

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) n/a
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Planning	DATE: 7/31/2015
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SUBJECT: Piazza Famiglia Agreements

PRIMARY CONTACT (NAME, PHONE): Scott Mercer, 619-533-3676 MS 606 F	SECONDARY CONTACT (NAME, PHONE): Robin Shifflet, 619-533-4524 MS 413
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COMPLETE FOR ACCOUNTING PURPOSES

FUND	400122				
FUNCTIONAL AREA	OTHR-00000000-GG				
COST CENTER	9913000011				
GENERAL LEDGER ACCT	330019				
WBS OR INTERNAL ORDER	RD-16000				
CAPITAL PROJECT No.	RD-16000				
AMOUNT	\$1,000,000.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): This action includes an expense of Development Impact Fees (DIF) from the Downtown Community (Centre City) totaling \$1,000,000 to reimburse Fenton Little Italy LLC (Developer) for design and construction costs associated with Piazza Famiglia.

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	Comptroller	ORIG DEPT.	Tomlinson, Tom 08/05/2015
Park and Recreation		CFO	
Equal Opportunity Contracting		DEPUTY CHIEF	Graham, David 09/10/2015
Financial Management		COO	
Liaison Office		CITY ATTORNEY	
		COUNCIL PRESIDENTS OFFICE	

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

- 1) Authorize the Mayor or his designee to execute a Park Development Agreement (PDA) between the City and Fenton Little Italy LLC for the design and construction of a public plaza to be known as Piazza Famiglia on a vacated segment of West Date Street in Little Italy.
- 2) Authorize the Mayor or his designee to execute a Reimbursement Agreement (RA) between the City and

<p>Fenton Little Italy LLC (Developer) to reimburse the Developer up to \$1,000,000 for design and construction costs associated with Piazza Famiglia, provided the Chief Financial Officer first certifies that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.</p> <p>3) The Chief Financial Officer is authorized to add CIP No. RD16000, Piazza Famiglia, to the Capital Improvements Program.</p> <p>4) The Chief Financial Officer is authorized to increase the Capital Improvements Program Budget in CIP RD16000, Piazza Famiglia and to appropriate and expend \$1,000,000 from Fund No. 400122 Centre City DIF-Admin, for the purpose of reimbursing the developer for design and construction costs associated with Piazza Famiglia Plaza.</p>	
<p>STAFF RECOMMENDATIONS: Approve requested actions.</p>	
<p>SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)</p>	
<p>COUNCIL DISTRICT(S):</p>	<p>3</p>
<p>COMMUNITY AREA(S):</p>	<p>Downtown</p>
<p>ENVIRONMENTAL IMPACT:</p>	<p>On July 14, 2014 the City Council adopted Resolution R-309115 certifying the Sixth Addendum to the 2006 Final Environmental Impact Report (EIR) for the Downtown Community Plan, Centre City Planned District Ordinance and the Tenth Amendment to the Centre City Redevelopment Plan for the Project which included the Piazza Famiglia. The proposed actions are consistent with the Sixth Addendum and no further environmental review under the California Environmental Quality Act is required.</p>
<p>CITY CLERK INSTRUCTIONS:</p>	<p>This item is subject to Charter Section 99 (10 day published notice, approval by Ordinance and 6 votes required)</p>

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 7/31/2015

ORIGINATING DEPARTMENT: Planning

SUBJECT: Piazza Famiglia Agreements

COUNCIL DISTRICT(S): 3

CONTACT/PHONE NUMBER: Scott Mercer/619-533-3676 MS 606 F

DESCRIPTIVE SUMMARY OF ITEM:

This action is for the consideration and approval of a Park Development Agreement and Reimbursement Agreement with Fenton Little Italy, LLC for a public plaza in the Little Italy neighborhood of Downtown to be known as Piazza Famiglia.

STAFF RECOMMENDATION:

Approve requested actions.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

On July 14, 2014 the City Council adopted Resolution Number R-309116 which among other things approved a Centre City Development Permit (CCDP), Planned Development Permit (PDP), Neighborhood Use Permit (NUP), and Site Development Permit (SDP) for a project known as “India and Date,” collectively known as CCDP/PDP/NUP/SDP No. 2013-10. CCDP/PDP/NUP/SDP No. 2013-10 allows for the construction of two mixed-use buildings on the north and south side of Date Street respectively between India and Columbia Streets, the construction of an underground parking structure under both buildings and underneath Date Street, and the construction of a public plaza on the vacated portion of Date Street between India and Columbia Streets.

On July 14, 2014 the City Council adopted Resolution Number R-309117 which vacated a portion of Date Street between India Street and Columbia Street (Right of Way Vacation No. 1094595) for the “India and Date” mixed-use project and the associated public plaza.

The proposed public plaza is to be known as Piazza Famiglia (Project). The Developer prepared a General Development Plan (GDP) for the Project, which was recommended for approval by the Park and Recreation Board on June 19, 2014 and subsequently approved by the Park and Recreation Department.

Condition No. 6 of CCDP/PDP/NUP/SDP No. 2013-10 calls for execution of a Park Development Agreement (PDA), the negotiation of a Reimbursement Agreement (RA), and the execution of a Maintenance Agreement (MA).

Today’s actions call for the consideration and approval of the proposed PDA and RA which have been developed in accord with CCDP/PDP/NUP/SDP No. 2013-10. The Maintenance Agreement (MA) for this project is also being developed and will be brought forward for consideration as a separate action.

DISCUSSION:

Park Development Agreement (PDA):

Under the PDA, the Developer is obligated to design and construct the piazza project on the vacated portion of Date Street consistent with the CCDP/PDP/NUP/SDP No. 2013-10, the GDP, City standard drawings and specifications, the Park and Recreation Department's Consultant's Guide to Park Design and Development, and all local, state, and federal disabled access laws and regulations.

The PDA also obligates the Developer to grant a perpetual recreation easement to the City for the land upon which the project is constructed. The easement will enable the City to oversee the operations, maintenance, and administration of the piazza as a public space of the City.

Reimbursement Agreement (RA):

The cost of the project is estimated to be \$1,597,590. The RA provides for City reimbursement to the developer of up to \$1,000,000 of these costs, effectively enabling the City to acquire a park asset at significantly less than the cost of developing the asset.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #1: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #3 Invest in Infrastructure.

Goal #3 Create and sustain a resilient and economically prosperous City.

Objective #1 Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability.

FISCAL CONSIDERATIONS:

The City will incur expenses of up to \$1,000,000 paid by the Downtown Development Impact Fee Fund (Downtown DIF). There are no General Fund expenses associated with the development of this project.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

These agreements are 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)

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

On June 17, 2014 the City Council approved the Fiscal Year 2015 Downtown Community Public Facilities Financing Plan (Downtown PFFP). The Downtown PFFP includes Project No. P-13, Downtown Park Acquisition and Development, which anticipates funding for the acquisition, design, and construction of park facilities in the Downtown Community. The piazza project is consistent with the intent of the Downtown PFFP.

On July 14, 2014 the City Council adopted Resolution Number R-309116 which among other things approved a certain Centre City Development Permit (CCDP), Planned Development Permit (PDP), Neighborhood Use Permit (NUP), and Site Development Permit (SDP) for a

project known as “India and Date”, collectively known as CCDP/PDP/NUP/SDP No. 2013-10. CCDP/PDP/NUP/SDP No. 2013-10 allows for the construction of the piazza project.

On July 14, 2014 the City Council adopted Resolution Number R-309117, vacating a portion of Date Street between India Street and Columbia Street (Right of Way Vacation No. 1094595) to enable, the construction and establishment of the piazza project.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Developer held public workshops in the Little Italy neighborhood related to the design of the public piazza on May 30, 2013, June 20, 2013, and September 17, 2013.

On March 19, 2014 the Downtown Community Planning Council (DCPC) voted 21-0 in support of the project.

On March 26, 2014 the Civic San Diego Board voted 6-0 in support of the project.

On June 19, 2014 the City of San Diego Park and Recreation Board voted 7-0 to recommend approval of the General Development Plan and the naming of the proposed plaza “Piazza Famiglia.”

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The project will result in the creation of an attractive 11,200 square foot plaza consisting of enhanced paving, lighting, landscaping, water fountain, and moveable tables and chairs. The project will be a public space for the community to enjoy on a daily basis, as well as provide an area for cultural activities, farmers markets, art events, and music events. The public plaza and activities associated with the open space will add value and provide identity and economic benefit to downtown and the Little Italy neighborhood.

A traffic assessment analysis dated October 14, 2013 has concluded that the street vacation associated with the project will not result in any significant impacts related to the redistribution of existing and future traffic, transit conditions or the removal of the existing 13 existing parking spaces. The associated “India and Date” project includes the construction of a privately owned and operated subterranean parking garage which will include a minimum of 50 parking spaces available to the general public for a minimum period of five years.

Tomlinson, Tom
Originating Department

Graham, David
Deputy Chief/Chief Operating Officer

DOCKET SUPPORTING INFORMATION CITY OF SAN DIEGO EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION	DATE: August 26, 2015
SUBJECT: Piazza Famiglia Agreements	

GENERAL CONSULTANT INFORMATION

Recommended Consultant: Fenton Little Italy LLC (Not Certified, M, Cauc)

Amount of this Action: \$ 1,000,000 (Not to Exceed)

Funding Source: Downtown Development Impact Fee Fund (DIF)

Goals: TBD

SUBCONSULTANT PARTICIPATION

There is no subconsultant activity associated with this action. Any future action or agreement is subject to Agency requirements.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Fenton Little Italy LLC submitted a Work Force Report for their San Diego County employees dated August 20, 2015, indicating 0 employees in their Administrative Work Force. The firm has fewer than 15 employees and therefore, is exempt from the employment category goals.

These agreements are subject to the City’s Equal Opportunity Outreach Program (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

Authorize the execution of a Reimbursement Agreement (RA) between the City and Fenton Little Italy LLC (Developer) to reimburse the Developer up to \$1,000,000 for design and construction costs associated with Piazza Famiglia.

RW



City of San Diego

EQUAL OPPORTUNITY CONTRACTING (EOC)

1200 Third Avenue • Suite 200 • San Diego, CA 92101

Phone: (619) 236-6000 • Fax: (619) 236-5904

WORK FORCE REPORT

The objective of the *Equal Employment Opportunity Outreach Program*, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to unlawful discrimination in the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractors are required to provide a completed *Work Force Report (WFR)*.

**NO OTHER FORMS WILL BE ACCEPTED
CONTRACTOR IDENTIFICATION**

Type of Contractor: Construction Vendor/Supplier Financial Institution Lessee/Lessor
 Consultant Grant Recipient Insurance Company Other

Name of Company: Fenton Little Italy LLC

ADA/DBA: _____

Address (Corporate Headquarters, where applicable): 7577 Mission Valley Road

City: San Diego County: San Diego State: CA Zip: 92108

Telephone Number: (619) 400-0120 Fax Number: (619) 400-0111

Name of Company CEO: Michael P. Neal

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address: _____

City: _____ County: _____ State: _____ Zip: _____

Telephone Number: (619) 400-0181 Cell ~~Fax~~ Number: (619) 607-7079 Email: jlaraia@hgfenton.com

Type of Business: Development Type of License: n/a (Contractors and Subs will be engaged)

The Company has appointed: John LaRaia

As its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address: 7577 Mission Valley Road, San Diego, CA 92108

Telephone Number: (619) 400-0181 Fax Number: (619) 400-0111 Email: jlaraia@hgfenton.com

N/A: Company is developer per Development Agreement and Reimbursement Agreement with the City whereby Developer engages Contractors to perform work on project. Section 4.5.1 of Reimbursement Agreement requires Contractors to comply with EOC Program.
 One San Diego County (or Most Local County) Work Force - Mandatory
 Branch Work Force *
 Managing Office Work Force
*Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.

I, the undersigned representative of Fenton Little Italy LLC
San Diego, CA (Firm Name) (County) (State) hereby certify that information provided

herein is true and correct. This document was executed on this 20th day of August, 2015

DocuSigned by:
John LaRaia
203AD95936A24BA...
(Authorized Signature)

John LaRaia
(Print Authorized Signature Name)

WORK FORCE REPORT – Page 2

NAME OF FIRM: Fenton Little Italy LLC DATE: 08/20/15

OFFICE(S) or BRANCH(ES): 7577 Mission Valley Road, San Diego, CA 92108 COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

N/A: Company has no employees

- (1) Black, African-American
- (2) Hispanic, Latino, Mexican-American, Puerto Rican
- (3) Asian, Pacific Islander
- (4) American Indian, Eskimo
- (5) Filipino
- (6) White, Caucasian
- (7) Other ethnicity; not falling into other groups

ADMINISTRATION OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Management & Financial														
Professional														
A&E, Science, Computer														
Technical														
Sales														
Administrative Support														
Services														
Crafts														
Operative Workers														
Transportation														
Laborers*														

*Construction laborers and other field employees are not to be included on this page

Totals Each Column														
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Grand Total All Employees

0

Indicate by Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
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Non-Profit Organizations Only:

Board of Directors														
Volunteers														
Artists														

WORK FORCE REPORT – Page 3

NAME OF FIRM: Fenton Little Italy LLC

DATE: 08/20/15

OFFICE(S) or BRANCH(ES): 7577 Mission Valley Road, San Diego, CA 92108

COUNTY: San Diego

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force. Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

N/A: Company has no employees

- | | |
|--|--|
| (1) Black, African-American | (5) Filipino |
| (2) Hispanic, Latino, Mexican-American, Puerto Rican | (6) White, Caucasian |
| (3) Asian, Pacific Islander | (7) Other ethnicity; not falling into other groups |
| (4) American Indian, Eskimo | |

TRADE OCCUPATIONAL CATEGORY	(1) Black		(2) Hispanic		(3) Asian		(4) American Indian		(5) Filipino		(6) White		(7) Other Ethnicity	
	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Brick, Block or Stone Masons														
Carpenters														
Carpet, Floor & Tile Installers Finishers														
Cement Masons, Concrete Finishers														
Construction Laborers														
Drywall Installers, Ceiling Tile Inst														
Electricians														
Elevator Installers														
First-Line Supervisors/Managers														
Glaziers														
Helpers; Construction Trade														
Millwrights														
Misc. Const. Equipment Operators														
Painters, Const. & Maintenance														
Pipelayers, Plumbers, Pipe & Steam Fitters														
Plasterers & Stucco Masons														
Roofers														
Security Guards & Surveillance Officers														
Sheet Metal Workers														
Structural Metal Fabricators & Fitters														
Welding, Soldering & Brazing Workers														
Workers, Extractive Crafts, Miners														

Totals Each Column														
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Grand Total All Employees 0

Indicate By Gender and Ethnicity the Number of Above Employees Who Are Disabled:

Disabled														
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CITY OF SAN DIEGO WORK FORCE REPORT

HISTORY

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm’s work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2010 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

WORK FORCE & BRANCH WORK FORCE REPORTS

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm’s work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.¹ By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.² If participation in a San Diego project is by work forces from San Diego County and, for example, from Los Angeles County and from

Sacramento County, we ask for separate Work Force Reports representing your firm from each of the three counties.

MANAGING OFFICE WORK FORCE

Equal Opportunity Contracting may occasionally ask for a Managing Office Work Force (MOWF) Report. This may occur in an instance where the firm involved is a large national or international firm but the San Diego or other local work force is very small. In this case, we may ask for both a local and a MOWF Report.^{1,3} In another case, when work is done only by the Managing Office, only the MOWF Report may be necessary.³

TYPES OF WORK FORCE REPORTS:

Please note, throughout the preceding text of this page, the superscript numbers one ¹, two ² & three ³. These numbers coincide with the types of work force report required in the example. See below:

- ¹ One San Diego County (or Most Local County) Work Force – Mandatory in most cases
- ² Branch Work Force *
- ³ Managing Office Work Force

**Submit a separate Work Force Report for all participating branches. Combine WFRs if more than one branch per county.*

Exhibit A: Work Force Report Job categories-Administration

Refer to this table when completing your firm’s Work Force Report form(s).

Management & Financial

Advertising, Marketing, Promotions, Public Relations, and Sales Managers
Business Operations Specialists
Financial Specialists
Operations Specialties Managers
Other Management Occupations
Top Executives

Professional

Art and Design Workers
Counselors, Social Workers, and Other Community and

Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers
Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

Architecture & Engineering, Science, Computer

Architects, Surveyors, and Cartographers
Computer Specialists
Engineers
Mathematical Science Occupations
Physical Scientists

Technical

Drafters, Engineering, and Mapping Technicians
Health Technologists and Technicians
Life, Physical, and Social Science Technicians
Media and Communication Equipment Workers

Sales

Other Sales and Related Workers
Retail Sales Workers
Sales Representatives, Services
Sales Representatives, Wholesale and Manufacturing
Supervisors, Sales Workers

Administrative Support

Financial Clerks
Information and Record Clerks
Legal Support Workers
Material Recording, Scheduling, Dispatching, and Distributing Workers
Other Education, Training, and Library Occupations
Other Office and Administrative Support Workers
Secretaries and Administrative Assistants
Supervisors, Office and Administrative Support Workers

Services

Building Cleaning and Pest Control Workers
Cooks and Food Preparation Workers
Entertainment Attendants and Related Workers
Fire Fighting and Prevention Workers
First-Line Supervisors/Managers, Protective Service Workers
Food and Beverage Serving Workers
Funeral Service Workers
Law Enforcement Workers
Nursing, Psychiatric, and Home Health Aides
Occupational and Physical Therapist Assistants and Aides
Other Food Preparation and Serving Related Workers
Other Healthcare Support Occupations
Other Personal Care and Service Workers
Other Protective Service Workers
Personal Appearance Workers
Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

Crafts

Construction Trades Workers
Electrical and Electronic Equipment Mechanics, Installers, and Repairers
Extraction Workers
Material Moving Workers
Other Construction and Related Workers
Other Installation, Maintenance, and Repair Occupations
Plant and System Operators
Supervisors of Installation, Maintenance, and Repair Workers
Supervisors, Construction and Extraction Workers
Vehicle and Mobile Equipment Mechanics, Installers, and Repairers
Woodworkers

Operative Workers

Assemblers and Fabricators
Communications Equipment Operators
Food Processing Workers
Metal Workers and Plastic Workers
Motor Vehicle Operators
Other Production Occupations
Printing Workers
Supervisors, Production Workers
Textile, Apparel, and Furnishings Workers

Transportation

Air Transportation Workers
Other Transportation Workers
Rail Transportation Workers
Supervisors, Transportation and Material Moving Workers
Water Transportation Workers

Laborers

Agricultural Workers
Animal Care and Service Workers
Fishing and Hunting Workers
Forest, Conservation, and Logging Workers
Grounds Maintenance Workers
Helpers, Construction Trades
Supervisors, Building and Grounds Cleaning and Maintenance Workers
Supervisors, Farming, Fishing, and Forestry Workers

Exhibit B: Work Force Report Job categories-Trade**Brick, Block or Stone Masons**

Brickmasons and Blockmasons
Stonemasons

Carpenters**Carpet, floor and Tile Installers and Finishers**

Carpet Installers
Floor Layers, except Carpet, Wood and Hard Tiles
Floor Sanders and Finishers
Tile and Marble Setters

Cement Masons, Concrete Finishers

Cement Masons and Concrete Finishers
Terrazzo Workers and Finishers

Construction Laborers**Drywall Installers, Ceiling Tile Inst**

Drywall and Ceiling Tile Installers
Tapers

Electricians**Elevator Installers and Repairers****First-Line Supervisors/Managers**

First-line Supervisors/Managers of Construction Trades and Extraction Workers

Glaziers**Helpers, Construction Trade**

Brickmasons, Blockmasons, and Tile and Marble Setters
Carpenters
Electricians
Painters, Paperhangers, Plasterers and Stucco
Pipelayers, Plumbers, Pipefitters and Steamfitters
Roofers
All other Construction Trades

Millwrights

Heating, Air Conditioning and Refrigeration Mechanics and Installers
Mechanical Door Repairers
Control and Valve Installers and Repairers
Other Installation, Maintenance and Repair Occupations

Misc. Const. Equipment Operators

Paving, Surfacing and Tamping Equipment Operators
Pile-Driver Operators
Operating Engineers and Other Construction Equipment Operators

Painters, Const. Maintenance

Painters, Construction and Maintenance
Paperhangers

Pipelayers and Plumbers

Pipelayers
Plumbers, Pipefitters and Steamfitters

Plasterers and Stucco Masons**Roofers****Security Guards & Surveillance Officers****Sheet Metal Workers****Structural Iron and Steel Workers****Welding, Soldering and Brazing Workers**

Welders, Cutter, Solderers and Brazers
Welding, Soldering and Brazing Machine Setter, Operators and Tenders

Workers, Extractive Crafts, Miners

**PARK DEVELOPMENT AGREEMENT FOR A PUBLIC PLAZA (PIAZZA FAMIGLIA)
IN THE DOWNTOWN COMMUNITY**

THIS PARK DEVELOPMENT AGREEMENT FOR A PUBLIC PLAZA (PIAZZA FAMIGLIA) IN THE DOWNTOWN COMMUNITY (Agreement) is made and entered into between the City of San Diego, a municipal corporation (City), and Fenton Little Italy, LLC, a California limited liability company (Developer). City and Developer are collectively referred to herein as the “Parties” and individually as a “Party.” This Agreement is entered into with reference to the following recitals:

RECITALS

A. Developer owns an approximately 50,611 square-foot site on both sides of West Date Street between Columbia and India Streets in the Little Italy neighborhood of the Downtown Community Plan area.

