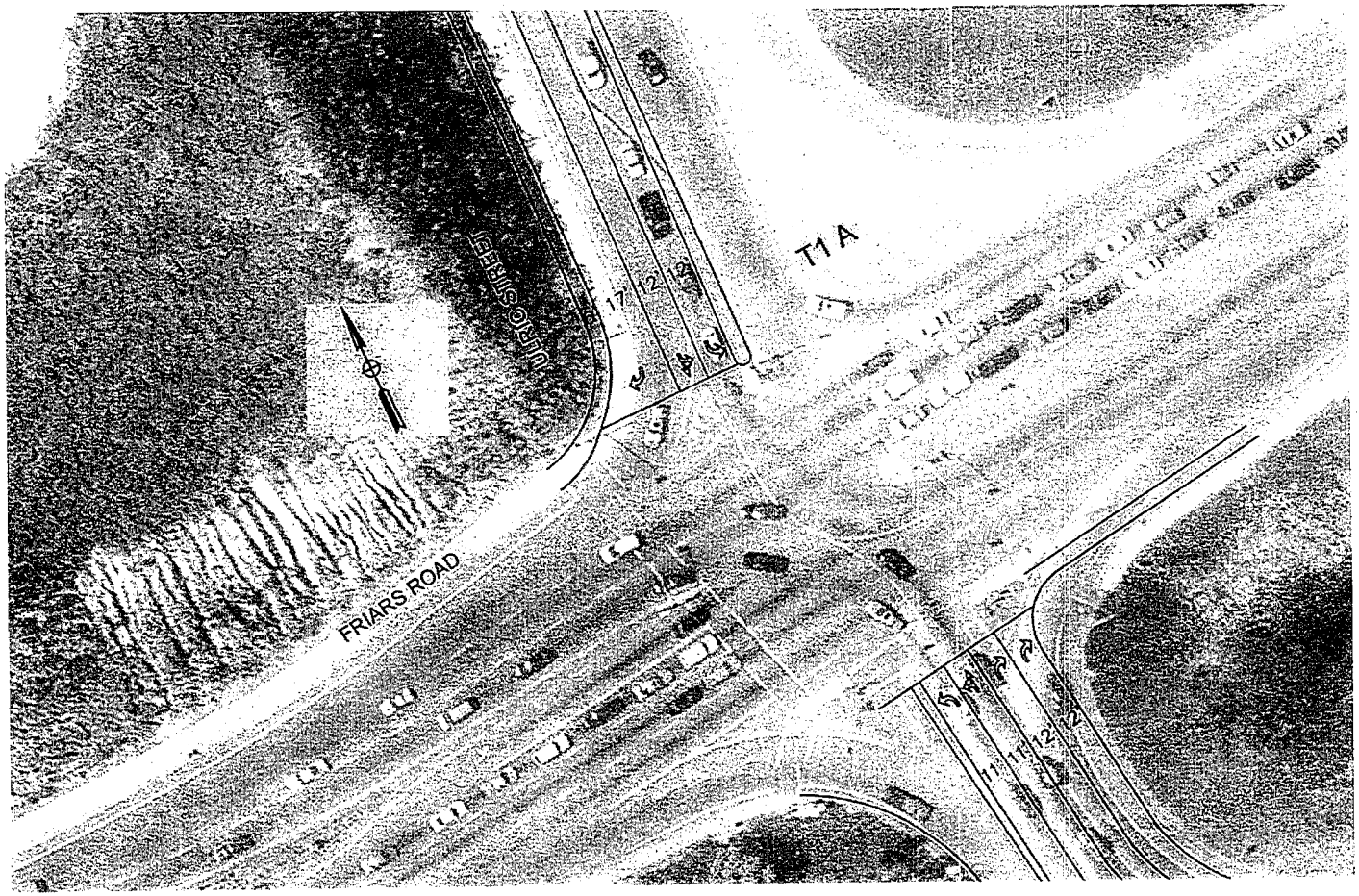


06-29-2006

Katz, Okitsu & Associates
Planning and Engineering

CONCEPTUAL IMPROVEMENT PLAN AT:
FRIARS ROAD AND SR-163 INTERCHANGE
T - 1A

Exhibit C-2



06-29-2006

Katz, Okitsu & Associates
Planning and Engineering

CONCEPTUAL IMPROVEMENT PLAN AT:
FRIARS ROAD AND SR-163 INTERCHANGE
T - 1A

Exhibit C-3

Exhibit D – Park Description

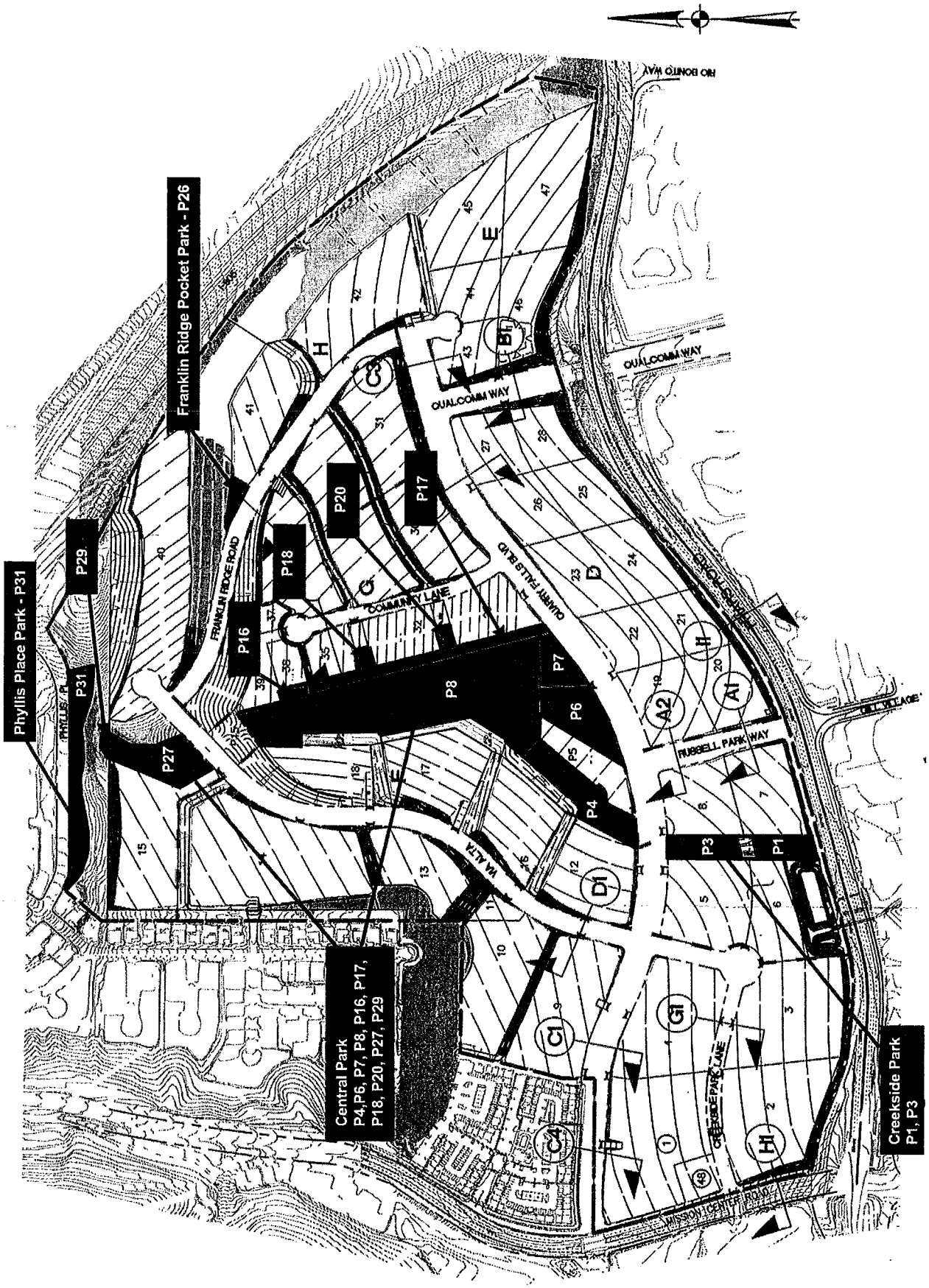


Exhibit "E"

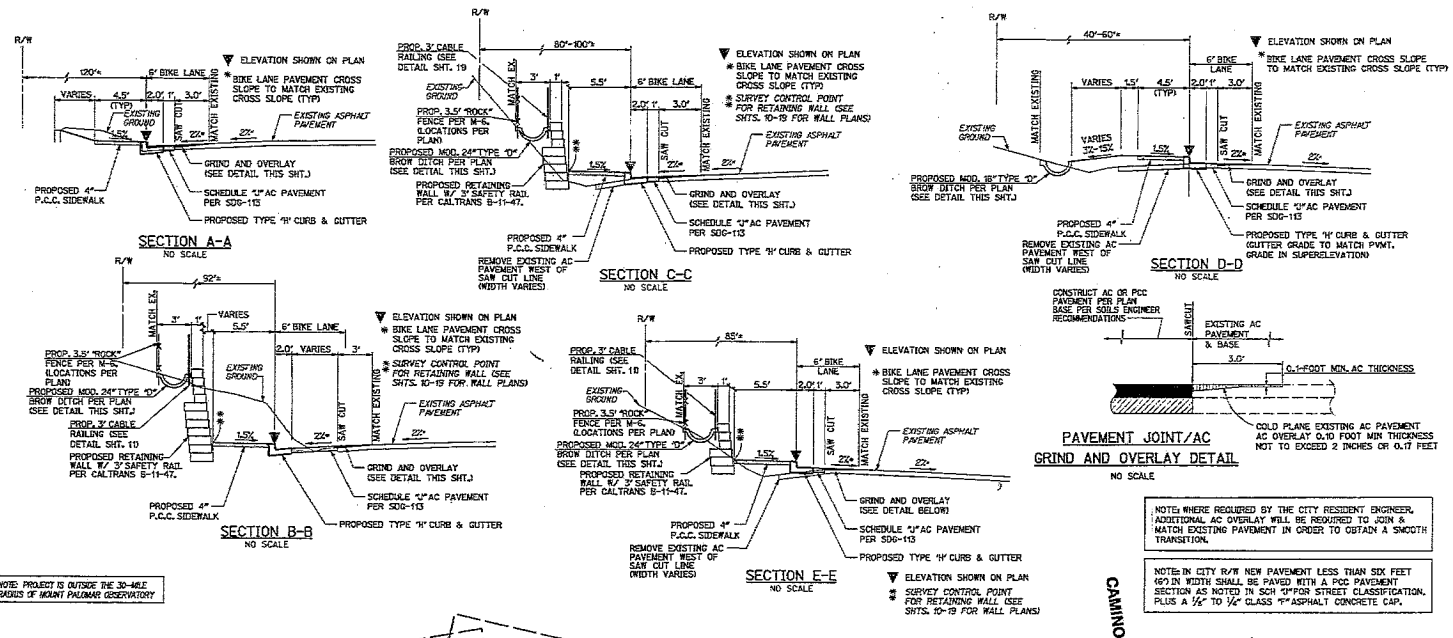
RTCIP Improvement Description

(Project #11 from Phasing Plan)

