

(R-96-1566)

RESOLUTION NUMBER R- 287554

ADOPTED ON JUN 25 1996

WHEREAS, the City is negotiating a possible settlement of the case San Dieguito Partnership, L.P., et al. v. City of San Diego, et al., Superior Court Case No. 675245; and

WHEREAS, the proposed settlement may include the City's acceptance of title to approximately 106 acres of property owned by San Dieguito Partnership, L.P. ("SDP") located south of Via de la Valle, west of El Camino Real and east of Interstate 5, and more fully shown on the diagram attached hereto as Exhibit "A"; and

WHEREAS, the City has received an appraisal from a qualified Real Estate Appraiser that the value of the parcel to be acquired is between \$4,240,000 and \$8,350,000, and a further opinion from a second qualified Real Estate Appraiser that the value of the parcel is at least \$6 million dollars; and

WHEREAS, the San Dieguito River Valley Regional Open Space Park Joint Powers Authority ("JPA") has indicated its willingness to pursue acquisition of the above-described parcel from the City, for inclusion within the Regional Open Space Park, at the City's cost of acquisition, which is the minimum price the City will accept for the sale of that parcel to the JPA; and

WHEREAS, a portion of the consideration for the acquisition of the 106 acre parcel would be the transfer of title of that parcel of City-owned property, commonly known as the Corporate

Research Park, more fully shown on the diagram enclosed as Exhibit "B"; and

WHEREAS, the City has received an appraisal from a qualified Real Estate Appraiser that the value of the Corporate Research Park is approximately \$1,500,000 for which the City will receive an equivalent portion of the parcel described above; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized to execute all documents, and take any actions, necessary to accept from SDP fee simple title to approximately 106 acres of real property located in the lower San Dieguito River Valley south of Via de la Valle, west of El Camino Real, and east of Interstate 5, on the condition that the parties execute a settlement agreement in the case San Dieguito Partnership, L.P., et al. v. City, et al., Superior Court Case No. 675245, and subject to the terms and conditions thereof.


BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to execute a Memorandum of Agreement with the San Dieguito River Valley Regional Open Space Park Joint Powers Authority ("JPA") for the possible sale of the approximately 106 acres described above to the JPA, on the terms and conditions set forth in the agreement on file in the Office of the City Clerk as Document No RR-287554 (a draft of which is attached hereto as Exhibit "C"), together with such modifications or amendments necessary to carry out the purpose and intent of the MOA, provided such modifications or amendments do not increase the cost, or decrease the revenue, to the City associated with the

MOA.