B. On July 14, 2014, by San Diego Resolution R-309116, the City Council of the City of San Diego (City Council) granted Centre City Development Permit/Planned Development Permit/Site Development Permit/Neighborhood Use Permit No. 2012-10 (Permit), and by San Diego Resolution R-309117, vacated a portion of Date Street (Vacation), to allow the construction of a seven-story mixed-use building on a 24,000 square-foot parcel located on the north side of the vacated portion of Date Street between India and Columbia Streets, a five-story mixed-use building on a 10,000 square-foot parcel located on the south side of the vacated portion of Date Street between India and Columbia Streets, an underground parking structure under both buildings and under the vacated portion of Date Street, an 11,200 square-foot public plaza (Plaza) on the vacated portion of Date Street, and outdoor dining areas along the north and south side of the vacated portion of Date Street adjacent to the plaza, as well as relocation of a designated historical resource (collectively, Developer’s Project).

C. Permit Condition 6 requires Developer to construct the Plaza within a 56-foot wide recreation easement located within the vacated portion of Date Street (Plaza Project) that is to be designed consistent with an approved General Development Plan (GDP). On June 19, 2014, the City Park and Recreation Board recommended approval of a GDP for the Plaza Project. The Director of the City Park and Recreation Department subsequently approved the GDP. The Plaza Project is to be designed and constructed in accordance with the approved GDP, which is attached as **Exhibit A**.

D. Permit Condition 6b also requires that a park development agreement be executed between City and Developer that provides specific development criteria and specifications of the Plaza Project, project schedule, maintenance specifications, and other provisions approved by City staff, prior to the commencement of the Plaza Project (Park Development Agreement). The Park Development Agreement is required to be executed and the Plaza Project is required to be completed prior to Developer’s Project receiving final inspection.

E. Permit Condition 6d requires a maintenance agreement with an entity, such as the Little Italy Association, to ensure maintenance of the Plaza Project at no cost to City (Maintenance Agreement). Permit Condition 6d requires Developer to provide a \$250,000 letter of credit in favor of City to be used in the event that the entity anticipated to perform maintenance fails to perform to City's satisfaction. The Maintenance Agreement is to be executed in a manner acceptable to City prior to Developer's Project receiving Final Inspection, as defined in Section 15.4. In the event that the Maintenance Agreement is not executed, Developer is to provide a \$250,000 letter of credit in favor of City prior to Developer's Project receiving Final Inspection.

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

ARTICLE I. SUBJECT OF THIS AGREEMENT

- 1.1 **Recitals and Exhibits.** The above recitals are true and correct, and are hereby fully incorporated herein by reference. All exhibits to this Agreement are hereby fully incorporated herein by reference.
- 1.2 **Developer Obligations.** Developer agrees to design and construct the Plaza Project including all improvements needed to develop the Plaza on the vacated portion of Date Street consistent with the Permit, the GDP, all City standard drawings and specifications, including City's Park and Recreation Department's Consultant's Guide to Park Design and Development, all local, state and federal disabled access laws and regulations, including but not limited to, the Americans with Disabilities Act (ADA), the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of Regulations, and City Council Policy 600-33. The Plaza Project is described and shown more particularly in **Exhibit A**.
- 1.3 **City's Obligations.** City agrees to accept performance of Developer's obligations under this Agreement as satisfaction of Developer's obligation under Permit Condition 6 to construct the Plaza Project, subject to the terms of this Agreement.
- 1.4 **Conveyance of the Plaza Project.** Developer shall execute and deliver a recreation easement to City for the land upon which the Plaza Project is constructed in a form acceptable to City (Recreation Easement Deed), within ten (10) calendar days after the Effective Date of this Agreement. City shall record the Recreation Easement Deed in accordance with Section 16.1.3 of this Agreement (Conveyance).
- 1.5 **Maintenance of the Plaza Project.** City's Acceptance, as defined in Section 16.1, of the Plaza Project shall not occur unless and until Permit Condition 6d regarding maintenance of the Plaza Project is satisfied. After Acceptance and Conveyance, maintenance of the Plaza Project shall be provided consistent with Permit Condition 6d. Notwithstanding this Section 1.5, all defective work and warranty provisions set forth in this Agreement shall remain in full force and effect.

1.6 **City's Administrative Costs Recovery.** Within ten (10) Working Days (defined as Monday through Friday, excluding City-observed holidays) following execution of this Agreement, Developer shall establish a deposit account for the initial phase of the Plaza Project by depositing Ten Thousand Dollars (\$10,000) with City to fund City's administrative costs. Thereafter, upon request by City, Developer shall make additional deposits in Five Thousand Dollar (\$5,000) increments to the individual or combined accounts to be drawn upon by City for administrative and inspection purposes. Any unused amounts in the deposit account(s) shall be refunded to Developer consistent with City's accounting practices for deposit accounts. If City costs exceed the Estimated Cost for the Plaza Project, as defined in Section 3.1, due to extraordinary assistance required by consultants or contractors beyond that which is customary, Developer shall be solely responsible for payment of such City administrative costs. City's administrative costs include, but are not limited to, the expenses City incurs to: (i) administer the acquisition of the Recreation Easement Deed for the Plaza Project site, (ii) facilitate design and public input process, (iii) review and approve the Plans and Specifications, as defined in Section 4.3, for the Plaza Project, (iv) inspect the Plaza Project during construction, until completion and City's Acceptance of the Plaza Project, and (v) costs associated with cost verification and reimbursement as set forth in Section 1.7.

1.7 **Plaza Project Cost Reimbursement.** Developer shall only be reimbursed for Plaza Project costs to the extent provided for pursuant to the terms of a reimbursement agreement approved by the City Council and executed by the Parties (Reimbursement Agreement). Where the terms of this Agreement and the Reimbursement Agreement conflict, the more stringent requirements shall apply. Developer is not entitled to any reimbursement for the Plaza Project unless and until the Reimbursement Agreement is approved by the City Council and executed by the Parties, and the terms of the Reimbursement Agreement have been satisfied.

ARTICLE II. DURATION OF THIS AGREEMENT

2.1 Upon the execution of this Agreement by the Parties, this Agreement shall be effective upon the date it is executed by the City Attorney in accordance with San Diego Charter Section 40 (Effective Date). Unless otherwise terminated, this Agreement shall be effective until the later of the following: (1) one year after the final Warranty Bond, as defined in Section 23.3, issued after Acceptance of the Plaza Project terminates; or (2) when the insurance obligations set forth in Article XXV terminate.

ARTICLE III. PROJECT COSTS

3.1 **Plaza Project Cost Estimate.** The cost estimate for the Plaza Project is provided in **Exhibit B** (Estimated Costs).

ARTICLE IV. CONSULTANTS AND PROJECT MANAGEMENT

- 4.1 **Selection of Consultant.** Developer's hiring of any consultants for which it seeks reimbursement from City for such consultant costs (Consultants) is subject to City's approval and is subject to all applicable public contract laws, rules, and regulations, including but not limited to, the City Charter, the San Diego Municipal Code, Council Policies, and the City's Administrative Regulations. As applicable, Developer shall work with City's Public Works Department to ensure that City's consultant selection procedures are met. Developer's Consultants shall be subject to all State and City laws, including regulations and policies applicable to consultants retained directly by City. Developer shall cause the provisions in **Exhibit C** "Consultant Provisions" to be included in its contract(s) with Consultants for the Plaza Project.
- 4.2 **Selection of Public Works Department Project Manager.** Within sixty (60) calendar days after the Effective Date of this Agreement, City shall select a Public Works Department (PWD Project Manager) for the purposes of fulfilling the functions of this Agreement, and shall notify Developer in writing of the name and contact information of the PWD Project Manager. In the event City elects to assign a new PWD Project Manager, City shall select a new PWD Project Manager and make the new PWD Project Manager available to perform all duties of the previous PWD Project Manager at the time the previous PWD Project Manager is reassigned. City shall minimize turnovers in the PWD Project Manager position to the extent practicable and shall assign a new PWD Project Manager within fourteen (14) calendar days of City's determination that a current PWD Project Manager will no longer be available to perform the functions of PWD Project Manager under this Agreement.
- 4.3 **Preparation of Plans and Specifications.** The PWD Project Manager and the manager selected by Civic San Diego for the Plaza Project (Civic San Diego Project Manager), if applicable as determined by City, shall review and determine if the Plans and Specifications are substantially consistent with the GDP. If the Plans and Specifications are substantially consistent with the GDP, as determined by City, no amendment to the GDP shall be required. The Plans and Specifications includes specific plans and specifications, including, but not limited to, site layout and staking, grading, irrigation, and landscape plans, and construction details, necessary to construct the Plaza Project in accordance with the GDP.

ARTICLE V. PROJECT SCHEDULE

- 5.1 **Project Schedule.** Developer shall perform and complete the work under this Agreement according to a project phasing schedule (Project Schedule) that shall be prepared for the Plaza Project substantially in the form attached as **Exhibit D**. Developer shall submit the Project Schedule to the PWD Project Manager for approval prior to the start of construction. The Project Schedule and any subsequent revisions to the Project Schedule must be approved by the PWD Project Manager in writing. Developer's obligations under this Agreement do not affect Developer's obligations to complete the Plaza Project in accordance with Permit Condition 6.

- 5.1.1 Developer shall maintain the Project Schedule, and any subsequently revised Project Schedule approved by PWD Project Manager in writing pursuant to Section 5.3 below.
 - 5.1.2. During the preparation of the Plans and Specifications for the Plaza Project, Developer shall submit an updated Project Schedule on a quarterly basis, four (4) times per year, to the PWD Project Manager for written approval.
 - 5.1.3 During construction, Developer shall submit an updated Project Schedule monthly to the PWD Project Manager for written approval.
 - 5.1.4 Project Schedules shall be dated and submitted to the City on a computer disk in substantially similar detail and form as shown in **Exhibit D**, or any form subsequently agreed to by the Parties in writing.
- 5.2 **Project Completion.** The Plaza Project shall be completed consistent with the Project Schedule, unless mutually extended by written agreement, subject to any approval that may be required by the PWD Project Manager, and subject to the terms of Permit Condition 6.
- 5.3 **Changes in Project Schedule.** All changes in the Project Schedule, including dates and substance, must be approved by the Project Manager in writing.

ARTICLE VI. COMPETITIVE BIDDING, EQUAL OPPORTUNITY, AND EQUAL BENEFITS

- 6.1 **Compliance.** Developer shall comply with the competitive bidding, equal opportunity, and equal benefits requirements set forth in the Reimbursement Agreement.

ARTICLE VII. PREVAILING WAGE

- 7.1 **Prevailing Wage.** The Developer shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code Section 1720 relating to the payment of prevailing wages for the Plaza Project, including inspection and land surveying work as set forth more specifically in the Reimbursement Agreement.

ARTICLE VIII. PLANS AND SPECIFICATIONS

- 8.1 **Preliminary Review of Plans and Specifications and Preliminary Cost Estimate.** Developer shall obtain written City approval from City's Public Works/Engineering & Capital Projects Department and the Civic San Diego Project Manager, as applicable as determined by City, of the preliminary Plans and Specifications prior to the solicitation of bids for construction of the Plaza Project. City's PWD Project Manager will notify Developer in writing within thirty (30) calendar days following receipt of the preliminary

Plans and Specifications and updated cost estimate of any City request for modifications to ensure compliance with the GDP and any applicable local, state, and federal regulations. If modifications are requested, Developer shall modify and resubmit the preliminary Plans and Specifications and updated cost estimate for the PWD Project Manager's approval.

8.1.1 *Condition Precedent.* City approval of the Final Plans and Specifications and Final Cost Estimate, as defined in Section 8.2, is a condition precedent to authorization to proceed with subsequent work on the Plaza Project.

8.1.2 *Sixty Percent (60%).* At sixty percent (60%) completion, the PWD Project Manager will notify Developer in writing within the timeframe established in the Project Schedule, following receipt of the Plans and Specifications for approval, of request for modifications to ensure compliance with the GDP and any applicable local, state, and federal regulations. If modifications are requested, Developer shall modify and resubmit the Plans and Specifications for City approval within the timeframe established in the Project Schedule.

8.1.3 *One Hundred Percent (100%).* At one hundred percent (100%) completion, the PWD Project Manager will notify Developer in writing within the timeframe established in the Project Schedule, following receipt of the Plans and Specifications for approval, of request for modifications to ensure compliance with the GDP and any applicable local, state, and federal regulations. If modifications are requested, Developer shall modify and resubmit the Plans and Specifications for PWD Project Manager's approval within the timeframe established in the Project Schedule.

8.2 **Final Review of Plans and Specifications and Final Cost Estimate.** Upon final approval of the Plans and Specifications by the PWD Project Manager, Developer shall deliver to City's Development Services Department (DSD) complete Plans and Specifications (Final Plans and Specifications) for permit issuance. Developer shall also require its consultant to prepare a final Cost Estimate (Final Cost Estimate) for the Plaza Project based on the Final Plans and Specifications, which shall be subject to PWD Project Manager's approval. Approval shall not be unreasonably withheld. Final Plans and Specifications shall include City's Standard Drawings and Specifications as described in Section 9.4. If requested by DSD, Developer shall cause its consultant to make such changes to the Final Plans and Specifications that are necessary to bring them into conformance with all applicable local, state, and federal regulations. If such changes would exceed ten percent (10%) of the Final Cost Estimate, Developer may elect to include additive alternates not related to the comments that are necessary to conform with local, state, and federal regulations in the bidding documents, bid and construct, rebid or redesign the individual phase of the Plaza Project, with the PWD Project Manager's approval. Any redesign must be in substantial conformance with the GDP or the redesign shall require community input in accordance with Council Policy 600-33.

ARTICLE IX. DESIGN AND CONSTRUCTION STANDARDS

- 9.1 **Purpose of Certification.** There exist and have existed certain requirements that City includes in its design and construction contracts for public improvements. These requirements are intended to protect City and the public, who benefit from these public improvements, from harm, including physical and monetary, as well as to ensure that the consultant and contractor involved in design and construction of the public improvement follows all laws related to such contracts and construction. Certification is intended to act as a guarantee to City that such requirements were met by Developer during its design and construction of the Plaza Project. If Developer has certified that 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, all with respect to the design and construction of the Plaza Project, then Developer shall indemnify and hold harmless 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 XXIV of this Agreement, provided, however, that Developer's duty to indemnify for the Plaza Project's alleged noncompliance with the requirements of the Americans with Disabilities Act (ADA) shall terminate upon City's Acceptance of the Plaza Project. This Section shall not act to limit the remedies otherwise available to City under the law.
- 9.2 **Standard of Care.** Developer agrees to use reasonable efforts to ensure that the professional services its contractors and subcontractors provide as part of this Agreement shall be performed in accordance with the standards customarily adhered to by licensed, experienced, and competent professionals (e.g., architectural, engineering, landscape architectural, 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.
- 9.3 **Compliance with all Laws.** Developer shall comply with all laws, including but not limited to:
- 9.3.1 All applicable local, city, county, state, and federal laws, codes and regulations, ordinances, and policies, including but not limited to, DSD permits, hazardous material permits, site safety, state and local building codes, storm water regulations, etc.
 - 9.3.2 The ADA and Title 24 of the California Building Code. It is Developer's sole responsibility to comply with all ADA and Title 24 regulations. Developer Certification for Title 24/ADA Compliance is attached as **Exhibit E** "Developers Certificate for Title 24/ADA Compliance."
 - 9.3.3 The Clean Air Act of 1970, the Clean Water Act (33 USC 1368)-Executive Order 11738, and the Storm water Management and Discharge Control-Ordinance No. 0-17988.

9.3.4 The Essential Services Building Seismic Safety Act, SB 239 & 132.

9.3.5 All directives issued by City's Mayor or Chief Operating Officer under authority of any laws, statutes, ordinances, rules, or regulations.

9.4 **Compliance with Design and Construction Standards.** Developer shall comply with the most recent edition of design and construction standards.

9.4.1 *Standard Specifications.* Developer shall comply with the most recent edition of the following reference specifications when designing and constructing the Plaza Project, including:

9.4.1.1 The Standard Specifications, which is the most recent edition of The "Greenbook" Standard Specifications for Public Works Construction (Greenbook) and The "Whitebook" Standard Specifications for Public Works Construction (Whitebook). The Whitebook is the most recent edition of the Whitebook Standard Specifications for Public Works Construction.

9.4.1.2 California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.

9.4.2 *City Standards.* Developer'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: City of San Diego's Drainage Design Manual; City of San Diego's Land Development Manual; City of San Diego's Consultant's Guide to Park Design and Development; City of San Diego's Street Design Manual; City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans; City of San Diego's Technical Guidelines for Geotechnical Reports; City of San Diego Standard Drawings including all Regional Standard Drawings; City of San Diego Data Standards for Improvement Plans; and City of San Diego Stormwater Pollution Prevention Regulations.

9.4.3 *Green Building.* The Plaza Project design and construction shall comply with City Council Policy 900-14, "SUSTAINABLE BUILDING POLICY." Any building over 5,000 square feet included in the Plaza Project shall be designed and constructed to achieve fifteen percent (15%) less total building energy consumption than the minimally code compliant building as modeled following the Title 24 requirements. An average pay-back period of less than ten (10) years shall be used as a guide for the aggregate of all energy efficiency measures. Developer shall submit and obtain LEED Silver Rating Certification from the United States Green Building Council for any building over 5,000 square feet included in the Plaza Project. Notwithstanding any of the above, Developer shall

not be required to exceed any of the green building or energy conservation standards contained within the Permit.

- 9.4.4 *Energy Conservation Standards.* Technological advances in energy conservation devices such as lighting and Heating Ventilation and Air Conditioning [HVAC] enable additional energy savings over that required by the State of California Title 24 Energy Standards. If requested by City, Developer shall be responsible for preparing a cost savings comparison of such devices for City review for any building over 5,000 square feet included in the Plaza Improvements. The purpose of the comparison would be to identify the additional initial cost of such devices, versus their long-term energy savings. If requested by City, Developer shall prepare a cost savings matrix for any building over 5,000 square feet that lists each device being considered and 1, 3, 5 and 10-year projected savings. The comparison shall include, but not be limited to lighting, HVAC, water, heating, and motors.
- 9.4.5 *Materials Standards.* Developer acknowledges that the Plaza Project is for public use and shall use industrial grade, not residential grade, equipment and accessories for all facets of design and construction.
- 9.4.6 *Architectural Compatibility.* Developer shall design the Plaza Project in a fashion which is architecturally compatible with the design guidelines for the Developer's Project.
- 9.5 **Imputed Knowledge.** Developer shall be responsible for all amendments or updates to standards and knowledge of all amendments or updates to standards, whether local, state, or federal, and such knowledge will be imputed to Developer to the extent allowed by law.
- 9.6 **City Approval Not a Waiver of Obligations.** Where approval by City, City's Mayor or Chief Operating Officer is required, it is understood to be general approval only and does not relieve Developer of responsibility for complying with all applicable laws, codes, and good consulting, design, or construction practices.

