



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: April 13, 2010

REPORT NO: 10-054

ATTENTION: City Council
Agenda of April 20, 2010

SUBJECT: FBA Reimbursement Agreement with Pardee Homes for a Portion of the
Water Transmission Line Relocation within the Carmel
Valley Community (Project W-1, Formerly 21-41)

REFERENCE: Reimbursement Agreement with Pardee
Public Facilities Financing Plan Cover & Project Sheet

REQUESTED ACTIONS:

Authorize the Mayor to execute the reimbursement agreement in the final total amount of \$381,210.47 for the design and construction of a portion of the Water Transmission Line Relocation Project within the Carmel Valley Community.

Authorize the Comptroller to appropriate and expend an amount not to exceed \$381,210.47 from Carmel Valley Consolidated FBA Fund 400088 in Internal Order 13001062, consistent with the timing established in the current Carmel Valley Public Facilities Financing Plan.

Authorize the Purchasing Department to create a Purchase Order-number in an amount not to exceed \$381,210.47.

STAFF RECOMMENDATION:

Recommend approval of requested actions.

SUMMARY:

Vesting Tentative Map No. 85-0220 conditions and the 1994 "Carmel Valley Neighborhood 4A, Units 1-4 Water Study" approved by the City of San Diego required that Pardee Homes complete a Water Transmission Line Relocation within the Carmel Valley Community. The waterline relocation provides a benefit to the Carmel Valley community, and reimbursement of project cost is appropriate for FBA reimbursement.

Pardee Homes has completed the design and construction of a portion of the Water Transmission Line Relocation within the Carmel Valley Community. This project is identified as W-1 (formerly 21-41) in the adopted Fiscal Year 2009 Carmel Valley Public Facilities Financing Plan and Facilities Benefit Assessment.

FISCAL CONSIDERATIONS:

Funds for this reimbursable project have been provided through collection of Facilities Benefit Assessments (developer impact fees).

EQUAL OPPORTUNITY CONTRACTING INFORMATION:

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Sections 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION:


On March 12, 2008 the Land Use and Housing Committee reviewed the updated Carmel Valley Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2009, and on April 24, 2008, the City Council approved the same. The Financing Plan identifies and includes the Carmel Valley Water Transmission Line Relocation project to be funded with FBA funds as project W-1 (formerly 21-41).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On February 12, 2008, the Carmel Valley Community Planning Board approved the updated Carmel Valley Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2009, which includes the Water Transmission Line Relocation project to be funded with FBA funds as project W-1 (formerly 21-41).

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders are the Carmel Valley Community and Pardee Homes.



Tom Tomlinson
Facilities Financing Manager



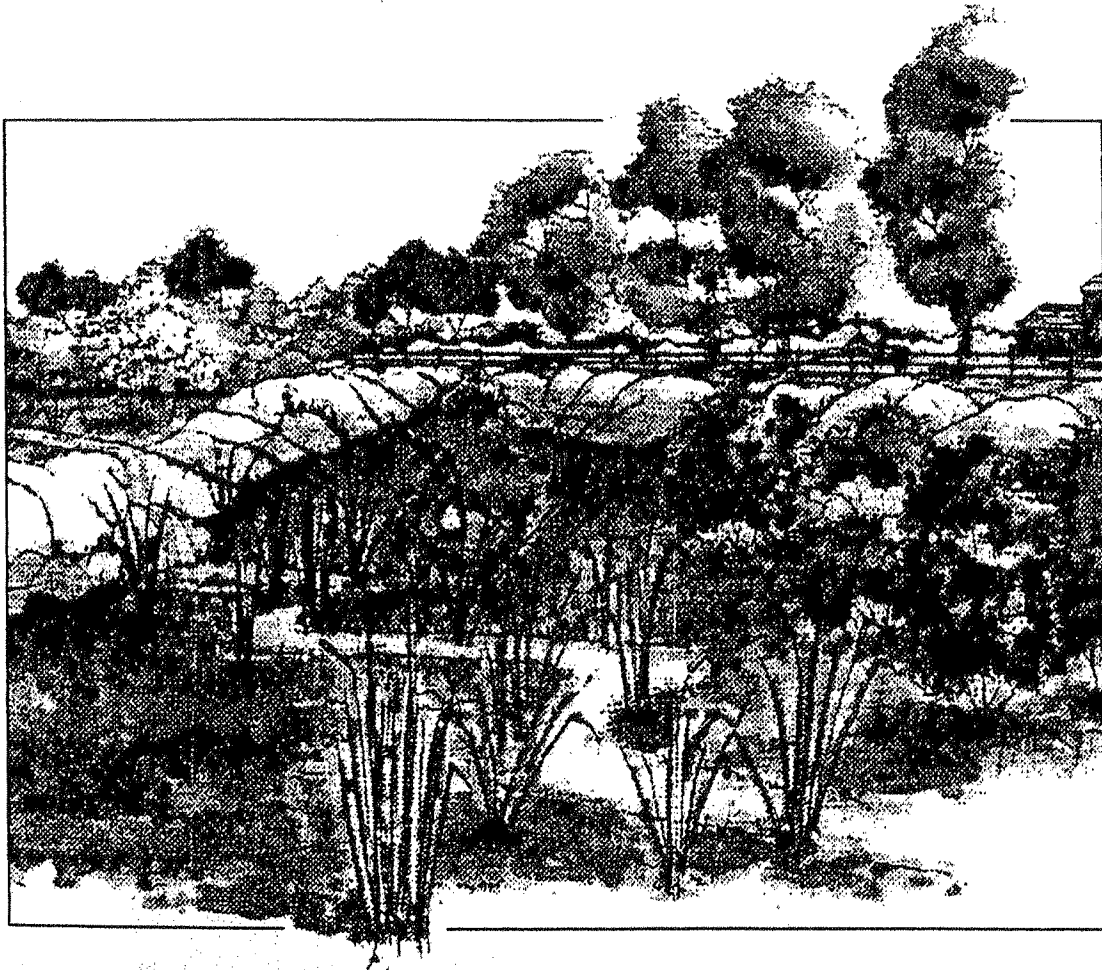
William Anderson, FAICP
Director of City Planning & Community
Investment

Attachments: Reimbursement Agreement with Pardee
FY 2009 Carmel Valley Public Facilities Financing Plan, Cover
FY 2009 Carmel Valley Public Facilities Financing Plan, W-1 Project Sheet

CARMEL VALLEY

Public Facilities Financing Plan and Facilities Benefit Assessment

Fiscal Year 2009



THE CITY OF SAN DIEGO

City Planning & Community Investment
Facilities Financing
April 2008

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: WATER TRANSMISSION LINE RELOCATION

PROJECT: W-1
PRIOR #: 21-41

DEPARTMENT:

WATER
CIP #: N/A

COUNCIL DISTRICT: 1
COMMUNITY PLAN: CV

DESCRIPTION:

PROVIDES FOR THE CONSTRUCTION OF A 30 INCH DIAMETER TRANSMISSION WATERLINE ALONG DEL MAR HEIGHTS ROAD EAST OF CARMEL CANYON ROAD FROM EXISTING 30 INCH WATERLINE AT APPROXIMATELY STATION 104 + 40 FOOT DEL MAR HEIGHTS ROAD AND RECONNECT TO EXISTING WATERLINE AT APPROXIMATELY 141 + 20 FEET DEL MAR HEIGHTS ROAD RIGHT-OF-WAY.

