

REAL PROPERTY PURCHASE AND SALE AGREEMENT

(North Central Square Park Site)

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into by and between Bosa California LLC, a California limited liability company (“SELLER”), and the City of San Diego, a California municipal corporation (“BUYER” or “City”), to be effective as of the date when signed by the parties and approved by the San Diego City Attorney (“Effective Date”). For good and valuable consideration, the receipt and sufficiency of which are acknowledged, SELLER and BUYER (collectively, the “Parties” and individually, a “Party”) enter into this Agreement on the following terms and conditions:

- 1. City Council Action Required.** SELLER acknowledges that the effectiveness of this Agreement, BUYER’s signature of this Agreement and the closing of the sale transaction contemplated by this Agreement (“Closing”) are expressly conditioned on and subject to BUYER’s compliance with the California Environmental Quality Act (“CEQA”) and BUYER taking both of the following actions (collectively, “City Authorization”): (a) the adoption and the legal effectiveness of an ordinance approving this Agreement and authorizing BUYER to purchase the “Property” (as defined in Section 2 below) in accordance with this Agreement; and (b) the adoption and the legal effectiveness of either (i) a “DIF Credit Ordinance” (as defined in Section 3.1 below) or (ii) an “Alternative Ordinance” (as defined in Section 3.1 below) to which SELLER does not timely deliver a “Disapproval Notice” (as defined in Section 3.1 below). SELLER further acknowledges that the City Authorization may or may not be granted in the City's sole discretion. BUYER shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by SELLER as a result of either the City’s failure to grant the City Authorization or the City’s adoption of an Alternative Ordinance disapproved by SELLER. SELLER expressly waives any claim against BUYER and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which SELLER incurs as a result of either the City’s failure to grant the Council Authorization or the City Council’s adoption of an Alternative Ordinance disapproved by SELLER. BUYER shall obtain the City Authorization, if at all, as soon as reasonably practicable, but in no event later than July 31, 2023. If the City does not timely grant the City Authorization, this Agreement shall not be signed by BUYER and shall be of no force or effect, with the exception of SELLER’s acknowledgement and waiver under this Section 1.
- 2. Purchase and Sale; Property.** Under the terms and conditions of this Agreement, SELLER shall sell and convey to BUYER, and BUYER shall purchase from SELLER, the real property identified as a portion of Assessor’s Parcel Numbers 534-183-03 and -06, consisting of approximately 23,045 square feet of land located in downtown San Diego, California, bordered by “C” Street on the south, 8th Avenue on the west and 9th Avenue on the east, as more particularly described in **EXHIBIT 1: Legal Description**, attached to this Agreement, together with all improvements to be constructed on such real property by SELLER after the Effective Date, pursuant to and as further described in the Reimbursement Agreement (as defined below), and together with all rights and appurtenances pertaining to such real property (collectively, “Property”).

3. **Sale Consideration.** The consideration to SELLER for the sale of the Property shall be in the form of a credit, available following the Closing, in the total amount of Thirteen Million Eight Hundred Twenty-Seven Thousand Dollars (\$13,827,000) (“DIF Credits”) which shall be available to SELLER to apply against Development Impact Fees (as defined in California Government Code Section 66000) (“DIF”) imposed by BUYER on Seller Projects (as defined below) pursuant to the San Diego Municipal Code. SELLER agrees to accept the DIF Credits in the amount of \$13,827,000 as full and adequate consideration for the sale of the Property, in lieu of BUYER’s cash payment of \$13,827,000. BUYER shall have no obligation to make any cash payment to SELLER in consideration for the sale of the Property.

3.1. The availability of the DIF Credits is conditioned on and subject to the adoption of an ordinance (“DIF Credit Ordinance”) which amends and supersedes, or provides an exception to or exemption from, the normal requirements of the San Diego Municipal Code with respect to the DIF applicable to Seller Projects. SELLER further acknowledges that the City may or may not adopt the DIF Credit Ordinance in its sole discretion or may adopt an alternative version of the DIF Credit Ordinance with conditions or limitations less favorable to SELLER, as determined by SELLER in its sole discretion (“Alternative Ordinance”). If the City adopts an Alternative Ordinance, SELLER shall deliver a written notice to BUYER within ten (10) days following the ordinance’s second reading setting forth with specificity SELLER’s reasons for its disapproval of the Alternative Ordinance (“Disapproval Notice”). If SELLER timely delivers a Disapproval Notice, then the City shall be deemed to have not granted the City Authorization for purposes of Section 1 above, and Buyer shall not sign this Agreement.

3.2. The DIF Credit Ordinance proposed for the City’s consideration shall permit application of Unused DIF Credits (as defined below) by SELLER, any Seller Affiliate (as defined below) or any assignee of SELLER of all or any portion of a Seller Project, as a credit against DIF imposed by BUYER on Seller Projects up to an aggregate total of \$13,827,000.

3.3. The DIF Credit Ordinance proposed for the City’s consideration shall provide that the DIF that will be imposed on Seller Projects will be fixed at a total of \$8,560 per residential dwelling unit, which includes \$5,891 for park, \$1,252 for fire, \$0 for library and \$1,416 for transportation, until the aggregate amount of DIF Credits applied in satisfaction of the DIF obligations of Seller Projects has reached a total of \$13,827,000. The foregoing DIFs shall not be subject to annual increases of any kind including, without limitation, the annual increases described in San Diego Municipal Code Section 142.0640(b), until all Unused DIF Credits have been utilized.

3.4. For the purposes of this Agreement, the following terms shall have definitions assigned below:

3.4.1. “Seller Affiliate” shall mean, any entity directly or indirectly controlling, controlled by, or under common control with, SELLER as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For

purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any entity, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity (which, in the case of a limited partnership, means such power and authority with respect to the general partner thereof), whether through the ownership of voting securities, by contract or otherwise.

3.4.2. “Unused DIF Credits” shall mean the initial amount of DIF Credits described in Section 3 (i.e., \$13,827,000) reduced by the aggregate amount of DIF Credits previously applied in satisfaction of the DIF obligations of Seller Projects.

3.4.3. “Seller Project” individually and “Seller Projects” collectively shall mean the residential development projects described in Sections 3.4.3.1 and 3.4.3.2, below:

3.4.3.1. The residential development projects described in the following table:

Project	Assessor Parcel Numbers	Approximate Number of Residential Dwelling Units
8 th & B	534-183-03 534-183-06	473
1 st & Island	535-075-01 535-075-01	212
10 th & Market	535-135-12 535-135-09-00 535-135-10-00 535-135-11-00	700
11 th & A	534-064-01 534-064-08 534-064-06 & 07 534-064-02	493
PCH and West E	533-534-06	250

3.4.3.2. Any other residential development project owned by SELLER or a Seller Affiliate in the Downtown Community Plan Area, whether acquired before or after the Effective Date, in which SELLER or a Seller Affiliate has elected, in writing, to utilize Unused DIF Credits.

3.5. SELLER acknowledges the following:

3.5.1. Once all DIF Credits (an aggregate total amount of \$13,827,000) have been applied toward the DIF obligations of Seller Projects, SELLER and Seller Affiliates will have no continuing benefit from the DIF Credit Ordinance. Any development projects proposed by SELLER or Seller Affiliates after the date in which all DIF Credits have been utilized will be subject to the DIF schedule established by San Diego Municipal Code Section 142.0640.

3.5.2. For purposes of this Agreement, the DIF amount fixed pursuant to Section 3.3 above does not include Regional Transportation Congestion Improvement Program fees, which shall be paid separately in connection with any Seller Projects. Regional Transportation Congestion Improvement Program is defined as the program adopted by the City of San Diego in Resolution No. R-303554, subsequently amended by Resolution No. R-307401 and Resolution No. R-314269, to ensure development contributes its proportional share of the funding needed to pay for regional transportation facility improvements.

3.5.3. In the event that the DIF Credits are not yet available at the time in which DIF payment is required for the residential development project identified as "8th & B" in Section 3.4.3.1 of this Agreement, Seller may request a final inspection of the project and a Certificate of Occupancy shall be granted in accordance with San Diego Municipal Code Section 129.0114 and City of San Diego Information Bulletin 585 upon Seller's presentation to Buyer of a non-interest-bearing promissory note in a form approved by Buyer, in the principal amount equal to the DIF payable with respect to the 8th & B development, and which shall be repaid by DIF Credits when available to apply to the 8th & B development.

- 4. Independent Consideration.** Within ten (10) business days after the Effective Date, BUYER will deliver to SELLER, outside of any formal escrow, the amount of \$1,000 (One Thousand Dollars) in immediately available funds. The Parties have bargained for and agreed to this amount as adequate independent consideration for SELLER's agreement to enter into this Agreement, to allow for BUYER's right of review, inspection and termination, and to not market the Property for sale to any third party pending the satisfaction of all conditions precedent to the Closing set forth in this Agreement, including SELLER's completion of the Park. This amount is in addition to and independent of all other consideration provided in this Agreement, is nonrefundable to BUYER in all circumstances, and shall not be credited or applied toward the DIF Credits.
- 5. Due Diligence Period.** BUYER shall have ninety (90) days following the Effective Date ("Due Diligence Period") to conduct, at BUYER's sole expense, its due diligence to determine, in BUYER's sole discretion, the feasibility of purchasing the Property and to resolve any matters that, if not corrected, would cause BUYER to terminate this Agreement, including, but not limited to, the matters described in Sections 6 and 7 of this Agreement (collectively, "Due Diligence Contingency"). Before the expiration of the Due Diligence Period, BUYER shall deliver written notice to SELLER confirming whether the Due Diligence Contingency has been satisfied, waived, or disapproved ("Due Diligence Notice"). If BUYER does not timely deliver the Due Diligence Notice, BUYER shall be deemed to have disapproved the Due Diligence Contingency. BUYER may waive the Due Diligence Period, in writing, at any time.
- 6. Survey; Environmental Investigation.** During the Due Diligence Period, BUYER, at BUYER's sole expense, may conduct a current survey of the Property and such environmental investigations of the Property as BUYER may deem appropriate. Upon BUYER's prior written notice to SELLER, BUYER, its officers, employees, agents and contractors may enter upon and occupy the Property for the purpose of conducting such survey, environmental

investigations and all other reasonable investigations related to the Property. Such notice shall state the purpose, scope and dates of such entry. BUYER shall make the results of BUYER's survey and investigations available to SELLER upon request. From the date of SELLER's signature of this Agreement through the Closing, SELLER shall comply promptly with BUYER's reasonable requests for documents pertaining to the Property, subject to cost limitations and confidentiality restrictions and the proprietary rights of any consultant preparing the same and any limitations on use imposed by them. SELLER's delivery of any such documents shall be on an as-is basis and without recourse and warranty of any nature, and BUYER's use of same shall be at BUYER's sole risk. BUYER shall be solely responsible for any personal injury or property damage resulting from the activities of BUYER, its officers, employees, agents and contractors under this section.

7. **Status of Title.** Within two (2) business days after the Effective Date, SELLER shall, at SELLER's expense, cause Chicago Title Company to deliver to BUYER a current preliminary title report covering the Property, together with a plat map showing plotted easements and copies of all documents listed in the title report as exceptions. BUYER shall review the preliminary title report and all supporting documents during the Due Diligence Period. If BUYER disapproves or is deemed to have disapproved any title matter which SELLER is unable or unwilling to remove before the expiration of the Due Diligence Period, BUYER's sole remedy will be to cancel this Agreement without liability.
8. **Park Construction.** If BUYER timely delivers the Due Diligence Notice confirming that the Due Diligence Contingency has been satisfied or waived, the Parties shall sign the North Central Square Park Reimbursement Agreement and Park Development Agreement in a form substantially consistent with **EXHIBIT 3** ("Reimbursement Agreement"), memorializing SELLER's obligation to construct the Park in accordance with applicable City requirements, SELLER's obligation to remove or remediate any "Hazardous Materials" (as defined in Section 15 of this Agreement) situated on, under, or about the Property during the course of construction of the Park to the satisfaction of the County Department of Environmental Health ("County DEH"), and the City's obligation to reimburse SELLER for the actual, reasonable costs incurred by SELLER in the construction of the Park using the City's available development impact fees. SELLER shall prepare a General Development Plan ("GDP") for development of the North Central Square Park ("Park") on the Property and shall present the GDP for discretionary approval by the City's Parks and Recreation Board ("Parks Board"). BUYER shall assist SELLER in obtaining such discretionary approval by preparing a staff report and presenting the GDP to the Parks Board.
9. **Parcel Map.** The Parties acknowledge that SELLER shall timely apply for and prosecute to completion a series of lot consolidation parcel maps that consolidate the existing parcels of the block bounded by 8th and 9th Avenues and B and C Streets into two legal parcels, including both the Property and another legal parcel consisting of SELLER's retained property to be used for construction of SELLER's private development project ("Parcel Maps"). The City shall process the Parcel Maps application in accordance with applicable City requirements and processes, which include the City's Parcel Map Regulations in Chapter 14, Article 4, Division 3 of the San Diego Municipal Code. The Parties intend that the Parcel Maps application will be administered pursuant to San Diego Municipal Code section 144.0330, which applies to

parcel maps that do not create new parcels. If the City approves the Parcel Maps, then the Parcel Maps shall be used as the basis of the legal description of the Property to be conveyed by SELLER to BUYER upon the Closing.

10. Opening of Escrow. BUYER shall open an escrow (“Escrow”) with Chicago Title Company, whose contact information is shown in Section 21 of this Agreement (“Escrow Agent”), within five (5) business days after SELLER’s delivery to BUYER of the Park Completion Notice. The Escrow shall open as of the date on which BUYER delivers to Escrow Agent this Agreement, signed by the Parties and approved by the San Diego City Attorney. Escrow Agent shall administer the Closing in accordance with this Agreement and any escrow instructions or other customary documents that Escrow Agent may require the Parties to sign in connection with the Closing.

11. Conditions Precedent to Closing. BUYER’s obligation to proceed with the Closing and purchase the Property is expressly conditioned upon the satisfaction, or BUYER’s written waiver, of each of the following conditions (collectively, “Conditions Precedent”):

- (a) The City has granted the City Authorization.
- (b) BUYER has delivered the Due Diligence Notice to SELLER, before the expiration of the Due Diligence Period, confirming, in BUYER’s sole discretion, that the Due Diligence Contingency has been satisfied or waived.
- (c) BUYER has received written confirmation that Chicago Title Company is irrevocably committed to issue an American Land Title Association (“ALTA”) extended owner’s Title Insurance Policy (“ALTA Title Policy”) upon the Closing with an insurance coverage in the amount of \$13,827,000, showing fee title ownership of the Property vested in BUYER, including any insurance endorsements reasonably requested by BUYER, and subject only to any title exceptions that BUYER has approved during the Due Diligence Period in BUYER’s sole and absolute discretion and as otherwise reflected in the form of Grant Deed attached as **EXHIBIT 2** to this Agreement (“Grant Deed”).
- (d) The Parties have signed the Reimbursement Agreement.
- (e) The Parks Board has approved the GDP for development of the Park, and the applicable City departments have approved SELLER’s construction documents for the Park, in accordance with Section 8 of this Agreement.
- (f) SELLER has completed construction of the Park in accordance with the Reimbursement Agreement and all applicable City requirements, the City has approved a physical inspection of the completed Park, signifying the City’s readiness to accept ownership of all improvements constituting the Park and SELLER has received payment of all "Reimbursable Costs" to which SELLER is entitled as the "Developer" under the terms of the Reimbursement Agreement.
- (g) SELLER has obtained a “no further action” letter or similar written correspondence

from the County DEH confirming that SELLER has removed or remediated any "Hazardous Materials" (as defined in Section 15 of this Agreement) situated on, under, or about the Property during the course of construction of the Park to the satisfaction of the County DEH.

- (h) The City has approved the Parcel Maps.
- (i) SELLER has signed and delivered to Escrow Agent all documents necessary to consummate the Closing.
- (j) All of SELLER's representations and warranties set forth in Section 15 of this Agreement continue to be factually accurate and complete.
- (k) SELLER has performed all of its material obligations under this Agreement, including the covenants set forth in Section 16 of this Agreement, and SELLER is not in default of any such obligations or covenants.

12. Closing. The Closing shall be held at Escrow Agent's offices within five (5) business days after all of the Conditions Precedent identified in Section 11 of this Agreement have been satisfied, or if not satisfied, then waived in writing by BUYER. SELLER acknowledges that, if BUYER exercises its right to terminate the Reimbursement Agreement before SELLER's completion of the Park on the basis of any termination right set forth in the Reimbursement Agreement, BUYER may waive any Condition Precedent in Section 11 of this Agreement related to SELLER's construction and completion of the Park and, in so doing, may cause the Closing to occur in accordance with this Agreement. If any of the Conditions Precedent is not satisfied in a timely manner or waived by BUYER in writing, then BUYER may deliver a written notice of termination of this Agreement to SELLER, in which event this Agreement shall terminate and, except as provided in Section 17 of this Agreement, neither Party shall have any resulting liability or obligation under this Agreement. The foregoing notwithstanding, if the Condition Precedent described in Buyer's written notice of termination is reasonably susceptible of cure, the Parties shall exercise commercially reasonable efforts to cure the failed Condition Precedent at the earliest possible date.

12.1. BUYER's Deliverables. At the Closing, BUYER shall sign (where applicable) and deliver to Escrow Agent for delivery to SELLER, or procure the delivery of the following to SELLER: (i) the Grant Deed; and (ii) all other instruments and documents that are reasonably required by SELLER or Escrow Agent to consummate the sale transaction contemplated by this Agreement.

12.2. SELLER's Deliverables. At the Closing, SELLER shall sign and deliver to Escrow Agent for delivery to BUYER, or procure the delivery of the following to BUYER: (i) the Grant Deed; and (ii) all other instruments and documents that are reasonably required by BUYER or Escrow Agent to consummate the sale transaction contemplated by this Agreement.

12.3. Taxes. Any and all ad valorem taxes and special taxes or assessments levied or

assessed against the Property for the year in which the Closing occurs shall be prorated at the Closing, and all delinquent taxes shall be added to the pro-rated amount in order to calculate the amount(s) of any taxes owed by SELLER as of the Closing date. If the Closing occurs before the tax rate or the assessed valuation is fixed for the then-current year, the prorating of ad valorem taxes shall use the tax rate and the assessed valuation for the preceding tax year. The prorating of ad valorem taxes shall be subject to later adjustment once the actual tax statements for the Closing year have been received; the obligation to re-prorate taxes shall survive the Closing.

12.4. Distribution of Funds and Documents. Immediately upon the Closing, Escrow Agent shall deliver all funds remaining in Escrow to the Parties in accordance with an escrow closing statement prepared by Escrow Agent and approved by the Parties. Escrow Agent shall cause the ALTA Title Policy to be delivered to BUYER promptly after the Closing.

13. Conveyance of Title. At the Closing, SELLER shall convey to BUYER fee title to the Property by the Grant Deed. SELLER's conveyance of the Property to BUYER at the Closing shall be free and clear of all liens, encumbrances, and third-party possessory rights, other than any liens and other encumbrances which BUYER accepted in writing prior to the Closing.

14. Escrow Costs.

14.1. SELLER's Costs. SELLER shall pay: (a) Chicago Title Company's cost of issuance of the Preliminary Title Report; (b) all San Diego County documentary transfer taxes; (c) the portion of the premium for the ALTA Title Policy attributable to standard California Land Title Association ("CLTA") insurance coverage; (d) all charges for SELLER's document drafting and recording; and (e) one half of Escrow Agent's fee.

14.2. BUYER's Costs. BUYER shall pay: (a) the portion of the premium for the ALTA Title Policy attributable to coverage in excess of standard CLTA insurance coverage; (b) the cost of any title insurance endorsements requested by BUYER; (c) all charges for BUYER's document drafting and recording; and (d) one half of Escrow Agent's fee.

14.3. Proration. Escrow Agent shall prorate fees and costs between the Parties at the Closing. Before the Closing, Escrow Agent shall prepare and deliver an escrow closing statement to each Party in accordance with the cost allocations specified in this Agreement.

15. SELLER's Representations and Warranties. SELLER represents and warrants to BUYER that all of the following are true and correct:

- (a) There are no actions, suits, material claims, legal proceedings, or any other proceedings at law or in equity, before any court or governmental agency, affecting the Property or any portion thereof or affecting SELLER's ability to enter into this Agreement and

perform its obligations under this Agreement.

- (b) Except as disclosed to BUYER in writing through the documents (if any) identified in Schedule 1 to this Agreement, SELLER is not aware of the presence or potential presence of contamination from Hazardous Materials situated at, under or about the Property. For purposes of this Agreement, (i) the term "Hazardous Materials" means any materials, substances or wastes defined as "hazardous," "toxic," "pollutant," or "contaminant," or stated to be known to cause cancer or reproductive toxicity, under any Environmental Law; and (ii) the term "Environmental Law" means any and all federal, state or local laws (whether statutory or common law) relating to pollution or protection of the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code Section 25300 et seq.; the California Hazardous Waste Control Law, California Health & Safety Code Section 25100 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 et seq.; or any of the regulations adopted and publications promulgated pursuant to such laws and regulations as they may be amended from time to time.
- (c) There are no operative leases or other agreements that give any third party the right to possess or occupy any portion of the Property after the Closing.
- (d) SELLER has not received notice from any governmental or regulatory agency as to the existence of any actual or alleged violations of laws or regulations applicable to the Property or any pending or threatened investigations or proceedings, including an eminent domain action, affecting the Property.
- (e) Neither SELLER's signature of this Agreement nor SELLER's performance of its obligations in this Agreement will conflict with or breach any bond, note, evidence of indebtedness, contract, lease, or other agreement or instrument to which SELLER or the Property may be bound, or any court or regulatory order or directive to which SELLER or the Property may be bound.

SELLER shall, upon learning of any fact or condition which would cause any of the representations and warranties in this section to be untrue or incomplete as of the Closing, immediately notify BUYER of such fact or condition

16. SELLER's Covenants. From the date of SELLER's signature of this Agreement through and including the Closing date, SELLER covenants for BUYER's benefit as follows:

- (a) SELLER shall not do anything to impair title to any of the Property.

(b) SELLER shall not lease or encumber any part of the Property, or otherwise grant or permit any lien, easement, or other interest in any of the Property to be attached thereto, and if any such interest should be attached, SELLER shall cause any and all such items to be removed or extinguished prior to the Closing.

(c) SELLER shall not allow any Hazardous Materials to be used, handled, generated, stored, released, treated or disposed of at, under or about the Property.

17. SELLER's Indemnification. SELLER shall indemnify, protect, defend and hold harmless BUYER and its officers, employees and agents, using legal counsel selected by BUYER, from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs and expenses (including, without limitation, attorneys' fees, court costs, administrative procedural costs and experts' fees), foreseen and unforeseen, relating to or arising from any of the following: (i) SELLER's breach of any of its representations, warranties, or covenants under this Agreement; (ii) the presence of any Hazardous Materials in, on or under the Property; (iii) the use, handling, generation, storage, release, treatment or disposal of Hazardous Materials by SELLER or any employee, agent, lessee, licensee or invitee of SELLER on, under or from the Property; and (iv) the cost of any required or necessary remediation, removal, repair, cleanup or detoxification, the costs of any testing, sampling or other investigations, and the preparation of required plans as a result of any of the causes described in items (ii) or (iii) above. SELLER's obligations under this section shall survive the Closing and recording of the Grant Deed transferring title to BUYER.

18. Assumption of Economic Risks. EACH PARTY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, OF EITHER PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMAND OR CHANGES IN THE ECONOMIC ASSUMPTIONS OF EITHER PARTY THAT MAY HAVE PROVIDED A BASIS FOR ENTERING INTO THIS AGREEMENT, SHALL NOT OPERATE TO EXCUSE OR DELAY THE PERFORMANCE OF EACH AND EVERY ONE OF EACH PARTY'S OBLIGATIONS AND COVENANTS ARISING UNDER THIS AGREEMENT. ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE PARTIES ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES OR MARKET DEMAND OR CONDITIONS AND WAIVE, TO THE GREATEST EXTENT ALLOWED BY LAW, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES. THE PARTIES AGREE THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE PARTY SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY ONE OF THE OBLIGATIONS, COVENANTS, CONDITIONS, AND REQUIREMENTS OF THIS AGREEMENT. THE PARTIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES

THAT THE COMPLETE SATISFACTION OF ALL CONDITIONS PRECEDENT TO THE CLOSING IS EXPECTED TO BE TIME-CONSUMING AND IS NOT GUARANTEED. EACH PARTY FURTHER ACKNOWLEDGES THAT, EVEN ASSUMING ALL CONDITIONS PRECEDENT TO THE CLOSING ARE ULTIMATELY MET, MARKET CONDITIONS MAY CAUSE THE VALUE OF THE PROPERTY TO INCREASE OR DECREASE SUBSTANTIALLY FROM THE EFFECTIVE DATE THROUGH AND INCLUDING THE CLOSING DATE RELATIVE TO THE AMOUNT OF CONSIDERATION NEGOTIATED BETWEEN THE PARTIES AND MEMORIALIZED IN THIS AGREEMENT.

*** City's Initials:  ***

*** SELLER's Initials:  ***

19. Default and Remedies.

19.1. SELLER Default. If SELLER is in default of this Agreement prior to the Closing, BUYER may, at its sole option, elect to do one of the following: (a) terminate this Agreement by written notice to SELLER and Escrow Agent; (b) if the default resulted from a failure to transfer possession and title to the Property to BUYER at the Closing, seek and enforce specific performance of this Agreement; or (c) seek and enforce any other remedy available at law or in equity. BUYER may seek and enforce any remedy available at law or in equity: (i) if SELLER defaults on its obligations under this Agreement after the Closing; and (ii) for any claim arising out of or in any manner directly or indirectly connected with this Agreement.

19.2. BUYER Default. If BUYER is in default of this Agreement at any time, SELLER may terminate this Agreement by written notice to BUYER and Escrow Agent, and/or seek and enforce any other remedy available at law or in equity, provided that SELLER shall not be entitled to recover from BUYER any consequential damages, lost opportunity damages, or punitive damages.

20. Mandatory Disclosure of Business Interests. Pursuant to San Diego City Charter section 225, SELLER shall make a full and complete disclosure of the name and identity of each person directly or indirectly involved in the transaction contemplated by this Agreement and the precise nature of their interest.

21. Notices. Any and all notices and communications pursuant to or as required by this Agreement must be in writing and may be sent by (i) messenger for immediate personal delivery; (ii) nationally recognized delivery service guaranteeing overnight delivery (i.e., United Parcel Service, Federal Express, etc.); (iii) registered or certified United States mail, postage prepaid, return receipt requested, to the address of the recipient Party, or (iv) electronic transmission, including email (which will be followed by a hard copy delivered in accordance with one of the preceding clauses (i) through (iii) or via regular U.S. mail, unless the hard copy is waived by reply email from a named recipient representing the recipient party in response to a notice email). All written notices to SELLER shall be directed to SELLER's designated representative, as identified below, who shall be responsible for relaying such notices to the other individuals or trusts comprising SELLER. To conserve

resources and reduce administrative burden, the Parties intend to deliver notices and communications via email, and to confirm via reply email that the delivery of a hard copy is waived, whenever feasible. Any notice shall be deemed received by the addressee, on the business day that the notice is sent by messenger for immediate personal delivery and received at the notice address before 5:30 p.m. Pacific Time, on the business day the notice is transmitted electronically and received at the notice address before 5:30 p.m. Pacific Time, one (1) business day after delivery to a nationally recognized overnight delivery service, or two (2) business days after the notice is placed in the United States mail (regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt). Any attorney representing a Party may give any notice on behalf of such Party and may confirm on behalf of such Party that delivery of a hard copy is waived with respect to any notices or communications delivered via email. The notice addresses for each Party are as follows:

If intended for Escrow Agent:

Chicago Title Company
National Commercial Services
2365 Northside Drive, Suite 600
San Diego, CA 92108
Attn: Renee Marshall
Email: marshallunit@ctt.com

If intended for SELLER:

Bosa California LLC
1300-2025 Willingdon Ave.
Burnaby, B.C. V5C 0J3
Attn: Richard Weir
Email: rweir@thinkbosa.com

With a copy to:

Charles E. Black, P.C.
4556 NW Paddock Lane
Camas, WA 98607
Email: cblack@cburbandevelopment.com

If intended for BUYER:

City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Penny Maus, Director
Department of Real Estate and Airport Management
Email: pmaus@sandiego.gov

With a copy to:

San Diego City Attorney's Office

1200 Third Avenue, Suite 1100
San Diego, CA 92101
Attn: Kevin Reisch, Esq., Senior Chief Deputy City Attorney
Email: kreisch@sandiego.gov

22. **Time of Essence.** Time is of the essence to the performance of each and every obligation under this Agreement.
23. **Further Assurances.** The Parties agree to take such further actions and sign and deliver such additional documents and instruments as may be reasonably required in order to more effectively carry out the terms of this Agreement and the intentions of the Parties, and to memorialize the sale transaction contemplated by this Agreement.
24. **Interpretation.** This Agreement shall be governed by the laws of the State of California. The section headings are for convenience only and shall not interpret, define or limit the scope or content of this Agreement. If any Party is made up of more than one person or entity, then all are identified in the singular in this Agreement. If any right of approval or consent by a Party is provided for in this Agreement, the Party shall exercise the right promptly and reasonably, unless this Agreement expressly gives such Party the right to use its sole discretion. The term “business day” shall mean Monday through Friday, excluding holidays recognized by the State of California and the City of San Diego.
25. **Amendments.** The terms and provisions of this Agreement may only be modified or amended pursuant to a written instrument signed by both Parties.
26. **Successors and Assigns.** This Agreement shall inure to and bind the successors and assigns of the Parties.
27. **No Personal Liability of Officials and Employees.** No official or employee of BUYER will be personally liable to SELLER in the event of BUYER’s default under this Agreement or for any amount that may become due to SELLER, or on any obligations under the terms of this Agreement, except to the extent resulting from the fraud or willful misconduct of such official or employee.
28. **Assignment.** Except as provided in Section 3.2, this Agreement may not be assigned in whole or in part by either Party without the other Party’s prior written consent.
29. **Partial Invalidity.** If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
30. **Mutual Negotiation.** No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, and have been given ample opportunity to consult with legal counsel and other consultants or advisers of their own choice.

31. **Tax Consequences.** Each Party shall bear all responsibility, liability, and costs relating to any tax consequences experienced by such Party as a result of this Agreement and the sale transaction contemplated by this Agreement.
32. **No Affiliation.** Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, or other affiliation between SELLER and BUYER, or between BUYER and any other entity or party, or cause BUYER to be responsible in any way for the debts or obligations of SELLER or any other party or entity.
33. **Survival.** Any obligation which accrues under this Agreement prior to the Closing or its termination shall survive the Closing or such termination.
34. **No Real Estate Commission.** Each Party represents, warrants and agrees that no real estate commission, finder's fee or broker's fee has been or will be incurred or paid in connection with the purchase and sale of the Property. The rights and obligations of the Parties pursuant to this section shall survive the Closing or termination of this Agreement.
35. **Entire Agreement.** This Agreement represents the entire agreement between the Parties for the purchase and sale of the Property, and supersedes all prior negotiations, representations or agreements, either oral or written.
36. **Authority to Contract.** Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to sign and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.
37. **Counterparts.** This Agreement may be signed in counterparts, each of which when signed shall be deemed an original, but all of which together shall constitute one and the same instrument. SELLER may electronically deliver a signed counterpart to this Agreement to BUYER. SELLER's electronically-delivered signed counterpart shall be deemed an original for all purposes. Notwithstanding the foregoing, SELLER shall deliver a paper counterpart of this Agreement bearing original signatures to Escrow Agent prior to the Closing.


[signatures continued on next page]

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

SELLER:

BOSA CALIFORNIA LLC,
a California limited liability company

Date: April 6, 2023

BY: 
Name: Ryan Bosa
Title: President

Date: _____

BY: _____
Name: _____
Title: _____

BUYER:

THE CITY OF SAN DIEGO,
a California municipal corporation

Date: 5-16-2023

BY: 
Penny Maus
Director
Department of Real Estate and Airport
Management

Approved as to form:

MARA W. ELLIOTT, City Attorney

BY: Kevin Reisch 5/30/23
Kevin Reisch
Senior Chief Deputy City Attorney

ATTACHMENTS

Exhibit 1: Legal Description of the Property

Exhibit 2: Form of Grant Deed

Exhibit 3: Form of Reimbursement Agreement

EXHIBIT 1

LEGAL DESCRIPTION OF THE PROPERTY

LOTS 'E', 'F', 'G', 'H' AND PORTIONS OF LOTS 'D' AND 'I' OF BLOCK 21 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 552, OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL 'A'

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 'G' ALSO BEING THE SOUTHEAST CORNER OF SAID BLOCK 21; THENCE LEAVING SAID SOUTHEAST CORNER AND ALONG THE SOUTHERLY LINE OF SAID BLOCK 21 NORTH 89°53'43" WEST A DISTANCE OF 200.26 FEET TO THE SOUTHWEST CORNER OF SAID LOT 'F' ALSO BEING THE SOUTHWEST CORNER OF SAID BLOCK 21; THENCE LEAVING SAID SOUTHWEST CORNER AND ALONG THE WESTERLY LINE OF SAID BLOCK 21 NORTH 0°06'58" EAST A DISTANCE OF 115.11 FEET TO A POINT ON THE WESTERLY LINE OF LOT 'D'; THENCE LEAVING SAID WESTERLY LINE OF LOT 'D' ALONG A LINE PARALLEL WITH THE NORTHERLY LINE OF SAID BLOCK 21 SOUTH 89°52'13" EAST A DISTANCE OF 200.30 FEET TO A POINT ON THE EASTERLY LINE OF SAID LOT 'I' ALSO BEING A POINT ON THE EASTERLY LINE OF SAID BLOCK 21; THENCE ALONG SAID EASTERLY LINE SOUTH 0°08'17" WEST A DISTANCE OF 115.02 FEET TO SAID SOUTHEAST CORNER OF BLOCK 21 ALSO BEING THE **POINT OF BEGINNING**.

RESERVING THEREFROM A 20.00 FOOT WIDE NO BUILD EASEMENT BEING MORE PARTICULARLY DESCRIBED AS THE NORTHERLY 20.00 FEET OF SAID LAND SALE.

SAID PARCEL CONTAINS 23,045.01 SQUARE FEET OR 0.529 ACRES, MORE OR LESS.

ATTACHED HERETO IS A DRAWING NO. 42498-B LABELLED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

EXHIBIT 2
GRANT DEED

RECORDING REQUESTED BY:

Chicago Title Company, on behalf of
City of San Diego

WHEN RECORDED MAIL TO:

City of San Diego
1200 Third Avenue, Suite 1700
San Diego, CA 92101
Attn: Penny Maus, Director
Department of Real Estate and Airport Management
Email: pmaus@sandiego.gov

APN: _____

(Space Above for Recorder's Use)

**Presented for recording by, and for the benefit of,
the CITY OF SAN DIEGO**

Exempt from Recording Fees per Cal. Govt. Code § 27383

Exempt from Documentary Transfer Tax per Cal. Revenue & Taxation Code § 11922

GRANT DEED

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, Bosa California LLC, a California limited liability company ("Grantor"), GRANTS and CONVEYS to the City of San Diego, a California municipal corporation ("Grantee"), all that real property situated in the City of San Diego, County of San Diego, State of California, as described in Attachment A (legal description) and Attachment B (graphic depiction) attached to this Grant Deed, together with all rights and appurtenances to such real property (collectively, "Park Property").

Upon Grantor's conveyance of the Park Property to Grantee, Grantor will continue to own that certain real property located contiguous to the Park Property, as more particularly described in Attachment C (legal description) attached to this Grant Deed ("Bosa Property"). The Bosa Property is, or will be, improved with a private development project. Grantee covenants and agrees not to construct, erect or maintain any above-ground roofed building or covered structure, over, upon and across the northerly 20.00 feet of the Park Property, designated as 'building restricted easement granted hereon' in Attachment B ("Building Restricted Area"), for the benefit of the Bosa Property ("Restrictive Covenant"). Grantee reserves the right to continued use of the Building Restricted Area for any purpose, except as provided in this Grant Deed, and the right to grant easements within the Building Restricted Area to any public utility company for the installation, operation, maintenance and repair of any underground distribution facilities. Responsibility for maintenance of the Building Restricted Area shall remain with the fee title

owner of the Park Property. The Restrictive Covenant shall be appurtenant to and shall benefit the Bosa Property and shall burden the Park Property. The Restrictive Covenant shall constitute a covenant running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468. The Restrictive Covenant shall not be construed to confer any rights to the general public.

IN WITNESS WHEREOF, Grantor and Grantee have signed this Grant Deed, to be effective upon its recordation in the Official Records of the San Diego County Recorder's Office.

GRANTOR:

BOSA CALIFORNIA LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

This is to certify that the interest in the real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego pursuant to authority conferred by Resolution No. 250320, adopted by the Council of the City of San Diego on October 1, 1979, and the grantee consents to recordation thereof by its duly authorized officer.

GRANTEE:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: _____

Penny Maus
Director
Department of Real Estate and Airport
Management

Approved as to form:

MARA W. ELLIOTT, City Attorney

BY: _____

Kevin Reisch
Senior Chief Deputy City Attorney

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____ (date), before me, _____
(name and title of notary public), personally appeared _____
(name of signer), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____ (Seal)

ATTACHMENT A

Legal Description of the Park Property

LOTS 'E', 'F', 'G', 'H' AND PORTIONS OF LOTS 'D' AND 'I' OF BLOCK 21 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L.L. LOCKLING FILED JUNE 21, 1871 IN BOOK 13, PAGE 552, OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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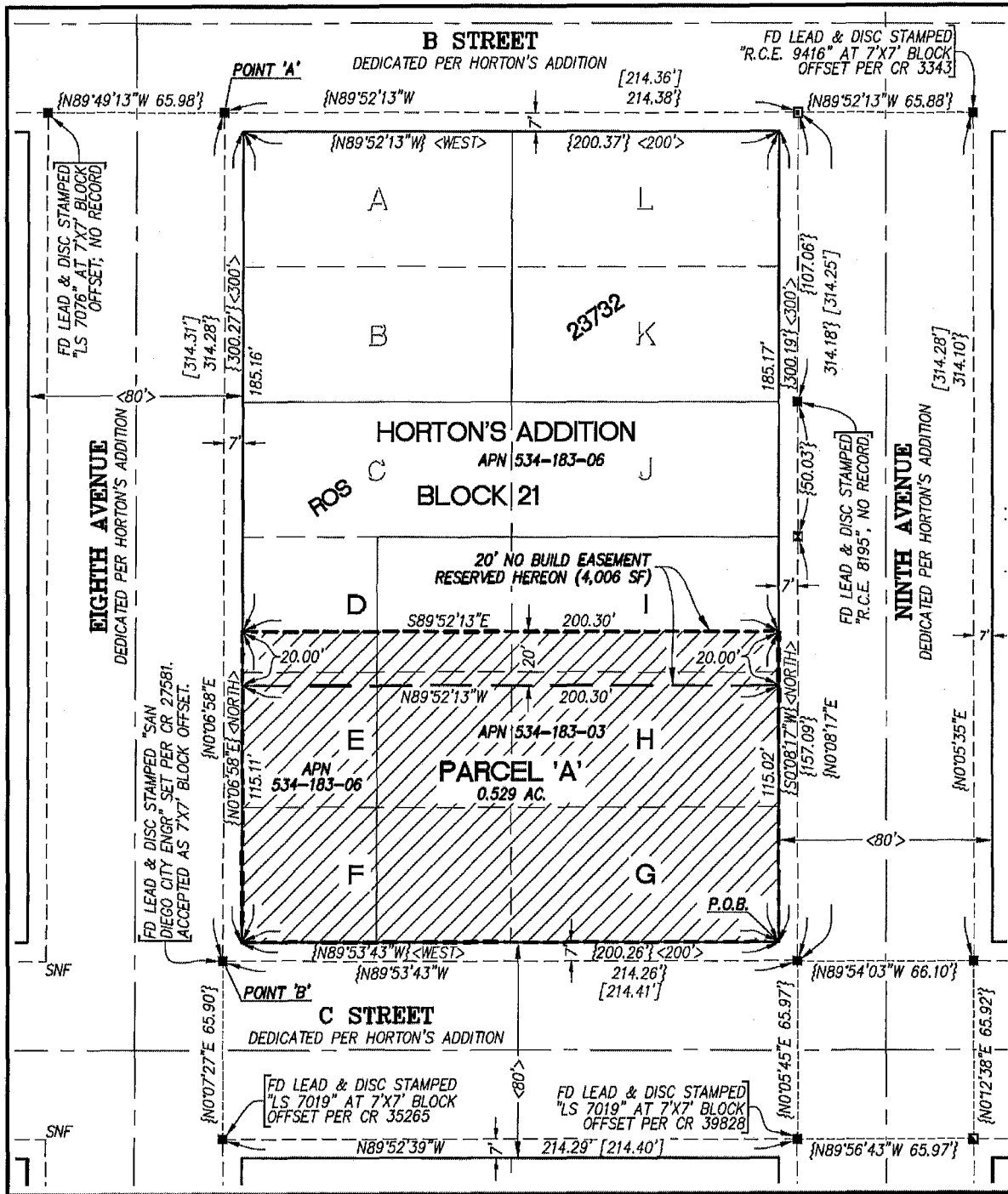
RESERVING THEREFROM A 20.00 FOOT WIDE NO BUILD EASEMENT BEING MORE PARTICULARLY DESCRIBED AS THE NORTHERLY 20.00 FEET OF SAID LAND SALE.

SAID PARCEL CONTAINS 23,045.01 SQUARE FEET OR 0.529 ACRES, MORE OR LESS.

ATTACHED HERETO IS A DRAWING NO. 42498-B LABELLED EXHIBIT "B" AND BY THIS REFERENCE MADE A PART HEREOF.

ATTACHMENT B

Graphic Depiction of the Park Property
Parcel A is the Park Property



ATTACHMENT C

Legal Description of the Bosa Property

[to be inserted on completion of lot consolidation process]

EXHIBIT 3

NORTH CENTRAL SQUARE PARK REIMBURSEMENT AND PARK DEVELOPMENT AGREEMENT

REIMBURSEMENT AND PARK DEVELOPMENT AGREEMENT WITH BOSA CALIFORNIA LLC., A CALIFORNIA LIMITED LIABILITY COMPANY FOR PROJECT NO. P-8 NORTH CENTRAL SQUARE PARK, IN THE DOWNTOWN COMMUNITY-REIMBURSEMENT AGREEMENT NO.

THIS REIMBURSEMENT AND PARK DEVELOPMENT AGREEMENT No. _____ (Agreement) is made and entered into effective on _____, 2023 (“Effective Date”) between the City of San Diego, a municipal corporation (“City”) and Bosa California LLC, a California limited liability company (“Developer”), (collectively the “Parties”), for reimbursement for the design, and construction of Project No. P-8 the North Central Square Park in the Downtown area in accordance with the Downtown Public Facilities Financing Plan.

RECITALS

1. On June 17, 2014, by San Diego Resolution R-309070, the City Council adopted the Downtown Public Facilities Financing Plan for Fiscal Year (FY) 2015 (Financing Plan). The Financing Plan identifies Project No. P-8, North Central Square Park as shown in Exhibit A.
2. This Agreement relates to a portion of Project No. P-8. Specifically, this Agreement relates to the design and construction of a park as depicted in Exhibit B and described in Exhibit C, which is referred to throughout this Agreement as the “Project.”
3. Developer’s Estimated Cost (as defined in Section 3.3) for the Project is \$ 8,996,800.
4. City and Developer are parties to that certain Real Property Purchase Agreement (RPPA) for the sale by Developer to City of the real property identified as a portion of Assessor’s Parcel Numbers 534-183-03 and -06, consisting of approximately 23,045 square feet of land located in downtown San Diego, California, bordered by “C” Street on the south, 8th Avenue on the west and 9th Avenue on the east, as more particularly described in the RPPA’s Exhibit A: Legal Description (Property).
5. The City’s Parks and Recreation Board (Parks Board) will consider a General Development Plan (“GDP”) for development of the North Central Square Park (“Park”) on the Property and shall present the GDP for a recommendation following the Effective Date of this Agreement. Following the Parks Board recommendation of the GDP, the City’s Development Services Department (“DSD”) shall approve the final GDP and the Developer shall submit construction documents for review and consideration by DSD and the City’s Parks and Recreation Department, and shall obtain all required governmental permits and authorizations for construction of the Park.
6. On August 13, 2021, the City Council of the City adopted Resolution Number R-313688 (“New Park DIF Ordinance”) which, among other things, establishes a new citywide development impact fee (“DIF”). Prior to the New Park DIF Ordinance Effective Date (defined below), the City maintained a DIF program which provided funding for public facilities projects throughout

DOCUMENT NO 00-21640-2

FILED APR 25 2023

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

the City, including transportation, fire services, libraries and parks, through DIFs calculated, collected and spent within each Community Planning Area (“Former DIF Program”). The effective date of the New Park DIF Ordinance was deferred until July 1, 2022 (“New Park DIF Ordinance Effective Date”) where the application of the New Park DIF Ordinance to a project located in the Downtown Community Plan Area would result in an increase in the DIF for the park component over that charged under the Former DIF Program as of July 1, 2021.