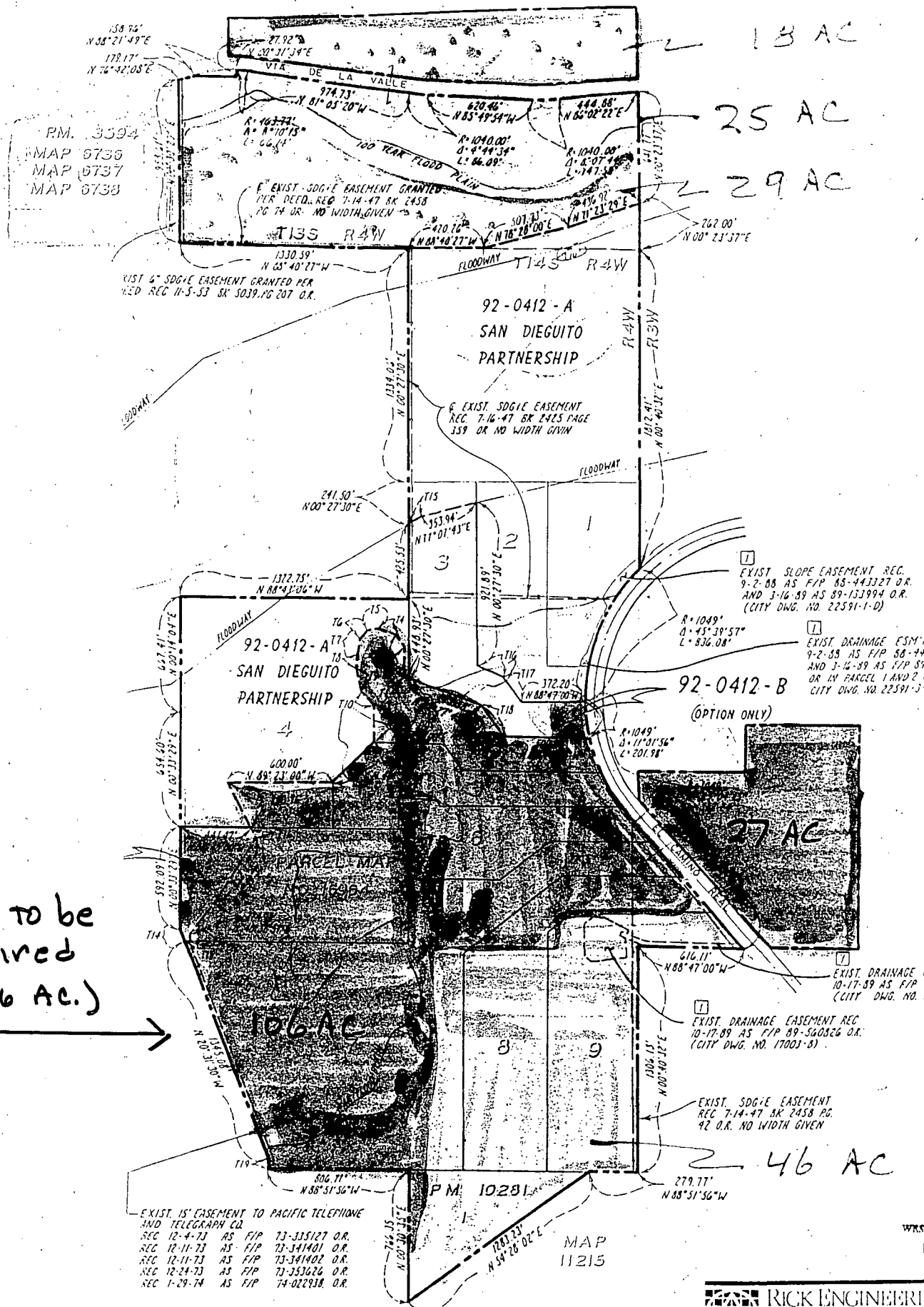
BE IT FURTHER RESOLVED, that the City Manager be and he is hereby authorized to execute all documents, and take any actions, necessary to transfer fee simple title to that parcel of real property commonly known as the Corporate Research Park to SDP, or its designee(s), on the condition that the parties execute a Settlement Agreement in the above-referenced litigation, and subject to the terms and conditions thereof, and subject to the terms and conditions in Section 2 of Ordinance No. 12685.

APPROVED: JOHN W. WITT, City Attorney

By

  
Leslie J. Girard  
Assistant City Attorney

LJG:js  
06/12/96  
Or.Dept:Atty  
R-96-1566  
Form=r-t



RM. 3394  
 MAP 6736  
 MAP 6737  
 MAP 6738

EXIST. SDG/E EASEMENT GRANTED PER DEED REC 7-14-47 BK 2458 PG 74 OR NO WIDTH GIVEN

EXIST. SDG/E EASEMENT GRANTED PER DEED REC 11-5-53 BK 5039 PG 207 O.R.

EXIST. SDG/E EASEMENT REC 7-16-47 BK 2425 PAGE 359 OR NO WIDTH GIVEN

EXIST. SLOPE EASEMENT REC. 9-2-88 AS F/P 88-44327 O.R. AND 3-16-89 AS 89-153994 O.R. (CITY DWG. NO. 22591-1-D)

EXIST. DRAINAGE ESM/T 9-2-88 AS F/P 88-44 AND 3-16-89 AS F/P 89 OR IN PARCEL 1 AND 2 (CITY DWG. NO. 22591-3-1)

EXIST. DRAINAGE E 10-17-89 AS F/P 8 (CITY DWG. NO. 1)

EXIST. DRAINAGE EASEMENT REC 10-17-89 AS F/P 89-560526 O.R. (CITY DWG. NO. 17003-5)

EXIST. SDG/E EASEMENT REC 7-14-47 BK 2458 PG 92 O.R. NO WIDTH GIVEN

EXIST. 15' EASEMENT TO PACIFIC TELEPHONE AND TELEGRAPH CO.  
 REC 12-4-73 AS F/P 73-335127 O.R.  
 REC 12-11-73 AS F/P 73-341401 O.R.  
 REC 12-11-73 AS F/P 73-341402 O.R.  
 REC 12-24-73 AS F/P 73-353026 O.R.  
 REC 1-29-74 AS F/P 74-022938 O.R.

