K166573

DUPLICATE ORIGINAL

REIMBURSEMENT AGREEMENT WITH PARDEE HOMES FOR PROJECT NOS. OM T-3.1, DENNERY ROAD-(Black Coral Way to Topsail Drive, OM T-3.3, DENNERY ROAD-(Triple Pipe Crossing), AND OM T-4.1, DEL SOL BOULEVARD-(west boundary of elementary school to Surfpoint Way), IN THE OTAY MESA COMMUNITY- REIMBURSEMENT AGREEMENT NO. 326206

THIS REIMBURSEMENT AGREEMENT No. 326206 (Agreement) is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation (City) and Pardee Homes, a a California Corporation] (Developer), (collectively the Parties), for reimbursement for purchase, design, and construction of Project Nos. OM T-3.1, DENNERY ROAD-(Black Coral Way to Topsail Drive, OM T-3.3, DENNERY ROAD-(Triple Pipe Crossing), and OM T-4.1, DEL SOL BOULEVARD-(west boundary of elementary school to Surfpoint Way), in the Otay Mesa Plan area in accordance with the Otay Mesa Public Facilities Financing Plan.

RECITALS

1. Developer owns real property in the Otay Mesa Community Plan Area (Property). Developer certifies that it is developing the Property subject to the requirements and conditions of the City Council of the City of San Diego (City Council).

2. On November 9, 1993, by San Diego Resolution R- 282975, City Council granted Vesting Tentative Map No. 88-0785 and on April 12, 1994 by San Diego Resolution R-283694, City Council granted Vesting Tentative Map No. VTM 86-1032 (VTM) subject to certain conditions determined to be necessary for Developer's development.

3. On March 11, 2014, by San Diego Resolution R-308811, the City Council adopted the OTAY MESA Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2014 (Financing Plan). The Financing Plan identifies Project Nos. OM T-3.1, DENNERY ROAD-(Black Coral Way to Topsail Drive, OM T-3.3, DENNERY ROAD-(Triple Pipe Crossing), and OM T-4.1, DEL SOL BOULEVARD-(west boundary of elementary school to Surfpoint Way), as shown in **Exhibit A**. This Agreement relates to a portion of Project Nos. OM T-3.1, a portion of Project OM T-4.1, and all of Project OM T-3.3 as depicted in **Exhibit B** and described in **Exhibit C**, which is referred to throughout this Agreement as the "Project."

4. The Financing Plan estimate of $825,000 for Project No. OM T-3.1, $750,000 for Project No. OM T-3.3, and $5,357,000 for Project No. OM T-4.1, minus the City's Administrative Costs (as defined in section 2.4.5), and minus City's equipment expenditures, constitutes the total and maximum City funds potentially available for reimbursement for Project Nos. OM T-3.1, OM T-3.3, and OM T-4.1. Of that amount, a maximum of $721,000 for Project No. OM T-3.1, $649,000 for Project No. OM T-3.3, and $441,000 for Project No. OM T-4.1 is available for reimbursement for the Project that is the subject of this Agreement (Maximum Funds); any amount in excess of this amount shall not be reimbursed through this Agreement and shall constitute a Non-Reimbursable Cost. Developer is not automatically entitled to the Maximum Funds or any other reimbursement. Developer must satisfy all terms of this Agreement to

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become eligible for any portion of the Maximum Funds if and as they are collected and become available for reimbursement.

5. Developer certifies that it has completed the design and construction of the Project and now seeks reimbursement from City in the final total amount of up to seven hundred twenty-one thousand dollars ($721,000) for Project No. OM T-3.1, six hundred forty-nine thousand dollars ($649,000) for Project No. OM T-3.3, and four hundred forty-one thousand dollars ($441,000) for Project No. OM T-4.1, including the payment of potential interest.

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

ARTICLE I. SUBJECT OF THE AGREEMENT

1.1 **Design and Construction of Project.** Developer certifies that it has completed the design and construction of an operational Project fully suited to the purpose for which it was intended and in accordance with approved Drawing Nos. 29794-D and 30533-D for Project No. OM T-3.1 and Project No. OM T-3.3, Drawing Nos. 29490-D and 28991-D for Project No. OM T-4.1, this Agreement, the Construction Documents, the Plans and Specifications, the Financing Plan, and any other applicable agreement.

1.2 **Reimbursement.** City agrees to reimburse Developer for the Project subject to the terms and conditions of this Agreement.

1.3 **Certification Regarding Past Acts.** There exist and have existed certain requirements that City includes in its construction contracts for public improvements. These requirements are intended to protect the City and the public who benefit from these public improvements from harm, including physical and monetary, as well as to ensure that Developer and/or the contractor building the public improvement follow all laws related to such contracts and construction. This certification is intended to act as a guarantee by Developer to City that such requirements were met by the Developer during its design and construction of the Project. When, throughout this Agreement, Developer certifies that an action has occurred, omission was not made, a standard was met, or a law was followed and such action did not occur, omission happened, such standard was not met, or such law was not followed, then Developer shall indemnify and hold harmless the City from any claim, demand, cause of action, cause, expense, losses, attorney fees, injuries, or payments arising out of or related to the act not done, the omission which occurred, the standard not met, or the law not followed in accordance with Article X. This section shall not act to limit the remedies otherwise available to the City under the law.

1.4 **Final Completion.** Developer shall provide verification to the City that the Project received Final Completion by providing all of the following: approved as-built plans, a signed final approved grading or public right-of-way permit, an acceptable capitalization form, and any required certificate of occupancy and/or property transfers (as defined in Section 8.1).

ARTICLE II. REIMBURSABLE COST

2.1 **Reimbursable Cost.** The final total cost for which Developer seeks reimbursement from City for the Project, including the Project Costs (as defined in Section 2.2) and Developer's Administrative Costs (as defined in Section 2.3) is seven hundred twenty-one thousand dollars ($721,000) for Project No. OM T-3.1, six hundred forty-nine thousand dollars ($649,000) for Project No. OM T-3.3, and four hundred forty-one thousand dollars ($441,000) for Project No. OM T-4.1 including interest (as defined in Section 2.4.6) (Reimbursable Cost). Developer acknowledges and agrees that it may not request, and is not entitled to any additional reimbursement in any form (including FBA credits) from City for the Project under any circumstance.

2.1.1 ***Non-Reimbursable Costs.*** Non-Reimbursable Costs include: (i) Any cost or expenditure in excess of the Maximum Funds or the Reimbursable Cost; (ii) any cost or expenditure identified in this Agreement as a Non-Reimbursable Cost; (iii) any cost or expenditure to remedy Defective Work (as defined in Section 13.1); (iv) any cost or expenditure caused by Developer's or Developer's consultants', contractors', subcontractors', employees', or other agents' (collectively, "Developer's agents") negligence, omissions, delay, or Default; (v) any cost of substituted products, work or services not necessary for completion of the Project, unless requested and approved by City in writing; (vi) any cost or expenditure not approved by City in the manner required by this Agreement and/or the Charter of the City of San Diego (Charter) and rules, regulations, or laws promulgated thereunder; (vii) any cost not supported by proper invoicing or other documentation as reasonable and necessary; and (viii) any cost in excess of FBAs actually collected by the City and available for reimbursement to Developer for the design and construction of the Project. Additionally, the fair value as reasonably determined by City of any property that is destroyed, lost, stolen, or damaged rendering it undeliverable, unusable, or inoperable for City constitutes a Non-Reimbursable Cost. Refundable deposits, such as utility deposits, also constitute a Non-Reimbursable Cost.

2.2 **Project Costs.** Project Costs are Developer's reasonable costs of purchase, design and construction necessary for the Project as depicted in **Exhibit D**. Project Costs do not include Developer's Administrative Costs (as defined in Section 2.3).

2.3 **Developer's Administrative Costs.** Developer's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures and shall total a flat five percent (5%) of Developer's Project Costs.

2.4 **Reimbursement to Developer.**

2.4.1 ***Reimbursement Request.*** Developer has submitted to City a written request for reimbursement for the Reimbursable Cost (Reimbursement Request). Developer has submitted all Reimbursement Requests and agrees that it will not submit any additional Reimbursement Requests for the Project after the Effective Date of this Agreement.