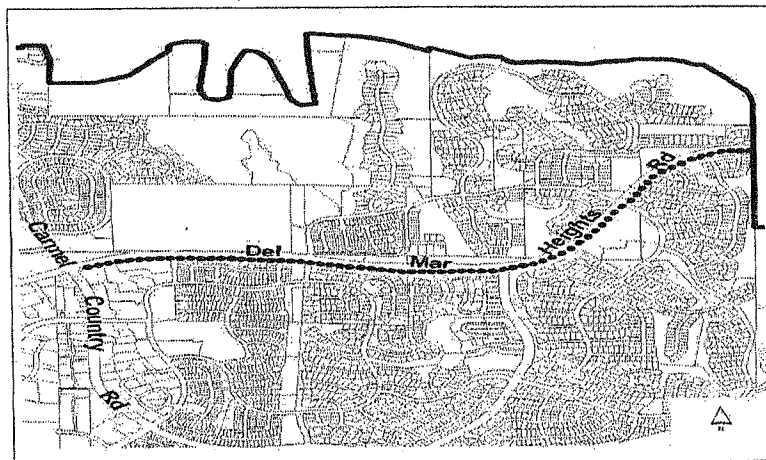
JUSTIFICATION:

THE WATERLINE RELOCATION WAS REQUIRED IN ORDER TO DEVELOP DEL MAR HEIGHTS ROAD WITHIN CARMEL VALLEY IN ACCORDANCE WITH THE COMMUNITY PLAN. THE EXISTING PIPE WAS REMOVED AND A NEW LINE PLACED WITHIN THE NEW DEL MAR HEIGHTS ROAD RIGHT-OF-WAY. THIS PROJECT IS CONSISTENT WITH THE COMMUNITY PLAN AND GENERAL PLAN GUIDELINES.

SCHEDULE:

REIMBURSEMENT FOR THE DESIGN AND CONSTRUCTION OF A PORTION OF THIS PROJECT OCCURRED IN FY 2001. REIMBURSEMENT FOR THE REMAINING PORTION (FUNDED IN FY 2009) IS SUBJECT TO APPROVAL OF A REIMBURSEMENT AGREEMENT.

SOURCE	FUNDING	EXPENDED	CONT. APP.	FY 2009	FY 2010	FY 2011
FBA-CVN	\$863,817	\$863,817	\$0	\$0	\$0	\$0
FBA-CV	\$621,183	\$0	\$0	\$621,183	\$0	\$0
TOTAL	\$1,485,000	\$863,817	\$0	\$0	\$0	\$0



Contact: Leonard Wilson
Phone: 619-533-4287
Email: LWilson@sandiego.gov

**REIMBURSEMENT AGREEMENT
FOR A PORTION OF PROJECT W-1 WATER
TRANSMISSION LINE RELOCATION (FORMERLY PROJECT
21-41) IN THE CARMEL VALLEY COMMUNITY**

THIS AGREEMENT [Agreement] is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation [City] and Pardee Homes (formerly known as Pardee Construction Company), a California Corporation [Subdivider] [collectively the Parties], for reimbursement for the design and construction of a completed portion of Project W-1, Water Transmission Line Relocation, along Del Mar Heights Road [Project], in the Carmel Valley Community Plan area in accordance with the Carmel Valley Public Facilities Financing Plan.

RECITALS

1. Subdivider owns real property within the Carmel Valley Community Plan area [Property]. Subdivider developed Property subject to the conditions and public improvements required by the City of San Diego City Council [City Council].
2. On October 26, 1987, City Council adopted Resolution R-269577, granting Tentative Map No. 85-0220 [TM] subject to certain conditions. A copy of the Resolution approving TM No. 85-0220 and conditions of approval is attached as **Exhibit A**.
3. Along with other facilities within the Carmel Valley Community, the 1994 "Carmel Valley Neighborhood 4A, Units 1-4 Water Study" prepared by Project Design Consultants and approved by City identified the need for the relocation of a 30" water transmission line along Del Mar Heights Road east of Carmel Canyon Road to Ashley Falls Road. The Project consists of a 30-inch water transmission line from STA 103+57.59 to STA 122+78.00, depicted in **Exhibit B** and described in **Exhibit C**.
4. Subdivider certifies it has completed the design and construction of the Project and now seeks reimbursement from City in the final total amount of **\$\$381,210.47** as described in **Exhibit E**, plus Interest (as defined in Section 2.4.6).
5. On April 24, 2008, City Council adopted Resolution R-303600 approving the Carmel Valley Public Facilities Financing Plan [Financing Plan] and Facilities Benefit Assessment as defined in San Diego Municipal Code section 61.2202(i) [FBA], for Fiscal Year 2009 [Financing Plan]. The Financing Plan identifies and includes the Water Transmission Line Relocation project to be funded with FBA funds as Project W-1 (formerly 21-41) further described in **Exhibit D** [Project W-1].
6. The Financing Plan estimate for the remaining portion of Project W-1 is \$621,183.00 (plus the applicable Inflationary Rate as set forth in the Financing Plan), minus the City's Administrative Costs (as defined in section 2.4.5) and City's equipment expenditures, constitutes the total and maximum City funds potentially available for reimbursement to Subdivider for Project W-1 [Maximum Funds]. The Maximum Funds constitutes an absolute cap for the entire remaining portion of Project W-1. Subdivider must satisfy all terms of this Agreement to become eligible for any portion of the Maximum Funds as they are collected and become available for reimbursement.

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

ARTICLE I. SUBJECT OF THE AGREEMENT

- 1.1 **Design and Construction of Project.** Subdivider certifies it designed and constructed a complete and operational Project fully suited to the purpose for which it was intended and in accordance with this Agreement, the TM Conditions, the Construction Documents, the Plans and Specifications, the Financing Plan, and any other applicable agreement.
- 1.2 **Certification Regarding Past Acts.** There exist and have existed certain requirements that City includes in its construction contracts for public improvements. These requirements are intended to protect the City and the public who benefit from these public improvements from harm, including physical and monetary, as well as to ensure that Subdivider and/or the contractor building the public improvement follow all laws related to such contracts and construction. The certification is intended to act as a guarantee to City that such requirements were met by the Subdivider during its design and construction of Project. When, throughout this Agreement, Subdivider certifies an action has occurred, omission not made, a standard met, or a law followed and such action did not occur, omission happened, such standard was not met, or such law was not followed, then Subdivider shall indemnify and hold harmless the City from any claim, demand, cause of action, cause, expense, losses, attorney fees, injuries, or payments arising out of or related to the act not done, the omission which occurred, the standard not met, or the law not followed in accordance with Article XII. This section shall not act to limit the remedies otherwise available to the City under law.

ARTICLE II. REIMBURSEABLE COST

- 2.1 **Reimbursable Cost.** The final total cost for which Subdivider seeks reimbursement from City for the Project, including the Project Costs (as defined in Section 2.2), all associated land acquisition costs, and administrative costs (as defined in Section 2.3) is **\$381,210.47** plus Interest (as defined in Section 2.4.6) [Reimbursable Cost]. Subdivider acknowledges no other monies or reimbursement in any form (including FBA credits) will be due to Subdivider from City for Project under any circumstance. Therefore, this Agreement may not be amended to increase the amount to be reimbursed to Subdivider.
- 2.1.1 **Non-Reimbursable Costs.** Non-Reimbursable Costs include: (1) Any cost or expenditure in excess of the Maximum Funds; (2) any cost or expenditure in excess of the Estimated Costs 3; (3) any cost or expenditure identified in this Agreement as a Non-Reimbursable Cost; (4) any cost or expenditure to remedy Defective Work (as defined in Section 15.1); (5) any cost or expenditure caused by Subdivider's or Subdivider's agents' negligence, omissions, delay, or Default; (6) any cost of substituted products, work, or services not necessary for completion of the Project, unless requested and approved by City in writing; (7) any cost or expenditure not approved by City in the manner required by this Agreement or the Charter of the City of San Diego and rules, regulations, or laws

promulgated thereunder; (8) any cost not supported by proper invoicing or other documentation as reasonable and necessary; and (9) any cost in excess of FBA's actually collected by the City and available for reimbursement to Subdivider for the design and construction of the Project. Additionally, the fair value as reasonably determined by City of any property that is destroyed, lost, stolen, or damaged rendering it undeliverable, unusable, or inoperable for City constitutes a Non-Reimbursable Cost. Refundable deposits, such as utility deposits, also constitute a Non-Reimbursable Cost.

