

ORIGINAL

**REIMBURSEMENT AND PARK DEVELOPMENT
AGREEMENT WITH PARDEE HOMES (FORMERLY
KNOWN AS PARDEE CONSTRUCTION COMPANY), A
CALIFORNIA CORPORATION FOR PROJECT NO. P-2
MCGONIGLE CANYON NEIGHBORHOOD PARK, IN THE
PACIFIC HIGHLANDS RANCH COMMUNITY-
REIMBURSEMENT AGREEMENT NO. 557651**

THIS REIMBURSEMENT AGREEMENT No. 557651 (Agreement) is made and entered into between the City of San Diego, a municipal corporation (City) and Pardee Homes (formerly known as Pardee Construction Company), a California Corporation (Developer), (collectively the Parties), for reimbursement for the design, and construction of Project No. P-2, McGonigle Canyon Neighborhood Park in the Pacific Highlands Ranch Plan area in accordance with the Pacific Highlands Ranch Public Facilities Financing Plan.

RECITALS

1. Developer owns real property in the community of Pacific Highlands Ranch (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 14, 2006, by San Diego Resolution R-302095, City Council granted Vesting Tentative Map No. 8878 (VTM) subject to certain conditions determined to be necessary for Developer's development.
3. On December 11, 2015, by San Diego Resolution R-310151, the City Council adopted the Pacific Highlands Ranch Public Facilities Financing Plan for Fiscal Year (FY) 2016 (Financing Plan). The Financing Plan identifies Project No. P-2, McGonigle Canyon Neighborhood Park as shown in **Exhibit A**.
4. This Agreement relates to a portion of Project No. P-2. Specifically, this Agreement relates to the design and construction of a five usable acre neighborhood park as depicted in **Exhibit B** and described in **Exhibit C**, which is referred to throughout this Agreement as the "Project." This Agreement does not address the purchase and acquisition of the Pacific Highlands Ranch Park site, which is detailed within that certain Pacific Highlands Ranch-Subarea III NCFUA Neighborhood Park Site (NP2) Purchase Agreement (Original Park Purchase Agreement) entered into between the Parties on September 8, 1998. On June 12, 2015, the Parties agreed to extend the escrow closing date contemplated under the Purchase Agreement to June 30, 2023. This Agreement pertains to the entirety of Project P-2 as depicted in **Exhibit B** and described in **Exhibit C**.
5. The Financing Plan estimate, which is currently listed as \$ 10,579,924 (FY 2016 dollars), and which may be increased upon an update to the Financing Plan, plus the applicable inflationary rate as set forth in the Financing Plan, constitutes the total City funds potentially available for Project No. P-2. The Financing Plan currently assumes an annual inflation rate of three percent (3%) for FY 2017 through build out. Thus, the Financing Plan estimate for Project No. P-2, expressed in FY 2023 dollars, the fiscal year in which reimbursement is currently programmed, is \$13,011,972.

0-21215
DOCUMENT NO _____
FILED JUL 14 2020
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

6. Developer's Estimated Cost (as defined in Section 3.3) for the Project is \$7,993,629 plus interest (as discussed in Section 12.1.6).

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 Developer's Provision of Park Land and the Project.** City requires population-based park acreage and development of park facilities to implement the Pacific Highlands Ranch Community Plan recommendations for public facilities. This Agreement provides the terms and conditions under which Developer will design and construct such park facilities and receive reimbursement from the City. City agrees to accept performance of Developer's obligations under this agreement either by traditional public contracting methods or by "Design/Bid/Build" or "Design/Build" procedures, at Developer's option, as satisfaction of Developer's obligations relating to the provisions of population-based park land including the design and construction, of park facilities. Upon the request of the Public Facilities Planning (PFP) Project Manager, Developer shall establish a deposit account with the amounts required in Section 12.1.5 of this Agreement.
- 1.2 Design and Construction of Project.** Developer agrees to design and construct the Project fully complete and operational and suited to the purpose for which it was designed and in accordance with this Agreement, the Plans and Specifications, the VTM, Planned Development Permit No. 8880/Site Development Permit No. 8881/Coastal Development Permit No. 8879, and the Financing Plan, and within the timeframe established in the Project Schedule attached as **Exhibit D**, and for the Estimated Costs attached as **Exhibit E**.
- 1.2.1 Plans and Specifications.** This Agreement has been prepared precedent to the completion of a General Development Plan (GDP) and preparation of Plans and Specifications for the Project.
- 1.2.2 Approval of GDP, Construction Documents, Cost Estimates, and Park Name.** Within eighteen (18) months following the Effective Date, the Developer shall provide to the City an approved GDP, a GDP Cost Estimate, and a park name approved by the Park and Recreation Board, in accordance with **Exhibit N, Approval of General Development Plan, Construction Documents, and Cost Estimate.**
- 1.3 Substantial and Final Completion.** City's acceptance of the Project shall occur upon Developer's receipt of a letter of Substantial Completion from City (as defined in Section 15.1). Final Completion of the Project shall not occur until after approval of the as-built plans, a signed as final approval for grading or public right-of-way permit, acceptable capitalization form, Notice of Completion, and any required certificate of occupancy and/or property transfers (as defined in Section 16.1).
- 1.4 Reimbursement.** City agrees to reimburse Developer for the Project subject to the terms and conditions of this Agreement.

ARTICLE II. PROJECT SCHEDULE

- 2.1 Project Schedule.** Developer shall perform and complete the work under this Agreement according to the Project Schedule attached as **Exhibit D**, the Project Schedule Obligations and Components attached as **Exhibit F**, the Meeting Requirements in **Exhibit G**; and Preconstruction, Progress, and Special Meeting Agendas in **Exhibit H**.
- 2.1.1** The Project Schedule, in all phases of development, shall consider and adhere to the regulations contained in Chapter 12, Land Development Reviews of the SDMC.
- 2.2 Project Completion.** Developer agrees that all work on the Project under this Agreement will be complete and ready for operational use according to the Project Schedule, and the Project Schedule Obligations and Components.
- 2.3 Changes in Project Schedule.**
- 2.3.1** Changes in the Project Schedule that increase the Estimated Cost must be approved by City in writing in accordance with Section 3.3.3.
- 2.3.2** Changes in the Project Schedule that do not increase the Estimated Cost may be approved by the engineer designated by the City's Public Works Department (PWD; Responsible Department), which shall be responsible for review and approval of the progress of, and changes to, the Project (Resident Engineer); provided, however, that the Project is still completed in accordance with the Financing Plan (including any associated phasing plans) and all conditions of approval including, but not limited to the VTM and the VTM Conditions.
- 2.4 Notification of Delay.** If Developer anticipates or has reason to believe that performance of work under this Agreement will be delayed, Developer shall immediately notify the representative designated by the City's PWD to manage the Project on behalf of City (Project Manager). Unless City grants Developer additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) calendar days of the initial notification and shall include an explanation of the cause of the delay, a reasonable estimate of the length of the delay, any anticipated increased costs due to the delay, all supporting data, and a written statement that the time adjustment requested is the entire time adjustment Developer needs as a result of the cause of the delay. If Developer anticipates or has reason to believe the delay will increase the Estimated Cost, Developer shall also give notice to City in accordance with Section 3.4.
- 2.5 Delay.** If delay in the performance of work required under this Agreement is caused by unforeseen events beyond the control of the Parties, such delay may entitle Developer to a reasonable extension of time. Any such extension of time must be approved in writing by City, and will not be unreasonably withheld. A delay in the performance of work or any activity by City or Developer that affects a deadline to perform imposed on the other party by this Agreement will entitle the other party to the number of days City or Developer failed to complete performance of the work. The following conditions may justify such a delay depending on their actual impact on the Project: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar

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

2.6 Costs of Delay. City and Developer acknowledge construction delays may increase the cost of the Project. Unless Developer informs City pursuant to Sections 2.4 and 3.4 of cost increases due to delay and such cost increases are determined by City to be reasonable and are fully recovered through collected fees under the Financing Plan, funding will be insufficient to cover the cost increase. Therefore, Developer agrees to absorb any increase in Estimated Costs and/or interest thereon not accounted for in the Financing Plan (or future updates of the Financing Plan) because Developer failed to timely notify the City in writing as required under Sections 2.4 and 3.4.

2.7 City's Right to Terminate for Default.

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

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

2.7.3 The rights and remedies of City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or

waive or deny any right or remedy at law or in equity available to City against Developer, including any claims for damages against Developer that City may assert as a result of the Default.

2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.

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

ARTICLE III. PROJECT COSTS AND CHANGE ORDERS

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

3.1.1 Hard Costs:

3.1.1.1 Net rough grading cost for the Property (net rough grading cost means a pro-rata share of cost paid by Developer to rough grade the Property, less any savings realized by Developer in balancing the cut and fill soil of the subdivision site); final grading in accordance with the approved GDP, and half-width street improvements which abut the Property, if applicable, to be conveyed to the City;

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

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

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

3.1.1.5 An erosion control and storm water protection plan.

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

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

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

3.2 Reimbursable Costs. Developer may seek reimbursement only for Reimbursable Costs. Reimbursable Costs shall consist only of the Estimated Costs (as defined in Section 3.3) reasonably expended by Developer, approved for reimbursement in the Financing Plan, and approved by City under the terms of this Agreement.

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

3.3 Estimated Cost(s). Developer's Estimated Costs shall consist only of: (i) Project Costs, (ii) Developer's Administrative Costs (as defined in Section 3.3.1), and (iii) the Project Contingency (as defined in Section 3.3.2). The total Estimated Cost of Project is **Seven Million Nine Hundred Ninety-Three Thousand Six Hundred Twenty-Nine Dollars (\$7,993,629)**, plus interest (as set forth in Section 12.1.6).

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

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

3.3.3 **Change Orders and Adjustments to Estimated Cost.** Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with **Exhibit I**. The Estimated Cost may only be increased if Developer provides documentation showing that the increase is reasonable in nature and amount, and is due to causes beyond Developer's or Developer's agents control or

otherwise not the result of unreasonable conduct by Developer or Developer's agents which may, based on actual impact on the Project, include: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Developer's work; concealed conditions encountered in the completion of the Project; inability to reasonably obtain materials, equipment, labor, or additional required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Developer. Developer shall not be reimbursed, and no Change Order may be approved, for costs or expenses resulting from a design error or omission (unless such a design error or omission is the direct result of a City request for such design or omission), Developer's or Developer's agents' negligence, or costs that exceed the amount available pursuant to the Financing Plan. Developer shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order.

- 3.4 Notification of Increased Estimated Costs.** If Developer anticipates or has reason to believe that the cost of the Project will exceed the Estimated Cost, Developer shall notify the City in writing within fourteen (14) calendar days of becoming aware of the potential increase. If Developer fails to timely notify City in writing, Developer agrees to absorb any increase in Estimated Costs and any interest thereon not accounted for in the Financing Plan. This written notification shall include an itemized cost estimate and a list of recommended revisions Developer believes will bring the construction cost to an amount within the Estimated Cost. In accordance with Section 3.3.3, City may approve an increase in Estimated Costs and/or delineate a project which may be constructed within Estimated Costs. If City chooses not to pursue the above options, Developer may elect to construct the Project and forgo any reimbursement in excess of the Estimated Cost.
- 3.5 Reallocation of Costs.** Developer may re-allocate savings realized with respect to particular line items on the Estimated Project Costs budget to pay for additive or deductive bid alternates, if any, subject to approval from PWD Project Manager, as identified pursuant to Section 6.5. City shall either approve or disapprove a request for reallocation of costs within 30 calendar days.

ARTICLE IV. COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

- 4.1 Compliance.** Developer shall bid and award contracts to complete the Project in accordance with the San Diego Charter and rules, regulations, and laws promulgated thereunder, including, but not limited to, the SDMC and City Council resolutions and policies, as well as any expressly applicable public contract laws, rules, and regulations or City's "Design/Bid/Build" or "Design/Build" procedures (Required Contracting Procedures). Required Contracting Procedures are determined in the sole discretion of the City, and include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's Small and Local Business Enterprise

Program (SLBE) for public works contracts, and the City's Equal Benefits Ordinance. Prior to bidding the Project and proceeding with a "Design/Bid/Build" or "Design/Build" procedures, Developer shall work with City's PWD to ensure that the bidding documents are in compliance with all Required Contracting Procedures. Developer understands that it must comply with all required contracting procedures as described in, but not limited to, **Exhibit J**. City's "Design/Build" procedures according to the Design/Build Project Management Procedure Summary for Developer is attached for guidance as **Exhibit X**. The Developer may, if needed, request assistance from the City's PWD. Developer's failure to adhere to all Required Contracting Procedures is a material breach of this Agreement, and any contract awarded not in accordance with the Required Contracting Procedures shall be ineligible for reimbursement.

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

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

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

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

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

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

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

4.4.1.1.1 City may terminate this Agreement. In the event the Agreement is terminated, Developer's obligations pursuant to this Agreement for the construction of the Project shall be released without further liability. This release shall in no way affect the obligations of Developer with respect to any terms or conditions of the VTMs, Tentative Map(s), Development Agreements, or other approvals and agreements with City. However, prior to termination of this Agreement, City shall reimburse Developer (at City's option with either DIF credits or cash reimbursement) for the engineering and design costs reasonably incurred and expended by Developer in accordance with this Agreement and within the Estimated Cost in accordance with Section 3.3. Developer shall provide City with copies of all executed contracts; or

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

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

4.5 Nondiscrimination Requirements.

- 4.5.1 ***Compliance with the City's Equal Opportunity Contracting Program.*** Developer shall comply with City's Equal Opportunity Contracting Program. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure its consultants, contractors, and their subcontractors comply with the City's Equal Opportunity Contracting Program. Nothing in this Section shall be interpreted to hold the Developer liable for any discriminatory practice of its consultants, contractors or their subcontractors.
- 4.5.2 ***Nondiscrimination Ordinance.*** Developer shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Developer shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between the Developer and any consultants, contractors, subcontractors, vendors and suppliers.
- 4.5.3 ***Compliance Investigations.*** Upon City's request, Developer agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers Developer used in the past five years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Developer for each contract, subcontract or supply contract. The Developer further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in

Contracting Ordinance (Municipal Code sections 22.3501-22.3517). Developer understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against Developer up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Developer further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

- 4.6 Equal Benefits.** This Agreement is with a sole source and therefore, Developer is not subject to the City's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the Municipal Code. However, the Equal Benefits Ordinance is applicable to contracts that Developer enters into with respect to the Project. Therefore, Developer shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Developer shall include in each of its contracts with its contractor(s) and consultant(s) provisions: (i) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (ii) stating that failure to maintain equal benefits is a material breach of those agreements; and (iii) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. Municipal Code § 22.4304(e)-(f). In addition, Developer's contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notify employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract. Municipal Code § 22.4304(a)-(b). Developer's contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the Equal Benefits Ordinance requirements. Municipal Code § 22.4304(c). Additionally, Developer's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the Equal Benefits Ordinance. Municipal Code § 22.4304(d). Developer shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance by including the following statement in all contracts with its contractors and consultants: "Equal Benefits Ordinance. Unless an exception applies, contractor/consultant shall comply with the Equal Benefits Ordinance (EBO) codified in the SDMC (§22.4304(f)). Failure to maintain equal benefits is a material breach of this contract. By signing this contract, contractor/consultant certifies that contractor/consultant is aware of, and will comply with, this City-mandated clause throughout the duration of the contract."

ARTICLE V. PREVAILING WAGE

- 5.1 Prevailing Wage.** Prevailing wages apply to the Project. Pursuant to SDMC section 22.3019, construction, alteration, demolition, repair and maintenance work performed on the Project is subject to State prevailing wage laws, and Developer shall ensure compliance with all applicable prevailing wage laws and requirements. For construction work performed on the Project that cumulatively exceeds \$25,000 and for alteration, demolition, repair and maintenance work performed on the Project that cumulatively exceeds \$15,000,

Developer shall ensure that its contractors and subcontractors comply with State prevailing wage laws including, but not limited to, the requirements listed below.

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

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

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

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

5.1.3 Payroll Records. Developer shall require its contractor and subcontractors comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Developer shall require its contractor to require its subcontractors to also comply with section 1776. Developer shall require its

contractor and subcontractors submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Developer shall require its contractor to ensure that its subcontractors submit certified payroll records to the City.

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

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

5.1.5 **Working Hours.** Developer shall require its contractors and subcontractors to comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

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

5.1.7 **Labor Code Section 1861 Certification.** In accordance with California Labor Code section 3700, Developer shall require that its contractors secure the payment of compensation of its employees and by signing the contract, the contractors certify as follows: "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this [agreement or contract]."

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

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

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

ARTICLE VI. CONSULTANTS

6.1 *Selection of Consultant.* If the Developer chooses to bid and award contracts without Design/Bid/Build or Design/Build procedures, Developer shall hire a State licensed consultant(s) who will design the Project and prepare the GDP, construction documents, specifications, and cost estimates for the Project. Developer’s hiring of a consultant is subject to 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 K** “Consultant Provisions” to be included in its consultant contract(s) for the Project. The selection of any consultant is subject to all applicable public contract laws, rules, and regulations, including but not limited to, the San Diego Charter, the Municipal Code, Council Policies, and the City’s Administrative Regulations. Developer shall work with City’s PWD to ensure that City’s consultant selection procedures are met. 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.

