



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: January 4, 2011 REPORT NO: 11-005
ATTENTION: Land Use and Housing Committee Chairman and Committee Members
Agenda of January 12, 2011
SUBJECT: Ardath Road Reconfiguration Exchange Agreement

REQUESTED ACTION:

1. Authorize the Mayor or his designee to approve the Exchange Agreement and accept a grant deed from the San Diego Unified School District for 0.147 acres of land at Ardath Road and Torrey Pines Road for street purposes as required for the Reconfiguration of La Jolla Shores Drive, Torrey Pines Road and Ardath Road and Water and Sewer Improvements (Project).
2. Authorize the CFO to create a debit entry on the Ledger in the amount of \$116,650 as required by the 2002 Master Agreement which was adopted by the City Council on October 7, 2002, Resolution R-297156.

STAFF RECOMMENDATION: Authorize the requested actions.

BACKGROUND: By Resolution R-297156, adopted October 7, 2002, the City Council authorized the execution of an agreement entitled "Master Agreement" between the City of San Diego (City) and the San Diego Unified School District (DISTRICT) for the future exchange, purchase, and/or disposition of property interests between the City and DISTRICT.

Pursuant to the terms of the Master Agreement, individual "Exchange Agreements" would be executed to effectuate the exchange of property rights. In addition, the Master Agreement set forth procedures that the parties would follow to transfer or convey certain assets to the other party, which would result in a book-entry credit or debit on the Ledger. No cash consideration would be paid in connection with any given transfer transaction.

This action seeks authorization to enter into an Exchange Agreement for property rights required by the City for the Reconfiguration of La Jolla Shores Drive, Torrey Pines Road and Ardath Road and Water and Sewer Improvements (Project). The City Council approved the reconfiguration of the intersection of La Jolla Shores Drive, Torrey Pines Road, Ardath Road, Hidden Valley Road in October 2001. The reconfiguration required the City to obtain approximately 0.147 acres of land from DISTRICT for street purposes.

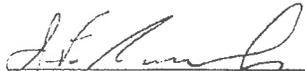
The City completed the reconfiguration in October 2005. Due to staffing changes at the District and City, the debit entry was not brought back before the District Board or the City Council for approval. The District's Board approved this item on November 9, 2010.

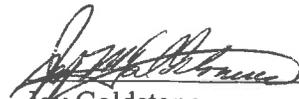
FISCAL CONSIDERATIONS: FISCAL CONSIDERATIONS: In accordance with the terms of the Master Agreement, the property rights were appraised by independent third-party appraisers and the price was determined to be \$116,650. San Diego Unified School District shall receive a ledger credit to the Master Exchange Agreement in the amount of \$116,650. No cash will be exchanged.

Accumulated debits and credits reflected in the ledger, when summed, shall reflect the net debit or credit position of the City and DISTRICT, with the ledger to be exchanged and reconciled annually. At any given time, the difference between the two sides of the ledger may not exceed \$500,000.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The City of San Diego.


James F. Barwick, Director
Real Estate Assets Department


Jay Goldstone
Chief Operating Officer



EXCHANGE AGREEMENT
Ardath Road Reconfiguration Project Property

THIS EXCHANGE AGREEMENT dated as of _____, 2010 (this "Exchange Agreement"), is made and entered into by and between the CITY OF SAN DIEGO, a California municipal corporation ("City") and the SAN DIEGO UNIFIED SCHOOL DISTRICT of San Diego County ("District"), a school district organized and existing under the laws of the State of California (each, a "Party" and collectively, the "Parties"). Capitalized terms used but not defined herein shall have the meanings given to such terms in that certain Master Exchange Agreement by and between the Parties dated as of October 8, 2002 ("Master Agreement"), a copy of which is on file in the Acquisition and Asset Management Department of the District and in the Real Estate Assets Department of the City.

