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**REIMBURSEMENT AGREEMENT FOR THE  
CONSTRUCTION OF A PORTION OF THE WESTERLY  
EXTENSION OF HAZARD CENTER DRIVE**

THIS AGREEMENT [Agreement] is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation [City] and HAZARD CENTER ASSOCIATES, a California general partnership [Subdivider] [collectively the Parties], for reimbursement for the construction of a portion of the westerly extension of Hazard Center Drive from the western boundary of Hazard Center, under State Route 163 [SR 163] to a connection within the Fashion Valley Shopping Center on the westerly side of SR 163 [Westerly Extension Project]. Throughout this Agreement, the Westerly Extension Project refers to that project in its entirety, and the term "Reimbursable Project" is used to refer to the portion of the Westerly Extension Project that is eligible for reimbursement pursuant to this Agreement as described more fully in Section 1.2 of this Agreement.

**RECITALS**

1. Development of the Hazard Center shopping center in City was subject to the conditions of Tentative Map No. 85-0362 [Tentative Map]. Conditions 9 and 20 of the Tentative Map originally required the developer to complete the Westerly Extension Project.
2. The original developer of Hazard Center, R.E. Hazard Contracting Co., entered into the "Improvement Agreement/Westerly Extension of Hazard Center Drive" dated November 9, 1987, on file in the Office of the City Clerk as Document No. RR-269700, and recorded in the Official Records of San Diego County on January 6, 1988 as Document No. 88-004325 [Improvement Agreement]. The Improvement Agreement governs the terms of the required construction of the Westerly Extension Project.
3. The Westerly Extension Project originally was to consist of two phases: (1) Phase 1, consisting of the two northerly lanes of a four-lane urban collector, from the initial cul-de-sac on the south side of Hazard Center to the property line between SR 163 and the Fashion Valley Shopping Center, and (2) Phase 2, from the preceding point to the parking lot within the Fashion Valley Shopping Center. Pursuant to Paragraph 3(d) of the Improvement Agreement, the obligation to build Phase 2 has lapsed because the City did not timely acquire the necessary right-of-way, as referenced in Recital D of the "Amendment to Improvement Agreement Westerly Extension of Hazard Center Drive" on file in the Office of the City Clerk as Document No. RR-292418 [First IA Amendment].
4. HCA acquired Hazard Center and became obligated to perform the obligations under the Improvement Agreement. HCA later sold Hazard Center, but agreed to remain the party obligated to construct Phase 1 of the Westerly Extension Project. Hazard Center is currently owned by 7510 Hazard, LLC, a Delaware limited liability company.
5. Caltrans has developed plans to widen SR 163 by adding six (6) new freeway lanes on the west (Fashion Valley) side of the existing SR 163 bridge in the area of the Westerly Extension Project as a part of the City's Friars Road/SR 163 Interchange project, which

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project will impact the design, construction, and cost of the design and construction of the Westerly Extension Project.

6. As a result of the City's placement of a Trunk Sewer in the area of the Westerly Extension Project, Phase 1 cannot be designed and constructed in accordance with established design standards for a two-lane urban collector. The Friars Road/SR 163 Interchange project has caused and required a change in the design of the Westerly Extension Project, which in turn has resulted in a change in the design speeds for vertical curves and the locations of same along Phase 2 of the Westerly Extension Project as specified in Recital F of the First IA Amendment.
7. City has determined the location of the Westerly Extension Project. City desires the construction of the Westerly Extension Project due to the community-wide and regional benefits it will provide. The location of the Westerly Extension Project is shown in **Exhibit A**.
8. Because City desired that Phase II be constructed in conjunction with Phase I and because the SR 163 widening has increased design and construction costs, a "Second Amendment to Improvement Agreement (Westerly Extension of Hazard Center Drive)" on file in the Office of the City Clerk as Document No. 305701 -01 [Second IA Amendment] is being considered along with this Agreement. This Agreement is contingent upon City Council approval of the Second IA Amendment.
9. Condition 69 of Planned Commercial Development Permit No. 80170 for the Fashion Walk project required the payment of "\$1,000,000 into a Friars Road/Ulric Street traffic congestion mitigation fund, to be used only toward the completion of Hazard Center Drive." In June 2007, that condition was satisfied when Avalon Bay Communities paid \$1,000,000 into Fund No. 63022, Account No. 78950, Job Order No. 991356 [the "Hazard Center Drive Traffic Mitigation Fund"].
10. This Agreement is intended by the Parties to define the method, terms, and conditions of reimbursement to Subdivider for the funds to be expended for the construction of Reimbursable Project.

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

## **ARTICLE I. SUBJECT OF THE AGREEMENT**

- 1.1 **Construction of Project.** Subdivider agrees to construct a complete and operational Westerly Extension Project in accordance with the terms of this Agreement, the Improvement Agreement, the First IA Amendment, and the Second IA Amendment [collectively, "the Hazard Center Drive Westerly Extension Agreements"], and the Plans and Specifications.
- 1.2 **Reimbursement.** City agrees to reimburse Subdivider for the Reimbursable Project in accordance with the terms of this Agreement. The Reimbursable Project consists of the bid items identified in **Exhibit E**.
- 1.3 **Operational Acceptance.** City's acceptance of the Westerly Extension Project shall occur upon Subdivider's receipt of a letter of acceptance from City after Subdivider

complies with the Punch List and passes Final Inspection (as defined in Section 13.4) confirming that the Westerly Extension Project is substantially complete and operational [Operational Acceptance].

## ARTICLE II. PROJECT SCHEDULE

- 2.1 **Project Schedule.** Subdivider shall perform and complete the work under this Agreement according to the Project Schedule, which Subdivider shall provide to City's Resident Engineer prior to the preconstruction meeting. Subdivider shall also perform and complete the work under this Agreement in accordance with the obligations and components approved by the City in **Exhibit B**. The Project Schedule includes the meeting requirements in **Exhibit C**; and preconstruction, progress, and special meeting agendas in **Exhibit D**.
- 2.2 **Project Completion.** Subdivider agrees that all work on the Westerly Extension Project under this Agreement will be complete and ready for operational use according to the Project Schedule (see Section 2.1), and the Project Schedule obligations and components in **Exhibit B**.
- 2.3 **Changes in Project Schedule.** Changes in Project Schedule may be approved by the engineer designated by City's Department of Engineering and Capital Projects with responsibility for review and approval of the progress of and changes to Project [Resident Engineer], provided that the Westerly Extension Project will still be completed in accordance with all conditions of approval including Tentative Map requirements and the requirements set forth in the Hazard Center Drive Extension Agreements requirements.
- 2.4 **Notification of Delay.** If Subdivider anticipates or has reason to believe performance of work under this Agreement will be delayed, Subdivider shall immediately notify the representative designated by City's Engineering and Capital Projects Department to manage the Westerly Extension Project on behalf of City [Project Manager]. Unless City grants Subdivider additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) calendar days of the initial notification and shall include: an explanation of the cause of the delay, a reasonable estimate of the length of the delay, all supporting data, and written statement that the time adjustment requested is the entire time adjustment Subdivider needs as a result of the cause of the delay.
- 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 Subdivider to a reasonable extension of time. Any such extension of time must be approved in writing by City, and will not be unreasonably withheld. The following conditions may justify such a delay depending on their actual impact on the Westerly Extension Project: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider's work; concealed conditions encountered in the completion of the Westerly Extension Project; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Subdivider. Any delay claimed to be caused by Subdivider's

inability to obtain materials, equipment, labor, or additional required services shall not entitle Subdivider to an extension of time unless Subdivider furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of Subdivider's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Subdivider shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Subdivider, its consultants, contractors, subcontractors, employees, or other agents [collectively, "Subdivider's agents"]. If City determines that the delay materially affects the Westerly Extension Project, City may exercise its rights under Section 2.7 of this Agreement.