- 2.2 Project Costs.** Project Costs are Subdivider's reasonable costs of materials and design necessary for the Project as approved by the City and set forth in **Exhibit E**. Project Costs include Subdivider's Administrative costs (as defined in Section 2.3).
- 2.3 Subdivider's Administrative Costs.** Subdivider's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures and shall total five percent (5%) of Subdivider's Project Costs.
- 2.4 Reimbursement to Subdivider.**
- 2.4.1 *Reimbursement Request.*** For all Reimbursable Costs, Subdivider shall submit to City a written request for reimbursement fully compliant with Sections 2.4.7 and 2.4.8 [Reimbursement Request]. Subdivider shall submit all Reimbursement Requests within two (2) months of the Effective Date of this Agreement [Cutoff Date]. Any Reimbursement Request submitted after the Cutoff Date shall not be included in the Reimbursable Cost and Subdivider shall not be entitled to any reimbursement for those costs or expenses.
- 2.4.2 *Type of Reimbursement.*** Subdivider shall be entitled to cash reimbursement or FBA credits for the Reimbursable Costs expended by Subdivider and approved by City in accordance with this Agreement and the Financing Plan. The Financing Plan currently has the estimated cost scheduled for reimbursement beginning in or after Fiscal Year 2009. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. Subdivider shall not receive cash reimbursement until and unless there are sufficient funds to reimburse Subdivider, in whole or in part, from the FBA. If sufficient funds are unavailable in the FBA, City shall reimburse Subdivider only if, and as funds accrue, in the FBA.
- 2.4.3 *Funds for Reimbursement.*** Subdivider shall only be entitled to reimbursement as set forth in this Agreement and only from FBA funds collected by City per the Financing Plan, as it may be amended, in the amount set forth in this Agreement and only as allocated for Project W-1 in the Financing Plan, if and as such funds become available, after the appropriate deductions and expenditures are made, pursuant to the method of reimbursement described in Section 2.4.7 and in the priority of reimbursement described in Section 2.4.9.
- 2.4.4 *Amount of Reimbursement.*** Subdivider shall be entitled only to Reimbursable Costs as identified in Section 2.1.
- 2.4.5 *City's Administrative Costs.*** City's Administrative Costs shall be paid prior to any reimbursement to Subdivider and consist of the costs and expenses incurred

by City to: (i) implement, process, and administer Project, (ii) review and approve the plans and specifications for Project, and (iii) inspect and approve work performed on Project during construction until completion and acceptance of Project [City's Administrative Costs].

- 2.4.6 **Interest.** Provided the Financing Plan includes the cost of financing the Project, the interest expense will incur from the time the submittal of a Reimbursement Request for Reimbursable Costs is complete to the date FBA credits are made available for Subdivider's use or the date of cash reimbursement. Interest shall accrue only on Reimbursable Costs at the rate identified in the Financing Plan or future updates of the Financing Plan [Interest].
- 2.4.7 **Method of Reimbursement.** The Reimbursement Request must clearly identify Project. Reimbursement Requests for projects other than those covered by this Agreement must be submitted as separate requests. The Reimbursement Request must also include all relevant documents in accordance with this Section. If City determines all relevant documents have not been submitted, City shall request Subdivider provide additional documentation within sixty (60) calendar days after Subdivider submits the Reimbursement Request. Subdivider shall provide additional documentation within fourteen (14) calendar days of request. City will make all reasonable efforts to review all Reimbursement Requests within 60 calendar days. City is not obligated to reimburse Subdivider until City confirms receipt of all relevant documentation to support the Reimbursement Request. After all appropriate cost documentation has been received and City approves the Reimbursement Request, City shall reimburse Subdivider for those Reimbursable Costs within seventy-five (75) calendar days of receipt of a complete Reimbursement Request provided funds are available in the FBA for Project and Project is scheduled in the Financing Plan for reimbursement at that time.
- 2.4.8 **Verification of Reimbursement Request.** Subdivider shall provide City with reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents showing that payment has been made in connection with the Reimbursement Request in the following manner:
- 2.4.8.1 Subdivider shall submit two (2) copies of a Reimbursement Request (cover letter, invoice, and documentation) to the City's Resident Engineer [RE] for work completed per plan and specification and/or Extra Work. Design invoicing shall be reviewed by the Project Manager.
- 2.4.8.2 Prior to the approval of the Reimbursement Request, the RE shall verify whether the materials and work for which reimbursement is being requested have been installed and performed as represented in the Reimbursement Request. The RE shall review the Project on-site for quality of material and assurance and adherence to bid list, contract estimates and plans and specifications. The RE shall also review as-builts and BMPs, and verify that a lien release has been prepared.

- 2.4.8.3 The RE shall initial the Reimbursement Request package, noting any disallowed costs, maintain a copy, and forward a copy to the Engineer for review.
- 2.4.8.4 The Engineer shall review Project invoices and monitor the RE's expenses charged to Project, as well as other City Administrative Costs. The Engineer shall also serve as the liaison between the RE and the Facilities Financing Project Manager [FF Project Manager].
- 2.4.8.5 After review and approval, the Engineer shall prepare a memorandum to Facilities Financing indicating the reimbursement amount and that the invoice is appropriate to pay if/as funds are/become available. The memorandum shall indicate any costs to be disallowed and the reason for the disallowance. The Reimbursement Request shall be forwarded to the FF Project Manager with the memorandum recommending payment.
- 2.4.8.6 The FF Project Manager shall verify that reimbursements are scheduled in the Financing Plan and verify FBA cash/credits are available for reimbursement.
- 2.4.9 ***Priority of Reimbursement.*** Reimbursement to Subdivider from the FBA for Project will be subsequent to reimbursement of City's equipment purchases, FF&E, and City's Administrative Expenses incurred in connection with the Project or Financing Plan, but takes priority over any Subdivider Reimbursable Project added to the FBA subsequent to the Effective Date (as defined in Section 20.1) of this Agreement, with the following exceptions:
 - 2.4.9.1 Any State or Federally mandated project.
 - 2.4.9.2 Appropriations for City administered, managed, and funded Capital Improvement Project.
 - 2.4.9.3 To the extent Subdivider failed to properly notify City in writing of any actual or anticipated cost increases, not yet approved, the reimbursement for the cost increases will be subsequent in priority to those projects with approved agreements prior to the notice of increased costs.
 - 2.4.9.4 The FBA identifies another project for funding in an earlier fiscal year than this Project prior to the Effective Date of this Agreement.