ARTICLE X. CONSTRUCTION

- 10.1 **Compliance with Project Schedule.** Developer shall commence construction of the Plaza Project in accordance with the Project Schedule, as described in Article V. Developer shall adhere to the Project Schedule, diligently pursue construction to completion, and shall promptly notify City of any delay in accordance with Article V.
- 10.2 **Preconstruction Meeting.** Developer shall conduct a preconstruction meeting with its officers, agents, and employees, and City. The purpose of this meeting is to discuss: (i) conditions of this Agreement, (ii) scope of work clarifications, and (iii) City policies, inspection requirements, and procedures.

- 10.2.1 *Attendance.* Developer shall ensure that Developer’s construction contractor, Developer’s superintendent, all Developer’s major subcontractors, City’s Inspection Team, as defined in Section 14.1, and any other persons necessary as determined by City, attend the preconstruction meeting.
- 10.2.2 *Agenda.* The preconstruction meeting agenda shall at a minimum address the topics described in **Exhibit F** “Preconstruction Meeting Agenda”.
- 10.2.3 *Minutes.* Developer or its consultant shall take corresponding meeting minutes and distribute copies to all attendees.
- 10.3 **Progress Meetings.** Developer shall conduct progress meetings at standing dates and times scheduled at the preconstruction meeting with the following necessary parties, or as otherwise determined by City: Developer’s construction superintendent, Developer’s project manager, Developer’s consultant, City representatives, including the Civic San Diego Project Manager, the PWD Project Manager, and the Resident Engineer (RE).
- 10.3.1 *Agenda.* The agenda shall include items as defined during the preconstruction meeting.
- 10.3.2 *As-Builts.* Developer shall bring updated As-Builts and verify that the latest changes have been made. As-Builts include the Construction Documents, as defined in Section 17.1.5, which are the Plans and Specifications, as defined in Section 4.3, modified from the original design to reflect the actual product built.
- 10.3.3 *Special Meetings.* Meetings to address issues which are not progress related shall occur as needed.
- 10.3.4 *Rescheduling.* Progress and special meetings may be rescheduled if meeting times are convenient for all necessary parties, and Developer has given no less than five (5) calendar days prior written notice of the rescheduled meeting.
- 10.4 **Access to Site.** Other than the PWD Project Manager and RE, City officers, agents and employees with Plaza Project-related business shall have the right to enter the Plaza Project site with reasonable notice to Developer, not less than forty-eight (48) hours, except where necessitated by a bona-fide emergency, or if the nature of their work requires unannounced notice, in which case, they shall be accompanied by an employee of Developer while at the Project site. The PWD Project Manager and RE shall have the right to access the site at any time for Plaza Project-related purposes provided they comply with all safety standards adopted by Developer.

ARTICLE XI. PRODUCTS

- 11.1 **Submittals.** Prior to the bidding process, Developer shall submit for City approval a list of products intended for use in the Plaza Project. The PWD Project Manager will review

and approve products specified therein, and Developer shall make modifications to Plans and Specifications, if required by City to ensure compliance with the GDP and any applicable local, state, and federal regulations. Developer shall provide City with a copy of each submittal for City approval throughout the duration of construction within twenty (20) calendar days of Developer's receipt of submittal. Approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits, or regulations.

11.2 **Substitutions.** Developer shall submit all requests for product substitutions to City in writing within thirty (30) calendar days after the date of award of the construction contract. After expiration of the thirty (30) calendar days, City will allow substitutions only when a product becomes unavailable due to no fault of Developer's contractor. City shall review substitution requests within thirty (30) calendar days of submission of such requests. Developer agrees that City requires Developer's consultants' input to review substitution requests, and as such, Developer shall coordinate a simultaneous five (5) working day review by its consultant(s); within five (5) working days, Developer shall ensure that its consultant(s) provide recommendations about substitutions to City.

11.2.1 *Substitution Request.* Developer shall include with each substitution request complete data which substantiates that the proposed substitution conforms to requirements of the Construction Documents.

11.2.2 *Developer Representations.* By submitting a substitution request, Developer is representing to City all of the following: (i) Developer has investigated the proposed product and determined that in all respects the proposed product meets or exceeds the specified product; (ii) Developer is providing the same or better warranty for the proposed product as was available for the specified product; (iii) Developer shall coordinate installation and make any other necessary modifications which may be required for work to be complete in all respects, and make any other necessary modifications which may be required for work to be complete in all respects; and (iv) Developer shall waive any claims for additional costs related to the substituted product.

11.2.3 *Separate Written Request.* City will not consider substitutions that are implied in the product data submittal without a separate written request or substitutions that will require substantial revision of Construction Documents.

11.3 **Samples.**

11.3.1 *Postage.* Samples shall be sent to Developer's office, carriage prepaid.

11.3.2 *Review.* Developer shall furnish to City for review, prior to purchasing, fabricating, applying, or installing, two (2) samples (other than field samples) of each required material with the required finish.

- 11.3.2.1 Where applicable, all samples shall be 8” x 10” in size and shall be limited in thickness to a minimum consistent with sample analysis. In lieu thereof, the actual full size item shall be submitted.
 - 11.3.2.2 Developer shall assign a submittal number. Developer shall include with each submission a list of all samples sent, a statement as to the usage of each sample and its location in the Project, the name of the manufacturer, trade name, style, model, and any other necessary identifying information.
 - 11.3.2.3 All materials, finishes, and workmanship in any complete building shall be equal in every respect to that of the reviewed sample.
 - 11.3.2.4 City will return one submitted sample upon completion of City review identifying approval or denial.
 - 11.3.2.5 Developer’s or Developer’s agents’ field samples shall be prepared at the site. Affected finish work shall not commence until Developer or its agents have been given a written review of the field samples.
- 11.3.3 *Not a Release of Liability.* City’s review of samples in no way relieves Developer of responsibility for construction of the Plaza Project in full compliance with all Construction Documents.

ARTICLE XII. CHANGE ORDERS

- 12.1 **Forms Required.** All Changes Orders must be approved or rejected by City in writing as provided in Section 12.3, and delivered to City in accordance with Article XXVII. Developer shall produce a tabulated sheet which itemizes the changes to the Plaza Project, including but not limited to, the date of approval or disapproval, cost associated with each item, and the reason for any disapproval. Updated Change Order tabulation sheets shall be provided at regularly scheduled progress meetings or when requested by the RE. Standing progress meetings shall be scheduled at a preconstruction meeting.
- 12.2 **Written Approval of Change Orders.** Change Orders which will not result in an increase in the Final Cost Estimate, affect the design, the quality of materials, intended use and the final deliverable product according to the approved GDP and Final Plans and Specifications may be approved by the RE who is the person responsible for overseeing construction of the Plaza Project.
- 12.3 **Process for Approval of Change Orders.** Developer shall notify the RE in writing of the need for a Change Order. The Change Order must indicate whether the change will affect, in any way, the Final Cost Estimate, Project Schedule, or Plaza Project quality established by the GDP and Final Plans and Specifications.

- 12.3.1 *RE Approval.* All changes and or substitutions proposed during construction by Developer must be submitted to the RE for review. If the requested change does not affect, in any way, the Final Cost Estimate, Project Schedule, or Plaza Project quality established by the GDP and Final Plans and Specifications, the RE shall either approve or reject the Change Order in writing within five (5) Working Days of receiving Developer's written notice, provided Developer has submitted complete documentation substantiating the need for such Change Order. If the RE fails to respond to Developer's written request within the five (5) Working Days, the Change Order request shall be deemed denied.
- 12.3.2 *PWD Project Manager Approval.* If the requested change affects in any way, the Final Cost Estimate, Project Schedule, or Plaza Project quality established by the GDP and Final Plans and Specifications, the RE shall solicit input from the PWD Project Manager. The PWD Project Manager shall either recommend approval or rejection of the Change Order request in writing within ten (10) Working Days. If the PWD Project Manager fails to respond to RE's request for input within the ten (10) Working Days, the Change Order request shall be approved or denied by the RE. If the RE fails to respond to Developer's written request within the ten (10) Working Days, the Change Order request shall be deemed denied. Developer shall bear the costs of Change Orders made necessary by physical conditions of the Plaza Project property or errors in the Final Plans and Specifications. If Change Orders are not made necessary by physical conditions of the Plaza Project property or errors in the Final Plans and Specifications, but requested by City, then Developer may elect to construct, rebid, or redesign the Plaza Project, with the PWD Project Manager's approval, to accommodate the request within the Final Cost Estimate. Any redesign must be in substantial conformance with the GDP or the redesign shall require community input in accordance with Council Policy 600-33.

ARTICLE XIII. PRIORITY OF DOCUMENTS

- 13.1 **Conflict, Priority, and Precedence of Documents.** If there is a conflict between Construction Documents, the document highest in precedence shall control.

13.1.1 *Order of Precedence.* The following documents are incorporated into this Agreement by this reference and are hereinafter collectively referred to as Contract Documents. The Contract Documents shall follow the order of precedence listed below, with the document listed first controlling as to any inconsistency with documents listed thereafter:

- 13.1.1.1 Permits from other agencies as may be required by law
- 13.1.1.2 Project Special Provisions
- 13.1.1.3 Project Plans

- 13.1.1.4 Project Technical Specifications
- 13.1.1.5 City Standard Drawings
- 13.1.1.6 Standard Specifications
- 13.1.1.7 Reference Specifications

ARTICLE XIV. INSPECTION

14.1 **Inspection Team.** The Plaza Project shall be inspected by a team composed of representatives from the following at the appropriate minimum Inspection Stages identified in Section 14.2:

- City’s RE – Stages 1-13
- City’s PWD Project Manager – Stages 1-13
- Developer’s construction superintendent – Stages 1, 5, 10, 12 & 13
- Developer’s Consultant(s) – Stages 1, 4-10, 12 & 13
- Civic San Diego Project Manager – Stages 1-13
- Contractor(s) – Stages 1-13
- Park and Recreation District Manager – Stages 1, 6-10, 12 & 13

14.2 **Inspection Stages.** The Plaza Project shall be inspected by the Inspection Team at the following minimum stages:

1. Preconstruction meeting;
2. Irrigation Mainline pressure test;
3. Wiring prior to backfilling trenches;
4. Hardscape at time of finished staking and layout;
5. Topsoil review, acceptance and placement
6. Finish grading and soil preparation;
7. Irrigation coverage test;
8. Plant material (when delivered) and plant placement approval;
9. Playground inspection, if applicable;
10. Pre-assembled equipment and/or on-site construction facilities;
11. Preliminary Walk-Through Inspection at 100% construction (develop list of incomplete or Defective Work (Punch List) and submit as-built drawings);
12. Plant establishment period to begin as indicated on the Construction Documents and when punch list items are complete ; and
13. Final Inspection (contractor to submit final approved as-built drawings to City).

ARTICLE XV. PROJECT COMPLETION

15.1 **Notice to City.** When Developer determines that the Plaza Project is complete, Developer shall notify City in writing of that status within seven (7) calendar days of Developer’s determination. The notice shall certify to City that the Plaza Project has

been completed in accordance with the Construction Documents, all applicable building codes and regulations, all permits, licenses, and certificates of inspection, use and occupancy, and ordinances relating to the Plaza Project.

15.2 **Walk-Through Inspection.** A preliminary Walk-Through Inspection shall be conducted by City within ten (10) Working Days following Developer's notice to City of completion (Walk-Through Inspection). The Walk-Through Inspection will be conducted by the Inspection Team identified in Section 14.1

15.2.1 *Punch List.* A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to Developer by the RE within three (3) Working Days of the Walk-Through Inspection. Developer shall correct the items listed on the Punch List within thirty (30) calendar days of receipt of the Punch List and prior to the Final Inspection.

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

15.3 **Equipment Demonstration.** Prior to Final Inspection, Developer shall demonstrate to City the operation of each system in the Plaza Project, and instruct City personnel in operation, adjustment, and maintenance of equipment and systems, using the operation and maintenance data.

15.4 **Final Inspection.** Provided Developer has corrected the Punch List items and notified City of the correction (Notice of Correction) and the Plant Maintenance Period is complete as described in Section 21.2, the Final Inspection for the Plaza Project shall be scheduled and conducted within ninety (90) calendar days of the Notice of Correction (Final Inspection).

ARTICLE XVI. PROJECT ACCEPTANCE AND FINAL COMPLETION

16.1 **Acceptance.** Upon approval by the Inspection Team during the Final Inspection that the Plaza Project is complete and that work required on the Punch List has been finished, City shall accept the Plaza Project (Acceptance). Upon Acceptance, the following shall occur:

16.1.1 *Notice of Completion.* Developer shall execute and file a Notice of Completion with the County Recorder of San Diego County and shall provide the RE and the Facilities Financing Section of the City's Planning Department with a conformed copy of the recorded Notice of Completion pursuant to Section 27.5.

16.1.2 *Lien and Material Releases.* Developer shall cause all contractors and subcontractors to provide lien and material releases as to the Plaza Project and provide copies of such lien and material releases to the RE or, upon approval of

City, which shall not be unreasonably withheld, provide bonds in lieu of lien and material releases in a form reasonably acceptable to City for all such work.

16.1.3 *Conveyance of Plaza Project.* City shall record the Recreation Easement Deed within thirty (30) calendar days of Acceptance of the Plaza Project.

16.2 **Final Completion.** Final Completion of the Plaza Project shall be deemed to occur on the last date of the following events: (a) recordation of the Notice of Completion with a conformed copy to City; (b) submission of all documents required to be supplied by Developer to City pursuant to this Agreement, including As-Built Drawings, warranties and operating and maintenance manuals; and (c) recordation of the Recreation Easement Deed in accordance with Section 16.1.3.

16.2.1 *As-Built Drawings.* Developer shall submit As-Built Drawings to City within five (5) Working Days of Final Completion. City, including but not limited to, Public Works/Engineering & Capital Projects Department, will evaluate the submitted As-Built Drawings for accuracy and completeness and may return them to Developer with comments. Developer shall meet with City until all issues are resolved. Upon issue resolution in accordance with disputed work procedures set forth in Section 19.5, Developer shall submit a mylar set and three (3) final sets of As-Built Drawings stamped by the architect/engineer of record as required by law within thirty (30) calendar days.

ARTICLE XVII. PROJECT DELIVERABLES

17.1 **Project Deliverables.** Prior to Acceptance, Developer shall deliver all of the following to City in the format required, if applicable as determined by City:

17.1.2 *Plans and Specifications Quality and Format.* Developer shall prepare Plans and Specifications in accordance with City's most current drawing format as outlined in the City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.

17.1.2.1 *Quality.* Developer shall make Plans 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.

17.1.2.2 *Font and Contents.* Specifications shall be typewritten with one type face, using carbon ribbon or equivalent on bond paper utilizing Greenbook Standard Specifications for Public Works Construction (Greenbook) format. Developer will furnish only the technical "Special Provisions" section of the Specifications to supplement or modify the Greenbook standards as needed.

- 17.1.3 *Survey.* Developer shall provide all surveying services required for the design of the Plaza 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 Public Works/Engineering & Capital Projects Department’s most recent “Data Standards for Improvement Plans.”.
- 17.1.4 *Design Development Documents.* Developer shall prepare from the GDP, for approval by the PWD Project Manager, sixty percent (60%) and one hundred percent (100%) design development documents (Design Documents) to fix and describe the size and character of the Plaza Project. The Design Documents shall contain, at a minimum, the following, consistent with the Consultant’s Guide to Park Design and Development:
- 17.1.4.1 Site Plan, indicating the nature and relational location, via dimensions, of all proposed Plaza Project components.
 - 17.1.4.2 Traffic circulation and landscaping should also be indicated at this stage, if applicable, as determined by City.
 - 17.1.4.3 Plans, elevations, cross-sections, and notes as required to fix and describe the Plaza Project components.
 - 17.1.4.4 Proposed construction schedules.
 - 17.1.4.5 Technical ‘Special Provisions’ section of the Specifications.
 - 17.1.4.6 Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
 - 17.1.4.7 Probable construction costs, for each component of the Plaza Project being considered in this phase.
 - 17.1.4.8 Color board with material samples.
- 17.1.5 *Construction Documents.* Developer shall provide, based on the approved Design Documents, and Final Plans and Specifications setting forth in detail the requirements for construction of the Plaza Project, including the necessary bidding documents. Bidding documents include, but are not limited to the notice inviting bids, instructions to bidders, bid documents (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), addenda to bid documents, general conditions, special provisions, the Final Plans and Specifications for the Plaza Project, Standard Drawings and Standard Specifications, reference specifications, and all addenda issued during the bidding process. Construction Documents also include construction contracts, contract addenda, and bonds.

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

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

17.1.8 *As-Built Drawings.* Developer shall provide As-Built Drawings as follows:

17.1.8.1 As-Built Drawings shall show by dimension accurate to within one (1) foot, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Developer shall clearly identify the item by accurate note such as "cast iron drain," "galvanized water," etc. Developer 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. Developer shall thoroughly coordinate all changes on the As-Built Drawings 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.

17.1.8.2 Developer shall include all of the following on the As-Built Drawings, as applicable as determined by City: depth of foundation in relation to finished first floor; horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements; locations of internal utilities and appurtenances, with references to visible and accessible features of the structure; field change of dimensions and details; changes authorized by approved proposal requests, construction Change Orders, documentation of discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials; details not issued with original Construction Documents, design/built plans, deferred approvals, etc.; upon completion of work, obtain signature of licensed surveyor or civil engineer on the Plaza Project record set verifying layout information; 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; the title "PROJECT RECORD" in 3/8" letter.

17.1.8.3 Developer shall maintain a set of As-Built Drawings at the Plaza Project site for reference. Developer shall ensure that changes to the As-Built Drawings are made within twenty-four (24) 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.

- 17.2 **Ownership of Project Deliverables.** Upon Acceptance or termination, Project deliverables shall become the property of City. Developer and City mutually agree that the Construction Documents for the Plaza Project shall not be used on any other work without the consent of each Party.

ARTICLE XVIII. WARRANTIES

- 18.1 **Warranties Required.** Developer shall provide and require its 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.
- 18.1.1 *Materials and Workmanship.* Developer shall warrant and guarantee, and shall require its agents to warrant and guarantee, all work on the Plaza Project against defective workmanship and materials furnished by Developer for a period of one (1) year from the date of the Plaza Project's Final Completion. Developer's construction contractor shall replace or repair, or require its agents to replace or repair, any such Defective Work (as defined in Section 19.1) or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.
- 18.1.2 *Acceptance of the Plaza Project.* Provided that Developer has received written notice of defective workmanship or materials within one (1) year of the date of the City's Acceptance of the Plaza Project, Developer shall replace or repair any such Defective Work (as defined in Section 19.1) in a manner satisfactory to the City, after notice to do so from the City, and within the time specified in the notice.
- 18.1.3 *New Materials and Equipment.* Developer shall warrant and guarantee, and shall require its agents to warrant and guarantee, to City that all materials and equipment incorporated into the Plaza Project are new unless otherwise specified.
- 18.1.4 *Design, Construction, and Other Defects.* Developer shall warrant and guarantee, and shall require its agents to warrant and guarantee to City that all work is in accordance with the Final Plans and Specifications and is not defective in any way in design, construction, or otherwise.
- 18.2 **Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Developer's and Developer's agent's material supplier's, installer's or manufacturer's own letterhead, addressed to City. All warranties shall be submitted in

the format specified in this section, modified as approved by City to suit the conditions pertaining to the warranty.

