REIMBURSEMENT AGREEMENT
FOR PROJECT NO. P-1,
GONZALES CANYON NEIGHBORHOOD PARK
IN THE PACIFIC HIGHLANDS RANCH COMMUNITY

THIS AGREEMENT [Agreement] is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation [City] and Pardee Homes (formerly known as Pardee Construction Company), a California Corporation [Subdivider] [collectively the Parties], for reimbursement for design and construction of Project No. P-1, Gonzales Canyon Neighborhood Park, in the Pacific Highlands Ranch Community Plan area in accordance with the Pacific Highlands Ranch Public Facilities Financing Plan, and for Subdivider's short-term maintenance of Project No. P-1.

RECITALS

1. The Pacific Highlands Ranch Subarea Plan was approved by the San Diego City Council (City Council) on July 28, 1998 by Resolution R-290521 **(Exhibit A)**.

2. On September 8, 1998, Subdivider and City entered into a Purchase Agreement (Purchase Agreement) for Project No. P-1, Gonzales Canyon Neighborhood Park (formerly Neighborhood Park Number One), which is on file in the Office of the City Clerk as Document No. OO-18579-1 **(Exhibit B)**.

3. On September 24, 2002, the City Council adopted Resolution No. R-297087 granting Vesting Tentative Map No. 7248 **(Exhibit C)** for Pacific Highlands Ranch Units No. 5-11 subject to certain development conditions.

4. The City Council has adopted a Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment, and in particular, on _____, by Resolution No. R _____adopted the Financing Plan for Fiscal Year **2013** (Financing Plan). The Financing Plan includes Project No. P-1, Gonzales Canyon Neighborhood Park. Project No. P-1 includes the acquisition and development of Gonzales Canyon Neighborhood Park. The project sheet for Project No. P-1 in the Financing Plan is attached as **Exhibit D**. This Agreement relates to the design and construction of the improvements necessary to complete Project No. P-1, which is referred to throughout this Agreement as the "Project."

5. On October 26, 2010, the City Council adopted Ordinance No. O-20000 **(Exhibit E)** which approved the First Amendment to the Neighborhood Park Site (NP1) Purchase Agreement for Gonzales Canyon Neighborhood Park [Purchase Agreement Amendment]. Under the Purchase Agreement Amendment, the final purchase price to acquire the site for Project No. P-1 was $1,966.189.91, and the amount eligible for reimbursement for specific improvement costs was $1,027,000. Pursuant to the Purchase Agreement Amendment, escrow has closed and City acquired fee title interest to the Gonzales Canyon Neighborhood Park site on December 28, 2010.

6. The Financing Plan includes a cost estimate of **$7,095,000** for the Project. The City's Administrative Costs (as defined in section 12.1.5) are currently estimated at $458,810.09. Of the **$7,095,000** programmed in the project, $458,810.09 is reserved for City's Administrative Costs. A reimbursement in the amount of $2,993,189.91 is already provided for under the Purchase

Agreement Amendment, and has already been disbursed to Subdivider. The remaining balance of **$3,643,000** constitutes the total and maximum City funds potentially available for reimbursement to Subdivider for the entire Project No. P-1 under this Agreement. Subdivider is not automatically entitled to any reimbursement. Subdivider must satisfy all terms of this Agreement to become eligible for any remaining portion of the Maximum Funds as they are collected and become available for reimbursement.

7. Subdivider's Estimated Cost (as defined in Section 3.3) of the Project is **$3,643,000**, including interest (as discussed in section 13.1.6). The Estimated Cost is the total and maximum amount available for reimbursement by City to Subdivider unless otherwise approved by City in accordance with the change order procedures set forth in Article III of this Agreement.

8. To expedite the completion of Project No. P-1 to be available for use by the residents of Subdivider's subdivision as well as the surrounding community, Subdivider desires to donate $5,000 per building permit that it is issued after Subdivider is issued its 1,390th residential building permit in Pacific Highlands Ranch, up to a maximum of $235,000 to be used by the City to maintain Gonzales Canyon Park.

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

ARTICLE I. SUBJECT OF THE AGREEMENT

1.1 **Design and Construction of Project**. Subdivider agrees to design and construct a complete and operational Project fully suited to the purpose for which it was designed and in accordance with this Agreement; the Plans and Specifications; and the Financing Plan. Subdivider also agrees to design and construct Project within the timeframe established by the Project Schedule attached as **Exhibit F**, and for the Estimated Costs attached as **Exhibit G**.

1.2 **Operational Acceptance**. City's acceptance of Project shall occur upon Subdivider's receipt of a letter of acceptance from City after Subdivider complies with the Punch List and passes Final Inspection (as defined in Section 15.4) confirming that Project is substantially complete and operational [Operational Acceptance].

1.3 **Park Maintenance Fund Contribution.** To expedite the completion of the Project so as to make Gonzales Canyon Neighborhood Park available for use by the residents of Subdivider's subdivision as well as the surrounding community, Subdivider has agreed to donate $5,000 for each market rate residential unit in Pacific Highlands Ranch for which a building permit is issued to Subdivider after Subdivider is issued building permits for its 1390th residential unit in Pacific Highlands Ranch [Park Maintenance Funds], up to a maximum of $235,000 (i.e. $5,000 for 47 market-rate residential units maximum). The Park Maintenance Funds shall be used by the City exclusively to maintain Gonzales Canyon Neighborhood Park. However, Subdivider's donation of $5,000 per market rate residential unit for which Subdivider obtains a building permit in Pacific Highlands Ranch as provided for herein shall terminate on January 1, 2016 or upon issuance of a building permit or permits for the 1,901st or greater residential unit in the phase shifted area of Pacific Highlands Ranch, whichever date or event occurs first. The Park

Maintenance Funds shall be used by City solely and exclusively for maintenance of the Gonzales Canyon Neighborhood Park. The Park Maintenance Funds are Non-Reimbursable Costs (see Section 3.2.1).

ARTICLE II. PROJECT SCHEDULE

2.1 **Project Schedule**. Subdivider shall perform and complete the work under this Agreement according to the Project Schedule, attached as **Exhibit F,** including its obligations and components approved by the City in **Exhibit H**. The Project Schedule includes the meeting requirements in **Exhibit I**; and preconstruction, progress, and special meeting agendas in **Exhibit J.**

2.2 **Project Completion**. Subdivider agrees that all work on the Project under this Agreement will be complete and ready for operational use according to the Project Schedule and the Project Schedule obligations and components.

2.3 **Changes in Project Schedule**.

2.3.1 Changes in Project Schedule that increase the Estimated Cost must be approved by City in writing in accordance with Section 3.3.3.

2.3.2 Changes in Project Schedule that do not increase the Estimated Cost may be approved by the engineer designated by City's Engineering and Capital Projects Department, which shall be responsible for review and approval of the progress of, and changes to the Project (Resident Engineer); provided, however, that the Project is still completed in accordance with the Financing Plan (including any associated phasing plans).

2.4 **Notification of Delay**. If Subdivider anticipates or has reason to believe performance of work under this Agreement will be delayed, Subdivider shall immediately notify the City's representative designated to manage the Project on behalf of City [Project Manager]. Unless City grants Subdivider additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) calendar days of the initial notification and shall include: an explanation of the cause of the delay, a reasonable estimate of the length of the delay, any anticipated increased costs due to delay, all supporting data, and a written statement that the time adjustment requested is the entire time adjustment Subdivider needs as a result of the cause of the delay. If Subdivider anticipates or has reason to believe the delay will increase the Estimated Cost, Subdivider 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 Subdivider 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 Subdivider 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 Subdivider failed to complete performance of the work. The following conditions may

justify such a delay depending on their actual impact on Project: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider's work; concealed conditions encountered in the completion of Project; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Subdivider. Any delay claimed to be caused by Subdivider's inability to obtain materials, equipment, labor, or additional required services shall not entitle Subdivider to an extension of time unless Subdivider furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of Subdivider's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Subdivider shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Subdivider, its consultants, contractors, subcontractors, employees, or other agents [collectively, "Subdivider's agents"]. A change in Project Schedule does not automatically entitle Subdivider 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 Subdivider acknowledge construction delays may increase the cost of Project. Unless Subdivider 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), Subdivider 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 Subdivider 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 Subdivider fails to adequately perform any obligation required by this Agreement, Subdivider's failure constitutes a Default. Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default Subdivider 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 Subdivider under this Agreement. A delay shall not constitute a Default if Subdivider 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 Subdivider's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by Subdivider or its agents for the construction of Project. Subdivider shall

include, and require its contractors and subcontractors to include, provisions in their contracts and subcontracts, that City is a third party beneficiary of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.

2.7.3 The rights and remedies of City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or waive or deny any right or remedy at law or in equity available to City against Subdivider, including any claims for damages against Subdivider that City may assert as a result of the Default.

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

ARTICLE III. PROJECT COSTS AND CHANGE ORDERS

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

3.2 **Reimbursable Costs**. Subdivider 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 Subdivider 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 Subdivider's or Subdivider'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 FBA's actually collected by the City and available for reimbursement to Subdivider for the design and construction of this 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)**. Subdivider's Estimated Costs shall consist only of: (i) Project Costs, (ii) Subdivider'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 **$3,643,000** including interest, as set forth in Section 12.1.6, attached as **Exhibit G**. Any other increase to Estimated Cost may only be approved in accordance with Section 3.3.3.

3.3.1 ***Subdivider's Administrative Costs*.** Subdivider's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures totaling a flat five percent (5%) of Subdivider's Project Costs. 3.3.2

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 Subdivider's or Subdivider'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 Subdivider or Subdivider's agents.

3.3.3 ***Change Orders and Adjustments to Estimated Cost.*** The "Procedure for Processing Change Orders" is attached as **Exhibit K**. Change Orders shall be on a form acceptable to the City. Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with **Exhibit K.** Estimated Cost may be increased if Subdivider provides documentation showing the increase is reasonable in nature and amount, and is due to causes beyond Subdivider's control or otherwise not the result of unreasonable conduct by Subdivider which may, based on actual impact on Project, include: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider'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 Subdivider. Subdivider 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 Subdivider's or Subdivider's agents' negligence. Subdivider shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order. 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, Subdivider may elect to construct Project and forgo any reimbursement in excess of Estimated Cost.

3.4 **Notification of Increased Estimated Costs**. If Subdivider anticipates or has reason to believe the cost of Project will exceed the Estimated Cost, Subdivider shall notify City in writing within fourteen (14) calendar days of becoming aware of the potential increase. Subdivider 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 Subdivider believes will bring the construction cost to an amount within the Estimated Cost.

ARTICLE IV. COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

4.1 **Compliance**. Subdivider shall bid and award contracts to complete the Project in accordance with the Charter of the City of San Diego and rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code and current City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations [Required Contracting Procedures]. Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's small and local business program for public works contracts, and the City's Equal Benefits Ordinance. Prior to bidding the Project, Subdivider shall consult with City's Purchasing and Contracting Department. Subdivider shall work with City's Purchasing and Contracting Department to ensure that all Required Contracting Procedures are met. Subdivider understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a material breach of this Agreement, and any contract awarded not in accordance with the Required Contracting Procedures shall be ineligible for reimbursement..

4.2 **Bidding Documents**. Following City review of the Construction Documents, Subdivider shall prepare final corrected Construction Documents to be submitted to City for review and approval, in accordance with City's standard review procedures prior to solicitation of bids.

4.2.1 ***Submission of Construction Documents*.** Subdivider shall submit bidding documents to City for approval before soliciting bids for work on Project. City retains the right to notify Subdivider of necessary corrections and will notify Subdivider of corrections within ten (10) Working Days of submittal date.

4.2.2 ***Obtain all Permits and Approvals*.** Subdivider shall obtain all necessary permits, including but not limited to environmental, grading, building, mechanical, electrical, and plumbing. Approval of Construction Documents will be evidenced by City's issuance of a letter indicating Subdivider may proceed with competitive bidding.

4.3 **Solicitation of Bids**. Subdivider shall solicit sealed bids for the construction of Project in accordance with all Required Contracting Procedures. With notice of at least five (5) Working Days, Subdivider shall notify City of the time and place of each bid opening. Subdivider shall work with City's Purchasing and Contracting Department to ensure that bids are solicited in the manner required in accordance with the Required Contracting Procedures..

4.4 **Bid Opening and Award of Contract**. Subdivider shall open bids and award contracts in accordance with all the Required Contracting Procedures. Subdivider shall work with City's Purchasing and Contracting Department to ensure that bids are opened and contracts

are awarded in the manner required in accordance with the Required Contracting Procedures. Subdivider shall publicly open sealed bids in the presence of City's authorized representative(s). The bidding contractors shall be permitted to be present at the bid opening. City's representative(s) shall be provided with all bids received immediately after the bid opening and with a copy of the tabulation of bid results upon Subdivider's completion. Contract(s) for the construction of the Project shall be awarded by Subdivider to the qualified contractor(s) in accordance with Required Contracting Procedures, as mutually determined by Subdivider and City's authorized representative(s). In the event of a dispute, the City shall have ultimate authority to determine to which contractor Subdivider is to award the bid.

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

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

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

4.4.1.1.2 City may work with Subdivider to rebid and/or redesign the Project; or

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

4.5 <u>Nondiscrimination Requirements.</u>

4.5.1 ***Compliance with the City's Equal Opportunity Contracting Program.*** Subdivider shall comply with the City's Equal Opportunity Contracting Program. Subdivider shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Subdivider shall provide equal opportunity in all employment practices. Subdivider shall ensure its consultants, contractors and their subcontractors comply with the City's Equal Opportunity Contracting Program. Nothing in this Section shall be interpreted to hold the Subdivider liable for any discriminatory practice of its consultants, contractors or their subcontractors.