- 6.2 **Equal Benefits and Nondiscrimination.** The requirements of City's Equal Benefits Ordinance apply to Developer's consultant contracts. See Section 4.6. The nondiscrimination requirements in Section 4.5 apply to Developer's consultant contracts.
- 6.3 **Estimated Budget.** Developer shall require its consultant to prepare an estimated budget for the Project.
- 6.4 **Schematic Drawings.** Developer shall require its consultant to prepare schematic drawings for the Project for City approval.
- 6.5 **Selection of PWD Project Manager.** City shall select a PWD Project Manager for the purposes of fulfilling the functions of this Agreement and the function of a Project Manager described in Council Policy 600-33 "Community Notification and Input for City-Wide Park Development Projects", and shall notify Developer in writing of the name and contact information of the PWD Project Manager.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

- 7.1 **Standard of Care.** Developer agrees that the professional services provided under this Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional design, architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.
- 7.2 **Compliance with all Laws, Design Standards, and Construction Standards.** In all aspects of the design and construction of the Project, Developer shall comply with all laws and the most current editions of the Green Book, the City's Standard Drawings and Design and Construction Standards, including those listed in **Exhibit L**. It shall be Developer's sole responsibility to comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. Developer shall certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit M**, "Certification for Title 24/ADA Compliance."
- 7.3 **Imputed Knowledge.** Developer shall be responsible for all amendments or updates to Design and Construction Standards and knowledge of all amendments or updates to Design and Construction Standards, whether local, state, or federal, and such knowledge will be imputed to Developer to the fullest extent allowed by law.
- 7.4 **City Approval.** Developer shall be required to obtain City approval of the GDP, construction documents, and construction cost estimates in the manner required in **Exhibit N**. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the duly authorized City representative designated by this Agreement.
- 7.5 **City Approval Not a Waiver of Obligations.** Where approval by City, the Mayor, or other representatives of City is required, it is understood to be general approval only and does

not relieve Developer of responsibility for complying with all applicable laws, codes, regulations, and standard consulting, design, or construction practices.

ARTICLE VIII. CONSTRUCTION AND DRUG-FREE WORKPLACE

- 8.1 Compliance with Project Schedule and Construction Requirements.** Developer shall commence construction of the Project in accordance with the Project Schedule, as described in Article II, and be subject to the obligations in **Exhibit O**, “Construction Obligations.” Developer shall diligently pursue such construction to completion. Failure to maintain the Project Schedule constitutes a Default subject to Section 2.7. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City’s rights or remedies under any other provision of this Agreement or those available at law or in equity.
- 8.2 Drug-Free Workplace.** Developer agrees to comply with City’s requirements in Council Policy 100-17, “DRUG-FREE WORKPLACE”, adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. The Developer shall certify to City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace in the form and content of **Exhibit P**. Developer shall ensure that its contractors comply with the requirements of City’s Council Policy 100-17.

ARTICLE IX. PRODUCTS

- 9.1 Product Submittal and Substitution.** To the extent product specification is not addressed by the most recent edition of the Standard Specifications for Public Works Construction (including the City of San Diego’s standard special provisions) (Green Book) or the Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding process, Developer shall obtain City approval of products and substitution of products in the manner provided in **Exhibit Q**, “Product Submittal and Substitution.”
- 9.1.1 *Not a Release of Liability.* City’s review of samples in no way relieves Developer of Developer’s responsibility for construction of the Project in full compliance with all Construction Documents.

ARTICLE X. EXTRA WORK

- 10.1 City Authority to Order Extra Work.** Any City additions or modifications to work or Developer obligations under this Agreement not described within City-approved Construction Documents (Extra Work) may be ordered by City prior to completion pursuant to the terms and conditions listed in **Exhibit R**, “Extra Work Provisions.”

ARTICLE XI. CHANGED CONDITIONS

- 11.1 Changed Conditions.** Changed Conditions shall have the meaning as defined in the Green Book. The Parties acknowledge and agree that even if Changed Conditions are found to be present, the Project shall not exceed the Estimated Cost without express City Council

approval of an increase to the Estimated Cost in accordance with Section 3.3.3. Absent such express approval of additional funds, Developer shall provide City with value engineering and the Parties shall return the Project to within the Estimated Cost.

ARTICLE XII. REIMBURSEMENT

12.1 Reimbursement to Developer

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

12.1.2 ***Type of Reimbursement.*** Developer shall be entitled to cash reimbursement, or DIF 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 Estimated Cost scheduled for reimbursement beginning in or after Fiscal Year 2023. The reimbursement schedule set forth in the Financing Plan is only intended to serve as a guide. Subject to the availability of funds and the Priority of Reimbursement set forth in Section 12.1.11 below, Developer shall be entitled to reimbursement as soon as the reimbursement requirements set forth in the Agreement have been satisfied. Any changes to the anticipated timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. Developer shall not receive cash reimbursement unless there are sufficient funds to reimburse Developer, in whole or in part, from the DIF. If sufficient funds are unavailable in the DIF, City shall reimburse Developer only if and as funds accrue in the DIF for the Project. Where DIF 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 DIF 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.

12.1.3 ***Funds for Reimbursement.*** Developer shall only be entitled to reimbursement as set forth in this Agreement and only from DIF funds collected by City in accordance with the Financing Plan, as it may be amended, in the amount set forth in this Agreement and only as allocated for the Project, if and as such funds become available for the Project, after the appropriate deductions and expenditures are made, pursuant to the method of reimbursement described in Section 12.1.7, and in the priority of reimbursement described in Section 12.1.11.

12.1.4 ***Amount of Reimbursement.*** Developer shall be eligible for reimbursement for Reimbursable Costs in accordance with Section 3.2 in an amount not to exceed Estimated Costs in accordance with Section 3.3.

12.1.5 ***City's Administrative Costs.*** City's Administrative Costs shall be paid by the same community DIF fund subject to this agreement prior to any reimbursement to Developer and shall consist of the costs and expenses incurred by City to: (i)

facilitate design, implement, process, and administer the Project, (ii) review contractor/subcontractor compliance with the City's Required Contracting Procedures, (iii) approve reimbursable costs for work performed during design/construction through Final Completion of the Project, and (iv) review project documentation to verify all costs related to the Project, inclusive of construction bid tabulations, contracts, and review of any cost allocation methods (City's Administrative Costs). City's Administrative Costs are not included in the Estimated Costs (as defined in Section 3.3) and not eligible for Developer reimbursement.

- 12.1.6 **Interest.** Interest shall begin to accrue from 90 days after the time the submittal of a Reimbursement Request (as defined in Section 12.1.7) is accepted and approved by the City, or the date the Developer submits an invoice for approved amounts in accordance with Section 12.1.10, whichever occurs later, and shall continue to accrue until either the date DIF credits are made available for Developer's use or the date of cash reimbursement, whichever occurs first up to a maximum of \$50,000. Interest shall accrue at the rate earned by the City Treasurer on funds allocated for the Project, not to exceed the assumed interest rate identified in the assumptions of the applicable Financing Plan, at the time the interest is accruing. Interest shall not accrue under circumstances set forth in Sections 2.6 and 3.4. Interest shall not accrue on the withholding amount set forth in Section 12.1.8.
- 12.1.7 **Method of Reimbursement.** Developer shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Project for which Developer was not previously reimbursed or granted DIF credit (Reimbursement Request). Reimbursement Requests for projects other than those covered by this Agreement must be submitted as separate requests. The Reimbursement Request must also include all relevant documents in accordance with this Section. City shall determine whether additional documentation is needed to support the Reimbursement Request or if the Reimbursement Request is otherwise incomplete, and shall notify Developer of such deficiencies within sixty (60) calendar days of Developer's Reimbursement Request submittal. Developer shall provide additional documentation within fourteen (14) calendar days of City's notification and request. However, even if City fails to notify Developer within sixty (60) calendar days regarding Developer's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Developer until City confirms receipt of all relevant documentation sufficient to support the Reimbursement Request. After all appropriate cost documentation has been received and City approves the Reimbursement Request (Reimbursement Request Approval), City shall reimburse Developer for those Reimbursable Costs within sixty (60) calendar days of the date of Reimbursement Request Approval provided that funds are available in the DIF for the Project, and that the Project is scheduled in the Financing Plan for reimbursement at that time.
- 12.1.8 **Reimbursement Timing.** Subject to the limitations of Article XII, and at the City's discretion, Developer shall be eligible for reimbursement as follows:

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

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

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

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

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

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

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

12.1.10 ***Verification of Reimbursement Request.*** A Reimbursement Request shall include one electronic (PDF) file that includes documentation showing completion of the milestone intervals identified in Sections 12.1.8.1 through 12.1.8.4. The Reimbursement Request shall include the City's most current version of a checklist

for submittal of Reimbursement claims. Developer shall on a monthly basis, or as otherwise required by the City in writing, provide reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents showing that payment has been made in connection with the Reimbursement Request in the following manner:

- 12.1.10.1 Developer shall submit one (1) copy of a Reimbursement Request Form (**Exhibit T**), and itemized summary spreadsheet with supporting documentation for work completed in accordance with this Agreement and the Plans and Specifications and/or Extra Work. Reimbursement Requests shall be numbered.
- 12.1.10.2 Prior to the approval of the Reimbursement Request, the RE shall verify whether the materials and work for which reimbursement is being requested have been installed and performed as represented. The RE shall review the Project on-site for quality of material and assurance and adherence to the bid list, contract estimates, and the Plans and Specifications. The RE shall also review as-builts and Best Management Practices (BMPs), and verify that a lien release has been prepared.
- 12.1.10.3 The RE shall initial the reimbursement Request, noting any disallowed costs, maintain a copy, and forward the original to the City Senior Civil Engineer or City designee for review and approval.
- 12.1.10.4 The City Senior Civil Engineer or City designee shall review the Reimbursement Request, as well as supporting cost documentation received from Developer, including soft costs related to the Project, as well as monitor the RE's expenses charged to the Project, and other City Administrative Costs. The City Senior Civil Engineer or City designee shall also serve as the liaison between the RE and the PFP Project Manager (PFP Project Manager).
- 12.1.10.5 After review and approval of the Reimbursement Request, the City Senior Civil Engineer or City designee shall forward to the FF Project Manager for review and approval. Following approval, the FF Project Manager shall return the request to the Senior Civil Engineer or City designee.
- 12.1.10.6 The City Senior Civil Engineer or City designee shall prepare a memorandum, including a summary schedule of budgeted and actual approved costs, to the FF Project Manager recommending the reimbursement amount including all construction invoices and change orders previously approved, and soft costs incurred to date, noting any costs to be disallowed and the reason for the disallowance. A copy of the memorandum shall be forwarded to Developer.

- 12.1.10.7 The FF Project Manager shall verify that reimbursements are scheduled in the Financing Plan and verify DIF cash/credits are available for reimbursement.
- 12.1.10.8 Developer shall then submit an invoice to the City for the reimbursement amount approved by City.
- 12.1.11 ***Priority of Reimbursement.*** Reimbursement to Developer from the DIF for the Project will be subsequent to reimbursement of City's Administrative Expenses incurred in connection with the Project subject to this agreement, or Financing Plan, and DIF fund administration, but takes priority over any Developer Reimbursable Project added to the Financing Plan subsequent to the Effective Date (as defined in Section 26.1) of this Agreement, with the following exceptions:
 - 12.1.11.1 Any State or Federally mandated project.
 - 12.1.11.2 Appropriations and planned/scheduled commitments for City administered, managed, and funded Capital Improvement Projects.
 - 12.1.11.3 To the extent Developer failed to properly notify City in writing of any actual or anticipated increases in Estimated Costs as required under Sections 2.6 and 3.4, the reimbursement for the cost increases, if approved by City, will be subsequent in priority to those projects with agreements approved by the City Council prior to the City Council's approval of increased Estimated Costs.
 - 12.1.11.4 The Financing Plan identifies other project(s) for funding in an earlier fiscal year than this Project prior to the Effective Date of this Agreement.

ARTICLE XIII. PUBLIC RELATIONS

- 13.1 **Presentations.** Developer and Developer's agents shall be available for all presentations required to be made to City Council, Council Committees, City's Park and Recreation Board, any other related committees, and citizen groups to provide them with information about the Project as well as presentations to any governing or regulatory body or agency for other approvals as may be required.
- 13.2 **City as Primary Contact.** Developer agrees that City is the primary contact with the media regarding the Project and Developer shall forward all questions regarding the Project status to the Responsible Department's Senior Public Information Officer.
- 13.3 **Advertising.** Developer acknowledges that advertising referring to City as a user of a product, material, or service by Developer and/or Developer's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval.
- 13.4 **Recognition.** Developer shall place a sign, placard, or other similar monument on the Project site during construction, which shall acknowledge Developer's and City's joint efforts in designing and constructing the Project, and identifying that the Project is funded with DIF funds. Developer shall properly recognize City and include the City of San Diego's logo on permanent and temporary signs, invitations, flyers, or other correspondence. Any recognition of City shall be reviewed and approved by the

Responsible Department's Senior Public Information Officer. For assistance with proper recognition, or if Developer is contemplating a dedication or ground-breaking ceremony, Developer shall contact the Responsible Department's Senior Public Information Officer.

- 13.5 Dedication Ceremony.** City or Developer shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on the Project site at any reasonable time following Operational Acceptance of the Project, provided Developer receives prior approval from the PWD for the ceremony and provides an opportunity for appearances by the Mayor, Council Members and other appropriate City officials. Developer shall contact the City's Communications Department to arrange a mutually acceptable date and time for any ceremony. Invitation shall not be sent out or a date set until the City's Communications Department has approved the time and date for the ceremony. This ceremony expense is a reimbursable cost up to a maximum of \$2,500 and must be included in the Estimated Costs (as defined in Section 3.3). Eligible costs should include but not limited to chair and table rentals, shade/tent rentals, public address system with podium, refreshments, collateral materials (i.e., brochures / fact sheets about the project).
- 13.6 Cleanup.** Developer shall be responsible for the cleanup of the Project site and the restoration and repair of any damage to the Project site attributable to any Developer sponsored ceremony.

ARTICLE XIV. STANDARD PARK INSPECTION

- 14.1 Inspection Team.** The Project shall be inspected by a team composed of representatives from the following (Inspection Team) at the appropriate minimum Inspection Stages identified in Section 14.2:
- (i) The City's Resident Engineer ("RE") – Stages 1-13
 - (ii) The City's PWD Project Manager – Stages 1-13
 - (iii) Developer's Construction Superintendent – Stages 1, 5, 10, 12, and 13
 - (iv) Developer's Consultant(s) – Stages 1, 4-10, 12, and 13
 - (v) Park and Recreation District Manager – Stages 1-13
 - (vi) Contractor(s) – Stages 1-13
- 14.2 Inspection Stages.** The Project shall be inspected by the Inspection Team at the following minimum stages.
- 1. Pre-construction meeting
 - 2. Irrigation Mainline pressure test
 - 3. Wiring prior to backfilling trenches
 - 4. Hardscape at time of finished staking and layout
 - 5. Topsoil review, acceptance and placement
 - 6. Finish grading and soil preparation

7. Irrigation coverage test
8. Plant material (when delivered) and plant placement approval
9. Playground inspection, if applicable
10. Pre-assembled equipment and/or on-site construction facilities
11. Preliminary Walk-Through Inspection at 90% construction completion (develop punch list and submit as-built drawings)
12. Plant establishment period to begin when punch list items are complete as indicated on construction documents
13. Final Inspection (contractor to submit final approval as-built drawings to City)

ARTICLE XV. PROJECT COMPLETION

- 15.1 Notice to City.** When Developer determines that the Project is complete, Developer shall notify City in writing of that status within seven (7) calendar days of Developer's determination. The notice shall certify to City that the Project is complete in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Project. The Developer shall also request an operational inspection and a Substantial Completion Letter from the Resident Engineer.
- 15.2 Walk-Through Inspection.** A preliminary Walk-Through Inspection shall be conducted by the Inspection Team within ten (10) Working Days following Developer's notice to City of completion (Walk-Through Inspection). The Walk-Through Inspection will be conducted by the Inspection Team identified in Section 14.1.
- 15.2.1 *Punch List.*** A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to Developer by the RE within three (3) Working Days of the Walk-Through Inspection. Developer shall correct the items listed on the Punch List within thirty (30) calendar days of receipt of the Punch List and prior to the Final Inspection.
- 15.2.2 *Failure to Identify Items.*** As to any items not included on the Punch List or later discovered, nothing in this section is intended to limit Developer's obligations under this Agreement and City will maintain all remedies available under this Agreement and the law.
- 15.3 Equipment Demonstration.** Prior to Final Inspection, Developer shall demonstrate to City the operation of each system in the Project, and instruct City personnel in operation, adjustment, and maintenance of equipment and systems, using the operation and maintenance data.
- 15.4 Final Inspection.** Provided Developer has corrected the Punch List items and notified City of the correction (Notice of Correction) and the Plant Maintenance Period is complete as described in Section 22.2, the Final Inspection for the Project shall be scheduled and conducted within ninety (90) calendar days of the Notice of Correction (Final Inspection).

