

000519

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

104
12/04

TO: CITY ATTORNEY

2. FROM: (ORIGINATING DEPARTMENT)
CITY PLANNING & COMMUNITY INVESTMENT

3. DATE
November 19, 2007

4. SUBJECT: (MAXIMUM OF 10 WORDS)
FAIRBROOK NEIGHBORHOOD PARK - PARK ACQUISITION REIMBURSEMENT AGREEMENT

5. PRIMARY CONTACT (NAME, PHONE, MAIL STA.)
Deborah Sharpe, 619/5275-8261, MS 5A

6. SECONDARY CONTACT (NAME, PHONE, MAIL STA.)
Jeffrey Harkness, 619/533-6595, MS 5A

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED:

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	11230				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPARTMENT	30244				Land acquisition \$ 350,000
ORGANIZATION	105				Project Admin. 70,000
OBJECT ACCOUNT	95444279				Total Est. Project Cost \$ 420,000
JOB ORDER	297170				
C.I.P. NUMBER	29-717.0				
AMOUNT	\$420,000				

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	<i>[Signature]</i> WILLIAM ANDERSON	11-19-07	8	DEPUTY CHIEF	<i>[Signature]</i> WILLIAM ANDERSON	11-19-07
2	DSD/EAS	<i>[Signature]</i> Allison Ahewood	11-20-07	9			
3	COUNCIL LIAISON	<i>[Signature]</i> ED PLANK	11/19/07	10	CITY ATTORNEY	<i>[Signature]</i> KIMBERLY DAWES	11/19/07
4	AUDITOR	<i>[Signature]</i> Bob Rucitto	11/19/07	11	ORIGINATING DEPARTMENT	<i>[Signature]</i> GARRY PATERS	11.19.07
5	EOCP	EXEMPT PER MEMO DATED 11/15-05					
	READ	<i>[Signature]</i> JAMES BARNICK	11/19/07		DOCKET COORD	<i>[Signature]</i> 11/20	COUNCIL LIAISON: <i>[Signature]</i> 11-20-07
6	FAC. FIN.	<i>[Signature]</i> CHARLENE GABRIEL	11/19/07		COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION	
7	FM/CIP	<i>[Signature]</i> Cynthia Lopez	11/19/07			<input type="checkbox"/> REFER TO: COUNCIL DATE: 12/4/07	

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorizing the Mayor to execute the Park Acquisition Reimbursement Agreement for Fairbrook Neighborhood Park with the San Diego Unified School District; and
2. Authorizing the expenditure of up to \$420,000 from CIP No. 29-717.0, FAIRBROOK NEIGHBORHOOD PARK - AQUISITION, Scripps/Miramar - Major District, Fund No.11230, contingent upon certification by the City Auditor and Comptroller that revenues are available at the time reimbursement is scheduled for this project.

11A. STAFF RECOMMENDATIONS:
Adopt the resolutions

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

COUNCIL DISTRICT(S): 5 (Maienschein)

COMMUNITY AREA(S): SCRIPPS MIRAMAR RANCH

ENVIRONMENTAL IMPACT: THIS ACTIVITY IS NOT A "PROJECT" AND, THEREFORE, IS NOT SUBJECT TO CEQA PER STATE CEQA GU SECTION 15060(C)(3).

HOUSING IMPACT: None

OTHER ISSUES:

APPRAISAL: \$344,000 by Jones, Roach and Caringella, MAI, an Independent Fee Appraiser.

COST OF PROPERTY RIGHTS: Land \$344,000, Title, Escrow and Miscellaneous \$6,000 for Total of \$350,000

CITY CLERK INSTRUCTIONS: Send all copies of resolutions and one (1) executed agreement to Deborah Sharpe, MS 5A

Send two (2) executed original agreements to San Diego Unified School District, Attn: Tony Razzo,

ATTACHMENTS: One (1) original and five (5) duplicate original copies of the proposed agreement, and Location Map.

000521

REPORT TO THE CITY COUNCIL
EXECUTIVE SUMMARY SHEET

DATE ISSUED: November 19, 2007
ATTENTION: Council President and City Council
ORIGINATING DEPT.: City Planning & Community Investment
SUBJECT: FAIRBROOK NEIGHBORHOOD PARK – PARK
ACQUISITION REIMBURSEMENT AGREEMENT
COUNCIL DISTRICTS: 5 (Maienschein)
STAFF CONTACT: Deborah Sharpe (619) 525-8261

REQUESTED ACTION:

Approval of the Park Acquisition Reimbursement Agreement for Fairbrook Neighborhood Park with the San Diego Unified School District; and, approval of the expenditure of up to \$420,000 from CIP No. 29-717.0, Fairbrook Neighborhood Park – Acquisition for purchase of the park site.

STAFF RECOMMENDATION:

Adopt the resolutions to: 1) authorize the Mayor to execute the Park Acquisition Reimbursement Agreement for Fairbrook Neighborhood Park with the San Diego Unified School District; and 2) authorize the expenditure of up to \$420,000 from CIP No. 29-717.0, Fairbrook Neighborhood Park – Acquisition for purchase of the park site.

EXECUTIVE SUMMARY:

The proposed Fairbrook Neighborhood Park is approximately 3.11 gross acres, 2.7 net useable acres, in size and located within the Fairbrook Estates Subdivision of the Scripps Miramar Ranch Community Planning Area. The park site is designated as Lot A as depicted on the Fairbrook Estates Vesting Tentative Map (see attachment) and reserved for park purposes. Execution of this proposed Park Acquisition Reimbursement Agreement between the City of San Diego and the San Diego Unified School District (Subdivider) will satisfy Condition Nos. 34 and 36 of the Fairbrook Estates Vesting Tentative Map No. 98-1011 (VTM) approved on October 19, 1999 by the City Council, Resolution No. R-292323, and extended by City Council approval on November 14, 2006, Resolution No. R-302092. Condition No. 34 requires the School District, at the time of recordation of the first final map within the subdivision, to enter into an agreement with the City for the City to acquire the park site at fair market value within two years after completion and acceptance of all public improvements, unless such period of time is extended by mutual agreement. Condition No. 36 establishes criteria to be used by the appraiser in determining the fair market value of the park site. Accordingly, the park site was appraised on December 4, 2002 at a fair market value of \$350,000.

The Subdivider will be reimbursed for the acquisition of the park site, pursuant to the attached agreement, in Special Park Fees collected for this purpose. Cash reimbursement will occur as provided for in the FY 2007 Scripps Miramar Ranch Public Facilities Financing Plan (PFFP), or as cash becomes available if not available when allowed for by the PFFP. The PFFP allows for reimbursement beginning in Fiscal Year 2007.

Development of the park site will occur as scheduled in the PFFP under a separate capital improvement project subsequent to City acquisition of the park site.

If the School District does not file a final map for the VTM prior to the expiration date of December 7, 2007, the VTM and permits will expire. Thus, the School District would be required to begin the entitlement process over again at additional time and expense. Additionally, if the VTM expires, and the School District chose to resubmit the VTM, the purchase price of the park site would no longer be tied to the original date in which the VTM submittal was deemed complete on December 1999, which would result in an increased fair market value and cost to the City.

FISCAL CONSIDERATIONS:

All approved costs associated with the acquisition of the land for this project are funded through CIP No. 29-761.0, Fairbrook Neighborhood Park – Acquisition, Scripps/Miramar - Major District, Fund No.11230.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Fairbrook Estates Vesting Tentative Map No. 98-1011 was approved on October 19, 1999 by City Council, Resolution No. R-292323, and extended on November 14, 2006 by City Council Resolution No. 302092 subject to certain conditions.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:

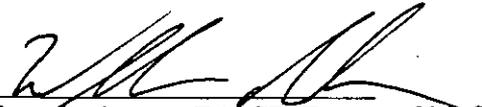
The proposed subdivision and park site have been extensively reviewed by the community members of Scripps Miramar Ranch over the past two years and they are supportive of this action. On July 7, 2005, the Scripps Ranch Planning Group voted to recommend approval of the proposed extension of time for the subdivision.

KEY STAKEHOLDERS and PROJECTED IMPACTS (if applicable):

Key stakeholders include the San Diego Unified School District, the City of San Diego Park and Recreation Department, and the residents of Scripps Miramar Ranch.



William Anderson, FAICP, Director
City Planning & Community Investment



William Anderson, FAICP, Deputy Chief
Operating Officer
Land Use and Economic Development

ANDERSON/DS/ds

000523

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

ORIGINATING

AC 2800395
DEPT. _____
NO.: 446

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

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____
AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

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

Not to Exceed: \$375,000.00

Vendor: San Diego Unified School District

Purpose: Authorizing the expenditure of funds for the Park Acquisition Reimbursement Agreement for Fairbrook Neighborhood Park with the San Diego Unified School District, CIP 297170.

Date: November 19, 2007 By: *RB Ramirez*
AUDITOR AND COMPTROLLER'S DEPARTMENT *CME*

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0		30244	105	4279	297170				\$375,000.00
TOTAL AMOUNT										\$375,000.00

FUND OVERRIDE

Pursuant to The California Environmental Quality Act (CEQA) and State CEQA Guidelines

Agency: CITY OF SAN DIEGO

LDR FILE NO.:N/A

DATE: 9/12/2005

Action/Permit(s): Council Action

Permit No.:N/A

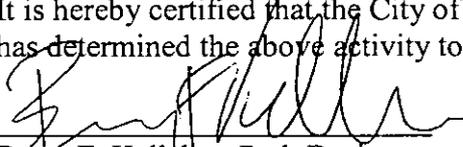
Description of Activity: The Fairbrook Neighborhood Park Acquisition Reimbursement Agreement will authorize the reimbursement to the Subdivider for acquisition of the park site consistent with the Fairbrook Estates Vesting Tentative Map, No. 98-1011 and the Scripps Miramar Ranch Public Facilities Financing Plan.