4.5.2 ***Nondiscrimination Ordinance.*** Subdivider shall not 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. Subdivider shall provide equal

opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Subdivider understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language shall be in contracts between the Subdivider and any consultants, contractors, subcontractors, vendors and suppliers.

4.5.3 ***Compliance Investigations.*** Upon City's request, Subdivider agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers Subdivider used in the past five years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Subdivider for each contract, subcontract or supply contract. The Subdivider further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] Subdivider understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against Subdivider up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Subdivider further understands and agrees the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

4.6 **Equal Benefits.** This Agreement is with a sole source and therefore, Subdivider is not subject to the City's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC]. However, the Equal Benefits Ordinance is applicable to contracts that Subdivider enters into with respect to the Project. Therefore, Subdivider shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Subdivider shall include in each of its contracts with its contractor(s) and consultant(s) provisions (1) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (2) stating that failure to maintain equal benefits is a material breach of those agreements; and (3) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. SDMC § 22.4304(e)-(f). In addition, Subdivider's contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notify employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract. SDMC § 22.4304(a)-(b). Subdivider's contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the EBO's requirements. SDMC § 22.4304(c). Additionally, Subdivider's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the EBO. SDMC § 22.4304(d). Subdivider shall ensure that its contractor(s) and consultant(s) complete the Equal Benefits Ordinance Certification of Compliance included herein as Exhibit **X**.

ARTICLE V. PREVAILING WAGE

5.1.1 **Prevailing Wage**. The Project shall pay Prevailing Wage to the extent required by the California Labor Code, the Charter of the City of San Diego and the rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code, City of San Diego Resolutions and Ordinances, City of San Diego Council Policies, or if otherwise required by the City Council.

ARTICLE VI. CONSULTANTS

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

6.2 **Equal Benefits and Equal Opportunity.** The requirements of City's Equal Benefits Ordinance apply to Subdivider's consultant contracts. See Section 4.5.4. The nondiscrimination requirements set forth in Section 4.5 apply to Subdivider's consultant contracts.

6.3 **Estimated Budget**. Subdivider shall require its consultant to prepare an estimated budget for Project.

6.4 **Schematic Drawings**. Subdivider shall require its consultant to prepare schematic drawings for Project for City approval.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

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

7.2 **Compliance with all Laws, Design Standards, and Construction Standards**. In all aspects of the design and construction of Project, Subdivider shall comply with all laws and the most current editions of the Green Book, the City's Standard Drawings and Design and Construction Standards, including those listed in **Exhibit M**. It is the sole

responsibility of Subdivider to comply with The Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. The Subdivider shall certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit N** "Certificate for Title 24/ADA Compliance."

7.3 **Imputed Knowledge**. Subdivider shall be responsible for all amendments or updates to Design and Construction Standards and knowledge of all amendments or updates to Design and Construction Standards, whether local, state, or federal, and such knowledge will be imputed to Subdivider to the fullest extent allowed by law.

7.4 **City Approval**. Subdivider shall be required to obtain City approval of design, plans, and specifications in the manner required in **Exhibit O**. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the duly authorized City representative designated by this Agreement.

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

ARTICLE VIII. CONSTRUCTION AND DRUG-FREE WORKPLACE

8.1 **Compliance with Project Schedule and Construction Requirements**. Subdivider shall commence construction of Project in accordance with the Project Schedule, as described in Article II, and be subject to the obligations in **Exhibit P** "Construction Obligations." Subdivider shall 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.

8.2 **Drug-Free Workplace**. Subdivider 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. Subdivider shall ensure that its contractors comply with the requirements of City's Council Policy 100-17. The Subdivider shall certify to City it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace in form and content of **Exhibit Q**.

ARTICLE IX. PRODUCTS

9.1 **Product Submittal and Substitution**. To the extent product specification is not addressed by the most recent edition of the Standard Specifications for Public Works Construction (including the City of San Diego's standard special provisions) [Green Book] or Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding process, Subdivider shall obtain City approval of products and substitution of products in the manner provided in **Exhibit R** "Product Submittal and Substitution."

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

ARTICLE X. EXTRA WORK

10.1 **City Authority to Order Extra Work**. Any City additions or modifications to work or Subdivider 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 S** "Extra Work Provisions."

ARTICLE XI. CHANGED CONDITIONS

11.1 **Changed Conditions**. Changed Conditions shall have the meaning as defined in the Green Book. The Parties acknowledge and agree that even if Changed Conditions are found to be present, 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, Subdivider shall provide City with value engineering and Parties will return Project to within the Estimated Cost.

ARTICLE XII. REIMBURSEMENT

12.1 **Reimbursement to Subdivider**.

12.1.1 **Notification of Reimbursable Project.** Along with the Project application to City's Development Services Department, and prior to commencement of any work on Project (including hiring a consultant), Subdivider shall submit a "Notification of Reimbursable Project" form (attached as **Exhibit T**) to the Development Services Department, Facilities Financing, and the City department designated by City for individual Project approval and/or supervision [Responsible Department]..

12.1.2 ***Type of Reimbursement.*** Subdivider shall be entitled to cash reimbursement, or FBA credits, for the Reimbursable Costs expended by Subdivider 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 2010. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. Subdivider shall not receive cash reimbursement unless and until there are sufficient funds to reimburse Subdivider, in whole or in part, from the FBA. If sufficient funds are unavailable in the FBA, City shall reimburse Subdivider only if and as funds accrue in the FBA for the Project. Where FBA credits are requested and approved by City, credit reimbursement shall be made in accordance with the schedule in the Financing Plan. Subdivider acknowledges and agrees that in the event there are no additional FBA funds available for collection by City to fund this Project, Subdivider shall not be reimbursed by City for any portion of Subdivider's

outstanding Project costs or expenditures, and Subdivider expressly agrees to fully absorb all such outstanding costs without any reimbursement from City.

12.1.3 ***Funds for Reimbursement.*** Subdivider shall only be entitled to reimbursement as set forth in this Agreement and only from FBA funds collected by City in accordance with the Financing Plan, as it may be amended, in the amount set forth in this Agreement and only as allocated for Project P-1 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 12.1.7 and in the priority of reimbursement described in Section 12.1.9.

12.1.4 ***Amount of Reimbursement.*** Subdivider 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.

12.1.5 ***City's Administrative Costs.*** City's Administrative Costs shall be paid prior to any reimbursement to Subdivider and shall 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].

12.1.6 ***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 either the date FBA credits are made available for Subdivider's use or the date of cash reimbursement, whichever occurs first, up to a maximum of $50,000. Interest shall accrue at the rate identified in the assumptions of 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 accrue on the withholding amount set forth in Section 12.1.7.2. Notwithstanding the foregoing, interest shall only accrue if the Maximum Funds have not otherwise been exceeded.

12.1.7 ***Method of Reimbursement.*** Subdivider shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Project for which Subdivider was not previously reimbursed or granted FBA credit in accordance with the Guidelines and Format for Submittal of Cost Reimbursement Claims attached as Exhibit U [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 Subdivider of such deficiencies within sixty (60) calendar days of Subdivider's Reimbursement Request submittal. Subdivider shall provide additional documentation within fourteen (14) calendar days of City's

notification and request. However, even if City fails to notify Subdivider within sixty (60) calendar days regarding Subdivider's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Subdivider 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 Subdivider for those Reimbursable Costs within ninety (90) calendar days of the date of Reimbursement Request Approval provided that funds are available in the FBA for the Project, and that the Project is scheduled in the Financing Plan for reimbursement at that time.

12.1.7.1 ***Withholding*** Subject to the limitations of Article XII, and at the City's discretion, Subdivider shall be entitled to cash reimbursement or FBA credits as follows:

12.1.7.1.1 Up to $250,000 upon Park and Recreation Board approval of a general development plan for the Project.

12.1.7.1.2 Up to twenty-five percent (25%) of the Reimbursable Costs for the Project (inclusive of the costs set forth in Section 12.1.7.1.1 above) subject to the Subdivider satisfying all of the following requirements:

- All plans and specifications for the Project have been approved by the City
- Any right-of-way required for the Project has been secured and dedicated
- All required permits and environmental clearances necessary for the Project have been secured
- Provision of all performance bonds, payment bonds, and warranty bonds as described in Article XVIII
- Payment of all City fees and costs
- Subdivider has provided evidence satisfactory to the City that it has complied with and satisfied Article IV (Competitive Bidding, Equal Opportunity, and Equal Benefits) and Article VI (Consultant Selection) of the Agreement.

12.1.7.1.3 Up to fifty percent (50%) of the Reimbursable Costs for the Project (inclusive of the costs set forth in Section 12.1.7.1.1 above) subject to the Subdivider satisfying all of the above referenced requirements for the twenty-five percent (25%) reimbursement and Subdivider having received valid bids for the Project, which have been approved by the City, and has awarded the construction contract. Such cash reimbursement, or FBA credit, shall be based on the Reimbursable Costs.

12.1.7.1.4 At the time of Operational Acceptance, provided that Reimbursement Requests have been approved for such amounts, Subdivider shall be entitled to cash reimbursement or FBA credits, up to ninety percent (90%) of the Reimbursable Costs for the Project (inclusive of the costs set forth in Section 12.1.7.1.1 above).

12.1.7.1.5 The remaining ten percent (10%) of the Reimbursable Costs shall be paid to Subdivider upon the later of: (i) the recordation by Subdivider of the Notice of Completion and delivery of a conformed copy to City, or (ii) the City's written acceptance of the Project As-Built Drawings or (iii) issuance of a final Certificate of Occupancy of Project from the City [Final Completion].

12.1.7.2 ***Cutoff for Submission of Reimbursement Requests*** Subdivider shall submit all Reimbursement Requests within six (6) months after the Final Completion or earlier as set forth in Section 12.1.8. Any Reimbursement Request submitted after the Cutoff Date shall constitute a Non-Reimbursable Cost and Subdivider shall not be entitled to any reimbursement for those costs or expenses.

12.1.8 ***Verification of Reimbursement Request*** No later than seventy-five (75) days after each of the milestones set forth in Section 12.1.7.1, Subdivider shall provide reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents showing that payment has been made in connection with the Reimbursement Request in the following manner:

12.1.8.1 Subdivider shall submit one (1) copy of a Reimbursement Request (cover letter and documentation) to the City's Resident Engineer [RE] for work completed per the Plans and Specifications and/or Extra Work.

12.1.8.2 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 the Plans and Specifications. The RE shall also review as-builts and Best Management Practices (BMPs), and verify that a lien release has been prepared. The RE shall notify the Subdivider of any preliminarily disallowed costs so that the Subdivider has the opportunity to review items with the RE.

12.1.8.3 The RE shall initial the Reimbursement Request package, noting any disallowed costs, maintain a copy, and forward a copy to the

Senior Civil Engineer for review. The RE shall send a copy of the final disallowed costs to the Subdivider.

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

12.1.8.5 After review and approval, the Senior Civil Engineer shall prepare a memorandum to Facilities Financing [FF] indicating the reimbursement amount and that the invoice is appropriate to pay if/as funds are/become available. The Senior Civil Engineer shall also send a copy of the memorandum to the Subdivider. 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 and identifying disallowed expenses. Subdivider shall then submit an invoice to the City for the reimbursement amount approved by City.

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

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

12.1.9.1 Any State or Federally mandated project.

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

12.1.9.3 To the extent Subdivider failed to properly notify City in writing of any actual or anticipated increases in Estimated Costs as required under Sections 2.6 and 3.4, the reimbursement for the cost increases, if approved by City, will be subsequent in priority to those projects with agreements approved by the City Council prior to the City Council's approval of increased Estimated Costs.

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

ARTICLE XIII. PUBLIC RELATIONS

13.1 **Presentations**. Subdivider, and Subdivider's agents, 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.

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

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

13.4 **Recognition**. Subdivider shall place a sign, placard, or other similar monument on Project site during construction, which shall acknowledge Subdivider's and City's joint efforts in designing and constructing Project, and identifying that Project is funded with FBA funds. Subdivider shall properly recognize City and include 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 Subdivider is contemplating a dedication or ground breaking ceremony, Subdivider shall contact the Responsible Department's Senior Public Information Officer.

13.5 **Dedication Ceremony**. City or Subdivider 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 Subdivider 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. Subdivider 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.

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

ARTICLE XIV. INSPECTION

14.1 **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) Subdivider's consultant(s), and (v) Subdivider's construction superintendent [Inspection Team].

14.2 **Inspection Schedule**. Project shall be inspected by Inspection Team in accordance with **Exhibit U**.

ARTICLE XV. PROJECT COMPLETION

15.1 **Notice to City**. When Subdivider determines Project is substantially complete, Subdivider shall notify City in writing of Project's status within seven (7) calendar days

of Subdivider'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.

15.2 **Walk-Through Inspection**. A preliminary Walk-Through Inspection shall be conducted by City within fourteen (14) calendar days following Subdivider's notice to City of completion. The Walk-Through Inspection will be conducted by the Inspection Team identified in Section 14.1.

15.2.1 ***Punch List.*** A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to Subdivider by the RE within five (5) calendar days of the Walk-Through Inspection. Subdivider 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 15.4) by City shall be conducted within ninety (90) calendar days of written notification by Subdivider to City that Subdivider has corrected all items identified on the Punch List [Notice of Correction].

15.2.2 ***Failure to Identify Items.*** As to any items not included on the Punch List or later discovered, nothing in this Section is intended to limit Subdivider's obligations under this Agreement and City shall maintain all remedies available under this Agreement, at law, or in equity.

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

15.4 **Final Inspection**. The Final Inspection for Project shall be scheduled and conducted within ninety (90) calendar days of the Notice of Correction. Subdivider shall be notified, by City, in writing, the date upon which Final Inspection is passed.

ARTICLE XVI. PROJECT ACCEPTANCE

16.1 **Acceptance**. Upon Operational Acceptance, Subdivider shall do all of the following:

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

16.1.2 ***Lien and Material Releases.*** Subdivider shall cause all contractors and subcontractors to provide lien and material releases as to Project and provide copies of such lien and material releases to the City 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.