ARTICLE III. [Reserved]

ARTICLE IV. COMPETITIVE BIDDING AND EQUAL OPPORTUNITY

- 4.1 **Competitive Bidding Certification.** Subdivider certifies it bid and awarded contracts to complete Project in accordance with the Charter of the City of San Diego, San Diego Municipal Code, and City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations.
- 4.2 **Non-Discrimination Requirements.**

- 4.2.1 ***Compliance with the City's Equal Opportunity Contracting Program.*** Subdivider certifies that it complied with the City's Equal Opportunity Contracting Program. Subdivider certifies it did not discriminate against any employee or applicant for employment on any basis prohibited by law. Subdivider certifies it provided equal opportunity in all employment practices. Subdivider certifies it ensured its consultants, contractors and their subcontractors complied with the City's Equal Opportunity Contracting Program. Nothing in this Section shall be interpreted to hold the Subdivider liable for any discriminatory practice of its consultants, contractors or their subcontractors.
- 4.2.2 ***Non-Discrimination Ordinance.*** Subdivider certifies it did 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 consultants, contractors, subcontractors, vendors or suppliers. Subdivider certifies it provided equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Subdivider understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and other sanctions. This language was included in contracts between the Subdivider and any consultants, contractors, subcontractors, vendors and suppliers.
- 4.2.3 ***Compliance Investigations.*** Upon City's request, Subdivider agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers Subdivider used in the past five years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Subdivider for each contract, subcontract or supply contract. The Subdivider further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517.] Subdivider understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in remedies being ordered against Subdivider up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Subdivider further understands and agrees the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

ARTICLE V. PREVAILING WAGE

- 5.1 **Prevailing Wage.** Subdivider certifies Prevailing Wages were paid for the Project if and/or to the extent required by the Charter of the City of San Diego, San Diego Municipal Code, City of San Diego Resolutions and Ordinances, City of San Diego Council Policies, or as required by the City Council.

ARTICLE VI. CONSULTANTS

- 6.1 **Selection of Consultant.** Subdivider certifies it hired a qualified and licensed consultant to perform the necessary services related to Project. Subdivider certifies it caused the provisions in **Exhibit F** "Consultant Provisions" to be included in its consultant contract(s) for Project.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

- 7.1 **Standard of Care.** Subdivider certifies the services provided under this Agreement were performed in accordance with the standards customarily adhered to by experienced and competent professional architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.
- 7.2 **Compliance with all Laws, Design Standards, and Construction Standards.** In all aspects of the design and construction of Project, Subdivider certifies it complied with all laws and the most current editions of the Greenbook, the City's Standard Drawings and Design and Construction Standards, as well as the items listed in **Exhibit G**. It is the sole responsibility of Subdivider to comply with The Americans with Disabilities Act and Title 24 of the California Building Standards Code, California Code of Regulations. The Subdivider shall certify compliance with Title 24/ADA to City in the form and content as set forth on **Exhibit H** "Certificate for Title 24/ADA Compliance."
- 7.3 **Imputed Knowledge.** Subdivider certifies it was and remains responsible for all amendments or updates to Design and Construction Standards and knowledge of all amendments or updates to Design and Construction Standards, whether local, state, or federal, and such knowledge was or will be imputed to Subdivider to the fullest extent allowed by law.
- 7.4 **City Approval.** Subdivider certifies it obtained City approval of design, plans, and specifications in the manner required in **Exhibit I**. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval may lawfully have been performed by the duly authorized City representative designated by this Agreement.
- 7.5 **City Approval Not a Waiver of Obligations.** Where approval by City, the Mayor, or other representatives of City is or was required, it is understood to be general approval only and does not relieve Subdivider of responsibility for complying with all applicable laws, codes, regulations and good consulting, design, or construction practices.

ARTICLE VIII. CONSTRUCTION

- 8.1 **Compliance with Construction Requirements.** Subdivider certifies it completed construction of Project in accordance with the obligations in **Exhibit J** "Construction Obligations."
- 8.2 **Drug-Free Workplace.** Subdivider certifies it complied with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. The

Subdivider shall certify to City it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace in form and content of Exhibit K.

ARTICLE IX. PROJECT ACCEPTANCE

- 9.1 **Acceptance.** Upon City's letter of acceptance of Project, Subdivider shall do all of the following:
- 9.1.1 **Notice of Completion.** Subdivider shall execute and file with the County Recorder of San Diego County documentation indicating Project and all work depicted on City drawing number 26903-D has achieved Final Completion and stipulating the date of Project completion [Notice of Completion]. Subdivider shall provide the City Engineer with a conformed copy of the recorded Notice of Completion.
- 9.1.2 **Lien and Material Releases.** Subdivider shall cause all contractors and subcontractors to provide lien and material releases as to Project and provide copies of such lien and material releases to the City Engineer or, upon approval of City which shall not be unreasonably withheld, provide bonds in lieu of lien and material releases in a form reasonably acceptable to City for all such work.
- 9.1.3 **Transfer Ownership.** Subdivider shall transfer the ownership of Project and Property, where applicable, pursuant to Section 1.2 and Article III.
- 9.2 **Final Completion.** Final Completion of Project shall be deemed to occur on the later of: (i) recordation by Subdivider of the Notice of Completion and delivery of a conformed copy to City; (ii) if applicable, the issuance of a final Certificate of Occupancy for Project; or (iii) submission of all documents required to be supplied by Subdivider to City pursuant to this Agreement, including As-Built Drawings, warranties, operating and maintenance manuals and other Deliverables identified in Exhibit L.
- 9.2.1 **As-Builts.** City, including but not limited to, Engineering and Capital Projects Department, will evaluate the submitted As-Builts for accuracy and completeness and may return comments. Subdivider shall meet with City until all issues are resolved. Upon issue resolution, Subdivider shall submit a mylar set, a digital copy, and three (3) final blue-line sets of As-Builts stamped by the architect/engineer of record as required by law.
- 9.3 **No Waiver.** Subdivider's obligation to perform and complete Project in accordance with this Agreement and Construction Documents shall be absolute. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to Subdivider under this Agreement, nor any use or occupancy of Project or any part thereof by City, nor any act of acceptance by City, nor any failure to act, nor any review of a shop drawing or sample submittal will constitute an acceptance of work which is not in accordance with the Construction Documents.
- 9.4 **Assignment of Rights.** Upon Final Completion of Project, Subdivider shall assign its rights under its contracts with all contractors, subcontractors, design professionals, engineers, and material suppliers associated with Project to City. Subdivider shall be required to obtain written approval and acknowledgement, whether in the form of a

contract provision or separate document, of such assignment from its contractors, subcontractors, design professionals, engineers, and material suppliers. This assignment of rights shall not relieve Subdivider of its obligations under this Agreement, and such obligations shall be joint and several.

ARTICLE X. PROJECT DELIVERABLES

- 10.1 **Project Deliverables.** Prior to Final Completion, Subdivider shall deliver to City "As-Builts" and related plans and specifications, operating manuals, warranty materials, and all other materials required by City in the format requested. Documents shall include those listed in Exhibit L.
- 10.2 **Ownership of Project Deliverables.** Upon Final Completion or termination, Project Deliverables shall become the property of City. Subdivider and City mutually agree that this Agreement, Construction Documents, and Project Deliverables for Project shall not be used on any other work without the consent of each Party.

ARTICLE XI. BONDS

- 11.1 **Warranty Bond.** Subdivider shall provide or require its construction contractor to provide City with a payment bond guaranteeing Project during the warranty period in favor of City [Warranty Bond]. Subdivider shall provide the Warranty Bond to City upon release of any applicable Performance Bond or commencement of the warranty periods, whichever occurs first. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Agreement.
- 11.2 **Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 11.3 **Licensing and Rating.** The bonds shall be duly executed by a responsible surety company admitted to do business in the State of California, licensed or authorized in the jurisdiction in which Project is located to issue bonds for the limits required by this Agreement, and have a minimum AM Best rating of "A-" to an amount not to exceed ten percent (10%) of its capital and surplus.
- 11.4 **Insolvency or Bankruptcy.** If the surety on any bond furnished by the construction contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of Project is located, Subdivider shall within seven (7) calendar days thereafter substitute or require the substitution of another bond and surety, acceptable to City.