RECITALS

Whereas, the City and District have entered into the Master Agreement which provides for the exchange of real property "Assets" between the City and the District subject to the identification of such "Assets" and the valuation of same; and

Whereas, the Master Agreement sets forth procedures that the Parties will follow in order to identify the Assets that each wishes to acquire from the other, to determine a method of valuing such Assets, and to establish a method of accounting for any differential in values between the Assets exchanged; and

Whereas, the Parties have identified one or more Assets owned by one of them that the other wishes to acquire in accordance with the procedures, methods and requirements of the Master Agreement; and

Whereas, the District's Board of Education approved this Exchange Agreement pertaining to the Ardath Road Reconfiguration Project on November 9, 2010; and

Whereas, each Acquiring Party has investigated title, physical conditions and all other matters concerning the Asset which is the subject of this Exchange Agreement ("Asset"), as more fully described in the Legal Description attached hereto as Exhibit "A" and has (a) determined that all such matters concerning the Asset are acceptable; (b) objected to one or more conditions concerning the Asset, in response to which the Transferring Party has agreed to provide a cure to the satisfaction of the Acquiring Party prior to the Closing; or (c) waived its right to object; and

Whereas, this Exchange Agreement is being entered into by the Parties in order to document the agreement for a transfer or exchange of Assets pursuant to the Master Agreement;

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, the Parties hereby agree as follows:

1. Exchange of Asset for Consideration.

1.1 District Easement. District hereby agrees to grant to City an easement for street dedication purposes on real property owned by District and located in the City of San Diego, State of California, and more particularly described on Exhibit A – Legal Description of District Easement,

attached hereto and incorporated herein by this reference, together with all improvements located thereon ("**District Easement** "), upon the terms and subject to the conditions described herein.

1.2 **Consideration.**

(a) Consideration for the District's conveyance of the District Easement to the City ("**Consideration**") shall be the property conveyed, the agreed-upon value of the Asset shall be recorded in the ledger attached hereto as Exhibit B – Ledger, and incorporated herein by this reference, as a credit to the Party conveying the Assets and as a debit to the Party receiving the Assets, and the accumulated debits and credits when summed shall reflect the net debit or credit position of each Party.

(b) No cash consideration shall be paid by either Party at the Closing (as defined in Section 8 of this Exchange Agreement).

1.3 **Appraised Value of District Easement.** Pursuant to the Master Agreement, the Parties have agreed that the Agreed-Upon Value of the District Easement is \$116,650.

1.4 **Escrow.** The Parties shall promptly open escrow ("Opening of Escrow") by delivering a fully executed copy of this Agreement to Chicago Title (herein referred to as the "Escrow Agent"). The Escrow shall be opened within three (3) business days after the Effective Date of this Exchange Agreement, as mutually determined by the Parties following completion of due diligence. The Parties shall execute and deliver to the Escrow Agent any instructions as may be necessary or convenient to implement the terms of this Exchange Agreement and close the transaction contemplated hereby. The Parties shall also deposit with the Escrow Agent all instruments, documents, and other items (a) identified in the escrow instructions, and (b) reasonably required by the Escrow Agent to close the transaction. The Escrow Agent is hereby designated the "real estate reporting person" for purposes of Section 6045 of the Internal Revenue Code of 1986, as amended and Treasury Regulation 1.6045-4, and any instructions or settlement statement prepared by the Escrow Agent shall so provide. Escrow Agent shall be responsible for filing Form 1099-S with the Internal Revenue Service if required.

2. **Representations and Warranties of the District.** District represents and warrants to City that the following statements are true and correct as of the date hereof and as of the Closing, and covenants to execute and deliver to City upon the Closing a certificate reaffirming the following representations or identifying, to the satisfaction of the City, the nature of any changes therein:

2.1 All the documents executed by District which are to be delivered to City at the Closing shall have been duly authorized, executed, and delivered by District and will be legal, valid, and binding obligations of District enforceable against District in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the right of contracting parties generally), and will not violate any provisions of any agreement to which District is a party or to which it is subject.

2.2 To the knowledge of District and except as disclosed in writing by District to City, District represents and warrants to City that neither the District Easement nor District is in violation of any Environmental Laws applicable to the District Easement and that the District Easement is not subject to any existing, pending or threatened investigation by any federal, state or local governmental authority and is not subject to any remedial obligation or lien under or in connection with any Environmental Law (as defined herein).

2.3 Notwithstanding anything to the contrary contained in this Exchange Agreement, District acknowledges that any written disclosures made by City prior to the Closing shall

constitute notice to District of the matter disclosed, and City shall have no liability with respect thereto if District thereafter consummates the transaction contemplated hereby.