Location of Activity: Lot "A" of Fairbrook Estates Subdivision, Scripps Miramar Ranch Community Planning Area, San Diego

- 1. This activity is **EXEMPT FROM CEQA** pursuant to:
 - Section 15060(c)(3) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378).
- 2. This project is EXEMPT FROM CEQA pursuant to State CEQA Guidelines Section checked below:

ARTICLE 19 of GUIDELINES CATEGORICAL EXEMPTIONS (Incomplete list)		ARTICLE 18 of GUIDELINES STATUTORY EXEMPTIONS (Incomplete list)	
Sec.	Short Name	Sec.	Short Name
<input type="checkbox"/> 15301	1 Existing Facilities	<input type="checkbox"/> 15261	Ongoing Project
<input type="checkbox"/> 15302	2 Replacement or Reconstruction	<input type="checkbox"/> 15262	Feasibility and Planning Studies
<input type="checkbox"/> 15303	3 New Construction or Conversion of Small Structures	<input type="checkbox"/> 15265	Adoption of Coastal Plans and Programs
<input type="checkbox"/> 15304	4 Minor Alterations to Land	<input type="checkbox"/> 15268	Ministerial Projects
<input type="checkbox"/> 15305	5 Minor Alterations in Land Use Limitations	<input type="checkbox"/> 15269	Emergency Projects
<input type="checkbox"/> 15306	6 Information Collection	<input type="checkbox"/> Other	
<input type="checkbox"/> 15311	11 Accessory Structures		
<input type="checkbox"/> 15312	12 Surplus Government Property Sales		
<input type="checkbox"/> 15315	15 Minor Land Divisions		
<input type="checkbox"/> 15317	17 Open Space Contracts or Easements		
<input type="checkbox"/> 15319	19 Annexation of Existing Facilities and Lots for Exempt Facilities		
<input type="checkbox"/> 15325	25 Transfer of Ownership of Interest in Land to Preserve Open Space		
<input type="checkbox"/> Other			

It is hereby certified that the City of San Diego has determined the above activity to be exempt:


 Barry F. Kelleher, Park Designer
 Park Planning and Development
 Per MOU w/EAS

Distribution: Y. Howser, DSD
Exemption or Project file

DSD: Terri Bumgardner
Park P&D: Deborah Sharpe

000527

NOTICE OF EXEMPTION

TO: X Recorder/County Clerk
P.O. Box 1750, MS A-33
1600 Pacific Hwy, Room 260
San Diego, CA 92101-2422

FROM: City of San Diego
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101

 Office of Planning and Research
 1400 Tenth Street, Room 121
 Sacramento, CA 95814

F I L E D
Gregory J. Smith, Recorder/County Clerk

SEP 12 2005

BY jt
LDR NO: NA DEPUTY

Project Title: Fairbrook Neighborhood Park Acquisition Reimbursement Agreement

Project Location-Specific: Lot "A" of Fairbrook Estates Subdivision, Scripps Miramar Ranch Community Planning Area, San Diego

Project Location-City: San Diego County: San Diego

Description of Project: The Fairbrook Neighborhood Park Acquisition Reimbursement Agreement will authorize the reimbursement to the Subdivider for acquisition of the park site consistent with the Fairbrook Estates Vesting Tentative Map, No. 98-1011 and the Scripps Miramar Ranch Public Facilities Financing Plan.

Name of Public Agency Approving Project: City of San Diego

Name of Person or Agency Carrying Out Project: City of San Diego

Exempt Status:

- Ministerial (Sec. 15268)
- Declared Emergency (Sec. 15269 (a))
- Emergency Project (Sec. 15269 (b) and (c))
- Categorical Exemption. State type and section number: _____

X Other. State type and section number: 15060(c)(3) (Not a Project)

Reasons why project is exempt: Agreement will authorize the reimbursement to the Subdivider, in Special Park Fees collected for this purpose, for acquisition of the park site per the FY 2005 Scripps Miramar Ranch Public Facilities Financing Plan (PFFP) or as funds become available consistent with the requirements of the PFFP.

Contact Person: Deborah Sharpe Telephone: (619) 525-8261

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project?
 Yes X No

Date Received for Filing: 9/12/2005

 Barry F. Kelleher
Barry F. Kelleher, Park Designer
Park Planning and Development
Per MOU w/ EAS

FILED IN THE OFFICE OF THE COUNTY CLERK
San Diego County on SEP 12 2005
Posted SEP 12 2005 Removed _____
Returned to agency on _____
Deputy jt

RESOLUTION NUMBER R- _____

DATE OF FINAL PASSAGE _____

A RESOLUTION AUTHORIZING APPROVAL OF THE PARK
ACQUISITION REIMBURSEMENT AGREEMENT FOR
FAIRBROOK NEIGHBORHOOD PARK WITH THE
SAN DIEGO UNIFIED SCHOOL DISTRICT

WHEREAS, the San Diego Unified School District [District] is the fee owner of undeveloped property in the City of San Diego [Fairbrook Site], which property, according to the Fairbrook Estates Vesting Tentative Map number 98-1011 [VTM] is to be subdivided into seventeen lots for residential development, two open space lots, and a park site; and

WHEREAS, DISTRICT intends to sell a portion of the Fairbrook Site to City for use as a neighborhood park and to sell the remaining portion of the Fairbrook Site to one or more private developers to be developed subject to the remaining conditions of the VTM; and

WHEREAS, the property intended for use as a neighborhood park has been reserved in accordance with section 66479 et seq. of the California Subdivision Map Act for park purposes [Park Site]; and

WHEREAS, VTM Condition 34 requires the District at the time of the recordation of the first final map, to enter into an agreement with the City for the City to acquire the Park Site at fair market value within two years after the completion and acceptance of all public improvements, unless such time is extended by mutual agreement; and

WHEREAS, VTM Condition 35 requires the developer to rough grade the Park Site to the Park and Recreation Department's specifications and to construct the contiguous street improvements, and to enter into an agreement with the City which defines the method of compensation for the work done; and

WHEREAS, in accordance with VTM Condition 36, the Park Site was appraised on July 14, 1999, at a fair market value of \$344,000; and

WHEREAS, a total of \$375,000 is required for the land acquisition and holding costs, including but not limited to title, escrow, taxes, interest, maintenance fees and miscellaneous expenses related to the acquisition; and

WHEREAS, the District will be reimbursed for the acquisition of the Park Site pursuant to a reimbursement agreement, in Special Park Fees collected for this purpose, as provided for in the FY 2007 Scripps Miramar Ranch Facilities Financing Plan [PFFP], or as cash becomes available if not available when allowed for by the PFFP; and

WHEREAS, the VTM expires on December 7, 2007; NOW THEREFORE,

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

1. That the Mayor, or designee, is hereby authorized and empowered to execute, for and on behalf of said City, the Park Acquisition Reimbursement Agreement for Fairbrook Neighborhood Park with the San Diego Unified School District.
2. That the expenditure is hereby authorized of an amount not to exceed \$375,000 from CIP No. 29-717.0, Fairbrook Neighborhood Park Acquisition, Scripps/Miramar-Major District, Fund No. 11230, contingent upon certification by the City Auditor and Comptroller that revenues are available at the time reimbursement is scheduled for this project.
3. That the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

4. This activity is exempt from the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Kimberly Ann Davies
Deputy City Attorney

KAD:ca
11/19/2007
Aud. Cert.: AC #2800395
Or.Dept:City Planning & Community Investment
R-2008-448
11/26/2007
R-2008-448 Corr. Copy
MMS #5602

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

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

PARK ACQUISITION REIMBURSEMENT AGREEMENT FOR FAIRBROOK NEIGHBORHOOD PARK

THIS Agreement shall be for the purchase of a park site pursuant to the terms and conditions set forth herein [Agreement]. This Agreement is made and entered into between the City of San Diego, a municipal corporation [City] and San Diego Unified School District, a public entity organized and existing under the laws of the State of California [District] and shall bind District's successor(s) in interest to the property which is the subject of this Agreement. The term "District" shall be understood to mean either the District or the District's successor(s) in interest depending on the context. City and District when referenced herein collectively shall be referred to as "Parties." This Agreement is entered into with reference to the following recitals:

RECITALS

- A. District currently is the fee owner of approximately 12.09 acres of undeveloped property in the City of San Diego [Fairbrook Site]. The Fairbrook Site is subject to the Fairbrook Estates Vesting Tentative Map number 98-1011 [VTM], approved on October 19, 1999 by City Council [City Council], Resolution No. R-292323 and extended on November 14, 2006 by City Council Resolution No. 302092 subject to certain conditions [VTM Conditions], which are set forth in Exhibit A, attached hereto and incorporated by this reference.
- B. The VTM proposes the subdivision of the Fairbrook Site into seventeen lots for residential development, two non-building lots and a park site in the Scripps Miramar Ranch Community Planning Area of the City of San Diego, County of San Diego, State of California. District, as the owner of the Fairbrook Site, is processing the VTM for the purpose of adding value to the property should District decide to sell the Fairbrook Site to one or more private developers to be developed subject to the VTM Conditions. If District sells the Fairbrook Site to a developer, or developers, the VTM Conditions require that a portion of the Fairbrook Site be sold to City for use as a neighborhood park.
- C. The property intended for use as the neighborhood park site comprises 3.4 gross acres, 2.7 net useable acres, of the 12.09 acre site, designated as Lot A as depicted on the VTM and reserved in accordance with Section 66479 *et seq.* of the California Subdivision Map Act for park purposes. [Park Site] The Park Site is more particularly described in Exhibit B and depicted in Exhibit C, both exhibits attached hereto and incorporated by this reference.
- D. VTM Condition number 34 requires the District, as the property owner and permit applicant, at the time of the recordation of the first final map within the subdivision, to enter into an agreement with the City for the City to acquire the Park Site at fair market value within two (2) years after the completion and acceptance of all Public Improvements, unless such period of time is extended by mutual agreement. VTM Condition number 35 requires the developer(s), who will be the District's successor(s) in interest, to rough grade the park site and construct the contiguous street improvements. VTM Condition number 36 establishes criteria to be used by the appraiser in determining the fair market value of the Park Site.
- E. City's Fiscal Year 2007 Scripps Miramar Ranch Public Facilities Financing Plan [Financing Plan], and Facilities Benefit Assessments [FBA], adopted on March 5, 2007, by Resolution number R-302405, provides for funding of the Park Site acquisition through Special Park . The Park Site acquisition is identified in the Financing Plan as a part of project number 34-25A, attached hereto and incorporated herein as Exhibit D.
- F. The Financing Plan is subject to annual review and updates by the City Council at which time the estimated funding appropriated for the Park Site acquisition is subject to change. The actual cost of the Park Site acquisition shall be determined in accordance with the terms of this Agreement.

- G. District is willing to complete the sale of the Park Site in accordance with the terms of this Agreement and accept payment from City, with the Special Park Fee funds identified in the Financing Plan, subject to the availability of such funds, as compensation for conveying the Park Site to the City.
- H. District is entering into this Agreement on the condition that City accepts performance of District's obligations under this Agreement as complete satisfaction of District's obligations under VTM Condition numbers 34, 35 and 36.

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

DEFINITIONS

Acceptance or Accepted: Final approval by the City Inspection Team following the Final Inspection that Project Improvements are complete and work required on the Punch List has been finished.

Calendar Day(s): All days of the week, holidays and weekends included.

City: The City of San Diego. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the City Representative designated by the Agreement.

City Council: The City Council of the City of San Diego.

District: The San Diego Unified School District or its successor in interest.

Financing Plan: Public Facilities Financing Plan and Facilities Benefit Assessment, as it may be updated by City Council from time to time.

Hazardous Materials: Hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Park Site, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). "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.

Holiday: The City-observed holidays listed below (if any holiday listed falls on a Saturday, then the Saturday and the preceding Friday are both legal holidays. If the holiday should fall on a Sunday, then the Sunday and the following Monday are both legal holidays):

Holiday	Observed On
New Year's Day	January 1
Martin Luther King Day	Third Monday in January
Presidents Day	Third Monday in February
Caesar Chavez Day	March 30
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September

Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

Special Park Fee: Fees collected pursuant to San Diego Municipal Code section 96.0405 prior to January 2000.