2.4.2 ***Type of Reimbursement.*** Developer shall be entitled to cash reimbursement, or FBA credits, for the Reimbursable Costs expended by Developer and approved by

City in accordance with this Agreement and the Financing Plan. The Financing Plan currently has the Reimbursable Cost scheduled for reimbursement beginning in or after Fiscal Year 2017 for Project No. OM T-3.1, Fiscal Year 2018 for Project No. OM T-3.3 and Fiscal Year 2018 for Project No. OM T-4.1. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. Developer shall not receive cash reimbursement unless there are sufficient funds available to reimburse Developer, in whole or in part, from the FBA. If sufficient funds are unavailable in the FBA, City shall reimburse Developer only if and as funds accrue in the FBA for the Project. Where FBA credits are requested and approved by City, credit reimbursement shall be made in accordance with the schedule in the Financing Plan. Developer acknowledges and agrees that in the event there are no additional FBA funds available for collection by City to fund the Project, Developer shall not be reimbursed by City for any portion of Developer's outstanding costs or expenditures, and Developer expressly agrees to fully absorb all such outstanding costs or expenditures without any reimbursement from City.

2.4.3 ***Funds for Reimbursement.*** Developer shall only be entitled to reimbursement as set forth in this Agreement and only from FBA funds collected by City in accordance with the Financing Plan, as it may be amended, in the amount set forth in this Agreement and only as allocated for the Project, if and as such funds become available, after the appropriate deductions and expenditures are made, in the priority of reimbursement described in Section 2.4.9.

2.4.4 ***Amount of Reimbursement.*** Developer shall be eligible for reimbursement for Reimbursable Costs as identified in Section 2.1 subject to the terms of this Agreement.

2.4.5 ***City's Administrative Costs.*** City's Administrative Costs shall be paid prior to any reimbursement to Developer and shall consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Project; (ii) review contractor/subcontractor compliance with the City's Required Contracting Procedures; (iii) approve reimbursable costs for work performed during design/construction through Final Completion of the Project; and (iv) review project documentation to verify all costs related to the Project, inclusive of construction bid tabulations, contracts, and review of any cost allocation methods (City's Administrative Costs).

2.4.6 ***Interest.*** Interest shall begin to accrue from ninety (90) days after the time the submittal of a Reimbursement Request (as defined in Section 2.4.1) is accepted and approved by City, or the Effective Date of this Agreement, whichever is later, and shall continue to accrue until either the date FBA credits are made available for Developer's use or the date of cash reimbursement, whichever occurs first up to a maximum of $20,000 for Project No. OM T-3.1, a maximum of $18,000 for Project No. OM T-3.3, and a maximum of $12,000 for Project No. OM T-4.1. Interest shall accrue at the rate earned by the City Treasurer on funds allocated for the Project, not to exceed the assumed interest rate identified in the assumptions of the applicable Financing Plan, at the time the interest is accruing.

2.4.7 ***Method of Reimbursement.*** Developer shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Project [Reimbursement Request]. Reimbursement Requests for projects other than those covered by this Agreement must be submitted as separate requests. The Reimbursement Request must also include all relevant documents in accordance with this Section. City shall determine whether additional documentation is needed to support the Reimbursement Request or if the Reimbursement Request is otherwise incomplete, and shall notify Developer of such deficiencies within sixty (60) calendar days of Developer's Reimbursement Request submittal. Developer shall provide additional documentation within fourteen (14) calendar days of City's notification and request. However, even if City fails to notify Developer within sixty (60) calendar days regarding Developer's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Developer until City confirms receipt of all relevant documentation sufficient to support the Reimbursement Request. After all appropriate cost documentation has been received and City approves the Reimbursement Request [Reimbursement Request Approval], City shall reimburse Developer for those Reimbursable Costs within sixty (60) calendar days of the date of Reimbursement Request Approval provided that funds are available in the FBA for the Project and that the Project is scheduled in the Financing Plan for reimbursement at that time.

2.4.8 ***Verification of Reimbursement Request.*** Developer shall provide City with 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:

2.4.8.1 Developer shall submit one (1) copy of a Reimbursement Request (cover letter, invoice, and documentation) to the City's Senior Civil Engineer or City designee for work completed in accordance with the Plans and Specifications.

2.4.8.2 Prior to the approval of the Reimbursement Request, the Senior Civil Engineer or City designee shall check with City's Resident Engineer (RE) to verify whether the materials and work for which reimbursement is being requested have been installed and performed as represented in the Reimbursement Request, and that all construction invoices and change orders have been approved by the RE. Also, any disallowed costs should be noted. The RE shall review the Project on-site for quality of material and assurance and adherence to the bid list, contract estimates and Plans and Specifications. The Senior Civil Engineer or City designee shall work with the RE to review as-builts and BMPs, and verify that a lien release has been prepared.

2.4.8.3 The Senior Civil Engineer or City designee shall review the reimbursement request, as well as supporting cost documentation received from Developer, including soft costs related to the project, and City administrative costs. The Senior Civil Engineer shall also serve as the liaison between the RE and the Facilities Financing Project Manager [FF Project Manager].

2.4.8.4 After review and approval, the Senior Civil Engineer or City designee shall prepare a memorandum, including a summary schedule of requested and actual approved costs, to the FF Project Manager recommending the reimbursement amount including all construction invoices, and soft costs incurred to date, noting any costs to be disallowed and the reason for the disallowance. The Reimbursement Request shall be forwarded to the FF Project Manager with the memorandum recommending payment and identifying disallowed expenses, with a copy forwarded to the Developer.

2.4.8.5 The FF Project Manager shall verify that reimbursements are scheduled in the Financing Plan and verify FBA cash/credits are available for reimbursement.

2.4.8.6 Developer shall then submit an invoice to the City for the reimbursement amount approved by city.

2.4.9 ***Priority of Reimbursement.*** Reimbursement to Developer from the FBA for the Project will be subsequent to reimbursement of City's equipment purchases, Furniture Fixtures & Equipment, and City's Administrative Expenses incurred in connection with the Project or Financing Plan and FBA, but takes priority over any Developer Reimbursable Project added to the Financing Plan subsequent to the Effective Date (as defined in Section 17.1) of this Agreement, with the following exceptions:

2.4.9.1 Any State or Federally mandated project.

2.4.9.2 Appropriations for City administered, managed, and funded Capital Improvement Projects.

2.4.9.3 The FBA identifies other project(s) for funding in an earlier fiscal year than this Project prior to the Effective Date of this Agreement.

ARTICLE III. COMPETITIVE BIDDING, EQUAL OPPORTUNITY, AND EQUAL BENEFITS

3.1 **Competitive Bidding Certification.** Developer certifies it bid and awarded contracts to complete the Project in accordance with the Charter and the rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code and City Council Resolutions and Policies in effect at the time of bidding, as well as any expressly applicable public contract laws, rules, and regulations (Required Contracting Procedures). Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's

small and local business program for public works contracts, and the City's Equal Benefits Ordinance.

3.2 Non-Discrimination Requirements.

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

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

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

3.3 Equal Benefits. Any contracts entered into with respect to the Project prior to January 1, 2011 are not subject to the City's Equal Benefits Ordinance (San Diego Municipal Code sections 22.4301 – 22.4308). Any contracts entered into with respect to the Project as of

January 1, 2011 are subject to the Equal Benefits Ordinance. Therefore, for any contracts entered into as of January 1, 2011, Developer certifies that its contractor(s) and consultant(s) complied with the Equal Benefits Ordinance, and shall provide to City the Equal Benefits Ordinance Certification of Compliance attached as **Exhibit E** for each of its contractor(s) and consultants(s).

ARTICLE IV. PREVAILING WAGE

4.1 **Prevailing Wage.** Developer certifies that prevailing wages were paid for the Project to the extent required by the California Labor Code, the Charter of the City of San Diego and the rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code, City of San Diego resolutions and ordinances, and City of San Diego Council Policies, or if otherwise required by the City Council, at the time the Project was completed.

ARTICLE V. CONSULTANTS

5.1 **Selection of Consultant.** Developer's hiring of a consultant is subject to City's approval. Developer's consultants shall be subject to all State and City laws, including regulations and policies applicable to consultants retained directly by City. Developer shall cause the provisions in **Exhibit F** Consultant Provisions to be included in its consultant contract(s) for the Project. The selection of any consultant is subject to all applicable public contract laws, rules, and regulations, including but not limited to, the City Charter, the Municipal Code, Council Policies, and the City's Administrative Regulations. Developer shall work with City's Public Works Department to ensure that City's consultant selection procedures are met. Developer understands that it must comply with all consultant selection procedures applicable to the City unless a waiver of those procedures is obtained. Failure to adhere to all applicable consultant selection procedures is a material breach of this Agreement, and any contract awarded not in accordance with the City's consultant selection procedures shall be ineligible for reimbursement.

Provided that San Diego Ordinance No. OO-20501 is finally passed, the consultant selection requirements for the selection of Project Design Consultants for design consultant services are waived.

