RESOLUTION NUMBER R- 307220

DATE OF FINAL PASSAGE JAN 23 2012

RESOLUTION OF THE CITY COUNCIL TO AUTHORIZE A REIMBURSEMENT AGREEMENT WITH THE SAN YSIDRO SCHOOL DISTRICT FOR A PORTION OF PROJECT NO. T-4.3, DEL SOL BOULEVARD–(CENTRAL), IN THE OTAY MESA COMMUNITY PLAN AREA.

WHEREAS, the San Ysidro School District (SYSD) owns approximately nineteen acres of real property in the Ocean View Hills area of the Otay Mesa Community Planning area that is west of the current terminus of Del Sol Boulevard (Property); and

WHEREAS, SYSD plans to construct a new elementary school as identified in the Ocean View Hills planned community documents, which will be called the Vista Del Mar Elementary School; and

WHEREAS, there is no dedicated right-of-way, easement, or other legal instrument that designates a right-of-way on the Property, and SYSD currently has no improved access to the Property; and

WHEREAS, the Otay Mesa Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2007 (Financing Plan), adopted by Resolution No. R-302040 on November 13, 2006, identifies Project No. T-4.3, Del Sol Boulevard–(Central), as a project to be funded through the FBA; and

WHEREAS, because the City's timeframe for the design and construction of Project No. T-4.3 does not correlate with the SYSD's timeframe for the construction of the Vista Del Mar Elementary School, SYSD desires to complete the 30 percent design of Project No. T-4.3 and construct the portion the Project No. T-4.3 necessary to provide access to SYSD's Vista Del Mar

Elementary School project and to be reimbursed by the FBA for such work; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor be and hereby is authorized and empowered to execute, for and on behalf of City, the Reimbursement Agreement Between the City of San Diego and the San Ysidro School District for a Portion of Project No. T-4.3, Del Sol Boulevard–(Central) in the Otay Mesa Community Planning Area, on file in the Office of the City Clerk as Document No. RR-307220 (Agreement), under the terms and conditions set forth in the Agreement.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is hereby authorized to expend an amount not to exceed Four Million Eight Hundred Forty-Eight Thousand Eight Hundred Ninety-Two Dollars ($4,848,892), plus the applicable inflationary rate as set forth in the Agreement, from the Otay Mesa Fund No. 400093 in CIP No. S-00858 (Del Sol Boulevard–(Central)), consistent with the timing established in the most recently adopted Financing Plan, and contingent upon Chief Financial Officer certification of funds available for reimbursement.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Heidi Vonblum
Heidi K. Vonblum
Deputy City Attorney

HKV:hm
11/30/2011
Or.Dept: Facilities Financing
Doc. No.: 284052

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 10 2012.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 1-23-12
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

DUPLICATE - ORIGINAL

REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE SAN YSIDRO SCHOOL DISTRICT FOR A PORTION OF PROJECT NO. T-4.3, DEL SOL BOULEVARD- (CENTRAL) IN THE OTAY MESA COMMUNITY PLANNING AREA

THIS AGREEMENT [Agreement] is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation [City] and THE SAN YSIDRO SCHOOL DISTRICT, a California public school district [District], [collectively the Parties], for reimbursement for a portion of Project No. T-4.3, Del Sol Boulevard - (Central) in the Otay Mesa Community Planning area in accordance with the Otay Mesa Public Facilities Financing Plan and Facilities Benefit Assessment, Fiscal Year 2007.

RECITALS

1. District owns approximately 19 acres of real property in the Ocean View Hills area of the Otay Mesa Community Planning area that is west of the current terminus of Del Sol Boulevard[Property]. The Property is shown in **Exhibit A**. District will be constructing a new elementary school as identified in the Ocean View Hills planned community documents, which will be called the Vista Del Mar Elementary School.

2. There is no dedicated right of way, easement, or other legal instrument that designates a right of way on the Property and the District currently has no improved access to the Property.

3. On October 18, 2006, by Resolution No. 302040, the City Council of the City of San Diego [City Council] adopted the Otay Mesa Public Facilities Financing Plan and Facilities Benefit Assessment [FBA] for Fiscal Year 2007 [Financing Plan]. The Financing Plan identifies Project No. T-4.3, Del Sol Boulevard – (Central), as shown in **Exhibit B**. This Agreement relates to the 30 percent design of the entire Project No. T-4.3 and the construction of the portion of Project No. T-4-3 necessary to provide access to District's Vista Del Mar Elementary School property [Project]. The Project is shown in **Exhibit C** and described in **Exhibit D**.

4. The City's timeframe for the design and construction of the Project does not correlate with the District's timeframe for the construction of the Vista Del Mar Elementary School. Therefore, the District desires to design and construct the Project and to be reimbursed by the City from the Otay Mesa West FBA for such design and construction.

5. District cannot enter into any agreements for public improvement unless designated funding sources are established.

6. The Financing Plan currently allocates $6,500,000.00 for the entire Project T-4.3, of which approximately $4,848,892.00 is available to be reimbursed through this Agreement. Therefore, the maximum City funds potentially available for reimbursement to District for the Project is $4,848,892.00, plus the applicable inflationary rate as set forth in the Financing Plan, minus the City's Administrative Costs (as defined in section 13.1.5) and City's equipment expenditures [Maximum Funds]. The Maximum Funds constitutes an absolute cap for this Project. District is not automatically entitled to the Maximum Funds. District must satisfy all terms of this Agreement to become eligible for any portion of the Maximum Funds if and as they are collected and become available for reimbursement.

DOCUMENT NO. R-307220
FILED JAN 10 2012
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

7. The District's Estimated Cost (as defined in Section 3.3) for the Project is $4,848,892.00. Excluding interest and the applicable inflationary rate, the Estimated Cost is the total and maximum amount available for reimbursement by City to District, unless otherwise approved by City in accordance with the change order procedures set forth in Article III of this Agreement.

8. This Agreement is intended by the Parties to define the method, terms, and conditions of reimbursement to District for the funds to be expended for the planning, design, permitting, and construction of the Project.

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

ARTICLE I. SUBJECT OF THE AGREEMENT

1.1 **Design and Construction of Project**. District agrees to complete the Project fully suited to the purpose for which it was designed and in accordance with: this Agreement, the Plans and Specifications, the Financing Plan, and within the timeframe established by the Project Schedule attached as **Exhibit E**, and for the Estimated Costs attached as **Exhibit F**. As explained more fully in the recitals, which are hereby fully incorporated into the terms of this Agreement, the Project that is the subject of this Agreement is defined as the 30 percent design of the entire Project No. T-4.3 and the construction of the portion of Project No. T-4.3 necessary to provide access to District's Vista Del Mar Elementary School property as shown in **Exhibit C** and described in **Exhibit D**.

1.2 **Transfer of Ownership.** After District complies with the Punch List (as defined in Section 16.2.1) and passes Final Inspection (as defined in Section 16.3) and upon receipt of a letter of acceptance from City confirming that the Project is substantially complete and operational [Operational Acceptance], District shall transfer a deed of easement to that portion of the Property related to the Project to City, which City shall then dedicate as a public right-of-way. City agrees that it shall maintain and repair the Project including any landscaping. City and District also agree that the water for the landscape irrigation along the Project shall be metered separately and paid by the City.

ARTICLE II. PROJECT SCHEDULE

2.1 **Project Schedule**. District shall require that its contractor perform and complete the work under this Agreement according to the Project Schedule, including the obligations and components approved by the City in **Exhibit G**. The Project Schedule includes the meeting requirements in **Exhibit H**; and preconstruction, progress, and special meeting agendas in **Exhibit I**.

2.2 **Project Completion**. District agrees that it shall require its contractor to complete all work on the Project under this Agreement and be complete and ready for operational use according to the Project Schedule in **Exhibit E**, and the Project Schedule obligations and components in **Exhibit G**.

2.3 **Changes in Project Schedule**.

2.3.1 Changes in Project Schedule that increase Estimated Cost must be approved by City in writing as set forth in **Exhibit J**.

2.3.2 Changes in Project Schedule that do not increase Estimated Cost may be approved by the engineer designated by City's Department of Engineering and Capital Projects with responsibility for review and approval of the progress of and changes to Project [Resident Engineer]; provided, however, that the Project will still be completed in accordance with the Financing Plan (including any associated Phasing Plans) and all applicable conditions of approval.

2.4 **Notification of Delay**. If District or its contractor anticipates or has reason to believe performance of work under this Agreement will be delayed, District shall immediately notify the representative designated by City's Engineering & Capital Projects Department to manage the Project on behalf of City [Project Manager]. Unless City grants District additional time to ascertain supporting data, which approval shall not be unreasonably withheld, 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 delay, all supporting data, and written statement that the time adjustment requested is the entire time adjustment District needs as a result of the cause of the delay to the extent it can be determined at that time. If District anticipates or has reason to believe the delay will increase the Estimated Cost, District 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 District 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 District 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 District 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; suspension of State funding or approval of applications for State funding for the Project; 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 District'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 District. Any delay claimed to be caused by District's inability to obtain materials, equipment, labor, or additional required services shall not entitle District to an extension of time unless District furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of District's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, District shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of District, its consultants, contractors, subcontractors, employees, or other agents [collectively, "District's agents"]. A change in Project Schedule does not automatically entitle District 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 District acknowledge construction delays may increase the cost of Project. Unless District 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 assessed fees in the Financing Plan, funding will be insufficient to cover the cost increase. Notwithstanding that pursuant to San Diego Municipal Code section 61.2200 et seq. City may periodically update the Financing Plan to reflect changes in Estimated Costs of Project (including potentially increasing Estimated Costs of Project based upon actual and reasonable costs as appropriate), District 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) allowing City reasonable opportunity to assess and collect necessary FBAs because District 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 District fails to adequately perform any obligation required by this Agreement, District's failure constitutes a Default. Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default District undertakes all reasonable efforts to ensure the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement including all rights of Subdivider and any person or entity claiming any rights by or through District under this Agreement. A delay shall not constitute a Default if District 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 District's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by District or its agents for the construction of Project. District shall include, and require its contractors and subcontractors 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 District, including any claims for damages against District that City may assert as a result of the Default.

ARTICLE III. PROJECT COSTS AND CHANGE ORDERS

3.1 **Project Costs**. Project Costs are District's reasonable costs of materials and design necessary for Project as approved by the City and depicted in **Exhibit F**. Project Costs do not include District's Administrative costs (as defined in Section 3.3.1).

3.2 **Reimbursable Costs**. District 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 District and approved for reimbursement by City in the Financing Plan and under the terms of this Agreement.

3.2.1 ***Non-Reimbursable Costs.*** Non-Reimbursable Costs include: (1) Any cost in excess of the Maximum Funds; (2) any cost in excess of the Estimated Costs not approved in accordance with Section 3.3.3; (3) any cost identified in this Agreement as a Non-Reimbursable Cost; (4) any cost to remedy Defective Work (as defined in Section 23.1); (5) any cost incurred as a result of District's or District's agents' negligence, omissions, delay, or Default; (6) any cost of substituted products, work, or services not necessary for completion of the Project, unless requested and approved by City in writing; (7) any cost not approved by City in the manner required by this Agreement or the Charter of the City of San Diego and rules, regulations, or laws promulgated thereunder; (8) any cost not supported by proper invoicing or other documentation as reasonable and necessary; and (9) any cost in excess of FBAs actually collected by the City and available for reimbursement to District 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)**. District's Estimated Costs shall consist only of: (i) Project Costs, (ii) District'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 **$4,848,892.00,** plus interest as set forth in Section 13.1.6. Without further amendment to this Agreement, the Estimated Cost may be increased annually by the applicable inflationary rate as set forth in the Financing Plan. Any other increase to Estimated Cost may only be approved in accordance with Section 3.3.3.

3.3.1 ***District's Administrative Costs.*** District's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures totaling a flat five percent (5%) of District's Project Costs.

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

3.3.3 ***Change Orders and Adjustments to Estimated Cost.*** The "Procedure for Processing Change Orders" is attached as **Exhibit J**. Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with **Exhibit J**. The Estimated Cost may only be increased if District provides documentation showing the increase is reasonable in nature and amount, and is due to causes beyond District's control or otherwise not the result of unreasonable conduct by District which may, based on actual impact on Project, include: war; changes in law or government regulation; suspension of State funding or approval of applications for State funding for the Project; 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 District's work; concealed conditions encountered in the completion of 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 District. District 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), or District's or District's agents' negligence. District 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 District anticipates or has reason to believe the cost of the Project will exceed the Estimated Cost, District shall within fourteen (14) calendar days of becoming aware of the potential increase notify City in writing. If District fails to timely notify City in writing, District 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). This written notification shall include an itemized cost estimate and a list of recommended revisions District 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, District may elect to construct Project and forgo any reimbursement in excess of Estimated Cost.