"Implementation of the following traffic calming measures on Texas Street from El Cajon Boulevard to Camino Del Rio South: provide pedestrian lighting and a new sidewalk from Camino Del Rio South to Madison Avenue (per item T4 in the Greater North Park Planning Committee's Priority List on page 13 of the Public Facilities Financing Plan, 2002)."

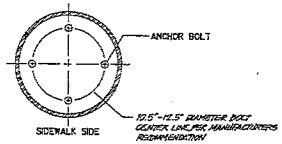
STREET LIGHT NOTES

1. CONTRACTOR INSTALLING THE STREET LIGHTING DISTRIBUTION SYSTEM SHALL NOTIFY THE CITY FIELD ENGINEER, AT (858) 627-3200, A MINIMUM OF THREE (3) DAYS PRIOR TO STARTING OF WORK FOR APPROVAL OF CONDUIT LOCATIONS AND REQUIREMENTS.
2. CONTRACTOR SHALL VERIFY THAT ALL STREET LIGHTS ARE ACTIVATED AND SHALL NOTIFY THE CITY FIELD ENGINEER, AT (858) 627-3200, A MAXIMUM OF FOUR (4) WEEKS AFTER FINAL ELECTRICAL INSPECTION.
3. NATIONAL ELECTRICAL CODE (NEC) WIRE COLOR CODING SHALL BE USED FOR ALL ELECTRICAL WORK.
4. THE IMPROVEMENT PLANS SHOULD SHOW ALL OF THE EXISTING AND PROPOSED STREET LIGHTS, PULL BOXES AND SERVICE POINTS IN THE VICINITY OF THE PROJECT AREA.
5. STREET LIGHT SCHEDULE:
   FOR TABLE SEE SHEET 20
6. STREET LIGHT SCHEDULE GUIDELINES:
   A. STREET LIGHT LUMINAIRES SHALL BE HIGH PRESSURE SODIUM VAPOR (HPS) WITH TYPE III DISTRIBUTION AND FULL CUT-OFF CONTROL OUTSIDE OF THE 30-MILE RADIUS OF MT. PALOMAR OBSERVATORY. LOW PRESSURE SODIUM VAPOR (LPS) SHALL BE USED WITHIN THE 30-MILE RADIUS OF MT. PALOMAR OBSERVATORY (CITY COUNCIL POLICY 200-18, ADOPTED MAY 30, 1995; AMENDED FEBRUARY 26, 2002).
   B. STREET LIGHT STANDARDS SHALL BE EITHER TYPE 15 STEEL, ANCHOR BASE CONCRETE (AB), OR DIRECT BURIAL CONCRETE (DB), AND SHALL CONFORM TO CURRENT CITY STANDARD DRAWING, SDE-161.
   C. MID-BLOCK STREET LIGHTING SHALL BE SPACED IN ACCORDANCE WITH THE CITY OF SAN DIEGO STREET DESIGN MANUAL, STREET LIGHTING SECTION (L7), PG. 94 AND CITY COUNCIL POLICY 200-18 (ADOPTED MAY 30, 1995; AMENDED JANUARY 10, 2000).
   D. SUPPLEMENTAL AND SPECIAL ORNAMENTAL STREET LIGHTING SHALL BE INCLUDED IN A SPECIAL STREET LIGHTING ASSESSMENT DISTRICT OR MAINTENANCE ASSESSMENT DISTRICT AND SHALL BE DESIGNATED WITH AN ASTERISK NEXT TO THE STREET LIGHT NUMBER. THE DEVELOPER/APPLICANT WILL BE ASSESSED THE COST OF THE STREET LIGHTS FOR THE PERIOD FROM THE DATE THE LIGHTS ARE ENERGIZED TO THE DATE THE ASSESSMENT DISTRICT IS FORMED. THE FEE MUST BE PAID PRIOR TO THE ENERGIZING OF THE STREET LIGHTS. THE DEVELOPER/APPLICANT SHALL CONTACT ANDY FIELD, PARK & RECREATION MAINTENANCE ASSESSMENT DISTRICT, AT (619) 533-4724 TO DETERMINE THE TOTAL FEE.
   E. ALL PRIVATE STREET LIGHTS SHALL HAVE SEPARATE SERVICE POINT AND SHALL NOT BE CONNECTED TO THE CITY CIRCUITS.
   F. ANY PRIVATE STREET LIGHTS SHOWN ON THESE PLANS ARE FOR INFORMATION ONLY. PROPOSED PRIVATE STREET LIGHTS SHALL BE PERMITTED AND INSPECTED UNDER A SEPARATE ELECTRICAL PERMIT.



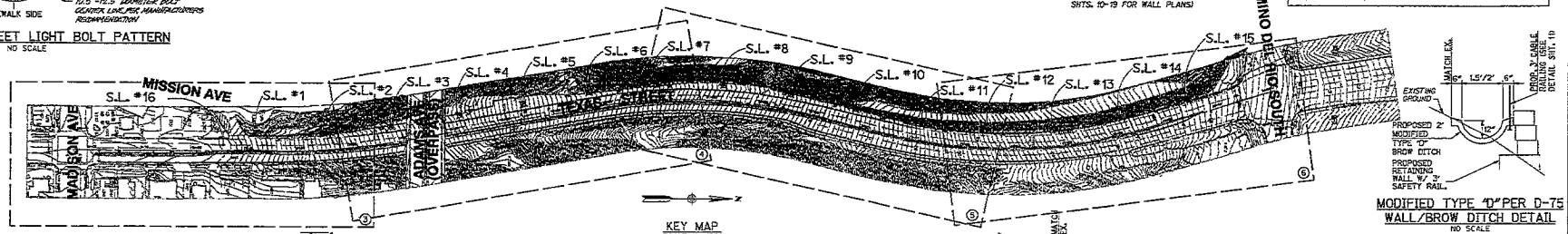
NOTE: WHERE REQUIRED BY THE CITY RESIDENT ENGINEER, ADDITIONAL AC OVERLAY WILL BE REQUIRED TO JOIN & MATCH EXISTING PAVEMENT IN ORDER TO OBTAIN A SMOOTH TRANSITION.

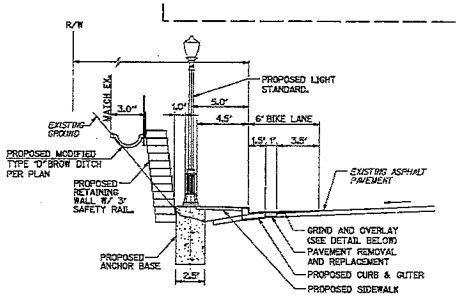
NOTE: IN CITY R/W NEW PAVEMENT LESS THAN SIX FEET (6') IN WIDTH SHALL BE PAVED WITH A PCC PAVEMENT SECTION AS NOTED IN SCH "J" FOR STREET CLASSIFICATION. PLUS A 1/2" TO 1/4" CLASS "F" ASPHALT CONCRETE CAP.

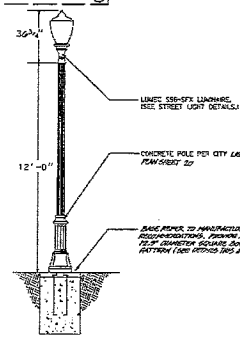


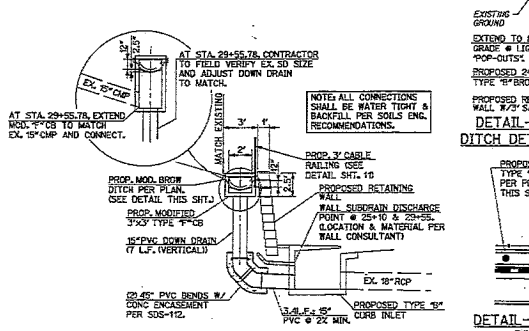
ORNAMENTAL STREET LIGHT BOLT PATTERN
NO SCALE

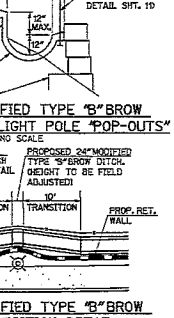
NOTE: PROJECT IS OUTSIDE THE 30-MILE RADIUS OF MOUNT PALOMAR OBSERVATORY

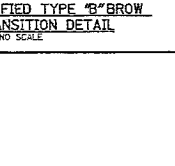












ENGINEER OF WORK

TIMOTHY W. GABRIELSON R.C.E. 51503 DATE 8/25/11

REGISTERED PROFESSIONAL ENGINEER TIMOTHY WARREN GABRIELSON NO. 51503 CIVIL STATE OF CALIFORNIA

PRIVATE CONTRACT

OFFSITE IMPROVEMENT & GRADING PLANS FOR:

QUARRY FALLS (CIVITA)
TEXAS STREET SIDEWALK

BETWEEN MISSION AVE. AND CAMINO DEL RIO SOUTH

CITY OF SAN DIEGO, CALIFORNIA
DEVELOPMENT SERVICES DEPARTMENT
SHEET 2 OF 28 SHEETS

I.O. NO. 24002903
P.T.S NO. 211750

FOR CITY ENGINEER — DATE

DESCRIPTION	BY	APPROVED	DATE	FILMED
ORIGINAL	REC			

V.T.M. 40-1316

1986-6017
HARDS COORDINATES

215-1722
LAMBERT COORDINATES

CONTRACTOR _____ DATE STARTED _____
INSPECTOR _____ DATE COMPLETED _____

35566- 2-D

11-03-10

RICK ENGINEERING COMPANY
9620 FRIARS ROAD
SAN DIEGO, CA 92110
619.291.0202
(FAX)619.291.4165
rickengineering.com

Exhibit G - Murray Ridge Improvement

CITY OF SAN DIEGO
M E M O R A N D U M

DATE: March 26, 2012

TO: Mark Redelow, Vice President, Sr. Project Manager, Sudberry Properties

FROM: Nick Manansala, Resident Engineer, Field Engineering Division

SUBJECT: Murray Ridge Road & Mission Center Road Traffic Signal

---

Final-operational check for the traffic signal at Murray Ridge Road and Mission Center Road was conducted on February 27, 2012. This letter is to confirm that work was substantially completed.