5.2 **Equal Benefits and Nondiscrimination.** The requirements of City's Equal Benefits Ordinance apply to Developer's consultant contracts entered into as of January 1, 2011. *See* Section 3.3. The nondiscrimination requirements in Section 3.2 apply to Developer's consultant contracts.

ARTICLE VI. DESIGN AND CONSTRUCTION STANDARDS

6.1 **Standard of Care.** Developer certifies that the professional services provided under this Agreement were performed in accordance with the standards customarily adhered to by experienced and competent professional design, architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

6.2 **Compliance with all Laws, Design Standards, and Construction Standards.** In all aspects of the design and construction of the Project, Developer certifies that it complied with all laws and the most current editions of the Green Book, the City's Standard Drawings and Design and Construction Standards, including those listed in **Exhibit G** as of the date the Project was completed. Developer certifies that it complied with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. Developer shall certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit H** "Certificate for Title 24/ADA Compliance."

6.3 **Imputed Knowledge.** Developer certifies that it was and remains 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 was or will be imputed to Developer to the fullest extent allowed by law.

6.4 **City Approval.** Developer certifies that it obtained City approval of design, plans, and specifications in the manner required in **Exhibit I**.

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

ARTICLE VII. CONSTRUCTION AND DRUG-FREE WORKPLACE

7.1 **Compliance with Construction Requirements.** Developer certifies that it completed construction of the Project in accordance with the obligations in **Exhibit J**, "Construction Obligations."

7.2 **Drug-Free Workplace.** Developer certifies that it complied 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. Developer shall certify to City that it provided and will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace in the form and content of **Exhibit K**. Developer certifies that its contractors complied with the requirements of City's Council Policy 100-17.

ARTICLE VIII. PROJECT ACCEPTANCE

8.1 **Final Completion.** Developer shall provide verification that the Project received Final Completion by providing the following:

8.1.1 ***Documents and Approvals.*** Submission and verification of approval of all documents required to be supplied by Developer to City pursuant to this Agreement, including as-built drawings, as-graded reports, warranties, operating and maintenance manuals and other Project Deliverables identified in **Exhibit L**. City signature and sign off as final approval on all grading or public right-of-way

permits, and if applicable, the issuance of a final Certificate of Occupancy for the Project.

8.1.2 ***Capitalization.*** The Developer shall submit a capitalization form with respect to the Project in a form acceptable to the Facilities Financing Project Manager. An example is provided as **Exhibit M**.

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

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

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

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

ARTICLE IX. BONDS AND OTHER ACCEPTABLE SECURITIES

9.1 **Warranty Bond.** Developer shall provide or require its construction contractor to provide City with a bond, letter of credit (LOC), cash or other acceptable security guaranteeing the Project during the warranty period in favor of City (Warranty Bond). Developer shall provide the Warranty Bond to City upon release of any applicable Performance Bond or commencement of the warranty periods, whichever occurs first.

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

9.3 **Licensing and Rating.** The bonds shall be duly executed by a responsible surety company admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this

Agreement, and have a minimum AM Best rating of "A-" to an amount not to exceed 10 percent of its capital and surplus.

9.4 **Insolvency or Bankruptcy.** If the surety on any bond or other security furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Developer shall within seven (7) calendar days thereafter substitute or require the substitution of another bond and surety, acceptable to City.

ARTICLE X. INDEMNIFICATION

10.1 **Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 10.2 and 10.3 below, to the fullest extent permitted by law, Developer shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Developer or Developer's agents), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Developer or Developer's agents, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Developer's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

10.2 **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Developer shall require its design professional to indemnify and hold harmless the City, its officers, and employees, from all claims, demands, or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Developer's design professional or design professional's officers or employees.

10.3 **Design Professional Services Defense.** The Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Developer's design professional or design professional's officers or employees.

10.4 **Insurance.** The provisions of this Article are not limited by the requirements of Article XI related to insurance.

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

10.6 **Indemnification for Liens and Stop Notices.** Developer shall keep the Project and underlying property free of any mechanic's liens and immediately secure the release of

any stop notices. Developer shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Developer shall be responsible for payment of all persons entitled to assert liens and stop notices.

ARTICLE XI. INSURANCE

11.1 **Type and Amount of Insurance.** Developer certifies that prior to commencement of construction it obtained and thereafter continuously maintained, as required in this Agreement, insurance for the Project duplicate to the City's standard insurance provisions set forth in **Exhibit N** (Required Insurance).

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

11.2.1 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.

11.3 **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.

11.4 **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.

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

11.6 **Obligation to Provide Documents.** Developer shall provide to City 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.

11.7 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy have been and shall remain the responsibility of Developer. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.

11.8 **Policy Changes.** Developer certifies it has not and shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.

11.9 **Reservation of Rights.** City reserves the right, from time to time, to review Developer's insurance coverage, limits, deductible and self insured retentions to determine if they are acceptable to City.

11.10 **Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Developer's obligations under this Agreement, including indemnity.

11.11 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal of required insurance during the term of this Agreement, and for a period of up to ten (10) years from the completion of the Project, may be treated by City as a material breach of this Agreement.

ARTICLE XII. WARRANTIES

12.1 **Warranties Required.** Developer certifies that it has required the construction contractor and its subcontractors and agents to provide the warranties listed below. This warranty requirement is not intended to exclude, and does not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warrantees shall be enforceable by and inure to the benefit of City.

12.1.1 ***Materials and Workmanship.*** All work on the Project is guaranteed against defective workmanship and all materials furnished by construction contractor or its agents is guaranteed against defects for a period of one (1) year from the date of the Project's Final Completion. Construction contractor shall replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.

12.1.2 ***New Materials and Equipment.*** Construction contractor and its agents warrant and guarantee that all materials and equipment incorporated into Project are new unless otherwise specified.

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

12.2 **Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Developer's and Developer's agents, material supplier's, installer's or manufacturer's own letterhead, addressed to City. All warranties shall be submitted in the format specified in this Section.

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

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

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

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

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

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

12.3 **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.

12.4 **Meetings.** During the one (1) year warranty period described in Section 12.3, Developer shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Public Works Project Manager and one or more Responsible Department representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems City discovers in design, construction, or furnishing, fixtures, and equipment of the Project or related furnishings, fixtures, and/or equipment during the one (1) year warranty period.

ARTICLE XIII. DEFECTIVE WORK

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

13.2 **City's Right to Correct.** If circumstances warrant, including an emergency or Developer's failure to adhere to Section 13.1, City may correct, remove, or replace the Defective Work. In such circumstances, Developer shall not recover costs associated with the Defective Work and shall reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.

13.3 **Defects Constitute Non-Reimbursable Costs.** All costs incurred by Developer or Developer's agents to remedy Defective Work are Non-Reimbursable Costs. If City has already reimbursed Developer for Defective Work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Developer's or the construction contractor's bond or against Developer if Developer has been paid in full.

13.4 **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.

13.5 **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.

13.6 **Resolution of Disputes.** If Developer and City are unable to reach agreement on disputed work, City may direct Developer to proceed with the work and compensate Developer for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation or as subsequently adjudicated or established in a court of law. Developer shall maintain and keep all records relating to disputed work in accordance with Article XIV.

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

ARTICLE XIV. RECORDS AND AUDITS

14.1 **Retention of Records.** Developer, consultants, contractors, and subcontractors shall maintain data and records related to this Project and Agreement for a period of not less than five (5) years following the Effective Date of this Agreement.

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

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

ARTICLE XV. NOTICES

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

15.2 **Effective Date of Notice.** Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (i) on personal delivery, (ii) on the second business day after mailing by Certified or Registered U.S. Mail, Return Receipt Requested, (iii) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (iv) upon documented successful transmission of facsimile.

15.3 **Recipients.** All demands or notices required or permitted to be given shall be delivered to all of the following:

15.3.1 Director, Public Works Department
City of San Diego
525 B Street, Suite 750 (M.S. #908A)
San Diego, California 92101
Facsimile No: (619) 533-5176

15.3.2 Facilities Financing Manager
Planning, Neighborhoods & Economic Development Departments
City of San Diego
1010 Second Avenue, Suite 600 M.S. #606F
San Diego, California 92101
Facsimile No: (619) 533-3687

15.3.3 Ms. Beth Fischer
Pardee Homes
Division President-San Diego
13400 Sabre Springs Parkway
Suite 200
San Diego, CA 92128
Facsimile No.: 858.794.2599

Thomas F. Steinke, Esq.
Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101
Facsimile No.: 619.702.6819

15.4 **Change of Address.** Notice of change of address shall be given in the manner set forth in Article XV.

ARTICLE XVI. MEDIATION

16.1 **Mandatory Mediation.** If dispute arises out of, or relates to the Project or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal

contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.

16.2 **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.

16.3 **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.