16.2 **Final Completion**. Final Completion of Project shall be deemed to occur on the later of: (i) recordation by Subdivider 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 Subdivider to City pursuant to this Agreement, including As-Built Drawings, warranties, operating and maintenance manuals and other Deliverables identified in **Exhibit V.**

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. Subdivider shall meet with City until all issues are resolved. Upon issue resolution, Subdivider 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.

16.3 **No Waiver**. Subdivider'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 Subdivider 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.

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

ARTICLE XVII. PROJECT DELIVERABLES

17.1 **Project Deliverables**. Prior to Final Completion, Subdivider shall 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 V.**

17.2 **Ownership of Project Deliverables**. Upon Final Completion or termination, Project Deliverables shall become the property of City. Subdivider 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 XVIII. BONDS AND OTHER ACCEPTABLE SECURITIES

18.1 **Payment Bond**. Subdivider shall provide or require its construction contractor to provide City with a payment bond, letter of credit [LOC], cash or other acceptable security as determined by City for material and labor in favor of City for 100% of the proposed construction costs, as determined by competitive bidding [Payment Bond].

18.2 **Performance Bond**. Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security as determined by City guaranteeing performance in favor of City for 100% of the proposed construction costs, as determined by competitive bidding [Performance Bond].

18.3 **Warranty Bond**. Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security as determined by City guaranteeing Project during the warranty period in favor of City [Warranty Bond]. Subdivider shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.

18.4 **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.

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

18.6 **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.

18.7 **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, Subdivider shall within seven (7) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to City.

ARTICLE XIX. INDEMNITY & DUTY TO DEFEND

19.1 **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, Subdivider 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 Subdivider or Subdivider'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 Subdivider, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Subdivider'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.

19.2 **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, 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.

19.3 **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.

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

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

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

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

ARTICLE XX. INSURANCE

20.1 **General.** Subdivider 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.

20.2 **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]. Subdivider shall obtain the Required Insurance prior to the commencement of construction. City's standard insurance provisions are attached as **Exhibit W.** If Subdivider is not informed otherwise in writing of Required Insurance, City's standard insurance provisions included in **Exhibit W** shall be the Required Insurance for the Project.

20.3 **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 Subdivider 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.

20.4 **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.

20.5 **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.

20.6 **Additional Insurance**. Subdivider may obtain additional insurance not required by this Agreement.

20.7 **Obligation to Provide Documents**. Prior to performing any work on Project, Subdivider 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.

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

20.9 **Policy Changes**. Subdivider shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.

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

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

20.12 **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 up to ten (10) years from the Effective Date of this Agreement, may be treated by City as a material breach of this Agreement.

ARTICLE XXI. WARRANTIES

21.1 **Warranties Required**. Subdivider 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.

21.1.1 ***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.

21.1.2 ***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.

21.1.3 ***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.

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

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

21.2.2 ***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.

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

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

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

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

21.3 **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.

21.4 **Meetings.** During the one (1) year warranty period described in Section 22.3, Subdivider 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 XXII. DEFECTIVE WORK

22.1 **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, Project is discovered to contain Defective Work, Subdivider shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.

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

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

22.4 **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.

22.5 **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.

22.6 **Resolution of Disputes**. If Subdivider and City are unable to reach agreement on disputed work, City may direct Subdivider to proceed with the work and compensate Subdivider 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. Subdivider shall maintain and keep all records relating to disputed work in accordance with Article XXIV.

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

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

ARTICLE XXIII. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

23.1 **Maintenance Period**. If the construction contractor is required to install or maintain landscaping and/or irrigation, Subdivider shall require the construction contractor to 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 the Landscaping and Irrigation is accepted, whichever is longer. The maintenance period shall be 120 calendar days if turf is seeded.

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

23.3 **Maintenance Required**. Subdivider shall require the construction contractor to conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, 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.

23.4 **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 Subdivider or Subdivider's contractor notifies City they are ready for the Final Inspection, whichever comes last. The City will notify Subdivider of all deficiencies revealed by the inspection before acceptance.

23.5 **Extension of Maintenance Period**. Subdivider shall require the construction contractor to extend completion of the maintenance period when in City's opinion improper maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period. Subdivider 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.

23.6 **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. Subdivider 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.

23.6.1 ***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. Subdivider 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 XXIV. RECORDS AND AUDITS

24.1 **Retention of Records.** Subdivider, 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.

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

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

ARTICLE XXV. NOTICES

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

25.2 **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.

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

25.3.1 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

25.3.2 Facilities Financing Manager
Development Services Department, Facilities Financing
City of San Diego
1010 Second Avenue, Suite 600 M.S. #606F
San Diego, California 92101
Facsimile No: (619) 533-3687

25.3.4 Ms. Beth Fischer
Pardee Homes
Division President – San Diego
6025 Edgewood Bend Court
San Diego, CA 92130

25.3.5 Thomas F. Steinke, Esq.
Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101

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

ARTICLE XXVI. MEDIATION

26.1 **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.

26.2 **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.

26.3 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.

26.3.1 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.

26.3.2 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.

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

26.4 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.

26.4.1 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.

26.4.2 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 XXVII. MISCELLANEOUS PROVISIONS

27.1 **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 [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 ten (10) years.

27.2 **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.

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

27.4 **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.

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

27.6 **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.

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

27.8 **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.

27.9 **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.

27.10 **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.

27.11 **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.

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

27.13 **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.

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

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

27.16 **Compliance with Controlling Law**. Subdivider 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, Subdivider 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.

27.17 **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). Subdivider agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

27.18 **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.

27.19 **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.

27.20 **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 Subdivider's contracts, purchase orders and other contracts between Subdivider and third-party services. Subdivider shall incorporate this provision into its contracts, supply agreements and purchase orders.

27.21 **Non-Assignment**. The Subdivider 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.

27.22 **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.

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

27.24 **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.

27.25 **No Waiver**. No failure of either City or Subdivider 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.

27.26 **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.

27.27 **Remedies.** Notwithstanding any other remedies available to City at law or in equity, Subdivider understands that its failure to comply with the insurance requirements or other obligations required by this Agreement, and/or submitting false information in response to these requirements, may result in withholding reimbursement payments until Subdivider complies and/or may result in suspension from participating in future city contracts as a developer, prime contractor or consultant for a period of not less than one

(1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three (3) years.

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

This Agreement was approved as to form and content by the City Attorney this _____ of _____, 2012, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated:_____

By:_____
Jay Goldstone, Chief Operating Officer

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

Dated:_____

By:_____
Heidi K. Vonblum, Deputy City Attorney

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

By: Bill Fischer
Title Vice President
Dated: 02/17/12

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

By: [illegible]
Title VICE PRESIDENT
Dated: 02/21/12

Law Offices of SELTZER CAPLAN MCMAHON VITEK

Dated: 2.21.12

By: Thomas F. Steinke
Thomas F. Steinke, Attorneys for Pardee Homes

Or. Dept: Facilities Financing

EXHIBIT 'A'

Pacific Highlands Ranch Subarea Plan
Resolution R-290521

EXHIBIT 'B'

Gonzales Canyon Park Purchase Agreement
Ordinance OO-18579-1
First Amendment to Gonzales Canyon Park Purchase Agreement
Ordinance

EXHIBIT 'C'

Vesting Tentative Map Conditions

EXHIBIT 'D'

Pacific Highlands Ranch Financing Plan
Gonzales Canyon Neighborhood Park Acquisition & Development
Project P-1

EXHIBIT 'E'

First Amendment to the Neighborhood Park Site Purchase Agreement
For Gonzales Canyon Neighborhood Park
Ordinance O-20000

EXHIBIT 'F'

Project Schedule

EXHIBIT 'G'

Estimated Costs for Project

EXHIBIT 'H'

Project Schedule Obligation and Components

EXHIBIT 'I'

Meeting Requirements

EXHIBIT 'J'

Preconstruction, Progress & Special Meeting Agenda

EXHIBIT 'K'

Procedure for Processing Change Orders

EXHIBIT 'L'

Consultant Provisions

EXHIBIT 'M'

Design and Construction Standards

EXHIBIT 'N'

Certification for Title 24/ADA Compliance

EXHIBIT 'O'

Approval of Design, Plans and Specifications

EXHIBIT 'P'

Construction Obligations

EXHIBIT 'Q'

Certification for a Drug-Free Workplace

EXHIBIT 'R'

Project Submittal and Substitution

EXHIBIT 'S'

Extra Work Provisions

EXHIBIT 'T'

Notification of Reimbursable Project

EXHIBIT 'U'

Inspection Schedule

EXHIBIT 'V'

Project Deliverables

EXHIBIT 'W'

Typical Insurance Provisions

EXHIBIT 'X'

Equal Benefits Ordinance Certificate of Compliance

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EXHIBIT A

(R-99-124 REV.)

RESOLUTION NUMBER R-290521

ADOPTED ON JULY 28, 1998

WHEREAS, on June 25, 1998, the Planning Commission of The City of San Diego held a public hearing for the purpose of considering an amendment to the Phased Development Areas Map of the Progress Guide and General Plan and an amendment to the North City Future Urbanizing Area Framework Plan; and

WHEREAS, certain property owners requested an amendment to the Progress Guide and General Plan to change the designation of a 2,102-acre area in the North City Future Urbanizing Area from Future Urbanizing to Planned Urbanizing, and an amendment to the North City Future Urbanizing Area Framework Plan for the purpose of adopting a subarea plan, the Pacific Highlands Ranch Subarea Plan, for Subarea III; and

WHEREAS, Council Policy No. 600-7 provides that public hearings to consider revisions of the Progress Guide and General Plan for The City of San Diego may be scheduled concurrently with public hearings on proposed community plans in order to retain consistency between said plans and the Planning Commission has held such concurrent public hearings; and

WHEREAS, the amendment to the North City Future Urbanizing Area Framework Plan may modify portions of the existing North City Local Coastal Program and the proposed rezones constitute an amendment to the City's LCP; and

WHEREAS, the Council has considered all maps, exhibits, written documents and materials in the file for this matter on file in The City of San Diego, and has heard all the oral presentations given at the public hearing; NOW, THEREFORE,

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

1. That the Council adopts the amendments to the Progress Guide and General Plan and the North City Future Urbanizing Area Framework Plan to incorporate the Pacific Highlands Ranch Subarea Plan, a copy of which is on file in the office of the City Clerk as Document No. RR-290521.

2. That the Council finds that the amendments are consistent with the City adopted Regional Growth Management Strategy, and directs the City Clerk to transmit a copy of this Resolution to SANDAG in its capacity as the Regional Planning and Growth Management Review Board.

3. That the Council adopts an amendment to the Progress Guide and General Plan for The City of San Diego to incorporate the amended North City Future Urbanizing Area Framework Plan.

4. That this amendment to the General Plan and the North City Future Urbanizing Area Framework Plan shall not be effective unless and until all of the following events have occurred:

(i) The City's Progress Guide and General Plan is amended by an affirmative vote of the People of the City of San Diego on November 3, 1998, specifically by amending the Official Phased Development Map, on file in the Office of the City Clerk as Document No. RR-267565-1, to change the designation of 2,102 acres within Pacific Highlands Ranch Plan as reflected on Exhibit 1-2 of said Plan from "Future Urbanizing" to "Planned Urbanizing"; and

(ii) The Council of The City of San Diego has adopted a Public Facilities Financing Plan/Facilities Benefit Assessment Program [PFFP/FBA] which shall thereupon be incorporated in the Subarea Plan; and

(iii) The applicant and majority property owner (Pardee Construction Company) within the Pacific Highlands Ranch Subarea Plan has approved a School Financing Plan by executing a School Impact Mitigation Agreement with the Solana Beach Elementary School District, Del Mar Union School District, and San Dieguito Union High School District; and

(iv) The applicant and majority property owner (Pardee Construction Company) within the Pacific Highlands Ranch Subarea Plan has executed a purchase contract with The City of San Diego for park, library, and fire station facility sites.

BE IT FURTHER RESOLVED, that the City Council hereby approves the amendment to the North City Local Coastal Program for the City of San Diego to incorporate the above amendment. The amendment will become effective within the Coastal Zone upon California Coastal Commission certification of the amendment to the North City Local Coastal Program.

BE IT FURTHER RESOLVED, prior to tentative map approval, a Water Quality Protection Plan, which includes Best Management Practices for urban runoff, will be prepared by the applicant and reviewed by interested parties and approved by the City.

APPROVED: CASEY GWINN, City Attorney

By _____
Richard A. Duvernay
Deputy City Attorney

RAD:lc
07/20/98
07/24/98 COR.COPY
10/23/98 REV.
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EXHIBIT B

PACIFIC HIGHLANDS RANCH - SUBAREA III NCFUA

NEIGHBORHOOD PARK SITE (NP1) PURCHASE AGREEMENT

THIS NEIGHBORHOOD PARK SITE PURCHASE AGREEMENT ("Agreement") is made and entered into as of the ___ day of SEP 08 1998, 19__, ("effective date") by and between Pardee Construction Company, a California corporation, ("Seller"), and The City of San Diego, a municipal corporation ("Buyer"), (collectively, the "Parties") with reference to the facts set forth below.

RECITALS

A. Seller owns real property consisting of approximately 2055 acres located within Subarea III in the North City Future Urbanizing Area in the City of San Diego. Seller's real property ownership is further identified on the Ownership map, EXHIBIT 2-3 (attached hereto as Exhibit "A") of the Pacific Highlands Ranch Subarea Plan ("Subarea Plan").