ARTICLE IV. [Reserved for Projects with Conveyance]

ARTICLE V. COMPETITIVE BIDDING AND EQUAL OPPORTUNITY

5.1 **Compliance**. District represents that it will construct the Project as part of its construction of the new Vista Del Mar Elementary School, however, the Project will be performed under separate contracts using the construction manager at risk delivery method. The District will seek competitive bids and award multiple prime contracts for the Project in accordance with the competitive bidding requirements for school districts set forth in California Public Contract Code section 20110, et seq. After award of the

trade contracts to the lowest responsible bidder(s), the District will assign those trade contracts to the District's construction manager, Echo Pacific, who will oversee and coordinate the work for a guaranteed maximum price. At the City's request, the District shall provide the City with copies of any and all bids received for the Project prior to the award of the contract(s).

5.2 **Bidding Documents**. District, following City review of the Construction Documents, shall prepare final corrected Construction Documents to be submitted to City for review and approval, in accordance with City's standard review procedures. Approval of the Construction Documents will be evidenced by City's issuance of a letter indicating that the City has reviewed and approved the Construction Documents for the Project.

5.2.1 ***Obtain all Permits and Approvals.*** District shall require that its contractor to obtain all necessary permits, including but not limited to environmental, grading, building, mechanical, electrical, and plumbing for the Project.

5.3 **Nondiscrimination Requirements.**

5.5.1 ***Applicability.*** San Diego Municipal Code section 22.3503 provides that the Nondiscrimination in Contracting provisions set forth in Chapter 2, Article 2, Division 35 of the San Diego Municipal Code do not apply to this Agreement because this Agreement is a contract to which a public entity is a party. However, as required by San Diego Municipal Code section 22.2704, District shall not discriminate against any employee or applicant for employment on any basis prohibited by law. District shall provide equal opportunity in all employment practices. District shall ensure that its contractors and subcontractors comply with this program. Nothing in this section shall be interpreted to hold District liable for any discriminatory practice of its subcontractors. Moreover, to further the City's policy not to engage in business with businesses that discriminate in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability, District agrees that it will ensure that its contractors do not discriminate against any employee or applicant for employment on any basis prohibited by law and that they provide equal opportunity in all employment practices. District also agrees that it shall not allow its contractors to discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. District agrees that it shall ensure that its contractors provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities.

ARTICLE VI. PREVAILING WAGE

6.1 **Prevailing Wage**. District represents and City acknowledges that District is required by state law to require its contractor to pay Prevailing Wage and District agrees to comply with this requirement.

ARTICLE VII. CONSULTANTS

7.1 **Selection of Consultant**. District's hiring of a consultant is subject to approval by City, which approval shall not be unreasonably withheld. District's selection of consultants for the Project shall be made pursuant to District Board Policy and all other laws applicable to District. To the extent that District has already retained consultants for the Project, District will provide, at City's request, copies of those consultant's proposals and contracts. District has already contracted with the following consultant(s) for the Project:

1. RBF Consulting - civil engineering and environmental mitigation
2. Eric Hall & Associates
3. Erickson Hall Construction
4. Helix Environmental
5. The Planning Center
6. Power Plus
7. CTE
8. TAIC

To the extent that the District seeks to hire additional consultants for the Project, District shall consult with City prior to the award of any contract for consulting services. For any consultant agreement for the Project which the District may enter into after the execution of this Agreement, District shall cause the provisions in **Exhibit K** "Consultant Provisions" to be included in its consultant contract(s) for Project. For consultant agreements for the Project which the District has already entered into, District shall amend the terms of those agreements by inserting the provisions in **Exhibit K** into such contracts.

7.2 **Estimated Budget**. District shall require its consultant to prepare an estimated budget for the Project, if applicable.

7.3 **Schematic Drawings**. District shall require its consultant to prepare schematic drawings for the Project for City approval, if applicable.

ARTICLE VIII. DESIGN AND CONSTRUCTION STANDARDS

8.1 **Standard of Care**. District agrees that the professional services provided under this Agreement by its contractors shall be performed in accordance with the standards customarily adhered to by experienced and competent professional architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

8.2 **Compliance with all Laws, Design Standards, and Construction Standards**. In all aspects of the design and construction of Project, District shall require that its contractors comply with all laws and the most current editions of the Greenbook, the City's Standard Drawings and Design and Construction Standards, including those listed in **Exhibit L**. It

is the sole responsibility of District to ensure that its contractors comply with the Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations, if applicable. The District shall require that its contractors certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit M** "Certificate for Title 24/ADA Compliance."

8.3 **Imputed Knowledge**. District shall require that its contractors 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.

8.4 **City Approval**. District shall be required to obtain City approval of design, plans, and specifications 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.

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

ARTICLE IX. CONSTRUCTION

9.1 **Compliance with Project Schedule and Construction Requirements**. District shall require that its contractor commence construction of Project in accordance with the Project Schedule, as described in Article II, and be subject to the obligations in **Exhibit O** "Construction Obligations." District shall require that its contractor diligently pursue such construction to completion. Failure to maintain 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.

9.2 **Drug-Free Workplace**. District 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 District shall require that its contractor certify to City it will provide a drug-free workplace by submitting a Certification for a Drug-Free Workplace in form and content of **Exhibit P**.

ARTICLE X. PRODUCTS

10.1 **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 Project has aesthetic aspects requiring City review, comment, and approval, District shall obtain City approval of products and substitution of products in the manner provided in **Exhibit Q** "Product Submittal and Substitution."

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

ARTICLE XI. EXTRA WORK

11.1 **City Authority to Order Extra Work**. Any City additions or modifications to work or District 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 XII. CHANGED CONDITIONS

12.1 **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, 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, District shall provide City with value engineering and Parties will return Project to within the Estimated Cost.

ARTICLE XIII. REIMBURSEMENT

13.1 **Reimbursement to District**.

13.1.1 **Notification of Reimbursable Project.** Along with the Project application to City's Development Services Department, and prior to commencement of any construction work on Project, District shall submit a "Notification of Reimbursable Project" form (attached as **Exhibit S**) to Development Services, Facilities Financing, and the City department designated by City for individual Project approval and/or supervision [Responsible Department]. District shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for Project for which District was not previously reimbursed or granted credit [Reimbursement Request].

13.1.2 ***Type of Reimbursement.*** District shall be entitled to cash reimbursement for the Reimbursable Costs expended by District 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 2007 and $6,500,000 has been allocated for the entire Project T-4.3 in the Financing Plan. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. District shall not receive cash reimbursement unless and until there are sufficient funds to reimburse District, in whole or in part, from the FBA. If sufficient funds are unavailable in the FBA, City shall reimburse District only if and as funds accrue in the FBA and are available for reimbursement for Project No. T-4.3.

13.1.3 ***Funds for Reimbursement.*** District shall only be entitled to reimbursement as set forth in this Agreement and only from FBA funds collected by City per the Financing Plan, as it may be amended, in the amount set forth in this Agreement and only as allocated for Project T-4.3 (Del Sol Boulevard - Central) in the Financing Plan, if and as such funds become available, after the appropriate deductions and expenditures are made, pursuant to the method of reimbursement described in Section 13.1.7 and in the priority of reimbursement described in Section 13.1.9.

13.1.4 ***Amount of Reimbursement.*** District shall be entitled to only Reimbursable Costs in accordance with Section 3.2 in an amount not to exceed Estimated Costs in accordance with Section 3.3.

13.1.5 ***City's Administrative Costs.*** City's Administrative Costs shall be paid prior to any reimbursement to District and consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Project, (ii) review and approve the plans and specifications for the Project, and (iii) inspect and approve work performed on Project during construction until completion and acceptance of Project [City's Administrative Costs]. 13.1.6 ***Interest.*** Interest shall begin to accrue from 90 days after the time the submittal of a Reimbursement Request for Reimbursable Costs is accepted and approved by City and shall continue to accrue until the date of cash reimbursement. Interest shall accrue at the rate identified in the Financing Plan in effect at the time 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 13.1.7.2.

13.1.7 ***Method of Reimbursement.*** District shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Project for which District was not previously reimbursed or granted FBA credit in accordance with the Guidelines and Format for Submittal of Cost Reimbursement Claims attached as **Exhibit W** [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 District of such deficiencies within forty-five (45) calendar days of District's Reimbursement Request submittal. District shall provide additional documentation within fourteen (14) calendar days of City's notification and request. However, even if City fails to notify District within forty-five (45) calendar days regarding District's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse District 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 District for those Reimbursable Costs within sixty (60) calendar days of the date of Reimbursement Request Approval provided funds are available in the FBA for the Project and the Project is scheduled in the Financing Plan for reimbursement at that time.

13.1.7.1 ***Withholding.*** From each reimbursement payment, five percent (5%) will be deducted and retained by City, and the remainder will be paid in accordance with the terms and conditions of this Agreement. No payment made to District will constitute a waiver of any rights City has under this Agreement. This Section is not intended to limit any rights City may have under the Payment Bond (as defined in Section 19.1).

13.1.7.2 ***Reimbursement of Withholding.*** City will reimburse District for the amounts withheld no later than sixty (60) calendar days from recordation of the Notice of Completion, provided no stop notices or mechanic's liens have been filed since the recordation of the Notice of Completion.

13.1.7.2.1 Where a stop notice or mechanic's lien has been filed following the recordation of the Notice of Completion, the amount equal to 125% of the amount in controversy shall continue to be withheld until a fully executed release of stop notice or mechanic's lien has been filed and a conformed copy delivered to City.

13.1.7.2.2 If the Withholding is insufficient to fully cover the amount in controversy under the stop notice or mechanic's lien, the deficiency shall be withheld from any outstanding balance of Reimbursable Costs or deducted from FBA or DIF credits previously granted.

13.1.7.3 ***Timing of Submissions of Reimbursement Requests.*** District shall submit Reimbursement Requests on a monthly basis for all costs not previously submitted or reimbursed.

13.1.7.4 ***Cutoff for Submission of Reimbursement Requests.*** District shall submit all Reimbursement Requests within six (6) months after the Final Completion (as defined in Section 17.2) [Cutoff Date]. Any Reimbursement Request submitted after the Cutoff Date shall not be included in Reimbursable Cost and District shall not be entitled to any reimbursement for those costs or expenses, unless otherwise agreed to in writing by City and District.

13.1.8 ***Verification of Reimbursement Request.*** District shall on a monthly basis provide reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents

showing that payment has been made in connection with the Reimbursement Request in the following manner:

13.1.8.1 District shall submit two (2) copies of a Reimbursement Request (cover letter, invoice, and documentation) to the City's Resident Engineer [RE] for work completed per plan and specification and/or Extra Work. Design invoicing shall be reviewed by the Project Manager.

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

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

13.1.8.4 The Sr. Civil Engineer shall review Project invoices and monitor the RE's expenses charged to Project, as well as other City Administrative Costs. The Sr. Civil Engineer shall also serve as the liaison between the RE and the Facilities Financing Project Manager [FF Project Manager].

13.1.8.5 After review and approval, the Sr. Civil Engineer shall prepare a memorandum to Facilities Financing indicating the reimbursement amount and that the invoice is appropriate to pay if/as funds are/become available. The memorandum shall indicate any costs to be disallowed and the reason for the disallowance. The Reimbursement Request shall be forwarded to the FF Project Manager with the memorandum recommending payment.

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

13.1.9 ***Priority of Reimbursement.*** Reimbursement to District from the FBA for Project will be subsequent to reimbursement of City's equipment purchases, FF&E, and City's Administrative Expenses incurred in connection with the Project or Financing Plan, but takes priority over any other Reimbursable Project added to the FBA subsequent to the Effective Date (as defined in Section 28.1) of this Agreement, with the following exceptions:

13.1.9.1 Any State or Federally mandated project.

13.1.9.2 Appropriations for City administered, managed, and funded Capital Improvement Project.

13.1.9.3 To the extent District 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.

13.1.9.4 The FBA identifies another project for funding in an earlier fiscal year than this Project prior to the Effective Date of this Agreement.

ARTICLE XIV. PUBLIC RELATIONS

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

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

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

14.4 **Recognition**. District shall require that its contractor place a sign, placard, or other similar monument on the Project site during construction, which shall acknowledge District's and City's joint efforts in designing and constructing Project, and identifying that Project is funded with FBA funds. District shall ensure that it or its contractor properly recognizes City and includes 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 District is contemplating a dedication or ground breaking ceremony, District shall contact the Responsible Department's Senior Public Information Officer.

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

14.6 **Cleanup**. District shall be responsible for the clean up of Project site and the restoration and repair of any damage to Project site attributable to any District sponsored ceremony.

ARTICLE XV. INSPECTION

15.1 **Inspection Team**. Project shall be inspected by a team composed of representatives from (i) the City's Engineering and Capital Project Department, (ii) the Responsible Department, (iii) City's Development Services Department, (iv) District's consultant(s), and (v) District's contractor's construction superintendent [Inspection Team].

15.2 **Inspection Schedule**. Project shall be inspected by Inspection Team in accordance with **Exhibit T**.