2.4 No brokerage commission, finder's fee or other compensation is due or payable by reason of District's actions with respect to the transaction contemplated hereby. District agrees to indemnify, defend and hold City harmless from and against any losses, damages, costs and expenses (including attorneys' fees) incurred by City by reason of any breach or inaccuracy of the representation and warranty contained in this Section 2.5.

2.5 The documents relating to the Easement that have been made available by District for review pursuant to Section 5.4 of the Master Agreement are (a) to the knowledge of District, all the material documents relating to the Easement which District has in its possession, and (b) are either original documents or true copies of such documents in District's possession.

3. **Representations and Warranties of City.** City represents and warrants to District that the following statements are true and correct as of the date hereof and as of the Closing and covenants to execute and deliver to District upon the Closing a certificate reaffirming the following representations or identifying, to the satisfaction of the District, the nature of any changes therein:

3.1 All the documents executed by City that are to be delivered to District at the Closing will be duly authorized, executed, and delivered by City and will be legal, valid, and binding obligations of City enforceable against City in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the right of contracting parties generally), and will not violate any provisions of any agreement to which City is a party or to which it is subject.

3.2 City acknowledges that (i) prior to the Closing City had the opportunity (without any obligation to do so), to investigate all physical, legal and economic aspects of the District Easement and to make all inspections and investigations of the District Easement which City deems necessary or desirable to protect its interests in acquiring the District Easement, including, without limitation, environmental audits and assessments, toxic reports, surveys, investigation of land use and development rights, development restrictions and conditions that are or may be imposed by governmental agencies, soils and geological reports, engineering and structural tests, insurance contracts, contracts for work in progress, governmental agreements and approvals, architectural plans and site plans, and (ii) except as otherwise expressly set forth in this Exchange Agreement, neither District, nor anyone acting for or on behalf of District, has made any representation, warranty, promise or statement, express or implied, to City, or to anyone acting for or on behalf of City concerning the District Easement, the use or development thereof. City further represents and warrants that, in entering into this Exchange Agreement, City has not relied on any representation, warranty, promise or statement, express or implied, of District, or anyone acting for or on behalf of District, other than as expressly set forth in this Exchange Agreement, and that City had the opportunity to verify all matters concerning the District Easement prior to the Closing, and that City shall acquire the District Easement on City's own prior investigation and examination of the District Easement (or City's election not to do so); **AND THAT CITY IS ACCEPTING THE DISTRICT EASEMENT IN AN "AS IS" AND "WITH ALL FAULTS" PHYSICAL CONDITION AND IN AN "AS IS" AND "WITH ALL FAULTS" STATE OF REPAIR.** Other than as set forth herein, City does hereby waive, and District does hereby disclaim, all warranties of any type or kind whatsoever with respect to the District Easement whether express or implied, including, by way of description but not limitation, those of fitness for a particular purpose and use, tenantability or habitability.

3.3 Notwithstanding anything to the contrary contained in this Exchange Agreement, City acknowledges that any written disclosures made by District prior to the Closing shall constitute notice to City of the matter disclosed, and District shall have no liability with respect thereto if City thereafter consummates the transaction contemplated hereby.

3.4 City has not entered into any agreement or incurred any obligation that might result in the obligation to pay any brokerage commission, finder's fee or other compensation with respect to the transaction contemplated hereby. City agrees to indemnify, defend and hold District harmless from and against any losses, damages, costs and expenses (including attorneys' fees) incurred by District by reason of any breach or inaccuracy of the representation and warranty contained in this Section 3.5.

3.5 City represents that it will comply with its standard maintenance and liability obligations for street vacations and street dedications as those obligations apply to the Easements described herein.

4. **Intentionally Omitted.**

5. **Release.**

5.1 City and any person or entity claiming by, through or under City, hereby fully and irrevocably releases, discharges and waives its rights to recover from District and its officers, directors, employees, agents and representatives (collectively, "District Releasees"), from any and all claims that City may now have or hereafter acquire against any District Releasee for any cost, loss, claim, penalty, fine, lien, judgment, liability, damage, expense, action or cause of action (including, without limitation reasonable attorneys' fees and costs), whether foreseen or unforeseen, direct or indirect, known or unknown, arising from or related to the existence or presence of Hazardous Substances in, on, under, or about the District Easement or the non-compliance of the District Easement with any Environmental Laws. The foregoing release does not extend to a breach by District of the representation set forth in Section 2.2 above.