16.3.1 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.

16.3.2 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.

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

16.4 **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.

16.4.1 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.

16.4.2 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 XVII. MISCELLANEOUS PROVISIONS

17.1 **Term of Agreement.** Following the adoption of the City Council ordinance authorizing this Agreement and the subsequent execution of the same by the Parties, this Agreement shall be effective upon the date it is executed by City Attorney in accordance with 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.

17.2 **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 bond(s), 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.

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

17.4 **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.

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

17.6 **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.

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

17.8 **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.

17.9 **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.

17.10 **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.

17.11 **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.

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

17.13 **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.

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

17.15 **Exhibits.** Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.

17.16 **Compliance with Controlling Law.** Developer certifies that it required and will require Developer's 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 during inspection and land surveying work. In addition, Developer certifies that it required and will require Developer's 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.

17.17 **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 (California Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25). Developer certifies that it complied and will comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

17.18 **Jurisdiction, Venue, and Choice of Law.** The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

17.19 **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.

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

17.21 **Non-Assignment.** The Developer shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this Section shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

17.22 **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.

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

17.24 **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 Project.

17.25 **No Waiver.** No failure of either City or Developer to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such

covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

17.26 **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.

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

DUPLICATE ORIGINAL

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by the through its Mayor, pursuant to Ordinance No. OO-20501, authorizing such execution, and by Developer.

This Agreement was approved by the City Attorney this 22nd of September, 2015, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: 7.30.15

By: [signature]

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

Dated: 9/22/15

By: [signature]

PARDEE HOMES, a California corporation
(formerly known as Pardee Construction Company

Dated: 3/24/15

By: [signature]

Beth Fischer
Division President

02/27/15
Or.Dept: PLN-Facilities Financing

O- 20501

EXHIBIT A
Financing Plan Project Sheet

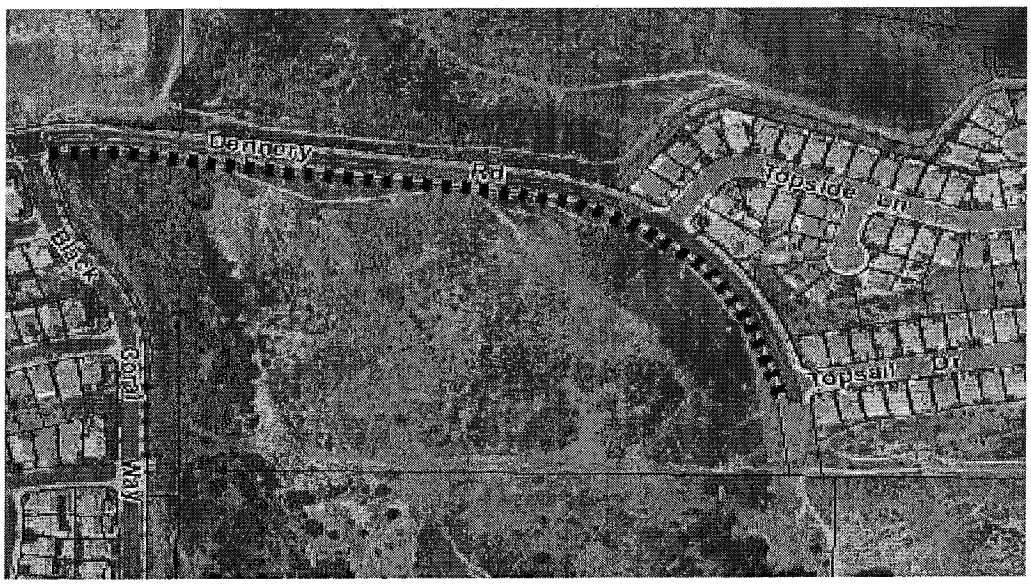
CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: **DENNERY ROAD - (Black Coral Way to Topsail Drive)**

PROJECT: **OM T-3.1**
DEPARTMENT: PUBLIC WORKS
WBS, CIP, or JO #: 52-657.0
COUNCIL DISTRICT: 8
COMMUNITY PLAN: OM

SOURCE	FUNDING:	EXPENDED	CONT APPROP	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
FBA-OM	**$825,000**						$825,000	
DIF-OM								
FBA-OM(w)								
FBA-OM(e)								
PDIF (w)								
PDIF (e)								
DEV/SUBD		$825,000					-$825,000	
OTHER								
TOTAL	$825,000	$825,000	$0	$0	$0	$0	$0	$0

SOURCE	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
FBA-OM								
DIF-OM								
FBA-OM(w)								
FBA-OM(e)								
PDIF (w)								
PDIF (e)								
DEV/SUBD								
OTHER								
TOTAL	$0	$0	$0	$0	$0	$0	$0	$0



CONTACT: TRANSPORTATION & STORM WATER TELEPHONE: (619) 533-3126 EMAIL: N/A

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: **DENNERY ROAD - (Black Coral Way to Topsail Drive)**

PROJECT: **OM T-3.1**

DEPARTMENT: PUBLIC WORKS
CIP or JO #: 52-657.0

COUNCIL DISTRICT: 8
COMMUNITY PLAN: OM

DESCRIPTION:

THIS PROJECT WOULD PROVIDE FOR THE REIMBURSEMENT OF DESIGN AND CONSTRUCTION OF DENNERY ROAD SOUTH FROM PALM AVENUE SOUTHERLY TO DEL SOL BOULEVARD AS A 3-LANE MAJOR STREET.

JUSTIFICATION:

THE OTAY MESA COMMUNITY PLAN TRANSPORTATION ELEMENT SUGGESTS THAT AN INTEGRATED TRANSPORTATION NETWORK WILL PROVIDE MOBILITY AND ACCESSIBILITY TO THE RESIDENTS AND BUSINESSES OF THE COMMUNITY. THIS PROJECT IS CONSISTENT WITH THE GOALS OF THE OTAY MESA COMMUNITY PLAN AND THE CITY'S GENERAL PLAN, AND IS NEEDED TO SERVE THE COMMUNITY AT BUILDOUT.

FUNDING ISSUES:

NOTES:

CONSTRUCTION IS COMPLETE AND THE DEVELOPER (PARDEE HOMES), SUBJECT TO THE TERMS AND CONDITIONS OF A REIMBURSEMENT AGREEMENT, WILL BE REIMBURSED FOR THIS PROJECT.

SCHEDULE:

PROJECT COMPLETED.

CONTACT: TRANSPORTATION & STORM WATER TELEPHONE: (619) 533-3126 EMAIL: N/A

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: **DENNERY ROAD - (Triple Pipe Crossing)**

PROJECT: **OM T-3.3**
DEPARTMENT: PUBLIC WORKS
COUNCIL DISTRICT: 8
WBS, CIP, or JO #: 52-657.0
COMMUNITY PLAN: OM

SOURCE	FUNDING:	EXPENDED	CONT APPROP	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
FBA-OM	**$750,000**							$750,000
DIF-OM								
FBA-OM(w)								
FBA-OM(e)								
PDIF (w)								
PDIF (e)								
DEV/SUBD		$750,000						-$750,000
OTHER								
TOTAL	$750,000	$750,000	$0	$0	$0	$0	$0	$0

SOURCE	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
FBA-OM								
DIF-OM								
FBA-OM(w)								
FBA-OM(e)								
PDIF (w)								
PDIF (e)								
DEV/SUBD								
OTHER								
TOTAL	$0	$0	$0	$0	$0	$0	$0	$0

CONTACT: TRANSPORTATION & STORM WATER TELEPHONE: (619) 533-3126 EMAIL: N/A

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: **DENNERY ROAD - (Triple Pipe Crossing)**

PROJECT: **OM T-3.3**

DEPARTMENT: PUBLIC WORKS
CIP or JO #: 52-657.0

COUNCIL DISTRICT: 8
COMMUNITY PLAN: OM

DESCRIPTION:

THIS PROJECT WOULD PROVIDE FOR REIMBURSEMENT OF DESIGN AND CONSTRUCTION OF A TRIPLE PIPE ARCH CULVERT BENEATH DENNERY ROAD WHERE THE ROAD SPANS DENNERY CANYON SO AS TO MAINTAIN THE CONTINUITY OF THE DENNERY CANYON OPEN SPACE LINK WITH THE OTAY RIVER VALLEY AND TO ACCOMMODATE WILDLIFE MOVEMENT.