- 2.6 **Costs of Delay.** City and Subdivider acknowledge that construction delays may increase the cost of the Westerly Extension Project. Subdivider agrees to fully absorb any increase in the cost of the Westerly Extension Project, and understands that such cost increases shall constitute a Non-Reimbursable Cost.

2.7 **City's Right to Terminate for Default.**

2.7.1 If Subdivider fails to adequately perform any obligation required under this Agreement, Subdivider's failure constitutes a Default. Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default Subdivider undertakes all reasonable efforts to ensure 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 Subdivider and any person or entity claiming any rights by or through Subdivider under this Agreement. A delay shall not constitute a Default if Subdivider has made good faith and reasonable efforts to adhere to the Project Schedule, has provided notice of delay in accordance with Section 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 Subdivider's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by Subdivider or its agents for the construction of the Westerly Extension Project. Subdivider 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 this Section are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or waive or deny any right or remedy at law or in equity available to City against Subdivider, including any claims for damages against Subdivider 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 Subdivider files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to or demand upon Subdivider immediately terminate this Agreement, and terminate all rights of Subdivider and any person or entity claiming any rights by or through Subdivider. The rights and remedies of City enumerated in this

Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

### ARTICLE III. PROJECT COSTS

3.1 **Reimbursable Costs.** Subdivider may seek reimbursement only for Reimbursable Costs. Reimbursable Costs shall consist only of the Estimated Cost (as defined in Section 3.2) up to a maximum of One Million Dollars (\$1,000,000) reasonably expended by Subdivider and approved for reimbursement by City under the terms of this Agreement.

3.1.1 ***Non-Reimbursable Costs.*** Non-Reimbursable Costs include: (1) Any cost in excess of funds available in the Hazard Center Traffic Mitigation Fund as of the date of this Agreement; (2) any cost in excess of the Estimated Cost; (3) any cost identified in this Agreement as a Non-Reimbursable Cost; (4) any cost to remedy Defective Work (as defined in Section 20.1); (5) any cost incurred as a result of the negligence, omissions, delay, or Default of Subdivider or Subdivider's agents; (6) any cost of substituted products, work, or services not necessary for completion of the Westerly Extension Project, unless requested and approved by City in writing; and (7) any cost not approved by City in the manner required by this Agreement or the Charter of the City of San Diego and rules, regulations, or laws promulgated thereunder. 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. Any accrued interest and other of Subdivider's administrative costs also constitute Non-Reimbursable Costs.

3.2 **Estimated Cost(s).** Subdivider's Estimated Cost shall consist only of the costs shown in **Exhibit E**, up to One Million Dollars (\$1,000,000), for the Reimbursable Project.

### ARTICLE IV. COMPETITIVE BIDDING AND EQUAL OPPORTUNITY

4.1 **Compliance.** Subdivider shall bid and award contracts to complete the Reimbursable Project in accordance with the Charter of the City of San Diego, San Diego Municipal Code, and current City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations.

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

4.2.1 ***Submission of Construction Documents.*** Subdivider shall submit bidding documents to City for approval before soliciting bids for work on the Westerly Extension Project. City retains the right to notify Subdivider of necessary corrections.

- 4.2.2 ***Obtain all Permits and Approvals.*** Subdivider shall obtain all necessary permits, including but not limited to environmental, grading, building, mechanical, electrical, and plumbing for the Westerly Extension Project. Approval of Construction Documents will be evidenced by City's issuance of a letter indicating Subdivider may proceed with competitive bidding.
- 4.3 **Solicitation of Bids.** Subdivider shall solicit sealed bids for the construction of the Reimbursable Project. Such solicitation may be by publication in a local newspaper of choice, but must include notice in the San Diego Daily Transcript for a minimum of one day. Subdivider shall notify City of the time and place of each bid opening for the construction of the Reimbursable Project and shall provide City with copies of all bids received.
- 4.4 **Bid Opening and Award of Contract.** Subdivider shall open sealed bids in the presence of City's authorized representative(s). The bidding contractors may be present at the bid opening. City's representative(s) shall be provided with a copy of the tabulation of bid results. Contract(s) for the construction of the Reimbursable Project shall be awarded by Subdivider to the qualified contractor(s) submitting the lowest responsible and responsive bid(s), as mutually determined by Subdivider and City's authorized representative(s).
- 4.4.1 In the event that the lowest responsible and responsive bid exceeds the Estimated Cost, reimbursement for said increase shall not be approved and Subdivider may not terminate the Agreement on such a basis. Subdivider shall award the bid and assume responsibility for any and all costs in excess of the Estimated Cost. Subdivider shall continue to be subject to the conditions of the VTMs, Tentative Map, Development Agreements, the Hazard Center Drive Westerly Extension Agreements, or other approvals and agreements with City.
- 4.5 **Nondiscrimination Requirements.**
- 4.5.1 ***Compliance with the City's Equal Opportunity Contracting Program.*** Subdivider shall comply with the City's Equal Opportunity Contracting Program. Subdivider shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Subdivider shall provide equal opportunity in all employment practices. Subdivider shall ensure 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 Subdivider liable for any discriminatory practice of its consultants, contractors or their subcontractors.
- 4.5.2 ***Nondiscrimination Ordinance.*** Subdivider shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Subdivider shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Subdivider 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 Subdivider and any consultants, contractors, subcontractors, vendors and suppliers.

- 4.5.3 ***Compliance Investigations.*** Upon City's request, Subdivider 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 Subdivider used in the past five years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Subdivider for each contract, subcontract or supply contract. The Subdivider further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] Subdivider 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 Subdivider up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Subdivider further understands and agrees the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

## ARTICLE V. CONSULTANTS

- 5.1 **Consultants.** Subdivider shall not be reimbursed for any consultant costs associated with the Westerly Extension Project. Such costs shall constitute a Non-Reimbursable Cost.

## ARTICLE VI. DESIGN AND CONSTRUCTION STANDARDS

- 6.1 **Standard of Care.** Subdivider 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 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.
- 6.2 **Compliance with all Laws, Design Standards, and Construction Standards.** In all aspects of the design and construction of the Westerly Extension Project, Subdivider shall comply with all laws and the most current editions of the Greenbook, the City's Standard Drawings and Design and Construction Standards, including those listed in **Exhibit F**. It is the sole responsibility of Subdivider to comply with The Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. The Subdivider shall certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit G** "Certificate for Title 24/ADA Compliance."
- 6.3 **Imputed Knowledge.** Subdivider shall be responsible for all amendments or updates to Design and Construction Standards and knowledge of all amendments or updates to Design and Construction Standards, whether local, state, or federal, and such knowledge will be imputed to Subdivider to the fullest extent allowed by law.
- 6.4 **City Approval.** Subdivider shall be required to obtain City approval of design, plans, and specifications. 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.

- 6.5 **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 Subdivider of responsibility for complying with all applicable laws, codes, regulations and good consulting, design, or construction practices.

## ARTICLE VII. CONSTRUCTION

- 7.1 **Compliance with Project Schedule and Construction Requirements.** Subdivider shall commence construction of the Westerly Extension Project in accordance with the Project Schedule, as described in Article II, and be subject to the obligations in **Exhibit H** "Construction Obligations." Subdivider shall diligently pursue such construction to completion. 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.
- 7.2 **Drug-Free Workplace.** Subdivider agrees to comply with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. Subdivider shall certify to City that it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace in form and content of **Exhibit I**.

## ARTICLE VIII. PRODUCTS

- 8.1 **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 Westerly Extension Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding process, Subdivider shall obtain City approval of products and substitution of products in the manner provided in **Exhibit J** "Product Submittal and Substitution."
- 8.1.1 ***Not a Release of Liability.*** City's review of samples in no way relieves Subdivider of Subdivider's responsibility for construction of the Westerly Extension Project in full compliance with all Construction Documents.

## ARTICLE IX. CHANGED CONDITIONS

- 9.1 **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, any increased costs associated with Changed Conditions shall constitute Non-Reimbursable Costs.