18.2.1 *Warranty Format.* All warranty information shall be provided to the City in digital format (provide three CDs), including warranties from Developer, Developer's agents, installers, and manufacturers, and should include a Table of Contents. All warranties shall be listed and typewritten in the sequence of the Table of Contents of the Plaza Project manual, with each item identified with the number and title of the specification section in which specified, and the name of the product or work item. Full information shall be provided, using separate sheets, as necessary, listing the Developer's agents, installers, and manufacturers, with name, address, and telephone number of each responsible principal.

18.2.2 *Warranty Start Date.* Except for items put into use with Developer's permission with date mutually agreed upon in writing, the date of the beginning of the time of warranty shall be the date of Acceptance.

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

18.3 **Term of Warranties.** Unless otherwise specified by law, warranties shall extend for a term of one (1) year from the date of Acceptance.

18.3.1 *Trees, shrubs and groundcover.* Notwithstanding the above, all shrubs and groundcover shall have a ninety (90) calendar day warranty period, and trees shall have a one (1) year warranty period. All plant warranties shall commence from the date of Acceptance.

18.3.1.1 Any trees, shrubs, or groundcover replaced during the warranty period shall be replaced in accordance with Sections 21.7 and 21.8.

18.4 **Meetings.** During the one (1) year warranty period described in Section 18.3, Developer shall meet, and shall require its design consultant, construction contractor, and key subcontractors to meet with City representatives, including the PWD Project Manager, the Civic San Diego Project Manager, as applicable as determined by City, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems that City discovers in design, construction, or furnishing, fixtures, and equipment of the Plaza Project during the one (1) year warranty period.

ARTICLE XIX. DEFECTIVE WORK & DEFAULT

19.1 **Correction, Removal, or Replacement.** All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the approved Construction Documents is defective work (Defective Work). If within the designated warranty period, or such additional period as may be required by law or regulation, the Plaza Project is

discovered to contain Defective Work, Developer 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.

- 19.2 **City's Right to Correct.** If circumstances warrant, including but not limited to an emergency or Developer's failure to adhere to Section 19.1, City may correct, remove, or replace the Defective Work. In such circumstances, Developer shall reimburse City for all of City's costs, whether direct or indirect, associated with the correction or removal and replacement.
- 19.3 **Extension of Warranty.** When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year or relevant warranty period will be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.
- 19.4 **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.
- 19.5 **Disputes.** If Developer and City are unable to reach agreement on disputed work, City may direct Developer to proceed with the disputed work. Reimbursement to City of disputed amounts expended by City pursuant to Section 19.2, or resolution of any other dispute, shall be as later determined by mediation pursuant to Article XXVIII, or as subsequently fixed in a court of law. Developer shall maintain and keep all records relating to disputed work for a period of five (5) years.
- 19.6 **City's Right to Terminate for Default and Mortgagee Rights and Obligations.**
- 19.6.1 If Developer fails to adequately perform any obligation required by this Agreement, Developer's failure constitutes a default (Default). Unless within thirty (30) calendar days of receiving a written notice of default (Notice of Default) from City specifying the nature of the Default Developer undertakes all reasonable efforts to ensure the Default is completely remedied within a reasonable time period to City's reasonable satisfaction, City may immediately terminate this Agreement including all rights of Developer and any person or entity claiming any rights by or through Developer under this Agreement except for a mortgagee's or beneficiary's right to cure as provided for in Section 19.8, and call upon the bonds posted in accordance with Article XXIII.
- 19.6.2 If City terminates the Agreement due to Developer's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by Developer or its agents for the construction of the Plaza Project. Developer shall include, and require its contractors and subcontractors to include provisions in their contracts and subcontracts, that City is a third party beneficiary

of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.

19.6.3 The rights and remedies of City enumerated in this Section 19.6 are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or waive or deny any right or remedy at law or in equity available to City against Developer, including any claims for damages against Developer that City may assert as a result of the Default.

19.7 **City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.** If Developer files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to or demand upon Developer immediately terminate this Agreement, and terminate all rights of Developer under this Agreement and any person or entity claiming any rights by or through Developer under this Agreement except for a mortgagee's or beneficiary's right to cure as provided for in Section 19.8. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

19.8 **Mortgagee Rights and Obligations.** The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Plaza Project site or any part thereof and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any Default by Developer under this Agreement which has not been cured within thirty (30) calendar days following either Developer's receipt of the Notice of Default or Developer's filing of a voluntary petition in bankruptcy, adjudication of bankruptcy, or general assignment for the benefit of creditors. Notwithstanding Developer's Default or Developer's filing of a voluntary petition in bankruptcy, adjudication of bankruptcy, or general assignment for the benefit of creditors, this Agreement shall not be terminated by City as to any mortgagee or beneficiary to whom notice is to be given and to which either of the following is true:

19.8.1 The mortgagee or beneficiary cures any Default by Developer within sixty (60) calendar days after receipt from City of the written notification of any Default by Developer or Developer's filing of a voluntary petition in bankruptcy, adjudication of bankruptcy, or general assignment for the benefit of creditors; or

19.8.2 As to Defaults requiring title or possession of the Plaza Project site or any portion thereof to effectuate a cure: (i) the mortgagee/beneficiary agrees in writing, within sixty (60) calendar days after receipt from City of the written notification of any Default by Developer or Developer's filing of a voluntary petition in bankruptcy, adjudication of bankruptcy, or general assignment for the benefit of creditors, to perform Developer's obligations under this Agreement; (ii) the mortgagee/beneficiary commences foreclosure proceedings to reacquire title to the Plaza Project site or any part thereof within said sixty (60) calendar days and thereafter diligently pursues such foreclosure to completion; and (iii) the

mortgagee/beneficiary promptly cures such Default after obtaining title or possession.

19.8.3 No mortgagee or beneficiary shall have an obligation or duty under this Agreement to perform the obligations of Developer or to guarantee such performance. In the event that a mortgagee or beneficiary elects to construct the Plaza Project in accordance with this Agreement, the mortgagee or beneficiary shall be required to assume and perform the obligations or other affirmative covenants of Developer under this Agreement.

ARTICLE XX. PUBLIC RELATIONS

- 20.1 **Presentation.** Developer's and Developer's agents' shall be available for all presentations required to be made to City Council, Council Committees, the local Recreation Council, any applicable Area Committee, any Design Review Committee, Civic San Diego, and citizen groups to provide them with information about the Plaza Project, as well as presentations to any governing or regulatory body or agency for other approvals as may be required.
- 20.2 **Primary Contact.** Developer agrees that City is the primary contact with the media regarding the Plaza Project and Developer shall forward all questions regarding the Plaza Project status to the PWD Project Manager. However, Developer may respond to questions directed to Developer so long as Developer specifies that such response is solely from the Developer and does not necessarily represent the views, opinions, or policies of the City.
- 20.3 **Advertising.** Developer acknowledges that advertising referring to City as a user of a product, material, or service by Developer and/or Developer's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval. City agrees not to advertise or publicize the Plaza Project prior to Acceptance without first obtaining Developer's written consent. Any advertising referencing the Plaza Project name shall be consistent with City policy and shall require written City approval.
- 20.4 **Recognition.** Developer shall place a sign, placard, or other similar monument on the Plaza Project during construction, which shall acknowledge Developer's and City's joint efforts in designing and constructing the Plaza Project. Developer shall properly recognize City and include City's logo on permanent and temporary signs, invitations, flyers, or other correspondence. Any recognition of City shall be reviewed and approved by the PWD Project Manager. For assistance with proper recognition, or if Developer is contemplating a dedication or ground breaking ceremony, Developer shall consult with the PWD Project Manager.
- 20.5 **Dedication Ceremony.** City or Developer or both shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on the Plaza Project site at any reasonable time following the Acceptance of the Plaza Project, provided Developer receives prior approval from City for the ceremony and provides an

opportunity for appearances by the Mayor, Council members and other appropriate City officials. Developer shall contact the PWD Project Manager to arrange a mutually acceptable date and time for any ceremony. Invitations shall not be sent out or a date set until the PWD Project Manager has approved the time and date for the ceremony.

- 20.6 **Cleanup.** Developer, or City as applicable, shall be responsible for the cleanup of the Plaza Project site and the restoration and repair of any damage to the Plaza Project attributable to a Developer-sponsored, or City-sponsored, as applicable, dedication or ground-breaking ceremony under Section 20.5 of this Agreement.

ARTICLE XXI. MAINTENANCE OF PLAZA PROJECT PRIOR TO CITY ACCEPTANCE AND CONVEYANCE OF PLAZA PROJECT SITE

- 21.1 **Maintenance Prior to City's Acceptance and Conveyance of Plaza Project Site.** Developer shall maintain and be responsible for the Plaza Project, including without limitation erosion control measures, until Acceptance of the Plaza Project pursuant to Section 16.1 and Conveyance of the Plaza Project site pursuant to Section 1.5.
- 21.2 **Plant Maintenance Period.** Developer shall provide a maintenance period for landscaping and/or irrigation which shall begin on the first day after all landscape and irrigation work on the Plaza Project is complete, checked, approved by the PWD Project Manager, and the PWD Project Manager has given written approval to begin the maintenance period, and shall continue thereafter for ninety (90) calendar days, or one hundred twenty (120) calendar days if lawn is seeded (Plant Maintenance Period).
- 21.3 **Maintenance Area.** Developer or Developer's contractor shall maintain the Plaza Project site until Acceptance and Conveyance.
- 21.4 **Maintenance Required.** Developer or Developer's contractor shall conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy, growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Developer or Developer's contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days from the date the condition is first detected. Maintenance shall also include the following: (i) filling and replanting of any low areas which may cause standing water; (ii) adjusting of sprinkler head height and watering pattern; (iii) filling and recompaction of eroded areas; (iv) weekly removal of trash, litter, clippings and foreign debris; (v) inspecting plants at least twice per week; and (vi) protecting all planting areas against traffic or other potential causes of damage.
- 21.5 **Landscape and Irrigation Inspection.** At the conclusion of the maintenance period and prior to Acceptance by the City, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be

scheduled with two (2) weeks' notice, a minimum of ninety (90) Calendar Days after the plant maintenance period commencement, or when the Developer or Developer's contractor notifies City that they are ready for the Final Inspection, whichever comes last. City will notify Developer of all deficiencies revealed by the Final Inspection before Acceptance.

21.6 **Extension of Maintenance Period.** Developer shall extend completion of the maintenance period when, in City's reasonable opinion, improper maintenance and/or possible poor or unhealthy condition of planted material is evident at or near the conclusion of the scheduled maintenance period. Developer shall be responsible for additional maintenance of the work until all of the work is completed and acceptable.

21.7 **Replacement.** Plants found to be dead or not in a vigorous condition, or if root balls have been damaged within the installation, maintenance and warranty periods, shall be replaced within fourteen (14) calendar days of notification by City. Developer shall include, at Developer's or Developer's contractor's expense, a timely written diagnosis of plant health by a certified arborist or horticulturist. Should a dispute arise, the arborist's or horticulturist's report shall indicate reason for lack of vigor, potential remedies, if any, and estimate of time required to regain vigor and specified size.

21.8 **Same Kind and Size.** Plants used for replacement shall be the same kind and not less than the size specified and shall be furnished, planted and fertilized as originally specified, unless otherwise directed by City in writing. Cost of all repair work to existing improvements damaged during replacement shall be borne by Developer.

**ARTICLE XXII.
(INTENTIONALLY DELETED)**

ARTICLE XXIII. BONDS AND SECURITY

23.1 **Payment Bond.** Developer shall provide, or require its construction contractor to provide City with a payment bond, letter of credit (LOC), cash or other acceptable security for material and labor in favor of City for one hundred percent (100%) of the proposed construction costs, as determined by competitive bidding (Payment Bond).

23.2 **Performance Bond.** Developer shall provide, or require its construction contractor to provide City with a bond, LOC, cash, or other acceptable security guaranteeing the performance in favor of City for one hundred percent (100%) of the proposed construction costs, as determined by competitive bidding (Performance Bond).

23.3 **Warranty Bond.** Developer shall provide or require its construction contractor to provide City with a bond, LOC, cash, or other acceptable security guaranteeing the Plaza Project during the warranty period in favor of City (Warranty Bond). Developer shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.

- 23.4 **Term.** The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond shall remain in full force and effect until Acceptance of the Plaza Project by City. Upon Acceptance, City shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Agreement.
- 23.5 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 23.6 **Licensing and Rating.** The bonds shall be duly executed by responsible surety companies admitted to do business in the State of California, licensed or authorized in the jurisdiction in which the Project is located to issue bonds for the limits required by this agreement, secured through an authorized agent with an office in California, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent (10%) of its capital and surplus.
- 23.7 **Insolvency or Bankruptcy.** If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Plaza Project is located, Developer shall within fifteen (15) calendar days thereafter substitute or require the substitution of another bond or other security, acceptable to City.

ARTICLE XXIV. INDEMNITY & DUTY TO DEFEND

- 24.1 **Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 24.2 and 24.3 below, to the fullest extent permitted by law, Developer shall defend (with legal counsel reasonably acceptable to City), indemnify and hold harmless 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 Developer or Developer'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 performance under this Agreement by Developer or Developer's agents, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Developer'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. Developer's indemnity and hold harmless obligation to City pursuant to this Section 24.1 shall not include any claims or liabilities arising from claims, losses, costs, damages, injuries, expense and liability of every kind, nature and description that arise out of the City's operation, maintenance, or use of the Plaza Project, or the public's use of the Plaza Project, after Acceptance and Conveyance of the Plaza Project.

- 24.2 **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, Developer shall require its design professional to indemnify and hold harmless 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 Developer's design professional or design professional's officers or employees. Developer shall also include in its contract with its design professional an obligation that the design professional, to the fullest extent permitted by law, agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Section.
- 24.3 **Design Professional Services Defense.** The 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.
- 24.4 **Insurance.** The provisions of this Article are not limited by the requirements of Article XXV related to insurance.
- 24.5 **Enforcement Costs.** Other than in enforcing the indemnity and defense provisions against the design professional which is solely as addressed in Section 24.2 above, Developer agrees to pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in this Article.
- 24.6 **Indemnification for Liens and Stop Notices.** Developer shall keep the Plaza Project and underlying property free of any mechanic's liens and immediately take all reasonable steps to secure the release of any stop notices. Developer 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. Developer shall be responsible for payment of all persons entitled to assert liens and stop notices.

ARTICLE XXV. INSURANCE

- 25.1 **General.** Developer shall not begin work on Plaza Project under this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Article.
- 25.2 **Type and Amount of Insurance.** Prior to the commencement of construction, Developer shall obtain insurance in the form (including all endorsements, specific clauses, and types of coverage) and in dollar amounts as set forth in **Exhibit G** "City Standard Insurance Provisions" (Required Insurance).
- 25.3 **Written Notice.** Except as provided for under California law, the Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Developer to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days' notice shall be provided.

- 25.3.1 Where the words “will endeavor” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” are present on a certificate, they shall be deleted.
- 25.4 **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.
- 25.5 **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.
- 25.6 **Additional Insurance.** Developer may obtain additional insurance not required by this Agreement.
- 25.7 **Obligation to Provide Documents.** Prior to performing any work on the Plaza Project, Developer shall provide copies of certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.
- 25.8 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Developer. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.
- 25.9 **Policy Changes.** Developer shall not modify any policy or endorsement thereto which increases City’s exposure to loss for the duration of this Agreement.
- 25.10 **Reservation of Rights.** City reserves the right, from time to time, to review the Developer’s insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to City. City will reimburse the Developer 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.
- 25.11 **Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Developer’s obligations under this Agreement, including indemnity.
- 25.12 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal of required insurance during the term of this Agreement and for a period of ten (10) years following Conveyance of the Plaza Project site pursuant to Section 1.5 may be treated by City as a material breach of this Agreement.

ARTICLE XXVI. RECORDS AND AUDITS

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

- 26.2 **Audit of Records.** At any time during normal business hours and as often as City reasonably deems necessary, Developer and all contractors or subcontractors shall make available to City for examination at reasonable locations within the City or County of San Diego all of the data and records with respect to all matters covered by this Agreement. Developer and all contractors or subcontractors will permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the County of San Diego, then Developer shall pay all City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained.

ARTICLE XXVII. NOTICES

- 27.1 **Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 27.2 **Effective Date of Notice.** Except in relation to Change Orders as provided for in Section 12.1 or as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (a) on personal delivery, (b) on the succeeding business day after mailing by certified or registered U.S. Mail, return receipt requested, (c) 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 (d) upon successful transmission of facsimile.
- 27.3 **Recipients.** Except in relation to Change Orders, all demands or notices required or permitted to be given shall be sent to all of the following:
- 27.3.1 Deputy Director, Architectural Engineering and Parks Division
Public Works/Engineering & Capital Projects Department
City of San Diego
202 "C" Street, MS. #908A
San Diego, CA 92101
Facsimile No.: (619) 533-5176
- 27.3.2 H.G. Fenton Development Company
7577 Mission Valley Road, Suite 200
San Diego, California 92108
Facsimile No.: (619) 400-0111
Attention: Martha Guy, General Counsel
- 27.4 **Recipients of Change Orders.**
- 27.4.1 Deputy Director, Field Engineering Division
Public Works/Engineering & Capital Projects Department
City of San Diego
202 "C" Street, M.S. #18
San Diego, CA 92101

Facsimile No.: (619) 627-3297

27.4.2 Deputy Director, Architectural Engineering and Parks Division
Public Works/Engineering & Capital Projects Department
City of San Diego
202 C Street M.S. # 908A
San Diego, CA 92101
Facsimile No.: (619) 533-5176

27.4.3 H.G. Fenton Development Company
7577 Mission Valley Road, Suite 200
San Diego, California 92108
Facsimile No.: (619) 400-0111
Attention: Martha Guy, General Counsel

27.5 **Recipients of Notice of Completion.**

27.5.1 Deputy Director, Field Engineering Division
Public Works/Engineering & Capital Projects Department
City of San Diego
202 "C" Street, M.S. #18
San Diego, CA 92101
Facsimile No.: (619) 627-3297

27.5.2 Program Manager, Facilities Financing Section
Planning Department
City of San Diego
1010 Second Avenue, Suite 600
San Diego, CA 92101-4998
Facsimile No.: (619) 533-3687

27.5.3 Park and Recreation Department
202 C Street, M.S. #39
San Diego, CA 92101
Facsimile No.: (619) 235-1160
Attention: Andrew Field, Assistant Director

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

ARTICLE XXVIII. MEDIATION

28.1 **Mandatory Mediation.** If dispute arises out of, or relates to the Plaza 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.

28.2 **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.

28.3 **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.

28.3.1 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.

28.3.2 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.

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

28.4 **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.

28.4.1 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.

28.4.2 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 XXIX. MISCELLANEOUS PROVISIONS

- 29.1 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 29.2 **Gender & Number.** Whenever the context requires, the use herein of (a) the neuter gender includes the masculine and the feminine genders and (b) the singular number includes the plural number.
- 29.3 **Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.
- 29.4 **Incorporation of Recitals.** All recitals herein are incorporated into this Agreement and are made a part hereof.
- 29.5 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of City or Developer shall be deemed to be both covenants and conditions.
- 29.6 **Integration.** This Agreement and the Exhibits and references incorporated into this Agreement fully express all understanding 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 an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 29.7 **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.
- 29.8 **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 or against either Party by reason of the extent to which each Party participated in the drafting of this Agreement.
- 29.9 **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.

- 29.10 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 29.11 **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.
- 29.12 **Further Assurances.** City and Developer each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 29.13 **Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:
- | | |
|-----------|---|
| Exhibit A | General Development Plan |
| Exhibit B | Estimated Cost |
| Exhibit C | Consultant Provisions |
| Exhibit D | Project Schedule |
| Exhibit E | Developer Certification for Title 24/ADA Compliance |
| Exhibit F | Preconstruction Meeting Agenda |
| Exhibit G | City Standard Insurance Provisions |
- 29.14 **Compliance with Controlling Law.** Developer shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, ordinances, regulations, and policies of the federal, state, and local government applicable to this Agreement, including California Labor Code section 1720 through 1861. In addition, Developer shall require its consultants, contractors, subcontractors, agents, and employees to comply immediately with all directives related to this Agreement that are reasonably issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
- 29.15 **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 the Plaza Project site, including, without limitation: the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code section 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). “Hazardous Materials” shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not

defined as hazardous waste or hazardous substance in any such statute, ordinance, rule or regulation. Developer agrees to comply with all applicable state, federal, and local laws and regulations pertaining to hazardous materials.

