

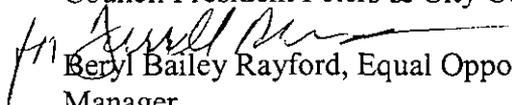


**CITY OF SAN DIEGO
MAYOR JERRY SANDERS**

MEMORANDUM

DATE: October 1, 2008

TO: Council President Peters & City Council

FROM:  Beryl Bailey Rayford, Equal Opportunity Contracting Program
Manager

SUBJECT: Approve Termination Agreement – Torrey Hills YMCA

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

CC: Fischle-Faulk, Debra
Barwick, James

000301

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:

331
01/27

October 1, 2008

SUBJECT: Approve Termination Agreement – Torrey Hills YMCA

GENERAL CONTRACT INFORMATION

Recommended Consultant: Not Applicable

Amount of this Action: Not Applicable

SUBCONSULTANT PARTICIPATION

There is no subconsultant activity associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity Required:

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)

ADDITIONAL COMMENTS

This action is to request approval of the Lease Termination Agreement between the City and the YMCA of San Diego County.



Beryl Rayford

EOC Program Manager by: MM-J

000303

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE OR) 331
01/27

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): Real Estate Assets Department

September 22, 2008

4. SUBJECT: Approve Termination Agreement - Torrey Hills YMCA

James Barwick (619) 236-6145 MS 51A Gary Jones (619) 236-6234 MS 51A

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

| | | | |
|----------------|--------|--|--|
| FUND | 100 | | |
| DEPT. | N/A | | |
| ORGANIZATION | N/A | | |
| OBJECT ACCOUNT | 79 450 | | |
| JOB ORDER | 222634 | | |
| C.I.P. NUMBER | | | |
| AMOUNT | | | |

9. ADDITIONAL INFORMATION / ESTIMATED COST:
Cost: None
Fiscal Impact: Waive \$5,965.72 in nonprofit administration fee
Job No. 222634
cc: Dept. Docket Clerk
Thomas Guide Page 1208 B3

10. ROUTING AND APPROVALS

| ROUTE (#) | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED | ROUTE (#) | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED |
|-----------|------------------------|--------------------|-------------|---|------------------------|--------------------|-------------|
| 1 | ORIGINATING DEPARTMENT | <i>[Signature]</i> | 9/25/08 | 8 | DEPUTY CHIEF | <i>[Signature]</i> | 11-4-08 |
| 2 | DSD/EAS | <i>[Signature]</i> | 10/02/08 | 9 | COO | <i>[Signature]</i> | 11-20-08 |
| 3 | EOCP MEMO 5-3-86 | <i>[Signature]</i> | 10/1/08 | 10 | CITY ATTORNEY | <i>[Signature]</i> | 11-21-08 |
| 4 | PURCHASING | <i>[Signature]</i> | 10/10/08 | 11 | ORIGINATING DEPARTMENT | <i>[Signature]</i> | |
| 5 | COUNCIL LIAISON | <i>[Signature]</i> | 11/3/08 | DOCKET COORD. _____ COUNCIL LIAISON: _____ | | | |
| 6 | AUDITORS | <i>[Signature]</i> | 10/31/08 | COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> | | | |
| 7 | FM | <i>[Signature]</i> | 10/28/08 | COUNCIL DATE: 1-27-09 | | | |

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

1. Approve the City of San Diego Lease Termination Agreement (Termination Agreement) between the City and the YMCA of San Diego County for the Torrey Hills YMCA.

11A. STAFF RECOMMENDATIONS: Approve the Termination Agreement

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 01

COMMUNITY AREA(S): TORREY HILLS

ENVIRONMENTAL IMPACT: This Activity is not a "Project" and therefore Exempt from CEQA Pursuant to State CEQA Guidelines Section 15060 (C)(3)

HOUSING IMPACT: NONE

CITY CLERK INSTRUCTIONS: DO NOT RECORD. Return documents to Real Estate Assets Department, Attn: Patti Phillips, MS. 51A for further handling.