## ARTICLE X. REIMBURSEMENT

## 10.1 Reimbursement to Subdivider.

- 10.1.1 **Notification of Reimbursable Project.** Along with the Westerly Extension Project application to City's Development Services Department, and prior to commencement of any work on the Reimbursable Project, Subdivider shall submit a "Notification of Reimbursable Project" form (attached as **Exhibit K**) to City's Engineering and Capital Projects Department [Responsible Department]. Subdivider shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Reimbursable Project for which Subdivider was not previously reimbursed [Reimbursement Request].
- 10.1.2 **Type of Reimbursement.** Subdivider shall be entitled to cash reimbursement, for the Reimbursable Costs expended by Subdivider and approved by City in accordance with this Agreement.
- 10.1.3 **Funds for Reimbursement.** Subdivider shall only be entitled to reimbursement as set forth in this Agreement and only from the Hazard Center Traffic Mitigation Fund. From the Hazard Center Traffic Mitigation Fund, the maximum amount available for reimbursement is \$1,000,000.
- 10.1.4 **Method of Reimbursement.** Subdivider shall submit to City a Reimbursement Request clearly identifying the Reimbursable Project in accordance with the Recommended Guidelines and Format for Submittal of Cost Reimbursement Claims available from City's Facilities Financing Department. The Reimbursement Request must also include all relevant documents in accordance with this Section. If City determines all relevant documents have not been submitted, City shall request Subdivider provide additional documentation within sixty (60) calendar days after Subdivider submits the Reimbursement Request. Subdivider shall provide additional documentation within fourteen (14) calendar days of request. City will make all reasonable efforts to review all Reimbursement Requests within 60 calendar days. City is not obligated to reimburse Subdivider until City confirms receipt of all relevant documentation to support the Reimbursement Request.

Within sixty (60) calendar days after all appropriate cost documentation has been received and City approves the Reimbursement Request, City shall reimburse Subdivider for those approved Reimbursable Costs; provided however, that City shall not be required to reimburse Subdivider until Operational Acceptance of the Westerly Extension Project, and until Subdivider has satisfied its obligations under the Hazard Center Drive Westerly Extension Agreements. In addition, City shall not be required to reimburse Subdivider in the event that Subdivider is not in compliance with its obligations under San Diego Municipal Code Chapter 11, Article 2, Division 2 relating to fees and deposits.

- 10.1.4.1 **Cutoff for Submission of Reimbursement Requests.** Subdivider shall submit all Reimbursement Requests within six (6) months after the Final Completion of the Reimbursable Project [Cutoff Date]. Any Reimbursement Request submitted after the Cutoff Date shall not be included in Reimbursable Cost and Subdivider

shall not be entitled to any reimbursement for those costs or expenses.

10.1.5 ***Verification of Reimbursement Request.*** Subdivider shall on a monthly basis 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:

10.1.5.1 Subdivider shall submit two (2) copies of a Reimbursement Request (cover letter, invoice, and documentation) to the City's Resident Engineer [RE] for approval for work completed per plan and specification and/or Extra Work.

10.1.5.2 Prior to the approval of the Reimbursement Request, the RE shall verify whether the materials and work for which reimbursement is being requested have been installed and performed as represented in the Reimbursement Request. The RE shall review the Reimbursable Project on-site for quality of material and assurance and adherence to bid list, contract estimates and plans and specifications. The RE shall also review as-builts and BMPs, and verify that a lien release has been prepared.

10.1.5.3 The RE shall initial the Reimbursement Request package, noting any disallowed costs, maintain a copy, and forward a copy to the Sr. Civil Engineer for review.

10.1.5.4 The Sr. Civil Engineer shall review the Reimbursable Project claims.

## ARTICLE XI. PUBLIC RELATIONS

11.1 **Presentations.** Subdivider, and Subdivider's agents and consultants, shall be available for all presentations required to be made to City Council, Council Committees, any other related committees, and citizen groups to provide them with information about the Westerly Extension Project as well as presentations to any governing or regulatory body or agency for other approvals as may be required.

11.2 **City as Primary Contact.** Subdivider agrees City is the primary contact with the media regarding the Reimbursable Project and Subdivider shall forward all questions regarding the Reimbursable Project status to the Responsible Department's Senior Public Information Officer.

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

11.4 **Recognition.** Subdivider shall place a sign, placard, or other similar monument on Project site during construction, which shall acknowledge Subdivider's and City's joint

efforts in designing and constructing the Westerly Extension Project, and identifying that the Reimbursable Project is funded with funds from the Hazard Center Traffic Mitigation Fund. Subdivider shall properly recognize City and include 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 Subdivider is contemplating a dedication or ground breaking ceremony, Subdivider shall contact the Responsible Department's Senior Public Information Officer.

- 11.5 **Dedication Ceremony.** City or Subdivider shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on the Westerly Extension Project site at any reasonable time following Operational Acceptance of the Westerly Extension Project, provided Subdivider receives prior approval from the Engineering & Capital Projects Department for the ceremony and provides an opportunity for appearances by the Mayor, Council Members and other appropriate City officials. Subdivider shall contact the Responsible Department's Senior Public Information Officer to arrange a mutually acceptable date and time for any ceremony. Invitation shall not be sent out or a date set until the Responsible Department's Senior Public Information Officer has approved the time and date for the ceremony.
- 11.6 **Cleanup.** Subdivider shall be responsible for the clean up of the Westerly Extension Project site and the restoration and repair of any damage to the Westerly Extension Project site attributable to any Subdivider sponsored ceremony.

## ARTICLE XII. INSPECTION

- 12.1 **Inspection Team.** the Westerly Extension Project shall be inspected by a team composed of representatives from (i) the City's Engineering and Capital Project Department, (ii) the Responsible Department, (iii) City's Development Services Department, (iv) Subdivider's consultant(s), and (v) Subdivider's construction superintendent [Inspection Team].
- 12.2 **Inspection Schedule.** The Westerly Extension Project shall be inspected by Inspection Team. Subdivider shall allow City officers, agents, and employees to enter the project site at any time.

## ARTICLE XIII. PROJECT COMPLETION

- 13.1 **Notice to City.** When Subdivider determines the Westerly Extension Project is complete, Subdivider shall notify City in writing of the Westerly Extension Project's status within seven (7) calendar days of Subdivider's determination. The notice shall certify to City that the Westerly Extension Project has been completed in accordance with the Construction Documents; all applicable building codes and regulations; all permits; all licenses; all certificates of inspection, use, and occupancy; and ordinances relating to the Westerly Extension Project.
- 13.2 **Walk-Through Inspection.** A preliminary Walk-Through Inspection shall be conducted by City within fourteen (14) calendar days following Subdivider's notice to City of

completion. The Walk-Through Inspection will be conducted by the Inspection Team identified in Section 12.1.

13.2.1 ***Punch List.*** A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to Subdivider by the RE within five (5) calendar days of the Walk-Through Inspection. Subdivider shall correct the items listed on the Punch List within sixty (60) calendar days of receipt of the Punch List. The Final Inspection of Project (as defined in Section 13.4) by City shall be conducted within ninety (90) calendar days of written notification by Subdivider to City that Subdivider has corrected all items identified on the Punch List [Notice of Correction].

13.2.2 ***Failure to Identify Items.*** As to any items not included on the Punch List or later discovered, nothing in this Section is intended to limit Subdivider's obligations under this Agreement and City shall maintain all remedies available under this Agreement, at law, or in equity.

13.3 **Equipment Demonstration and Cleaning.** Prior to Final Inspection, Subdivider shall demonstrate to City the operation of each system in the Westerly Extension Project, and instruct City personnel in operation, adjustment and maintenance of equipment and systems, using the operation and maintenance data. Subdivider shall also professionally clean the Westerly Extension Project, including, if applicable, mopping, sanitizing restrooms, polishing floors, dusting, vacuuming, and cleaning glass and windows.

13.4 **Final Inspection.** The Final Inspection for the Westerly Extension Project shall be scheduled and conducted within ninety (90) calendar days of the Notice of Correction.