JUSTIFICATION:

THE ALIGNMENT OF DENNERY ROAD WILL BISECT A KEY WILDLIFE CORRIDOR WITHIN THE OTAY MESA COMMUNITY. IN ORDER TO MINIMIZE THE DISTURBANCE, A WILDLIFE UNDER CROSSING PROVIDES AN UNOBSTRUCTED CORRIDOR FOR WILDLIFE MOVEMENT BETWEEN DENNERY CANYON AND THE OTAY RIVER VALLEY. THIS PROJECT IS CONSISTENT WITH THE GOALS OF THE OTAY MESA COMMUNITY PLAN AND THE CITY'S GENERAL PLAN, AND IS NEEDED TO SERVE THE COMMUNITY AT BUILDOUT.

FUNDING ISSUES:

THE DESIGN AND CONSTRUCTION OF THE TRIPLE PIPE CROSSING WAS PERFORMED BY THE SUBDIVIDER RESPONSIBLE FOR THE CONSTRUCTION OF DENNERY ROAD, WITH REIMBURSEMENT FROM THE FBA.

NOTES:

SCHEDULE:

PROJECT COMPLETED. REIMBURSEMENT FOR OPEN SPACE PORTION IS PENDING.

CONTACT: TRANSPORTATION & STORM WATER TELEPHONE: (619) 533-3126 EMAIL: N/A

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

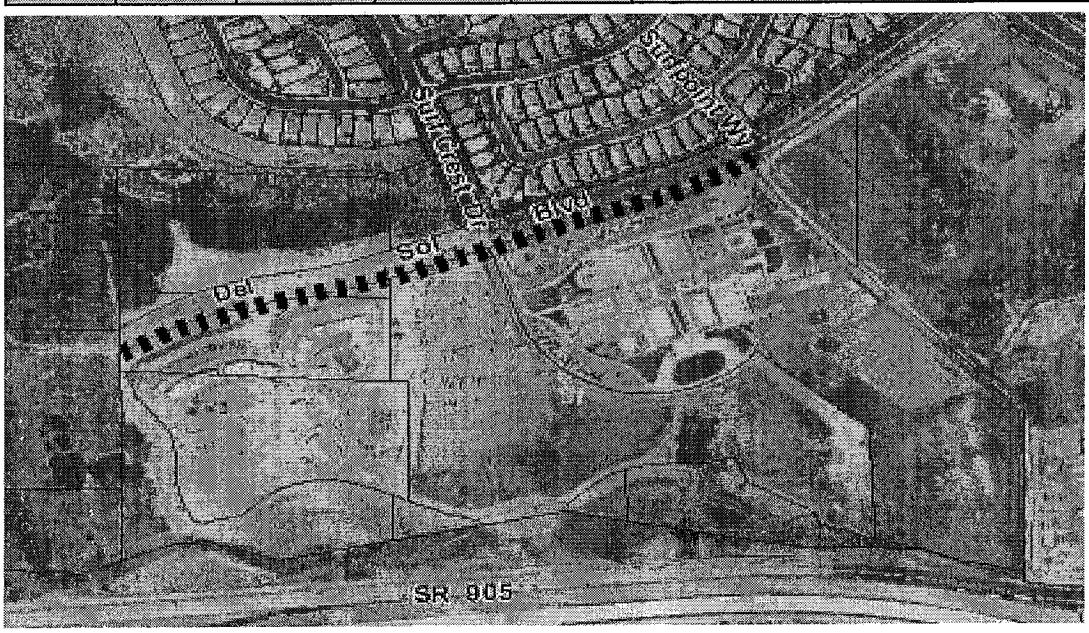
TITLE: DEL SOL BOULEVARD (west boundary of elementary school to Surf Crest Drive)

PROJECT: OM T-4.1
COUNCIL DISTRICT: 8
COMMUNITY PLAN: OM

DEPARTMENT: PUBLIC WORKS
WBS, CIP, or JO #: 52-492.0/S-00858

SOURCE	FUNDING:	EXPENDED	CONT APPROP	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
FBA-OM	**$483,598**							$483,598
DIF-OM								
FBA-OM(w)	**$4,873,402**	$3,073,402	$1,775,598	$24,402				
FBA-OM(e)								
PDIF (w)								
PDIF (e)								
DEV/SUBD								
OTHER								
TOTAL	**$5,357,000**	$3,073,402	$1,775,598	$24,402	$0	$0	$0	$483,598

SOURCE	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
FBA-OM								
DIF-OM								
FBA-OM(w)								
FBA-OM(e)								
PDIF (w)								
PDIF (e)								
DEV/SUBD								
OTHER								
TOTAL	$0	$0	$0	$0	$0	$0	$0	$0



CONTACT: TRANSPORTATION & STORM WATER TELEPHONE: (619) 533-3126 EMAIL: N/A

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: **DEL SOL BOULEVARD (west boundary of elementary school to Surf Crest Drive)**

PROJECT: **OM T-4.1**

DEPARTMENT: PUBLIC WORKS
CIP or JO #: 52-492.0/S-00858

COUNCIL DISTRICT: 8
COMMUNITY PLAN: OM

DESCRIPTION:

THIS PROJECT PROVIDES FOR THE DESIGN AND CONSTRUCTION OF DEL SOL BOULEVARD FROM SURFPOINT WAY TO APPROXIMATELY 50 FEET EASTERLY OF THE WESTERLY PROPERTY LINE OF THE VISTA DEL MAR SCHOOL (APPROXIMATELY 2,000 LF). THE IMPROVEMENTS CONSIST OF AN IMPROVED FOUR-LANE COLLECTOR ROAD TRANSITIONING TO A TWO-LANE RESIDENTIAL ROAD AND INCLUDES A NEW TRAFFIC SIGNAL AT SURFCREST DRIVE, RAISED MEDIAN, WATER, SEWER, STORM DRAIN, STREET LIGHTS, RETAINING WALLS, GUARDRAIL, SLOPE GRADING, LANDSCAPE AND IRRIGATION.

JUSTIFICATION:

THE OTAY MESA COMMUNITY PLAN TRANSPORTATION ELEMENT SUGGESTS THAT AN INTEGRATED TRANSPORTATION NETWORK WILL PROVIDE MOBILITY AND ACCESSIBILITY TO THE RESIDENTS AND BUSINESSES OF THE COMMUNITY. THIS PROJECT IS CONSISTENT WITH THE GOALS OF THE OTAY MESA COMMUNITY PLAN AND THE CITY'S GENERAL PLAN, AND IS NEEDED TO SERVE THE COMMUNITY AT BUILDOUT.

FUNDING ISSUES:

NOTES:

FRONTAGE THROUGH MSCP OPEN SPACE SUBJECT TO CONFIRMATION. IF DEVELOPMENT IS PERMITTED CONTIGUOUS TO THE ROADWAY, THEN THAT PORTION OF THE ROADWAY FRONTING DEVELOPMENT WILL BE FUNDED AS A SUBDIVISION EXACTION. IF CONSTRUCTED BY SUBDIVIDER, REIMBURSEMENT FROM FBA FUNDS WILL ONLY BE PROVIDED FOR THE OPEN SPACE PORTIONS SUBJECT TO THE TERMS OF A REIMBURSEMENT AGREEMENT.
SEE COMPANION PROJECTS: T-3.2 AND T-3.3.

SCHEDULE:

THIS PROJECT IS IN PROGRESS. SUBJECT TO THE TERMS AND CONDITIONS OF REIMBURSEMENT AGREEMENTS, THE DEVELOPERS (SAN YSIDRO SCHOOL DISTRICT AND PARDEE HOMES) WILL BE REIMBURSED FOR CONSTRUCTION OF A SEGMENT OF THE PROJECT.