7. City hereby represents and warrants to Developer as follows:

7.1 The Project is not subject to the New Park DIF Ordinance.

7.2 For the purposes of this Agreement, “Deferred Fee Projects” shall mean and refer to all projects in the Downtown Community Plan Area that are the subject of a development application submitted to the City prior to July 1, 2022, or qualify for a “preliminary application date” (as that term is defined in California Government Code section 65589.5(o)(1)) prior to July 1, 2022 which (subject to becoming an "Abandoned Project," as defined in Section 12.1.2) shall include the projects described in the following table:

City Assigned Project ID No.	Project Name
PTS 653653	AC Hotel
PTS 639320	The Jefferson Makers Quarter
PTS 641440	220 W. Broadway
PTS 664512	800 Broadway
PTS 686780	Elevate Hotel
PTS 426421	11 th & Broadway Phase 2
PTS 663655	The Lindley
PTS 649856	9G (Radian)
PRJ 1050923	Cortez Hill Apts
PTS 636267	Columbia & A
PRJ 1057058	Front & A
PTS 670397	Cedar & Kettner
PRJ 1056300	1 st & Beech
PRJ 1056807	1521 National Ave

The Deferred Fee Projects are, and shall continue to be, subject to the Former DIF Program and are exempt from the New Park DIF Ordinance. The Parties acknowledge that the projects within the definition of Deferred Fee Projects are subject to change due to the possibility that additional projects may qualify and become Deferred Fee Projects and that some projects may be disqualified as Deferred Fee Projects if they become Abandoned Projects. The Parties agree that such additions and subtractions to Deferred Fee Projects (i) shall not affect the Parties rights and obligations under this Agreement except as provided in Section 12.1.2 and (ii) shall not require the amendment or modification to this Agreement.

7.3 Notwithstanding any requirement in the New Park DIF Ordinance to the contrary but subject to Section 12.1.11, the priority of distribution of DIFs from Deferred Fee Projects under the Former DIF Program is, and will remain throughout the term of this Agreement, as follows:

7.3.1 First, for the payment of costs incurred in connection with the East Village Green project (CIP S16012) in an amount not to exceed \$4,886,000;

7.3.2 Second, for the payment Reimbursable Costs (as defined in Section 3.2) until all Reimbursable Costs incurred by Developer through completion of the Project are paid in full; and

7.3.3 Third, to all other projects in the order and amounts as determined by the City, in its sole discretion.

8. City hereby covenants and agrees for the benefit of Developer as follows:

8.1 All DIFs received from Deferred Fee Projects pursuant to the Former DIF Program shall be deposited into Fund 400122.

8.2 All DIFs received from Deferred Fee Projects shall be distributed from Fund 400122 in accordance with the priority of distribution set forth in Section 8.3 of the Recitals, above. For the avoidance of doubt, all DIFs from Deferred Fee Projects that are deposited into Fund 400122 shall be distributed first to the payment of the reimbursable costs incurred in connection with for the East Village Green project (CIP S16012) in an amount not to exceed \$4,886,000 and second for the payment of Reimbursable Costs until the Project is complete and all Reimbursable Costs are paid in full. Subject to Recital 7.3.1 and Section 12.1.11, City shall not disburse any funds derived from DIFs received from Deferred Fee Projects unless and until all Reimbursable Costs incurred by Developer under this Agreement through completion of the Project have been paid in full.

8.3 Upon written request received from Developer not more frequently than once each calendar year during the term of this Agreement, City shall provide an updated list of Deferred Fee Projects and a written accounting of DIFs collected from Deferred Fee Projects and the amount and purpose of all disbursements of such funds through the date of such accounting.

NOW, THEREFORE, in consideration of the foregoing recitals (the truth of which the Parties acknowledge) and mutual obligations of the Parties, and for other good and valuable consideration, City and Developer agree as follows:

ARTICLE I. SUBJECT OF THE AGREEMENT

1.1 **Developer's Provision of Park Land and the Project.** This Agreement provides the terms and conditions under which Developer will design and construct the park facilities described in the GDP consistent with Exhibit B (Park Improvements) and receive reimbursement from the City. City agrees to accept performance of Developer's obligations under this Agreement either by traditional public contracting methods or by "Design/Bid/Build" or "Design/Build" procedures, at Developer's option, as satisfaction of Developer's obligations relating to the provisions of population-based park land including the design and construction, of park facilities. Upon the request of the Public Facilities Planning (PFP) Project Manager, Developer shall establish a deposit account with the amounts required in Section 12.1.5 of this Agreement.

- 1.2 **Design of Park Improvements** Following the Effective Date, Developer shall prepare construction documents for the Park Improvements (Plans and Specifications) based on the GDP pursuant to the Project Schedule attached as Exhibit D, and shall submit the Plans and Specifications to the City's DSD for review and consideration by DSD and the City's Parks and Recreation Department, and shall obtain all required governmental permits and authorizations for construction of the Park. If all of the foregoing conditions are met, Developer shall promptly commence and diligently pursue construction of the Park in accordance with this Agreement.
- 1.3 **Design and Construction of Project.** Developer agrees to design and construct the Project fully complete and operational and suited to the purpose for which it was designed and in accordance with this Agreement, the GDP Plans and Specifications and such other permits and approvals issued by the City for the Park Improvements, within the timeframe established in the Project Schedule attached as Exhibit D and for the Estimated Costs attached as Exhibit E.
- 1.4 **Substantial and Final Completion.** City's acceptance of the Project shall occur upon Developer's receipt of a letter of Substantial Completion from City (as defined in Section 15.1). Final Completion of the Project shall not occur until after approval of the as-built plans, a signed as final approval for grading or public right-of-way permit, acceptable capitalization form, Notice of Completion, and any required certificate of occupancy and/or property transfers (as defined in Section 16.1).
- 1.4 **Reimbursement.** City agrees to reimburse Developer for the Project subject to the terms and conditions of this Agreement.

ARTICLE II. PROJECT SCHEDULE

- 2.1 **Project Schedule.** Subject to Section 2.5.1, Developer shall perform and complete the work under this Agreement according to the Project schedule attached as Exhibit C (Schedule), the schedule obligations and components attached as Exhibit D (Schedule Obligations and Components), the Meeting Requirements in Exhibit E; and Preconstruction, Progress, and Special Meeting Agendas in Exhibit F.
- 2.1.1 The Project Schedule, in all phases of development, shall consider and adhere to the regulations contained in Chapter 12, Land Development Reviews of the San Diego Municipal Code (SDMC).
- 2.2 **Project Completion.** Developer agrees that all work on the Park Improvements will be complete and ready for operational use according to the Schedule in Exhibit D, and the Project Schedule Obligations and Components in Exhibit D.
- 2.3 **Changes in Project Schedule.**
- 2.3.1 Changes in the Project Schedule that increase the Estimated Cost must be approved by City in writing in accordance with Section 3.3.3.
- 2.3.2 Changes in the Project Schedule that do not increase the Estimated Cost must be approved by the City Engineer.
- 2.4 **Notification of Delay.** If Developer anticipates or has reason to believe that performance of work under this Agreement will be delayed, Developer shall immediately notify the City

Project Manager. Unless City grants Developer 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 Developer needs as a result of the cause of the delay. If Developer anticipates or has reason to believe the delay will increase the Estimated Cost, Developer shall also give notice to City in accordance with Section 3.4.

2.5 **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 Developer 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 Developer 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 Developer failed to complete performance of the work. The following conditions may justify such a delay depending on their actual impact on the 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 Developer's work; concealed conditions encountered in the completion of the Project; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Developer. Any delay claimed to be caused by Developer's inability to obtain materials, equipment, labor, or additional required services shall not entitle Developer to an extension of time unless Developer furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of Developer's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Developer shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Developer, its consultants, contractors, subcontractors, employees, or other agents (collectively, Developer's agents). A change in the Project Schedule does not automatically entitle Developer to an increase in Reimbursable Costs (as defined in Section 3.2). If City determines that the delay materially affects the Project, City may exercise its rights under Section 2.7 of this Agreement.

2.5.1 City understands and acknowledges that the construction schedule of the Project may be impacted by the construction schedule of Developer's residential project immediately adjacent and to the north of the Property ("Adjacent Project") due to, among other things, Developer's use of the Property for construction staging and laydown for the Adjacent Project. City further understands and acknowledges that uncertainties in the financial and/or real estate markets including, without limitation, fluctuations in construction or borrowing costs or supply chain uncertainties (collectively, "Adverse Market Conditions") may affect Developer's decision whether (i) to proceed with the uninterrupted construction of the Adjacent Project or (ii) to pause or temporarily halt construction of the Adjacent Project pending the improvement and/or stabilization of Adverse Market Conditions. Accordingly, Developer has the right, which may be exercised in Developer's sole discretion at any time, or from time to time, to pause or temporarily halt

construction of the Adjacent Project ("Adjacent Project Delay") until Developer determines that the risks associated with the Adverse Market Conditions have abated. Upon the occurrence of an Adjacent Project Delay, Developer shall promptly deliver a written notice of such delay ("Adjacent Project Delay Notice") to City. Upon City's receipt of an Adjacent Project Delay Notice, the Project Schedule shall be and remain tolled until the recommencement of construction of the Adjacent Project. Upon recommencement of construction of the Adjacent Project, Developer shall promptly deliver a written notice to City of such recommencement ("Adjacent Project Recommencement Notice"). The date the City receives the Adjacent Project Recommencement Notice shall be deemed the date of recommencement of construction for all purposes under this Agreement. Parties agree to administratively update the Project schedule based on the Adjacent Project Recommendation Notice. The amended Project schedule shall not exceed the term of the Agreement identified in Section 26.1.

2.6 Costs of Delay. City and Developer acknowledge construction delays may increase the cost of the Project. Unless Developer informs City pursuant to Sections 2.4 and 3.4 of cost increases due to delay and such cost increases are determined by City to be reasonable and are fully recovered through collected fees under the Financing Plan, funding will be insufficient to cover the cost increase. Therefore, Developer 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) because Developer failed to timely notify the City in writing as required under Sections 2.4 and 3.4.

2.7 City's Right to Terminate for Default.

2.7.1 If Developer fails to adequately perform any obligation required by this Agreement, Developer's failure shall constitute a Default. Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default Developer undertakes all reasonable efforts to ensure that the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement including all rights of Developer and any person or entity claiming any rights by or through Developer under this Agreement. A delay shall not constitute a Default if Developer has made good faith and reasonable efforts to adhere to the Project Schedule, has provided notice of delay in accordance with Section 2.4, and such delay was caused by unforeseen events that justify the delay as set forth in Section 2.5.

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

2.7.3 The rights and remedies of City enumerated in Section 2.7 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

Developer, including any claims for damages against Developer that City may assert as a result of the Default.

- 2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.** If Developer files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to or demand upon Developer immediately terminate this Agreement, and terminate all rights of Developer and any person or entity claiming any rights by or through Developer. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

ARTICLE III. PROJECT COSTS AND CHANGE ORDERS

3.1 Project Costs. Project Costs are Developer's reasonable costs of construction materials and design necessary for the Project as approved by the City and depicted in **Exhibit E** Project Costs do not include Developer's Administrative Costs (as defined in Section 3.3.1). Project Costs shall include, but not be limited to, the following activities, but only to the extent those activities occurred on or after January 1, 2020:

3.1.1 Hard Costs:

3.1.1.1 Net rough grading cost for the Property (net rough grading cost means a pro-rata share of cost paid by Developer to rough grade the Property, less any savings realized by Developer in balancing the cut and fill soil of the site; final grading in accordance with the approved GDP;

4.1 3.1.1.2 Construction of landscaping, irrigation systems, and other park amenities and facilities as described in the GDP and as shown on the approved construction documents and specifications;

3.1.1.3 Costs associated with provision of required utilities, including potable and reclaimed water, electricity, paving, storm drain system, and sanitary sewer system, if any, to serve the Project from the closest point of public connection;

3.1.1.4 Other improvements as may be required by City during City's review and approval process as described and permitted in the Agreement; and

3.1.1.5 An erosion control and storm water protection plan.

3.1.2 Soft Costs. Professional services for preparation of the GDP, construction documents, specifications, and cost estimates, and construction administration. Soft Costs also include Developer's construction management costs,

3.1.3 Insurance premiums and bonds associated with actual construction of the Project,

3.1.4 City Permits, City processing fees, and City Administrative Costs as defined in Section 12.1.5, associated with actual construction of the Project that are paid for by Developer.

- 3.2 Reimbursable Costs.** Developer may seek reimbursement only for Reimbursable Costs. "Reimbursable Costs" shall consist only of the Estimated Costs (as defined in Section 3.3)

reasonably expended by Developer, approved for reimbursement in the Financing Plan, and approved by City under the terms of this Agreement.

3.2.1 Non-Reimbursable Costs. Non-Reimbursable Costs include: (i) any cost in excess of the Estimated Costs not approved in accordance with Section 3.3.3; (ii) any cost identified in this Agreement as a Non-Reimbursable Cost; (iii) any cost to remedy Defective Work (as defined in Section 21.1); (iv) any cost incurred as a result of Developer's or Developer's agents' negligence, omissions, delay, or Default; (v) any cost of substituted products, work, or services not necessary for completion of the Project, unless requested and approved by City in writing; (vi) any cost not approved by City in the manner required by this Agreement and/or the Charter of the City of San Diego (San Diego Charter) and rules, regulations, or laws promulgated thereunder; (vii) any cost not supported by proper invoicing or other documentation as reasonable and necessary; and (viii) any cost in excess of DIFs actually collected by the City and available for reimbursement to Developer for the design and construction of the Project. Additionally, 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 constitutes a Non-Reimbursable Cost. Refundable deposits, such as utility deposits, also constitute a Non-Reimbursable Cost.

3.3 Estimated Cost(s). Developer's Estimated Costs shall consist only of: (i) Project Costs, (ii) Developer's Administrative Costs (as defined in Section 3.3.1), and (iii) the Project Contingency (as defined in Section 3.3.2). The total Estimated Cost of Project is **Eight Million Nine Hundred Ninety-Six Thousand Eight Hundred Dollars (\$8,996,800)** plus interest (as set forth in Section 12.1.6).

3.3.1 Developer's Administrative Costs. Developer's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures totaling 6 percent of Developer's Project Costs.

3.3.2 Project Contingency. A Project Contingency of 10 percent of estimated construction costs is included in the Estimated Cost. The Project Contingency shall not be available for: (i) work required due to Developer's or Developer'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 Developer or Developer's agents.

3.3.3 Change Orders and Adjustments to Estimated Cost. Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with Exhibit I. The Estimated Cost may only be increased if Developer provides documentation showing that the increase is reasonable in nature and amount, and is due to causes beyond Developer's or Developer's agents control or otherwise not the result of unreasonable conduct by Developer or Developer's agents which may, based on actual impact on the Project, include: 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 Developer's work; concealed conditions encountered in the completion of the Project; 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 Developer. Developer 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), Developer's or Developer's agents' negligence, or costs that exceed the amount available pursuant to the Financing Plan. Developer shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order.

3.4 Notification of Increased Estimated Costs. If Developer anticipates or has reason to believe that the cost of the Project will exceed the Estimated Cost, Developer shall notify the City in writing within fourteen (14) calendar days of becoming aware of the potential increase. If Developer fails to timely notify City in writing, Developer agrees to absorb any increase in Estimated Costs and any interest thereon not accounted for in the Financing Plan. This written notification shall include an itemized cost estimate and a list of recommended revisions Developer believes will bring the construction cost to an amount within the Estimated Cost. In accordance with Section 3.3.3, City may approve an increase in Estimated Costs and/or delineate a project which may be constructed within Estimated Costs, subject to City Council consideration. If City chooses not to pursue the above options, Developer may elect to construct the Project and forgo any reimbursement in excess of the Estimated Cost.

3.5 Reallocation of Costs. Developer may re-allocate savings realized with respect to particular line items on the Estimated Project Costs budget to pay for additive or deductive bid alternates, if any, subject to approval from the Project Manager, as identified pursuant to Section 6.5. City shall either approve or disapprove a request for reallocation of costs within 30 calendar days.

ARTICLE IV. COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

4.1 Compliance. Developer shall bid and award contracts to complete the Project in accordance with the San Diego Charter and rules, regulations, and laws promulgated thereunder, including, but not limited to, the SDMC and City Council resolutions and policies, as well as any expressly applicable public contract laws, rules, and regulations or City's "Design/Bid/Build" or "Design/Build" procedures (Required Contracting Procedures). Required Contracting Procedures are determined in the sole discretion of the City, and include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's Small and Local Business Enterprise Program (SLBE) for public works contracts, and the City's Equal Benefits Ordinance. Prior to bidding the Project and proceeding with a "Design/Bid/Build" or "Design/Build" procedures, Developer shall work with City's Project Manager to ensure that the bidding documents are in compliance with all Required Contracting Procedures. Developer understands that it must comply with all required contracting procedures as described in, but not limited to, Exhibit J. City's "Design/Build" procedures according to the Design/Build Project Management Procedure Summary for Developer is attached for guidance as Exhibit X. The Developer may, if needed, request assistance from the City's Project Manager. Developer's 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.

4.2 Bidding Documents. This section 4.2 shall only be applicable in the event Developer does not elect to proceed using “Design/Build” procedures.

4.2.1 ***Submission of Construction Documents.*** Developer shall submit bidding documents to City for approval before soliciting bids for work on the Project. Within two weeks of receipt, the City will contact the developer to notify Developer of any necessary corrections that need to be made.

4.2.2 ***Obtain all Permits and Approvals.*** Developer shall obtain all necessary permits, including, but not limited to, environmental, grading, building, mechanical, electrical, and plumbing. The final approval of the Construction Bidding Documents will be by way of the City’s issuance of a letter or an email indicating that the Developer may proceed with competitive bidding.

4.3 Solicitation of Bids. Should Developer elect not to proceed with “Design/Bid/Build” or “Design/Build” procedures, Developer shall solicit sealed bids for construction of the Project in accordance with all Required Contracting Procedures. With notice of at least five (5) Working Days, Developer shall notify City of the time and place of each bid opening. Developer shall work with City’s Project Manager to ensure that bids are solicited in the manner required in accordance with the Required Contracting Procedures.

4.4 Bid Opening and Award of Contract. Should Developer elect not to proceed with “Design/Bid/Build” or “Design/Build” procedures, Developer shall open bids and award contracts in accordance with all Required Contracting Procedures. Developer shall ensure that bids are opened and that contracts are awarded in accordance with all required Contracting Procedures. The Developer may, if needed, request assistance from the City’s assigned Project Manager representative. Developer shall publicly open sealed bids. The bidding contractors shall be permitted to be present at the bid opening. The Developer will submit to the assigned City representative copies of all bids received immediately after the bid opening; and with a copy of the tabulation of bid results upon its completion by the Developer. The Contract for the construction of the Project shall be awarded by Developer to the lowest responsive and responsible bidder in accordance with the Required Contracting Procedures.

4.4.1 In the event that the lowest responsive and responsible bid exceeds the Estimated Cost, any reimbursement for such an increase shall be subject to approval by Change Order pursuant to Section 3.3.3 following award of the contract.

4.4.1.1 In the event the City Council does not approve the increased cost, at City’s option:

4.4.1.1.1 City may terminate this Agreement. In the event the Agreement is terminated, Developer’s obligations pursuant to this Agreement for the construction of the Project shall be released without further liability. Prior to termination of this Agreement, City shall reimburse Developer in cash from Deferred Fee Project DIF payments received by the City for the engineering and design costs reasonably incurred and expended by

Developer in accordance with this Agreement and within the Estimated Cost in accordance with Section 3.3. Developer shall provide City with copies of all executed contracts; or

4.4.1.1.2 City may work with Developer to rebid and/or redesign the Project.

4.4.1.1.3 With Developer's consent, Developer may award the bid and assume responsibility for the costs in excess of Estimated Cost.

4.5 Nondiscrimination Requirements.

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

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

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

4.6 Equal Benefits. This Agreement is with a sole source and therefore, Developer is not subject to the City's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the

Municipal Code. However, the Equal Benefits Ordinance is applicable to contracts that Developer enters into with respect to the Project. Therefore, Developer shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Developer shall include in each of its contracts with its contractor(s) and consultant(s) provisions: (i) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (ii) stating that failure to maintain equal benefits is a material breach of those agreements; and (iii) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. SDMC section 22.4304(e)-(f). In addition, Developer'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 section 22.4304(a)-(b). Developer'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 Equal Benefits Ordinance requirements. SDMC section 22.4304(c). Additionally, Developer's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the Equal Benefits Ordinance. SDMC section 22.4304(d). Developer shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance by including the following statement in all contracts with its contractors and consultants: "Equal Benefits Ordinance. Unless an exception applies, contractor/consultant shall comply with the Equal Benefits Ordinance (EBO) codified in the SDMC section 22.4304(f). Failure to maintain equal benefits is a material breach of this contract. By signing this contract, contractor/consultant certifies that contractor/consultant is aware of, and will comply with, this City-mandated clause throughout the duration of the contract."

ARTICLE V. PREVAILING WAGE

5.1 Prevailing Wage. Prevailing wages apply to the Project. Pursuant to SDMC section 22.3019, construction, alteration, demolition, repair and maintenance work performed on the Project is subject to State prevailing wage laws, and Developer shall ensure compliance with all applicable prevailing wage laws and requirements. For construction work performed on the Project that cumulatively exceeds \$25,000 and for alteration, demolition, repair and maintenance work performed on the Project that cumulatively exceeds \$15,000, Developer shall ensure that its contractors and subcontractors comply with State prevailing wage laws including, but not limited to, the requirements listed below.

5.1.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, Developer shall ensure that its contractors and subcontractors ensure that all workers who perform work on the Project are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. Developer shall immediately notify City of any known violations of this Article.

5.1.1.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the

prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Developer shall ensure that its contractors and subcontractors post a copy of the prevailing rate of per diem wages determination at each job site and make them available to any interested party upon request.

5.1.1.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of contract for the Project. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the contract, each successive predetermined wage rate shall apply to the contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the contract, such wage rate shall apply to the balance of the contract.

5.1.2 **Penalties for Violations.** Developer shall require its contractor and subcontractors comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

5.1.3 **Payroll Records.** Developer shall require its contractor and subcontractors comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Developer shall require its contractor to require its subcontractors to also comply with section 1776. Developer shall require its contractor and subcontractors submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Developer shall require its contractor to ensure that its subcontractors submit certified payroll records to the City.

5.1.3.1 For contracts entered into on or after April 1, 2015, Developer shall ensure that its contractor and subcontractors furnish records specified in California Labor Code section 1776 directly to the Labor Commissioner in the manner required by California Labor Code section 1771.4.

5.1.4 **Apprentices.** Developer shall require its contractors and its subcontractors comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Developer shall require its contractors to be held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5.1.5 **Working Hours.** Developer shall require its contractors and subcontractors to comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restricting working hours on public works contracts to eight hours a

day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

5.1.6 Required Provisions for Subcontracts. Developer shall require its contractors to include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

5.1.7 Labor Code Section 1861 Certification. In accordance with California Labor Code section 3700, Developer shall require that its contractors secure the payment of compensation of its employees and by signing the contract, the contractors certify as follows: “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ 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 this [agreement or contract].”

5.1.8 Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Equal Opportunity Contracting Department at 619-236-6000.

5.1.9 Department of Industrial Relations Registration. This Project is subject to compliance monitoring and enforcement by the DIR. Developer shall register with the DIR pursuant to Labor Code section 1725.5. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to California Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. Developer shall ensure that its calls for bids and contract documents include the following provisions: “No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5”; “No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5”; “This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations”; and “By submitting a bid or proposal, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request.”

5.1.9.1 A contractor's inadvertent error in listing a subcontractor who is not registered pursuant to California Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in California Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

ARTICLE VI. CONSULTANTS

- 6.1** **Selection of Consultant.** If the Developer chooses to bid and award contracts without Design/Bid/Build or Design/Build procedures, Developer shall hire a State licensed consultant(s) who will design the Project and prepare the GDP, construction documents, specifications, and cost estimates for the Project. Developer's hiring of a consultant is subject to approval from the Development Services Department Director. Developer's consultants shall be subject to all State and City laws, including regulations and policies applicable to consultants retained directly by City. Developer shall cause the provisions in Exhibit K (Consultant Provisions) to be included in its consultant contract(s) for the Project. The selection of any consultant is subject to all applicable public contract laws, rules, and regulations, including but not limited to, the San Diego Charter, the Municipal Code, Council Policies, and the City's Administrative Regulations. , Failure to adhere to all applicable consultant selection procedures is a material breach of this Agreement, as applicable, and any contract awarded not in accordance with the City's consultant selection procedures, as applicable, shall be ineligible for reimbursement.
- 6.2** **Equal Benefits and Nondiscrimination.** The requirements of City's Equal Benefits Ordinance apply to Developer's consultant contracts. *See* Section 4.6. The nondiscrimination requirements in Section 4.5 apply to Developer's consultant contracts.
- 6.3** **Estimated Budget.** Developer shall require its consultant to prepare an estimated budget for the Project.
- 6.4** **Schematic Drawings.** Developer shall require its consultant to prepare schematic drawings for the Project for City approval.
- 6.5** **Selection of Project Manager.** City shall select a Project Manager for the purposes of fulfilling the functions of this Agreement and the function of a Project Manager described in Council Policy 600-33 "Community Notification and Input for City-Wide Park Development Projects", and shall notify Developer in writing of the name and contact information of the Project Manager.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

- 7.1** **Standard of Care.** Developer agrees that the professional services provided under this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional design, 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.

- 7.2 **Compliance with all Laws, Design Standards, and Construction Standards.** In all aspects of the design and construction of the Project, Developer 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 L. It shall be Developer's sole responsibility to comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. Developer shall certify compliance with Title 24/ADA to City in the form and content as set forth on Exhibit M (Certification for Title 24/ADA Compliance).
- 7.3 **Imputed Knowledge.** Developer 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 Developer to the fullest extent allowed by law.
- 7.4 **City Approval.** Developer shall be required to obtain City approval of the GDP, construction documents, and construction cost estimates in the manner required in Exhibit N. 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.
- 7.5 **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 Developer of responsibility for complying with all applicable laws, codes, regulations, and standard consulting, design, or construction practices.

ARTICLE VIII. CONSTRUCTION AND DRUG-FREE WORKPLACE

- 8.1 **Compliance with Project Schedule and Construction Requirements.** Developer shall commence construction of the Project in accordance with the Project Schedule, as described in Article II, and be subject to the obligations in Exhibit O (Construction Obligations). Developer shall diligently pursue such construction to completion. Subject to Section 2.5.1, failure to maintain the Project Schedule constitutes a Default subject to Section 2.7. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under any other provision of this Agreement or those available at law or in equity.
- 8.2 **Drug-Free Workplace.** Developer 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 Developer shall certify to City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace in the form and content of Exhibit P. Developer shall ensure that its contractors comply with the requirements of City's Council Policy 100-17.

ARTICLE IX. PRODUCTS

- 9.1 **Product Submittal and Substitution.** To the extent product specification is not addressed by the most recent edition of the Standard Specifications for Public Works Construction (including the City of San Diego's standard special provisions) (Green Book) or the Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding

process, Developer shall obtain City approval of products and substitution of products in the manner provided in Exhibit Q (Product Submittal and Substitution).

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

ARTICLE X. EXTRA WORK

10.1 **City Authority to Order Extra Work.** Any City additions or modifications to work or Developer 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 R (Extra Work Provisions).

ARTICLE XI. CHANGED CONDITIONS

11.1 **Changed Conditions.** Changed Conditions shall have the meaning as defined in the Green Book. 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 3.3.3. Absent such express approval of additional funds, Developer shall provide City with value engineering and the Parties shall return the Project to within the Estimated Cost.

ARTICLE XII. REIMBURSEMENT

12.1 **Reimbursement to Developer**

12.1.1 ***Notification of Reimbursable Project.*** Prior to commencement of any work on the Project, Developer shall submit to the City's Development Services Department a "Notification of Reimbursable Project" form (attached as Exhibit S) together with the Project's construction permit application.

12.1.2 ***Type of Reimbursement.*** Developer shall be entitled to cash reimbursement for the Reimbursable Costs expended by Developer and approved by City in accordance with this Agreement. Subject to the City's receipt of Deferred Fee Project DIF payments and the Priority of Reimbursement set forth in Section 12.1.11 below, Developer shall be entitled to reimbursement as soon as the reimbursement requirements set forth in this Agreement have been satisfied. Any changes to the anticipated timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. Developer shall not receive cash reimbursement unless there are sufficient funds to reimburse Developer, in whole or in part, from Deferred Fee Project DIF payments. Provided the City complies with its obligations under this Agreement related to the collection, deposit and distribution of Deferred Fee Project DIF payments, if sufficient Deferred Fee Project DIF payments are not available to fully reimburse Developer in accordance with the schedule of reimbursement set forth in Section 12.1.8 of this Agreement, reimbursement shall be deferred until sufficient funds accrue to complete reimbursement to Developer of all eligible Reimbursable Costs. If one or more Deferred Fee Projects become Abandoned Projects (defined below) such that sufficient Deferred Fee Project DIF payments are not available to

complete reimbursement of all eligible Reimbursable Costs, Developer shall not be reimbursed by City for Developer's outstanding costs or expenditures, and Developer expressly agrees to fully absorb all such outstanding costs or expenditures without any further reimbursement from City. For the purposes of this Section 12.1.2, the term "Abandoned Project" shall mean a Deferred Fee Project that does not proceed with construction for a period of time sufficient for its applicable development approvals (i.e., building permits, etc.) to expire without the possibility of reinstatement.

- 12.1.3 ***Funds for Reimbursement.*** Developer shall only be entitled to reimbursement as set forth in this Agreement and only from Deferred Fee Project DIF payments actually collected by City, after the appropriate deductions and expenditures permitted by this Agreement are made, pursuant to the method of reimbursement described in Section 12.1.7, and in the priority of reimbursement described in Section 12.1.11.
- 12.1.4 ***Amount of Reimbursement.*** Developer shall be eligible for reimbursement for Reimbursable Costs in accordance with Section 3.2 in an amount not to exceed Estimated Costs in accordance with Section 3.3.
- 12.1.5 ***City's Administrative Costs.*** Unless previously paid by Developer in accordance with Section 3.2, City's Administrative Costs shall be paid by Deferred Fee Project DIF payments subject to this Agreement prior to any reimbursement to Developer and shall consist of the costs and expenses incurred by City to: (i) facilitate design, implement, process, and administer the Project, (ii) review contractor/subcontractor compliance with the City's Required Contracting Procedures, (iii) approve reimbursable costs for work performed during design/construction through Final Completion of the Project, and (iv) review project documentation to verify all costs related to the Project, inclusive of construction bid tabulations, contracts, and review of any cost allocation methods (City's Administrative Costs). City's Administrative Costs are not included in the Estimated Costs (as defined in Section 3.3) and not eligible for Developer reimbursement.
- 12.1.6 ***Interest.*** Interest shall begin to accrue from 90 days after the time the submittal of a Reimbursement Request (as defined in Section 12.1.7) is accepted and approved by the City, or the date the Developer submits an invoice for approved amounts in accordance with Section 12.1.10, whichever occurs later, and shall continue to accrue until the date of cash reimbursement, up to a maximum of \$50,000. Interest shall accrue at the rate earned by the City Treasurer on funds allocated for the Project, not to exceed the assumed interest rate identified in the assumptions of the applicable Financing Plan, at the time the interest is accruing. Interest shall not accrue under circumstances set forth in Sections 2.6 and 3.4. Interest shall not accrue on the withholding amount set forth in Section 12.1.8.
- 12.1.7 ***Method of Reimbursement.*** Developer shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Project for which Developer was not previously reimbursed (Reimbursement Request). Reimbursement Requests for projects other than those covered by this Agreement must be submitted as separate requests. The Reimbursement Request must also

include all relevant documents in accordance with this Section. City shall determine whether additional documentation is needed to support the Reimbursement Request or if the Reimbursement Request is otherwise incomplete, and shall notify Developer of such deficiencies within sixty (60) calendar days of Developer's Reimbursement Request submittal. Developer shall provide additional documentation within fourteen (14) calendar days of City's notification and request. However, even if City fails to notify Developer within sixty (60) calendar days regarding Developer's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Developer 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 Developer for those Reimbursable Costs within sixty (60) calendar days of the date of Reimbursement Request Approval provided that funds are available in the DIF for the Project, and that the Project is scheduled in the Financing Plan for reimbursement at that time.

12.1.8 Reimbursement Timing. Subject to the limitations of Article XII, and at the City's discretion, Developer shall be eligible for reimbursement as follows:

12.1.8.1 Up to 30 percent of the Reimbursable Costs estimated for the Project subject to the Developer satisfying all of the following requirements:

- All Plans (GDP and construction documents) and Specifications for the Project have been approved by the City (Design-Build: City approval of the Request For Proposal);
- Any public access (e.g. right-of-way, access easement, etc.) required for the project that has been secured and dedicated;
- All required permits and environmental clearances necessary for the Project have been secured;
- All performance bonds, payment bonds, and warranty bonds as described in Article XVII have been provided;
- All City fees and costs have been paid;
- Evidence satisfactory to the City that Developer has complied with and satisfied Article IV (Competitive Bidding, Equal Opportunity, and Equal Benefits) and Article VI (Consultants) of the Agreement;
- Copies of valid bids;
- Documentation of City approval of the bids; and
- Awarded construction contract.

Such reimbursement shall be based on Costs expended and verified to date per Section 12.1.10.

12.1.8.2 Up to 90 percent of the Reimbursable Costs reasonably expended and verified to date per Section 12.1.10 for the Project subject to City's issuance of a Substantial Completion Letter (as defined in Section 15.1) for the Project.

12.1.8.3 The remaining 10 percent of the Reimbursable Costs reasonably expended and verified to date per Section 12.1.10 shall be paid to Developer upon submission and approval of all documents as required for Final Completion pursuant to Section 16.1 of this Agreement.

Reimbursement Requests shall be submitted at the completion of each of the milestone intervals identified above in Sections 12.1.8.1 through 12.1.8.3.

12.1.9 ***Cutoff for Submission of Reimbursement Requests.*** Developer shall submit all Reimbursement Requests 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 Developer shall not be eligible or entitled to any reimbursement for those costs or expenses.

12.1.10 ***Verification of Reimbursement Request.*** A Reimbursement Request shall include one electronic (PDF) file that includes documentation showing completion of the milestone intervals identified in Sections 12.1.8.1 through 12.1.8.4. The Reimbursement Request shall include the City's most current version of a checklist for submittal of Reimbursement claims. Developer shall on a monthly basis, or as otherwise required by the City in writing, provide 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:

12.1.10.1 Developer shall submit one (1) copy of a Reimbursement Request Form (Exhibit T, and itemized summary spreadsheet with supporting documentation for work completed in accordance with this Agreement and the Plans and Specifications and/or Extra Work. Reimbursement Requests shall be numbered.

12.1.10.2 Prior to the approval of the Reimbursement Request, the Resident Engineer (RE) shall verify whether the materials and work for which reimbursement is being requested have been installed and performed as represented. The RE shall review the Project on-site for quality of material and assurance and adherence to the bid list, contract estimates, and the Plans and Specifications. The RE shall also review as-builts and Best Management Practices (BMPs), and verify that a lien release has been prepared.

12.1.10.3 The RE shall initial the reimbursement Request, noting any disallowed costs, maintain a copy, and forward the original to the City Senior Civil Engineer or City designee for review and approval.

- 12.1.10.4 The City Senior Civil Engineer or City designee shall review the Reimbursement Request, as well as supporting cost documentation received from Developer, including soft costs related to the Project, as well as monitor the RE's expenses charged to the Project, and other City Administrative Costs. The City Senior Civil Engineer or City designee shall also serve as the liaison between the RE and the PFP Project Manager.
- 12.1.10.5 After review and approval of the Reimbursement Request, the City Senior Civil Engineer or City designee shall forward to the PFP Project Manager for review and approval. Following approval, the PFP Project Manager shall return the request to the Senior Civil Engineer or City designee.
- 12.1.10.6 The City Senior Civil Engineer or City designee shall prepare a memorandum, including a summary schedule of budgeted and actual approved costs, to the PFP Project Manager recommending the reimbursement amount including all construction invoices and change orders previously approved, and soft costs incurred to date, noting any costs to be disallowed and the reason for the disallowance. A copy of the memorandum shall be forwarded to Developer.
- 12.1.10.7 The PFP Project Manager shall verify that reimbursements from Deferred Fee Project DIF payments received by the City are available for reimbursement.
- 12.1.10.8 Developer shall then submit an invoice to the City for the reimbursement amount approved by City.
- 12.1.11 ***Priority of Reimbursement.*** Payment of Reimbursable Costs to Developer will be subsequent to reimbursement of City's Administrative Expenses incurred in connection with the Project subject to this Agreement, or Financing Plan, and DIF fund administration, but takes priority over (i) any project other than the East Village Green project (CIP S16012) subject to Recital 8.3.1 of this Agreement and (ii) any other project added to the Financing Plan subsequent to the Effective Date (as defined in Section 26.1) of this Agreement, with the following exceptions:
 - 12.1.11.1 Any State or Federally mandated project.
 - 12.1.11.2 If and to the extent Developer failed to properly notify City in writing of any actual or anticipated increases in Estimated Costs as required under Sections 2.6 and 3.4, the 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.

ARTICLE XIII. PUBLIC RELATIONS

- 13.1 **Presentations.** Developer and Developer's agents shall be available for all presentations required to be made to City Council, Council Committees, City's Park and Recreation Board, any other related committees, and citizen groups to provide them with information

about the Project as well as presentations to any governing or regulatory body or agency for other approvals as may be required.

- 13.2 **City as Primary Contact.** Developer agrees that City is the primary contact with the media regarding the Project and Developer shall forward all questions regarding the Project status to the Responsible Department's Senior Public Information Officer.
- 13.3 **Advertising.** Developer acknowledges that advertising referring to City as a user of a product, material, or service by Developer and/or Developer's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval.
- 13.4 **Recognition.** Developer shall place a sign, placard, or other similar monument on the Project site during construction, which shall acknowledge Developer's and City's joint efforts in designing and constructing the Project, and identifying that the Project is funded with DIF funds. Developer shall properly recognize City and include the City of San Diego'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 Senior Public Information Officer. For assistance with proper recognition, or if Developer is contemplating a dedication or ground-breaking ceremony, Developer shall contact the Responsible Department's Senior Public Information Officer.
- 13.5 **Dedication Ceremony.** City or Developer shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on the Project site at any reasonable time following Operational Acceptance of the Project, provided Developer receives prior approval from the Project Manager for the ceremony and provides an opportunity for appearances by the Mayor, Council Members and other appropriate City officials. Developer shall contact the City's Communications Department to arrange a mutually acceptable date and time for any ceremony. Invitation shall not be sent out or a date set until the City's Communications Department has approved the time and date for the ceremony. This ceremony expense is a reimbursable cost up to a maximum of \$2,500 and must be included in the Estimated Costs (as defined in Section 3.3). Eligible costs should include but not limited to chair and table rentals, shade/tent rentals, public address system with podium, refreshments, collateral materials (i.e., brochures / fact sheets about the project).
- 13.6 **Cleanup.** Developer shall be responsible for the cleanup of the Project site and the restoration and repair of any damage to the Project site attributable to any Developer sponsored ceremony.

ARTICLE XIV. STANDARD PARK INSPECTION

- 14.1 **Inspection Team.** The Project shall be inspected by a team composed of representatives from the following (Inspection Team) at the appropriate minimum Inspection Stages identified in Section 14.2:
 - (i) The City's Resident Engineer ("RE") – Stages 1-13
 - (ii) The City's Project Manager – Stages 1-13
 - (iii) Developer's Construction Superintendent – Stages 1, 5, 10, 12, and 13
 - (iv) Developer's Consultant(s) – Stages 1, 4-10, 12, and 13

- (v) Park and Recreation District Manager – Stages 1-13
- (vi) Contractor(s) – Stages 1-13

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

- (i) Pre-construction meeting
- (ii) Irrigation Mainline pressure test
- (iii) Wiring prior to backfilling trenches
- (iv) Hardscape at time of finished staking and layout
- (v) Topsoil review, acceptance and placement
- (vi) Finish grading and soil preparation
- (vii) Irrigation coverage test
- (viii) Plant material (when delivered) and plant placement approval
- (ix) Playground inspection, if applicable
- (x) Pre-assembled equipment and/or on-site construction facilities
- (xi) Preliminary Walk-Through Inspection at 90% construction completion (develop punch list and submit as-built drawings)
- (xii) Plant establishment period to begin when punch list items are complete as indicated on construction documents
- (xiii) Final Inspection (contractor to submit final approval as-built drawings to City)

ARTICLE XV. PROJECT COMPLETION

15.1 Notice to City. When Developer determines that the Project is complete, Developer shall notify City in writing of that status within seven (7) calendar days of Developer's determination. The notice shall certify to City that the Project is complete in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project. The Developer shall also request an operational inspection and a Substantial Completion Letter from the Resident Engineer.

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

15.2.1 Punch List. A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to Developer by the RE within three (3) Working Days of the Walk-Through Inspection. Developer shall correct the items

listed on the Punch List within thirty (30) calendar days of receipt of the Punch List and prior to the Final Inspection.

15.2.2 ***Failure to Identify Items.*** As to any items not included on the Punch List or later discovered, nothing in this section is intended to limit Developer's obligations under this Agreement and City will maintain all remedies available under this Agreement and the law.

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

15.4 **Final Inspection.** Provided Developer has corrected the Punch List items and notified City of the correction (Notice of Correction) and the Plant Maintenance Period is complete as described in Section 22.2, 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 ACCEPTANCE AND FINAL COMPLETION

16.1 **ACCEPTANCE.** Upon approval by the Inspection Team during the Final Inspection that the Project is complete and that work required on the Punch List has been finished, City shall accept the Project (Acceptance). Upon Acceptance, the following shall occur:

16.1.1 ***Parks and Recreation Department Acceptance.*** The Project Manager shall obtain a Letter of Acceptance from the Parks and Recreation Department for the completed Project prior to transfer of ownership.

16.1.2 ***Notice of Completion.*** Developer shall execute and file with the County Recorder of San Diego County documentation indicating that the Project and all work depicted on the approved City drawings has achieved Final Completion and identifying the date of Project completion [Notice of Completion]. Developer shall provide the City Engineer with a conformed copy of the recorded Notice of Completion.

16.1.3 ***Capitalization.*** The Developer shall submit a capitalization form with respect to the Project in a form acceptable to the PFP Project Manager. An example is provided as **Exhibit V**.

16.1.4 ***Lien and Material Releases.*** Developer shall ensure that all contractors and subcontractors provide lien and material releases for the Project and provide copies of such lien and material releases to the City Engineer. Alternatively, with City's approval, which shall not be unreasonably withheld, Developer may ensure that bonds are provided in a form reasonably acceptable to City in lieu of the lien and material releases.

16.1.5 ***Documents and Approvals.*** Submission and approval of all documents required to be supplied by Developer to City pursuant to this Agreement, including As-Built Drawings, As-Graded Reports, warranties, operating and maintenance manuals and other Project Deliverables identified in **Exhibit U**; City signature and sign off as final approval on all grading or public right-of-way permits; and if applicable, the issuance of a final Certificate of Occupancy for the Project.

16.1.6 **Transfer of Ownership.** Developer shall transfer the ownership of the Neighborhood Park site pursuant to the terms set forth in the Purchase Agreement.

16.1.7 **Project Acceptance.** Notwithstanding anything to the contrary herein, until such time as the City has taken title to the Neighborhood Park site, accepted the Neighborhood Park site, and exonerated the bonds posted for the Neighborhood Park (Project Acceptance), the Neighborhood Park shall not be opened for use by the general public.

16.2 Final Completion. Final Completion of the Project shall be deemed to occur on the date all of the requirements in section 16.1 have been completed.

16.2.1 **As-Built Drawings.** Developer shall submit As-Built Drawings to City within five (5) Working Days of Final Completion. City, including but not limited to, Public Works/Engineering & Capital Projects Development, will evaluate the submitted As-Built Drawings for accuracy and completeness and may return them to Developer with comments. Developer shall meet with City until all issues are resolved. Upon issue resolution in accordance with disputed work procedures set forth in Section 21.6, Developer shall submit a mylar set and three (3) final sets of As-Built Drawings stamped by the architect/engineer of record as required by law within thirty (30) calendar days.

16.3 No Waiver. Developer's obligation to perform and complete the Project in accordance with this Agreement and Construction Documents shall be absolute. Neither recommendation of any progress payment or acceptance of the work, nor any payment by City to Developer under this Agreement, nor any use or occupancy of the Project or any part thereof by City, nor any act of acceptance by City, nor any failure to 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.

16.4 Assignment of Rights. Upon Final Completion of the Project, Developer shall assign its rights under its contracts with all contractors, subcontractors, design professionals, engineers, and material suppliers associated with the Project to City. Developer 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 Developer of its obligations under this Agreement, and such obligations shall be joint and several.

16.5 Ownership of Project Deliverables. Upon Final Completion or termination, Project Deliverables shall become City's property. Developer and City mutually agree that this Agreement, Construction Documents, and Project Deliverables for the Project shall not be used on any other work without the consent of each Party.

