

DUPLICATE ORIGINAL
COPY

**PARTICIPATION AGREEMENT
 FOR THE DESIGN AND CONSTRUCTION OF
 THE OTAY 2ND PIPELINE RELOCATION AND RELATED FACILITIES**

This Participation Agreement for the design, construction, and funding of the Otay 2nd Pipeline Relocation from Olympic Parkway to the Otay Water Treatment Plant, and the design, construction, and funding of the relocation of the Otay 3rd Pipeline from the South San Diego Reservoir to the eastern boundary of Village 10, the design, construction, and reimbursement of relocating South San Diego Pipelines 1 and 2 within Village 8 West "Agreement" is made by the City of San Diego, a municipal corporation, herein called "City", and Baldwin & Sons, LLC a California limited liability company; Otay Land Company, LLC, a Delaware limited liability company; and SSBT LCRE V, LLC a Delaware limited liability company, herein called "Developers" with reference to the recitals set forth below. Developers and City may be individually referred to as "Party" and collectively the "Parties."

RECITALS

- A. Developers are owners and developers of certain real property located in the City of Chula Vista, County of San Diego, State of California, within a portion of an area commonly known as Otay Ranch. The term "Developer" is used for convenience. SSBT LCRE V, LLC acquired the property following a default by the borrower under a loan secured by the property and is entering into this agreement as the owner to protect the value of its property.
- B. The City has an existing water transmission pipeline known as the Otay 2nd Pipeline which transverses all the Developers properties; the Otay 3rd Pipeline which transverses Village 8 West, Village 8 East, Village 9, and Village 10, and the South San Diego Pipelines which traverse Village 8 West. The location of Developers' properties, the existing Otay 2nd Pipeline, the Otay 3rd Pipeline, and the South San Diego Pipelines are shown on Exhibit A.
- C. As a condition of their respective developments, Developers will relocate, as required, the Otay 2nd Pipeline, the Otay 3rd Pipeline, and the South San Diego Pipelines in accordance with the accepted Otay 2nd Pipeline Relocation Study dated February 2013. However, this Agreement does not require any Developer to construct all or any portion of the Work within the term of this Agreement. Construction will occur in multiple phases as shown on Exhibit B. The existing water facility will not be abandoned until the new facility is operationally accepted.
- D. This Agreement establishes Developers' fair share of the costs for relocating the Otay 2nd Pipeline, the Otay 3rd Pipeline, and the South San Diego Pipelines. In addition, City agrees to contribute funds for relocating the Otay 2nd Pipeline, the Otay 3rd Pipeline, and the South San Diego Pipelines in accordance with the terms of this Agreement.

- E. The Otay 2nd Pipeline Relocation, the Otay 3rd Pipeline Relocation, and the South San Diego Pipelines Relocation benefit both the Developers and the City.
- F. The Developers have and intend to enter into separate purchase and sale agreements with the City to facilitate the relocation of the pipeline.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties as herein expressed, City and Developers agree as follows:

AGREEMENT

1. Description of Improvements:

1.1 City's Responsibilities:

1.1.1 Otay 2nd Pipeline Sizing. The City has established the sizing of the Otay 2nd Pipeline from previous studies which have been incorporated into the accepted Otay 2nd Pipeline Relocation Study dated February 2013. City will pay for all costs solely associated with facility upsizing in accordance with the accepted Otay 2nd Pipeline Relocation Study.

1.1.2 Easement Vacations. The City has existing easements over portions of the Developers properties for existing water transmission pipelines. Upon the City's issuance of a permit to Developers for any phase of Work requiring an easement vacation, and prior to commencement of construction, the City shall expeditiously process an easement vacation for City Council approval for the phase of work being permitted. Developer will not begin construction until City Council approval. The City shall record and finalize the City Council approved easement vacation with the County Recorder upon operational acceptance for the phase of work being permitted. With the recordation of the easement vacation with the County Recorder, the easement vacation is complete.

1.1.3 Joint Use Agreement. The City and the City of Chula Vista will execute a Joint Use Agreement prior to the commencement of construction in existing or to be dedicated right-of-way in the City of Chula Vista. Any delay in approval of the Joint Use Agreement will extend the anticipated completion of the Work in accordance with Exhibit "B".

1.2. Developers' Responsibilities:

1.2.1 Each Developer shall be responsible for the design and construction of their respective phase(s) of the Otay 2nd Pipeline, Otay 3rd Pipeline, and the South San Diego Pipelines (the "Work"). Developer responsibilities include securing all necessary agency approvals and environmental clearances necessary to complete the Work, including but not limited to those required by the City of Chula Vista.

City shall not be obligated to issue permits for any phase of Work until certification of all approvals and clearances are obtained.

1.2.2 Design. Each Developer shall retain a consultant to prepare the design, engineering, easement vacation documents, if applicable, and public improvement drawings for the Work. Construction documents shall (1) be based on sound engineering judgment, (2) adhere to all applicable engineering standards, the City of San Diego Water Guidelines and Standards, and (3) obtain approval of the Development Services Department. Each Developer and/or its consultant shall work with the City's representative to comply with the City's requirements and standards. Each Developer's consultant shall submit construction documents for their respective phase(s) of the Work at 60% design, 90% design, 100% design, and Final design for review and approval in both hard copy and electronic format. A minimum of five (5) sets of hard copies shall be included for each submittal unless instructed otherwise by the City's representative.

1.2.3 Construction. A separate written contract to complete the Work shall be entered into by each Developer and a contractor selected in accordance with Section 3.1, (a "Construction Contract"). Through the execution of one or more Construction Contracts, each Developer shall cause the construction, supervision, and completion of its phase(s) of the Work per the approved construction documents. Construction may occur in multiple phases over time in accordance with Exhibit "B". Each phase of Work shall be independent of the remainder of Work and in no event shall this Agreement create a cross obligation to a Developer not a party to a specific phase of Work (i.e. – no Developer shall be responsible for any phase(s) of the Work on another Developer's property and no default by any Developer under this Agreement will affect the rights or obligations of the other Developers). The Work shall meet the approval of the City and all applicable standards and codes.