Useable Acres: That portion of the Park Site not exceeding a grade of two percent (2.0%), unconstrained by environmental restrictions that would prevent its use as a park and recreational facility, free of structures and unencumbered by any easements, except as to title exceptions that have received the prior written approval of City.

Working Day(s): Monday through Friday, excluding City holidays.

ARTICLE I. SUBJECT OF THE AGREEMENT

The above-listed recitals are true and correct and are hereby incorporated by this reference. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference.

- 1.1 **Park Site Purchase.** The City agrees to purchase the Park Site, and the District agrees to transfer title to the Park Site to the City pursuant to the terms and conditions of this Agreement.
- 1.2 **Park Site Description.** The Park Site is located on Lot A of the Fairbrook Estates Subdivision. It consists of 3.4 gross acres or 2.7 net usable acres. It is more particularly described in Exhibit B and depicted in Exhibit C.
- 1.3 **Condition of Sale of Fairbrook Site.** District and City agree that the terms of this Agreement apply if, and only if, District sells the Fairbrook Site to one or more private developer(s).
- 1.4 **Sale of Fairbrook Site.** District shall require as a term of the sale of the Fairbrook Site that the developer(s) enter into a Park Improvement Reimbursement Agreement, acceptable to the Mayor, pursuant to VTM Condition number 35, to rough grade the site to Park and Recreation Department's specifications and construct the contiguous street improvements, and to define the method of compensation for the subject infrastructure improvements, including mitigation if required.

ARTICLE II. PURCHASE PRICE

- 2.1 **Purchase Price.** The Purchase Price of the Park Site shall not exceed the sum of the Market Value and Holding Costs, calculated pursuant to sections 2.1.1 and 2.1.2 respectively.
 - 2.1.1 ***Market Value.*** The Market Value shall be the fair market value of said Park Site at the time of the filing of the first substantially complete final map, December 24, 1998.
 - 2.1.1.1 **Appraisal of Park Site.** The Park Site has been appraised by Robert P. Caringella, MAI, on July 14, 1999, in accordance with the criteria established under VTM Condition number 36, at a fair market value of three hundred forty four thousand dollars (\$344,000), as described in Exhibit H. The Parties agree that this appraisal is accurate and the associated fair market value of three hundred forty four thousand dollars (\$344,000) shall be the Market Value for the purpose of this Agreement.
 - 2.1.2 ***Holding Costs.*** Holding Costs shall be the actual costs paid associated with the maintenance of the Park Site, including the taxes and assessments against Park Site from the date of reservation, December 24, 1998 to the close of escrow, interest not to exceed the rate specified in the Financing Plan incurred on any internal financing or loan covering the Park Site from the date of reservation, December 24, 1998, to the date of conveyance to the City, and any other costs incurred by the

District in the maintenance of the Park Site. Rents or receipts on Park Site shall be a deduction from the costs.

2.1.2.1 Proration. All receipts and disbursements related to the Park Site shall be prorated as of 11:59 p.m. on the day immediately preceding the Closing Date pursuant to section 8.1.3 and the Holding Costs shall be calculated accordingly.

2.1.3 *Funding of Purchase Price.* Payment of the Purchase Price shall be subject to the availability of the Special Park Fees identified in the Financing Plan as available for Project 34-25A [Fairbrook Neighborhood Park Acquisition].

2.2 **Payment of Purchase Price.** The City agrees to pay, or cause to be paid, the Purchase Price to District through Escrow by depositing cash, certified or cashier's check payable to Escrow Holder, or by electronic transfer of funds delivered to Escrow Holder at least one (1) Working Day prior to Closing Date.

ARTICLE III. DISTRICT'S CONTINGENCIES

3.1 **Payment of Purchase Price.** District's obligation to transfer the Park Site to the City is expressly contingent on the receipt of the Purchase Price as adjusted and payable in the manner provided for in this Agreement.

3.2 **Representations and Warranties.** District's obligation to transfer the Park Site to the City is expressly contingent on all of the Representations and Warranties of the City set forth in this Agreement being true in all material respects as of the Closing Date.

3.3 **Performance.** District's obligation to transfer the Park Site to the City is expressly contingent on the City performing and observing in all material respects all covenants and agreements of this Agreement to be performed and observed by the City.

3.4 **Satisfaction of Obligations.** District's obligation to transfer the Park Site to the City is expressly contingent on the City's acceptance of the District's complete performance of its obligations under this Agreement as satisfaction of its obligations under VTM Conditions numbers 34, 35 and 36.

ARTICLE IV. CITY'S CONTINGENCIES

4.1 **District's Delivery of Preliminary Documents.** City's obligation to purchase the Park Site is expressly conditioned on District's delivering all documents listed below [Preliminary Documents]. District shall deliver the Preliminary Documents to City no later than ninety (90) Calendar Days prior to the Closing Date.

4.1.1 *Preliminary Report.* A Preliminary Report dated no earlier than thirty (30) Calendar Days before the Closing Date covering the Park Site, issued by Fidelity National Title Company, together with a legible copy of all exceptions to the title shown on the Preliminary Report, including each document, map, and survey referred to in the Preliminary Report.

4.1.2 *Surveys.* An ALTA survey of the Park Site dated no later than thirty (30) Calendar Days before the Closing Date, meeting the requirements of the most current edition of the ALTA/ACSM Minimum Survey Standards and copies of all other existing surveys in the District's possession.

4.1.3 *Agreements.* Copies of all written easements, covenants, restrictions, agreements, service contracts, and other documents that affect the Park Site in the District's possession.

4.1.4 *Tax Bills.* Property tax bills from the date of reservation until the Closing Date. [Not applicable]

- 4.1.5 *Materials Related to the Condition of the Park Site.* Any environmental impact reports, "Phase I" or "Phase II" reports, or environmental site assessments concerning Hazardous Materials on the Park Site, geological surveys, soil tests, engineering reports, inspection results, complaints, or notices received regarding the safety of the Park Site.
- 4.1.6 *Litigation Materials.* All materials related to pending or threatened litigation, or litigation that was pending or threatened during the District's ownership of the Park Site, involving the Park Site or the District on account of its ownership of the Park Site, including correspondence, complaints, court orders, settlements, and judgments.
- 4.1.7 *Other Documents.* All other data, correspondence, documents, agreements, waivers, notices, applications, and other records regarding the Park Site relating to transactions with taxing authorities, governmental agencies, utilities, neighbors, and others with whom the District may be dealing from and after the Closing Date.
- 4.1.8 *Excluded Records.* The Preliminary Documents shall not include any books, records, documents, or information on the corporate, financial, and accounting records of the operations of District as an entity (as opposed to records concerning the Park Site), regarding offers or inquiries made by third Parties concerning the purchase of some or all of the Park Site, or appraisals of the value of the Park Site that are attorney-client communications of the District, that is the District's work product, or that is not in the possession of the District or persons under the District's control.
- 4.2 **District's Obligation to Provide Updated Information.** The District shall have an obligation to inform the City of any changes to the information provided in the Preliminary Documents and to provide updated documents reflecting the changes in the information from the date originally provided for the City's review thirty (30) Calendar Days prior to the Closing Date.
- 4.2.1 Failure to deliver updates to the Preliminary Documents by the date referred to in section 4.2 will extend the Contingency Date (as defined in section 4.3) by one day until the date the last document is delivered. District shall use its best efforts to deliver all updates to the Preliminary Documents on or before the date referred to in section 4.2.
- 4.3 **City's Approval of Preliminary Documents.** City's obligation to purchase the Park Site is expressly conditioned on its approval, in its sole discretion, of the matters disclosed in the Preliminary Documents and any updates thereto. City shall have the period from the Effective Date until forty five (45) Calendar Days prior to the Closing Date [Contingency Date] to review the Preliminary Documents and updates to Preliminary Documents in order to decide whether to approve the matters disclosed in the Preliminary Documents. On or before the Contingency Date, City shall deliver written notice to the District either accepting the matters disclosed in the Preliminary Documents and the updates thereto, accepting subject to conditions, or terminating this Agreement.
- 4.4 **City's Approval of Title.** City's obligation to purchase the Park Site is expressly conditioned on the City's approval of the condition of title of the Park Site in accordance with the following procedures.
- 4.4.1 *Permitted Exceptions.* The following exceptions shown on the Preliminary Report are approved by City:
- 4.4.1.1 Liens for local real estate taxes and assessment not yet due or payable.
- 4.4.1.2 Standard preprinted exceptions and exclusions of the Title Company.
- 4.4.1.3 Other exceptions in the Preliminary Report, which City expressly accepts by written

notice to District within ten (10) Calendar Days after delivery of Preliminary Report [City's Title Notice].

4.4.2 *Title Objections.* With respect to any Title Objection arising or resulting from any act or omission of the District, the District shall have thirty (30) Calendar Days after delivery of City's Title Notice, to specify the manner in which it will remove or cure such Title Objection. With respect to any Title Objection that did not arise or result from any act or omission of District, District shall have thirty (30) Calendar Days after delivery of City's Title Notice, to give notice to City in writing [District's Title Notice], stating either (i) the manner in which District will remove or cure such Title Objection, or (ii) that District shall not remove or cure such Title Objection. If District fails to deliver District's Title Notice within the time specified in this section, District shall be deemed to have elected not to cure such Title Objection. Despite the foregoing, District agrees to remove all liens securing the payment of money that encumber the Park Site and to remediate or remove any hazardous materials pursuant to section 4.5.1.2.

4.4.3 *District Elects Not to Cure.* If District elects not to cure or remove a Title Objection (or is deemed to have so elected), then the City shall have thirty (30) Calendar Days after delivery of District's Title Notice to deliver a written notice to District [City's Election Notice] of City's election either to (i) proceed with the purchase of the Park Site, waive such Title Objection, and accept the exception shown in the Preliminary Report as a Permitted Exception or (ii) require the District to cure, increase the Purchase Price by actual cost District incurs to cure, and proceed with the Purchase of Park Site following cure.

4.4.3.1 *Non-waivable Title Objections and District's Obligation to Cure.* City shall not waive any Title Objection related to the presence of hazardous materials on the Park Site, and despite any language to the contrary herein, District shall have an obligation to cure and may not elect not to cure or remove such Title Objections pursuant to section 4.4.3.

4.4.4 *Nonmonetary Cure.* If District is obligated or elects to cure or remove a Title Objection, but the method specified for removing or curing the Title Objection is other than the payment of a specific sum of money, then the City shall have thirty (30) Calendar Days after delivery of the District's Title Notice to deliver City's Election Notice specifying whether it elects to proceed with the purchase of the Park Site, subject to District's removal of the Title Objection.

4.4.5 *Additional Encumbrances.* If any encumbrance or other exception to title arises or is discovered after delivery of the Preliminary Report [Additional Encumbrance], the Party discovering such Additional Encumbrance shall promptly give notice of such Additional Encumbrance to the other Party. No later than thirty (30) Calendar Days after the delivery of the notice of such Additional Encumbrance, City shall deliver a new City's Title Notice to District specifying whether the Additional Encumbrance is a Title Objection or a Permitted Exception. If City objects to the Additional Encumbrance, the Parties shall proceed in the same manner as set forth above for Title Objections arising from the Preliminary Report.