Sincerely

Nick Manansala
Resident Engineer

Exhibit H-1

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

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

(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 H-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 H-2

Preliminary Cost Estimate for Creekside Park 1.30 Acres

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

(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 H-3

Preliminary Cost Estimate for Franklin Ridge Pocket Park 0.20 Acre

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

(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 H-4

Preliminary Cost Estimate for Phyllis Place Park 1.33 Acre

I.	**Design:**		
	A.	**Consultant Fees (12% of Construction)**	**$165,953**
II.	**Construction** (1) (2):		**$1,382,940**
		Subtotal Design/Construction	**$1,548,893**
III.	**Construction Contingencies (10% of Construction Costs)**		**$138,294**
IV.	**Administration:**		
	A.	**City Administration (20% of Design/Construction Costs)**	**$309,779**
	B.	**Developer Administration (5% of Design/Construction Costs)**	**$77,445**
V.	**Land** (3):		
	A.	**Acquisition** **1.33 ac. x $584,000/ac. =**	**$776,720**
		Subtotal	**$2,851,130**
		Mission Valley pro rata share (4) **62% x $3,670,410 =**	**$1,767,701**
		Total Costs (5)	**$1,767,701**

(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 H-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 I

Amendment to RTCIP Program

City of San Diego Regional Transportation Congestion Improvement Program (RTCIP) Funding Program

Revised April 2012

TABLE OF CONTENTS

1. INTRODUCTION 1
2. NEXUS STUDY 2
3. RTCIP IMPACT FEE CALCULATION 2
4. COLLECTION OF IMPACT FEES 2
5. EXPENDITURE OF FUNDS 2
6. REPORTING REQUIREMENTS 3
7. GENERAL EXEMPTIONS 4
8. AFFORDABLE HOUSING EXEMPTION 4
9. EXEMPT ALTERNATIVELY CONTRIBUTING COMMUNITIES 4
10. POTENTIALLY EXEMPT ALTERNATIVELY CONTRIBUTING COMMUNITY PROJECTS 5
11. NON-EXEMPT COMMUNITIES 6
12. LIST OF EXEMPT ALTERNATIVELY CONTRIBUTING COMMUNITIES 6
13. LIST OF POTENTIALLY EXEMPT ALTERNATIVELY CONTRIBUTING COMMUNITY PROJECTS 6
14. PROJECT SPECIFIC CONTRIBUTION ANALYSIS 8

APPENDIX:

A. SANDAG TRANSNET EXTENSION ORDINANCE AND EXPENDITURE PLAN
B. RTCIP IMPACT FEE NEXUS STUDY
C. COUNCIL RESOLUTION APPROVING RTCIP FUNDING PROGRAM
D. REGIONAL ARTERIALS WITHIN SAN DIEGO JURISDICTION (SANDAG 2050 RTP)
E. SANDAG BOARD POLICY NO. 31 - RULES 17 & 23

1 INTRODUCTION

On May 28, 2004, the San Diego County Regional Transportation Commission adopted the San Diego Transportation Improvement Program Ordinance and Expenditure Plan (TransNet 2 Ordinance), approved by San Diego voters in November, 2004. The TransNet 2 Ordinance (Appendix A) established a Regional Transportation Congestion Improvement Program (RTCIP) to ensure future development contributes its proportional share of the funding needed to pay for the Regional Arterial System (RAS) and related regional transportation facility improvements.

Under Section 9 of the TransNet 2 Ordinance, each local agency shall establish an impact fee or other revenue Funding Program by which it collects and funds its contribution to the RTCIP; and shall be responsible for establishing a procedure for providing its monetary contribution to the RTCIP. This program is known as the local jurisdiction's funding program. RTCIP revenue is to be used to construct improvements on the RAS such as new or widened arterials, traffic signal coordination and other traffic improvements, freeway interchange and related freeway improvements, railroad grade separations, and improvements required for regional express bus and rail transit. If a local agency does not comply with the RTCIP requirements set forth in the TransNet 2 Ordinance, the agency may lose TransNet sales tax funding for local roads.

This document constitutes the City of San Diego's RTCIP Funding Program (City RTCIP Program) pursuant to the TransNet 2 Ordinance requirements. Key Components to the City RTCIP Program include:

- Beginning July 1, 2008, the City of San Diego (City) must contribute $2,000 (increased annually based upon the Engineering Construction Cost Index or similar cost of construction index or two percent, whichever is greater, and as approved by the SANDAG Board of Directors) on RAS improvements per each new residential dwelling unit (City RTCIP Funding Requirement);

- Beginning July 1, 2008, the City implements a City RTCIP Development Impact Fee Schedule on residential development, as adopted and updated annually by City Council Resolution, which identifies the applicable RTCIP fee (City RTCIP Fee);

- Beginning July 1, 2008, certain residential development in communities, and specifically identified projects, as adopted and updated by City Council Resolution, are not required to pay a City RTCIP Fee because compliance with the City's RTCIP Program is demonstrated through private sector payments or provision of an average of $2,000 (plus applicable annual increases) per residential unit through payment of a Facilities Benefit Assessment (FBA) or other similar development fee, or through provision of eligible RAS improvements;

- City RTCIP Fees are collected at building permit issuance; and revenues must be expended within the parameters defined under the Mitigation Fee Act (California Government Code Sections 66000 *et seq.*) and in a manner consistent with the expenditure priorities in the SANDAG Regional Transportation Plan (RTP); and

- The Independent Taxpayer Oversight Committee (ITOC), created by SANDAG for the TransNet Program is responsible for reviewing the City's implementation of the RTCIP.

2 NEXUS STUDY

In order to comply with the Mitigation Fee Act, the City is required to make certain findings demonstrating a reasonable relationship or nexus between the amount of the City RTCIP Fee collected and the cost of public facilities attributable to the development on which the fee is imposed. On September 22, 2006 the SANDAG Board of Directors approved the "RTCIP Impact Fee Nexus Study" dated September 5, 2006, as prepared by MuniFinancial (Nexus Study). The Nexus Study (Appendix B) provides the basis for the dollar amount of the RTCIP Fee. The Nexus Study was adopted by the San Diego City Council (City Council) on April 14, 2008 by Resolution No. R-303554 (Appendix C).

3 RTCIP IMPACT FEE CALCULATION

SANDAG staff developed the original RTCIP contribution amount of $2,000 per residence using an approach that allocated transportation system improvements proportionately across both existing development and projected growth. The methodology, specified in the Nexus Study, assumes that all residential development, existing and new, has the same impact on the need for RAS improvements based on the amount of travel demand generated (vehicle trips). Thus, existing and new development should share proportionately in the cost of transportation system improvements.

The City RTCIP Fee is broken down into a multi-family fee and a single family fee as set forth below:

New Multi-Family Residential Unit (FY 2009)	$ 1,865
New Single Family Residential Unit (FY 2009)	$ 2,331

The purpose of bifurcating the fee is to reflect the reduced number of vehicle trips generated by multifamily residential development. This methodology is consistent with other Development Impact Fee calculations in which a separate single family and multi-family fee is provided. As it was anticipated that these fee amounts would satisfy the RTCIP Funding Requirement, the City adopted these fee amounts as the City RTCIP Fee with the implementation of the City RTCIP Program on July 1, 2008.

4 COLLECTION OF IMPACT FEES

In accordance with Municipal Code Section 142.0640, and the resolutions adoting the City RTCIP Fee, the City RTCIP Fee is due at building permit issuance. In accordance with the TransNet 2 Ordinance, the fee is subject to annual increases based upon the Engineering Construction Cost Index or similar cost of construction index, or two percent, whichever is greater, as approved by the SANDAG Board of Directors.

5 EXPENDINTURE OF FUNDS

1. Revenues collected through the City RTCIP Program shall be used for preliminary and final engineering, right-of-way acquisition, and construction that will be needed to accommodate future travel demand generated by new development throughout the San Diego region. Selection of proposed projects to be fully or partially funded by the City RTCIP Program are based upon RTCIP eligibility criteria and the City Council approved CIP Prioritization Policy (800-14).

RTCIP Fee revenues must be expended on improvments to the Regional Arterial System (RAS), as designated and updated periodically in the SANDAG Regional Arterials by Jurisdiction (Appendix D showing San Diego area locations). RAS arterials are defined as meeting one of three criteria:

- provides parallel capacity in high-volume corridors to supplement freeways, state highways, and/or other regional arterials (Corridor);
- provides capacity and a direct connection between freeways or other regional arterials, ensuring continuity of the freeway, state highways, and arterial network throughout the region without duplicating other regional facilities (Cross-corridor); or
- provides all or part of the route for existing or planned regional and/or corridor transit service that provides headways of 15 minutes or less during the peak period.

RTCIP revenues may be expended for costs associated with RAS improvements including: arterial widening, extension, and turning lanes; traffic signal coordination and other traffic improvements; reconfigured freeway-arterial interchanges; railroad grade separations; and expanded regional bus service.