B. The Subarea Plan identifies the location of two five-acre neighborhood park sites and one community park site. Neighborhood Park One is located in the north-central portion of the Subarea and north of the existing Carmel Valley Road/Del Mar Heights Road (see Exhibit 2-2 of the Subarea Plan attached hereto as Exhibit "B".) Neighborhood Park Two is located in the eastern portion of the Subarea and south of proposed State Route 56. The Community Park is planned as a 20 acre stand alone park or alternatively, as a 13 acre park adjacent to a junior high school. If a junior high school is located adjacent to the Village as depicted on Exhibit "B" hereto, an adjacent 13 acre community park will be developed. If a junior high school is not located adjacent to the Village, a stand alone 20 acre community park will be developed in the location depicted on Exhibit "B" hereto. The sum total of acreage being purchased by Buyer will be five acres for each neighborhood park site and either 13 or 20 acres for a Community Park. A separate park site acquisition agreement will be executed for each neighborhood park site and the community park site. Neighborhood Park One is the subject of this Agreement.

C. Neighborhood Park One is proposed to be developed upon a portion of Seller's property in Subarea III. The description of Seller's Property is attached hereto as Exhibit "C" (the "Property"). The Legal description of the proposed 5 acre Neighborhood Park One site is attached hereto as Exhibit "D" ("Park Site").

D. Seller wishes to sell to Buyer and Buyer wishes to purchase from Seller that certain portion of the Property consisting of the Park Site.

DOCUMENT NO. 00-18579-1

FILED SEP 08 1998
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the recitals set forth above and the mutual covenants, terms and conditions contained herein, Parties agree as set forth below.

1. Agreement to Buy and Sell. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, a 5 acre Park Site located in the City of San Diego, County of San Diego, State of California.

2. Purchase Price. The Purchase Price shall consist of the following components: (i) the market value of the Park Site as of the date the application was deemed complete for the filing of the tentative subdivision map for portions of the Property which include the Park Site ("TM Filing Date") as established by appraisal pursuant to Section 4 below; plus (ii) the amount of all real property taxes allocable to the Park Site from the TM Filing Date to close of escrow; (iii) any costs incurred by the Seller in the maintenance of the Park Site from the TM Filing Date to the close of escrow; plus (iv) the amount of all interest costs on loans covering the Property and allocable to the Park Site from the TM Filing Date to close of escrow. Said total amount shall hereinafter be referred to as the "Purchase Price".

3. Method of Payment. The Purchase Price shall be payable in cash upon the close of escrow as defined in Section 7(a) below.

4. Appraisal Method. If Buyer and Seller do not agree on the market value of the Park Site within 15 days after Buyer gives its notice pursuant to Paragraph 7(c), then the market value shall be determined by appraisal. In that case, both parties shall attempt to agree on a mutually acceptable appraiser chosen from the then current list of City approved Real Estate Appraisers who will determine the market value of the Park Site. In the event the parties cannot agree upon a mutually acceptable appraiser, then each party will choose an appraiser from the above-mentioned list. The two appraisers shall then choose a third appraiser who will determine the Park Site's market value. Market value shall be based on the highest and best private use of the Property as though the Park Site were part of a larger parcel (identified as the Property) and as though the Property were raw, unsubdivided acreage at the TM Filing Date. The cost of the appraisal shall be split equally between the Parties.

5. Construction Cost Reimbursement. Should the close of escrow, as defined in Section 7(a) below, be concurrent with, or subsequent to, the development of the Property and should the Seller install, or cause to be installed, at its expense, and at its option, the grading of the Park Site and/or the adjacent frontage street and/or utilities to serve the Park Site, Buyer will reimburse, upon close of escrow, the costs to Seller together with interest at the PFFP Rate from the date of expenditure to the date of reimbursement of such infrastructure and grading specifically limited to the following:

(a) Street Improvements. One-half width of the total future street improvements limited to paving, sidewalks, curb and gutter, storm drains and storm drain facilities fronting the Park Site only.

(b) Utilities. Up to one-half the cost of utility installation along the frontage of the Park Site only, necessary to provide direct service and benefit to the Park Site.

(c) Grading. Grading costs limited to those required for construction of the Park Site and street improvements only.

(d) Mitigation. All mitigation required by approvals granted for the Property but limited to the Park Site and the abutting 1/2 width street improvement areas.

(e) administrative costs to be mutually agreed upon but not to exceed fifteen percent of the total of costs associated with (a) through (d) above.

The reimbursement of the above costs will only be a requirement of the Buyer if the Buyer has been given the opportunity to review the plans and estimated construction costs, for the Park Site, prior to an award of contract for such construction. Buyer shall have fifteen (15) calendar days in order to disapprove of said costs in writing. If Buyer disapproves in writing of such costs within the allowed time period, Seller may, at its option, deliver the Park Site to Buyer in an unfinished and unimproved condition.

Any such construction reimbursement amounts will be made through funds from the Subarea III Public Facilities Financing Plan and Facilities Benefit Assessment approved by the City Council on JUL 28 1998 by Resolution No. R-290522 ("PFFP"). Should the PFFP have insufficient funds available to reimburse Seller such construction costs when incurred, Seller may receive credit for PFFP fees against all or part of such construction costs.

6. Reserved Rights.

(a) Use of Park Site. While this Agreement is in effect, and prior to the close of escrow for the Park Site, Seller reserves to itself, its agents, successors, assigns, and personal representatives all rights accruing from its ownership of the Park Site including, without limitation, unrestricted use, access and utilization of the Park Site, so long as legally permitted and subject to the terms of this Agreement.

(b) Legal Description. Seller further reserves the right to amend the legal description of Property and the Park Site (Exhibits "C" and "D" attached hereto) as further specified in paragraph 17 hereto.

(c) In the event any property owner within a subarea in the City's North City Future Urbanizing Area negotiates a public facility site purchase agreement with Buyer whose terms are substantially different from the terms of this Agreement, Seller shall have the option at its sole and exclusive discretion to cause this Agreement to be amended in accordance with such terms.

7. Escrow and Closing.

(a) Closing Date. Subject to possible extension as expressly provided in Subparagraph (b), below, pursuant to the PFFP acquisition and development schedule for the Park Site, the close of escrow shall be on or before June 30, 2004 ("Closing Date").

(b) Extension Of Closing Date. Upon mutual consent of Parties hereto, the date for the Close of Escrow may be extended commensurate with Buyer and Seller's estimates that acquisition funds will be available as provided in any revised or updated PFFP, provided, however, that in no event may the Closing Date be extended 90 calendar days beyond the Closing Date without Seller's written consent.

(c) Opening of Escrow. At such time as Buyer desires to complete the purchase of the Park Site, but in no case later than 120 calendar days prior to the Closing Date, Buyer shall deliver written notice of intent to close escrow to Seller and to Chicago Title Company ("Escrow Holder"), and Buyer shall concurrently deliver a fully signed copy of this Agreement to Escrow Holder which, along with any supplemental written escrow instructions signed by Buyer and Seller, shall constitute the Escrow Instructions. Buyer shall give such notice at least one hundred twenty (120) days before the Closing Date specified in subparagraph (a), as such Closing Date may be extended pursuant to subparagraph (b). Escrow shall close within one hundred twenty (120) days after Buyer's delivery of such notice, but in no event later than the Closing Date specified in subparagraph (a), above, or as such Closing Date may be extended pursuant to subparagraph (b). Buyer agrees to close escrow as soon as reasonably possible after the acquisition financing is available, but Buyer acknowledges that its obligation to purchase the Park Site is not contingent on the availability of such financing. If funding is unavailable and the City elects to purchase the Park Site then Seller may accept, at its sole and exclusive discretion, credit for PFFP fees against all or part of such Purchase Price. Buyer and Seller agree to execute and deliver any reasonable supplemental escrow instructions of Escrow Holder or other instruments as may reasonably be required by Escrow Holder to consummate this transaction. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control as between Buyer and Seller.

8. Condition of Title. It shall be a condition to the Close of Escrow that title to the Park Site shall be conveyed to Buyer by Seller by Grant Deed subject only to the following approved condition of title:

(a) A lien to secure payment of real estate taxes and assessment, not delinquent.

(b) The lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with section 75 of the California Revenue and Taxation Code.

(c) Building, building line, use or occupancy restrictions and zoning and building laws and ordinances of the federal, state, municipal, city and other governmental authorities having jurisdiction over the Park Site.

(d) All public rights of way, utility easements and other matters of record or which would be disclosed by an inspection or survey of the Park Site.

Notwithstanding anything herein which may provide to the contrary, Seller agrees to pay and discharge upon close of escrow all deeds of trust, mortgages, mechanics' liens, judgments and attachment liens and other encumbrances securing an obligation to pay money which exists as of the date hereof or are created or suffered by Seller (other than non-delinquent taxes, special assessments, and owners' association assessments [which are to be prorated as provided herein] and liens and encumbrances created or suffered by Buyer).

9. Conditions to Close of Escrow.

(a) Conditions to Sellers Obligations. For the benefit of Seller the close of escrow shall be conditioned upon the occurrence and/or satisfaction of each of the following conditions (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions by written waiver):

i. approval of the Subarea Plan and a Phase Shift by the City Council prior to November 1998; and,

ii. approval by the voters of a phase shift for Subarea III at a city-wide election on November 3, 1998; and,

iii. the Subarea Plan becoming effective and implementable no later than November 4, 1998.

(b) Buyers Obligations. Buyer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Buyer.

10. Deposits by Seller. At least one (1) day prior to the Close of Escrow, Seller shall deposit or cause to be deposited with Escrow Holder the following documents and instruments:

(a) Grant Deed. The Grand Deed in a form substantially identical to Exhibit "E" attached hereto conveying the Park Site to Buyer duly executed by Seller, acknowledged and in recordable form, and;

(b) Proration, Fees and Costs. The amount, if any, required of Seller under Paragraph 12 of this Agreement and under any other provision of this Agreement, shall be paid out of the funds deposited by Buyer with Escrow Holder and otherwise due Seller at the close of escrow pursuant to this Agreement.

11. Deposits by Buyer. At least one (1) day prior to the close of escrow, Buyer shall deposit or cause to be deposited with Escrow Holder the following:

(a) Purchase Price Balance. Cash in the amount of the Purchase Price, and;

(b) Prorations, Fees and Costs. The amount, if any, required of Buyer under Paragraphs 12 and 13 of this Agreement and any other amounts payable upon the close of escrow under any other provision of this Agreement, and;

(c) Documents. A fully executed acceptance by City with respect to the Grant Deed and an executed and certified resolution of the City Council authorizing acceptance of the Park Site pursuant to the Grant Deed.

For all purposes herein, "cash" shall mean: (i) currency of the United States of America; (ii) cashier's check currently dated and payable to Escrow Holder or Seller, or (iii) wire transferred funds credited to Escrow Holder or Sellers bank account.

12. Costs and Expenses. The cost and expense of a standard form CLTA Owner's Title Policy shall be paid by Seller. Any additional coverages or endorsements requested by Buyer, shall be paid by Buyer. The escrow fee of Escrow Holder shall be shared equally by Seller and Buyer. Buyer shall pay all documentary transfer taxes payable in connection with the recordation of the Grant Deed. Buyer and Seller shall pay, respectively, the Escrow Holder's customary charges to buyers and sellers for document drafting, recording and miscellaneous charges. If, as a result of no fault of Buyer or Seller, Escrow fails to close, Buyer and Seller shall share equally all of Escrow Holders and Title Company's cancellation fees and charges.

13. Reimbursements. As a portion of the Purchase Price, Buyer shall reimburse Seller, at close of escrow, the following items: (i) the amount of all real property taxes allocable to the Park Site from the TM Filing Date to close of escrow; (ii) any costs incurred by the Seller in the maintenance of the Park Site from the TM Filing Date to the close of escrow; plus (iii) the amount of all interest costs on loans covering the portion of the Property and allocable to the Park Site from the TM Filing Date to close of escrow. Any current or outstanding Taxes, not including any delinquency fees or late charges, shall be paid by Buyer.

14. Disbursements and Other Actions by Escrow Holder. Upon the close of escrow, the Escrow Holder shall promptly undertake all of the following in the manner indicated:

(a) Prorations. Prorate (i.e. apportion) all matters referenced above based upon the statement delivered into Escrow signed by the Parties.

(b) Recording. Cause the Grant Deed and any other documents which the parties hereto may mutually direct, to be recorded in the Official Records of San Diego County, California.

(c) Funds. Disburse from funds deposited by Buyer with Escrow Holder towards payment of all items chargeable to the account of Buyer pursuant hereto in payment of such costs, including, without limitation, the payment of the Purchase Price to Seller, and disburse the balance of such funds, if any, to Buyer.

(d) Documents. Deliver all required and agreed upon documents pursuant to this Agreement to the Parties.

(e) Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

15. Seller's Representations and Warranties. Buyer acknowledges and agrees that except as set forth herein, Seller has made absolutely no representation or warranties regarding the Park Site, including, without limitation, its condition, past use, or suitability for Buyer's intended use, and that Buyer is purchasing the Park Site on an "AS-IS" basis. Notwithstanding the foregoing, Seller makes the following representations to Buyer: Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and to the execution, delivery and performance of this Agreement; Seller has no actual knowledge of any Hazardous Materials on or under the Park Site or any underground tanks on the Park Site or of any easements, leases liens or encumbrances affecting the Park Site which are not disclosed by the public records. The foregoing representation is true and the foregoing warranties and agreements are in full force and effect and binding on Seller as of the date hereof. If there is more than one party constituting the "Seller," such

representations and warranties are made severally, and not jointly. If before the Closing Date Seller discovers that any representation or warranty is untrue or misleading in any material respect, Seller shall notify Buyer and Buyer shall have the right to terminate this Agreement; in that event, Seller shall have no liability unless Seller's original representation or warranty was knowingly false or misleading.

16. Buyer's Covenants, Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Park Site to Buyer, Buyer makes the following covenants, representations and warranties.