4.4.6 *District's Failure to Remove Title Objections.* If District is obligated or elects to cure or remove a Title Objection and fails to do so at least thirty (30) Calendar Days before the Closing Date, or fails to show that it will be able to do so on Closing, then District shall be in Default under this Agreement, and City shall have all its rights and remedies provided by this Agreement and under law.

4.5 Review of Preliminary Documents and Physical Condition.

4.5.1 *Due Diligence.* City's obligation to purchase the Park Site is expressly conditioned on its

approval, in its sole discretion, of the condition of the Park Site, including without limitation economic, financial, and accounting matters relating to or affecting the Park Site or its value, and the physical and environmental condition of the Park Site. City shall have until the Contingency Date to conduct such investigations as City may choose [Due Diligence] to determine, in its sole discretion, whether this contingency is met. On or before the Contingency Date, City shall deliver written notice to District accepting the Park Site or terminating this Agreement pursuant to section 11.2 and 11.3.

4.5.1.1 City's Obligation to Conduct Environmental Review. As part of Due Diligence, prior to the conveyance of the Park Site, the City shall conduct a Phase I Environmental Site Assessment. If the Phase I Environmental Site Assessment, indicates that Hazardous Materials affect or have significant potential to affect the ability to develop the Park Site as a park and recreational facility, a Phase II Report shall be prepared. The Phase II Report shall confirm whether the potential Hazardous Materials exist. If such Hazardous Materials are found to exist, the City shall ascertain what types of materials are present, whether they exist in quantities that require them to be reported or remediated, and the approximate level of contamination required to be remediated or removed. Upon determining that remediation or removal is required, the City shall immediately notify the District and provide District with a copy of the Phase I and Phase II Report and any related documentation.

4.5.1.2 District to Remediate Contamination. If City identifies Hazardous Materials on or under the Park Site as a result of the Phase II Report conducted pursuant to section 4.5.1.1, District shall be obligated, at District's expense, to diligently cause the remediation or removal of such Hazardous Materials before the close of escrow. If the District is required to remediate or remove Hazardous Materials under this section, the close of escrow shall be extended by the amount of time reasonably necessary to complete the remediation or removal, including without limitation preparation of a work plan for the remediation or removal and obtaining all necessary governmental approvals for the work. As long as District completes the remediation or removal of the identified Hazardous Materials under this section, City shall have no right to terminate this Agreement on account of its discovery of Hazardous Materials.

4.5.2 *Access to Park Site.* Notwithstanding City's covenant not to interfere with District's use and possession of the Park Site prior to Closing, as part of its Due Diligence, City may investigate economic, financial, and accounting matters relating to or affecting the Park Site or its value, and conduct inspections, tests, and studies with respect to the physical and environmental condition of the Park Site. City and City's consultants, agents, engineers, inspectors, contractors, and employees [City's Representatives] shall be given reasonable access to the Park Site during regular business hours for the purpose of performing such Due Diligence. City shall undertake the Due Diligence at its sole cost and expense, except as provided in section 4.5.1.2. City shall indemnify, defend, and hold District harmless from all claims, demands, liabilities, losses, costs, fees, and expenses, arising from the acts or activities of City's Representatives in, on, or about the Park Site during or arising in connection with City's inspections of the Park Site.

ARTICLE V. PRECLOSING COVENANTS

5.1 District's Preclosing Covenants.

5.1.1 *No Amendments or Agreements.* On or after the Effective Date, District shall not (i) amend or waive any right under any Preliminary Document or (ii) enter into any lease or other agreement of any type affecting the Park Site that would survive the Closing Date, without City's prior written consent.

Before the Contingency Date, City may not unreasonably withhold its consent under this section; however, after the Contingency Date, City shall have the sole discretion in all such matters.

- 5.1.2 *No Marketing.* District agrees not to market, show, or list the Park Site to any other prospective buyer during the term of this Agreement.
- 5.1.3 *Existing Financing.* District shall not permit any default, or any event that could give rise to a default with lapse of time or notice, to occur under any existing loan secured by the Park Site or other financing encumbering the Park Site.
- 5.1.4 *Access to Park Site.* City and City's representatives, agents, and designees shall have the right at all reasonable times until Closing to enter the Park Site as provided in section 4.5.2.
- 5.1.5 *Notification.* District shall promptly notify the City of any material change in any condition with respect to the Park Site or of any material event or circumstance that makes any representation or warranty of District under this Agreement untrue or misleading.

5.2 **City's Preclosing Covenants.**

- 5.2.1 *No Interference.* Except as expressly provided section 4.5.2, City covenants and agrees with District that prior to the Closing and delivery of the Park Site to the City following Closing, City shall not interfere with the operation of the Park Site by the District in any way.
- 5.2.2 *Authority.* City has the legal right, power, and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized, and no other action by the City is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise set forth herein.

VI. REPRESENTATIONS AND WARRANTIES

6.1 **District's Representations and Warranties.** District hereby represents and warrants that each of the following is true as of the Effective Date and the Closing Date.

- 6.1.1 *Compliance With Laws.* District has received no notice that the Park Site or its operation violates in any way any applicable laws, ordinances, rules, regulations, judgments, orders, or covenants, conditions and restrictions, whether federal, state, local, foreign or private.
- 6.1.2 *Documents.* All Preliminary Documents to be delivered to the City under section 4.1, and all other documents to be delivered to the City by or on behalf of the District, are true, complete, and accurate, and are correct copies of the documents and information that such Park Site Documents purport to be. The documents to be delivered by the District to the City are all the material documents concerning the Park Site in the District's possession or under its control.
- 6.1.3 *Pending or Threatened Litigation.* District has received no notice of pending or threatened private or governmental litigation by any governmental authority or person against District relating to the Park Site that might, if it and all other pending and threatened litigation were adversely determined, result in a material adverse change in the Park Site, its operation, or that challenges the validity of or otherwise materially adversely affects the transaction contemplated by this Agreement.
- 6.1.4 *Other Proceedings.* District has received no notice of attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings are pending or threatened against District or District's interest in the Park Site, nor are

any such proceedings contemplated by the District.

- 6.1.5 *Development Rights.* Neither the District nor, to the District's knowledge, any previous owner of the Park Site has, except by operation of law, sold, transferred, conveyed, or entered into any agreement regarding "air rights," "excess floor area ratio," or other development rights or restrictions relating to the Park Site, except as otherwise expressly set forth in the Preliminary Report.
- 6.1.6 *Due Authorization.* This Agreement and the performance of the District's obligations under it and all documents executed by the District that are to be delivered to the City at the Closing are, or on the Closing Date shall be, legal, valid, and binding obligations of the District, and do not, and on the Closing Date shall not, violate any provision of any agreement or judicial order to which District is a party or to which District or the Park Site is subject. No consent of any judicial or administrative body, governmental agency, or other party is required for District to enter into and/or to perform District's obligations under this Agreement, except as has already been obtained. District is a public entity, duly organized and legally existing under the laws of the State of California, the execution and delivery by District of, and District's performance under, this Agreement are within District's powers and have been duly authorized by all requisite action, and the person executing this Agreement on behalf of the District has the legal authority to do so.
- 6.1.7 *Title.* District has good and marketable title to the Park Site. District has no actual knowledge of any unrecorded or undisclosed legal or equitable interest in the Park Site owned or claimed by anyone other than the District. District has no knowledge that anyone will, at the Closing, have any right to possession of the Park Site, except as disclosed by this Agreement or otherwise in writing to the City. There are no unsatisfied mechanics' or materialmen's lien rights on the Park Site. No assessment lien or bond encumbers the Park Site, and no governmental authority has undertaken any action that could give rise to an assessment lien affecting the Park Site, other than those effected by the City.
- 6.1.8 *Hazardous Materials.* District has received no notification that the Park Site is in violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to the environmental conditions on, under, or about the Park Site, including but not limited to soil and groundwater conditions. There are no environmental, health, or safety hazards on, under, or about the Park Site, including but not limited to soil and groundwater conditions. Neither the District nor any third party (including but not limited to the District's predecessors in title to the Park Site) has used or installed any underground tank, or used, generated, manufactured, treated, stored, placed, deposited, or disposed of on, under, or about the Park Site or transported to or from the Park Site any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials [Hazardous Materials], which for the purposes of this Agreement includes, but is not limited to, substances defined as "hazardous substances, hazardous materials, or toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 United States Codes §§9601 et seq.); the Hazardous Materials Transportation Act (49 United States Codes §§1801 et seq.); the Resource Conservation and Recovery Act (42 United States Codes §§6901 et seq.); the substances defined as "hazardous wastes" in California Health and Safety Code §25117 or as "hazardous substances" in California Health and Safety Code §25316; and the chemicals known to cause cancer or reproductive toxicity as published in the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code §25249.5 et seq.); and in the regulations adopted and publications promulgated under each of the aforementioned laws. District has no actual knowledge, except as otherwise disclosed to City in writing, of the existence or prior existence on the Park Site of any Hazardous Material, other than de minimis amounts of household cleaners or office supplies.

- 6.2 **City's Representations and Warranties.** Despite anything to the contrary in this Agreement, City hereby warrants and represents that, as of the Effective Date, this Agreement and the performance of the City's obligations under it and all the documents executed by the City that are to be delivered to the District at the Closing are, or on the Closing Date shall be, duly authorized, executed, and delivered by the City and are, or at the Closing Date shall be, legal, valid, and binding obligations of the City, and do not, and on the Closing Date shall not, violate any provision of any agreement or judicial order to which City is a party or to which City or the Park Site is subject.
- 6.3 **Effect of Representations and Warranties.** Each representation and warranty in this Agreement is (i) material and shall be relied upon by the party to which the representation or warranty is made; (ii) is true in all respects as of the Effective Date; (iii) shall be true in all respects on the Closing Date; and (iv) shall survive the Closing, except as otherwise provided in this Agreement.

VII. CLOSING CONDITIONS

- 7.1 **City's Closing Conditions.** All obligations of City under this Agreement are subject to the fulfillment, before or at the Closing of each of the following conditions [City's Closing Conditions]. City's Closing Conditions are solely for the benefit of the City and any or all of the City's Closing Conditions may be waived in writing by the City in whole or in part without prior notice.

7.1.1 **Title.** It is City's Closing Condition that, on the Closing Date, District convey to the City marketable fee simple title to the Park Site, free and clear of all liens and encumbrances, by execution and delivery of a grant deed in the form attached to this Agreement as Exhibit E [Deed]. Prior to the Closing, District shall cause to be released from the Park Site any exceptions to title including, but not limited to, any mortgages, deeds of trust, or other monetary encumbrances shown on the Title Report, except for real property taxes not delinquent, assessments, if any, pursuant to recorded covenants, and title exceptions that have received the prior written approval of City.