ARTICLE XVI. PROJECT COMPLETION

16.1 **Notice to City**. When District determines Project is complete, District shall require that its contractor notify City in writing of Project's status within seven (7) calendar days of District's determination. The notice shall certify to City that Project has been completed in accordance with the Construction Documents; all applicable building codes and regulations; all permits; all licenses; all certificates of inspection, use, and occupancy; and ordinances relating to Project.

16.2 **Walk-Through Inspection**. A preliminary Walk-Through Inspection shall be conducted by City within fourteen (14) calendar days following District's or District's contractor's notice to City of completion. The Walk-Through Inspection will be conducted by the Inspection Team identified in Section 15.1.

16.2.1 ***Punch List.*** A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to District's contractor by the RE within five (5) calendar days of the Walk-Through Inspection. District's contractor shall correct the items listed on the Punch List within sixty (60) calendar days of receipt of the Punch List. The Final Inspection of Project (as defined in Section 16.4) by City shall be conducted within ninety (90) calendar days of written notification by District's contractor to City that District's contractor has corrected all items identified on the Punch List [Notice of Correction].

16.2.2 ***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 District's obligations under this Agreement and City shall maintain all remedies available under this Agreement, at law, or in equity.

16.3 **Equipment Demonstration and Cleaning**. Prior to Final Inspection, District or District's contractor shall demonstrate to City the operation of each system in Project, if any, and instruct City personnel in operation, adjustment and maintenance of equipment and systems, using the operation and maintenance data. District's contractor shall also professionally clean the Project, including (if applicable) mopping, sanitizing restrooms, polishing floors, dusting, vacuuming, cleaning glass and windows.

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

ARTICLE XVII. PROJECT ACCEPTANCE

17.1 **Acceptance**. Upon Operational Acceptance of Project, District shall do all of the following:

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

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

17.1.3 ***Transfer Ownership.*** District shall transfer the ownership of Project and Property, where applicable, pursuant to Section 1.2.

17.2 **Final Completion**. Final Completion of Project shall be deemed to occur on the later of: (i) recordation by District of the Notice of Completion and delivery of a conformed copy to City; (ii) if applicable, the issuance of a final Certificate of Occupancy for Project; or (iii) submission of all documents required to be supplied by District to City pursuant to this Agreement, including As-Built Drawings, warranties, operating and maintenance manuals and other Deliverables identified in **Exhibit U.**

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

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

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

ARTICLE XVIII. PROJECT DELIVERABLES

18.1 **Project Deliverables**. Prior to Final Completion, District shall require its contractor to deliver to City "As-Builts" and related plans and specifications, operating manuals, warranty materials, and all other materials required by City in the format requested. Documents shall include those listed in **Exhibit U**, if applicable.

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

ARTICLE XIX. BONDS [LOC, CASH OR OTHER ACCEPTABLE SECURITY]

19.1 **Payment Bond**. District shall require its construction contractor to provide City with a payment bond, letter of credit [LOC], cash or other acceptable security for material and labor in favor of City for 100% of the proposed construction costs for the Project [Payment Bond].

19.2 **Performance Bond**. District shall require its construction contractor to provide City with a bond, LOC, cash or other acceptable security guaranteeing performance in favor of City for 100% of the proposed construction costs for the Project [Performance Bond].

19.3 **Warranty Bond**. District shall 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]. District shall require its contractor to provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.

19.4 **Term**. The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond shall remain in full force and effect until Operational Acceptance of Project by City. Upon Operational Acceptance, City shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Agreement.

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

19.6 **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 Project is located to issue bonds for the limits required by this Agreement, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent (10%) of its capital and surplus.

19.7 **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 Project is located, District shall within seven (7) calendar days thereafter substitute or require the substitution of another bond and surety, acceptable to City.

ARTICLE XX. INDEMNITY & DUTY TO DEFEND

20.1 **Indemnification and Hold Harmless Agreement**. Other than in the performance of design professional services which shall be solely as addressed in Sections 20.2 and 20.3 below, to the fullest extent permitted by law, District 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 District or 'District'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 District, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. District'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.

20.2 **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, District shall require its Design Professional to 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 District's Design Professional or Design Professional's officers or employees.

20.3 **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.

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

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

20.6 **Indemnification for Liens and Stop Notices**. District shall keep the Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. District 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. District shall be responsible for payment of all persons entitled to assert liens and stop notices.

20.7 **Enforcement Costs**. District agrees to pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in this Article.

ARTICLE XXI. INSURANCE

21.1 **General.** District shall not begin work on 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.

21.2 **Type and Amount of Insurance**. For each Project, the City Attorney shall confer with the City's risk management department and determine the appropriate dollar amount and type of insurance, including any endorsements or specific clauses, necessary for the Project [Required Insurance]. District shall obtain the Required Insurance prior to the commencement of construction. City's standard insurance provisions are attached as **Exhibit V.** If District is not informed otherwise in writing of Required Insurance, City's standard insurance provisions included in **Exhibit V** shall be the Required Insurance for the Project.

21.3 **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 District to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.

21.3.1 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.

21.4 **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.

21.5 **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.

21.6 **Additional Insurance**. District and/or its contractor's may obtain additional insurance not required by this Agreement.

21.7 **Obligation to Provide Documents**. Prior to performing any work on Project, District or District's contractor 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.

21.8 **Deductibles/Self Insured Retentions**. All deductibles and self-insurance retentions on any policy shall be the responsibility of District and/or District's contractors. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.

21.9 **Policy Changes**. District and/or District's contractors shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.

21.10 **Reservation of Rights**. City reserves the right, from time to time, to review the District's and/or District's contractor's insurance coverage, limits, deductible and self insured retentions to determine if they are acceptable to City. City will reimburse the District 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.

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

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

ARTICLE XXII. WARRANTIES

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

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

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

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

22.2 **Form and Content**. Except manufacturer's standard printed warranties, all warrantics shall be on District's, District's contractor's, 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.

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

22.2.2 ***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.

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

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

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

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

22.3 **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.

22.4 **Meetings.** During the one (1) year warranty period described in Section 22.3, District shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Engineering and Capital Projects Project Manager and one or more Responsible Department representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems City discovers in design, construction, or furnishing, fixtures, and equipment of Project during the one (1) year warranty period.

ARTICLE XXIII. DEFECTIVE WORK

23.1 **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, District shall ensure that its contractor promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either corrects the Defective Work, or if it has been rejected by City, removes it from the site and replaces it with non-defective and conforming work.

23.2 **City's Right to Correct**. If circumstances warrant, including an emergency or District's failure to adhere to Section 23.1, City may correct, remove, or replace the Defective Work. In such circumstances, District 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.

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

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

23.5 **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.

23.6 **Resolution of Disputes.** If District and City are unable to reach agreement on disputed work, City may direct District to proceed with the work and compensate District 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. District and/or District's contractor shall maintain and keep all records relating to disputed work in accordance with Article XXV.

23.7 **Prior to Final Acceptance and Reimbursement to** District. Where Defective Work has been identified prior to the Final Completion of Project, District shall:

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

ARTICLE XXIV. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

24.1 **Maintenance Period**. If the District's construction contractor is required to install or maintain landscaping and/or irrigation, District shall require the construction contractor provide a maintenance period to begin on the first day after all landscape and irrigation work on Project is complete, checked, approved by City, and City has given written approval to begin the maintenance period, and shall continue until ninety (90) calendar days after the date of Final Completion or ninety (90) calendar days after the date of the date the Landscaping and Irrigation is accepted, whichever is longer.

24.2 **Maintenance Area.** District shall require the construction contractor maintain all areas of Project, including areas impacted or disturbed by the Project.

24.3 **Maintenance Required**. District shall require the construction contractor conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Construction contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days. Maintenance shall also include the following: (1) filling and replanting of any low areas that may cause standing water (2) adjusting of sprinkler head height and watering pattern, (3) filling and recompaction of eroded areas, (4) weekly removal of trash, litter, clippings and foreign debris, (5) inspecting plants at least twice per week, and (6) protecting all planting areas against traffic or other potential causes of damage.

24.4 **Landscape and Irrigation Inspection**. At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be scheduled with two (2) weeks notice, a minimum of eighty (80) calendar days after the plant maintenance period commencement, or when District or District's contractor notifies City they are ready for the Final Inspection, whichever comes last. The City will notify District of all deficiencies revealed by the inspection before acceptance.

24.5 **Extension of Maintenance Period**. District shall require the construction contractor extend completion of the maintenance period when in City's opinion, which opinion shall not be unreasonable or without substantial basis, improper maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period. District shall require the construction contractor accept responsibility for additional maintenance of the work until all of the work is completed and acceptable. Additional costs for failure to maintain landscaping during the maintenance period are Non-Reimbursable Costs.

24.6 **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. District shall require the construction contractor include, at construction contractor's expense, a timely written diagnosis of plant health by a certified arborist, should a dispute arise. An arborist's report shall indicate reason for lack of vigor, potential remedies, if any, and estimate of time required to regain vigor and specified size.

24.6.1 ***Same Kind and Size.*** Plants used for replacement shall be of the same kind and size as specified and shall be furnished, planted and fertilized as originally specified, unless otherwise directed in writing by City. District 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 XXV. RECORDS AND AUDITS

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

25.2 **Audit of Records**. At any time during normal business hours and as often as City deems necessary and upon reasonable notice, District 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. District and all contractors or subcontractors will permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the County of San Diego, then District 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.

25.2.1 ***Costs.*** Upon reasonable notice, District and District's contractors 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 XXVI. NOTICES

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

26.2 **Effective Date of Notice**. Except in relation to Change Orders as provided for in Section 3.3.3 or as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (1) on personal delivery, (2) on the second business day after mailing by Certified or Registered U.S. Mail, Return Receipt Requested, (3) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (4) upon documented successful transmission of facsimile.

26.3 **Recipients**. Except in relation to Change Orders as provided in Sections 3.3.3 and 26.4, all demands or notices required or permitted to be given to City or District shall be sent to all of the following:

26.3.1 Director, Engineering & Capital Projects Department
City of San Diego
City Administration Building
202 C Street, M.S. #9B
San Diego, California 92101
Facsimile No: (619) 533-4736

26.3.2 Facilities Financing Manager
City Planning and Community Investment Department
City of San Diego
1010 Second Avenue, Suite 600 M.S. #606F
San Diego, California 92101
Facsimile No: (619) 533-3687

26.3.3 San Ysidro School District
Attn: Assistant Superintendent of Business Services
4350 Otay Mesa Road
San Diego, CA 92173
Facsimile No.: (619) 428-9355

26.4 Recipients of Change Orders.

26.4.1 Deputy Director, Engineering & Capital Projects, Field Division
City of San Diego
9485 Aero Drive
San Diego, CA 92123
Facsimile No: (858) 627-3297

26.4.2 San Ysidro School District
Attn: Assistant Superintendent of Business Services
4350 Otay Mesa Road
San Diego, CA 92173
Facsimile No.: (619) 428-9355

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

ARTICLE XXVII. MEDIATION

27.1 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.

27.2 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.

27.3 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.

27.3.1 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.

27.3.2 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.

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

27.4 **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.

27.4.1 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.

27.4.2 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 XXVIII. MISCELLANEOUS PROVISIONS

28.1 **Term of Agreement**. Following the adoption of the City Council Resolution authorizing this Agreement and the subsequent execution of the same by the Parties, this Agreement shall be effective upon the date it is executed by City Attorney in accordance with San Diego Charter Section 40, or the date it is executed by the District, whichever occurs later [Effective Date]. Unless otherwise terminated, the Agreement shall be effective until (i) the final reimbursement payment is made; or (ii) one year after the Warranty Bond terminates, whichever is later but not to exceed five years unless approved by City ordinance.

28.2 **Construction Documents**. Construction documents include, but are not limited to: construction contract, contract addenda, notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bonds, the general conditions, permits from other agencies, the special provisions, the plans, standard plans, standard specifications, reference specifications, and all modifications issued after the execution of the construction contract.

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

28.4 **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.

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

28.6 **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.

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

28.8 **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.

28.9 **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.

28.10 **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.

28.11 **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.

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

28.13 **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.

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

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

28.16 **Compliance with Controlling Law**. District shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement (and if expressly made applicable by the City Council, California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of Project), including inspection and land surveying work. In addition, District 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.

28.17 **Hazardous Materials**. Hazardous Materials constitute any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). District agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

28.18 **Jurisdiction, Venue, Choice of Law, and Attorney Fees**. The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of

California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

28.19 **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.

28.20 **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 District's contracts, purchase orders and other contracts between District and third-party services related to the Project. District shall incorporate this provision into its contracts, supply agreements and purchase orders.

28.21 **Non-Assignment**. The District 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.

28.22 **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.

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

28.24 **Approval**. Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld; however, nothing in this Section shall in any way bind or limit any future action of the City Council pertaining to this Agreement or Project.

28.25 **No Waiver**. No failure of either City or District 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.

28.26 **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.