2. Construction of Improvements:

- 2.1 Term. The term of this Agreement shall be 10 (ten) years and may be extended for two 5 (five) year terms upon mutual agreement of the Parties.
- 2.2 Time for Completion. The Parties anticipate the completion of the Work in accordance with Exhibit "B." This Agreement shall not obligate any Developer to construct all or any portion of the Work within the term of this Agreement.
- 2.3 License Requirements. Developers shall select and retain duly licensed and qualified professionals to perform the Work. Contractor(s) and design consultant(s) must be licensed in the State of California.
- 2.4 Standard of Performance. The Work shall be done in a good and workmanlike manner to the satisfaction of the City, lien free and in compliance with the approved plans and specifications, the City of San Diego Water Guidelines and Standards, and the *Standard Specifications for Public Works Construction*,

current edition (the “Greenbook”), including regional and City supplements thereto. In the event of conflict between the approved plans and the Greenbook, the former will govern. To the extent it is feasible and prudent to do so Developers shall use reasonable efforts to schedule the delivery of materials to the project site to coincide with their installation. Developers shall comply with all laws including, but not limited to: 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, etc. In addition, Developers shall comply immediately with all lawful directives issued by the City or its authorized representatives under authority of such laws, statutes, ordinances, rules or regulations.

- 2.5 Notice of Project Requirements. City shall provide full information regarding its requirements for the Work. If any Party obtains actual knowledge of any fault or defect in the Work or nonconformance with the plans and specifications, that Party (ies) shall give prompt written notice thereof to the other Parties. The services and information required by the above shall be furnished with reasonable promptness. The City shall have no contractual obligation with Developers designers, contractor or subcontractors.
- 2.6 Records. Developers shall keep accurate and legible records on a set of as-builts and document all changes of the Work which occur during construction. All information necessary to maintain and/or service any Work shall be noted on the as-built drawings. Records shall be kept up to date with all entries checked by the City’s Resident Engineer before any part of the Work is buried or covered up. Prior to acceptance, Developers shall deliver this redline “as-built” information to its design firm, who shall prepare records drawings for submittal and approval by the City. Developers agree that City or its authorized agent's review of documents, plans, and specifications not prepared by the City does not constitute an approval or establish a basis for liability on the part of the City.
- 2.7 Acceptance of the Work. When Developers consider a phase of the Work ready for its intended use Developers shall notify the City in writing that such phase of the Work is substantially complete. Developers shall attach to this notice a list of all Work items that remain to be completed. Within twenty (20) working days thereafter, the City shall inspect the Work to determine the status of completion. If the City does not consider the Work complete, City will notify Developers within twenty (20) working days.

2.7.1 If the City considers the Work substantially complete, City will prepare and issue a Notice of Substantial Completion formally accepting the Work or a portion of the Work completed. The Notice of Substantial Completion shall fix the date of substantial completion. Attached to the Notice of Substantial Completion will be a tentative list of items to be completed or corrected before final payment can be processed to Developers, if any such items exist.

2.7.2 Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by the City of any defects in the Work. From and after acceptance, the Work shall be owned and operated by the City.

2.7.3 Abandonment of existing water facilities shall only occur upon the operational acceptance of each phase of Work replacing the said existing water facility.

3. Bid Opening. Prior to commencing construction, Developers shall solicit bids and award one or more contracts for the construction of the Work in accordance with all public works laws, rules, and regulations set forth in the San Diego Municipal Code and applicable State law. The sealed bids shall be opened by Developers in the presence of the City, not less than ten (10) days after advertising for one day in the official newspaper of the City for sealed proposals for the Work.

3.1 A contract for the construction of the Work shall be awarded to the lowest responsible and reliable bidder (“Contractor”) paying Prevailing Wage, as mutually agreed to by City and Developers.

3.2 Developers shall provide the City with a copy of the bids and the Construction Contract(s).

4. Advance of Costs. Developers shall pay all costs for the design and construction of the Work, subject to reimbursement by the City in accordance with this Agreement.

5. Maximum Cost. City will reimburse Developers for the City’s share of the actual cost of the design and construction of the Work in accordance with Section 7.1 below. The total Project cost to the City shall not exceed \$28,093,224.00 [Maximum Cost], without written amendment to this Agreement.

6. Credits and Fees. Developers will pay all applicable costs and City fees associated with the Work. Developers shall receive a pro-rata credit for all applicable costs, fees and betterment and full credit for upsizing of the Work in accordance with the “Cost Loaded Schedule” attached hereto as Exhibit “C”. City will reimburse Developers its pro-rata share of the Work in accordance with Section 7.

7. Reimbursement:

7.1 Reimbursement Amount. City will reimburse Developers for the Work completed in accordance with Exhibit “C.”

7.1.1 The City’s actual cost of the Work will be based on the lowest responsible bid submitted, the actual design, bidding and construction management costs, any change orders, the cost for preparation of the fair share cost analysis and this Agreement, and a markup of 8% for Developers project management and overhead. The Parties understand and agree that the cost estimate attached as Exhibit “C” reflects an engineer’s cost estimate for performance of the Work contemplated in this Agreement and that the actual

cost of the Work may be greater or less than set forth on Exhibit "C". Any adjustments to the Party's shares shall be made as described in Section 6.

7.2 Reimbursement Requests. Developers may submit monthly reimbursement requests with respect to all Work performed for which Developers were not previously paid, not to exceed the Maximum Cost. Developers shall supply paid invoices, paid receipts or canceled checks, and an updated spreadsheet and other similar support documentation and conditional mechanics' lien releases (if applicable) in connection with each payment request. The City may cause its inspector to verify whether or not the Work for which payment is being requested has been installed and performed as represented in the payment request.

7.3 Reimbursement Payments. Within forty-five (45) days after Developer submits a reimbursement request, City shall reimburse Developers the amount requested under Section 7.2 of this Agreement, provided that City's representative has verified that the Work for which reimbursement is being requested has been performed as represented in the reimbursement request, and subject to the retention provided for in Section 8 of this Agreement.

7.4 City Engineering and Field Inspection. The costs for City staff time including engineering review and field inspections by the Resident Engineer shall be included in the total cost of the Work.

8. Retention. Payments by the City applicable to construction will be subject to a ten percent (10%) retention, which may be reduced to five percent (5%) in the City's discretion, after successful completion of half of the construction portion of the Work. The retention shall be released to Developer within 60 days after the completion of the Work, in accordance with Public Contract Code section 7107. Retention shall not be released for outstanding liens recorded against the Work. Retention will not be withheld from payments for design activities.