ARTICLE XVI. PROJECT ACCEPTANCE AND FINAL COMPLETION

- 16.1 ACCEPTANCE.** Upon approval by the Inspection Team during the Final Inspection that the Project is complete and that work required on the Punch List has been finished, City shall accept the Project (Acceptance). Upon Acceptance, the following shall occur:
- 16.1.1 ***Parks and Recreation Department Acceptance.*** The PWD Project Manager shall obtain a Letter of Acceptance from the Parks and Recreation Department for the completed Project prior to transfer of ownership.
 - 16.1.2 ***Notice of Completion.*** Developer shall execute and file with the County Recorder of San Diego County documentation indicating that the Project and all work depicted on the approved City drawings has achieved Final Completion and identifying the date of Project completion [Notice of Completion]. Developer shall provide the City Engineer with a conformed copy of the recorded Notice of Completion.
 - 16.1.3 ***Capitalization.*** The Developer shall submit a capitalization form with respect to the Project in a form acceptable to the PFP Project Manager. An example is provided as **Exhibit V**.
 - 16.1.4 ***Lien and Material Releases.*** Developer shall ensure that all contractors and subcontractors provide lien and material releases for the Project and provide copies of such lien and material releases to the City Engineer. Alternatively, with City's approval, which shall not be unreasonably withheld, Developer may ensure that bonds are provided in a form reasonably acceptable to City in lieu of the lien and material releases.
 - 16.1.5 ***Documents and Approvals.*** Submission and approval of all documents required to be supplied by Developer to City pursuant to this Agreement, including As-Built Drawings, As-Graded Reports, warranties, operating and maintenance manuals and other Project Deliverables identified in **Exhibit U**; City signature and sign off as final approval on all grading or public right-of-way permits; and if applicable, the issuance of a final Certificate of Occupancy for the Project.
 - 16.1.6 ***Transfer of Ownership.*** Developer shall transfer the ownership of the Neighborhood Park site pursuant to the terms set forth in the Purchase Agreement.
 - 16.1.7 ***Project Acceptance.*** Notwithstanding anything to the contrary herein, until such time as the City has taken title to the Neighborhood Park site, accepted the Neighborhood Park site, and exonerated the bonds posted for the Neighborhood Park (Project Acceptance), the Neighborhood Park shall not be opened for use by the general public.
- 16.2 Final Completion.** Final Completion of the Project shall be deemed to occur on the date all of the requirements in section 16.1 have been completed.
- 16.2.1 ***As-Built Drawings.*** Developer shall submit As-Built Drawings to City within five (5) Working Days of Final Completion. City, including but not limited to, Public Works/Engineering & Capital Projects Development, will evaluate the submitted As-Built Drawings for accuracy and completeness and may return them to Developer with comments. Developer shall meet with City until all issues are resolved. Upon issue resolution in accordance with disputed work procedures set forth in Section 21.6,

Developer shall submit a mylar set and three (3) final sets of As-Built Drawings stamped by the architect/engineer of record as required by law within thirty (30) calendar days.

- 16.3 No Waiver.** Developer's obligation to perform and complete the Project in accordance with this Agreement and Construction Documents shall be absolute. Neither recommendation of any progress payment or acceptance of the work, nor any payment by City to Developer under this Agreement, nor any use or occupancy of the Project or any part thereof by City, nor any act of acceptance by City, nor any failure to act, nor any review of a shop drawing or sample submittal will constitute an acceptance of work which is not in accordance with the Construction Documents.
- 16.4 Assignment of Rights.** Upon Final Completion of the Project, Developer shall assign its rights under its contracts with all contractors, subcontractors, design professionals, engineers, and material suppliers associated with the Project to City. Developer shall be required to obtain written approval and acknowledgement, whether in the form of a contract provision or separate document, of such assignment from its contractors, subcontractors, design professionals, engineers, and material suppliers. This assignment of rights shall not relieve Developer of its obligations under this Agreement, and such obligations shall be joint and several.
- 16.5 Ownership of Project Deliverables.** Upon Final Completion or termination, Project Deliverables shall become City's property. Developer and City mutually agree that this Agreement, Construction Documents, and Project Deliverables for the Project shall not be used on any other work without the consent of each Party.

ARTICLE XVII. BONDS AND OTHER ACCEPTABLE SECURITIES

- 17.1 Payment Bond.** Developer shall provide or require its construction contractor to provide City with a payment bond, letter of credit (LOC), cash or other acceptable security for material and labor in favor of City for 100 percent of the proposed construction costs, as determined by competitive bidding (Payment Bond).
- 17.2 Performance Bond.** Developer shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the performance in favor of City for 100 percent of the proposed construction costs, as determined by competitive bidding (Performance Bond).
- 17.3 Warranty Bond.** Developer shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing the Project during the warranty period in favor of City (Warranty Bond). Developer shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.
- 17.4 Term.** The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond shall remain in full force and effect until Operational Acceptance of the Project by City. Upon Operational Acceptance, City shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Agreement.

- 17.5 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 17.6 **Licensing and Rating.** The bonds shall be duly executed by a responsible surety company admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this Agreement, and have a minimum AM Best rating of "A-" to an amount not to exceed 10 percent of its capital and surplus.
- 17.7 **Insolvency or Bankruptcy.** If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Developer shall within seven (7) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to City.

ARTICLE XVIII. INDEMNIFICATION

- 18.1 **Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 18.2 and 18.3 below, to the fullest extent permitted by law, Developer shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Developer or Developer's agents), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Developer or Developer's agents, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Developer's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.
- 18.2 **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Developer shall require its design professional to indemnify and hold harmless the City, its officers, and employees, from all claims, demands, or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Developer's design professional or design professional's officers or employees.
- 18.3 **Design Professional Services Defense.** The Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of design professional or design professional's officers or employees.
- 18.4 **Insurance.** The provisions of this Article are not limited by the requirements of Article XIX related to insurance.

- 18.5 **Enforcement Costs.** Developer agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.
- 18.6 **Indemnification for Liens and Stop Notices.** Developer shall keep the Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. Developer shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Developer shall be responsible for payment of all persons entitled to assert liens and stop notices.

ARTICLE XIX. INSURANCE

- 19.1 **General.** Developer shall not begin work on the Project under this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Article.
- 19.2 **Type and Amount of Insurance.** The dollar amount and type of insurance required for the Project, including any endorsements or specific clauses, is attached as **Exhibit W (Required Insurance Provisions)**.
- 19.3 **Written Notice.** Except as provided for under California law, any Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Developer to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days' notice shall be provided.
- 19.3.1 Where the words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" are present on a certificate, they shall be deleted.
- 19.4 **Rating Requirements.** Except for the State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VI" rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.
- 19.5 **Non-Admitted Carriers.** City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers.
- 19.6 **Additional Insurance.** Developer may obtain additional insurance not required by this Agreement.
- 19.7 **Obligation to Provide Documents.** Prior to performing any work on the Project, Developer shall provide copies of documents including, but not limited to, certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.

- 19.8 Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Developer. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.
- 19.9 Policy Changes.** Developer shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.
- 19.10 Reservation of Rights.** City reserves the right, from time to time, to review the Developer's insurance coverage, limits, deductible and self-insured retentions to determine if they are acceptable to City. City will reimburse the Developer for the cost of the additional premium for any coverage-requested by City in excess of that required by this Agreement without overhead, profit, or any other markup.
- 19.11 Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Developer's obligations under this Agreement, including indemnity.
- 19.12 Material Breach.** Failure to maintain, renew, or provide evidence of renewal of required insurance during the term of this Agreement, and for a period of ten (10) years from the Effective Date of this Agreement, may be treated by City as a material breach of this Agreement.

ARTICLE XX. WARRANTIES

- 20.1 Warranties Required.** Developer shall require the construction contractor and its subcontractors and agents to provide the warranties listed below. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warranties shall be enforceable by and inure to the benefit of City.
- 20.1.1 *Materials and Workmanship.*** All work on the Project shall be guaranteed against defective workmanship and all materials furnished by the construction contractor or its agents shall be guaranteed against defects for a period of one (1) year from the date of the Project's Final Completion. Construction contractor shall replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.
- 20.1.2 *New Materials and Equipment.*** Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all materials and equipment incorporated into the Project are new unless otherwise specified.
- 20.1.3 *Design, Construction, and Other Defects.*** Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, that all work is in accordance with the Plans and Specifications and is not defective in any way in design, construction, or otherwise.
- 20.2 Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Developer's and Developer's agents, material supplier's, installer's or manufacturer's own letterhead, addressed to City. All warranties shall be submitted in the format specified in this Section.

- 20.2.1 **Durable Binder.** Obtain warranties, executed in triplicate by Developer, Developer's agents, installers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.
- 20.2.2 **Table of Contents.** All warranties shall be listed and typewritten in the sequence of the table of contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of product or work item.
- 20.2.3 **Index Tabs.** Each warranty shall be separated with index tab sheets keyed to the table of contents listing.
- 20.2.4 **Detail.** Provide full information, using separate typewritten sheets, as necessary. List Developer's agents, installer, and manufacturer, with name, address and telephone number of responsible principal.
- 20.2.5 **Warranty Start Date.** This date shall be left blank until the date of Final Completion.
- 20.2.6 **Signature and Notarization.** All warranties shall be signed and notarized. Signatures shall be required from Developer's construction contractor and where appropriate, the responsible subcontractor.
- 20.3 **Term of Warranties.** Unless otherwise specified or provided by law, all warranties, including those pertaining to plants, trees, shrubs and ground cover, shall extend for a term of one (1) year from the date of Final Completion.
- 20.4 **Meetings.** During the one (1) year warranty period described in Section 20.3, Developer shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Public Works Project Manager and one or more Responsible Department representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems City discovers in design, construction, or furnishing, fixtures, and equipment of the Project during the one (1) year warranty period.

ARTICLE XXI. DEFECTIVE WORK

- 21.1 **Correction, Removal, or Replacement.** All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the Construction Documents is defective (Defective Work). If within the designated warranty period, or such additional period as may be required by law or regulation, the Project is discovered to contain Defective Work, Developer shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.
- 21.2 **City's Right to Correct.** If circumstances warrant, including an emergency or Developer's failure to adhere to Section 21.1, City may correct, remove, or replace the Defective Work. In such circumstances, Developer shall not recover costs associated with the Defective Work and shall reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.

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

ARTICLE XXII. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

- 22.1 Maintenance Period.** If the construction contractor is required to install or maintain landscaping and/or irrigation, Developer shall require the construction contractor to provide a maintenance period to begin on the first day after all landscape and irrigation work on the Project is complete, checked, approved by City, and City has given written approval to begin the maintenance period, and shall continue until ninety (90) calendar days after the date of Final Completion or ninety (90) calendar days after the date the landscaping and irrigation is accepted, whichever is longer, however, the maintenance period shall be a minimum of one hundred twenty (120) calendar days if turf is seeded or until the Bermuda grass specified has established by the Parks and Recreation Department.
- 22.2 Maintenance Area.** Developer shall require the construction contractor to maintain all areas of the Project, including areas impacted or disturbed by the Project.
- 22.3 Maintenance Required.** Developer shall require the construction contractor to conduct regular planting maintenance operations immediately after each plant is planted. Plants

shall be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, aerating, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Construction contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days from the date the condition is first detected. Maintenance shall also include the following: (i) filling and replanting of any low areas that may cause standing water (ii) adjusting of sprinkler head height and watering pattern, (iii) filling and recompaction of eroded areas, (iv) weekly removal of trash, litter, clippings and foreign debris, (v) inspecting plants at least twice per week, and (vi) protecting all planting areas against traffic or other potential causes of damage.

22.4 Landscape and Irrigation Inspection. At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be scheduled within fourteen (14) calendar days' notice, when Developer or Developer's contractor notifies City they are ready for the final Landscape and Irrigation Inspection. The City will notify Developer of all deficiencies revealed by the inspection before acceptance.

22.5 Extension of Maintenance Period. Developer shall require the construction contractor to extend completion of the maintenance period when in City's opinion improper maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period. Developer shall require the construction contractor to accept responsibility for additional maintenance of the work until all of the work is completed and acceptable. Additional costs for failure to maintain landscaping during the maintenance period are Non-Reimbursable Costs.

22.6 Replacement. Plants found to be dead or not in a vigorous condition, or if root balls have been damaged, within the installation, maintenance and guarantee periods, shall be replaced within fourteen (14) calendar days of notification by City. Developer shall require the construction contractor to include, at construction contractor's expense, a timely written diagnosis of plant health by a certified arborist, should a dispute arise. An arborist's report shall indicate the reason for lack of vigor, potential remedies, if any, and an estimate of the time required to regain vigor and specified size. Plants used for replacement shall be of the same kind and size as specified and shall be furnished, planted and fertilized as originally specified, unless otherwise directed in writing by City. Developer shall require the cost of all repair work to existing improvements damaged during replacements be borne by the construction contractor. Costs of replacement are Non-Reimbursable Costs.

ARTICLE XXIII. RECORDS AND AUDITS

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

23.2 Audit of Records. At any time during normal business hours and as often as City deems necessary, Developer and all contractors or subcontractors shall make available to City for examination at reasonable locations within the City/County of San Diego all of the data

and records with respect to all matters covered by this Agreement. Developer and all contractors or subcontractors shall permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Developer shall pay all City's travel-related costs to audit the records associated with this Agreement at the location where the records are maintained. All such costs are Non-Reimbursable Costs.

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

ARTICLE XXIV. NOTICES

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

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

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

24.3.1 Director, Public Works Department
City of San Diego
525 B Street, Suite 750 (M.S. #908A)
San Diego, California 92101
Facsimile: (619) 533-5176

24.3.2 Public Facilities Planning Manager
Planning Department
City of San Diego
9485 Aero Drive, (M.S.#413)
San Diego, California 92123
Facsimile: (619) 533-3687

24.3.3 Pardee Homes
Attn: Jimmy Ayala, Division President
13400 Sabre Springs Parkway, Suite 200
San Diego, CA 92128

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

ARTICLE XXV. MEDIATION

- 25.1 **Mandatory Mediation**. If dispute arises out of, or relates to the Project or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.
- 25.2 **Mandatory Mediation Costs**. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator (Mediator), and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.
- 25.3 **Selection of Mediator**. A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.
- 25.3.1 If AAA is selected to coordinate the mediation (Administrator), within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.
- 25.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.
- 25.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.
- 25.4 **Conduct of Mediation Sessions**. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will

be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

25.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

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

ARTICLE XXVI. MISCELLANEOUS PROVISIONS

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

26.2 Definitions.

26.2.1 Construction Documents include, but are not limited to: construction contract, contract addenda, notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bonds, the general conditions, permits from other agencies, the special provisions, the plans, standard plans, standard specifications, reference specifications, requests for proposals/qualifications (including all related evaluation documents for "Design/Bid/Build" or "Design/Build" solicitations) and all modifications issued after the execution of the construction contract.

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

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

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

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

- 26.6 Incorporation of Recitals.** All Recitals herein are true and correct to the Parties' best knowledge and belief, and are fully incorporated into this Agreement by reference and are made a part hereof.
- 26.7 Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of City or Developer shall be deemed to be both covenants and conditions.
- 26.8 Integration.** This Agreement and all Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 26.9 Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 26.10 Drafting Ambiguities.** The Parties acknowledge they each have been fully advised by their own counsel with respect to the negotiations, terms, and conditions of this Agreement. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 26.11 Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 26.12 Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 26.13 Good Faith Performance.** The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 26.14 Further Assurances.** City and Developer each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 26.15 Exhibits.** Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.
- 26.16 Compliance with Controlling Law.** Developer shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code sections 1720 through 1861 relating to the payment of prevailing wages, including, but not limited to, the design, preconstruction, and construction phases of the Project. In addition, Developer shall

require its consultants, contactors, subcontractors, agents, and employees comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, resolutions, ordinances, rules, regulations or policies.

- 26.17 Hazardous Materials.** Hazardous Materials constitute any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25). Developer agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.
- 26.18 Jurisdiction, Venue, and Choice of Law.** The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.
- 26.19 Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 26.20 Third-Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third-party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third-party beneficiary of all Developer's contracts, purchase orders and other contracts between Developer and third-party services. Developer shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 26.21 Non-Assignment.** The Developer shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this Section shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.
- 26.22 Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 26.23 Independent Contractors.** The Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Developer concerning the details of performing the work or services under this Agreement, or to exercise any control over such performance, shall mean only that Developer shall follow the direction of City concerning the end results of the performance.
- 26.24 Approval.** Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld; however, nothing

in this Section shall in any way bind or limit any future action of the City Council pertaining to this Agreement or the Project.