ARTICLE XII. INDEMNITY & DUTY TO DEFEND

- 12.1 **Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 12.2 and 12.3 below, to the fullest extent permitted by law, Subdivider shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all

claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Subdivider or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Subdivider, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Subdivider's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties.

- 12.2 **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
- 12.3 **Design Professional Services Defense.** Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
- 12.4 **Insurance.** The provisions of this Article are not limited by the requirements of Article XIII related to insurance.
- 12.5 **Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.
- 12.6 **Indemnification for Liens and Stop Notices.** Subdivider shall keep the Project and underlying property free of any mechanic's liens and immediately secure the release of any stop notices. Subdivider shall defend, indemnify, protect, and hold harmless, City, its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney fees, arising from or attributable to a failure to pay claimants. Subdivider shall be responsible for payment of all persons entitled to assert liens and stop notices.
- 12.7 **Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in this Article, provided that Subdivider shall have the option to select an attorney to represent City for any such enforcement subject to approval of the City Attorney, with such approval not to be unreasonably withheld.

ARTICLE XIII. INSURANCE

- 13.1 **Type and Amount of Insurance.** Subdivider certifies that prior to commencement of construction it obtained and thereafter continuously maintained, as required in this

Agreement, insurance for the Project duplicate to the City's standard insurance provisions set forth in **Exhibit M** [Required Insurance].

- 13.2 **Written Notice.** Except as provided for under California law, any Required Insurance shall not be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Subdivider to City by certified mail, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.
- 13.2.1 Where the words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" are present on a certificate, they shall be deleted.
- 13.4 **Rating Requirements.** Except for the State Compensation Insurance Fund, all insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VI" rating by AM BEST, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City.
- 13.5 **Non-Admitted Carriers.** City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers.
- 13.6 **Additional Insurance.** Subdivider may obtain additional insurance not required by this Agreement.
- 13.7 **Obligation to Provide Documents.** Subdivider certifies that prior to performing any work on Project, Subdivider provided to City copies of documents including but not limited to certificates of insurance and endorsements, and furnished renewal documentation prior to expiration of insurance. Subdivider certifies each required document was signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all insurance policies required herein.
- 13.8 **Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy have been and remain the responsibility of Subdivider. Subdivider certifies that deductibles and self-insurance retentions were disclosed to City at the time the evidence of insurance was provided.
- 13.9 **Policy Changes.** Subdivider certifies it has not and shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.
- 13.10 **Reservation of Rights.** City reserves the right, from time to time, to review the Subdivider's insurance coverage, limits, deductible and self insured retentions to determine if they are acceptable to City. City will reimburse the Subdivider for the cost of the additional premium for any coverage requested by City in excess of that required by this Agreement without overhead, profit, or any other markup.
- 13.11 **Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Subdivider's obligations under this Agreement, including indemnity.

- 13.12 **Material Breach.** Failure to maintain, renew, or provide evidence of renewal of Required Insurance during the term of this Agreement and for a period of ten (10) years following Transfer of Ownership of the Project may be treated by City as a material breach of this Agreement.

ARTICLE XIV. WARRANTIES

- 14.1 **Warranties Required.** Subdivider certifies it has required or shall require the construction contractor and its subcontractors and agents to provide the warranties listed below. This warranty requirement is not intended to exclude, and shall not exclude, other implicit or explicit warranties or guarantees required or implied by law. All such warranties shall be enforceable by and inure to the benefit of City.
- 14.1.1 **Materials and Workmanship.** All work on Project shall be guaranteed against defective workmanship and all materials furnished by construction contractor or its agents shall be guaranteed against defects for a period of one (1) year from the date of Project's Final Completion. Construction contractor shall replace or repair or require its agents to replace or repair any such Defective Work or materials in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.
- 14.1.2 **New Materials and Equipment.** Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, all materials and equipment incorporated into Project are new unless otherwise specified.
- 14.1.3 **Design, Construction, and Other Defects.** Construction contractor shall warrant and guarantee, and shall require its agents to warrant and guarantee, all work is in accordance with the Plans and Specifications and is not defective in any way in design, construction or otherwise.
- 14.2 **Form and Content.** Except manufacturer's standard printed warranties, all warranties shall be on Subdivider's and Subdivider's agents, material supplier's, installer's or manufacturer's own letterhead, addressed to City. All warranties shall be submitted in the format specified in this Section.
- 14.2.1 **Durable Binder.** Obtain warranties, executed in triplicate by Subdivider, Subdivider's agents, installers, and manufacturers. Provide table of contents and assemble in binder with durable plastic cover.
- 14.2.2 **Table of Contents.** All warranties shall be listed and typewritten in the sequence of the table of contents of the Project manual, with each item identified with the number and title of the specification section in which specified, and the name of product or work item.
- 14.2.3 **Index Tabs.** Each warranty shall be separated with index tab sheets keyed to the table of contents listing.
- 14.2.4 **Detail.** Provide full information, using separate typewritten sheets, as necessary. List Subdivider's agents, installer, and manufacturer, with name, address and telephone number of responsible principal.

- 14.2.5 **Warranty Start Date.** This date shall be left blank until the date of Final Completion.
- 14.2.6 **Signature and Notarization.** All warranties shall be signed and notarized. Signatures shall be required from Subdivider's construction contractor and where appropriate, the responsible subcontractor.
- 14.3 **Term of Warranties.** Unless otherwise specified or provided by law, all warranties, including those pertaining to plants, trees, shrubs and ground cover, shall extend for a term of one (1) year from the date of Final Completion.
- 14.4 **Meetings.** During the one (1) year warranty period described in Section 14.3, Subdivider shall meet and shall require its design consultant, construction contractor, and key subcontractors to meet, with City representatives, including the Engineering and Capital Projects Project Manager and one or more Responsible Department representatives, on a monthly basis, if requested by City. This meeting shall be held to discuss and resolve any problems City discovers in design or construction of Project or related furnishings, fixtures, and/or equipment during the one (1) year warranty period.

ARTICLE XV. DEFECTIVE WORK

- 15.1 **Correction, Removal, or Replacement.** All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not conform to the Construction Documents is defective [Defective Work]. If within the designated warranty period, or such additional period as may be required by law or regulation, Project is discovered to contain Defective Work, Subdivider shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.
- 15.2 **City's Right to Correct.** If circumstances warrant, including an emergency or Subdivider's failure to adhere to Section 15.1, City may correct, remove, or replace the Defective Work. In such circumstances, Subdivider shall not recover costs associated with the Defective Work and shall reimburse City for all City's costs, whether direct or indirect, associated with the correction or removal and replacement.
- 15.3 **Defects Constitute Non-Reimbursable Costs.** All costs incurred by Subdivider or Subdivider's agents to remedy Defective Work are Non-Reimbursable Costs. If City has already reimbursed Subdivider for Defective Work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Subdivider's bond if Subdivider has been paid in full.
- 15.4 **Extension of Warranty.** When Defective Work, or damage there from, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, shall be extended for an additional one (1) year from the date of the satisfactory completion of the correction, removal, or replacement.
- 15.5 **No Limitation on other Remedies.** Exercise of the remedies for Defective Work pursuant to this Article shall not limit the remedies City may pursue under this Agreement, at law, or in equity.