- 29.16 **Jurisdiction, Venue, and Choice of Law.** The venue for any suit or proceeding concerning this Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 29.17 **Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State of California.
- 29.18 **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 Developer's contracts, purchase orders and other contracts between Developer and third party services. Developer shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 29.19 **Non-Assignment.** Except with respect to Permitted Transfers, the Developer shall not assign any or all of the obligations under this Agreement, nor any monies due or to become due, without City's prior written approval, which approval shall not be unreasonably withheld. Permitted Transfers include assignments to affiliates that are under Developer's control. The term "control" as used in the immediately preceding sentence, means the power to direct the affiliate's management or the power to control the appointment or election of the board of directors or other governing body of the affiliate. Upon notification by Developer to City, Permitted Transfers are subject to the reasonable approval of documentation, by the Mayor or his designee, substantiating that the assignment is a Permitted Transfer within ten (10) Working Days. City reserves the right to require where deemed appropriate by the City, as a condition precedent to the completion of any Permitted Transfer, and any other assignment or transfer approved by the City, an executed assignment and assumption agreement confirming that the assignee has assumed the obligations under this Agreement. 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.
- 29.20 **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.
- 29.21 **Independent Contractors.** Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Developer concerning the details of performing the services under this

Agreement, or to exercise any control over such performance, shall mean only that Developer shall follow the direction of City concerning the end results of the performance.

29.22 **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 the Plaza Project.

29.23 **No Waiver.** No failure of either City or Developer 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 every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

29.24 **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 obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by the through its Mayor, pursuant to O-_____, authorizing such execution, and by Developer, acting as Fenton Little Italy, LLC, as well as their respective counsel.

This Agreement was approved as to form by the City Attorney this ____ of _____, 2015, 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: _____
Deputy City Attorney

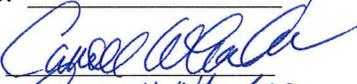
FENTON LITTLE ITALY, LLC, a California Limited Liability Company

Dated: _____

By: H.G. Fenton Company, a California corporation

Its: Authorized Agent

By: 
Name: Michael P. Neal
Title: President and CEO

By: 
Name: Carol Whalen
Title: EVP, Residential Asset Mgmt

Dated: _____

Allen D. Haynie
Attorney for Developer

Exhibit A

General Development Plans



PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

HG FENTON COMPANY

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

PLAZA RENDERING

GILLESPIE MOODY PATTERSON

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977



MARTINEZ + CUTRI
CORPORATION

402 W Broadway, Suite 2600
Emerald Plaza, San Diego, CA 92101
Tel (619) 233-4857 Fax (619) 233-7417



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**Gillespie
Moody
Patterson, Inc.**
LANDSCAPE ARCHITECTURE
& PLANNING



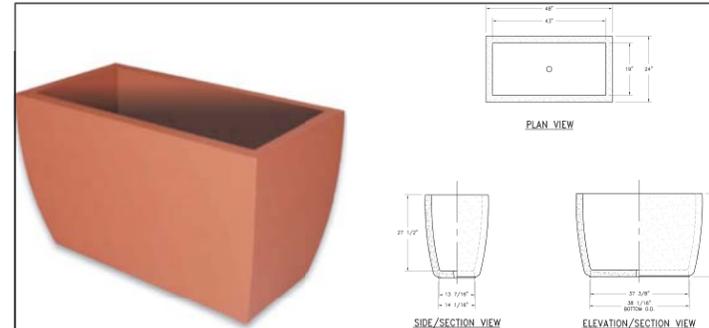
MJJ Sales: 11' Aluminum Umbrella with Crank. Color: Blue or Red
SEATING AREA FURNISHINGS



Fermob 4102 Armchair in Cedar Green



Fermob 4134 Table 32x32 in Black



Quickcrete Cascade Planter QS-CE244830P

ON-SITE PLANTERS

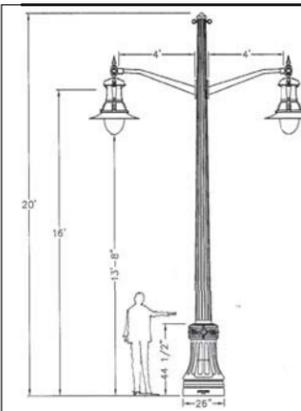


Custom Manhole Cover

SITE FOCAL ELEMENTS



Piazza fountain example



Proposed pole base - Oxford Style

SITE LIGHTING ELEMENTS



Example fixture with radial shade option



Oxford Base with Planters



Fixture with radial shade



Rosmarinus officinalis 'Tuscan Blue'
Upright Rosemary

SITE PLANTING



Rosmarinus officinalis 'Tuscan Blue'
Planted Upright Rosemary



Re-located Christmas Tree



Laurus nobilis (standard)
Sweet Bay



Belgard Mega-Lafitt Grana Pavers

ON-SITE PAVERS



75% Bella Blend

25% Montecito Blend



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402 W Broadway, Suite 2600
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PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

HG FENTON COMPANY

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

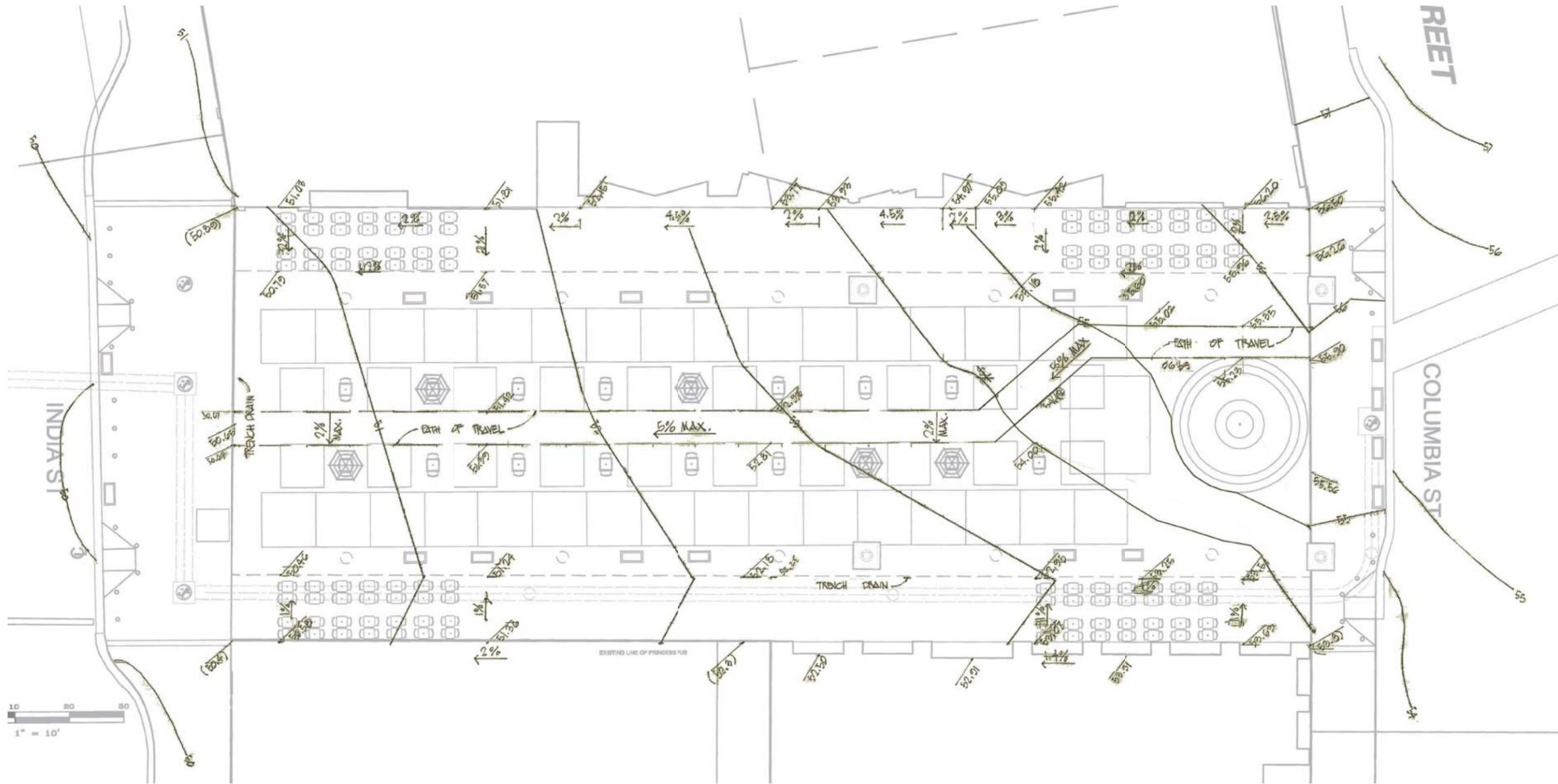
SITE FURNISHINGS + PLANTING

GILLESPIE MOODY PATTERSON

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977



Gillespie
Moody
Patterson, Inc.
LANDSCAPE ARCHITECTURE
& PLANNING



PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

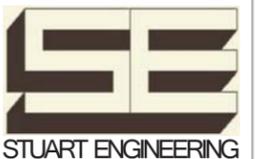
HG FENTON COMPANY

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

CONCEPT GRADING

GILLESPIE MOODY PATTERSON

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977

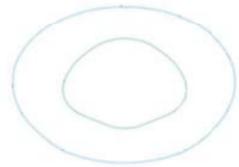


Symbol	Qty	Label	Arrangement	Total Lamp Lumens	LLF	Description
	10	1914LEDFA-21L45-MDL10-MD-rlm431	TWIN	N.A.	0.500	MOD to 21L with LLF.

Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min
Ground_Surface	Illuminance	Fc	5.95	10.5	0.6	9.92	17.50
Vertical_FC	Illuminance	Fc	0.79	3.9	0.1	7.90	39.00

NOTES:

- FIXTURE MOUNTING HEIGHT: 16'-0" (15' TO LIGHT SOURCE)
- HORIZONTAL CALC PTS @ GROUND: 0'-0" A.F.G.
- VERTICAL CALC PTS @ WALL SURFACE
- REFLECTANCES:
 - VERTICAL SURFACES: 50%
 - HORIZONTAL SURFACES: 20%

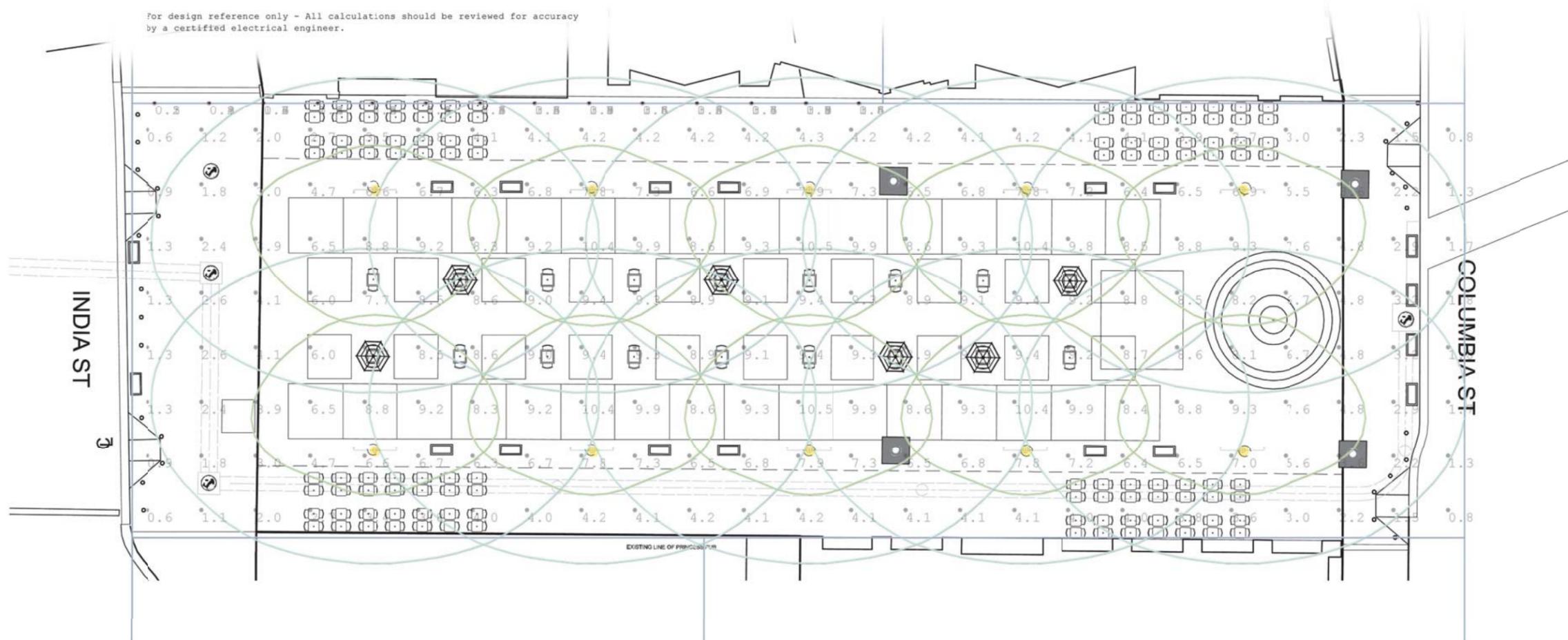


Calculations have been performed according to information provided regarding room dimensions, reflectances, furniture and architectural element placement. Some differences between measured values and calculated results may occur if the real environment conditions do not match the input data.

Photometric Data used as input for these calculations is based on established IES procedures and published lamp & ballast ratings.

Field Performance will depend on actual lamp, ballast, electrical and site characteristics.

For design reference only - All calculations should be reviewed for accuracy by a certified electrical engineer.



PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

HG FENTON COMPANY

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

CONCEPT LIGHTING

GILLESPIE MOODY PATTERSON

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977





PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

HG FENTON COMPANY

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

LIGHT STUDY RENDERING

GILLESPIE MOODY PATTERSON

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977



MARTINEZ + CUTRI
CORPORATION

402 W Broadway, Suite 2600
Emerald Plaza, San Diego, CA 92101
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**Gillespie
Moody
Patterson, Inc.**
LANDSCAPE ARCHITECTURE
& PLANNING

EXHIBIT "B"

ESTIMATED COSTS

PROJECT COSTS *(Ref Reimbursement Agreement Section 3.1)*

Hard Costs \$ 1,368,314

Hard costs include but are not limited to asphalt, construction, final clean-up, site improvements, earthwork, site utilities and foundation, drains, A.C. paving, landscaping, irrigation, water feature, concrete, roofing and waterproofing, building specialties and miscellaneous sub trades, Mercato stall infrastructure, and electrical including Audio/Visual/Technology equipment.

Soft Costs \$ 156,092

Soft costs include but are not limited to general conditions, supervision, liability insurance, course of construction insurance, fee & overhead, construction management, performance and completion bond.

Total Project Costs *(Hard Costs + Soft Costs)*

\$ 1,524,406

PROJECT CONTINGENCY *(Ref Reimbursement Agreement Section 3.3.1)*

\$ 73,184

ESTIMATED COSTS *(Ref Reimbursement Agreement Section 3.3)*

\$ 1,597,590

OTHER COSTS

Other costs include, design fees, special testing and inspection costs, soils testing and inspection, Developer Administrative Costs, charges for City Permits & associated processing, City staff charges for review of the GDP, City staff charges for development of the Park Development and Reimbursement Agreement No. 1326979, and City Administrative Costs per Reimbursement Agreement Section 12.1.5. ***These costs are not reimbursable to the Developer.***

Exhibit C

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 Developer, 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

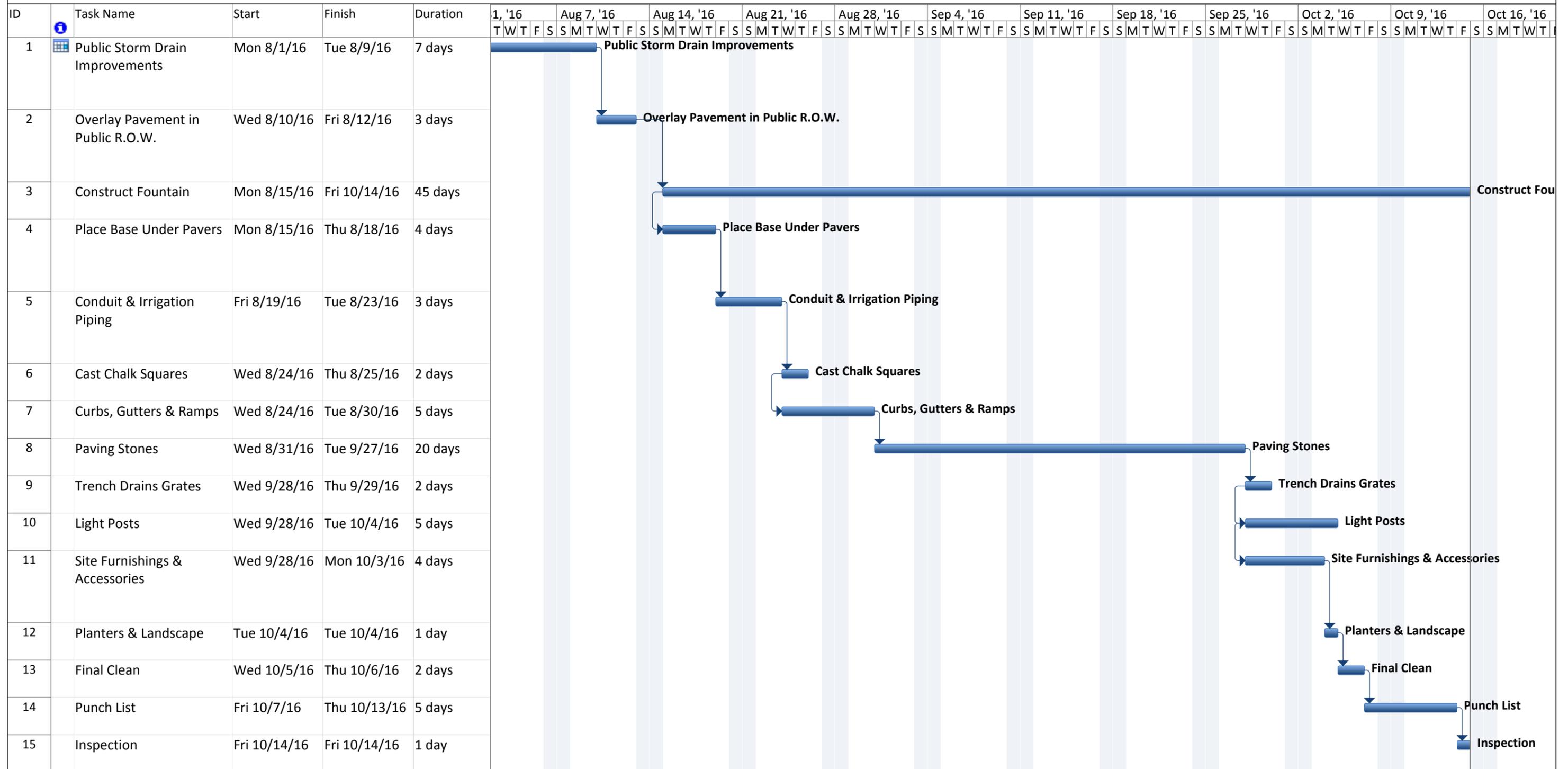
Consultant's provision of services under this Agreement.