- 26.25 No Waiver.** No failure of either City or Developer to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 26.26 Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been duly obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.
- 26.27 Remedies.** Notwithstanding any other remedies available to City at law or in equity, Developer understands that its failure to comply with the insurance requirements or other obligations required by this Agreement, and/or submitting false information in response to these requirements, may result in withholding reimbursement payments until Developer complies and/or may result in suspension from participating in future city contracts as a developer, prime contractor or consultant for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three (3) years.

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

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


THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: 8/17/20

By: 

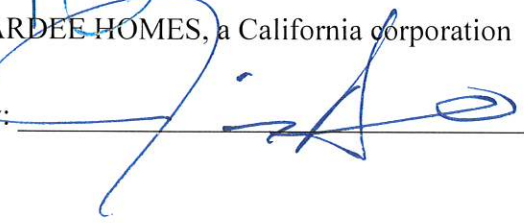
Approved:
MARA W. ELLIOTT, City Attorney

Dated: 8/18/2020

By: 

PARDEE HOMES, a California corporation

Dated: 2-28-2020

By: 

Or.Dept: PLN-Public Facilities Planning
Doc.No.:

EXHIBIT A
Financing Plan Project Sheet

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

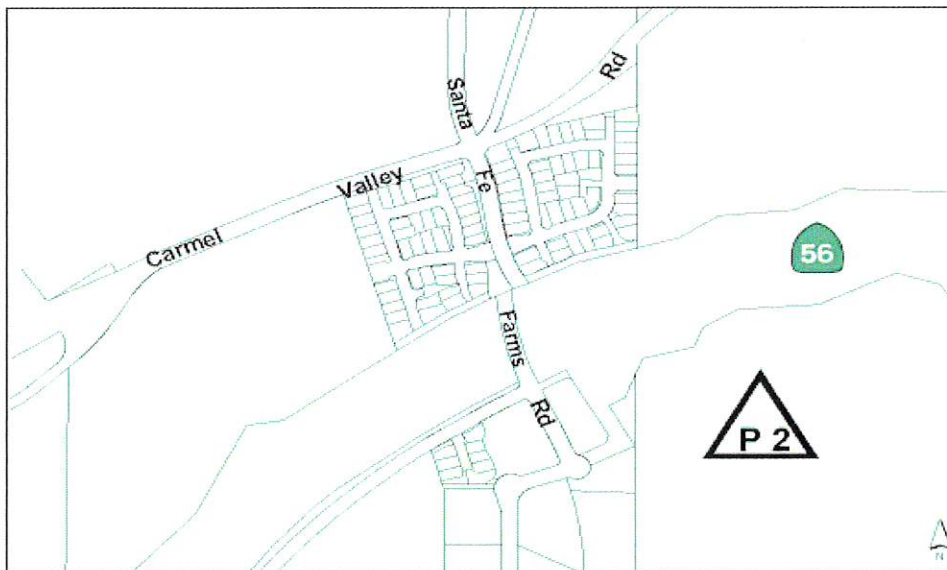
TITLE: **McGONIGLE CANYON NEIGHBORHOOD PARK - Acquisition and Development**

DEPARTMENT: PARK AND RECREATION
CIP, JO, or WBS #: 29-540.0

PROJECT: **P-2**
COUNCIL DISTRICT: 1
COMMUNITY PLAN: PHR

SOURCE	FUNDING:	EXPENDED	CONT APPROP	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
FBA-PHR	\$10,579,924							
FBA-BMR								
FBA-TH								
FBA-DMM								
FBA-RP								
GRANT								
DEVELOPER								
COUNTY								
STATE								
OTHER								
UNIDEN								
TOTAL	\$10,579,924	\$0	\$0	\$0	\$0	\$0	\$0	\$0

SOURCE	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
FBA-PHR			\$5,289,962	\$5,289,962				
FBA-BMR								
FBA-TH								
FBA-DMM								
FBA-RP								
GRANT								
DEVELOPER								
COUNTY								
STATE								
OTHER								
UNIDEN								
TOTAL	\$0	\$0	\$5,289,962	\$5,289,962	\$0	\$0	\$0	\$0



CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: **McGONIGLE CANYON NEIGHBORHOOD PARK - Acquisition and Development**

DEPARTMENT: PARK AND RECREATION	PROJECT: P-2
CIP, JO, or WBS #: 29-540.0	COUNCIL DISTRICT: 1
	COMMUNITY PLAN: PHR

DESCRIPTION:

THIS PROJECT PROVIDES FOR THE ACQUISITION, DESIGN, AND CONSTRUCTION OF A FIVE (5.00) USABLE ACRE NEIGHBORHOOD PARK TO BE LOCATED ADJACENT TO A PROPOSED ELEMENTARY SCHOOL NO. 2 IN THE PACIFIC HIGHLANDS RANCH COMMUNITY. PARK AMENITIES COULD INCLUDE TURFED MULTI-PURPOSE SPORTS FIELDS, A CHILDREN'S PLAY AREA, MULTI-PURPOSE COURTS, PICNIC FACILITIES, WALKWAYS, SECURITY LIGHTING, LANDSCAPING, AND A COMFORT STATION. THIS PROJECT ALSO INCLUDES HALF-WIDTH STREET IMPROVEMENTS FOR THE LOCAL ROADWAYS ADJACENT TO THE PARK AND UTILITIES TO SERVE THE PARK.

JUSTIFICATION:

THIS PROJECT IS IN CONFORMANCE WITH THE CITY'S GENERAL PLAN GUIDELINES FOR POPULATION-BASED PARK ACREAGE, IMPLEMENTS THE PACIFIC HIGHLANDS RANCH SUBAREA PLAN RECOMMENDATIONS, AND IS NEEDED TO SERVE THE COMMUNITY.

FUNDING:

NOTES:

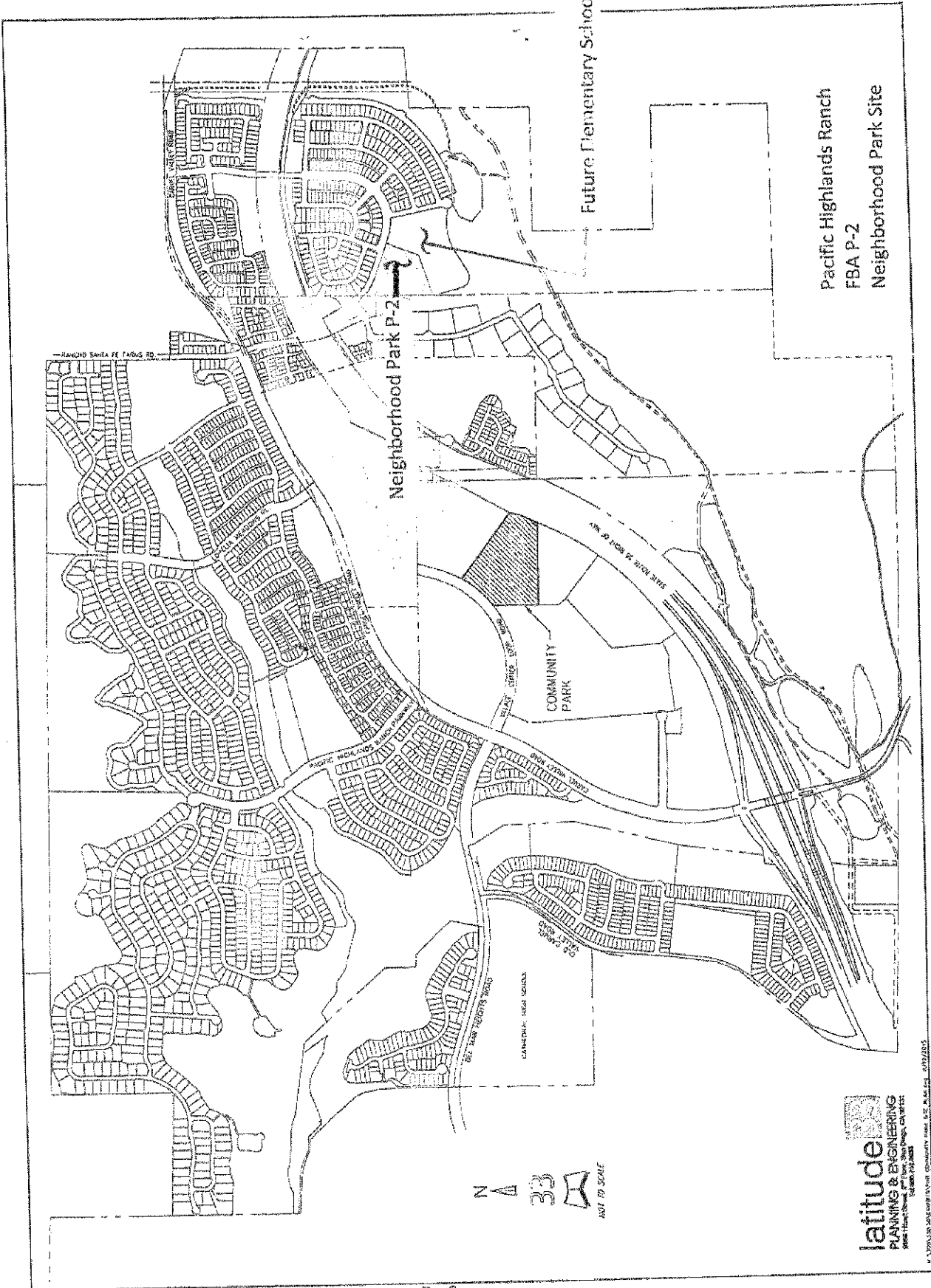
TRANSPORTATION AND FACILITY PHASING PLAN, PHASE 4B.

SCHEDULE:

THE SCHEDULE IS DEPENDENT UPON THE ACTUAL RATE OF DEVELOPMENT WITHIN PACIFIC HIGHLANDS RANCH.

SITE ACQUISITION IS ANTICIPATED IN FY 2023 WITH DESIGN AND CONSTRUCTION ANTICIPATED TO START IN FY 2024.

EXHIBIT B
Depiction of Project



Pacific Highlands Ranch
 FBA P-2
 Neighborhood Park Site

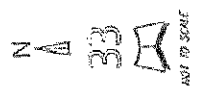
Neighborhood Park P-2

Future Elementary School Site

COMMUNITY PARK

CARNERVA HIGH SCHOOL

RANCHO SANTA FE TARDUS RD



latitude
 PLANNING & ENGINEERING
 10000 Hillside Drive, Suite 100
 San Diego, CA 92120
 Tel: 619 594 1000

DATE: 11/15/05 11:53 AM 11/15/05 11:53 AM 11/15/05 11:53 AM 11/15/05 11:53 AM

EXHIBIT C
Description of Project

EXHIBIT C

Description of Pacific Highlands Ranch McGonigle Canyon Neighborhood Park Site Project P-2

DESCRIPTION OF PROJECT P-2

THIS PROJECT PROVIDES FOR THE DESIGN AND CONSTRUCTION OF A 5.0 NET USEABLE ACRE NEIGHBORHOOD PARK TO BE LOCATED IN PACIFIC HIGHLANDS RANCH, TO SERVE RESIDENTS IN THE PACIFIC HIGHLANDS RANCH COMMUNITY. PARK AMENITIES COULD INCLUDE TURFED MULTI-PURPOSE SPORTS FIELDS, A CHILDREN'S PLAY AREA, MULTI-PURPOSE COURTS, PICNIC FACILITIES, WALKWAYS, SECURITY LIGHTING, LANDSCAPING, AND A COMFORT STATION. THIS PROJECT WILL BE DEVELOPED ADJACENT TO A PROPOSED ELEMENTARY SCHOOL SITE. THIS PROJECT IS IN CONFORMANCE WITH THE CITY'S GENERAL PLAN GUIDELINES AND IMPLEMENTS THE RECOMMENDATIONS OF THE PACIFIC HIGHLANDS RANCH SUBAREA PLAN.

EXHIBIT D
Project Schedule

EXHIBIT “D”

Schedule

Pacific Highlands Ranch FBA Project P-2

(McGonigle Canyon Neighborhood Park)

Item No.	Activity*	Schedule Neighborhood Park P-2	Approximate Start Date **
1	Effective Date of the Agreement	Day 1	1.1.2020
2	Obtain City approval of GDP; Submit cost estimate for GDP to City; Obtain City’s Park and Recreation Board approval of Park’s name	18 months	7.1.2021
3	Preparation of Construction drawings	6 months	1.1.2022
4	Permit processing/park permits issued	6 months	7.1.2022
5	Bidding/procurement	6 months	1.1.2023
6	Begin and complete park construction	12 months	7.1.2023
7	Begin maintenance period and perform maintenance	4-6 months	7.1.2024
8	Park is opened to the public		11.1.2024

*Undertaking an Activity in this Schedule does not, upon completion, require immediate commencement of performance of a scheduled Activity that follows the completed Activity.

**These dates are approximate. The dates shall be updated when the actual Effective Date of the Agreement is known.

EXHIBIT E
Developer's Estimated Cost

Project Title: McGonigle Canyon Neighborhood Park NP-2

ITEM DESCRIPTION	Total Cost	
1. Construction (Hard) Costs		
Mobilization/Demobilization/General Conditions	\$ 505,000	
Earthwork/Fine Grading	\$ 261,000	
Erosion Control/Stormwater Pollution Prevention	\$ 174,000	
Traffic Control	\$ 58,000	
Demolition	\$ 144,000	
Sewer and Drainage Improvements	\$ 254,000	
Water Service and fees	\$ 158,000	
Restroom, Concession and Storage Rooms	\$ 371,000	
Electrical (including lighting)	\$ 254,000	
Landscaping, (including establishment period)	\$ 754,000	
Irrigation	\$ 754,000	
Hardscape/Walkways	\$ 754,000	
Playgrounds and Sports Courts	\$ 700,000	
Subtotal No. 1:	\$ 5,141,000	
2. Design (Soft) Costs		
Consultant Services, GDP, Community Outreach, etc.	\$ 232,000	
Engineering (Construction Documents, Specifications, Cost Estimates)	\$ 514,100	10%
Bond Premiums	\$ 102,820	2%
Insurance (Section 19)	\$ 102,820	2%
Plan Check, City Permits/Processing Fees, Inspection Fees (Paid to City)	\$ 257,050	5%
Construction Management; Engineering Support; Surveying; Soils Engineering; Testing; etc.	\$ 514,100	10%
Environmental Mitigation	\$ 58,000	
Site Security, Perimeter Fencing, Surveillance, etc.	\$ 58,000	
Subtotal No. 2:	\$ 1,838,890	
3. Total Project Costs (Subtotals No. 1 and No.2) (Section 3.1)	\$ 6,979,890	
4. Project Contingency (10% of Construction Costs) (Section 3.3.2)	\$ 514,100	
5. Developer Administration Costs (6% of Total Project Costs) (Section 3.3.1)	\$ 449,639	
6. Interest on Reimbursement Payment (Up to Maximum per Agreement) (Section 12.1.6)	\$ 50,000	
TOTAL ESTIMATED COST (Section 3.3)	\$ 7,993,629	

Notes:

1. Above budget estimates expressed in FY2023 dollars
2. Cost overruns to any line item above can be offset by savings realized in any other line item.
3. Above budget prepared prior to preparation of GDP. Scope of Work may change due to approval of GDP.

as of November 8, 2019

EXHIBIT F

Project Schedule Obligations and Components

1. **Developer's Obligation.** To the extent required by City, Developer shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.
 - A. *Project Initiation.* During Project initiation and design phases, Developer shall submit an updated Project Schedule on a quarterly basis to City for approval.
 - B. *Construction Phase.* During Construction, Developer shall submit an updated Project Schedule monthly to City and shall include:
 - i. Forecast data with the intended plan for the remainder of the contract duration.
 - ii. Actual data with indications of when and how much work and/or services was performed (percent complete).
 - iii. Logic changes or other changes required to maintain the Project Schedule.
2. **Detail and Format.** Unless otherwise directed by City, the Project Schedule shall include all phases of the Project. It shall be in a precedence diagram format, plotted on a time-scaled calendar, detailed to activity level, and shall include:
 - A. *Identification of design and construction activities and their sequence.*
 - i. Work shall be divided into a minimum of 5 activities.
 - ii. Activities shall not exceed 21 calendar days in duration or \$50,000 in value, except long lead procurement and submittal activities or those accepted by City in writing.
 - iii. Each activity shall be assigned a budget value in accordance with Agreement requirements and activity descriptions.
 - a. The sum of all budget values assigned shall equal Estimated Cost.
 - b. Each construction activity shall indicate the estimated labor days and materials quantities required.
 - iv. Incorporate specific activity and time requirements.
 - v. Include 10 weather/delay days, commonly known as "rain days." The late finish date shall be the fully elapsed Contract Time.
 - B. *Float Time.* Show activities on their early dates with corresponding Total Float Time noted beside them.
 - i. Project Schedule shall not include more than 40 calendar days of Float Time absent written City approval.
 - C. *Milestones.* Show milestones with beginning and ending dates.
 - i. Milestones shall include schematic plans, 60% design, 90% design, 100% design; bid opening; Notice to Proceed; start construction; end construction; and Project Completion and Acceptance.
 - D. *Relationships.* Show all appropriate definable relationships with separate explanation of constraints and each start-start, finish-finish, or lag relationship. Relate all activities to each other and to the first appropriate milestone.
 - E. *Procurement.* Show the procurement of major equipment and materials.
 - F. *Submittals.* Include all submittals required and identify the planned submittal dates, adequate review time, and the dates acceptance is required to support design and construction.
3. **Submittal.** The Project Schedule shall be submitted electronically to City.