#### ARTICLE XIV. PROJECT ACCEPTANCE

14.1 **Acceptance.** Upon Operational Acceptance of the Westerly Extension Project, Subdivider shall do all of the following:

14.1.1 ***Notice of Completion.*** Subdivider shall execute and file with the County Recorder of San Diego County documentation indicating that the Westerly Extension Project and all work depicted on City drawing number 30837-Dhas achieved Final Completion and stipulating the date of the Westerly Extension Project completion [Notice of Completion]. Subdivider shall provide the City Engineer with a conformed copy of the recorded Notice of Completion.

14.1.2 ***Lien and Material Releases.*** Subdivider shall cause all contractors and subcontractors to provide lien and material releases as to the Westerly Extension Project and provide copies of such lien and material releases to the City Engineer or, upon approval of City which shall not be unreasonably withheld, provide bonds in lieu of lien and material releases in a form reasonably acceptable to City for all such work.

14.2 **Final Completion.** Final Completion of the Westerly Extension Project shall be deemed to occur on the later of: (i) recordation by Subdivider of the Notice of Completion and delivery of a conformed copy to City; or (ii) submission of all documents required to be supplied by Subdivider to City pursuant to this Agreement, including As-Built Drawings,

warranties, operating and maintenance manuals and other Deliverables identified in **Exhibit L**.

14.2.1 ***As-Builts***. City, including but not limited to, its Engineering and Capital Projects Department, will evaluate the submitted As-Builts for accuracy and completeness and may return comments. Subdivider shall meet with City until all issues are resolved. Upon issue resolution, Subdivider shall submit a mylar set, a digital copy, and three (3) final blueline sets of As-Builts stamped by the architect/engineer of record as required by law.

14.3 **No Waiver**. Subdivider's obligation to perform and complete the Westerly Extension Project and Reimbursable Project in accordance with this Agreement and Construction Documents shall be absolute. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to Subdivider under this Agreement, nor any use or occupancy of the Westerly Extension 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.

14.4 **Assignment of Rights**. Upon Final Completion of the Westerly Extension Project, Subdivider shall assign its rights under its contracts with all contractors, subcontractors, and material suppliers associated with the Westerly Extension Project to City. In addition, upon Final Completion of the Westerly Extension Project, Subdivider shall assign its rights under its contracts with its design professionals and engineers; provided however, that contracts with design professionals and engineers which were entered into prior to the Effective Date of this Agreement, and which contain no assignment clauses, shall not be subject to this requirement. Subdivider shall be required to obtain written approval and acknowledgement, whether in the form of a contract provision or separate document, of such assignment from its contractors, subcontractors, design professionals, engineers, and material suppliers. This assignment of rights shall not relieve Subdivider of its obligations under this Agreement, and such obligations shall be joint and several.

## ARTICLE XV. PROJECT DELIVERABLES

15.1 **Project Deliverables**. Prior to Final Completion, Subdivider shall deliver to City "As-Builts" and related plans and specifications, operating manuals, warranty materials, and all other materials required by City in the format requested. Documents shall include those listed in **Exhibit L**.

15.2 **Ownership of Project Deliverables**. Upon Final Completion or termination, Project Deliverables shall become the property of City. Subdivider and City mutually agree that this Agreement, Construction Documents, and Project Deliverables for Project shall not be used on any other work without the consent of each Party. City shall not reuse or make any modification to the construction documents without the prior written authorization of Subdivider or its contractor(s) or consultant(s). City agrees, to the fullest extent permitted by law, to indemnify and hold harmless Subdivider, or its contractor(s) or consultant(s), their officers, directors, employees and subconsultants against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from, or in any way connected with, the unauthorized reuse or modification of the

construction documents by City or any person or entity that lawfully acquires or obtains the construction documents from or through City without written authorization of Subdivider or its contractor(s) or consultant(s).

## ARTICLE XVI. BONDS / OTHER SECURITIES

- 16.1 **Payment Bond.** Subdivider 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% of the proposed construction costs, as determined by competitive bidding [Payment Bond].
- 16.2 **Performance Bond.** Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing performance in favor of City for 100% of the proposed construction costs, as determined by competitive bidding [Performance Bond].
- 16.3 **Warranty Bond.** Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the Westerly Extension Project during the warranty period in favor of City [Warranty Bond]. Subdivider shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.
- 16.4 **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 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 a period of one (1) year from Operational Acceptance.
- 16.5 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 16.6 **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 Westerly Extension 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 ten percent (10%) of its capital and surplus.
- 16.7 **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 Westerly Extension Project is located, Subdivider shall within seven (7) calendar days thereafter substitute or require the substitution of another bond and surety, acceptable to City.

## ARTICLE XVII. INDEMNITY & DUTY TO DEFEND

- 17.1 **Indemnification and Hold Harmless Agreement.** To the fullest extent permitted by law, and subject to the City's indemnification obligations set forth in the Second IA

Amendment, Subdivider shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Subdivider or 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 Subdivider, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Subdivider's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

- 17.3 **Insurance.** The provisions of this Article are not limited by the requirements of Article XVIII related to insurance.
- 17.4 **Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.
- 17.5 **Indemnification for Liens and Stop Notices.** Subdivider shall keep the the Westerly Extension Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. Subdivider shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Subdivider shall be responsible for payment of all persons entitled to assert liens and stop notices.
- 17.6 **Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in this Article, provided that Subdivider shall have the option to select an attorney to represent City for any such enforcement subject to approval of the City Attorney, with such approval not to be unreasonably withheld.

## ARTICLE XVIII. INSURANCE

- 18.1 **General.** Subdivider shall not begin work on the Westerly Extension Project 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.
- 18.2 **Type and Amount of Insurance.** The City Attorney shall confer with the City's risk management department and determine the appropriate dollar amount and type of insurance, including any endorsements or specific clauses, necessary for the Westerly Extension Project [Required Insurance]. Subdivider shall, or Subdivider shall ensure that its contractor(s) obtain the Required Insurance prior to the commencement of construction. City's standard insurance provisions are attached as **Exhibit L**. If

Developer is not informed otherwise in writing of Required Insurance, City's standard insurance provisions included in **Exhibit L** shall be the Required Insurance for the Project.

- 18.3 **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 Subdivider to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.
- 18.3.1 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.
- 18.4 **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.
- 18.5 **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.
- 18.6 **Additional Insurance.** Subdivider may obtain additional insurance not required by this Agreement.
- 18.7 **Obligation to Provide Documents.** Prior to performing any work on the Westerly Extension Project, Subdivider shall provide copies of documents including but not limited to certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.
- 18.8 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Subdivider. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.
- 18.9 **Policy Changes.** Subdivider shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.
- 18.10 **Reservation of Rights.** City reserves the right, from time to time, to review the Subdivider's insurance coverage, limits, deductible and self insured retentions to determine if they are acceptable to City. City will reimburse the Subdivider for the cost of the additional premium for any coverage-requested by City in excess of that required by this Agreement without overhead, profit, or any other markup.
- 18.11 **Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Subdivider's obligations under this Agreement, including indemnity.
- 18.12 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal of required insurance during the term of this Agreement and for a period of ten (10) years following

Transfer of Ownership of the Project may be treated by City as a material breach of this Agreement.

## ARTICLE XIX. WARRANTIES

19.1 **Warranties Required.** Subdivider shall require the construction contractor and its subcontractors and agents 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.

19.1.1 ***Materials and Workmanship.*** All work on the Westerly Extension Project shall be guaranteed against defective workmanship and all materials furnished by construction contractor or its agents shall be guaranteed against defects for a period of one (1) year from the date of the Westerly Extension Project's Operational Acceptance. 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.

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

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

19.2 **Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Subdivider's and Subdivider'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.

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

19.2.2 ***Table of Contents.*** All warranties shall be listed and typewritten in the sequence of the table of contents of the Westerly Extension 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.