ARTICLE XVII. BONDS AND OTHER ACCEPTABLE SECURITIES

17.1 Payment Bond. Developer shall provide or require its construction contractor to provide City with a payment bond, letter of credit (LOC), cash or other acceptable security for material and labor in favor of City for 100 percent of the proposed construction costs, as determined by competitive bidding (Payment Bond).

- 17.2 **Performance Bond.** Developer shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the performance in favor of City for 100 percent of the proposed construction costs, as determined by competitive bidding (Performance Bond).
- 17.3 **Warranty Bond.** Developer shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the Project during the warranty period in favor of City (Warranty Bond). Developer shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.
- 17.4 **Term.** The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond shall remain in full force and effect until Operational Acceptance of the Project by City. Upon Operational Acceptance, City shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Agreement.
- 17.5 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 17.6 **Licensing and Rating.** The bonds shall be duly executed by a responsible surety company 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, and have a minimum AM Best rating of "A-" to an amount not to exceed 10 percent of its capital and surplus.
- 17.7 **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, Developer shall within seven (7) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to City.

ARTICLE XVIII. INDEMNIFICATION

- 18.1 **Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 18.2 and 18.3 below, to the fullest extent permitted by law, Developer 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 Developer or Developer'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 Developer or Developer's agents, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Developer's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities

arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

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

ARTICLE XIX. INSURANCE

- 19.1 General.** Developer shall not begin work on the Project under this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Article.
- 19.2 Type and Amount of Insurance.** The dollar amount and type of insurance required for the Project, including any endorsements or specific clauses, is attached as Exhibit W (Required Insurance Provisions).
- 19.3 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 Developer to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days' notice shall be provided.
- 19.3.1 Where the words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" are present on a certificate, they shall be deleted.

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

ARTICLE XX. WARRANTIES

- 20.1 **Warranties Required.** Developer shall require the construction contractor and its subcontractors and 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.
- 20.1.1 ***Materials and Workmanship.*** All work on the Project shall be guaranteed against defective workmanship and all materials furnished by the construction contractor or its agents shall be guaranteed against defects for a period of one (1) year from

the date of the Project's Final Completion. Construction contractor shall replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.

20.1.2 ***New Materials and Equipment.*** Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all materials and equipment incorporated into the Project are new unless otherwise specified.

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

20.2 Form and Content. Except manufacturer's standard printed warranties, all warranties shall be on Developer's and Developer's agents, 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.

20.2.1 ***Durable Binder.*** Obtain warranties, executed in triplicate by Developer, Developer's agents, installers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.

20.2.2 ***Table of Contents.*** All warranties shall be listed and typewritten in the sequence of the table of contents of the Project 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.

20.2.3 ***Index Tabs.*** Each warranty shall be separated with index tab sheets keyed to the table of contents listing.

20.2.4 ***Detail.*** Provide full information, using separate typewritten sheets, as necessary. List Developer's agents, installer, and manufacturer, with name, address and telephone number of responsible principal.

20.2.5 ***Warranty Start Date.*** This date shall be left blank until the date of Final Completion.

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

20.3 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 one (1) year from the date of Final Completion.

20.4 Meetings. During the one (1) year warranty period described in Section 20.3, Developer shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Public Works Project Manager and one or more Responsible Department representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems City discovers in design, construction, or furnishing, fixtures, and equipment of the Project during the one (1) year warranty period.

ARTICLE XXI. DEFECTIVE WORK

- 21.1 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, the Project is discovered to contain Defective Work, Developer shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.
- 21.2 City's Right to Correct.** If circumstances warrant, including an emergency or Developer's failure to adhere to Section 21.1, City may correct, remove, or replace the Defective Work. In such circumstances, Developer 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.
- 21.3 Defects Constitute Non-Reimbursable Costs.** All costs incurred by Developer or Developer's agents to remedy Defective Work are Non-Reimbursable Costs. If City has already reimbursed Developer for Defective Work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Developer's or the construction contractor's bond if Developer has been paid in full.
- 21.4 Extension of Warranty.** When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, shall be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.
- 21.5 No Limitation on other Remedies.** Exercise of the remedies for Defective Work pursuant to this Article shall not limit the remedies City may pursue under this Agreement, at law, or in equity.
- 21.6 Resolution of Disputes.** If Developer and City are unable to reach agreement on disputed work, City may direct Developer to proceed with the work and compensate Developer for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation or as subsequently adjudicated or established in a court of law. Developer shall maintain and keep all records relating to disputed work in accordance with Article XXIII.
- 21.7 Prior to Final Acceptance and Reimbursement to the Developer.** Where Defective Work has been identified prior to the Final Completion of the Project, Developer shall promptly, and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or 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 setoff against the amount paid, or make a claim against the Developer's or construction contractor's bond.

ARTICLE XXII. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

- 22.1 Maintenance Period.** If the construction contractor is required to install or maintain landscaping and/or irrigation, Developer shall require the construction contractor to provide a maintenance period to 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 until ninety (90) calendar days after the date of Final Completion or ninety (90) calendar days after the date the landscaping and irrigation is accepted, whichever is longer, however, the maintenance period shall be a minimum of one hundred twenty (120) calendar days if turf is seeded or until the Bermuda grass specified has established by the Parks and Recreation Department.
- 22.2 Maintenance Area.** Developer shall require the construction contractor to maintain all areas of the Project, including areas impacted or disturbed by the Project.
- 22.3 Maintenance Required.** Developer shall require the construction contractor to 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, aerating, 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. Construction contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days from the date the condition is first detected. Maintenance shall also include the following: (i) filling and replanting of any low areas that 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, and (vi) protecting all planting areas against traffic or other potential causes of damage.
- 22.4 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 within fourteen (14) calendar days' notice, when Developer or Developer's contractor notifies City they are ready for the final Landscape and Irrigation Inspection. The City will notify Developer of all deficiencies revealed by the inspection before acceptance.
- 22.5 Extension of Maintenance Period.** Developer shall require the construction contractor to 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. Developer shall require the construction contractor to accept responsibility 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 Non-Reimbursable Costs.
- 22.6 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. Developer shall require the construction contractor to include, at construction contractor's expense, a timely written diagnosis of plant health by a certified arborist, should a dispute arise. An arborist's report shall indicate the reason for lack of vigor, potential remedies, if any, and an estimate of the

time required to regain vigor and specified size. Plants used for replacement shall be of the same kind and size as specified and shall be furnished, planted and fertilized as originally specified, unless otherwise directed in writing by City. Developer shall require the cost of all repair work to existing improvements damaged during replacements be borne by the construction contractor. Costs of replacement are Non-Reimbursable Costs.

ARTICLE XXIII. RECORDS AND AUDITS

23.1 Retention of Records. Developer and Developer's agents shall maintain data and records related to this Project and Agreement for a period of not less than five (5) years following the Effective Date of this Agreement.

23.2 Audit of Records. At any time during normal business hours and as often as City deems necessary, Developer and all contractors or subcontractors shall make available to City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Developer and all contractors or subcontractors 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 the City/County of San Diego, then Developer shall pay all City's travel-related costs to audit the records associated with this Agreement at the location where the records are maintained. All such costs are Non-Reimbursable Costs.

23.2.1 Costs. Developer and Developer'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 XXIV. NOTICES

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

24.2 Effective Date of Notice. Except 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.

24.3 Recipients. All demands or notices required or permitted to be given to City or Developer shall be delivered to all of the following:

24.3.1 Director, Engineering & Capital Projects Department
City of San Diego
525 B Street, Suite 750 (M.S. #908A)

San Diego, California 92101
Facsimile: (619) 533-5176

24.3.2 Deputy Director, Environmental Policy & Public Spaces
Planning Department
City of San Diego
9485 Aero Drive, (M.S.#413)
San Diego, California 92123
Facsimile: (619) 533-3687

24.3.3 Developer, Bosa California LLC, a California limited liability company
1300-2025 Willingdon Ave.
Burnaby, B.C. V5C 0J3
Attn: Richard Weir
Email: rweir@thinkbosa.com

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

ARTICLE XXV. MEDIATION

25.1 Mandatory Mediation. If dispute arises out of, or relates to the Project 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.

25.2 Mandatory Mediation Costs. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator (Mediator), and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

25.3 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.

25.3.1 If AAA is selected to coordinate the mediation (Administrator), within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual

objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

25.3.2 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.

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

25.4 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.

25.4.1 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.

25.4.2 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 XXVI. MISCELLANEOUS PROVISIONS

26.1 Term of Agreement. Following the final passage of the City Council Ordinance authorizing this Agreement and the subsequent execution of the same by the Parties, this Agreement shall be effective upon the date it is executed by the City Attorney in accordance with San Diego Charter section 40 ("Effective Date"). Unless otherwise terminated, the Agreement shall be effective until (i) the final reimbursement payment is made; or (ii) one year after the Warranty Bond terminates, whichever is later, but not to exceed fifteen (15) years.

26.2 Definitions.

26.2.1 Construction Documents include, but are not limited to: construction contract, 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, requests for proposals/qualifications (including all related

evaluation documents for “Design/Bid/Build” or “Design/Build” solicitations) and all modifications issued after the execution of the construction contract.

26.2.2 Plans and Specifications include, but are not limited to: building, mechanical, and electrical drawings, including instructions for materials, workmanship, style, color, and finishes.

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

26.4 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.

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

26.6 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.

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

26.8 Integration. This Agreement and all 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 a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

26.9 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.

26.10 Drafting Ambiguities. The Parties acknowledge they each have been fully advised by their own counsel with respect to the negotiations, terms, and conditions of this Agreement. 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.

26.11 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.

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

- 26.13 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.
- 26.14 Further Assurances.** City and Developer each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 26.15 Exhibits.** Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.
- 26.16 Compliance with Controlling Law.** Developer 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, including California Labor Code sections 1720 through 1861 relating to the payment of prevailing wages, including, but not limited to, the design, preconstruction, and construction phases of the Project. In addition, Developer shall require its consultants, contractors, 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.
- 26.17 Hazardous Materials.** Hazardous Materials constitute 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 (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25). Developer agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.
- 26.18 Jurisdiction, Venue, and Choice of Law.** The venue for any suit or proceeding concerning this Agreement, including 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.
- 26.19 Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 26.20 Third-Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third-party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third-party beneficiary of all Developer's contracts, purchase orders and other contracts between Developer and third-party services. Developer shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 26.21 Non-Assignment.** The Developer shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. 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.

- 26.22 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.
- 26.23 Independent Contractors.** The Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Developer concerning the details of performing the work or services under this Agreement, or to exercise any control over such performance, shall mean only that Developer shall follow the direction of City concerning the end results of the performance.
- 26.24 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 the Project.
- 26.25 No Waiver.** No failure of either City or Developer to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 26.26 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 duly 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.
- 26.27 Remedies.** Notwithstanding any other remedies available to City at law or in equity, Developer 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 Developer 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.

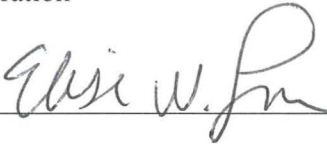
IN WITNESS WHEREOF, this agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Ordinance No. 0-21640, authorizing such execution, and by Developer.

[SIGNATURE PAGE FOLLOWS]

This Agreement was approved by the City Attorney this _____ of _____, 20____, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: 5/9/23

By: 

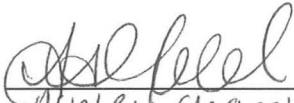
Approved:
MARA W. ELLIOTT, City Attorney

Dated: 11/8/23

By: 

BOSA CALIFORNIA LLC,
a California limited liability company

Date: NOV 7, 2023

BY: 
Name: Ashley Chamberlayne
Title: Authorized Agent

Date: _____

BY: _____
Name: _____
Title: _____

EXHIBIT A
Financing Plan Project Sheets
North Central Square Park

Title: North Central Square **Project: P-8**

Department: Engineering and Capital Projects Council District: 3
CIP/WBS #: Community Plan: Downtown

Description: This project would provide for the acquisition, design and construction of a 0.69 acre park, bounded by C Street, 8th and 9th Avenues, and adjacent to a proposed mixed-use high rise to the North, in the East Village District. It is anticipated that the park will be maintained in perpetuity by the adjacent developer. Park amenities may include, but are not limited to: public open space areas, public art, accommodations for special events such as art shows, twilight movie showings and small concerts, kiosks, and security lighting.

Justification: This project is consistent with the goals of the Downtown Community Plan and City's General Plan, and is needed to serve the community at buildout.

Schedule: FY 2021-2025.

Source	Funding	Exp.	Cont. Appr.	FY 2015	FY 2016	2017-2020
Unidentified (DIF)	\$10,454,850	\$0	\$0	\$0	\$0	\$0
Total	\$10,454,850	\$0	\$0	\$0	\$0	\$0

Title: Downtown Promenades **Project: T-4**

Department: Engineering and Capital Projects Council District: 3
CIP/WBS #: Community Plan: Downtown

Description: This project would provide for the future design and construction of open space linkages throughout the Downtown community area. Open space linkages are pedestrian-friendly routes between recreational and open space areas, as well a cultural/leisure opportunities and activities, and are designed to promote alternative transportation modalities and provide downtown residents with walk-able links to all local open space and recreational facilities.

Justification: This project is consistent with the goals of the Downtown Community Plan and City's General Plan, and is needed to serve the community at buildout.

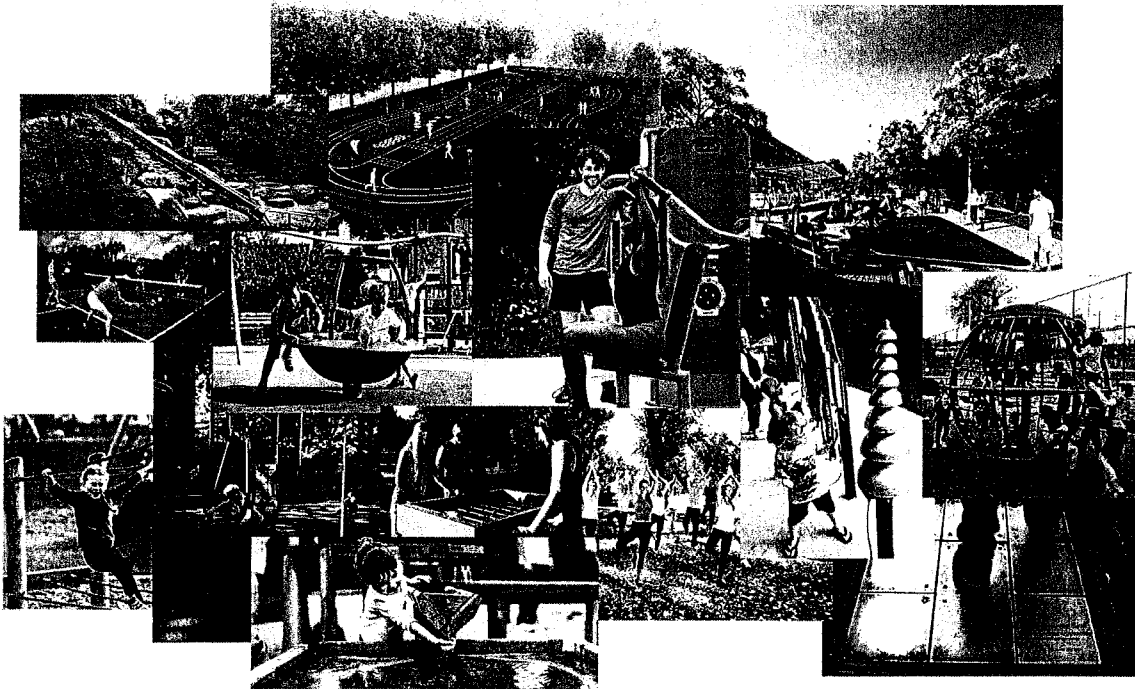
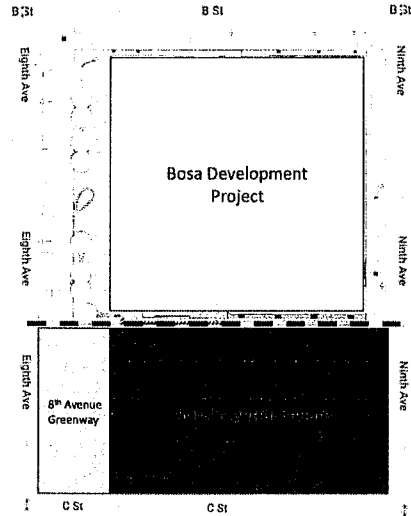
Schedule: Projects will be scheduled individually.

Source	Funding	Exp.	Cont. Appr.	FY 2015	FY 2016	2017-2020
Unidentified (DIF)	\$90,000,000	\$0	\$0	\$0	\$0	\$0
TOTAL	\$90,000,000	\$0	\$0	\$0	\$0	\$0

Exhibit B
North Central Square
Depiction of the Project

North Central Square

Approximate 24,000 square foot highly-active
Neighborhood Park in the East Village Neighborhood of
Downtown with a variety of unique family-focused
recreation elements to activate the park.



For illustrative purposes only. Images are a representation of potential recreation amenities.

Exhibit C

North Central Square

Description of the Project

North Central Square is envisioned as an approximately 24,000 square foot highly-active urban park that may include, but not be limited to such uses as: family-focused play and recreation equipment, interactive amenities, and other urban park amenities as determined through an expedited general development plan public workshop process. The project will also include the construction of the 8th Avenue greenway improvements.

EXHIBIT D
Project Schedule
North Central Square Park

Effective Date of Agreement	Start Date
City Approval of GDP	12 Months
Preparation of Construction Drawings	6 Months
Permit Processing and Issuance	9 Months
Bidding and Procurement	3 Months
Construction Improvements	12 Months
Total Project Schedule	42 Months

EXHIBIT E
Developer's Estimated Cost
North Central Square Park

ITEM DESCRIPTION	Total Cost
1. Construction (Hard) Costs	
Mobilization/Demobilization	\$ 80,000
Erosion Control/Stormwater Pollution Prevention	\$ 10,000
Traffic Control	\$ 75,000
Demolition	\$ 75,000
Drainage Improvements	\$ 250,000
Water	\$ 155,000
Sewer	\$ 25,000
Dry Utilities	\$ 400,000
Landscaping	\$ 140,000
Irrigation	\$ 160,000
Site Improvements, such as typical park equipment	\$ 5,600,000
Subtotal No. 1:	\$ 6,970,000
2. Design (Soft) Costs	
Consultant Services	
Engineering (Construction Documents, Specifications, Cost Estimates)	\$ 120,000
Bond Premiums	\$ 75,000
Insurance (Section 19)	\$ 75,000
Plan Check, City Permits/Processing Fees, Inspection Fees (Paid to City) (Section 12.1.5)	\$ 50,000
Construction Management	\$ 400,000
Environmental Review / Mitigation	\$ 60,000
General Conditions	\$ 80,000
Subtotal No. 2:	\$ 860,000
3. Total Project Costs (Subtotals No. 1 and No.2) (Section 3.1)	\$ 7,830,000
4. Project Contingency (10% of Construction Costs) (Section 3.3.2)	\$ 697,000
5. Developer Administration Costs (6% of Total Project Costs) (Section 3.3.1)	\$ 469,800
TOTAL ESTIMATED COST (Section 3.3)	\$ 8,996,800

Instructions:

Please include applicable Financing Plan project number in *Project Title*.

Section 1 (Construction Costs) can be customized to add or delete line items as needed.

Section 2 (Design Costs) is locked and should not be changed. Please notify Facilities Financing if line items need to be added or deleted.

Sections 3 and below are locked and cannot be changed.

Note:

The final cost of individual line items may be more or less than estimate as long as *Total Project Costs* do not exceed the *Maximum Funds* allowed under this agreement.

EXHIBIT F

Project Schedule Obligations and Components

1. **Developer's Obligation.** To the extent required by City, Developer shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.
 - A. *Project Initiation.* During Project initiation and design phases, Developer shall submit an updated Project Schedule on a quarterly basis to City for approval.
 - B. *Construction Phase.* During Construction, Developer 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 (percent 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 in writing.
 - 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 written 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.** The Project Schedule shall be submitted electronically to City.

EXHIBIT G

Meeting Requirements

1. **Preconstruction Meeting.** Developer 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.* Developer 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 Developer or City attend the preconstruction meeting.
 - B. *Minutes.* Developer shall take corresponding meeting minutes and distribute copies to all attendees.
2. **Progress Meetings.** Developer shall conduct weekly progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: Developer's Construction Superintendent, Developer's Project Manager, Developer's Design Consultant, City representatives including Responsible Department representatives, the Public Works Department Project Manager and the Resident Engineer.
 - A. *As-Builts.* Developer 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 H**.
 - C. *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Developer 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 H**.
4. If needed, the Developer shall be responsible for providing all documents and the exhibits for Community Outreach defined in Section 13.7 of this Agreement

EXHIBIT H

Preconstruction, Progress, & Special Meeting Agenda

1. Preconstruction. The issues below, but not limited to, 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 Developer 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 Developer'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 Developer and the respective communication procedures between parties.
 - 1.10 Safety and first aid procedures including designation of Developer'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 Developer, 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, but not limited to, 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 Developer'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 Developer's appropriate subcontractors, the RE, the City's survey crew, and any appropriate consultants (if deemed necessary by the RE) shall 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 Developer'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) shall 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 Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) shall 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 Developer shall call a mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) shall 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 I

Procedure for Processing Change Orders

1. **Forms Required.** Prior to construction, all Change Orders shall be requested in writing by the Developer on the appropriate City form and must be approved or rejected by City in writing as provided in Section 3, below, and delivered to Developer. The purpose is for the developer to obtain advance written approval (or rejection) from the City prior to incurring the cost.
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 in writing. If a requested Change Order *will* result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval only if the increase will exceed the Financing Plan estimate.
3. **Process for Approval of Change Orders.** 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 Review.** The RE shall either approve or reject the Change Order in writing on the appropriate City form within fourteen (14) calendar days of receiving Developer's written notice, provided Developer has submitted complete documentation substantiating the need for such Change Order and the reasonableness of the cost. If City fails to respond to Developer's written notice within the fourteen (14) calendar days, the Change Order request shall automatically be deemed denied.

Documentation substantiating the reasonableness of the cost of the Change Order may include:

- a. Signed daily work tickets. T & M sheets should be signed at the end of each day. This allows the RE to be present during construction and confirm quantities and time as it relates to the change order work and since Change Order Requests (COR's) are eventually billed on subsequent IAR's.
- b. Proposals showing the cost of labor, materials, and equipment, using unit costs that are similar to those of the original construction contract;
- c. An explanation why the Change Order unit costs are dissimilar to those of the original construction contract;
- d. Quotes from multiple vendors; or
- e. Copies of correspondence between the contractor, subcontractors, Resident Engineer, etc. that document a price negotiation.

If the RE acknowledges the work to be extra, a Change Order will be issued adjusting the compensation for such portion of the Work in accordance with the Greenbook "Payment" and "Payment for Extra Work" Sections.

- 3.2 **Consultant Review.** On behalf of the City, the Public Facilities Planning(PFP) Consultant reviews the Developer's written request for a Change Order and supporting documentation, and compares them to the terms of the Agreement and industry standards. The PFP Consultant makes a recommendation for the reimbursable amount of the Change Order and sends the signed form to PFP, including the documentation used to make the recommendation, for PFP's review.
- 3.3 **Public Facilities Planning Review.** PFP reviews and either approves or requests additional information or documentation prior to approving the Change Order, including the recommendation for the reimbursable amount.
4. **City Council Approval.** As noted in Section 2 above, if the Change Order request *will* result in an increase in the Estimated Cost, City Council approval is required for increases that will exceed the Financing Plan estimate. In such cases, once a Change Order is preliminarily accepted 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 J

Developer Checklist For Solicitation Preparation And Advertisement Of Reimbursable Construction Bid Packages

Before You Begin Creating the Solicitation

- Contact the City's Planning Department at (619) 533-3670 in order to receive a "WBS" number or an Internal Order (IO) number.
- Ensure that plans have been approved and signed by the City prior to advertising the solicitation.
- Contact the City's Project Implementation (PI) Division of PWD at (619) 533-3778 in order to request the Equal Opportunity Contracting Program (EOCP) ELBE/SLBE subcontracting goal percentages.
- Refer to the Reimbursement Agreement section of the Planning Department's website to ensure the appropriate and complete insurance requirements are provided.

Critical Elements for the Solicitation

- Type of State Contractor License required for the project.
- Addenda acknowledgement section.
- Bid Bond requirement language for Design-Bid-Build solicitations valued at \$250,000 or more.
- Payment and Performance Bond language.
- Clear announcement of Pre-Bid meeting date, time, and location (if applicable).
- Clear announcement of Bid due date, time, and location.
- Clear instructions on Contractor Prequalification requirements and process.
- Clear announcement of Equal Benefits Ordinance policy.
- Clear statement that Prevailing Wages will apply to the project.
- Statement of the Prime Contractor self-performance requirement. Standard is 50%, minimum is 25%.
- Identify the basis of award; such as base bid only, or base bid plus all alternates (when applicable).

➤ Required Forms and Certifications

- ✓ Subcontractor Listing Form
- ✓ Subcontractor Listing Form for Alternates
- ✓ Supplier Listing Form
- ✓ Non-Collusion Affidavit
- ✓ Drug-Free Workplace
- ✓ ADA Compliance
- ✓ Contractor Standards
- ✓ Equal benefits Ordinance
- ✓ Bid Bond
- ✓ Contractor's Certification of Pending Actions

USING THE CITY'S SOLICITATION DOCUMENTS AS A TEMPLATE (provided by the Public Works Contracts Division upon request) IS HIGHLY RECOMMENDED IN ORDER TO MEET THESE REQUIREMENTS FOR REIMBURSEMENT.

Advertisement of the Solicitation

- Ensure that the solicitation for the project is advertised for one day (minimum) in the City's official newspaper (SD Daily Transcript via The Daily Journal Corporation – 1-800-788-7840).
- Ensure that there is the required time between the advertisement of the project and the bid due date. This will allow contractors to solicit and meet the EOCP requirements. Standard is 30 days "on the street", minimum is 21 days.

EXHIBIT K

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 Developer, 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 of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.
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 parts 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 L

Design and Construction Standards

1. **Laws.** Developer 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, Coastal Commission 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 Developer's sole responsibility to comply with all ADA and Title 24 regulations. See Developer Certification attached as **Exhibit M**.
 - D. *Environmental.* Developer 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.* Developer 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.* Developer shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
 - G. *City Directives.* Developer 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.** Developer shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:
 - A. *Green Book and White Book.* 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.** Developer's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:
 - A. *City of San Diego's Drainage Design Manual*
 - B. *City of San Diego's Landscape Technical Manual*
 - 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*

EXHIBIT M
Certification for Title 24/ADA Compliance
North Central Square Park

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for [INSERT Name of Project] 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.

BOSA CALIFORNIA LLC,
a California limited liability company

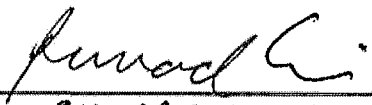
By: 
Name: RICHARD WEIR
Title: VICE PRESIDENT
Date: JUNE 21/21

EXHIBIT N

Approval of General Development Plan, Construction Documents, Cost Estimates, and Park Name

UNLESS OTHERWISE DIRECTED BY THE CITY IN WRITING, DEVELOPER SHALL OBTAIN APPROVAL OF THE GENERAL DEVELOPMENT PLAN (GDP), PLANS AND SPECIFICATIONS, COST ESTIMATES, AND THE PARK NAME IN THE MANNER IDENTIFIED BELOW:

- 1. Preparation of the GDP and GDP Cost Estimate.** The Developer shall complete all tasks within the City Council Policy 600-33, Community Notification and Input for the City-Wide Park Development Projects, in the preparation of the GDP and a GDP Cost Estimate of the Project. The Project shall be consistent with all local, state, and federal disabled access laws and requirements, as well as City's Park and Recreation Department's current version of the Consultant's Guide to Park Design and Development. The Project shall generally be designed as a highly-amenitized, active, urban park that includes a number of recreational components typically found in Neighborhood Parks, Mini Parks, or Pocket Parks as listed in the Parks Master Plan.
- 2. Final Review of the GDP, GDP Cost Estimate and Park Name.** The Developer shall diligently pursue expedited approval of the GDP through such staff, committees, commissions, and/or council as have jurisdiction to approve the Project. The GDP and the name of the park is subject to recommendation by the park and Recreation Board. Approval of the park name shall be in conformance with the Park and Recreation Board Policy No. 1001. Upon final recommendation from the Park and Recreation Board, the final approved GDP and GDP cost estimate shall be formatted as identified in the most current edition of the Consultant's Guide to the Park Design and Development and submitted to the Project Manager.
- 3. Preliminary Review of Plans and Specifications and Construction Cost Estimate.** Developer shall obtain City approval via Project Manager, in writing, of the Plans and Specifications prior to the solicitation of bids for construction of the Project. Developer may request approval of preliminary Plans and Specifications and preliminary Construction Cost Estimate for the Project prior to bidding. Project Manager will notify Developer in writing within thirty (30) Calendar Days following receipt of the preliminary Plans and Specifications and preliminary Construction Cost Estimate of any City request for modifications. If modifications are requested, Developer shall modify and resubmit the preliminary Plans and Specifications and preliminary Construction Cost Estimate for Project Manager's approval.
- 4. Final Review Plans and Specifications and Final Construction Cost Estimate.** Upon final approval of the Plans Specifications by the Project Manager, Developer shall deliver to Development Services Department (DSD) complete Plans and Specifications for permit issuance. Developer shall also require its Consultant to prepare a final Construction Cost Estimate (Final Construction Cost Estimate) for the Project based on the approved Plans and Specifications, which shall be subject to Project Manager's approval. Approval shall not be unreasonably withheld. Final Plans and Specifications shall include City's Standard Drawings and Specifications as EXHIBIT L. If requested by DSD, Developer shall cause the Consultant to make only such changes to the Plans and Specifications that are necessary to bring them into conformance with the approved GDP and all applicable local, state, and federal regulations when the cumulative total of such changes would not increase the Final Construction Cost Estimate by more than five percent (5%). If such changes would not exceed five percent (5%) of the approved Final Construction Cost Estimate, the changes to the Plans and Specifications shall be considered additive or deductive alternates in the Bidding Documents, with the Project Manager's approval.

Any redesign must be in substantial conformance with the final approved GDP, as determined by the Project Manager.

5. **City Approval.** Developer shall obtain City approval of the design, in writing, at GDP, 60% Design, and 100% Design, and Final Design.
 - A. *Condition Precedent.* Approval of the GDP is a condition precedent to the authorization to proceed with subsequent work on the Project. City will notify Developer in writing within four weeks after receipt of approved final GDP,
 - B. *Sixty (60) Percent Design.* At 60% design, City will notify Developer in writing at each require stage of design, of approval, or of request for modifications. If modifications are requested, Developer shall modify and resubmit Design Documents for City approval.
 - C. *100% Percent Design.* At 90% design, City will notify Developer in writing at each required stage of design, of approval, or request for modifications. If modifications are requested, Developer shall modify and resubmit Design Documents for City approval.
 - D. *Final Design.* At final design, City will notify Developer in writing of approval.
6. **Submittal of Plans, Specifications, and Final Construction Cost Estimate.** Developer shall deliver to City complete Plans, Specifications, and Final Construction Cost Estimate, consistent with the approved GDP, for the construction of the Project, in accordance wit **Exhibit D** (Project Schedule).
7. **Citywide Review of 100% Plans, Specifications and Final Construction Cost Estimate.** Plans and Specifications shall include City's standard drawings and specifications as described in **Exhibit L**. If requested by City, Developer shall make changes to the Plans and Specifications, but Developer shall not be responsible for implementing such changes if they would increase the Estimated Project 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.
8. **Final Approval and Permit Review.** City approval of the Plans, Specifications and Final Construction Cost Estimate is a condition precedent to authorization to proceed with subsequent work on the Project.

EXHIBIT O

Construction Obligations

1. **Site Safety, Security, and Compliance.** Developer shall be responsible for site safety, security, and compliance with all related laws and regulations.
 - A. *Persons.* Developer 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 Developer to access the Project site.
 - B. *Other.* Developer is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been accepted by the City pursuant to Article I.
 - C. *Environment.* Developer 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 Enforcement Official. Furthermore, the Developer shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan (SWPPP) to be implemented by the Developer 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. *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 Developer.
 - B. *Site Tours.* Site tours may be necessary throughout completion of the Project. Developer shall allow City to conduct site tours from time to time as the City deems necessary. City will give Developer notice of a prospective tour and a mutually agreeable time shall be set. Developer is not obligated to conduct tours or allow access for tours when City fails to give prior notice.
3. **Surveying and Testing.** Developer 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.* Developer 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, agronomic soil preparation recommendations, and any other information concerning the existing conditions of the site.
 - B. *Utilities.* Developer 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. Developer 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.* Developer 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.* Developer 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.* Developer 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.* Developer 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.** Developer shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans, and/or notes.
6. **Inspections.** Developer shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.
 - A. *Reports.* Developer shall provide City all special inspection reports within seven (7) calendar days of inspection. Developer shall report all failures of special inspections to City.
 - B. *Remedies.* Remedies for compliance shall be approved by Developer, Developer's consultants, City's Development Services Department, and City representatives.
 - C. *Concealing Work.* Prior to concealing work, Developer 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 provided in this Agreement. This approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Developer shall fulfill all requirements of each of these three entities.
7. **Property Rights.** Developer 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. City shall not require Developer to provide any easement documents for land to which Developer does not have title; however, Developer 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 or other entitlement.
8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Developer 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 Developer. 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 Developer is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Developer 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.** Developer 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.** Developer 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. Developer shall certify to the City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace form (**Exhibit P**).
 - A. *Developer Notice to Employees.* Developer 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.* Developer 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 Developer shall post the drug-free policy in a prominent place.
- C. *Developer's Agreements.* Developer 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 P
Certification for a Drug-Free Workplace
North Central Square Park

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace, and that Bosa California 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.

BOSA CALIFORNIA LLC,
a California limited liability company

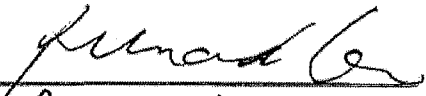
By: 
Name: RICHARD WEIR
Title: VICE PRESIDENT
Date: JUNE 21/21

EXHIBIT Q

Product Submittal and Substitution

1. **Product Submittal.** Prior to the bidding process, Developer shall submit for City approval a list of products intended for use in the Project. Upon Developer's completion of Plans and Specifications, City will review and approve products specified therein. Developer shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Developer's receipt of submittal. Approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits, or regulations.
2. **Substitutions.** Developer shall submit all requests for product substitutions to City in writing within thirty (30) Calendar Days after the date of award of the construction contract. After expiration of the thirty (30) calendar days, City will allow substitution only when a product becomes unavailable due to no fault of Developer's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. Developer agrees that City requires Consultant's input and as such Developer shall coordinate a seven (7) calendar review by its Consultant.
 - A. *Substantiate Request.* Developer shall include with each substitution request complete data that substantiates that the proposed substitution conforms to requirements of the Contract Documents.
 - B. *Developer Representations.* By submitting a substitution request, Developer is representing to City all of the following: (a) Developer has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (b) Developer is providing the same warranty for the proposed product as was available for the specified product; (c) Developer shall coordinate installation and make any other necessary modifications that may be required for work to be complete in all respects; and (d) Developer 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 Developer's office, postage prepaid.
 - B. *Review.* Developer shall furnish to City for review, prior to purchasing, fabricating, applying or installing, two (2) samples (other than field samples) of each required material with the required finish.
 - 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. Developer shall assign a submittal number. Developer shall include with each submission a list of all samples sent, a statement as to the usage of each sample and its location in the Project, the name of the manufacturer, trade name, style, model, and any other necessary identifying information.
 - 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. Developer's or Developer's agents' field samples shall be prepared at the site. Affected finish work shall not commence until Developer or Developer's agents have been given a written review of the field samples.

EXHIBIT R

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. Developer 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.** Developer's and Developer's agents' bonds, under Article XVII, 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 Developer as Extra Work is reimbursable in the same manner as described in Article XII. The Project Contingency as described in Article III, will be used first to cover the costs of Extra Work.
4. **Markup.** Developer will be paid a reasonable allowance for overhead and profit. The allowance shall be paid in accordance with and per the percentage described in the section of the Greenbook and Whitebook noted as "Markup", and shall be added to the Developer's costs for Extra Work.

EXHIBIT S

Notification of Reimbursable Project

Pursuant to Section 12.1.1 of the Reimbursement Agreement with [INSERT Developer Name] for Financing Plan Project No. [INSERT Number], [INSERT Project Name], in the [INSERT Community] Community, adopted pursuant to City Council Resolution/Ordinance No. [INSERT Number] and executed on [INSERT Date], [INSERT Developer Name] hereby notifies the City of San Diego that work will begin on [INSERT Name of Project] in the [INSERT Community] community on or about [Insert Date Work is Scheduled to Begin].

This Notification of Reimbursable Project form shall be submitted with the Project's construction permit application to the City's Development Services Department prior to commencement of any work on construction Project No. [INSERT PTS Number], Development Services Deposit Account No. [INSERT Account Number].

The Developer shall add the following note above the title block on the construction plan cover sheet, and on all sheets where subject to reimbursement:

REIMBURSABLE PROJECT: [INSERT Community Name], [INSERT Financing Plan Project No.].

This note is required to be submitted with the application for the Project's construction permit.

[Insert Name of Developer],
[Insert type of entity]

By: _____

[Insert Title] _____

Dated: _____

EXHIBIT T

Reimbursement Request Form

Change Order Request						No. <input style="width: 50px;" type="text"/>
Completed by Developer Prior to Performing the Work						
Reimbursable Project Name				Total Estimated Project Cost		
Developer Project Manager		PFFP Community		Date Requested		
Requested by		PFFP Project Number		Date Approval Requested		
Change Order Scope of Work						
Will this Change Order change the project quality established during design and submittal review?						<input type="checkbox"/> Yes <input type="checkbox"/> No
Will this Change Order result in an increase in the Estimated Cost shown in the Reimbursement Agreement (see above)?						<input type="checkbox"/> Yes <input type="checkbox"/> No
Will this Change Order change the project schedule? If yes, by how many days? _____ days						<input type="checkbox"/> Yes <input type="checkbox"/> No
Justification for the Change Order or Extra Work						
Line Item	Qty.	Unit	Unit Cost	Previous Cost	Current Cost	Total to Date
1						
2						
3						
4						
5						
6						
Total Requested for this Change Order including Retention						
I am an authorized signatory or agent of the Developer, and I hereby certify that this information is true, accurate and not part of a previously approved Change Order, and that complete substantiating documentation is attached to this form.						
Date	Developer	Title and Signature				
Completed by Resident Engineer Prior to Performing the Work						
I have reviewed this request and its complete substantiating documentation and have made the following decision:						
<input type="checkbox"/> The CO is <u>approved</u> (proceed with the work). <input type="checkbox"/> The CO is <u>disputed work</u> (proceed with the work). <input type="checkbox"/> The CO is <u>rejected</u> .						
Date	Inspector Name and Signature					
Comments						
Completed by Financial Consultant						
I have reviewed this request with respect to the Developer's Reimbursement Agreement and industry practices and:						
<input type="checkbox"/> The following items are recommended for approval: _____						
<input type="checkbox"/> The following items are <u>not</u> recommended for approval: _____						
Date	Consultant	Consultant Name and Signature				
Previous Recommendation			Current Recommendation		Recommendation to Date	
Comments						
Completed by Public Facilities Planning						
The items recommended for approval are acceptable as a Change Order under the Reimbursement Agreement. Reimbursement is contingent upon acceptance of the work by City.						
Date	Name and Signature					
Comments						

Invoice Approval Request

No.

Completed by Developer						
Reimbursable Project Name				Total Estimated Project Cost		
Developer Project Manager		PFFP Community		Date Requested		
Requested by		PFFP Project Number		Date Approval Requested		
Invoice Scope of Work						
Related Change Orders or CORs (Please list their numbers)						
Line Item	Qty.	Unit	Unit Cost	Previous Cost	Current Cost	Total to Date
1						
2						
3						
4						
5						
6						
Total Requested for this Invoice including Retention						

I am an authorized signatory or agent of the Developer, and I hereby certify that this information is true, accurate and not part of a previously approved invoice, and that complete substantiating documentation is attached to this form.

Date	Developer	Title and Signature
------	-----------	---------------------

Completed by Resident Engineer

I have reviewed this invoice and its complete substantiating documentation and have made the following decision:

- The work is within and pertains directly to the limits of the project, and the quantity is consistent with measurements of work installed in the field.
- The work is not within the limits of the project or the quantity is not consistent with measurements of work installed in the field. The invoice approval request is rejected.

Date	Inspector Name and Signature
Comments	

Completed by Financial Consultant

I have reviewed this request with respect to the Developer's Reimbursement Agreement and industry practices and:

- The following items are recommended for approval: _____
- The following items are not recommended for approval: _____

Date	Consultant	Consultant Name and Signature
Previous Recommendation	Current Recommendation	Recommendation to Date
Comments		

Completed by Public Facilities Planning

The items recommended for approval are acceptable and considered reimbursable as presented. Reimbursement is contingent upon acceptance of the work by City.

Date	Name and Signature
Comments	

EXHIBIT U

Project Deliverables

- A. *Working Drawings.* Developer 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.
- i. Quality. Developer 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, on bond paper utilizing Greenbook format. Developer will furnish only the technical "Special Provisions" section of the Specifications to supplement or modify the Green Book and White Book standards as needed.
- B. *Surveys.* Developer 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.* Developer shall consult with City to ascertain requirements of the Project and to prepare 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. Developer's Schematics 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.* Developer 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. These 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.
 - 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.* Developer 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, Developer shall furnish copies of the Service and Meter Location Request and all utility companies' verifications.
- G. *Cost Estimate.* Developer shall provide a construction cost estimate based on the Construction Documents.
- H. *H, G, & E Reports.* Developer shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports as required by City.
- I. *As-Builts.* Developer shall provide 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. Developer shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Developer shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Developer shall thoroughly coordinate all changes on the As-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. Developer 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. Developer shall maintain a set of As-Builts at the Project site for reference. Developer 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. *As-Graded Reports.* Developer shall submit the City approved As-Graded Report summarizing the results of the observations and testing of grading operations.
- K. *Signed Grading and/or Public Right-of-Way Permit.* The Developer shall submit the signed grading and/or public right-of-way permit.
- L. *Operation and Maintenance Manuals.* Developer 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 Developer'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 Developer'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.
- M. *Capitalization Form*. The Developer shall submit all required capitalization information in a form acceptable to the Facilities Financing Project Manager.
- N. *Certificate of Occupancy/Property Transfers*. The Developer shall submit any required certificates of occupancy and/or property transfers.

EXHIBIT V

Capitalization Form: Capitalization Form to be completed by Developer updated upon final completion of Project (100%) to reflect all verified project costs.

EXHIBIT "V"

Capitalization Cost Breakdown For Developer Built Reimbursable Public Projects-Completed

<i>Capitalization Form to be completed by developer upon final completion of Project (100%) to reflect all verified project costs. Actual Cost Incurred should be used to fill our Capitalization Form, even if not fully reimbursed.</i>					
1) Project Title/Location: _____			5) Permit Number: _____		
2) Project (PTS) Number: _____			6) Substantial Completion Letter Date: _____		
3) Internal Order Number: _____			7) As-Built Date: _____		
4) Drawing Number: _____			8) Public Facilities Financing Plan Ref. #: Reimb. Agreement Resolution #: Date Approved: _____		
TABLE A.					
(1) Item	(2) Description	(3) Asset Code	(4) Quantity #	(5) Unit Measurement	(6) Total Cost *
STREETS					
Roadways		ROAD		SF	
Sidewalk		SIDE		SF	
Curb & Gutter		SIDE		LF	
Curb Ramps		SIDE		Each	
Medians		SIDE		SF	
Alleys		ALLY		SF	
Traffic Signals		TRAF		Each	
Street Lights		STRT		Each	
Guardrails		STRT		LF	
BRIDGES					
Vehicular/Wildlife		BRDG	0.00	SF	
Pedestrian		BRDG	0.00	SF	
Other (Specify) _____					
STORM DRAINS					
Storm Drains		STRM		LF	
Channels & Culverts		CHAN		LF	
Other (Specify) _____					
PARK INFRASTRUCTURE (Use)					
Parkgrounds		PARK		Each/Acres	
Picnic Shelter		PARK		Each	
Playground		PARK		Each	
Recreation Center		3000		Each/SF	
Comfort Stations		3000		Each	
Park Lighting		PARK		Each	
Pool		PARK		Each	
Bike Path or Multi-Use Trails		PATH		LF	
Parking Lot		LOTS		SF	
OTHER (Use)					
Pedestrian Lighted Crosswalk		TRAF			
Fire Station		various			
Library					
Police Station					
Total Project Cost					\$ -
I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE INFORMATION PROVIDED ON THIS CAPITALIZATION FORM IS TRUE AND ACCURATE REGARDING THE CITY ACQUIRED INFRASTRUCTURES. PRINT NAME: _____ TITLE: _____ SIGNATURE: _____ DATE: _____			Name/Title _____ Contact No. _____ Prepared by: _____		
City Use Only-Forward Original to Facilities Financing for Distribution					
* Project soft cost for administration, engineering, design, etc. should be allocated using the percentage of hard cost for each cost category. Note: Water & Sewer may be part of the PUD Capitalization and need to be double checked by the City Comptroller.			Copy Comptroller's Office - CIP Fixed Asset Accountant Copy Street Division Copy Development Services Department		
1/28/2015					

EXHIBIT W

Required Insurance Provisions

1. **Types of Insurance.** At all times during the term of this Agreement and for so long as the Agreement requires, Developer shall maintain insurance coverage as follows:
 - 1.1 **Commercial General Liability.** Developer 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. Developer shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars (\$2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars (\$2,000,000); (iii) Personal Injury Limit one million dollars (\$1,000,000); and (iv) Each Occurrence one million dollars (\$1,000,000).
 - 1.2 **Commercial Automobile Liability.** For all of Developer's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Developer shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ("Any Auto"). All costs of defense shall be outside the policy.
 - 1.3 **Architects and Engineers Professional Liability.** For all of Developer's employees who are subject to this Agreement, Developer shall keep in full force and effect, or Developer shall require that its architect/engineer(s) of record keep in full force and effect errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate. Developer shall ensure both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Contract. Developer agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.
 - 1.4 **Worker's Compensation.** For all of Developer's employees who are subject to this Contract and to the extent required by the State of California, Developer shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Developer against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Developer to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars (\$1,000,00) for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit. Developer shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
 - 1.4.1 Prior to the execution of the Agreement by the City, the Developer shall file the following signed certification:

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

- 1.5 Builder’s Risk. To the extent commercially available, Developer shall provide a policy of “all risk” Builders Risk Insurance. Developer shall also add its construction contractor, and the construction contractor’s subcontractors to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. The insurance may provide for a deductible which shall not exceed fifty thousand dollars (\$50,000). It shall be Developer’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 of San Diego 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 of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Engineer’s Estimate 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 Engineer’s Estimate 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 of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer’s obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.
 - 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 of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and

representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.