9. Prevailing Wages. City has determined prevailing wages shall apply to this project. Pursuant to Labor Code sections 1720 et seq., and 1770 et seq., Developer shall provide in its Construction Contract that the Contractor and all Subcontractors shall pay not less than the Prevailing Wage Rate to all persons employed by them in the execution of the Work.

9.1. Contractor and Subcontractors must comply with Labor Code section 1776 by keeping accurate payroll records that show the name, address, social security number, work classification, straight time, and overtime hours worked each day and week by each worker, and the actual per diem wages paid to each worker employed by Contractor or Subcontractor in connection with the public works project. Each payroll record shall contain or be verified by a written declaration signed by Contractor or Subcontractors under penalty of perjury that states that: 1) the information contained in the payroll record is true and correct; and 2) Contractor or Subcontractors have complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records must be certified.

Contractor and Subcontractor(s), if required, shall submit weekly certified payrolls online via the City's web-based labor compliance program. Developers shall be responsible for the compliance with these provisions by its Contractor and Subcontractors. City will withhold contract payments when payroll records are delinquent or deemed inadequate by City or another governmental entity, or when it is established after investigation by City or another governmental entity that underpayment has occurred.

9.2. Living Wage Ordinance requirements, as described in San Diego Municipal Code sections 22.4201 et. seq., also apply to this Agreement. Contractor must determine which per diem rate is highest for each classification of work (i.e., Prevailing Wage Rates or Living Wage rates), and pay their employees the highest of the two rates. Living Wages apply to workers who are not subject to Prevailing Wage Rates.

10. Changed Conditions. Developer may rely on maps, engineering reports, diagrams, drawings and similar reference data ("Reports") provided by the City or its representatives. However, non-technical data, interpretations, and opinions contained in such Reports are not to be relied on by Developers, and shall not be the basis of changed conditions. If Developers discover any unknown subsurface or latent physical conditions materially different from what is represented in the Reports that adversely impact the progress of the Work, then Developers shall notify the City in writing upon their discovery and before they are disturbed. If conditions warrant an adjustment in compensation or time, a change order will be processed in accordance with Section 11 of this Agreement.
11. Additional Work. If a change order or change to the scope of work for design services ("Additional Work") is desired by either party, Developers shall submit to the City's representative a proposal setting forth the desired change, any necessary extension of time for the Work and any adjustment to the cost of the Work. Developers may proceed with any change requested in the Project scope upon receipt of written approval by the City's representative, provided that the total estimated cost for the Work does not exceed the Maximum Cost. If any change in the Work, as described in any proposal, will result in exceeding the Maximum Cost, then such request for Additional Work will require approval of the San Diego City Council prior to performing the Additional Work. Developers shall not be reimbursed for any cost or time resulting from the negligence of Developers or Developers' agents, including but not limited to the Developers Contractor for the Work, its subcontractors, and Developers' design professionals for the Work.
12. Force Majeure. In the event the Work is delayed due to causes which are outside the control of the Parties and their agents, and could not be avoided by the exercise of due care, which may include, but is not limited to, war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of the Work, inability to obtain materials, labor or equipment, required extra Work, or other specific events as may be further described in the specifications, the Parties will be entitled to an extension in time equivalent to the length of delay.

13. Bonds. Developers shall provide, or cause the Contractor to provide, a Performance Bond and a Payment Bond in accordance with Government Code sections 66499.1 and 66499.2, respectively, for each phase of Work prior to commencement of such phase. Each bond shall be in the amount of 100% of the cost of construction of that phase of the Work, to guarantee faithful performance and payment of all Work, in a manner satisfactory to the City, and that all materials and workmanship will be free from original or developed defects. The bonds may be combined into a single document, if desired. If provided by the Contractor, a dual rider type bond shall be provided that names the City as an additional Obligee. The Performance and Payment Bonds shall be released in accordance with Government Code sections 66499.7. The City of Chula Vista shall be named as a third party beneficiary on all Performance Bonds for the Work.

14. Guarantees. All materials and equipment shall be new and of industrial quality. Developers shall guarantee, or cause Contractor to guarantee, all Work for a period of one (1) year after the date of substantial completion and shall repair and replace any and all Work, together with any other Work which may be displaced in so doing, that may prove defective in workmanship and/or materials within the one (1) year period, without expense whatsoever to the City, ordinary wear and tear and usual abuse or neglect excepted. In the event of failure to comply or making reasonable progress towards complying with the abovementioned conditions within one (1) week after being notified in writing, the City may repair any defects or take other corrective action at the expense of Developer or Contractor who hereby agrees to pay the costs and charge therefore immediately upon demand. Developer or Contractor shall transfer to the City any and all manufacture warranties and provide operating manuals prior to the City's acceptance of the Work.

15. Notice. Any notice to be given or other document to be delivered by any Party to the other hereunder, may be delivered in person, or may be deposited in the United States mail in the State of California, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service or by e-mail and addressed to the party for whom intended, as follows:

If to City, to:

Public Utilities Director
9192 Topaz Way
San Diego, CA 92123

If to Developers, to:

Stephen M. Haase
Baldwin and Sons, LLC
610 West Ash Street, Suite 1500
San Diego, CA 92101

Jeff O'Connor
Otay Land Company, LLC
1903 Wright Place, Suite 220
Carlsbad, CA 92008

Q. Sophie Yang
SSBT LCRE V, LLC
1 Lincoln Street, SFC9
Boston, MA 02111

16. Examination of Records. Developers shall preserve and maintain the following records, and allow the City to inspect and copy such records upon reasonable notice.

16.1 Plans and Specifications. Developers shall keep accurate and legible records on a set of Project blue-line prints of all changes to the Work which may have occurred during Project construction. All information necessary to maintain and/or service any concealed Work shall be noted on the record drawings. Prior to final payment, Developers shall deliver the “as-built” information to the City for each phase of the Work.

16.2 Costs. Developers shall keep an accurate record of the actual cost of the Work in accordance with generally accepted accounting procedures, including without limitation, all negotiated offers, proposals and invoices. Cost records and backup documentation shall be kept by Developers for five (5) years after the completion of the entirety of the Work.