6 REPORTING REQUIREMENTS

TransNet 2 Ordinance Section 9 requires that RTCIP fees increase annually by an amount no less than 2% per year; that an annual review of the City RTCIP Program be performed by the SANDAG Independent Taxpayers Oversight Committee (ITOC), and that an annual audit of the City RTCIP Program be performed by SANDAG. For specific requirements, see SANDAG Board Policy Rule 17 and Rule 23 (Appendix E). Specific to the City of San Diego:

Annual Fee Schedule Increase

The Development Services Department (DSD) Facilities Financing Division prepares an annual Report to City Council no later than April 29 of each year requesting approval and adoption of an increase to the current City RTCIP Fee Schedule for the following fiscal year in an amount equal to the annual percent increase approved by the SANDAG Board of Directors.

Annual ITOC Review

The DSD Facilities Financing Division submits an annual report to ITOC no later than March 31 of each year documenting implementation of the City RTCIP Program, itemizing changes to the program including amount of previous annual increase approved by City Council, and confirming continued adherence to the program through the end of the prior fiscal year.

Annual SANDAG Audit

The SANDAG annual audit is conducted in the Office of the City Auditor in conjunction with DSD Facilities Financing Division to verify the City is in compliance with the TransNet 2 Ordinance, and has collected or provided RAS improvements in an amount or value greater than $2,000 (plus applicable annual increases) average per residential unit.

7 GENERAL EXEMPTIONS

Consistent with the RTCIP as set forth in the TransNet 2 Ordinance, the following types of development shall be exempt from the City RTCIP Fee:

A. New moderate, low, very low and extremely low income residential units as defined in Health & Safety Code sections 50079.5, 50093, 50105, 50106, and by reference in Government Code section 65585.1;
B. Government/public buildings, public schools and public facilities;
C. Rehabilitation and/or reconstruction of any legal residential structure and/or the replacement of a previously existing residential unit;
D. Development projects subject to Public Facilities Development Agreements prior to the effective date of the TransNet 2 Ordinance (May 28, 2004) that expressly prohibit the imposition of new fees; provided however, that if the terms of the development agreement are extended after July 1, 2008, the requirements of the City RTCIP Program shall be imposed;
E. Guest dwellings;
F. Additional residential units located on the same parcel regulated by the provisions of any agricultural zoning;
G. Kennels and catteries established in conjunction with an existing residential unit;
H. The sanctuary building of a church, mosque, synagogue, or other house of worship eligible for property tax exemption;
I. Residential units that have been issued a building permit prior to July 1, 2008; and,
J. Condominium converstions.

8 AFFORDABLE HOUSING EXEMPTION

In order to be exempt from payment of the City RTCIP Fee at the time of building permit issuance, each unit must meet the definition of affordable housing as defined above in Section 7(A), and provide a copy of an affordable housing agreement with the San Diego Housing Commission.

9 EXEMPT ALTERNATIVELY CONTRIBUTING COMMUNITIES

Community planning areas which collect Facilities Benefit Assessments (FBA), or similar development fees or facilities in an amount or value greater than $2,000 average (plus applicable annual increases) per residential unit, are considered to have met the required contribution towards the RAS and thus the City's RTCIP Funding Requirement without additional payment of the City RTCIP Fee. These communities, as identified in Section 12, are considered to be **Exempt Alternatively Contributing Communities** and are exempt from the City RTCIP Fee.

To ensure that City RTCIP Fees continue to be collected appropriately, the DSD Facilities Financing Division shall conduct an analysis to determine the current per-residential unit contribution towards funding or provision of RAS projects, no less than once every five years, beginning in Fiscal Year 2009. Based on the analysis, the list of communities exempt from paying City RTCIP Fees may be amended. However, changes to the list are subject to City Council approval and only those communities and specific projects included on the current Council approved list may be exempt from payment of City RTCIP Fees at time of building permit issuance.

10 POTENTIALLY EXEMPT ALTERNATIVELEY CONTRIBUTING COMMUNITY PROJECTS

In certain circumstances, the City may determine that a particular project that is not otherwise located in an alternatively contributing community will otherwise contribute the required contribution toward the RAS, and thus meet the RTCIP Funding Requirement through the payment of other development fees or provision of RAS improvements valued at an amount greater than or equal to the amount the project would otherwise be required to pay through City RTCIP Fee collection. These community projects, identified in Section 13, are considered to be **Potentially Exempt Alternatively Contributing Community Projects**, and residential units within these projects may qualify for the RTCIP exemption.

To be exempt from paying the City RTCIP Fee at time of building permit issuance, prior to building permit issuance the City must verify that the value of the RAS improvement being provided exceeds the revenue requirements of the RTCIP Funding Program. If it cannot be verified, the City RTCIP Fee shall be paid at building permit issuance. If the value received from the project toward RAS improvements is determined to be insufficient after the building permit is issued, in no case shall a certificate of occupancy be issued until the deficit is paid in City RTCIP Fees. In order to comply with the annual auditing requirements of the RTCIP, the City must submit evidence demonstrating that the required contribution toward the City RTCIP has been met through the provision of improvements that equal or exceed the City RTCIP Fee.

Each alternatively contributing community project shall be required to submit documentation for each RAS improvement it provides, in support of its alternative contribution to the RTCIP Funding Requirement. Such documentation shall include, but not be limited to, copies of contracts, change orders, and invoices received, proof of vendor payments, and proof that all mechanic liens have been released. The City shall verify whether materials and work have been installed and performed per the documents submitted, terms of the project plans and specifications, and in adherence to the bid list as to quality and quantities.

The applicant will be required to establish a deposit account with the City, and contribute up to a maximum of three percent (3%) of the total cost of each RAS improvement as stated below:

- Up to three percent (3%): RAS improvement less than $1,000,000;
- Up to two percent (2%): RAS improvement greater than $1,000,00 and less than $5,000,000; or
- Up to one percent (1%): RAS improvement greater than $5,000,000.

The deposit account will fund the cost to review and verify the value of the RAS improvement provided in lieu of the City RTCIP Fee. It is anticipated that the review and verification process will be conducted by a consultant retained by the City. The funds used in the deposit account shall not count toward the value of the RAS improvement contributed in lieu of the City RTCIP Fee, nor shall it be considered a credit against fees.

11 NON-EXEMPT COMMUNITIES

List of communities in which City RTCIP Fee will be imposed:

Barrio Logan
Carmel Mountain Ranch
Centre City
Clairemont Mesa
College Area
Fairbanks Ranch
Golden Hill
Kearny Mesa
La Jolla
Linda Vista
Mid City
Midway/Pac. Highway
Miramar Ranch North
Mission Beach
Mission Valley
Navajo
North Park
Ocean Beach
Old San Diego
Otay Mesa – Nestor
Pacific Beach
Peninsula
Rancho Bernardo
Rancho Encantada
Sabre Springs
San Pasqual
San Ysidro
Serra Mesa
Skyline/Paradise Hills
Southeastern San Diego
Subarea 2
Tierrasanta
Tijuana River Valley
Torrey Hills
Torrey Pines
University City South
Uptown
Via de la Valle

12 LIST OF EXEMPT ALTERNATIVELY CONTRIBUTING COMMUNITIES

Communities in which City RTCIP Fee will not be imposed:

Black Mountain Ranch
Carmel Valley
Del Mar Mesa
Mira Mesa
North University City
Otay Mesa
Pacific Highlands Ranch
Rancho Peñasquitos
Scripps Miramar Ranch
Torrey Highlands

13 LIST OF POTENTIALLY EXEMPT ALTERNATIVELY CONTRIBUTING COMMUNITY PROJECTS

Projects in which Residential Development May be Exempt from City RTCIP Fee

Quarry Falls Project No. 49068

In-lieu of contributing the City RTCIP Fee, the Quarry Falls Project No. 49068 (Quarry Falls Project) may provide its share toward mitigating new traffic impacts on the RAS by constructing RAS improvements in an amount or value greater than $2,000 (plus applicable annual increases) average per residential unit. An analysis of the Quarry Falls Project is shown in Section 14.

RTCIP Reimbursement

For those projects listed in Section 13, RTCIP reimbursement may be issued. At the City's sole discretion, City RTCIP Fees already paid at time of building permit issuance may be reimbursed to a private developer, if the private developer has designed and/or constructed an eligible RAS improvement and has entered into a Reimbursement Agreement (RA) with the City, and as per the specific terms of the RA.

RTCIP Credit Allowance

For those projects listed in Section 13, RTCIP credit allowance may be issued. At the City's discretion, a private developer (Developer) may be entitled to a City RTCIP Fee credit allowance as follows:

A. Up to twenty-five percent (25%) credit allowance based on the City verified cost estimate for the RAS improvement subject to a Developer satisfying all of the following requirements:

1. All construction plans and drawings for the RAS improvement have been approved by the City;
2. Any right-of-way required for the RAS improvement has been secured and dedicated, or an irrevocable offer to dedicate has been provided to the City;
3. All required permits and environmental clearances necessary for the RAS improvement have been secured;
4. Provision of all performance bonds and payment bonds to complete the RAS improvement; and
5. Payment of all City fees and costs.

B. Up to fifty percent (50%) credit allowance based on the amount of the construction contract, consultants contract, and soft costs that qualify as allowable in lieu costs then incurred for the individual RAS improvement subject to a Developer satisfying all of the above referenced requirements for the twenty-five percent (25%) credit allowance, and provided Developer has received valid bids for the RAS improvement, and has awarded the construction contract.

C. Up to ninety percent (90%) credit allowance at the time of Operational Acceptance, provided that reimbursement requests have been submitted and approved for such amounts, based on the value of the improvements as verified by the City.

D. A credit allowance shall be issued to Developer based upon the remaining ten percent (10%) of value of RAS improvement upon the later of: (i) the recordation by Developer of the notice of completion and delivery of a conformed copy to City, or (ii) City's written acceptance of the Project As-Built Drawings.