- 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 of San Diego, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Developer'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 that will apply only to the work performed under this Agreement. Claims payments not arising from the work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.
- 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 Developer 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 X
Required Contracting Procedures

Design-Build Project Management Procedure Summary for Developers

1.0 PURPOSE:

This procedure serves to provide general guidelines specific to the Design-Build method of project delivery. Its purpose is to describe the following:

1. The Design-Build basics to be used as the training for staff uninformed about Design-Build methodology.
2. The Design-Build planning and procurement procedure to be followed during RFQ and RFP stages.
3. The roles and responsibilities of the participants in the Design-Build process.
4. The general format and content of Design-Build procurement and contract documents.

2.0 SCOPE:

This procedure covers the general procedure of the Design-Build project delivery method from planning through award and project execution.

3.0 RESPONSIBILITY:

It is the responsibility of Developer to ensure this procedure is followed when the activity is performed. This procedure provides all of the information and approaches needed to prepare the Design-Build documents but each project will require some effort to tailor the general Design-Build documents into documents suitable for a specific Design-Build Project.

4.0 PROCEDURE:

4.1 PHASE I: Procurement Strategy

- 4.1.1 Decision:** Many factors should be considered when determining whether any given project is a good candidate for Design-Build. There are no formulae or cut-off scores in such an evaluation.
- 4.1.2** The initial decision is made during Preliminary Engineering. Design-Build may make sense for some projects but not others. Therefore, careful consideration must be given in the selection of the contracting system. If requested by the City, the Developer will provide written justification to support its recommendation to use the Design-Build method of project delivery for any given project.
- 4.1.3** The following is a listing of factors that should be considered and a brief discussion of each. In some cases, one or two factors may override all others.
- 4.1.3.1** Time: The most commonly noted advantage of Design-Build is time. Design-Build generally allows final project delivery in a shorter period of time compared to traditional design-bid-build project delivery. The primary reasons for this schedule acceleration are that design and construction proceed concurrently and the design and construction interface is managed by a single entity.
 - 4.1.3.2** If timely completion is critical and/or the available or desired time of project delivery is short, the project may be an excellent candidate for Design-Build. Even if time is not an overriding consideration, the project may still be a good Design-Build project.
 - 4.1.3.3** Cost/Funding: Design-Build results in greater “cost certainty” because a single entity is responsible for both design and construction. Furthermore, reduced project duration leads to reduced soft costs.
 - 4.1.3.4** Clarity and Consistency of Scope: A successful Design-Build project needs a well-defined, consistent scope of work. The Developer must spell out the needs and objectives and define the criteria and constraints. This does not mean that every element of the project has to be spelled out in minute detail. It does mean that the scope should not change significantly as the work progresses.
 - 4.1.3.5** Flexibility: Design-Build thrives in situations where Design-Builders have a fair degree of latitude in determining the solution to a given problem or situation. If the Developer feels it is necessary to prescribe a single solution or to adopt prescriptive requirements, the full benefit of Design-Build will not be attained.
 - 4.1.3.6** This does not mean the Developer should avoid

prescriptive requirements entirely when using Design-Build. However, if the design solution and construction means and methods are generally tightly controlled by the Developer or other stakeholders or if the project has complicated environmental resource impacts that need extensive permitting and monitoring it may not be a good candidate for Design-Build.

- 4.1.3.7** Innovation, Creativity, and Complexity: If the project offers opportunities for innovation and creativity relating to design and engineering solutions and/or construction scheduling, phasing, or techniques, the synergistic relationship of designer and constructor inherent in Design-Build can work strongly to the benefit of the project. This is especially the case for complex projects, where a single Design-Builder, working closely with the Developer, can creatively plan for, coordinate, and control all of the project design and construction variables.
- 4.1.3.8** Innovation and creativity is not limited to technical design and construction, and often extends to management techniques and other elements of the project, such as commitment to the Equal Contracting Opportunity mission, public information and community relations, staging and phasing of traffic control activities, and schedule. Even if a project does not offer significant opportunities for innovation and creativity, Design-Build may still be beneficial for schedule and other reasons.
- 4.1.3.9** Current Status of Design: It is best to determine whether or not to use the Design-Build method of project delivery early in the project planning phases before significant design work is done. The scope of the Preliminary Engineering (PE) work can then be tailored to meet the specific needs and conditions associated with the Design-Build project.
- 4.1.3.10** Once the design has progressed to the point where the significant and controlling design decisions have already been made, the benefits of designer/constructor interaction in developing solutions are reduced (or existing design may require some “de-engineering” to be compatible with use of Design-Build). Under this circumstance, the Developer loses the benefit of being able to review multiple solutions from different Design-Builders and being able to select the best solution.
- 4.1.3.11** If design has progressed to the point where the major design decisions have been made, the project essentially becomes what is called a “draw-build” project, where the Design-Builder completes the details of the design and constructs the project based on the solution dictated by the Developer. In the alternative, if the Developer allows flexibility to redesign, thereby gaining the benefit of innovation by the

Design-Builder, the Developer will have paid twice for the project design.

- 4.2 Selection of PM Team:** Implementing and administering a Design-Build procurement process from project inception to project completion will be made easier and more successful if responsibility is assigned to individuals who are well versed in the concepts and principles of Design-Build and who understand the gains in productivity possible with this project delivery method.
- 4.3** Continuity of personnel can make a significant difference in the success of a project. The City's field construction representative responsible for managing the construction oversight for the Project should also be a part of the team that plans the procurement, prepares the Request for Proposals (RFP), and evaluates and selects the Design-Builder. Similarly, the engineers who write the Performance Specifications, oversee the PE, and prepare the RFP should also evaluate the Proposals and review the designs produced by the Design-Builder. It is important to recognize that the project management team should be an integrated planning, design, construction, and contracting team from inception through Final Acceptance of the project.
- 4.3 Stakeholders:** As always, the Developer should identify the stakeholders for each project (i.e., those having a significant financial, regulatory, approval, or jurisdictional interest in the project).
- 4.4 Project Goals:** The Developer's PM develops the list of project goals in coordination with representatives of key Stakeholders. Clearly and definitively articulated project goals are critical to the Design-Build procurement process. The goals are usually developed in the form of time, quality, and cost and guide all subsequent decisions of the RFP development. Constraints on funding or time may require adjustment in quality goals. Time may be a driving force that takes precedence over budget to a degree. The setting of goals may require negotiations and tradeoffs among the stakeholders. The Developer and stakeholder staff may wish to develop an initial list of project goals using brainstorming techniques. Subsequently, the list should be refined such that the final project goals are expressed in a few succinct statements such as:
- Cost not to exceed \$_____;
 - Substantial Completion (or Final Acceptance) within _days of Notice to Proceed (NTP);
 - Issuance of NTP by _____.
 - EOCP Performance by%.
 - No change orders.
- 4.5 Orientation/Training for Cultural Change:** Especially for the first project and any time that new staff are involved in Design-Build, a short training (or refresher) session on Design-Build will be invaluable in building an understanding and acceptance of the concepts of Design-Build. The training should include appropriate personnel and, if appropriate, stakeholder and consultant personnel who will be involved in project procurement and execution. Early involvement of stakeholder personnel e.g., Development Services Department (DSD), Planning Department, Public Works Contracts, Equal Opportunity Contracting Program (EOCP), Field Engineering, Environmental Permitting Section (EPS), etc. does much to assure the Project's success.

- 4.6.1 Fixed Price Contracts:** Design-Build Contracts with a fixed budget and possibly multi-facility are subject to the following selection methodology. Points are subject to change per project needs except for EOCP points.

SUBMITTAL PACKAGE:

1. General

The Design-Builder submits a complete package separating price proposals from technical proposals in separate sealed envelopes for consideration with the following information as a proposal. Failure to comply with this section may render the Design-Builder's submittal invalid and disqualify it from this selection process.

2. Technical Proposals (Maximum 25 Points)

Describe in detail the proposed design concept for the project. Include detailed descriptions, conceptual design drawings, schematics, a list of major equipment, and any other information deemed necessary to allow the Developer to make an informed evaluation of the Design-Builder's technical approach. The completeness and technical merit of the design concept will be evaluated.

Describe the proposed project management plan for this project. Describe the strength of key proposed construction and technical personnel and subcontractors.

3. Technical Presentation (points included in the technical proposals) The

interview will consist of a forty-five (45) minute presentation by the Design-Builder and forty-five (45) minutes of questions by the panel. The presentation should be presented by the Design-Builder's key personnel who will be continuously involved on site or in San Diego, in relative proportion to their level of involvement.

4. Equal Opportunity Contracting and Outreach Program/Work Force Report: (Maximum 25 Points)

a) The City and the Developer are dedicated to the principles of equal opportunity in the workplace and in subcontracting. It is the Developer's expectation that firms doing business with the Developer, and are able to demonstrate, the same level of commitment.

b) The Design-Builder includes both a completed Work Force Report for its employees located within San Diego County only and the specific actions consistently taken to ensure equal opportunity in their employment and subcontracting practices, including past performance and actions to be taken on this project. The selected firm may be required to submit workforce data for a regional office prior to contract award.

c) The Design-Builder is asked to provide with its proposal a listing of three largest subcontractors for the project, and all other subcontractors, known at the time the Design-Builder submits a proposal using the form(s) provided in the RFP. The proposal must also include specific details on how the Design-Builder plans to ensure a diverse group of subcontractors are provided with meaningful opportunities to participate in the project.

5. Price Proposal: (Max 50 Points)

The Design-Builder is responsible to demonstrate by submittal of their package that the complete design and construction services they provide do not exceed the Maximum Price stated in the RFP for all facilities listed there. Proposals that exceed the Maximum Price by more than 5% may be deemed non-responsive by the Developer at its sole discretion. Price proposals will be compared to the Maximum Price and treated as follows at 1% increments:

Less than or equal to 0% increase	Max 40 Points
1% increase	Max 39 Points
2% increase	Max 38 Points
3% increase	Max 37 Points
4% increase	Max 36 Points
5% increase	Max 35 Points

Example:

ADA& TITLE 24 FACILITY IMPROVEMENTS: PROJECT II

Facility	Price Absolute Value Point (PAVP)
A) La Jolla Fire Station	02.73
B) Ocean Beach Rec. Center	37.54
C) Mid-City Community Gymnasium	33.56
D) Rancho Bernardo Rec. Center	08.53
E) Scripps Ranch Library	02.28
F) Mira Mesa Teen Center	15.36
Total 100.00	

6. Award Of Contract Or Rejection Of Proposals:

The project manager for the Developer will assemble a team which will evaluate the proposals and utilize the point system mentioned in the RFP to select the Design-Build team for this project. Design-Builders will be notified in writing of the Developer's final decision. Following review of the proposals, total points is calculated by adding Technical Qualification Points (TQP), EOC Commitment Points (EOCCP), and Price Absolute Value Points (PAVP) together for all facilities. Selection of the Design-Builder will be made as follows:

Step 1: Determine price point earned for the Project by adding up maximum points for the facilities included in the Bid.

Step 2: Divide the actual Bids by the price points earned to determine

an adjusted price for calculation purposes only.

Step 3: Determine the minimum adjusted Bid price for all submitted Bids.

Step 4: Divide the minimum adjusted price by the adjusted price for each Bid.

Step 5: Multiply the result from Step 3 by the maximum Price weight (i.e., 60).

Step 6: Multiply the Technical percentage points by the Technical Qualification Points (i.e., 25).

Step 7: Multiply the EOC Commitment Points by the EOC Commitment weight (i.e., 15).

Step 8: Add the results from Steps 5, 6, and 7 to determine the Total Points.

Step 9: Subtract the deduction points from the value in Step 8 to get the Net Total earned.

The firm with the highest net Total Points earned will be recommended for award.

4.6.2 Determining Progress/Payment: Progress and payment for work performed under a design-bid-build project are normally determined by measuring quantities of work accomplished and multiplying the quantity by a unit price included in the contractor's bid. Since most work on Design-Build projects is priced on a lump sum basis, and not based on quantities, other means must be used to determine progress and the appropriate level of payment.

4.6.3 The procedure provides for payment to be made using the Schedule of Values (SOV) concept. For smaller, less complex projects, progress will be determined by mutual agreement between the Developer and the Design-Builder of the physical percent complete of each item on the SOV. For larger, more complex projects, progress and payment will be determined on the basis of a payment schedule developed from the Critical Path Method (CPM) schedule.

4.6.4 For certain types of work it may be appropriate to use Allowances or even Unit Prices and quantities as the basis of measuring progress and making payment. Typically work measured and paid on Time and Materials (T/M) basis or on the quantity/Unit Price basis includes high risk items, such as Hazardous Materials remediation, or work that is difficult to define during the procurement phase of the Project, such as removal of old railroad tracks whose location or extent is not well defined. Even in a lump sum contract, quantities and unit prices can be used as a means of determining the amount of periodic payments when a schedule of values is included in the price proposal and quantities of work are measured as work progresses. SOV is merely a tool for determining interim payments, and any change in quantities from the original assumptions would not affect the lump sum price for the project.

4.6.5 The vast majority of work on a Design-Build contract is priced on a lump sum basis. For those few items that may be paid on the basis of unit prices and measured quantities, the method of pricing, determining progress and payment is the same as on design-bid-build projects. While it is possible

to have a price proposal contain a single lump sum amount for the entire

project, it is preferable to require the bidders to divide the project into defined and more manageable components for pricing and payment, regardless of how progress is determined. Those components are listed in the SOV. This approach allows the Developer to analyze the reasonableness of price allocations to different components of the work (including but not limited to non-construction items), and simplifies the process of making progress determinations for payment purposes over the course of the work. It also provides historical data for future estimates.

- 4.6.6 **Initial Engineering Parameters:** Simply put, the design requirements and applicable standards and references need to be specified and listed. Care should be taken to avoid incorporating a “laundry list” of standards and references that may have conflicting requirements. If special criteria are to apply for a specific project, these need to be determined or developed. This task includes defining specific performance criteria for components of the project, such as pipe relocations, and particularly for those elements of the project for which there will be performance specifications in the contract.
- 4.6.7 The specific construction criteria or requirements should be identified with an eye toward allowing flexibility in means and methods where possible. This will require the examination of the City’s Standard Specifications and the likely need for special provisions to supplement or alter the standard specifications.
- 4.6.8 **Preliminary Evaluation Factors:** Appropriate evaluation factors should be established early in the project development process, with reference to the project goals. In determining the evaluation factors, the Developer should identify the objectives related to each factor, i.e., why the particular information is being requested, and what the Developer expects to learn from the information submitted. Evaluation factors should focus on differentiators, i.e., factors that will allow the Developer to determine real differences between the proposers. Care should be taken to avoid requesting extensive, time-consuming, or costly information from Proposers that will not be used by or useful to the Developer in evaluating and differentiating Proposals.
- 4.6.9 The focus of evaluation factors is significantly different between the RFQ and the RFP, but there are some similarities, particularly for items rated on a “pass/fail” basis. For instance, a responsiveness determination is required for both the Statement of Qualifications (SOQ) and proposal. Also, at both RFQ and RFP phases of procurement, certain legal documents will be submitted and evaluated. The firm’s bonding capacity is generally reviewed as part of the City’s Prequalification Program.
- 4.6.10 **Permits and California Environmental Quality Act (CEQA) Review:** Major discretionary permits which have not been obtained prior to the due date for Proposals are likely to be considered a major project risk by the Proposers. It is therefore advisable for the Developer to take steps to obtain such permits during this phase of project development if not previously obtained during PE. It may not be feasible to obtain all permits until after 100 percent design has been completed. The Developer should evaluate the risks associated with such permits and determine whether it wishes to retain responsibility or transfer the responsibility to the Design-Builder.
- 4.6.11 It may be possible to obtain a general permit covering the major issues, and to delegate responsibility to the Design-Builder to obtain specific permits once the design reaches an appropriate level. Certain other permits usually ministerial or environmental specific permits may be obtained by a

contractor after award of the contract (e.g., Storm Water Pollution Prevention Program (SWPPP)). The Developer should examine such permits and, if they require long lead times, may wish to work out alternative arrangements in order to expedite the Project schedule. EPS staff should be consulted as early as possible.

- 4.6.12** In assessing the value or viability of obtaining a permit prior to Award to the Design-Builder, the Developer should balance the advantages of obtaining any permits against the disadvantages of producing the higher level of design required to obtain the permit, with reference to the project goals, the desired allocation of project risk, and the need to provide design flexibility to the Design-Builder.
- 4.6.13** As noted above, some permits may be best obtained by the Design-Builder or completed based on interim or draft permits obtained by the Developer. Where it is not possible to obtain an interim or draft permit, the Developer should work with permit/regulatory agencies e.g., DSD to facilitate approval of permits prior to advanced levels of design or final design. In some cases agencies may provide the criteria for permit approval and agree to issue the permit once the Design-Builder satisfies those criteria. Any decisions regarding the delegation of permits to Design-Build should be vetted with the EPS section to avoid costly delays after award of Design-Build contract.
- 4.6.14** CEQA review including the production of the final CEQA document (Exemption, MND, EIR, etc.) should be obtained prior to awarding the Design-Builder as well as City and other agency permits. City development permits are tied to CEQA review and would be obtained concurrently. Other permits from outside agencies or jurisdictions usually require the final CEQA document.
- 4.6.15** Changes to scope can affect the validity of the environmental documents and permits issued for conceptual designs, particularly if the scope involves new geographic locations or new activities not described in the environmental documents and permits. This can put the project at risk. If any changes to scope are proposed during the Design-Build process, DSD and other agencies do not have an opportunity to review and approve the changes readily. Therefore, EPS staff should be notified of proposed changes as soon as possible and before construction occurs. EPS staff will review the proposed changes to determine if they are covered under the existing environmental documents. If not, DSD's Mitigation Monitoring Coordination (MMC) staff can assist in changing the documents to fit the new scope, but it must occur before construction.
- 4.6.16** It is the responsibility of the Developer to obtain all required background research and investigations and provide the information to MMC staff before construction begins.
- 4.6.17** Cost Estimating: While preliminary cost estimates will be prepared during PE, refinements to such estimates will be necessary as the RFP is developed, to ensure that all costs are recognized in the estimate. Cost estimates obtained by the Developer for design-bid-build projects are based on: (1) having a design (plans and specifications); and (2) review of comparable prices for the construction of the design. A Design-Build estimate (engineer's estimate) needs to be developed generally following the same process that will be used by the Developer but involving selection among different design alternatives.
- 4.6.18** Engineering and design costs must be considered as well as the costs of additional responsibilities assigned to Design-Builders that are normally

performed by the Developer in design-bid-build projects (for example, certain quality control (QC) activities and documentation, public information/community relations, monitoring environmental mitigation, and as-built plans), and the potential costs associated with risks that have been allocated to the Design-Build contractor. Design-Build Price Proposals are not made on the basis of quantities and Unit Prices, except for a few items (typically Hazardous Materials remediation work). Unit Prices need to be analyzed and adjusted to compensate for the different pricing schemes, responsibilities, and risk allocation associated with Design-Build.

- 4.6.19** Individual Proposer Meetings: Depending on the risks, complexities, or need for creativity regarding a project, the Developer, during the RFP preparation phase, may elect to invite proposers on the short-list to one-on-one meetings to gain further insight from the Proposers regarding major challenges and keys for success. The individual proposer meetings provide a confidential forum allowing each proposer on the Short-List to provide input and comments to the Developer regarding the project. Individual proposer meetings are most beneficial when combined with a request for the proposers on the short-list to review and comment on drafts of the RFP. These one-on-one meetings are primarily intended to allow the Developer to gain information from the Proposers rather than to disseminate information to the teams.
- 4.6.20** Once the RFP is issued, it is generally inadvisable to continue to hold one-on-one meetings because of the potential for inadvertently disclosing information to one Proposer that is not disseminated to the others. Nevertheless, it may be desirable to hold additional meetings with individual proposers to discuss certain technical concepts. In addition, if all of the proposers on the short-list request additional one-on-one meetings be held, the Developer may consider such request. It is important that all one-on-one meetings be strictly controlled so information is provided to all the teams equally and no team receives an unfair advantage due to information they may receive during such a meeting.
- 4.6.21** To reduce the risk of protest associated with one-on-one meetings, the Developer must control and handle such meetings in a strict, fair, and equitable manner by undertaking, among other things, the following:
- a) Inviting all proposers on the short-list to individual meetings.
 - b) Identifying in the RFQ that meeting of this nature may occur in connection with RFP development.
 - c) Limiting the number of Developer and consultant personnel who attend these sessions and attempting to have the same Developer/consultant "team" participate in each of the meetings.
 - d) Ensuring that any oral or written information provided in the meetings by the Developer, including interpretation of the RFP and answers to proposer questions regarding procurement requirements, is provided to all teams.
 - e) Ensuring that no proposer is given an unfair advantage as a result of the sessions, such as by commenting on the merits, disadvantages or desirability of a particular proposer's intended approach.

4.6.22 EOCB Goals and Requirements: EOCB goals and requirements must be incorporated into Design-Build contracts to ensure contracting opportunities for varied San Diego contractors. **The Developer must work with the Project Implementation Division of the Public Works Department to obtain any subcontracting goals for a Design-Build project.**

- a) In Design-Bid-Build projects, it is common to require the contractor to identify and have commitments with SLBE and ELBE firms and other subcontractors and suppliers and to meet project goals (or demonstrate good faith efforts if goals are not met) at the time that bids are submitted. Since final design is completed before the project is advertised, contractors can solicit and get binding bids from subcontractors.
- b) In Design-Build, the Design-Builder may not be able to identify and “sign up” Subcontractors in advance of Proposal submittal because most Subcontractors cannot provide quotes based on an incomplete design. Therefore, listing of proposed subcontractors in the Statement of Qualifications (SOQ) is not required. The standard Design-Build procurement documents require Proposals to include a comprehensive plan/program for reaching the applicable project goals and demonstration of compliance with the EOCB requirements.
- c) Also, the Design-Build contract documents require evidence of continuing compliance to be submitted after selection and Award. By allowing the Design-Builder to secure SLBE-ELBE certified firms after submission of the proposal and award of the Design-Build contract, as design for components of the project is completed, bids and proposals can be solicited from subcontractors without their incurring the risk of bidding on incomplete plans. It is also possible in Design-Build to have separate goals for the design portion of the contract.
- d) The EOCB Office will be the sole reviewer of the EOCB submittals throughout the process.
- e) The Developer must work closely with EOCB to ensure they receive the latest EOCB requirements for projects and in particular, Design-Build projects.

4.7 PHASE II: Prepare Bridging Documents

4.7.1 Preliminary Engineering (PE): One of the most significant determinations to be made relates to the type and amount of PE (or design) that needs to be accomplished prior to award of the Design-Build contract. The challenge with Design-Build is to avoid advancing the preliminary design to the point where the benefits of Design-Build are overridden due to a reduction in the opportunity for innovation and flexibility. PE should be driven by the requirements of the environmental document and information gleaned from the risk identification, assessment, and allocation process, and other project constraints. The Bridging Documents containing the PE (published with RFP) are generally self-explanatory. Those typical documents deserving some explanation include the following:

- a) Design-Build Agreement, a form with some similarities to the standard design-bid-build Contract form;
- b) Design-Build special provisions (if applicable), a modified version of the design-bid-build standard specification. It provides project-specific direction and modifications to the standard specifications, construction and materials; to be compatible with the Design-Build contract; and to meet the particular requirements of a given project;
- c) Scope of Services: design requirements, policies, and procedures that define the limits and technical standards and requirements for the design of the various components of the project;
- d) Performance Specifications, tailored to the needs of a specific project and focused on the desired end result rather than the “how to” approach in traditional design-bid-build specifications (may also include applicable design policies and procedures), including environmental constraints and commitments from the environmental process for the Project;
- e) Utilities Requirements, identifying the roles and responsibilities of the Developer, the utility owners, and the Design-Build Team, including assignment of responsibilities for design and construction and timing of work done by utility owners;
- f) Preliminary Design Data such as planning report (if any), engineering, geotechnical, and survey data, which in a Design-Build contract is typically limited to raw data such as traffic counts and projections, presence of hazardous materials, and pavement boring and sampling and testing data, approved materials list (AML), applicable environmental documents and permits; etc. Analytical and interpretive opinions or reports should generally not be included in the RFP.
- g) Agreements with private entities, utility owners, railroads, school districts, and local governments.
- h) Other data that are not warranted by the Developer will be placed in the reference documents. The reference documents often include information gathered from earlier projects or created by entities other than the Developer, often for purposes unrelated to the project. They may include studies and preliminary reports relating to project conditions such as Site Assessment and Mitigation Program (SAM) sites. Agreements applicable to the project (such as franchise utility agreements) that do not involve the Design-Build team as a signing party are often provided in the reference documents, in which case the Developer will need to ensure any substantive requirements in such agreements are addressed in the contract documents.
- i) Reference documents include a variety of information that may be useful or of interest to the Design-Builders in preparing their proposals and executing the contract. Reference documents are provided to the Design-Builders but the use of such information is entirely at the Design-Builders' risk and the reference documents come without Developer warranties and may not be relied upon by the Design-Builders except as specifically provided in the contract documents. Reference documents are not included in the contract documents.

4.7.2 Supplemental Studies: In most Design-Build projects major risks or unknowns include issues associated with relocation of existing utilities, subsurface conditions, and hazardous materials remediation. While some preliminary information regarding utility relocations and site conditions may have been gathered as part of as-built research, it is frequently beneficial to perform additional, more detailed investigations (such as geotechnical investigations, subsurface utility engineering, hazardous material investigations, and pavement subgrade investigations) to provide more information to proposers regarding existing conditions in order to lessen uncertainty and reduce contingency amounts included in proposal prices.

It may also be desirable to obtain additional information in order to speed up project development.

4.7.3 For example, taking geotechnical borings while the RFP is being developed, in lieu of including the borings in the Design-Builder's scope, could shorten the time required to complete the project. In some cases it may be desirable to conduct preconstruction condition surveys of buildings and structures to document their condition and provide a basis for settlement of or defense against damage claims during construction.

4.7.4 Decisions regarding steps to be taken to obtain additional data should be guided by the risk identification, assessment, and allocation process outlined in this procedure. As with all other information provided to proposers, the Developer should consider whether the proposers should be allowed to rely on any additional investigations performed by the Developer or whether the results of such investigations should be included in the reference documents.

4.7.5 Third Party Agreements: Preliminary work to draft and execute agreements relating to the project can do much to provide for smoother execution of the project and lessen risk (and contingency costs) to the Developer and the Design-Builder. The contract documents should specify which of the requirements included in an agreement that is to be carried out by the Design-Builder and which are to be performed by the Developer. The agreements themselves should in most cases be included in the RFP either as reference documents or in some instances, contract requirements.

4.7.6 Third party agreements to be included in the RFP may include agreements with:

- a) Utility Owners
- b) Railroads
- c) Political subdivisions
- d) Regulatory agencies e)
School Districts
- f) Landowners e.g., re-plumbing

4.7.7 Scope of Work: The Developer needs to define the basic project requirements and its limits in the contract documents under scope of work and services. If a material change in the basic project requirements is made, such change must be covered by a change order. The basic project requirements also define the extent of change (the risk) for which the Design-Builder is responsible. If the Design-Builder has to adjust the design within the basic project requirements limits. The Design-Builder is responsible for all cost and time implications associated with such an adjustment. Adjustments in EOCP goals may also be required.

4.8 PHASE III: Issue Request for Qualifications (RFQ)

4.8.1 The primary purpose of an RFQ is to determine the short-list, typically from three to five Proposers best qualified to develop the Project based on stated evaluation criteria. A public announcement in San Diego Daily Transcript kicks-off the process of RFQ. It serves the following purposes:

1. Announces and defines the project.
2. Stimulates interest.
3. Facilitates formation of Design-Build teams.
4. Issues RFQ and provides Developer's contact information.
5. Initiates communication and information exchange and identifies the ground rules of that exchange.

4.8.2 The RFQ shall be prepared by the Developer's project management team and, prior to issuance, reviewed by the City of San Diego's Public Works Contracts Division (Public Works Department) and by the Equal Opportunity Contracting Program (EOCP). The RFQ must be advertised by the Developer in the San Diego Daily Transcript per City's standard advertising process and in other newspapers or trade journals the Developer may designate. The advertisement should be prepared by the Developer and, prior to publication, reviewed by the Public Works Contracts Division (PWC) of the Public Works Department. The Developer may decide to offer a pre-submittal meeting for questions and answers.

4.8.3 The evaluation factors for the RFQ phase need to be determined quickly in order to allow timely issuance of the RFQ, and should focus on experience and past performance. Usually at this stage the Project requirements have not been identified sufficiently to request specific, meaningful information relative to project approach. However, information regarding understanding of the project and its issues may be requested at this stage.

4.8.4 Typical SOQ evaluation factors include the following:

- a) For pass/fail factors:
- b) Responsiveness of the SOQ in general (often assessed prior to legal/financial evaluation);
- c) Provision of draft legal documents outlining the proposed organizational structure and legal relationships of the proposers;
- d) Provision of certain legal documents identifying and designating the authorized representatives of the proposer;
- e) Evidence of compliance with professional licensing/certifications statutes or commitment to obtain appropriate licenses/certificates;
- f) Letters from surety indicating sufficient bonding capacity of the proposer; and
- g) Hazardous materials handling certifications

- h) SOQ evaluation factors may include the following quality factors:
- i. Experience of firms, including experience of the following:
 - a. The proposing entity and its members, if a joint venture, partnership, or similar organization.
 - b. Lead design entity.
 - c. Major construction subcontractors.
 - d. Specialty subcontractors as may be designated by the Developer.
 - ii. Capability of the firms to perform the work.
 - iii. Relevant past performance information (if available), including: record of conforming to contract requirements (including SLBE-ELBE compliance) and to standards of good workmanship; record of forecasting and controlling costs; adherence to contract schedules, including the administrative aspects of performance.
 - iv. History of reasonable and cooperative behavior and commitment to customer satisfaction; and business-like concern for the interest of the customer. If past performance of Construction Contractors will be a factor, the evaluation will need to be based on information provided by the Contractors and its clients. Typically the SOQ would ask for client contact information which would then be used by the Developer to make telephone calls or to request forms to be filled out, to rate the contractor in the above areas. Any decision to request information regarding issues such as protests, claims and litigation should be made only after consultation with the Developer's legal counsel, to ensure that appropriate standards are included and that due process requirements are met. Information relating to past performance should focus on the past three to five years for the actual offices or divisions of the firms that will be performing the work. The lack of relevant past performance cannot be a basis of a favorable or unfavorable rating.
- i) The factors and information evaluated during the RFQ/SOQ stage should not be re-evaluated during the RFP/proposal stage, except that final legal organizational documents, a specific commitment of a Surety, updated financial information, and specific information relating to the key personnel not evaluated at the RFQ/SOQ stage should be evaluated in the RFP/Proposal stage. Material adverse changes in any SOQ provided information should also be evaluated in the RFP/Proposal stage. Information relating to past performance should focus on the past three to five years for the actual offices or divisions of the firms that will be performing the work. The lack of a record of relevant past performance cannot be a basis of a favorable or unfavorable rating.

4.9 PHASE IV: Short List

- 4.9.1** The short-list resulting from the RFQ process should include at least three but no more than five proposers. A minimum of three teams is desirable in order to provide a reasonable level of competition and to avoid having the Proposers in a position to unduly influence RFP requirements. The short-list should include the most highly qualified entities that have the general capability to

perform the contract. It is best to draw the line between the short list and the unsuccessful teams at a point where there is a significant break in the ratings between similarly rated teams, provided such a breakpoint exists within the minimum and maximum numbers specified in the RFQ.

- 4.9.2 The SOQ evaluation process must be disciplined and follow precisely the procedures and responsibilities that are laid out, unless the Developer's legal counsel advises a deviation is permissible. The process also must maintain strict confidentiality. The proposers must be able to "trust" that the Developer will maintain confidentiality of their Proposals, and the process of developing this trust begins with the information contained in the SOQs.
- 4.9.3 SOQ's shall be evaluated by a diverse review team of three to five individuals (with no conflict of interests) and lead by the Developer. While outside consultants can provide support and analysis to the evaluation teams and committee(s) and even make rating recommendations, the final ratings should be solely determined by the Developer. The period of time for the evaluation must be scheduled in advance, so individuals participating in the evaluation can clear their calendars to attend the training and organizational sessions and spend the requisite amount of review time. Use the same rating method for the SOQs and the proposals to avoid the need for re-training and to assure consistency in the overall decision making process. Ideally, the selection committee members would be the same for both the SOQ evaluation and the proposal evaluation. They should be individuals that can focus on the "big picture" issues and not get bogged down in the details. See the attached sample worksheets.
- 4.9.4 The evaluation and Short-List process will culminate in the Short-List as discussed above. No Proposer who "fails" a pass/fail factor or receives an "Unacceptable" rating on a quality evaluation factor will be entitled to be on the Short-List. It is important the Short-List be the product of, and the individuals participating in the evaluation precisely follow, the evaluation and Short-List process articulated in the RFQ. As mentioned above, the Developer, will determine the Short List. The basis for the Short-List decision must be fully documented in a report that will become part of the Project procurement file. The Short-List and accompanying report may be subject to review by the City prior to announcement.

4.10 PHASE V: Issue Request for Proposals (RFP)

- 4.10.1 The RFP is step two in the two-step selection method required by the City's Design-Build legislation. For Design-Build, the RFP is analogous to the production of plans, specifications, and an estimate (or the technical documents) in a design-bid-build delivery process. The RFP will be prepared by the Developer's project management team and, prior to issuance, reviewed by the City of San Diego's Public Works Contracts Division (Public Works Department) and by the Equal Opportunity Contracting Program (EOCP). As with the RFQ, preparation of the RFP requires significant coordination not only between the City and the Developer, but also among project stakeholders.

4.10.2 The primary purpose of an RFP is to solicit proposals that will allow the Developer to determine which proposer has provided the best combination of quality and price (i.e., best value) to complete the design and construction of the given project based on stated evaluation criteria. Everything produced by the Developer and its consultants in support of Design-Build procurement [i.e., PE; agreements with Utilities and others; Right of Way (ROW); environmental assessments and permits; and performance specifications] is interrelated with the RFP. During the preparation of the RFP, rather than attempting to solve problems, the focus should be on identifying problems for the Design-Builder to solve and defining parameters / criteria applicable to potential solutions. A well conceived and well written RFP that is also clear is crucial to the success of a Design-Build project.

4.10.3 An RFP typically includes the following three components:

- a) Instructions to proposers.
- b) Contract documents.
- c) Reference documents.

4.10.4 Although the issuance of the RFP comes later in the procurement process, it is important to develop a “tentative” list of evaluation factors in order to: (1) help focus the Developer as it accomplishes PE and begins preparation of the RFP; and (2) include in the RFQ to assist Proposers in establishing and organizing their team. The evaluation factors for the Proposals should focus on how the Proposer intends to accomplish the work. Qualifications ratings except as noted above, should be established during the RFQ/SOQ stage and not repeated at this stage. Of course, price will also be evaluated and considered at this stage of the procurement. The evaluation factors for the RFP/Proposal stage typically include, but are not limited to, the following:

a) Pass/Fail Factors:

- a. Responsiveness in general.
- b. Provision of acceptable final legal documents regarding the organizational structure and legal relationships of the proposer.
- c. Evidence of possession of, or ability to, obtain appropriate licenses.
- d. Provision of required certifications and disclosures;
- e. Letters from a surety committing to provide required payment and performance bonds.
- f. Acceptability of changes to financial statements or other information provided in the SOQ.

b) Quality Factors:

a. Experience and Qualifications:

- 1. Qualifications of individuals holding key management positions identified by the Developer.
- 2. Qualifications of key technical personnel.

Management Approach, including the following:

1. Organization.
2. Project controls, particularly the schedule.
3. Quality Plan and approach to quality.
4. Interfaces and approach between Design-Builder and the Developer and with other applicable third parties.
5. Safety plan.

c. Technical Solutions, including the following:

1. Proposed technical solutions to key technical aspects of a project, such as, pipe alignment, pump size, structures, etc.
2. Other technical features as identified by the Developer.

d. Project Support, including the following:

1. Maintenance and protection of traffic.
2. Public information/community relations, if such work is included in the scope of the Project.
3. Implementation of SWPPP for soil and erosion control.
4. Environmental mitigation and monitoring.
5. Hazardous material handlings.
6. Permit procurement.

e. Price:

1. Total price.
2. Price reasonableness of specific items, including options.
3. Responsiveness.

4.10.5 The following are key items to keep in mind when establishing evaluation factors:

- a) Focus on what is important to the Developer and other stakeholders.
- b) Only ask what is necessary to make a decision (consider the cost to prepare proposals and the cost to evaluate them).
- c) Direct efforts towards discriminators where the RFP allows proposers the flexibility to develop different approaches.

4.10.6 Proposers' Questions and Answers and Addenda: Both RFQ and RFP should allow interested firms to submit questions seeking to clarify portions of the published information. Any question received and its response should be sent to all firms that received an RFQ or RFP. It may be advisable to publish questions and responses on a Developer or project web site after consultation with Public Works Contracts (PWC).

- 4.10.7** When publishing the questions and providing responses, the firm submitting the question should not be identified (which may necessitate rephrasing and/or revision of the question by the Developer). To facilitate responding to questions, firms submitting questions should be required to submit the questions via e-mail to the Developer (or web site, if used). Responses should be prepared by the Developer. The Developer then disseminates responses in a formal addendum format. Addenda may also be necessary to clarify requirements, correct errors or omissions or to provide supplemental information not previously available. Questions from interested firms may also generate the need for addenda.
- 4.10.8 Technical Proposal:** Technical proposal contains the detailed information to be submitted in the proposals for each of the evaluation factors and sub-factors, except for price. The RFP specifies the organization and format for the proposals; otherwise information may be presented in any number of ways by different proposers, making evaluation difficult and time consuming. Specific directions on page number limitations, page formatting, submission requirements for each evaluation factor and sub-factor, and organization and formatting guidelines must be clearly spelled out.
- 4.10.9 Price Proposal:** Price Proposal should be separated from technical proposal and come in a sealed envelope. The pricing instructions need to be tailored to the pricing concepts and needs of the project, and the organization and format of the price proposal to be submitted should be clearly specified. If options are included in the RFP, the pricing instructions need to explain how the option and alternate proposal prices will be treated in the overall price consideration (and how the options and/or alternate proposals, if any, will factor into overall evaluation and selection). Similar language and guidance to evaluators regarding how to evaluate options or alternate proposals will also have to be included in the evaluation and selection plan for the procurement. The engineer's estimate should be prepared using the same format as the price proposal in order to facilitate the review and analysis process.
- 4.10.10 Presentations and Interviews:** If the Developer decides it is advantageous, the Proposers can be asked to attend individual presentations and interviews as part of the evaluation process. If it is determined that this be done, the information regarding the presentations and interviews should be included in the RFP so that schedules can be arranged and presentations prepared. During the presentations and interviews, no mention of the price proposals is acceptable. These meetings focus entirely on the quality evaluation factors and on increasing the Developer's understanding of the proposals. Further reference checks may also be deemed desirable by the Developer. See sample interview rating and reference check worksheets included in the attachments here.

4.11 PHASE VI: Selection

- 4.11.1** The City's Municipal Codes guide the selection process to be used for Design-Build contracts, allowing price and other factors to be considered when selecting a Design-Builder, instead of the competitive bidding selection process typically used for construction contracts, or the qualifications based selection process used for design agreements. Negotiations are allowed and advisable for some instances with the selected firm prior to Award.

4.11.2 The solicitation must state the combination of factors and the formula for determining the winner based on the recommendations of Design-Build Institute of America (DBIA) i.e., Adjusted Low Bid, Weighted Low Bid, Meet Criteria/Low Bid i.e., Lowest Price for the Acceptable Design, and Best Value i.e., Best Design for a Lump Sum Price. The actual bid opening sessions and possibly calculating scores is conducted by the Developer. Scoring shall be reviewed for accuracy by the Public Works Contracts Division of the City. A representative from the Public Works Contracts Division should also be physically present at any bid openings conducted for Design-Build contracts.

4.12 PHASE VII: Award

4.12.1 The contract will be awarded to the proposer that submits a responsive and responsible proposal that represents the best value to the Developer, as determined by the selection committee in accordance with the RFP. When the selection committee has completed its evaluation of the proposals a recommendation for Award must be made to the City. Upon approval by the City (PWC and EOCP), the Developer must then assemble a “conformed contract” consisting of the following:

- a) Special Provisions
- b) Standard Agreement
- c) RFQ
- d) RFP
- e) Proposal
- f) EOCP Forms, etc.
- g) Addenda

4.12.2 From this point on the rest of the process is similar to design-bid-build contract processing.

4.13 PHASE VIII: Design-Build NTP

4.13.1 Feedback Sessions: After the Award the Developer offers feedback sessions to the unsuccessful Design-Builders. The objective of the session is an open, healthy dialogue between both parties intended to improve the process. Therefore, encourage feedback on the procurement process, too. The sessions are intended to help explain the selection process to the Proposers who did not win. The sessions will also be helpful for improving the process for future projects. The following guidelines will help ensure that the feedback discussions will be effective and productive:

- a) consider the session as an opportunity to discuss the selection process and how the best value for the Developer was determined;
- b) schedule the session at a mutually convenient time in a private and neutral setting, such as a conference room;
- c) avoid defensiveness, anger, or frustration;
- d) state strengths demonstrated in the SOQ or proposal;
- e) identify areas where points were not given and briefly explain why; and

f) at the end of the discussion, summarize strengths, improvement areas, and invite the Design-Builder for bidding on future jobs.

4.13.2 Partnering: While Partnering is often used on design-bid-build projects, it is critical to the success of Design-Build projects, more so than in design-bid-build projects. The initial partnering session(s) should be held within 30 days of NTP.

4.13.3 Continuous, effective communication between the Developer and the Design-Builder is critical. There must be a common understanding of the project goals and of the management, design, and construction processes and their interaction. The partnering process and procedures are no different. But follow-on partnering after the initial partnering meetings cannot be over emphasized. Design-Build projects typically move quickly. Decisions must be made and issues resolved on a “real-time” basis.

4.13.4 Submittal Review The Developer’s review of Design-Builder’s design submittals does not relieve Design-Builder from its responsibilities under the contract. Where approval or acceptance by the Developer is required, it is to be general approval for compliance with the scope of work and services only as Design-Builder is the Engineer of Record.D

4.14 PHASE IX: Post Construction

The post construction activities and procedures are the same as Design-Bid-Build method.

5.0 DEFINITIONS:

The following includes definitions used in this procedure summary and some additional common terms that the Developer may find useful while managing a Design-Build project.

Adjusted Low Bid: A form of best value selection recommended by DBIA in which qualitative aspects are scored on a 0 to 100 scale expressed as a decimal; bid price is then divided by qualitative score to yield an “adjusted bid” or “cost per quality point”. Award is made to the lowest “adjusted bid”.

Allowance: An estimated amount set by the Developer and so designated in the pricing information (i.e., bid sheets) serving to provide for payment for specified items of work and services or an expenditure which has not been quantified or detailed at the time the Contract is executed, which sum may include provision for work and services to be executed or for goods, materials, or services to be supplied.

