

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) pending
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): DSD - Facilities Financing	DATE: 02/21/2013
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SUBJECT: Reimbursement Agreement with Seabreeze Properties LLC for Little McGonigle Ranch Road Water Pipeline in the Del Mar Mesa area.

PRIMARY CONTACT (NAME, PHONE): Charlette Strong Williams, 619-533-3683	SECONDARY CONTACT (NAME, PHONE): John Tracanna , 619-533-3682
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COMPLETE FOR ACCOUNTING PURPOSES

FUND	400089				
DEPT / FUNCTIONAL AREA	OTHR-00000000-PR				
ORG / COST CENTER	2013131115				
OBJECT / GENERAL LEDGER ACCT	512066				
JOB / WBS OR INTERNAL ORDER	S-00069 .07.03				
C.I.P./CAPITAL PROJECT No.	S00069				
AMOUNT	\$102,032.00	0.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Broughton, Kelly	4/9/2013
Financial Management	CFO		
Liaison Office	DEPUTY CHIEF		
Equal Opportunity Contracting	COO		
Comptroller	CITY ATTORNEY	Vonblum, Heidi	
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

1) The Mayor or his designee is authorized to execute an agreement with Seabreeze Properties LLC for the design and construction in CIP S-00069, Little McGonigle Ranch Road Water Pipeline in the Del Mar Mesa area,

in an amount not to exceed \$200,000.00; and
 2) The Chief Financial Officer is authorized to expend an aggregate amount not to exceed \$200,000 of cash payments or FBA credits per approved Public Facilities Financing Plans, in CIP S-00069, Little McGonigle Ranch Road Pipeline, of which \$102,032 is from Fund 400089, Del Mar Mesa FBA in FY 2013, and \$97,968 is from Fund 400090, Pacific Highlands Ranch FBA in FY 2015, for the purpose of constructing public improvements in the Del Mar Mesa area, contingent upon the Chief Financial Officer furnishing one or more certificate(s) certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

STAFF RECOMMENDATIONS:
 Approve the requested actions

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S):	1
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COMMUNITY AREA(S):	Del Mar Mesa
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ENVIRONMENTAL IMPACT:	This activity was addressed in Findings to MEIR No. 99-0729 to the Del Mar Mesa Specific Plan MEIR No. 95-0353. Note that the Findings to MEIR No. 99-0729 were before City Council on August 7, 2001 no action is required on the environmental determination.
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CITY CLERK INSTRUCTIONS:	Send copies of the resolution to Charlette Strong Williams MS 606F
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**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 02/21/2013

ORIGINATING DEPARTMENT: DSD - Facilities Financing

SUBJECT: Reimbursement Agreement with Seabreeze Properties LLC for Little McGonigle Ranch Road Water Pipeline in the Del Mar Mesa area.

COUNCIL DISTRICT(S): 1

CONTACT/PHONE NUMBER: Charlette Strong Williams/619-533-3683

DESCRIPTIVE SUMMARY OF ITEM:

Requesting approval of the Reimbursement Agreement for a portion of Project #43-21, Little McGonigle Ranch Road Water Pipeline in the Del Mar Mesa Area. Under the terms of the reimbursement agreement, Seabreeze Properties LLC has designed and constructed the waterline and the City will reimburse Seabreeze Properties LLC for those costs.

STAFF RECOMMENDATION:

Approve the requested actions

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

As part of the approval process for its Duck Pond Ranch project in Del Mar Mesa, Sea Breeze Properties LLC was to construct a portion of the Little McGonigle Ranch Water Pipeline. The improvements provide water distribution within the Del Mar Mesa community and serve as the initial phase for a future connection to the north expanding water service to the Pacific Highlands Ranch community.

The improvement is included in the Del Mar Mesa and Pacific Highlands Ranch financing plans and FBA. The cost of this phase of the improvement was \$200,000, which was advanced by the developer. This reimbursement agreement will allow Sea Breeze Properties LLC to seek reimbursement from current and future FBA funds collected for this purpose.

FISCAL CONSIDERATIONS:

Sea Breeze Properties LLC will be reimbursed in cash and/or credit per the Del Mar Mesa and Pacific Highlands Ranch financing plans (Public Facilities Financing Plans) for the purpose of executing this agreement up to aggregate amount of \$200,000 from CIP S-00069, Little McGonigle Ranch Road Water Pipeline. The funds are allocated as follows: Del Mar Mesa FBA, Fund 400089 to contribute \$102,032, which will be certified by Comptroller's immediately, and Pacific Highlands Ranch FBA, Fund 400090 to contribute \$97,968 to be certified in the future consistent with the Pacific Highlands Ranch Public Facilities Financing Plan document currently programmed for FY2015.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

On November 5, 2005, City Council adopted Resolution No. 301007 approving the Del Mar Mesa Public Facilities Financing Plan and Facilities Benefit Assessment [FBA] for Fiscal Year 2006, which identifies project no. 43-21, Little McGonigle Ranch Road Water Pipeline, as a project to be funded with FBA funds.

On April 23, 2012, City Council adopted Resolution No. 307364 approving Pacific Highlands Ranch Facilities Financing Plan and Facilities Benefit Assessment [FBA] for Fiscal Year 2013. The PHR Financing Plan identifies Project No. U-4, Little McGonigle Ranch Road Water Pipeline, as a project to be funded with FBA funds.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On October 13, 2005, the Del Mar Mesa Planning Group voted to approve the FY2006 Del Mar Mesa Public Facilities Financing Plan and Facilities Benefit Assessment by a vote of 9-1-0. On February 23, 2012, the Carmel Valley Planning Group (CVPG) voted 12-0, with 1 recusal to recommend approval of the update to the Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2013.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Seabreeze Properties LLC, members of the Del Mar Mesa and Pacific Highlands Ranch Community Groups. The impacts have already been considered due to the cost being adopted and approved by City Council during the FY2006 update to the Del Mar Mesa Public Facilities Financing Plan and the FY2013 update to the Pacific Highlands Ranch Public Facilities Financing Plan.

Broughton, Kelly

Originating Department

Deputy Chief/Chief Operating Officer

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE:

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

May 13, 2013

SUBJECT: e1472 – Reimbursement Agreement with Seabreeze Properties LLC for Little McGonigle Ranch Road Water Pipeline in the Del Mar Mesa Area

GENERAL CONTRACTOR INFORMATION

Recommended Contractor: Seabreeze Properties LLC (Not Certified M. Caucasian)

Action Amount: \$200,000 (Not to exceed)

Funding Source: City of San Diego

Goals: NA

SUBCONTRACTOR PARTICIPATION

There is no subcontractor activity identified with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Seabreeze Properties LLC submitted a Work Force Report for their San Diego County employees dated January 16, 2013. The Work Force Report reflects fewer than 15 employees in both their Administrative and Trade Work Force Report and is, therefore, exempt from employment category goals.

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

ADDITIONAL COMMENTS

There has been no documentation provided validating the contractor is in compliance with the City's Equal Opportunity Outreach Program (San Diego Municipal Code, Chapter 2, Article 2, Division 27, Sections 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code, Chapter 2, Article 2, Division 35, Sections 22.3501 through 22.3517).

There has been no documentation provided validating this project went through a competitive bidding process and/or was inclusive to local and certified SLBE, ELBE, DBE, MBE, WBE, and DVBE firms.

JS

**REIMBURSEMENT AGREEMENT WITH SEA BREEZE PROPERTIES LLC
FOR A PORTION OF PROJECT NO. 43-21 AND PROJECT NO. U-4, LITTLE
MCGONIGLE RANCH ROAD WATER PIPELINE, SERVING THE DEL MAR MESA
AND PACIFIC HIGHLANDS RANCH COMMUNITIES**

THIS AGREEMENT [Agreement] is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation [City] and Sea Breeze Properties LLC, a California Limited Liability Company [Subdivider] [collectively, "the Parties"], for reimbursement for the design and construction of approximately four hundred fifty (450) linear feet of Project No. 43-21 and Project No. U-4, Little McGonigle Ranch Road Water Pipeline, serving the Del Mar Mesa Specific Plan area and the Pacific Highlands Ranch Community Plan area in accordance with the Del Mar Mesa Public Facilities Financing Plan and the Pacific Highlands Ranch Public Facilities Financing Plan.