P.M. 10281  
 MAP 11215

WRST  
 N

**RICK ENGINEERING**

EXHIBIT "A"

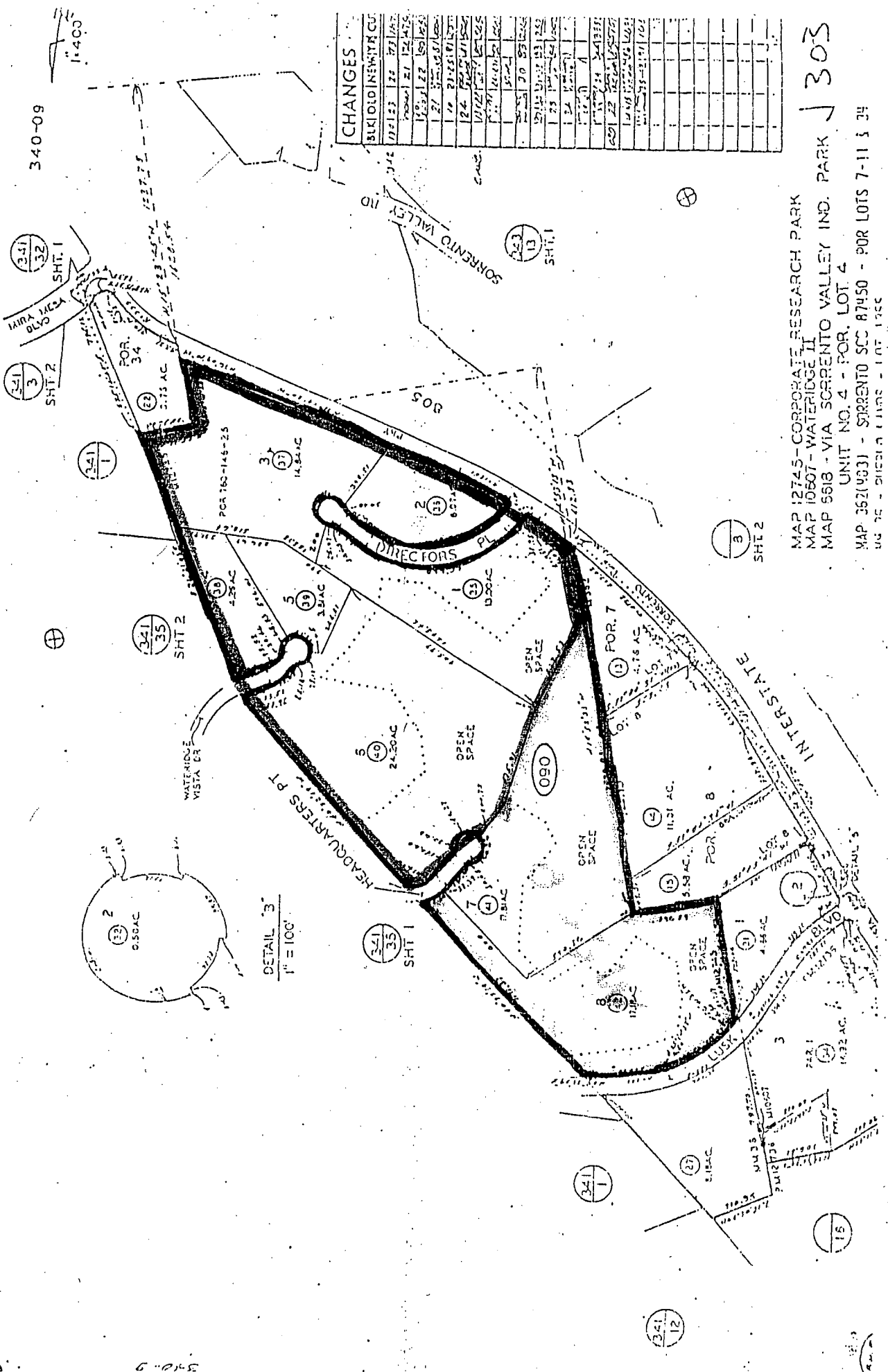
R-287554

1303

340-09

EXHIBIT "B"