Alternate Proposals: An alternate proposal is in addition to the baseline proposal required in the RFP. It is unique to the proposer that submitted it, and if accepted, the details of it are not shared with the other proposers. If accepted, the alternate proposal is evaluated the same as all other proposals and is considered with the others in the selection of best value. Under an RFP without alternate proposals, the Developer must revise the RFP requirements through an addendum, if the Developer likes a concept that is outside the RFP requirements (revealed in one-on-one meetings or communications or through the technical concepts review). This would allow all proposers the opportunity to consider the revised requirements.

Alternate Technical Concepts (ATC): Under alternate proposals, the RFP requires that a proposer submitting an alternate proposal must also submit a baseline proposal. Under ATC, a proposer can submit an ATC to the Developer for consideration during the proposal preparation period (much the same as with technical concepts review), and if accepted, can elect to concentrate on and submit only the accepted ATC. Again, if accepted, the details of

the accepted ATC are not shared with the other proposers.

Best Value: A selection process in which proposals contain both price and qualitative components, and Award is based upon a combination of price and qualitative considerations. “Qualitative” can be further subdivided as to “technical design” and/or “management plan”. There are several methodologies of determining the best value as recommended by the Design Build Institute of America (DBIA).

Change Conditions: There are several significant changes from the design-bid-build specifications regarding what constitutes changes in the character of the work and services. A significant change applies only to: A) When the changes modify the general definition of the project or the Design-Build character of the work and services; or B) When the Developer requires work and services to be performed that is physically remote from the original project and not necessary for completion of the original project. A significant change in scope or location of work, not a change in quantities, is the measure of a change in the character of work.

Developer’s Consultant: A consultant or consulting firm that may be employed by the Developer because of insufficient in-house expertise to acquire Design-Build services to assist in organizing and administering the Design-Build selection process, and for other consulting services such as review of submissions for compliance with the RFP. He/she is often the “design criteria professional” who develops the facility program, performance specifications, and other RFP components.

Design-Build Package (Bridging Documents): The document published by the Developer that specify the minimum acceptable technical standards and define the limits within which the design of the Project shall be developed and conducted. It contains the Public Advertisement, the Request for Qualifications, the Request for Proposals, General Requirements, Scope of Work and Services, Technical Specifications, Bid Schedule, and any forms, drawings and other supporting documents necessary to guide the proposers in preparation and submittal of a proposal for a Design-Build project.

Design-Build: Also known as “design-construct” or “single responsibility”, Design-Build is a system of contracting under which one entity performs architecture, engineering and construction under one single contract.

Design-Builder: The entity contractually responsible for delivering the project design and construction. The Design-Builder can assume several organizational structures. The common types would be a firm possessing design and construction resources in-house, a joint venture between designer and contractor, a contractor led team with the designer in a subcontract role, or a designer-led team with the constructor in a subcontractor role.

Design-Build Agreement: The Design-Build Agreement is the document that is actually signed, or executed, by delegated authorities of the Developer and the Design-Builder.

Design Proposal: That portion of a Design-Build proposal which contains design factors, usually including function, layout, materials, aesthetics, and specifications. The design proposal falls under the general category of qualitative evaluation factors.

Direct Selection: Also known as “Qualifications-Based Selection” is based upon qualifications of the proposer for the project; followed by negotiation to determine the contract cost.

Equivalent Design/Low Bid: A form of best value selection in which qualitative proposals are followed by a critique rather than scoring. Price envelopes remain sealed. Each proposer receives the critique of its proposal and responds with design changes and corresponding price amendment. Revised designs are evaluated for compliance and price

envelopes, both base and amendment, are opened. Award is made on basis of lowest price because the proposal critique creates relative equivalency of designs.

Fast Track Construction: A scheduling process in which design and construction activities overlap. Design documents and equipment and trade subcontracts are released incrementally or in phases.

Fixed Price/Best Design: It is a form of best value selection in which contract price is established by the Developer and stated in the RFP. Design proposals and management plan are evaluated and scored, with award going to the firm offering the best qualitative proposal for the established price. For example, many projects for playgrounds are evaluated using this methodology.

Management Proposal: That portion of a Design-Build proposal which contains the management plan including project approach, personnel, organization, schedule, Equal Opportunity Contracting (EOC) plan, etc. The management proposal falls under the general category of qualitative evaluation factors.

Meet Criteria/Low Bid i.e., Lowest Price for the Acceptable Design): The Developer will select a Design-Builder that will offer the lowest price for the design and construction of the Project the contract. The Developer will assemble a team which will utilize a point system to evaluate the acceptability of the Proposals. Only Proposals scored e.g., 80 points or higher will be deemed acceptable and considered. The apparent winning Design-Builder will be selected based on the lowest price.

Performance Specification: A specification expressed in terms of an expected outcome or acceptable performance standard.

Prescriptive Specification: The traditional method of specifying materials or techniques found in design-bid-build projects. The range of acceptable products, manufacturers, and techniques, etc., is stipulated in detail to be followed by the builder (i.e., standard “boiler” technical specifications).

Price Proposal: The proposers’ price for performing the work contained in the technical proposal and specified in the Design-Build package. The price proposal is sealed and completed only on forms included in the Design-Build package.

Proposer: The Design-Builder or joint venture submitting a statement of qualifications or a technical proposal for a Design-Build project.

Qualitative: The subjective and non-cost factors that characterize and qualify a Proposer. Such factors would include both factors that characterize the Design-Build entity and the proposal they submit. Examples include the experience and management plan of the Design-Builder and the aesthetic, functional and other aspects of a design that are not directly convertible to cost.

Quality Assurance (QA): All planned and systematic oversight actions by the Developer necessary to provide confidence that the Design-Builder is performing Quality Control (QC) in accordance with the Quality Plan that all Work and Services comply with the Contract.

Quality Control (QC) – The total of all activities performed by the Design-Builder, designer, subcontractor, or manufacturer to ensure that work and services meet contract requirements is called QC.

Reference Documents: The reference documents often include information from earlier projects or created by entities other than the City or the Developer, often for purposes unrelated to the project. They may include studies and preliminary reports relating to project conditions. Agreements applicable to the project that do not involve the Design-Builder as a

signing party are often provided in the reference documents, in which case the Developer will need to ensure any substantive requirements in such agreements are addressed in the contract documents. Reference documents are provided to the proposer/Design- Builder for its use and at its own risk.

Request for Proposal (RFP): The document that thoroughly describes the procurement process, forms the basis for proposals, and ultimately becomes an element in the contract. It contains a detailed scope of work including design concepts, technical requirements, EOC requirements, and specifications; the time allowed for design and construction; the Developer's estimated cost of the project; the deadline for submitting the proposal; the required format for the proposal; the selection criteria; and a copy of the contract the Design-Builder is expected to sign.

Request for Qualifications (RFQ): The document issued by the Developer prior to an RFP that typically: describes the project in enough detail to let potential Proposers determine if they wish to compete; and forms the basis for requesting Statements of Qualifications (SOQs) in a "two phase" or prequalification process. It contains the desired minimum qualifications of the Design-Builder, a scope of work statement, the project requirements, and the selection criteria (e.g., understanding and approach, team members, firm's capabilities, and quality and safety programs) for compiling a short list including the number of firms to be short listed.

Scope of the Project: The brief description of the work and services to be performed to design and construct the project as contained in the contract.

Shortlist: The list of those Proposers that have submitted SOQs that the Developer determines, through evaluation of the SOQs, are eligible to receive an RFP and invited to submit proposals. The number of shortlisted Design-Build Proposers invited to submit final proposals is frequently between three to five firms.

Statement of Qualifications (SOQ): The Design-Builder's response to the Request for Qualifications. It contains information about the Design-Builder capabilities, team members, and previous experience. It is more generic and limited than a proposal and is used by the Developer for prequalification or short-listing.

Technical Proposal: This document is in response to the request for proposals. It contains detailed descriptions of the Design-Builder's approach to designing, constructing, and managing the project in accordance with the Design-Build package. The Design-Builder's conceptual design is included as well as a proposed construction sequence and schedule. Technical Proposals are usually tens of pages in length and contain tables, charts, drawings, plots, and sketches. In short, it is the non-price part of the total Proposal.

Two-Phase Selection Process: A procurement process in which the first phase consists of prequalification or short-listing, and the second phase consists of preparation and submission of complete Design-Build proposals from the pre-qualified or shortlisted proposers. It is also known as *two stage procurement*.

Two-Step Proposal/Bid Evaluation: Also referred to as "two envelope", any selection process in which qualitative proposals are submitted separately from price proposals with price proposal remaining sealed until qualitative proposals are evaluated.

Weighted Criteria Process: A form of best value selection in which maximum point values are pre-established for qualitative criteria and price components (e.g., 70 percent price, 30 percent technical qualifications), and award is based upon high total points earned by the proposers from both components.

6.0 REFERENCES and/or RELATED DOCUMENTS:

6.1 San Diego Municipal Codes:

<http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter02/Ch02Art02Division33>

<http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter02/Ch02Art02Division34>

6.2 NYDOT Design - Build Procedure Manual

6.3 DBIA Research Report: Best Practices in Design-Build for the Water and Wastewater Industry

7.0 ATTACHMENTS:

7.1 Sample Evaluation Worksheets:

7.1.1 SOQ Evaluation Worksheets

7.1.2 RFP Evaluation Worksheets

EXHIBIT 4

APPRAISAL REPORT

***NORTH CENTRAL SQUARE PARK SITE
LOCATED AT C STREET, BETWEEN EIGHTH AND NINTH AVENUE
SAN DIEGO, CALIFORNIA***

APPRAISED FOR

Mr. Michael Keagy, MAI
Principal Appraiser/Program Manager
City of San Diego, Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, California 92101

DATE OF VALUATION

November 1, 2020

DATE OF REPORT

December 10, 2020

APPRAISED BY

Jones, Roach & Caringella, Inc.
10920 Via Frontera, Suite 440
San Diego, California 92127-1732
Our File No.: 2020141

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ROBERT N. JONES, MAI (RETIRED)
STEPHEN D. ROACH, MAI, SRA, AI-GRS, CDEI

December 10, 2020

Mr. Michael Keagy, MAI
Principal Appraiser/Program Manager
City of San Diego, Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, California 92101

Re: *North Central Square Park Site*

Dear Mr. Keagy:

At your authorization and request, we have performed an appraisal of the referenced property. The purpose of this appraisal is to estimate the market value of the fee simple interest in the subject property. The intended use is to assist the city of San Diego's planning department in determining market value of the land only for a new downtown urban park. The city of San Diego is the client and the only intended user of this report; there are no other intended uses of the appraisal or users of the appraisal report. The effective date of the appraisal, commonly known as the date of value, is November 1, 2020. The conclusion is presented on page one of this report.

The findings of the appraisal are presented in this appraisal report, which is intended to comply with the reporting requirements set forth under Standards Rule 2 of the *Uniform Standards of Professional Appraisal Practice* (USPAP). It contains a summary discussion of the data, reasoning, and analyses that were used in the appraisal process to develop the value conclusions presented. The depth of discussion contained in this report is specific to the needs of the client.


This appraisal was performed in conformance with USPAP and the supplemental requirements of the Appraisal Institute. This appraisal is subject to general and special assumptions and limiting conditions that are made part of this report. Acceptance and use of this report by the client or any other intended user constitutes acceptance of these assumptions and limiting conditions.

Thank you for this opportunity to be of service.

Sincerely,



Robert P. Caringella, MAI, SRA, AI-GRS
AG003295



Eric C. Schneider, MAI, SRA, AI-GRS
AG040624

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Exhibit A
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SUMMARY OF SALIENT FACTS AND CONCLUSIONS

PROPERTY OWNER:	Bosa California LLC
PROPERTY LOCATION:	North side of C Street, between Eighth and Ninth Avenue San Diego, California
ASSESSOR'S PARCEL NUMBERS (APNs):	Portion of 534-183-03 and 06
SUBJECT PROPERTY:	<p>The subject consists of a parcel containing approximately 23,390 square feet. The property is located in the East Village neighborhood of downtown San Diego and comprises the southern portion of a city block. The rectangular-shaped site is bordered by C Street on the south, Eighth Avenue on the west, and Ninth Avenue on the east. The property is currently improved as a parking lot (which covers the entire city block).</p> <p>The property is zoned CCPD-RE, Centre City Planned District, Residential Emphasis within the Centre City Planned District; this designation is consistent with the Downtown Community Plan. The base minimum floor area ratio (FAR) is 6.0, the base maximum FAR is 10.0, and the maximum with all bonuses is 12.0. The subject is within the Park/Open Space Overlay District, and is identified as a potential park site known as North Central Square. Further, a portion of the subject is to be encumbered with a no-build easement. Pursuant to standard appraisal procedure and instructions from the client, the property has been valued based upon an economic highest and best use (private highest and best use rather than park land).</p>
HIGHEST AND BEST USE:	Mixed-use development, residential emphasis
ESTATE APPRAISED:	Fee simple
EFFECTIVE DATE OF APPRAISAL:	November 1, 2020
DATE OF APPRAISAL REPORT:	December 10, 2020
MARKET VALUE CONCLUSION:	\$14,034,000 (\$600.00 per square foot)

ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is subject to the following extraordinary assumption and hypothetical condition, the use of which may have affected assignment results.

1. The client has reported that the size of the subject site is 23,390 square feet, and that a no-build easement will be recorded along the north edge of the parcel. We have assumed the size is correct and the easement is in place.

This appraisal is subject to the following general assumptions and limiting conditions:

1. Information, estimates, and opinions furnished by others and contained in this report are assumed to be true, correct, and reliable. A reasonable effort has been made to verify such information; however, no responsibility for its accuracy is assumed.

2. No responsibility is assumed for legal matters, nor do we render an opinion as to title, which is assumed to be held in fee simple interest as of the date of valuation unless otherwise stated.

3. It is assumed that the property is marketable and free of all liens and encumbrances except any specifically discussed in this report.

4. Photographs, plats, and maps furnished in this report are to assist the reader in visualizing the subject property. No survey of the subject property has been made by this firm for purposes of this appraisal, and no responsibility has been assumed in this matter.

5. It is assumed that environmental reasons would not prevent continued operation of the property at its opined highest and best use.

6. A soils engineering study has not been provided for this appraisal. It is assumed that there are no hidden or unapparent conditions of the property such as subsoil conditions which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which might be required to discover such factors, unless otherwise noted.

7. Possession of this report, or a copy thereof, does not carry with it the right of publication. Disclosure of the contents of this report is governed by the by-laws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially reference to the Appraisal Institute or its professional designations) may be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communications without prior written consent and approval.

8. This report may not be used for any purpose by anyone other than the party to whom it is addressed without written consent.

ASSUMPTIONS AND LIMITING CONDITIONS

(continued)

9. The submission of this report constitutes completion of the services authorized. It is submitted on the condition that the client will provide customary compensation relating to any subsequent required depositions, conferences, additional preparation, or testimony.
10. No warranty is made as to the seismic stability of the subject property.
11. The date of value to which the opinions expressed in this report apply is set forth in the summary of salient facts. We assume no responsibility for economic or physical factors occurring at some later date which may affect the opinions herein stated.
12. An engineering survey has not been made. Except as specifically stated, data relative to size and area were taken from sources considered reliable, and no encroachment of real property improvements is assumed to exist.
13. No opinion is expressed as to the value of subsurface oil, gas, or mineral rights and it is assumed that the property is not subject to surface entry for the exploration or removal of such materials except as is expressly stated.
14. The projections included in this report are utilized to assist in the valuation process and are based on current market conditions and anticipated short-term supply and demand factors. Therefore, the projections are subject to changes in future conditions that cannot be accurately predicted and could affect the future income or value projections.
15. Testimony or attendance in court or any other hearing is not required by reason of rendering this appraisal unless such arrangements are made a reasonable time in advance.
16. By acceptance and use of this appraisal, the user agrees that any liability for errors, omissions, or judgment is limited to the amount of the fee charged for the appraisal. Anyone acting in reliance upon the opinions, judgments, conclusions, or data contained herein, who has the potential for monetary loss due to the reliance thereon, is advised to secure an independent review and verification of all such conclusions and/or facts. The user agrees to notify us, prior to any loan or irrevocable investment decision, of any error which could reasonably be determined from a thorough and knowledgeable review.
17. A title report was not available for this appraisal. It is assumed that there are no easements or encumbrances that would limit the utility of the property, unless otherwise noted in the report. No responsibility is assumed for undisclosed items of record or any unrecorded items that may limit the utility of the subject property.

ASSUMPTIONS AND LIMITING CONDITIONS

(continued)

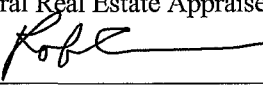
18. The existence of potentially hazardous substances, which may or may not be present on the property, has not been considered in this valuation. The existence of such substances on or near the property may have an effect on the value of the property. We are not qualified to detect such substances. The client is urged to retain an expert in this field if desired.

19. The effective date of value for this appraisal is after the date in which COVID-19 was declared to be a pandemic by the World Health Organization. The analyses and value opinion in this appraisal are based on the data available to us at the time of the assignment and apply only as of the effective date indicated. No analyses or opinions contained in this appraisal should be construed as predictions of future market conditions or value.

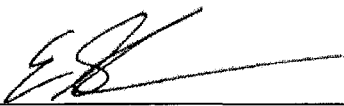
APPRAISER'S CERTIFICATE

I certify that, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. My engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the *Code of Professional Ethics* and *Standards of Professional Appraisal Practice* of the Appraisal Institute.
8. The reported analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. I have made a personal inspection of the property that is the subject of this report (land only).
11. No one provided significant real property appraisal assistance to the persons signing this certification.
12. I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding the agreement to perform this assignment.
13. As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute and have received certification from the state of California as a Certified General Real Estate Appraiser.



 Robert P. Caringella, MAI, SRA, AI-GRS
 AG003295



 Eric C. Schneider, MAI, SRA, AI-GRS
 AG040624

December 10, 2020

 Date

IDENTIFICATION OF THE PROPERTY

The subject of this appraisal is a proposed park site located in downtown San Diego. The site contains 23,390 square feet and is currently improved as a parking lot. The property is located on the north side of C Street, from Eighth Avenue and Ninth Avenue. It is identified as a portion of APNs 534-183-03 and -06.

PURPOSE OF THE APPRAISAL

The purpose of this appraisal is to estimate the market value of the fee simple interest in the subject property. This appraisal is subject to the assumptions and limiting conditions presented in this report. If any of the assumptions and limiting conditions are not valid, we reserve the right to amend the appraisal.

EFFECTIVE DATE OF APPRAISAL

The effective date of the appraisal is November 1, 2020.

INTENDED USE OF THE APPRAISAL AND USER OF THE APPRAISAL REPORT

This appraisal is to be used by the client, the city of San Diego, to assist the planning department in determining market value for a new downtown urban park. There are no other intended uses of the appraisal or users of the appraisal report.

PROPERTY RIGHTS APPRAISED

The estate appraised is the fee simple interest subject to covenants, conditions, and restrictions of record, if any. An easement to be recorded on the property is discussed later in this report.

DEFINITION OF PROPERTY RIGHTS APPRAISED

According to *The Dictionary of Real Estate, Sixth Edition*, which was published by the Appraisal Institute in 2015, fee simple estate is defined as follows:

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

DEFINITION OF VALUE

For purposes of this appraisal, the definition of market value as defined in *The Appraisal of Real Estate, 15th Edition* was applied. This definition is as follows.

The most probable price, as of a specific date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

The subject property was appraised on a cash basis. This appraisal is subject to the assumptions and limiting conditions presented in this report. The exposure time was estimated to be about three to nine months, based on a review of market data in the downtown San Diego submarket.

OWNERSHIP AND PROPERTY HISTORY

According to public records, the property is vested in Bosa California LLC (Bosa), which has owned the property for many years. Bosa owns the entire city block where the subject is located. The entire block was contemplated for development. At this time, Bosa is planning and engineering the northern portion of the block for high-rise residential construction. The southern portion of the block is proposed to be sold to the city and is the subject of this appraisal. To our knowledge, no transfers of title have occurred in the three years prior to the date of value. The subject property is designated as a potential park site in city planning documents. For this assignment, the subject has been valued based on an economic highest and best use (private highest and best use, rather than as park land).

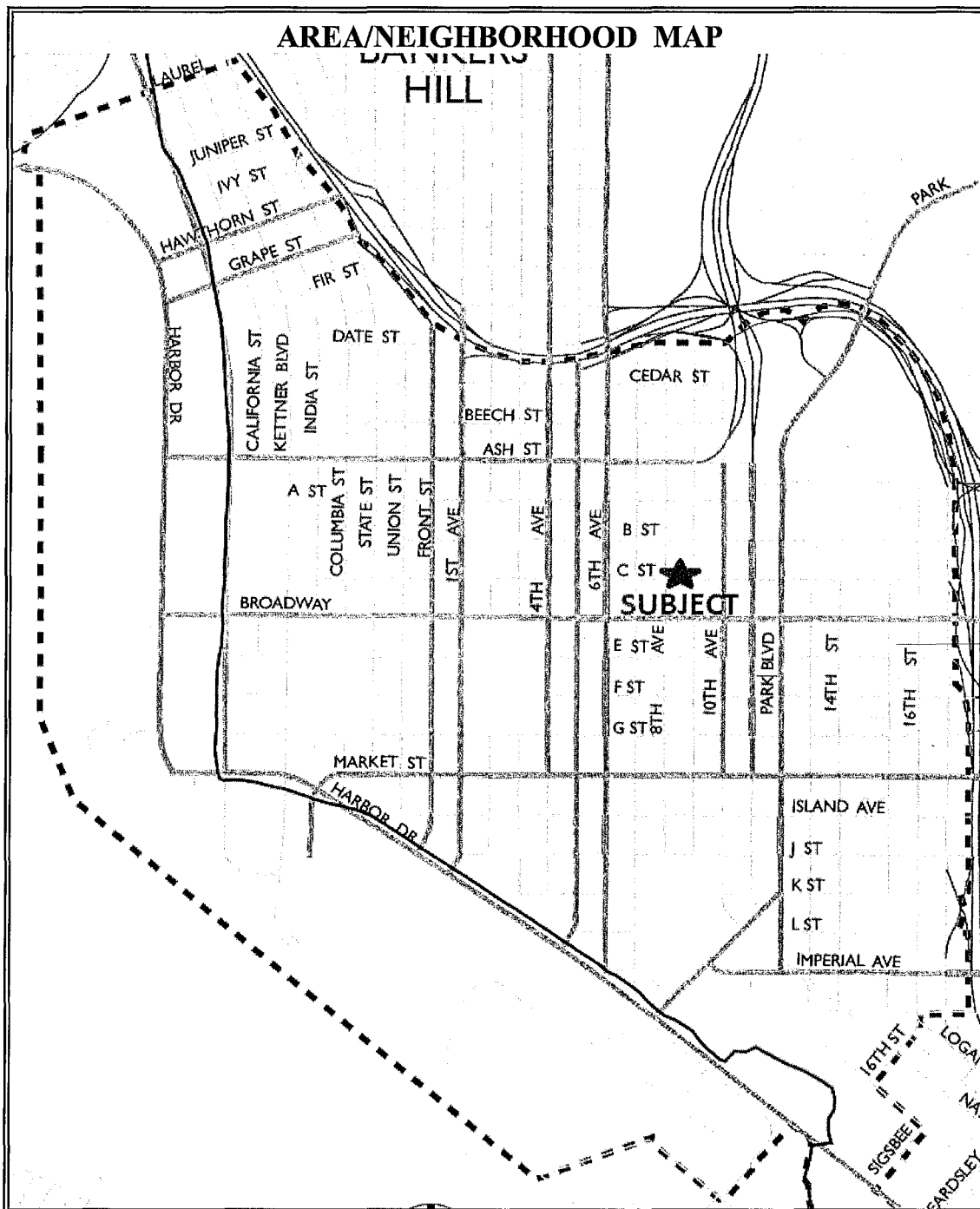
SCOPE OF THE APPRAISAL

This analysis is intended to be an “appraisal” as defined in the Uniform Standards of Professional Appraisal Practice (USPAP). It is our intent that the appraisal service be performed in such a manner that the results of the analysis, opinion, or conclusion be that of a disinterested third party. All appropriate data deemed pertinent to the solution of the appraisal problem were collected, confirmed, and reported in conformity with USPAP and the supplemental requirements of the Appraisal Institute. The scope was appropriate to the appraisal problem.

In preparing this appraisal, the following tasks, among others, were performed:

- the subject property was inspected by the appraisers;
- the physical, legal, and economic characteristics of the subject property were investigated, including zoning and planning constraints;
- representatives of the property ownership were interviewed;
- the highest and best use of the subject site was determined;
- various market participants, including brokers and agents, were interviewed;
- research was conducted to locate, inspect, and verify sales of comparable properties (land in downtown San Diego); and
- the sales comparison approach was used to value the subject.

Our findings are presented in this appraisal report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of USPAP. This report includes a description of the subject property as well as a discussion of the reasoning that has resulted in the opinions. This appraisal is subject to certain assumptions and limiting conditions that are made part of this report.



AREA DESCRIPTION

The subject is located in San Diego County. The population of the San Diego region, estimated by the United States Census Bureau, was 3,338,330 persons as of January 2019. This represents an increase of about 7.8 percent from the April 2010 population estimate of 3,095,313. Population forecasts for 2050 from SANDAG indicate that the population of the entire county will grow to about 4,068,759 persons. In the county of San Diego, there were an estimated 1,204,814 housing units as of 2019.

The subject property is located in downtown San Diego, the heart of San Diego where many government, law, and business offices are located. Downtown has also evolved into a popular shopping, entertainment, and residential location. The downtown area has been divided into several subareas: Columbia, Civic/Core, Convention Center, Marina, Horton Plaza/Gaslamp Quarter, Little Italy, Cortez, and East Village (where the subject is located), each with its distinctive land use patterns. Downtown's two former redevelopment projects, the Horton Plaza Redevelopment Project and the Centre City Redevelopment Project, eventually covered the entire 1,450 acres of downtown bounded by the waterfront and Interstate 5. This area is generally covered by the Downtown Community Plan. When the redevelopment agency was dissolved in about 2011, development planning was shifted to Civic San Diego (successor to the Centre City Redevelopment Agency). In response to a settlement agreement, in June 2019 the San Diego City Council voted to separate Civic San Diego from the city. This action returned downtown land use decisions to the city and left Civic San Diego a private non-profit public benefit company that has a focus on community investment programs.

Columbia

The neighborhood boundaries of the Columbia district have changed since a portion was merged with the Civic/Core neighborhood. Together, the two neighborhoods contain the central business district (CBD). Some of the CBD's newer Class A office space is located here. New development in the late 1980's and early 1990's was concentrated in the Columbia area, which was primarily targeted for office and commercial development. Major projects in this area include McClintock Plaza, a restoration and conversion project for restaurant and office use of the former Bekins warehouse; the Best Western Columbia Hotel, a 13-story hotel; the 27-story First National Bank Building; several low-rise office buildings; several historical restorations; and a seniors'

housing project. The next wave of development included Cabot, Cabot & Forbes Corporate Centre, a 344,000-square-foot office tower; Koll Center, a 21-story office building of 355,000 square feet mixed with residential units; Emerald Plaza, a 702,000-square-foot office tower and hotel tower; and One American Plaza, a 34-story, 370,000-square-foot office building.

This area is also home to several courthouses and related facilities. A 13-story, 379,000-square-foot Hall of Justice was constructed on Broadway, and across the street is the location of the recently completed U.S. Federal Courthouse. The new San Diego Central Courthouse is a high-rise, joint county-state courthouse building that replaced existing county courthouse buildings dating from 1961. It consists of a 22-story high-rise containing 704,000 square feet, 71 courtrooms, judges' chambers, and ancillary uses. A third-level bridge provides a connection to the Hall of Justice.

The westerly part of Columbia includes the North Embarcadero, an area along the bayfront that is undergoing a renovation process. Recent projects include the Lane Field hotels, where two high-rise towers were recently completed at the northwest corner of Pacific Highway and Broadway. The complex is called BRIC, for *Broadway at Pacific Highway*. Several mid-to-high-rise residential projects were developed along the east side of Pacific Highway.

Civic/Core

This area is known for its concentration of high-rise office buildings. The Core area has seen little new development in recent years. Some high-rise office buildings have been refurbished and re-leased, including the 336,000-square-foot Comerica Building and the 433,000-square-foot Golden Eagle Plaza. A 19-story, 194-room hotel on the east side of Fifth Avenue between Broadway and C Street was completed here; this project is the former Diegan Hotel that incorporated the facade of the historic Jessop's building. Other completed projects include a 247-room Courtyard by Marriott, which is an adaptive re-use of the historic 15-story San Diego Trust & Savings Bank building. The former County of San Diego courthouse was sold in June 2019. The almost four-acre site consists of three city blocks and significant improvements that are to be demolished, and replaced with towers. At full build out of the project, Courthouse Commons will feature approximately 1.4 million square feet of office and residential space. The Carte Hotel and Suites was completed in 2019. Located at 401 Ash Street the 239 room, 14-story hotel is operated by Hilton.

Currently under construction is a project by Canadian developer Bosa on a full block bound by Broadway, C Street, and Seventh and Eighth Avenues. The Diega project consists of 41-stories with two towers and 617 residential units with ground floor commercial space.

The California Theatre at 1122 Fourth Avenue sold in December 2019 to Australian developer Caydon Property Group. The 25,000 square foot site was entitled for a 41-story, 444 unit condominium development, though the approvals have since been invalidated by the court. The developer reached an agreement with Save Our Heritage Organization (SOHO) to preserve large elements of the theatre, which originally opened in 1927, and features a 1960s-era mural depicting the Agua Caliente Racetrack in Tijuana. Current plans, submitted in April 2020, call for 41 stories, 336 condominium units, a 190-room hotel, and about 4,000 square feet of ground floor retail. The floor area ratio is 22.28, which is considerably high for this market.

Convention Center

The Convention Center neighborhood lies along the southeastern edge of the downtown area and is home to the San Diego Convention Center as well as rail switching yards, the Tenth Avenue Marine Terminal, Campbell hotels and associated parking, and the South Embarcadero area. The Hilton San Diego Bayfront is located southeast of the convention center. Opened in 2008, the upscale hotel includes 1,190 rooms and 165,000 square feet of meeting space. The neighborhood character consists mainly of large sites and large buildings. Most of the area is under jurisdiction of the Port of San Diego. It is likely that relatively small changes will occur in the area due to the entrenched large users, with the possible exception of a proposed convention center expansion and/or an additional bayfront hotel. The preservation of views is emphasized in any future development as well as increasing linkages over Harbor Drive, a large physical barrier to pedestrians. There may be the potential for future, smaller mixed-use development at the eastern edge of the district. A measure on the March 2020 ballot to fund an expansion of the Convention Center did not pass.

Marina District

Until the surge of development in East Village, the Marina District was the focus of high-end residential development, primarily in the form of condominiums. Most of the available land has been developed in the Marina District. Several major projects have been completed, including 235 on Market (57 condominium units), Crown Bay (86 condominium units), Marina Place (151

apartment units), City Walk (109 condominium units), Renaissance (218 high-rise condominiums), Park Place (178 high-rise condominiums), and Horizons (211 high-rise condominium units). Also completed was Pinnacle Marina Tower (formerly Pinnacle Museum Tower) located on the block bounded by Island Avenue and Market, Front, and Union Streets. The development is a 35-story building with 182 luxury condominium units, below grade parking, 10,000 square feet of retail space, and a 50,000 square foot children's museum.

The Marina District is the location of Seaport Village, a 14-acre complex that houses shopping, dining and entertainment services. Opened in 1980, the center is operated by Terramar Retail Centers. In late 2016, the San Diego Board of Port Commissioners adopted a development plan by 1HWY1 which will redevelop the site. Called Seaport San Diego, the \$1.6 billion project, backed in part by San Diego's famed Jacobs family, was selected by the Port of San Diego in November 2016 to redevelop 70 acres — 39 land acres and 31 water acres — and is still in the beginning stages. Also located in this area is the Headquarters at Seaport Village, a retail project on the site of the former San Diego Police Headquarters. Built in 1939, the historic development was renovated in 2013 and includes various restaurants and shops. This project is also operated by Terramar, who signed a 40-year lease with the Port of San Diego in 2008. Another major project under development is the Manchester Pacific Gateway. The one-of-a-kind \$1.5 billion luxury development encompasses approximately 13.5 acres, and will feature a luxury hotel as well as the U.S. Navy Regional Headquarters. IQHQ, Inc., a life sciences real estate development company, recently acquired eight acres of the site for \$230 million (approximately \$660 per square foot) and will be developing new Class A office/research and development, lab, and retail space.

Horton Plaza/Gaslamp Quarter

The historic Gaslamp Quarter has become one of San Diego's most popular entertainment neighborhoods. In 1985, Horton Plaza regional shopping center opened adjacent to the Gaslamp Quarter and due to its early success, initial redevelopment activity followed. The area now features a mix of new and old buildings, and the many historically and architecturally significant structures house restaurants and nightclubs, clothing stores, offices, galleries, and lofts. The Gaslamp Quarter also has hosted numerous annual events such as St. Patrick's Day and Mardi Gras celebrations, among others. Projects in this area include Trellis Fifth Avenue, a 10-story, mixed-use project with 149 condominiums and 19,000 square feet of retail uses. This half-block development is located at Fifth Avenue and K Street. The Marriott Renaissance Hotel includes 344 rooms and 7,000 square

feet of retail space. Other notable projects include the Hard Rock Hotel with two 12-story buildings, 393 rooms, 25,000 square feet of retail, a ballroom, and underground parking. One of the newer hotels is the Pendry Hotel located at 5th Avenue and J Street, and includes 317 rooms as well as 30,000 square feet of meeting space.

Horton Plaza is now almost entirely closed, and the former shopping center is slated to be repurposed. The \$275 million overhaul of the property is set for completion in early 2022, with 770,000 square feet of office space and 300,000 square feet of commercial space. The developer, Stockdale Capital, received \$330 million in construction financing, and demolition began in mid-2020. Stockdale reports that, when stabilized, the site will add 3,000 to 4,000 jobs to the downtown market.

East Village

East Village has seen significant redevelopment in past economic upturns. The 26-block ballpark district features Petco Park, a 42,000 seat stadium designed for the San Diego Padres. The ballpark opened in 2004 and is located in the southwest quadrant of East Village. As downtown's largest neighborhood, East Village is the last neighborhood where major new development has occurred. Largely as a result of the ballpark and ancillary uses, development surged in the area. The western part of this neighborhood is home to several mid and high-rise residential projects. Cisterra Development constructed a \$165 million, 16-story office tower for Sempra Energy, which includes 393,000 square feet above grade, and parking for approximately 500 cars. Pinnacle at the Park, a 46-story, 484-unit apartment project, was constructed in 2015 at a cost of \$150 million. The Rey is a 478-unit, 328,000 square-foot apartment complex that was constructed in 2017 at the west edge of East Village. In addition to these projects, a new San Diego Central Library complex took root in East Village, opening in September 2013. The main structure is nine stories high and the entire complex contains approximately 497,000 square feet. Its iconic architecture represents an anchor and a landmark for the neighborhood. East Village is further divided into four sub-districts, Northwest, Northeast, Southeast, and Ballpark. The subject is located in the northwest sub-district.

There are several new developments in East Village, including: 1601 Broadway, a 265-unit apartment mid-rise built in 2018; Park 12, a 718-unit apartment complex built in 2018; the F11, a 99-unit apartment mid-rise built in 2019; and Spire San Diego, a 472-unit apartment complex built in 2019. There are several other residential projects under construction or proposed.

A the corner of Park Boulevard and Broadway is a proposed development consisting of two low-rise residential buildings on the east side of the block, and a 40-story residential tower on the west side of the block. There is an earthquake fault crossing the middle of the property around which the residential structures are to be built. At 11th Street and Broadway, a 40,000 square foot L-shaped site has two high-rise towers under construction. When finished, the towers will comprise 618 units and 646,125 total square feet.

At 241 14th Street, the Moderna San Diego complex is under construction. The full block site is being improved with a seven-story residential building. The total building area is 344,892 square feet, resulting in an FAR of 5.81. The site sold in November 2018, at which time it was improved with an older warehouse building. The sale's price was \$23.3 million, which equates to roughly \$387 per square foot of land area.

Another site, located at 1402 Commercial Street, is a 1.06 acre site approved for a 14-story residential tower. The site is owned by Father Joe's Village and the project is being developed by Chelsea Investment Corporation. The project consists of 407 units, all of which will be operated as affordable housing. Construction is underway.

Located east of the ballpark is Tailgate Park, a block that is planning to be developed by the Padres organization in conjunction with local and international real estate partners; the Padres development team, known as Tailgate Development LLC, is led by Tishman Speyer and Ascendant Capital Partners. The city council approved entering into an exclusive negotiating agreement to sell the 5.25-acre site in November 2020.

Another notable development in East Village is the planned East Village Green, a long-planned public park. Located at the intersection of 13th and F Streets, East Village Green will eventually encompass an area over four acres in size. The initial phase of development consists of a 8,500 square-foot children's play area and interactive water feature, an 11,000 square-foot event lawn alongside a performance pavilion designed for outdoor concerts, downtown's first neighborhood community center, a pay parking garage, two café buildings, and two dog parks.

Little Italy

The Little Italy neighborhood is located in the northwestern portion of the downtown area. As with East Village, this area has also undergone a major surge in development. Major projects in the area include several mid- and high-rise residential projects and street-scape enhancements along

India Street. Restaurant and retail uses have developed along India Street, the spine of Little Italy. Most of the intense land uses are located south of Grape Street. The western portion of Little Italy tends to have a mixture of commercial retail, hotel, and residential uses. The Kettner and India corridors have seen more redevelopment in the past few years. Many of the newer apartment/condominium and mixed-use projects have been developed in this area. Several projects were completed recently, including Piazza della Famiglia. This development by H.G. Fenton Company includes 125 apartments and over 16,000 square feet of retail space. It included the closure of Date Street, between India and Columbia Streets, for the creation of a public plaza. The project was completed in 2018, along with the Little Italy Food Hall. New development in Little Italy also includes Luma, a 220 unit, 24-story residential tower completed in 2019 and 2100 Kettner, a 209,000 square foot, six-level Class A office building, which is currently under construction and expected to be completed in 2021.

Cortez

This hillside neighborhood is located in the northern portion of downtown and is anchored by the former El Cortez Hotel, now a condominium and retail development. One of San Diego's oldest residential neighborhoods, the hill's topography separates it from the rest of downtown and enhances view potential. Completed projects are Aria, Aloft on Cortez Hill, Cortez Blu, and Solara Lofts. All are for-sale condominium projects. Aria is a 24-story, 137-unit project located at the northeast corner of Ninth Avenue and Ash Street. Aloft on Cortez Hill is a five-story, 16-unit project located on the south side of Date Street between Eighth and Ninth avenues. Cortez Blu is a 20-story, 67-unit project located on the southeast corner of Eighth Avenue and Ash Street. Solara Lofts is an eight-story, 77-unit loft development located on the southeast corner of Cedar Street and Fourth Avenue. Cedar Gateway is a rent-restricted apartment project with 65 units. In 2017, a 205-unit affordable housing project was completed at 1453 Fourth Avenue. Known as Atmosphere, the \$79 million project includes 51 supportive housing units, a rooftop terrace, and three levels of underground parking.

Analysis of Subject Location

The subject property is located along the north side of C Street, between Eighth Avenue and Ninth Avenue. The site is located along the trolley line. Development in the immediate area consists of older commercial buildings, office, as well as multifamily residential (apartments and

condominiums) with ground floor retail. Such an example is the aforementioned Diega project, located southwest of the subject. The site is well located. Development in East Village in recent years has been focused on mixed-use projects that typically include residential over commercial/retail space. Some office components have been included in selected projects. Development of the subject would most likely adhere to this vision and could include any mixture of the uses described above (though an emphasis on residential use is likely given the subject's land use designation).

COVID-19

As of this report date, the world is responding to a pandemic of respiratory disease spreading from person-to-person caused by a novel coronavirus (named coronavirus disease 2019, or COVID-19). The COVID-19 outbreak was characterized as a pandemic by the World Health Organization on March 11, 2020, and as a result all levels of the U.S. government are enacting various measures to combat the virus, including stay-at-home orders, social distancing, and mandatory closures of certain businesses such as restaurants (with certain exception such as drive-through and take-home orders), bars and nightclubs, and gyms and fitness studios, among others. Municipalities have also closed various public places such as city halls (closed to the public) and public parking lots (beach, community parks, etc.). Some of these measures are still taking place as of the report date.

As a result of the pandemic and government responses, the economy is facing several challenges. Due to closures of many business sectors (including the previously mentioned mandatory closures as well as non-mandatory closures such as businesses within the hospitality and retail industries), Unemployment Insurance claims in California rose substantially in spring 2020. According to the San Diego Association of Governments, the county is projected to lose an estimated \$12.4 billion in gross regional product.

In addition to shelter-in-place orders and mandatory business closures, the state's governor has implemented a residential eviction moratorium through February 2021. Both residential and commercial tenants are seeking rent and other economic relief. On March 27, a \$2 trillion stimulus package was signed into law, which could provide relief to various industries. A second deal was reached in late April to provide an additional stimulus package of almost \$500 billion. Another stimulus agreement is being negotiated at the federal level.

A recent study of the capital markets indicted substantial volatility since around the middle of March. While interest rates are incredibly low, risk premium spreads and valuation metrics in the underwriting process are important. Federal intervention has helped limit impacts to the market so far, but may not mitigate longer-term concern about defaults; late payments and loan defaults are increasing, but far less than expected, likely due to federal intervention and stimulus. Mortgage REITs (Real Estate Investment Trusts) took a significant hit early in the pandemic, despite no significant losses in collateral due to loan defaults. The commercial mortgage REIT sector is reportedly down more than 36 percent year to date, with some REITs down 50 percent.

It is unclear how the real estate market will recover from COVID-19 once the spreading has subsided. Due to stay-at-home orders and social distancing, industries such as hospitality and office co-working may be impacted for years. Non-essential businesses are being forced to close, which may lead to increased vacancies and lower rents.

On the date of value, some qualitative and quantitative impacts are manifesting, but the number sales of property comparable to the subject is limited, and the full extent of the impact may not manifest for months (until there is sufficient, relevant data to analyze). The real estate market tends to react slower than the stock market (including REITs that are publicly traded). Overall, on the date of value there is some impact being experienced, and the short term outlook was negative. Some real estate sectors such as grocery, take-out food, and industrial distribution have fared rather well, while other sectors such as inline retail, dine-in restaurants, personal services, and hospitality uses have been severely impacted. The outlook for these latter sectors in the foreseeable future is not good. While there are very few sales to help appraisers measure the impact on property value, there is enough economic evidence to show that certain property types have experienced little impact, while other property types have arguably suffered a decrease in value.

The labor market is continuing to feel the impacts of the ongoing COVID-19 pandemic. The unemployment rate in September 2020 in California was 11.0 percent, compared to 3.9 percent a year prior per the California Employment Development Department. In San Diego County, the October 2020 unemployment rate was 7.7 percent, compared to 3.0 percent a year prior. The unemployment rate is decreasing, but still significantly higher than pre-COVID-19 numbers.

MARKET CONDITIONS

As discussed later in this report, the highest and best use for the subject was determined to be mixed-use residential development. This product type in downtown San Diego typically consists of a residential tower with a ground floor commercial component (primarily retail, but could include office). As such, multifamily property trends were investigated using CoStar Group, a commercial real estate research firm. For-sale residential property trends in downtown were researched using information from the local multiple listing service (MLS). Office is a use that could be considered in ground floor commercial space. Further, there is evidence of office development downtown and particularly East Village. As such, we briefly reviewed downtown office trends using CoStar.

Multifamily Market

Regional Market

There were 346,310 apartment units in San Diego County as of fourth quarter 2020. Apartment inventory has been slowly increasing over the last several years and there were 343,999 units in 2019, an increase of 2,311 units in the last year, or 0.7 percent. Over the last five years, apartment inventory in the county increased by 16,296 units, or 4.9 percent. As of fourth quarter 2020, there were 51 apartment complexes under construction in the county with a total of 8,048 units.

The vacancy rate for San Diego County apartments has been very stable over the last two years. The countywide vacancy rate for apartments has ranged between 4.6 percent and 4.9 percent. Overall, COVID-19 has not had a significant impact on vacancy rates.

Downtown Market

Downtown is one of the larger apartment markets in San Diego County. It has a significant amount of newer apartment complexes recently finished and currently under construction. There were 17,214 apartment units in downtown San Diego as of fourth quarter 2020. Apartment inventory has been increasing in downtown over the last several years. There were 16,299 units in 2019, which indicates an increase of 915 units in the last year, or 5.6 percent. Over the last five years, apartment inventory in the downtown increased by 5,287 units. As of fourth quarter 2020, there were 11 apartment complexes under construction in the downtown area, totaling 2,972 units. There is a significant amount of proposed apartment construction in downtown San Diego as well.

A total of 28 new apartment projects are proposed, with between eight and 640 units each, for a total of almost 8,000 units.

The vacancy rate for downtown San Diego apartments has fluctuated significantly over the last two years. The vacancy rate for apartments in downtown has ranged between 5.0 and 11.9 percent over the last five years. As of fourth quarter 2020 the vacancy was 11.3 percent, a slight decrease from the third quarter peak of 11.9 percent. The vacancy rate was 10.8 percent in the beginning of the year. This appears to be high due to newer projects in the absorption phase.