RECITALS

1. Subdivider owns real property in the Del Mar Mesa Specific Plan area of the City [Property]. Subdivider developed Property subject to the conditions and public improvements required by the City of San Diego City Council [City Council].
2. On August 7, 2001, City Council adopted Resolution No. R-295387 granting Tentative Map No. 99-0729 [TM] subject to certain conditions determined to be necessary for Subdivider's development. A copy of the TM conditions of approval [TM Conditions] are attached as **Exhibit A**.
3. The TM Conditions required Subdivider, prior to the issuance of any building or grading permits, to construct necessary water pipeline improvements in a manner satisfactory to the Director of the Water Department and the City Engineer. This Agreement relates to a 450 linear foot 30-inch water transmission pipeline in Little McGonigle Ranch Road as depicted in **Exhibit B** and described in **Exhibit C** [Project].
4. On November 1, 2005, City Council adopted Resolution No. 301007 approving the Del Mar Mesa Public Facilities Financing Plan and Facilities Benefit Assessment [FBA] for Fiscal Year 2006 [Del Mar Mesa Financing Plan]. The Del Mar Mesa Financing Plan identifies Project No. 43-21, Little McGonigle Ranch Road Water Pipeline, as a project to be funded with FBA funds from Del Mar Mesa (as shown in **Exhibit D-1**). On April 23, 2012, City Council adopted Resolution No. 307364 approving the Pacific Highlands Ranch Facilities Financing Plan and Facilities Benefit Assessment [FBA] for Fiscal Year 2013 [PHR Financing Plan]. The PHR Financing Plan identifies Project No. U-4, Little McGonigle Ranch Road Water Pipeline, as a project to be funded with FBA funds from Pacific Highlands Ranch (as shown in **Exhibit D-2**). Project Nos. 43-21 and U-4 are identical projects identified separately in the Del Mar Mesa Financing Plan and the PHR Financing Plan. The Del Mar Mesa Financing Plan and the PHR Financing Plan are referred to collectively throughout this Agreement as the "Financing Plans." **Of the funds allocated for the entire Project Nos. 43-21 and U-4 in the Financing Plans, a maximum of \$200,000, including interest, is potentially available for reimbursement for the Project that is the subject of this Agreement.**

5. Subdivider certifies and City has verified that Subdivider has completed the design and construction of the Project and now seeks reimbursement from City in the final total amount of **One Hundred Sixty-Four Thousand Five Hundred Fifty-Two Dollars (\$164,552)**, plus a maximum of \$35,448 in interest as defined in Section 2.4.6. Subdivider must satisfy all terms of this Agreement to become eligible for reimbursement if and as funds are collected and become available for reimbursement.

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 certifies that it designed and constructed a complete and operational Project fully suited to the purpose for which it was intended and in accordance with this Agreement, the TM Conditions, the Construction Documents, the Plans and Specifications, the Financing Plan, and any other applicable agreement.
- 1.2 Certification Regarding Past Acts.** There exist and have existed certain requirements that City includes in its construction contracts for public improvements. These requirements are intended to protect the City and the Public who benefit from these public improvements from harm, including physical and monetary, as well as to ensure that Subdivider and/or the contractor building the public improvement follow all laws related to such contracts and construction. The certification is intended to act as a guarantee to City that such requirements were met by the Subdivider during its design and construction of Project. When, throughout this Agreement, Subdivider certifies an action has occurred, omission not made, a standard met, or a law followed and such action did not occur, omission happened, such standard was not met, or such law was not followed, then Subdivider shall indemnify and hold harmless the City from any claim, demand, cause of action, cause, expense, losses, attorney fees, injuries, or payments arising out of or related to the act not done, the omission which occurred, the standard not met, or the law not followed in accordance with Article XII. This section shall not act to limit the remedies otherwise available to the City under law.

ARTICLE II. REIMBURSABLE COST

- 2.1 Reimbursable Cost.** The final total cost for which Subdivider seeks reimbursement from City for the Project, including the Project Costs (as defined in Section 2.2), and Subdivider's Administrative Costs (as defined in Section 2.3) is One Hundred Sixty-Four Thousand Five Hundred Fifty-Two Dollars (\$164,552), plus interest (as defined in Section 2.4.6) [Reimbursable Cost]. Subdivider acknowledges that no other monies or reimbursement in any form (including FBA credits) will be due to Subdivider from City for the Project under any circumstance. Therefore, this Agreement may not be amended to increase the amount to be reimbursed to Subdivider.
- 2.1.1 Non-Reimbursable Costs.** Non-Reimbursable Costs include: (1) Any cost or expenditure in excess of the Reimbursable Cost; (2) any cost or expenditure identified in this Agreement as a Non-Reimbursable Cost; (3) any cost or

expenditure to remedy Defective Work (as defined in Section 15.1); (4) any cost or expenditure caused by Subdivider's or Subdivider's consultants', contractors', subcontractors', employees', or other agents' [collectively, "Subdivider's agents"] negligence or omissions; (5) any cost of substituted products, work or services not necessary for completion of the Project, unless requested and approved by City in writing; (6) any cost or expenditure 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; (7) any cost in excess of FBAs actually collected by the City and available for reimbursement to Subdivider for the design and construction of the Project; and (8) any cost not supported by proper invoicing or other documentation as reasonable and necessary. 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.

2.2 Project Costs. Project Costs are Subdivider's reasonable costs of materials and design necessary for the Project as approved by the City and depicted in **Exhibit E**. Project Costs do not include Subdivider's Administrative costs (as defined in Section 2.3).

2.3 Subdivider's Administrative Costs. Subdivider's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures and shall total a flat five percent (5%) of Subdivider's Project Costs.

2.4 Reimbursement to Subdivider.

2.4.1 ***Reimbursement Request & Cutoff Date.*** Subdivider has submitted to City a written request for reimbursement [Reimbursement Request]. Subdivider has submitted all Reimbursement Requests and agrees that it will not submit any additional Reimbursement Requests for the Project after execution of this Agreement.

2.4.2 ***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. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plans without further amendment to this Agreement. Subdivider shall not receive cash reimbursement unless and until there are sufficient funds available 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. Subdivider acknowledges and agrees that in the event there are no additional FBA funds available for collection by City to fund the 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.

2.4.3 ***Funds for Reimbursement.*** Subdivider shall only be entitled to reimbursement as set forth in this Agreement and only from FBA funds collected by City per the

Financing Plan, as it may be amended, in the amount set forth in this Agreement and only as allocated for Project Nos. 43-21 and U-4 in the Financing Plan, if and as such funds become available, after the appropriate deductions and expenditures are made, pursuant to the priority of reimbursement described in Section 2.4.7.

- 2.4.4 ***Amount of Reimbursement.*** Subdivider shall be entitled only to Reimbursable Costs as identified in Section 2.1.
- 2.4.5 ***City's Administrative Costs.*** City's Administrative Costs shall be paid prior to any reimbursement to Subdivider and consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Project, (ii) review and approve the plans and specifications for the Project, and (iii) inspect and approve work performed on the Project during construction until completion and acceptance of Project [City's Administrative Costs].
- 2.4.6 ***Interest.*** Interest shall begin to accrue ninety (90) days after the date Subdivider's Reimbursement Request for Reimbursable Costs was deemed complete, 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. Subdivider's Reimbursement Request for Reimbursable Costs was deemed completed by the City's Public Utilities Department on January 25, 2006. Interest shall accrue only on Reimbursable Costs at the rate actually earned by the City Treasurer on funds allocated for the Project, not to exceed the assumed interested rate identified in the assumptions of the applicable Financing Plan, at the time interest is accruing. Interest shall accrue up to a maximum of \$ 35,448. .
- 2.4.7 ***Priority of Reimbursement.*** Reimbursement to Subdivider from the FBA for the Project will be subsequent to reimbursement of City's design and construction costs, City's equipment purchases, and City's Administrative Expenses incurred in connection with the Project or Financing Plan, but takes priority over any Subdivider Reimbursable Project added to the Financing Plan subsequent to the Effective Date (as defined in Section 19.1) of this Agreement, with the following exceptions:
- 2.4.7.1 Any State or Federally mandated project.
- 2.4.7.2 Appropriations for City administered, managed, and funded Capital Improvement Project.
- 2.4.7.3 The FBA identifies another project for funding in an earlier fiscal year than this Project prior to the Effective Date of this Agreement.

ARTICLE III. [Reserved]

ARTICLE IV. COMPETITIVE BIDDING AND EQUAL OPPORTUNITY

- 4.1 **Competitive Bidding Certification.** Subdivider certifies that it bid and awarded contracts to complete Project in accordance with the Charter of the City of San Diego, San Diego Municipal Code, and City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations.

4.2 **Non-Discrimination Requirements.**

4.2.1 ***Compliance with the City's Equal Opportunity Contracting Program.***

Subdivider certifies it complied with the City's Equal Opportunity Contracting Program. Subdivider certifies it did not discriminate against any employee or applicant for employment on any basis prohibited by law. Subdivider certifies it provided equal opportunity in all employment practices. Subdivider certifies it ensured its consultants, contractors and their subcontractors complied 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.

4.2.2 ***Non-Discrimination Ordinance.*** Subdivider certifies it did 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 certifies it provided 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 was included in contracts between the Subdivider and any consultants, contractors, subcontractors, vendors and suppliers.

4.2.3 ***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 this 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.

4.3 **Equal Benefits Ordinance.** Any contracts entered into with respect to the Project prior to January 1, 2011 are not subject to the City of San Diego's Equal Benefits Ordinance [EBO], Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC]. Any contracts entered into with respect to the Project as of January 1, 2011 are subject to the Equal Benefits Ordinance. Therefore, for any contracts entered into as of January 1, 2011, Subdivider shall certify that its contractors and consultants complied with the EBO, by providing to City the Equal Benefits Ordinance Certification of Compliance. If such a

certification is required, failure to maintain equal benefits in accordance with the EBO shall constitute a material breach of the contract.

ARTICLE V. PREVAILING WAGE

- 5.1 **Prevailing Wage.** Subdivider certifies that Prevailing Wages were paid for the Project if and/or to the extent required by the California Labor Code and 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, City of San Diego Resolutions and Ordinances, City of San Diego Council Policies, or as required by the City Council [Required Contracting Procedures].