14 PROJECT SPECIFIC CONTRIBUTION ANALYSIS

Quarry Falls Project No. 49068

Standard RTCIP Fee Calculation:

Number of Market Rate Residential Units:	4,302
Number of Affordable Units:	478
FY 2012 RTCIP Fee:	$1,979
Total Estimated Contribution:	$8,513,658

Proposed Alternative Contribution

Number of Market Rate Residential Units:	4,302
Approx. Per Unit Average:	$6,403
Valus of RAS Improvements (2011)	$27,547,433

Comparison:

RTCIP Fee Contribution, Per Unit and Total:	$1,979 / **$8,513,658**
Alternative Contribution, Per Unit and Total:	$6,403/ **$27,547,433**

Phasing and Design, Funding, and Estimated Constrution Cost Details:

Project No.	Project Title	Estimated Cost
PHASE 1*		
4	Friars Road - Qualcomm Way to Mission Center Road	$2,613,762.00
10	Friars Road &Avenida De Las Tiendas	$158,558.00
11	Texas Street - Camino del Rio South to El Cajon Blvd	$1,185,544.00
		$3,957,864.00
PHASE 2*		
15a	Friars Rd/SR-163 Interchange	$2,660,000.00
15b	Mission Center Road/I-8 Interchange	$1,000,000.00
16	Friars Road - Pedestrian Bridge across Friars Road	$3,500,000.00
17	Friars Rd EB Ramp/Qualcomm Way	$1,296,750.00
18	Friars Road WB Ramp/Qualcomm Way	Incl. Above
19	Friars Rd/1-15 SB Off-ramp	$1,056,044.00
		$9,512,794.00
PHASE 3*		
15b	Mission Ctr Rd/ I-8 Interchange	$13,034,250.00
20	Texas St/ El Cajon Blvd	$416,350.00
21	Qualcomm Way / I-8 WB off ramp	$626,175.00
		$14,076,775.00
	Total Estimated Contribution:	**$27,547,433.00**

**Quarry Falls Transportation Phasing Plan (TPP) Project No. 49068; the TPP asumes no Phyllis Place Road connection and may be modified if the City subsequently approves the connection.*

EXHIBIT J

Notification of Reimbursable Project

Pursuant to Section 4.1.1 of the "Reimbursement Agreement" [Agreement], adopted pursuant to Resolution No. _____ and executed on _____, 2012, {Insert Subdivider Name} [Subdivider] hereby notifies the City of San Diego that work will begin on the following Project, {Insert Name of Project}, also known as Project No. {Insert Project No.} in the {Insert Financing Plan Name} Financing Plan on or about {Insert Date Work is Scheduled to Begin}.

{Insert Name of Subdivider},
{Insert type of entity}

By: _____

{Insert Title} _____

Dated: _____

Exhibit K

Fee Credit Notification

Facilities Financing Division
City of San Diego

Dear Sir or Madam:

As of this date, Quarry Falls, LLC, a California limited liability company ("QF"), has $_____ of Development Impact Fees ("DIF") credits with the City of San Diego, a municipal corporation ("City") pursuant to the Reimbursement Agreement with Quarry Falls, LLC for Public Facilities in the Mission Valley community, on file in the Office of the City Clerk as Document No. 00-_____ ("Reimbursement Agreement"). QF hereby assigns to _____, _____ ($_____) of those credits ("Assigned DIF Credits") for ___ units at $_____ per unit.

The Assigned DIF Credits are for the _____ project, Project No. _____ for Building _____ (address) consisting of _____Units, and Building _____ (address), consisting of _____ Units, for a total of ____ Units, in the Mission Valley community. The property to which the Assigned DIF Credits have been assigned is legally described as _____.

The Assigned DIF credits are to be deducted from the total DIF credits that Quarry Falls, LLC is entitled to receive under the Reimbursement Agreement. A balance of $_____ of DIF credits remains following this assignment.

Once approved, please remove any holds on final inspections placed as a result of the requirement to pay DIF for the above referenced units.

Very truly yours,

QUARRY FALLS, LLC, a California limited liability company,
By: Sudberry Properties/Entitlement, L.P., a California limited partnership, its Manager
By: Sudberry Development, Inc., a California corporation, its General Partner

By: _____ _____
Marco A. Sessa, Senior Vice President Date

Approved:

_____ _____
Tom Tomlinson, Facilities Financing Program Manager Date

Exhibit L

Equal Benefits Ordinance Certification of Compliance

EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE

For additional information, contact:
CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
202 C Street, MS 9A, San Diego, CA 92101
Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name:	Contact Name:
Company Address:	Contact Phone:
	Contact Email:

CONTRACT INFORMATION

Contract Title:	Start Date:
Contract Number (if no number, state location):	End Date:

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
  - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.
  - Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.
- Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.
- Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.
- Contractor shall submit *EBO Certification of Compliance*, signed under penalty of perjury, prior to award of contract.

NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at *www.sandiego.gov/administration*.

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.

☐ I affirm compliance with the EBO because my firm *(contractor must select one reason)*:
- ☐ Provides equal benefits to spouses and domestic partners.
- ☐ Provides no benefits to spouses or domestic partners.
- ☐ Has no employees.
- ☐ Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.

☐ I request the City's approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.

Name/Title of Signatory	Signature	Date

FOR OFFICIAL CITY USE ONLY

Receipt Date: EBO Analyst: ☐ Approved ☐ Not Approved – Reason:

rev 02/15/2011

EXHIBIT M

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 and payment in full to Consultant by Subdivider, the City will become the owner of the Project design and work products, and 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. **Professional Services Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Sections 4 and 5 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 [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, 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 services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant'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. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.

4. **Indemnification for Design Professional Services**. 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 the 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.

5. **Design 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 Design Professional or Design Professional's officers or employees.

6. **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.

7. **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 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 (1) this policy's retroactive date is on or before the date of commencement of the work to be performed under this Agreement; and (2) 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.

8. **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.

9. **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 that 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.

10. **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 or 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.

11. **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 ports of the ADA and Title 24.

12. **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 upon reasonable written notice. 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 N

Design and Construction Standards

1. **Laws**. Subdivider shall comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:

   A. *Permits*. Development Services Department permits, hazardous material permits.

   B. *Building Codes*. State and local Building Codes.

   C. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code* [Title 24]. It is Subdivider's sole responsibility to comply with all ADA and Title 24 regulations. See Subdivider Certification attached as **Exhibit O**.

   D. *Environmental.* Subdivider shall complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring.

   E. *Air, Water, and Discharge.* Subdivider shall comply with the Clean Air Act of 1970, the Clean Water Act, and San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).

   F. *ESBSSA.* Subdivider shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.

   G. *City Directives*. Subdivider shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.

2. **Standard Specifications**. Subdivider shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:

   A. *Greenbook.* Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments.

   B. *DOT.* California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.

3. **City Standards**. Subdivider'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:

   A. *City of San Diego's Drainage Design Manual.*

   B. *City of San Diego's Landscape Technical Manual produced by the Planning Department.*

   C. *City of San Diego's Street Design Manual.*

   D. *City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.*

   E. *City of San Diego's Technical Guidelines for Geotechnical Reports.*

F. *City of San Diego Standard Drawings including all Regional Standard Drawings.*

G. *City of San Diego Data Standards for Improvement Plans.*

H. *The City of San Diego Consultant's Guide to Park Design and Development.*

I. *The City of San Diego Water Department Guidelines and Standards*

6. **Architectural Compatibility**. Subdivider shall design the Project in a fashion which is architecturally compatible with the Project's surrounding area, subject to the City's discretion.

EXHIBIT O

Certification for Title 24/ADA Compliance

Quarry Falls Masterplan

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for **Quarry Falls Masterplan** by **Rick Engineering, Geocon Inc., Schmidt Design Group and any and all consultants and sub-consultants** shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with the Americans with Disabilities Act of 1990.

Dated: 3/27/13

By: V.P.
MARK RADELOW

EXHIBIT P

Approval of Design, Plans, and Specifications

UNLESS OTHERWISE DIRECTED BY THE CITY OR AS SPECIFIED IN THE PARK AGREEMENT, SUBDIVIDER SHALL OBTAIN APPROVAL OF DESIGN, PLANS, AND SPECIFICATIONS IN THE MANNER IDENTIFIED BELOW:

1. **City Approval.** Subdivider shall obtain City approval of the design, in writing, at schematic design, 60% Design, and 90% Design.

   A. *Condition Precedent.* City approval of the Schematic Design Documents is a condition precedent to authorization to proceed with subsequent work on the Project. City will notify Subdivider in writing within four weeks after receipt of Design Documents of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Schematics for City approval.

   B. *Sixty (60) Percent Design.* At 60% design, City will notify Subdivider in writing within eight weeks after receipt of Design Documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Design Documents for City approval.

   C. *Ninety (90) Percent Design.* At 90% design, City will notify Subdivider in writing within ten weeks after receipt of design documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Design Documents for City approval.

2. **Submittal of Plans, Specifications, and Budget.** Subdivider shall deliver to City complete Plans and Specifications, Estimated Costs, and bid documents, consistent with the Schematic Drawings, for the design and construction of the Project in accordance with Article XI of the Agreement.

3. **Citywide Review of 100% Plans and Specifications.** City agrees to review the Plans and Specifications and provide City's written comments to Subdivider within ninety (90) calendar days of the date such Plans and Specifications are delivered to City in accordance with the notice provisions in Article XXVIII. Plans and Specifications shall include City's standard drawings and specifications as described in **Exhibit N**. If requested by City, Subdivider shall make changes to the Plans and Specifications, but Subdivider shall not be responsible for implementing such changes if they would increase the Estimated Cost by more than 5%. In such a case, the changes to the Plans and Specifications shall be considered additive or deductive bid alternates to the Project.

4. **Final Approval and Permit Review.** City approval of the Plans and Specifications is a condition precedent to authorization to proceed with subsequent work on the Project. Approval and permit review will require a minimum of ninety (90) calendar days from the date that the Plans and Specifications were submitted to the City review, if no changes are required, or ninety (90) days from the date the requested changes are submitted to the City.