17. Hold Harmless and Indemnify. Except as otherwise provided in Section 1.2 of this Agreement, each Developer agrees to defend, indemnify, protect and hold City and its agents, officers and employees harmless from and against any and all claims asserted or liability for personal injury or property damage arising from or connected with or are caused or claimed to be caused by the acts or omissions of that Developer, its agents, officers, or employees in performing the Work herein, and all expenses of investigating and defending against same, but only to the extent occurring prior to the completion of the Work. Each Developer’s duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of the City, its agents, officers or employees. Each Developer, in its sole discretion, will select defense counsel to defend the City and its agents, officers, and employees. The City may select its own defense counsel, but must do so at its own expense.

17.1 Indemnity for Design Professional Services. With respect to any design professional services provided under this Agreement, except as otherwise provided by Civil Code section 2782.8, each Developer shall indemnify and hold harmless the City, its officers and employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of the design professional, its officers or employees.

18. Attorney's Fees and Costs. Each Party shall be responsible for its own attorney's fees and costs. Attorney's fees and costs incurred pursuant to mediation under this Agreement are not recoverable.

19. Liability Insurance. At all times during the term of this Agreement, Developers shall maintain insurance coverage as required by Exhibit "D" hereby incorporated by reference, at Developers' sole cost and expense. Developers shall require the contractors to maintain the same insurance coverage. Before performing any work, Developers shall provide the City with copies of all Certificates of Insurance accompanied by all endorsements. Developers shall be responsible for the payment of all deductibles and self-insured retentions. Developers shall notify the City thirty (30) days prior to any material change to the policies of insurance.

20. Mediation:

20.1 Mandatory Mediation. If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association or any other neutral organization agreed upon before having recourse in a court of law.

20.2 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.

20.3 Mediation Results. Any resultant agreements 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 all parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

20.4 Judicial Reference. Should mediation described above not be successful in resolving any dispute, such dispute shall be resolved by general judicial reference pursuant to Code of Civil Procedure Sections 638 and 641 through 645.1, or any successor statutes thereto, and as modified or as otherwise provided in this Section. The referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The referee shall be the only trier of fact or law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other party, without the consent of all parties. The referee shall be a retired judge with experience in relevant real estate matters. The parties to the dispute shall meet to select the referee within 10 days after service of the initial complaint on all defendants. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if none, to the presiding judge of the Superior Court of San Diego County who shall select the referee. The referee shall have the power to hear

and dispose of motions in the same manner as a trial court judge, provided that if, prior to the selection of the referee, any provisional remedies are sought by the parties, such relief may be sought in the Superior Court of San Diego County.

21. Equal Employment Opportunities and Equal Opportunity Contracting. Developers Contractors shall comply with sections 21.1 through 21.5 below, if applicable under Government Code sections 65864 *et. seq.* and the Subdivision Map Act's vesting tentative map regulations.

21.1 Drug-Free Workplace. The Contractor agrees to comply with the City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference.

21.2 ADA Certification. The Contractor hereby certifies that it agrees to comply with the City's Americans With Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Agreement by this reference.

21.3 Compliance with the City's Equal Opportunity Contracting Program. The Contractor shall comply with the City's Equal Opportunity Contracting Program Contractor Requirements. The Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. The Contractor shall provide equal opportunity in all employment practices. The Contractor shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Contractor Requirements. Nothing in this Section shall be interpreted to hold the Contractor liable for any discriminatory practice of its Subcontractors.

21.4 Non-Discrimination Ordinance. The Contractor 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 Subcontractors, vendors or suppliers. The Contractor shall provide equal opportunity for Subcontractors to participate in subcontracting opportunities. The Contractor understands and agrees that violation of this clause shall be considered a material breach of the Construction Contract and may result in contract termination, debarment, and other sanctions. This language shall be in contracts between the Contractor and any Subcontractors, vendors and suppliers.

21.5 Compliance Investigations. Upon the City's request, the Contractor agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all Subcontractors, vendors, and suppliers that the Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the Contractor for each subcontract or supply contract. The Contractor further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517]. The Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against the Contractor up to and including contract

termination, debarment, and other sanctions. The Contractor further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

22. Assignment. Developers may transfer or assign the Work, in whole or in part, to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement with the prior written consent of the City and if the transfer or assignment of the rights under this Agreement includes in writing the assumption of Developers' duties, obligations, and liabilities arising under or from this Agreement. Upon assumption by such an assignee, the assigning Developer shall be released from all liability arising out of events after the assumption. City will not withhold consent to the assignment of this Agreement.
23. Successors-In-Interest. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Agreement have been succeeded by another entity, and all rights and obligations of the Parties signatory to this Agreement shall be vested and binding on their successors-in-interest.
24. Effective Date of Agreement. This Agreement shall become effective upon execution by all Parties.
25. Governing Law. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. Venue from actions arising out of the Agreement shall be in the County and City of San Diego, California.
26. Entire Agreement. This Agreement contains the entire understanding between all the Parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect. No provision of this Agreement may be amended, waived, or added except by an instrument in writing signed by the Parties hereto.
27. Incorporation of Exhibits and Recitals. All exhibits referenced in this Agreement and all recitals are incorporated herein by reference.
28. Counterparts. This Agreement may be executed in counterparts, which when taken together, shall constitute a single signed original as though all parties had executed the same page.

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IN WITNESS WHEREOF, the Agreement is executed by the City of San Diego, acting by and through its Mayor or his designee, pursuant to Ordinance 00-20464 authorizing such execution, and by Developers through its authorized officer.

DEVELOPERS

CITY OF SAN DIEGO

By: [Signature]
Stephen M. Haase
Baldwin & Sons LLC

By: [Signature]
Downs Prior
Principal Contract Specialist

Date: November 13, 2014

Date: 3/25/15

By: [Signature]
Erin Ruhe
Otay Land Company, LLC

Date: 11-12-14

By: [Signature]
Q. Sophie Yang
SSBT LCRE V, LLC

Date: Nov. 18, 2014

I HEREBY APPROVE the form
of the foregoing Agreement this 25 day
of March, 2015

JAN GOLDSMITH, City Attorney

By: [Signature]
Raymond Palmucci
Deputy City Attorney

EXHIBIT 'A'

Map Depicting the Work

EXHIBIT 'B'