ARTICLE VI. CONSULTANTS

- 6.1 **Selection of Consultant.** Subdivider certifies it hired a qualified and licensed consultant to perform the necessary services related to the Project and that it selected its consultants in accordance with all applicable public contract laws, rules, and regulations, including but not limited to, the City Charter, the San Diego Municipal Code, and the City's Administrative Regulations (except where a waiver of applicable policies and/or administrative regulations has been lawfully obtained). Subdivider certifies that it caused the provisions in **Exhibit F** "Consultant Provisions" to be included in its consultant contract(s) for the Project.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

- 7.1 **Standard of Care.** Subdivider certifies the professional services provided under this Agreement were 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 certifies it complied with all laws and the most current editions of the Greenbook, the City's Standard Drawings and Design and Construction Standards, as well as the items listed in **Exhibit G**. 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 H** "Certificate for Title 24/ADA Compliance."
- 7.3 **Imputed Knowledge.** Subdivider certifies it was and remains 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 was or will be imputed to Subdivider to the fullest extent allowed by law.

- 7.4 **City Approval.** Subdivider certifies it obtained City approval of design, plans, and specifications in the manner required in **Exhibit I.**
- 7.5 **City Approval Not a Waiver of Obligations.** Where approval by City, the Mayor, or other representatives of City is or was 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 Construction Requirements.** Subdivider certifies that it completed construction of the Project in accordance with the Construction Obligations in **Exhibit J.**
- 8.2 **Drug-Free Workplace.** Subdivider certifies that it complied with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. The Subdivider shall certify to City that it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace in form and content of **Exhibit K.**

ARTICLE IX. PROJECT ACCEPTANCE

- 9.1 **Acceptance.** Upon City's letter of acceptance of the Project, Subdivider shall do all of the following:
- 9.1.1 ***Notice of Completion.*** Subdivider shall execute and file with the County Recorder of San Diego County documentation indicating that the Project and all work depicted on City drawing number 31447-1-D 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.
- 9.1.2 ***Lien and Material Releases.*** Subdivider shall cause all contractors and subcontractors to provide lien and material releases as to the Project and provide copies of such lien and material releases to the City Engineer or, upon approval of City which shall not be unreasonably withheld, provide bonds in lieu of lien and material releases in a form acceptable to City for all such work.
- 9.2 **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; or (ii) 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 L** [Final Completion].
- 9.2.1 ***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 blue-line sets of As-Builts stamped by the architect/engineer of record as required by law.

- 9.3 **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.
- 9.4 **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 X. PROJECT DELIVERABLES

- 10.1 **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 L**.
- 10.2 **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 XI. BONDS

- 11.1 **Warranty Bond.** Subdivider shall provide or require its construction contractor to provide City with a bond guaranteeing the Project during the warranty period in favor of City [Warranty Bond]. Subdivider shall provide the Warranty Bond to City upon release of any applicable Performance Bond or commencement of the warranty periods, whichever occurs first. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Agreement.
- 11.2 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 11.3 **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.
- 11.4 **Insolvency or Bankruptcy.** If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Subdivider shall within

seven (7) calendar days thereafter substitute or require the substitution of another bond and surety, acceptable to City.

ARTICLE XII. INDEMNITY & DUTY TO DEFEND

- 12.1 Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 12.2 and 12.3 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 or Subdivider's agents. 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.
- 12.2 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, Subdivider shall require its design professional to indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Subdivider's design professional or design professional's officers or employees.
- 12.3 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.
- 12.4 Insurance.** The provisions of this Article are not limited by the requirements of Article XIII related to insurance.
- 12.5 Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.
- 12.6 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.

ARTICLE XIII. INSURANCE

- 13.1 Type and Amount of Insurance.** Subdivider certifies that prior to commencement of construction it obtained and thereafter continuously maintained, as required in this Agreement, insurance for the Project duplicate to the City's standard insurance provisions set forth in **Exhibit M** [Required Insurance].
- 13.2 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.
- 13.2.1 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.
- 13.4 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.
- 13.5 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.
- 13.6 Additional Insurance.** Subdivider may obtain additional insurance not required by this Agreement.
- 13.7 Obligation to Provide Documents.** Subdivider certifies that prior to performing any work on Project, Subdivider provided to City copies of documents including but not limited to certificates of insurance and endorsements, and furnished renewal documentation prior to expiration of insurance. Subdivider certifies each required document was 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.
- 13.8 Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy have been and remain the responsibility of Subdivider. Subdivider agrees that deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance was provided.
- 13.9 Policy Changes.** Subdivider certifies it has not and shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.
- 13.10 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.

- 13.11 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.
- 13.12 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 XIV. WARRANTIES

- 14.1 Warranties Required.** Subdivider certifies it has required or shall require the construction contractor and its subcontractors and agents to provide the warranties listed below. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warranties shall be enforceable by and inure to the benefit of City.
- 14.1.1 *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.
- 14.1.2 *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.
- 14.1.3 *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.
- 14.2 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.
- 14.2.1 *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.
- 14.2.2 *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.
- 14.2.3 *Index Tabs.*** Each warranty shall be separated with index tab sheets keyed to the table of contents listing.

14.2.4 **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.

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

14.2.6 **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.

14.3 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.

ARTICLE XV. DEFECTIVE WORK

15.1 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.

15.2 City's Right to Correct. If circumstances warrant, including an emergency or Subdivider's failure to adhere to Section 15.1, 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.

15.3 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.

15.4 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.

15.5 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.

15.6 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 XVII.

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

15.7.1 ***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 XVI. RECORDS AND AUDITS

16.1 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.

16.2 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 will be Non-Reimbursable Costs.

16.2.1 ***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.

ARTICLE XVII. NOTICES

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

17.2 Effective Date of Notice. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (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.

17.3 Recipients. All demands or notices required or permitted to be given shall be sent to all of the following:

17.3.1 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

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

17.3.3 Sea Breeze Properties LLC
3525 Del Mar Heights Road #246
San Diego, CA 92130
Attn: Gary Levitt

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

ARTICLE XVIII. MEDIATION

18.1 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.

18.2 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.

18.3 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.

18.3.1 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.

18.3.2 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.

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

18.4 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.

18.4.1 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.

18.4.2 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 XIX. MISCELLANEOUS PROVISIONS

19.1 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 five years unless approved by City ordinance.

- 19.2 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 bond(s), 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.
- 19.3 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 19.4 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.
- 19.5 Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.
- 19.6 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.
- 19.7 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.
- 19.8 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.
- 19.9 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.
- 19.10 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.
- 19.11 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.

- 19.12 Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 19.13 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.
- 19.14 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.
- 19.15 Exhibits.** Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.
- 19.16 Compliance with Controlling Law.** Subdivider certifies that it required 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 during inspection and land surveying work. In addition, Subdivider certifies it required its consultants, contractors, 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.
- 19.17 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 certifies it complied with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.
- 19.18 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.
- 19.19 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.
- 19.20 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 certifies it has incorporated this provision into its contracts, supply agreements and purchase orders.

- 19.21 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.
- 19.22 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.
- 19.23 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.
- 19.24 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.
- 19.25 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.
- 19.26 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.
- 19.27 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 Resolution No. R-_____, authorizing such execution, and by Subdivider.

This Agreement was approved as to form and content by the City Attorney this _____ of _____, 2013, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: _____

By: _____

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

Dated: _____

By: _____
Heidi K. Vonblum, Deputy City Attorney

Sea Breeze Properties, a California Limited Liability Company

Dated: March 3, 2013

By: _____

Gary Levitt, Manager

HKV
01/30/13
Or.Dept: Facilities Financing

EXHIBIT A
Tentative Map Conditions

CITY COUNCIL CONDITIONS TO TENTATIVE MAP NO. 99-0729
DUCK POND RANCH
ADOPTED BY RESOLUTION NO. R-295387 ON AUGUST 7, 2001

1. This tentative map will expire on August 7, 2004.
2. Compliance with all conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the 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 vesting 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 Residential Development Permit No. 99-0729.
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 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 meridian (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.

9. The approval of this 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 Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 *et seq.*).
10. The subdivider must provide a geologic (geotechnical) investigation report on the subject property to discover and address potential geological hazards. The report must be prepared in accordance with the most recent edition of the City of San Diego "Technical Guidelines for Geotechnical Reports." All slopes shall be constructed in accordance with the provisions of San Diego Municipal Code [SDMC] section 62.0415 *et seq.*
11. Undergrounding of existing and proposed public utility systems and service facilities is required according to SDMC section 102.0404(2).
12. The subdivider shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the Findings No. 99-0729 to the Del Mar Mesa Specific Plan Master EIR No. 95-0353, to the satisfaction of the Environmental Review Manager of Land Development Review. Prior to issuance of any grading and building permit, 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, Historical and Paleontological Resources, Public Facilities and Services, and Public Safety.
13. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the subdivider to provide the right-of-way free and clear of all encumbrances and prior easements. The subdivider must secure subordination agreements for minor distribution facilities and/or joint-use agreements for major transmission facilities.
14. 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.
15. Prior to the filing of the first final map or the issuance of a grading permit, or any other permit, the subdivider shall provide evidence of compliance with the affordable housing requirements of the North City Future Urbanizing Area Framework Plan and the Del Mar Mesa Specific Plan, in a manner satisfactory to the City Manager, and the Executive

TM No. 99-0729
August 7, 2001

Page 3

Director of the Housing Authority. Such evidence of compliance shall include execution of An Affordable Housing Agreement with the Executive Director of the Housing Authority that provides security for performance. The subdivider's project is eligible under the in-lieu fee option of the Del Mar Mesa Specific Plan to meet the affordable housing requirement in this manner, and the Subdivider has stated its intent to pay the then current in-lieu fee for Del Mar Mesa as required, at the time of issuance of building permits.