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED:
 ATTENTION: Council President and City Council
 ORIGINATING DEPARTMENT: Real Estate Assets Department
 SUBJECT: City of San Diego Lease Termination Agreement
 COUNCIL DISTRICT(S): 01
 CONTACT/PHONE NUMBER: James Barwick (619) 236-6144/ Gary Jones (619) 236-6264

REQUESTED ACTION: Approve the City of San Diego Lease Termination Agreement (Termination Agreement) between the City and the YMCA of San Diego County.

STAFF RECOMMENDATION: Approve the Termination Agreement.

EXECUTIVE SUMMARY: The YMCA of San Diego County has a lease with the City to construct, operate and maintain a community and recreational center on approximately 4 acres adjacent to the Torrey Hills Neighborhood Park in the City of San Diego. The lease is dated April 15, 2002 and is filed in the Office of the City Clerk as document number RR-296349. The lease is for a term of 30 years with two 10-year options at an annual rent of \$1 per year plus and annual non-profit administrative fee subject to CPI adjustments. The Lease was based on YMCA's representation that they would be obtaining substantial donations which would support development of a large recreational facility on the property. Circumstances changed and the YMCA was unsuccessful in its fundraising efforts to develop a new facility.

The Park and Recreation Department believes that interest of the Torrey Hills community will be best served by terminating the Lease and giving the community an opportunity to consider a variety of recreational alternatives for the site. The City requested the termination of the Lease and the YMCA agreed.

FISCAL CONSIDERATIONS:

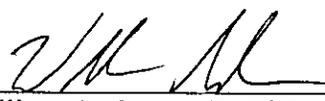
The YMCA currently owes the City \$5,965.72 in past due non-profit administrative fees. The non-profit annual administrative fee was implemented to help offset City staff time and costs to administer the lease agreement. The Park and Recreation Department and the Real Estate Assets Department believe it is in the City's interest to regain control of the property and recommend waiving the \$5,965.72 administrative fee.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The proposed Termination Agreement will allow the community to provide input for proposed recreational uses at the Torrey Hills Neighborhood Park.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The City of San Diego will benefit from the proposed Termination Agreement since it will allow the community to consider a variety of recreational alternatives for the site.



 James F. Barwick, CCIM
 Director, Real Estate Assets Department



 William Anderson, FAICP
 Deputy Chief: Executive Director
 City Planning and Development

000307

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION APPROVING A LEASE TERMINATION AGREEMENT WITH THE YMCA OF SAN DIEGO COUNTY AT TORREY HILLS NEIGHBORHOOD PARK.

WHEREAS, The City of San Diego [CITY], as lessor, and YMCA of San Diego County [YMCA], as lessee, are parties to that certain CITY OF SAN DIEGO TORREY HILLS YMCA LEASE [Lease] filed in the Office of the San Diego City Clerk as Document No. RR-296349 on April 15, 2002, relating to the leasing of approximately four acres of Torrey Hills Neighborhood Park, in the City of San Diego, California and more particularly described in the Lease [Premises]; and

WHEREAS, the term of the Lease is 30 years, with rent payable under the Lease being One Dollar (\$1) per lease year and with an annual non-profit administration fee; and

WHEREAS, YMCA intended to construct, operate, and maintain a YMCA community center on the Premises for recreational, educational, health, social and cultural uses by YMCA members and the general public; and

WHEREAS, the Lease was based on YMCA'S representation that they would be obtaining a large donation to support development of a large recreational facility, and that donation was not received; and

WHEREAS, CITY'S Park and Recreation Department believes the interests of the Torrey Hills community will best be served by terminating the Lease and giving the community the opportunity to take a new look at a variety of recreational alternatives for the Premises; and