Schedule for Completion of the Work

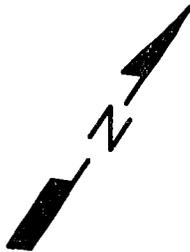
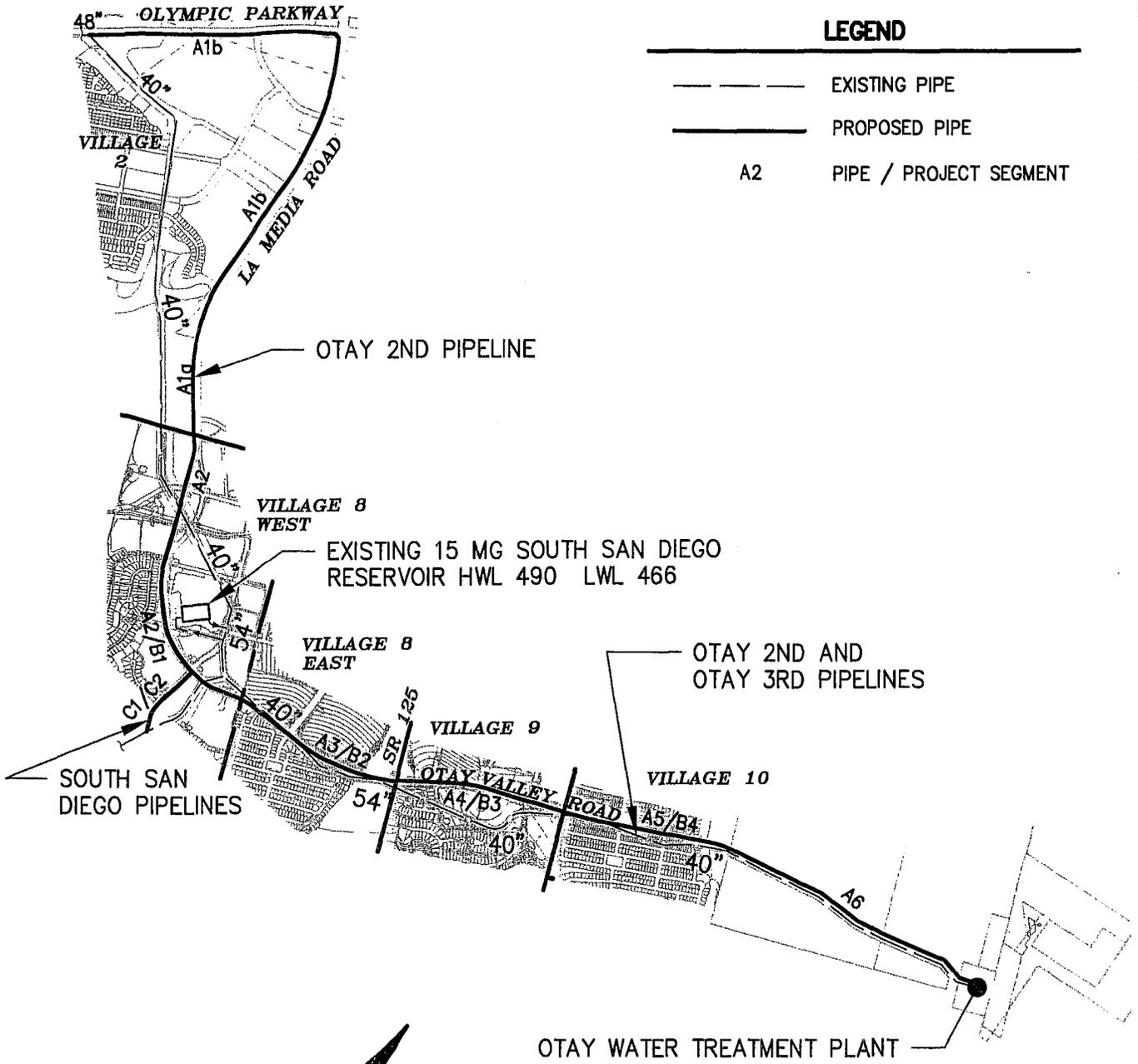
EXHIBIT 'C'

Cost Loaded Schedule

EXHIBIT 'D'

Insurance Requirements

PACIFIC\DWG\646373\AGREEMENT\EXHIBIT A.DWG 04-28-14 08:47:41 LAYOUT: AREA



SCALE: 1" = 2500'

EXHIBIT A

STUDY AREA MAP

EXHIBIT C
OTAY 2ND PIPELINE AND RELATED FACILITIES PARTICIPATION AGREEMENT
COST LOADED SCHEDULE (Updated 06-03-2014)