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 D
Project Schedule



Project: Little Italy Center 56 Sche
Date: Wed 11/12/14

Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
Split		External Tasks		Inactive Summary		Manual Summary		Progress	
Milestone		External Milestone		Manual Task		Start-only			
Summary		Inactive Task		Duration-only		Finish-only			

Exhibit E

Developer 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(s)] shall meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with the Americans with Disabilities Act of 1990.

Dated: _____

By: _____

Exhibit F

Preconstruction Meeting Agenda

1. **Preconstruction.** The issues below should be made part of the Preconstruction Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.
 - 1.1 Permits and utility issues, including telephone, cable, gas, and electric. RE to announce to Developer that franchise companies may be working in the area of the Project and that coordination regarding such a situation may need to be done.
 - 1.2 Establish parking areas for construction employees and possibly patrons/others.
 - 1.3 Developer's payment procedure and forms.
 - 1.4 Format for Request for Proposals (RFPs) using the sample in the back of the contract documents.
 - 1.5 Collection of emergency numbers for off-hour emergencies from the prime (with an alternate contact person).
 - 1.6 Distribution and discussion of the construction schedule.
 - 1.7 Procedure for maintaining the Project record documents.
 - 1.8 Distribution of the Second Opinion Option Form.
 - 1.9 Designation of persons authorized to represent and sign documents for the RE and Developer and the respective communication procedures between parties.
 - 1.10 Safety and first aid procedures including designation of Developer's safety officer.
 - 1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.
 - 1.12 Testing laboratory or agency and testing procedures.
 - 1.13 Establish schedule for progress meetings.
 - 1.14 Procedure for changes in work requested by Developer, notice to RE, timing, etc.
 - 1.15 Procedure for changes in work requested by City.
 - 1.16 Public safety.
 - 1.17 Housekeeping procedures and Project site maintenance.
 - 1.18 Protection and restoration of existing improvements.
 - 1.19 Sanitation, temporary lighting, power, water, etc.
 - 1.20 Procedure for encountering hazardous substances.
 - 1.21 Any items requested by attendees of preconstruction meeting/open discussion.
2. **Progress Meetings.** The issues below should be made part of the Progress Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.

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

3. **Special Meetings.**

- 3.1 **Grading.** Prior to grading the site, the RE shall call a grading mini-preconstruction meeting. This meeting applies when surveying is being supplied by the City. The superintendent, the Developer's appropriate subcontractors, the RE, the City's survey crew, and any appropriate consultants (if deemed necessary by the RE) shall attend. Unless otherwise noted, the agenda will be to coordinate the staking, reference markers, bearings, various site conditions, etc. as defined in the contract documents and any necessary coordination of scope or scheduling between the respective parties.
- 3.2 **Roofing.** Upon completion of the roofing structural diaphragm and prior to installing flashing, and/or any other roofing materials, the RE shall call a roof mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, the roof suppliers manufacturer's representative, and any appropriate consultants (if deemed necessary by the RE) shall attend. The agenda will be to coordinate the flashing, caulking, sealing, and different roofing materials and/or contractors on site with the various field conditions.
- 3.3 **Landscaping.** Upon completion of the grading and prior to the installation of any landscaping equipment, supplies, etc., the RE shall call a landscaping mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) shall attend. The agenda will be to coordinate all landscape materials, plant and irrigation coverage, visual planting procedures, etc. and/or contractors on site with the various field conditions.

- 3.4 **Mini-Preconstruction Meeting**. Prior to the installation of any mechanical, electrical, plumbing, and sprinkler system equipment, the Developer shall call a mini-preconstruction meeting. The superintendent, the Developer's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) shall attend. The intent of this meeting is to ensure that the prime contractor is adequately coordinating the space of the facility so as to not impede the visual integrity of the overall product.
- 3.5 **Other**. Upon appropriate notice to other parties, the RE may call special meetings at times agreed to by all parties involved.

Exhibit G

City Standard Insurance Provisions

1. **Types of Insurance.** At all times during the term of this Agreement and for so long as the Agreement requires, Developer shall maintain insurance coverage as follows:
 - 1.1 **Commercial General Liability.** Developer 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. Developer 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 Developer's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Developer 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 Developer's employees who are subject to this Agreement, Developer shall keep in full force and effect, or Developer 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. Developer 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 Agreement. Developer 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 Developer's employees who are subject to this Agreement and to the extent required by the State of California, Developer shall keep in full force and effect a Workers' Compensation Insurance and Employers' Liability Insurance to protect Developer 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 Developer to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of one million dollars (\$1,000,00) 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. Developer 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 Developer 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 Agreement."

- 1.5 **Builder's Risk.** To the extent commercially available, Developer shall provide a policy of "all risk" Builders Risk Insurance. Developer 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. Developer 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 Developer'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 Developer; 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 Developer'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 Developer 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.

**REIMBURSEMENT AGREEMENT WITH FENTON LITTLE ITALY, LLC
FOR A PUBLIC PLAZA (PIAZZA FAMIGLIA), PROJECT NO. P-13
(DOWNTOWN PARK ACQUISITION AND DEVELOPMENT) IN THE
DOWNTOWN COMMUNITY – REIMBUREMENT AGREEMENT NO.
1326979**

THIS REIMBURSEMENT AGREEMENT NO. 1326979 (Agreement) is made and entered into between the CITY OF SAN DIEGO, a municipal corporation (City) and FENTON LITTLE ITALY, LLC, a California limited liability company (Developer) (collectively the Parties), for reimbursement for purchase, design, and construction of a public plaza known as Piazza Famiglia, which is included in Project No. P-13, Downtown Park Acquisition and Development, in the Downtown Community Plan area in accordance with the Downtown Public Facilities Financing Plan.

R E C I T A L S

A. Developer owns approximately 50,611 square feet of real property on both sides of West Date Street between Columbia and India Streets in the Little Italy neighborhood of the Downtown Community Plan area (Property). Developer certifies that it is developing the Property subject to the requirements and conditions of the City Council of the City of San Diego (City Council).

B. On July 14, 2014, by San Diego Resolution R-309116, City Council granted Centre City Development Permit/Planned Development Permit/Site Development Permit/Neighborhood Use Permit No. 2012-10 (Permit), and by San Diego Resolution R-309117, vacated a portion of Date Street (Vacation), to allow the construction of a seven-story mixed-use building on a 24,000 square-foot parcel located on the north side of the vacated portion of Date Street between India and Columbia Streets, a five-story mixed-use building on a 10,000 square-foot parcel located on the south side of the vacated portion of Date Street between India and Columbia Streets, an underground parking structure under both buildings and under the vacated portion of Date Street, an 11,200 square foot public plaza on the vacated portion of Date Street (Plaza), and outdoor dining areas along the north and south sides of the vacated portion of Date Street adjacent to the Plaza, as well as the relocation of a designated historical resource.

C. Permit Condition 6 requires Developer to construct the Plaza within a 56-foot wide recreation easement located within the vacated portion of Date Street (Plaza Project) that is to be designed consistent with an approved General Development Plan (GDP). On June 19, 2014, the City Park and Recreation Board recommended approval of a GDP for the Plaza Project. The Director of the City Park and Recreation Department subsequently approved the GDP. The Plaza Project is to be designed and constructed in accordance with the approved GDP, which is attached as **Exhibit A**.

D. Permit Condition 6 also requires that a park development agreement be executed between City and Developer that provides specific development criteria and specifications of the Plaza Project, project schedule, maintenance specifications, and other provisions approved by City staff, prior to the commencement of the Plaza Project.

E. Permit Condition 6 requires the negotiation of a reimbursement agreement that provides up to \$1,000,000 in development impact fees collected pursuant to the applicable Downtown Public Facilities Financing Plan. Permit Condition 6 provides that a “reimbursement agreement shall be presented to City Council for consideration prior to . . . commencing construction of the [Plaza Project] . . .” and that Developer “shall construct the [Plaza Project] even if a reimbursement agreement is not approved by the City.”

F. On June 17, 2014, by San Diego Resolution R-309070, City Council adopted the Downtown Community Public Facilities Financing Plan and Development Impact Fee Fiscal Year 2015 (Financing Plan). The Financing Plan includes Project No. P-13, Downtown Park Acquisition and Development, which anticipates funding for the acquisition, design, and construction of up to 5.7 acres of public open space and park facilities throughout the Downtown Community including plazas. City staff has determined that a maximum of One Million Dollars (\$1,000,000) is available for the Plaza Project from the Downtown Development Impact Fee (DIF) fund (Maximum Funds). Any amount in excess of the Maximum Funds may not be reimbursed through this Agreement and shall constitute a Non-Reimbursable Cost. Developer is not automatically entitled to the Maximum Funds or any other reimbursement. Developer must satisfy all terms of this Agreement to become eligible for any portion of the Maximum Funds if and as they are collected and become available for reimbursement.

G. Consistent with Permit Condition 6b, City and Developer have entered into the Park Development Agreement for a Public Plaza (Piazza Famiglia) in the Downtown Community (Park Development Agreement), on file in the Office of the City Clerk as Document No. _____. Under the Park Development Agreement, Developer is to develop the Plaza Project consistent with the GDP. The process for the design, approval, and construction of the Plaza Project is subject to the provisions of the Park Development Agreement.

H. Developer’s Estimated Cost (as defined in Section 3.3) for the Plaza Project is One Million Five Hundred Ninety-Seven Thousand Five Hundred Ninety Dollars (\$1,597,590). The Parties acknowledge that the Estimated Cost exceeds the Maximum Funds available for a DIF credit or cash reimbursement pursuant to this Agreement.

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

ARTICLE I. SUBJECT OF THE AGREEMENT

1.1 Design and Construction of Plaza Project. Developer agrees to design and construct the Plaza Project fully complete and operational and suited to the purpose for which it was designed and in accordance with this Agreement, the Park Development Agreement, the Plans and Specifications, as defined in the Park Development Agreement, and the Financing Plan, and within the timeframe established in the Project Schedule as set forth in the Park Development Agreement, and for the Estimated Cost attached as **Exhibit B**.

1.2 Acceptance and Final Completion. Acceptance and Final Completion of the Plaza Project shall occur as described in Article XVI of the Park Development Agreement.

1.3 Reimbursement. City agrees to reimburse Developer for the construction of the Plaza Project subject to the terms and conditions of this Agreement.

ARTICLE II. PROJECT SCHEDULE

2.1 Project Schedule. Developer shall comply with the Project Schedule as set forth in the Park Development Agreement, including the construction and meeting requirements set forth in the Park Development Agreement.

2.2 Project Completion. Developer agrees that all work on the Plaza Project will be complete and ready for operational use according to the Project Schedule and all other requirements as set forth in the Park Development Agreement.

2.3 Changes in Project Schedule.

2.3.1 Changes in the Project Schedule that increase the Estimated Cost must be approved by City in writing in accordance with Section 3.3.

2.3.2 Changes in the Project Schedule that do not increase the Estimated Costs may be approved by the engineer designated by the City's Public Works Department (Responsible Department), which shall be responsible for review and approval of the progress of, and changes to, the Plaza Project (RE); provided, however, that the Plaza Project is still completed in accordance with the Financing Plan, all conditions of approval of the Permit, and the GDP.

2.4 Notification of Delay. If Developer anticipates or has reason to believe that performance of work under this Agreement will be delayed, Developer shall immediately notify the representative designated by the City's Public Works Department to manage the Plaza Project on behalf of City (Project Manager). Unless City grants Developer additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) calendar days of the initial notification and shall include an explanation of the cause of the delay, a reasonable estimate of the length of the delay, any anticipated increased costs due to the delay, all supporting data, and a written statement that the time adjustment requested is the entire time adjustment Developer needs as a result of the cause of the delay. If Developer anticipates or has reason to believe the delay will increase the Estimated Cost, Developer shall also give notice to City in accordance with Section 3.4.

2.5 Delay. If delay in the performance of work required under this Agreement is caused by unforeseen events beyond the control of the Parties, such delay may entitle Developer to a reasonable extension of time. Any such extension of time must be approved in writing by City, and will not be unreasonably withheld. A delay in the performance of work or any activity by City or Developer that affects a deadline to perform imposed on the other party by this Agreement will entitle the other party to the number of days City or Developer failed to complete performance of the work. The following conditions may justify such a delay depending on their actual impact on the Plaza Project: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Developer's work; concealed conditions encountered in the

completion of the Plaza Project; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Developer. Any delay claimed to be caused by Developer's inability to obtain materials, equipment, labor, or additional required services shall not entitle Developer to an extension of time unless Developer furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of Developer's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Developer shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Developer, its consultants, contractors, subcontractors, employees, or other agents (collectively, Developer's agents). A change in the Project Schedule does not automatically entitle Developer to an increase in Reimbursable Costs (as defined in Section 3.2). If City determines that the delay materially affects the Plaza Project, City may exercise its rights under Section 2.7.

2.6 Costs of Delay. City and Developer acknowledge construction delays may increase the cost of the Plaza Project. Unless Developer informs City pursuant to Sections 2.4 and 3.4 of cost increases due to delay and such cost increases are determined by City to be reasonable and are fully recovered through collected fees under the Financing Plan, funding will be insufficient to cover the cost increase. Therefore, Developer agrees to absorb any increase in Estimated Costs and/or interest thereon not accounted for in the Financing Plan (or future updates of the Financing Plan) because Developer failed to timely notify the City in writing as required under Sections 2.4 and 3.4.

2.7 City's Right to Terminate for Default and Mortgagee Rights and Obligations.

2.7.1 If Developer fails to adequately perform any obligation required by this Agreement, Developer's failure shall constitute a default (Default). Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default Developer undertakes all reasonable efforts to ensure that the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement including all rights of Developer and any person or entity claiming any rights by or through Developer under this Agreement except for a mortgagee's or beneficiary's right to cure as provided for in the Park Development Agreement. A delay shall not constitute a Default if Developer has made good faith and reasonable efforts to adhere to the Project Schedule, has provided notice of delay in accordance with Section 2.4, and such delay was caused by unforeseen events that justify the delay as set forth in Section 2.5.

2.7.2 If City terminates the Agreement due to Developer's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by Developer or Developer's agents for the construction of the Plaza Project. Developer shall include, and require its contractors and subcontractors to include provisions in their contracts and subcontracts, that City is a third party beneficiary of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.

2.7.3 The rights and remedies of City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or

waive or deny any right or remedy at law or in equity available to City against Developer, including any claims for damages against Developer that City may assert as a result of the Default.

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

ARTICLE III. PROJECT COSTS AND CHANGE ORDERS

3.1 Project Costs. Project costs are Developer's reasonable costs of construction necessary for the Plaza Project as approved by the City and depicted in **Exhibit B** (Project Costs). Project Costs do not include Developer's administrative costs, which are Non-Reimbursable Costs (as defined in Section 3.2.1).

3.2 Reimbursable Costs. Reimbursable Costs shall consist only of the Estimated Costs reasonably expended by Developer, approved for reimbursement in the Financing Plan, and approved by City under the terms of this Agreement (Reimbursable Costs). Developer may seek DIF credits or cash reimbursement only for Reimbursable Costs in an amount not to exceed the Maximum Funds.

3.2.1 Non-Reimbursable Costs. Non-Reimbursable Costs include: (i) any cost in excess of the Maximum Funds; (ii) any cost in excess of the Estimated Costs not approved in accordance with Section 3.3.2; (iii) any cost identified in this Agreement as a Non-Reimbursable Cost; (iv) any cost identified in **Exhibit B** as a Non-Reimbursable cost; (v) Developer's administrative costs; (vi) any cost to remedy Defective Work (as defined in the Park Development Agreement); (vii) any cost incurred as a result of Developer's or Developer's agents' negligence, omissions, delay, or Default; (viii) any cost of substituted products, work, or services not necessary for completion of the Plaza Project, unless requested and approved by City in writing; (ix) any cost not approved by City in the manner required by this Agreement and/or the Charter of the City of San Diego (Charter) and rules, regulations, or laws promulgated thereunder; (x) any cost not supported by proper invoicing or other documentation as reasonable and necessary; (xi) with respect to a cash reimbursement, any cost in excess of DIFs actually collected by the City and available for reimbursement to Developer for the design and construction of the Plaza Project during the term of this Agreement; and (xii) any cost associated with the design of the Plaza Project. Additionally, the fair value as reasonably determined by City of any property that is destroyed, lost, stolen, or damaged rendering it undeliverable, unusable, or inoperable for City constitutes a Non-Reimbursable Cost. Refundable deposits, such as utility deposits, also constitute a Non-Reimbursable Cost.

3.3 Estimated Cost. Developer's Estimated Cost shall consist only of: (i) Project Costs, and (ii) the Project Contingency (as defined in Section 3.3.2). The total Estimated Cost of the Plaza Project is One Million Five Hundred Ninety-Seven Thousand Five Hundred Ninety Dollars (\$1,597,590). The Parties acknowledge that the Estimated Cost exceeds the Maximum Funds.

3.3.1 *Project Contingency.* A Project Contingency of Seventy Three Thousand One Hundred Eighty-Four Dollars (\$73,184) is included in the Estimated Cost. The Project Contingency shall not be available for: (i) work required due to Developer's or Developer's agents' failure to perform work or services according to the terms of this Agreement or in compliance with the Park Development Agreement; or (ii) uninsured losses resulting from the negligence of Developer or Developer's agents.

3.3.2 *Change Orders and Adjustments to Estimated Cost.* Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with Article XII of the Park Development Agreement. The Estimated Cost may only be increased if Developer provides documentation showing that the increase is reasonable in nature and amount, and is due to causes beyond Developer's or Developer's agents control or otherwise not the result of unreasonable conduct by Developer or Developer's agents which may, based on actual impact on the Plaza Project, include: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Developer's work; concealed conditions encountered in the completion of the Plaza Project; inability to reasonably obtain materials, equipment, labor, or additional required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Developer. Developer shall not be reimbursed, and no Change Order may be approved, for costs or expenses resulting from a design error or omission (unless such a design error or omission is the direct result of a City request for such design or omission), or Developer's or Developer's agents' negligence. Developer shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order.

3.4 Notification of Increased Estimated Costs. If Developer anticipates or has reason to believe that the cost of the Plaza Project will exceed the Estimated Cost, Developer shall notify the City in writing within fourteen (14) calendar days of becoming aware of the potential increase. If Developer fails to timely notify City in writing, Developer agrees to absorb any increase in Estimated Costs and any interest thereon not accounted for in the Financing Plan. This written notification shall include an itemized cost estimate and a list of recommended revisions Developer believes will bring the construction cost to an amount within the Estimated Cost. In accordance with Section 3.3, City may approve an increase in Estimated Cost and/or delineate a project which may be constructed within the Estimated Cost. If City chooses not to pursue the above options, Developer may elect to construct the Plaza Project and forgo any reimbursement in excess of the Estimated Cost.

ARTICLE IV. COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

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

4.2 Bidding Documents. Following City review of the Construction Documents, as that term is defined in the Park Development Agreement, Developer shall prepare final corrected Construction Documents to be submitted to City for review and approval, in accordance with City's standard review procedures prior to solicitation of bids.

4.2.1 *Submission of Construction Documents.* Developer shall submit bidding documents to City for approval before soliciting bids for work on the Plaza Project. The Developer may elect to prepare bidding documents requesting bids based on Lump Sum or Firm-Fixed prices or unit costs as applicable. City retains the right to notify Developer of necessary corrections and will notify Developer of corrections within fifteen (15) Working Days of submittal date.

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

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

4.4 Bid Opening and Award of Contract. Developer shall open bids and award contracts in accordance with all the Required Contracting Procedures. Developer shall work with City's Public Works Department to ensure that bids are opened and contracts are awarded in the manner required in accordance with the Required Contracting Procedures. Developer shall publicly open sealed bids in the presence of City's authorized representative(s). The bidding contractors shall be permitted to be present at the bid opening. City's representative(s) shall be

provided with copies of all bids received immediately after the bid opening and with a copy of the tabulation of bid results upon Developer's completion. Contract(s) for the construction of the Plaza Project shall be awarded by Developer to the lowest responsible and reliable bidder in accordance with the Required Contracting Procedures.