16. The subdivider shall conform to the Del Mar Mesa/Subarea V Specific Plan, Transportation Phasing Plan and Public Facilities Financing Plan.
17. The project shall be connected to SR-56 by a network of improved public streets based on the approved transportation plan for Del Mar Mesa/Subarea V.
18. The alignment and grade for Carmel Mountain Road shall be in agreement with Shaw Lorenz TM No. 40-0669.
19. Carmel Mountain Road is classified as a two lane modified collector with a two way left turn lane transitioning to a two lane collector street. The subdivider shall dedicate a 74 foot right-of-way and provide 50 feet of pavement from the southerly boundary transitioning to a 64 foot right-of-way with 40 feet of pavement to the intersection of Del Mar Mesa Rd/Del Vino Ct. (future). The subdivider shall provide curb, gutter with an eight foot curb to property line distance on the west side of the road and a multi-use trail within a 15 foot curb to property line distance with a 5 foot general utility easement on the east side of the road, satisfactory to the City Engineer.

The subdivider shall start the transition of Carmel Mountain Road from 50 feet to 40 feet of pavement north of the access to Pardee's 16 Lot subdivision, Shaw Lorenz VTM No. 40-0669. The subdivider shall maintain a 10 foot curb to property line distance for the northerly offsite construction/transition of Carmel Valley Road to Del Vino Court.
20. The subdivider shall provide a 30 foot wide driveway at the project's access point off Carmel Mountain Road. The driveway shall be constructed in accordance with City Standard Drawings SDG-100, G-14a and G-16.
21. The subdivider shall provide reciprocal access easements as necessary, satisfactory to the City Engineer.
22. Vehicular access to the dwelling units within this planned development shall be by private driveways that are, non-dedicated, privately maintained and constructed in a manner, satisfactory to the City Engineer.

23. Providing streets for this subdivision is dependent upon the prior construction of certain streets in previously approved developments in this area. If they have not been constructed when required for this subdivision, then the construction of certain portions of these previously approved streets, as required by the City Engineer, will become off-site improvement requirements for this subdivision.

24. WATER REQUIREMENTS:

- a. The subdivider shall design and construct minimum 8-inch diameter public water facilities in Private Drive "A" from Carmel Mountain Road to the easterly limits of grading, in a manner satisfactory to the Director of the Water Department and the City Engineer.
- b. The subdivider shall design and construct a minimum 8-inch diameter public water main connecting to the main in Private Drive "A" and extending through an easement connecting to water mains in Mesa Verde Estates, in a manner satisfactory to the Director of the Water Department and the City Engineer.
- c. The subdivider shall install fire hydrants at locations satisfactory to the Fire Department, the Director of the Water Department and the City Engineer.
- d. The subdivider shall grant minimum 24-foot-wide, fully paved, water easements over all public water facilities not located within fully improved public rights-of-way in a manner satisfactory to the Director of the Water Department. Basements shall be located within single lots. Basements containing public water facilities with services shall be a minimum of 30-foot-wide.
- e. The subdivider shall grant an easement over Lot 13, adjacent to Lots 9 through 12, from the southerly lot line of Lot 13 to the northerly subdivision boundary in a manner satisfactory to the Director of the Water Department and the City Engineer.
- f. The subdivider shall install water meters behind full height curb in a manner satisfactory to the Director of the Water Department.
- g. 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.
- h. If the development is gated, then the subdivider shall provide keyed access to the Water Operations Division in a manner satisfactory to the Director of the Water

TM No. 99-0729
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Department. The City will not be held responsible for any issues that may arise relative to the availability of keys.

- i. Providing water for this development is dependent upon prior construction of certain water facilities in previously approved TM Nos. 89-1296, 96-0625, 96-7286, and 91-0834 in this area. If facilities, including but not limited to a water pump station and approximately 1,500 lineal feet of 8-inch pipe or approximately 15,000 lineal feet of minimum diameter 30-inch pipeline, have not been constructed when required for this development, then the construction of certain portions of these previously approved public water facilities, as required by the City Engineer, will become off-site improvements required for this development in a manner satisfactory to the Director of the Water Department and the City Engineer.

26. SEWER REQUIREMENTS:

- a. Prior to the submittal of any public improvement drawings, including grading plans, the developer shall submit a sewer study satisfactory to the Director of the Metropolitan Wastewater Department, for the sizing, grade and alignment of public gravity-sewer-mains and to show that the existing and proposed public sewer-facilities will provide adequate capacity and have cleansing velocities necessary to serve this development and the drainage basin in which it lies and adjacent areas that cannot gravity sewer to an existing sewer system.
- b. The subdivider shall install all facilities, as required by the accepted sewer study, necessary to serve the proposed development. Sewer facilities, as shown on the approved tentative map, will require modification based on the accepted sewer study.
- c. The subdivider shall design all proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide. Proposed facilities that do not meet the current standards shall be private or re-designed.
- d. The subdivider shall grant adequate sewer, and/or access easements, including vehicular access to each manhole, for all public sewer facilities that are not located within public rights-of-way, satisfactory to the Director of the Metropolitan Wastewater Department. The minimum easement width for sewer mains with manholes is 20 feet. The easements shall be located within single lots. Vehicular access roadbeds shall be a minimum of 20 feet wide and surfaced with suitable approved material satisfactory to the Director of the Metropolitan Wastewater Department. Vehicular access roadbeds to sewer mains with laterals shall be a minimum 24 foot wide and paved full width. An additional 5 feet of easement width per additional utility is required for easements carrying more than one utility. Sewer mains greater than 8

feet deep will require an additional 2 feet of easement width for each additional foot of depth beyond 8 feet.

- e. No structures or landscaping that would inhibit or prevent access shall be installed in or over any sewer access easement.
 - f. No structures or landscaping, including private sewer facilities and enhanced paving, shall be installed in or over any easement prior to the applicant obtaining an encroachment removal agreement.
 - g. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer facilities.
 - h. The subdivider shall provide evidence, satisfactory to the Director of the Metropolitan Wastewater Department, indicating that each lot will have its own sewer lateral or provide Covenants, Conditions and Restrictions [CC&Rs] for the operation and maintenance of on-site private sewer mains that serve more than one lot.
 - i. Providing sewer for this development is dependent upon prior construction of certain sewer facilities in previously approved TM No. 96-0625. If they have not been constructed when required for this development, then the construction of certain portions of these previously approved sewer facilities, as required by the City Engineer, will become off-site improvements required for this development.
 - j. For public on-site sewer facilities located within a gated community, the subdivider shall provide the Wastewater Collection Divisions with keyed access satisfactory to the Director of the Metropolitan Wastewater Department. The City will not be held responsible for any issues that may arise relative to possession of the keys.
 - k. The subdivider shall construct their fair share of the Carmel Valley Trunk Sewer, as identified in the Del Mar Mesa Facilities Financing Plan, and may enter into a Reimbursement Agreement for all development that exceeds their fair share of the Carmel Valley Trunk Sewer.
27. In accordance with the Del Mar Mesa Specific Plan Subarea V, the subdivider shall, prior to or concurrently with the recordation of the first final map within Subarea V, prepare a Master Drainage Plan. The plan shall address sizing and siting of facilities required to mitigate potential impact to downstream facilities from increases in runoff and erosion, as a result of the specific plan. The plan shall be comprehensive, covering the entire Subarea V area.

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Page 7

28. The drainage system proposed for this subdivision shall be private and is subject to approval by the City Engineer.
29. Development of this project shall comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 92-08-DWQ (NPDES General Permit No. CAS000002), Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity. In accordance with said permit, a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan shall be developed and implemented concurrently with the commencement of grading activities, and a complete and accurate Notice of Intent [NOI] shall be filed with the SWRCB. A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received.

In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 92-08-DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in Section C.7 of SWRCB Order No. 92-08-DWQ.

30. The subdivider shall submit complete landscape construction documents, including plans, details, and specifications (including a permanent automatic irrigation system unless otherwise approved), for the required right-of-way improvements, slope revegetation and hydroseeding of all disturbed land in accordance with the Landscape Standards and to the satisfaction of the City Manager. The landscape construction documents shall be in substantial conformance with Exhibit "A," Landscape Concept Plan, dated August 7, 2001, on file in the Development Services Department. The subdivider shall assure by permit and bond the installation of landscaping per landscape construction documents.
31. The subdivider shall submit for review, a bonded landscape maintenance agreement for all landscape improvements within the public right-of-way area consistent with Exhibit "A," dated August 7, 2001, on file in the Development Services Department. The approved bonded landscape maintenance agreement shall be recorded prior to recordation of the final map.
32. The subdivider shall identify on a separate sheet entitled Non-title Sheet the brush management areas in substantial conformance with Exhibit "A," dated August 7, 2001, on file in the Development Services Department. These brush management areas shall be identified with a hatch symbol with no specific dimensions or zones called out. The following note shall be provided on the Non-title sheet to identify the hatched areas:
"Indicates fire hazard zone(s) per Section 142.0412 of the San Diego Municipal Code."