R. 287554



340-09

1" = 400'

CHANGES	BLK	OLD INVENTORY CT
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	103	123
	104	124
	105	125
	106	126
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	175	195
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	179	199
	180	200

MAP 12745-CORPORATE RESEARCH PARK  
 MAP 10607-WATERIDGE II  
 MAP 5618-VIA SORRENTO VALLEY IND. PARK  
 UNIT NO. 4 - POR. LOT 4  
 MAP 3621(03) - SORRENTO SEC 87450 - POR LOTS 7-11 & 24  
 MAP 75 - BUREAU OF LANDS - LOT 17450

1303

6/11

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**CITY OF SAN DIEGO**

**AND**

**SAN DIEGUITO RIVER VALLEY REGIONAL OPEN SPACE PARK**

**JOINT POWERS AUTHORITY**

**WHEREAS**, the City of San Diego ("City") intends to acquire fee title to approximately 106 acres of land in the San Dieguito River Valley (the "Property"), as more particularly described in Exhibit "A" which is attached hereto, as part of a settlement of litigation to which the San Dieguito River Valley Regional Open Space Park Joint Powers Authority ("JPA") is not a party; and

**WHEREAS**, the City is willing to make any of the Property it acquires available for purchase by the JPA for a period of five (5) years from the date of this Agreement (the "Option Period") for inclusion in the Regional Park; and

**WHEREAS**, the JPA is willing to commit to using its best good faith efforts to acquire grant or other funding to buy the Property within the Option Period, and to making the acquisition of the Property its top priority; and

**WHEREAS**, the City recognizes that the JPA's ability to acquire grant or other funding to complete the purchase cannot be guaranteed; and

**WHEREAS**, the City is willing to hold any of the Property which it acquires in fee title as open space during the Option Period or any extension thereof; and

**WHEREAS**, the City is offering the Property to the JPA during the Option Period for the sum of \$6 million, or the City's actual cost of acquisition, which ever is less; and

**WHEREAS**, the City recognizes that the JPA may not be successful in obtaining grant or other funding to complete the purchase and that the JPA is not obligated to complete the purchase in the absence of funding; and

**WHEREAS**, the Property is on the JPA's acquisition priorities list and would be a desirable addition to the Regional Park; and

**WHEREAS**, an independent review of value has been conducted by a qualified appraiser who has determined and advised the JPA that the fair market value of the Property is not less than \$ 6 million; and

**WHEREAS**, the City and JPA desire to set out the terms and conditions of their agreement with respect to availability of the Property for acquisition by the JPA in this Memorandum of Agreement (“MOA”);

**NOW, THEREFORE**, the City and JPA agree as follows:

**1. RECITALS**

The foregoing recitals are true and correct.

**2. CITY OFFER OF PROPERTY TO JPA**

The City offers the Property to the JPA during the Option Period at the price of \$6 million under the terms and conditions as set forth in this MOA.

**3. JPA OBLIGATION TO SEEK FUNDING AND ACQUIRE THE PROPERTY**

The JPA agrees to make the acquisition of the Property its top priority, based upon eligible and available funding. The JPA further agrees to use its best good faith efforts to acquire grant or other funding to acquire the Property.

**4. TRANSFER OF TITLE**

**A. Contingent Upon Settlement of Litigation**

The City has informed the JPA that, as part of its settlement of litigation with the San Dieguito Partnership, et al., the City intends to acquire fee title to the Property. The JPA is not a party to that litigation and has not participated in the negotiations for the settlement thereof, nor is the JPA a party to the settlement. The obligations set forth in this MOA on the part of the JPA are contingent upon the City’s settlement of the litigation with the San Dieguito Partnership. If that settlement is not effected in any respect with regards to the transfer of the Property to the City, the JPA’s obligations under this MOA are extinguished, unless otherwise agreed between the City and the JPA.