EXHIBIT G

Meeting Requirements

1. **Preconstruction Meeting.** Developer shall conduct a preconstruction meeting with its officers, agents, and employees and City. The purpose of this meeting is to discuss: (1) the Agreement conditions, (2) Scope of Work clarifications, and (3) City policies, inspection requirements, and procedures.
 - A. *Attendance.* Developer shall ensure that its construction contractor and major subcontractors, the Project Superintendent, and the City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by Developer or City attend the preconstruction meeting.
 - B. *Minutes.* Developer shall take corresponding meeting minutes and distribute copies to all attendees.
2. **Progress Meetings.** Developer shall conduct weekly progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: Developer's Construction Superintendent, Developer's Project Manager, Developer's Design Consultant, City representatives including Responsible Department representatives, the Public Works Department Project Manager and the Resident Engineer.
 - A. *As-Builts.* Developer shall bring updated As-Builts and verify that the latest changes have been made.
 - B. *Special Meetings.* Special meetings shall occur at Project phases as outlined in **Exhibit H.**
 - C. *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Developer has given no less than seven calendar days prior written notice of the rescheduled meeting.
3. **Agenda.** All meetings shall include at a minimum the agenda identified in **Exhibit H.**
4. If needed, the Developer shall be responsible for providing all documents and the exhibits for Community Outreach defined in Section 13.7 of this Agreement

EXHIBIT H

Preconstruction, Progress, & Special Meeting Agenda

1. **Preconstruction.** The issues below, but not limited to, should be made part of the Preconstruction Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.
 - 1.1 Permits and utility issues, including telephone, cable, gas, and electric. RE to announce to Developer that franchise companies may be working in the area of the Project and that coordination regarding such a situation may need to be done.
 - 1.2 Establish parking areas for construction employees and possibly patrons/others.
 - 1.3 Developer's payment procedure and forms.
 - 1.4 Format for Request for Proposals (RFPs) using the sample in the back of the contract documents.
 - 1.5 Collection of emergency numbers for off-hour emergencies from the prime (with an alternate contact person).
 - 1.6 Distribution and discussion of the construction schedule.
 - 1.7 Procedure for maintaining the Project record documents.
 - 1.8 Distribution of the Second Opinion Option Form.
 - 1.9 Designation of persons authorized to represent and sign documents for the RE and Developer and the respective communication procedures between parties.
 - 1.10 Safety and first aid procedures including designation of Developer's safety officer.
 - 1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.
 - 1.12 Testing laboratory or agency and testing procedures.
 - 1.13 Establish schedule for progress meetings.
 - 1.14 Procedure for changes in work requested by Developer, notice to RE, timing, etc.
 - 1.15 Procedure for changes in work requested by City.
 - 1.16 Public safety.
 - 1.17 Housekeeping procedures and Project site maintenance.
 - 1.18 Protection and restoration of existing improvements.
 - 1.19 Sanitation, temporary lighting, power, water, etc.
 - 1.20 Procedure for encountering hazardous substances.
 - 1.21 Any items requested by attendees of preconstruction meeting/open discussion.
2. **Progress Meetings.** The issues below, but not limited to, should be made part of the Progress Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.
 - 2.1 Review progress of construction since the previous meeting.
 - 2.2 Discuss field observations, problems, conflicts, opportunities, etc.
 - 2.3 Discuss pre-planning opportunities.
 - 2.4 Identify problems that impede planned progress and develop corrective measures as required to regain the projected schedule; revise the schedule if necessary.

- 2.5 Discuss Developer's plan for progress during the next construction period and the corresponding inspections necessary.
 - 2.6 Discuss submittal status.
 - 2.7 Discuss request for information (RFI) status.
 - 2.8 Progress of schedule.
 - 2.9 Disputed items.
 - 2.10 Non-conformance/non-compliance items.
 - 2.11 New business of importance from any member of the meeting.
 - 2.12 Deferred approvals and their coordination.
 - 2.13 Discuss request for proposals, change orders, and progress payment status.
3. Special Meetings.
- 3.1 Grading. Prior to grading the site, the RE shall call a grading mini-preconstruction meeting. This meeting applies when surveying is being supplied by the City. The superintendent, the Developer's appropriate subcontractors, the RE, the City's survey crew, and any appropriate consultants (if deemed necessary by the RE) shall attend. Unless otherwise noted, the agenda will be to coordinate the staking, reference markers, bearings, various site conditions, etc. as defined in the contract documents and any necessary coordination of scope or scheduling between the respective parties.
 - 3.2 Roofing. Upon completion of the roofing structural diaphragm and prior to installing flashing, and/or any other roofing materials, the RE shall call a roof mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, the roof suppliers manufacturer's representative, and any appropriate consultants (if deemed necessary by the RE) shall attend. The agenda will be to coordinate the flashing, caulking, sealing, and different roofing materials and/or contractors on site with the various field conditions.
 - 3.3 Landscaping. Upon completion of the grading and prior to the installation of any landscaping equipment, supplies, etc., the RE shall call a landscaping mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) shall attend. The agenda will be to coordinate all landscape materials, plant and irrigation coverage, visual planting procedures, etc. and/or contractors on site with the various field conditions.
 - 3.4 Mini-Preconstruction Meeting. Prior to the installation of any mechanical, electrical, plumbing, and sprinkler system equipment, the Developer shall call a mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) shall attend. The intent of this meeting is to ensure that the prime contractor is adequately coordinating the space of the facility so as to not impede the visual integrity of the overall product.
 - 3.5 Other. Upon appropriate notice to other parties, the RE may call special meetings at times agreed to by all parties involved.

EXHIBIT I

Procedure for Processing Change Orders

1. **Forms Required.** Prior to construction, all Change Orders shall be requested in writing by the Developer on the appropriate City form and must be approved or rejected by City in writing as provided in Section 3, below, and delivered to Developer. The purpose is for the developer to obtain advance written approval (or rejection) from the City prior to incurring the cost.
2. **Written Approval of Change Orders.** Change Orders that *will not* result in an increase in the Estimated Cost, may be approved by the RE in writing. If a requested Change Order *will* result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval only if the increase will exceed the Financing Plan estimate.
3. **Process for Approval of Change Orders.** A Change Order must indicate whether the change will result in any change to the Estimated Cost, Project Schedule, or Project quality established during the design and submittal review process.
 - 3.1 **Resident Engineer Review.** The RE shall either approve or reject the Change Order in writing on the appropriate City form within fourteen (14) calendar days of receiving Developer's written notice, provided Developer has submitted complete documentation substantiating the need for such Change Order and the reasonableness of the cost. If City fails to respond to Developer's written notice within the fourteen (14) calendar days, the Change Order request shall automatically be deemed denied.

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

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

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

- 3.2 **Consultant Review.** On behalf of the City, the Public Facilities Planning(PFP) Consultant reviews the Developer's written request for a Change Order and supporting documentation, and compares them to the terms of the Agreement and industry standards. The PFP Consultant makes a recommendation for the reimbursable amount of the Change Order and sends the signed form to PFP, including the documentation used to make the recommendation, for PFP's review.
- 3.3 **Public Facilities Planning Review.** PFP reviews and either approves or requests additional information or documentation prior to approving the Change Order, including the recommendation for the reimbursable amount.
4. **City Council Approval.** As noted in Section 2 above, if the Change Order request *will* result in an increase in the Estimated Cost, City Council approval is required for increases that will exceed the Financing Plan estimate. In such cases, once a Change Order is preliminarily accepted by the appropriate City staff, City staff shall process the Change Order along with any required amendments to the Financing Plan and this Agreement as a 1472 (Request for Council Action). At a hearing on such Request for Council Action, City Council may either approve or reject such Change Orders. Council Approval shall not be subject to the fourteen (14) calendar day response time set forth above in Section 3.1. Furthermore, nothing in this Agreement shall compel the City Council to take any particular action.

Exhibit J

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

Before You Begin Creating the Solicitation

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

Critical Elements for the Solicitation

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

➤ Required Forms and Certifications

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

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

Advertisement of the Solicitation

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

EXHIBIT K

Consultant Provisions

1. **Third Party Beneficiary.** The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and payment in full to Consultant by Developer, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.
2. **Competitive Bidding.** Consultant shall ensure that all design plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.
3. **Professional Services Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Sections 4 and 5 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.
4. **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
5. **Design Professional Services Defense.** Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
6. **Enforcement Costs.** Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.
7. **Professional Liability Insurance.** For all of Consultant's employees who are subject to this Agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. Consultant shall ensure both that (1) this policy's retroactive date is on or before

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

8. **Commercial General Liability (CGL) Insurance.** Consultant shall keep in full force and effect, during any and all work performed in accordance with this Agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.
9. **Insurance Policy Requirements.** Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement that shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements.
10. **Workers Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.
11. **Compliance Provision.** Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 (ADA) and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code (Title 24). Further, Consultant is responsible as designer and employer to comply with all parts of the ADA and Title 24.
12. **Maintenance of Records.** Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.

EXHIBIT L

Design and Construction Standards

1. **Laws.** Developer shall comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:
 - A. *Permits.* Development Services Department permits, hazardous material permits, Coastal Commission permits.
 - B. *Building Codes.* State and local Building Codes
 - C. *The Americans with Disabilities Act (ADA) and Title 24 of the California Building Code (Title 24).* It is Developer's sole responsibility to comply with all ADA and Title 24 regulations. See Developer Certification attached as **Exhibit M**.
 - D. *Environmental.* Developer shall complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring.
 - E. *Air, Water, and Discharge.* Developer shall comply with the Clean Air Act of 1970, the Clean Water Act, and San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).
 - F. *ESBSSA.* Developer shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
 - G. *City Directives.* Developer shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
2. **Standard Specifications.** Developer shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:
 - A. *Green Book and White Book.* Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments.
 - B. *DOT.* California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
3. **City Standards.** Developer's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:
 - A. *City of San Diego's Drainage Design Manual*
 - B. *City of San Diego's Landscape Technical Manual*
 - C. *City of San Diego's Street Design Manual*
 - D. *City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans*
 - E. *City of San Diego's Technical Guidelines for Geotechnical Reports*
 - F. *City of San Diego Standard Drawings including all Regional Standard Drawings*
 - G. *City of San Diego Data Standards for Improvement Plans*
 - H. *The City of San Diego Consultant's Guide to Park Design and Development.*
 - I. *The City of San Diego Water Department Guidelines and Standards*

EXHIBIT M

Certification for Title 24/ADA Compliance

[INSERT Name of Project]

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for [INSERT Name of Project] shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with the Americans with Disabilities Act of 1990.

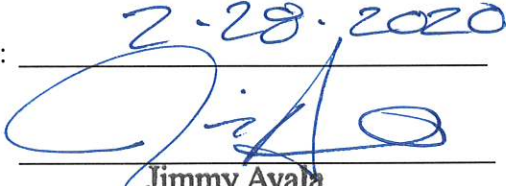
Dated: 2-28-2020
By: 
Jimmy Ayala
Division President



EXHIBIT N

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

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

1. **Preparation of the GDP and GDP Cost Estimate.** The Developer shall complete all tasks within City Council Policy 600-33, Community Notification and Input for City-Wide Park Development Projects, in the preparation of the GDP and a GDP Cost Estimate of the Project. The Project shall be consistent with all local, state, and federal disabled access laws and requirements, as well as City's Park and Recreation Department's current version of the Consultant's Guide to Park Design and Development. The Project shall generally include, but not be limited to, the types of Neighborhood Park components listed in Table RE-2 of the City's General Plan.
2. **Final Review of the GDP, GDP Cost Estimate and Park Name.** The Developer shall diligently pursue approval of the GDP through such committees, commissions, and/or council as have jurisdiction to approve the Project (Discretionary Bodies). As a result of any presentation to, or any suggestion of, any Discretionary Body, PWD Project Manager may request changes in the GDP, if applicable, and Developer shall direct the Consultant to make those changes where the estimated cost of such changes does not exceed five percent (5%) of the Estimated Project Cost. The GDP and the name of the park is subject to approval by the Park and Recreation Board. Approval of the park name shall be in conformance with the Park and Recreation Board Policy No. 1001. Upon final recommendation from the Park and Recreation Board, the final approved GDP and GDP cost estimate shall be formatted as identified in the most current edition of the Consultant's Guide to Park Design and Development and submitted to the PWD Project Manager.
3. **Preliminary Review of Plans and Specifications and Construction Cost Estimate.** Developer shall obtain City approval via the PWD Project Manager, in writing, of the Plans and Specifications prior to the solicitation of bids for construction of the Project. Developer may request approval of preliminary Plans and Specifications and a preliminary Construction Cost Estimate for individual phases of the Project prior to bidding. PWD Project Manager will notify Developer in writing within thirty (30) Calendar Days following receipt of the preliminary Plans and Specifications and preliminary Construction Cost Estimate of any City request for modifications. If modifications are requested, Developer shall modify and resubmit the preliminary Plans and Specifications and preliminary Construction Cost Estimate for PWD Project Manager's approval.
4. **Final Review of Plans and Specifications and Final Construction Cost Estimate.** Upon final approval of the Plans and Specifications by the PWD Project Manager, Developer shall deliver to Development Services Department (DSD) complete Plans and Specifications for permit issuance. Developer shall also require its Consultant to prepare a final Construction Cost Estimate (Final Construction Cost Estimate) for the Project based on the approved Plans and Specifications, which shall be subject to PWD Project Manager's approval. Approval shall not be unreasonably withheld. Final Plans and Specifications shall include City's Standard Drawings and Specifications as described in **EXHIBIT L**. If requested by DSD, Developer shall cause the Consultant to make only such changes to the Plans and Specifications that are necessary to bring them into conformance with the approved GDP and all applicable local, state, and federal regulations when the cumulative total of such changes would not increase the Final Construction Cost Estimate by more than five percent (5%). If such changes would exceed five percent (5%) of the approved Final Construction Cost Estimate, the changes to the Plans and Specifications shall be considered additive or deductive alternates in the Bidding Documents, with the PWD Project Manager's approval. Any redesign must be in substantial conformance with the final approved GDP or the redesign shall require community input per Council Policy 600-33.

5. **City Approval.** Developer shall obtain City approval of the design, in writing, at GDP, 60% Design, and 100% Design, and Final Design.
 - A. *Condition Precedent.* Approval of the GDP is a condition precedent to authorization to proceed with subsequent work on the Project. City will notify Developer in writing within four weeks after receipt of approved final GDP,
 - B. *Sixty (60) Percent Design.* At 60% design, City will notify Developer in writing at each required stage of design, of approval, or of request for modifications. If modifications are requested, Developer shall modify and resubmit Design Documents for City approval.
 - C. *100% Percent Design.* At 90% design, City will notify Developer in writing at each required stage of design, of approval, or of request for modifications. If modifications are requested, Developer shall modify and resubmit Design Documents for City approval.
 - D. *Final Design.* At final design, City will notify Developer in writing of approval.
6. **Submittal of Plans, Specifications, and Final Construction Cost Estimate.** Developer shall deliver to City complete Plans, Specifications, and Final Construction Cost Estimate, consistent with the approved GDP, for the construction of the Project, in accordance with **Exhibit D** (Project Schedule). If the PWD Project Manager determines the Plans and Specifications are substantially consistent with the approved GDP, no amendment to the GDP shall be required.
7. **Citywide Review of 100% Plans, Specifications and Final Construction Cost Estimate.** Plans and Specifications shall include City's standard drawings and specifications as described in **Exhibit L**. If requested by City, Developer shall make changes to the Plans and Specifications, but Developer shall not be responsible for implementing such changes if they would increase the Estimated Project Cost by more than 5%. In such a case, the changes to the Plans and Specifications shall be considered additive or deductive bid alternates to the Project.
8. **Final Approval and Permit Review.** City approval of the Plans, Specifications and Final Construction Cost Estimate is a condition precedent to authorization to proceed with subsequent work on the Project.

EXHIBIT O

Construction Obligations

1. **Site Safety, Security, and Compliance.** Developer shall be responsible for site safety, security, and compliance with all related laws and regulations.
 - A. *Persons.* Developer shall be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by Developer to access the Project site.
 - B. *Other.* Developer is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been accepted by the City pursuant to Article I.
 - C. *Environment.* Developer shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including, but not limited to, the Clean Air Act of 1970, the Clean Water Act, Executive Order Number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Furthermore, the Developer shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan (SWPPP) to be implemented by the Developer during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.
2. **Access to Project Site.**
 - A. *Field Office.* Developer 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 Developer.
 - C. *Site Tours.* Site tours may be necessary throughout completion of the Project. Developer shall allow City to conduct site tours from time to time as the City deems necessary. City will give Developer notice of a prospective tour and a mutually agreeable time shall be set. Developer is not obligated to conduct tours or allow access for tours when City fails to give prior notice.
3. **Surveying and Testing.** Developer shall coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:
 - A. *Existing Conditions.* Developer shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The soils consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions, agronomic soil preparation recommendations, and any other information concerning the existing conditions of the site.
 - B. *Utilities.* Developer shall provide all required information for the construction or relocation of public or private utility facilities that must be constructed or relocated as a result of this Project. Developer shall file all of the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project.
 - C. *Geotechnical Information.* Developer shall obtain all necessary geotechnical information required for the design and construction of the Project. The Project Engineering Geologist and/or Project Soils Engineer (qualified R.C.E. or R.G.E.) shall prepare a statement, that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.