33. Lots 15 and 16 shall be granted, at no cost, to the City for open space. Said lots shall be free and clear of all private easements, private encroachments, private agreements or private liens.
34. Lots 7 through 11 shall have a covenant of easement as shown on the tentative map to protect the Multiple Habitat Planning Area (MHPA) lands on private property.
35. Any perimeter fencing for Lot 17 shall be designed as post and rail and not to exceed four (4) feet in height.
36. Lot 17 shall be reserved for a future park in accordance with the provisions of the Subdivision Map Act. In the event that Lot 17 is not purchased for public park purposes an amendment to this Planned Development Permit shall be submitted to reflect land uses that are consistent with the provisions of the Del Mar Mesa Specific Plan. Additional residential density will only be considered from a site within Del Mar Mesa that is designated for resource based open space that would no longer have density associated with it and would be conserved by dedication to the city.
37. PARK REQUIREMENTS:
 - a. The park site at Lot 17, of the Duck Pond Ranch Tentative Map is reserved in accordance with Section 66479 et seq. of the California Subdivision Map Act. Provisions of that Act require that the Developer/Owner shall, at the time of the recordation of the first final map within this subdivision, enter into an agreement, acceptable to the City Manager, for the City to acquire the park site within two (2) years after the completion and acceptance of all public improvements, unless such period of time is extended by mutual agreement. The purchase price shall be the market value of the raw unsubdivided land thereof at the time of the filing of the first substantially complete map of July 30, 1999, plus the taxes against such reserved area from the date of reservation, and any other costs incurred by the developer in the maintenance of such reserved area, including interest costs incurred on any loan covering such reserved areas. In the event the City does not exercise its option to acquire the park site, the reservation shall automatically terminate.
 - b. Subdivider shall select a qualified professional independent real estate appraiser from the City's list of approved appraisers to value said property. If the appraisal for said property is not acceptable to the City, the City will hire its own appraiser to value the land parcel. If the two appraisers are unable to resolve the price difference between themselves they may select a third qualified professional independent real estate appraiser from City list, which third appraiser will be employed to determine the

TM No. 99-0729
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market value of the property. In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within ten days, then the third appraiser will be appointed by the presiding judge of the Superior Court of the State of California, County of San Diego, acting in his or her individual capacity, upon application by either City or Developer/Owner with prior notice thereof to the other party. In the event that the Superior Court judge declines to make the appointment, the Parties agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. The third appraiser shall complete the assignment within sixty days of appointment. To expedite the appraisal process each Party shall pay the cost of its own selected appraiser, and both City and Developer/Owner agree to equally share the cost of the third mutually selected or court-appointed appraiser.

Binding Appraisal Determination. City and subdivider agree to accept and be bound by the market value of the property determined by the third appraiser selected or appointed to complete the assignment.

Escrow. The conveyance of the property shall occur and be effected upon payment of the purchase price by City after receiving written notice thereof delivered by subdivider to the City Manager within sixty days after the appraiser determines the market value of the property as defined above. Promptly after such notice, Parties shall open an escrow with Chicago Title Insurance Company or equal to facilitate conveyance by subdivider of the property to City. Parties agree to enter into mutually acceptable escrow instructions. The escrow instructions shall contain all pertinent terms and conditions of the agreement. The escrow instructions shall set forth that City will pay the closing costs, document transfer taxes, prorated real estate taxes, title insurance policy premiums, and escrow fees associated with the purchase of the property. Subdivider shall convey title to the property to City free and clear of all liens and encumbrances except as to title exceptions which have received the prior written approval of City.

Non-delinquent City and county general and specific taxes. Taxes owed will be determined by the County Tax Assessor's Office at the time of conveyance to the City.

Any public improvement assessments imposed after the effective date of the agreement.

Any covenants, conditions, restrictions, reservations, and existing easements of record as of the date of the agreement or thereafter imposed and approved by the City, which approval will not be unreasonably withheld.

- e. City's Del Mar Mesa Public Facilities Financing Plan and Facilities Benefit Assessment [FBA] provides funding for the land acquisition, rough grading, associated public amenities, design and construction of the park and the reimbursement associated with this project. The Financing Plan is subject to annual review and updates by the City Council at which time the estimated FBA funding appropriate for acquisition, design and construction of the park site is subject to change. The actual cost of acquisition, rough grading, associated public amenities of the project shall be determined in accordance with the terms of the agreement.
- d. Subdivider agrees to accept funds from the FBA, as compensation for acquisition of the property, rough grading, adjacent public improvements and all costs associated with the design and grading of the project.
- e. Acquisition of Lot 17 by the City for a neighborhood park shall cause the removal of said lot from the control of any and all CC&Rs associated with this development including all recreational guidelines, design guidelines and review procedures.
- f. The grading and construction drawings for this project require review and approval by the Park and Recreation Department, Northern Parks Division, Park Planning Section.
- g. Upon execution of the agreement, subdivider shall be entitled to cash reimbursement or credit from the FBA, however subdivider shall not receive a cash reimbursement until there are sufficient funds to reimburse subdivider, in whole or in part. City hereby agrees that reimbursement to subdivider from the FBA for the project will take priority over any project added to the FBA subsequent to the effective date of the agreement.

Timing of Reimbursement. Although monthly reimbursement is required, City shall be responsible to reimburse Duck Pond Ranch the total project cost no later than one year after City's acceptance of the Project. At such time, if sufficient funds are unavailable in the FBA, City shall reimburse Duck Pond Ranch as funds accrue in the FBA. Duck Pond Ranch reimbursement will have priority over all other FBA expenditures, except those FBA projects for which design or construction contracts have been awarded by the City prior to the date of this Agreement. At Duck Pond Ranch sole and exclusive option it may elect to accept FBA credit in lieu of receiving payment for some portion or all of the total project cost.

38. This subdivision is in a community plan area designated in the City of San Diego Progress Guide and General Plan as Future Urbanizing. As such, special financing plans have been, or will be, established to finance the public facilities required for the community plan area.

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August 7, 2001

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Therefore, in connection with Council approval of the final map, the subdivider shall comply with the provisions of the financing plan then in effect for this community plan area, in a manner satisfactory to the Director of the Development Services Department. This compliance shall be achieved by entering into an agreement for the payment of the assessment, paying a FEA or such other means as may have been established by the City Council.

FOR INFORMATION:

- 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 1986, Chapter 887), in accordance with procedures established by the Director of Building Inspection.
- This tentative map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.

RESOLUTION NUMBER R-295387

ADOPTED ON AUGUST 7, 2001

WHEREAS, Sea Breeze Investment, LLC, Applicant, and RBF Consulting, Engineer, submitted an application to the City of San Diego for a 17-lot tentative map (Tentative Map No. 99-0729 and street vacation for the Duck Pond Ranch project), located on the east side of the extension of Carmel Mountain Road, south of the eastern terminus of Del Mar Mesa Road, and legally described as Portions of the Northwest Quarter of the Northwest Quarter of the Southeast Quarter and the North Half of the Northeast Quarter of the Southwest Quarter of Section 22, Township 14 South, Range 3 West, San Bernardino Base Meridian, in the Del Mar Mesa Community Plan area, in the AR-1-1 zone (previously referred to as the A-1-10 zone); and

WHEREAS, on June 14, 2001, the Planning Commission of the City of San Diego considered Tentative Map No. 99-0729, and pursuant to Resolution No. 3152-3-PC voted to recommend approval of the map; and

WHEREAS, the matter was set for public hearing on August 7, 2001, 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 this Council adopts the following findings with respect to Tentative Map No. 99-0729:

1. The map proposes the subdivision of a 30.9-acre site into 17 lots for residential development (12 residential, 1 open space, 2 private driveways, 1 future park, and 1 urban amenity lots). This type of development is consistent with the City of San Diego's Progress Guide and General Plan and the Del Mar Mesa Subarea V 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 and development regulations of the AR-1-1 zone (previously referred to as the A1-10 zone) in that:

a. All lots have minimum frontage on a dedicated street which is open to and usable by vehicular traffic, as allowed under a Planned Residential Development/Resource Protection Ordinance [PRD/RPO] permit.

b. All lots meet the minimum dimension requirements of the AR-1-1 zone (previously referred to as the A1-10 zone), as allowed under a PRD/RPO permit.

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 PRD/RPO permit.

d. Development of the site is controlled by Planned Residential Development/Resource Protection Ordinance Permit No. 99-0729.

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 and 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 design of the subdivision and the proposed improvements are likely to cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitat. However, the project as revised now avoids or mitigates the potentially significant environmental effects based upon Findings No. 99-0729 to the Del Mar Mesa Specific Plan Master Environmental Impact Report No. 95-0353, which are included herein by this reference.

7. The design of the subdivision and the type of improvements will not likely cause serious public health problems inasmuch 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 City Council has reviewed the adopted Housing Element of the Progress Guide and General Plan of the City of San Diego and 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 are in accordance with financing and environmental policies of the Council.

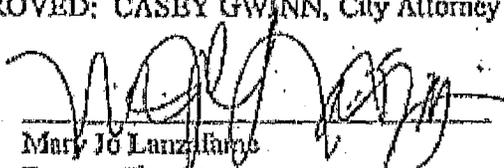
10. The property contains a right-of-way which must be vacated to implement the final map in accordance with San Diego Municipal Code section 125.0430.

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

BE IT FURTHER RESOLVED, that the recommendation of the Planning Commission is sustained, and Tentative Map No. 99-0729 is granted to Sea Breeze Investment, LLC, Applicant, and RBF Consulting, Engineer, subject to the conditions attached hereto and made a part hereof.