4.4.1 In the event that the lowest responsible and reliable bid exceeds the Estimated Cost, any reimbursement for such an increase shall be subject to approval by Change Order pursuant to Section 3.3.2 following award of the contract.

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

4.4.1.1.1 City may terminate this Agreement subject to the rights granted a mortgagee as provided for in the Park Development Agreement. In the event the Agreement is terminated, Developer's obligations pursuant to this Agreement for the construction of the Plaza Project shall be released without further liability. This release shall in no way affect the obligations of Developer with respect to any terms or conditions of the Permit, the Vacation, or any other approvals and agreements with City. However, prior to termination of this Agreement, City shall reimburse Developer (at City's option with either DIF credits or cash reimbursement) for the engineering and design costs reasonably incurred and expended by Developer in accordance with this Agreement and within the Estimated Cost in accordance with Section 3.3. Developer shall provide City with copies of all executed contracts; or

4.4.1.1.2 City may work with Developer to rebid and/or redesign the Plaza Project.

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

4.5 Nondiscrimination Requirements.

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

4.5.2 *Nondiscrimination Ordinance.* Developer shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Developer shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and

other sanctions. This language shall be in contracts with respect to the Plaza Project between the Developer and any consultants, contractors, subcontractors, vendors and suppliers.

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

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

ARTICLE V. PREVAILING WAGE

5.1 Prevailing Wage. Prevailing wages apply to the Plaza Project. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed on the Plaza Project is subject to State prevailing wage laws, and Developer shall ensure compliance with all applicable prevailing wage laws and requirements. For construction work performed on the Plaza Project that cumulatively exceeds \$25,000 and for

alteration, demolition, repair and maintenance work performed on the Plaza Project that cumulatively exceeds \$15,000, Developer shall ensure that its contractors and subcontractors comply with State prevailing wage laws including, but not limited to, the requirements listed below.

5.1.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, Developer shall ensure that its contractors and subcontractors ensure that all workers who perform work on the Plaza Project are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. Developer shall immediately notify City of any known violations of this Article.

5.1.1.1 Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Developer shall ensure that its contractors and subcontractors post a copy of the prevailing rate of per diem wages determination at each job site and make them available to any interested party upon request.

5.1.1.2 The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of contract for the Plaza Project. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the contract, each successive predetermined wage rate shall apply to the contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the contract, such wage rate shall apply to the balance of the contract.

5.1.2 Penalties for Violations. Developer shall ensure that its contractor and subcontractors comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

5.1.3 Payroll Records. Developer shall ensure that its contractor and subcontractors comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Developer shall require its contractor to require its subcontractors to also comply with section 1776. Developer shall ensure that its contractor and subcontractors submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Developer shall ensure that its contractor ensures its subcontractors submit certified payroll records to the City.

5.1.3.1 For contracts entered into on or after April 1, 2015, Developer shall ensure that its contractors and subcontractors furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

5.1.4 Apprentices. Developer shall ensure that its contractors and its subcontractors comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Developer shall ensure that its contractors are held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5.1.5 Working Hours. Developer shall ensure that its contractors and subcontractors comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

5.1.6 Required Provisions for Subcontracts. Developer shall ensure that its contractors include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

5.1.7 Labor Code Section 1861 Certification. Developer shall ensure, in accordance with California Labor Code section 3700, that its contractors are required to secure the payment of compensation of its employees and by signing the contract, the contractors certify as follows: “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ 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 this [agreement or contract].”

5.1.8 Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Equal Opportunity Contracting Department at 619-236-6000.

5.1.9 Department of Industrial Relations Registration. This Project is subject to compliance monitoring and enforcement by the DIR. Developer shall register with the DIR pursuant to Labor Code section 1725.5. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to California Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work

pursuant to California Labor Code section 1725.5. Developer shall ensure that its calls for bids and contract documents include the following provisions: “No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5”; “No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5”; “This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations”; and “By submitting a bid or proposal, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request.”

5.1.9.1 A contractor’ or subcontractor’s inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

ARTICLE VI. CONSULTANTS

6.1 Selection of Consultant. Developer’s hiring of a consultant for the Plaza Project shall comply with the requirements set forth in Section 4.1 of the Park Development Agreement. Failure to adhere to all applicable consultant selection procedures as set forth in the Park Development Agreement is a material breach of this Agreement, and any contract awarded not in accordance with the City’s consultant selection procedures shall be ineligible for reimbursement.

6.2 Equal Benefits and Nondiscrimination. The requirements of City’s Equal Benefits Ordinance apply to Developer’s consultant contracts for the Plaza Project as described in Section 4.6. The City’s nondiscrimination requirements apply to Developer’s consultant contracts for the Plaza Project as described in Section 4.5.

6.3 Estimated Budget. Developer shall require its consultant to prepare an estimated budget for the Plaza Project.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

7.1 Design and Construction Standards. Developer shall comply with the design and construction standards described in Article IX of the Park Development Agreement.

ARTICLE VIII. CONSTRUCTION AND DRUG-FREE WORKPLACE

8.1 Compliance with Project Schedule and Construction Requirements. Developer shall commence construction of the Plaza Project in accordance with the Project Schedule, as described in Article II and the construction requirements set forth in the Park

Development Agreement and **Exhibit D**. Failure to maintain the Project Schedule constitutes a Default subject to Section 2.7. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under any other provision of this Agreement or those available at law or in equity.

8.2 Drug-Free Workplace. Developer agrees to comply with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. The Developer shall certify to City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace in the form and content of **Exhibit E**. Developer shall ensure that its contractors comply with the requirements of City's Council Policy 100-17.

ARTICLE IX. PRODUCTS

9.1 Product Submittal and Substitution. Developer shall comply with the product submittals and substitution requirements of Article XI of the Park Development Agreement.

ARTICLE X. EXTRA WORK

(INTENTIONALLY DELETED)

ARTICLE XI. CHANGED CONDITIONS

(INTENTIONALLY DELETED)

ARTICLE XII. REIMBURSEMENTS

12.1 Reimbursement to Developer.

12.1.1 *Notification of Reimbursable Project.* Along with the Plaza Project's construction permit application to the City's Development Services Department, and prior to commencement of any work on the Plaza Project, Developer shall submit a "Notification of Reimbursable Project" form (attached as **Exhibit F**) to Planning Department.

12.1.2 *Type of Reimbursement.* Developer shall be entitled to cash reimbursement or DIF credits for the Reimbursable Costs expended by Developer and approved by City in accordance with this Agreement and the Financing Plan and in an amount not to exceed the Maximum Funds. The Downtown DIF fund currently has the Maximum Funds available for reimbursement beginning in or after Fiscal Year 2015. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. Developer shall not receive cash reimbursement unless there are sufficient funds to reimburse Developer, in whole or in part, from DIF funds available for the Plaza Project. If sufficient funds are unavailable, City shall reimburse Developer only if and as DIF funds for the Plaza Project accrue in the Downtown DIF fund. Where DIF credits are requested and approved by City, credit reimbursement shall be made. Developer acknowledges and agrees that in the event there are no additional DIFs available for collection by City to fund the Plaza Project, Developer shall not be reimbursed by City in cash for any portion of Developer's outstanding costs or expenditures, and Developer expressly agrees to fully absorb

all such outstanding costs or expenditures without any cash reimbursement from City, but Developer retains the right to request DIF credits for such outstanding cost or expenditures in an amount not to exceed the Maximum Funds.

12.1.3 Funds for Cash Reimbursement. Developer shall only be entitled to cash reimbursement as set forth in this Agreement and only from DIF funds collected by City in accordance with the Financing Plan, as it may be amended, in the amount set forth in this Agreement, and only as allocated for the Plaza Project, if and as such funds become available for the Plaza Project, after the appropriate deductions and expenditures are made, pursuant to the method of reimbursement described in Section 12.1.7, and in the priority of reimbursement described in Section 12.1.11.

12.1.4 Amount of Reimbursement. Developer shall be eligible for reimbursement for Reimbursable Costs in an amount not to exceed the Maximum Funds in accordance with Section 3.2.

12.1.5 City's Administrative Costs. City's Administrative Costs shall be paid prior to any reimbursement to Developer and shall consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Plaza Project, (ii) review contractor/subcontractor compliance with the City's Required Contracting Procedures; (iii) approve the Plans and Specifications for the Plaza Project, (iii) inspect and approve work performed on the Plaza Project during design/construction through Final Completion of the Plaza Project, and (iv) review project documentation to verify all costs related to the Plaza Project, inclusive of construction bid tabulations, contracts, and review of any cost allocation methods (City's Administrative Costs).

12.1.6 Interest. Developer is not eligible to earn or receive interest on costs eligible for reimbursement under this Agreement.

12.1.7 Method of Reimbursement. Developer shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Plaza Project for which Developer was not previously reimbursed or granted DIF credits (Reimbursement Request). Reimbursement Requests for projects other than those covered by this Agreement must be submitted as separate requests. The Reimbursement Request must also include all relevant documents in accordance with this Section. City shall determine whether additional documentation is needed to support the Reimbursement Request or if the Reimbursement Request is otherwise incomplete, and shall notify Developer of such deficiencies within sixty (60) calendar days of Developer's Reimbursement Request submittal. Developer shall provide additional documentation within fourteen (14) calendar days of City's notification and request. However, even if City fails to notify Developer within sixty (60) calendar days regarding Developer's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Developer until City confirms receipt of all relevant documentation sufficient to support the Reimbursement Request. After all appropriate cost documentation has been received and City approves the Reimbursement Request (Reimbursement Request Approval), City shall reimburse Developer for those Reimbursable Costs within sixty (60) calendar days of the date of Reimbursement Request Approval if it is a DIF credit or ninety (90) calendar days of the date of Reimbursement Request

Approval if it is a cash reimbursement, provided that funds are available in the DIF fund for the Plaza Project

12.1.8 Reimbursement Timing. Subject to the limitations of Article XII, and provided that Reimbursement Requests have been approved for such amounts, Developer shall be entitled to reimbursement for Reimbursable Costs reasonably expended upon Final Completion as that term is defined in Section 16.2 of the Park Development Agreement.

12.1.9 Cutoff for Submission of Reimbursement Requests. Developer shall submit all Reimbursement Requests within six (6) months after the Final Completion (Cutoff Date). Any Reimbursement Request submitted after the Cutoff Date shall constitute a Non-Reimbursable Cost and Developer shall not be eligible or entitled to any reimbursement for those costs or expenses.

12.1.10 Verification of Reimbursement Request. Developer shall on a monthly basis, or as otherwise required by the City in writing, provide reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents showing that payment has been made in connection with the Reimbursement Request in the following manner:

12.1.10.1 Developer shall submit one (1) copy of a Reimbursement Request Form (**Exhibit G**) with supporting documentation for work completed in accordance with this Agreement and the Park Development Agreement.

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

12.1.10.3 The RE shall initial the reimbursement Request, noting any disallowed costs, maintain a copy, and forward the original to the City Senior Civil Engineer or City designee for review and approval.

12.1.10.4 The City Senior Civil Engineer or City designee shall review the Reimbursement Request, as well as supporting cost documentation received from Developer, including soft costs related to the Plaza Project, as well as monitor the RE's expenses charged to the Plaza Project, and other City Administrative Costs. The City Senior Civil Engineer or City designee shall also serve as the liaison between the RE and the Facilities Financing Project Manager (FF Project Manager).

12.1.10.5 After review and approval of the Reimbursement Request, the City Senior Civil Engineer or City designee shall forward to the FF Project Manager for review and approval. Following approval, the FF Project Manager shall return the request to the Senior Civil Engineer or City designee.

12.1.10.6 The City Senior Civil Engineer or City designee shall prepare a memorandum, including a summary schedule of budgeted and actual approved costs, to the FF Project Manager recommending the reimbursement amount including all construction invoices and change orders previously approved, and soft costs incurred to date, noting any costs to be disallowed and the reason for the disallowance. A copy of the memorandum shall be forwarded to Developer.

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

12.1.10.8 Developer shall then submit an invoice to the City for the reimbursement amount approved by City.

12.1.11 Priority of Cash Reimbursement. Cash reimbursement to Developer from DIF funds for the Plaza Project will be subsequent to reimbursement of City's equipment purchases, Furniture Fixtures & Equipment (FF&E), and City's Administrative Expenses incurred in connection with the Plaza Project or Financing Plan and DIF, but takes priority over any other reimbursable project added to the Financing Plan subsequent to the Effective Date (as defined in Section 26.1) of this Agreement with the following exceptions:

12.1.11.1 Any State or Federally mandated project.

12.1.11.2 Appropriations for City administered, managed, and funded Capital Improvement Projects.

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

12.1.11.4 The Financing Plan identifies other project(s) for funding in an earlier fiscal year than the Plaza Project prior to the Effective Date of this Agreement.

ARTICLE XIII. PUBLIC RELATIONS

13.1 Public Relations Compliance. Developer shall comply with the public relations requirements of Article XX of the Park Development Agreement concerning the Plaza Project.

ARTICLE XIV. INSPECTION

14.1 Inspection Team. Developer shall comply with the inspection requirements of Article XIV of the Park Development Agreement.

ARTICLE XV. OPERATIONAL ACCEPTANCE

15.1 Acceptance. Acceptance of the Plaza Project shall be as defined in Section 16.1 of the Park Development Agreement.

ARTICLE XVI. FINAL COMPLETION

16.1 Final Completion. Final Completion of the Plaza Project shall be as defined in Section 16.2 of the Park Development Agreement. In addition to the requirements set forth in the Park Development Agreement, Final Completion shall not occur prior to submittal of a capitalization form acceptable to the Facilities Financing Project Manager.

16.2 No Waiver. Developer's obligation to perform and complete the Plaza Project in accordance with this Agreement and the Park Development Agreement shall be absolute. Neither recommendation of any progress payment or acceptance of the work, nor any payment by City to Developer under this Agreement, nor any use or occupancy of the Plaza 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 this Agreement and the Park Development Agreement.

ARTICLE XVII. BONDS AND OTHER ACCEPTABLE SECURITIES

17.1 Bonds and Securities. Bonds and securities required for the Plaza Project shall be provided as described in Article XXIII of the Park Development Agreement.

ARTICLE XVIII. INDEMNIFICATION

18.1 Indemnification and Hold Harmless Agreement. Developer's obligations to indemnify and hold harmless City with respect to the Plaza Project are set forth in Article XXIV of the Park Development Agreement.

ARTICLE XIX. INSURANCE

19.1 General. Developer's insurance obligations are set forth in Article XXV of the Park Development Agreement.

ARTICLE XX. WARRANTIES

20.1 Warranties. Developer shall require its contractors and its subcontractors and agents to provide the warranties described in Article XVIII of the Park Development Agreement.

ARTICLE XXI. DEFECTIVE WORK

21.1 Correction, Removal, or Replacement. Correction, removal or replacement of Defective Work, as that term is defined in the Park Development Agreement, shall comply with the requirements set forth in Article XIX of the Park Development Agreement.

21.2 Defects Constitute Non-Reimbursable Costs. All costs incurred by Developer or Developer's agents to remedy Defective Work are Non-Reimbursable Costs. If City has already reimbursed Developer 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 Developer's or the construction contractor's bond if Developer has been paid in full.

21.3 Prior to Final Acceptance and Reimbursement to the Developer. Where Defective Work has been identified prior to the Final Completion of the Plaza Project, Developer 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 Developer's or construction contractor's bond.

ARTICLE XXII. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

22.1 Maintenance. Developer's maintenance obligations with respect to the Plaza Project are set forth in Articles XXI and XXII of the Park Development Agreement.

ARTICLE XXIII. RECORDS AND AUDITS

23.1 Retention and Audit of Records. Developer and Developer's agents shall retain data and records related to the Plaza Project in accordance with Article XXVI of the Park Development Agreement.

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

ARTICLE XXIV. NOTICES

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

24.2 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: (i) on personal delivery, (ii) on the second business day after mailing by certified or registered U.S. Mail, Return Receipt Requested, (iii) 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 (iv) upon documented successful transmission of facsimile.

24.3 Recipients. All demands or notices required or permitted to be given to City or Developer shall be delivered to all of the following:

24.3.1 Director, Engineering & Capital Projects Department
City of San Diego
City Administration Building
202 C Street, M.S. #9B
San Diego, California 92101
Facsimile: (619) 533-4736

24.3.2 Facilities Financing Manager
Planning Department, Facilities Financing Section
City of San Diego
1010 Second Avenue, Suite 600 (M.S. #606F)
San Diego, California 92101
Facsimile: (619) 533-3687

24.3.3 H. G. Fenton Development Company LLC
7577 Mission Valley Road, Suite 200
San Diego, California 92108
Attention: Michael P. Neal, CEO and John LaRaia
Telephone: (619) 400-0120
Facsimile: (619) 400-0111

and: H. G. Fenton Development Company LLC
7577 Mission Valley Road, Suite 200
San Diego, California 92108
Attention: Martha Guy, General Counsel
Telephone: (619) 400-0163
Facsimile: (619) 400-0111

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

ARTICLE XXV. MEDIATION

25.1 **Mandatory Mediation**. If dispute arises out of, or relates to the Plaza 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.

25.2 **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.

25.3 **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.

25.3.1 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.

25.3.2 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.

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

25.4 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.

25.4.1 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.

25.4.2 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 XXVI. MISCELLANEOUS PROVISIONS

26.1 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 the City Attorney in accordance with Charter section 40 (Effective Date). Unless otherwise terminated, the Agreement shall be effective until (i) the final reimbursement payment is made; or (ii) one year after the Warranty Bond terminates, whichever is later but not to exceed ten (10) years.

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

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

26.4 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.

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

26.6 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.

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

26.8 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.

26.9 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.

26.10 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.

26.11 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.

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

26.13 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.

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

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

26.16 Compliance with Controlling Law. Developer shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code sections 1720 through 1861 relating to the payment of prevailing wages, including, but not limited to, the design, preconstruction, and construction phases of the Plaza Project. In addition, Developer shall require 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.

26.17 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 (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25). Developer agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

26.18 Jurisdiction, Venue, and Choice of Law. 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.

26.19 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.

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

26.21 Non-Assignment. The Developer 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.

26.22 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.

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

26.24 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 the Plaza Project.

26.25 No Waiver. No failure of either City or Developer 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.

26.26 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.

26.27 Remedies. Notwithstanding any other remedies available to City at law or in equity, Developer 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 Developer 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.

[Signature page follows]

IN WITNESS WHEREOF, this agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Ordinance No. O-_____, authorizing such execution, and by Developer.

This Agreement was approved by the City Attorney this ____ of _____, 2015, and this date shall constitute the Effective Date of this Agreement.