CONTACT: TRANSPORTATION & STORM WATER TELEPHONE: (619) 533-3126 EMAIL: N/A

EXHIBIT B
Depiction of Project

EXHIBIT B1

DENNERY ROAD
(from Black Coral Way to Topsail Drive)
Project OM T-3.1
Otay Mesa
Public Facilities Financing Plan and Facilities Benefit Assessment

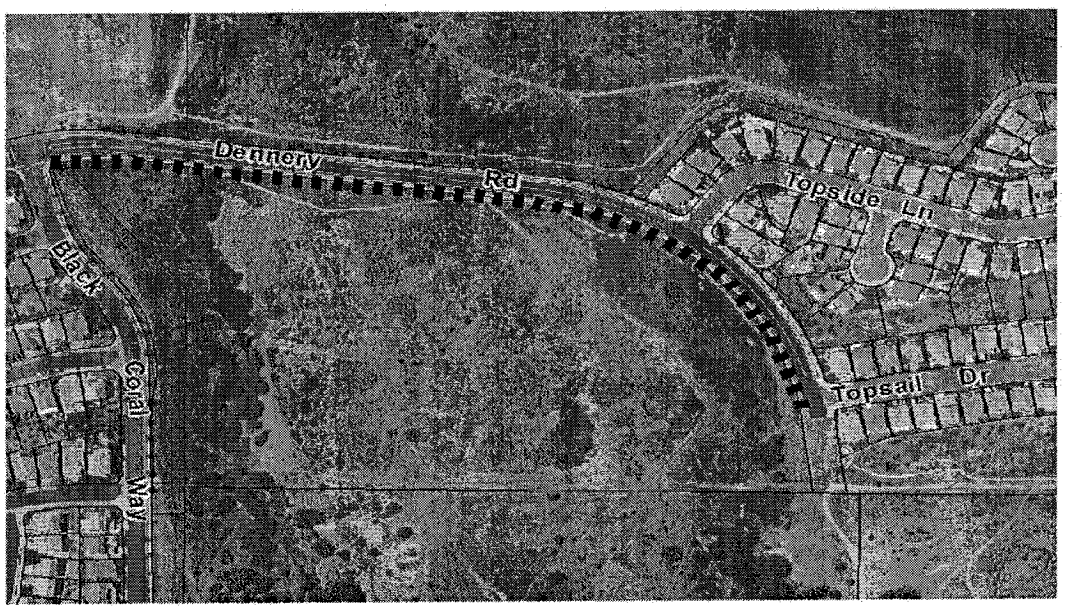


EXHIBIT B2

DENNERY ROAD
(Triple Pipe Crossing)
Project OM T-3.3
Otay Mesa
Public Facilities Financing Plan and Facilities Benefit Assessment

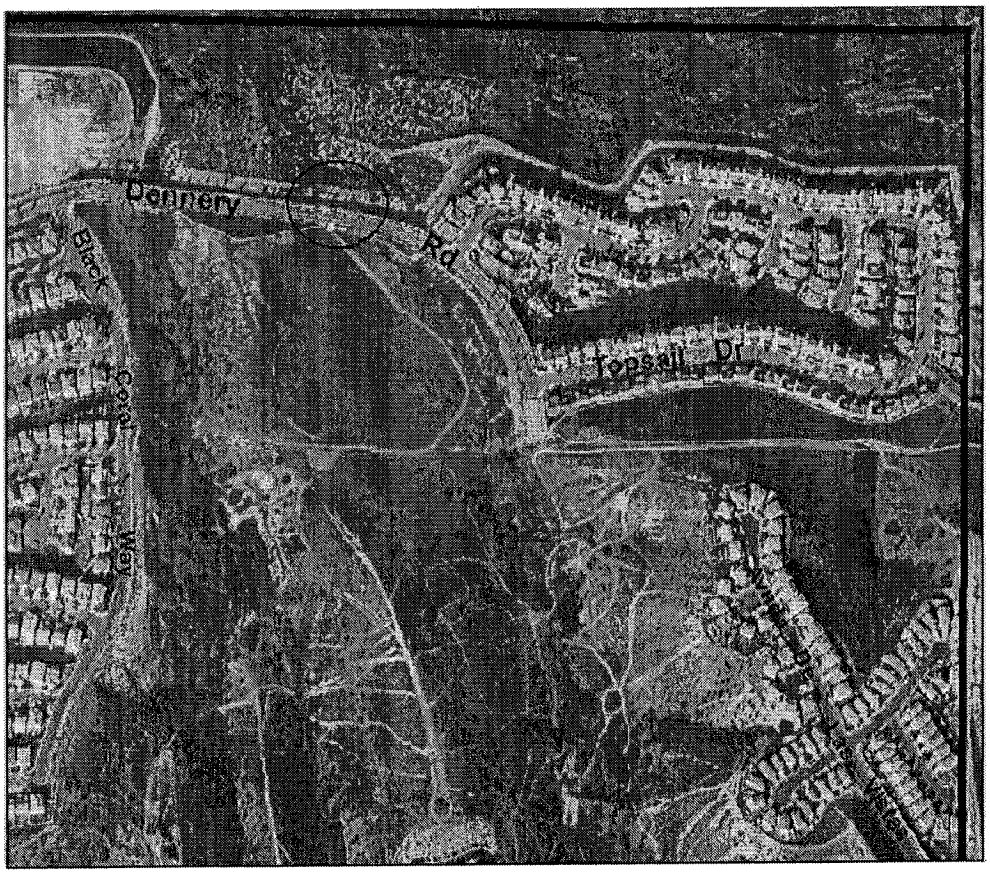


EXHIBIT B3

DEL SOL BOULEVARD
(west boundary of elementary school to Surfpoint Way)
Project OM T-4.1
Otay Mesa
Public Facilities Financing Plan and Facilities Benefit Assessment

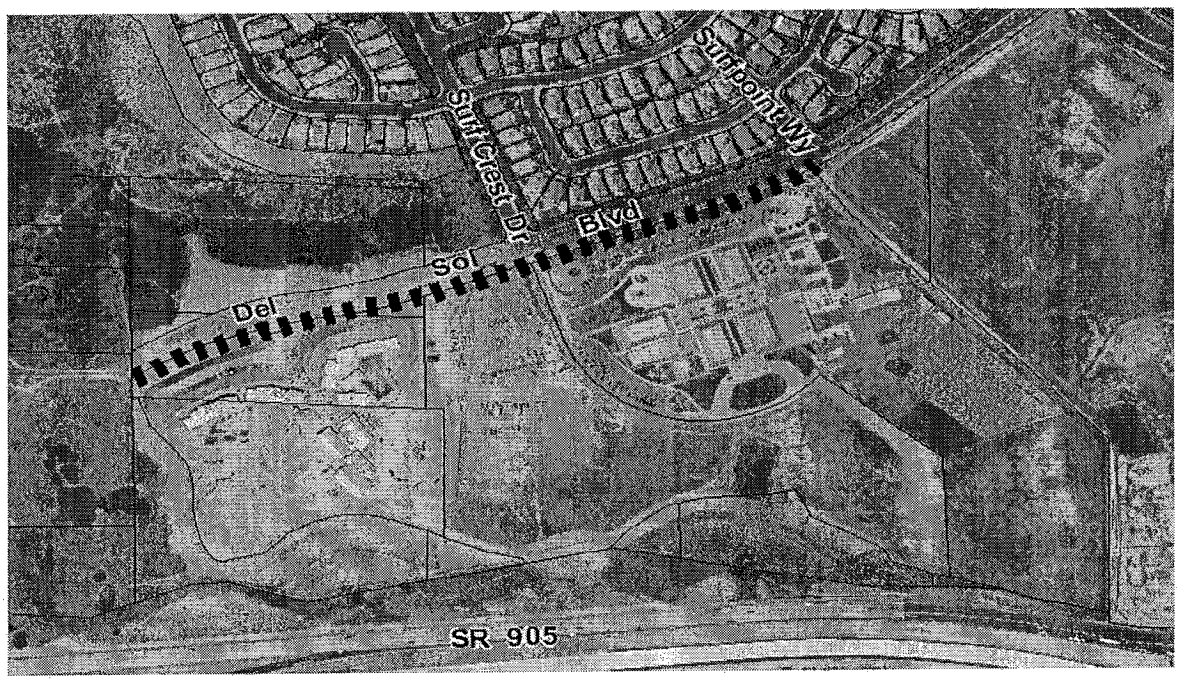


EXHIBIT C
Description of Project

EXHIBIT C1

(Project Description)

Dennery Road-Black Coral Way to Topsail Drive
Project No. OM T-3.1
Otay Mesa
Public Facilities Financing Plan and Facilities Benefit Assessment

Design and construct approximately 2900 linear feet of Dennery Road from Black Coral Way to Topsail Drive utilizing two vehicular lanes collector street standards for the street improvements.

EXHIBIT C2

(Project Description)

Triple Pipe Crossing-Dennery Road
Project No. OM T-3.3
Otay Mesa
Public Facilities Financing Plan and Facilities Benefit Assessment

Design and construct triple pipe arch culvert beneath Dennery Road between Black Coral Way and Topside Lane where Dennery Road spans across Dennery Canyon in order to maintain an open space link with the Otay River Valley and to accommodate wildlife movement within Dennery Canyon.

EXHIBIT C3

(Project Description)

Del Sol Boulevard-west boundary of elementary school to Surfpoint Way
Project No. OM T-4.1
Otay Mesa
Public Facilities Financing Plan and Facilities Benefit Assessment

Design and construct approximately 800 linear feet of Del Sol Boulevard consisting of two vehicular lanes of collector street standards (along the elementary school frontage) and construct an additional approximately 200 linear feet of Del Sol Boulevard consisting of four vehicular lanes of collector street standards (west of Surf Crest Drive).