000308

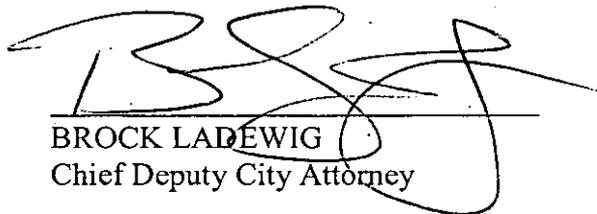
WHEREAS, CITY has requested the termination of the Lease, and, therefore,
recommends the Council waive outstanding non-profit administration fees totaling \$5,965.72;
NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, the Mayor or his designee
is authorized to execute and deliver that CITY OF SAN DIEGO LEASE TERMINATION
AGREEMENT filed in the Office of the San Diego City Clerk as Document No. RR-
_____ ; and

BE IT FURTHER RESOLVED, the Mayor or his designee is authorized to waive
amounts owing under the Lease in the total amount of Five Thousand Nine Hundred Sixty-Five
Dollars and Seventy-Two Cents (\$5,965.72).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



BROCK LADEWIG
Chief Deputy City Attorney

BL:bas
11/07/08
Or.Dept: READ
R-2009-627
MMS #6568

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

**CITY OF SAN DIEGO
LEASE TERMINATION AGREEMENT**

THIS LEASE TERMINATION AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY" or "Party"), and YMCA OF SAN DIEGO COUNTY, a California nonprofit public benefit corporation ("YMCA" or "Party"), to be effective when executed by the parties and as of the date approved by the San Diego City Attorney (the "Effective Date"), as follows:

RECITALS

- A. CITY, as lessor, and YMCA, as lessee, are parties to that certain CITY OF SAN DIEGO TORREY HILLS YMCA LEASE (the "Lease") filed in the Office of the San Diego City Clerk as Document No. RR-296349 on April 15, 2002, relating to the leasing of approximately four acres of Torrey Hills Neighborhood Park, in the City of San Diego, California and more particularly described in the Lease (the "Premises").
- B. The term of the Lease is thirty (30) years, expiring April 30, 2032. Rent payable under the Lease is One Dollar (\$1) per lease year.
- C. YMCA intended to construct, operate, and maintain a YMCA community center for recreational, educational, health, social and cultural uses by YMCA members and the general public, as more particularly specified in the Lease.
- D. The Lease was based on YMCA'S representation that they would be obtaining a large donation which would support development of a large recreational facility on the property. Unfortunately, circumstances changed, and the donation did not materialize as anticipated. Efforts by YMCA over the succeeding years to obtain replacement donations were unsuccessful. CITY'S Park and Recreation Department believes the interests of the Torrey Hills community will best be served by terminating the Lease and giving the community the opportunity to take a new look at a variety of recreational alternatives for the Premises. CITY has requested the termination of the Lease. YMCA has agreed.
- E. YMCA represents and warrants it has no knowledge of any pending or potential legal claims related to the Lease or the Premises. CITY has inspected the Premises and is satisfied with its condition.
- F. By this Agreement, CITY and YMCA will terminate the Lease.

FOR VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Termination. The Lease is hereby terminated as of the Effective Date and shall be void and of no further effect.

2. Mutual Release of Claims. Except as to the obligations created by this Agreement, the Parties hereby release and forever discharge each other and their respective successors, assigns, employees, shareholders, officers, directors, elected officials, agents, attorneys, and affiliated corporations, organizations or entities, whether previously or hereafter affiliated in any manner, jointly and severally, from any and all claims, demands, causes of action, obligations, damages, attorneys' fees, costs and liabilities of any nature whatsoever, whether or not now known, suspected or claimed, which the Parties ever had, now have or may claim to have as of the Effective Date which arise out of, or are connected to, or are related, in any fashion, to the Lease or the Premises (the "Claims").

3.1 Later Discovered Facts. The Parties acknowledge they may discover facts in the future that are different from or in addition to those they now know or believe to be true with respect to the Claims. Nevertheless, this Agreement shall be effective in all respects, regardless of such additional or different facts.