EXHIBIT Q

RTCIP Improvement Cost Estimate*

1. Project: Texas Street Improvements

2. Scope: Lighting, retaining walls, sidewalk, curb and gutter, striping, and landscape

3. Design Costs

a.	Civil Engineer	Rick Engineering	$94,945
b.	Soils Engineer	Geocon Incorporated	$20,000
c.	Traffic Engineer	Rick Engineering	$26,400
d.	Structural Engineer	Simon Wong Engineering	$16,012
e.	Lighting Consultant	Francis Krahe & Associates	$5,000

4. Miscellaneous Soft Costs

a.	Plan Check and Permits	City of San Diego	$40,000
b.	Reimbursement Consultant	AECOM	$29,000
c.	Construction Consulting	Devcon CPM LLC	$20,000
d.	Employment Consultant	Ricky Laster Consulting	$2,250
e.	Bonding	Lexon Surety Company	$57,754
f.	Plan Processing	Janay Kruger	$5,000
g.	Misc. Costs	Various	$5,000

5. Hard Costs

a.	General Contractor	Excavating Engineers	$744,209
b.	Change Order – GC	Excavating Engineers	$75,000

6. Contingency 10% $114,057

7. **Total** **$1,254,627***

*In accordance with Recital I *and Section 4.1* of the Agreement, a maximum of $725,560 is eligible for reimbursement. Any amount in excess of $725,560 is a Non-Reimbursable Cost.

EXHIBIT R

Procedure for Processing Change Orders

1. **Forms Required.** All Change Orders shall be in writing on the appropriate City form and must be approved or rejected by City in writing as provided in Section 3, below, and delivered to Subdivider.

2. **Written Approval of Change Orders.** Change Orders that will not result in an increase in the Estimated Cost may be approved by the RE. If a requested Change Order would result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval.

3. **Process for Approval of Change Orders.** Subdivider shall notify the RE in writing of the need for a Change Order. A Change Order must indicate whether the change will result in any change to the Estimated Cost, Project Schedule, or Project quality established during the design and submittal review process.

   3.1 ***Resident Engineer Approval.*** If the Change Order request does not result in an increase in the Estimated Cost, the RE shall either approve or reject the Change Order in writing within fourteen (14) calendar days of receiving Subdivider's written notice, provided Subdivider has submitted complete documentation substantiating the need for such Change Order. If City fails to respond to Subdivider's written notice within the fourteen (14) calendar days, the Change Order request shall automatically be deemed denied.

   3.2 ***City Council Approval.*** For Change Orders not subject to Section 3.1, above, City Council approval is required. In such cases, once a Change Order is preliminarily approved by the appropriate City staff, City staff shall process the Change Order along with any required amendments to the Financing Plan and this Agreement as a 1472 (Request for Council Action). At a hearing on such Request for Council Action, City Council may either approve or reject such Change Orders. Council Approval shall not be subject to the fourteen (14) calendar day response time set forth above in Section 3.1. Furthermore, nothing in this Agreement shall compel the City Council to take any particular action.

EXHIBIT S

Extra Work Provisions

1. **Extra Work.** City may at any time prior to Project Completion order Extra Work on the Project. The sum of all Extra Work ordered shall not exceed five percent (5%) of the Estimated Cost at the time of Bid Award, without invalidating this Agreement and without notice to any surety.

   A. *Requests in Writing.* All requests for Extra Work shall be in writing, and shall be treated as and are subject to the same requirements as Change Orders. Subdivider shall not be responsible for failure to perform Extra Work, which was requested in a manner inconsistent with this Section.

2. **Bonds Required for Extra Work.** Subdivider's and its agents' bonds, under Article XXI, shall cover any Extra Work provided that the Extra Work is paid for by the Project Budget

3. **Reimbursement for Extra Work.** Work performed by Subdivider as Extra Work is reimbursable in the same manner described as in Article IV. The Project Contingency as described in Article VIII, Section 8.3.2, will be used first to cover the costs of Extra Work.

4. **Markup**. Subdivider will be paid a reasonable allowance for overhead and profit. The allowance shall not exceed five percent (5%) and shall be added to the Subdivider's costs for Extra Work.

EXHIBIT T

Project Schedule Obligations and Components

1. **Subdivider's Obligation**. To the extent required by City, Subdivider shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.

   A. *Project Initiation.* During Project initiation and design phases, Subdivider shall submit an updated Project Schedule on a quarterly basis to City for approval.

   B. *Construction Phase.* During Construction, Subdivider shall submit an updated Project Schedule monthly to City and shall include:

      i. Forecast Data with the intended plan for the remainder of the contract duration.
      ii. Actual Data with indications of when and how much Work and/or Services was performed (% complete)
      iii. Logic changes or other changes required to maintain the Project Schedule

2. **Detail and Format**. Unless otherwise directed by City, the Project Schedule shall include all phases of the Project. It shall be in a precedence diagram format, plotted on a time-scaled calendar, detailed to activity level, and shall include:

   A. Identification of *design and construction activities and their sequence:*

      i. Work shall be divided into a minimum of 5 activities.
      ii. Activities shall not exceed 21 calendar days in duration or $50,000 in value, except long lead procurement and submittal activities or those accepted by City.
      iii. Each Activity shall be assigned a budget value in accordance with Agreement requirements and activity descriptions.
         a. The sum of all budget values assigned shall equal Estimated Cost.
         b. Each construction activity shall indicate the estimated labor days and materials quantities required.
      iv. Incorporate specific activity and time requirements.
      v. Include 10 weather/delay days, commonly known as "rain days." The late finish date shall be the fully elapsed Contract Time.

   B. *Float Time.* Show activities on their early dates with corresponding Total Float Time noted beside them.

      i Project Schedule shall not include more than 40 calendar days of Float Time absent City approval.

   C. *Milestones.* Show Milestones with beginning and ending dates.

      i Milestones shall include schematic plans, 60% design, 90% design, 100% design; bid opening; Notice to Proceed; start construction; end construction; and Project Completion and Acceptance.

   D. *Relationships.* Show all appropriate definable relationships with separate explanation of constraints and each start-start, finish-finish, or lag relationship. Relate all activities to each other and to the first appropriate Milestone.

   E. *Procurement.* Show the procurement of major equipment and materials.

F. *Submittals.* Include all submittals required and identify the planned submittal dates, adequate review time, and the dates acceptance is required to support design and construction.

3. **Submittal**. Project Schedule shall be submitted to City on a computer disk in PRIMAVERA Project Planner P3e/c Release Version 4.1 SP1 software in conformance with Construction Plans & Scheduling by AGC or America, or other software specifically designated by City.

EXHIBIT U

Meeting Requirements

1. **Preconstruction Meeting.** Subdivider shall conduct a preconstruction meeting with its officers, agents and employees and City. The purpose of this meeting is to discuss: (1) the Agreement conditions, (2) Scope of Work clarifications, and (3) City policies, inspection requirements, and procedures.

   A. *Attendance.* Subdivider shall ensure that its construction contractor and major subcontractors, the Project Superintendent, and the City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by Subdivider or City attend the preconstruction meeting.

   B. *Minutes.* Subdivider shall take corresponding meeting minutes and distribute copies to all attendees.

2. **Progress Meetings.** Subdivider shall conduct weekly progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: Subdivider's Construction Superintendent, Subdivider's Project Manager, Subdivider's Design Consultant, City representatives including Responsible Department representatives, the Engineering and Capital Projects Project Manager and the Resident Engineer.

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

   B. *Special Meetings.* Special meetings shall occur at Project phases as outlined in **Exhibit V.**

   C. *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Subdivider has given no less than seven calendar days prior written notice of the rescheduled meeting.

3. **Agenda**. All meetings shall include at a minimum the agenda identified in **Exhibit V.**

EXHIBIT V

Preconstruction, Progress, & Special Meeting Agenda

1. Preconstruction. The issues below should be made part of the Preconstruction Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.

   1.1 Permits and Utility Issues, including telephone, cable, gas, and electric. RE to announce to Subdivider that franchise companies may be working in the area of the Project and that coordination regarding such a situation may need to be done.
   1.2 Establish parking areas for construction employees and possibly patrons/others.
   1.3 Subdivider's payment procedure and forms.
   1.4 Format for Request for Proposals (RFPs) using the sample in the back of the contract documents.
   1.5 Collection of emergency numbers for off-hour emergencies from the prime (with an alternate contact person).
   1.6 Distribution and discussion of the construction schedule.
   1.7 Procedure for maintaining the Project record documents.
   1.8 Distribution of the Second Opinion Option Form.
   1.9 Designation of persons authorized to represent and sign documents for the RE and Subdivider and the respective communication procedures between parties.
   1.10 Safety and first aid procedures including designation of Subdivider's safety officer.
   1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.
   1.12 Testing laboratory or agency and testing procedures.
   1.13 Establish schedule for progress meetings.
   1.14 Procedure for changes in work requested by Subdivider, notice to RE, timing, etc.
   1.15 Procedure for changes in work requested by City.
   1.16 Public safety.
   1.17 Housekeeping procedures and Project site maintenance.
   1.18 Protection and restoration of existing improvements.
   1.19 Sanitation, temporary lighting, power, water, etc.
   1.20 Procedure for encountering hazardous substances.
   1.21 Any items requested by attendees of preconstruction meeting/open discussion.

2. Progress Meetings. The issues below should be made part of the Progress Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.

   2.1 Review progress of construction since the previous meeting.
   2.2 Discuss field observations, problems, conflicts, opportunities, etc.
   2.3 Discuss pre-planning opportunities.
   2.4 Identify problems that impede planned progress and develop corrective measures as required to regain the projected schedule; revise the schedule if necessary.
   2.5 Discuss Subdivider's plan for progress during the next construction period and the corresponding inspections necessary.
   2.6 Discuss submittal status.
   2.7 Discuss request for information (RFI) status.
   2.8 Progress of schedule.
   2.9 Disputed items.
   2.10 Non-conformance/non-compliance items.
   2.11 New business of importance from any member of the meeting.
   2.12 Deferred approvals and their coordination.
   2.13 Discuss request for proposals, change orders, and progress payment status.