EXHIBIT D
Project Costs

EXHIBIT 'D'

Estimated Cost of Dennery Road-(Black Coral Way to Topsail Drive) Project No. OM T-3.1

Item	Description	Amount[1]
	Hard Costs	
1	Grading	$40,000
2	Surface Improvements	$220,000
3	Landscaping	$221,000
4	Landscape Maintenance	$74,000
5	Dry Utilities	$46,000
	Subtotal Hard Costs	$601,000
	Soft Costs	
1	Engineering	$25,000
2	Permitting, Plan Check & Inspection Fees	$42,000
	Subtotal Soft Costs	$67,000
	Subtotal (Hard plus Soft Costs)	$668,000
	Project Contingency (10% of Hard Costs)[2]	$0
	Project Costs	$668,000
	5% Administration Fee	$33,000
	Interest (Not To Exceed $20,000)	$20,000
	Reimburseable Cost	**$721,000**

Note 1: All figures are rounded to the nearest $1,000.

Note 2: The project has been completed and operationally accepted by the City; therefore the contingency fee for the Project is $0.00.

Revised 2-28-14

EXHIBIT 'D'

Estimated Cost - Dennery Road (Triple Pipe Crossing) Project No. OM T-3.3

Item	Description	Amount[1]
	Hard Costs	
1	Storm Drain	$528,000
2	Erosion Control	$23,000
	Subtotal Hard Costs	$551,000
	Soft Costs	
1	Engineering	$50,000
	Subtotal Soft Costs	$50,000
	Subtotal (Hard plus Soft Costs)	$601,000
	Project Contingency (10% of Hard Costs)[2]	$0
	Project Costs	$601,000
	5% Administration Fee	$30,000
	Interest (Not To Exceed $18,000)	$18,000
	Reimburseable Cost	**$649,000**

Note 1: All figures are rounded to the nearest $1,000.

Note 2: The project has been completed and opeationally accepted by the City; therefoer the contingency fee for the Project is $0.00.

Revised 2-28-14

EXHIBIT 'D'

Estimated Cost of Del Sol Boulevard (west boundary of elementary school to Surfpoint Way) Project No. OM T-4.1

Item	Description	Amount[1]
	Hard Costs	
1	Grading	$6,000
2	Surface Improvements	$94,000
3	Landscaping	$43,000
4	Landscape Maintenance	$25,000
5	Dry Utilities	$32,000
6	Storm Drain	$17,000
7	Sewer	$150,000
8	Water System	$32,000
	Subtotal Hard Costs	$399,000
	Soft Costs	
1	Engineering	$7,000
2	Permitting, Plan Check & Inspection Fees	$3,000
	Subtotal Soft Costs	$10,000
	Subtotal (Hard plus Soft Costs)	$409,000
	Project Contingency (10% of Hard Costs)[2]	$0
	Project Costs	$409,000
	5% Administration Fee	$20,000
	Interest (Not To Exceed $12,000)	$12,000
	Reimburseable Cost	**$441,000**

Note 1: All figures are rounded to the nearest $1,000.

Note 2: The project has been completed and operationally accepted by the City; therefore the contingency fee for the Project is $0.00.

Revised 2-28-14

EXHIBIT E

Equal Benefits Ordinance Certification of Compliance

EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE

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

COMPANY INFORMATION

Company Name: Pardee Homes, a California corporation	Contact Name:
Company Address: 2120 Park Place, Suite 120	Contact Phone:
El Segundo, CA 90245	Contact Email:

CONTRACT INFORMATION

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

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

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

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

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

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

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

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

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

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

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

Name/Title of Signatory	Signature	Date

FOR OFFICIAL CITY USE ONLY

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

rev 02/15/2011

EXHIBIT F

Consultant Provisions

1. **Third Party Beneficiary.** The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and payment in full to Consultant by Subdivider, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.

2. **Competitive Bidding.** Consultant shall ensure that all design plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.

3. **Professional Services Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Sections 4 and 5 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.

4. **Indemnification for Design Professional Services**. To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

5. **Design Professional Services Defense**. Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.

6. **Enforcement Costs.** Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.

7. **Professional Liability Insurance.** For all of Consultant's employees who are subject to this Agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) aggregate. Consultant shall ensure both that (1) this policy's retroactive date is on or before

the date of commencement of the work to be performed under this Agreement; and (2) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City of San Diego's exposure to loss.

8. **Commercial General Liability (CGL) Insurance.** Consultant shall keep in full force and effect, during any and all work performed in accordance with this Agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars ($1,000,000) per occurrence, subject to an annual aggregate of two million dollars ($2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

9. **Insurance Policy Requirements.** Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement that shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements.

10. **Workers Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum or one million dollars ($1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.

11. **Compliance Provision.** Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 (ADA) and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code (Title 24). Further, Consultant is responsible as designer and employer to comply with all ports of the ADA and Title 24.

12. **Maintenance of Records.** Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.

EXHIBIT G

Design and Construction Standards

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

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

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

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

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

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

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

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

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

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

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

3. **City Standards**. Subdivider's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:

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

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

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

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

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

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

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

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

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

EXHIBIT H

Certification for Title 24/ADA Compliance

OM T-3.1, DENNERY ROAD-(Black Coral Way to Topsail Drive, OM T-3.3, DENNERY ROAD-(Triple Pipe Crossing), OM T-4.1, DEL SOL BOULEVARD-(west boundary of elementary school to Surf Crest Drive)

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for OM T-3.1, DENNERY ROAD-(Black Coral Way to Topsail Drive, OM T-3.3, DENNERY ROAD-(Triple Pipe Crossing), OM T-4.1, DEL SOL BOULEVARD-(west boundary of elementary school to Surf Crest Drive) by Project Design Consultants shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with the Americans with Disabilities Act of 1990.

Dated: 3/25/15

By: Debby Reece
Debby Reece, VP PDC

EXHIBIT I

Approval of Design, Plans, and Specifications

UNLESS OTHERWISE DIRECTED BY THE CITY IN WRITING, SUBDIVIDER SHALL OBTAIN APPROVAL OF DESIGN, PLANS, AND SPECIFICATIONS IN THE MANNER IDENTIFIED BELOW:

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

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

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

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

2. **Submittal of Plans, Specifications, and Budget**. Within six (6) months of City Council approval of this Agreement, Subdivider shall deliver to City complete Plans and Specifications, Estimated Costs, and bid documents, consistent with the Schematic Drawings, for the design and construction of the Project.

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

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

EXHIBIT J

Construction Obligations

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

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

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

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

2. **Access to Project Site**.

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

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

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

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

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

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

   C. *Geotechnical Information.* Subdivider shall obtain all necessary geotechnical information required for the design and construction of the Project. The Project Engineering Geologist and/or Project Soils Engineer (qualified R.C.E. or R.G.E.) shall prepare a statement, that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.

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

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

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

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

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

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

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

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

C. *Concealing Work.* Prior to concealing work, Subdivider shall obtain approval of the work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as provided 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 entities.

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 or other entitlement.

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**. 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. 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 K**).

A. *Subdivider Notice to Employees.* 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.* 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.* 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 K

Certification for a Drug-Free Workplace

PROJECT TITLE: OM T-3.1, DENNERY ROAD-(Black Coral Way to Topsail Drive, OM T-3.3, DENNERY ROAD-(Triple Pipe Crossing), OM T-4.1, DEL SOL BOULEVARD-(west boundary of elementary school to Surf Crest 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 Pardee Homes, a California corporation has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

Signed Beth Fischer

Printed Name Beth Fischer

Title Division President

Date 3/24/15

EXHIBIT L

Project Deliverables

1. **Master Contract Documents**.

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

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

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

B. *Surveys.* Subdivider shall provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and the City of San Diego Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.

C. *Schematic Design Documents.* Subdivider shall consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.

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

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

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

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

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

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

f. Summary of Project requirements and a recommendation.

g. Artistic renderings of the Project.

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

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

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

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

iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.

iv. Proposed construction schedules.

v. Technical 'Special Provisions' section of the Specifications.

vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.

vii. Probable Project construction costs, for each component of the Project being considered in this phase.

viii. Color board with material samples.

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

F. *Utility Location Requests.* Along with initial submission of Construction Documents, Subdivider shall furnish copies of the Service and Meter Location Request and all utility companies' verifications.

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

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

I. *As-Builts.* Subdivider shall provide As-Builts.

i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Subdivider shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Subdivider shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Subdivider shall thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.

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

a. Depth of foundation in relation to finished first floor.

b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.

c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.

d. Field changes of dimensions and details.

e. Changes authorized by approved proposal requests, construction change orders, discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.

f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.

g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.

h. Show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.

i. The title "PROJECT RECORD" in 3/8" letters.

iii. Subdivider shall maintain a set of As-Builts at the Project site for reference. Subdivider shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil),

shall clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.