- 15.6 **Resolution of Disputes.** If Subdivider and City are unable to reach agreement on disputed work, City may direct Subdivider to proceed with the work and compensate Subdivider for undisputed amounts. Payment of disputed amounts shall be as later determined by mediation or as subsequently adjudicated or established in a court of law. Subdivider shall maintain and keep all records relating to disputed work in accordance with Article XVII.
- 15.7 **Prior to Final Acceptance and Reimbursement to Subdivider.** Where Defective Work has been identified prior to the Final Completion of Project, Subdivider shall:
- 15.7.1 ***Correct, Remove, or Replace.*** Subdivider shall promptly and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work. Costs incurred to remedy Defective Work are Non-Reimbursable Costs. Where Defective Work is not remedied, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount paid, or make a claim against the construction contractor's bond.

ARTICLE XVI. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

- 16.1 **Maintenance Period.** If the construction contractor is required to install or maintain landscaping and/or irrigation, Subdivider shall require the construction contractor provide a maintenance period to begin on the first day after all landscape and irrigation work on Project is complete, checked, approved by City, and City has given written approval to begin the maintenance period, and shall continue until ninety (90) calendar days after the date of Final Completion or ninety (90) calendar days after the date of the date the Landscaping and Irrigation is accepted, whichever is longer.
- 16.2 **Maintenance Area.** Subdivider shall require the construction contractor maintain all areas of Project, including areas impacted or disturbed by the Project.
- 16.3 **Maintenance Required.** Subdivider shall require the construction contractor conduct regular planting maintenance operations immediately after each plant is planted. Plants shall be kept in a healthy growing condition and in a visually pleasing appearance by watering, pruning, mowing, rolling, trimming, edging, fertilizing, restaking, pest and disease controlling, spraying, weeding, cleaning up and any other necessary operation of maintenance. Landscape areas shall be kept free of weeds, noxious grass and all other undesired vegetative growth and debris. Construction contractor shall replace all plants found to be dead or in an impaired condition within fourteen (14) calendar days. Maintenance shall also include the following: (1) filling and replanting of any low areas that may cause standing water (2) adjusting of sprinkler head height and watering pattern, (3) filling and recompaction of eroded areas, (4) weekly removal of trash, litter, clippings and foreign debris, (5) inspecting plants at least twice per week, and (6) protecting all planting areas against traffic or other potential causes of damage.
- 16.4 **Landscape and Irrigation Inspection.** At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be scheduled with two (2) weeks

notice, a minimum of eighty (80) calendar days after the plant maintenance period commencement, or when Subdivider or Subdivider's contractor notifies City they are ready for the Final Inspection, whichever comes last. The City will notify Subdivider of all deficiencies revealed by the inspection before acceptance.

- 16.5 **Extension of Maintenance Period.** Subdivider shall require the construction contractor extend completion of the maintenance period when in City's opinion improper maintenance and/or possible poor or unhealthy condition of planted material is evident at the termination of the scheduled maintenance period. Subdivider shall require the construction contractor accept responsibility for additional maintenance of the work until all of the work is completed and acceptable. Additional costs for failure to maintain landscaping during the maintenance period are Non-Reimbursable Costs.
- 16.6 **Replacement.** Plants found to be dead or not in a vigorous condition, or if root balls have been damaged, within the installation, maintenance and guarantee periods, shall be replaced within fourteen (14) calendar days of notification by City. Subdivider shall require the construction contractor include, at construction contractor's expense, a timely written diagnosis of plant health by a certified arborist, should a dispute arise. An arborist's report shall indicate reason for lack of vigor, potential remedies, if any, and estimate of time required to regain vigor and specified size.
- 16.6.1 **Same Kind and Size.** Unless otherwise requested and accepted by City in writing, plants used for replacement shall be of the same kind and size as specified and shall be furnished, planted and fertilized as originally specified. Subdivider shall require the cost of all repair work to existing improvements damaged during replacements be borne by the construction contractor. Costs of replacement are Non-Reimbursable Costs.

ARTICLE XVII. RECORDS AND AUDITS

- 17.1 **Retention of Records.** Subdivider, consultants, contractors, and subcontractors shall maintain data and records related to this Project and Agreement for a period of not less than five (5) years following the Effective Date of this Agreement.
- 17.2 **Audit of Records.** At any time during normal business hours and as often as City deems necessary, Subdivider and all contractors or subcontractors shall make available to City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Subdivider and all contractors or subcontractors will permit City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Subdivider shall pay all City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained. All such costs will be Non-Reimbursable Costs.
- 17.2.1 **Costs.** Subdivider and Subdivider's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred.

ARTICLE XVIII. NOTICES

- 18.1 **Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 18.2 **Effective Date of Notice.** Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (1) on personal delivery, (2) on the second business day after mailing by Certified or Registered U.S. Mail, Return Receipt Requested, (3) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (4) upon documented successful transmission of facsimile.
- 18.3 **Recipients.** All demands or notices required or permitted to be given shall be sent to all of the following:
- 18.3.1 Director, Engineering & Capital Projects Department
City of San Diego
City Administration Building
202 C Street, M.S. #9B
San Diego, California 92101
Facsimile No: (619) 533-4736
- 18.3.2 Facilities Financing Manager
City Planning and Community Investment
City of San Diego
1010 Second Avenue, Suite 600 M.S. #606F
San Diego, California 92101
Facsimile No: (619) 533-3687
- 18.3.3 Ms. Beth Fischer
Pardee Homes
Division President – San Diego
6025 Edgewood Bend Court
San Diego, CA 92130
Facsimile No: (858) 794-2599
- 18.3.4 Thomas F. Steinke, Esq.
Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101
Facsimile No: (619) 702-6819
- 18.5 **Change of Address(es).** Notice of change of address shall be given in the manner set forth in Article XVIII.

ARTICLE XIX. MEDIATION

- 19.1 **Mandatory Mediation.** If dispute arises out of, or relates to the Project or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association [AAA] or any other neutral organization agreed upon before having recourse in a court of law.
- 19.2 **Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator [Mediator], and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.
- 19.3 **Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.
- 19.3.1 If AAA is selected to coordinate the mediation [Administrator], within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.
- 19.3.2 The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.
- 19.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.
- 19.4 **Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

- 19.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.
- 19.4.2 Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

ARTICLE XX. MISCELLANEOUS PROVISIONS

- 20.1 **Term of Agreement.** Following the adoption of the City Council Resolution authorizing this Agreement and the subsequent execution of the same by the Parties, this Agreement shall be effective upon the date it is executed by City Attorney in accordance with San Diego Charter section 40 [Effective Date.] Unless otherwise terminated, the Agreement shall be effective until (i) the final reimbursement payment is made; or (ii) one year after the Warranty Bond terminates, whichever is later but not to exceed five years unless approved by City ordinance.
- 20.2 **Construction Documents.** Construction Documents include, but are not limited to: construction contract, contract addenda, notice inviting bids, instructions to bidders, bid (including documentation accompanying bid and any post-bid documentation submitted prior to notice of award), the bond(s), the general conditions, permits from other agencies, the special provisions, the plans, standard plans, standard specifications, reference specifications, and all modifications issued after the execution of the construction contract.
- 20.3 **Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 20.4 **Gender & Number.** Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders, and (ii) the singular number includes the plural number.
- 20.5 **Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.
- 20.6 **Incorporation of Recitals.** All Recitals herein are true and correct to the Parties' best knowledge and belief, and are fully incorporated into this Agreement by reference and are made a part hereof.
- 20.7 **Covenants and Conditions.** All provisions of this Agreement expressed as either covenants or conditions on the part of City or Subdivider shall be deemed to be both covenants and conditions.
- 20.8 **Integration.** This Agreement and all Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered

in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties or a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