3.2 Waiver of Civil Code Section 1542. Except as provided by this Agreement, and with respect only to the Claims, the Parties expressly waive and relinquish all rights and benefits they may have under California Civil Code Section 1542, which reads as follows:

§1542 A GENERAL RELEASE DOES NOT EXTEND
TO CLAIMS WHICH THE CREDITOR DOES NOT
KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM MUST HAVE MATERIALLY
AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3. No Prior Assignments. YMCA represents and warrants that it has not previously assigned, transferred, or purported to have assigned or transferred, in any manner, any right or obligation under the Lease. YMCA shall protect, defend, indemnify, and hold CITY harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to YMCA'S officers, employees, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with any person or legal entity claiming to hold any right under the Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs.

4. Quitclaim. Pursuant to Lease section 2.4, Surrender of Premises, within five (5) days after the Effective Date, YMCA shall execute, acknowledge, and deliver to CITY a valid and recordable quitclaim deed in form and content as attached hereto as **Exhibit A: Quitclaim Deed**.

5. Construction. The provisions of this Agreement, or this Agreement as a whole, shall not be construed against the drafting party.

6. Waiver. No breach of any provision of this Agreement shall be waived unless in writing. Waiver of any one breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of the same or any other provision.

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7. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between the parties pertaining to the Premises.
8. Governing Law. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

9. Authority. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to the Mayor, that such authority is valid and that such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

IN WITNESS WHEREOF, this Agreement shall be effective as of the Effective Date.

Date: 9/4/08

YMCA OF SAN DIEGO COUNTY, a California nonprofit public benefit corporation

BY: 
Name: RICHARD A. COLLATO
Title: PRESIDENT

Date: _____

THE CITY OF SAN DIEGO, a California municipal corporation

BY: _____
Name: _____
Title: _____

APPROVED AS TO FORM AND LEGALITY:

Date: _____

MICHAEL J. AGUIRRE, City Attorney

BY: _____
Name: _____
Title: _____

000315

Exhibit A: Quitclaim Deed

Recording requested by:

The City of San Diego

000317

WHEN RECORDED MAIL TO:

THE CITY OF SAN DIEGO

Attention: Real Estate Assets Department
Director

1200 Third Avenue, Suite 1700 MS 51A
San Diego, CA 92101

| | | | | |
|--|--|--|--|--|
| | | | | |
| | | | | |

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

QUITCLAIM DEED

YMCA OF SAN DIEGO COUNTY, a California nonprofit corporation ("GRANTOR"),
FOR VALUABLE CONSIDERATION, DOES HEREBY REMISE, RELEASE, AND QUITCLAIM TO
THE CITY OF SAN DIEGO, a California municipal corporation ("GRANTEE"),

ALL RIGHT, TITLE, AND INTEREST in and to that certain real property situated in the City of San Diego, County of San Diego, State of California, commonly known as approximately four (4) acres of Torrey Hills Neighborhood Park, and as specifically described in the legal description attached hereto as **Exhibit A**, and incorporated herein.

IN WITNESS WHEREOF, GRANTOR has caused this Quitclaim Deed to be executed by its duly authorized officer this _____ day of _____, 20____, pursuant to a duly adopted resolution of its Board of Trustees.