The average asking rental rate for apartments in downtown San Diego was \$2,180 per month as of fourth quarter 2020. The average asking rental rate has ranged between \$2,158 and \$2,184 over the last eight quarters with relatively stable rates. Rates decreased to \$2,124 in the second quarter of 2020, but have increased in the last two quarters. Apartment rental rates have generally been increasing since 2011 at a rate between about 1 and 3 percent per year. This rate of increase is relatively low compared to other suburban submarkets.

Residential For-Sale Market

In addition to multifamily rental data, condominium sale trends in downtown San Diego were reviewed, as multifamily use could include for-sale product. The median sale price for attached product in the 92101 zip code was \$550,000 as of November 2020. This represents an increase of \$20,000 from 2019; the median sale price was \$530,000 in 2019, resulting in an increase of almost 4 percent. The MLS reported 733 sales in 2019 and 726 sales thorough mid-November 2020. For-sale residential product has fared well in 2020; the median sale price in the second half of 2020 is higher than the first half (\$565,000 compared to \$537,500, respectively). In general, the residential market has been able to weather the effects of COVID-19.

Office Market

The downtown office market is one of the largest office submarkets in the county. Downtown San Diego had 13,962,112 square feet of existing office inventory as of fourth quarter 2020 and had 1,043,011 square feet of office space under construction as of fourth quarter 2020. The fourth quarter 2020 vacancy rate was 19.1 percent, up almost 3 percent from a year ago (16.5 percent), but down from a peak in the third quarter (20.8 percent). Vacancy has ranged between 15.6 and 20.8 percent over the last eight quarters. Net absorption has been negative in six of the last eight quarters and has ranged from negative 154,287 to positive 239,210 square feet. Net absorption was

positive 239,210 square feet in fourth quarter 2020, reversing three quarters of negative trends. The average asking lease rate was \$2.89 per square foot in downtown San Diego as of fourth quarter 2020. Despite increasing vacancy, the average asking lease rate has remained relatively flat over the year, increasing from \$2.88 in the beginning of the year.

LAND DESCRIPTION - PHYSICAL CHARACTERISTICS

Location and Access

The subject is bounded by C Street on the south, Eighth Avenue on the west, and Ninth Avenue on the east. The subject property is located in the East Village neighborhood of downtown, west of Interstate 5. The area has convenient access to Interstate 5, State Route 163, and State Route 94. Access onto the property is via these streets with the exception of C Street, which is subject to an overlay that does not allow curb cuts.

Street Improvements

Each of the aforementioned streets are asphalt-paved and have concrete curbs, gutters, and sidewalks. The right-of-way width for each street is 80 feet. In addition, a trolley line travels along the middle of C Street, serving the blue and orange lines (these lines provide transportation to south and east San Diego County, respectively).

Size and Shape

According to the client, the lot area is 23,390 square feet. We have relied on the area provided by the client in this analysis. The site is rectangular in shape. Based on the Assessor's parcel map shown on page 27 of this report, the width of the block is 200 feet, resulting in dimensions for the subject site of 200 feet by about 116.95 feet.

Topography, Drainage, and Flood Control

The subject's topography is level. Drainage appears to be adequate, with storm drains in the vicinity of the subject. The subject is located on Flood Insurance Rate Map panel number 06073C1883H, dated December 20, 2019. The subject is located in Zone X, defined as an area determined to be outside the 500-year flood plain.

Soils

A soils report was not provided for this appraisal. No obvious adverse soils conditions were noted during our inspection of the subject property. It was assumed as part of this analysis that the subject property has soils capable of supporting its highest and best use.

Seismic Stability

According to the Department of Conservation, the subject is located within the Point Loma Quadrangle. The city also produces a Seismic Safety Study identifying geologic hazards and faults. Based on these sources, the subject is not located within an Alquist-Priolo earthquake fault zone, but is proximate to one to the east (about three blocks). The Safety Study also identifies downtown San Diego as a special fault zone, which represent possible limits within which faults could be located. Limits are included to indicate a suggested area for exploration (e.g. trenching). San Diego County is seismically active, and improvements in the area are generally required to withstand seismic activity.

Utilities

Public utilities are available to the subject. Water and sewer are provided by the city of San Diego. Electricity and gas are provided by San Diego Gas & Electric.

Hazardous Waste

The downtown neighborhood has had historic uses commonly associated with hazardous waste/chemical contamination. Physical inspection of the subject from the street did not reveal the obvious existence of any hazardous waste, however, we are not experts in this field. According to Geotracker of the State Water Resources Control Board, there are no cases involving the subject property. In accordance with this research, we have assumed that the property is free and clear of any significant hazardous waste and chemical contamination that would impact the value of the property. We also understand that the property owner will deliver the site "clean" when sold to the city.

Adverse Influences

The subject is located proximate to a light rail line, but the market data utilized, particularly two sales along C Street, reflects existing transportation facility conditions. No other adverse influences given our highest and best use conclusion were noted.

LAND DESCRIPTION - LEGAL CHARACTERISTICS**Legal Description**

The subject consists of a portion of APNs 534-183-03 and 06 as depicted on a map provided by the client. A legal description of the subject parcel was not provided.

Easements and Encumbrances

A preliminary report was not available for this assignment. A pixilated exhibit provided by the client shows a “no build easement” encumbering a portion of the north side of the site. This easement is noted as being 20 feet wide and having an area of 3,200, resulting in a length of 160 feet (noting that the width of the block is 200 feet). Based 23,390 square feet of area, this easement impacts about 14 percent of the site area. It is our understanding that this easement is in place to allow proper setback from the property line if the northern portion of the block is developed with windows along the property line (proper fire setback). We have considered this easement in the valuation analysis and will discuss its impact later in this report.

There were no noted easements on the Assessor’s parcel map, and no additional encroachments or easements were observed during the onsite inspection. Lacking any information to the contrary, this assignment is based on the assumption that there are no other easements or encumbrances that would have a significant adverse impact on value.

Zoning and Land Use

The subject property is located in the East Village neighborhood of downtown San Diego. Land use is regulated by the Centre City Planned District (CCPD). According to the Centre City Planned District Ordinance (CCPDO), the subject’s base district is identified as Residential

Emphasis (CCPD-RE). This district is intended to accommodate primarily residential development, with at least 80 percent of the gross floor area being occupied by residential uses. Small-scale businesses, offices, services, and ground-floor active commercial uses are allowed subject to size and area limitations; non-residential uses may occupy no more than 20 percent of the gross floor area. The property is also regulated by the Downtown Community Plan, which is generally consistent with the CCPDO.

The property is subject to the Park/Open Space Overlay (P), which identifies locations of existing and future public park sites designated in the Downtown Community Plan. The property is also within the Park Sun Access Overlay, which ensures adequate sunlight to future park sites designated in the Downtown Community Plan by controlling the height of new development to the south and west. Based on Figure F of the CCPDO, the subject is the only designated park site within the particular boundaries of this overlay. Given an economic highest and the best (not a public use like a park), these overlays were ignored. Lastly, C Street is subject to the Limited Vehicle Access Overlay, where no curb cuts are permitted (the trolley travels along this street).

Properties within the CCPD are subject to a base minimum and maximum FAR for new construction. With respect to the subject, the base minimum FAR is 6.0 and the maximum is 10.0. The CCPD allows for density bonuses/incentives to promote civic benefits. These include retail along active streets, preservation of historical resources, affordable housing, parks or public infrastructure, and specifically desirable amenities such as green roofs. Additional FAR may also be purchased from (former) Civic San Diego. Based on planning documents, an additional 2.0 FAR in development bonuses is available at the subject property (e.g. additional FAR for items such as green development, park development, etc.). This equates to a total of 12.0. It is noted that the northern part of the block has a maximum FAR of 20, with bonuses (maximum of 5.0 through bonus payment).

New residential development in the city of San Diego is subject to an affordable housing requirement. Currently, ten percent of units in a complex with more than two units must be reserved for affordable housing. If a developer does not include an affordable housing component, an in-lieu fee applies. The fee is \$15.18 per square foot and will increase steadily every year until it reaches \$25 per square foot in 2024.

The subject is designated as a “sending site”, where gross floor area can be transferred to a “receiving” site in accordance with the CCPDO’s Transfer of Development Rights (TDR)

procedures. According to a representative of the city of the San Diego, there have been no projects in the last 14 years (since the 2006 update of the Downtown Community Plan) that have processed a density transfer. Based on prior history, new developments have taken advantage of other density bonuses to allow for more development on a site; this is considered to be a relatively easier option compared to the TDR process, which requires city council approval. No transfer of density on the subject has been proposed; no density has reportedly been transferred to the northern portion of the block. Bosa is seeking to develop to a 14.5 FAR on the northern portion of the block.

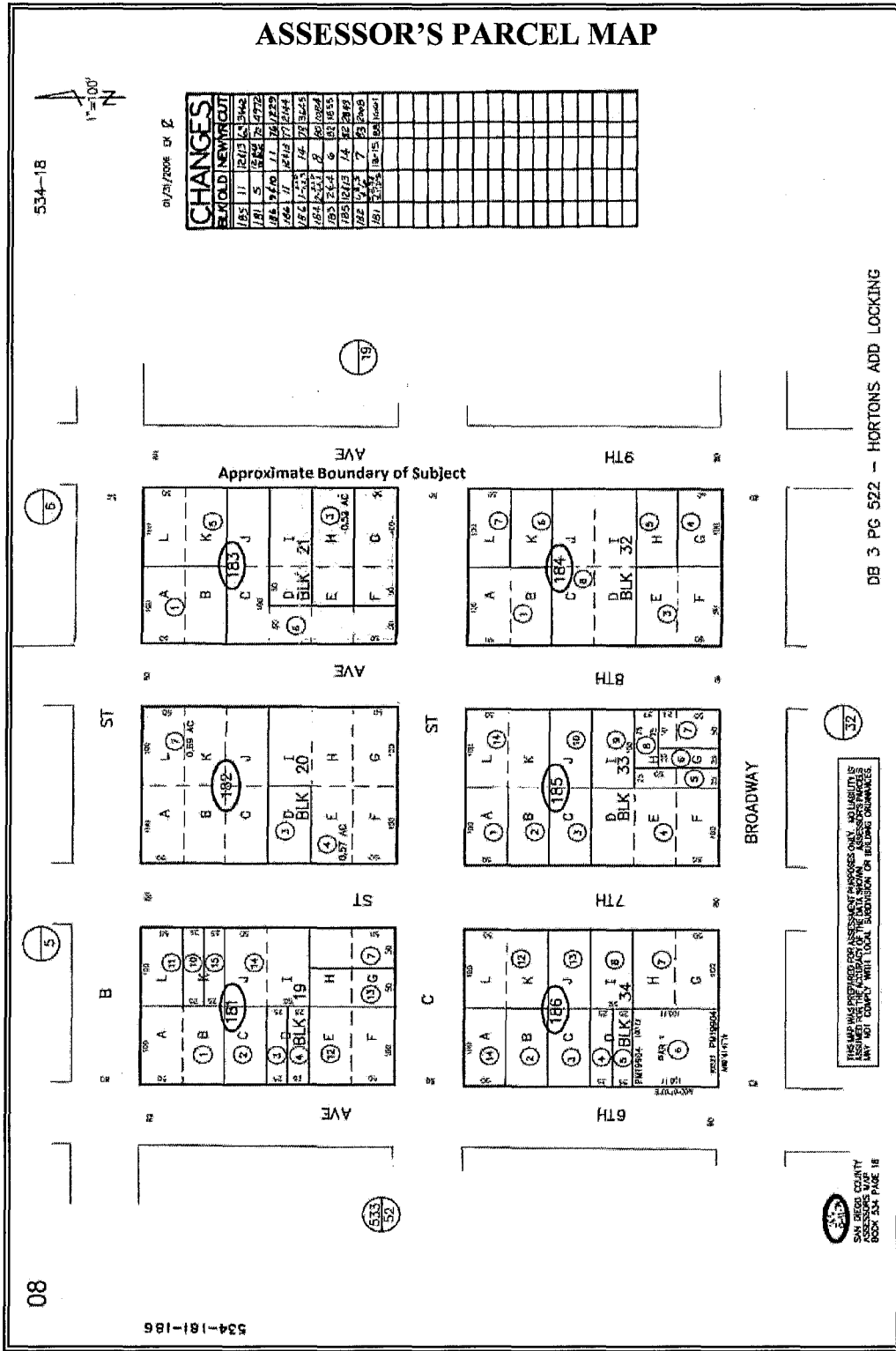
LAND DESCRIPTION - ECONOMIC CHARACTERISTICS

Assessment Information

The subject is located in tax rate area 08242, which carried a tax rate of \$1.22982 per \$100.00 of assessed value based on the 2020/2021 tax rate. California law requires that properties be reassessed at their market value upon transfer. Inherent in the definition of value is a sale of the property. Therefore, this appraisal is predicated on the assumption that the property would be reassessed upon transfer.

DESCRIPTION OF THE IMPROVEMENTS

The subject is improved as a parking lot that covers the entire city block. Based on our analysis, this is an interim use until mixed-use development occurs.



DB 3 PG 522 - HORTONS ADD LOCKING

BROADWAY

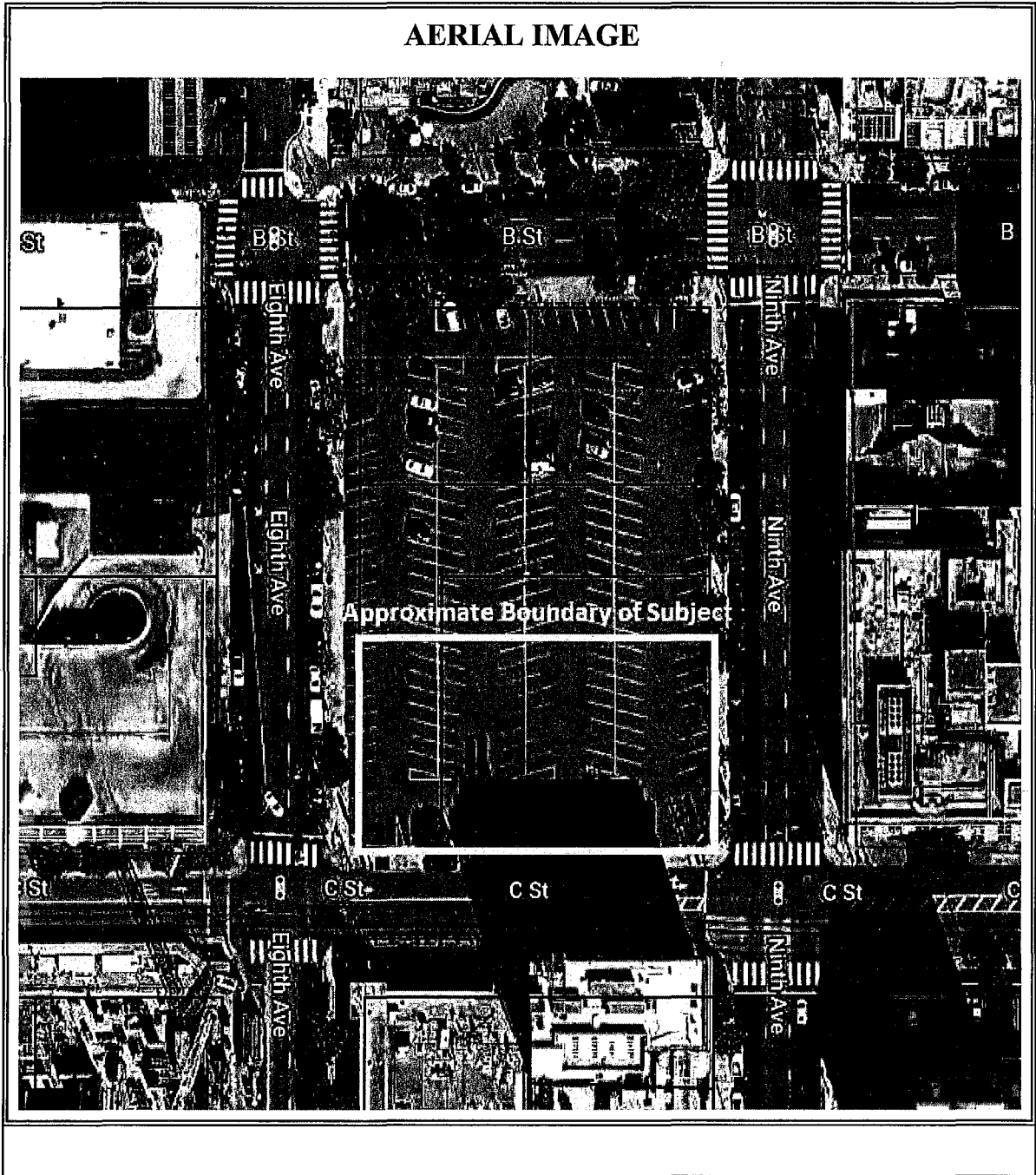
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THIS MAP IS PROVIDED FOR INFORMATION PURPOSES ONLY. ALL RIGHTS ARE RESERVED. THE ASSessor'S OFFICE DOES NOT GUARANTEE THE ACCURACY OF THIS MAP. ANY DISCREPANCY WILL BE THE RESPONSIBILITY OF THE USER.

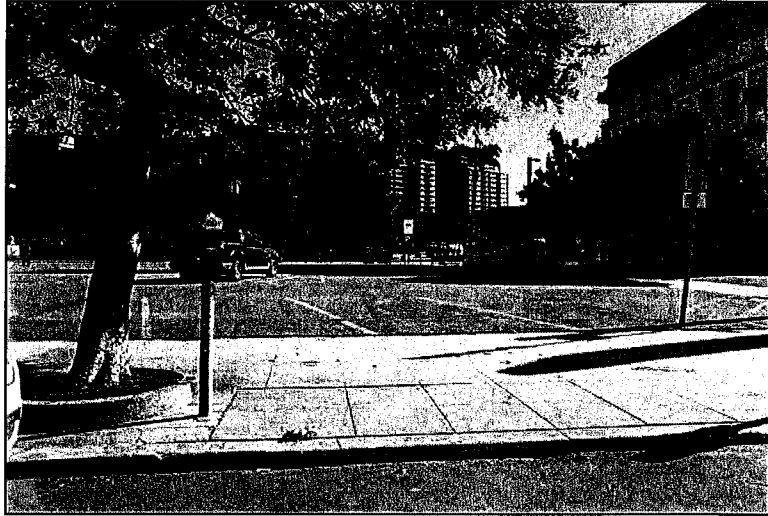
SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 304 PAGE 18

AERIAL IMAGE



SUBJECT PHOTOGRAPHS

View of subject facing east from Eighth Avenue.



View of subject facing north from C Street.



View of subject facing west from Ninth Avenue.



VALUATION METHODOLOGY

The purpose of this appraisal is to estimate the market value of the subject property. There are three generally recognized approaches to value. These are the cost, sales comparison, and income capitalization approaches. The sales comparison approach was used to value the subject. The cost and income capitalization approaches were not used as they are not applicable given the highest and best use of the subject. Neither of these approaches would be used by market participants in determining land value. The sales comparison approach is based on the principle of substitution, and relates similar properties that have recently sold to the subject. Sufficient data were available to estimate market value in this case.

Prior to valuing the subject, the highest and best use of the subject property must be determined. The purpose of the highest and best use analysis is to establish which use will result in the highest value, and to assist in identifying relevant comparable data. Pursuant to standard appraisal procedure and instructions from the client, the property has been valued based upon an economic highest and best use (private highest and best use rather than park land).

HIGHEST AND BEST USE

Highest and best use is an important concept in real estate valuation as it represents the premise upon which value is based. As used in this report, highest and best use is defined in *The Appraisal of Real Estate, 15th Edition* as follows:

The reasonably probable use of property that results in the highest value.

In order to meet the reasonably probable criterion, a use must be (1) physically possible, (2) legally permissible, and (3) financially feasible. These criteria are often considered in that order because qualification under a latter test does not matter if the property fails an earlier test. Uses which meet these three criteria are then tested for economic productivity, and the reasonably probable use with the highest value (i.e. maximally productive) is then determined to be the highest and best use. This definition applies to vacant land or improved property. The highest and best use of vacant land could be immediate development of the property or holding for future development.

The highest and best use of a property is determined by social, economic, governmental, and environmental forces. The relative weight that any of these forces carries in determining the highest

and best use of a property depends on the individual property. Social forces are exerted primarily by population characteristics. Specifically, the demographic composition of the population reveals the potential demand for real estate. Examples of social forces that influence real estate are population changes, rate of family formations and dissolutions, and age distributions.

Economic forces determine the supply and demand conditions influencing real estate. The desire and ability of the population to satisfy its demand for real estate, or those uses situated on the real estate, are determined by economic forces. Examples of economic forces influencing the demand for real estate are employment and wage levels, the economic base of the region and community, price levels, and the cost and availability of mortgage credit. Examples of economic forces influencing the supply of real estate are the stock of available improved properties, proposed development, occupancy rates, and price patterns of existing properties.

Governmental influences include a broad range of political and legal actions which influence the provision of public services, restrict the supply of real estate through zoning and planning ordinances, establish local, state, and national fiscal policies, and special legislation (e.g., a building moratorium) which may influence property values and availability.

Environmental conditions which may influence real estate include climatic conditions, topography and soil, transportation systems, and the nature and desirability of the immediate neighborhood surrounding a property. Environmental forces can be external to the property being appraised or can include characteristics of the property itself.

While the four forces that influence value have been identified separately, they work in concert to affect property values. For a given property these forces will probably exert uneven influence on the value, with certain forces having greater impact on that property than others.

Physically Possible

The subject contains 23,390 square feet of land area and is rectangular in shape. The surrounding area is developed, and all public utilities are readily available to the subject. The property has level topography. Overall, the subject property is physically suited for a wide range of development options.

Legally Permissible

The subject is designated Residential Emphasis in the CCPD. This district is intended to accommodate primarily residential development, but allows some commercial uses. This is consistent with newer development in the immediate area. Based on this, a range of uses (residential, office, and retail) that are consistent with this land use classification were considered to be legally permissible. In addition, there is a no-build easement located on the property; this easement slightly constrains development on the parcel.

Financially Feasible/Maximally Productive

By definition, any use which results in positive land value represents a financially feasible use. The market for land is fairly strong in downtown San Diego, though the market in general is somewhat uncertain due to COVID-related impacts. Numerous purchases of land and new construction downtown suggest that development is feasible. The maximally productive use of a property is that use which results in the highest land value. Research suggests that buyers in East Village are looking primarily to develop residential, but at least one buyer is contemplating office development. Most projects also contain a retail component. Rental product appears to be preferred by developers in this area. Further evidence is provided by Bosa's reported plans to break ground for an apartment tower in 2021 on the northern portion of the subject block (noting that no plans have yet to be processed with the city). Based on this research, mixed-use (most likely residential with active commercial uses on the ground floor) was determined to be financially feasible and maximally productive given the activity in the market.

Conclusion

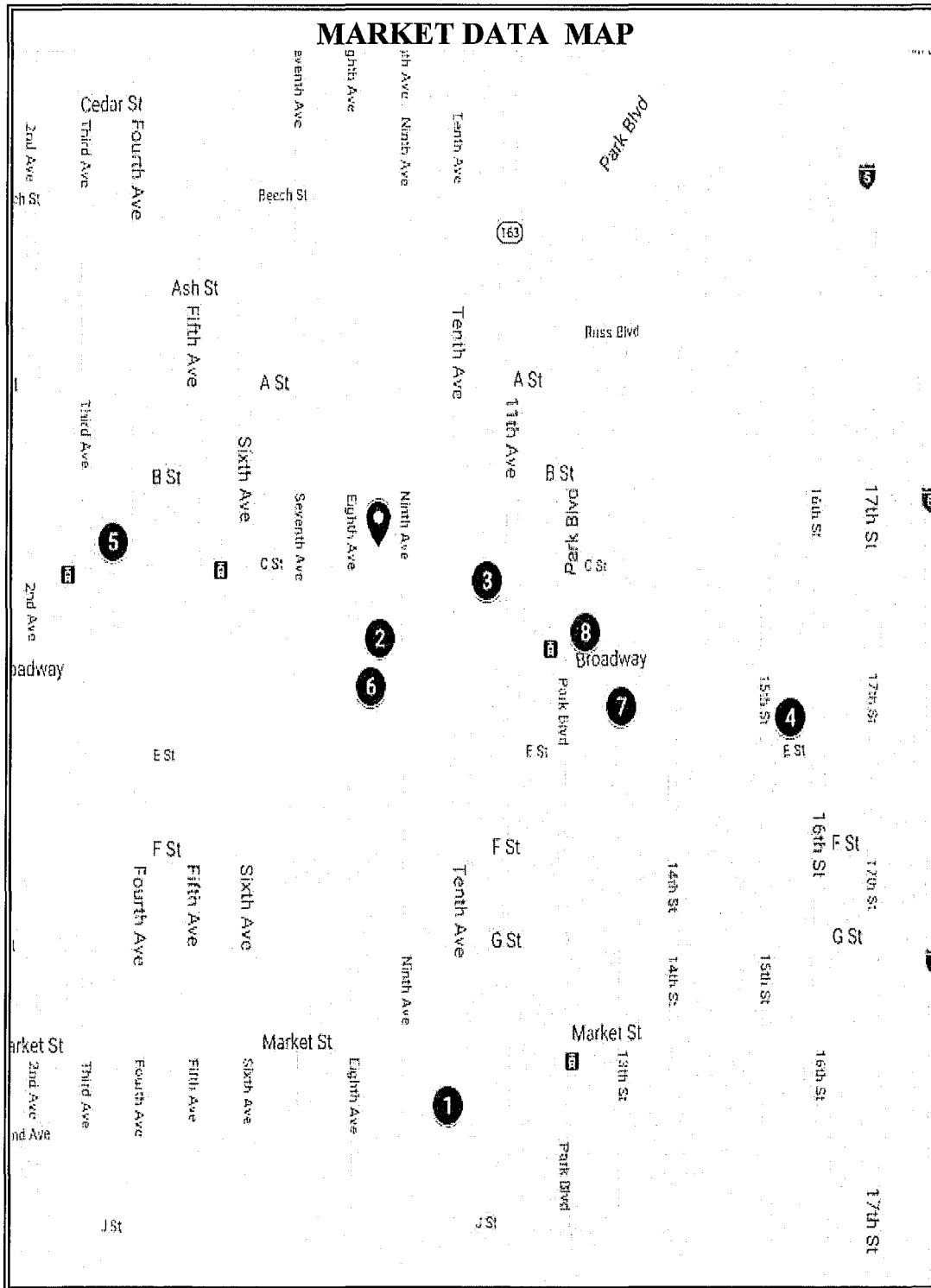
Based on our investigation and analysis, the highest and best use as vacant is concluded to be mixed-use development consisting of active commercial use on the ground floor and residential (tower) use above. The most likely buyer would be a developer (local, regional, and even national and international developers are active in downtown San Diego). Planning for such a use could be immediate, with development occurring after securing the appropriate entitlements. A developer would likely attempt to maximize density (FAR) in this location. The existing parking lot is considered to be an interim use until construction can begin.

SALES COMPARISON APPROACH

The subject property was valued via the sales comparison approach. The sales comparison approach is based on the principle of substitution, which implies that a prudent buyer would pay no more to purchase a property than it would cost to obtain a comparable substitute property. The primary sources of data were CoStar, RealQuest, and interviews with market participants. The comparables were field checked to determine locational, topographic, and other characteristics. The comparables were then verified with the buyer, seller, real estate broker, or other knowledgeable party involved in the transaction.

Of the units of comparison potentially available, the price per square foot was judged to be best suited to an analysis of the subject. Price based on FAR was considered, but was given less weight as it is unclear what precise FAR and use would ultimately be selected by a buyer of the subject property. The data show consistency in price per square foot of land area, but less of a pattern in terms of price per FAR foot. Also, buyers do not always have a precise development contemplated nor will they always maximize FAR. In this case, the price per square foot of land was considered to be a more reliable indicator. The data used show that there is not a perfect linear relationship between FAR and price (the first 4.0 to 6.0 FAR are most critical as demonstrated by the market data). Nonetheless, the price per FAR foot was analyzed as a check of reasonableness.

Though downtown San Diego represents a relatively small portion of the market, land uses and prices can vary by neighborhood or by block depending on allowable use, maximum FAR, entitlement status, and/or proximity to desirable landmarks (waterfront, Petco Park, etc.). Pricing is also influenced by size. In some markets, a smaller site will tend to sell for a higher price per square foot based on economies of scale. However, this is not always the case in downtown, where larger sites have more hard corners and allow more efficient building and garage design. Large sites may sell for a higher price per square foot (or, at least, would not be negatively impacted by larger size). Sales that are located in downtown near the subject and have physical and land use characteristics similar to the subject were utilized in this assignment. All are arm's-length transactions. The market data are summarized in the following table and are briefly described following the table.



Summary of Land Sales								
No.	Location/APN	Sale Date Doc. Number	Seller/ Buyer	Sale Price	Square Feet	FAR **	Price/ SF	Price/ FAR Foot
1	Tenth Avenue and Island Avenue 535-121-06, 07, 08	08/20 2020-428044 2020-428046	DurketMeads, LLC; David Cardan/ K-Elevate 10 th Street Prop LLC	\$8,400,000	10,000	10.00	\$840.00	\$84.00
2	800-828 East Broadway 534-184-03, 04, 05	04/20 2020-210392	Minto Investment Group, LLC/ DRI/CA 800 Broadway Property Owner, LLC	\$19,100,000	20,000	10.00	\$955.00	\$95.50
3	C Street and Eleventh Avenue 534-195-01, 09	03/20 2020-111041	Columbia Parking, LP/ East C Street Holdings LLC	\$12,000,000	20,000	10.00	\$600.00	\$60.00
4	Broadway at 15 th Street 534-352-01, 02, 03, 04	02/20 2020-60724	Jefferson Makers Quarter, LLC/ R&V MQ Investment Holding, LLC	\$39,864,500	60,000	5.80	\$664.41	\$114.55
5	1122 Fourth Avenue 533-521-04, 05	12/19 2019-608307	1122 4 th Ave, LLC Caydon San Diego Property LLC	\$21,100,000	25,000	22.28	\$844.00	\$37.88
6	801 Broadway 534-323-01	12/19 2019-575915	Hall/Fish Investments, Inc./ Reef Point Hospitality LLC	\$8,160,000	15,000	10.00	\$544.00	\$54.40
7	901 Park Boulevard & 1335 Broadway 534-341-11; 534-342-14	08/19 2019-351467 2019-351471	The Salvation Army/ KR 901 Park, LLC & KR 1335 Broadway, LLC	\$40,000,000	100,187	10.00	\$399.25	\$39.93
8*	1015 Park Boulevard 534-206-03, -04	07/19 2019-267125	The Salvation Army/ Mark S. Schmidt	\$7,750,000	18,000	10.00	\$430.56	\$43.06
* Sale No. 8 land area is net of 12,000 square foot fault line setback area								
** Maximum base FAR, or proposed FAR if known								

Land Sale No. 1 is the August 2020 sale of land located at the northwest corner of Tenth Avenue and Island Avenue in downtown San Diego. The site contains 10,000 square feet, and included a commercial building measuring 6,000 square feet as well as a parking lot at the time of sale. The land use designation is CCPD-ER, Employment/Residential Mixed-Use, which is intended to provide a synergy between educational institutions and residential neighborhoods. There are no noted overlays. The base FAR is 3.5, the base maximum is 6.0. The maximum potential FAR with bonuses is 10.0. This comparable consists of two transactions from two separate sellers. The parcel improved with the commercial building (APN 535-121-06) will be leased back to the seller for a period of six months. The buyer is planning a 14-story high-rise building on the site.

Land Sale No. 2 is the April 2020 transfer of a portion of a city block located on the north side of Broadway, between Eighth Avenue and Ninth Avenue, in East Village. The site contains 20,000 square feet. The land use designation is CCPD-NC, Neighborhood Mixed-Use Center. The base minimum FAR is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 12.0. The property is also subject to a view corridor setback, a Park Sun Access Overlay, Limited Vehicle Access Overlays on Eighth Avenue and Broadway, a Main Street Overlay on Eighth Avenue, and a Commercial Street Overlay on Broadway. A permit application had been applied for and included 384 multifamily units (28 of which were designated as affordable) and approximately 22,000 square feet of retail. This application was never approved and eventually expired. A revised project consisting of 389 units was submitted for preliminary review in October 2020. The revised project is ministerial, and the project is currently in plan check for a grading permit. We understand that most of the architectural and engineering had been completed prior to purchase and the price was influenced upward significantly.

Land Sale No. 3 is the March 2020 transfer of an "L"-shaped site located at the southwest corner of C Street and Eleventh Avenue in East Village. The 20,000 square foot site is bounded by these streets as well as Tenth Avenue. The land use designation is CCPD-ER, Employment Required Mixed-Use, which is intended to provide a synergy between educational institutions and residential neighborhoods. The streets bounding the property are also subject to Limited Vehicle Access Overlays. The base minimum FAR is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 14.0. The property is currently improved as a parking lot. The buyer is a Canadian-based real estate developer. The property was in escrow for approximately six months; the original escrow period was scheduled to be four months, but the buyer required a two-month extension which cost \$150,000; the \$12 million figure has been utilized as this additional \$150,000 is considered more of a carrying cost. The property was unentitled when it sold. Reportedly, there were other offers at a higher price, but the potential buyers wanted to be under contract for many months in order to

obtain entitlements; the higher offer prices were “as entitled” and were in the range of \$750 per square foot.

Land Sale No. 4 is the February 2020 transfer of a full city block at 15th and Broadway in East Village. The 60,000 square foot site is located between E Street and Broadway, and between 15th and 16th Streets. The land use designation is CCPD-ER, Employment/Residential Mixed-Use, which is intended to provide a synergy between educational institutions and residential neighborhoods. There are Commercial Street and Limited Vehicle Access Overlays along Broadway. The Commercial Street overlay requires that a minimum of 60 percent of the ground-floor street frontage shall contain commercial uses. The Main Street overlay requires that a minimum of 80 percent of the ground-floor street frontage shall contain active commercial uses. The base FAR is 3.5, the base maximum is 6.0. The maximum potential FAR with bonuses is 12.0. The site sold fully entitled for a seven-story residential building with an FAR of 5.8 that is scheduled to deliver in late 2021. The purchase price was \$39,864,500, which equates to \$664.41 per square foot of land area. CoStar reported that the purchase price included \$9 million in hard and soft costs related to the entitlements. Were the purchase price adjusted for \$9 million, it would equate to roughly \$515 per square foot of land area. This adjusted price still reflects the time value of money being able to break ground in the near term future. The property sold in October 2018 from the longtime owner, the Navarra family, to JAI for \$20,760,000, or roughly \$346 per square foot. We discussed the property with the broker involved in that transfer, who opined that the site is worth less than \$500 per square foot without entitlements (in early 2020).

Land Sale No. 5 is the December 2019 of a property located at 1122 Fourth Avenue in downtown San Diego. The 25,000 square foot site is bounded by Fourth Avenue to the east, C Street to the south, and Third Street to the west. Previously developed as the California Theatre, the property sold to Australian developer Caydon Property Group. The land use designation is CCPD-CORE, Neighborhood Mixed-Use Center. The base minimum FAR is 6.0 and the base maximum is 10.0. There is a Limited Vehicle Access Overlay on C Street. The maximum potential FAR with bonuses is 20.0. The property was under contract for 2.5 years as the seller sought to obtain entitlements (which, as discussed previously, were invalidated). The price reflected the site as entitled; the listing broker opined that as an unentitled site, the price would be in the range of \$16 million, or about \$640 per square foot. The current proposal, submitted in April 2020, calls for a 41-story project with 336 residential condominiums, a 190-room hotel, and 4,000 square feet of retail. The proposed FAR is 22.28.

Land Sale No. 6 is the December 2019 transfer of a property located at 801 Broadway in downtown San Diego. The 15,000 square foot site is situated on a corner and is currently being operated as a pay parking lot. The purchase price equates to \$544 per square foot of land area, and the property sold without entitlements. The listing broker was not aware of the buyer's plans for the property but opined that the purchase price is indicative of an intent to redevelop. No unusual conditions were reported. The property was reportedly in escrow for 180 days. The land use designation is CCPD-NC, Neighborhood Mixed-Use Center. The base minimum floor area ratio (FAR) is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 14.0. The site is also impacted by the Commercial Street and Main Street overlays.

Land Sale No. 7 is the August 2019 transfer of roughly 100,187 square feet located on most of two city blocks between Park Boulevard and 14th Street (west and east), and E Street and Broadway (south and north) in East Village. The acquisition comprises one entire block and roughly two-thirds of another block. The seller was the Salvation Army and the buyer is Kilroy Realty. A fault line impacts a small portion of the northeast corner of the parcel. A representative of Kilroy stated that the fault line was considered in the decision to purchase but did not have a significant impact on price. The purchase price equates to roughly \$400 per square foot of land area. The site is improved with older warehouse and retail buildings that were considered of limited value to the buyer. The buyer intends to redevelop the site but did not report any definitive plans other than primarily office with ground floor retail. Their project may also include a residential component. The representative from Kilroy noted that they have a preference for "large plate" office development and that the site will allow for this type of development. Also, Kilroy will not necessarily pursue the maximum FAR for the site. The land use designation is CCPD-NC, Neighborhood Mixed-Use Center. The base minimum FAR is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 10.0. The site is also impacted by the Commercial Street and Main Street overlays. The trolley line runs in Park Boulevard adjacent to the westerly parcel.

Land Sale No. 8 is the July 2019 transfer of a half-block, totaling 30,000 square feet of land located at 1015 Park Boulevard. The site was previously improved with older buildings considered of limited value to the buyer. The property was purchased for assemblage with the northern portion of the site. The seller was the Salvation Army, and the buyer is a local developer. The buyer was pursuing entitlements for the northern portion of the block when the site became available. This sale transferred without any plans or permits. The entire block is now planned for development with a 40-story tower and two low-rise buildings (at a 10.0 FAR). The tower and the low-rise buildings are separated by an earthquake fault line. The listing broker reported that the fault significantly impacted the site value (in part because it cross the middle of the site). The purchase price equates to roughly

\$258 per square foot of gross site area. The listing broker reported that the site value was allocated to the net usable area of roughly 18,000 square feet, which equates to roughly \$431 per square foot. This latter figure was used in this analysis. This sale was reportedly in escrow for roughly six months. No unusual conditions were reported. The land use designation is CCPD-NC, Neighborhood Mixed-Use Center. The base minimum FAR is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 10.0. The site is also impacted by the Commercial Street and Main Street overlays.

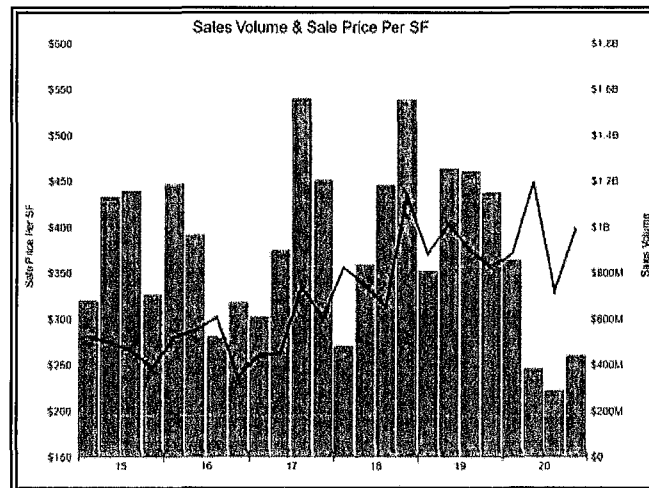
Land Valuation Analysis

This downtown data set was not well suited to quantified adjustments. As such, the other comparisons were qualitative in nature. The following discussion summarizes the treatment of the comparables in the analysis. Although some of the sales may have been occupied by tenants when they sold, none were encumbered by long-term leases, and the properties were purchased for land value. Therefore, no adjustment was warranted for property rights. Additionally, none of the parties interviewed noted any atypical financing or conditions of sale. The primary elements of comparison include market conditions, location, land use with respect to density and FAR, entitlements, physical characteristics (including size and configuration), and the impact of the no-build easement.

Market Conditions

In general, the market for commercial and residential land has improved in recent years. Additionally, the subject property has a favorable location in downtown San Diego. The demand for well-located land in San Diego is considered above average as demand in the area has improved, noting that conditions are beginning to moderate. The recent sales do not present a uniform trend of appreciation, and downtown tends to move in steps rather than slow, gradual trend lines. We have instead used the sales of improved properties as a proxy for land sales to demonstrate the trend. This is useful to the extent that land sales may follow the market for improved properties.

In order to estimate an adjustment for market conditions, sale-resale data in downtown was investigated as well as interviews with market participants involved in the sales utilized for this analysis. Due to a shortage of applicable data, our search expanded to the entire San Diego market to observe any noticeable trends. The following chart from CoStar shows the total sales volume and the average price per square foot of improved sales in the San Diego market (city-wide) tracked by CoStar, including office, retail, multifamily, and hospitality (property types related to the subject and surrounding properties).



As evidenced by the preceding exhibit, the average price per square foot of improved properties was generally increasing beginning in 2020, but COVID-19 has caused overall pricing to drop. Recently, the data suggests that prices have begun to recover, though this can vary based on property type. The total sales volume has fluctuated but has dropped considerably in 2020. The line for the average price per square foot rises and falls but shows a relatively level trend from 2019 onward.

In addition to this data, we interviewed market participants who are active in the San Diego land market. Participants noted that the increase in construction costs (labor and materials) over the past few years has adversely impacted the market. The increase in construction costs has slowed the upward trend in the land market. Some participants reported that the increase in construction costs has negatively impacted the land market. If this is true, the trend is not of sufficient duration to be considered a pattern. However, we have considered this trend in evaluating market conditions. In some cases, we noted that an increase in land value was related to a willingness of buyers to propose developments with high FARs. For example, in recent past a buyer considered a 6.0 to 10.0 FAR as ideal, but now some buyers are proposing developments in the 15.0 to 20.0 range. Another market participant has indicated that low supply has mitigated the negative impacts on commercial real estate due to COVID-19, and that prices have remained relatively level as a result. One other developer opined that the downtown land market has merely “paused”.

Overall, COVID-19 has most likely impacted values downtown, to a point where average pricing is in line with pricing in the beginning of 2019. Construction costs may have stabilized, and absorption may be slightly longer than prior to COVID-19. However, a buyer of unentitled land will likely not deliver product for about two to three years. Based on this information, a market conditions adjustment was not made to the data.

Location

As noted previously, land value in downtown San Diego can vary by neighborhood and by block. An adjustment for location was made based on market research, interviews with market participants, and our experience in recent appraisal assignments involving downtown land. While different metrics were considered (e.g. a comparison of rents and condominium sale prices for the various neighborhoods), these were considered less reliable when valuing land given variations in the improvements themselves, including quality/condition, project amenities, etc.

Based on this analysis, Sale Nos. 1 and 5 were considered superior. Sale Nos. 2 and 6 were considered similar. The other sales were considered inferior in location.

Land Use Regulations and FAR

Land use designations can be considered a positive or negative feature. For example, the subject is designated Residential Emphasis, which is considered a positive feature as there is no significant employment or commercial component required. Sale Nos. 1, 3, and 4 are designated Employment/Residential, a feature that can be considered negative. However the primary factor impacting value for land use in downtown San Diego is typically the FAR potential.

The following table summarizes FAR information for the subject and the comparables.

Summary of Density					
No.	Land Use	Base FAR		Actual FAR	Max FAR W/ Bonuses
		Min	Max		
Subject	Residential Emphasis	6.0	10.0		12.0
1	Employment/Residential Mixed-Use	3.5	6.0		10.0
2	Neighborhood Mixed-Use Center	6.0	10.0		12.0
3	Employment/Residential Mixed-Use	6.0	10.0		14.0
4	Employment/Residential Mixed-Use	3.5	6.0	5.8	12.0
5	Core - Neighborhood Mixed-Use	6.0	10.0	22.3	20.0
6	Neighborhood Mixed-Use Center	6.0	10.0		14.0
7	Neighborhood Mixed-Use Center	6.0	10.0		10.0
8	Neighborhood Mixed-Use Center	6.0	10.0	10.0	10.0
* Actual FAR used for entitled projects					

Overall, the subject has a base maximum FAR is in line with the other sales. The exception are Nos. 1 and 4, which have a lower base FAR. A meaningful comparison in this market is maximum base FAR since this is more likely to be achieved than the maximum with all bonuses; many of the density bonuses require additional costs (e.g. higher construction costs) and obligations. The market data all have a maximum potential FAR sufficient to support most types of development. Not all developers purchase with the intent to develop to the maximum FAR, as evidenced by Sale No. 4; however, some properties like Sale No. 5 have maximized their density. Based on this information, the adjustment for the potential for maximum FAR is tempered, particularly when the plans for development are unknown. The majority of the sales are considered to be similar with the exception of sale Nos. 1 and 4 (which are inferior) as well as No. 5 (which is superior).