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

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

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

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

19.3 **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.

19.4 **Meetings.** During the one (1) year warranty period described in Section 19.3, Subdivider shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Engineering and Capital Projects 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 Westerly Extension Project during the one (1) year warranty period.

## ARTICLE XX. DEFECTIVE WORK

20.1 **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 Westerly Extension Project is discovered to contain Defective Work, Subdivider shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.

20.2 **City's Right to Correct.** If circumstances warrant, including an emergency or Subdivider's failure to adhere to Section 20.1, City may correct, remove, or replace the Defective Work. In such circumstances, Subdivider shall not recover costs associated with the Defective Work and shall reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.

20.3 **Defects Constitute Non-Reimbursable Costs.** All costs incurred by Subdivider or Subdivider's agents to remedy Defective Work are Non-Reimbursable Costs. If City has already reimbursed Subdivider 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 Subdivider's bond if Subdivider has been paid in full.

20.4 **Extension of Warranty.** When Defective Work, or damage there from, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, shall be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.

20.5 **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.

20.6 **Resolution of Disputes.** If Subdivider and City are unable to reach agreement on disputed work, City may direct Subdivider to proceed with the work and compensate

Subdivider for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation or as subsequently adjudicated or established in a court of law. Subdivider shall maintain and keep all records relating to disputed work in accordance with Article XXII.

- 20.7 **Prior to Final Acceptance and Reimbursement to Subdivider.** Where Defective Work has been identified prior to the Final Completion of the Westerly Extension Project, Subdivider shall:

20.7.1 ***Correct, Remove, or Replace.*** Subdivider shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work. Costs incurred to remedy Defective Work are Non-Reimbursable Costs. Where Defective Work is not remedied, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount paid, or make a claim against the construction contractor's bond.

## ARTICLE XXI. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

- 21.1 **Maintenance Period.** If the construction contractor is required to install or maintain landscaping and/or irrigation, Subdivider shall require the construction contractor provide a maintenance period to begin on the first day after all landscape and irrigation work on the Westerly Extension 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 of the date the Landscaping and Irrigation is accepted, whichever is longer.
- 21.2 **Maintenance Area.** Subdivider shall require the construction contractor maintain all areas of the Westerly Extension Project, including areas impacted or disturbed by the the Westerly Extension Project.
- 21.3 **Maintenance Required.** Subdivider shall require the construction contractor conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Construction contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days. Maintenance shall also include the following: (1) filling and replanting of any low areas that may cause standing water (2) adjusting of sprinkler head height and watering pattern, (3) filling and recompaction of eroded areas, (4) weekly removal of trash, litter, clippings and foreign debris, (5) inspecting plants at least twice per week, and (6) protecting all planting areas against traffic or other potential causes of damage.
- 21.4 **Landscape and Irrigation Inspection.** At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be scheduled with two (2) weeks

notice, a minimum of eighty (80) calendar days after the plant maintenance period commencement, or when Subdivider or Subdivider's contractor notifies City they are ready for the Final Inspection, whichever comes last. The City will notify Subdivider of all deficiencies revealed by the inspection before acceptance.

- 21.5 **Extension of Maintenance Period.** Subdivider shall require the construction contractor 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. Subdivider shall require the construction contractor 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.
- 21.6 **Replacement.** Plants found to be dead or not in a vigorous condition, or if root balls have been damaged, within the installation, maintenance and guarantee periods, shall be replaced within fourteen (14) calendar days of notification by City. Subdivider shall require the construction contractor 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 reason for lack of vigor, potential remedies, if any, and estimate of time required to regain vigor and specified size.
- 21.6.1 ***Same Kind and 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. Subdivider 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 XXII. RECORDS AND AUDITS

- 22.1 **Retention of Records.** Subdivider, consultants, contractors, and subcontractors shall maintain data and records related to the Westerly Extension Project and Agreement for a period of not less than five (5) years following the Effective Date of this Agreement.
- 22.2 **Audit of Records.** At any time during normal business hours and as often as City deems necessary, Subdivider 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. Subdivider and all contractors or subcontractors will permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Subdivider shall pay all City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained. All such costs will be Non-Reimbursable Costs.
- 22.2.1 ***Costs.*** Subdivider and Subdivider's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be

incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Agreement.

## ARTICLE XXIII. NOTICES

- 23.1 **Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 23.2 **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: (1) on personal delivery, (2) on the second business day after mailing by Certified or Registered U.S. Mail, Return Receipt Requested, or (3) 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.
- 23.3 **Recipients.** All demands or notices required or permitted to be given to City or Subdivider shall be sent to all of the following:
- 23.3.1 Director, Engineering & Capital Projects Department  
City of San Diego  
City Administration Building  
202 C Street, M.S. #9B  
San Diego, CA 92101
- 23.3.3 Michele Kadis  
CIGNA Realty Investors  
Wide Building, A4-CRI  
900 Cottage Grove Road  
Hartford, CT 06152  
(860) 226-8806  
Michele.Kadis@CIGNA.COM
- 23.3.4 Mark J. Rowson  
Land Development Strategies, Inc.  
16652 Maverick Lane  
Poway, CA 92064  
(858) 673-5573  
markrowsonldsi@san.rr.com
- 23.5 **Change of Address(es).** Notice of change of address shall be given in the manner set forth in this Article.

## ARTICLE XXIV. MEDIATION

- 24.1 **Mandatory Mediation.** If dispute arises out of, or relates to the Westerly Extension 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.

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

**24.3 Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

24.3.1 If AAA is selected to coordinate the mediation [Administrator], within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

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

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

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

24.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand,

either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

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

## ARTICLE XXV. MISCELLANEOUS PROVISIONS

- 25.1 **Term of Agreement.** Following the adoption of the City Council Resolution 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 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 five years unless approved by City ordinance.
- 25.2 **Construction Documents.** 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, and all modifications issued after the execution of the construction contract.
- 25.3 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 25.4 **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.
- 25.5 **Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.
- 25.6 **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.
- 25.7 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of City or Subdivider shall be deemed to be both covenants and conditions.
- 25.8 **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.

- 25.9 **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.
- 25.10 **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.
- 25.11 **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.
- 25.12 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 25.13 **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.
- 25.14 **Further Assurances.** City and Subdivider each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 25.15 **Exhibits.** Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.
- 25.16 **Compliance with Controlling Law.** Subdivider shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement (and if expressly made applicable by the City Council, California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of Project), including inspection and land surveying work. In addition, Subdivider shall require its consultants, 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.
- 25.17 **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 (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner

Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). Subdivider agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

- 25.18 **Jurisdiction, Venue, Choice of Law, and Attorney Fees.** 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. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.
- 25.19 **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.
- 25.20 **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 Subdivider's contracts, purchase orders and other contracts between Subdivider and third-party services. Subdivider shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 25.21 **Non-Assignment.** The Subdivider 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.
- 25.22 **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.
- 25.23 **Independent Contractors.** The Subdivider, any consultants, contractors, subcontractors, and any other individuals employed by Subdivider shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Subdivider concerning the details of performing the work or services under this Agreement, or to exercise any control over such performance, shall mean only that Subdivider shall follow the direction of City concerning the end results of the performance.
- 25.24 **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 Westerly Extension Project.
- 25.25 **No Waiver.** No failure of either City or Subdivider 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.

**25.26 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.

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

IN WITNESS WHEREOF, this agreement is executed by the City of San Diego, acting by the through its Mayor, pursuant to Resolution No. R- 305701, authorizing such execution, and by Subdivider, as well as their respective counsel.