7.1.1.1 **Title Insurance.** District shall cause to be delivered to the City from the Title Company a standard form CLTA Owner's Title Policy, effective as of Closing, with liability in the full amount of the Purchase Price, insuring title to the Park Site to be vested in the City, subject only to the real estate taxes and assessments not delinquent and the Permitted Exceptions, together with such endorsements described below or as may be reasonably requested by the City [Title Policy]. The Title Policy shall also include such endorsements or guaranties as City may request. District must deliver to the Title Company such instruments, documents, releases, and agreements and must perform such other acts as Title Company may reasonably require in order to issue the Title Policy. Indemnification of the Title Company to induce it to insure any otherwise not permitted exception to title shall not be allowed except with City's prior written consent after full disclosure to the City of the nature and substance of such exception and indemnity, which consent shall not be unreasonably withheld by City except for exceptions not material to marketable title to the Park Site. The expense of the CLTA policy shall be paid by the District. City may, at its sole cost and expense, elect to upgrade the Title Policy to an ALTA Owner's Extended Coverage Policy of Title Insurance, and in such event, issuance of such Extended Title Policy shall be a condition precedent to City's obligation to purchase the Park Site pursuant to the terms of this Agreement, provided that: (i) the Title Company issues a pro forma commitment for such Extended Title Policy to City on or prior to the Contingency Termination Date; and (ii) City, at City's sole expense without delaying the Close of Escrow, satisfies all of the Title Company's requirements for issuance of such Extended Title Policy.

7.1.2 **Liens.** City must have received a certified report, with copies of all documents, satisfactory to the

City and City's counsel, from the Title Company or a reputable lien search company indicating that there are no personal property liens of record on file with the Secretary of State of California, other than those that will be discharged at the Closing, as of a date not more than thirty (30) Working Days before the Closing Date, and a confirmation dated no more than thirty (30) Working Days before the Closing Date that no further liens have been filed since the date of the certified report. Also, City must have received a verified report, satisfactory to the City and City's counsel, from the Title Company or reputable lien search company, indicating that there are no federal or state tax liens or record against the Park Site and on file with the respective agencies as of a date no more than thirty (30) Working Days before the Closing Date.

- 7.1.3 *District's Representations, Warranties, and Covenants.* The representations and warranties of the District in this Agreement must be true in all material respects on and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date. District must have performed and complied with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by it before or on the Closing Date. City must have been furnished with a certificate from District dated as of the Closing Date, certifying to the fulfillment of the foregoing conditions. Such certificate shall have the effect of a representation and warranty of District made on and as of the Closing Date.
- 7.1.4 *Financing.* The funds for the Purchase Price shall be available for disbursement, accompanied by a signed City Auditor's certificate, and scheduled for disbursement in the Financing Plan.
- 7.1.5 *Closing Documents.* District must have delivered to the Escrow Holder the documents it is required to deliver through Escrow at Closing.
- 7.1.6 *Infrastructure Improvements.* Improvements to the Park Site required by VTM Condition number 35 shall have been completed by District's successor(s) in interest and accepted by City.
- 7.1.7 *Adverse Actions.* There shall exist no actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization, or other proceedings, pending or threatened, against the District or regarding the Park Site that would materially and adversely affect the District's ability to perform its obligations under this Agreement or City's title to the Park Site and there shall exist no pending or threatened action, suit, or proceeding regarding the District before or by any court or administrative agency that seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transactions contemplated by this Agreement.
- 7.1.8 *Hazardous Material.* No Hazardous Materials shall have been discovered on the Park Site after the Contingency Date that were not previously disclosed to City or discovered by the City before the Contingency Date.
- 7.1.9 *No Material Changes.* No event shall have occurred nor shall any condition have arisen after the Contingency Date that as of the Closing Date materially and adversely affects all or any part of the Park Site or its current or prospective operation, use, value, income, expenses, or occupancy.
- 7.1.10 *Consents.* All necessary agreements and consents of all Parties to consummate the transaction contemplated by this Agreement shall have been obtained and furnished by District to City.
- 7.2 **District's Closing Conditions.** District's obligation to sell the Park Site is expressly conditioned on the fulfillment of each condition precedent at or before the Closing [District's Closing Conditions]. District's Closing Conditions are solely for the District's benefit and any of District's Closing conditions may be waived in writing by the District in whole or in part without prior notice.

- 7.2.1 *Fulfillment of VTM Conditions.* City has accepted performance of District's obligations under this Agreement as complete satisfaction of District's obligations under VTM Condition numbers 34 and 36.
- 7.2.2 *Acceptance of Park Improvements.* City has accepted all public improvements as completed by District's successor in interest.
- 7.2.3 *Approval of Conditions.* City has acknowledged its approval or waiver of all City's Closing Conditions as required under section 7.1.
- 7.2.4 *Purchase Price.* City has delivered the Purchase Price to Escrow.
- 7.2.5 *Delivery of Closing Documents and Funds.* City has delivered to Escrow the documents and funds specified in section 8.1.4.
- 7.2.6 *City's Representations, Warranties, and Covenants.* The representations and warranties of the City in this Agreement must be true in all material respects on and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date. City has performed and complied with all covenants, agreements, and conditions required by this Agreement to be performed or complied with by it before or on the Closing Date. City has furnished District with a certificate dated as of the Closing Date, certifying to the fulfillment of the foregoing conditions. Such certificate shall have the effect of a representation and warranty of City made on and as of the Closing Date.

VIII. CLOSING

8.1 Closing.

- 8.1.1 *Opening of Escrow.* At such time as City desires to complete the purchase of the Park Site, but in no event later than one hundred twenty (120) Calendar Days prior to the Closing Date, City shall deliver a notice of intent to close escrow [Notice] to the District and Fidelity National Title Company [Escrow Holder] in order to consummate the purchase and sale of the Park Site in accordance with the terms and conditions of this Agreement. Concurrently, the City shall deliver a signed and executed original of this Agreement to Escrow Holder. The date on which the Escrow Holder receives the Notice and the Agreement shall constitute the "Opening of Escrow."
- 8.1.2 *Escrow Instructions.* The provisions of this Agreement shall constitute joint primary escrow instructions to the Escrow Holder. Parties, however, agree to enter into mutually acceptable escrow instructions as reasonably requested by Escrow Holder that are not inconsistent with the provisions herein. The Parties may mutually consent in writing to additional Escrow Instructions.
- 8.1.3 *Closing Date.* Subject to possible extension as expressly provided in this section, the conveyance of the Park Site shall occur and be effective no later than two years after completion and acceptance by City of all public improvements as required by VTM Condition number 34.
- 8.1.3.1 *Extension of Closing Date.* The Parties may extend the Closing Date and the conveyance of the Park Site for the following reasons. All such extensions must be in writing and signed by both Parties.
- 8.1.3.1.1 To accommodate environmental mitigation.
- 8.1.3.1.2 To adjust for the availability of the funds for acquisition identified in section 2.1.3.

8.1.3.1.3 To coincide with the acceptance of the public improvements required pursuant to VTM Condition number 34.

8.1.3.1.4 Other reasons mutually agreed upon by the Parties in writing.

8.1.4 *Deposits with Escrow Holder.* At least one (1) Working Day prior to the Close of Escrow, District and/or City shall deposit or cause to be deposited with Escrow Holder the following documents, instruments, or funds as indicated. Amounts payable by District shall either be deposited by District prior to the Close of Escrow or shall be paid out of the funds, deposited by the City with the Escrow Holder, which would otherwise be due District at the Close of Escrow.

8.1.4.1 Grant Deed. District shall deposit the Grant Deed in a form substantially similar to Exhibit E, attached hereto, conveying the Park Site to the City. The Grant Deed shall be duly executed by the District, acknowledged and in recordable form.

8.1.4.2 Bill of Sale. District shall deposit a duly executed bill of sale in a form substantially similar to Exhibit F, attached hereto, conveying Park Site to City free and clear of liens, encumbrances, and restrictions of every kind and description, except for Permitted Exceptions as defined in 4.4.1 above.

8.1.4.3 Assignment. District shall deposit a duly executed assignment in a form substantially similar to Exhibit G, attached hereto, assigning to the City, District's interest in all warranties of which District is the beneficiary with respect to the public improvements.

8.1.4.4 Nonforeign Certification. District shall deposit certificates required by §1445 of the Internal Revenue Code, and equivalent provisions of the California Revenue and Taxation Code, executed by the District, in a form satisfactory to the City, to relieve City of any potential transferee's withholding liability under such statutes.

8.1.4.5 Park Improvement Reimbursement Agreement. District's successor(s) in interest shall deposit a copy of the Park Improvement Reimbursement Agreement with the City, pursuant to VTM Condition number 35 for improvements to the Park Site.

8.1.4.6 Additional Documents. Such additional documents, including written escrow instructions consistent with this Agreement, as may be necessary or desirable to convey the Park Site in accordance with this Agreement.

8.1.4.7 Purchase Price. City shall deposit the Purchase Price in the form of cash, wire transfer, or certified bank cashier's check in the amount of the Purchase Price, plus or minus any prorations as provided in section 2.1.2.1.

8.1.4.8 Title Policy. The cost and expense of a standard CLTA Owner's Title Policy shall be paid by District. Any additional coverage or endorsements requested by City shall be paid by City.

8.1.4.9 Acceptance and Resolution. City shall deposit a fully executed acceptance by the City with respect to the Grant Deed and an executed and certified resolution of the City Council authorizing the acceptance of the Park Site pursuant to the Grant Deed.

8.1.4.10 Statement of Satisfaction. City shall deposit a signed and executed statement certifying that the City has accepted the District's performance of its obligations under this Agreement as complete satisfaction of VTM Conditions 34, 35 and 36.

- 8.1.5 *Conditions to Closing Escrow.* Escrow shall not close unless and until the following conditions precedent and contingencies have been satisfied or waived in writing by the Party for whom the benefit of the condition inures. City and District shall use their respective good faith efforts in connection with such conditions and, except in connection with the express provisions of this Agreement, shall not act unreasonably for the purpose of causing any such condition to fail.
- 8.1.5.1 All documents, instruments, and funds described in section 8.1.4 have been delivered to the Escrow Holder.
 - 8.1.5.2 All representations and warranties made by the District and the City shall be true and correct in all material respects as of the Closing Date.
 - 8.1.5.3 District and City have performed, observed, and complied with all covenants, agreements, and conditions required by this Agreement to be performed, observed, and/or complied with by the District or City prior to, or as of, the Closing Date, or on such date as it may be extended.
 - 8.1.5.4 The Title Company shall be irrevocably and unconditionally committed to issue the Title Policy or the Extended Title Policy, if the City has elected to upgrade the Title Policy, subject to the provisions of section 7.1.1.1, on the Closing Date.
- 8.1.6 *Closing Escrow.* Escrow shall close within one hundred twenty (120) Calendar Days after City's delivery of the Notice and Agreement, but in no event later than the Closing Date specified above, or on such date as it may be extended. Upon the satisfaction of the Conditions of Closing Escrow, the Escrow Holder is instructed to do the following:
- 8.1.6.1 Record the Deed in the Official Records of San Diego County, California and deliver to City conformed copies of the Grant Deed.
 - 8.1.6.2 Pay to the District the Purchase Price less the Escrow Costs and adjusted for any Prorations.
 - 8.1.6.3 Direct the Title Company to issue the Title Policy to the City.
 - 8.1.6.4 Disburse the remaining balance of funds deposited by City to the City pursuant to instructions to be delivered by City to Escrow Holder.
 - 8.1.6.5 Deliver to the City the Bill of Sale, Assignment, the Nonforeign Certification, copies of all recorded documents related to the transfer or encumbering of the Park Site, and a copy of District's escrow instructions.
 - 8.1.6.6 Deliver all other required and agreed upon documents pursuant to this Agreement to the Parties.
 - 8.1.6.7 Deliver the Statement of Satisfaction to District.
 - 8.1.7 *Closing Costs.* Closing costs shall be allocated as follows:
 - 8.1.7.1 District shall pay all costs associated with removing any debt encumbering the Park Site.
 - 8.1.7.2 Escrow costs shall be shared equally by City and District.