APPROVED: CASBY GWINN, City Attorney

By


Mary Jo Lanzillame
Deputy City Attorney

MLL/mdw/lc

10/18/01

Or.Dept:Clerk

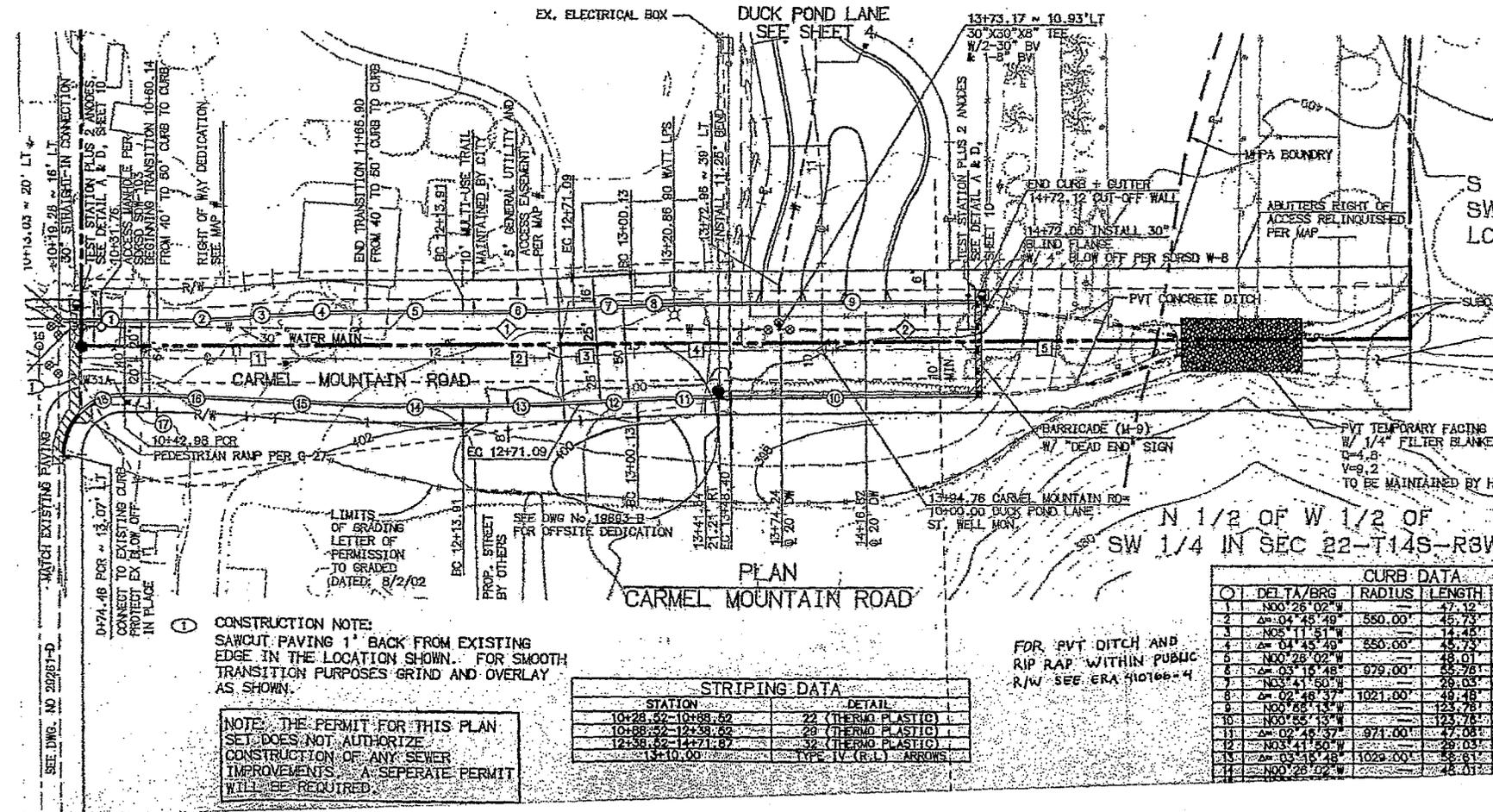
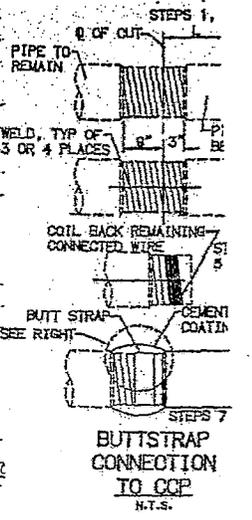
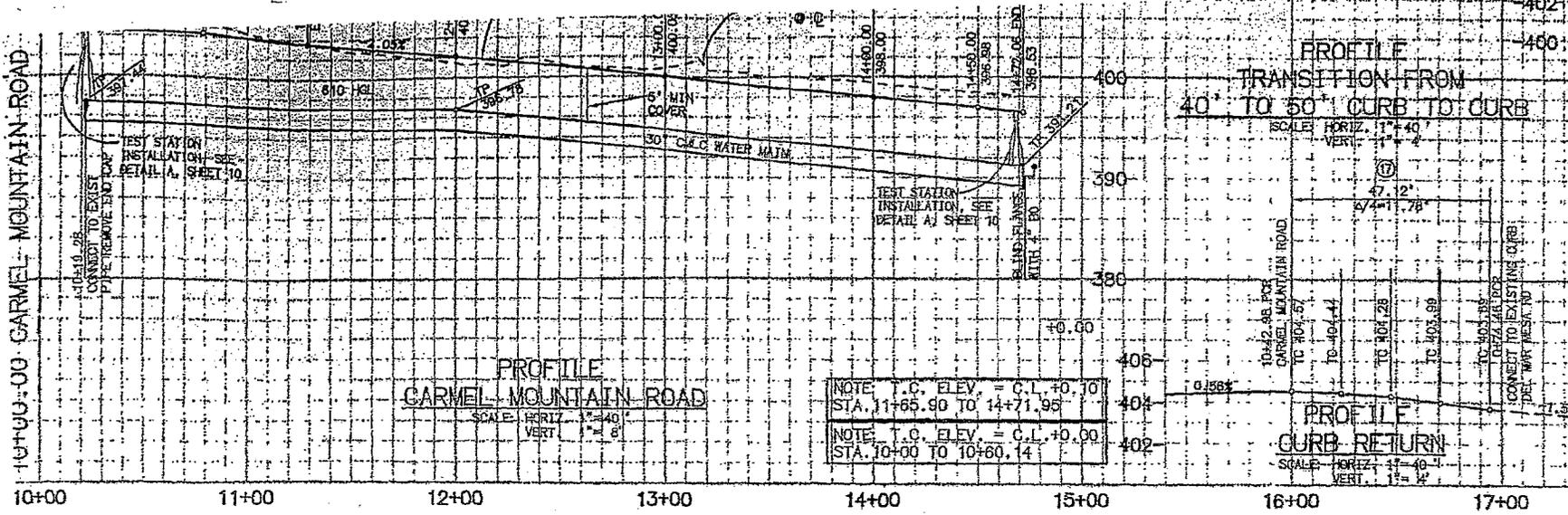
R-2002-439

Form=tnr frm

Reviewed by Robert Gentles

EXHIBIT B
Graphic Depiction of Project

10+00:00 CARMEL MOUNTAIN ROAD



S 1/2 OF NE 1/4
SW 1/4 & W 20 A
LOT 2 SEC 22-T14

FOR IMPROVEMENTS IN THE
AREA PLEASE SEE DEFERRED
IMPROVEMENT AGREEMENT
DATED _____ RESOLUTION _____

N 1/2 OF W 1/2 OF
SW 1/4 IN SEC 22-T14S-R3W

STRIPING DATA

STATION	DETAIL
10+28.52-10+88.52	22 (THERMO PLASTIC)
10+88.52-12+38.52	28 (THERMO PLASTIC)
12+38.52-14+71.82	32 (THERMO PLASTIC)
14+71.82-15+10.00	TYPE IV (R.L.) ARROWS

CURB DATA

NO.	DELTA/BRG	RADIUS	LENGTH	REMARK
1	N00°26'02"W	-	47.12	6" TYPE I C&G
2	Δ°04'45"49"	550.00'	45.73	6" TYPE I C&G
3	N05°11'51"W	-	14.48	6" TYPE I C&G
4	Δ°04'45"49"	550.00'	45.73	6" TYPE I C&G
5	N00°26'02"W	-	48.01	6" TYPE I C&G
6	Δ°05'10"45"	979.00'	35.261	6" TYPE I C&G
7	N03°11'50"W	-	28.03	6" TYPE I C&G
8	Δ°02'46"37"	1021.00'	42.48	6" TYPE I C&G
9	N04°55'13"W	-	123.78	6" TYPE I C&G
10	N00°55'15"W	-	123.78	6" TYPE I C&G
11	Δ°02'46"37"	971.00'	47.081	6" TYPE I C&G
12	N00°41'50"W	-	29.03	6" TYPE I C&G
13	Δ°03'16"48"	1029.00'	38.61	6" TYPE I C&G
14	N00°26'02"W	-	28.01	6" TYPE I C&G

FOR PVT DITCH AND
RIP RAP WITHIN PUBLIC
R/W SEE ERA 101066-4



Exhibit C

Description of Project

30 Inch Diameter Transmission Water Line within Carmel Mountain Rd from intersection of Carmel Mountain Rd and Little McGonigle Ranch Road on the north to Southern termination of Carmel Mountain Road just past entry to Duck Pond Lane.