COPY DUPLICATE ORIGINAL

This Agreement was approved as to form and content by the City Attorney this 5<sup>th</sup> of MAY, 2010, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: 4/14/10

By: Hildred Pepper Jr

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

Dated: 5/5/10

By: Sharon Thomas

Hazard Center Associates, a California partnership

Dated: 2/19/2010

By: Connecticut General Life Insurance Company,  
a Connecticut corporation, Managing General Partner

By: CIGNA Investments, Inc., a Delaware corporation, its Authorized Signatory

By: Michele Kadis

MICHELE KADIS  
Managing Director

Approved as to form and content:

CIGNA Corporation  
Investment Law Department

Dated: 2/19/10

By: Alan Innes

ALAN INNES  
Senior Counsel

HKV  
02/18/10  
Or.Dept: Facilities Financing

## **EXHIBIT A**

### **Project Location**

The extension of Hazard Center Drive from its existing terminus East of SR-163, westerly underneath the existing bridge for SR-163, to a point at the existing terminus of Avenida del Rio at the driveway in the Fashion Valley Mall, just west of SR-163, as shown on City of San Diego Drawing No. 30837-D.

## EXHIBIT B

### Project Schedule Obligations and Components

1. **Subdivider's Obligation.** To the extent required by City, Subdivider shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Westerly Extension Project.
  - A. *Project Initiation.* During the Westerly Extension Project initiation and design phases, Subdivider shall submit an updated Project Schedule on a quarterly basis (four times a year) to City for approval.
  - B. *Construction Phase.* During Construction, Subdivider shall submit an updated Project Schedule monthly to City and shall include:
    - i. Forecast Data with the intended plan for the remainder of the contract duration.
    - ii. Actual Data with indications of when and how much Work and/or Services was performed (% complete)
    - iii. Logic changes or other changes required to maintain the Project Schedule
2. **Detail and Format.** Unless otherwise directed by City, the Project Schedule shall include all phases of the Project. It shall be in a precedence diagram format, plotted on a time-scaled calendar, detailed to activity level, and shall:
  - A. *Define design and construction activities and their sequence:*
    - i. Work shall be divided into a minimum of 5 activities.
    - ii. Activities shall not exceed 21 calendar days in duration or \$50,000 in value, except long lead procurement and submittal activities or those accepted by City.
    - iii. Incorporate specific activity and time requirements.
    - iv. Include 10 weather/delay days, commonly known as "rain days." The late finish date shall be the fully elapsed Contract Time.
  - B. *Float Time.* Show activities on their early dates with corresponding Total Float Time noted beside them.
    - i. Project Schedule shall not include more than 40 calendar days of Float Time absent City approval.
  - C. *Milestones.* Show Milestones with beginning and ending dates.
    - i. Milestones shall include schematic plans, 60% design, 90% design, 100% design; bid opening; Notice to Proceed; start construction; end construction; and Project Completion and Acceptance.
  - D. *Relationships.* Show all appropriate definable relationships with separate explanation of constraints and each start-start, finish-finish, or lag relationship. Relate all activities to each other and to the first appropriate Milestone.
  - E. *Procurement.* Show the procurement of major equipment and materials.
  - F. *Submittals.* Include all submittals required and identify the planned submittal dates, adequate review time, and the dates acceptance is required to support design and construction.
3. **Submittal.** Project Schedule shall be submitted to City on a computer disk in PRIMAVERA Project Planner P3e/c Release Version 4.1 SP1 software in conformance with Construction Plans & Scheduling by AGC or America, or other software specifically designated by City.

## EXHIBIT C

### Meeting Requirements

1. **Preconstruction Meeting.** Subdivider shall conduct a preconstruction meeting with its officers, agents and employees and City. The purpose of this meeting is to discuss: (1) the Agreement conditions, (2) Scope of Work clarifications, and (3) City policies, inspection requirements, and procedures.
  - A. *Attendance.* Subdivider shall ensure the preconstruction meeting is attended by Subdivider's construction contractor, the Westerly Extension Project Superintendent, all Subdivider's major subcontractors, the City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by Subdivider or City.
  - B. *Minutes.* Subdivider shall take corresponding meeting minutes and distribute copies to all attendees.
2. **Progress Meetings.** Subdivider shall conduct weekly progress meetings, or as needed, at dates and times scheduled at the preconstruction meeting with the following necessary parties: Subdivider's Construction Superintendent, Subdivider's Project Manager, Subdivider's Design Consultant, City representatives including Responsible Department representatives, Engineering and Capital Projects Project Manager and Resident Engineer.
  - A. *As-Builts.* Subdivider shall bring updated As-Builts and verify that the latest changes have been made.
  - B. *Special Meetings.* Special meetings shall occur at the Westerly Extension Project phases as outlined in **Exhibit C.**
  - C. *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Subdivider has given no less than seven calendar days prior written notice of the rescheduled meeting.
3. **Agenda.** All meetings shall include at a minimum the agenda identified in **Exhibit D.**

## EXHIBIT D

### Preconstruction, Progress, & Special Meeting Agenda

1. Preconstruction. The issues below should be made part of the Preconstruction Meeting Agenda; however, the agenda may deviate depending on needs.
  - 1.1 Permits and Utility Issues. telephone, cable, gas and electric. RE to announce to Subdivider that franchise companies may be working in the area of the Westerly Extension Project and that coordination regarding such a situation may need to be done.
  - 1.2 Parking areas establish for construction employees and possibly patrons/others.
  - 1.3 Subdivider's payment procedure and forms.
  - 1.4 Format for Request for Proposals (RFPs) using the sample in the back of the contract documents.
  - 1.5 Collection of emergency numbers for off-hour emergencies from the prime (with an alternate contact person).
  - 1.6 Distribution and discussion of the construction schedule.
  - 1.7 Procedure for maintaining the Westerly Extension Project record documents.
  - 1.8 Distribution of the Second Opinion Option Form.
  - 1.9 Designation of persons authorized to represent and sign documents for the RE and Subdivider and the respective communication procedures between Parties.
  - 1.10 Safety and first aid procedures including designation of Subdivider's safety officer.
  - 1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.
  - 1.12 Testing laboratory or agency and testing procedures.
  - 1.13 Establish schedule for progress meetings.
  - 1.14 Procedure for changes in work requested by Subdivider, notice to RE, timing, etc.
  - 1.15 Procedure for changes in work requested by City.
  - 1.16 Public safety.
  - 1.17 Housekeeping procedures, the Westerly Extension Project site maintenance.
  - 1.18 Protection and restoration of existing improvements.
  - 1.19 Sanitation, temporary lighting, power, water, etc.
  - 1.20 Procedure for encountering hazardous substances.
  - 1.21 Any items requested by attendees of preconstruction meeting/open discussion.
2. Progress Meetings. The issues below should be made part of the Progress Meeting Agenda; however, the agenda may deviate depending on needs.
  - 2.1 Review progress of construction since the previous meeting.
  - 2.2 Discuss field observations, problems, conflicts, opportunities, etc.
  - 2.3 Discuss pre- planning opportunities.
  - 2.4 Identify problems that impede planned progress and develop corrective measures as required to regain the projected schedule. Revise the schedule if necessary.
  - 2.5 Discuss Subdivider's plan for progress during the next construction period and the corresponding inspections necessary.
  - 2.6 Discuss submittal status.
  - 2.7 Discuss request for information (RFI) status.
  - 2.8 Progress of schedule.
  - 2.9 Disputed items.
  - 2.10 Non-conformance/non-compliance items.
  - 2.11 New business of importance from any member of the meeting.
  - 2.12 Deferred approvals and their coordination.
  - 2.13 Discuss request for proposals, change orders, and progress payment status.

3. Special Meetings.

- 3.1 Grading. Prior to grading the site, a **grading mini-preconstruction** meeting will be called for by the RE. This meeting applies when surveying is being supplied by the City. The superintendent, the Subdivider's appropriate subcontractors, the RE, the City's survey crew, and any appropriate consultants (if deemed necessary by the RE) will attend. Unless otherwise noted, the agenda will be to coordinate the staking, reference markers, bearings, various site conditions, etc. as defined in the contract documents and any necessary coordination of scope or scheduling between the respective Parties.
- 3.3 Landscaping. Upon completion of the grading and prior to installing any landscaping equipment, supplies, etc., a **landscaping mini-preconstruction** meeting will be called for by the RE. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The agenda will be to coordinate all landscape materials, plant and irrigation coverage, visual planting procedures, etc. and/or contractors on site with the various field conditions.
- 3.4 Mini-Preconstruction Meeting. Prior to installing any mechanical, electrical, plumbing, and sprinkler system equipment, a **mini-preconstruction** meeting will be called for by the Subdivider. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The intent of this meeting is to ensure the prime contractor is adequately coordinating the space of the facility as to not impede the visual integrity of the overall product.
- 3.5 Other. Upon appropriate notice to other parties, special meetings may be called by the RE at times agreed to by all parties involved.