Phase	Segment	Location	Project	City Fair Share %	TOTAL COSTS, \$	CITY COSTS, \$										DEVELOPER COSTS, \$													
						Total	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	Total	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	Total	
1	A1a	Village 2	Phase 1 - Replace Ex 40" with 2500 LF of 48" (Otay 2nd)																										
			Construction	50	2,187,250	109,363	984,263	0	0	0	0	0	0	0	0	0	1,093,625	109,363	984,263	0	0	0	0	0	0	0	0	1,093,625	
			Design, Permit, Bond, PC (11.5%)	50	251,534	125,767	0	0	0	0	0	0	0	0	0	0	125,767	125,767	0	0	0	0	0	0	0	0	0	0	125,767
			Construction Supervision (6%)	50	131,235	6,562	59,056	0	0	0	0	0	0	0	0	0	116,309	6,562	59,056	0	0	0	0	0	0	0	0	0	116,309
			FACILITY SUBTOTAL		2,570,019	241,691	1,043,318	0	0	0	1,285,009	241,691	1,043,318	0	0	0	1,285,009												
			Inflation Factor (3%) ²	50	62,599	0	31,300	0	0	0	0	0	0	0	0	0	31,300	0	31,300	0	0	0	0	0	0	0	0	0	31,300
			Mgmt and Overhead (8%)	50	205,602	19,335	83,465	0	0	0	0	0	0	0	0	0	102,801	19,335	83,465	0	0	0	0	0	0	0	0	0	102,801
			Contingencies (10%)	50	257,002	24,169	104,332	0	0	0	0	0	0	0	0	0	128,501	24,169	104,332	0	0	0	0	0	0	0	0	0	128,501
			Field Order Allowances (5%)	50	128,501	12,085	52,166	0	0	0	0	0	0	0	0	0	64,250	12,085	52,166	0	0	0	0	0	0	0	0	0	64,250
			FACILITY TOTAL		3,223,722	297,280	1,314,581	0	0	0	1,611,861	297,280	1,314,581	0	0	0	1,611,861												
	Facility Upsizing ³	100	220,509	108,625	111,884	0	0	0	0	0	0	0	0	0	220,509	0	0	0	0	0	0	0	0	0	0	0	0		
	SEGMENT A1a TOTAL		3,444,231	405,905	1,426,465	0	0	0	0	0	0	0	0	0	1,832,370	297,280	1,314,581	0	0	0	0	0	0	0	0	0	1,611,861		
	A2	Village 8 West	Replace Ex 40" with 2230 LF of 48" and 2760 LF of 54" (Otay 2nd)																										
			Construction	50	3,959,450	197,973	1,781,753	0	0	0	0	0	0	0	0	1,979,725	197,973	1,781,753	0	0	0	0	0	0	0	0	0	1,979,725	
			Design, Permit, Bond, PC (11.5%)	50	455,337	227,668	0	0	0	0	0	0	0	0	0	0	227,668	227,668	0	0	0	0	0	0	0	0	0	0	227,668
			Construction Supervision (6%)	50	237,567	11,878	106,905	0	0	0	0	0	0	0	0	0	118,784	11,878	106,905	0	0	0	0	0	0	0	0	0	118,784
			FACILITY SUBTOTAL		4,652,354	437,519	1,888,658	0	0	0	2,326,177	437,519	1,888,658	0	0	0	2,326,177												
			Inflation Factor (3%) ²	50	113,319	0	56,660	0	0	0	0	0	0	0	0	0	56,660	0	56,660	0	0	0	0	0	0	0	0	0	56,660
			Mgmt and Overhead (8%)	50	372,188	35,002	151,093	0	0	0	0	0	0	0	0	0	186,094	35,002	151,093	0	0	0	0	0	0	0	0	0	186,094
			Contingencies (10%)	50	465,235	43,752	188,866	0	0	0	0	0	0	0	0	0	232,618	43,752	188,866	0	0	0	0	0	0	0	0	0	232,618
			Field Order Allowances (5%)	50	232,618	21,876	94,433	0	0	0	0	0	0	0	0	0	116,309	21,876	94,433	0	0	0	0	0	0	0	0	0	116,309
			FACILITY TOTAL		5,835,715	538,149	2,379,709	0	0	0	2,917,857	538,149	2,379,709	0	0	0	2,917,857												
	Facility Upsizing ³	100	878,976	432,988	445,988	0	0	0	0	0	0	0	0	0	878,976	0	0	0	0	0	0	0	0	0	0	0	0		
	SEGMENT A2 TOTAL		6,714,691	971,137	2,825,697	0	0	0	0	0	0	0	0	0	3,796,833	538,149	2,379,709	0	0	0	0	0	0	0	0	0	2,917,857		
	B1	Village 8 West	Construct 90 LF of 48" and 2350 LF of 54" (Otay 3rd)																										
			Construction	0	2,352,350	0	0	0	0	0	0	0	0	0	0	0	235,235	2,117,115	0	0	0	0	0	0	0	0	0	2,352,350	
			Design, Permit, Bond, PC (11.5%)	0	270,520	0	0	0	0	0	0	0	0	0	0	0	270,520	0	0	0	0	0	0	0	0	0	0	0	270,520
			Construction Supervision (6%)	0	141,141	0	0	0	0	0	0	0	0	0	0	0	14,114	127,027	0	0	0	0	0	0	0	0	0	0	141,141
FACILITY SUBTOTAL				2,764,011	0	0	0	0	0	0	0	0	0	0	0	519,869	2,244,142	0	0	0	0	0	0	0	0	0	0	2,764,011	
Inflation Factor (3%) ²			0	67,324	0	0	0	0	0	0	0	0	0	0	0	0	67,324	0	0	0	0	0	0	0	0	0	0	67,324	
Mgmt and Overhead (8%)			0	221,121	0	0	0	0	0	0	0	0	0	0	0	41,590	179,531	0	0	0	0	0	0	0	0	0	0	221,121	
Contingencies (10%)			0	276,401	0	0	0	0	0	0	0	0	0	0	0	51,987	224,414	0	0	0	0	0	0	0	0	0	0	276,401	
Field Order Allowances (5%)			0	138,201	0	0	0	0	0	0	0	0	0	0	0	25,993	112,207	0	0	0	0	0	0	0	0	0	0	138,201	
FACILITY TOTAL				3,467,058	0	0	0	0	0	0	0	0	0	0	0	639,439	2,827,619	0	0	0	0	0	0	0	0	0	0	3,467,058	
Facility Upsizing ³	100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0			
SEGMENT B1 TOTAL		3,467,058	0	0	0	0	0	0	0	0	0	0	0	639,439	2,827,619	0	0	0	0	0	0	0	0	0	0	3,467,058			
C1	Village 8 West	Replace Ex 33" with 1800 LF of 48" (SSD Pipeline)																											
		Construction	14	1,104,950	15,469	139,224	0	0	0	0	0	0	0	0	154,693	95,026	855,231	0	0	0	0	0	0	0	0	0	950,257		
		Design, Permit, Bond, PC (11.5%)	14	127,069	17,790	0	0	0	0	0	0	0	0	0	0	17,790	109,280	0	0	0	0	0	0	0	0	0	0	109,280	
		Construction Supervision (6%)	14	66,297	928	8,353	0	0	0	0	0	0	0	0	0	9,282	5,702	51,314	0	0	0	0	0	0	0	0	0	57,015	
		FACILITY SUBTOTAL		1,298,316	34,187	147,577	0	0	0	0	0	0	0	0	0	181,764	210,007	906,545	0	0	0	0	0	0	0	0	0	1,116,552	
		Inflation Factor (3%) ²	14	31,624	0	4,427	0	0	0	0	0	0	0	0	0	4,427	0	27,196	0	0	0	0	0	0	0	0	0	27,196	
		Mgmt and Overhead (8%)	14	103,865	2,735	11,806	0	0	0	0	0	0	0	0	0	14,541	16,801	72,524	0	0	0	0	0	0	0	0	0	89,324	
		Contingencies (10%)	14	129,832	3,419	14,758	0	0	0	0	0	0	0	0	0	18,176	21,001	90,655	0	0	0	0	0	0	0	0	0	111,655	
		Field Order Allowances (5%)	14	64,916	1,709	7,379	0	0	0	0	0	0	0	0	0	9,088	10,500	45,327	0	0	0	0	0	0	0	0	0	55,828	
		FACILITY TOTAL		1,628,553	42,050	185,947	0	0	0	0	0	0	0	0	0	227,997	258,308	1,142,247	0	0	0	0	0	0	0	0	0	1,400,555	
Facility Upsizing ³	100																												