- 8.1.7.3 The cost and expense of a standard CTLA Owner's Title Policy shall be paid by District. Any additional coverage or endorsements requested by City shall be paid by City.
- 8.1.7.4 City shall pay the cost of recording the Deed.
- 8.1.7.5 City shall pay any sales tax.
- 8.1.7.6 The documentary transfer tax and any municipal transfer tax shall be paid in accordance with the custom and practice in the county in which the Park Site is located.
- 8.1.8 *Broker's Commission; Indemnity.* Neither Party has had any contact or dealings regarding the Park Site, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or person, who can claim a commission or finder's fee as a procuring cause of the sale contemplated in this Agreement. If any other broker or finder perfects a claim for a commission or finder's fee based on any contract, dealings, or communication with a party [Indemnifying Party], then the Indemnifying Party shall indemnify, defend, and hold harmless the other party [Non-indemnifying Party] harmless for all costs and expenses incurred by the Non-indemnifying Party in connection with such claim.
- 8.1.9 *Possession.* District shall deliver exclusive right of possession of the Park Site to the City on the Closing Date.
- 8.1.10 *IRC Reporting.* Escrow Holder shall deliver signed closing statements showing all receipts and disbursements to City and District and shall file the reporting statement required under Internal Revenue Code §6045(e).

IX. RISK OF LOSS

- 9.1 **Condemnation.** If before the Closing Date any action or proceeding is commenced for the condemnation or exercise of the rights of eminent domain of the Park Site or any portion of it, or if District is notified by the duly authorized officer of a duly empowered condemning authority of the intent to commence such action or proceeding [Condemnation] and if such Condemnation would materially and adversely affect the use or intended use of the Park Site, have the effect of decreasing the square footage of the Park Site, or reduce or eliminate access to the Park Site, then the City may either (i) terminate this Agreement or (ii) proceed with the Closing without modifying the terms of this Agreement and without reducing the Purchase Price, on the condition that District must assign and turn over, and City is entitled to keep, all awards for the Condemnation that accrue to the District. District may not negotiate, resist, or stipulate to any Condemnation without City's written consent. District must notify the City of any notice of Condemnation of all or any portion of the Park Site within thirty (30) Calendar Days after the receipt of the notice, and City must exercise its option(s) as provided in this section within thirty (30) Working Days after receipt of such notice. If necessary, the Closing Date shall be extended to give City the full thirty (30) Working Day period to make such election.

X. DEFAULT

- 10.1 **City's Default.** City shall be in default under this Agreement if City fails, for any reason other than District's default under this Agreement, to meet, comply with, or perform any covenant, agreement, or obligation required on its part within the time limits and in the manner required in this Agreement, or if there occurs a material breach of any representation or warranty (made by the City) by reason of City's actual fraud or intentional misrepresentations; provided, however, that no such default shall be deemed to have occurred unless and until the District has given the City written notice of such default, describing the nature of the default, and the City has failed to cure such default within thirty (30) Calendar Days after the receipt of such notice.

- 10.2 **Remedies for City's Default.** If the Closing fails to occur because of City's default under the terms of this Agreement, City shall be responsible for any additional costs incurred by District resulting from the City's default, District shall have the right to terminate this Agreement and District may pursue any available legal or equitable remedies.
- 10.3 **District's Default.** District shall be in default under this Agreement if District fails, for any reason other than City's default under this Agreement, to meet, comply with, or perform any covenant, agreement, or obligation required on its part within the time limits and in the manner required in this Agreement, or if there occurs a material breach of any representation or warranty (made by the District) by reason of District's actual fraud or intentional misrepresentations; provided, however, that no such default shall be deemed to have occurred unless and until the City has given the District written notice of such default, describing the nature of the default, and the District has failed to cure such default within thirty (30) Calendar Days after the receipt of such notice.
- 10.4 **Remedies for District's Default.** If the Closing fails to occur because of District's default under the terms of this Agreement, City shall have the right to terminate this Agreement and pursue any available legal or equitable remedies. If this Agreement is terminated before the Closing Date due to District's default, then, in addition to any remedy City has under this Agreement, District shall reimburse the City for the costs incurred by City in conducting its Due Diligence.
- 10.5 **Resolution of Disputes.** Controversies or claims between the City and the District that arise from this Agreement (including any modifications or amendments to this Agreement) shall be resolved under this section. This section shall survive termination of this Agreement.
- 10.5.1 *Mediation.* If a Dispute arises out of, or relates to this Agreement, or the breach thereof, and if the Dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the Dispute by mediation administered by the American Arbitration Association [AAA] under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.
- 10.5.2 *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, and the expenses of any witness 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.
- 10.5.3 *Selection of Mediator.* A single AAA-qualified Mediator acceptable to both Parties shall be used to mediate the dispute. 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 potential Mediators marked in preference order, and a preference for available dates.
- 10.5.4 *Arbitration/Attorney's Fees.* If mediation as described above is unsuccessful, any controversy or claim arising from or relating to this Agreement or the breach thereof shall be settled by binding arbitration under the Commercial Rules of AAA. Venue for any arbitration proceeding or related court action shall be in San Diego County, California. The prevailing Party in any arbitration or related court action shall be entitled to have and recover from the other Party its costs and reasonable attorneys' fees.
- 10.5.5 *Applicability of Code of Civil Procedure.* It is specifically contemplated and agreed by the Parties that California Code of Civil Procedure §1283.05 (allowing for discovery in arbitration), as it may be amended from time to time, shall be incorporated into, made a part of, and made applicable to the arbitration agreement in this Agreement.

10.5.6 *Statutory Notice.* NOTICE: BY PLACING INITIALS IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN SECTION 10.5.5 ABOVE. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

THE UNDERSIGNED HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION PROVISION TO NEUTRAL ARBITRATION.

District's Initials: _____

City's Initials: _____

XI. TERMINATION OF AGREEMENT

- 11.1 **Failure to File Final Map.** As VTM Condition number 34 requires this Agreement as a prerequisite to the District or its successor in interest filing a final subdivision map under California's Subdivision Map Act, the failure of the District or its successor in interest to file such final subdivision map on or before the expiration of the VTM, or any extensions thereof, will terminate this Agreement, in which case the Parties shall have no further duties to one another under this Agreement. Failure to file a final subdivision map does not constitute a breach on District's part.
- 11.2 **Termination by Mutual Agreement.** The Parties may mutually agree to terminate this Agreement. The termination must be in writing, signed by both Parties, and approved by each Party's governing boards (*i.e.* City Council or Board of Trustees).
- 11.3 **Other Termination.**
- 11.3.1 *Termination with no breach.* In the event this Agreement is terminated under section 11.1 (no final map) or 11.2 (mutual agreement), neither City nor District shall be in breach of this Agreement; the District shall not be obligated to transfer the Park Site to the City and neither Party shall have any further obligations under this Agreement.
- 11.3.2 *Termination under District's Breach.* In the event that this Agreement is terminated pursuant to a breach of section 7.1.3 (District's representations and warranties) or section 10.3 (District's default), District shall not be obligated to transfer the Park Site to the City; however, District shall be in breach of the Agreement and City shall be entitled to all remedies available at law and equity.
- 11.3.3 *Termination under City's Breach.* In the event that this Agreement is terminated pursuant to a breach of section 6.2 (City's representations and warranties) or section 10.1 (City's default), this Agreement shall be terminated and District shall not be obligated to transfer the Park Site to City. Additionally, City shall be in breach of the Agreement and District shall be entitled to all remedies available at law and equity.

XII. RESERVED RIGHTS

- 12.1 **Use of Park Site.** While this Agreement is in effect, and prior to the Close of Escrow, District reserves to itself, its agents, successors, assigns, and personal representatives all rights accruing from its ownership of the Park Site including, without limitation, the unrestricted use of and access to the Park Site, so long as legally permitted and not in contravention to other terms and conditions of this Agreement.
- 12.2 **Legal Description.** District and City reserve the right to amend the legal description and depiction of the Park Site, Exhibits B and C.

XIII. SATISFACTION OF OBLIGATIONS

- 13.1 **Satisfaction of Obligations.** Compliance with this Agreement satisfies District's obligations under VTM Condition numbers 34, 35 and 36.

ARTICLE XIV. NOTICES

- 14.1 **Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 14.2 **Effective Date of Notice.** Except as otherwise provided by law, any notice required or permitted to be given by one Party to the other Party shall be effective (a) on personal delivery, (b) on the second 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.
- 14.3 **Recipients.** All notices required or permitted to be given shall be sent to all of the following:
- 14.3.1 Director, City Planning & Community Investment Department
City of San Diego
City Administration Building
202 "C" Street, M.S. #5A
San Diego, CA 92101-3865
Facsimile No.: (619) 236-6478
 - 14.3.2 Facilities Financing Manager
City Planning & Community Investment Department
City of San Diego
1010 Second Avenue, Suite 600 M.S. #606F
San Diego, California 92101
Facsimile No.: (619) 533-3687
 - 14.3.3 San Diego City Attorney
Real Property Section
1200 Third Ave., Suite 1100
San Diego, California 92101
Facsimile No.: (619) 533-5856
 - 14.3.4 Acquisition and Asset Management
San Diego Unified School District
MOC Annex Room 2
4860 Ruffner Street
San Diego, California 92111

Facsimile No: (858) 573-5856

14.3.5 Fagen Friedman & Fulfroast, LLP
1 Civic Center, Suite 300
San Marcos, California 92069
Attn: Kathy McKee, Esq.
Facsimile No: (760) 304-6011

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

ARTICLE XV. MISCELLANEOUS PROVISIONS

- 15.1 **Headings**. All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 15.2 **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.
- 15.3 **Reference to Paragraphs**. Each reference in this Agreement to a section refers, unless otherwise stated, to a section of this Agreement.
- 15.4 **Incorporation of Recitals**. All recitals herein are incorporated into this Agreement and are made a part hereof.
- 15.5 **Covenants and Conditions**. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or the District, shall be deemed to be both covenants and conditions.
- 15.6 **Integration**. This Agreement and the 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 an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 15.7 **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.
- 15.8 **Drafting Ambiguities**. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. 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.
- 15.9 **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.
- 15.10 **Prompt Performance**. Time is of the essence of each covenant and condition set forth in this Agreement.