Entitlements

Sale Nos. 2, 4, and 5 sold with some level of entitlements (or engineering/architecture and planning), a characteristic that has a strong upward influence on value. Sale No. 2 exhibited a very large premium attributable to these characteristics and requires a downward adjustment. Sale No. 4 previously transferred in October 2018 for \$346 per square foot of land area, and subsequently transferred in February 2020, fully entitled, for \$664 per square foot of land area (deducting \$9,000,000 in entitlement costs results in an adjusted price of \$515 per square foot). This adjusted

price also has a premium for the ability to break ground almost immediately. Sale No. 5 sold as entitled, and the listing broker opined that the price without entitlements would be in the range of \$640 per square foot. These sales were considered markedly superior for entitlements. The balance of the market data sold without entitlements and were considered similar to the subject in this regard.

Physical Characteristics

This category includes consideration for physical characteristics such as size and configuration. In general, there is a larger pool of buyers for smaller sites because the smaller projects are overall more affordable and have a shorter absorption period. In some markets, larger properties tend to sell for less per square foot compared to smaller properties. However, this is not always the case in downtown San Diego where larger sites have more hard corners and allow for more flexibility in project design and parking. Large sites may sell for a higher price per square foot (or, at least, would not be negatively impacted by size). With respect to configuration, sites can have an irregular shape or, in the case of Sale No. 7, be very large and separated by a street. This sale was considered to be inferior primarily for size. Sale No. 8 is considered to be inferior as a fault line travels through the middle of the property. Although the price per square foot listed is based on net area, the configuration of the site is still inferior. Sale No. 3 is considered inferior for shape. The other sales were determined to be sufficiently similar.

No-Build Easement

The subject is to be encumbered with 3,200 square foot no-build easement along much of the north edge of the parcel. This easement (which we believe does not exist on any of the sales utilized) replaces what would ordinarily be a 10-foot setback for windows along the interior property line, and establishes a 20-foot setback. The easement is not a major burden, but does decrease the development flexibility of the subject site and provides a benefit to the Bosa development proposed on the northern portion of the block. It is somewhat analogous to an earthquake fault line - a fault line crossing the middle of the site is a major burden (Sale No. 8), but crossing the edge of the site tends to have little impact (Sale. 7). Overall, a slight discount is warranted in our view, and all of the sales were considered to be superior.

Conclusion

The following table summarizes the adjustments and comparisons. It is important to note that the individual comparisons are not weighted equally; the comparisons vary by degree. The reader's attention is invited to the "overall" comparison considered in the final analysis.

Summary of Market Data Comparisons								
Comparable	1	2	3	4	5	6	7	8
Sale Date	08/20	04/20	03/20	02/20	12/19	12/19	08/19	07/19
Sale Price	\$8,400,000	\$19,100,000	\$12,000,000	\$39,864,500	\$21,100,000	\$8,160,000	\$40,000,000	\$7,750,000
Land Size (SF)	10,000	20,000	20,000	60,000	25,000	15,000	100,187	18,000
Price per Square Foot	\$840.00	\$955.00	\$600.00	\$664.41	\$844.00	\$544.00	\$399.25	\$430.56
Market Conditions	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Adjusted Price	\$840.00	\$955.00	\$600.00	\$664.41	\$844.00	\$544.00	\$399.25	\$430.56
Location	Superior	Similar	Inferior	Inferior	Superior	Similar	Inferior	Inferior
Density & FAR	Inferior	Similar	Similar	Inferior	Superior	Similar	Similar	Similar
Entitlements	Similar	Superior	Similar	Superior	Superior	Similar	Similar	Similar
Physical	Similar	Similar	Inferior	Similar	Similar	Similar	Inferior	Inferior
No-Build Easement	Superior	Superior	Superior	Superior	Superior	Superior	Superior	Superior
Overall	Significantly Superior	Significantly Superior	Similar	Superior	Significantly Superior	Superior	Significantly Inferior	Significantly Inferior
Value Conclusion	Significantly Below	Significantly Below	Near	Below	Significantly Below	Below*	Significantly Above	Significantly Above
	\$840.00	\$955.00	\$600.00	\$664.41	\$844.00	\$544.00	\$399.25	\$430.56

* Sale No. 6 is considered to be an outlier when compared to Nos. 2 and 3.

In summary, the data generally bracket the subject property. Sale Nos. 1, 2, and 5 are high indicators due primarily to entitlements or advanced planning/engineering (or in the case of Sale No. 1, proximity to Petco Park). Sale Nos. 7 and 8 were considered inferior, suggesting a value above \$430.00 per square foot. The sales that are most similar to the subject are Nos. 3 and 6. Sale No. 3 is located two blocks east of the subject and is similar in size. However, it is an “L”-shaped site, which provides less development flexibility than the subject site; the seller reported multiple offers, and opined that the subject has a slightly better micro-neighborhood. This sale suggests that the value of the subject is near \$600.00 per square foot. Sale No. 6 is located two blocks south of the subject and is similar with respect to physical and location characteristics. However, it appears to be a low indicator based on other transactions in the area (as evidenced by the fact that the price per square foot is lower than inferior Sale No. 3). Sale No. 6 also appears low in light of the more recent of Sale No. 2 at over \$900.00 per square foot. Overall, the subject value should fall above Sale No. 6.

In reconciling the data, it is noted that Sale No. 4, without entitlements, would most likely have sold in the range of \$500.00 per square foot. This is considered reasonable given its inferior location and land use regulations. The next highest sale is Sale No. 1, which is superior due to location. Based on our analysis of the data and discussions with market participants, we have reconciled at \$600.00 per square foot, which is in line with Sale No. 3.

During the late part of our investigation, we interviewed a representative of Bosa who disclosed his opinion of value, consistent with a recent Cushman appraisal of the property, at \$600.00 per square foot. We did not review the Cushman report. Our appraisal was developed independently of the seller’s opinion, but the seller’s opinion of \$600.00 per square foot is relevant to the assignment.

Price Per FAR Foot Analysis

As a test of reasonableness, we also considered the market data in light of price per FAR foot. This approach was not given primary weight as the actual FAR from the sales as well as the subject property are not known. In some cases, buyers may not desire to maximize FAR. Regardless, this metric is a relevant tool in valuation and was used as a secondary unit of comparison.

The price per FAR foot is typically inversely proportional to the FAR. However, there is not a perfect linear relationship between price per FAR foot and FAR. The data tend to indicate that the first 4.0 to 6.0 FAR are most critical. In East Village, some buyers opt for a nearly 6.0 FAR (allows

lower cost construction at seven stories), while other buyers are proposing more expensive high-rise construction with a 10.0 FAR or higher. The subject has a maximum potential FAR (without bonuses) of 10.0, which is considered similar compared to many other properties in the downtown market. A buyer of the subject would likely develop at or near the subject's maximum FAR with bonuses. In our view, the likely range would be 10.0 to 12.0 for the subject property.

The sale data range from \$39.93 to \$114.55 per FAR foot. The high end of this range is represented by Sale Nos. 1, 2, and 4, which are either in a better location (No. 1) or reflect entitlements/advanced planning (Nos. 2 and 4). Also, Sale No. 4 has a much lower FAR. The remaining sales range from \$39.93 to \$60.75 per FAR foot. In general, the data indicate that price per FAR foot tends to decrease as allowable FAR increases. After consideration of characteristics such as market conditions and location, the sale data suggest that the value of the subject property should fall near \$55.00 to \$60.00 per FAR foot (predicated on the subject's likely range of 10.0 to 12.0). When \$55.00 per FAR foot is applied to a 12.00 FAR, and \$60.00 per FAR foot is applied to a 10.0 FAR, the result is a range in *price per square foot of land* of \$600 to \$660 per square foot. This is supportive of the preceding primary sales comparison approach method discussed previously, particularly without consideration of the no-build easement (the impact of the no-build easement supports a value at the low end of this range).

Summary and Conclusion

Based on our investigation and analysis, we concluded that the value of the subject property is \$600.00 per square foot. This conclusion extends to \$14,034,000 for the 23,390 square foot subject site. This value is stated as of November 1, 2020, and is subject to the assumptions and limiting conditions referenced as part of this report.

ADDENDA

SALE NO. 1

LOCATION: Tenth Avenue and Island Avenue, San Diego

APNs: 535-121-06, 07, 08

SIZE AND SHAPE: 10,000 square feet, rectangular

TOPOGRAPHY: Mostly level

ACCESS: Island Avenue is a two-lane street, and Tenth Avenue is a three-lane, one-way street.

ZONING: The land use designation is CCPD-ER, Employment/Residential Mixed-Use, which is intended to provide a synergy between educational institutions and residential neighborhoods. There are no noted overlays. The base FAR is 3.5, the base maximum is 6.0. The maximum potential FAR with bonuses is 10.0 .

PRICE: \$8,400,000

INDICATOR: \$840.00 per square foot

TERMS: Cash to the Seller

TRANSACTION: Grant Deed -
Recorded: August 3, 2020
Doc. No: 2020-428044 and 2020-428046

SELLER: DurketMeads, LLC; David Cardan

BUYER: K-Elevate 10th Street Prop LLC

SOURCE: CoStar, Public Records, Listing Broker

CURRENT USE: Commercial building, parking lot

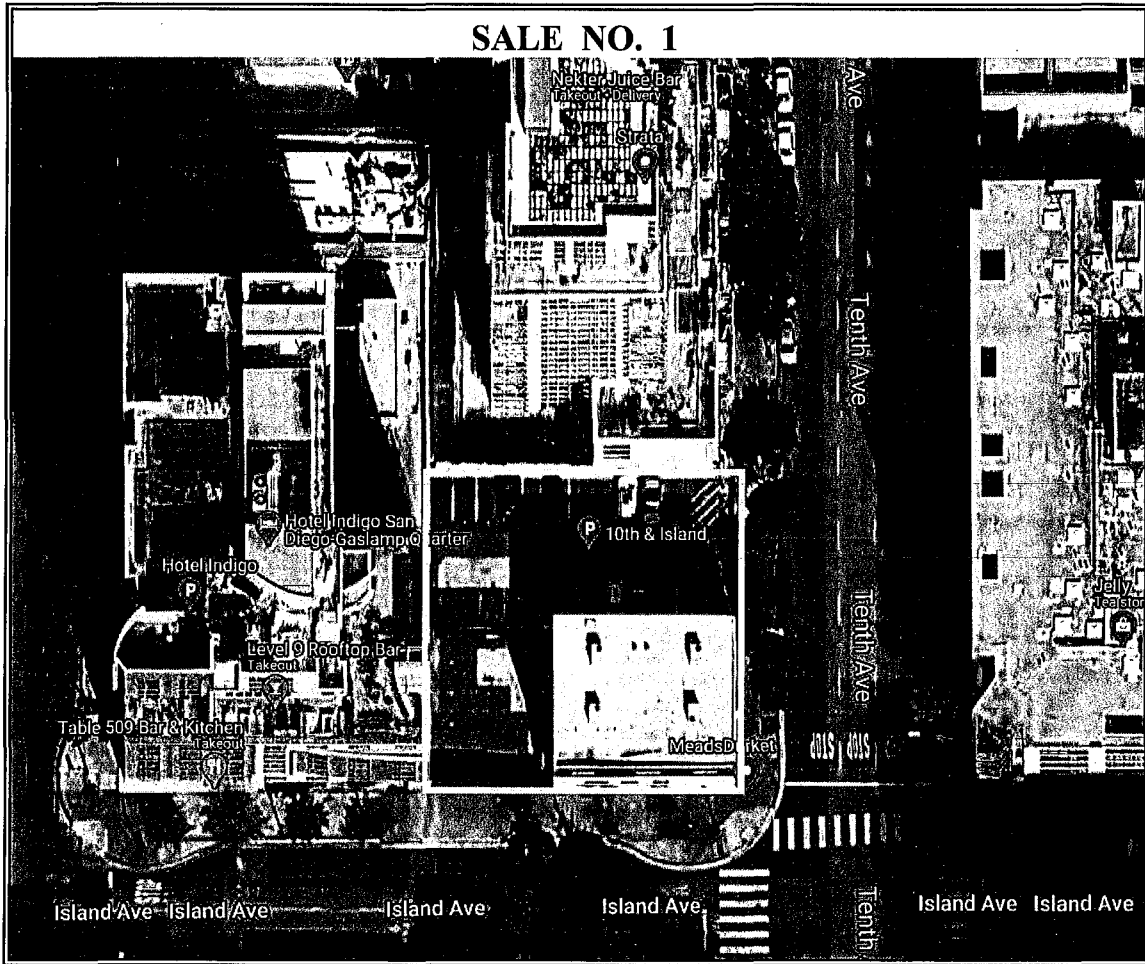
SALE HISTORY: According to public records, the property has not sold in the past three years.

SALE NO. 1

Continued

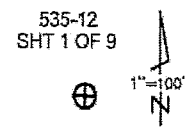
COMMENTS:

This comparable consists of two transactions from two separate sellers. The property improved with the commercial building (APN 535-121-06) will be leased back to the seller for a period of six months. The buyer is planning a 14-story high-rise building on the site.



08

535-12 | 21-126



535-12
SHT 1 OF 9

08/02/06 PR

CHANGES					
BLK	OLD	NEW	TRCUT		
125	4-16	11	43	2420	
122	6-8	13	53	4677	
123	3-7	7	63	3504	
121	3-4-5-6	11	77	2223	
122	1-2-3	14	87	1265	
125	11	12-13	89	1787	
125	9-10	14	92	1476	
122	12	15-16	00	1113	DC
123	1-2-3-4	03	1236		DC
124	1	3-4	03	1062	CANC
125	1-2-3	15-16	04	1420	
126	4-7	14	04	2124	
126	14	15-17	05	563	
122	4-5-6-7-8-9-10-11-12-13-14-15-16	17	05	1567	
123	11	12-13	05	620	
122	17	18-19	05	676	
124	2	3-4	05	724	
126	10-11-12	-14-03	06	1573	
125	16	CONDO	06	750	
126	13	CONDO	06	755	
121	1-9-10	12	07	1415	

- 1st CONDO
DIAMOND TERRACE
DOC05-4425-12
(SEE SHTS 2 & 3)
- 2nd CONDO
ANGOVE
DOC05-011777-8
(SEE SHT 5)
- 3rd CONDO
FAHRENHEIT
DOC05-471523
(SEE SHT 5)
- 4th CONDO
PARK BOULEVARD WEST
PHASE 1
DOC05-131248-9 & DOC04-8305-67
(SEE SHT 4)

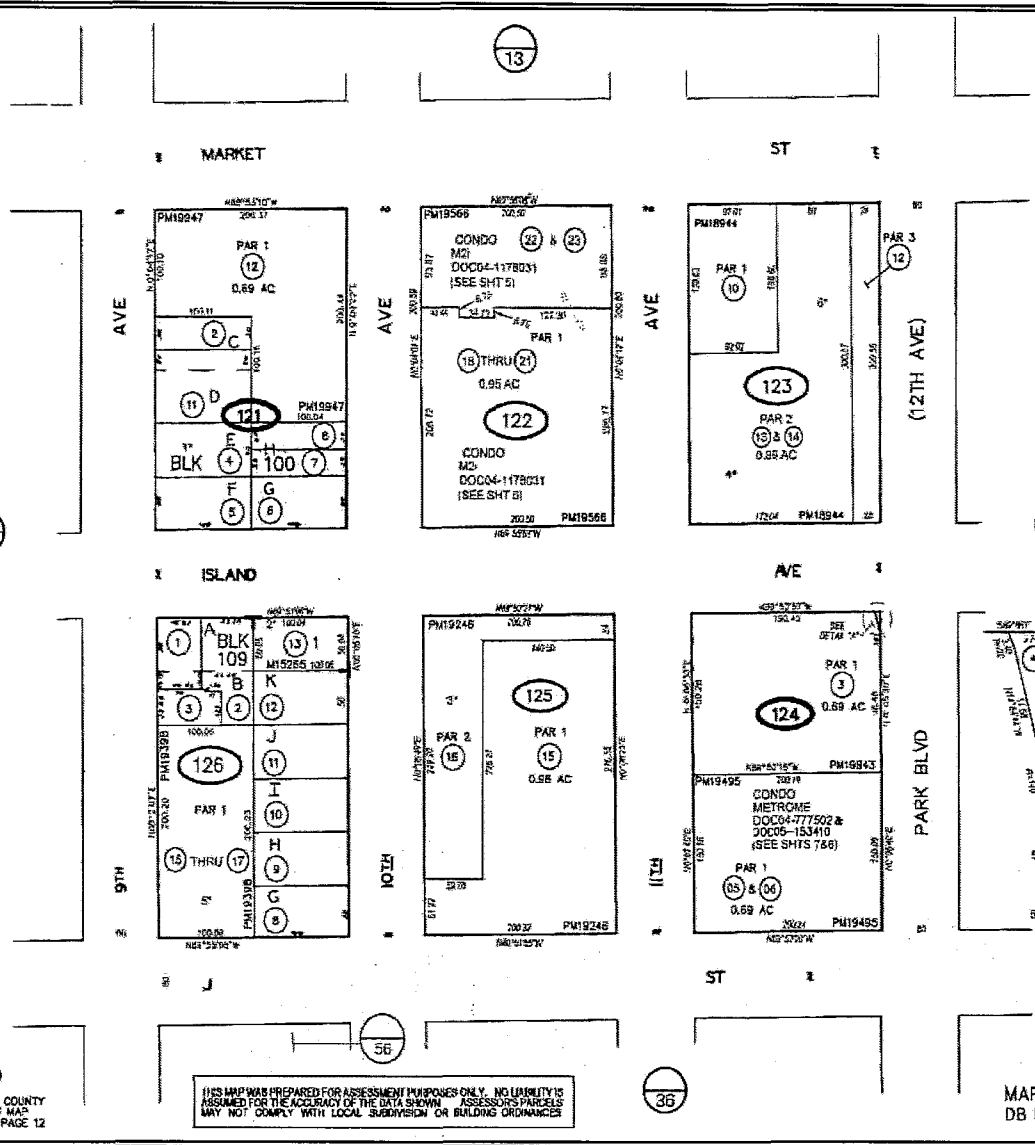
DETAIL "A"
NO SCALE

- 5th CONDO
DIAMOND TERRACE
DOC05-4425-12
(SEE SHTS 2 & 3)
- 6th CONDO
PARK BOULEVARD WEST
PHASE 2
DOC04-834924 & DOC04-834924
(SEE SHT 4)

MAP 15265 - ANGOVE CONDOMINIUMS
DB 13 PG 522 - HORTONS ADD LOCKLING

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 535 PAGE 12



Jones, Roach & Caringella, Inc.

SALE NO. 2

LOCATION: 800-828 East Broadway, San Diego

APNs: 535-184-03, 04, 05

SIZE AND SHAPE: 20,000 square feet, rectangular

TOPOGRAPHY: Level

ACCESS: Eight Avenue is a three-lane, one-way road; Ninth Avenue is a two-lane, one-way road; and Broadway is a four-lane, two-way road.

ZONING: The land use designation is CCPD-NC, Neighborhood Mixed-Use Center. The base minimum FAR is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 12.0. The property is also subject to a view corridor setback, a Park Sun Access Overlay, Limited Vehicle Access Overlays on Eighth Avenue and Broadway, a Main Street Overlay on Eighth Avenue, and a Commercial Street Overlay on Broadway.

PRICE: \$19,100,000

INDICATOR: \$955.00 per square foot

TERMS: Cash to the Seller

TRANSACTION: Grant Deed -
Recorded: April 24, 2020
Doc. No: 2020-210392

SELLER: Minto Investment Group, LLC

BUYER: DRI/CA 800 Broadway Property Owner, LLC

SOURCE: CoStar, Public Records

CURRENT USE: Parking lot

SALE HISTORY: According to public records, the property has not sold in the past three years.

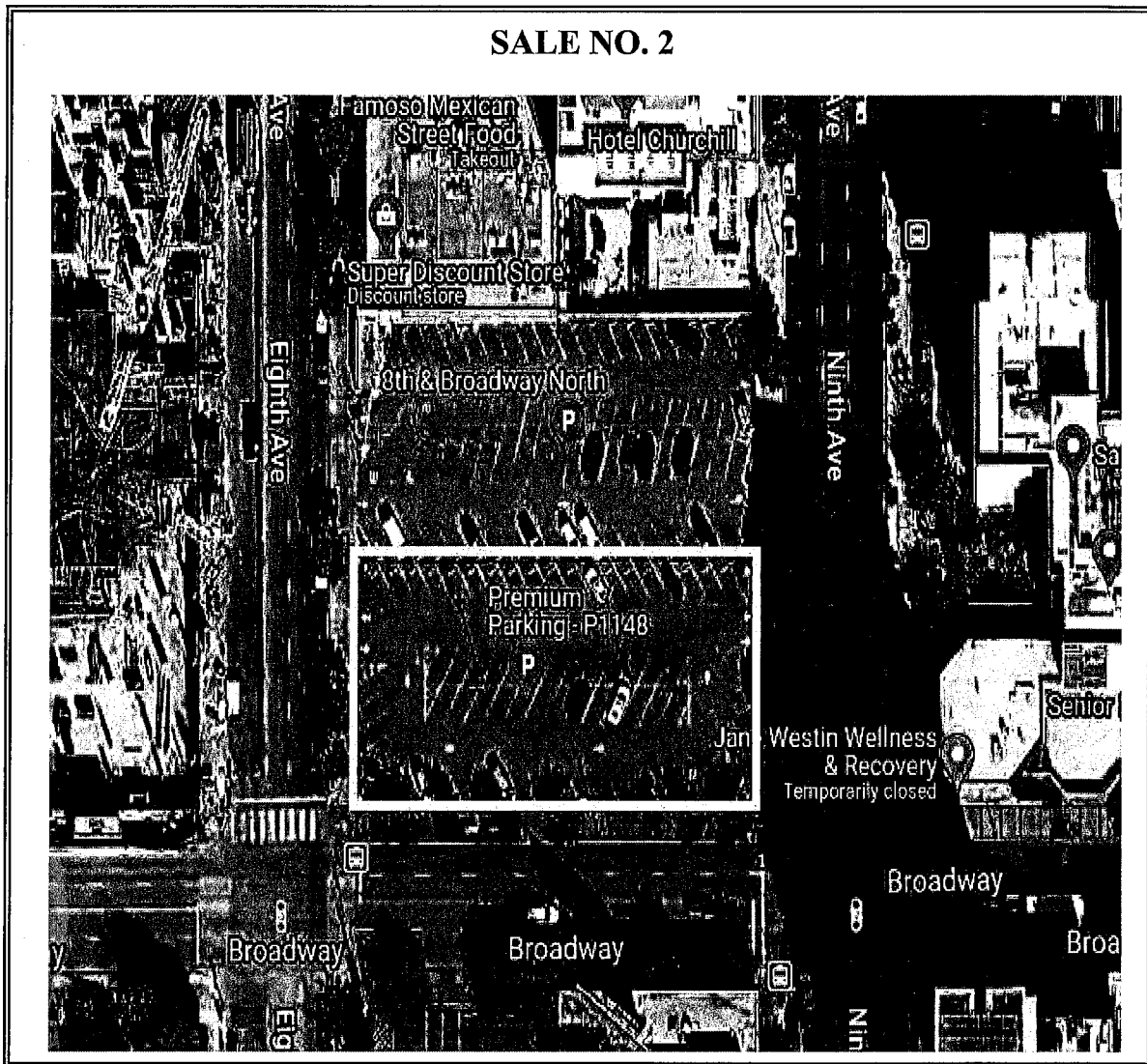
SALE NO. 2

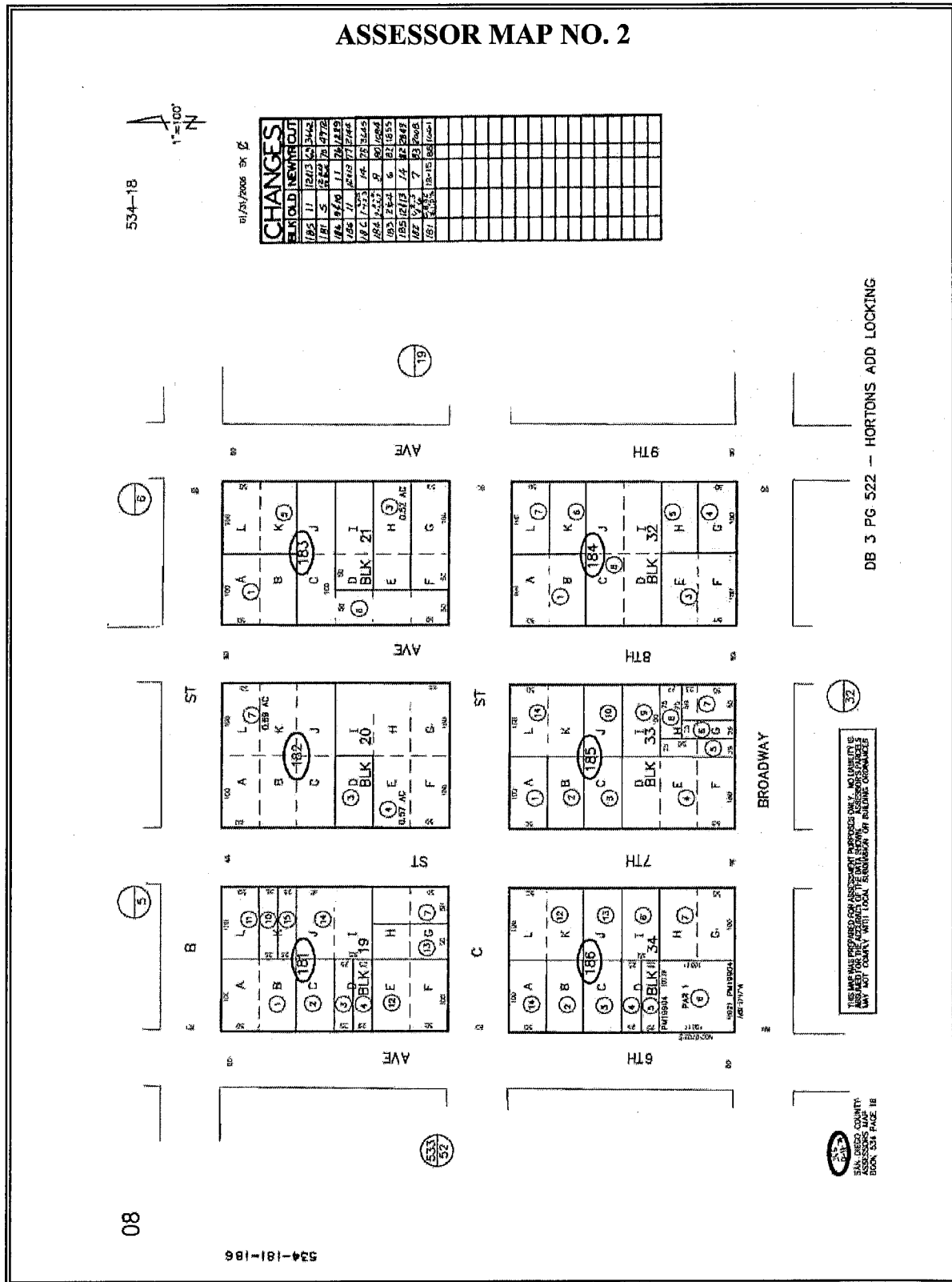
Continued

COMMENTS:

A permit application had been applied for and included 384 multifamily units (28 of which were designated as affordable) and approximately 22,000 square feet of retail. This application was never approved and eventually expired. A revised project consisting of 389 units was submitted for preliminary review in October 2020. The revised project is ministerial, and the project is currently in plan check for a grading permit.

SALE NO. 2





SALE NO. 3

LOCATION: C Street and Eleventh Avenue, San Diego

APNs: 534-195-01, 09

SIZE AND SHAPE: 20,000 square feet, "L"-Shaped

TOPOGRAPHY: Level

ACCESS: C Street is a two-lane, one-way road; Eleventh Avenue is a three-lane, one-way road (plus a bus lane); and Tenth Avenue is a three-lane, one-way road.

ZONING: The land use designation is CCPD-ER, Employment Required Mixed-Use, which is intended to provide a synergy between educational institutions and residential neighborhoods. The streets bounding the property are also subject to Limited Vehicle Access Overlays. The base minimum FAR is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 14.0.

PRICE: \$12,000,000

INDICATOR: \$600.00 per square foot

TERMS: Cash to the Seller

TRANSACTION: Grant Deed -
Recorded: March 3, 2020
Doc. No: 2020-111041

SELLER: Columbia Parking, LP

BUYER: East C Street Holdings LLC

SOURCE: CoStar, Public Records, Seller

CURRENT USE: Parking lot

SALE HISTORY: According to public records, the property has not sold in the past three years.

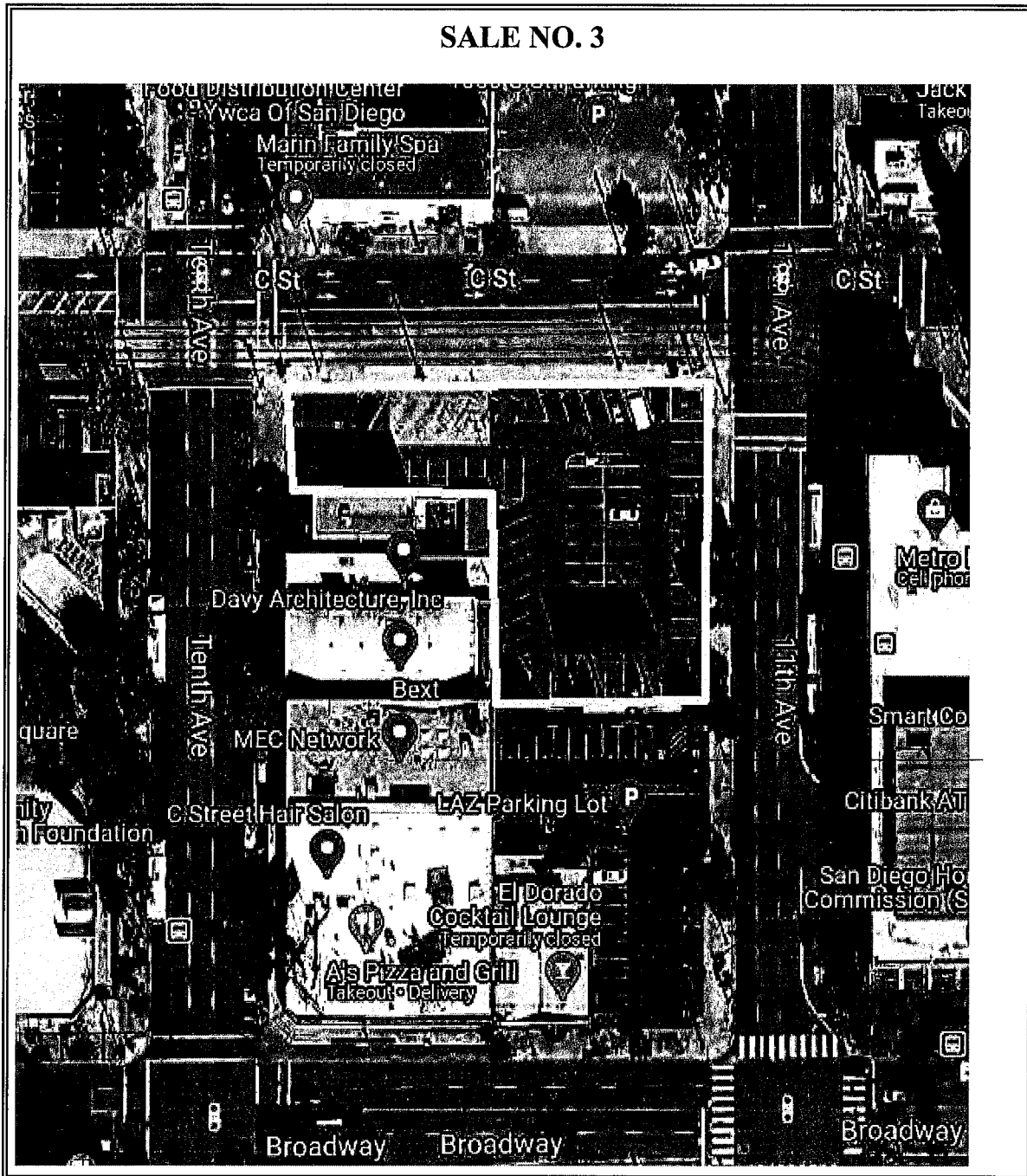
SALE NO. 3

Continued

COMMENTS:

The buyer is a Canadian-based real estate developer. The property was in escrow for approximately six months; the original escrow period was scheduled to be four months, but the buyer required a two-month extension which cost \$150,000. The property was unentitled when it sold. Reportedly, there were other offers at a higher price but the potential buyers wanted to be under contract for several months in order to obtain entitlements; the higher offer prices were "as entitled" and were in the range of \$750 per square foot.

SALE NO. 3



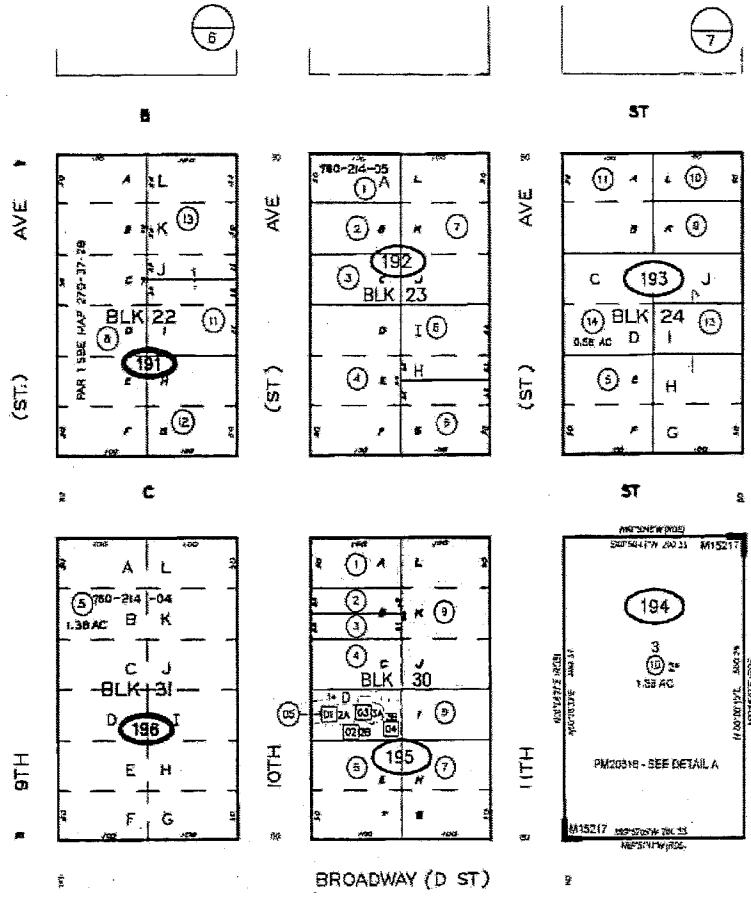
Jones, Roach & Caringella, Inc.

08

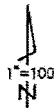
534-191-196

THIS MAP HAS BEEN PREPARED BY AN UNLICENSED SURVEYOR. ANY USE OF THIS MAP FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED IS AT THE USER'S RISK. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

 SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 534 PAGE 19

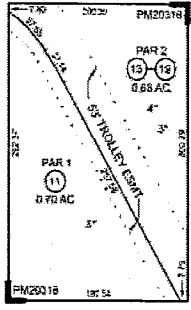


534-19
SHT 1 OF 3



9/25/2007 SM

CHANGES			
BLK	OLD	NEW	YR CUT
193	162	11	68 2424
194	5-7	9	69 5587
191	4-5	11	70 6081
191	3-4	12	77 2013
190	1-4	5	80 1315
191	11	12	81 5778
191	10-11	13	85 1456
193	2-3	12	87 2579
195	05	CONDO	99 524 RC
193	12	13&14	03 1323
194	1-4	10-12	06 1458
194	11&12	03	09 2916
194	12	09	09 570
194	11&12	09	08 5536
194	11&12	16-73	08 1624



DETAIL "A"
SCALE - 1"=100'

- 1* CONDO
ALGER STUDIOS
DOC98-101898
- 2* PLAZA LEVEL TO
CENTER OF EARTH
- 3* PLAZA LEVEL
TO INFINITY
- 4* CONDO
SMART CORNER
OCC2008-0225857
OCC2009-0377948
OCC2017-0587402
(SEE SHTS 2 & 3)

MAP 15217 - SMART CORNER
DB 13 PG 522 - HORTONS ADD LOCKLING
ROS 12388,15455

SALE NO. 4

LOCATION: Broadway at 15th Street, San Diego

APNs: 534-352-01, 02, 03, and 04

SIZE AND SHAPE: 60,000 square feet, rectangular

TOPOGRAPHY: Level

ACCESS: Broadway, 15th Street, 16th Street and E Street are all two-lane paved roads.

ZONING: The land use designation is CCPD-ER, Employment Required Mixed-Use, which is intended to provide a synergy between educational institutions and residential neighborhoods. The base minimum FAR is 3.5, the base maximum is 6.0. The maximum potential FAR with bonuses is 12.0. There are Commercial Street and Limited Vehicle Access Overlays along Broadway.

PRICE: \$39,864,500

INDICATOR: \$664.41 per square foot of land area

TERMS: Cash to the Seller

TRANSACTION: Grant Deed -
Recorded: February 5, 2020
Doc. No: 2020-60724

SELLER: Jefferson Makers Quarter, LLC

BUYER: R&V MQ Investment, LLC

SOURCE: CoStar, Public Records, Broker

CURRENT USE: Former warehouse site

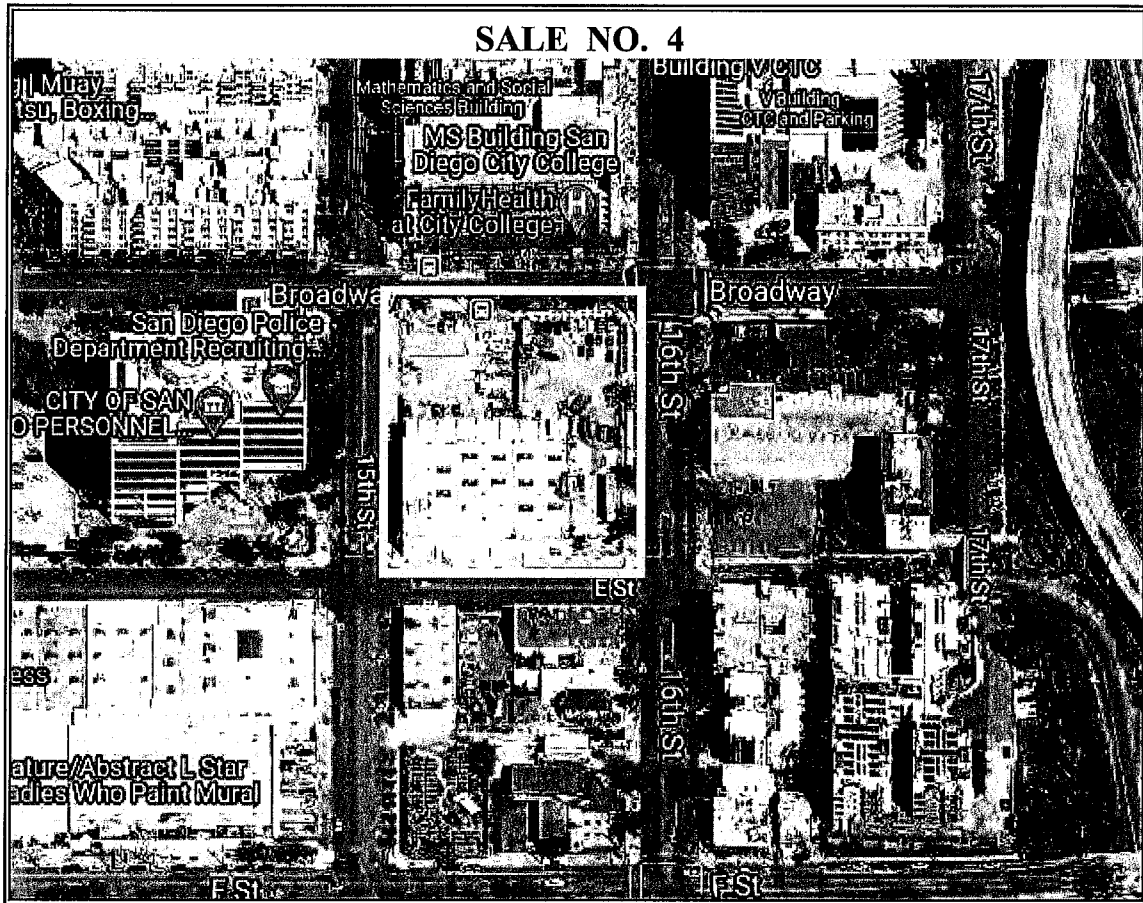
SALE HISTORY: The property transferred in October 2018 for \$20,760,000.

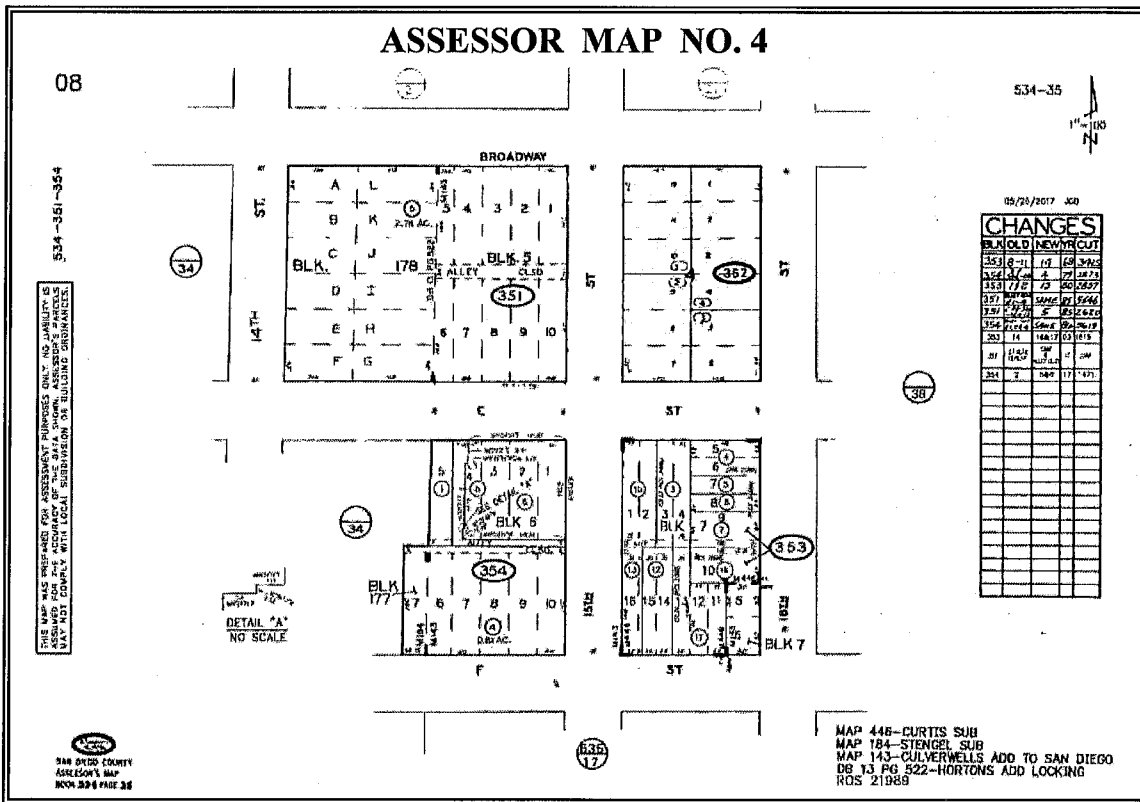
SALE NO. 4

Continued

COMMENTS:

The 60,000 square foot site is between E Street and Broadway, to the south and north respectively, and between 15th and 16th Streets. The site sold fully entitled for a seven-story residential building with an FAR of 5.8. The buyer reportedly planned to break ground in March 2020 and deliver in late 2021. CoStar reported that the purchase price included \$9 million in hard and soft costs related to entitlements. Were the purchase price adjusted for \$9 million, the price would equate to roughly \$515 per square foot of land area. The property would still benefit from the ability to develop immediately. The property sold in October 2018 from the longtime owner, the Navarra family, to JPI for a purchase price of \$20,760,000 or roughly \$346 per square foot. We discussed the property with the broker involved in that transfer, who opined that the site was worth less than \$500 per square foot, unentitled.





SALE NO. 5

LOCATION: 1122 Fourth Avenue, San Diego

APNs: 533-521-04, 05

SIZE AND SHAPE: 25,000 square feet, rectangular

TOPOGRAPHY: Mostly level

ACCESS: Third Avenue is a two-lane, two-way street and Fourth Avenue is a three-lane, one-way street. In front of the property, C Street is limited to trolley access.

ZONING: The land use designation is CCPD-CORE, Neighborhood Mixed-Use Center. The base minimum FAR is 6.0, and the base maximum is 10.0. The maximum potential FAR with bonuses is 20.0. There is a Limited Vehicle Access Overlay on C Street.