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

This Agreement was approved as to form by the City Attorney this _____ of _____, 2011.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: 2/17/12

By: _____

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

Dated: 2/24/12

By: _____

SAN YSIDRO SCHOOL DISTRICT

Dated: 7/25/11

By: _____
Manuel H. Paul
Superintendent

Approved as to form:
ATKINSON, ANDELSON, LOYA, RUUD & ROMO

Dated: 7/25/11

By: _____
Martin A. Hom
Attorneys for San Ysidro School District

HKV
06/14/11
Or.Dept: Facilities Financing

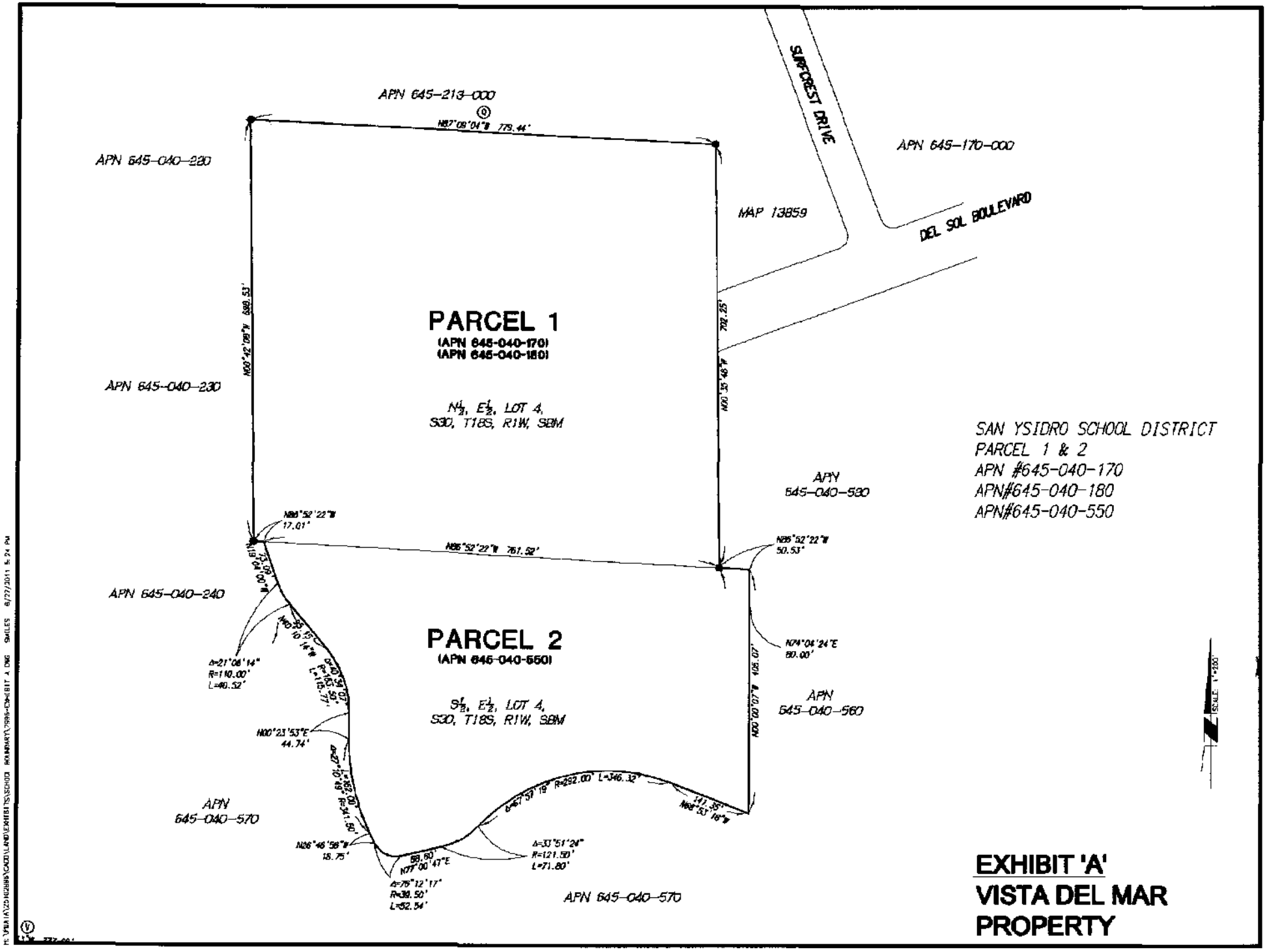
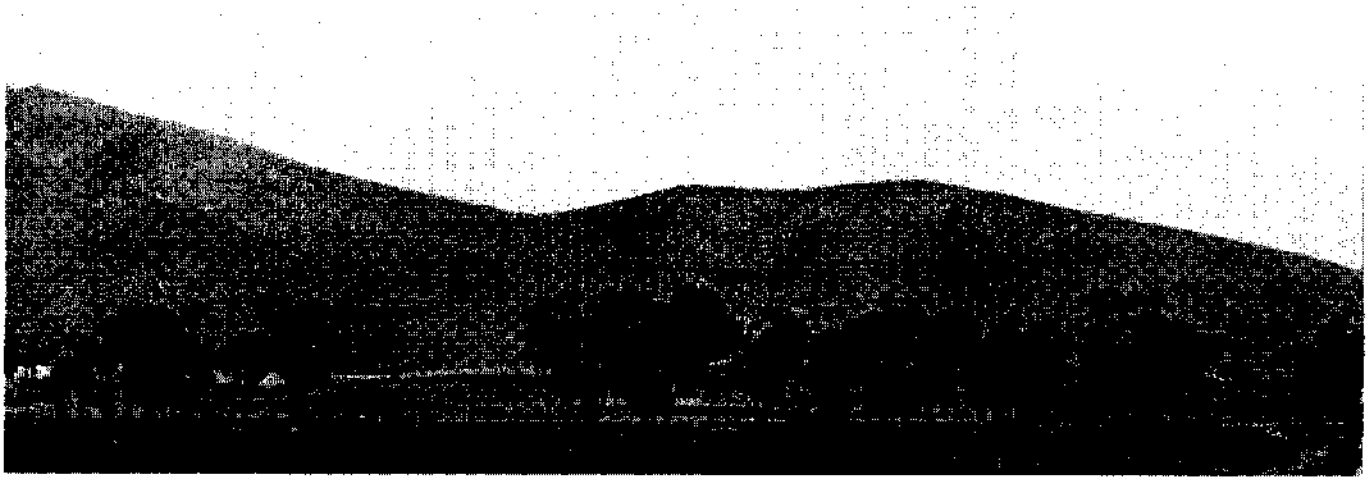


EXHIBIT 'A'
VISTA DEL MAR PROPERTY

OTAY MESA

Public Facilities Financing Plan and Facilities Benefit Assessment

Fiscal Year 2007



THE CITY OF SAN DIEGO

CITY PLANNING & COMMUNITY INVESTMENT DEPARTMENT
Facilities Financing

October 18, 2006

Exhibit B

(R-2007-444)

RESOLUTION NUMBER R- 302040

DATE OF FINAL PASSAGE NOV 22 2006

RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE OTAY MESA PUBLIC FACILITIES FINANCING PLAN AND FACILITIES BENEFIT ASSESSMENT.

BE IT RESOLVED, by the Council of the City of San Diego, that it approves the document titled, "Otay Mesa Public Facilities Financing Plan and Facilities Benefit Assessment, Fiscal Year 2007," a copy of which is on file in the office of the City Clerk as Document No. RR- 302040.

BE IT FURTHER RESOLVED, that this activity is exempt from CEQA pursuant to State Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By
David E. Miller
Deputy City Attorney

10/18/06
Or.Dept:Planning/Fac.Fin.
R-2007-444
MMS#3937
Comp; R-2007-445
R-2007-446
R-2007-447
R-2007-448

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 13 2006.

ELIZABETH S. MALAND
City Clerk
By
Deputy City Clerk

Approved: 11-22-06
(date)

JERRY SANDERS, Mayor

Exhibit B

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: **DEL SOL BOULEVARD - (Central)**

PROJECT: **T-4.3**
DEPARTMENT: ENGINEERING AND CAPITAL PROJECTS — COUNCIL DISTRICT: 8
CIP or JO#: 52-492.0 — COMMUNITY PLAN: OM

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
FBA-OM(w)	**$6,500,000**	$18,125	$8,375	$473,500	$2,000,000	$4,000,000		
FBA-OM(e)								
PDIF (w)								
PDIF (e)								
CRD								
CITY								
DEV/SUBD								
CALTRANS								
STATE								
OTHER								
UNIDEN								
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FBA-OM(w)								
FBA-OM(e)								
PDIF (w)								
PDIF (e)								
CRD								
CITY								
DEV/SUBD								
CALTRANS								
STATE								
OTHER								
UNIDEN								
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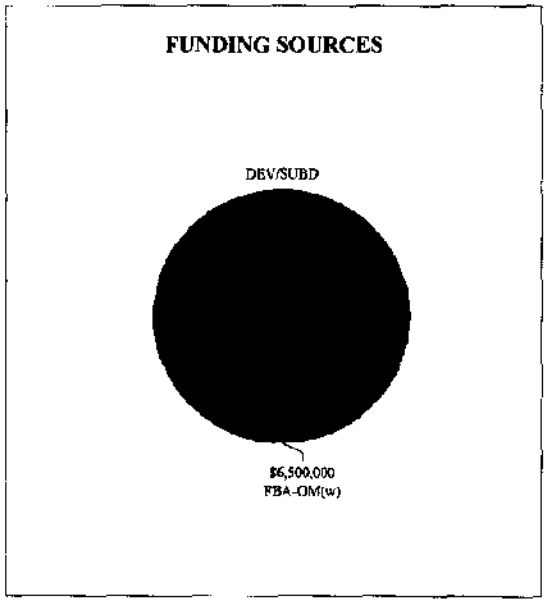
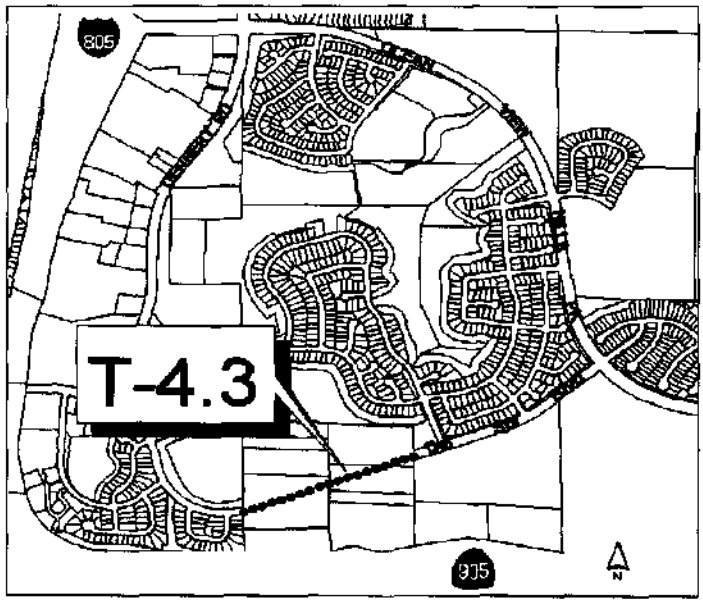




CONTACT: LARRY VAN WEY — TELEPHONE: (619) 533-3005 — EMAIL: lvanwey@sandiego.gov

Exhibit B

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: **DEL SOL BOULEVARD - (Central)**

PROJECT: **T-4.3**

DEPARTMENT: ENGINEERING AND CAPITAL PROJECTS
CIP: 52-492.0

COUNCIL DISTRICT: 8
COMMUNITY PLAN: OM

DESCRIPTION:

CONSTRUCT THE CENTRAL SECTION OF DEL SOL BOULEVARD EASTERLY OF THE EASTERN BOUNDARY OF PALM RIDGE THROUGH THE MSCP OPEN SPACE AND ALONG THE FRONTAGE OF THE PROPOSED COMMUNITY PARK, ELEMENTARY SCHOOL, AND MIDDLE SCHOOL. THE ROADWAY WILL CONSIST OF 800 LINEAR FEET OF 2-LANE COLLECTOR AND 2,000 LINEAR FEET OF A 4-LANE COLLECTOR STREET.

SEE COMPANION PROJECTS: T-4.1 AND T-4.2.

JUSTIFICATION:

THE TRANSPORTATION ELEMENT OF THE OTAY MESA COMMUNITY PLAN SUGGESTS THAT AN INTEGRATED TRANSPORTATION NETWORK WILL PROVIDE MOBILITY AND ACCESSIBILITY FOR THE RESIDENCES AND BUSINESSES TRAVELING TO, FROM AND THROUGH THE COMMUNITY. THIS PROJECT IS REQUIRED AND IS CONSISTENT WITH THE COMMUNITY PLAN.