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

Dated _____

By _____
James F. Barwick, Director
Real Estate Assets Department

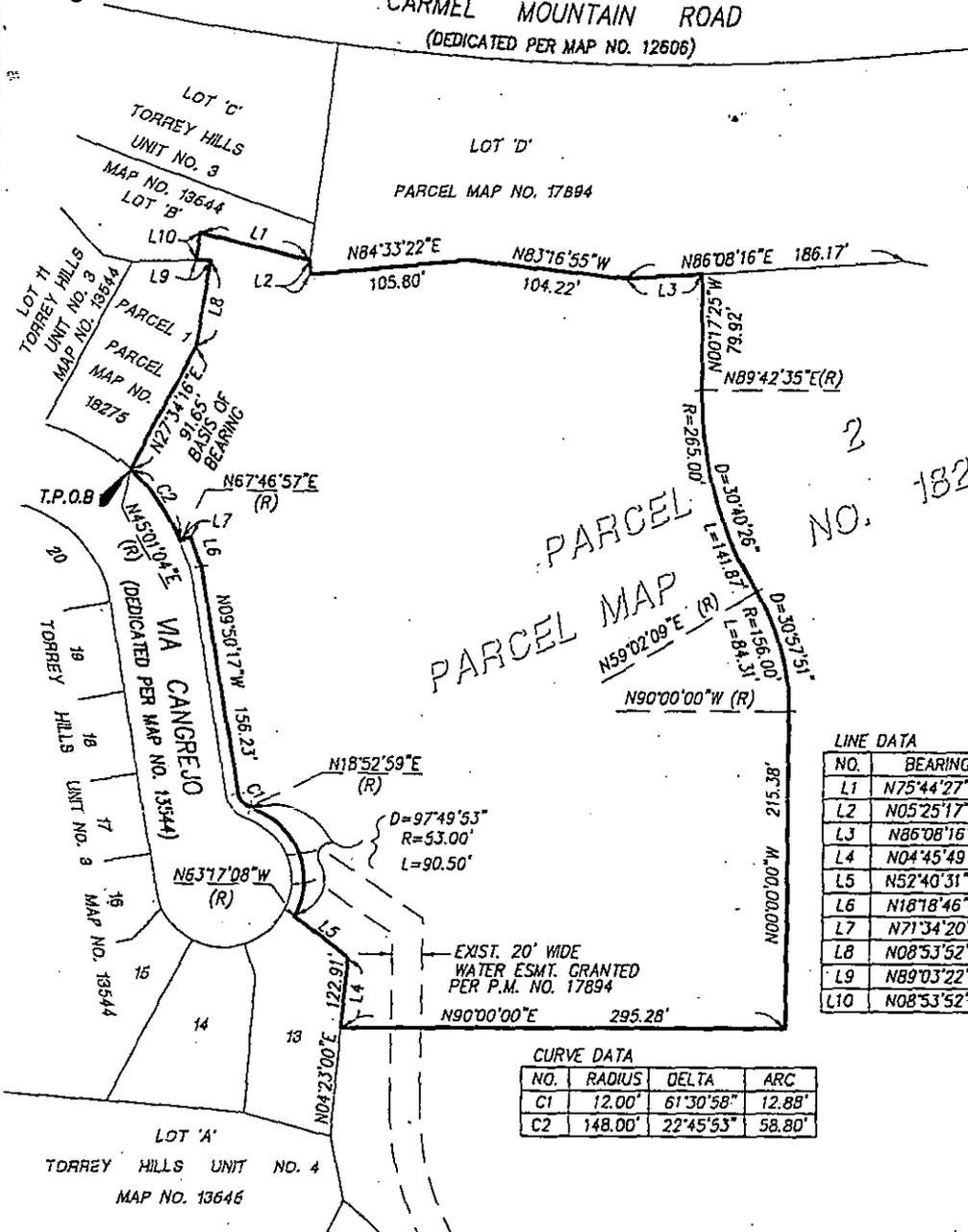
YMCA OF SAN DIEGO COUNTY, a California nonprofit corporation

BY _____
Name: _____
Title: _____

000319

CARMEL MOUNTAIN ROAD
(DEDICATED PER MAP NO. 12606)

SCALE: 1"=80'



LINE DATA

| NO. | BEARING | DISTANCE |
|-----|-------------|----------|
| L1 | N75°44'27"W | 75.22' |
| L2 | N05°25'17"W | 9.21' |
| L3 | N86°08'16"E | 51.07' |
| L4 | N04°45'49"E | 47.64' |
| L5 | N52°40'31"W | 45.11' |
| L6 | N18°18'46"W | 21.02' |
| L7 | N71°34'20"E | 7.84' |
| L8 | N08°53'52"E | 59.99' |
| L9 | N89°03'22"E | 10.15' |
| L10 | N08°53'52"E | 18.65' |