3. Special Meetings.

3.1 Grading. Prior to grading the site, the RE shall call a grading mini-preconstruction meeting. This meeting applies when surveying is being supplied by the City. The superintendent, the Subdivider's appropriate subcontractors, the RE, the City's survey crew, and any appropriate consultants (if deemed necessary by the RE) will attend. Unless otherwise noted, the agenda will be to coordinate the staking, reference markers, bearings, various site conditions, etc. as defined in the contract documents and any necessary coordination of scope or scheduling between the respective parties.

3.2 Roofing. Upon completion of the roofing structural diaphragm and prior to installing flashing, and/or any other roofing materials, the RE shall call a roof mini-preconstruction meeting. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, the roof suppliers manufacturer's representative, and any appropriate consultants (if deemed necessary by the RE) will attend. The agenda will be to coordinate the flashing, caulking, sealing, and different roofing materials and/or contractors on site with the various field conditions.

3.3 Landscaping. Upon completion of the grading and prior to the installation of any landscaping equipment, supplies, etc., the RE shall call a landscaping mini-preconstruction meeting. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The agenda will be to coordinate all landscape materials, plant and irrigation coverage, visual planting procedures, etc. and/or contractors on site with the various field conditions.

3.4 Mini-Preconstruction Meeting. Prior to the installation of any mechanical, electrical, plumbing, and sprinkler system equipment, the Subdivider shall call a mini-preconstruction meeting. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The intent of this meeting is to ensure that the prime contractor is adequately coordinating the space of the facility so as to not impede the visual integrity of the overall product.

3.5 Other. Upon appropriate notice to other parties, the RE may call special meetings at times agreed to by all parties involved.

EXHIBIT W

Construction Obligations

1. **Site Safety, Security, and Compliance.** Subdivider shall be responsible for site safety, security, and compliance with all related laws and regulations.

A. *Persons.* Subdivider shall be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by Subdivider to access the Project site.

B. *Other.* Subdivider is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been Accepted by the City pursuant to Article XIX.

C. *Environment.* Subdivider shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including, but not limited to, the Clean Air Act of 1970, the Clean Water Act, Executive Order Number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the applicable enforcement official. Furthermore, the Subdivider shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan [SWPPP] to be implemented by the Subdivider during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.

2. **Access to Project Site.**

A. *Field Office.* Subdivider shall provide in the construction budget a City field office (approximately 100 square feet) that allows City access to a desk, chair, two drawer locking file cabinet with key, phone, fax, computer, copy machine and paper during working hours.

B. *Site Access.* City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Subdivider.

C. *Site Tours.* Site tours may be necessary throughout completion of the Project. Subdivider shall allow City to conduct site tours from time to time as the City deems necessary. City will give Subdivider notice of a prospective tour and a mutually agreeable time shall be set. Subdivider is not obligated to conduct tours or allow access for tours when City failed to give prior notice.

3. **Surveying and Testing.** Subdivider shall coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:

A. *Existing Conditions.* Subdivider shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The Soils Consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.

B. *Utilities.* Subdivider shall provide all required information for the construction or relocation of public or private utility facilities that must be constructed or relocated as a result of this Project. Subdivider shall file all of the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project.

C. *Geotechnical Information.* Subdivider shall obtain all necessary geotechnical information required for the design and construction of the Project. The Project Engineering Geologist and/or Project

Soils Engineer (qualified R.C.E. or R.G.E.) shall prepare a statement that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.

4. **Public Right of Way.** All work, including, materials testing, special testing, and surveying to be conducted in the Public right of way shall be coordinated with the City.

A. *Materials Testing.* Subdivider shall pay for and coordinate with City to have all material tests within the Public right of way and any asphalt paving completed by City's Material Testing Laboratory.

B. *Surveying.* Subdivider shall pay for and coordinate with City's Survey Section all surveying required within the Public right of way.

C. *Follow all Laws, Rules, and Regulations.* Subdivider agrees to follow all City standards and regulations while working in the Public right of way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.

5. **Traffic Control.** Subdivider shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.

6. **Inspections.** Subdivider shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.

A. *Reports.* Subdivider shall provide City all special inspection reports within seven (7) calendar days of inspection. Subdivider shall report all failures of special inspections to City.

B. *Remedies.* Remedies for compliance shall be approved by Subdivider, Subdivider's consultants, City's Development Services Department, and City representatives.

C. *Concealing Work.* Prior to concealing work, Subdivider shall obtain approval of the work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as stipulated in this Agreement. This approval is general approval only and in no way relieves Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Subdivider shall fulfill all requirements of each of these three agencies.

7. **Property Rights.** Subdivider shall provide all required easement documents, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements, as required by City of San Diego Real Estate Assets Department requirements and Council Policy 600-04, "STANDARDS FOR RIGHTS OF WAY AND IMPROVEMENTS INSTALLED THEREIN". City shall not require Subdivider to provide any easement documents for land to which Subdivider does not have title; however, Subdivider shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Public Facilities Financing Plans or any applicable Development Agreement.

8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Subdivider in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Subdivider. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Subdivider is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Subdivider in accordance with the terms of the Agreement for the work completed. All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon reimbursement as set forth above.

9. **Maintenance.** Subdivider shall maintain and be responsible for the Project site until Acceptance of the

Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.

10. **Drug-Free Workplace.** The Subdivider agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Subdivider shall certify to the City that it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace form [Exhibit X].

A. *Subdivider Notice to Employees.* The Subdivider shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

B. *Drug-Free Awareness Program.* The Subdivider shall establish a drug free awareness program to inform employees about all of the following:

i. The dangers of drug abuse in the work place.
ii. The policy of maintaining a drug free work place.
iii. Available drug counseling, rehabilitation, and employee assistance programs.
iv. The penalties that may be imposed upon employees for drug abuse violations.
v. In addition to section 10.A above, the Subdivider shall post the drug free policy in a prominent place.

C. *Subdivider's Agreements.* The Subdivider further certifies that each contract for Consultant or Contractor Services for this Project shall contain language that binds the Consultant or Contractor to comply with the provisions of section 10 "Drug-Free Workplace," as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and Contractors shall be individually responsible for their own drug free work place program.

EXHIBIT X

Certification for a Drug-Free Workplace

PROJECT TITLE: Quarry Falls Masterplan

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

Quarry Falls, LLC

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

Signed _____

Printed Name MARK RADELOW

Title VICE PRESIDENT

Date 3-27-13

EXHIBIT Y

Project Deliverables

1. **Master Contract Documents**.

A. *Working Drawings.* Subdivider shall prepare working drawings in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans [Working Drawings].

i. Quality. Subdivider shall make Working Drawings 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.

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

B. *Surveys.* Subdivider shall provide all surveying services required for the design of this Project 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 Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.

C. *Schematic Design Documents.* Subdivider shall consult with City to ascertain requirements of the Project and to prepare schematic design documents [Schematic Design Documents].

i. Schematic Design Documents shall include, but not be limited to the following:

a. Sketches with sufficient detail to illustrate the scale and location of Project components.

b. Floor plans with sufficient cross-sections to illustrate the scale and relationship of building components, exterior elevations and exterior colors and textures.

c. Analysis of parameters affecting design and construction for each alternate considered.

d. Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.

e. Probable construction costs for the base Project and all additive alternates considered.

f. Summary of Project requirements and a recommendation.

g. Artistic renderings of the Project.

ii. Form. Subdivider's Schematic Design Documents shall conform to the quality levels and standards in size, equipment, and all facets of its design and deliverables as set forth in City specifications and as may be updated prior to commencement of construction.

D. *Design Development Documents.* Subdivider shall prepare from the approved Schematic Design Documents, for approval by City, design development documents to fix and describe the size and character of the entire Project [Design Development Documents]. The Design Development Documents shall contain, at a minimum, the following:

i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.

ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.

iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.
iv. Proposed construction schedules.
v. Technical 'Special Provisions' section of the specifications.
vi. Outline of specifications prepared in accordance with the latest recommended format of the Construction Specification Institute [Contract Specifications].
vii. Probable Project construction costs, for each component of the Project being considered in this phase.
viii. Color board with material samples.

E. *Construction Documents.* Subdivider shall provide, based on the approved Design Development Documents, working drawings and Contract Specifications [throughout the Agreement and attached exhibits referred to as Construction Documents] setting forth in detail the requirements for construction of the Project, including the necessary bidding information.

F. *Utility Location Requests.* Along with initial submission of Construction Documents, Subdivider shall furnish copies of the service and meter location request and all utility companies verifications.

G. *Cost Estimate.* Subdivider shall provide a construction cost estimate based on the Construction Documents.

H. *H, G, & E Reports.* Subdivider shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports as required by City.

I. *As-Builts.* Subdivider shall provide as-builts [As-Builts].

i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Subdivider shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Subdivider 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. Subdivider shall thoroughly coordinate all changes on the As-Builts 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.

ii. Subdivider shall include all of the following on the As-Builts:

a. Depth of foundation in relation to finished first floor.
b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.
d. Field changes of dimensions and details.
e. 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.
f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.
g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
h. 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.
i. The title "PROJECT RECORD" in 3/8" letters.

iii. Subdivider shall maintain a set of As-Builts at the Project site for reference. Subdivider shall ensure that changes to the As-Builts are made within twenty-four 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

J. *Operation and Maintenance Manuals*. Subdivider shall submit all Operation and Maintenance manuals prepared in the following manner:

i. In triplicate, bound in 8½ x 11 inch (216 x 279 mm) three-ring size binders with durable plastic covers prior to City's Final Inspection.

ii. A separate volume for each system, including but not limited to mechanical, electrical, plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:

a. Part 1: Directory, listing names, addresses, and telephone numbers of Subdivider's agents, suppliers, manufacturers, and installers.

b. Part 2: Operation and Maintenance Instructions, arranged by specification division or system. For each specification division or system, provide names, addresses and telephone numbers of Subdivider's agents, suppliers, manufacturers, and installers. In addition, list the following: 1) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.

EXHIBIT Z

Typical Insurance Provisions

1. Types of Insurance. At all times during the term of this Agreement, Subdivider shall maintain insurance coverage as follows:

1.1 Commercial General Liability. Subdivider 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. Subdivider 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 CGL Insurance 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 Limit one million dollars ($1,000,000).