- 20.9 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 20.10 **Drafting Ambiguities.** The Parties acknowledge they each have been fully advised by their own counsel with respect to the negotiations, terms, and conditions of this Agreement. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.
- 20.11 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.
- 20.12 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 20.13 **Good Faith Performance.** The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 20.14 **Further Assurances.** City and Subdivider each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 20.15 **Exhibits.** Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.
- 20.16 **Compliance with Controlling Law.** Subdivider certifies it required its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement (and if expressly made applicable by the City Council, California Labor Code section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of Project), including during inspection and land surveying work. In addition, Subdivider certifies it required its consultants, contractors, subcontractors, agents, and employees comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, resolutions, ordinances, rules, regulations or policies.
- 20.17 **Hazardous Materials.** Hazardous Materials constitute any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to Property, including, without limitation the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). Subdivider certifies it complied with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

- 20.18 **Jurisdiction, Venue, Choice of Law, and Attorney Fees.** The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. The prevailing Party in any such suit or proceeding shall be entitled to a reasonable award of attorney fees in addition to any other award made in such suit or proceeding.
- 20.19 **Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 20.20 **Third-Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third-party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third-party beneficiary of all Subdivider's contracts, purchase orders and other contracts between Subdivider and third-party services. Subdivider certifies it has incorporated this provision into its contracts, supply agreements and purchase orders.
- 20.21 **Non-Assignment.** The Subdivider shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this Section shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.
- 20.22 **Successors in Interest.** This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by this Agreement shall be vested and binding on any Party's successor in interest.
- 20.23 **Independent Contractors.** The Subdivider, any consultants, contractors, subcontractors, and any other individuals employed by Subdivider shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Subdivider concerning the details of performing the work or services under this Agreement, or to exercise any control over such performance, shall mean only that Subdivider shall follow the direction of City concerning the end results of the performance.
- 20.24 **Approval.** Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld; however, nothing in this Section shall in any way bind or limit any future action of the City Council pertaining to this Agreement or Project.

20.25 **No Waiver.** No failure of either City or Subdivider to insist upon the strict performance by the other of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

20.26 **Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been duly obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

20.27 **Remedies.** Notwithstanding any other remedies available to City at law or in equity, Subdivider understands that its failure to comply with the insurance requirements or other obligations required by this Agreement, and/or submitting false information in response to these requirements, may result in withholding reimbursement payments until Subdivider complies and/or may result in suspension from participating in future city contracts as a developer, prime contractor or consultant for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three (3) years.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by the through its Mayor, pursuant to Resolution No. R-_____, authorizing such execution, and by Subdivider, as well as their respective counsel.

This Agreement was approved as to form and content by the City Attorney this _____ of _____, 2010, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: _____

By: _____
Its: _____

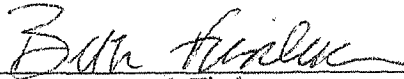
Approved as to form and content:
JAN I. GOLDSMITH, City Attorney

Dated: _____

By: _____
Its: _____

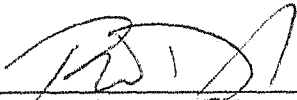
PARDEE HOMES , a California Corporation
(formerly known as Pardee Construction Company)

Dated: 2/24/10

By: 
Its: Beth Fischer
Vice President

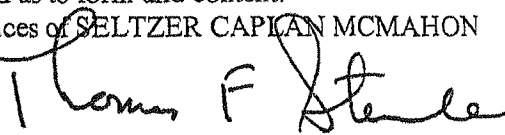
PARDEE HOMES , a California Corporation
(formerly known as Pardee Construction Company)

Dated: 2/24/10

By: 
Its: VICE PRESIDENT

Approved as to form and content:
Law Offices of SELTZER CAPLAN MCMAHON
VITEK

Dated: 2.24.10

By: 

Thomas F. Steinke, Attorneys for Pardee
Homes

HKV
02/23/10
Or.Dept: Facilities Financing

RECEIVED

CLERK'S FILE COPY

(R-88-948)

JAN 27 88

RESOLUTION NUMBER R-269577

PROJECT DESIGN
CONSULTANTS

ADOPTED ON OCTOBER 26, 1987

WHEREAS, James and Joan C. Beu, appealed the decision of the Planning Commission in approving Tentative Map No. T.M. 85-0220 submitted by Pardee Construction Company, Owner/Permittee, for North City West Neighborhood 4A, Units 1, 2, 3, 4 and 5, for a subdivision of a total of 320 lots for residential and open space development on a portion of Sections 8 and 17, Township 14 South, Ranch 3 West, SBBM, located 0.3 miles east of Torrey Pines High School, north of Del Mar Heights Road, in the North City West Community area, in the A-1-10 Zone; and

WHEREAS, the matter was set for public hearing on October 26, 1987, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that this City Council adopts and incorporates herein by reference the findings of the Planning Commission in Planning Commission Resolution No. 6029, adopted December 5, 1985, which are supported by the minutes, maps and exhibits, all of which are herein incorporated by reference.

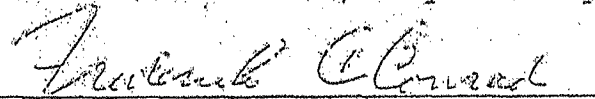
BE IT FURTHER RESOLVED, that the appeal of James and Joan C. Beu, is denied; the decision of the Planning Commission is sustained, and Tentative Map No. T.M. 85-0220 is hereby granted

M/S 656 FACILITIES FINANCING

Pardee Construction Company, Owner/Permittee, subject to the conditions attached hereto and made a part hereof.

APPROVED: JOHN W. WITT, City Attorney

By



Frederick C. Conrad
Chief Deputy City Attorney

FCC:ta

10/26/87

Or. Dept: Clerk

R-88-948

Form=r.tm

CITY COUNCIL TM CONDITIONS 85-0220

1. This map will become effective with the effective date of the North City West Development Unit 4A Precise Plan and shall expire three years from that date. However, the map shall not become effective unless the vacating of portions of the old alignment of Black Mountain Road within the subdivision has been approved by the City Council. In the event the specific plan or the street vacation is denied, this map shall be deemed denied.
2. The "General Conditions for Tentative Subdivision Maps" filed in the office of the City Clerk under Document No. 767-688 on May 7, 1980, shall be made a condition of map approval. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.
3. The subdivider must provide a geological reconnaissance on the subject property to determine the stability of the soil. All slopes shall be constructed in accordance with the provisions of San Diego Municipal Code Section 62.0410 et seq.
4. Undergrounding of existing and/or proposed public utility systems and service facilities is required according to San Diego Municipal Code Section 102.0404, Subsection 2.
5. Del Mar Heights Road will ultimately be dedicated and improved as a 6-lane primary arterial street within a 122-foot-wide right-of-way. In connection with this subdivision, the subdivider shall dedicate 61 feet of right-of-way adjacent to the subdivision at the alignment shown on the approved tentative map and shall improve this right-of-way with standard half-width improvements consisting of a 44-foot-wide paved roadway, curb, 5-foot-wide sidewalk, and a half of a 14-foot-wide raised median with a transition satisfactory to the City Engineer at the easterly end to meet the existing paved roadway.
6. In connection with Council approval of the final map on Unit 5, Del Mar Heights Road, off-site to the west of this subdivision to Interstate 5, shall be dedicated and graded full-width as a 6-lane primary arterial street within a 122-foot-wide right-of-way and improved with the center lanes and median without curbs and sidewalks. A temporary AC sidewalk shall be constructed on both sides and transitions as required by the City Engineer shall be constructed.
7. The subdivider shall relinquish access rights to Del Mar Heights Road.
8. Black Mountain Road shall be dedicated and fully improved as a collector street with curbs, 5-foot-wide sidewalks, and a 40-foot-wide