## Exhibit E Estimated Cost

### A. Hazard Center Improvements - East Section

1 . Mobilization	1 LS @	\$5,000.00 / LS =	\$5,000.00
2 . Potholing	1 LS @	\$1,500.00 / LS =	\$1,500.00
3 . Dewatering for Pump Station Installation	1 LS @	\$40,000.00 / LS =	\$40,000.00
4 . Erosion Control	1 LS @	\$5,000.00 / LS =	\$5,000.00
5 . Pump Station	1 EA @	\$1,200,000.00 / EA =	\$1,200,000.00
6 . Electrical Switchgear, Conduit & Wire for Pump Station	1 LS @	\$75,000.00 / LS =	\$75,000.00
7 . 18" RCP 1350-D Storm Drain	145 LF @	\$90.00 / LF =	\$13,050.00
8 . 14" PVC CL-150 Storm Force Main	65 LF @	\$90.00 / LF =	\$5,850.00
9 . 8" PVC CL-150 Storm Force Main	80 LF @	\$80.00 / LF =	\$6,400.00
10 . CDS Unit	1 EA @	\$30,000.00 / EA =	\$30,000.00
11 . Type A-4 Cleanout	1 EA @	\$5,400.00 / EA =	\$5,400.00
12 . Modify Existing Type A-4 Cleanout	2 EA @	\$1,000.00 / EA =	\$2,000.00
13 . Storm Drain Headwall	1 EA @	\$1,200.00 / EA =	\$1,200.00
14 . Rip Rap	2 CY @	\$300.00 / CY =	\$600.00
	<b>Subtotal</b>		<b><u>\$1,391,000.00</u></b>

### B. Caltrans Right-of-Way Improvements - Middle Section

1 . 18" RCP 1350-D Storm Drain	310 LF @	\$90.00 / LF =	\$27,900.00
2 . 16" Type A-2 Curb Inlet	1 EA @	\$6,600.00 / EA =	\$6,600.00
3 . 9" Type A-2 Curb Inlet	1 EA @	\$5,800.00 / EA =	\$5,800.00
4 . 14.5' Type B-1 Curb Inlet	1 EA @	\$6,900.00 / EA =	\$6,900.00
5 . 4.5' Type B-1 Curb Inlet	1 EA @	\$5,000.00 / EA =	\$5,000.00
6 . Type A-4 Cleanout	2 EA @	\$5,400.00 / EA =	\$10,800.00
	<b>Subtotal</b>		<b><u>\$63,000.00</u></b>

### C. Alternate 1

1 . 10" Perforated Subdrain & Drains & Rock bedding	800 LF @	\$350.00 / LF =	\$280,000.00
	<b>Subtotal</b>		<b><u>\$280,000.00</u></b>
	<b>Grand Total</b>		<b><u>\$1,734,000.00</u></b>

Note: Final breakdown of lump sum items shall be provided at the preconstruction meeting.

Note: The Reimbursable Cost of this Estimated Cost shall not exceed One Million Dollars (\$1,000,000).

## EXHIBIT F

### Design and Construction Standards

1. **Laws.** All local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including but not limited to, Development Services Department permits, hazardous material permits, site safety, state and local Building Codes, stormwater regulations, etc.
  - A. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code.* It is the sole responsibility of Subdivider to comply with all ADA and Title 24 regulations. [Subdivider Certification attached as **Exhibit G**].
  - B. *Environmental.* Subdivider shall complete all environmental measures required by CEQA (State requirements), NEPA (Federal requirements), and the local jurisdiction, including but not limited to, mitigation measures, and site monitoring.
  - C. *Air, Water, and Discharge.* Subdivider shall comply with the Clean Air Act of 1970, the Clean Water Act (33 USC 1368)-Executive Order 11738, and the Stormwater Management and Discharge Control-Ordinance No. 0-17988.
  - D. *ESBSSA.* Subdivider shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
  - E. *City Directives.* Subdivider shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
2. **Standard Specifications.** Subdivider shall comply with the most current editions of the following reference specifications when designing and constructing the Westerly Extension Project, including:
  - A. *Greenbook.* Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments.
  - B. *Caltrans.* California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones, except where Caltrans has approved a deviation from these standards, such as non-standard shoulder widths under the SR-163 Freeway bridge.
3. **City Standards.** Subdivider's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:
  - A. *City of San Diego's Drainage Design Manual.*
  - B. *City of San Diego's Landscape Technical Manual produced by the Planning Department.*
  - C. *City of San Diego's Street Design Manual.*
  - D. *City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.*
  - E. *City of San Diego's Technical Guidelines for Geotechnical Reports.*
  - F. *City of San Diego Standard Drawings including all Regional Standard Drawings.*
  - G. *City of San Diego Data Standards for Improvement Plans.*

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

4. **Exception.** The following deviations to the standards identified in this Exhibit shall apply to the Westerly Extension Project:

A. The deviations set forth in the Second IA Amendment

## EXHIBIT G

### Certification for Title 24/ADA Compliance

#### **Westerly Extension of Hazard Center Drive**

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for the Westerly Extension of Hazard Center Drive Project by HCA's consultants meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with The Americans with Disabilities Act of 1990.

Dated: 2/23/2010

Hazard Center Associates, a California partnership

By: Connecticut General Life Insurance Company,  
a Connecticut corporation, Managing General  
Partner

By: CIGNA Investments, Inc., a Delaware  
corporation, its Authorized Signatory

By: Michele Kadis  
MICHELE KADIS  
Managing Director

## EXHIBIT H

### Construction Obligations

1. **Site Safety, Security, and Compliance.** Subdivider shall be responsible for site safety, security, and compliance with all related laws and regulations.
  - A. *Persons.* Subdivider shall be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by Subdivider to access the Project site.
  - B. *Other.* Subdivider is responsible for the Westerly Extension Project, site, materials, equipment, and all other incidentals until the Westerly Extension Project has been Accepted by the City pursuant to Article I.
  - C. *Environment.* Subdivider shall be responsible for the environmental consequences of the Westerly Extension Project construction and shall comply with all related laws and regulations, including 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 Subdivider shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan [SWPPP] to be implemented by the Subdivider during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.
2. **Access to Project Site.**
  - A. *Site Access.* City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Subdivider.
  - B. *Site Tours.* Site tours may be necessary throughout completion of the Westerly Extension Project. Subdivider shall allow City to conduct site tours from time to time as the City deems necessary. City will give Subdivider notice of a prospective tour and a mutually agreeable time shall be set. Subdivider is not obligated to conduct tours or allow access for tours when City failed to give prior notice.
3. **Surveying and Testing.** Subdivider shall coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:
  - A. *Existing Conditions.* Subdivider shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The Soils Consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.
  - B. *Utilities.* Subdivider shall provide all required information for the construction or relocation of Public or private utility facilities that must be constructed or relocated as a result of this Project. Subdivider shall file all of the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project.
  - C. *Geotechnical Information.* Subdivider shall obtain all necessary geotechnical information required for the design and construction of the Project. The Project Engineering Geologist and/or Project Soils Engineer (qualified R.C.E. or R.G.E.) shall prepare a statement, that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.