(a) Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

(b) "AS-IS" Nature of Sale. Buyer acknowledges and agrees that except as set forth herein, Seller has not made, does not make and specifically negates and disclaims any representations, warranties, or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (i) the value, nature, quality of condition of the Park Site, including, without limitation, the water, soil and geology, (ii) the suitability of the Park Site for any and all activities and uses which Buyer may conduct thereon; (iii) the compliance of or by the Park Site or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Park Site; (v) the manner, quality, state of repair or lack of repair of the Park Site; or (vi) any other matter with respect to the Park Site, and specifically (except as set forth herein) that Seller has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R., Part 261, or the disposal or existence, in or on the Park Site, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The substances, wastes and materials which are regulated by the foregoing laws or any other state and/or federal laws are herein referred to as "Hazardous Materials.") Buyer further acknowledges and agrees that any information provided or to be provided by or on behalf of Seller with respect to the Park Site was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of

such information. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Park Site, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Buyer hereby acknowledges and agrees that the sale of the Park Site as provided for herein is made on an "AS-IS" condition and basis with all faults.

(c) The representations and warranties of Buyer and Seller set forth in this Agreement shall be true on and as of the Close of Escrow and shall survive the closing.

(d) City represents and warrants that the conveyance of the park land to the City is exempt from the mapping requirements of the California Subdivision Map Act.

17. Legal Description Amendment. Buyer and Seller acknowledge that the legal description of Property and the Park Site is based on information used to identify generally the Park Site within the Property. Such legal descriptions are not precise, thus it is expected that more detailed information may be used to delineate the Park Site on a tentative map submitted to the City in the future in conjunction with development applications. Therefore, this Agreement does not preclude, and contemplates that the Parties will amend the legal descriptions attached as Exhibit "C" and "D" hereto, upon the recording of a final map approved by the City.

18. Damage or Condemnation Prior to Closing. Seller shall promptly notify Buyer of any material casualty to the Park Site or any condemnation proceeding commenced prior to the Close of Escrow of which Seller obtains actual knowledge. If any such damage or proceeding relates to or may result in the loss of any material portion of the Park Site, Buyer may, at its option, elect either to: (i) terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder, or (ii) continue this Agreement in effect, in which event upon the Close of Escrow, Buyer shall be entitled to any compensation, awards, or other payments or relief resulting from such casualty or condemnation proceeding up to the amount of the purchase price, with any amounts exceeding such purchase price to be returned to Seller.

19. Termination. This Agreement shall terminate in the event that such November 3, 1998, phase shift ballot measure is successfully challenged in a court of law resulting in the Property having a designation of "Future Urbanizing" or its equivalent.

20. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, delivered by reputable overnight carrier, sent by certified mail, postage prepaid, return receipt requested, or sent by telecopy, and shall be deemed received upon the earlier of (i) if personally delivered or delivered by

overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed, two (2) business days after the date of posting by the United States Post Office, (iii) if given by telecopy, when sent. Any notice, request, demand, direction or other communication sent by telecopy must be confirmed widen forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing.

To Buyer:	City of San Diego 202 "C" Street San Diego, CA 92101 Attention: City Manager Facsimile No. (619) 236-6067 Telephone No.: (619) 236-5941
To Seller:	Pardee Construction Company 10880 Wilshire Blvd., Suite 1900 Los Angeles, CA 90024
Attention:	David Lyman
Facsimile No.:	(310) 446-1292
Telephone No.:	(310) 475-3525
With a Copy to:	Seltzer Caplan Wilkins & McMahon 750 B Street, Suite 2100 San Diego, CA 92101
Attention:	Thomas F. Steinke
Facsimile No.:	(619) 685-3100
Telephone No.:	(619) 685-3003
And an additional copy to:	Pardee Construction Company 110 West C Street, Suite 2200 San Diego, CA 92101
Attention:	Michael Madigan
Facsimile No.:	(619) 231-1765
Telephone No.:	(619) 525-7245
To Escrow Holder:	Chicago Title Company 925 "B" Street San Diego, CA 92101
Attention:	Shelva Molm
Facsimile No.:	(619) 544-6229
Telephone No.:	(619) 544-6250

Notice of change of address or telephone numbers shall be given by written notice in the manner detailed in this paragraph. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

21. Brokers. Buyer and Seller each represents and warrant to the other that there will be no brokers' or finders' fees payable in respect of this transaction based upon any statement,

representation or agreement made by Buyer or Seller, respectively. If any claims for brokers' or finders fees for the consummation of this Agreement arise, then Buyer hereby agrees to indemnify, save harmless and defend Seller from and against such claims if they shall be based upon any statement or representation or agreement by Buyer, and Seller hereby agrees to indemnify, save harmless and defend Buyer if such claims shall be based upon any statement, representation or agreement made by Seller.

22. Legal Fees. In the event any action or suit is brought by a party hereto against another party hereunder by reason of any willful breach of any of the covenants on the part of the other party arising out of this Agreement, or for declaratory relief, then in that event, the prevailing party in such action or dispute shall be entitled to have and recover of and from the other party all costs and expenses of such action, including reasonable attorneys' fees.

23. Assignment. Buyer shall not assign, transfer or convey its rights and/or obligations under this Agreement and/or with respect to the Park Site without the prior written consent of Seller, which consent Seller may withhold in its absolute discretion. Any attempted assignment without the prior written consent of Seller shall be void and Buyer shall be deemed in default hereunder. Any permitted assignments shall not relieve the assigning party from its liability under this Agreement.

24. Buyers Entry Onto Property. While this Agreement is in effect, Buyer, its agents, contractors and subcontractors shall have the right to enter upon the Park Site, at reasonable times during ordinary business hours and upon 48 hours prior written notice to Seller, to make any and all inspections and tests as Buyer reasonably deems desirable and which may be accomplished without causing any alteration or damage to the Park Site. Buyer agrees to indemnify, defend and hold Seller and the Property harmless from any and all costs, loss, liability, damages or expenses, of any kind or nature, arising out of or resulting from such entry. The foregoing indemnity and defense obligation of Buyer shall survive the termination and/or full performance of this Agreement.

25. Miscellaneous.

(a) Survival of Covenants. The covenants, representations and warranties of both Buyer and Seller set forth in this Agreement shall survive the recordation of the Grant Deed and the Close of Escrow.

(b) Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instructions and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use their best efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

(c) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

(d) Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

(e) No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate The parties hereto, to any person or entity other than the Parties hereto.

(f) Exhibits and Schedules. The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference.

(g) Amendment to this Agreement. Except as specified in paragraph 17 hereto, the terms of this Agreement may not be modified or amended except by an instruct in writing executed by the Parties hereto.

(h) Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof

(i) Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California

(j) Fees and Other Expanses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

(k) Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by the Party hereto, or by or to any employee, officer, agent or representative of the Party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(l) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

26. Indemnification of Escrow Holder.

(a) If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold Escrow Holder free and harmless from any loss or expense, including attorneys' fees, that may be suffered by it by reason thereof except for losses or expenses as may arise from Escrow Holder's negligent or willful misconduct. If conflicting demands are made or notices served upon Escrow Holder with respect to this Agreement, the parties expressly agree that Escrow Holder shall be entitled to file a suit in interpleader and obtain an order from the court requiring the Parties to interplead and litigate their several claims and rights among themselves. Upon the filing of the action in interpleader, Escrow Holder shall be fully released and discharged from any obligations imposed upon it by this Agreement; and

(b) Escrow Holder shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure to comply with any of the provisions of any agreement, contract or other instrument filed with Escrow Holder or referred to herein. Escrow Holder's duties hereunder shall be limited to the safekeeping of all moneys, instruments or other documents received by it as Escrow Holder, and for their disposition in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

"BUYER"

City Of San Diego
202"C" Street
San Diego, CA 92101

By: [signature]

Name: Tina P. Christiansen

Title: Acting Director, CED

Approved as to form and legality
this 9th day of Oct, 1995
CASEY GWINN, City Attorney

By [signature]
Deputy City Attorney

[Signatures Continued on Next Page]

"SELLER"

Pardee Construction Company
10880 Wilshire Blvd., Suite 1900
Los Angeles, CA 90024

Signature: _____

Name: Michael D. Madigan

Title: Senior Vice President
PARDEE CONSTRUCTION COMPANY

Address: 110 West "C" Street, Suite 2200
San Diego, CA 92101

EXHIBIT B

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of SAN DIEGO

On September 29, 1998 (Date) before me, Edythe E. Goff, Notary Public (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared MICHAEL D. MADIGAN (Name(s) of Signer(s)),

☒ personally known to me – OR – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

EDYTHE E. GOFF
Commission # 1130620
Notary Public — California
San Diego County
My Comm. Expires Mar 23, 2001

WITNESS my hand and official seal.

Edythe E. Goff
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: PACIFIC HIGHLANDS RANCH - SUBAREA III NCFUA NEIGHBORHOOD PARK SITE (NP1) PURCHASE AGREEMENT

Document Date: September 8, 1998 Number of Pages: 14 (plus ordinance #0-18579

Signer(s) Other Than Named Above: not yet signed by City of San Diego

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael D. Madigan

☐ Individual
☒ Corporate Officer
Title(s): Sr. Vice President
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

Pardee Construction Company

Signer's Name:

☐ Individual
☐ Corporate Officer
Title(s):
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing:

© 1995 National Notary Association • 8236 Remmet Ave., P.O. Box 7184 • Canoga Park, CA 91309-7184 Prod. No. 5907 Reorder: Call Toll-Free 1-800-876-6827

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EXHIBIT C

(R-2003-305)

RESOLUTION NUMBER R-297087

ADOPTED ON SEP 24 2002

WHEREAS, Pardee Homes, Applicant, and Lattitude 33 Planning and Engineering, Engineer, submitted by an application to the City of San Diego for a vesting tentative map (Vesting Tentative Map No. 7248 for the Pacific Highlands Ranch Units 5-11 project) and street and easement vacations, located on the north east corner of Black Mountain Road and Carmel Valley Road between Del Mar Heights Road and Rancho Santa Fe Farms Road, and legally described as Sections 8, 9, and 16, Township 14 South, Range 3 West, San Bernardino Base Meridian, in the Pacific Highlands Ranch Subarea Plan area, in the RS-1-11, RS-1-13, RS-1-14, RX-1-1, RT-1-2, OC-1-1, and AR-1-1 zones; and

WHEREAS, on August 1, 2002, the Planning Commission of the City of San Diego considered Vesting Tentative Map No. 7248, and pursuant to Resolution No. 3290-3-PC voted to recommend City Council approval of the map; and

WHEREAS, the matter was set for public hearing on SEP 24 2002, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Vesting Tentative Map No. 7248:

1. The map proposes the subdivision of a 451.6-acre site into 1,000 Residential Lots, 108 affordable housing units in Unit 11, six Multiple Habitat Planning Area [MHPA] Open Space Lots, seven Water Quality Basin Lots, twenty-six H.O.A/Park Lots, one Unit 7 Recreation Center Lot, one Unit 5 Elementary School Lot, one Unit 5 Park Lot, five Monument Sign Lots, two Urban Amenity Open Space Lots for residential and associated development. This type of development is consistent with the General Plan and the Pacific

Highlands Ranch Subarea III Planning Area of the North City Future Urbanizing Area [NCFUA] Community Plan, which designate the area for residential use. The proposed map will retain the community's character by encouraging orderly, sequential development compatible in its intensity with surrounding existing and future land development.

2. The design and proposed improvements for the map are consistent with the zoning/ development regulations of the RS-1-11, RS-1-13, RS-1-14, RX-1-1, RT-1-2, OC-1-1 and AR-1-1 zones in that:

   a. All lots have minimum frontage on dedicated streets which are open to and usable by vehicular traffic, as allowed under Planned Development Permit [PDP] No. 7250 and Site Development Permit [SDP] No. 7251.

   b. All lots meet the minimum dimension requirements of the RS-1-11, RS-1-13, RS-1-14, RX-1-1, RT-1-2, OX-1-1, AR-1-1 zones as allowed under a PDP and SDP.

   c. All lots are designed so that required improvements do not result in nonconforming lots in respect to building area, setbacks, side yard and rear yard regulations, as allowed under a PDP and SDP.

   d. Development of the site is controlled by Planned Development Permit No. 7250 and Site Development Permit No. 7251.

3. The design and proposed improvements for the subdivision are consistent with California Government Code section 66473.1 regarding the design of the subdivision for future passive or natural heating or cooling opportunities.

4. The site is physically suitable for residential development. The harmony in scale, height, bulk, density, and coverage of development creates a compatible physical relationship to surrounding properties for which this area has been planned.

5. The site is physically suitable for the proposed density of development. This is consistent with the community plan, which provides for residential uses.

6. The permittee shall comply with the Mitigation, Monitoring and Reporting Program [MMRP] as specified in the Pacific Highlands Ranch Units 5-11 Findings (LDR No. 41-0185) to the Pacific Highlands Ranch Subarea Plan Master EIR (LDR No. 96-7918), to the satisfaction of the Environmental Review Manager and City Manager. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas: Transportation/Circulation, Biological Resources, Hydrology/Water Quality, Landform Alteration/Visual Quality, Paleontological Resources, Public Facilities/Services, Water and Sewer Service, Solid Waste, Noise Levels and Public Safety.

7. The design of the subdivision and the type of improvements will not likely cause serious public health problems, in as much as needed public services and facilities are available/or required by condition of this map to provide for water and sewage facilities, as well as other related public services.

8. The design of the subdivision and the type of improvements are such that they will not conflict with any easements, acquired by the public at large, for access through or use of property within the proposed subdivision, as demonstrated by the City Engineer's request for public dedications and adequate improvement on the proposed subdivision map.

9. The Planning Commission has reviewed the adopted Housing Element, the Progress Guide, and the General Plan of the City of San Diego, and hereby finds, pursuant to Government Code section 66412.3, that the housing needs of the region are being met because residential development has been planned for the area and public services programmed for installation, as determined by the City Engineer, in accordance with financing and environmental policies of the City Council.