4. **Public Right of Way.** All work, including, materials testing, special testing, and surveying to be conducted in the public right-of-way shall be coordinated with the City.
 - A. *Materials Testing.* Developer shall pay for and coordinate with City to have all material tests within the public right-of-way and any asphalt paving completed by City's Material Testing Laboratory.
 - B. *Surveying.* Developer shall pay for and coordinate with City's Survey Section all surveying required within the public right-of-way.
 - C. *Follow all Laws, Rules, and Regulations.* Developer agrees to follow all City standards and regulations while working in the public right-of-way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.
5. **Traffic Control.** Developer shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans, and/or notes.
6. **Inspections.** Developer shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.
 - A. *Reports.* Developer shall provide City all special inspection reports within seven (7) calendar days of inspection. Developer shall report all failures of special inspections to City.
 - B. *Remedies.* Remedies for compliance shall be approved by Developer, Developer's consultants, City's Development Services Department, and City representatives.
 - C. *Concealing Work.* Prior to concealing work, Developer shall obtain approval of the work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as provided in this Agreement. This approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Developer shall fulfill all requirements of each of these three entities.
7. **Property Rights.** Developer shall provide all required easement documents, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements, as required by City of San Diego Real Estate Assets Department requirements. City shall not require Developer to provide any easement documents for land to which Developer does not have title; however, Developer shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Public Facilities Financing Plans or any applicable Development Agreement or other entitlement.
8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Developer in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Developer. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Developer is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Developer in accordance with the terms of the Agreement for the work completed. All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon reimbursement as set forth above.
9. **Maintenance.** Developer shall maintain and be responsible for the Project site until Acceptance of the Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.
10. **Drug-Free Workplace.** Developer agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. Developer shall certify to the City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace form (**Exhibit P**).
 - A. *Developer Notice to Employees.* Developer shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is

prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

- B. *Drug-Free Awareness Program.* Developer shall establish a drug-free awareness program to inform employees about all of the following:
- i. The dangers of drug abuse in the work place.
 - ii. The policy of maintaining a drug free work place.
 - iii. Available drug counseling, rehabilitation, and employee assistance programs.
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
 - v. In addition to Section 10.A above, the Developer shall post the drug-free policy in a prominent place.
- C. *Developer's Agreements.* Developer further certifies that each contract for consultant or contractor services for this Project shall contain language that binds the consultant or contractor to comply with the provisions of Section 10 "Drug-Free Workplace," as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and contractors shall be individually responsible for their own drug-free work place program.

EXHIBIT P

Certification for a Drug-Free Workplace

PROJECT TITLE: [INSERT Name of Project]

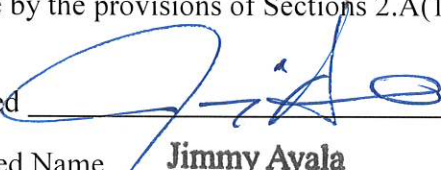
I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace, and that [INSERT Developer Name] has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

Signed _____

Printed Name _____

Title _____

Date _____


Jimmy Ayala
Division President

2.28.2020

EXHIBIT Q

Product Submittal and Substitution

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

EXHIBIT R

Extra Work Provisions

1. **Extra Work.** City may at any time prior to Project Completion order Extra Work on the Project. The sum of all Extra Work ordered shall not exceed five percent (5%) of the Estimated Cost at the time of Bid Award, without invalidating this Agreement and without notice to any surety.
 - A. *Requests in Writing.* All requests for Extra Work shall be in writing, and shall be treated as and are subject to the same requirements as Change Orders. Developer shall not be responsible for failure to perform Extra Work, which was requested in a manner inconsistent with this Section.
2. **Bonds Required for Extra Work.** Developer's and Developer's agents' bonds, under Article XVII, shall cover any Extra Work provided that the Extra Work is paid for by the Project Budget.
3. **Reimbursement for Extra Work.** Work performed by Developer as Extra Work is reimbursable in the same manner as described in Article XII. The Project Contingency as described in Article III, will be used first to cover the costs of Extra Work.
4. **Markup.** Developer will be paid a reasonable allowance for overhead and profit. The allowance shall be paid in accordance with and per the percentage described in the section of the Greenbook and Whitebook noted as "Markup", and shall be added to the Developer's costs for Extra Work.

EXHIBIT S

Notification of Reimbursable Project

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

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

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

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

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

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

By: _____

[Insert Title] _____

Dated: _____

EXHIBIT T

Reimbursement Request Form

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

Invoice Approval Request

No.

Completed by Developer

Reimbursable Project Name		Total Estimated Project Cost
Developer Project Manager	PFFP Community	Date Requested
Requested by	PFFP Project Number	Date Approval Requested

Invoice Scope of Work

Related Change Orders or CORs (Please list their numbers)

Line Item	Qty.	Unit	Unit Cost	Previous Cost	Current Cost	Total to Date
1						
2						
3						
4						
5						
6						
Total Requested for this Invoice including Retention						

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

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

Completed by Resident Engineer

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

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

Date	Inspector Name and Signature
------	------------------------------

Comments

Completed by Financial Consultant

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

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

Date	Consultant	Consultant Name and Signature
------	------------	-------------------------------

Previous Recommendation	Current Recommendation	Recommendation to Date
-------------------------	------------------------	------------------------

Comments

Completed by Public Facilities Planning

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

Date	Name and Signature
------	--------------------

Comments

EXHIBIT U

Project Deliverables

- A. *Working Drawings.* Developer shall prepare Working Drawings in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.
- i. Quality. Developer shall make Working Drawings by one of the following methods: permanent ink, Computer Aided Drafting, a permanent photographic reproduction process, or with pencil made for use on drafting film and permanently fixed with spray coating. Scale and clarity of detail shall be suitable for half-size reduction.
 - ii. Font and Contents. Specifications shall be typewritten with one type face, on bond paper utilizing Greenbook format. Developer will furnish only the technical "Special Provisions" section of the Specifications to supplement or modify the Green Book and White Book standards as needed.
- B. *Surveys.* Developer shall provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and the City of San Diego Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.
- C. *Schematic Design Documents.* Developer shall consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.
- i. Schematic Design Documents shall include, but not be limited to the following:
 - a. Sketches with sufficient detail to illustrate the scale and location of Project components.
 - b. Floor plans with sufficient cross-sections to illustrate the scale and relationship of building components, exterior elevations and exterior colors and textures.
 - c. Analysis of parameters affecting design and construction for each alternate considered.
 - d. Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.
 - e. Probable construction costs for the base Project and all additive alternates considered.
 - f. Summary of Project requirements and a recommendation.
 - g. Artistic renderings of the Project.
 - ii. Form. Developer's Schematics shall conform to the quality levels and standards in size, equipment, and all facets of its design and deliverables as set forth in City specifications and as may be updated prior to commencement of construction.
- D. *Design Development Documents.* Developer shall prepare from the approved Schematic Design Documents, for approval by City, Design Development Documents to fix and describe the size and character of the entire Project. These documents shall contain, at a minimum, the following:
- i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.
 - ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.
 - iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.
 - iv. Proposed construction schedules.
 - v. Technical 'Special Provisions' section of the Specifications.
 - vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
 - vii. Probable Project construction costs, for each component of the Project being considered in this phase.
 - viii. Color board with material samples.

- E. *Construction Documents.* Developer shall provide, based on the approved Design Development documents, Working Drawings and Contract Specifications (throughout the Agreement and attached exhibits referred to as Construction Documents) setting forth in detail the requirements for construction of the Project, including the necessary bidding information.
- F. *Utility Location Requests.* Along with initial submission of Construction Documents, Developer shall furnish copies of the Service and Meter Location Request and all utility companies' verifications.
- G. *Cost Estimate.* Developer shall provide a construction cost estimate based on the Construction Documents.
- H. *H, G, & E Reports.* Developer shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports as required by City.
- I. *As-Builts.* Developer shall provide As-Builts.
 - i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Developer shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Developer shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Developer shall thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.
 - ii. Developer shall include all of the following on the As-Builts:
 - a. Depth of foundation in relation to finished first floor.
 - b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
 - c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.
 - d. Field changes of dimensions and details.
 - e. Changes authorized by approved proposal requests, construction change orders, discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.
 - f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.
 - g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
 - h. Show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.
 - i. The title "PROJECT RECORD" in 3/8" letters.
 - iii. Developer shall maintain a set of As-Builts at the Project site for reference. Developer shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil), shall clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.
- J. *As-Graded Reports.* Developer shall submit the City approved As-Graded Report summarizing the results of the observations and testing of grading operations.
- K. *Signed Grading and/or Public Right-of-Way Permit.* The Developer shall submit the signed grading and/or public right-of-way permit.
- L. *Operation and Maintenance Manuals.* Developer shall submit all Operation and Maintenance manuals prepared in the following manner:
 - i. In triplicate, bound in 8½ x 11 inch (216 x 279 mm) three-ring size binders with durable plastic covers prior to City's Final Inspection.

- ii. A separate volume for each system, including but not limited to mechanical, electrical, plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:
 - a. Part 1: Directory, listing names, addresses, and telephone numbers of Developer's agents, suppliers, manufacturers, and installers.
 - b. Part 2: Operation and Maintenance Instructions, arranged by specification division or system. For each specification division or system, provide names, addresses and telephone numbers of Developer's agents, suppliers, manufacturers, and installers. In addition, list the following: 1) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.
- M. *Capitalization Form*. The Developer shall submit all required capitalization information in a form acceptable to the Facilities Financing Project Manager.
- N. *Certificate of Occupancy/Property Transfers*. The Developer shall submit any required certificates of occupancy and/or property transfers.

EXHIBIT V

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

EXHIBIT "V"

Capitalization Cost Breakdown For Developer Built Reimbursable Public Projects-Completed

Capitalization Form to be completed by developer upon final completion of Project (100%) to reflect all verified project costs. <small>Amounts entered should be used to prepare capitalization form upon final project completion.</small>					
1) Project Title/Location: _____			5) Permit Number: _____		
2) Project (PTS) Number: _____			6) Substantial Completion Letter Date: _____		
3) Internal Order Number: _____			7) As-Built Date: _____		
4) Drawing Number: _____			8) Public Facilities Financing Plan Ref. #: Reimb. Agreement Resolution #: Date Approved: _____		
TABLE A.					
(1) Item	(2) Description	(3) Asset Code	(4) Quantity #	(5) Unit Measurement	(6) Total Cost *
STREETS					
Roadways		ROAD		SF	
Sidewalk		SIDE		SF	
Curb & Gutter		SIDE		LF	
Curb Ramps		SIDE		Each	
Medians		SIDE		SF	
Alleys		ALLY		SF	
Traffic Signals		TRAF		Each	
Street Lights		STRT		Each	
Guardrails		STRT		LF	
BRIDGES					
Vehicular/Wildlife		BRDG	0.00	SF	
Pedestrian		BRDG	0.00	SF	
Other (Specify) _____					
STORM DRAINS					
Storm Drains		STRM		LF	
Channels & Culverts		CHAN		LF	
Other (Specify) _____					
PARK INFRASTRUCTURE (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 CAPITALIZATION FORM IS TRUE AND ACCURATE REGARDING THE CITY ACQUIRED INFRASTRUCTURES. PRINT NAME: _____ TITLE: _____ SIGNATURE: _____ DATE: _____			Name/Title _____ Contact No. _____ Prepared by: _____ _____ City Use Only-Forward Original to Facilities Financing for Distribution		
* Project soft cost for administration, engineering, design, etc. should be allocated using the percentage of hard cost for each cost category. Note: Water & Sewer may be part of the PUD Capitalization and need to be double checked by the City Comptroller.			Copy _____ Comptroller's Office - CIP Fixed Asset Accountant Copy _____ Street Division Copy _____ Development Services Department		
1/26/2015					

EXHIBIT W

Required Insurance Provisions

1. **Types of Insurance.** At all times during the term of this Agreement and for so long as the Agreement requires, Developer shall maintain insurance coverage as follows:
 - 1.1 **Commercial General Liability.** Developer shall provide at its expense a policy or policies of Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Developer shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars (\$2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars (\$2,000,000); (iii) Personal Injury Limit one million dollars (\$1,000,000); and (iv) Each Occurrence one million dollars (\$1,000,000).
 - 1.2 **Commercial Automobile Liability.** For all of Developer's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Developer shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ("Any Auto"). All costs of defense shall be outside the policy.
 - 1.3 **Architects and Engineers Professional Liability.** For all of Developer's employees who are subject to this Agreement, Developer shall keep in full force and effect, or Developer shall require that its architect/engineer(s) of record keep in full force and effect errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate. Developer shall ensure both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Contract. Developer agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.
 - 1.4 **Worker's Compensation.** For all of Developer's employees who are subject to this Contract and to the extent required by the State of California, Developer shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Developer against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Developer to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars (\$1,000,00) for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit. Developer shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
 - 1.4.1 Prior to the execution of the Agreement by the City, the Developer shall file the following signed certification:

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

- 1.5 **Builder’s Risk.** To the extent commercially available, Developer shall provide a policy of “all risk” Builders Risk Insurance. Developer shall also add its construction contractor, and the construction contractor’s subcontractors to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. The insurance may provide for a deductible which shall not exceed fifty thousand dollars (\$50,000). It shall be Developer’s responsibility to bear the expense of this deductible. The Builders Risk coverage shall expire at the time such insured property is occupied by City, or a Notice of Completion is filed, whichever occurs first.
2. **Endorsements Required.** Each policy required under Section 1, above, shall expressly provide, and an endorsement shall be submitted to the City, that:
 - 2.1 *Additional Insureds.* Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.
 - 2.1.1 **Commercial General Liability.** The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Engineer’s Estimate is one million dollars (\$1,000,000) or more shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, (iii) Your work, including but not limited to your completed operations performed by you or on your behalf, or (iv) premises owned, leased, controlled, or used by you; the coverage for Projects for which the Engineer’s Estimate is less than one million dollars (\$1,000,000) shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, or (iii) premises owned, leased, controlled, or used by you; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code Section 11580.04, the insurer’s obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code Section 11580.04.
 - 2.1.2 **Commercial Automobile Liability Insurance.** Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and

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

- 2.2 *Primary and Non-Contributory.* The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City of San Diego, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Developer's insurance and shall not contribute to it.
- 2.3 *Project General Aggregate Limit.* The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the work performed under this Agreement. Claims payments not arising from the work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.
- 2.4 *Written Notice.* Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Developer to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.
- 2.5 The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

EXHIBIT X
Required Contracting Procedures

Design-Build Project Management Procedure Summary for Developers

1.0 PURPOSE:

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

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

2.0 SCOPE:

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

3.0 RESPONSIBILITY:

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

4.0 PROCEDURE:

4.1 PHASE I: Procurement Strategy

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

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

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

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

4.2 Selection of PM Team: Implementing and administering a Design-Build procurement process from project inception to project completion will be made easier and more successful if responsibility is assigned to individuals who are well versed in the concepts and principles of Design-Build and who understand the gains in productivity possible with this project delivery method.

4.3 Continuity of personnel can make a significant difference in the success of a project. The City's field construction representative responsible for managing the construction oversight for the Project should also be a part of the team that plans the procurement, prepares the Request for Proposals (RFP), and evaluates and selects the Design-Builder. Similarly, the engineers who write the Performance Specifications, oversee the PE, and prepare the RFP should also evaluate the Proposals and review the designs produced by the Design-Builder. It is important to recognize that the project management team should be an integrated planning, design, construction, and contracting team from inception through Final Acceptance of the project.

4.3 Stakeholders: As always, the Developer should identify the stakeholders for each project (i.e., those having a significant financial, regulatory, approval, or jurisdictional interest in the project).

4.4 Project Goals: The Developer's PM develops the list of project goals in coordination with representatives of key Stakeholders. Clearly and definitively articulated project goals are critical to the Design-Build procurement process. The goals are usually developed in the form of time, quality, and cost and guide all subsequent decisions of the RFP development. Constraints on funding or time may require adjustment in quality goals. Time may be a driving force that takes precedence over budget to a degree. The setting of goals may require negotiations and tradeoffs among the stakeholders. The Developer and stakeholder staff may wish to develop an initial list of project goals using brainstorming techniques. Subsequently, the list should be refined such that the final project goals are expressed in a few succinct statements such as:

- Cost not to exceed \$_____;
- Substantial Completion (or Final Acceptance) within _days of Notice to Proceed (NTP);
- Issuance of NTP by _____.
- EOCP Performance by%.
- No change orders.