FUNDING ISSUES:

A PORTION OF THIS PROJECT IS BEING FUNDED WITH FBA FUNDS BECAUSE THERE IS EITHER NO PROJECT FRONTING THIS ROADWAY OR THE PROJECTS FRONTING THE ROADWAY ARE ALSO PUBLIC FACILITY PROJECTS, FOR EXAMPLE SCHOOLS, PARK, ETC.

NOTES:

PORTIONS OF THIS PROJECT WILL BE FUNDED WITH FBA FUNDS. SHOULD THE ADJACENT PROPERTIES EVER DEVELOP, THESE PROPERTIES SHALL REIMBURSE THE FBA FUND FOR THE ACTUAL COST OF THE PROJECT AS A CONDITION OF THEIR DEVELOPMENT.

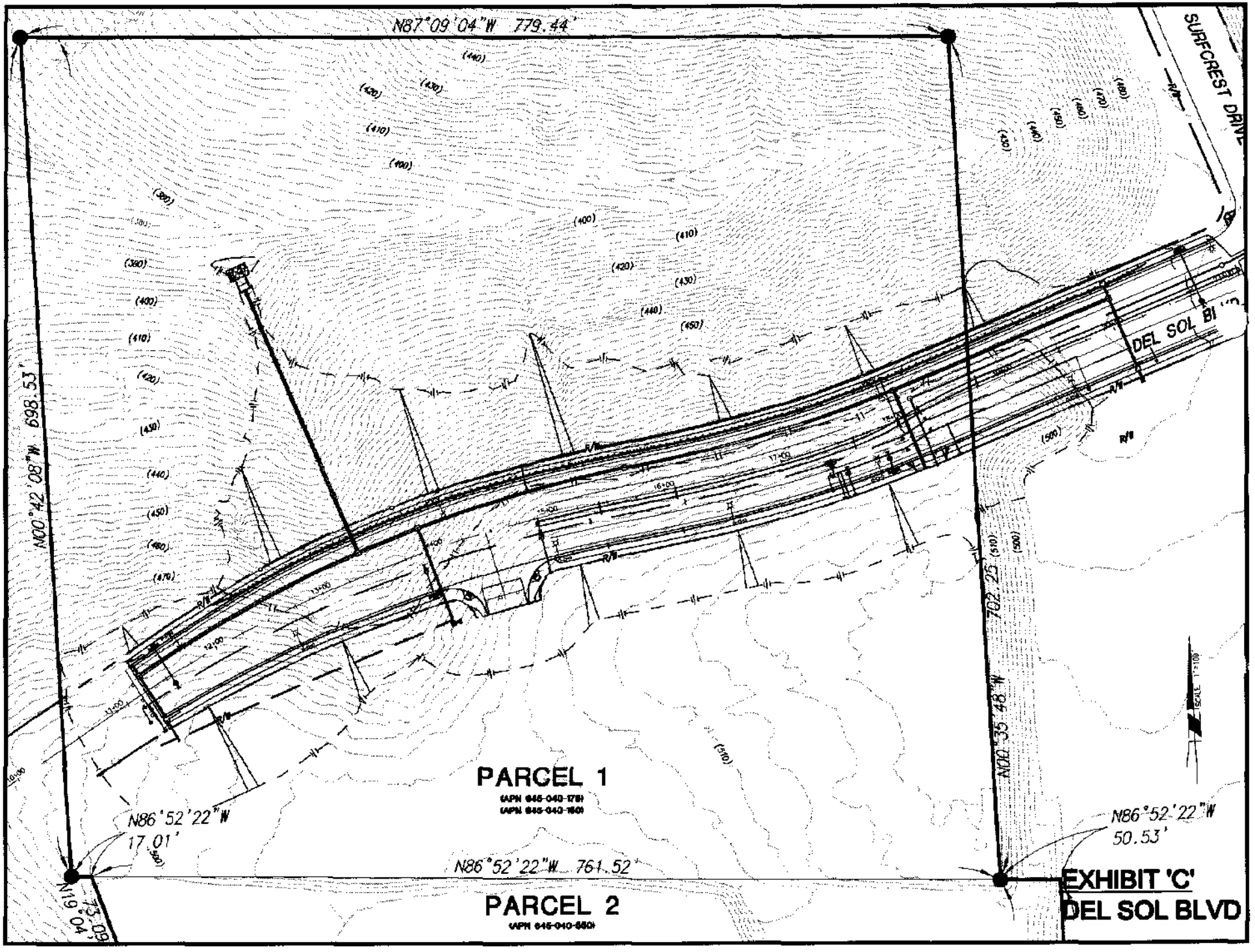
THIS ROADWAY IS PROGRAMMED FOR CONSTRUCTION CONCURRENT WITH THE CONSTRUCTION OF THE NORTH COMMUNITY PARK (PROJECT P-4.1).

SCHEDULE:

DESIGN	FY 2008
CONSTRUCTION	FY 2009

CONTACT: LARRY VAN WEY TELEPHONE: (619) 533-3005 EMAIL: lvanwey@sandiego.gov

Exhibit B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N86°52'22"W 17.01'
N86°52'22"W 50.53'
N19°04'
SURFCREST DRIVE
DEL SOL BLVD
PARCEL 1
(APN 645-040-170)
(APN 645-040-180)
PARCEL 2
(APN 645-040-550)
SCALE 1"=100'
EXHIBIT 'C'
DEL SOL BLVD

Exhibit D - Del Sol Boulevard Description

Del Sol Boulevard scope of work consists of extending Del Sol Boulevard from Surfcrest Drive to approximately 50 feet easterly of the westerly property line of the Vista Del Mar School which is shown as Parcel 1 on Exhibit C. Del Sol Boulevard is a circulation element road and is being constructed in two phases. Phase 1 is needed now to provide service to the future Vista Del Mar school. Phase 2 will require environmental clearance before proceeding with final engineering and is not a part of the current reimbursement agreement.

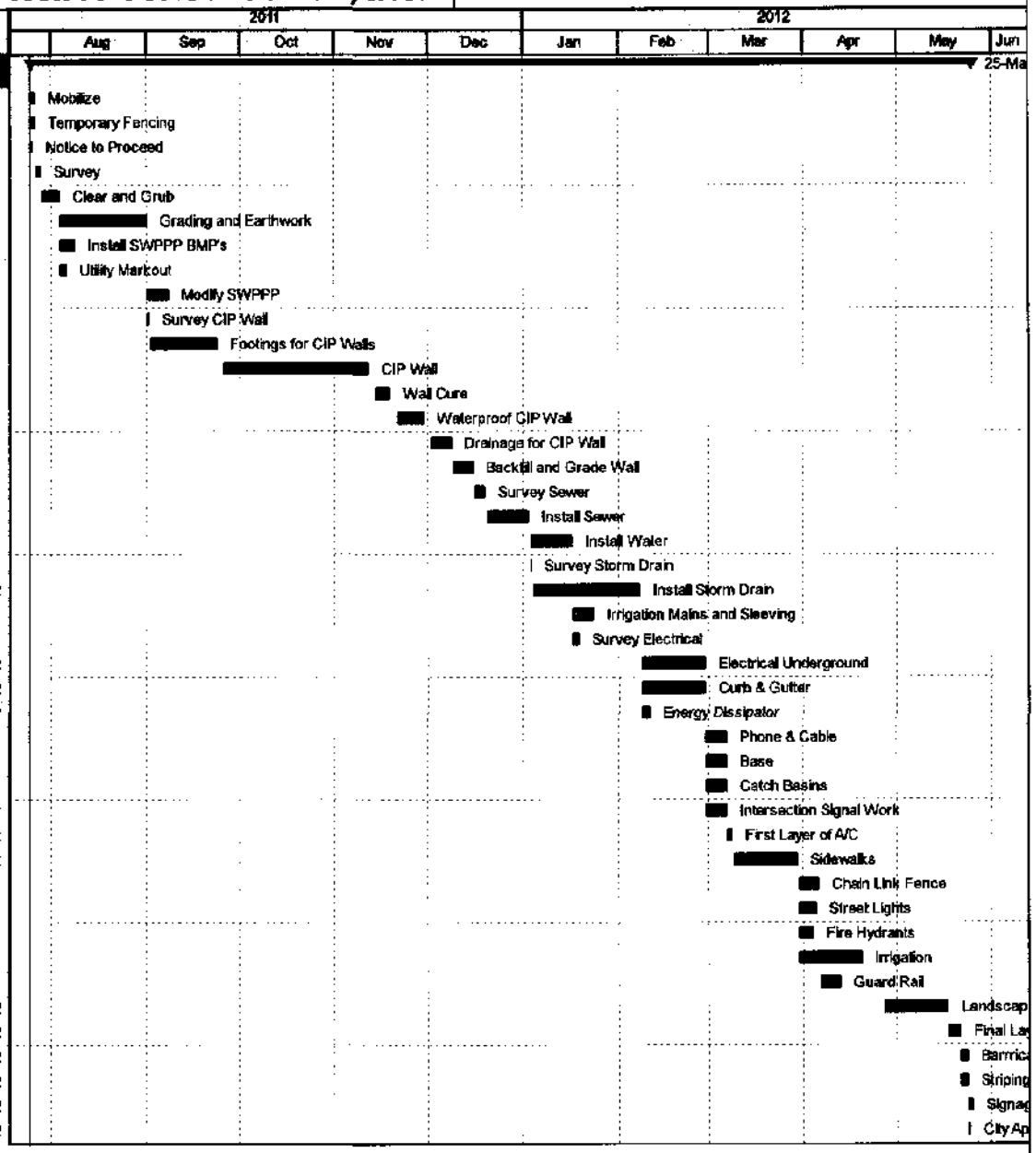
Phase 1 improvements consist of an improved four lane collector road transitioning to a two lane residential road. Specific improvements include a new traffic signal at Surfcrest Drive and conduits to allow for a future signal at the schools entry as well as an inter-connect between the two signals. Other improvements consist of a raised median, water, sewer, and storm drain, street lights, retaining walls, guardrail, slope grading, and landscape and irrigation.

Del Sol Boulevard Extension

ECHO PACIFIC CONSTRUCTION, INC.

07-Jul-11

Activity ID	Activity Name	Orig Days	Rem Days	Start	Finish
Del Sol Boulevard Extension					
D1010	Mobilize	2	2	25-Jul-11	26-Jul-11
D1020	Temporary Fencing	2	2	25-Jul-11	26-Jul-11
D1000	Notice to Proceed	1	1	25-Jul-11	25-Jul-11
D1040	Survey	2	2	27-Jul-11	28-Jul-11
D1050	Clear and Grub	4	4	29-Jul-11	03-Aug-11
D1080	Grading and Earthwork	20	20	04-Aug-11	31-Aug-11
D1060	Install SWPPP BMP's	3	3	04-Aug-11	08-Aug-11
D1070	Utility Markout	2	2	04-Aug-11	05-Aug-11
D1090	Modify SWPPP	4	4	01-Sep-11	07-Sep-11
D1100	Survey CIP Wall	1	1	01-Sep-11	01-Sep-11
D1110	Footings for CIP Walls	15	15	02-Sep-11	23-Sep-11
D1120	CIP Wall	35	35	26-Sep-11	11-Nov-11
D1130	Wall Cure	5	5	14-Nov-11	18-Nov-11
D1140	Waterproof CIP Wall	5	5	21-Nov-11	29-Nov-11
D1150	Drainage for CIP Wall	5	5	02-Dec-11	08-Dec-11
D1160	Backfill and Grade Wall	5	5	09-Dec-11	15-Dec-11
D1210	Survey Sewer	2	2	16-Dec-11	19-Dec-11
D1220	Install Sewer	10	10	20-Dec-11	02-Jan-12
D1230	Install Water	10	10	03-Jan-12	16-Jan-12
D1170	Survey Storm Drain	1	1	03-Jan-12	03-Jan-12
D1180	Install Storm Drain	25	25	04-Jan-12	07-Feb-12
D1240	Irrigation Mains and Sleeving	5	5	17-Jan-12	23-Jan-12
D1270	Survey Electrical	2	2	17-Jan-12	18-Jan-12
D1280	Electrical Underground	15	15	08-Feb-12	28-Feb-12
D1250	Curb & Gutter	15	15	08-Feb-12	28-Feb-12
D1200	Energy Dissipator	3	3	08-Feb-12	10-Feb-12
D1290	Phone & Cable	5	5	29-Feb-12	06-Mar-12
D1310	Base	5	5	29-Feb-12	06-Mar-12
D1190	Catch Basins	5	5	29-Feb-12	06-Mar-12
D1300	Intersection Signal Work	5	5	29-Feb-12	06-Mar-12
D1320	First Layer of A/C	2	2	07-Mar-12	08-Mar-12
D1330	Sidewalks	15	15	09-Mar-12	29-Mar-12
D1340	Chain Link Fence	5	5	30-Mar-12	05-Apr-12
D1360	Street Lights	4	4	30-Mar-12	04-Apr-12
D1260	Fire Hydrants	3	3	30-Mar-12	03-Apr-12
D1370	Irrigation	15	15	30-Mar-12	19-Apr-12
D1350	Guard Rail	5	5	06-Apr-12	12-Apr-12
D1380	Landscaping	15	15	27-Apr-12	17-May-12
D1390	Final Layer of Asphalt	2	2	18-May-12	21-May-12
D1400	Barricade	2	2	22-May-12	23-May-12
D1410	Striping	2	2	22-May-12	23-May-12
D1420	Signage	2	2	24-May-12	25-May-12
D1430	City Approval	1	1	24-May-12	24-May-12



Actual Work
Remaining Work
Critical Remaining Work
Milestone
Summary

07-Jul-11 Update

TASK filter: All Activities

(c) Primavera Systems, Inc.