B. Transfer to Occur in Increments

The City may be acquiring fee title to the Property in increments. The City agrees to make so much of the Property as it acquires in increments available for purchase by the JPA as soon as City acquires fee title.

C. Title to Pass as Funding Becomes Available

The City shall transfer title to so much of the Property as it may acquire in increments to the JPA as soon as the JPA acquires the funding necessary to make the acquisition.

D. Condition of Title

Unless agreed otherwise by the City and the JPA in writing, title to the Property shall pass to the JPA in fee subject only to such encumbrances as are of record and which are approved by the JPA. This MOA is conditional upon the right of the JPA to review and accept the condition of title to the Property prior to its conveyance to the JPA in that, at the time of the execution of this MOA, the JPA has not had the opportunity to review the condition of title. City shall, as expeditiously as possible, provide the JPA with a title report for the Property showing its condition.

**5. EXTENSION OF OPTION PERIOD AND PURCHASE BY OTHER ENTITY**

If, at the end of the Option Period, the JPA has acquired at least 60 % of the total acreage of the Property acquired by the City, the City and JPA shall in good faith meet and confer on the possibility of an extension of the Option Period. In addition, at the end of the Option Period the City agrees to consider selling to any other entity proposed by the JPA, so much of the Property as the City has acquired but the JPA has been unable to acquire.

**6. PURCHASE IN INCREMENTS AND PRIORITY OF ACQUISITION**

It is the intention of the City and JPA that the JPA may acquire the Property in increments as funding becomes available. It is the further intention of the City and JPA that, insofar as practicable, the JPA may acquire the Property in roughly the same proportions as wetlands bears to uplands in the entire parcel (approximately 45%-55%, respectively). It is the further intention of the City and JPA that the upland area in the northerly and easterly portion of the parcel shall be the last to be acquired by the JPA. The reason for this priority of acquisition is that, in the event that the JPA cannot acquire as much of the Property as the City has acquired, the City wishes to retain its ability to market and sell the remainder of the Property to recover its investment therein. Accordingly, the City desires to retain until the last, those portions of the Property that are the most marketable. The City and JPA shall meet and confer in good faith on



the specifics of each incremental purchase as appropriate.

**7. CITY TO PRESERVE AND PROTECT THE PROPERTY PRIOR TO ACQUISITION BY THE JPA**

The City agrees to take such action as necessary to ensure that as much of the Property as City may acquire is preserved and protected as open space until such time as it is acquired by the JPA, recognizing that agriculture has occurred on the site in the past and portions of the Property are currently disturbed. It is further recognized the the JPA's interest in acquiring the Property is for park, open space, habitat and related purposes consistent with the JPA's San Dieguito River Valley Park Plans, and that in this regard it is important that the Property's usefulness for these purposes not be impaired. The JPA's obligations under this MOA are expressly contingent upon the City's ability to assure preservation of the Property it acquires from the date of acquisition to the date of transfer to the JPA.

**8. NO JPA DEBT CREATED**

The City recognizes that no debt on the part of the JPA or any of its members is created by this MOA. Rather, the JPA's obligation is limited to designating the acquisition of the Property its top priority, based upon eligible and available funding, and using its best, good-faith efforts to secure eligible funding to acquire the Property during the Option Period. If the JPA is unable to obtain some or all of the necessary funding to fully acquire as much of the Property as the City has acquired, it shall have no further financial obligation.

**9. RIGHTS OF CITY IN THE EVENT PROPERTY NOT ACQUIRED**

In the event that the JPA is unable to acquire some or all of the Property the City has acquired by the end of the Option Period or any extension thereof, the City retains its right to determine the appropriate use of the unacquired Property, or to sell or otherwise dispose of the unacquired Property as it deems proper. No restrictions are placed upon the City's right and authority to sell or otherwise dispose of the unacquired Property by this MOA, nor does this MOA give the JPA any special right to control or affect how the City may treat the unacquired Property.