The above findings are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66434(g), a portion of Old Survey No. 57, known as Black Mountain Road, dedicated by County of San Diego Board of Supervisors Minutes in Book 7, Page 200, dated February 27, 1886, as a portion oft he public street, granted to the City of San Diego by grant deeds recorded September 1, 1982, as file No. 82-271463 and file No. 82-271466, located within the project boundaries as shown in Vesting Tentative Map No. 7248, shall be vacated, contingent upon the recordation of the approved final map for the project.

BE IT FURTHER RESOLVED, that pursuant to California Government Code section 66434(g), a portion of the water easement granted to the City of San Diego per document recorded January 7, 1972, as file No. 72-5264, a portion of the water easement granted to the City of San Diego per document recorded March 31, 1971, as file No. 6145, and a portion of the water easement granted to the City of San Diego per documents recorded March 17, 1971, as file

numbers 50373, 50374, 50375 and 50376, located within the project boundaries as shown in Vesting Tentative Map No. 7248, shall be vacated, contingent upon the recordation of the approved final map for the project.

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Vesting Tentative Map No. 7248 is granted to Pardee Homes, Applicant and Latitude 33 Planning & Engineering, Engineer, subject to the conditions attached hereto and made a part hereof.

APPROVED: CASEY GWINN, City Attorney

By

Mary Jo Lanzafame
Deputy City Attorney

MJL:pev
8/26/02
Or.Dept:Clerk
R-2003-305
Form=tmr-residential.frm

R-297087

CITY COUNCIL CONDITIONS FOR VESTING TENTATIVE MAP NO. 7248
PACIFIC HIGHLANDS RANCH UNITS 5-11 PROJECT
ADOPTED BY RESOLUTION NO. R-297087 ON SEP 24 2002

1. Unless otherwise extended, this vesting tentative map will expire SEP 24 2005.

2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the first final map, unless otherwise noted.

3. Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this vesting tentative map, may protest the imposition within ninety days of the approval of this tentative map by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

4. The final map shall conform to the provisions of Planned Development Permit [PDP] No. 7250 and Site Development Permit [SDP] No. 7251.

5. The "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, shall be made a condition of map approval. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

   All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. 769830.

6. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).

7. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."

8. The subdivider has requested approval to file final maps out of numerical sequence. This request is approved, subject to the provision that the City Engineer can review the off-site improvements in connection with each unit

9. The subdivider has reserved the right to record multiple final maps over the area shown on the approved tentative map. In accordance with Article 66456.1of the Subdivision Map Act, the City Engineer shall retain the authority to review the areas of the tentative map the subdivider is including in each final map. The City Engineer may impose reasonable conditions relating to the filing of multiple final maps, in order to provide for orderly development, such as off-site public improvements, that shall become requirements of final map approval for a particular unit.

10. Every final map shall:

    a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.

    b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

11. The approval of this vesting tentative map by the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies, including, but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC § 1531 et seq.).

12. ENGINEERING CONDITIONS

    a. The subdivider shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

    b. The preliminary drainage system for this development is approved per condition of approval of the "Runoff Management Plan" provided that, in the final design, the following requirement is satisfied:

       A hydrology report must be developed using the Rational and Modified Rational Method for each unit within Pacific Highlands Ranch, subject to the approval of the City Engineer.

    c. All drainage facilities within this subdivision and outside of the public right-of-way shall be private and privately maintained.

    d. A portion of this project has been identified as being within the Floodway of a Special Flood Hazard Area (Gonzales Canyon). No increases to base flood elevations are allowed. A Registered Professional Engineer shall submit a no rise certification along with a detailed engineering analysis to substantiate the certification. The analysis is subject to the approval of the City Engineer.

e. If the engineering analysis shows the development will alter the floodway or floodplain boundaries of the Special Flood Hazard Area, the developer must obtain a Conditional Letter of Map Revision [CLMR] from the Federal Emergency Management Agency prior to issuance of any grading, engineering, or building permits. The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.

f. No certificates of occupancy will be granted or bonds released for development associated with this project for those portions that lie within the Floodway of a Special Floor Hazard Area until a Letter of Map Revision [LOMR] is obtained from FEMA. The LOMR is issued based upon as-built site conditions, therefore, the applicant must allow time to complete this process. The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.

g. All fill placed within the Special Flood Hazard Area must be compacted to 95% relative compaction.

h. The developer shall denote on the final map and the improvement plans "Subject to Inundation" all areas lower than the base flood elevation plus 1 foot.

i. The developer shall enter into an agreement with the City waiving the right to oppose a special assessment initiated for the construction of flood control facilities and their perpetual maintenance.

j. The developer shall grant a flowage easement, satisfactory to the City Engineer.

13. TRANSPORTATION CONDITIONS

a. Prior to the recordation of the first final map, the applicant shall assure by permit and bond the construction of Del Mar Heights Road from Old Carmel Valley Road to Carmel Valley Road as a four lane modified major street. The applicant shall dedicate 122 feet of right-of-way, and shall provide 102 feet of curb to curb, curb, gutter and a 5 foot sidewalk within a 10 feet curb to property line distance satisfactory to the city engineer..

b. Prior to the recordation of the first final map, the applicant shall assure by permit and bond the construction of Carmel Valley Road from SR-56 to Subarea IV/Torrey Highlands boundary as a six lane/four lane modified major street with a minimum curb to curb width of 126 feet within 146 feet of right-of-way then transitioning to a minimum curb to curb width of 102 feet within 128 feet of

right-of-way east of Del Mar Heights Road, satisfactory to the City Engineer. Construction of Carmel Valley Road off-site from easterly subdivision boundary to Subarea IV/Torrey Highlands boundary will also be required as a condition of approval for any development within this area. The subdivider may request the City Council to establish a Reimbursement District to pay for this portion of construction costs and right-of-way acquisition in accordance with Municipal Code, when the property within the Reimbursement District is subdivided or otherwise developed.

c. Prior to the recordation of the first final map, the applicant shall assure by permit and bond the construction of the traffic signal at the intersection of Carmel Valley Road and Street "A," satisfactory to the City Engineer.

d. Prior to the recordation of the first final map, the applicant shall assure by permit and bond the construction of the traffic signal at the intersection of Carmel Valley Road and Del Mar Heights Road, satisfactory to the City Engineer.

e. Prior to the recordation of the first final map, the applicant shall assure by permit and bond the construction of the traffic signal at the intersection of Carmel Valley Road and Street "B," satisfactory to the City Engineer.

f. Prior to the recordation of the first final map, the applicant shall assure by permit and bond the construction of the traffic signal at the intersection of Carmel Valley Road and Street "C," satisfactory to the City Engineer.

g. Prior to the recordation of the first final map, the applicant shall assure by permit and bond the construction of the traffic signal at the intersection of Carmel Valley Road and Rancho Santa Fe Farms Road, satisfactory to the City Engineer.

h. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of the traffic signal at the intersection of Old Carmel Valley Road and Del Mar Heights Road, satisfactory to the City Engineer.

i. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of the traffic signal at the intersection of Street "A" and Elementary School access, satisfactory to the City Engineer. The applicant shall also assure the establishment of a school zone in the vicinity of the school's site, satisfactory to the City Engineer. The school zone should include appropriate pavement markings, signage, signing and traffic control devices.

j. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of Street "A" from Carmel Valley Road to private

drive "A" as a modified 4-lane collector street. The applicant shall dedicate 148 feet of right-of-way and shall provide 78 feet of pavement including curb, gutter and a 5 foot sidewalk with a 15-50 foot curb to property line distance, satisfactory to the City Engineer.

k. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of Street "A" as a two-lane modified collector street north of private drive A . The applicant shall provide 70 feet curb to curb pavement width within 140 feet of right-of-way including curb, gutter and a 5' sidewalk with 15-55 foot curb to property line distance, satisfactory to the City Engineer

l. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of the cul-de-sac at the northern end of Street "A" with a minimum pavement radius of 50' including curb, gutter and a 5 feet sidewalk within a 60 feet right-of-way radius satisfactory to the City Engineer.

m. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of Street "B" from Carmel Valley Road to north for a distance of at least 150 feet as a two lane collector street. The applicant shall dedicate 60 feet of right-of-way, an additional 5 feet General Utility Easement [GUE] and shall provide 40 feet of pavement including curb, gutter and a 5 foot sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.

n. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of Street "C" from Carmel Valley Road to Street "O" as a modified two lane collector street. The applicant shall dedicate 106 feet of right-of-way and shall provide 52 feet curb to curb pavement including a 12 feet median, curb, gutter and a 5 foot sidewalk with a 12-42 foot curb to property line distance, satisfactory to the City Engineer.

o. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of Street "C" from Street "O" to Street "S" as a modified two lane collector street. The applicant shall dedicate 114 feet of right-of-way and shall provide 52 feet curb to curb pavement including a 12 feet median, curb, gutter and a 5 foot sidewalk within a 20-42 foot curb to property line distance, satisfactory to the City Engineer.

p. The applicant shall provide a minimum of 100 foot curve radius shown on the site plans for all proposed public residential streets, satisfactory to the City Engineer.

q. The applicant shall construct the private driveways of Units 9A and 9B with a minimum pavement width of 28 feet within 45 feet of parkway, satisfactory to the City Engineer.

r. The applicant shall provide and pave a 20 feet triangular area at the corner of any intersection of two alleys, satisfactory to the City Engineer.

s. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of Street "A" north of the Urban Amenity, Street "B" north of private drive "G," Street "D," Street "E," Street "F," Street "G," Street "H," Street "I" and Street "J" as a two lane residential street. The applicant shall dedicate 54' of right-of-way and shall provide 34' of pavement including curb, gutter and a 5 foot sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.

t. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of street "K," street "L," Street "M," Street "O," Street "P," Street "Q," Street "R," Street "S," Street "T," Street "U," Street "V," and Street "X," as two lane residential streets. The applicant shall dedicate 54' of right-of-way and shall provide 34' of pavement including curb, gutter and a 5 foot sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.

u. Prior to the recordation of the first final map, the applicant shall assure by permit and bond, the construction of Street "G" from Street "A" to Street "D" as a modified two-lane collector with a 50' curb to curb pavement within 90 feet of right-of-way including curb, gutter and a 5 foot sidewalk within 20 curb to property line distance, satisfactory to the City Engineer.

14. WATER REQUIREMENTS:

a. Prior to the approval of any public improvement drawings, the Subdivider shall provide an acceptable water study satisfactory to the Water Department Director. The study shall plan the pressure zone(s) and water facilities necessary to serve this development consistent with previously accepted studies in this area maintaining redundancy throughout phasing of construction. If phasing of the development is proposed, then a phasing plan shall be included in the study with the affordable housing site in the first phase.

b. Prior to the approval of any public improvement drawings, the Subdivider shall provide an acceptable recycled water study, consistent with previously accepted studies in this area, satisfactory to the Water Department Director.

c. The Subdivider shall design and construct all potable and recycled water facilities as required in the accepted water studies for this area, necessary to serve this development in a manner satisfactory to the Water Department Director. Water facilities, as shown on the approved tentative map, will require modification based on the accepted water studies and standards.

d. The Subdivider shall install fire hydrants at locations satisfactory to the Fire Department, the Water Department and the City Engineer. If more than two (2) fire hydrants or thirty (30) dwelling units are located on a dead-end main then the Subdivider shall design and construct a redundant water system satisfactory to the Water Department Director.

e. The Subdivider shall, if required, install parallel water facilities with a minimum separation of 20-feet, satisfactory to the Water Department Director.

f. The Subdivider shall grant adequate water easements, including vehicular access to each appurtenance (meters, blow offs, valves, fire hydrants, etc.), for all public water facilities that are not located within fully improved public rights-of-way, satisfactory to the Water Department Director. Easements shall be located within single lots.

g. Grants of water easements shall have the following minimum widths: water mains with no appurtenances including valves - 15 feet; water mains with services or fire hydrants - 30 feet with 24 feet of paving and full height curbs. Easements, as shown on the approved tentative map, will require modification based on standards and final engineering. If sufficient easement area cannot be provided to allow for operation and maintenance of public facilities, then the Subdivider shall install a private water system.

h. The Subdivider shall process encroachment maintenance and removal agreements for all acceptable private encroachments, including, but not limited to, structures, enhanced paving, or landscaping, into any easement. No structures or landscaping of any kind shall be installed in or over any vehicular access roadway.

i. If any portion of the subdivision will have gated access, then the Subdivider shall provide keyed access to the Water Operations Division in a manner satisfactory to the Water Department Director. The City will not be held responsible for any issues that may arise relative to the availability of keys.

j. The Subdivider agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Design Guide and City regulations, standards, and practices

pertaining thereto. Water facilities, as shown on the approved tentative map, shall be modified at final engineering to conform to standards.

15. WASTEWATER CONDITIONS

a. The developer shall enter into a Participation Agreement with the City to contribute their fair share cost for upgrading Sewer Pump Station No. 79 to accommodate sewer flows from the proposed development.

b. All proposed public sewer facilities are to be designed and constructed in accordance with established criteria in the most current City of San Diego sewer design guide. Proposed facilities that do not meet the current standards shall be private or re-designed. Re-design may include, but is not limited to, land form modification and changes to street alignments.

16. AFFORDABLE HOUSING CONDITION

a. The affordable housing requirements of PDP No. 7250 and SDP No. 7251 on file with the Development Services Department, are hereby incorporated by reference into this vesting tentative map. Prior to the recordation of any final map, the subdivider shall enter into an agreement with the Executive Director of the Housing Authority of the City of San Diego, or designee. The Affordable Housing Requirements are more thoroughly described through conditions of the accompanying PDP No. 7250 and SDP No. 7251, such permit becoming utilized upon recordation of this vesting tentative map.