4. **Public Right of Way.** All work, including, materials testing, special testing, and surveying to be conducted in the Public right of way shall be coordinated with the City.
  - A. *Materials Testing.* Subdivider shall pay for and coordinate with City to have all material tests within the Public right of way and any asphalt paving completed by City's Material Testing Laboratory.
  - B. *Surveying.* Subdivider shall pay for and coordinate with City's Survey Section all surveying required within the Public right of way.
  - C. *Follow all Laws, Rules, and Regulations.* Subdivider agrees to follow all City standards and regulations while working in the Public right of way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.
5. **Traffic Control.** Subdivider shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.
6. **Inspections.** Subdivider shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.
  - A. *Reports.* Subdivider shall provide City all special inspection reports within seven (7) calendar days of inspection. Subdivider shall report all failures of special inspections to City.
  - B. *Remedies.* Remedies for compliance shall be approved by Subdivider, Subdivider's consultants, City's Development Services Department, and City representatives.
  - C. *Concealing Work.* Prior to concealing work, Subdivider shall obtain approval of work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as stipulated in this Agreement. This approval is general approval only and in no way relieves Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Subdivider shall fulfill all requirements of each of these three agencies.
7. **Property Rights.** Subdivider shall provide all required easement documents, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements, as required by City of San Diego Real Estate Assets Department requirements and Council Policy 600-04, "STANDARDS FOR RIGHTS OF WAY AND IMPROVEMENTS INSTALLED THEREIN". City shall not require Subdivider to provide any easement documents for land to which Subdivider does not have title; however, Subdivider shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Public Facilities Financing Plans or any applicable Development Agreement.
8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Subdivider in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Subdivider. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Subdivider is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Subdivider in accordance with the terms of the Agreement for the work completed. All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon reimbursement as set forth above.
9. **Maintenance.** Subdivider shall maintain and be responsible for the Project site until Acceptance of the Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.
10. **Drug-Free Workplace.** The Subdivider agrees to comply with the City's requirements in Council Policy

100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Subdivider shall certify to the City that it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace form [Exhibit I].

- A. *Subdivider Notice to Employees.* The Subdivider shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.
- B. *Drug-Free Awareness Program.* The Subdivider shall establish a drug free awareness program to inform employees about all of the following:
  - i. The dangers of drug abuse in the work place.
  - ii. The policy of maintaining a drug free work place.
  - iii. Available drug counseling, rehabilitation, and employee assistance programs.
  - iv. The penalties that may be imposed upon employees for drug abuse violations.
  - v. In addition to section 10(A) above, the Subdivider shall post the drug free policy in a prominent place.
- C. *Subdivider's Agreements.* The Subdivider further certifies that each contract for Consultant or Contractor Services for this Project shall contain language that binds the Consultant or Contractor to comply with the provisions of section 10 "Drug-Free Workplace, as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and Contractors shall be individually responsible for their own drug free work place program.

EXHIBIT I

Certification for a Drug-Free Workplace

PROJECT TITLE: Westerly Extension of Hazard Center Drive

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 Hazard Center Associates has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for the Westerly Extension Project contains language that indicates the Contractors/Subcontractors agreement to abide by the provisions of Sections 2.A.1-3 of the policy as outlined.

Dated: 2/23/2010

Hazard Center Associates, a California partnership

By: Connecticut General Life Insurance Company,  
a Connecticut corporation, Managing General  
Partner

By: CIGNA Investments, Inc., a Delaware  
corporation, its Authorized Signatory

By: Michele Al Kadis  
MICHELE KADIS  
Managing Director

## EXHIBIT J

### Product Submittal and Substitution

1. **Product Submittal.** Prior to the bidding process, Subdivider shall submit for City approval a list of products intended for use in the Project. Upon Subdivider's completion of plans and specifications, City will review and approve products specified therein. Subdivider shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Subdivider's receipt of submittal. Approval is general approval only and in no way relieves Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations.
2. **Substitutions.** Subdivider shall submit all requests for product substitutions to City in writing within thirty (30) Calendar Days after the date of award of the construction contract. After expiration of the thirty (30) calendar days, City will allow substitution only when a product becomes unavailable due to no fault of Subdivider's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. Subdivider agrees that City requires Consultant's input and as such Subdivider shall coordinate a seven (7) calendar review by its Consultant.
  - A. *Substantiate Request.* Subdivider shall include with each substitution request complete data that substantiates that the proposed substitution conforms to requirements of the Contract Documents.
  - B. *Subdivider Representations.* By submitting a substitution request, Subdivider is representing to City all of the following: (a) Subdivider has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (b) Subdivider is providing the same warranty for the proposed product as was available for the specified product; (c) Subdivider shall coordinate installation and make any other necessary modifications that may be required for work to be complete in all respects; and (d) Subdivider shall waive any claims for additional costs related to the substituted product, unless the specified product is not commercially available.
  - C. *Separate Written Request.* City will not consider either substitutions that are implied in the product data submittal without a separate written request or substitutions that will require substantial revision of construction contract documents.
3. **Samples.**
  - A. *Postage.* Samples shall be sent to Subdivider's office, carriage prepaid.
  - B. *Review.* Subdivider shall furnish to City for review, prior to purchasing, fabricating, applying or installing, two (2) samples (other than field samples) of each required material with the required finish.
    - i. Where applicable, all samples shall be 8" x 10" in size and shall be limited in thickness to a minimum consistent with sample analysis. In lieu thereof, the actual full-size item shall be submitted.
    - ii. Subdivider shall assign a submittal number. Subdivider shall include with each submission a list of all samples sent, a statement as to the usage of each sample and its location in the Project, the name of the manufacturer, trade name, style, model, and any other necessary identifying information.
    - iii. All materials, finishes, and workmanship in the complete building shall be equal in every respect to that of the reviewed sample.
    - iv. City will return one submitted sample upon completion of City review.
    - v. Subdivider's, or Subdivider's agent's, field samples shall be prepared at the site. Affected finish work shall not commence until Subdivider or its agents have been given a written review of the field samples.

## EXHIBIT K

### Notification of Reimbursable Project

Pursuant to Section 10.1.1 of the "Reimbursement Agreement" [Agreement], adopted pursuant to Resolution No. \_\_\_\_\_ and executed on \_\_\_\_\_, 2010, [Insert Subdivider Name] [Subdivider] hereby notifies the City of San Diego that work will begin on the following Project, [Insert Name of Project], also known as \_\_\_\_\_ on or about [Insert Date Work is Scheduled to Begin].

[Insert Name of Subdivider],  
a California limited liability company

By: \_\_\_\_\_

[Title] \_\_\_\_\_

Dated: \_\_\_\_\_

## EXHIBIT L

### Typical Insurance Provisions

1. Types of Insurance. At all times during the term of this Agreement, Subdivider shall maintain insurance coverage, or ensure that its contractor(s) maintain insurance, as follows:
  - 1.1 Commercial General Liability. Subdivider shall ensure that its contractor(s) provide at no expense to City 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. 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 Subdivider's automobiles used in conjunction with the Westerly Extension Project including owned, hired and non-owned automobiles, Subdivider shall keep in full force and effect, or Subdivider shall require that its contractor(s) 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 Subdivider's employees who are subject to this Agreement, Subdivider shall keep in full force and effect, or Subdivider shall require that its architect/engineer(s) of record keep in full force and effect errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate. Subdivider shall ensure that this policy retroactive date is on or before the date of commencement of the Westerly Extension Project. Subdivider agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.
  - 1.4 Worker's Compensation. For all of Subdivider's employees who are subject to this Agreement and to the extent required by the State of California, Subdivider shall, or Subdivider shall ensure that its contractor(s), keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Subdivider against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Subdivider or its contractor(s) to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars (\$1,000,000) for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit. Subdivider shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
    - 1.4.1 Prior to the execution of the Agreement by the City, the Subdivider shall file the following signed certification:

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

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 Subdivider; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City 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 Subdivider's insurance and shall not contribute to it.
- 2.3 *Project General Aggregate Limit.* The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit 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 Subdivider to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.
- 2.5 The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.