Dated: _____

THE CITY OF SAN DIEGO, a Municipal Corporation

By: _____

Dated: _____

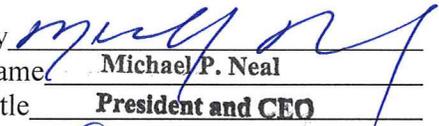
Approved as to form:
JAN I. GOLDSMITH, City Attorney

By: _____

Dated: _____

FENTON LITTLE ITALY LLC, a California limited liability company

BY: H. G. FENTON COMPANY, a California corporation, Authorized Agent

By 
Name: Michael P. Neal
Title: President and CEO

By 
Name: Campbell Whaler
Title: EVP, Residential Asset Mgmt

Exhibit A
General Development Plan



PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

HG FENTON COMPANY

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

PLAZA RENDERING

GILLESPIE MOODY PATTERSON

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977



MARTINEZ + CUTRI
CORPORATION

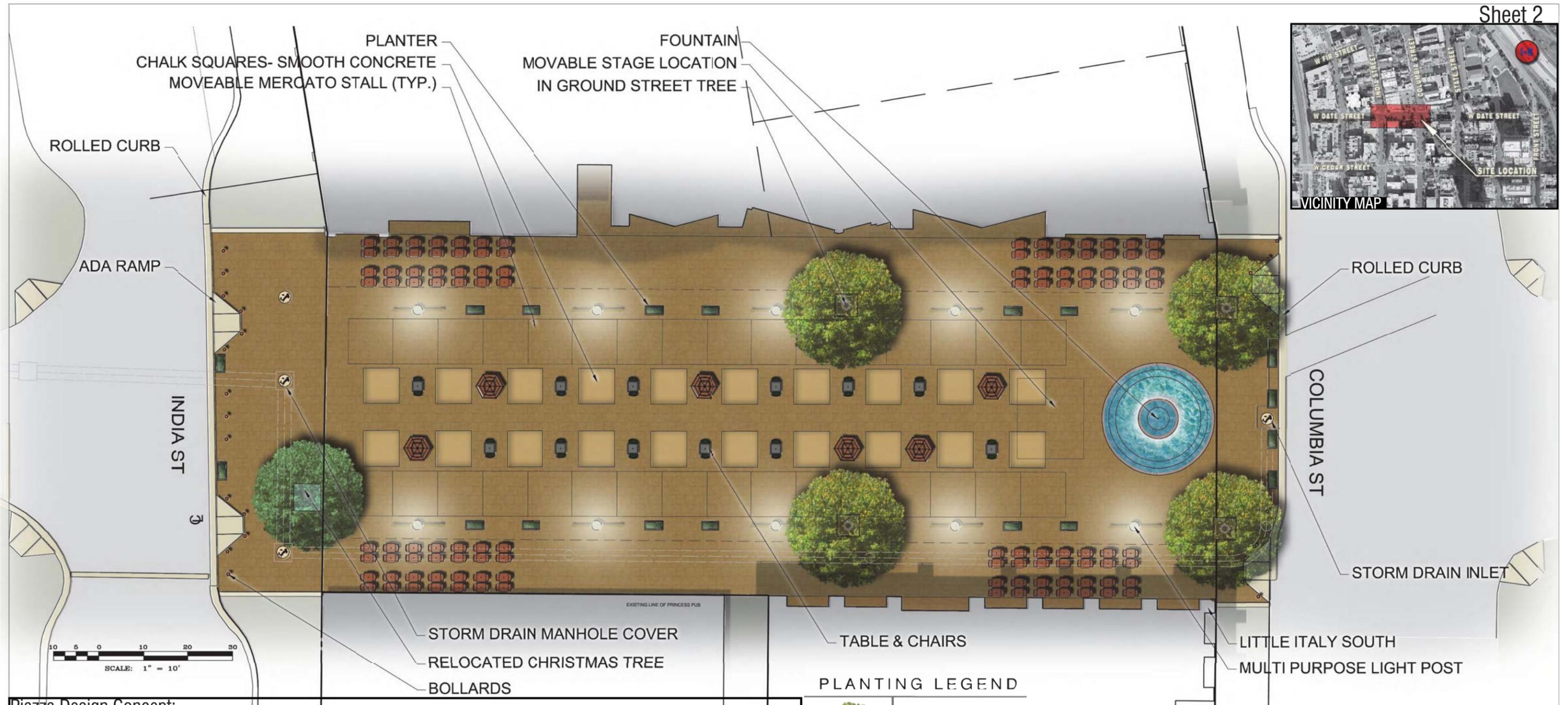
402 W Broadway, Suite 2600
Emerald Plaza, San Diego, CA 92101
Tel (619) 233-4857 Fax (619) 233-7417



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LANDSCAPE ARCHITECTURE
& PLANNING



Piazza Design Concept:
 Piazza Famiglia is a public plaza that is intended to create a new pedestrian friendly corridor in what is now a public roadway. The plaza has been designed to be a new focal piece of the Little Italy community, near downtown San Diego. The centrally located project is meant for multiple uses for both visitors and residents of the location. Such activities will include farmer's markets, performances, and special events. The design is open, well-lit, and linear to allow pedestrians to move comfortably throughout the space as well as allow the markets to be set up without blocking the passerby's experience. Ample seating areas have been provided for public use, along with designated spaces for movable mercato stalls and stage areas. A re-located specimen tree has been designed to fit in with additional low water use plant material. A large fountain on the east side of the site will be a primary focal point for the project entrance as well as being visible throughout the site.

PLANTING LEGEND

	Sweet Bay <i>Laurus nobilis</i>
	(Re Located) Christmas Tree
	Tuscan Blue Rosemary <i>Rosmarinus officianils</i> 'Tuscan Blue'

PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

HG FENTON COMPANY
 7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

GILLESPIE MOODY PATTERSON
 4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977

MARTINEZ + CUTRI CORPORATION
 402 W Broadway, Suite 2600
 Emerald Plaza, San Diego, CA 92101
 Tel (619) 233-4857 Fax (619) 233-7417

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CONCEPT PLAN 
Gillespie Moody Patterson, Inc.
 LANDSCAPE ARCHITECTURE & PLANNING



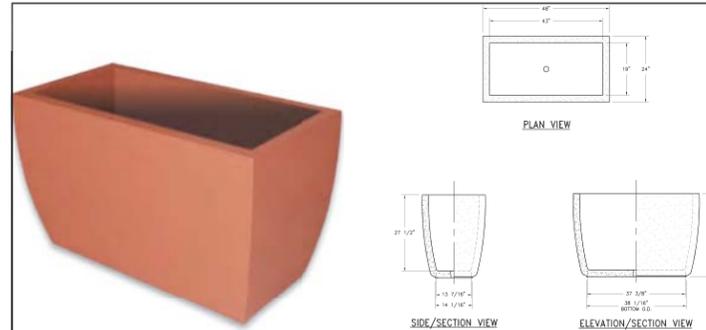
MJJ Sales: 11' Aluminum Umbrella with Crank. Color: Blue or Red
SEATING AREA FURNISHINGS



Fermob 4102 Armchair in Cedar Green



Fermob 4134 Table 32x32 in Black



Quickcrete Cascade Planter QS-CE244830P

ON-SITE PLANTERS

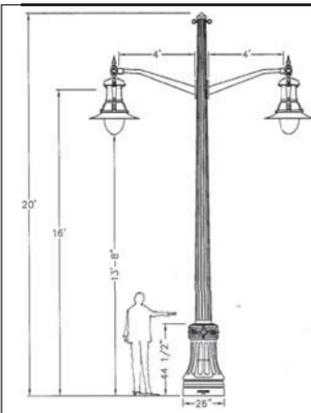


Custom Manhole Cover

SITE FOCAL ELEMENTS



Piazza fountain example



Proposed pole base - Oxford Style

SITE LIGHTING ELEMENTS



Example fixture with radial shade option



Oxford Base with Planters



Fixture with radial shade



Rosmarinus officinalis 'Tuscan Blue'
Upright Rosemary

SITE PLANTING



Rosmarinus officinalis 'Tuscan Blue'
Planted Upright Rosemary



Re-located Christmas Tree



Laurus nobilis (standard)
Sweet Bay



Belgard Mega-Lafitt Grana Pavers

ON-SITE PAVERS



75% Bella Blend

25% Montecito Blend



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PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

HG FENTON COMPANY

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

SITE FURNISHINGS + PLANTING

GILLESPIE MOODY PATTERSON

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977



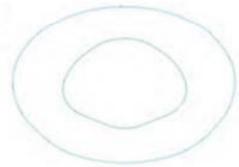
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Moody
Patterson, Inc.
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& PLANNING

Luminaire Schedule						
Symbol	Qty	Label	Arrangement	Total Lamp Lumens	LLF	Description
	10	1914LEDFA-21L45-MDL10-MD-rim431	TWIN	N.A.	0.500	MOD to 21L with LLF.

Calculation Summary						
Label	CalcType	Units	Avg	Max	Min	Avg/Min
Ground_Surface	Illuminance	Fc	5.95	10.5	0.6	9.92
Vertical_FC	Illuminance	Fc	0.79	3.9	0.1	7.90

NOTES:

- FIXTURE MOUNTING HEIGHT: 16'-0" (15' TO LIGHT SOURCE)
- HORIZONTAL CALC PTS @ GROUND: 0'-0" A.P.G.
- VERTICAL CALC PTS @ WALL SURFACE
- REFLECTANCES:
 - VERTICAL SURFACES: 50%
 - HORIZONTAL SURFACES: 20%

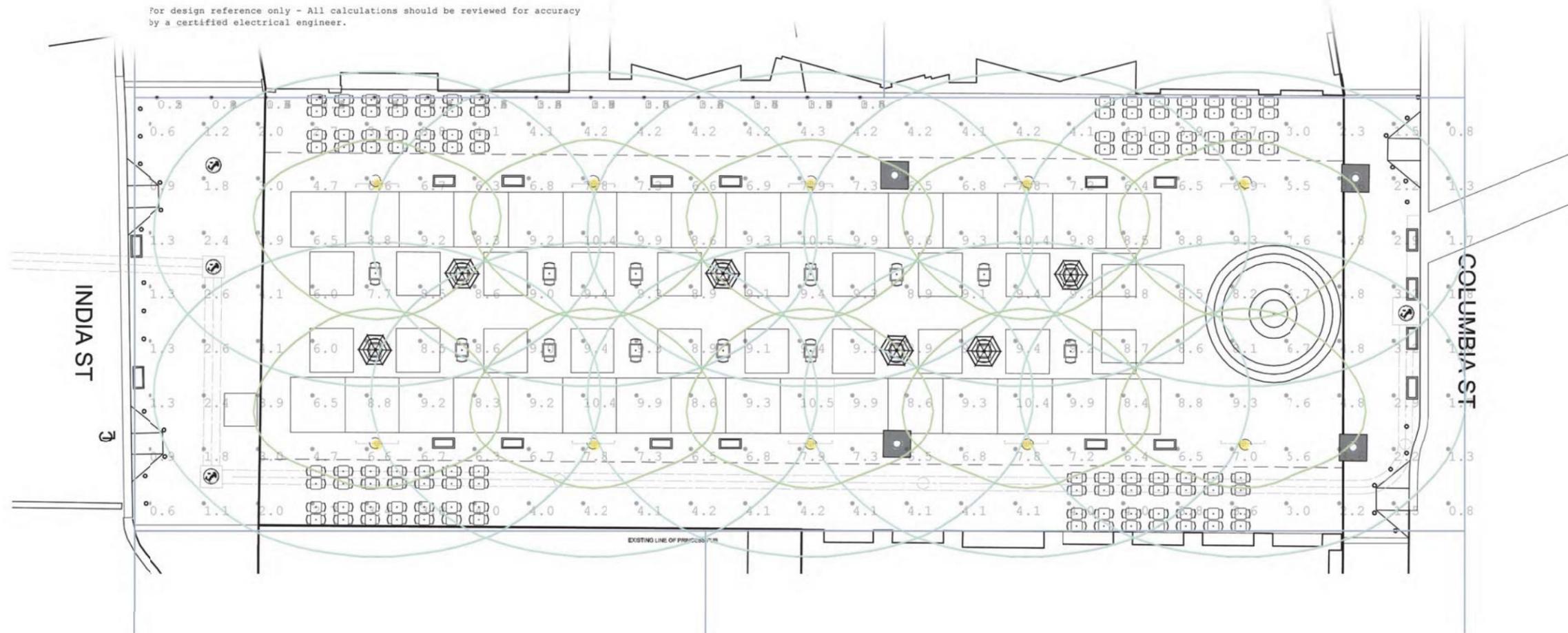
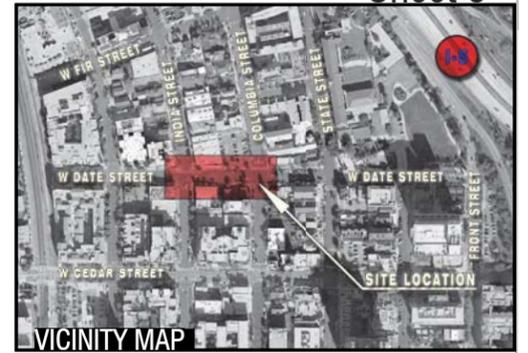


Calculations have been performed according to information provided regarding room dimensions, reflectances, furniture and architectural element placement. Some differences between measured values and calculated results may occur if the real environment conditions do not match the input data.

Photometric Data used as input for these calculations is based on established IES procedures and published lamp & ballast ratings.

Field Performance will depend on actual lamp, ballast, electrical and site characteristics.

For design reference only - All calculations should be reviewed for accuracy by a certified electrical engineer.



PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

HG FENTON COMPANY

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

CONCEPT LIGHTING

GILLESPIE MOODY PATTERSON

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977





PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA

HG FENTON COMPANY

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

LIGHT STUDY RENDERING

GILLESPIE MOODY PATTERSON

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977



MARTINEZ + CUTRI
CORPORATION

402 W Broadway, Suite 2600
Emerald Plaza, San Diego, CA 92101
Tel (619) 233-4857 Fax (619) 233-7417



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**Gillespie
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LANDSCAPE ARCHITECTURE
& PLANNING

EXHIBIT "B"

ESTIMATED COSTS

PROJECT COSTS *(Ref Reimbursement Agreement Section 3.1)*

Hard Costs

\$ 1,368,314

Hard costs include but are not limited to asphalt, construction, final clean-up, site improvements, earthwork, site utilities and foundation, drains, A.C. paving, landscaping, irrigation, water feature, concrete, roofing and waterproofing, building specialties and miscellaneous sub trades, Mercato stall infrastructure, and electrical including Audio/Visual/Technology equipment.

Soft Costs

\$ 156,092

Soft costs include but are not limited to general conditions, supervision, liability insurance, course of construction insurance, fee & overhead, construction management, performance and completion bond.

Total Project Costs *(Hard Costs + Soft Costs)*

\$ 1,524,406

PROJECT CONTINGENCY *(Ref Reimbursement Agreement Section 3.3.1)*

\$ 73,184

ESTIMATED COSTS *(Ref Reimbursement Agreement Section 3.3)*

\$ 1,597,590

OTHER COSTS

Other costs include, design fees, special testing and inspection costs, soils testing and inspection, Developer Administrative Costs, charges for City Permits & associated processing, City staff charges for review of the GDP, City staff charges for development of the Park Development and Reimbursement Agreement No. 1326979, and City Administrative Costs per Reimbursement Agreement Section 12.1.5. ***These costs are not reimbursable to the Developer.***

Exhibit C

Equal Benefits Ordinance Certification of Compliance

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



For additional information, contact:

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

COMPANY INFORMATION		
Company Name:	Contact Name:	
Company Address:	Contact Phone:	
	Contact Email:	
CONTRACT INFORMATION		
Contract Title:	Start Date:	
Contract Number (if no number, state location):	End Date:	
SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS		
<p>The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:</p> <ul style="list-style-type: none">■ Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.<ul style="list-style-type: none">▪ Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.▪ Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.■ Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.■ Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.■ Contractor shall submit <i>EBO Certification of Compliance</i>, signed under penalty of perjury, prior to award of contract. <p>NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.</p>		
CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION		
<p>Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.</p> <p><input type="checkbox"/> I affirm compliance with the EBO because my firm (<i>contractor must select one reason</i>):</p> <ul style="list-style-type: none"><input type="checkbox"/> Provides equal benefits to spouses and domestic partners.<input type="checkbox"/> Provides no benefits to spouses or domestic partners.<input type="checkbox"/> Has no employees.<input type="checkbox"/> Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired. <p><input type="checkbox"/> I request the City's approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.</p> <p>It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]</p> <p>Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.</p>		
_____ Name/Title of Signatory	_____ Signature	_____ Date
FOR OFFICIAL CITY USE ONLY		
Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved – Reason:

rev 02/15/2011

Exhibit D

Construction Requirements

1. **Site Safety, Security, and Compliance.** Developer shall be responsible for site safety, security, and compliance with all related laws and regulations.
 - A. *Persons.* Developer 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 Developer to access the Project site.
 - B. *Other.* Developer 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.* Developer 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 Developer shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan (SWPPP) to be implemented by the Developer 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.* Developer 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 Developer.
 - C. *Site Tours.* Site tours may be necessary throughout completion of the Project. Developer shall allow City to conduct site tours from time to time as the City deems necessary. City will give Developer notice of a prospective tour and a mutually agreeable time shall be set. Developer is not obligated to conduct tours or allow access for tours when City fails to give prior notice.
3. **Surveying and Testing.** Developer 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.* Developer 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.* Developer 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. Developer 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.* Developer 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.* Developer 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.* Developer 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.* Developer 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.** Developer shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans, and/or notes.
6. **Inspections.** Developer shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the contract documents.
- A. *Reports.* Developer shall provide City all special inspection reports within seven (7) calendar days of inspection. Developer shall report all failures of special inspections to City.
 - B. *Remedies.* Remedies for compliance shall be approved by Developer, Developer's consultants, City's Development Services Department, and City representatives.
 - C. *Concealing Work.* Prior to concealing work, Developer 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 provided in this Agreement. This approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Developer shall fulfill all requirements of each of these three entities.

7. **Property Rights.** Developer 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. City shall not require Developer to provide any easement documents for land to which Developer does not have title; however, Developer 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 or other entitlement.
8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Developer 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 Developer. 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 Developer is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Developer 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.** Developer 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.** Developer 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. Developer shall certify to the City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace form (**Exhibit E**).
 - A. *Developer Notice to Employees.* Developer 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.* Developer 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 Developer shall post the drug-free policy in a prominent place.

C. *Developer's Agreements.* Developer 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 E

Developer Certificate for a Drug-Free Workplace

PROJECT TITLE: [INSERT Name of Project]

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace, and that [INSERT Developer Name] 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 _____

Title _____

Date _____

Exhibit F

Notification of Reimbursable Project

Pursuant to Section 12.1.1 of the Reimbursement Agreement with [INSERT Developer Name] for Financing Plan Project No. [INSERT Number], [INSERT Project Name], in the [INSERT Community] Community, adopted pursuant to City Council Resolution/Ordinance No. [INSERT Number] and executed on [INSERT Date], [INSERT Developer Name] hereby notifies the City of San Diego that work will begin on [INSERT Name of Project] in the [INSERT Community] community on or about [Insert Date Work is Scheduled to Begin].

This Notification of Reimbursable Project form shall be submitted with the Project's construction permit application to the City's Development Services Department prior to commencement of any work on construction Project No. [INSERT PTS Number], Development Services Deposit Account No. [INSERT Account Number].

The Developer shall add the following note above the title block on the construction plan cover sheet, and on all sheets where subject to reimbursement:

REIMBURSABLE PROJECT: [INSERT Community Name], [INSERT Financing Plan Project No.].

This note is required to be submitted with the application for the Project's construction permit.

[Insert Name of Developer],
[Insert type of entity]

By: _____

[Insert Title] _____

Dated: _____

Exhibit G

Reimbursement Request Form

Change Order Request No. _____ or Invoice Approval Request No. _____

Project Name	PFFP Project No:
Project Manager	Date Requested
Requested by	Date Approval Requested

Scope of Work Covered by Submittal:

Line Item	Qty	Units	Unit Price	Cost		
				Previous	Current	Total To Date
1.						
2.						
3.						
4.						
5.						
6.						
7.						
(use separate form for additional items)						
Total Requested for this Submittal						

Justification for Change/Extra
Impacts, Adds, Deducts, Schedule Impacts, etc

Date	Developer	Title/Signature
*I hereby certify that this information is true and accurate and is not part of a previously approved submittal		

Approvals

Date	Field Division	Inspector Name/Signature
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This work is within and pertains directly to the limits of the approved project and the quantity is consistent with measurements of work installed in the field.

Comments:

Date	Consultant	Printed Name/Signature
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We have reviewed this request with respect to the Developer's Reimbursement Agreement and industry practices and have the following recommendations:

Items _____ are recommended for approval

Total Recommended Amount	Previous	Current	To Date
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Items _____ are **not** recommended for approval. <Comments>

Date	Facilities Financing	Printed Name/Signature
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The reimbursement request items noted above are accepted and considered reimbursable as presented.

Comments:

¹ Approval denotes the acceptability of change under the reimbursement agreement. Reimbursement is contingent upon work acceptance by City.

COMPLETED BY DEVELOPER

COMPLETED BY INSPECTOR

COMPLETED BY CONSULTANT/CITY PM

COMPLETED BY FACILITIES FINANCING