Phase	Segment	Location	Project	City Fair Share %	TOTAL COSTS, \$	CITY COSTS, \$										DEVELOPER COSTS, \$												
					Total	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	Total	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	Total	
2	A1b	Village 2	Phase 2 - Replace Ex 40" with 8308 LF of 48" (Otay 2nd)																									
			Construction	50	11,292,782	0	0	2,973,196	2,973,196	0	0	0	0	0	0	0	5,946,391	0	0	2,973,196	2,973,196	0	0	0	0	0	0	5,946,391
			Design, Permit, Bond, PC (11.5%)	50	1,367,670	0	0	341,917	341,917	0	0	0	0	0	0	0	683,835	0	0	341,917	341,917	0	0	0	0	0	0	683,835
			Construction Supervision (6%)	50	713,567	0	0	178,392	178,392	0	0	0	0	0	0	0	356,783	0	0	178,392	178,392	0	0	0	0	0	0	356,783
			FACILITY SUBTOTAL		13,974,019	0	0	3,493,505	3,493,505	0	0	0	0	0	0	0	6,987,009	0	0	3,493,505	3,493,505	0	0	0	0	0	0	6,987,009
			Inflation Factor (3%) ¹	50	1,073,393	0	0	212,754	323,942	0	0	0	0	0	0	0	536,697	0	0	212,754	323,942	0	0	0	0	0	0	536,697
			Mgmt and Overhead (8%)	50	1,117,922	0	0	279,480	279,480	0	0	0	0	0	0	0	558,961	0	0	279,480	279,480	0	0	0	0	0	0	558,961
			Contingencies (10%)	50	1,397,402	0	0	349,350	349,350	0	0	0	0	0	0	0	698,701	0	0	349,350	349,350	0	0	0	0	0	0	698,701
			Field Order Allowances (5%)	50	698,701	0	0	174,675	174,675	0	0	0	0	0	0	0	349,350	0	0	174,675	174,675	0	0	0	0	0	0	349,350
			FACILITY TOTAL		18,261,436	0	0	4,509,765	4,620,953	0	0	0	0	0	0	0	9,130,718	0	0	4,509,765	4,620,953	0	0	0	0	0	0	9,130,718
Facility Upsizing ²	100	1,256,275	0	0	618,855	637,420	0	0	0	0	0	0	0	1,256,275	0	0	0	0	0	0	0	0	0	0	1,256,275			
SEGMENT A1b TOTAL		19,517,712	0	0	5,128,620	5,258,373	0	0	0	0	0	0	0	10,386,993	0	0	4,509,765	4,620,953	0	0	0	0	0	0	9,130,718			
PHASE 2 TOTAL					19,517,712	0	0	5,128,620	5,258,373	0	0	0	0	0	10,386,993	0	0	4,509,765	4,620,953	0	0	0	0	0	0	9,130,718		
3	A3	Village 8 East	Replace Ex 40" with 2210 LF of 54" (Otay 2nd)																									
			Construction	50	1,461,626	0	0	0	0	365,407	365,407	0	0	0	0	0	730,813	0	0	0	0	365,407	365,407	0	0	0	0	730,813
			Design, Permit, Bond, PC (11.5%)	50	168,087	0	0	0	0	42,022	42,022	0	0	0	0	0	84,043	0	0	0	0	42,022	42,022	0	0	0	0	84,043
			Construction Supervision (6%)	50	87,698	0	0	0	0	21,924	21,924	0	0	0	0	0	43,849	0	0	21,924	21,924	0	0	0	0	0	0	43,849
			FACILITY SUBTOTAL		1,717,411	0	0	0	0	429,353	429,353	0	0	0	0	0	858,705	0	0	0	0	429,353	429,353	0	0	0	0	858,705
			Inflation Factor (3%) ¹	50	244,545	0	0	0	0	53,888	68,385	0	0	0	0	0	122,272	0	0	53,888	68,385	0	0	0	0	0	0	122,272
			Mgmt and Overhead (8%)	50	137,393	0	0	0	0	34,348	34,348	0	0	0	0	0	68,696	0	0	34,348	34,348	0	0	0	0	0	0	68,696
			Contingencies (10%)	50	171,741	0	0	0	0	42,935	42,935	0	0	0	0	0	85,871	0	0	42,935	42,935	0	0	0	0	0	0	85,871
			Field Order Allowances (5%)	50	85,871	0	0	0	0	21,468	21,468	0	0	0	0	0	42,935	0	0	21,468	21,468	0	0	0	0	0	0	42,935
			FACILITY TOTAL		2,356,960	0	0	0	0	581,991	596,488	0	0	0	0	0	1,178,480	0	0	581,991	596,488	0	0	0	0	0	0	1,178,480
Facility Upsizing ²	100	548,835	0	0	0	0	270,362	278,473	0	0	0	0	0	548,835	0	0	0	0	0	0	0	0	0	0	548,835			
SEGMENT A3 TOTAL		2,905,794	0	0	0	0	852,353	874,961	0	0	0	0	0	1,727,314	0	0	581,991	596,488	0	0	0	0	0	0	1,178,480			
PHASE 3 TOTAL					6,000,216	0	0	0	0	852,353	874,961	0	0	0	1,727,314	0	0	2,110,169	2,162,733	0	0	0	0	0	0	4,272,902		
4	A4	Village 9	Replace Ex. 40" with 2770 LF of 54" (Otay 3rd)																									
			Construction	50	1,776,225	0	0	0	0	296,038	296,038	296,038	0	0	0	888,113	0	0	0	0	0	296,038	296,038	296,038	0	0	888,113	
			Design, Permit, Bond, PC (11.5%)	50	204,266	0	0	0	0	34,044	34,044	34,044	0	0	0	102,133	0	0	0	0	0	34,044	34,044	34,044	0	0	102,133	
			Construction Supervision (6%)	50	106,574	0	0	0	0	17,762	17,762	17,762	0	0	0	53,287	0	0	0	0	0	17,762	17,762	17,762	0	0	53,287	
			FACILITY SUBTOTAL		2,087,064	0	0	0	0	347,844	347,844	347,844	0	0	0	1,043,532	0	0	0	0	0	347,844	347,844	347,844	0	0	1,043,532	
			Inflation Factor (3%) ¹	50	405,725	0	0	0	0	55,403	67,500	79,960	0	0	0	202,863	0	0	0	0	0	55,403	67,500	79,960	0	0	202,863	
			Mgmt and Overhead (8%)	50	166,965	0	0	0	0	27,828	27,828	27,828	0	0	0	83,483	0	0	0	0	0	27,828	27,828	27,828	0	0	83,483	
			Contingencies (10%)	50	208,706	0	0	0	0	34,784	34,784	34,784	0	0	0	104,353	0	0	0	0	0	34,784	34,784	34,784	0	0	104,353	
			Field Order Allowances (5%)	50	104,353	0	0	0	0	17,392	17,392	17,392	0	0	0	52,177	0	0	0	0	0	17,392	17,392	17,392	0	0	52,177	
			FACILITY TOTAL		2,972,815	0	0	0	0	483,251	495,348	507,808	0	0	0	1,486,407	0	0	0	0	0	483,251	495,348	507,808	0	0	1,486,407	
Facility Upsizing ²	100	702,576	0	0	0	0	227,305	234,124	241,148	0	0	0	702,576	0	0	0	0	0	0	0	0	0	0	0	702,576			
SEGMENT A4 TOTAL		3,675,391	0	0	0	0	710,555	729,472	748,956	0	0	0	2,188,983	0	0	0	0	0	483,251	495,348	507,808	0	0	1,486,407				
PHASE 4 TOTAL					7,594,038	0	0	0	0	710,555	729,472	748,956	0	0	2,188,983	0	0	0	0	1,757,255	1,801,245	1,846,553	0	0	5,405,055			
4	B3	Village 9	Construct 2730 LF of 54" (Otay 3rd)																									
			Construction	0	2,341,350	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	780,450	780,450	780,450	0	0	2,341,350	
			Design, Permit, Bond, PC (11.5%)	0	269,255	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	89,752	89,752	89,752	0	0	269,255	
			Construction Supervision (6%)	0	140,481	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	46,827	46,827	46,827	0	0	140,481	
			FACILITY SUBTOTAL		2,751,086	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	917,029	917,029	917,029	0	0	2,751,086	
			Inflation Factor (3%) ¹	0	534,811	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	146,059	177,952	210,801	0	0	534,811	
			Mgmt and Overhead (8%)	0	220,087	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	73,362	73,362	73,362	0	0	220,087	
			Contingencies (10%)	0	275,109	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	91,703	91,703	91,703	0	0	275,109	
			Field Order Allowances (5%)	0	137,554	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	45,851	45,851	45,851	0	0	137,554	
			FACILITY TOTAL		3,918,647	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1,274,004	1,305,897	1,338,746	0	0	3,918,647	
Facility Upsizing ²	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0				
SEGMENT B3 TOTAL		3,918,647	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1,274,004	1,305,897	1,338,746	0	0	3,918,647				
PHASE 4 TOTAL					7,594,038	0	0	0	0	710,555	729,472	748,956	0	0	2,188,983	0	0	0	0	1,757,255	1,801,245	1,846,553	0	0	5,405,055			