5.2 As used herein the term "Hazardous Substance" shall mean, at any time, (i) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Laws or any occupational safety and health laws as a "hazardous substance," "hazardous contaminants," "hazardous constituents," "hazardous material," "hazardous waste," "infectious waste," "toxic substance," "toxic pollutant," "toxic emission," "air contaminant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, radioactivity, carcinogenicity, toxicity, reproductive toxicity, or "EP toxicity," (ii) any oil, gas and other petroleum hydrocarbons or any products, by-products or fractions thereof (including, without limitation, gasoline, diesel fuel, and solvents), (iii) PCBs, (iv) urea formaldehyde, (v) any substance potentially injurious to the public health, safety or welfare, the environment or the Properties, (vi) asbestos, lead, cadmium, mercury and other heavy metals, cyanide, pesticides, chlorinated hydrocarbons, and (vii) any substance which is a basis for liability to any governmental authority or third party under any applicable statute, regulation or common law theory.

5.3 As used herein, "Environmental Laws" means collectively, all present and future laws (whether common law, statute, rule, regulation, ordinance or otherwise), the requirements of governmental authorities and any permits and guidance issued pursuant thereto relating to Hazardous Substances, human health or the environment, as heretofore or hereafter amended, and in any regulations promulgated pursuant thereto.

5.4 City and District further acknowledge and agree that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and unsuspected claims, damages and causes of action. As a material covenant and condition of this Exchange Agreement, City agrees that in the event of the presence of any Hazardous Substances at a level in violation of Environmental Laws, or any other environmental conditions in violation of Environmental Laws affecting the District Easement, City shall look solely to persons and entities other than the District Releasees for any redress or relief (except to the extent of a breach by District of the representation set forth in Section 2.2 above). As a material covenant and condition of this Exchange Agreement, District agrees that in the event of the presence of any Hazardous Substances at a level in violation of Environmental Laws, or any other environmental conditions in violation of Environmental Laws affecting the City Easement, District shall look solely to persons and entities other than the City Releasees for any redress or relief (except to the extent of a breach by City of the representation set forth in Section 3.2 above). With respect to the release set forth herein relating to unknown and unsuspected claims, each Party hereby acknowledges that such waiver and release is made with the advice of counsel and with full knowledge and understanding of the consequences and effects of such waiver, and that such waiver is made with the full knowledge, understanding and agreement that California Civil Code § 1542 provides as follows, and that the protection afforded by said Code Section is hereby waived:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Upon consummation of the Closing, the foregoing release shall be deemed to be restated and made again as of the Closing.

6. **City's Conditions Precedent.** The following shall be conditions precedent to City's obligation to perform hereunder:

6.1 District shall not have validly terminated this Exchange Agreement.

6.2 Title Company shall be prepared to issue at Closing to District an updated title report ("District Title Report ") on the real property where District Easement is located, reflecting the easement for street dedication purposes granted to City.

6.3 There shall be no material change in the status of any matter covered by any of District's representations and warranties set forth herein as of the Closing; provided, however that if there is a material change in the status of any matter covered by any of the District's representations and warranties set forth herein that is disclosed by the District to the City prior to the Closing, the Closing shall be extended for up to thirty (30) days to permit District the opportunity to cure or correct the matter to the satisfaction of the City.

6.4 District shall have performed all of its obligations hereunder and shall not be in breach of this Exchange Agreement.

6.5 City shall not be required to accept a grant of District Easement unless City shall have obtained all discretionary entitlements and approvals (not including ministerial permits) needed for the development of the District Easement.

The conditions set forth in this Section 6 are solely for the benefit of the City and may be waived only by the City. The City shall, at all times prior to the Closing, have the right to waive any of these conditions.

7. **District's Conditions Precedent.** The following shall be conditions precedent to District's obligation to perform hereunder:

7.1 City shall not have validly terminated this Exchange Agreement

7.2 City shall have performed all of its obligations hereunder and shall not be in breach of this Exchange Agreement.

The conditions set forth in this Section 7 are solely for the benefit of the District and may be waived only by the District. The District shall, at all times prior to the Closing, have the right to waive any of these conditions.

8. **Closing.** The Closing shall be the date upon which the grant deed, in the form of Exhibit C attached hereto, conveying the District Easement to City ("**District Grant of Easement**") as Exhibit C - District Grant of Easement, is recorded in the official records of San Diego County, California (the "**Closing**"). The Closing shall occur on or before _____, ____ ("**Closing Date**").

9. **Costs, Fees and Expenses.** City shall pay for documentary transfer tax due in connection with recording the District Grant of Easement, and the title insurance premium for the City Title Policy. City shall pay the cost of recording the District Grant of Easement and any other instruments necessary or appropriate hereunder. City shall pay for escrow fees. Each Party shall bear the expense of its own counsel.

10. **District's Deliveries.** District hereby covenants and agrees to deliver to escrow on or prior to the Closing the following instruments and documents:

10.1 The District Grant of Easement in the form of Exhibit C attached hereto, duly executed and acknowledged by District conveying the District Easement to City;

10.2 Any other instrument or documents necessary to effectuate the purposes of this Exchange Agreement.

11. **City's Deliveries.** City hereby covenants and agrees to deliver to escrow on or prior to the Closing any instrument or documents necessary to effectuate the purposes of this Exchange Agreement.

12. **Intentionally Deleted.**

13. **Default.** In the event a Transferring Party defaults in its obligation to transfer the Easement pursuant to this Exchange Agreement, the Acquiring Party shall have all rights and remedies available to it at law or in equity; provided, however, that in an action for damages, Purchaser shall be limited to recovering its actual damages but not any consequential or punitive damages.

14. **Conditions to Effectiveness.** This Exchange Agreement shall not be binding or effective (i) against District until pursuant to California Education Code Section 17537, the District's governing board has adopted, by two-thirds vote of its members, a resolution declaring its intention to exchange the easement that is contemplated to be the subject of the Exchange Agreement, approving this Exchange Agreement and authorizing its execution and (ii) against City until the City Council has adopted, by majority vote of its members, a resolution declaring its intention to exchange the easement that is contemplated to be the subject of the Exchange Agreement, approving this Exchange Agreement and authorizing its execution.

15. **Notices.** All notices under this Exchange Agreement shall be in writing and shall be given to the Parties at the addresses herein set forth, or at such other address as any of the Parties may hereafter specify in the same manner. All notices required or permitted to be given may be given by personal delivery (including express courier service) or by United States certified mail, postage prepaid, return receipt requested. Any such notice shall be deemed received upon the actual delivery of such personal service (or express courier service) or, if sent by certified mail, three (3) days after the date of mailing by certified mail. The addresses for notices are as follows:

To District at:

San Diego Unified School District
4860 Ruffner Street
San Diego, California 92111
Attention: Real Estate Management

To City at:

City of San Diego
Real Estate Assets Department
1200 3rd Avenue, Suite 1700
San Diego, California 92101
Attention: Real Estate Assets Director

16. **Time of the Essence.** Time is of the essence of this Exchange Agreement, and any amendments hereto.

17. **Amendments.** Any amendments to this Exchange Agreement shall be effective only when in writing and duly executed by the Parties.

18. **Entire Agreement.** This Exchange Agreement supersedes any prior agreement, oral or written, and contains the entire agreement between City and District as to the transaction contemplated by this Exchange Agreement. No subsequent agreement, representation or promise made by either Party, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

19. **Further Assurances.** Each Party agrees to execute any additional instructions or documents as may be necessary to complete the transaction contemplated by this Exchange Agreement.

20. **Construction and Captions.** This Exchange Agreement shall be construed as a whole and in accordance with its fair meaning. Captions and organizations are for convenience only and shall not be used in construing meaning.

21. **No Waiver.** The waiver by either Party of the performance of any covenant, condition or promise, shall not invalidate this Exchange Agreement, nor shall it be considered a waiver of any other

covenant, condition or promise. The waiver by either Party of the time for performing any act shall not be a waiver of the right to require performance of any similar or identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions in this Exchange Agreement for any remedy shall not exclude any other remedy unless it is expressly excluded.

22. **Attorneys' Fees.** If either District or City commences any action or proceeding in court to enforce any of the terms of this Exchange Agreement or for damages by reason of an alleged breach of any provision of this Exchange Agreement, the losing or defaulting Party shall pay to the prevailing Party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.

23. **Governing Law.** This Exchange Agreement shall be construed in accordance with and governed by the laws of the State of California. Proper venue for any action shall be in the County of San Diego, California.

24. **Assignment; Binding Effect.**

25.1 Except as provided in Section 25.2, below, neither Party shall have the right to assign this Exchange Agreement without the prior written consent of the other Party, which consent shall may be given or withheld in such Party's sole and absolute discretion, and provided any such assignment shall not release either Party from any obligation or liability hereunder.

25.2 Assignments to Affiliates shall be permitted. For purposes of this Exchange Agreement, an "Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with another person or entity. The term "control" as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors.

25.3 This Exchange Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns, heirs and legatees.

25. **Relationship of the Parties.** Nothing stated in this Exchange Agreement is intended to or shall be construed as establishing City and District as partners or joint venturers or as creating the relationship of principal/agent between the Parties. Neither Party has any power, right or authority to bind the other Party or to assume or create any obligation or responsibility, express or implied, on behalf of the other Party, except as herein expressly provided.

26. **Counterparts.** This Exchange Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all Parties had signed the same signature page. Any signature page of this Exchange Agreement may be detached from any counterpart of this Exchange Agreement and reattached to any other counterpart of this Exchange Agreement identical in form hereto but having attached to it one or more additional signature pages.

27. **No Third Party Beneficiaries.** Except as specifically set forth in this Exchange Agreement, nothing in this Exchange Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Exchange Agreement on any persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Exchange Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party, nor give any third persons any right of subrogation or action against any Party.

28. **Exhibits.**

Exhibit A - Legal Description of District Easement (with Exhibit A-1 and A-2)

Exhibit B - Ledger

Exhibit C - District Grant of Easement

IN WITNESS WHEREOF, the Parties hereto have executed this Exchange Agreement as of the date shown above.

"CITY"
THE CITY OF SAN DIEGO,
a municipal corporation

By: _____
Name: James Barwick
Title: Director, Real Estate Assets

"DISTRICT"
SAN DIEGO UNIFIED SCHOOL DISTRICT,
a school district organized and existing under the laws
of the State of California

By: _____
Name: Arthur S. Hanby, Jr.
Title: Strategic Sourcing and Contracts Officer

Exhibit A – Legal Description of District’s Easement

THAT PORTION OF LOTS 1286 AND 1288 OF THE PUEBLO LANDS OF SAN DIEGO, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY JAMES PASCOE IN 1870, A COPY OF WHICH SAID MAP WAS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 14, 1921, AND IS KNOWN AS MISCELLANEOUS MAP NO. 36, AND AS DESCRIBED IN DEED TO THE SAN DIEGO UNIFIED SCHOOL DISTRICT, RECORDED NOVEMBER 28, 1950 IN BOOK 3877 PAGE 158 OF OFFICIAL RECORDS OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF THAT TRACT OF LAND CONVEYED TO LEONARD R. HOLLIDAY AND WIFE, BY DEED DATED SEPTEMBER 7, 1921 AND RECORDED IN BOOK 857, PAGE 395 OF DEEDS, SAID POINT BEING ALSO IN THE SOUTHERLY RIGHT-OF-WAY LINE OF TORREY PINES ROAD AS DEDICATED TO THE CITY OF SAN DIEGO BY DEED RECORDED OCTOBER 13, 1950 IN BOOK 3818, PAGE 435, OFFICIAL RECORDS; THENCE SOUTH 85° 44' 35" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE 467.09 FEET TO THE TRUE POINT OF BEGINNING, BEING A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 44.00 FEET, THE CENTER OF WHICH BEARS SOUTH 13° 46' 47" WEST FROM SAID POINT; THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE OF TORREY PINES ROAD SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 62° 23' 58" A DISTANCE OF 47.92 FEET TO A POINT OF REVERSE CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 56.00 FEET, THE CENTER OF WHICH BEARS NORTH 76° 10' 45" EAST FROM SAID POINT; THENCE EASTERLY AND NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 170° 25' 42" A DISTANCE OF 166.57 FEET TO A POINT IN A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1339.56 FEET, THE CENTER OF WHICH BEARS SOUTH 08° 43' 48" WEST FROM SAID POINT, SAID POINT BEING ALSO IN THE SOUTHERLY RIGHT-OF-WAY LINE OF TORREY PINES ROAD AS DEDICATED TO THE CITY OF SAN DIEGO BY DEED RECORDED OCTOBER 9, 1951 IN BOOK 4258, PAGE 253 OFFICIAL RECORDS; THENCE WESTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04° 28' 23" A DISTANCE OF 104.58 FEET TO A POINT IN THE ABOVE-DESCRIBED SOUTHERLY RIGHT-OF-WAY LINE OF TORREY PINES ROAD PER DEED RECORDED OCTOBER 13, 1950; THENCE NORTH 85° 44' 35" WEST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE 38.70 FEET TO THE TRUE POINT OF BEGINNING.