17. LANDSCAPE CONDITIONS

a. Prior to (final map) any grading permit(s) the owner permittee shall enter into a Bonded Revegetation Installation Agreement for all disturbed lands and permanent BMP's to the satisfaction of the Development Services Landscape Section.

b. Prior to (final Map) any grading permit (s) the owner permittee shall provide to the City Manager a bonded Landscape Maintenance and Establishment Agreement for the establishment and long term monitoring of all disturbed lands and permanent BMP's to the satisfaction of the Development Services Landscape Section.

18. STREET AND EASEMENTS VACATION

a. The street vacation of a portion of Old Survey No. 57, known as Black Mountain Road, and the street vacation of a portion of the public street, granted to the City of San Diego by grant deed recorded September 1, 1982, as file No. 82-271463,

within subject Vesting Tentative Map, are conditioned upon approval and recordation of a final map in accordance with the Subdivision Map Act Section 66434(g).

b. The vacation of a portion of the water easements granted to the City of San Diego per document recorded January 7, 1972, as file No. 72-5264, per document recorded March 31, 1971 as file No. 61545, and per documents recorded March 17, 1971, as file numbers 50373, 50374, 50375 and 50376 are conditioned upon approval and recordation of a final map in accordance with the Subdivision Map Act section 66434(g) and upon determination of the fair market value and compensation as required by the Real Estate Assets Department.

FOR INFORMATION:

- This development may be subject to the payment of a park fee in accordance with the San Diego Municipal Code, which specifies park fees applicable in the Pacific Highlands Ranch Subarea III Planning Area of the North City Future Urbanizing Area [NCFUA] Community Plan area.

- This development may be subject to payment of a park fee prior to the filing of the final subdivision map in accordance with San Diego Municipal Code section 102.0406, et seq. This property is also subject to a building permit park fee in accordance with San Diego Municipal Code section 96.0401, et seq.

- This development may be subject to payment of School Impact Fees at the time of issuance of building permits, as provided by California Government Code section 53080(b) (Statutes of 1981, Chapter 887), in accordance with procedures established by the Director of Building Inspection.

- This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.

- This vesting Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.

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CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

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

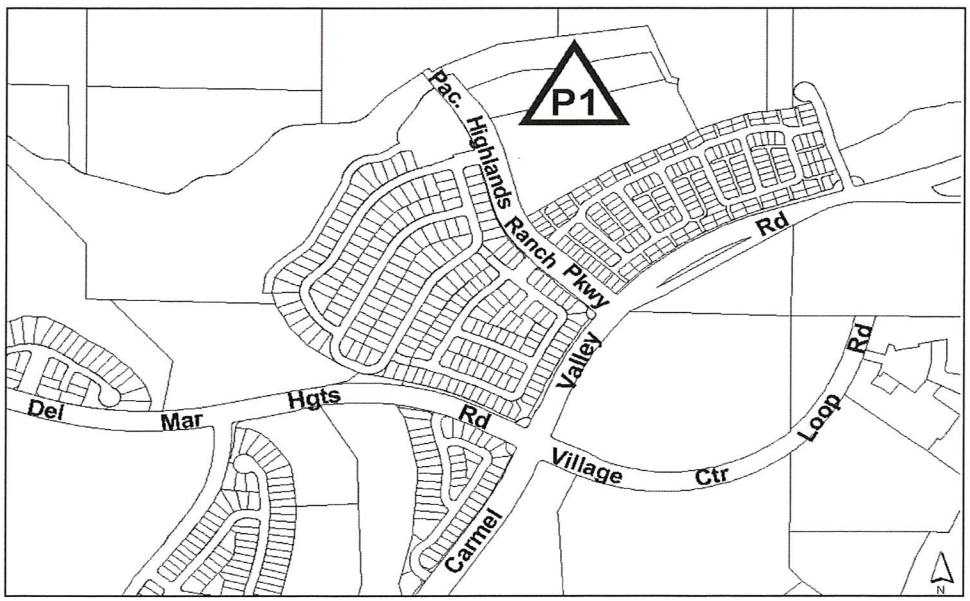
PROJECT: **P-1**

DEPARTMENT: PARK AND RECREATION
CIP, JO, or WBS #: 29-534.0/S-00994

COUNCIL DISTRICT: 1
COMMUNITY PLAN: PHR

SOURCE	**FUNDING:**	EXPENDED	CONT APPROP	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
FBA-PHR	**$7,095,000**	$2,907,261	$2,892,739	$1,295,000				
FBA-BMR								
FBA-TH								
FBA-DMM								
FBA-RP								
DEV. ADV								
DEV/SUBD								
COUNTY								
STATE								
OTHER								
UNIDEN								
TOTAL	**$7,095,000**	$2,907,261	$2,892,739	$1,295,000	$0	$0	$0	$0

SOURCE	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
FBA-PHR								
FBA-BMR								
FBA-TH								
FBA-DMM								
FBA-RP								
DEV. ADV								
DEV/SUBD								
COUNTY								
STATE								
OTHER								
UNIDEN								
TOTAL	$0	$0	$0	$0	$0	$0	$0	$0



CONTACT: DEBORAH SHARPE TELEPHONE: (619) 525-8261 EMAIL: dsharpe@sandiego.gov

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

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

		PROJECT:	**P-1**
DEPARTMENT:	PARK AND RECREATION	COUNCIL DISTRICT:	1
CIP, JO, or WBS #:	29-534.0/S-00994	COMMUNITY PLAN:	PHR

DESCRIPTION:

THIS PROJECT PROVIDES FOR THE ACQUISITION, DESIGN, AND CONSTRUCTION OF A FIVE (5.00) USABLE ACRE NEIGHBORHOOD PARK TO BE LOCATED ADJACENT TO A PROPOSED ELEMENTARY SCHOOL IN THE GONZALES CANYON AREA OF PACIFIC HIGHLANDS RANCH COMMUNITY. JOINT-USE OF RECREATIONAL FACILITIES IS INTENDED. PARK AMENITIES COULD INCLUDE TURFED MULTI-PURPOSE SPORTS FIELDS, A CHILDREN'S PLAY AREA, MULTI-PURPOSE COURTS, PICNIC FACILITIES, WALKWAYS, SECURITY LIGHTING, LANDSCAPING, AND A COMFORT STATION. THIS PROJECT ALSO INCLUDES HALF-WIDTH STREET IMPROVEMENTS FOR THE LOCAL ROADWAYS ADJACENT TO THE PARK AND UTILITIES TO SERVE THE PARK.

JUSTIFICATION:

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

FUNDING ISSUES:

NOTES:

THE SCHEDULE IS DEPENDENT UPON THE ACTUAL RATE OF DEVELOPMENT WITHIN PACIFIC HIGHLANDS RANCH. PROJECTIONS INDICATE THAT THIS COMMUNITY WILL REACH A POPULATION OF 5,000 PEOPLE IN FY 2013.

SCHEDULE:

SITE ACQUISITION OCCURRED IN DECEMBER 2010.GENERAL DEVELOPMENT PLAN IS ANTICIPATED IN FY 2013; DESIGN TO BEGIN IN FY 2014; CONSTRUCTION TO START IN FY 2015.

CONTACT: DEBORAH SHARPE TELEPHONE: (619) 525-8261 EMAIL: dsharpe@sandiego.gov

EXHIBIT E

(O-2011-15)
MEET

ORDINANCE NUMBER O- 20000

DATE OF FINAL PASSAGE OCT 26 2010

AN ORDINANCE OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR TO EXECUTE A FIRST AMENDMENT TO NEIGHBORHOOD PARK SITE (NP1) PURCHASE AGREEMENT (GONZALES CANYON NEIGHBORHOOD PARK).

WHEREAS, on September 8, 1998, the City of San Diego and Pardee Homes [Seller] entered into a purchase agreement for Project No. P-1, Gonzales Canyon Neighborhood Park (formerly Neighborhood Park One) [Project], which is on file in the Office of the City Clerk as Document No. OO-18579-1 [Purchase Agreement]; and

WHEREAS, under the Purchase Agreement, Seller is to sell the five-acre Gonzales Canyon Neighborhood Park site [Park Site] to the City, and City is to reimburse Seller for agreed upon site improvement costs; and

WHEREAS, on October 18, 2007, the San Diego City Council adopted the updated Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment for Fiscal Year 2008 [Financing Plan], which identifies the Project; and

WHEREAS, Seller is ready to sell the Park Site to the City; and

WHEREAS, Seller has completed certain improvements to the Park Site for which Seller seeks reimbursement; and

WHEREAS, the Purchase Agreement provided for a close of escrow date for the Park Site that has expired, and City and Seller desire to extend the close of escrow date to complete the purchase of the Park Site; and

WHEREAS, the First Amendment to Neighborhood Park Site (NP1) Purchase Agreement (Gonzales Canyon Neighborhood Park) [Amendment] with Seller is on file in the Office of the City Clerk as Document No. OO-20000, and sets forth amended terms and conditions for the purchase of the Park Site and reimbursement to Seller for certain site improvements to the Park Site; and

WHEREAS, an Environmental Impact Report, EIR NO. 96-7918, which included the Project, was prepared and considered for the Pacific Highlands Ranch Subarea III, and was certified on July 29, 1998 by Resolution No. R-290520; NOW, THEREFORE,

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

Section 1. That the Mayor be and hereby is authorized and empowered to execute, for and on behalf of the City, the Amendment for purchase of the Park Site in the amount of $1,966,189.91, and for reimbursement for certain site improvements in an amount not to exceed $1,027,000.00.

Section 2. That the Mayor is authorized to enter into an amendment to the Amendment to extend the Closing Date for an additional six (6) month period beyond the Closing Date identified in the Amendment if the Mayor determines such extension to be necessary.

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. This ordinance, having been introduced and adopted by a two-thirds vote of the members of the San Diego City Council pursuant to Section 99 of the Charter of the City of San Diego, shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Heidi Vonblum
Heidi K. Vonblum
Deputy City Attorney

HKV:js
07/23/10
Or.Dept:Fac.Financing
O-2011-15
Prolaw # 2010-00236

(O-2011-15)

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 19 2010.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 10.26.10
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

O- 20000

EXHIBIT E

Passed by the Council of The City of San Diego on OCT 19 2010, by the following vote:

Council Members	Yeas	Nays	Not Present	Recused
Sherri Lightner	☑	☐	☐	☐
Kevin Faulconer	☑	☐	☐	☐
Todd Gloria	☑	☐	☐	☐
Anthony Young	☑	☐	☐	☐
Carl DeMaio	☑	☐	☐	☐
Donna Frye	☑	☐	☐	☐
Marti Emerald	☑	☐	☐	☐
Ben Hueso	☑	☐	☐	☐

Date of final passage OCT 26 2010.

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 Mary Zumaya, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on OCT 05 2010, and on OCT 26 2010.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

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

(Seal)

By Mary Zumaya, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O-20000

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EXHIBIT F

Project Schedule

Pacific Highlands Ranch FBA Project P-1 Gonzales Canyon Neighborhood Park	
Activity	Schedule
Council Approval of Reimbursement Agreement	June 2012
Bid/Select Park Design Consultant	July-Sept 2012
Preliminary design and city/community comments	Sept- Feb 2013
Finalize preliminary design/update budget and schedule	March 2013
Complete Construction Drawings	April- June 2013
City approval and permit processing	June- Aug 2013
Bid/Select Construction Contractor	Sep- Dec 2013
Complete Park Construction/Begin Maintenance Period	Jan- Sept 2014
Maintenance Period	Sep- Dec 2014
Open Park	12/31/2014

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EXHIBIT G

Cost Estimate

GONZALES CANYON NEIGHBORHOOD PARK

	ITEM		COST
1	Mobilization/Demobilization	$	30,000
2	Grading		42,000
3	Soil Erosion Control & SWPPP		99,000
4	Drainage System		50,000
5	Water System		15,000
6	Surface Improvements		14,000
7	Concrete Pavement and Surfaces		274,000
8	Utility Locator (SDG&E)		2,000
9	Site Lighting & Electrical		236,000
10	Comfort Station		350,000
11	Play Structures		201,000
12	Site Furnishings		212,000
13	Park Signage		38,000
14	Irrigation System		233,000
15	Landscape Items		523,000
16	"AS-BUILT" Plans		5,000
17	Construction Staking		15,000
18	Contingency (10%)		234,000
19	General Contractor		242,000
20	City Permits & Processing Costs		154,000
21	GDP Preparation & Approval		60,000
22	Professional Services		249,000
23	Bonds/Insurance/Turnover		142,000
24	Interest		50,000
25	Administration (5%)		173,000
	Project Total	**$**	**3,643,000**

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EXHIBIT H

Project Schedule Obligations and Components

1. **Subdivider's Obligation**. To the extent required by City, Subdivider shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.

   A. *Project Initiation*. During Project initiation and design phases, Subdivider shall submit an updated project schedule on a quarterly basis to City for approval.

   B. *Construction Phase*. During Construction, Subdivider shall submit on a monthly basis any updates to the Project Schedule to the Resident Engineer with a copy to City's Facilities Financing Department. The updated schedule 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 include:

   A. *Identification of design and construction activities and their sequence*:

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

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

      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.

3. **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 of America, or other software specifically designated by City.

EXHIBIT I

Meeting Requirements

1. **Preconstruction Meeting**. Subdivider shall conduct a preconstruction meeting with its 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*. Subdivider shall ensure the preconstruction meeting is attended by Subdivider's construction contractor, the Project Superintendent, all Subdivider's major subcontractors, a representative of City's Facilities Financing Department, the City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by Subdivider or City.

   B. *Minutes*. Subdivider shall take corresponding meeting minutes and distribute copies to all attendees.

2. **Progress Meetings**. Subdivider shall conduct regular progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: Subdivider's Construction Superintendent, Subdivider's Project Manager, Subdivider's Design Consultant (on an as needed basis only), City representatives including Responsible Department representatives, Engineering and Capital Projects Project Manager and Resident Engineer.