Exhibit D
Insurance Requirements

D-1 Required Insurance: Developers shall obtain, and maintain in full force throughout the duration of the Work, insurance as called for below, with insurance carriers acceptable to the City and shall furnish certificate(s) of insurance to the City prior to commencing the Work. As a minimum requirement of acceptability, the insurance carrier shall be duly authorized by the California Insurance Commissioner to transact the business of insurance in the State of California. Except for the State Compensation Insurance Fund, insurance coverage must be from an insurance carrier licensed in the State of California and rated "A-" and "VI" or better by the A.M. Best Key Rating Guide. The required insurance policies and the certificate(s) of insurance shall contain the endorsements listed in Paragraph D-2 below.

D-1.1 Workers' Compensation and Employer's Liability Insurance.

D-1.1.1 Workers' Compensation in compliance with the applicable state and federal laws.

D-1.1.2 Employer's Liability:

Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each employee
Bodily Injury by Disease	\$1,000,000 policy limit

Developers will provide a Worker's Compensation certificate of insurance that states: "Workers' Compensation applies to enrolled parties of Developers Wrap-Up Insurance Program and does extend to employees of Developers."

D-1.2 Commercial General Liability Insurance written on ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from premises and operations, XCU (explosion, underground, and collapse), independent contractors, products/completed operations, personal injury and advertising injury, 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 policy coverage shall be on an occurrence basis and in amounts not less than the following limits of liability:

General Annual Aggregate Limit

(Other than Products/Completed Operations)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

D-1.3 Contractor shall provide at its expense 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 \$1,000,000 combined single limit per accident, covering bodily injury and property damage for owned, non-owned and hired automobiles.

D-2 Required Endorsements: The following endorsements shall be included in the insurance policies and certificates of insurance called for in Paragraph D-1 above, as indicated below.

D-2.1 Workers' Compensation and Employer's Liability insurance endorsements:

D-2.1.1 Cancellation. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

D-2.1.2 Waiver of Subrogation. The policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City, and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured.

D-2.2 Commercial General Liability Insurance Endorsements:

D-2.2.1 Additional Insureds. 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: (a) Ongoing operations performed by you or on your behalf, (b) Your products, (c) Your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled, or used by you.

D-2.2.2 Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives as respects operations 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 Developers' insurance and shall not contribute to it.

D-2.2.3 Cancellation. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

D-2.2.4 Severability of Interest. The policy or policies must be endorsed to provide that Developers' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

D-2.3 Automobile Liability Insurance Endorsements:

D-2.3.1 Additional Insureds. 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 Developers.

D-2.3.2 Cancellation. Except as provided for under California law, the policy or policies must be endorsed to provide that the City is entitled to thirty (30) days prior written notice ten (10) days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

D-2.3.3 Severability of Interest. The policy or policies must be endorsed to provide that Developers' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

D-3 Surplus Lines. A policy by a Surplus Lines insurer is presumptively invalid unless the insurer is on the List of Eligible Surplus Line Insurers [LESLI List] maintained by the California Department of Insurance. The LESLI List may be found at:

<http://www.insurance.ca.gov/FAD/Surplusl.htm>

All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein.