

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO

1. CERTIFICATE NUMB (FOR AUDITOR'S US. 7131)  
AC 2800038

002069

TO: CITY ATTORNEY  
 2. FROM: (ORIGINATING DEPARTMENT) CITY PLANNING & COMMUNITY INVESTMENT  
 3. DATE July 6, 2007  
 4. SUBJECT: (MAXIMUM OF 10 WORDS) Settlement Agreement with 4S Kelwood General Partnership  
 5. PRIMARY CONTACT (NAME, PHONE, MAIL STA.) Charlene M. Gabriel (619) 533-3187 MS 606F.  
 6. SECONDARY CONTACT (NAME, PHONE, MAIL STA.) John E. Tracanna (619) 533-3682 MS 606F.  
 7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED:

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	10586				9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPARTMENT					Cost \$945,679
ORGANIZATION					
OBJECT ACCOUNT	9544				
JOB ORDER					
C.I.P. NUMBER.					
AMOUNT	\$945,679				

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	<i>Mary P. Wright, for</i> WILLIAM ANDERSON		6	DEPUTY CHIEF	<i>J. T. Waring</i> JAMES T. WARING	7/13/07
2	DSD/EAST	<i>[Signature]</i>	7/9/07	7	COO	<i>[Signature]</i>	
3	COUNCIL LIAISON	ED PLANK	7/13/07	8	CITY ATTORNEY	<i>[Signature]</i> MARK BLAKE	7/18/07
4	AUDITOR	<i>[Signature]</i>	7/18/07	9	ORIGINATING DEPARTMENT	<i>[Signature]</i>	7/18/07
5	EOCP	Exempt per memo dated 11/15/05			DOCKET COORD:	<i>[Signature]</i>	
					COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION	
						<input type="checkbox"/> REFER TO:	COUNCIL DATE: 7/31/07

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

11A. STAFF RECOMMENDATIONS:

- 1) Authorize the Mayor or his designee to enter into a settlement agreement with 4S Kelwood General Partnership regarding contributions made to the City for improvements to the intersection of Camino Del Norte & Bernardo Center Drive and;
- 2) Authorize the Auditor and Comptroller to expend up to \$1,000,000 but not less than \$945,679 from the Bernardo Center Drive Interchange Fund (10586), for the purpose of settling all claims between the City and 4S regarding contributions made to the City for improvements to the intersection of Camino Del Norte and Bernardo Center Drive, contingent upon the Auditor and Comptroller first certifying that funds necessary for said agreement are or will be on deposit in the City Treasury and;
- 3) Authorize the Auditor and Comptroller to retain any funds received subsequent to settlement for future improvements along the I-15 corridor and;
- 4) Authorizing the Auditor and Comptroller upon advice from the administering department to transfer excess funds, if any, to the appropriate reserves.

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

COUNCIL DISTRICT(S): 5

COMMUNITY AREA(S): Rancho Bernardo

ENVIRONMENTAL IMPACT: This activity is not a project and is therefore not subject to CEQA per State CEQA Guidelines, Section 15060 (C) (3)

HOUSING IMPACT: None

OTHER ISSUES: None

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EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: June 25, 2007 REPORT NO.  
ATTENTION: Council President and City Council  
Agenda of July 16, 2007  
ORIGINATING DEPT.: City Planning & Community Investment  
SUBJECT: 4S Kelwood Settlement Agreement  
COUNCIL DISTRICTS: 5  
STAFF CONTACT: John E. Tracanna, (619) 533-3682

REQUESTED ACTION:

- 1) Authorize the Mayor or his designee to enter into a settlement agreement with 4S Kelwood General Partnership regarding contributions made to the City for improvements to the intersection of Camino Del Norte & Bernardo Center Drive and;
- 2) Authorize the Auditor and Comptroller to expend up to \$1,000,000 but not less than \$945,679 from the Bernardo Center Drive Interchange Fund (10586), for the purpose of settling all claims between the City and 4S regarding contributions made to the City for improvements to the intersection of Camino Del Norte and Bernardo Center Drive, contingent upon the Auditor and Comptroller first certifying that funds necessary for said agreement are or will be on deposit in the City Treasury and;
- 3) Authorize the Auditor and Comptroller to retain any funds received subsequent to settlement for future improvements along the I-15 corridor and;
- 4) Authorizing the Auditor and Comptroller upon advice from the administering department to transfer excess funds, if any, to the appropriate reserves.

STAFF RECOMMENDATION:

- Approve the Settlement Agreement between the City of San Diego and 4S Kelwood General Partnership.

EXECUTIVE SUMMARY:

On December 7, 1987, City Council approved a Contribution Agreement between the City and 4S Partners (R-269946) whereby 4S Partners [4S] agreed to contribute \$397,892 to the City to pay 4S's portion of improvements to the intersection of Camino Del Norte & Bernardo Center Drive [Project] and on April 3, 1989 Council authorized the establishment of an interest bearing fund (R-273126) to receive the funds for the Project. The Project was anticipated to be constructed by the City as a grade-separated intersection. This was not constructed and in the mid-1990's the County and City amended their infrastructure plans to eliminate that particular road improvement. Kelwood General Partnership (4S) subsequently constructed an at-grade improvement at the intersection of Camino Del Norte & Bernardo Center Drive [New Project] at a cost to 4S of approximately \$3.6 million.

4S has requested the return of their original contribution made by it's affiliate, plus interest. While the Contribution Agreement does not require reimbursement of 4s's original contribution, the City recognizes that 4S has completed the New Project and that the return of 4S's original contribution, plus a portion of the accrued interest, is an appropriate resolution to this matter.

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To settle this matter, the City will pay to 4S an amount not less than \$945,679 of funds currently available in fund 10586, which represents the original contribution of \$397,892, plus a portion of accrued interest to date. The final amount paid to 4S will be calculated based upon the interest earnings in fund 10586 up to the time that the Auditor and Comptroller disburse the then current balance of the fund to 4S. 4S will give up all rights to funds deposited into fund 10586, or any other fund created by the City to receive those funds, after the Settlement Agreement is executed. Funds subsequently due are expected to total approximately \$66,597. Such amount will be retained by the City to pay for expenses incurred in administering the Contribution Agreement with any remaining amounts earmarked for contribution to projects within the I-15 corridor.

FISCAL CONSIDERATIONS:

Funding for the Settlement Agreement in an amount not less than \$945,679 is available from the Bernardo Center Drive Interchange Fund 10586.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

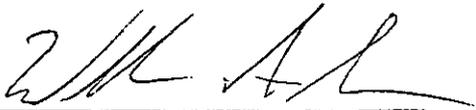
None.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:

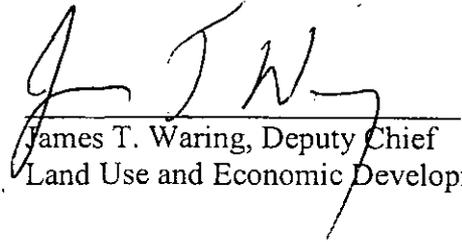
None.

KEY STAKEHOLDERS and PROJECTED IMPACTS (if applicable):

Developer will be reimbursed for the original contribution, plus interest earned to date, less administrative cost.



William Anderson, FAICP, Director  
City Planning and Community Investment



James T. Waring, Deputy Chief  
Land Use and Economic Development

WARING/ANDERSON/CMG

Attachment: Settlement Agreement and Release of Claims

The City of San Diego  
**CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

002073

**CERTIFICATE OF UNALLOTTED BALANCE**

AC 2800038

ORIGINATING

DEPT. NO.: 065

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: \$945,679.00 Fund: 10586

Purpose: Authorizing a settlement agreement with 4S Kelwood General Partnership for contributions deposited with the City for improvements to the intersections of Camino Del Norte and Bernardo Center Drive.

Date: July 18, 2007

By: Faye Ponder-Price *Faye Ponder-Price*

ACCOUNTING DATA

ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
1	0	10586			9544					\$945,679.00
TOTAL AMOUNT										\$945,679.00

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: \_\_\_\_\_

Vendor: \_\_\_\_\_

Purpose: \_\_\_\_\_

Date: July 18, 2007

By: \_\_\_\_\_

ACCOUNTING DATA

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

FUND OVERRIDE

AC 2800038

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE SETTLEMENT OF ALL CLAIMS BETWEEN THE CITY OF SAN DIEGO AND 4S KELWOOD GENERAL PARTNERSHIP REGARDING CONTRIBUTIONS MADE TO THE CITY FOR THE IMPROVEMENT OF THE INTERSECTION OF CAMINO DEL NORTE AND BERNARDO CENTER DRIVE AND RELATED ACTIONS

WHEREAS, on December 7, 1987, the City Council approved a Contribution Agreement between the City and 4S Partners whereby 4S Partners agreed to contribute to the City a sum of \$397,892 [Original Contribution] to pay 4S Partners' portion of the cost of improvements to the intersection of Camino Del Norte and Bernardo Center Drive [Project]; and

WHEREAS, the Project was not constructed, and the Original Contribution was retained by the City in an account established therefor; and

WHEREAS, 4S Kelwood General Partnership subsequently constructed a different project at the intersection of Camino Del Norte and Bernardo Center Drive; and

WHEREAS, 4S Kelwood General Partnership has requested the return of the Original Contribution made by it's affiliate, plus interest, but the Contribution Agreement does not contain provisions that address the return of 4S Partners' contribution if the Project was not completed; and

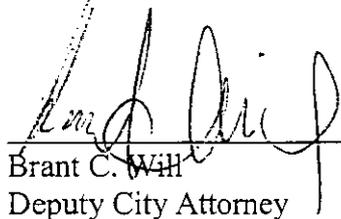
WHEREAS, the City and 4S Kelwood General Partnership have agreed that the return of the Original Contribution, less the City's cost in administering the Contribution Agreement, is an equitable resolution of this issue, and the terms of the settlement are set forth in that Settlement Agreement, on file with the Clerk as document No. \_\_\_\_\_; NOW, THEREFORE,

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

1. That the Mayor or his designee is authorized and directed to enter in a Settlement Agreement with 4S Kelwood General Partnership [Settlement Agreement] substantially in the form attached hereto.
2. That the Auditor and Comptroller is authorized and directed to expend up to \$1,000,000 but not less than \$945,679 from the Bernardo Center Drive Interchange Fund (10586) in accordance with the Settlement Agreement.
3. That the Auditor and Comptroller is authorized and directed to retain any funds paid into the Bernardo Center Drive Interchange Fund (10586) after the execution of the Settlement Agreement for future improvements along the I-15 corridor.
4. Authorizing the Auditor and Comptroller upon advice from the administering department to transfer excess funds, if any, to the appropriate reserves.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
\_\_\_\_\_  
Brant C. Will  
Deputy City Attorney

BCW:jdf  
07/03/2007  
Or.Dept:Planning Dept.  
R-2008-7

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

**SETTLEMENT AGREEMENT  
AND RELEASE OF CLAIMS**

THIS SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS (the "Agreement") is made and entered into effective this \_\_\_\_ day of July, 2007, between the City of San Diego, a municipal corporation (the "City") and 4S Kelwood General Partnership, a California general partnership ("4S"). The City and 4S may be referred to herein individually as a "Party" or together as the "Parties."

**RECITALS**

A. Pursuant to condition 1r of Tentative Tract Map No. 4478R approved by the County of San Diego (the "County") on December 19, 1984, 4-S Partners, a California limited partnership ("Partners"), was required to construct road improvements at the intersection of Camino Del Norte and Bernardo Center Drive (the "Original Road Improvements") to the satisfaction of the City. The Original Road Improvements were planned by the City and the County as a grade-separated intersection consistent with a six-lane expressway.

B. On December 7, 1987, the City Council approved Resolution No. R-269946, authorizing the City Manager to execute a certain Agreement for Contribution (the "Contribution Agreement"). The Contribution Agreement required Partners to contribute \$397,892.00 (the "Improvement Funds") to the City to pay for Partners' fair share contribution of the future construction of the Original Road Improvements. In addition, the Contribution Agreement required the City to notify the County that Partners had satisfied all City requirements in connection with condition 1r upon Partners' deposit of the Improvement Funds with the City.

C. On April 3, 1989, the City Council approved Resolution No. R-273126, establishing the interest bearing Trust Fund No. 10586, Camino Del Norte/Bernardo Center Drive Interchange Fund (the "Trust Fund"). The Improvement Funds deposited by Partners and placed by the City into the Trust Fund currently equal approximately \$950,000.00 and continue to accrue interest.

D. The Contribution Agreement and the right to any future reimbursement of the Improvement Funds have been transferred by Partners to its affiliate, 4S.

E. In the mid-1990s, the County and the City amended their infrastructure plans to eliminate the need for the Original Road Improvements based on the cancellation of the previously proposed six lane expressway. On September 17, 1999, pursuant to Tentative Tract Map No. 5066R, the County adjusted 4S's improvement obligations and instead required 4S to construct at-grade improvements at the Camino Del Norte and Bernardo Center Drive intersection (the "Final Road Improvements") in lieu of the Original Road Improvements. In 2005, 4S paid for the construction of the Final Road Improvements at an approximate cost of \$3.6 million. Now that the Final Road Improvements have been completed and the construction of the Original Road Improvements is no longer necessary, the need for the Improvement Funds no longer exists.

F. The City asserts that the Contribution Agreement does not expressly require reimbursement of the unused Improvement Funds to 4S.

G. 4S asserts that the City is required to reimburse the Improvement Funds to 4S, plus all interest accrued since the date the Improvement Funds were first deposited with the City. 4S bases this assertion on, among other things: (i) language in Resolution No. R-269946 which shows that the purpose of the Contribution Agreement was to assure Partners' fair share contribution to the future construction of the Original Road Improvements; (ii) language in the Contribution Agreement which indicates that the Improvement Funds were to be used to construct the Original Road Improvements in order to satisfy condition 1r of the County's Tentative Tract Map No. 4478R; (iii) the completion by 4S of the Final Road Improvements, rendering both the Original Road Improvements and the Improvement Funds unnecessary; and (iv) language in the Form 1472 and docket supporting information for Resolution No. R-273126 prohibiting the use of the Improvement Funds for any purpose other than for the Original Road Improvements.

H. This Agreement is entered to resolve all outstanding issues between the Parties regarding the Contribution Agreement and the Improvement Funds. The City's Planning and Community Investment Department, the City Attorney's office, and 4S hereby confirm that this Agreement is a fair and equitable settlement of the issues raised herein.

#### AGREEMENT

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

1. Each recital and definition set forth above is incorporated herein by reference and is made a part of this Agreement. City represents and warrants the truth, accuracy and completeness of the trust fund analysis completed by the City as set forth on Exhibit A. City acknowledges that 4S is relying on the truth of the information stated in Exhibit A and would not enter this Agreement but for the foregoing representation and warranty by City.

2. City agrees to use best efforts to place this matter on the docket for consideration and vote on the first available meeting of the City Council after this Agreement is executed by the Parties, and the City reasonably expects that this Agreement will be considered by the City Council in July 2007. If the City Council does not vote and accept the terms of this Agreement by September 30, 2007, this Agreement shall be null and void.

3. Within thirty (30) days after the approval of this Settlement Agreement by the City Council (the "Disbursement Date"), the City shall pay to 4S all of the Improvement Funds in the Trust Fund, plus all interest accrued thereon from the date the Improvement Funds were first deposited with the City to the date the funds are paid to 4S, by wire transfer of immediately available U.S. funds in accordance with the instructions set forth on Exhibit B, in an amount not less than Nine Hundred Forty-Five Thousand Six Hundred Seventy-Eight Dollars and Ninety Five Cents (\$945,678.95). Concurrently with the payment of the Improvement Funds plus interest to 4S, the City shall deliver to 4S a written statement and accounting for all monies held in the Trust Fund certified as accurate and true by the City's Facilities Financing Manager. The

written statement shall show the dates and amounts of all periodic interest that has accrued on the Improvement Funds from the date of initial deposit through the date the monies are paid to 4S. The written statement, and any other notices required to be delivered to 4S hereunder, shall be sent to the following address: 4S Kelwood General Partnership, 10815 Rancho Bernardo Road, Suite 310, San Diego, California 92127, Attention: Michael L. Rust.

4. City shall be entitled to retain funds deposited into the Trust Fund after the Disbursement Date (which the City has advised as of the date of this Agreement is approximately \$66,000) as an administrative fee for its responsibilities in administering the Trust Fund and in full settlement of all claims to any other monies deposited from time to time in the Trust Fund.

5. Except for the terms and conditions of this Agreement, in exchange for the consideration herein, each Party hereto fully releases, acquits and discharges the other Party from all rights, claims, liabilities, demands, damages, actions, compensation, costs or causes of action which they now have, or may have, arising out of (a) the Contribution Agreement; or (b) any act or omission of the Parties or any of their agents or employees relating to the Contribution Agreement.

A. This release is intended as a full and complete release and discharge of any and all such claims that each Party may or might have against the other Party arising from the facts and circumstances arising out of the matters described in clauses (a) and (b) of Section 5 above.

B. In making this release, each Party intends to release the other Party from any liability of any nature whatsoever for any claim or injury or for damages or equitable or declaratory relief of any kind, whether the claim, or any facts on which such claim might be based, is known or unknown, arising from the facts and circumstances arising out of the matters described in clauses (a) and (b) of Section 5 above.

C. In connection with the foregoing release and discharge, each Party expressly waives all rights it has under section 1542 of the California Civil Code which provides as follows:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

D. Each Party acknowledges that such Party may hereafter discover facts different from, or in addition to, those which such Party now believes to be true with respect to the release of the claims described in clauses (a) and (b) of section 5 above.

E. Each Party agrees that the foregoing release shall be and remain effective in all respects notwithstanding such different or additional facts or any discovery thereof.

F. The foregoing release and discharge by the City shall apply to 4S, as well as Partners, 4S Ranch Company 1700, a California limited partnership, Kelwood Development

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Company, LLC, a Delaware limited liability company, Newland-IHP Ventures, LLC, a Delaware limited liability company, Newland Communities, LLC, a Delaware limited liability company, NCC, LP, a California limited partnership, and any direct or indirect partner, shareholder, member, manager, officer, director, trustee, agent or employee of 4S or any of the foregoing named entities.

6. Each party to this Agreement shall bear its own attorneys' fees and costs incurred in connection with the matters released herein.

7. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by all of the Parties.

8. The agreements contained herein shall not be construed in favor of or against either Party, but shall be construed as if all Parties prepared this Agreement.

9. Each Party will execute such other and further documents and instruments as may be necessary or proper in order to consummate this Agreement. Both the City Attorney's office and the City Planning and Community Investment Department hereby covenant to 4S to support and recommend approval of the terms and conditions of this Agreement and all reports to be submitted to the City Council regarding this Agreement will reflect the same. Whenever under this Agreement a Party may or must approve or disapprove any document, action or other matter prepared or to be taken by the other Party, such approval shall not be unreasonably withheld unless otherwise expressly set forth in this Agreement.

10. With respect to the matters settled herein, this Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements between the Parties. It is understood that there are no oral or written agreements or representations between the Parties hereto affecting this Agreement, and that this Agreement, supersedes and cancels any and all previous negotiations, arrangements, representations, estimates, agreements and understandings, if any, made by or between the Parties with respect to the subject matter thereof.