Exhibit E

Estimated Cost per section 3.3

Construction

Prime Trade Contracts	$2,719,462	See attached detail.
Construction Management	$571,100	Echo Pacific Construction
CM Support Services	$98,438	CM Field Office, Temporary Facilities.
Environmental Mitigation	$176,219	RBF (see attached detail).
Subtotal	$3,565,219	
District Administration (5%)	$178,261	
Contingency (10%)	$356,522	
Construction Total	**$4,100,002**	

Soft Costs

Design Fees	$473,325	RBF (see attached detail).
Program Manager	$70,807	Eric Hall and Associates
Design Consultant	$32,500	Erikson Hall Construction
Environmental Impact Report	$31,314	Helix Environmental
Subsequent Environmental Impact Report	$51,225	The Planning Center
Electrical Utility Fees	$33,000	SDGE (half of estimated fees).
Elec Design Fees	$29,537	Power Plus
City of San Diego Treasurer	$16,013	Marron Valley Land Purchase for Gnat Catcher
Attorney Fees	$11,169	Atkinson, Andelson, Loya, Ruud & Romo
Soft Cost Total	**$748,890**	
Grand Total	**$4,848,892**	

Exhibit F

Exhibit F

Bid Package #1 - EARTHWORK				
Bond & Insurance	$	8,353		
Mobilization	$	10,500		
Survey	$	21,000		
Clear & Grub Site	$	20,336		
Remove & Recompact	$	42,893		
On Site Excavation	$	84,289		
Export	$	125,773		
Finish Grade Site	$	29,925		
SWPPP	$	26,933		
	Total Bid Package# 1		$	370,000
Bid Package #2 - WET UTILITIES				
SEWER				
Bond & Insurance	$	10,367		
8" PVC sewer - DR-18	$	29,447		
3+4 Man holes	$	9,263		
8" C.O.	$	683		
6" Sewer lateral (tee's, 60' pipe, clean out)	$	1,680		
Connect to main / rechannel	$	2,100		
Adjust man holes to grade	$	1,890		
Video	$	735		
WATER				
12"PVC	$	42,525		
16" PVC	$	97,062		
Fire Hydrant Assembly	$	36,120		
10" Fire Service	$	12,600		
2" Water Service	$	9,844		
16" Gate Valve	$	4,725		
16" Back Flow Valve	$	8,610		
12" Gate Valve	$	3,203		
2" Blow Off	$	8,395		
4" Blow Off	$	5,880		
12" Cap & TB	$	1,040		
16" Cap & TB	$	1,680		
STORM DRAIN				
18" RCP	$	18,787		
24" RCP	$	52,773		
30" RCP	$	27,361		
30" Water Tight Joint RCP	$	31,126		
B-1 Clean Out	$	13,283		
"F" Catch Basin	$	6,787		
B Clean Out	$	8,778		
Cut off wall	$	10,500		

Energy Disapator	$	21,154		
A-4 Clean Out	$	22,680		
A-4 Ring, Cover and Standby	$	3,780		
Adjust to Manhole Grade	$	2,835		
Rip Rap	$	2,625		
MISCELLANEOUS				
Misc. Fittings, Parts & Filters	$	12,285		
	Total Bid Package# 2		$	522,600
Bid Package #3 - ELECTRICAL				
Bond & Insurance	$	8,019		
BID ITEM #1 - SURF CREST & DEL SOL BLVD				
Mobilization	$	13,197		
Utility Locating	$	7,897		
Conduit (Inc. SIC)	$	90,613		
Foundations	$	36,165		
Pull Boxes	$	15,950		
Service Cabinet	$	5,316		
Poles & Gear	$	44,100		
Controller	$	10,500		
Wiring	$	15,750		
Striping	$	10,500		
Loops	$	5,250		
Turn On	$	2,625		
Restoration	$	5,250		
BID ITEM #2 - CONDUIT INSTALL-FUTURE SIG				
Mobilization	$	998		
Utility Locating	$	1,187		
Conduit	$	10,500		
Pull Boxes	$	2,520		
Rope	$	1,785		
Loop Stub Outs	$	2,310		
Restoration	$	398		
BID ITEM #3 - STREET LIGHTING				
Mobilization	$	3,447		
Utility Locating	$	3,447		
Conduit	$	21,063		
Foundations	$	10,500		
Pull Boxes	$	4,136		
Poles & Fixtures	$	14,116		
Wiring	$	9,652		
Restoration	$	690		
BID ITEM #4 - DRY UTILITY DUCT BANK				
Mobilization	$	4,461		
Utility Locating	$	1,784		
Conduit	$	61,247		
Boxes / Vaults	$	19,629		
	Total Bid Package# 3		$	445,000

Exhibit F

Bid Package #4 - CONCRETE				
Bond & Insurance	$	15,331		
Retaining Wall	$	271,008		
Anti-Graffiti	$	12,054		
Subdrain System	$	13,152		
Waterproofing	$	17,142		
Median Curb	$	17,509		
Driveway & Valley Gutter	$	15,461		
Stamped Concrete	$	15,156		
Sidewalks	$	53,550		
Curb Ramps	$	21,000		
Curb & Gutter	$	51,450		
Mobilization	$	56,438		
Form Liner & Concrete Color	$	100,000		
Sound Wall	$	60,000		
	Total Bid Package# 4		$	719,250
Bid Package #5 - AC PAVING				
Bond & Insurance	$	8,078		
Install 3.5" Base AC on 18" CTB	$	302,543		
Install 2" AC Overlay	$	72,294		
Traffic Control	$	2,460		
M-9 Barricade	$	2,954		
Seal & Sand	$	5,320		
Striping per 16-D	$	11,252		
	Total Bid Package# 5		$	404,900
Bid Package #6 - LANDSCAPING				
Submittals	$	6,825		
Bond & Insurance	$	5,250		
Mobilization	$	10,500		
Sleeves	$	12,600		
Irrigation Mainline & Valves	$	39,900		
Irrigation Lateral Line & Heads	$	45,150		
Controller	$	5,775		
Backflow	$	4,137		
Soil Prep	$	8,400		
Jute Mesh	$	8,400		
Shrubs/Tree Planting	$	33,600		
Hydroseed	$	10,500		
90-Day Maintenance	$	3,045		
125-Day Maintenance	$	5,040		
25 Month Maintenance	$	25,200		
Guard Rail	$	19,950		
Chain Link Fence at Retaining Wall	$	10,500		
Barricade	$	2,940		
	Total Bid Package# 6		$	257,712

Exhibit F

Construction Mangement				
Construction Mgmt. Services Fee	$	571,100		
Support Services	$	98,438		
Construction Management Total			**$**	**669,538**
Environmental Mitigation				
TAIC biological construction support - permit compliance assistance, pre-con California gnatcatcher surveys, biology construction monitoring	$	6,898		
cultural resources grading monitoring	$	5,700		
RBF permit compliance assistance, agency coordination, biology construction monitoring	$	51,335		
SDNHM paleo excavation monitoring	$	10,505		
D&D salvage coastal sage scrub, BMP installation	$	18,929		
TAIC biological support - agency coordination, PAR/CE for onsite preserve, pre-con meeting/contractor education, biology construction monitoring	$	23,452		
RBF program management, meetings, coordination	$	59,400		
Environmental Mitigation Total			**$**	**176,219**
Grand Total			**$**	**3,565,219**

Exhibit F

EXHIBIT G

Project Schedule Obligations and Components

1. **District's Obligation**. To the extent required by City, District shall require that its construction manager provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.

   A. *Construction Phase*. During Construction, District shall have its construction manager submit an updated Project Schedule monthly to City and shall include:

      i. Forecast Data with the intended plan for the remainder of the contract duration.
      ii. Actual Data with indications of when and how much Work and/or Services was performed (% complete)
      iii. Logic changes or other changes required to maintain the Project Schedule

2. **Detail and Format**. Unless otherwise directed by City, the Project Schedule shall include all phases of the Project. It shall be in a precedence diagram format, plotted on a time-scaled calendar, detailed to activity level, and shall:

   A. Define design and construction activities and their sequence:

      i. Work shall be divided into a minimum of 5 activities.

      ii. Activities shall not exceed 21 calendar days in duration or $50,000 in value, except long lead procurement and submittal activities or those accepted by City.

      iii. 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 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.

Submittal. Project Schedule shall be submitted to City on a computer disk in PRIMAVERA Project Planner P3e/c Release Version 4.1 SP1 software in conformance with Construction Plans & Scheduling by AGC or America, or other software specifically designated by City.

EXHIBIT H

Meeting Requirements

1. **Preconstruction Meeting.** District and its construction manager 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.* District shall ensure the preconstruction meeting is attended by District's construction manager and trade contractors, and the City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by District or City.

   B. *Minutes.* District's construction manager will take corresponding meeting minutes and distribute copies to all attendees.

2. **Progress Meetings.** District's construction manager will conduct weekly progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: District's construction manager, Design Consultant, City representatives including Responsible Department representatives, Engineering and Capital Projects Project Manager and Resident Engineer.

   A. *As-Builts.* District 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 I.**

   C. *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Subdivider has given no less than seven calendar days prior written notice of the rescheduled meeting.

3. **Agenda**. All meetings shall include at a minimum the agenda identified in **Exhibit I.**

EXHIBIT I

Preconstruction, Progress, & Special Meeting Agenda

1. Preconstruction. The issues below should be made part of the Preconstruction Meeting Agenda; however, the agenda may deviate depending on needs.

   1.1 Permits and Utility Issues. Telephone, cable, gas and electric. RE to announce to District 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 Parking areas establish for construction employees and possibly patrons/others.
   1.3 District'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 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 District and the respective communication procedures between Parties.
   1.10 Safety and first aid procedures including designation of 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 District, notice to RE, timing, etc.
   1.15 Procedure for changes in work requested by City.
   1.16 Public safety.
   1.17 Housekeeping procedures, Project site maintenance.
   1.18 Protection and restoration of existing improvements.
   1.19 Sanitation, temporary lighting, power, water, etc.
   1.20 Procedure for encountering hazardous substances.
   1.21 Any items requested by attendees of preconstruction meeting/open discussion.

2. Progress Meetings. The issues below should be made part of the Progress Meeting Agenda; however, the agenda may deviate depending on needs.

   2.1 Review progress of construction since the previous meeting.
   2.2 Discuss field observations, problems, conflicts, opportunities, etc.
   2.3 Discuss pre- planning opportunities.
   2.4 Identify problems that impede planned progress and develop corrective measures as required to regain the projected schedule. Revise the schedule if necessary.
   2.5 Discuss District's plan for progress during the next construction period and the corresponding inspections necessary.
   2.6 Discuss submittal status.
   2.7 Discuss request for information (RFI) status.
   2.8 Progress of schedule.
   2.9 Disputed items.
   2.10 Non-conformance/non-compliance items.
   2.11 New business of importance from any member of the meeting.
   2.12 Deferred approvals and their coordination.
   2.13 Discuss request for proposals, change orders, and progress payment status.

3. Special Meetings.

3.1 Grading. Prior to grading the site, a grading mini-preconstruction meeting will be called for by the RE. This meeting applies when surveying is being supplied by the City. The superintendent, the District's appropriate contractors, the RE, the City's survey crew, and any appropriate consultants (if deemed necessary by the RE) will attend. Unless otherwise noted, the agenda will be to coordinate the staking, reference markers, bearings, various site conditions, etc. as defined in the contract documents and any necessary coordination of scope or scheduling between the respective Parties.

3.2 Roofing. Upon completion of the roofing structural diaphragm and prior to installing flashing, and/or any other roofing materials, a roof mini-preconstruction meeting willed be called for by the RE. The superintendent, theDistrict'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) will 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 installing any landscaping equipment, supplies, etc., a landscaping mini-preconstruction meeting willed be called for by the RE. The superintendent, the District's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The agenda will be to coordinate all landscape materials, plant and irrigation coverage, visual planting procedures, etc. and/or contractors on site with the various field conditions.

3.4 Mini-Preconstruction Meeting. Prior to installing any mechanical, electrical, plumbing, and sprinkler system equipment, a mini-preconstruction meeting willed be called for by the Subdivider. The superintendent, the District's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The intent of this meeting is to ensure the prime contractor is adequately coordinating the space of the facility as to not impede the visual integrity of the overall product.

3.5 Other. Upon appropriate notice to other parties, special meetings may be called by the RE at times agreed to by all parties involved.

EXHIBIT J

Procedure for Processing Change Orders

1. **Forms Required.** All Change Orders shall be in writing on the appropriate City form and must be approved or rejected by City in writing as provided in Section 3, below, and delivered to District.

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. If a requested Change Order would result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval.

3. **Process for Approval of Change Orders.** District shall notify the RE in writing of the need for a Change Order. Change Order must indicate whether the change will affect, in any way, by increasing or decreasing, the Estimated Cost, Project Schedule, or Project quality established during the design and submittal review process.

   3.1 ***Resident Engineer Approval.*** If the Change Order request does not result in an increase in the Estimated Cost, the RE shall either approve or reject the Change Order in writing within fourteen (14) calendar days of receiving District's written notice, provided Subdivider has submitted complete documentation substantiating the need for such Change Order. If City fails to respond to District's written notice within the fourteen (14) calendar days, the Change Order request shall automatically be deemed denied.

   3.2 ***City Council Approval.*** For Change Orders not subject to Section 3.1, above, City Council approval is required. Only for Change Orders preliminarily approved by the necessary City staff, the appropriate City staff shall process the Change Order along with any required amendments to the Financing Plan and this Agreement as a 1472, a Request for Council Action. At a hearing on such Request for Council Action, City Council shall 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.

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 District, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.

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

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

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

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

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

7. **Professional Liability Insurance.** For all of Consultant's employees who are subject to this Agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) aggregate. Consultant shall ensure both that (1) this policy's retroactive date is on or before the date of commencement of the work to be performed under this Agreement; and (2) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City of San Diego's exposure to loss.

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

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

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

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

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

EXHIBIT L

Design and Construction Standards

1. **Laws**. All local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including but not limited to, Development Services Department permits, hazardous material permits, site safety, state and local Building Codes, stormwater regulations, etc.

   A. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code.* It is the sole responsibility of Subdivider to comply with all ADA and Title 24 regulations. [Subdivider Certification attached as **Exhibit M**].

   B. *Environmental.* Subdivider shall complete all environmental measures required by CEQA (State requirements), NEPA (Federal requirements), and the local jurisdiction, including but not limited to, mitigation measures, and site monitoring.

   C. *Air, Water, and Discharge.* Subdivider shall comply with the Clean Air Act of 1970, the Clean Water Act (33 USC 1368)-Executive Order 11738, and the Stormwater Management and Discharge Control-Ordinance No. 0-17988.

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 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*] by [*insert name of Consultant/Sub*] 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: _____

By: _____
Authorized Representative

_____
Print Name and Title

EXHIBIT N

Approval of Design, Plans, and Specifications

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

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

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

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

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

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

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

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

EXHIBIT O

Construction Obligations

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

   A. *Persons.* District 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 District to access the Project site.

   B. *Other.* District 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.* District shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including the Clean Air Act of 1970, the Clean Water Act, Executive Order number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Furthermore, the Subdivider shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan [SWPPP] to be implemented by the Subdivider during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.

2. **Access to Project Site.**

   A. *Field Office.* District 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 District.

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

3. **Surveying and Testing.** District 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.* District shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The Soils Consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.

   B. *Utilities.* District 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. District 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.* District 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.* District 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.* District 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.* District 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.** District shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.

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

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

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

   C. *Concealing Work.* Prior to concealing work, Subdivider shall obtain approval of work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as stipulated in this Agreement. This approval is general approval only and in no way relieves Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Subdivider shall fulfill all requirements of each of these three agencies.

7. **Property Rights.** District shall provide all required easement documents, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements, as required by City of San Diego Real Estate Assets Department requirements and Council Policy 600-04, "STANDARDS FOR RIGHTS OF WAY AND IMPROVEMENTS INSTALLED THEREIN". City shall not require District to provide any easement documents for land to which Subdivider does not have title; however, District shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Public Facilities Financing Plans or any applicable Development Agreement.

8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by District 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 District. 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 District is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse District 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.** District shall maintain and be responsible for the Project site until Acceptance of the Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.

10. **Drug-Free Workplace.** The District agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The District shall certify to the City that it will provide a drug-free workplace by submitting a District Certification for a Drug-Free Workplace form [Exhibit P].

A. *District Notice to Employees.* The District shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.

B. *Drug-Free Awareness Program.* The District 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 District shall post the drug free policy in a prominent place.

C. *District's Agreements.* The District 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: _____

_____

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that:

_____
Name under which business is conducted

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 Section 4.9.1 subdivisions A through C of the policy as outlined.

Signed _____

Printed Name _____

Title _____

Date _____

EXHIBIT Q

Product Submittal and Substitution

1. **Product Submittal.** Prior to the bidding process, District shall submit for City approval a list of products intended for use in the Project. Upon District's completion of plans and specifications, City will review and approve products specified therein. District shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of District's receipt of submittal. Approval is general approval only and in no way relieves District of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations.

2. **Substitutions.** District 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 District's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. District agrees that City requires Consultant's input and as such District shall coordinate a seven (7) calendar review by its Consultant.

   A. *Substantiate Request.* District shall include with each substitution request complete data that substantiates that the proposed substitution conforms to requirements of the Contract Documents.

   B. *District Representations.* By submitting a substitution request, District is representing to City all of the following: (a) District has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (b) District is providing the same warranty for the proposed product as was available for the specified product; (c) District shall coordinate installation and make any other necessary modifications that may be required for work to be complete in all respects; and (d) District 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 District's office, carriage prepaid.

   B. *Review.* District 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. District shall assign a submittal number. District 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. District's, or District's agent's, field samples shall be prepared at the site. Affected finish work shall not commence until District or its 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, shall be treated as and are subject to the same requirements as Change Orders. District 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.** District's and its agents' bonds, under Article XIX, 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 District as Extra Work is reimbursable in the same manner described as in Article XIII. The Project Contingency as described in Article III, Section 3.3.2, will be used first to cover the costs of Extra Work.

4. **Markup**. District will be paid a reasonable allowance for overhead and profit. The allowance shall not exceed five percent (5%) and shall be added to the District's costs for Extra Work.

EXHIBIT S

Notification of Reimbursable Project

Pursuant to Section 13.1.1 of the "Reimbursement Agreement" [Agreement], adopted pursuant to Resolution No. _____ and executed on _____, 2008, [Insert District Name] [District] hereby notifies the City of San Diego that work will begin on the following Project, [Insert Name of Project], also known as Project [Insert Project No. from Financing Plan] in the [Insert Financing Plan Name] Financing Plan on or about [Insert Date Work is Scheduled to Begin].

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

By: _____

[Title] _____

Dated: _____

EXHIBIT T

INSPECTION TEAM

Resident Engineer (Inspector and Single Point of Contact)
Rick Skinner
9485 Aero Drive
San Diego, CA 92123-1801
Email: rskinner@sandiego.gov
Phone: 858 495-4712

Area Supervisor
John Qsar
9485 Aero Drive
San Diego, CA 92123-1801
Email: jqsar@sandiego.gov
Phone: 858 627-3231

Construction Engineer
Lisa Adams
9485 Aero Drive
San Diego, CA 92123-1801
Email: lhadams@sandiego.gov
Phone: 858 627-3230

Materials Lab
Zuhair Al-Attia
9485 Aero Drive
San Diego, CA 92123-1801
Email: zalatta@sandiego.gov
Phone: 858 627-3277

Surveys
Ron Dodds
9485 Aero Drive
San Diego, CA 92123-1801
Email: rdodds@sandiego.gov
Phone: 858 627-3220

EXHIBIT U

Project Deliverables

I. **Master Contract Documents**.

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

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

B. *Surveys.* District 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.* District 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. District'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.* District 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.* District 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, District shall furnish copies of the Service and Meter Location Request and all utility companies verifications.

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

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

I. *As-Builts.* District 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. District shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. District 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. District 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. District 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. District shall maintain a set of As-Builts at the Project site for reference. District shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil), shall

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

J. *Operation and Maintenance Manuals.* District 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 District'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 District's agents, suppliers, manufacturers, and installers. In addition, list the following: 1.) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.

EXHIBIT V

Typical Insurance Provisions

1. Types of Insurance. At all times during the term of this Agreement, District shall maintain insurance coverage as follows:

1.1 Commercial General Liability. District 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. District 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 District's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, District 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 District's employees who are subject to this Agreement, District shall keep in full force and effect, or District 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. District 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. District 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 District's employees who are subject to this Contract and to the extent required by the State of California, District shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect District 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 District to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars ($1,000,000) for Bodily Injury by Accident for each accident, one million dollars ($1,000,000) for Bodily Injury by Disease each employee, and one million dollars ($1,000,000) for Bodily Injury by Disease policy limit. District 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 District 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, District shall provide a policy of "all risk" Builders Risk Insurance. District shall add City and its respective elected officials, officers, employees, agents, and representatives to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. District 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 District'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 District; 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 District'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 District 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.

Facilities Financing, City Planning and Community Investment, City of San Diego

Recommended Guidelines for Submittal of Reimbursement Claims

arb
4/23/2010

Exhibit W

FORM
"RECOMMENDED GUIDELINES FOR SUBMITTAL OF REIMBURSEMENT CLAIMS

INSTRUCTIONS

Please use this FORM, "Recommended Guidelines for Submittal of Reimbursement Claims", to evaluate the completeness and comprehensiveness of submittals. Facilities Financing will return, without further action, any claim package that is incomplete, not comprehensive, or not in conformance with the conditions of the Reimbursement Agreement (RA) or any Differed Improvement Agreements DIA, if applicable.

Respond to the "Check List Questions" by marking on the "YES" and "NO" option column. Compare your response to the "Expected Answer" column. If responses fail to match the "Expected Answer", the submittal package is incomplete. It is not ready for review and audit by the City! Reorganize and reevaluate documentation so all responses match with the "Expected Answer". Exhibit A, "Cover Letter", Exhibit B and Exhibit C, "Summary of Claim on the Project", and Exhibit D, "Individual Claim Items by Vendor or Subcontractor" are samples to facilitate organization of the submittal package.

A full match for all items indicates that the cost reimbursement submittal package is ready for review and audit.

YES	NO	Check List Question	Expected Answer
		Does this submittal INCLUDE A COPY OF the executed RA?	YES
		Does this submittal INCLUDE a copy of any executed DIA related to this project?	YES
		Has a copy of the executed City Council resolution(s) authorizing the RA been INCLUDED?	YES
		Is a copy of each of the executed subcontract agreement between the developer and each vendor or sub-contractor included in this submittal?	YES
		Does the packet include a copy of a COVER LETTER stating the total amount of the claim as per Exhibit A?	YES
		Do all items of claim conform to conditions & stipulations in the RA?	YES
		Do all items of claim conform to conditions specified in City Council Resolution(s)?	YES
		Is this project financed through a CFD with the City of San Diego? If so, has cost verification package been forwarded the Debt Management Department, City of San Diego?	NO
		Are there claims, change orders, extra costs items in the submittal that are NOT RELATED to this project?	YES
		Have all correspondence, written directives and instructions from the City of San Diego been included in this submittal package?	NO
		Do contract or sub-contract documents show itemized bid items for the contract amount?	YES
		Has each individual vendor or subcontractor on the project submitted a complete and comprehensive set of claims?	YES
		Do all reimbursement claims for ALL change orders, extras and time & material (T&M) work have written and signed approval documents from all parties including the City's Resident Engineer? Change orders, extra work or T&M work signed by the developer and the vendor or subcontractor and NOT AUTHORIZED in writing by the City cannot be processed?	YES