15.11 **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.

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

15.13 **Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:

- Exhibit A – VTM Conditions
- Exhibit B – Description of Park Site
- Exhibit C – Depiction of Park Site
- Exhibit D – Financing Plan Project Number 34-25A
- Exhibit E – Form of Grant Deed
- Exhibit F – Form of Bill of Sale
- Exhibit G – Form of Assignment
- Exhibit H – Appraisal dated July 14, 1999

15.14 **Compliance with Controlling Law.** The laws of the State of California shall govern and control the terms and conditions of this Agreement.

15.15 **Jurisdiction, Venue, and Attorney Fees.** 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 prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.

15.16 **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.

15.17 **Third Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third party.

15.18 **Non-Assignment.** District 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 the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

15.19 **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.

15.20 **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.

15.21 **No Waiver.** No failure of either the City or District 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.

- 15.22.1 **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 or Parties hereto harmless if it is later determined that such authority does not exist.
- 15.22.2 **San Diego's Strong Mayor Form of Governance.** All references to "City Manager" in this Agreement and all subsequent amendments thereto shall be deemed to refer to "Mayor." This section is effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter.
- 15.22.3 **City and District Approval.** Whenever an act or approval is required by City pursuant to the terms of this Agreement, that act or approval shall be performed by the Mayor or his/her duly designated representative. Whenever an act or approval is required by District pursuant to the terms of this Agreement, that act or approval shall be performed by the Superintendent or his/her duly designated representative

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its Mayor pursuant to Resolution No. R-_____, authorizing such execution, and by the San Diego Unified School District of San Diego County, California, acting by and through its Superintendent pursuant to approval by its Board of Education pursuant to Resolution No. _____.

This Agreement is dated _____, 2007 and this date shall constitute the effective date of this Agreement [Effective Date].

THE CITY OF SAN DIEGO,
a Municipal Corporation

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

By: _____
Jay Goldstone
Chief Operating Officer

By: _____
Peter M. Iverson
Interim Executive Director, Facilities

Date: _____, 2007

Date: _____, 2007

Approved as to form and legality by:
MICHAEL J. AGUIRRE, City Attorney

By: _____
Deputy City Attorney
_____, 2007

Approved as to form and legality by:

General Counsel
_____, 2007

CONDITIONS FOR VESTING TENTATIVE MAP NO. 8569

FAIRBROOK ESTATES - PROJECT NO. 5284

EXTENSION OF TIME TO VESTING TENTATIVE MAP NO. 98-1011

ADOPTED BY RESOLUTION NO. 302092 ON NOV 14 2006

GENERAL

1. This Vesting Tentative Map will expire on DEC - 7 2007.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.
3. Prior to the Vesting Tentative Map expiration date, a Final Map to consolidate the existing lots into one lot shall be recorded in the Office of the County Recorder.
4. A Final Map shall be recorded in the Office of the County Recorder, prior to the Vesting Tentative Map expiration date.
5. The Final Map shall conform to the provisions of Planned Development Permit No. 8570.

ENGINEERING

6. The drainage system proposed for this subdivision, as shown on the approved vesting tentative map, is subject to approval by the City Engineer.
7. The developer shall provide a downstream drainage study, satisfactory to the City Engineer, that demonstrates that no adverse impacts will occur to downstream properties as a result of the increased runoff from this development or, if substantial impacts are anticipated, what measures must be taken to mitigate such impacts.
8. The subdivider shall underground any new service run to any new or proposed structures within the subdivision.
9. Prior to recordation of the Final Map, all existing on-site utilities serving the subdivision shall be undergrounded with appropriate permits. The applicant shall provide written confirmation from applicable utilities that the conversion has taken place, or provide other means to assure the undergrounding, satisfactory to the City Engineer.

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R. 302092

30. Whenever street rights of way are required to be dedicated, it is the responsibility of the subdivider to provide the right of way free and clear of all encumbrances and prior easements. The subdivider shall secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.
31. Street "A" (from Fairbrook Road to Street "B") is classified as a residential local street. The subdivider shall dedicate a 60-foot wide right of way and provide 40 feet of pavement, curb, gutter, and 5-foot wide sidewalks within a 10-foot curb-to-propertyline distance.
32. Street "A" (from Street "B" to the end of the cul-de-sac) is classified as a residential local street. The subdivider shall dedicate a 56-foot wide right of way and provide 36 feet of pavement, curb, gutter, and 5-foot wide sidewalks within a 10-foot curb-to-propertyline distance. The subdivider shall provide a 60-foot right of way radius and a 50-foot radius for the cul-de-sac at the end of Street "A."
33. Street "B" is classified as a residential cul-de-sac. The subdivider shall dedicate a 56-foot wide right of way and provide 36 feet of pavement, curb, gutter, and 5-foot wide sidewalks within a 10-foot curb-to-propertyline distance. The subdivider shall provide a 60-foot right of way radius and a 50-foot curb radius for the cul-de-sac at the end of Street "B."

PARKS AND OPEN SPACE

34. The park site, Lot "A," shown on the approved Vesting Tentative Map, is reserved in accordance with Section 66479, et seq., of the Subdivision Map Act. Provisions of the Act require that the subdivider shall, at the time of the recordation of the first final map within the subdivision, enter into an agreement for the City to acquire the park site within two years after the completion and acceptance of all public improvements, unless such period of time is extended by mutual agreement. The purchase price shall be fair market value thereof at the time of the filing of the first substantially complete map, December 24, 1998, plus the taxes against such reserved area from date of reservation, and any other costs incurred on any loan covering such reserved areas. In the event the City does not exercise its option to acquire the park site, the reservation shall automatically terminate.
35. The developer shall rough grade the park site, Lot "A," to Park and Recreation Department's specifications and shall construct the contiguous street improvements. The developer shall enter into an agreement, acceptable to the City Manager, which defines the method of compensation for the work done on the future park site, including mitigation if required. The agreement shall be approved and signed prior to the filing of the first final map of the subdivision. Note: The City normally pays its fair share of costs toward the design of public

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infrastructure required to serve the park. These costs do not include the costs of the sanitary and storm sewer alignments through the park..

36. The market value shall be determined by a mutually acceptable appraiser and shall be based upon the highest and best use of the property as though unsubdivided acreage as of the date of the filing of the Vesting Tentative Map. The appraisal shall be completed and approved prior to the filing of the first final map of this subdivision.
37. The subdivider shall grant a building restricted easement over Lot "C" (the lot directly to the west of the northwestern corner of Lot "A").
38. The subdivider shall grant a building restriction easement over Lot "B."

FACILITIES FINANCING

39. This subdivision is in a community plan area designated in the General Plan as Planned Urbanizing. As such, special financing plans have been, or will be established to finance the public facilities required for the community plan area.

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

40. This tentative map is a Vesting Tentative Map. As such, the subdivider shall pay an additional \$300 fee to the Development Services Department for each final map processed in connection with this Vesting Tentative Map.

INFORMATION:

- The approval of this Vesting Tentative Map by the City Council of the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).
- If the subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), then the subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.

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**FAIRBROOK ESTATES
Park Site
Legal Description**

The "Park Site" is created and described as "Lot A" (3.404 acres), as indicated on Sheet 4 of 5, of Final Map _____, as recorded by the County of San Diego on _____.

FAIRBROOK ESTATES

(SEE SHEET NO. 5)

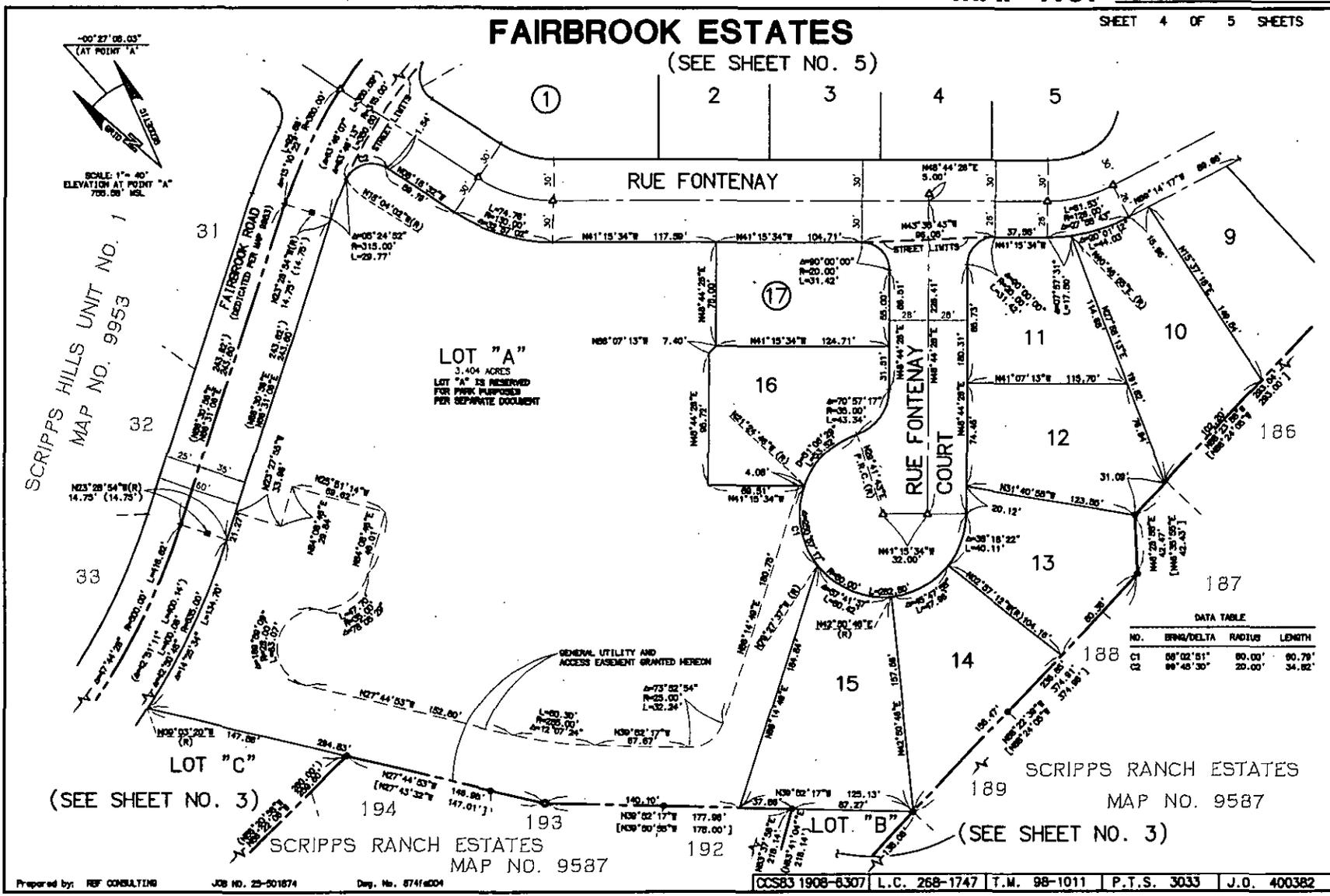


EXHIBIT C

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

PROJECT: 34-25A
COUNCIL DISTRICT: 5
COMMUNITY PLAN: SMR

TITLE: FAIRBROOK NEIGHBORHOOD PARK - ACQUISITION

DEPARTMENT: PARK AND RECREATION

FUNDING	SOURCE	EXPEN/ENCUM	CONT	APPROP	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
420,000	SPF	24,612		395,388						
420,000	TOTAL	24,612		395,388	0	0	0	0	0	0

DESCRIPTION:

THIS PROJECT PROVIDES FOR THE ACQUISITION OF LAND FOR AN APPROXIMATELY THREE-USABLE ACRE NEIGHBORHOOD PARK SOUTH OF POMERADO IN THE SCRIPPS MIRAMAR RANCH COMMUNITY.