1.2 Commercial Automobile Liability. For all of Subdivider's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Subdivider 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. All costs of defense shall be outside the policy.

1.3 Architects and Engineers Professional Liability. For all of Subdivider's employees who are subject to this Agreement, Subdivider shall keep in full force and effect, or Subdivider 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. Subdivider shall ensure both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Subdivider 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.

1.4 Worker's Compensation. For all of Subdivider's employees who are subject to this Agreement and to the extent required by the State of California, Subdivider shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Subdivider 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 Subdivider 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. Subdivider 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.

1.4.1 Prior to the execution of the Agreement by the City, the Subdivider 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 Agreement."

1.5 Builder's Risk. To the extent commercially available, Subdivider shall provide a policy of "all risk" Builders Risk Insurance. Subdivider shall add 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. Subdivider 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 be Subdivider's responsibility to bear the expense of this deductible. The Builders Risk coverage shall expire at the time such insured property is occupied by City, or a Notice of Completion is filed, whichever occurs first.

2. **Endorsements Required.** Each policy required under Section 1, above, shall expressly provide, and an endorsement shall be submitted to the City, that:

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

2.1.1 Commercial General Liability. The policy or policies must be endorsed to include as an Insured the City and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Estimated Costs is one million dollars ($1,000,000) 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 Estimated Costs is less than one million dollars ($1,000,000) 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 and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City 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 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 and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.

2.1.2 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 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 Subdivider; 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 and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City 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 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 and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.

2.2 *Primary and Non-Contributory.* The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City , 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 and its elected officials, officers, employees, agents, and representatives shall be in excess of Subdivider's insurance and shall not contribute to it.

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

2.4 *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 Subdivider 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.

2.5 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.

EXHIBIT AA

Product Submittal and Substitution

1. **Product Submittal.** Prior to the bidding process, Subdivider shall submit for City approval a list of products intended for use in the Project. Upon Subdivider's completion of plans and specifications, City will review and approve products specified therein. Subdivider shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Subdivider's receipt of submittal. Approval is general approval only and in no way relieves Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits, or regulations.

2. **Substitutions.** Subdivider 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 substitution only when a product becomes unavailable due to no fault of Subdivider's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. Subdivider agrees that City requires Consultant's input and as such Subdivider shall coordinate a seven (7) Calendar Days review by its Consultant.

   A. *Substantiate Request.* Subdivider shall include with each substitution request complete data that substantiates that the proposed substitution conforms to requirements of the Contract Documents.

   B. *Subdivider Representations.* By submitting a substitution request, Subdivider is representing to City all of the following: (a) Subdivider has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (b) Subdivider is providing the same warranty for the proposed product as was available for the specified product; (c) Subdivider shall coordinate installation and make any other necessary modifications that may be required for work to be complete in all respects; and (d) Subdivider shall waive any claims for additional costs related to the substituted product, unless the specified product is not commercially available.

   C. *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 contract documents.

3. **Samples.**

   A. *Postage.* Samples shall be sent to Subdivider's office, postage prepaid.

   B. *Review.* Subdivider 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.

      i. 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.
      ii. Subdivider shall assign a submittal number. Subdivider 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.
      iii. All materials, finishes, and workmanship in the complete building shall be equal in every respect to that of the reviewed sample.
      iv. City will return one submitted sample upon completion of City review.
      v. Subdivider's or Subdivider's agents' field samples shall be prepared at the site. Affected finish work shall not commence until Subdivider or its agents have been given a written review of the field samples.

(O-2013-29) 11/27/12 #50 F

ORDINANCE NUMBER O- 20219 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 27 2012

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND QUARRY FALLS, LLC, IN THE MISSION VALLEY AND SERRA MESA COMMUNITY PLAN AREAS, FOR THE QUARRY FALLS (CIVITA) DEVELOPMENT PROJECT.

WHEREAS, Quarry Falls, LLC (Subdivider) owns approximately 230 acres of real 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 of San Diego, which was previously known as the Quarry Falls development project and is currently known as the Civita development project, to construct residential units, commercial retail/office use, parks, civic uses, open space and trails, and an optional school site (Development); and

WHEREAS, the Mission Valley Public Facilities Financing Plan for Fiscal Year 2006 (Financing Plan), adopted by Resolution No. R-300692 on July 19, 2005, identifies various sources of funding for public facilities including a Development Impact Fee (DIF), and construction or funding of projects identified in the Financing Plan as being funded by the DIF are eligible for a credit against or reimbursement from the DIF; and

WHEREAS, Subdivider has funded and intends to fund a portion of the cost of Financing Plan Project No. MV-16, State Route 163 and Friars Road On-Off Ramp Improvements, CIP No. S00851, and a portion of the cost for Project No. MV-16 is eligible for DIF credit or reimbursement (SR-163 Project); and

WHEREAS, on October 21, 2008, by Resolution No. R-304292, the City Council certified Program Environmental Impact Report No. 49068 and adopted the Mitigation, Monitoring, and Reporting Program, including the Transportation Phasing Plan (Phasing Plan), for the Development; and

WHEREAS, on April 24, 2012, by Resolution No. R-307401, the City Council revised the City Regional Transportation Congestion Improvement Program (RTCIP) Funding Program and adopted the two percent (2%) annual increase to the RTCIP Fee ; and

WHEREAS, the RTCIP Funding Program provides that new development shall contribute towards the Regional Arterial Systems (RAS) through the RTCIP Fee, and that "if a developer funds or constructs improvements on the Regional Arterial System and/or that arise out of SANDAG's Congestion Management Program, the developer shall receive credit for the costs associated with the arterial improvements offsetting the revenue requirements of the Funding Program;" and

WHEREAS, Subdivider has agreed to design and construct Improvement #11 of the Phasing Plan, a RAS improvement described in the Regional Transportation Plan (RTCIP Improvement) that is eligible for reimbursement; and

WHEREAS, Subdivider is required to acquire, design and construct public park improvements in accordance with the Park Development Agreement for the Quarry Falls (Civita) Development Project approved by the City Council on NOV 27 2012, by Ordinance No. O-20220 and on file in the Office of the City Clerk as Document No. OO-20220, that are eligible for DIF credit or reimbursement (Park Improvements); and

WHEREAS, On April 28, 2008, the City's Planning Commission granted Planned Development Permit No. 212959 and Site Development Permit No. 9430 (Fenton Permit) to

H.G. Fenton Company for the Murray Canyon Apartments project. In accordance with Condition No. 81 of the Fenton Permit, H.G. Fenton Company has deposited $140,000 into a trust account restricted for the purpose of constructing a signalized intersection at Murray Ridge Road and Mission Center Road or any other traffic improvements, if needed, in the vicinity (Murray Ridge Improvement). In January 2012, Subdivider completed the Murray Ridge Improvement, Improvement #7 of the Phasing Plan, and subject to City cost verification of the completed Murray Ridge Improvement, Subdivider seeks reimbursement of the $140,000 on deposit with the City for the Murray Ridge Improvement; and

WHEREAS, Subdivider has agreed to design, construct, and/or fund the SR163 Project, the RTCIP Improvement, Park Improvements, and the Murray Ridge Improvement; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor is authorized to execute, for and on behalf of City, the Reimbursement Agreement with Quarry Falls, LLC for Public Facilities in the Mission Valley Community, which is on file in the Office of the City Clerk as Document No. OO- 20219 (Reimbursement Agreement), for the acquisition, design, and construction of certain improvements as identified in the Reimbursement Agreement.

Section 2. That the Chief Financial Officer is authorized to pay in cash and/or the Mayor is authorized to issue credit pursuant to the Financing Plan and the Reimbursement Agreement, in total in an amount not to exceed Thirty Six Million Five Hundred Twenty Three Thousand One Hundred Ninety Five Dollars ($36,523,195), from the Mission Valley-Urban Community Development Impact Fee Fund, Fund No. 400135, for the Park Improvements,

provided that the City Comptroller furnishes one or more certificates demonstrating that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

Section 3. That the Chief Financial Officer is authorized to add CIP RD-13000, Texas Street from Camino del Rio South to El Cajon Boulevard, to the Capital Improvements Program.

Section 4. That the Chief Financial Officer is authorized to increase the Capital Improvements Program Budget in CIP RD-13000, Texas Street from Camino del Rio South to El Cajon Boulevard and to appropriate and expend an amount not to exceed Seven Hundred Twenty-Five Thousand Five Hundred Sixty Dollars ($725,560) from Fund No. 400174, the Transnet Extension RTCIP Fee Fund, for the purpose of reimbursing the Subdivider for project engineering, permitting, design, and construction.

Section 5. That the Chief Financial Officer is authorized to expend an amount not to exceed One Hundred Forty Thousand Dollars ($140,000) from the Developer Contribution Fund, Fund No. 200636, for the improvements to Murray Ridge Road and Mission Center Road, for the purpose of reimbursing the developer for project engineering, permitting, design, and construction.

Section 6. That the Chief Financial Officer is authorized, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves.

Section 7. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 8. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Hilda R. Mendoza
Deputy City Attorney

HRM:als
10/04/12
Or.Dept: Facilities Financing
Doc.No. 449618_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 11/27/12.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 11-27-12
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on NOV 27 2012, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☑	☐	☐	☐
Kevin Faulconer	☑	☐	☐	☐
Todd Gloria	☑	☐	☐	☐
Anthony Young	☑	☐	☐	☐
Carl DeMaio	☑	☐	☐	☐
Lorie Zapf	☑	☐	☐	☐
Marti Emerald	☑	☐	☐	☐
David Alvarez	☑	☐	☐	☐

Date of final passage NOV 27 2012.

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on OCT 23 2012, and on NOV 27 2012.

I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By _____, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-20219

Passed by the Council of The City of San Diego on November 27, 2012 by the following vote:

YEAS:	**LIGHTNER, FAULCONER, GLORIA, YOUNG, DEMAIO, ZAPF, EMERALD,ALVAREZ.**
NAYS:	**NONE.**
NOT PRESENT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: _____, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. **O – 20219** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **October 23, 2012** and on **November 27, 2012.**

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: _____, Deputy