4.5 Orientation/Training for Cultural Change: Especially for the first project and any time that new staff are involved in Design-Build, a short training (or refresher) session on Design-Build will be invaluable in building an understanding and acceptance of the concepts of Design-Build. The training should include appropriate personnel and, if appropriate, stakeholder and consultant personnel who will be involved in project procurement and execution. Early involvement of stakeholder personnel e.g., Development Services Department (DSD), Planning Department, Public Works Contracts, Equal Opportunity Contracting Program (EOCP), Field Engineering, Environmental Permitting Section (EPS), etc. does much to assure the Project's success.

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

SUBMITTAL PACKAGE:

1. General

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

2. Technical Proposals (Maximum 25 Points)

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

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

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

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

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

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

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

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

5. Price Proposal: (Max 50 Points)

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

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

Example:

ADA& TITLE 24 FACILITY IMPROVEMENTS: PROJECT II

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

6. Award Of Contract Or Rejection Of Proposals:

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

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

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

an adjusted price for calculation purposes only.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.7 PHASE II: Prepare Bridging Documents

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

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

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

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

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

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

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

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

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

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

4.8 PHASE III: Issue Request for Qualifications (RFQ)

- 4.8.1** The primary purpose of an RFQ is to determine the short-list, typically from three to five Proposers best qualified to develop the Project based on stated evaluation criteria. A public announcement in San Diego Daily Transcript kicks-off the process of RFQ. It serves the following purposes:
1. Announces and defines the project.
 2. Stimulates interest.
 3. Facilitates formation of Design-Build teams.
 4. Issues RFQ and provides Developer's contact information.
 5. Initiates communication and information exchange and identifies the ground rules of that exchange.
- 4.8.2** The RFQ shall be prepared by the Developer's project management team and, prior to issuance, reviewed by the City of San Diego's Public Works Contracts Division (Public Works Department) and by the Equal Opportunity Contracting Program (EOCP). The RFQ must be advertised by the Developer in the San Diego Daily Transcript per City's standard advertising process and in other newspapers or trade journals the Developer may designate. The advertisement should be prepared by the Developer and, prior to publication, reviewed by the Public Works Contracts Division (PWC) of the Public Works Department. The Developer may decide to offer a pre-submittal meeting for questions and answers.
- 4.8.3** The evaluation factors for the RFQ phase need to be determined quickly in order to allow timely issuance of the RFQ, and should focus on experience and past performance. Usually at this stage the Project requirements have not been identified sufficiently to request specific, meaningful information relative to project approach. However, information regarding understanding of the project and its issues may be requested at this stage.
- 4.8.4** Typical SOQ evaluation factors include the following:
- a) For pass/fail factors:
 - b) Responsiveness of the SOQ in general (often assessed prior to legal/financial evaluation);
 - c) Provision of draft legal documents outlining the proposed organizational structure and legal relationships of the proposers;
 - d) Provision of certain legal documents identifying and designating the authorized representatives of the proposer;
 - e) Evidence of compliance with professional licensing/certifications statutes or commitment to obtain appropriate licenses/certificates;
 - f) Letters from surety indicating sufficient bonding capacity of the proposer; and
 - g) Hazardous materials handling certifications

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

4.9 PHASE IV: Short List

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

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

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

4.10 PHASE V: Issue Request for Proposals (RFP)

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

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

4.10.3 An RFP typically includes the following three components:

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

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

- a) Pass/Fail Factors:
 - a. Responsiveness in general.
 - b. Provision of acceptable final legal documents regarding the organizational structure and legal relationships of the proposer.
 - c. Evidence of possession of, or ability to, obtain appropriate licenses.
 - d. Provision of required certifications and disclosures;
 - e. Letters from a surety committing to provide required payment and performance bonds.
 - f. Acceptability of changes to financial statements or other information provided in the SOQ.
- b) Quality Factors:
 - a. Experience and Qualifications:
 - 1. Qualifications of individuals holding key management positions identified by the Developer.
 - 2. Qualifications of key technical personnel.

Management Approach, including the following:

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

c. Technical Solutions, including the following:

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

d. Project Support, including the following:

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

e. Price:

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

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

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

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

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

4.11 PHASE VI: Selection

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

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

4.12 PHASE VII: Award

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

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

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

4.13 PHASE VIII: Design-Build NTP

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

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

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

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

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

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

4.14 PHASE IX: Post Construction

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

5.0 DEFINITIONS:

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

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

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

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

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

the accepted ATC are not shared with the other proposers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.0 REFERENCES and/or RELATED DOCUMENTS:

6.1 San Diego Municipal Codes:

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

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

6.2 NYDOT Design - Build Procedure Manual

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

7.0 ATTACHMENTS:

7.1 Sample Evaluation Worksheets:

7.1.1 SOQ Evaluation Worksheets

7.1.2 RFP Evaluation Worksheets

Sample Evaluation Worksheets

SAMPLE - Design-Build Statement of Qualifications (SOQ) Evaluation Guidelines

The following summary and worksheets are being provided for evaluating the non-price elements of the proposals received at RFP stage.

- I. **General Instructions.** The Design-Builder is required to submit an SOQ that is concise, well organized, and demonstrates the Design-Builder's qualifications and experience applicable to the Project. The SOQ must contain all information required by the RFQ, including the requirements contained in SOQ Format and Content and Prequalification Criteria. Refer to the RFQ for detailed explanation of each requirement. **These guidelines and the RFQ must be consistent. The Project Manager shall review these worksheets and modify as needed.**

- II. **Evaluation Worksheets.** The following worksheets are provided to complete the evaluation:
 - a. SOQ Pre-Screening Checklist to be completed by Developer to identify if the SOQ submitted is responsive (i.e., Pass/Fail criteria).
 - b. Scoring Point System to be completed by Project Manager.
 - c. SOQ Evaluation Worksheet to be completed by the Committee for each SOQ.
 - d. SOQ Scoring Summary to be completed by Project Manager.

- III. **Evaluation Criteria.** The Committee will follow the evaluation process outlined in the RFP.

The evaluation criteria and respective weights given to each criterion are as follows. The Project Manager shall review the criteria and make modifications to the criteria and/or weights as needed on a project by project basis (except EEO/EOCP Commitment).

- IV. **Confidentiality of Scoring.** Scoring by individual Committee members is private and confidential. Committee results of scoring are held by the Developer. If requested, debriefing of unsuccessful candidates is performed by the Deputy Director, Services & Contracts Division or designee, so as to not compromise scoring by individual Committee members.

**SAMPLE - DESIGN-BUILD SOQ PRE-SCREENING
CHECKLIST**

**(To be completed by
Developer and reviewed
by Public Works Contracts)**

Project Title: _____

Design-Builder's Name: _____

Evaluator: _____ Date: _____

AN SOQ WILL BE NON-RESPONSIVE IF THE DESIGN-BUILDER FAILS IN ANY OF THE FOLLOWING:

REQUIREMENT	COMMENTS	PASS (P) or FAIL (F) or N/A
<p>Received by [<i>*insert time*</i>] p.m. on [<i>*insert date*</i>] Attended Mandatory Meeting (if applicable) Format: x Submitted In Soft Cover Comb Binder x Original & 6 Copies x Maximum 40 Pages</p> <p>Identification Of Design-Builder with Supporting Docs. Addenda Acknowledgement Pre-Qualification List Contractor's license/San Diego Bus. License Joint Venture/Financial Arrangements Work Force Report and Other EOCP Docs. Submitted Authorized Signature <u>Exceptions (Yes or No):</u> (if yes, attached description of exception(s) taken)</p>	<p align="center">(list addendum)</p>	

Developer Recommendation: Pass Fail

Notes: _____

**SAMPLE - DESIGN-BUILDER SOQ EVALUATION
WORKSHEET**

**(To be completed by Panel
Assembled by Developer)**

Project Title: _____

Design-Builder's Name: _____

Evaluator: _____ Date: _____

1. Experience and Technical Competence

Describe Design-Builder's experience in completing similar design-build efforts. List three (3) successfully completed projects within the past 5 years for both public and private clients of a similar nature with name of owner's Project Manager, phone numbers, project type, total value of completed construction and identify whether the work was for a public or private client. Projects currently in process may be submitted for consideration. Include in your client references projects and clients where the team has worked together.

Design-Builder shall include design and build experience with wastewater projects (treatment plants, pump stations, etc.); number or facilities designed and built pursuant to a design-build contract; record of timely completion. Number of design-build projects performed as compared to the number completed on schedule; experience and capability in operating, maintaining, and repairing pump station facilities; and, experience with retrofit work, specifically operating a pump station while simultaneously performing construction work with service interruption.

Comments: _____

Score	
Max.	25

2. Project Organization and Key Personnel

Describe proposed project organization and provide an organizational chart, including identification and responsibilities of key personnel. Indicate role and responsibilities of the Design-Builder and all Subcontractor. Indicate how local firms are being utilized to ensure a strong understanding of local laws, ordinances, regulations, policies, requirements, permitting, etc. Indicate extent of commitment of key personnel for duration of project and furnish resumes of key personnel. Provide indication of staffing level for the project.

The Design-Builder's evaluation will consider its entire team, therefore no changes in team composition will be allowed without prior written approval of the Developer. Subconsultant and

Subcontractor Letters of Commitment are required as stated in the attachments to this RFQ. Describe Design-Builder's capacity to perform the work within the time limitations, considering and identifying Design-Builder's current and planned workload and Design-

Comments: _____

Score	
Max.	10

3. **Proposed Method to Accomplish the Work**

Describe in narrative form the Design-Builder's technical and management approach to the design, construction, and start-up of the facilities. Discuss lines of communications necessary to maintain design schedule and construction schedules. This should not be a design concept, but rather a general discussion of how the team will execute the project.

Comments: _____

Score	
Max.	10

4. **Change Order and Litigation History**

a. Change Order History

Provide a spreadsheet that outlines the projects the Design-Builder has completed over the last three (3) years; the original contract value of the list projects; the quantity of change orders for each project; and, the percentage of total change order dollar amounts to original contract value for each project. Provide non-owner initiated change order activity as a percentage of the total change order activity. Provide any explanation of change order activity by project that Design-Builder deems appropriate.

Comments: _____

Score	
Max.	5

b. **Litigation History**

Provide a sealed letter that lists all litigations (since your last pre-qualification clearance from the City) your firm or firms, if organized as a joint venture, was a party.

Comments: _____

Score	
Max.	5

5. **Knowledge and Understanding of Local Environment**

Describe experience working in the local "environment" and proposed local presence for interfacing with the Developer's project management staff. The "environment" includes but is not limited to: City of San Diego and other local agencies regulations and policies; local environmental documentation requirements; geotechnical conditions in project area; local building codes; and other local design criteria and community issues.

Comments: _____

Score	
Max.	10

6. **Financial Arrangements and/or Reviews**

- a. If the Design-Builder is a Joint Venture, the Design-Builder shall address the proposed financial arrangements between the Joint Venture members as they relate to liability to the Developer for work to be performed under this Project.
- b. Design-Builder shall include with the SOQ its latest published annual [INSERT COMPILED, REVIEWED, OR AUDITED BASED ON THE PROJECT NEEDS. CONSULT WITH PRE-QUALIFICATION PROGRAM IF NEEDED] financial reports for the past three years, and a copy of its Dun & Bradstreet financial rating report, if available.

Comments: _____

Score	
Max.	5

7. **EEO and EOCP Commitment**

The Design-Builder shall include in its SOQ either: (1) a completed Work Force Report for its employees located within San Diego County only; or (2) an Equal Employment Opportunity Plan, which shall comply with the EEO Plan Requirements. The selected firm may be required to submit workforce data for a regional office prior to contract award.

The Design-Builder shall include in its SOQ the specific actions consistently taken to ensure equal opportunity in their employment and subcontracting practices, including past performance and actions to be taken on this project.

Comments: _____

Score	
Max.	10

8. **Exceptions to This RFQ**

The Design-Builder shall certify that it takes no exceptions to this RFQ, its addenda, or the draft Agreement by signing and submitting Attachment P of this RFP in its SOQ. If the Design-Builder does take exception(s) to any portion of the RFQ, the specific portion of the RFQ to which exception is taken shall be submitted to the Developer in writing prior to the Pre-submittal Meeting. Although the Exceptions to the RFQ is an evaluation criteria, an exception may be determined by the Developer to be of such a material nature that such exception may cause the SOQ to be considered at the sole discretion of the Developer, non-responsive.

Comments: _____

Max.	5

**SAMPLE - DESIGN-BUILDER SOQ
EVALUATION**

**SCORING POINT SYSTEM AND SUMMARY
(Completed by the Developer and
reviewed by Public Works Contracts)**

Project Title: _____

Design-Builder's Name: _____

Evaluator: _____ Date: _____

EVALUATION CRITERIA

	Criteria	Minimum Qualified	Qualified	Best Qualified	Max. Points	Score
1	Experience and Technical Competence	10-15	16-20	21-25	25	
2	Project Organization and Key Personnel	5-6	7-8	9-10	10	
3	Proposed Method to Accomplish the Work	5-6	7-8	9-10	10	
4	Change Order and Litigation History	5-6	7-8	9-10	10	
5	Knowledge and Understanding of Local "Environment"	5-6	7-8	9-10	10	
6	Financial Information and Arrangements	5-6	7-8	9-10	10	
7	EEO & EOCP Commitment	5-10	11-15	16-20	20	
8	Exception to the RFQ	3	4	5	5	
	TOTAL	43-58	59-79	80-100	100	

**SAMPLE - SOQ SCORING
SUMMARY (Completed by the
Developer and reviewed by Public
Works Contracts)**

Project Title: _____

Design-Builder's Name: _____

Evaluator: _____ Date: _____

DESIGN-BUILDER	EVALUATOR					AVERAGE	RANK
	1	2	3	4	5		
FIRM 1							
FIRM 2							
FIRM 3							
FIRM 4							
FIRM 5							
FIRM 6							
FIRM 7							

SAMPLE - Technical (Non-Price) Proposal Evaluation Guidelines

The following summary and worksheets are being provided for evaluating the non-price elements of the proposals received at RFP stage.

- I. **General Instructions.** The Design-Builder is required to submit a Proposal that is concise, well organized, and demonstrates the Design-Builder's proposed Work plan and cost. The Proposal shall contain all information required by this RFP. Therefore, evaluation of Proposals will be conducted per the RFP. **These guidelines and the RFP must be consistent. The Project Manager must review these worksheets and modify as needed.**

- II. **Evaluation Worksheets.** The following worksheets are provided to complete the evaluation:
 - a. Proposal Pre-Screening Checklist – to be completed by Developer to identify if the Proposal submitted is responsive (i.e., Pass/Fail criteria).
 - b. Proposal Evaluation Worksheet – to be completed by the Committee for each Proposal.
 - c. Interview and Questions Worksheet.
 - d. Reference Interview Worksheet.
 - e. Proposal Scoring Summary.

- III. **Evaluation Criteria.** The Committee will follow the evaluation process outlined in the RFP. The evaluation criteria and respective weights given to each criterion are as defined in the RFP. The Project Manager will further break down each of the categories in the RFP into smaller components for each of the submittal requirements in that category. A suggested breakdown is provided in the DESIGN-BUILD NON-PRICE PROPOSAL EVALUATION WORKSHEET SUMMARY. The Project Manager shall review the criteria and make modifications to the criteria and/or weights as needed on a project by project basis (except EEO/EOCP Commitment). Scoring of EEO/EOCP categories will be conducted only by the EOCP staff representative, and scoring for reference checks will be conducted only by the Project Manager.

- IV. **Confidentiality of Scoring.** Scoring by individual Committee members is private and confidential. Upon completion the Committee members will meet and discuss their point assignments and group variations before completing the final scoring. Consensus is not required, but an understanding of each other's assignment of points may result in less variation. Results of scoring are held by the Purchasing and Contracting Department. If requested, debriefing of unsuccessful candidates is performed by the Project Manager, in consultation with the Division's Deputy Director, to avoid compromising scoring by individual Committee members.

**SAMPLE - DESIGN-BUILD PROPOSAL PRE-SCREENING
CHECKLIST (To be completed by Developer and
reviewed by Public Works Contracts)
(Pass/Fail Criteria)**

Project Title: _____

Design-Builder's Name: _____

Evaluator: _____ Date: _____

A PROPOSAL WILL BE NON-RESPONSIVE IF THE DESIGN-BUILDER FAILS IN ANY OF THE FOLLOWING:

REQUIREMENT	COMMENTS	PASS (P) or FAIL (F) or N/A
<p>Proposal Received by [<i>*insert time*</i>] p.m. on [<i>*insert date*</i>] Attend Mandatory Meeting (if applicable). Format: <ul style="list-style-type: none"> x Submit In Soft Cover Comb Binder x Original & 6 Copies x Maximum 40 Pages Identification of Design-Builder with Supporting Docs. Addenda Acknowledgement. Financial Arrangements and/or Audits (if required in the RFP) Price Proposal Documents in sealed packages and labeled with all information required by the RFP. Include a Bid Guaranty Bond (if required by the RFP). Submit a Compensation Rate Schedule (if required in the RFP). Work Force Report and other EOCP Docs Submitted. Authorized signature. <u>Exceptions (Yes or No):</u> (if yes, attached description of exception(s) taken?)</p>	<p>(add number of</p>	

Developer Recommendation: Pass Fail

Notes: _____

**SAMPLE - DESIGN-BUILD NON-PRICE PROPOSAL EVALUATION
WORKSHEET (To be completed by the Panel
Assembled by Developer)**

Project Title: _____

Design-Builder's Name: _____

Evaluator: _____ Date: _____

DEVELOPER INTENDS TO EVALUATE PROPOSAL CONTENT ACCORDING TO THE FOLLOWING POINT SYSTEM. PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP SHALL BE IN THE FOLLOWING ORDER AND SHALL INCLUDE:

1. Executive Summary

Include a 1-2 page overview of the entire proposal describing the highlights of the proposal and why the Developer should select the Design-Builder.