CURVE DATA

| NO. | RADIUS | DELTA | ARC |
|-----|---------|-----------|--------|
| C1 | 12.00' | 61°30'58" | 12.88' |
| C2 | 148.00' | 22°45'53" | 58.80' |

5650 El Camino Real,
Suite 100
Carlsbad, CA 92008
P: (760) 438-1210
F: (760) 438-2785
www.dalrthco.com



GEORGE L. BENTON R.C.E. 14594 DATE
IC. EXP. DATE: 3-31-2005

LEASE AREA - OF A PORTION OF PARCEL 2, PARCEL MAP NO. 18275

| DESCRIPTION | BY | APPROVED | DATE | FILMED | CITY OF SAN DIEGO, CALIFORNIA SHEET 2 OF 2 SHEET | W.D. N.O. |
|-------------|-----|----------|------|--------|---|---------------------------------|
| ORIGINAL | JWC | | | | | XX-XXXX |
| | | | | | | T.M. NONE |
| | | | | | | 1914-6261 NAD83 COORDINATES |
| | | | | | FOR CITY ENGINEER | DATE |
| | | | | | | 274-1701 LAMBERT COORDINATES |
| | | | | | | -B |

000321

Legal Description.

All that portion of Parcel 2 of Parcel Map No. 18275, in the City of San Diego, County of San Diego, State of California, according to Map thereof filed in the Office of the San Diego County Recorder, June 3, 1999, more particularly described as follows:

Beginning at the most Southeasterly corner of Parcel 1 of said Parcel Map, said corner also being an angle point on the Westerly boundary of said Parcel 2; thence along the boundary of said Parcel 2 as follows: North 27°34'16" East, 91.65 feet; North 08°53'52" East, 59.99 feet; South 89°03'22" West, 10.15 feet; North 08°53'52" East, 18.65 feet; South 75°44'27" East, 75.22 feet; South 05°25'17" East, 9.21 feet; North 84°33'22" East, 105.80 feet; South 83°16'55" East, 104.22 feet; North 86°08'16" East, 51.07 feet; thence leaving said boundary of Parcel 2 South 00°17'25" East, 79.92 feet to the beginning of a 265.00-foot radius curve, concave Easterly; thence Southerly along the arc of said curve through a central angle of 30°40'26", a distance of 141.87 feet to the beginning of a 156.00-foot radius reverse curve, concave Westerly; thence Southerly along the arc of said reverse curve through a central angle of 30°57'51", a distance of 84.31 feet; thence South 00°00'00" East, 215.38 feet; thence South 90°00'00" West, 295.28 feet to the intersection with the boundary of said Parcel 2; thence along said boundary North 04°45'49" East, 47.64 feet; thence North 52°40'31" West, 45.11 feet to the beginning of a 53.00-foot radius non-tangent curve, concave Westerly, a radial to said point bears South 63°17'08" East; thence Northerly along the arc of said curve through a central angle of 97°49'53", a distance of 90.50 feet to the beginning of a 12.00-foot radius reverse curve, concave Northeasterly; thence Northerly along the arc of said reverse curve through a central angle of 61°30'58", a distance of 12.88 feet; thence North 09°50'17" West, 156.23 feet; thence North 18°18'46" West, 21.02 feet; thence South 71°34'20" West, 7.84 feet to the intersection with the boundary of said Parcel 2, said intersection being the beginning of a 148.00-foot radius non-tangent curve, concave Southwesterly, a radial to said point bears North 67°46'57" East; thence Northerly along the arc of said curve and said boundary of Parcel 2 through a central angle of 22°45'53", a distance of 58.80 feet returning to the Point of Beginning.

Containing 4.123 acres, more or less.