**10. RIGHTS OF JPA AS TO UNACQUIRED OR ADJACENT PROPERTY**

The JPA retains its rights to review, comment upon, support, stay neutral, or oppose the planning and development activities that may occur on property immediately adjacent to the Property, or that may occur for the unacquired Property. Nothing in this MOA restricts the JPA's rights in that regard.

## **11. FURTHER DOCUMENTATION**

### **A. Escrow**

The City and JPA agree to take any further actions, and to execute any additional documents, as may reasonably be necessary or required to carry out the terms of this MOA. If either party so requests, an escrow shall be opened as to one or more of the incremental transfers of the Property contemplated by this MOA with the parties sharing the costs of escrow equally at an agreed upon escrow company.

### **B. Title Reports; Title Insurance**

The City, at its cost, shall provide the JPA with an up-to-date title report on each increment of the Property at the time it is transferred to the JPA. The JPA may, at its cost, purchase such title insurance as it deems appropriate.

## **12. LIABILITY: INDEMNITY AND INSURANCE**

### **A. Indemnification**

The parties agree that landowners liability for the Property shall rest with which ever entity has title to the Property, or portion thereof, at the time of the incident giving rise to liability. The parties agree to defend, indemnify and hold harmless each other, their Council/Board members, officers, employees, or agents with respect to any claim, demand or litigation of any kind including, but not limited to, personal injury, death and property damage, arising out of or related to the Property or this MOA during the time that the City and JPA respectively hold title to the Property or portion thereof on which the incident giving rise to the claim or litigation occurs.

### **B. Insurance**

During the Option Period or any extension thereof, the parties agree to either maintain liability insurance with respect to the Property, naming the other party as additional insured, or maintain a self-insured status as authorized by law.

## **13. DISPUTE RESOLUTION**

In the event that any dispute should arise under this MOA the parties agree to engage in informal dispute resolution before invoking any other remedy. To this end, upon the written request of either party, the parties shall, within thirty (30) days of the date of mailing of a request for dispute resolution, meet and confer in good faith in an attempt to resolve any dispute that arises. Such informal dispute resolution may continue for so long as the parties agree, provided that neither party may file litigation nor invoke any other remedy either before at least one

informal dispute resolution session is held, or, if the other party refuses to participate in dispute resolution, before the expiration of thirty (30) days from the demand for dispute resolution. Participation in informal dispute resolution shall be confidential and informal and shall be without prejudice to either parties' right to pursue litigation or other remedies thereafter.

**14. AMENDMENT**

This MOA maybe amended at any time by an agreement in writing signed by the parties.

**15. CONTACT PERSON; ADDRESS**

The following persons are designated as the contact persons for the parties with respect to implementation of this MOA and for purposes of receiving all notices:

A. City of San Diego:

Robert J. Collins, Real Estates Assets Manager  
202 C Street  
San Diego, CA. 92101

Copy to:

Leslie J. Girard, Assistant City Attorney  
202 C Street  
San Diego, CA. 92101

B. JPA

Diane Coombs, Executive Director  
San Dieguito River Valley Regional Open Space Park Joint Powers  
Authority  
1500 State Street, Suite 280  
San Diego, CA. 92101

Copy to:

D. Dwight Worden, General Counsel  
Law Offices of D. Dwight Worden  
462 Stevens Avenue, Suite 102  
Solana Beach, CA. 92075

**16. EFFECTIVE DATE**

This MOA will be effective upon full execution by all parties. This MOA may be executed in counterparts, an original to be retained by each party.

Dated March \_\_\_, 1996

CITY OF SAN DIEGO

by \_\_\_\_\_  
Jack McGrory, City Manager

Dated March \_\_\_, 1996

SAN DIEGUITO RIVER VALLEY REGIONAL  
OPEN SPACE PARK JOINT POWERS  
AUTHORITY

by \_\_\_\_\_  
Diane Coombs, Executive Director

Approved as to form:  
John W. Witt, City Attorney

by \_\_\_\_\_  
Leslie J. Girard, Assistant City Attorney

Law Offices of D. Dwight Worden

by \_\_\_\_\_  
D. Dwight Worden, JPA General Counsel