FORM
"RECOMMENDED GUIDELINES FOR SUBMITTAL OF REIMBURSEMENT CLAIMS

YES	NO	Check List Question	Expected Answer
		Have copies of written approvals by the City's Resident Engineer for ALL change orders, extra and T&M work, associated with any "lump sum" contract, been included in this submittal documents?	YES
		Is each Purchase Order, included in the submittal package, signed by both the claimant and the vendor or subcontractor?	YES
		Are method and calculations that deal with the allocation of costs clearly identified in the submittal documents (e.g. grading, hauling, etc)?	YES
		Are all claim amounts based on calculations that EXCLUDE retention from the claim?	YES
		Are any claims based on mark up or cost escalator factors that are not defined in the RA?	NO
		Have ALL "Non-Reimbursable Costs", as defined in the RA, been EXCLUDED?	YES
		Have costs that would qualify as "over head" costs been included in this claim?	NO
		Have normal utility costs (such as electricity charges; temporary sanitation facilities; garbage and waste disposal costs, etc.); maintenance service costs; project security costs; office space rental costs; etc., been EXCLUDED?	YES
		Have all legal fees been EXCLUDED from the submittal? City policy considers all legal fees as non-reimbursable office overhead costs.	YES
		Are loans including construction loans and interest rates on any and all loans included in the claims?	YES
		Are any late charges or late fees included in the claims?	NO
		Are normal operational insurance and bonds premiums INCLUDED in the claim?	YES
		Has each vendor's claim been itemized per the vendor's bid items and linked to items in the cost estimate?	YES
		Are individual vendor or subcontractor claims organized and itemized per the scope of work in the RA and/or cost estimates?	YES
		Are the claims arranged, organized, and presented using the Estimated Cost items in the RA?	YES
		Has each claim invoice, including each line item in the claim, been classified under the following categories: signed contract amount, approved change order amount, approved extra amount, approved time and material costs, approved PO amount, etc.?	yes
		Are all spread sheets in a format that can read and converted by "Excel"?	YES
		Exhibit B represents a "SAMPLE SUMMARY OF CLAIMS SHEET", based on conditions noted in the Reimbursement Agreement. Exhibit C represents a sample SUMMARY OF CLAIM SHEET, based on Cost Estimates. They show the essential data expected in the submittal. Does the submittal include a SUMMARY OF CLAIMS SHEET, in a spread sheet format, that captures the essential data as noted in the sample exhibits?	YES
		Exhibit D represents a "SAMPLE INDIVIDUAL CLAIMS SHEET" based on itemed bid items from a subcontract agreement. It shows the essential data expected in the submittal. Do individual claim by each subcontractor or vendor, in a spread sheet format, captures the essential data included in the package?	YES

SAMPLE COVER LETTER EXHIBIT A

Date: XXXXXXXXXXXXXXX

Mr./MS. XXXXXXXXXXXXXXXXX
City Planning & Community Investment Facilities Financing
City of San Diego 1010 Second Avenue, Suite 600, MS 606F
San Diego, Ca 92101-4889

Re: XXXXXXXXXXXXXXXXXXXXXXX [Project Name, Reimbursement Agreement Number XXXX dated XXXXXXX, Council Resolution Number XXXX, PTS# (if any)]

Mr./Ms. XXXXXXXX:

In accordance with the Cost Reimbursement Agreement (CRA) on the above project, we have determined the total reimbursable claim amounts to $XXXXXXXX.xx ($ XXXXXXXXX.xx in base claim and $ XXXXXXXXX.xx in Extra Claims or change orders or T&M). The amount of the claim conforms to the terms and conditions of the Reimbursement Agreement. The Reimbursement Agreement and City Council Resolution XXXXX, (dated XXXXX and file with the City Clerk's Office), limits the reimbursement to a maximum amount of $ XXXXXXXXX.

We have reviewed and followed the "Recommended Method of Submitting Cost Reimbursement Claims" to the best our ability. We have provided, to the best our knowledge, all the necessary authorization and backup documents for all the items on this claim. "Claims for Extras", where applicable, have been submitted with all the necessary authorization and backup documents.

The extra claims in the amount of $ XXXXXXX were authorized by the representatives of the City of San Diego.

Please review the claim based on the documents provided. Please contact me if you have any questions or require additional backup information.

Sincerely,

XXXXXXXXX

SAMPLE COVER LETTER FOR RA CLAIMS

Exhibit W

Exhibit 3

EXHIBIT II

SAMPLE SPREAD SHEET
SUMMARY CLAIM ON PROJECT XXXXXXXX
FILES 1 THROUGH XXXXX

	% contribution to Park from Overall Claim												
	Oringal Project Estimate												
	cost of acquistion												
COL A	COL B	COL C											COL S
DATA BY CLAIMANT	DATA BY CLAIMANT	DATA BY CLAIMANT	DATA BY CLAIMANT	DATA BY CLAIMANT	CALS BY CLAIMANT (COL D xCOL E)	DATA BY CLAIMANT	CALS BY CLAIMANT (COL G xCELL D)	DATA BY CLAIMANT	CALS BY CLAIMANT (COL K xCELL D)	DATA BY CLAIMANT	DATA BY CLAIMANT	DATA BY CLAIMANT	CALS BY CLAIMANT (COL G +COLK)
ID	Description	CONTRACTOR SUBCONTRACT	AMT PER BID CONTRACT	SHARED PER AGREEMENT	CALCULATED VALUE OF CONTRACT PER SHARED	TOTAL CLAIM BY SUBDIVIDER	CALCULATED VALUE OF SUBDIVIDER'S CLAIM PER SHARED	TOTAL EXTRA CLAIM BY SUBDIVIDER	CALCULATED VALUE OF EXTRA CLAIM BY SUBDIVIDER BASED ON SHARED	PART OF CONTRACT	SECTION OF CONTRACT	FILE #	SUBDIVIDER'S TOTAL CLAIM INCLUDING EXTRAS
1													
2													
3													
4													
5													
6													
7													
40													
50													
51													
52													
53													
54													
55													
56													
	TOTALS		$0.00		$0.00	$0.00	$0.00	$0.00					0.00

SAMPLE SPREADSHEET SUMMARY CLAIMS ON PROJECT xxxxxxx BASED ON ESTIMATE IN RA

EXHIBIT C

Exhibit W

	LAND ACQUISTION COST				CLAIMANT		
	CITY OF SD MONITORING COSTS				CLAIMANT		
COL A (DATA BY CLAIMANT)	COL B (DATA BY CLAIMANT)	COL C (DATA BY CLAIMANT)	COL D (DATA BY CLAIMANT)	COL E (DATA BY CLAIMANT)	COL F - CALCS BY CLAIMANT	COL G (DATA BY CLAIMANT)	COL K (DATA BY CLAIMANT)
ID	CLAIM ITEMS PER AGREEMENT	VENDOR	TOTAL COSTS PER ESTIMATE	% SHARED BETWN PARTIES	CALCULATED SHARED COST PER %	ACTUAL CLAIMED COSTS (CLAIMANT)	CLAIM CATEGORY PER ESTIMATE OR AGREEMENT
3	AC Paving						
4	Curb & Gutter						
5	Street Light						
6	Sidewalk						
7	Rough Grading						
8	Fine Grading						
9	Driveway						
10	12" water line						
11	Fire Hydrant						
12	3" Blow out						
13	12" Gate valve						
14	10" Fire Service						
15	4" Fire Service w/ meter						
16	4" water service w/ meter						
17	Type B curb inlet						
18	Cleanout						
19	Catchbasin baseball field						
20	Cleanout by Dissipator						
21	Concreter Energy Dissipator						
22	Headwell						
23	18" RCP Storm Drain						
	Contract Engineering Corp						
	City Permit Fee						
	CO#2: 700 feet swale						
	delay						

SUMMARY OF CLAIMS BASED ON COST ESTIMATES IN REIMBURSEMENT AGREEMENT

EXHIBIT C

Exhibit 2

STREET										
	Estimate					Actual				
Item	Quantity	Unit Price	Total Cost	School District Share	APN #306-041-20 Share	Quantity	Unit Price	Total Cost	School District Share	APN #306-041-20 Share
AC Paving										
Curb and Gutter										
Street Lights										
Street Lights - add'l cost (SDGE&E costs)										
Sidewalk										
Access Ramp										
Rough Grading										
Fine Grading										
Driveways										
								$ -	$ -	$ -

WATER										
	Estimate					Actual				
Item	Quantity	Unit Price	Total Cost	School District Share	APN #306-041-20 Share	Quantity	Unit Price	Total Cost	School District Share	APN #306-041-20 Share
12" Water Line										
Fire Hydrant										
3" Blow-off										
12" Gate Valve										
10" Fire Service										
4" Fire Service with 3" Meter										
4" Water Service with 3" Meter										
								$ -	$ -	$ -

STORM DRAIN										
	Estimate					Actual				
Item	Quantity	Unit Price	Total Cost	School District Share	APN #306-041-20 Share	Quantity	Unit Price	Total Cost	School District Share	APN #306-041-20 Share
Type "B" Curb Inlet										
Cleanout										
Catch Basin by Baseball Field (Type 3)										
Cleanout by Dissipator										
Concrete Energy Dissipator										
Headwall										
18" RCP Storm Drain										
								$ -	$ -	$ -

SUMMARY OF CLAIMS BASED ON CO[illegible] [illegible]ATES IN REIMBURSEMENT AGREEMENT

[illegible]HIBIT C

Exhibit 4

ENGINEERING AND DESIGN						
Estimate				Actual		
Item	Total Cost	School District Share	APN #306-041-20 Share	Total Cost	School District Share	APN #306-041-20 Share
Lump Sum Fees Paid to Contract Engineering Corporation						
City Engineering Permit Fees						
				$ -	$ -	$ -

COST REIMBURSEMENT ENGINEERING						
Estimate				Actual		
Item	Total Cost	School District Share	APN #306-041-20 Share	Total Cost	School District Share	APN #306-041-20 Share
Lump Sum Fees Paid to the City						

Land Acquisition
Legal Fees
Equipment Rental
Title fees

LANDSCAPING					
Item	Quanity	Unit Price	Total Cost	School District Share	APN #306-041-20 Share
Erosion Control					
a. Irrigation					
b. Planting					
c. 90 day Mnt					
Decorative					
a. Irrigation					
b. Planting					
c. 90 day Mnt					
Item					
Conduit					
Pull boxes					
Barricades					
Electical for extension Conduit 2-5"					
Item					
Demolition					
1. Pvmt sawcut					
2. Remove B Ditch					
Clear & Grub					

total w/o architect fee
Architect Fee - 9%
TOTAL COST SUM

RESOLUTION NUMBER R- 307220

DATE OF FINAL PASSAGE JAN 23 2012

RESOLUTION OF THE CITY COUNCIL TO AUTHORIZE A REIMBURSEMENT AGREEMENT WITH THE SAN YSIDRO SCHOOL DISTRICT FOR A PORTION OF PROJECT NO. T-4.3, DEL SOL BOULEVARD–(CENTRAL), IN THE OTAY MESA COMMUNITY PLAN AREA.

WHEREAS, the San Ysidro School District (SYSD) owns approximately nineteen acres of real property in the Ocean View Hills area of the Otay Mesa Community Planning area that is west of the current terminus of Del Sol Boulevard (Property); and

WHEREAS, SYSD plans to construct a new elementary school as identified in the Ocean View Hills planned community documents, which will be called the Vista Del Mar Elementary School; and

WHEREAS, there is no dedicated right-of-way, easement, or other legal instrument that designates a right-of-way on the Property, and SYSD currently has no improved access to the Property; and

WHEREAS, the Otay Mesa Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2007 (Financing Plan), adopted by Resolution No. R-302040 on November 13, 2006, identifies Project No. T-4.3, Del Sol Boulevard–(Central), as a project to be funded through the FBA; and

WHEREAS, because the City's timeframe for the design and construction of Project No. T-4.3 does not correlate with the SYSD's timeframe for the construction of the Vista Del Mar Elementary School, SYSD desires to complete the 30 percent design of Project No. T-4.3 and construct the portion the Project No. T-4.3 necessary to provide access to SYSD's Vista Del Mar

Elementary School project and to be reimbursed by the FBA for such work; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor be and hereby is authorized and empowered to execute, for and on behalf of City, the Reimbursement Agreement Between the City of San Diego and the San Ysidro School District for a Portion of Project No. T-4.3, Del Sol Boulevard–(Central) in the Otay Mesa Community Planning Area, on file in the Office of the City Clerk as Document No. RR-307220 (Agreement), under the terms and conditions set forth in the Agreement.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is hereby authorized to expend an amount not to exceed Four Million Eight Hundred Forty-Eight Thousand Eight Hundred Ninety-Two Dollars ($4,848,892), plus the applicable inflationary rate as set forth in the Agreement, from the Otay Mesa Fund No. 400093 in CIP No. S-00858 (Del Sol Boulevard–(Central)), consistent with the timing established in the most recently adopted Financing Plan, and contingent upon Chief Financial Officer certification of funds available for reimbursement.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Heidi Vonblum
Heidi K. Vonblum
Deputy City Attorney

HKV:hm
11/30/2011
Or.Dept: Facilities Financing
Doc. No.: 284052

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 10 2012.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 1-23-12
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on JAN 10 20__, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☑	☐	☐	☐
Kevin Faulconer	☑	☐	☐	☐
Todd Gloria	☑	☐	☐	☐
Anthony Young	☑	☐	☐	☐
Carl DeMaio	☑	☐	☐	☐
Lorie Zapf	☑	☐	☐	☐
Marti Emerald	☐	☐	☑	☐
David Alvarez	☑	☐	☐	☐

Date of final passage JAN 23 2012.

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

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

By _____, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 307220

Passed by the Council of The City of San Diego on January 10, 2012 by the following vote:

YEAS:	**LIGHTNER, FAULCONER, GLORIA, YOUNG, DEMAIO, ZAPF, ALVAREZ.**
NAYS:	**NONE.**
NOT PRESENT:	**EMERALD.**
VACANT:	**NONE.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Peggy Rogers, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-307220** approved by the Council of the City of San Diego approved by the Mayor of the City of San Diego, California on January 23, 2012.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: _____, Deputy