PRICE: \$21,100,000

INDICATOR: \$844.00 per square foot

TERMS: Cash to the Seller

TRANSACTION: Grant Deed -
Recorded: December 27, 2019
Doc. No: 2019-608307

SELLER: 1122 4th Avenue, LLC

BUYER: Caydon San Diego Property LLC

SOURCE: CoStar, Public Records, Listing Broker

CURRENT USE: Former California Theatre

SALE HISTORY: According to public records, the property has not sold in the past three years.

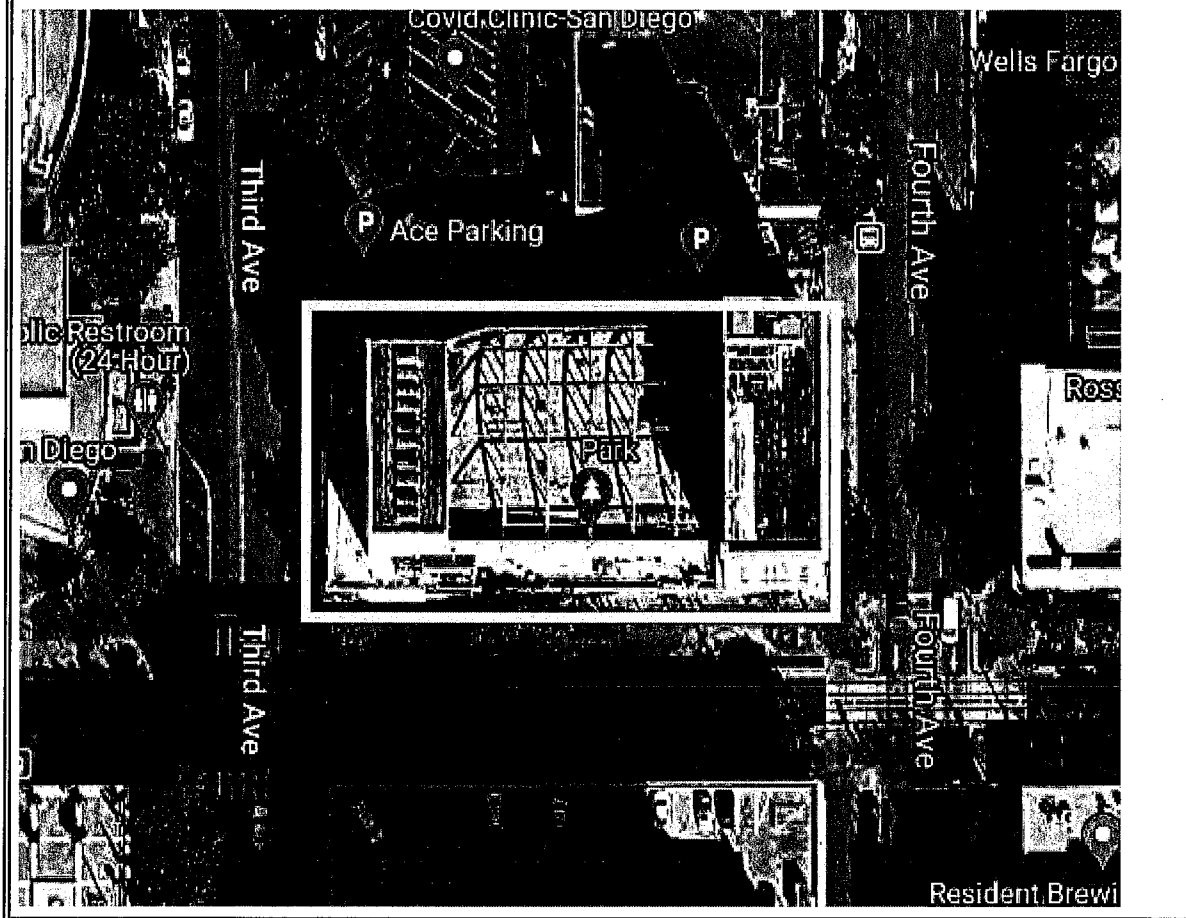
SALE NO. 5

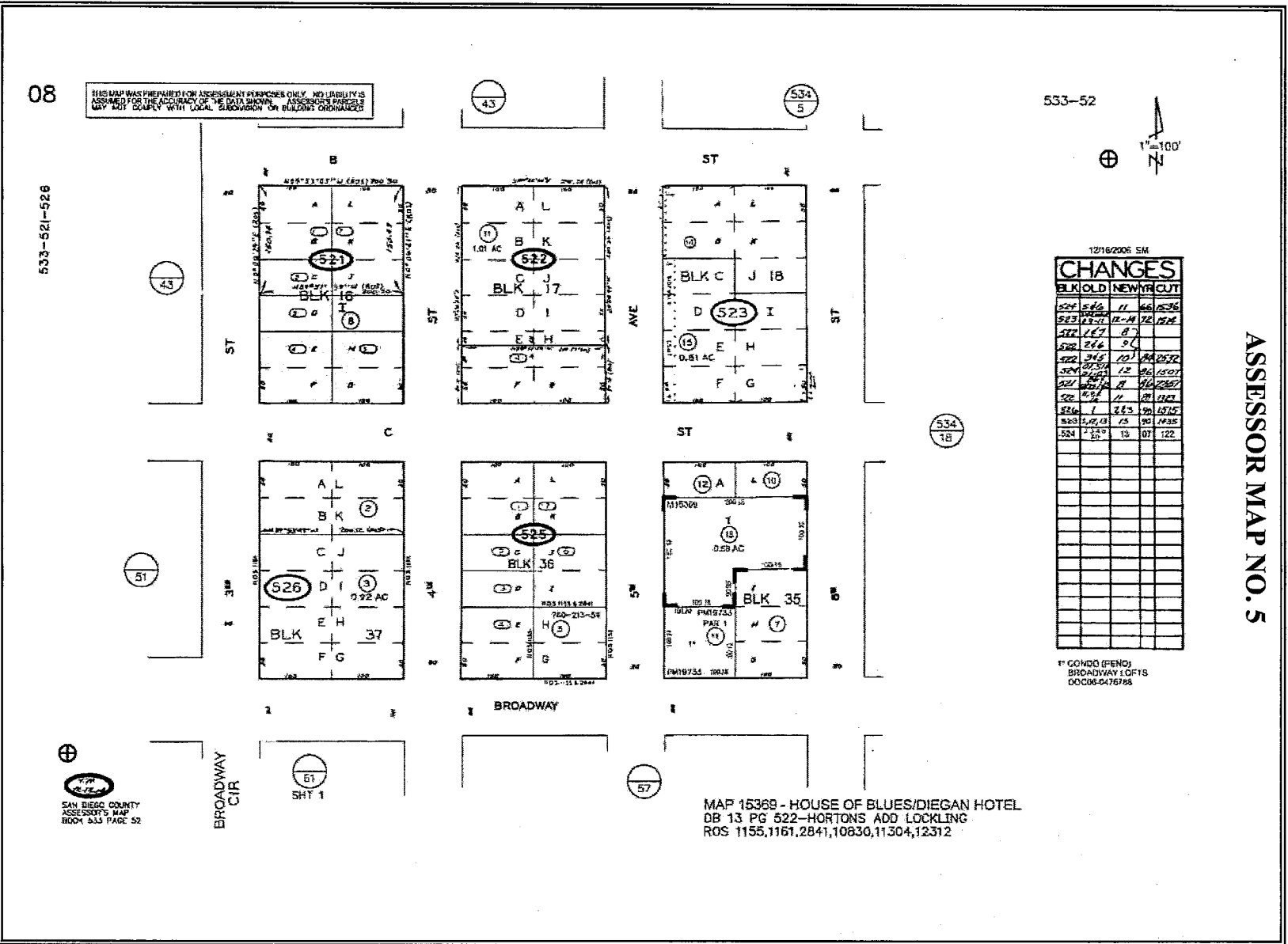
Continued

COMMENTS:

The property was under contract for 2.5 years as the seller sought to obtain entitlements which were ultimately invalidated by the court. The price reflected the site as entitled; the listing broker opined that as an unentitled site, the price would be in the range of \$16 million, or about \$640 per square foot. The current proposal, submitted in April 2020, calls for a 41-story project with 336 residential condominiums, a 190-room hotel, and 4,000 square feet of retail. The proposed FAR is 22.28.

SALE NO. 5





THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S OFFICE MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

12/16/2006 SM

CHANGES		BLK OLD		NEW		CUT	
521	546	11	46	536			
522	547	12-4	72	537			
523	548	0					
524	549	101	18	538			
525	550	12	86	539			
526	551	17	112	540			
527	552	11	31	541			
528	553	245	30	542			
529	554	15	101	543			
530	555	10	07	544			

1" CONDO (FENS)
BROADWAY LOFTS
00006-0476788

MAP 15369 - HOUSE OF BLUES/DIEGAN HOTEL
DB 13 PG 522-HORTONS ADD LOCKLING
ROS 1155,1161,2841,10830,11304,12312

SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 533 PAGE 52

Jones, Roach & Caringella, Inc.

SALE NO. 6

LOCATION: 801 Broadway, San Diego

APN: 534-323-01

SIZE AND SHAPE: 15,000 square feet, rectangular

TOPOGRAPHY: Level

ACCESS: 8th Avenue is a three-lane paved road, Broadway is a four-lane paved road.

ZONING: The land use designation is CCPD-NC, Neighborhood Mixed-Use Center. The base minimum FAR is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 14.0. The site is impacted by the Commercial Street and Main Street overlays along Broadway.

PRICE: \$8,160,000

INDICATOR: \$544.00 per square foot

TERMS: Cash

TRANSACTION: Grant Deed -
Recorded: December 10, 2019
Doc. No: 2019-575915

SELLER: Hall/Fish Investments, Inc.

BUYER: Reef Point Hospitality, LLC

SOURCE: Listing Broker, CoStar, Public Records

CURRENT USE: Parking lot

SALE HISTORY: According to public records, the property has not sold in the past three years.

SALE NO. 6

Continued

COMMENTS:

The site is situated on a corner and is currently being operated as a pay parking lot. The property sold without entitlements. The listing broker was not aware of the buyer's plans for the property but opined that the purchase price is indicative of an intent to redevelop. No unusual conditions were reported. The property was reportedly in escrow for 180 days.



SALE NO. 7

LOCATION: 901 Park Boulevard and 1335 Broadway, San Diego

APNs: 534-341-11; 534-342-14

SIZE AND SHAPE: 100,187 square feet, irregular

TOPOGRAPHY: Mostly level

ACCESS: E Street and Broadway are four-lane, paved roads. 13th and 14th Street are two-lane paved roads. Park Boulevard is a one-lane paved road and also includes the trolley right of way.

ZONING: The land use designation is CCPD-NC, Neighborhood Mixed-Use Center. The base minimum FAR is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 10.0. Broadway and Park Boulevard are impacted by the Commercial Street and Main Street overlays.

PRICE: \$40,000,000

INDICATOR: \$399.25 per square foot

TERMS: Cash to the Seller

TRANSACTION: Grant Deed -
Recorded: August 19, 2019
Doc. No: 2019-351467 and 71

SELLER: The Salvation Army

BUYER: KR 901 Park, LLC & KR 1335 Broadway, LLC

SOURCE: Buyer, CoStar, Public Records

CURRENT USE: Salvation Army warehouse & retail buildings

SALE HISTORY: According to public records, the property has not sold in the past three years.

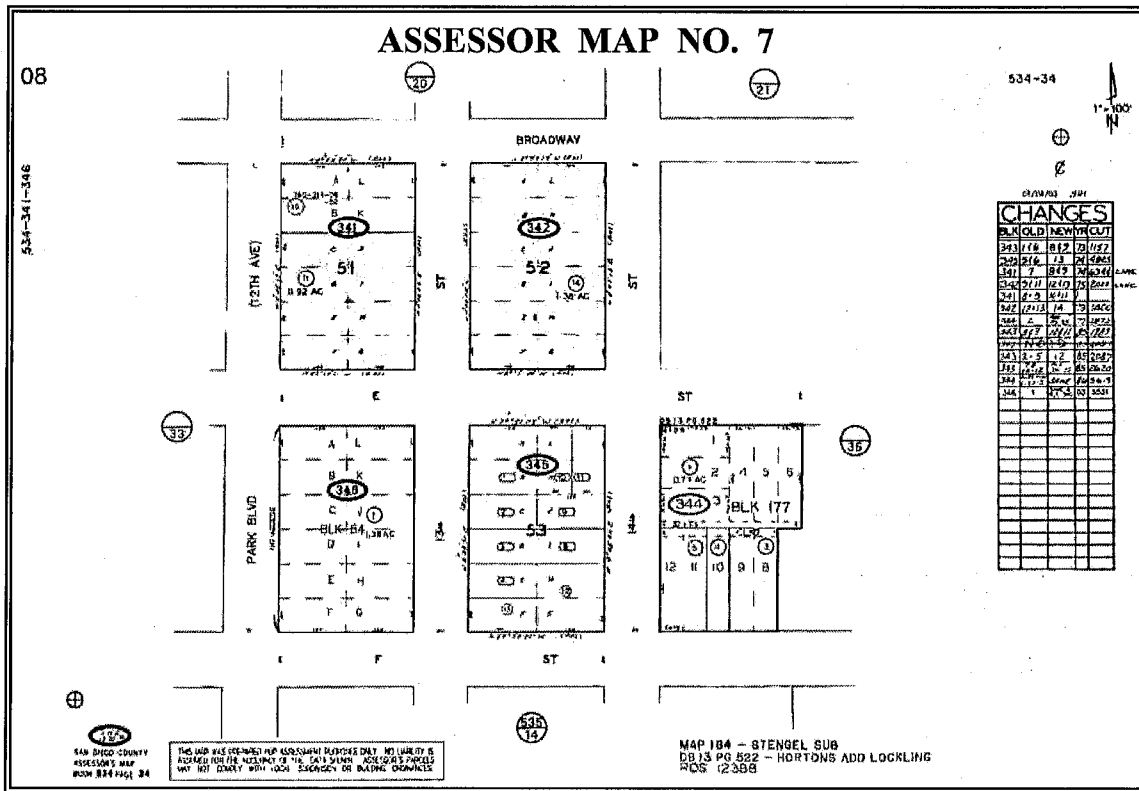
SALE NO. 7

Continued

COMMENTS:

An 100,187 square foot site located on most of two city blocks between Park Boulevard and 14th Street (west and east), and E Street and Broadway (south and north) in East Village. The acquisition comprises one entire block and roughly two thirds of another block. A fault line impacts a small portion of the northeast corner of the westerly parcel. A representative of Kilroy stated that the fault line was considered in the decision to purchase but did not have a significant impact. The site is improved with older warehouse and retail buildings that were considered of limited value to the buyer. The buyer intends to redevelop the site but did not report any definitive plans other than primarily office with ground floor retail for the eventual development. The representative from Kilroy noted that they have a preference for "large plate" office development and that the site will allow for this type of development. Also, Kilroy will not necessarily pursue the maximum FAR for the site.





SALE NO. 8

LOCATION: 1015 Park Boulevard, San Diego

APNs: 534-206-03 and 04

SIZE AND SHAPE: 18,000 square feet (net fault line setback), irregular; 30,000 square feet gross, rectangular

TOPOGRAPHY: Mostly level

ACCESS: Park Boulevard is a two-lane paved road, 13th Street and C Street are two-lane paved roads, Broadway is a four-lane paved road.

ZONING: The land use designation is CCPD-NC, Neighborhood Mixed-Use Center. The base minimum FAR is 6.0, the base maximum is 10.0. The maximum potential FAR with bonuses is 10.0. The site is impacted by the Commercial Street and Main Street overlays along Broadway and Park Boulevard.

PRICE: \$7,750,000

INDICATOR: \$430.56 per square foot (based on the net area)

TERMS: Cash to the Seller

TRANSACTION: Grant Deed -
Recorded: July 5, 2019
Doc. No: 2019-267125

SELLER: The Salvation Army

BUYER: Mark S. Schmidt

SOURCE: Buyer's Broker, CoStar, Public Records

CURRENT USE: Previously developed site

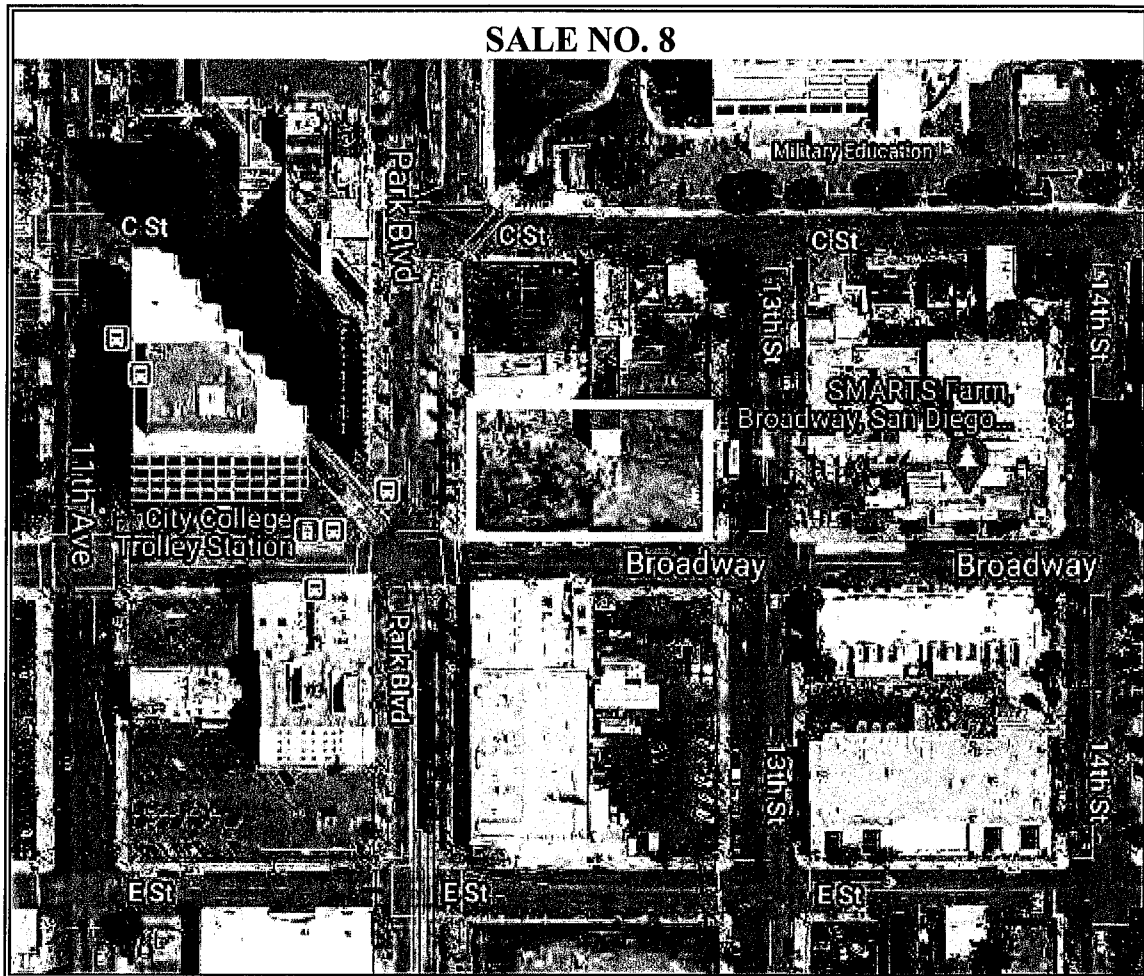
SALE HISTORY: According to public records, the property has not sold in the past three years.

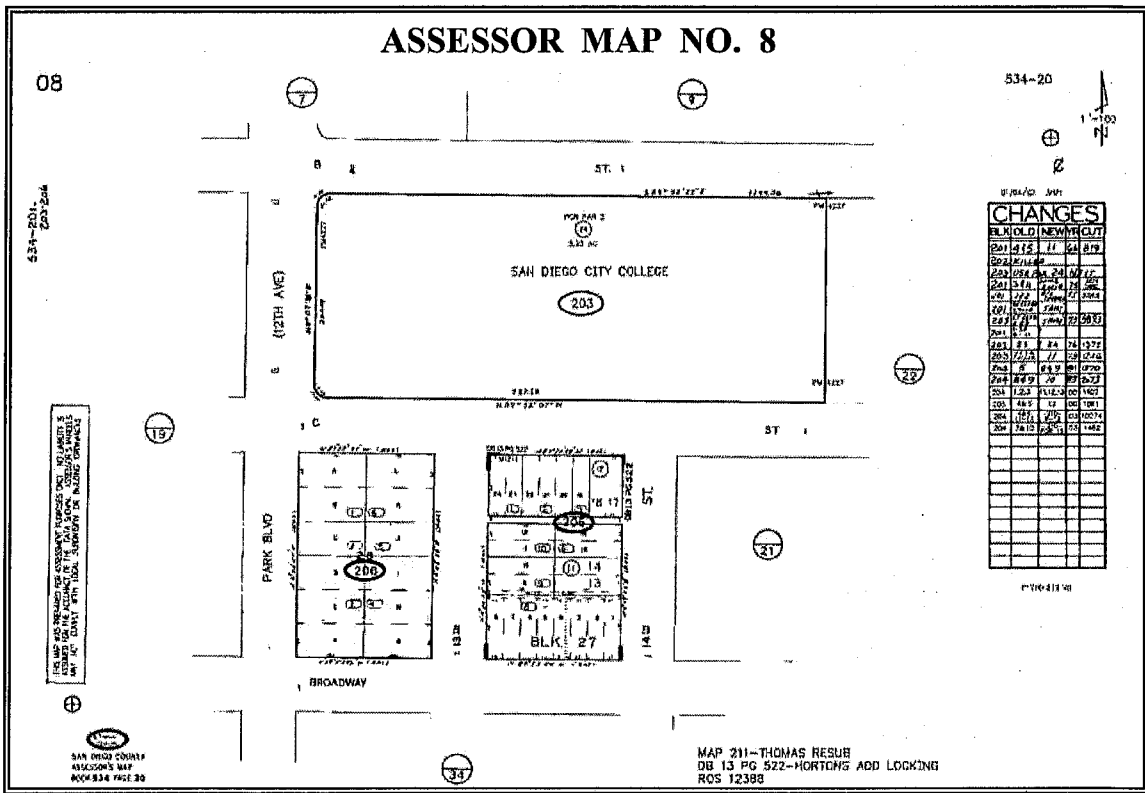
SALE NO. 8

Continued

COMMENTS:

The site was previously improved with older buildings considered of limited value to the buyer. The property was purchased for assemblage with the northern portion of the site. The seller was the Salvation Army, and the buyer is a local developer. The buyer was pursuing entitlements for the northern portion of the block when the site became available. The site transferred without any plans or permits. The entire block is now planned for development with a 40-story tower and two low-rise buildings (at a 10.0 FAR). The tower and the low-rise buildings are separated by an earthquake fault line. The listing broker reported that the fault significantly impacted the site value, particularly since it crosses the middle of the site. The purchase price equates to roughly \$258 per square foot of land area for the gross site area. The listing broker reported that the site value was allocated to the net usable area of roughly 18,000 square feet, which equates to roughly \$431 per square foot.





QUALIFICATIONS
OF THE
APPRAISERS

Robert P. Caringella, MAI, SRA, AI-GRS

Educational Background

B.A. degree in Management Science, Economics Department, University of California, San Diego	1987
Professional Courses Completed:	
Appraisal Institute (or AIREA):	
Real Estate Appraisal Principles/Valuation Procedures	1987
Capitalization Theory and Techniques - Parts A & B	1988
Case Studies in Real Estate Valuation	1989
Report Writing	1991
Standards of Professional Practice	2005, 2008, 2010, 2012, 2014, 2016, 2018
Limited Partnership and Common Tenancy Valuation	2002
Fundamentals of Separating Real/Personal Property and Intangibles	2012
Review Theory - General	2015
The Cost Approach	2020
Seminars Attended (partial list):	
Appraisal Institute (or AIREA):	
Business Practices and Ethics	2017
Historic Districts and Properties	2016
Uniform Appraisal Standards for Federal Land Acquisitions	2011
Appraising Unique Properties	2010
Annual Litigation Seminar	1989, 1990, 1995, 1996, 2007
Conservation Easements	2005
Planning and Land Use	1990
OREA Federal and State Laws and Regulations	1995, 1999
Attorneys, Appraisers & Real Estate	1996, 1997, 1998
Blueprint Reading	1996
Environmental Issues	1996
San Diego Economic Update	2004, 2005, 2006, 2007, 2009, 2012, 2013
Mitigation Land Update and Valuation	1997
Tax Assessment	1997
Apartment Seminar	1998, 2003, 2005
Retail Property Analysis; Single Tenant Net Leased Properties	1998;1999
Trends in R&D Market	2002
Advanced Appraisal	2004
International Right-of-Way Association:	
Easement Valuation	1990
Mock Condemnation Trial	1994, 2000, 2012
Eminent Domain Case Update	1995, 1997, 2002, 2005, 2018
IRS Symposium	2006, 2018

Professional Affiliations

Member, Appraisal Institute (MAI No. 9649) (SRA and AI-GRS)
 Certified under Continuing Education Program
 Appraisal Institute, Admissions and Designation Qualifications Committee 2015-2017
 Vice-Chair 2017
 Appraisal Institute, National Finance Committee, 2015-16 and prior; 2019-2020

Appraisal Institute Education Trust - Board, 2011-2013
National Board of Directors, Regional Vice Chair 2007, Regional Chair 2008
President, San Diego Chapter of Appraisal Institute, 2005
Board of Directors, San Diego Chapter, 1999-2001, 2003-2005
Leadership Development and Advisory Council, 1999 and 2000 (National)
Chairman of Experience Review Committee, San Diego Chapter 1996-98
California Certified General Real Estate Appraiser (AG003295)
Member, International Right-of-Way Association
Board of Directors, San Diego Chapter, 1999-2003
Young Leadership Council, 1998 and 1999 (National)

Appraisal Company Experience

Co-Owner - Jones, Roach & Caringella, Inc. (formerly Jones & Roach, Inc.), Since 1996
Staff Appraiser - Jones & Roach, Inc. - 1987-1996

Testimony Experience

San Diego Superior Court
San Diego Assessor Tax Hearing
Los Angeles Superior Court
Imperial County Superior Court
US District Court, Special Master Hearing
Mediations and Arbitrations

Teaching and Education Experience

Speaker - San Bernardino Assessors Office - Effective Testimony: 2020
Speaker - CLE International - Eminent Domain, Precondemnation Damages: 2019
Speaker - Appraisal Institute - Residential "Spring Symposium": 2018
Speaker - IRWA Seminar - "Eminent Domain and Valuation": 2018
Guest Lecturer at UCSD, SDSU, USD, and Point Loma Nazarene University on Appraisal
Guest Instructor - USD Real Estate Class: 2017
Speaker - CLE International, Eminent Domain: 2015
Speaker - Lormon Seminar, Law of Easements: 2013
Speaker - MCLE Seminar, Eminent Domain: 2011
Speaker - Caltrans Seminar, Contaminated Properties: 2011
Speaker - Appraisal Institute Litigation Seminar So. Cal.: 2007
Speaker - IRS Symposium, Conservation Easements: 2006
Co-Creator, Co-Instructor - "Advanced Refresher": 2004
Co-Instructor - "Rates and Ratios", Appraisal Institute: 2003
Seminar Creator/Moderator - "The Client": 2003
Speaker - IRS Seminar "Valuation of Fractional Interests": 2000
Speaker - San Diego Assessor's Seminar: 1998
Seminar Coordinator/Moderator - "Attorneys, Appraisers & Real Estate": 1996, 97, and 98
Seminar Co-Coordinator/Moderator - Int'l Right-of-Way Assoc. "Valuation Tour": 1996

Other Affiliations

Board of Directors - Willow Grove Educational Foundation 2008 -2013
Board of Directors - USE Credit Union, San Diego, 1999-2006
Investor Manager of LLC - \$5,000,000 Loft Development, Downtown San Diego 2000

Types of Appraisals

Agricultural
 Apartment Buildings
 Auto Dealerships
 Auto Repair
 Aviation Facilities
 Commercial Buildings
 Contaminated Properties
 Development Rights
 Easements
 Eminent Domain/Partial Acquisitions
 Fractional Interests
 Historical Appraisals
 Industrial & Office Buildings
 Leasehold and Leased Fee Estates
 Mining - Aggregate
 Mitigation Credits
 Mixed-Use Properties
 Notes/Loans
 Mobilehome/RV Parks and Homes
 Planned Communities
 Research & Development Buildings
 Residential Subdivisions
 Retail Centers
 Self-Storage Facilities
 Single Family Homes and Condominiums
 Single Room Occupancy Hotels
 Vacant Land
 View Impairment
 Wetlands/Other Sensitive Habitat

Partial List of Clients**Public Agencies**

California Department of Transportation
 California Coastal Conservancy
 California State Lands Commission
 Centre City Devel. Corp. (Civic San Diego)
 Chula Vista Redevelopment Agency
 City of Chino Hills
 City of Dana Point
 City of Escondido
 City of National City
 City of Oceanside
 City of Redlands
 City of San Diego

County of San Diego
 Del Mar Union School District
 IRS
 Metropolitan Transit System (MTS and MTDB)
 MiraCosta Community College District
 Oceanside Redevelopment Agency
 Otay Water District
 Regents of the University of California
 Resolution Trust Corporation (RTC)
 San Diego Association of Governments
 San Diego City College District
 San Diego County Water Authority
 San Diego Unified Port District
 Solana Beach School District
 Southeastern Economic Development Corp.
 U.S. Department of Justice
 Wildlife Conservation Board (California)

Lenders and Developers

Ayres Land Company
 Bank of America
 Bank of California
 Barratt American
 Brookfield Homes
 Buie Corporation
 California Transportation Ventures
 Citicorp Acceptance Company
 Coast Federal Bank
 Column Financial
 Continental Bank
 Downey Savings
 D.R. Horton
 First Interstate Bank
 Garden Communities
 Great American Bank
 Home Savings of America
 HomeFed Bank and Home Capital Dev. Corp.
 KB Home
 Leisure Technology
 Nexus Development Corporation
 Pardee Homes
 McMillin Communities
 San Diego National Bank
 Sherritt Development Services
 Union Bank
 US Bank

Wells Fargo Bank
Western National Properties
Western Pacific Housing

Corporations, Attorneys, and Individuals

American Assets
Anderson, Mann & Hilbert, LLP
ARCO Petroleum Products Co.
Bartz & McCarberg, LLP
Berger & Norton
Best, Best & Krieger LLP
Bob Baker Enterprises
Brobeck, Phleger & Harrison
Burger King Franchisee
Burke, Williams & Sorensen, LLP
Coldwell Banker Realty Advisory Services
Daley & Heft
Endeman, Lincoln, Turek & Heater
English & Gloven
Epsten & Grinnell
Ford Motor Company
Fraser Engineering, Inc.
Golden Eagle Insurance Company
Golub & Morales
Gordon & Rees
Gray, Cary, Ware & Friedenrich
Greenberg Traurig
Haight, Brown & Bonesteel
Hearthstone Advisors
HomeFed Corporation
Insurance Company of the West
Irell & Manella, LLP
John H. Reaves, Attorney at Law
Judge Robert C. Thaxton (retired)
Lempres & Wulfsberg
Liberty Mutual Insurance Company
McKenna & Cuneo
McKenna Long & Aldridge, LLP
Meisenheimer Herron & Steele
Morris, Polich & Purdy
Olmstead, Hughes & Garrett
Orrick, Herrington & Sutcliffe, LLP
Palmieri Tyler Weiner Wilhelm & Waldron
Procopio Cory Hargreaves & Savitch
Rick Engineering Company
Ryals & Associates
San Diego Gas & Electric Company
Seltzer Caplan McMahon Vitek

Sheppard, Mullin, Richter & Hampton, LLP
Sierra Club Legal Defense Fund
Silldorf, Burdman, Duignan & Eisenberg
Solomon Ward Seidenwurm & Smith, LLP
Sullivan Wertz McDade & Wallace
Texaco Oil
Thorsnes, Bartolotta, McGuire & Padilla
Trust Company of the West
Trust for Public Land
UETA
Walmart
Withers Bergman

Eric C. Schneider, MAI, SRA, AI-GRS

Appraisal Company Experience

Senior Appraiser - Jones, Roach & Caringella, Inc.	2015 to Present
Senior Analyst - Integra Realty Resources	2011 to 2015
Appraiser - Robert Shea Perdue Real Estate Appraisal	2009 to 2011

Professional Affiliations

State Certifications

California Certified General Real Estate Appraiser
(AG040624)

Nevada Certified General Appraiser (A.0207821-CG)

Member, Appraisal Institute (MAI, SRA, and AI-GRS Designations)

Certified under Continuing Education Program

Chapter President, San Diego 2019

Board of Directors, San Diego Chapter 2016-2020

Volunteer of Distinction (National) 2016

Leadership Development Advisory Council (LDAC) 2016 to Present

Instructor: Income Capitalization, Part 1

Co-Developer: Condemnation Appraising: Principles and
Applications

Member, International Right of Way Association

Chapter President, San Diego 2019-2020

Board of Directors, San Diego Chapter 2015 to Present

International Director, San Diego Chapter 2018-2020

Young Professional of the Year, San Diego Chapter 2017

Other Organizations

Urban Land Institute

San Diego County Bar Association (Vendor Member)

Publications and Presentations

Co-Author: "Should Land Be Valued as Entitled? Case Studies for
Ensuring Proper Just Compensation" – *Right of Way Magazine* September/
October 2020

Co-Presenter: "Value Buildings if They're Not Being Taken?
Shedding Light on Complicated Valuations" – Virtual for IRWA,
Chapter 67 October 2020

Co-Presenter: "Part Takes of Improved Properties", San Diego,
California March 2020

Co-Author: "Value Buildings if They're Not Being Taken? Shedding
Light on Complicated Valuations" - *Right of Way Magazine* July/August 2019

Co-Developer/Presenter - "Value Buildings If They Are Not Taken?
Shedding Light on Complicated Valuations", Costa Mesa, California August 2019

Co-Presenter - "Diversification for the Residential Appraiser", Downey, California	September 2019
Co-Presenter - "Property Tax Administration: Strengths, Challenges, & Opportunities", San Diego, California	September 2019

Educational Background

San Diego State University	
B.S. Degree in Business Administration, Emphasis in Real Estate	2008
Appraisal Institute (Partial List)	
Condemnation Appraising: Principles & Applications	2015
Litigation Appraising: Specialized Topics & Applications	2015
The Appraiser as an Expert Witness: Preparation & Testimony	2015
Uniform Appraisal Standards for Federal Land Acquisitions	2015
Advanced Land Valuation: Sound Solutions to Perplexing Problems	2017
Evaluating Commercial Leases: The Tenants and the Terms Matter	2018
How Tenants Create or Destroy Value: Leasehold Valuation	2019
Uniform Standards of Professional Appraisal Practice	Current
International Right of Way Association (IRWA)	
Easement Valuation	2015
The Valuation of Partial Acquisitions	2016
Problems in the Valuation of Partial Acquisitions	2019
Integrating Appraisal Standards	2019
Reviewing Appraisals in Eminent Domain	2019
Urban Land Institute	
Introduction to the Real Estate Development Process	2020
Professional Seminars (Partial List)	
Introduction to Right of Way Appraising (Appraisal Institute)	2015
Associating with Appraisers and Attorneys (Appraisal Institute)	2017
IRS Valuation Seminar (Appraisal Institute)	2018
What Does and Doesn't Work for Appraisers at Deposition and Trial (Appraisal Institute and IRWA)	2019, 2020
Annual Valuation Seminar (IRWA Los Angeles)	Multiple
Eminent Domain Conference (CLE International)	Multiple
Eminent Domain Roundtable - Severance Damages and Goodwill (San Diego County Bar Association)	2017
How to Keep Your Expert In and Keep Their Expert Out (San Diego County Bar Association)	2018
Eminent Domain From Start to Finish (Nossaman LLP)	2019
Navigating COVID-19 for the Right of Way Industry (Nossaman LLP, Webinar)	2020

Property Experience

Agricultural
Automotive Dealerships
Automotive Repair Facilities
Bank Branches/Financial Buildings
Brewery
Bed and Breakfast/Inns
Condominiums (Office, Retail)
Convenience Stores/Service Stations
Government Facilities
Hotels and Motels
Industrial/Warehouses
Land (Rural, Urban, Open Space, Subdivision)
Medical Facilities/Clinics
Mixed-Use (Residential/Commercial)
Multifamily (2-4 units and 5+ units)
Offices (Low and High Rise)
Orchard
Parking Lots
Public (Library, Museum)
Religious Facilities/Churches
Research & Development Facilities
Restaurants/Bars/Night Clubs/Breweries
Retail (Single Tenant/Freestanding)
Self-Storage/RV Storage Facilities
Shopping Centers
Single Family Residential

Ownership Experience

Fee Simple
Leased Fee
Leasehold
Easements
Partial Acquisitions
Partial Interest
Ground Leases

#56a 4-25-23

(O-2023-130)

ORDINANCE NUMBER O- 21640 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 01 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE REAL PROPERTY PURCHASE AND SALE AGREEMENT AND THE REIMBURSEMENT AND PARK DEVELOPMENT AGREEMENT FOR THE NORTH CENTRAL SQUARE PARK SITE IN THE DOWNTOWN COMMUNITY PLANNING AREA, AUTHORIZING THE EXPENDITURE OF FUNDS FOR CERTAIN PARK ACQUISITION AND DEVELOPMENT COSTS, AND APPROVING RELATED ACTIONS.

WHEREAS, Bosa California LLC, a California limited liability company (Bosa), owns certain real property in the Downtown Community Planning Area bordered by B Street on the north, C Street on the south, Eighth Avenue on the west, and Ninth Avenue on the east; and

WHEREAS, Bosa intends to construct a private development project on the northerly half of this downtown property (Private Development Site) and a public park on the southerly half of this downtown property (Park Site); and

WHEREAS, the public park to be constructed on the Park Site is designated as Park Project No. P-8 in the Downtown Public Facilities Financing Plan and is known as the North Central Square Park (Park); and

WHEREAS, the City of San Diego (City) and Bosa have negotiated certain proposed agreements related to the Park Site, including a proposed Real Property Purchase and Sale Agreement (Purchase Agreement) and a proposed Reimbursement and Park Development Agreement (Reimbursement Agreement); and

WHEREAS, copies of the Purchase Agreement and the Reimbursement Agreement are attached to the staff report accompanying this Ordinance, and the Reimbursement Agreement is included as Exhibit C to the Purchase Agreement; and

WHEREAS, the Reimbursement Agreement envisions that the City's Parks and Recreation Board (Park Board) will consider approval of a General Development Plan (GDP) for development of the Park; and

WHEREAS, if the Park Board approves the GDP for the Park, the Reimbursement Agreement requires Bosa to design and construct the Park based on plans and specifications to be prepared by Bosa in accordance with the GDP and approved by the City's Development Services Department; and

WHEREAS, the Reimbursement Agreement requires the City to reimburse Bosa, using development impact fees (DIF) on deferred fee project payments deposited in Fund 400122, for eligible Park design and construction costs up to a total of \$8,996,800 plus accrued interest; and

WHEREAS, the Reimbursement Agreement will remain in effect until the City makes the final reimbursement payment to Bosa, or one year after a specified warranty bond terminates, whichever is later, but not to exceed 15 years; and

WHEREAS, the Purchase Agreement envisions that, if certain specified conditions are met (including the City's approval of its physical inspection of the completed Park), the City will acquire the Park Site from Bosa for the purchase price of \$13,827,000; and

WHEREAS, if the closing occurs under the Purchase Agreement, the City will acquire fee title ownership of the Park Site by a recorded grant deed; and

WHEREAS, the form of grant deed (Exhibit 2 to the Purchase Agreement) includes a restrictive covenant for the benefit of the Private Development Site, by which the City will agree not to construct or maintain any above-ground roofed building or covered structure over, upon, or across the northerly 20 feet of the Park Site; and

WHEREAS, the Purchase Agreement states that the City's payment of the purchase price for the Park Site will not be in the form of cash, but instead in the form of DIF credits in the total amount of \$13,827,000 (DIF Credits), available after the closing of the sale transaction, allowing Bosa or its affiliated entities to apply the DIF Credits against DIF imposed by the City on specified future development projects; and

WHEREAS, the availability of the DIF Credits is conditioned on and subject to the City Council's separate adoption of a "DIF Credit Ordinance," or an "Alternative Ordinance" deemed acceptable to Bosa, as defined and described in Section 3 of the Purchase Agreement; and

WHEREAS, the Park Site consists of approximately 23,045 square feet of land; and

WHEREAS, the City retained a qualified appraiser, Jones, Roach & Caringella, Inc., who prepared an appraisal (Appraisal) estimating the market value of the unimproved park site to be \$600 per square foot as of a specified date of value (November 1, 2020), yielding an estimated total land value of \$13,827,000; and

WHEREAS, consistent with Council Policy 700-32, the City and Bosa negotiated the purchase price of \$13,827,000 based on the estimated land value in the Appraisal; and

WHEREAS, San Diego Charter section 99 (Section 99) generally provides that no contract, agreement, or obligation creating City indebtedness and extending for a period of more than five years may be authorized except by an ordinance adopted by a two-thirds majority of the City Council; and

WHEREAS, both the Purchase Agreement and the Reimbursement Agreement are subject to the ordinance requirement in Section 99 because they may be in effect for longer than five years in accordance with their respective terms; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the

information provided by City staff (including information provided by affected third parties and verified by City staff), with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

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

Section 1. The Council approves the Purchase Agreement and the City's acquisition of the Park Site in accordance with the Purchase Agreement.

Section 2. The Mayor or designee is authorized to sign the Purchase Agreement, a copy of which, when fully signed, shall be placed on file in the Office of the City Clerk as Document No. OO- 21640 - 1.

Section 3. The Council approves the Reimbursement Agreement.

Section 4. The Mayor or designee is authorized to sign the Reimbursement Agreement, a copy of which, when fully signed, shall be placed on file in the Office of the City Clerk as Document No. OO- 21640 - 2.

Section 5. The Mayor or designee is authorized to sign all additional documents, and take all additional actions, necessary to implement the terms and conditions of the Purchase Agreement and the Reimbursement Agreement.

Section 6. The City's Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$10,000 from Fund 400122, Downtown DIF, to allow the City's payment of all transaction costs for acquisition of the Park Site, including escrow and title costs and the City's payment of independent consideration under Section 4 of the Purchase Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit with the City Treasurer.

Section 7. The City's Chief Financial Officer is authorized to appropriate and expend an amount not to exceed \$9,100,000 (including up to \$8,996,800 in reimbursement costs and up to \$103,200 in accrued interest) in Deferred Fee Project DIF Payments from Fund 400122, Downtown DIF, subject to the City's receipt of these payments as they become available, for the purpose of funding the City's reimbursement obligation under the Reimbursement Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit with the City Treasurer.

Section 8. The Chief Financial Officer is authorized to add CIP No. RD23002, North Central Square Park, to the Capital Improvements Program.

Section 9. The Chief Financial Officer is authorized to increase the Capital Improvements Program Budget in CIP No. RD23002, North Central Square Park, and to appropriate and expend up to \$9,100,000 from Fund 400122, Downtown DIF, for the purpose of reimbursing Bosa for the design and construction of the park consistent with the terms of the Reimbursement Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit in the City Treasury.

Section 10. The Chief Financial Officer is authorized to increase the Capital Improvement Program Budget in CIP No. RD23002, North Central Square Park, and to appropriate and expend an amount up to \$10,000 from Fund 400122, Downtown DIF, to allow the City's payment of all transaction costs for acquisition of the park site, including escrow and title costs and the City's payment of independent consideration under Section 4 of the Purchase Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit with the City Treasurer.

Section 11. The Chief Financial Officer is authorized to increase the Capital Improvement Program Budget in CIP No. RD23002, North Central Square Park, and to appropriate and expend an amount up to \$100,000 from Fund 400122, Downtown DIF, to allow the City's payment of all staff costs accrued in acceptance and implementation of the Purchase Agreement and Reimbursement Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are or will be on deposit with the City Treasurer.

Section 12. A full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 13. This Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By Kevin Reisch
Kevin Reisch
Senior Chief Deputy City Attorney

KJR:jdf
03/14/2023
Or. Dept: DREAM
Doc. No.: 3154813_2
Comp. to O-2023-128

I certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 25 2023.

DIANA J.S. FUENTES
City Clerk

By Connie Patterson
Deputy City Clerk

Approved: 5/1/23
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on APR 25 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 01 2023

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Kristell Medina, 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 MAY 01 2023 APR 11 2023, and on _____.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By Kristell Medina for Connie Patterson, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 21640

Passed by the Council of The City of San Diego on April 25, 2023, by the following vote:

YEAS: LACAVA, CAMPBELL, WHITBURN, MONTGOMERY STEPPE, VON WILPERT, LEE, CAMPILLO, MORENO, & ELO-RIVERA.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

DIANA J. S. FUENTES

City Clerk of The City of San Diego, California

(Seal)

By: Matthew R. Hilario, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. O-21640 (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 April 11, 2023, and on May 1, 2023

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

DIANA J. S. FUENTES

City Clerk of The City of San Diego, California

(SEAL)

By:  _____, Deputy