JUSTIFICATION:

THIS PROJECT IS IN CONFORMANCE WITH THE CITY'S PROGRESS GUIDE AND GENERAL PLAN GUIDELINES, AND CONSISTENT WITH THE SCRIPPS MIRAMAR RANCH COMMUNITY PLAN. THE COMMUNITY DESIRES THE ACQUISITION OF THIS SITE TO PROVIDE ADDITIONAL PARK LAND TO SERVE AN EXPAND COMMUNITY.

SCHEDULE:

LAND ACQUISITION AND DEVELOPMENT OF THIS SITE IS TENTATIVELY SCHEDULED FOR FY 2010 (SEE 34-25B), BUT THE ACTUAL TIMING OF THE PROJECT IS DEPENDENT UPON WHEN THE LAND IS ACQUIRED FROM THE SAN DIEGO UNIFIED SCHOOL DISTRICT.

CIP NO: 29-717.0 (SEE COMPANION PROJECT 29-761.0)



Recording Requested by: City Clerk

After recording mail to:

City Clerk
City of San Diego
Mail Station 2A

Form of

				ALL
				PTN

SPACE ABOVE THIS LINE FOR RECORDER'S USE
NO DOCUMENTARY TAX DUE - R&T 11922 (amended)
Presented for record by the CITY OF SAN DIEGO

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SAN DIEGO UNIFIED SCHOOL DISTRICT

HEREBY GRANT(S) to the City of San Diego, a municipal corporation, in the County of San Diego, State of California, all that real property situated in the City of San Diego, County of San Diego, State of California, described as follows:

See Exhibit "A" attached hereto and made a part hereof

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

SAN DIEGO UNIFIED SCHOOL DISTRICT

Dated _____ By _____

(FORM) BILL OF SALE

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, SAN DIEGO UNIFIED SCHOOL DISTRICT, a school district organized and existing under the laws of the State of California or its successor in interest ("**District**" or "**Successor**") does hereby sell and convey to the City of San Diego, a municipal corporation ("**City**"), any and all of District's right, title and interest in and to all improvements located upon the land described in the Park Acquisition Reimbursement Agreement, to which this Bill of Sale is attached as an exhibit, and all tangible property presently within the improvements located thereon ("**Personal Property**"). District represents and warrants title to the Personal Property is owned by District free and clear of any and all liens and encumbrances.

DISCLAIMER: THE PERSONAL PROPERTY IS CONVEYED BY DISTRICT AND ACCEPTED BY CITY AS IS, WHERE IS, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, EXPRESS OR IMPLIED, IT BEING THE INTENTION OF DISTRICT AND CITY EXPRESSLY TO NEGATE AND EXCLUDE ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY CONVEYED HEREUNDER, AND ALL OTHER REPRESENTATIONS AND WARRANTIES WHATSOEVER CONTAINED IN OR CREATED BY THE UNIFORM COMMERCIAL CODE OF THE STATE CALIFORNIA.

IN WITNESS WHEREOF, District has executed this Bill of Sale as of _____, 20__.

DISTRICT

SAN DIEGO UNIFIED SCHOOL DISTRICT

A school district organized and existing under the laws of the State of California

By: _____

Approved as to form:

By: _____
Legal Counsel

(FORM) ASSIGNMENT OF WARRANTIES

THIS ASSIGNMENT OF WARRANTIES (this "Assignment") is entered into effective _____, 20__ by and between SAN DIEGO UNIFIED SCHOOL DISTRICT, a school district organized and existing under the laws of the State of California [or its Successor in Interest] ("Assignor") and the City of San Diego, a municipal corporation ("Assignee"), with reference to the following facts:

RECITALS

A. Assignor and Assignee entered into that Park Acquisition Reimbursement Agreement for Fairbrook Neighborhood Park dated _____ ("Agreement") in which Assignor will convey to Assignee 3.4 gross acres, 2.7 net useable acres of real property as described in the Agreement to which this Assignment is attached as an exhibit ("Park Site").

B. Pursuant to Section 8.1.4.3 of the Agreement, prior to the close of Escrow, Assignor will assign all of its right, title and interest in and to warranties of which Assignor is the beneficiary with respect to the public improvements ("Warranties").

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of its right, title and interest in and to any and all Warranties of which Assignor is the beneficiary with respect to public improvements under the Agreement, effective immediately prior to the "Closing" as defined in the Agreement.

2. Acceptance of Assignment. Assignee hereby accepts the above assignment, and agrees to be bound by all of the terms and conditions of any documents executed by Assignor prior to the Closing in connection therewith and to fully perform all terms and conditions of the Warranties to be kept and performed.

3. Assumption of Obligations. Assignee hereby assumes those duties, obligations, representations and warranties of Assignor under the Warranties and shall be bound by all consents and approvals previously given or deemed given by Assignor.

4. Authority of Signatories. The individual signing below on behalf of the parties hereby represents and warrants that he or she is the officer of the entity indicated, and has full power and authority to execute and deliver this assignment on behalf of the entity.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment effective the date set forth above.

ASSIGNOR:

ASSIGNEE:

CONSENT TO ASSIGNMENT:

The undersigned _____, hereby consents to the foregoing Assignment of Warranties.

Date: _____

RECEIVED
CITY OF SAN DIEGO

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REAL ESTATE ASSETS DEPT.

APPRAISAL OF

*AP 2707 - FAIRBROOK SCHOOL SITE
FAIRBROOK ROAD AT RUE FONTENAY*

SAN DIEGO, CALIFORNIA

APPRAISED FOR

Ms. Lucille Galvin, SR/WA
Property Agent
City of San Diego Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, California 92101

DATE OF VALUATION

December 24, 1998

DATE OF REPORT

July 14, 1999

APPRAISED BY

Jones, Roach & Caringella, Inc.
4669 Murphy Canyon Road, Suite 200
San Diego, California 92123-4333

OUR FILE NO.: 99089

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

PROPERTY IDENTIFICATION: Fairbrook Surplus School Site

PROPERTY OWNER: San Diego Unified School District

PROPERTY LOCATION: Along the south side of Fairbrook Road across from Rue Fontenay, Scripps Miramar Ranch community, City of San Diego.

A.P.N. 320-110-40 & 364-102-06

LAND DATA: Two level superpads separated by an approximately five-foot north/south trending embankment. The parcel contains 12.09 acres. A proposed park parcel, part of the larger parcel, contains 3.44 acres.

IMPROVEMENT DATA: The property is unimproved, sheet-graded land.

ESTATE APPRAISED: Fee simple

DATE OF VALUE: December 24, 1998

DATE OF REPORT: July 14, 1999

HIGHEST AND BEST USE: Four single family homes and/or other low intensity use such as a church or recreation center.

CONCLUDED VALUE ESTIMATES:

Entire Site:	\$1,210,000
Park Site (Lot A):	\$344,000

SHANNON L. CUTSINGER, MAI
WILLIAM N. PATTERSON, MAI, SRA
MATHEW D. SHAKE, MAI
GALEN JUSTICE-BLACK

JONES, ROACH & CARINGELLA, INC.
REAL ESTATE APPRAISERS AND CONSULTANTS
4669 MURPHY CANYON ROAD, SUITE 200
SAN DIEGO, CALIFORNIA 92123-4333
(858) 565-2400 FAX: (858) 565-4916

ROBERT P. CARINGELLA, MAI
ROBERT N. JONES, MAI
STEPHEN D. ROACH, MAI

July 14, 1999

Ms. Lucille Galvin, SR/WA
Property Agent
City of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, California 92101

Re: AP 2707 - Appraisal of *Fairbrook School Site*, Fairbrook Road at Rue Fontenay, San Diego
Jones, Roach & Caringella File No. 99089

Dear Ms. Galvin:

In accordance with your request, we have performed a complete appraisal of the as-is market value of the referenced property under a special assumption, which does not consider the potential for a rezone or community plan amendment. The subject parcel contains 12.09 acres and is currently vacant land. The purpose of this appraisal is to estimate the value of the fee simple interest in the subject property as of December 24, 1998. A proposed park site containing 3.44 acres, part of the larger parcel, was also valued.

After an examination of the subject property and market data, we have estimated the as-is market value of the fee simple in the subject, as of the effective date, as set forth on page 1 of this report.

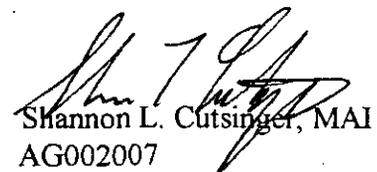
The following summary report includes a description of the subject property as well as discussions of the data and reasoning that has resulted in our opinions. This appraisal is subject to certain assumptions and limiting that are made part of this report. Acceptance and use of this report by the client or any other party constitutes acceptance of these assumptions and limiting conditions.

Thank you for this opportunity to be of service.

Sincerely,



Robert P. Caringella, MAI
AG003295



Shannon L. Cutsinger, MAI
AG002007

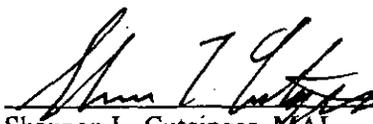
APPRAISERS' CERTIFICATE

We certify that, to the best of our knowledge and belief:

1. The statements of fact contained in this appraisal report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the attached assumptions and limiting conditions, and are my personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in the property that is the subject of this appraisal report and no personal interest or bias with respect to the parties involved.
4. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
5. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of the appraisal.
6. Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.
7. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
8. No one provided significant professional assistance to the persons signing this report.
9. We have personally inspected the property that is the subject of this report.
10. We have completed the requirements of the continuing education program of the Appraisal Institute and have received certification from the state of California as a Certified General Real Estate Appraiser.
11. We have the knowledge and experience to complete this appraisal assignment and have appraised this property type before. Please refer to the Qualifications of the Appraisers included in the Addenda for additional information.



Robert P. Caringella, MAI
AG003295



Shannon L. Cutsinger, MAI
AG002007

July 14, 1999

Date