Score	
Max.	5

Suggested guidelines for evaluation:

- Best Qualified response includes: a convincing summary of why the Design-Builder is best qualified to provide the Design-Build services, and a description of the Major Elements of the proposal.
- Qualified Response lacks specific support for claims of best qualifications, and incorporates general boilerplate information.
- Minimally Qualified response is an unconvincing or rambling presentation that is not project specific, and includes a significant amount of boilerplate information.

2. Project Team

- a. Organization and Staffing - The Design-Builder shall provide an updated organization chart that depicts the Design-Builder's entire staffing for the Project based on the Design-Builder's understanding of the requirements of the Contract. The Design-Builder shall provide a corresponding spreadsheet that identifies each staff member or category, the member's role on the Project, and when each staff member will be released from other current assignments [Staff Plan]. The Staff Plan shall include the leadership of the team, the accountability of the team leader, the lines of authority, and shall be consistent with the Critical Path Schedule and Bid Schedule. The Staff Plan shall show that the Design-Builder is staffed with the appropriate mix of skills and disciplines, that the Design-Builder has fully integrated design and construction staff, and that there will be continuity from design through construction.
- b. Key Personnel Resumes and Time Commitment - The Design-Builder shall provide a statement that all resumes provided with the SOQ for the Project Team are still current, or provide a current 1-2 page resume of each key personnel listed in the Project Team. The Design-Builder

shall also describe in detail each Project Team member's percent time commitment to this Project.

- c. Describe the Proposed Management Plan for this project - Describe the strength of key proposed technical personnel and sub-consultants, including, but not limited to the following disciplines:

1. Civil
2. Geotechnical
3. Environmental (including testing, monitoring and mitigation)
4. Traffic Control
5. Quality Assurance/Quality Control

Score	
Max.	10

3. Technical Approach/Design Concept

- a. Describe in detail the proposed design concept - Include detailed descriptions, conceptual design drawings, schematics, a list of major equipment, and any other information deemed necessary to allow the Developer to make an informed evaluation of the Design-Builder's technical approach. The completeness and technical merit of the design concept will be evaluated. Describe the design and technical issues involved in the Project, including those related to water facilities and the approach to address the Project issues. Describe any additions or modifications to the Developer's preliminary engineering including all maps and conceptual plans provided in the Bridging Documents.
- b. Proposed Design Schedule - Outline the proposed design schedule, including sequencing of each major design component (30%, 60%, 100% and Final design, and permitting) and proposed durations.

Score	
Max.	22

4. Construction Plan

- a. Describe the proposed construction plan, including the following, at a minimum:
 1. Construction approach and methods.
 2. Plan for operation of facility during construction.
 3. Plan for phasing of construction activities including phasing for highlining and scheduling for cut and plugs, cut-in connections and reconnections to existing water mains.
 4. General plan for functional, laboratory and hydrostatic testing and start-up.
 5. Proposed safety program.
 6. Proposed emergency response plan.
 7. Proposed construction schedule.
- b. Project Coordination - The Design-Builder shall identify the following:

1. The processes and procedures it will use to ensure that all Work is properly coordinated.
2. The design and construction coordination requirements with governmental entities and agencies, utilities, Underground Service Alert, City forces, and all other persons or entities involved in infrastructure improvements or otherwise affected by Project design and construction requirements.
3. The design coordination system between drawings and specifications and disciplines.
4. The system for tracking questions and responses.
5. The system for coordinating work among subcontractors and equipment manufacturers.

- c. Critical Path Schedule - The Contract requires the Design-Builder to complete the Project within the number of working days set forth in the Contract. The Design-Builder shall include a summary level critical path method (CPM) schedule in the form of a bar chart that identifies all Project milestones set forth in this RFP, including its Attachments such as additional tasks or milestones, as well as all critical activities the Design-Builder anticipates performing and coordinating with others to complete the Project. The Design-Builder shall include with the schedule a narrative explaining detailed procedures for ensuring all Project milestones are met. Proposals that show valid means to reduce the duration of the Project may be given favorable consideration if they demonstrate realistic activity durations and no increase in Project cost.

Score	
Max.	10

5. Project Challenges

Identify what your team believes to be the largest challenges associated with this project. Describe how your team has overcome similar challenges on a previous project your project team has participated in.

Score	
Max.	10

Suggested guidelines for evaluation:

- o Best Qualified Response includes: a number (preferably 5) of project specific challenges with a discussion that exhibits research and understanding of the problems and solutions.
- o Qualified Response includes: less than 5 challenges, some of which are not project specific, and discussion that doesn't exhibit more than a general understanding of the problem and solution.
- o Minimally Qualified response: problems that are not project specific, or relevant to this project, with minimal discussion of the problem and solution.

6. Project Issues

Proposals shall describe the Design-Builder's understanding of the design and technical issues involved in the Project, including those related to design review, value engineering, bidding,

general contracting, schedule, site mobilization, constructability, construction sequencing, quality control, code compliance, and cost containment.

Score	
Max.	10

- Best Qualified Response includes: identifies at least 5 valid project specific issues, exhibits understanding of the design and technical issues and coordination of all the work necessary to complete Design and construction of the project.
- Qualified Response includes: identifies 3 or 4 valid project specific issues, exhibits limited understanding of the design and technical issues and coordination of all the work necessary to complete Design and construction of the project.
- Minimally Qualified Response: identifies 0 to 4 general issues, exhibits limited understanding of the design and technical issues and coordination of all the work necessary to complete Design and construction of the project.

7. Community Outreach and Public Relations Program

The Design-Builder shall describe its general approach to building relations between the Design-Builder and the community, including how the Design-Builder will provide effective public information and respond to public concerns. The Design-Builder shall work cooperatively with the Developer’s team and creatively integrate the needs of the community into the design of the Project.

Score	
Max.	5

8. EEO & EOCP Commitment

As set forth in the RFQ and this RFP, the Developer is dedicated to the principles of equal opportunity in the workplace and in subcontracting. It is the Developer’s expectation that firms doing business with the Developer have, and are able to demonstrate, the same level of commitment.

a. EEO/Work Force Reports

The Design-Builder shall include either a completed Work Force Report for its employees located within San Diego County only; or the specific actions consistently taken to ensure equal opportunity in their employment and subcontracting practices, including past performance and actions to be taken on this Project. The selected firm may be required to submit workforce data for a regional office prior to contract award. The Design-Builder shall include in the proposal a copy of the Equal Opportunity Plan submitted with its SOQ.

b. Subconsultant Documentation

Any changes or modifications that have occurred in the information, data, or documentation submitted in the SOQ shall be submitted, and shall be included in an attachment, which shall be entitled “Subconsultant Documentation” using the form(s) provided in the price proposal forms found in this RFP.

Design-Builder shall certify in writing if there are no changes in the documentation submitted in the SOQ.

c. Subcontractor Documentation

The Design-Builder shall provide with its technical proposal a listing of subcontractors, using the form(s) provided in the price proposal forms found in Attachment D of this RFP.

Score	
Max.	20

8. **Exceptions to RFP**

The Design-Builder shall certify that it takes no exceptions to this RFP and its attachments by signing and submitting a Proposal. If the Design-Builder does take exception(s) to any portion of the RFP, the specific portion of the RFP to which exception is taken shall be submitted to the Developer in writing prior to the Pre-submittal Meeting. Although the Exceptions to the RFP is an evaluation criteria, an exception may be determined by the Developer to be of such a material nature that such exception may cause the Proposal to be considered at the sole discretion of the Developer, non-responsive.

Comments: _____

Max.	5

Score	
TOTAL MAXIMUM WEIGHTS	

Notes: _____

**DESIGN-BUILD PROJECT - SAMPLE -
PRESENTATION AND INTERVIEW EVALUATION**

**(To be completed by the Panel
Assembled by Developer)**

Design-Builder: _____

Project Title: _____

Evaluator: _____ Date: _____

GENERAL QUESTIONS FOR ALL PROPOSERS

1. Project Team Experience: Please highlight the proposed Design-Build Team's past design and construction of water main projects that you have completed (indicate if you worked as a Design-Build Team). If any, provide your experience performing highlining work, cut and plug and tie-in/cut-in connections.

Score	
Max.	2

2. Technical Approach-Project Management: Describe your approach to design-build, and how you plan to execute the design on this project with multiple water groups. Describe your firm's project management plan, based on your current workload to handle several design projects (i.e. schedule and budget control, organizational structure, coordination of design plans with the city and permitting agencies, etc). What specific design delivery method would you utilize to handle several group jobs?

Note; Typical Answer - The design-build process brings the designer and the constructor together from the start of the project in an integrated team effort, providing innovation and creativity from the start of the project. Issues such as value engineering, constructability, operability, and maintainability are addressed up front early in the design process. During the design effort, construction personnel are actively involved in making input concerning the above issues. Also when the project transitions to the field, design personnel will stay involved in the construction as well. The design-builder should be able to demonstrate how this transition will take place. (i.e., key design person moves to the field as the project engineer).

Score	
Max.	2

3. Construction Plan-Project Management: Describe your approach to design-build, and how you plan to execute the construction on this project with multiple water groups. Describe your firm's construction management plan, based on your current workload to handle several construction

projects (i.e. schedule and budget control, organizational structure, coordination with the city and permitting agencies, etc). **What specific delivery method would you utilize to handle several group jobs?**

Score	
Max.	1

4. Technical Approach and Construction Plan to Address Challenges: Describe any challenges (i.e. technical, budget, scheduling, securing permits, etc) you anticipate during the course of the design and construction based on your previous experience and the scope of this project, and address how you would handle them. Describe your most successful similar past project.

Score	
Max.	2

5. Community Outreach and Public Relations Program: Describe your community outreach plan, including the lines of communication that you would use on this project. What would be your process for addressing complaints during construction?

Score	
Max.	1

6. EOCP Commitment: Explain and describe the policies, and/or programs, or process your firm has in place that demonstrates your commitment to Equal Opportunity for hiring of employees, Subconsultants and subcontractors. Include methods used to meet the City's EOCP goals and any internal EOCP goals you may have.

Score	
Max.	2

Other Possible Questions:

- ... Understanding of Changes and Process to Determine Responsibility for Changes.
- ... Understanding of Scope of Work, its Work Plan, and Value Engineering.

Notes: _____

**SAMPLE - REQUEST FOR
PROPOSALS FOR DESIGN-BUILD
SERVICES
REFERENCE INTERVIEW QUESTIONS**

Design-Builder: _____

Project Title: _____

Reference: _____

Evaluator: _____ Date: _____

The following questions will be used by the Developer to interview randomly selected references from at least two (2) completed projects. An equal number of references will be interviewed for each Design-Builder who submits an SOQ. No action on your part is necessary. These questions are for your information only.

1. Are there any outstanding stop notices or liens currently unresolved on contracts that have had notices of completion recorded? (1 point for each is deducted from overall score.)
2. Did the Design-Builder and/or its members provide adequate personnel? (Max. 10 points)
3. Did the Design-Builder and/or its members provide adequate supervision? (Max. 10 points)
4. Was there adequate equipment provided on the job? (Max. 10 points)
5. Was the Design-Builder and/or its members timely in providing reports and other paperwork, including change order paperwork? (Max. 10 points)
6. Was the Design-Builder and/or its members timely in completing the project? (Max. 10 points)
7. Were there excessive amendments or change orders on the job that can be faulted to the Design-Builder, its members, or their subcontractors? (Max. 10 points)
8. When an amendment or change order was issued, did the Design-Builder and/or its members perform the work well, and did it integrate into the existing work easily? (Max. 10 points)
9. Did the Design-Builder and/or its members satisfactorily address warranty items? (Max. 10 points)
10. Did you have difficulty with claims? (Max. 10 points)
11. How would you rate the Design-Builder and/or its members overall performance? Would you want to work with them again? (Max 10 points)
12. Subcontractor/supplier question: Did the Design-Builder and/or its members pay bills on time? (Max 10 points)

Notes: _____

**SAMPLE - DESIGN-BUILD NON-PRICE PROPOSAL EVALUATION
WORKSHEET SUMMARY
(To be completed by the
Developer and reviewed by
Public Works Contracts)**

Project Title: _____

Design-Builder's Name: _____

Evaluator: _____ Date: _____

ITEM NO.	DESCRIPTION	MAXIMUM WEIGHTS	EARNED POINTS
1.	Executive Summary	5	
	Project Team	3	
2.	a. Organization and Staffing	3	
	b. Key Personnel	2	
	c. Proposed Management Plan	8	
3.	Technical Approach/Design Concept	14	
	a. Design Concept		
	b. Proposed Design Schedule		
	Construction Plan	2	
4.	a. Proposed Construction Plan	2	
	b. Project Coordination	4	
	c. CPM Schedule	5	
5.	Project Challenges	5	
6.	Project Issues	5	
7.	Community Outreach & Public Relations Program	5	
8.	Equal Opportunity Outreach Program/Work Force Report	18	
9.	Exception to RFP	5	
10.	Presentation/Interview	10	
11.	Reference Checks	5	
	TOTAL	100	

#51
7/14/20

(O-2020-125)

ORDINANCE NUMBER O- **21215** (NEW SERIES)

DATE OF FINAL PASSAGE JUL 20 2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A REIMBURSEMENT AND PARK DEVELOPMENT AGREEMENT FOR PROJECT NO. P-2, MCGONIGLE CANYON NEIGHBORHOOD PARK IN THE PACIFIC HIGHLANDS RANCH COMMUNITY.

WHEREAS, on November 14, 2006, by Resolution No. R-302095, the Council of the City of San Diego (City Council) granted Vesting Tentative Map No. 8878 (VTM) to Pardee Homes, a California corporation (Developer), subject to certain conditions determined to be necessary for development of the McGonigle Canyon Neighborhood Park project (Development); and

WHEREAS, effective December 8, 2015, by Resolution No. R-310151, the City Council adopted the Pacific Highlands Ranch Public Facilities Financing Plan for Fiscal Year 2016, on file in the Office of the City Clerk as Document No. RR-310151, (Financing Plan), which identifies Project No. P-2 McGonigle Canyon Neighborhood Park (Project), a component of the Development; and

WHEREAS, Developer designed and began construction on the Project in accordance with the Financing Plan, and seeks reimbursement for anticipated costs (Reimbursement and Park Development Agreement); and

WHEREAS, the Financing Plan sets forth \$7,993,629 for design and construction of the Project, which constitutes the total and maximum funds potentially available for reimbursement by the City to Developer; and

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

Section 1. The Reimbursement and Park Development Agreement, a copy of which is on file in the Office of the City Clerk as Document No. OO- **21215**, is approved.

Section 2. The Chief Financial Officer, as delegated, is authorized to appropriate and expend an amount not to exceed \$7,993,629 from Fund No. 400090, Pacific Highland Ranch Facilities Benefit Assessment, in accordance with the Reimbursement and Park Development Agreement, contingent on certification by the Chief Financial Officer that funds necessary for expenditure are available.

Section 3. The Chief Financial Officer, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

Section 4. A full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the City Council and the public prior to the day of its passage.

Section 5. The Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By: /s/ Katherine A. Malcolm
Katherine A. Malcolm
Deputy City Attorney

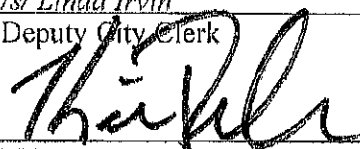
KAM:soc
06/22/2020
Or.Dept: Facilities Financing
Doc. No.: 2402203

I certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 07/14/2020.

ELIZABETH S. MALAND
City Clerk

By /s/ Linda Irvin
Deputy City Clerk

Approved: 7/20/20
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on JUL 14 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 20 2020

AUTHENTICATED BY:

(Seal)

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

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

By Linda Irwin, 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 30 2020, and on JUL 20 2020.

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

(Seal)

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

By Linda Irwin, Deputy

Office of the City Clerk, San Diego, California
21215
Ordinance Number O-_____

Passed by the Council of The City of San Diego on July 14, 2020, by the following vote:

YEAS: BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN, MORENO, GÓMEZ.

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: Linda Irwin, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. O-21215 (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 30, 2020, and on July 20, 2020.

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: Linda Irwin, Deputy