11. Each Party agrees that this settlement is made in compromise of disputed claims, and that by entering into and performing the obligations of this Agreement, no Party concedes or admits the truth of any claim or any fact and the execution and performance of this Agreement shall not be construed as an admission by any Party.

12. The laws of the State of California shall govern this Agreement and venue shall be in any court of competent jurisdiction in the County of San Diego, California.

13. Time is of the essence of each and every provision of this Agreement.

14. If any portion of this Agreement shall become illegal, null, or void or against public policy for any reason or shall be held by any court of competent jurisdiction to be illegal, null, or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the full extent permissible by law.

15. The waiver by one Party of the performance of any covenants, condition, or promise shall not invalidate this Agreement, nor shall it be considered as a waiver by such Party

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of any other covenant, condition, or promise hereunder. The waiver of the time for performing any act shall not constitute a waiver of the time for performing any other act or identical act required to be performed at another time. The exercise of any remedy shall not preclude the exercise of any other remedies any of the Parties may have at law or in equity.

16. Should either of the Parties institute any action or proceeding to enforce any provision of this Agreement or for damages by reason of any alleged breach of any provisions of this Agreement, the prevailing Party shall be entitled to recover such amounts as the court may judge to be reasonable attorneys' fees and costs for services rendered to the prevailing Party in such action or proceeding.

17. The individuals signing this Agreement on behalf of each Party represent and warrant that they have full authority and are duly authorized to do so on behalf of the Party they represent.

18. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same Agreement. Facsimile signatures will have the same force and effect as original signatures.

19. By execution of this Agreement, the parties confirm that each has been represented by counsel and has received the advice of counsel with respect to the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement with the intent to be bound hereto.

THE CITY OF SAN DIEGO,  
a municipal corporation

4S KELWOOD GENERAL PARTNERSHIP,  
a California general partnership

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: Kelwood Development Company, LLC,  
a Delaware limited liability company,  
its Managing General Partner

Approved as to form and legality this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Michael L. Rust  
Vice President

MICHAEL AGUIRRE, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

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EXHIBIT A

**Bernardo Center Drive/Camino del Norte Interchange Fund 10586**

**Fund Analysis**

**As of April 06, 2007**

<u>Revenues:</u>	<u>Date</u>	<u>Amount</u>
4S Kelwood General Partnership Original Contribution	5/9/1989	\$397,892.00
Interest Earnings	5/09/89 - 12/05/05	<u>590,350.29</u>
<b>Cash balance at time of transfer to Caltrans</b>	12/5/2005	<u><b>988,242.29</b></u>
Less: Funds advanced to Caltrans for Auxiliary Lanes on I-15	12/5/2005	-959,461.00
 <b>Balance after transfer to Caltrans</b>		 <b>\$28,781.29</b>
 <u>Post Transfer Revenues:</u>		
Interest Earnings (12/06/05 - 4/06/07)		20,993.16
Developer Contribution - Maranatha		794,459.00
Developer Contribution - Santa Fe Lakes Partners (McCrink)		<u>101,445.50</u>
<b>Total Revenues collected since transfer to Caltrans</b>		<b>916,897.66</b>
 <b>Cash balance @ 4/06/07 available for reimbursement to 4S Kelwood</b>	<b>(Proposed Settlement Amount)</b>	 <b>\$945,678.95</b>

<b>Cash Balance vs. amount advanced to Caltrans</b>	<b>(13,782.05)</b>
<b>Imputed interest lost from advance to Caltrans (12/05/05 - 4/06/07)</b>	<b>(52,815.64)</b>
<b>Amount of funds due to fully reimburse 4S Kelwood (Proposed amount to City)</b>	<b>(\$66,597.69)</b>

488 days of interest on \$959,461 advance to Caltrans \*

\* Based on City Treasurer's average investment rate from December 2005 - January 2007.

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EXHIBIT B

**Wire Instructions for Payment**

California Bank & Trust  
4320 La Jolla Village Dr., Ste. 100  
San Diego, CA 92122-1204  
Account #2120068821  
ABA #122232109

# 4574260\_v4