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

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

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

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

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

EXHIBIT M

Sample Capitalization Form

Capitalization Cost Breakdown
For Developer Built Reimbursable Public Projects

1) Project Title/Location:

2) Project (PTS) Number:

3) Internal Order Number:

4) Drawing Number:

5) Permit Number:

6) Substantial Completion Letter Date:

7) As-Built Date:

8) PFFP Ref. #:

Reimb. Agreement Resolution #:

Date Approved:

(1) Item	(2) Description	(3) Asset Code	(4) Quantity #	(5) Unit Measurement	(6) Total Cost *
STREETS **					
Roadways		ROAD		SF	
Sidewalk		SIDE		SF	
Curb & Gutter		SIDE		LF	
Curb Ramps		SIDE		Each	
Medians		SIDE		SF	
Alleys		ALLY		SF	
Traffic Signals		TRAF		Each	
Street Lights		STRT		Each	
Guardrails		STRT		LF	
BRIDGES					
Vehicular/Wildlife		BRDG		SF	
Pedestrian		BRDG		SF	
Other (Specify)					
STORM DRAINS					
Storm Drains		STRM		LF	
Channels & Culverts		CHAN		LF	
Other (Specify)					
PARK INFRASTRUCTURE (list)					
Parkgrounds		PARK		Each/acres	
Picnic Shelter		PARK		Each	
Playground		PARK		Each	
Recreation Center		3000		Each/SF	
Comfort Stations		3000		Each	
Park Lighting		PARK		Each	
Pool		PARK		Each	
Bike Path or Multi-Use Trails		PATH		LF	
Parking Lot		LOTS		SF	
OTHER (list)					
Pedestrian Lighted Crosswalk		TRAF			
Fire Station		various			-
Library					
Police Station					
		Total Project Cost	-		$ -

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, THE INFORMATION PROVIDED ON THIS CAPITALIZTION FORM IS TRUE AND ACCURATE REGARDING THE CITY ACQUIRED INFRASTRUCTURES.

PRINT NAME: TITLE:

SIGNATURE: DATE:

	Name/Title	Contact No.
Prepared by:		

City Use Only-Forward Original to Facilities Financing for Distribution

Copy	Auditor- CIP Fixed Asset Acct. MS 6A
Copy	Street Division-MS 44
Copy	Development Services Department

12/03/2013

** Project soft cost for administration, engineering, design, etc. should be allocated using the percentage of hard cost for each cost category.*

*** Water & Sewer capitalized by PUD.*

Exhibit N

Typical Insurance Provisions

1. **Types of Insurance**. At all times during the term of this Agreement and for so long as the Agreement requires, Subdivider shall maintain insurance coverage as follows:

1.1 Commercial General Liability. Subdivider shall provide at its expense a policy or policies of Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Subdivider shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The 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 Project including owned, hired and non-owned automobiles, Subdivider shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars ($1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ("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 both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Contract. 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 Contract and to the extent required by the State of California, Subdivider shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Subdivider against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Subdivider to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars ($1,000,00) for Bodily Injury by Accident for each accident, one million dollars ($1,000,000) for Bodily Injury by Disease each employee, and a one million dollars ($1,000,000) for Bodily Injury by Disease policy limit. 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."

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

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

2.1 *Additional Insureds.* Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City 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.

Item 53 6-16-15

(O-2015-100)

ORDINANCE NUMBER O-20501 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 1 2015

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A REIMBURSEMENT AGREEMENT WITH PARDEE HOMES FOR PROJECT NO. OM T-3.1 (DENNERY ROAD (BLACK CORAL WAY TO TOPSAIL DRIVE), A PORTION OF PROJECT NO. OM T-3.3 (DENNERY ROAD (TRIPLE PIPE CROSSING)), AND PROJECT NO. OM T-4.1 (DEL SOL BOULEVARD (WEST BOUNDARY OF ELEMENTARY SCHOOL TO SURFPOINT WAY)), IN THE OTAY MESA COMMUNITY.

WHEREAS, on November 9, 1993, the City granted Vesting Tentative Map No. 88-0785, by San Diego Resolution R-282975, and on April 12, 1994 granted Vesting Tentative Map No. 86-1032 subject to certain conditions determined to be necessary for Pardee Homes (Developer) to complete its development; and

WHEREAS, On March 11, 2014, by San Diego Resolution R-308811, the City Council adopted the Otay Mesa Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2014 (Financing Plan). The Financing Plan identifies Project Nos. OM T-3.1, Dennery Road-(Black Coral Way to Topsail Drive), OM T-3.3, Dennery Road-(Triple Pipe Crossing), and OM T-4.1, Del Sol Boulevard-(west boundary of elementary school to Surfpoint Way); and

WHEREAS, Developer certifies that it has completed the design and construction of Project No OM T-3.3, and a portion of Project Nos. OM T-3.1 and OM T-4.1, and now seeks reimbursement from City in the final total amount of seven hundred twenty-one thousand dollars ($721,000) for Project No. OM T-3.1, six hundred forty-nine thousand dollars ($649,000) for Project No. OM T-3.3, and four hundred forty-one thousand dollars ($441,000) for Project No. OM T-4.1, including the payment of potential interest; NOW, THEREFORE,

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

Section 1. That the Mayor is authorized and directed to execute, for and on behalf of City, a Reimbursement Agreement with Pardee Homes for Project Nos. OM T-3.1, Dennery Road-(Black Coral Way to Topsail Drive), OM T-3.3, Dennery Road-(Triple Pipe Crossing), and OM T-4.1, Del Sol Boulevard-(west boundary of elementary school to Surfpoint Way), in the Otay Mesa Community Plan area, on file in the Office of the City Clerk as Document No. OO-20501 (Agreement), under the terms and conditions set forth in the Agreement.

Section 2. That the consultant selection requirements of San Diego Municipal Code section 22.3202, Council Policy 300-07, and Council Policy 100-10 for the selection of Project Design Consultants for design consultant services are waived.

Section 3. That the Chief Financial Officer is authorized to expend an amount not to exceed $721,000 from CIP S-10018, Dennery Road (Black Coral Way to Topsail Drive), Fund No. 400856, Otay Mesa Facilities Benefit Assessment, for the design and construction of Project No. OM T-3.1 consistent with the timing established in the Financing Plan, contingent upon the Chief Financial Officer furnishing one or more certificate(s) certifying that funds necessary for expenditure are, or will be, on deposit in the City Treasury.

Section 4. That the Chief Financial Officer is authorized to expend an amount not to exceed $649,000.00 from CIP S-10017, Dennery Road (Triple Pipe Crossing), Fund No. 400856, Otay Mesa Facilities Benefit Assessment, for the design and construction of Project No. OM T-3.3 consistent with the timing established in the Financing Plan, contingent upon the Chief Financial Officer furnishing one or more certificate(s) certifying that funds necessary for expenditure are, or will be, on deposit in the City Treasury.

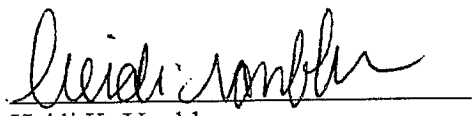
Section 5. That the Chief Financial Officer is authorized to appropriate and expend an amount not to exceed $441,000.00 from CIP S-00858, Del Sol Boulevard (west boundary of elementary school to Surfpoint Way), Fund No. 400856, Otay Mesa Facilities Benefit Assessment, for the design and construction of Project No. OM T-4.1 consistent with the timing established in the Financing Plan, contingent upon the Chief Financial Officer furnishing one or more certificate(s) certifying that funds necessary for expenditure are, or will be, on deposit in the City Treasury.

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

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

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

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Heidi K. Vonblum
Deputy City Attorney

HKV:nja
04/21/15
Or.Dept: Planning
Doc. No.: 999405

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUN 16 2015.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 6/30/15
(date)

KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUN 16 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Lorie Zapf	☒	☐	☐	☐
Todd Gloria	☒	☐	☐	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☒	☐	☐	☐

Date of final passage JUL 1 2015.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

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

(Seal)

By Mary Fernandez, Deputy

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

JUN 2 2015, and on JUL 1 2015.

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

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

(Seal)

By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20501

Passed by the Council of The City of San Diego on June 16, 2015, by the following vote:

YEAS:	**LIGHTNER, ZAPF, GLORIA, COLE, KERSEY, CATE, SHERMAN, ALVAREZ, EMERALD.**
NAYS:	**NONE.**
NOT PRESENT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Jeannette I. Santos**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. **O-20501** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **June 2, 2015** and on **July 1, 2015.**

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

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: _____, Deputy