EXHIBIT D-1
Del Mar Mesa Public Facilities Financing Plan
Sheet for Project No. 43-21

**CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM**

TITLE: **LITTLE MCGONIGLE RANCH ROAD PIPELINE**
(FORMERLY CAMINO SANTA FE PIPELINE)

DEPARTMENT: WATER

PROJECT: 43-21

COUNCIL DISTRICT: 1

CIP NO.: 70-964.0

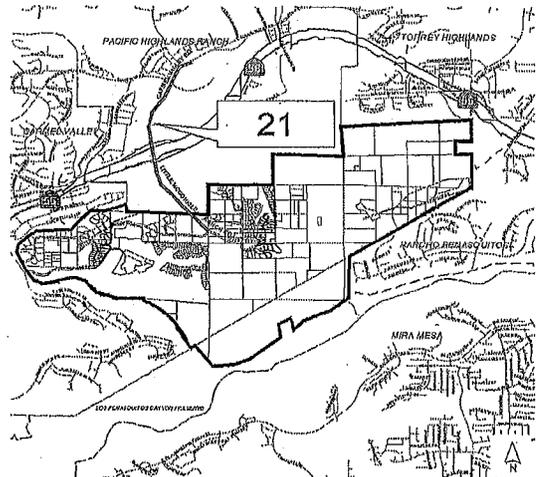
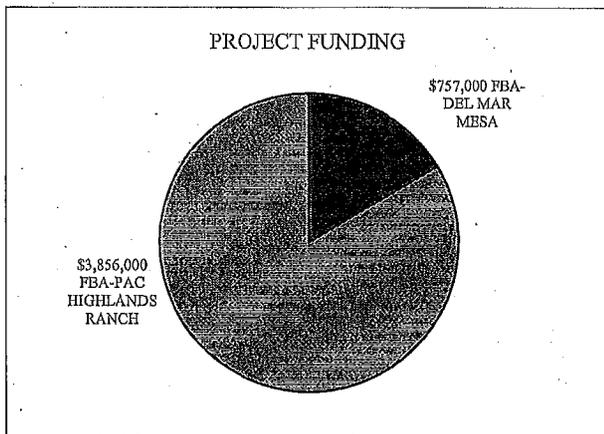
COMMUNITY PLAN: DEL MAR MESA

DESCRIPTION: THIS PROJECT PROVIDES FOR THE CONSTRUCTION OF APPROXIMATELY 11,200 LINEAR FEET OF 30-INCH DIAMETER TRANSMISSION WATER PIPELINE IN CARMEL VALLEY ROAD AND LITTLE MCGONIGLE RANCH ROAD (FORMERLY CAMINO SANTA FE) WITHIN THE DEL MAR MESA AND PACIFIC HIGHLANDS RANCH COMMUNITIES TO PROVIDE FOR BOTH DEL MAR MESA AND PACIFIC HIGHLANDS RANCH.

MESA VERDE-DEL MAR LP - 1,550 LINEAR FEET @ \$757,000
PACIFIC HIGHLANDS RANCH - 9,650 LINEAR FEET @ \$3,856,000

JUSTIFICATION: THE PIPELINE IS REQUIRED TO PROVIDE CAPACITY IN THE WATER SYSTEM TO ADEQUATELY SUPPLY THE DEMANDS AT BUILDOUT OF THE DEL MAR MESA AND PACIFIC HIGHLANDS RANCH COMMUNITIES.

SCHEDULE: COMPLETION IN FY 2004.



FUNDING	SOURCE	EXPEN/						
		ENGUM	CONTRARR	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
\$757,000	FBA-DEL MAR MESA		\$400,000	\$357,000				
\$3,856,000	FBA-PAC HIGHLANDS RANCH DEV. ADVANCE		\$4,213,000	\$3,856,000 -\$4,213,000				
\$4,613,000	TOTAL	\$0	\$4,613,000	\$0	\$0	\$0	\$0	\$0

REFERENCE: Pacific Highlands Ranch (U-4)

EXHIBIT D-2
Pacific Highlands Ranch Public Facilities Financing Plan
Sheet for Project No. U-4

Pacific Highlands Ranch Public Facilities Financing Plan FY 2013

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

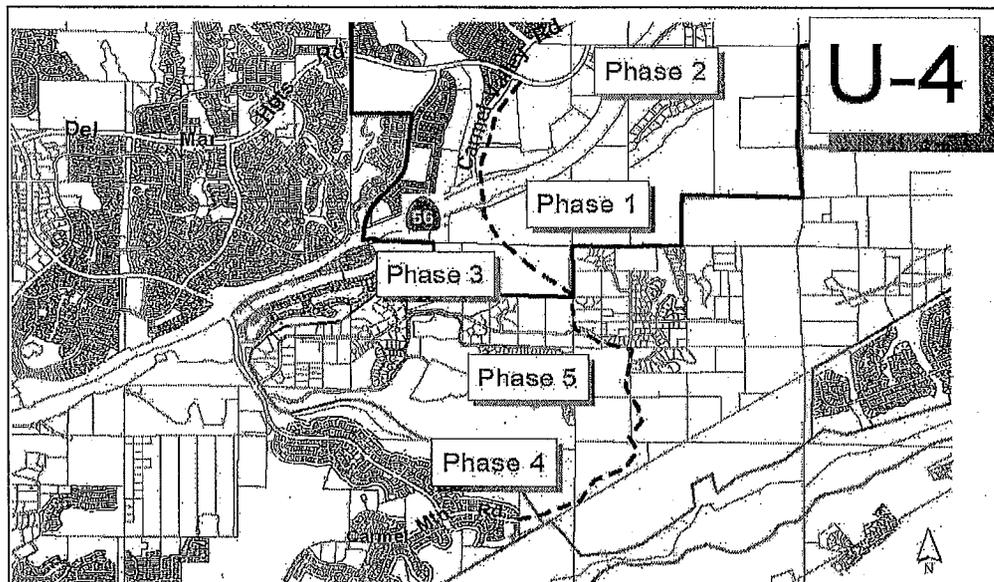
TITLE: LITTLE MCGONIGLE RANCH ROAD PIPELINE

DEPARTMENT: WATER
CIP, JO, or WBS #: 70-964.0

PROJECT: U-4
COUNCIL DISTRICT: 1
COMMUNITY PLAN: PHR

SOURCE	FUNDING	EXPENDED	COMM. APPROV.	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
FBA-PHR	\$4,500,000					\$1,900,000		
FBA-BMR								
FBA-TH								
FBA-DMM	\$1,500,000	\$654,968			\$845,032			
FBA-RP								
DEV. ADV								
DEV/SUBD								
COUNTY								
STATE								
OTHER								
UNIDEN								
TOTAL	\$6,000,000	\$654,968	\$0	\$0	\$845,032	\$1,900,000	\$0	\$0

SOURCE	FY 2013	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
FBA-PHR						\$2,600,000		
FBA-BMR								
FBA-TH								
FBA-DMM								
FBA-RP								
DEV. ADV								
DEV/SUBD								
COUNTY								
STATE								
OTHER								
UNIDEN								
TOTAL	\$0	\$0	\$0	\$0	\$0	\$2,600,000	\$0	\$0



CONTACT: CHRIS GASCON

TELEPHONE: (619) 533-7417

EMAIL: CGascon@sandiego.gov

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: LITTLE MCGONIGLE RANCH ROAD PIPELINE

DEPARTMENT: PUBLIC UTILITIES
CIP, JO, or WBS #: 70-964.0

PROJECT: U-4
COUNCIL DISTRICT: 1
COMMUNITY PLAN: PHR

DESCRIPTION:

THIS PROJECT PROVIDES FOR THE CONSTRUCTION OF APPROXIMATELY 14,850 LINEAR FEET (7,000 FEET WITHIN PACIFIC HIGHLANDS RANCH, 7,800 FEET WITHIN DEL MAR MESA) OF 30-INCH DIAMETER TRANSMISSION WATER PIPELINE IN CARMEL VALLEY ROAD AND LITTLE MCGONIGLE RANCH ROAD WITHIN THE DEL MAR MESA AND PACIFIC HIGHLANDS RANCH COMMUNITIES TO PROVIDE FOR BOTH DEL MAR MESA AND PACIFIC HIGHLANDS RANCH.

REFERENCE:

DEL MAR MESA PUBLIC FACILITY FINANCING PLAN PROJECT 43-21

JUSTIFICATION:

THIS PIPELINE IS REQUIRED TO PROVIDE CAPACITY IN THE WATER SYSTEM TO ADEQUATELY SUPPLY THE DEMAND AT FULL COMMUNITY DEVELOPMENT OF THE DEL MAR MESA AND PACIFIC HIGHLANDS RANCH COMMUNITIES.

FUNDING ISSUES:

PHASE I WAS CONSTRUCTED AND REIMBURSED AS A PART OF THE SR-56/CARMEL VALLEY ROAD INTERCHANGE PROJECT, PROJECT T-1.3.

THE ACTUAL TIMING FOR COMMUNITY CONTRIBUTIONS MAY DIFFER AS PUBLIC FACILITY FINANCING PLANS ARE UPDATED SEPARATELY.