   A. *As-Builts*. Subdivider 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 J.

   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 J.

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EXHIBIT J

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, including telephone, cable, gas and electric. RE to announce to Subdivider 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 Subdivider'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 Subdivider and the respective communication procedures between Parties.

   1.10 Safety and first aid procedures including designation of Subdivider’s safety officer.

   1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.

   1.12 Testing laboratory or agency and testing procedures.

   1.13 Establish schedule for progress meetings.

   1.14 Procedure for changes in work requested by Subdivider, 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 discursion.

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 Subdivider'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. To the extent applicable to the Project, the following special meetings shall be held:

3.1 Grading. Prior to grading the site, a **grading mini-preconstruction** meeting will be called by the RE. This meeting applies when surveying is being supplied by the City. The superintendent, the Subdivider's appropriate subcontractors, 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, the RE shall call a **roof mini-preconstruction** meeting. The superintendent, the Subdivider'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 the installation of any landscaping equipment, supplies, etc., the RE shall call **a landscaping mini-preconstruction** meeting. The superintendent, the Subdivider'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 the installation of any mechanical, electrical, plumbing, and sprinkler system equipment, the Subdivider shall call a **mini-preconstruction** meeting. The superintendent, the Subdivider'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 that the prime contractor is adequately coordinating the space of the facility so as to not impede the visual integrity of the overall product.

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

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EXHIBIT K

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 Subdivider.

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**. Subdivider 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 Subdivider's written notice, provided Subdivider has submitted complete documentation substantiating the need for such Change Order. If City fails to respond to Subdivider'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. Once a change order has been preliminarily approved by appropriate 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 may either approve or reject such Change Orders. Council Approval shall not be subject to the fourteen (14) calendar day response time set forth above in Section 3.1. Furthermore, nothing in this Agreement shall compel City Council to take any particular action.

4. **City Council Review of a Request to Increase the Estimated Cost**. The Estimated Cost may only be increased if Subdivider provides documentation showing the increase is reasonable in nature and amount, and is due to causes beyond Subdivider's control or otherwise not the result of unreasonable conduct by Subdivider which may, based on actual impact on Project and by way of non-exclusive examples only, include: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider's work; concealed conditions encountered in the completion of the Project; inability to reasonably obtain materials, equipment, labor, or additional

required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Subdivider. Subdivider 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 Subdivider's or Subdivider's agents' negligence.

EXHIBIT L

Consultant Provisions

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

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

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

officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.

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

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

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

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

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

9. **Insurance Policy Requirements**. Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all

insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement that shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements.

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

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

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

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EXHIBIT M

Design and Construction Standards

1. **Laws**. All local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including to the extent applicable 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.

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

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

2. **Standard Specifications**. Subdivider shall comply with the most current editions of the following reference specifications when designing and constructing the Project [Specifications], 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**. Subdivider's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:

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

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

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

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

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

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

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

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

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

EXHIBIT N

Certification for Title 24/ADA Compliance

PROJECT NO. P-1, GONZALES CANYON NEIGHBORHOOD PARK)

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for the Project (Project No. P-1, Gonzales Canyon Neighborhood Park) by Pardee Homes, a California Corporation, 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

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EXHIBIT O

Approval of Design, Plans, and Specifications

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

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

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

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

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

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

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

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

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EXHIBIT P

Construction Obligations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. **Permits**. The Parties acknowledge the construction work to be performed on the Project by Subdivider in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Subdivider. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Subdivider is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Subdivider in accordance with the terms of the Agreement for the work completed. All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon reimbursement as set forth above.

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

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

B. *Drug-Free Awareness Program*. The Subdivider shall establish a drug free awareness program to inform employees about all of the following:

i. The dangers of drug abuse in the work place.

ii. The policy of maintaining a drug free work place.

iii. Available drug counseling, rehabilitation, and employee assistance programs.

iv. The penalties that may be imposed upon employees for drug abuse violations.

v. In addition to section 10(A) above, the Subdivider shall post the drug free policy in a prominent place.

C. *Subdivider's Agreements*. The Subdivider further certifies that each contract for Consultant or Contractor Services for this Project shall contain language that binds the Consultant or Contractor to comply with the provisions of this 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 Q

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 Sections2.A(1) through (3) of the policy as outlined.

Signed _____

Printed Name _____

Title _____

Date _____

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EXHIBIT R

Product Submittal and Substitution

1. **Product Submittal**. Prior to the bidding process, Subdivider shall submit for City approval a list of products intended for use in the Project. Upon Subdivider's completion of plans and specifications, City will review and approve products specified therein. Subdivider shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Subdivider's receipt of submittal. 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.

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

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

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

   B. *Review*. Subdivider 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. Subdivider shall assign a submittal number. Subdivider 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. Subdivider's, or Subdivider's agent's, field samples shall be prepared at the site. Affected finish work shall not commence until Subdivider or its agents have been given a written review of the field samples.

EXHIBIT S

Extra Work Provisions

1. **Extra Work**. City may at any time prior to Final Completion order Extra Work on the Project. The sum of all Extra Work ordered shall not exceed five percent (5%) of the Estimated Cost at the time of Bid Award, without invalidating this Agreement and without notice to any surety.

   A. *Requests in Writing*. All requests for Extra Work shall be in writing, and shall be treated as and are subject to the same requirements as Change Orders. Subdivider 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**. Subdivider's and its agents' bonds, under Article XVIII of the Agreement, shall cover any Extra Work provided that the Extra Work is paid for by the Project as Reimbursable Costs and satisfies the other criteria specified herein.

3. **Reimbursement for Extra Work**. Work performed by Subdivider as Extra Work is reimbursable in the same manner described as in Article XII of the Agreement. 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**. Subdivider will be paid a reasonable allowance for overhead and profit. The allowance shall not exceed five percent (5%) and shall be added to the Subdivider’s costs for Extra Work.

5. **Impact on Project Schedule**. Subdivider shall not have an obligation to perform Extra Work that will result in a delay unless the City approves an extension of time as provided for in the Agreement.

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EXHIBIT T

Notification of Reimbursable Project

Pursuant to Section 12.1.1 of the "Reimbursement Agreement" [Agreement], adopted pursuant to Ordinance No. _____ and executed on _____, 20__, [Insert Subdivider Name] [Subdivider] 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 Subdivider],
a California limited liability company

By: _____

[Title] _____

Dated: _____

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EXHIBIT U

Inspection Schedule

Resident Engineer and Subdivider shall meet and confer prior to and during construction of the Project to establish an inspection schedule for the Project.

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EXHIBIT V

Project Deliverables

Master Contract Documents.

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

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

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

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

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

i. To the extent applicable as determined by the City, Schematic Design Documents shall include, but not be limited to the following:

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

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

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

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

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

f. Summary of Project requirements and a recommendation.

g. Artistic renderings of the Project

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

D. *Design Development Documents*. Subdivider shall prepare from the approved Schematic Design Documents, for approval by City, Design Development Documents to fix and describe the size and character of the entire Project. To the extent applicable, 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.

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

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

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

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

I. *As-Builts*. Subdivider shall provide As-Builts that meet current City requirements.

i. 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. Subdivider shall meet with City until all issues are resolved. Upon issue resolution, Subdivider shall submit a mylar set, a digital copy (PDF), and three (3) final blueline sets of As-Builts stamped by the architect/engineer of record as required by law.

ii. To the extent applicable as determined by the City, Subdivider shall include all of the following on the As-Builts:

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

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

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

d. Field changes of dimensions and details.

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

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

g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information pursuant to Business & Professions Code Section 6735.6.

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

i. The title “PROJECT RECORD” in 3/8” letters.

iii. Subdivider shall maintain a set of As-Builts at the Project site for reference. Subdivider shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil), shall clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.

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

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

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

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

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

EXHIBIT W

Typical Insurance Provisions

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

   1.1 *Commercial General Liability*. Subdivider shall provide at its expense a policy or policies of Commercial General Liability [CGL] Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Subdivider shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars ($2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars ($2,000,000); (iii) Personal Injury Limit one million dollars ($1,000,000); and (iv) Each Occurrence one million dollars ($1,000,000).

   1.2 *Commercial Automobile Liability*. For all of Subdivider's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Subdivider shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars ($1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ["Any Auto"]. All costs of defense shall be outside the policy.

   1.3 *Architects and Engineers Professional Liability*. For all of Subdivider's employees who are subject to this Agreement, Subdivider shall keep in full force and effect, or Subdivider shall require that its architect/engineer(s) of record keep in full force and effect errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) annual aggregate. Subdivider shall ensure both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Contract.

Subdivider agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.

1.4 *Worker's Compensation*. For all of Subdivider's employees who are subject to this Contract and to the extent required by the State of California, Subdivider shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Subdivider against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Subdivider to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars ($1,000,000) for Bodily Injury by Accident for each accident, one million dollars ($1,000,000) for Bodily Injury by Disease each employee, and a one million dollars ($1,000,000) for Bodily Injury by Disease policy limit. Subdivider shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

1.4.1 Prior to the execution of the Agreement by the City, the Subdivider shall file the following signed certification:

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

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

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

2.1 *Additional Insureds*. Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.

2.1.1 Commercial General Liability. The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Engineer's Estimate is one million dollars ($1,000,000) or more shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, (iii) Your work, including but not limited to your completed operations performed by you or on your behalf, or (iv) premises owned, leased, controlled, or used by you; the coverage for Projects for which the Engineer's Estimate is less than one million dollars ($1,000,000) shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, or (iii) premises owned, leased, controlled, or used by you; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.

2.1.2 Commercial Automobile Liability Insurance. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Subdivider; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the

Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.

2.2 *Primary and Non-Contributory*. The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City of San Diego, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Subdivider's insurance and shall not contribute to it.

2.3 *Project General Aggregate Limit*. The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the work performed under this Agreement. Claims payments not arising from the work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.

2.4 *Written Notice*. Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Subdivider to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.

2.5 The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

EXHIBIT X

Equal Benefits Ordinance Certification of Compliance

[Attached]

EXHIBIT X

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE

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

COMPANY INFORMATION

Company Name:	Contact Name:
Company Address:	Contact Phone:
	Contact Email:

CONTRACT INFORMATION

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

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

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

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

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

CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION

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

☐ I affirm **compliance** with the EBO because my firm *(contractor must select one reason):*

- ☐ Provides equal benefits to spouses and domestic partners.
- ☐ Provides no benefits to spouses or domestic partners.
- ☐ Has no employees.
- ☐ Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.

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

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

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

Name/Title of Signatory	Signature	Date

FOR OFFICIAL CITY USE ONLY

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

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 02/27/2012

ORIGINATING DEPARTMENT: DSD - Facilities Financing

SUBJECT: Reimbursement Agreement for P-1, Gonzales Canyon Neighborhood Park in Pacific Highlands Ranch

COUNCIL DISTRICT(S): CD1

CONTACT/PHONE NUMBER: Frank January/619 533-3699, MS 606F

DESCRIPTIVE SUMMARY OF ITEM:
Requesting approval of the Reimbursement Agreement for P-1, Gonzales Canyon Neighborhood Park in Pacific Highlands Ranch

STAFF RECOMMENDATION:
Approval of the requested actions

EXECUTIVE SUMMARY OF ITEM BACKGROUND:
In November 2010, the voters of San Diego passed Proposition C (Ordinance Number O-19979). Proposition C removed the SR-56/I-5 Connector project as a development timing restriction in the Pacific Highlands Ranch Transportation Phasing Plan, subject to City Council approval of a revised, integrated Transportation and Facility Phasing Plan to ensure facilities are constructed before or concurrent with new development. The approval of the Fiscal Year 2013 Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment implements the new phasing plan and the opening of Gonzales Canyon Neighborhood Park as a threshold requirement before residential development may proceed beyond 1,900 dwelling units.

On December 28, 2010, the City closed escrow and acquired fee title interest to the Gonzales Canyon Neighborhood Park site in Pacific Highlands Ranch. The project is identified as P-1 in the Fiscal Year 2013 Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment. Sufficient funds are anticipated to be available in the Pacific Highlands Ranch FBA, Fund No. 400090, to fund the park in FY 2013.

Pardee Homes has agreed to prepare the General Development Plan (GDP) and complete the design and construction of Gonzales Canyon Neighborhood Park. Pardee has also agreed to donate up to $235,000 for maintenance of the park. The donation will be made in the form of $5,000 for each market rate residential unit (up to 47) permitted before January 1, 2016 and after their 1,390th residential unit in Pacific Highlands Ranch.

The reimbursement agreement, in the amount of $3,643,000, includes the GDP, design, anticipated construction costs, and contingencies.

FISCAL CONSIDERATIONS:
With approval of this action, Pardee Homes' anticipated costs to deliver the Gonzales Canyon Neighborhood Park will be reimbursed from the Pacific Highlands Ranch FBA fund. These costs are incorporated into the budget for this project and are included in the FY 2013 Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment.

Approval of this action will also allow the for the acceptance of up to $235,000 from Pardee Homes to be used for the maintenance of Gonzales Canyon Neighborhood Park.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):
This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Sections 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):
Pacific Highlands Ranch – Subarea III NCFUA Neighborhood Park Site Purchase Agreement, approved September 8, 1998, O-18579-1. First Amendment to Neighborhood Park Site (NP1) Purchase Agreement approved October 19, 2010, O-20000.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
The FY 2013 Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment includes the park as an FBA funded project. On February 23, 2012, the Carmel Valley Planning Group (CVPG) voted 12-0, with 1 recusal, to recommended approval of the updated Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2013, which includes a revised, integrated Transportation and Facility Phasing Plan to ensure facilities are constructed before or concurrent with new development.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:
The key stakeholders are the residents of Pacific Highlands Ranch and its neighboring communities, and Pardee Homes.

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Originating Department

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Deputy Chief/Chief Operating Officer