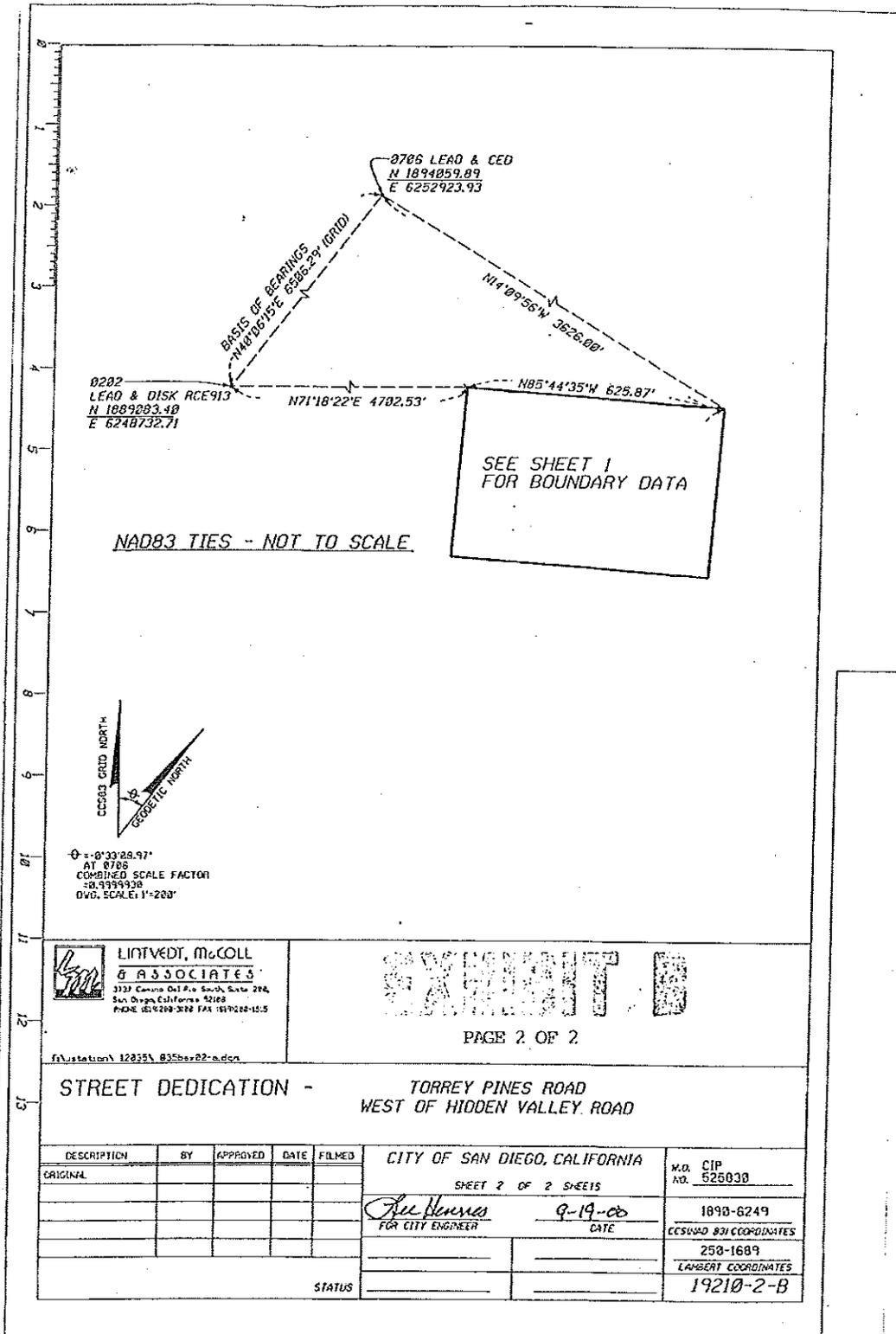
CONTAINING 6415 SQ. FT. (0.147 ACRES) MORE OR LESS

W.O. NO. 525830
DWG. NO. 19210-B



Gary A. Lintvedt 9-14-2000
GARY A. LINTVEDT, L.S. 4593 DATE
MY LICENSE EXPIRES 9-30-2002

Exhibit A-2 – Depiction of District Easement



LINTVEDT, McCOLL & ASSOCIATES
3127 Camino Del Rio South, Suite 200
San Diego, California 92108
PHONE 619-228-3127 FAX 619-228-1515

EXHIBIT B

PAGE 2 OF 2

STREET DEDICATION - TORREY PINES ROAD
WEST OF HIDDEN VALLEY ROAD

DESCRIPTION	BY	APPROVED	DATE	FILMED	CITY OF SAN DIEGO, CALIFORNIA	M.O. CIP NO.
ORIGINAL					SHEET 2 OF 2 SHEETS	525838
					<i>Lee Hennessy</i> FOR CITY ENGINEER	1898-6249
					9-19-08 DATE	CCSWD 831 COORDINATES
						250-1689
						LAMBERT COORDINATES
					STATUS	19210-2-B

Exhibit C - District Grant of Easement

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Documentary Transfer Tax: \$-0- Easement Only SPACE ABOVE THIS LINE FOR RECORDER'S USE

DISTRICT GRANT OF EASEMENT TO THE CITY OF SAN DIEGO

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, SAN DIEGO UNIFIED SCHOOL DISTRICT, a public school district organized and existing under the laws of the State of California ("Grantor"), pursuant to the Exchange Agreement between Grantor and Grantee dated _____ ("Agreement"), HEREBY GRANTS TO:

THE CITY OF SAN DIEGO, a California municipal corporation ("Grantee"),

an easement on, over, across, under and through a portion of Grantor's property located in the County of San Diego, State of California and more particularly described in Exhibit A, Exhibit A-1 and Exhibit A-2 of the Agreement, attached hereto and incorporated herein by this reference (the "District Easement"), SUBJECT TO any matters of record and any and all applicable laws, ordinances, rules, regulations and permits affecting the Easement or governing the use thereof.

THE PURPOSE OF THE EASEMENT shall be for street right of way, including without limitation sidewalks and appurtenances, and to erect, install, construct, remove, repair, replace, reconstruct, maintain and use, for public service purposes, any and all materials, fixtures, appliances, equipment, pipes, pipelines, wires, cables, including fiber optics, necessary for the transmission, distribution and delivery of electricity, water, sewer, storm water, gas, cable television, communications and information service utilities over, along, upon, under and across the District Easement.

IN WITNESS WHEREOF, Grantor has caused its duly authorized representative to execute this instrument as of the date hereinafter written.

DATED: _____, 2010

GRANTOR:

This is to certify that the interest in real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego pursuant to authority conferred by Resolution No. 250320, adopted by the Council of the City of San Diego on October 1, 1979, and the grantee consents to recordation thereof by its duly authorized officer.

San Diego Unified School District,
A public school district organized and existing
under the laws of the State of California

By: _____
Name: W. Drew Rowlands
Title: Executive Director, Auxiliary Services

Dated _____ By _____
James F. Barwick, Director
Real Estate Assets Department