NOTES:

PHASE I: CVR WITHIN SR-56/CVR INTERCHANGE WITHIN ROW (NOT INCLUDED) -	1,050 LF
PHASE II: CARMEL VALLEY ROAD FROM SR-56/CVR INTERCHANGE TO DMHR -	2,800 LF
PHASE III: LMRR FROM INTERCHANGE TO DEL MAR MESA ROAD -	3,900 LF
PHASE IV: LMRR FROM DEL MAR MESA ROAD TO DEVINO COURT -	1,900 LF
PHASE V: CMR FROM DEVINO COURT TO DMM COMMUNITY BOUNDARY -	<u>5,200 LF</u>
TOTAL	14,850

LF

D SHEETS:

PHASE I: 11-172824
PHASE II: 33567-D
PHASE III:
PHASE IV: 29261-D & 31447-D
PHASE V: 33472-D & 33419-D

SCHEDULE:

PHASE I IS COMPLETE;
PHASE II: ESTIMATED TO BE COMPLETED IN FY 2015;
PHASE III: ESTIMATED TO BE COMPLETED IN FY 2015;
PHASE IV: ESTIMATED TO BE COMPLETED IN FY 2015;
PHASE V: ESTIMATED TO BE COMPLETED IN FY 2015

CONTACT: CHRIS GASCON

TELEPHONE: (619) 533-7417

EMAIL: CGascon@sanidiego.gov

EXHIBIT E
Project Costs

Duck Pond Ranch / Sea Breeze Properties, LLC
 Little McGonigle Ranch Road Water Pipeline
 Costs

3/4/13

<u>ITEM</u>	<u>Method Of Allocation</u>	<u>Total Area</u>	<u>Total Cost</u>	<u>Park Site Area</u>	<u>Pipeline Costs</u>
4 Point Pipeline Construction	Actual Costs Associated with pipeline construction	450 Lf			135,900
RBF Engineering & Working Drawings		Allocation as % of costs		5%	6,795
Testing Engineers	Actual Costs				1,740
City Processing Costs - billed to Duck Pond Ranch Project		Allocation as % of costs		5%	6,795
City Fees -Connections 1 & 2	Actual Costs				5,486
	<u>SUBTOTAL</u>				<u>156,716</u>
Project Administration & Overhead			5.00%		7,836
Interest		Amount Established In Reimbursement Agreement			
					<u>-</u>
TOTAL COSTS					<u>\$ 164,552</u>

EXHIBIT F

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 of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.
11. **Compliance Provision.** Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 [ADA] and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code [Title 24]. Further, Consultant is responsible as designer and employer to comply with all parts of the ADA and Title 24.
12. **Maintenance of Records.** Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.

EXHIBIT G

Design and Construction Standards

1. **Laws.** Subdivider shall comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including but not limited to, the following:
 - A. *Permits.* Development Services Department permits, hazardous materials permits.
 - B. *Building Codes.* State and local Building Codes.
 - C. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code [Title 24].* It is Subdivider's sole responsibility to comply with all ADA and Title 24 regulations. See Subdivider Certification attached as **Exhibit H**.
 - D. *Environmental.* Subdivider shall complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring.
 - E. *Air, Water, and Discharge.* Subdivider shall comply with the Clean Air Act of 1970, the Clean Water Act (33 USC 1368)-Executive Order 11738, and San Diego Municipal Code Chapter 4, Article 3, Division 3 (Stormwater Management and Discharge Control).
 - F. *ESBSSA.* Subdivider shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
 - G. *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, 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 H

Certification for Title 24/ADA Compliance

{INSERT Name of Project}

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for {Insert Name of Project} by {Insert Consultant Name} 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: 3/03/2013

By: Cathy Louitt
(Insert Name)

Manager, Sea Breeze Properties LLC
(Insert Title)

EXHIBIT I

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.** Subdivider certifies that it has delivered 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.** Subdivider certifies that City has reviewed the Plans and Specifications, and the Plans and Specifications included City's standard drawings and specifications as described in **Exhibit G**.
4. **Final Approval.** Subdivider certifies that the City approved the Plans and Specifications.

EXHIBIT J

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.
 - C. *Environment.* Subdivider shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including, but not limited to, the Clean Air Act of 1970, the Clean Water Act, Executive Order Number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Furthermore, the 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 City all special inspection reports within seven (7) calendar days of inspection. Subdivider shall report all failures of special inspections to City.
 - 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 the work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as 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 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 K].
- 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 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 K

Certification for a Drug-Free Workplace

PROJECT TITLE: Duck Pond Ranch
SEA Range Properties, LLC

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:

SEA Range Properties, LLC
{Insert Name Under Which Business 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 Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

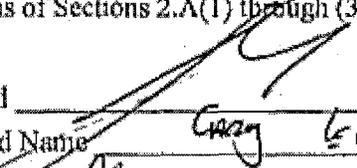
Signed 
Printed Name Craig Levitt
Title Manager
Date 3/07/2012

EXHIBIT L

Project Deliverables

1. 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.* Specifications shall be 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. 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. These documents shall contain, at a minimum, the following:
- i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.
 - ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.
 - iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.

- iv. Proposed construction schedules.
 - v. Technical 'Special Provisions' section of the Specifications.
 - vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
 - vii. Probable Project construction costs, for each component of the Project being considered in this phase.
 - viii. Color board with material samples.
- E. *Construction Documents.* Subdivider shall provide, based on the approved Design Development documents, Working Drawings and Contract Specifications [throughout the Agreement and attached exhibits referred to as Construction Documents] setting forth in detail the requirements for construction of the Project, including the necessary bidding information.
- F. *Utility Location Requests.* Along with initial submission of Construction Documents, 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.
- i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Subdivider shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Subdivider shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Subdivider shall thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.
 - ii. 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.
 - 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 M

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.

**City of San Diego
Human Resources Department**

RECEIVED
MAR 08 2013

Request for Human Resources Approval for Purchase Requisition

BY:

Requesting Department:	Development Services
Vendor Name:	Little McGonigle Ranch Road Water Pipeline
Purchase Requisition #:	N/A
Department Contact:	Charlette Strong Williams (619) 533-3683 John Tracanna (619) 533-3682
Date of Request:	March 7, 2013
Contract Amount:	\$200,000.00

Please submit request to HumanResources@sanidiego.gov or MS 56L

<u>Question</u>	<u>Department Response</u>
What is the contract for?	<p>Reimbursement for the design and construction of approximately 450 linear feet (LF) of Little McGonigle Ranch Road Water Pipeline, serving the Del Mar Mesa Specific Plan area and the Pacific Highlands Ranch Community Plan area.</p> <p>The Developer (Seabreeze Properties LLC) constructed 450LF of 30" water pipeline as a portion of the City's future transmission system in the Del Mar Mesa area along Little McGonigle Ranch Road.</p> <p><u>Background:</u> On August 7, 2001, City Council adopted Resolution No. R-295387 granting Tentative Map No. 99-0729 [TM] subject to certain conditions determined to be necessary for Subdivider's development. The TM Conditions required Subdivider to construct necessary water pipeline improvements in a manner satisfactory to the Director of the Utilities Department and the City Engineer.</p> <p>The Del Mar Mesa Financing Plan identifies Project No. 43-21, Little McGonigle Ranch Road Water Pipeline as a project to be funded with FBA funds from Del Mar Mesa. Also, the Pacific Highlands Ranch Financing Plan identifies Project No. U-4, Little McGonigle Ranch Road Water Pipeline, as a project to be funded with FBA funds from Pacific Highlands Ranch. Project Nos. 43-21 and U-4 are identical projects identified separately in the Del Mar Mesa and Pacific Highlands Ranch Financing Plans. Both the DMM and PHR FBA's will provide funding towards this reimbursable project.</p>
Are City employees currently performing any of the work?	<u>No</u>
Will any City employees be	<u>No</u>

displaced as a result of this bid?	
If this is a renewal of an existing contract, how long have these services been contracted out?	<u>No</u>
Is this a Public Works Contract? (construction, reconstruction or repair of City buildings, street or other facilities)	<u>No: However, PUD staff have reviewed and verified costs of the project and accepted the completed improvement.</u>
Is this a Tenant Improvement?	<u>No</u>
Was another department contacted to determine if they can or do perform this service (i.e. Streets, Facilities, etc.)? If so, please attach communication.	<u>Yes: The PUD was aware of the developer provided improvement.</u>

NOTE: If a public works construction contract and over \$100k, see City Charter Section 94.

<u>HUMAN RESOURCES DEPARTMENT USE ONLY</u>		APPROVED
Based on the Department's representation, this contract is _____ from a labor relations perspective.		
 _____ Human Resources Department Liaison	_____ 3/13/13 Date	

**The City of San Diego
COMPTROLLER'S CERTIFICATE**

CERTIFICATE OF UNALLOTTED BALANCE

CC 300006256

Originating Business Area: 2000

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
 align="right">COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Funds Center or Cost Center	Internal Order or WBS Element	Original Amount
TOTAL AMOUNT									

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$102,032.00

Vendor: Seabreeze Properties, LLC

Purpose: To authorize the expenditure of funds for the purpose of executing a Reimbursement Agreement with Seabreeze Properties, LLC for the Little McGonigle Ranch Road Pipeline Project S-00069.

Date: July 23, 2013 By: Josh Spas
 align="right">COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA									
Doc. Item	Funded Program	Fund	Grant Number	G/L Account	Functional Area	Business Area	Funds Center	WBS Element	Original Amount
001	S00069	400089	NOT_RELEVANT_GRANT	512066	OTHR-00000000-PR	2013	2013131115	S-00069.07.03	\$102,032.00
TOTAL AMOUNT									\$102,032.00

FUND OVERRIDE