

001291

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER 341  
(for auditor's use only) 05/27

TO:  
CITY ATTORNEY

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

3. DATE  
May 5, 2008

4. SUBJECT:  
Agreement with Burgener-Clark, LLC for the Construction and Maintenance of the Clairemont Drive Median  
(Companion to Redevelopment)

5. Primary Contact (Name, Phone & Mail Sta.)  
Lydia Goularte-Ruiz, 619-236-6539, 56D

6. Secondary Contact (Name, Phone & Mail Sta.)  
Robert Chavez, 619-236-6263, 56D

7. Check BOX if REPORT TO COUNCIL IS ATTCHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	980781		
DEPT.			
ORGANIZATION			
OBJECT ACCOUNT	78950		
JOB ORDER			
C.I.P. NUMBER			
AMOUNT	100,000		

9. ADDITIONAL INFORMATION/ESTIMATED COST:  
Fiscal Impact: City to Receive \$100,000, to be deposited into an interest bearing fund for the ongoing maintenance of the Clairemont Drive Median.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVING SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVING SIGNATURE	DATE SIGNED
1	Finance Specialist	Scott Mercer	5/5/08	8	Auditor	Rolando Charvel	5/13/08
2	Assistant Director, CPCI, Redevelopment	Janice L. Wehrick	5/5/08	9	City Attorney	Carol Leone	5/12/08
3	Deputy Chief Operating Officer, Executive Director City Planning & Development	William Anderson	5/11/08	10	Originating Department	Lydia Goularte-Ruiz	5/12/08
4	Park & Recreation	Stacey D. Medico	5/8/08				
5	Financial Management	Julio Canizal	5/8/08				
6	EAS	Martha Blake	5/14/08	11	Docket Coord: _____ Council Liaison: [Signature]		5/14/08
7	EOCP	Beryl Rayford	5/15/08		COUNCIL PRESIDENT [Signature]	<input type="checkbox"/> Spob <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION	COUNCIL DATE: 5/27/08

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

- Authorize the City Auditor and Comptroller to establish a special interest-bearing Fund for the purpose of funding on-going, long-term maintenance of the Clairemont Drive Median.
- Authorize the Auditor and Comptroller to acceptance a one-time payment of \$100,000 from Burgener-Clark, LLC to be deposited in the special interest-bearing Fund for the long-term maintenance of the Clairemont Drive Median.
- Authorize the Auditor and Comptroller to expend funds in the amount of \$5,000, adjusted for inflation, from the special interest-bearing Fund for maintenance costs of the Clairemont Drive Median.
- Make necessary findings and authorize the Auditor and Comptroller to expend North Bay tax increment to finance the construction of the Clairemont Drive Median.

DOCKET OF: May 27, 2008

11a. STAFF RECOMMENDATIONS:

Approve the resolution(s)

12. SPECIAL CONDITIONS (REFER TO A.R. 3:20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 6

Community Planning Area(s): Clairemont Mesa

Environmental Impact:

This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15060 (c)(3)

Housing Impact: None with this action

Other Issues: None with this action.

City Clerk Instruction: Please send copies of the resolution(s) to Jeannette Santos, MS 56D and Lydia Goularte-Ruiz, MS 56D

001293

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: May 21, 2008

ATTENTION: Honorable Chair and Members of the Redevelopment Agency  
Council President and Members of the City Council  
Docket of May 27, 2008

ORIGINATING DEPARTMENT: City Planning and Community Investment,  
Redevelopment Division

SUBJECT: Agreement with Burgener-Clark LLC for the Construction and Maintenance  
of the Clairemont Drive Median

COUNCIL DISTRICT(S): 6

STAFF CONTACT: Lydia Goularte-Ruiz, (619) 236-6539, [lgoularteruiz@sandiego.gov](mailto:lgoularteruiz@sandiego.gov)  
Robert Chavez, (619) 236-6263, [rchavez@sandiego.gov](mailto:rchavez@sandiego.gov)

REQUESTED ACTION:

For the Agency:

1. Authorize the Executive Director, or designee, to execute an Agreement with Burgener-Clark, LLC for the construction of the Clairemont Drive Median.
2. Authorize the expenditure of \$215,000 of North Bay tax increment for the construction of the Clairemont Drive Median.
3. Make necessary findings and authorize the use of North Bay tax increment to finance the construction of the Clairemont Drive Median.

For the Council:

1. Authorize the City Auditor and Comptroller to establish a special interest-bearing Fund for the purpose of funding on-going, long-term maintenance of the Clairemont Drive Median.
2. Authorize the Auditor and Comptroller to accept a one-time payment of \$100,000 from Burgener-Clark, LLC to be deposited in the special interest-bearing Fund for the long-term maintenance of the Clairemont Drive Median.
3. Authorize the Auditor and Comptroller to expend funds up to the amount of \$5,000, adjusted for inflation, funds from the special interest-bearing Fund for maintenance costs of the Clairemont Drive Median.
4. Make necessary findings and authorize the Auditor and Comptroller to expend North Bay tax increment to finance the construction of the Clairemont Drive Median.

STAFF RECOMMENDATION:

That the City Council and Redevelopment Agency approve the resolutions.

EXECUTIVE SUMMARY:

It is proposed that the Redevelopment Agency (the Agency) enter into an agreement with Burgener-Clark, LLC (the Developer) for the construction of the Clairemont Drive median improvements (the Median) - (see Attachment 1 - Participation Agreement). Development costs for the Median are estimated not to exceed \$215,000.

The Median is located in front of the Developer's proposed development of a new 75,000 square foot retail center (Bayview Plaza Project), fronting Clairemont Drive, between Morena Boulevard and Denver Street. It is proposed that the Developer be reimbursed for Median costs including design, construction, and landscaping. The Developer will be reimbursed up to \$215,000 for the

improvements, to be funded by tax increment from the North Bay Project Area. With respect to ongoing maintenance, it is proposed that the Developer make a one-time payment to the City of San Diego (the City) of \$100,000 to be deposited in a special interest bearing account for funding the maintenance of the Median. The Park and Recreation Department would assume custody of the endowment funds and maintain the Median. According to the City's Investment Office, the \$100,000 deposit will cover maintenance costs for a minimum period of 20 years. Prior to the exhaustion of the endowment fund, if a new maintenance vehicle (e.g. Maintenance Assessment District) is not identified, funds from the endowment fund should be used to remove the landscaping and restore the median to its prior condition.

The current Clairemont Drive median is deficient and exhibits blighted conditions that have existed since the adoption of the North Bay Redevelopment Plan in 1998. It is anticipated that the Median will provide safer ingress and egress for vehicular traffic flow on Clairemont Drive because of its traffic calming features. With new landscaping and a community welcome sign, the Median will enhance the aesthetic appearance of the entryway into the Clairemont community from two Interstate-5 off-ramps. In addition, these improvements could serve to stimulate economic activity for the commercial area.

The Median is proposed to be constructed concurrently with the Developer's construction of the Bayview Plaza Project. It is projected that the Median will be completed no later than June 2009.

Finally, pursuant to California Community Redevelopment Law (CCRL), Section 33445, the Agency is legally authorized to pay for the construction of public improvements within a project area when certain legal findings can be made by the Agency. Attachment 2 – Special Findings provides the necessary findings to satisfy the requirements under CCRL Section 33445.

FISCAL CONSIDERATIONS:

Total project costs are estimated at \$215,000. Funding is available from North Bay Redevelopment Project Area tax increment. Funding from the special interest bearing account associated with this action will pay for the on-going maintenance of the Median.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None

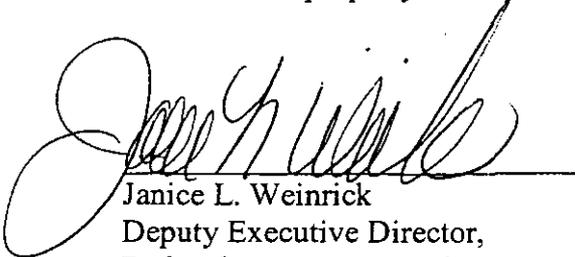
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The North Bay PAC voted 6-2-1, to recommend funding for the Clairemont Drive median improvements at its April 23, 2008 meeting.

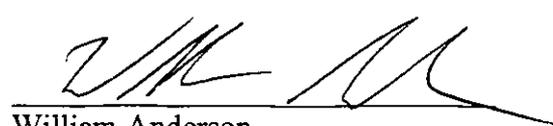
The Clairemont Mesa Community Planning Group supports the project.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Business and property owners near the proposed Clairemont Drive median improvements.



Janice L. Weinrick  
Deputy Executive Director,  
Redevelopment Agency/  
Assistant Director City Planning  
and Community Investment,  
Redevelopment Division



William Anderson  
Assistant Executive Director,  
Redevelopment Agency/  
Deputy Chief Operating Officer  
Executive Director of City Planning and  
Development

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

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

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO ESTABLISHING A SPECIAL INTEREST-BEARING FUND; ACCEPTING A ONE-TIME PAYMENT FOR THE ESTABLISHMENT OF THE SPECIAL INTEREST-BEARING FUND; AND MAKING CERTAIN FINDINGS WITH RESPECT TO THE USE OF TAX INCREMENT TO FUND THE CLARIEMONT DRIVE MEDIAN IMPROVEMENTS.

WHEREAS, the Council of the City of San Diego [City] implements projects to improve economic and physical conditions in the City of San Diego; and

WHEREAS, the Redevelopment Agency of the City of San Diego [Agency] and City desire to cooperate in the construction of public improvements designed to enhance the appearance, functionality, and safety of existing conditions in the North Bay Redevelopment Project Area [Project Area]; and

WHEREAS, City wishes to establish a special interest-bearing fund for the purpose of maintaining the Clairemont Drive median improvements and authorize yearly appropriations to pay for the maintenance of the median improvements; NOW, THEREFORE,

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

1. That the Council finds and determines: (a) that the Clairemont Drive median improvements are of benefit to the North Bay Redevelopment Project Area; (b) that no other reasonable means for financing is available to the community; (c) that the Project will assist in eliminating one or more blighting conditions in the Project Area; and (d) that the Project is consistent with the Implementation Plan adopted for the Project by the Agency July 29, 2003 on file as Document No. 03664 in the office of the Secretary to the Agency pursuant to California Health and Safety Code Section 33490. These findings are set forth in more detail in Attachment 1 hereto.

2. That the City Auditor and Comptroller are authorized to establish a special interest-bearing fund for the purpose of funding on-going, long-term maintenance of the Clairemont Drive median.

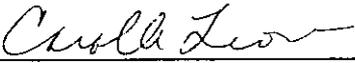
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3. That the City Auditor and Comptroller are authorized to accept a one-time payment of \$100,000 from Burgener-Clark, LLC to be deposited in the interest-bearing Fund for the long-term maintenance of the Clairemont Drive median.

4. That the City Auditor and Comptroller are authorized to appropriate and expend up to \$5,000 per fiscal year, adjusted for inflation, from the special interest-bearing fund for maintenance of the Clairemont Drive median, contingent upon the Auditor and Comptroller certifying funds are available.

BE IT FURTHER RESOLVED that this activity is exempt from CEQA pursuant to State CEQA Guidelines Section 15060 (c) (3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Carol A. Leone  
Deputy City Attorney

CAL:cfq  
05/06/08  
Or.Dept:RA  
R-2008-1026  
Redevelopment:Companion RA-2008-133  
MMS#6220

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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

**Findings  
(Health & Safety Code § 33445)  
North Bay Redevelopment Project Area**

SUBJECT IMPROVEMENTS:  
CLAIREMONT DRIVE MEDIAN IMPROVEMENTS

The following findings are for the construction of the Clairemont Drive median improvements in the Clairemont community within the North Bay Redevelopment Project Area.

I. FINDINGS OF BENEFIT

The subject improvements for which the Redevelopment Agency of the City of San Diego ("Agency") proposes to pay will benefit the North Bay Redevelopment Project Area in that:

- A. The improvements are within the North Bay Redevelopment Project Area.
- B. The improvements will enhance portions of the North Bay Redevelopment Project Area for the benefit of residents, visitors, and merchants.
- C. The improvements will provide improved traffic mobility and pedestrian safety along a commercial and transit corridor.

II. NO OTHER REASONABLE MEANS OF FINANCING

There are no other reasonable means available to the community for financing the subject improvements for which the Agency proposes to pay in that:

City of San Diego

- A. The City's Capital Improvement Budget is funded with water and sewer fees, a half-cent local sales tax for transportation improvements, development impact fees, State and Federal grants and/or the issuance of bonds. The Fiscal Year 2008 Adopted Capital Improvements Program (CIP) Budget totals \$491.6 million, which is an increase of \$197.9 million from the Fiscal Year 2007 Annual Budget.
- B. Priorities of the City's CIP budget are to address deferred maintenance projects, which according to the City's 2009-2013 Five-Year Financial Outlook (January 2008) is estimated to be at least \$800 to \$900 million, excluding Water and Wastewater.

- A. The Agency's Budget was developed in accordance with City and Council Policy, and each project activity was evaluated and incorporated in the respective budgets. The Fiscal Year 2008 Annual Budget for City Redevelopment totals \$128.2 million. Of this amount, \$91.4 million is comprised of new funds with \$36.8 million carrying over from the previous year. The Agency also secured a \$70.0 million three-year line of credit through San Diego National Bank. This line of credit will be drawn upon to cover an estimated \$47.0 million of redevelopment project expenditures during Fiscal Year 2008. Tax increment to be generated in Fiscal Year 2008 in the City Redevelopment areas is estimated to exceed \$39.2 million.
- B. The cost of the Clairemont Drive median improvements in the Clairemont community is approximately \$215,000 (estimate). There are currently no funds allocated in the 2008 CIP Annual Budget to fund this Project. The Redevelopment Agency shall contribute up to \$215,000 of North Bay Redevelopment Project Area tax increment funds to finance these improvements.
- C. Funding from the CIP Budget for this project is presently unavailable as all available CIP funds for this fiscal year have been allocated to other priority public infrastructure projects.
- D. Revenue forecasts for Fiscal Year 2008 suggest that the rate of growth of the City's primary sources of revenue is expected to continue to show growth, though at a slower pace, and is expected to exceed the State and national economic trends from Fiscal Year 2007.

## II. ELIMINATION OF BLIGHTING CONDITIONS

The payment of Agency funds toward the cost of the improvements will assist in the elimination of one or more blighting conditions inside the North Bay Redevelopment Project Area in that:

- A. The improvements will help to eliminate physical blighted conditions as the improvements will correct and upgrade substandard and deteriorated infrastructure and will improve traffic mobility and pedestrian safety.
- B. The improvements will upgrade deficient public right-of-way space by the construction of the Clairemont Drive median.
- C. The improvements will upgrade public infrastructure that does not meet City's standards for commercial, business and transit corridors.

- D. The improvements will help eliminate economic blighted conditions in that the traffic mobility and pedestrian safety will be enhanced, provide incentive for private investment, and improved maintenance in the surrounding area.

III. FINDINGS OF CONSISTENCY WITH IMPLEMENTATION PLAN

The payment of Agency funds toward the cost of the improvements are consistent with the Second Five-Year Implementation Plan for the Project Area, adopted pursuant to Health and Safety Code Section 33490, in that:

- A. The improvements are consistent with the Second Implementation Plan for the North Bay Redevelopment Project, which is recorded with the Agency as Document No. D-03664 and dated July 29, 2003, in that the improvements address the Implementation Plan's specific goals and objectives including:
  - i. Eliminate and prevent the spread of blight and deterioration, and conserve, rehabilitate, and redevelop the Project Area in accordance with the General Plan, specific plans, and local codes and ordinances;
  - ii. *Improve, promote, and preserve the positive neighborhood characteristics in North Bay, while correcting physical and economic deficiencies in the community;*
  - iii. Enhance pedestrian and vehicular mobility, and improve transportation facilities in compliance with ADA regulations;
  - iv. Enhance infrastructure facilities which improve the community and support public safety, health, and local vitality; and
  - v. Build public improvements to eliminate physical and economic conditions of blight.

PARTICIPATION AGREEMENT  
FOR THE FUNDING AND CONSTRUCTION OF  
IMPROVEMENTS TO THE CLAIREMONT DRIVE MEDIAN

This Participation Agreement for the funding and construction of improvements to the Clairemont Drive median [Project] on Clairemont Drive in San Diego [Agreement] is made by the Redevelopment Agency of the City of San Diego [Agency], a public entity, corporate and politic, and Burgener-Clark, LLC [Developer], a California limited liability company, whose mailing address is 4180 La Jolla Village Drive, suite 405, La Jolla, California 92037 [individually referred to as "Party" and collectively the "Parties"].

RECITALS

- A. Improvements to the Clairemont Drive Entryway has been identified in the Community Plan for the area, and implementing improvements to the entryway is a community priority. The Redevelopment Plan and Implementation Plan for the North Bay Redevelopment Project Area [Project Area] identify improvements to medians and entryways to the Project Area as redevelopment goals.
- B. Developer is in the process of constructing the Bay View Plaza, which is the redevelopment of a retail center along the south side of Clairemont Drive, adjacent to the Clairemont Drive median Project. The Clairemont Drive median Project is not part of nor a condition of Developer's Bay View Plaza.
- C. Both the Agency and the Developer find it in their best interests to enter into an agreement to implement improvements to the Clairemont Drive median. Developer has agreed to contract for the construction of the Project and provide to the City of San Diego [City] funding for subsequent maintenance of the Project, and Agency has agreed to provide the necessary funding for construction of the Project, consistent with the terms of this Agreement.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties as herein expressed, Agency and Developer agree as follows:

AGREEMENT

1. Description of Improvements:

Developer shall contract for the design, construction, and landscaping of the Project, approximately 700 linear feet along Clairemont Drive. The Project will include trees, shrubs, irrigation, decorative pavers, entry way monument sign, and other improvements as depicted in Exhibit A and described in the scope of work as Exhibit A-1.

An entry way monument sign is included in the scope of work as an additive alternate that Developer will construct as part of the Project, so long as there is sufficient funding remaining in the Project budget after construction of all other improvements.

2. Construction of Improvements:

- 2.1 Time for Completion. The Developer shall complete the design and construction called for in Section 1 above no later than June 1, 2009.
- 2.2 License Requirements. Developer shall select and retain duly licensed and qualified professionals to complete the Project. The Contractor engaged by Developer must be licensed in the State of California. Developer contemplates using Legacy Construction Company, Inc. as the contractor to be engaged for the Project (California contractor license number \_\_\_\_\_).
- 2.3 Standard of Performance. The Project shall be constructed in a good and Workmanlike manner to the satisfaction of the Agency, lien free and in compliance with the approved plans and specifications, and the *Standard Specifications for Public Works Construction*, current edition, including regional and City supplements thereto (the "Greenbook"). In the event of conflict between the approved plans and the Greenbook, the former will govern. To the extent it is feasible and prudent to do so, Developer shall use reasonable efforts to schedule the delivery of materials to the project site to coincide with their installation. Developer shall comply with all laws, including but not limited to: all local, city, county, state, and federal laws, codes and regulations, ordinances, and policies, including but not limited to, Planning and Development Review Department permits, hazardous material permits, site safety, etc. In addition, Developer shall comply immediately with all directives issued by Agency, the City of San Diego or their authorized representatives under authority of such laws, statutes, ordinances, rules or regulations, provided, however, that no such directive may unilaterally modify the scope of work for the Project.
- 2.4 Records. Accurate and legible records shall be kept on a set of project blue-line prints or CAD file of all work which occur during Project construction. All information necessary to maintain and/or service the Project shall be noted on the record drawings. Records shall be kept up to date with all entries checked by the City Engineer. Prior to acceptance, Developer shall deliver this redline "as-built" information to the City Engineer. City or its authorized agent's review of documents, plans, and specifications not prepared by the City does not constitute an approval or establish a basis for liability on the part of the City.
- 2.6 Acceptance of the Project. When the Developer considers the Project complete, the Developer shall notify the Agency in writing of same. The Developer shall attach to this notice a list of any items that remain to be completed. Within a reasonable time thereafter, the Agency shall inspect the Project to determine the status of completion. If the Agency does not consider the Work substantially complete, the Agency will notify the Developer in writing giving the reasons

therefore. If the Agency considers the Project substantially complete, a Notice of Substantial Completion will be prepared, which shall fix the date of substantial completion. Attached to the notice will be a tentative list of items to be completed or corrected before final payment to the Developer. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by the Agency of any defects in the Project. From and after acceptance, the Project shall be owned and operated by the City.

- 2.7 Prevailing Wages. Developer shall carry out the construction of the Project in conformity and compliance with all applicable laws, including, without limitation, all applicable federal and state labor laws (including any applicable requirement to pay state prevailing wages). Developer expressly acknowledges and agrees that the construction of the improvements is subject to the provisions of applicable laws requiring payment of prevailing wages and that Developer shall comply with all applicable rules and procedures relating to the payment of prevailing wages.
3. Advance of Costs. Developer shall pay all costs for the construction of the Work as such work is completed, subject to reimbursement by the Agency in accordance with this Agreement.
4. [reserved]
5. Payment Amount. Agency shall pay Developer for the actual cost of the construction of the Project. The total payment to Developer shall not exceed Two Hundred Fifteen Thousand Dollars (\$215,000.00) [Maximum Cost], without written amendment to this Agreement. A Project Budget is attached as Exhibit C.
6. Reimbursement Requests. Developer may submit periodic pay requests with respect to all work performed for which Developer was not previously paid, not to exceed the Maximum Cost. One request will be made for each of three phases of the project: (a) design, (b) hardscape construction and (c) landscaping. The amount requested shall be for all authorized costs and expenses incurred during the period for which payment is requested. Developer shall supply paid invoices, paid receipts or canceled checks, and an updated spreadsheet and other similar support documentation and conditional mechanics' lien releases (if applicable) in connection with each payment request. The Agency may cause its inspector to verify whether or not the work for which payment is being requested has been installed and performed as represented in the payment request.
7. Reimbursement Payments. Within 30 days after Developer submits a reimbursement request, Agency shall reimburse Developer the amount requested under Paragraph 6 of this Agreement, provided that Agency's Project Manager has verified that the Work for which reimbursement is being requested has been performed as represented in the reimbursement request, and subject to the retention provided for in Paragraph 8 of this Agreement.

8. Retention. Payments by the Agency for construction will be subject to a ten percent (10%) retention, held until sixty (60) days after a Notice of Completion for the project is recorded. The retention shall be released to the Developer 60 days after the Notice of Completion is recorded, if there are no outstanding liens recorded against the Project. The retention shall not be released for the amount of any outstanding liens recorded against the Project, until such time as the lien(s), if any, have been resolved.
9. [reserved]
10. Force Majeure. In the event the Project is delayed due to causes which are outside the control of the Parties and their agents, and could not be avoided by the exercise of due care, which may include war, terrorist attack, act of God, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of the Project, inability to obtain materials, labor or equipment, required extra work, or other specific events as may be further described in the Specifications, the Developer will not be entitled to an increase in the cost of the Project, but will be entitled to an extension in time equivalent to the length of delay.
11. Maintenance Fund. Developer agrees to contribute to the City of San Diego, One Hundred Thousand Dollars (\$100,000.00) to be placed in an interest-bearing maintenance endowment fund for future project maintenance costs. Within ten (10) days of substantial completion of the Project as established by the Notice of Substantial Completion prepared in accordance with Paragraph 2.6 of this Agreement, Developer will deposit \$100,000.00 with the City as an endowment for the purpose of providing funding for future maintenance needs of the Project. The endowment fund will be administered by the City.
12. [reserved]
13. Guarantees. All materials and equipment shall be new and of industrial quality. Developer guarantees all work and improvements, including plants and vegetation, for a period of one year after the date of substantial completion and shall repair and replace any and all improvements, together with any other improvements which may be displaced in so doing, that may prove defective in workmanship and/or materials within the one-year period, without expense whatsoever to the Agency, ordinary wear and tear and usual abuse or neglect excepted. In the event of failure to comply or making reasonable progress towards complying with the abovementioned conditions within one week after being notified in writing, the Agency may take corrective action at the expense of the Developer who hereby agrees to pay the costs and charge therefore immediately upon demand.
14. Notice. Any notice to be given or other document to be delivered by any Party to the other hereunder, may be delivered in person, or may be deposited in the United States mail in the State of California, duly certified or registered, return receipt requested, with postage prepaid, or by Federal Express or other similar overnight delivery service or by facsimile transmission and addressed to the party for whom intended, as follows:

If to Agency, to:

North Bay Redevelopment Area Project Manager  
 Redevelopment Agency of the City of San Diego  
 1200 Third Avenue  
 Suite 1400  
 San Diego, CA 92101  
 Fax: (619) 533-3219

If to Developer, to:

Craig W. Clark  
 Burgener-Clark, LLC  
 c/o C.W. Clark, Inc.  
 4180 La Jolla Village Dr., Suite 405  
 La Jolla, CA 92037  
 Fax: (858) 453-7260

15. Records. The Developer shall preserve and maintain the following records, and allow the Agency to inspect and copy such records upon reasonable notice.
- 15.1 Plans and Specifications. The Developer shall preserve and maintain any plans and specifications prepared by or through the Developer until completion of the Project, and shall deliver the same to Agency. Accurate and legible records shall be kept on a set of project blue-line prints of all changes to the project which may have occurred during project construction. All information necessary to maintain and/or service any concealed work shall be noted on the record drawings. Prior to final payment, the Developer shall deliver the "as-built" information to the Agency.
- 15.2 Costs. Developer shall keep an accurate record of the actual cost of the Project in accordance with generally accepted accounting procedures, including without limitation, all negotiated offers, proposals and invoices. Cost records and backup documentation shall be kept by Developer for four (4) years after the completion of the Project.
16. Hold Harmless and Indemnify. Developer agrees to defend, indemnify, protect and hold Agency, City and their agents, officers and employees harmless from and against any and all claims asserted or liability arising under, by reason of, or incidentally to this Agreement or any performance of the work, and for damages or injuries to any person or property, including injury to Developer's and Contractor's employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of Developer, Contractor, and their agents, officers or employees, in performing the services herein, and all expenses of investigating and defending against same; provided, however, that Developer's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the Agency, the City, or their agents, officers or employees.
17. Attorney's Fees and Costs. If litigation is brought by either party to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs. Attorney's fees and costs incurred pursuant to mediation under this Agreement are not recoverable.

18. Liability Insurance. At all times during the term of this Agreement, the Developer shall maintain insurance coverage as required by Exhibit "B," hereby incorporated by reference, at Developer's sole cost and expense. The Developer shall require the Contractor to maintain the same insurance coverage. Before performing any work, the Developer shall provide the Agency with copies of all Certificates of Insurance accompanied by all endorsements. Developer shall be responsible for the payment of all deductibles and self-insured retentions. Developer shall notify the Agency 30 days prior to any material change to the policies of insurance.
19. Mediation:
- 19.1 Mandatory Mediation. If a dispute arises out of, or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association or any other neutral organization agreed upon before having recourse in a court of law.
- 19.2 Expenses. 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 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.
- 19.3 Mediation Results. Any resultant agreements from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
20. Equal Employment Opportunities and Equal Opportunity Contracting.
- 20.1 Equal Employment Opportunity Nondiscrimination. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure that their prime contractors and their subcontractors comply with this program. Nothing in this section shall be interpreted to hold Developer or a prime contractor liable for any discriminatory practice of its subcontractors.
- 20.2 Equal Employment Opportunity Duty to Submit Reports. Developer shall submit to the Equal Opportunity contracting program a Work Force Report or an Equal Employment Opportunity Plan approved by the program manager prior to tendering the signed contract documents to the City for signature.

- 20.3 Equal Opportunity Contracting Nondiscrimination. Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Developer understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. The language of this Subsection shall be inserted in direct contracts between Developer and any of its contractors, subcontractors, vendors, or suppliers.
- 20.4 Local Contracts/Investigation. Upon Agency's request, Developer agrees to provide the Agency, within sixty (60) calendar days a truthful and complete list of the names of all subcontractors, vendors, and suppliers the Developer has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Developer for each subcontract or supply contract. Developer further agrees to fully cooperate in any investigation conducted by the Agency pursuant to the City's Nondiscrimination in Contracting Ordinance (Municipal Code sections 22.3501-22.3517). Developer understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment, and other sanctions.
21. Termination for Default. In the event of a default by Developer, the Agency shall give written notice of Agency's intent to terminate the Agreement for default. Developer shall have 10 working days following such written notice, or a longer period if both parties mutually agree to an extension, for Developer to fully and completely remedy, to Agency's satisfaction, the conditions constituting the default. If Developer fails to remedy the conditions constituting default within the time allowed, Agency may then terminate this Agreement and be released from any further obligation imposed by this Agreement.
- 21.1 Actions Constituting Default. It shall be considered a default by Developer if Developer:
- a. Declares bankruptcy, becomes insolvent, assigns its assets for the benefit of its creditors, or is unable to pay debts as they become due;
  - b. Fails to provide materials or workmanship which meet the requirement of the Agreement and fails to correct any defective work as required by Agency;
  - c. Disregards or violates provisions of the Agreement;
  - d. Developer's contractor fails to perform the work according to the approved construction schedule, if any, or to complete the work within the time specified by this Agreement;

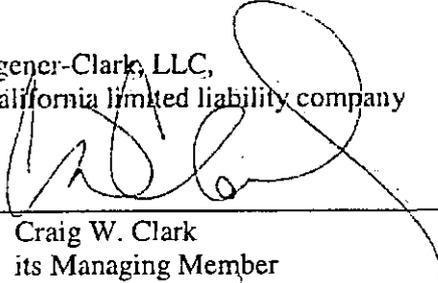
- e. Developer's contractor fails to provide competent management and supervision, competent workmen, or materials or equipment meeting the requirements of this Agreement;
- f. Disregards law or regulations of any public body having jurisdiction over the work;
- g. Commits continuous or repeated serious violations of approval or legislated safety program requirements.

- 21.2 Remedies. If the Agreement has been terminated by the Agency under this provision, such termination will not affect any rights or remedies of the Agency against Developer, then existing or which may thereafter accrue. Any retention or payment of moneys paid to Developer by the Agency shall not release Developer from liability.
22. Assignment. Developer may transfer or assign the Project, in whole or in part, to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement with the prior written consent of the Agency, which will not be unreasonably withheld, and if the transfer or assignment of the rights under this Agreement includes in writing the assumption of the Developer's duties, obligations, and liabilities arising under or from this Agreement.
23. Successors-in-interest. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Agreement have been succeeded by another entity, and all rights and obligations of the parties signatory to this Agreement shall be vested and binding on their successors-in-interest.
24. Effective Date of Agreement. This Agreement shall become effective upon execution by both Parties.
25. Governing Law. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. Venue from actions arising out of the Agreement shall be in the County and City of San Diego, California.
26. Entire Agreement. This Agreement contains the entire understanding between all the Parties relating to the transaction contemplated hereby, and all prior or contemporaneous Agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect. No provision of this Agreement may be amended, waived, or added except by an instrument in writing signed by the Parties hereto.
27. Incorporation of Exhibits. All exhibits referenced in this Agreement are incorporated herein by reference.
28. Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

001311

IN WITNESS WHEREOF, the Agreement is executed by the Redevelopment Agency of the City of San Diego, pursuant to Resolution R-\_\_\_\_\_ authorizing such execution, and by Developer through its authorized officer.

Burgener-Clark, LLC,  
a California limited liability company

By:   
Craig W. Clark  
its Managing Member

Date: 5-5-08

The Redevelopment Agency of the  
City of San Diego

By: \_\_\_\_\_  
Janice Weinrick  
Deputy Executive Director

Date: \_\_\_\_\_

I HEREBY APPROVE the form and legality  
of the foregoing Agreement this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008.

MICHAEL J. AGUIRRE, City Attorney

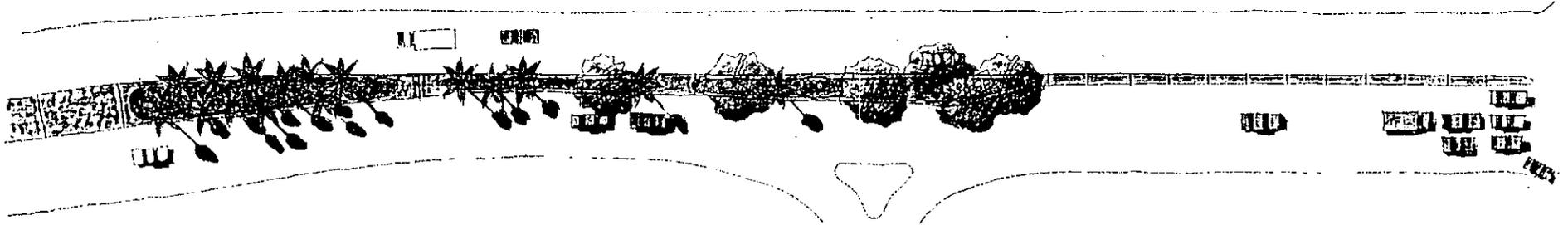
By: \_\_\_\_\_  
Deputy City Attorney

001313

**Exhibit A**

Depiction of the Clairemont Drive median Project  
(Attached on following page.)

001315



CLAREMONT DRIVE MEDIAN  
BAYVIEW PLAZA - ALT. 2  
1" = 20'-0"  
PLAN - KTUTA ⊕  
8-10-06

## Exhibit A-1

## Scope of Work for the Project

The median improvements consist of landscaping and hardscape of an existing center raised median on Clairemont Drive between Interstate 5 and Denver Street in the Clairemont Mesa community. The work shall be performed in accordance with the Drawing labeled Exhibit A, and shall include the following improvements and materials:

- 1.) 4630 SF of Fine Grading
- 2.) 4630 SF of Soil Preparation
- 3.) 4630 SF of 3" deep Mulch
- 4.) the planting of Fifty 1-gallon *Arctostaphylos* 'Emerald Carpet' Shrubs, Fifty 1-gallon *Baccharis* 'Pigeon Point' Shrubs, Twenty Five 1-gallon *Eriogonum fasciculatum* Shrubs, One Hundred 1-gallon *Fetuca ovina* 'Glauca' Shrubs, Twenty Five 1-gallon *Galvezia speciosa* Shrubs, One Hundred 1-gallon *Nasella tenuissima* Shrubs, Thirteen 5-gallon *Agave attenuate* Shrubs, Seven 5-gallon *Arctostaphylos hookeri* 'Wayside' Shrubs, Forty Five 5-gallon *Encelia californica* Shrubs, Sixty Five 5-gallon *Helictotrichon sempervirens* Shrubs, Fifty 5-gallon *Limonium perezii* Shrubs, One Hundred 5-gallon *Muhlenbergia rigens* Shrubs, Six 48'-box *Plantanus racemosa* Trees, Sixteen Relocated *Washingtonia robusta* Palm Trees
- 5.) Installation of 240 LF of Root Control Barriers, 6235 SF of Aggregate Concrete with Pebble 1'-3', Thirty Boulders
- 6.) Installation of Irrigation Systems and Drainage
- 7.) A 12-month Plant Establishment Period
- 8.) As Bid Alternate (A) – Design, Construction and Installation of a Community Entryway Sign.

### Community Sign

#### Additive Alternate (A) – Community Sign

An alternate is an item proposed and stated on the cost analysis that will be included as part of the Project so long as there is sufficient funding remaining in the project budget after construction of all other improvements.

**Exhibit B**  
Insurance Requirements

B-1 Required Insurance: The Developer shall obtain, and maintain in full force throughout the duration of the Work, insurance as called for below, with insurance carriers acceptable to the Agency and shall furnish certificate(s) of insurance to the Agency prior to commencing the Work. As a minimum requirement of acceptability, the insurance carrier shall be duly authorized by the California Insurance Commissioner to transact the business of insurance in the State of California. Except for the State Compensation Insurance Fund, insurance coverage must be from an insurance carrier licensed in the State of California and rated "A-" and "VI" or better by the A.M. Best Key Rating Guide. The required insurance policies and the certificate(s) of insurance shall contain the endorsements listed in Paragraph B-2 below.

B-1.1 Workers' Compensation and Employer's Liability Insurance.

B-1.1.1 Workers' Compensation in compliance with the applicable state and federal laws.

B-1.1.2 Employer's Liability:

Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each employee
Bodily Injury by Disease	\$1,000,000 policy limit

B-1.2 Commercial General Liability Insurance written on ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from premises and operations, XCU (explosion, underground, and collapse), independent contractors, products/completed operations, personal injury and advertising injury, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. All policy coverage shall be on an occurrence basis and in amounts not less than the following limits of liability:

General Annual Aggregate Limit

(Other than Products/Completed Operations)	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

B-1.3 Contractor shall provide at its expense a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90, or a later version of this form or equivalent form, providing coverage at least as broad in

the amount of \$1,000,000 combined single limit per accident, covering bodily injury and property damage for owned, non-owned and hired automobiles.

B-2 Required Endorsements: The following endorsements shall be included in the insurance policies and certificates of insurance called for in Paragraph B-1 above, as indicated below.

B-2.1 Workers' Compensation and Employer's Liability insurance endorsements:

B-2.1.1 Cancellation. Except as provided for under California law, the policy or policies must be endorsed to provide that the Agency is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

B-2.1.2 Waiver of Subrogation. The policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the Agency, the City, and their respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured.

B-2.2 Commercial General Liability Insurance Endorsements:

B-2.2.1 Additional Insureds. The policy or policies must be endorsed to include as an Insured the Redevelopment Agency of the City of San Diego and the City of San Diego and their respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of: (a) Ongoing operations performed by you or on your behalf, (b) Your products, (c) Your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled, or used by you.

B-2.2.2 Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the Redevelopment Agency of the City of San Diego or of the City of San Diego and their elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by the Redevelopment Agency of the City of San Diego or the City of San Diego and their elected officials, officers, employees, agents and representatives shall be in excess of Developer's insurance and shall not contribute to it.

B-2.2.3 Cancellation. Except as provided for under California law, the policy or policies must be endorsed to provide that the Agency is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

B-2.2.4 Severability of Interest. The policy or policies must be endorsed to provide that Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

B-2.3 Automobile Liability Insurance Endorsements:

B-2.3.1 Additional Insureds. The policy or policies must be endorsed to include as an Insured the Redevelopment Agency of the City of San Diego, the City of San Diego and their respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Developer.

B-2.3.2 Cancellation. Except as provided for under California law, the policy or policies must be endorsed to provide that the Agency is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies.

B-2.3.3 Severability of Interest. The policy or policies must be endorsed to provide that Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

B-3 Surplus Lines. A policy by a Surplus Lines insurer is presumptively invalid unless the insurer is on the List of Eligible Surplus Line Insurers [LESLI List] maintained by the California Department of Insurance. The LESLI List may be found at:

<http://www.insurance.ca.gov/FAD/SurplusI.htm>

All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

001321

**Exhibit C**

Project Budget

(Attached on following page.)

001323

**Clairemont Drive Median Improvements  
Budget**

Design	\$17,700.00
Construction	\$100,642.45
Landscaping	\$48,600.98
Community Sign	\$ 20,013.10
Contingency (15%)	<u>\$28,043.47</u>
Total	\$215,000.00

001324

Attachment 2  
Special Findings  
[Behind this Page]

**Findings**  
**(Health & Safety Code § 33445)**  
**North Bay Redevelopment Project Area**

SUBJECT IMPROVEMENTS:  
CLAIREMONT DRIVE MEDIAN IMPROVEMENTS

The following findings are for the construction of the Clairemont Drive median improvements in the Clairemont community within the North Bay Redevelopment Project Area.

I. FINDINGS OF BENEFIT

The subject improvements for which the Redevelopment Agency of the City of San Diego ("Agency") proposes to pay will benefit the North Bay Redevelopment Project Area in that:

- A. The improvements are within the North Bay Redevelopment Project Area.
- B. The improvements will enhance portions of the North Bay Redevelopment Project Area for the benefit of residents, visitors, and merchants.
- C. The improvements will provide improved traffic mobility and pedestrian safety along a commercial and transit corridor.

II. NO OTHER REASONABLE MEANS OF FINANCING

There are no other reasonable means available to the community for financing the subject improvements for which the Agency proposes to pay in that:

City of San Diego

- A. The City's Capital Improvement Budget is funded with water and sewer fees, a half-cent local sales tax for transportation improvements, development impact fees, State and Federal grants and/or the issuance of bonds. The Fiscal Year 2008 Adopted Capital Improvements Program (CIP) Budget totals \$491.6 million, which is an increase of \$197.9 million from the Fiscal Year 2007 Annual Budget. Excluding water and sewer projects the Fiscal Year 2008 Adopted CIP Budget has increased \$22.3 million from the Fiscal Year 2007 Annual Budget. In Fiscal Year 2007, the Water and Metropolitan Wastewater Department received rate increases.
- B. Priorities of the City's CIP budget are to address deferred maintenance projects, which according to the City's 2009-2013 Five-Year Financial Outlook (January

2008) is estimated to be at least \$800 to \$900 million, excluding Water and Wastewater.

- C. The Agency's Budget was developed in accordance with City and Council Policy, and each project activity was evaluated and incorporated in the respective budgets. The Fiscal Year 2008 Annual Budget for City Redevelopment totals \$128.2 million. Of this amount, \$91.4 million is comprised of new funds with \$36.8 million carrying over from the previous year. The Agency also secured a \$70.0 million three-year line of credit through San Diego National Bank. This line of credit will be drawn upon to cover an estimated \$47.0 million of redevelopment project expenditures during Fiscal Year 2008. Tax increment to be generated in Fiscal Year 2008 in the City Redevelopment areas is estimated to exceed \$39.2 million.
- D. The cost of the Clairemont Drive median improvements in the Clairemont community is approximately \$215,000 (estimate). There are currently no funds allocated in the 2008 CIP Annual Budget to fund this Project. The Redevelopment Agency shall contribute up to \$215,000 of North Bay Redevelopment Project Area tax increment funds to finance these improvements.
- E. Funding from the CIP Budget for this project is presently unavailable as all available CIP funds for this fiscal year have been allocated to other priority public infrastructure projects.
- F. Revenue forecasts for Fiscal Year 2008 suggest that the rate of growth of the City's primary sources of revenue is expected to continue to show growth, though at a slower pace, and is expected to exceed the State and national economic trends from Fiscal Year 2007.

### III. ELIMINATION OF BLIGHTING CONDITIONS

The payment of Agency funds toward the cost of the improvements will assist in the elimination of one or more blighting conditions inside the North Bay Redevelopment Project Area in that:

- A. The improvements will help to eliminate physical blighted conditions as the improvements will correct and upgrade substandard and deteriorated infrastructure and will improve traffic mobility and pedestrian safety.
- B. The improvements will upgrade deficient public right-of-way space by the construction of the Clairemont Drive median.
- C. The improvements will upgrade public infrastructure that does not meet City's standards for commercial, business and transit corridors.

- D. The improvements will help eliminate economic blighted conditions in that the traffic mobility and pedestrian safety will be enhanced, provide incentive for private investment, and improved maintenance in the surrounding area.

IV. FINDINGS OF CONSISTENCY WITH IMPLEMENTATION PLAN

The payment of Agency funds toward the cost of the improvements are consistent with the Second Five-Year Implementation Plan for the Project Area, adopted pursuant to Health and Safety Code Section 33490, in that:

- A. The improvements are consistent with the Second Implementation Plan for the North Bay Redevelopment Project, which is recorded with the Agency as Document No. D-03664 and dated August 8, 2003, in that the improvements address the Implementation Plan's specific goals and objectives including:
  - i. Eliminate and prevent the spread of blight and deterioration, and conserve, rehabilitate, and redevelop the Project Area in accordance with the General Plan, specific plans, and local codes and ordinances;
  - ii. Improve, promote, and preserve the positive neighborhood characteristics in North Bay, while correcting physical and economic deficiencies in the community;
  - iii. Enhance pedestrian and vehicular mobility, and improve transportation facilities in compliance with ADA regulations;
  - iv. Enhance infrastructure facilities which improve the community and support public safety, health, and local vitality; and
  - v. Build public improvements to eliminate physical and economic conditions of blight.

EQUAL OPPORTUNITY AGREEMENT

**NON-DISCRIMINATION CLAUSE:** Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractor shall ensure that its subcontractors comply with the City of San Diego's Equal Employment Opportunity Program.

**EQUAL EMPLOYMENT OPPORTUNITY (EEO):** Contractor has received, read, understands and agrees to be bound by the City of San Diego *Municipal Code*, Chapter II, Article 2, Division 27 (Equal Employment Opportunity Program) provided with the proposal package.

Contractor has submitted either a *Work Force Report* or an *Equal Employment Opportunity Plan* as required by Section 22.2705 of the City of San Diego *Municipal Code*.

City and Contractor agree that compliance with EEO provisions will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program (EOCP) staff.

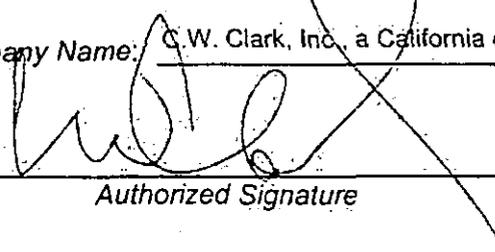
**EQUAL OPPORTUNITY CONTRACTING:** Contractor has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Program requirements described in the proposal package.

If requested, Contractor shall submit the *Outreach and Teaming Survey*. Contractor agrees to provide updated reports as requested by the City.

Contractor agrees to insert equal opportunity compliance language in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.

Project Name: Clairemont Drive Median Project Bid No.: N/A

Company Name: C.W. Clark, Inc., a California corporation Date: 05/08/08

  
\_\_\_\_\_  
Authorized Signature

Craig W. Clark  
\_\_\_\_\_  
Print Authorized Signature Name

COMPLETE SET OF "BIDDING DOCUMENTS" (All "B" Pages) MUST BE SUBMITTED AS BID PROPOSAL



Goals reflect statistical labor force availability for the following: 2000 CLFA  
San Diego, CA

City of San Diego/Equal Opportunity Contracting  
**WORK FORCE ANALYSIS REPORT**  
FOR  
Company: C.W. Clark, Inc.

I. TOTAL WORK FORCE:

	Black		Hispanic		Asian		American Indian		Filipino		White		Other						
	Goals	M	F	Goals	M	F	Goals	M	F	Goals	M	F	M	F					
Mgmt & Financial	3.3%	0	0	11.9%	0	0	6.2%	0	2	0.4%	0	0	6.2%	0	0	0	0		
Professional	4.0%	0	0	12.6%	0	0	6.5%	0	0	0.5%	0	0	6.5%	0	0	0	0		
A&E, Science, Computer	2.8%	0	0	7.3%	0	0	16.2%	0	0	0.3%	0	0	16.2%	0	0	0	0		
Technical	6.6%	0	0	14.8%	0	0	17.2%	0	0	0.4%	0	0	17.2%	0	0	0	0		
Sales	3.9%	0	0	19.5%	0	0	6.6%	0	0	0.6%	0	0	6.8%	0	0	0	0		
Administrative Support	7.0%	0	0	20.8%	0	1	8.8%	0	1	0.6%	0	0	8.8%	0	0	3	8		
Services	5.5%	0	0	36.8%	0	0	9.7%	0	0	0.6%	0	0	9.7%	0	0	0	0		
Crafts	4.5%	0	0	25.8%	0	0	9.1%	0	0	0.7%	0	0	9.1%	0	0	0	0		
Operative Workers	4.3%	0	0	38.8%	0	0	20.8%	0	0	0.3%	0	0	20.8%	0	0	0	0		
Transportation	8.1%	0	0	32.1%	0	0	4.5%	0	0	0.5%	0	0	4.5%	0	0	0	0		
Laborers	4.4%	0	0	54.0%	0	0	4.1%	0	0	0.5%	0	0	4.1%	0	0	0	0		
<b>TOTAL</b>		0	0		0	2		0	3		0	0		0	0	9	10	0	0

HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial  
Professional  
A&E, Science, Computer  
Technical  
Sales  
Administrative Support  
Services  
Crafts  
Operative Workers  
Transportation  
Laborers

TOTAL EMPLOYEES			Female Goals
ALL	M	F	
11	6	5	39.8%
0	0	0	59.5%
0	0	0	22.3%
0	0	0	49.0%
0	0	0	49.4%
13	3	10	73.2%
0	0	0	62.3%
0	0	0	8.6%
0	0	0	38.7%
0	0	0	15.2%
0	0	0	11.1%
<b>TOTAL</b>	24	9	15

HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

II. EMPLOYMENT ANALYSIS

	Black			Hispanic			Asian			American Indian			Filipino			Female		
	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy	Goals	Actual	Discrepancy
Mgmt & Financial	0.38	0	N/A	1.31	0	N/A	0.68	2	-1.32	0.04	0	N/A	0.88	0	N/A	4.38	5	N/A
Professional	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
A&E, Science, Computer	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Technical	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Sales	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Administrative Support	0.91	0	N/A	2.70	1	(1.70)	1.14	1	N/A	0.08	0	N/A	1.14	0	(1.14)	9.52	10	N/A
Services	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Crafts	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Operative Workers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Transportation	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00
Laborers	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00	0.00	0	0.00

Goals are set by job categories for each protected group. An underrepresentation is indicated by a negative number, but if the DISCREPANCY is less than -1.00 position, a N/A will be displayed to show there is no underrepresentation.

001330



City of San Diego
EQUAL OPPORTUNITY CONTRACTING (EOC)
1010 Second Avenue • Suite 500 • San Diego, CA 92101
Phone: (619) 533-4464 • Fax: (619) 533-4474

WORK FORCE REPORT

ADMINISTRATIVE

The objective of the Equal Employment Opportunity Outreach Program, San Diego Municipal Code Sections 22.3501 through 22.3517, is to ensure that contractors doing business with the City, or receiving funds from the City, do not engage in unlawful discriminatory employment practices prohibited by State and Federal law.

CONTRACTOR IDENTIFICATION

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

Name of Company: C.W. CLARK, INC., a California corporation

AKA/DBA:

Address (Corporate Headquarters, where applicable): 4180 La Jolla Village Drive, Suite 405

City La Jolla County San Diego State CA Zip 92037

Telephone Number: (858) 452-7170 FAX Number: (858) 453-7260

Name of Company CEO: Craig W. Clark

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

Address:

City County State Zip

Telephone Number: FAX Number: ( )

Type of Business: Type of License:

The Company has appointed: Craig W. Clark

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

Address: (Same as Above)

Telephone Number: ( ) FAX Number: ( )

- [X] One San Diego County (or Most Local County) Work Force - Mandatory
[ ] Branch Work Force \*
[ ] Managing Office Work Force

Check the box above that applies to this WFR.

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

I, the undersigned representative of C.W. CLARK, INC., a California corporation,

San Diego California (County) (State) hereby certify that information provided

herein is true and correct. This document was executed on this 8th day of May, 2008.

(Authorized Signature) Craig W. Clark, President (Print Authorized Signature)

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WORK FORCE REPORT - NAME OF FIRM: C.W. CLARK, INC.. DATE: 05/08/08

OFFICE(S) or BRANCH(ES): 4180 La Jolla Village Dr. #405 COUNTY: San Diego

La Jolla, California 92037

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

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

OCCUPATIONAL CATEGORY	(1) Black	(2) Hispanic	(3) Asian	(4) American Indian	(5) Filipino	(6) White	(7) Other Ethnicities
	(M) (F)	(M) (F)	(M) (F)	(M) (F)	(M) (F)	(M) (F)	(M) (F)
Management & Financial		1	2			6 2	
Professional							
A&E, Science, Computer							
Technical							
Sales							
Administrative Support		1	1			3 8	
Services							
Crafts							
Operative Workers							
Transportation							
Laborers*							

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

Totals Each Column		2	3			9 10	
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Grand Total All Employees	24
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Non-Profit Organizations Only:

Board of Directors							
Volunteers							
Artists							



**CITY OF SAN DIEGO WORK FORCE REPORT – ADMINISTRATIVE**

**HISTORY**

The Work Force Report (WFR) is the document that allows the City of San Diego to analyze the work forces of all firms wishing to do business with the City. We are able to compare the firm's work force data to County Labor Force Availability (CLFA) data derived from the United States Census. CLFA data is a compilation of lists of occupations and includes the percentage of each ethnicity we track (Black, Hispanic, Asian, American Indian, Filipino) for each occupation. Currently, our CLFA data is taken from the 2000 Census. In order to compare one firm to another, it is important that the data we receive from the consultant firm is accurate and organized in the manner that allows for this fair comparison.

**WORK FORCE & BRANCH WORK FORCE REPORTS**

When submitting a WFR, especially if the WFR is for a specific project or activity, we would like to have information about the firm's work force that is actually participating in the project or activity. That is, if the project is in San Diego and the work force is from San Diego, we want a San Diego County Work Force Report.<sup>1</sup> By the same token, if the project is in San Diego, but the work force is from another county, such as Orange or Riverside County, we want a Work Force Report from that county.<sup>2</sup> For example, if participation in a San Diego project is by work forces from San Diego County, Los Angeles County and Sacramento County, we will ask for separate Work Force Reports representing the work forces of each of the three counties.<sup>1,2</sup> On the other hand, if the

project will be accomplished completely outside of San Diego, we ask for a Work Force Report from the county or counties where the work will be accomplished.<sup>2</sup>

**MANAGING OFFICE WORK FORCE**

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

**TYPES OF WORK FORCE REPORTS:**

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

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

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

**Exhibit: Work Force Report Job categories**

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

**Management & Financial**

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

**Professional**

Art and Design Workers
Counselors, Social Workers, and Other Community and Social Service Specialists
Entertainers and Performers, Sports and Related Workers
Health Diagnosing and Treating Practitioners
Lawyers, Judges, and Related Workers
Librarians, Curators, and Archivists
Life Scientists
Media and Communication Workers

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Other Teachers and Instructors
Postsecondary Teachers
Primary, Secondary, and Special Education School Teachers
Religious Workers
Social Scientists and Related Workers

**Architecture & Engineering, Science, Computer**

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

**Technical**

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

**Sales**

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

**Administrative Support**

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

**Services**

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

Supervisors, Food Preparation and Serving Workers
Supervisors, Personal Care and Service Workers
Transportation, Tourism, and Lodging Attendants

**Crafts**

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

**Operative Workers**

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

**Transportation**

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

**Laborers**

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