8. Black Mountain Road shall be dedicated and fully improved as a collector street with curbs, 5-foot-wide sidewalks, and a 40-foot-wide paved roadway within a 60-foot-wide dedicated right-of-way at the alignment shown on the approved tentative map. The dedication and paving width shall widen to 82 feet and 54 feet with a 14-foot curb-to-property-line distance on each side at the intersection with Del Mar Heights Road. These improvements shall meet the improvements required with Tentative Map 85-0259 in a manner satisfactory to the City Engineer.
9. The subdivider shall construct a traffic signal system in a manner satisfactory to the City Engineer at the intersection of Black Mountain Road and Del Mar Heights Road.
10. The subdivider shall provide transitions between the new and old paving on Black Mountain Road, and to existing private driveways as shown on the approved tentative map.
11. The remaining streets within the subdivision shall be dedicated and full improved as local streets with curbs, sidewalks and paving as shown on the approved tentative map. Fully improved standard residential cul-de-sacs shall be constructed as shown on the approved tentative map.
12. Water requirements:
 - a. The subdivider shall provide a water study for approval by the Water Utilities Director.
 - b. The subdivider shall install a system of water mains as called for in the approved water study.
 - c. The subdivider shall relocate the existing 30-inch water main as required by the Water Utilities Director.
 - d. The subdivider shall install pressure regulating stations as called for in the approved water study.
 - e. The subdivider shall install fire hydrants at locations satisfactory to the City Engineer.
13. Sewer requirements:
 - a. Provide a sewer study for the Gonzales Canyon drainage basin for approval by the Water Utilities Director.
 - b. Install the Gonzales Canyon trunk sewer as called for in the approved sewer study to the easterly boundary of Section 8, T14S, R3W.

- c. Install a system of gravity sewer mains adequate to serve all the lots and the adjacent areas within the drainage basis.
 - d. Provide calculations, satisfactory to the Water Utilities Director, to show that the size and the grade of the sewer mains will provide cleansing velocities.
14. In connection with Council approval of the Unit 5 final map, the subdivider shall provide an alignment and grade study for approval by the City Engineer for the extension of Del Mar Heights Road easterly of this subdivision to a connection with Camino Ruiz.
 15. Lots A through F and H must be deeded to the City for open space purposes. The deed conveying the property to the City of San Diego is to be submitted to the City Council for acceptance concurrently with the filing of the final subdivision map. No park fee credits will be given because of this land transfer.
 16. The subdivider shall grant non-building area easements over Parcels G and I through Q.
 17. Parcel R shall be labeled on the final map as "Not A Building Site." The recording of a subsequent map will be required in order to develop this parcel.
 18. This subdivision is in a community plan area designated in the General Plan as Planned Urbanizing or Future Urbanizing. As such, special financing plans have been, or will be, established to finance the public facilities required for the community plan area.

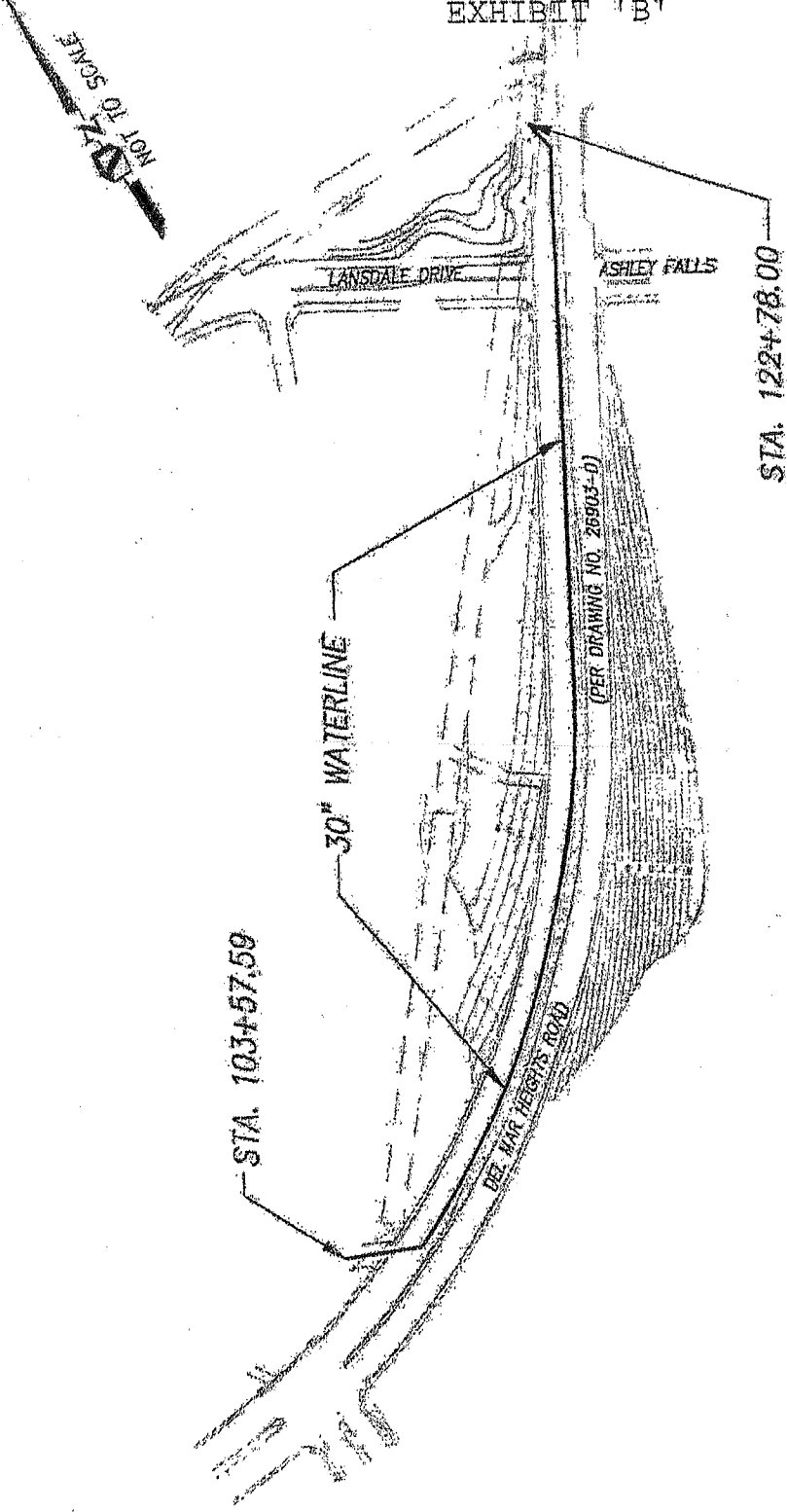
Therefore, in connection with Council approval of the final map, the subdivider shall comply with the provisions of the financing plan then in effect for this community plan area, in a manner satisfactory to the City Engineer. This compliance shall be achieved by entering into a development agreement, paying a facilities benefit assessment, or such other means as may have been established by the City Council.
 19. The subdivider has requested approval to file final maps out of numerical sequence. This request is approved subject to the provision that the City Engineer can review the off-site improvements proposed in connection with each unit.
 20. Council approval of the final maps within this subdivision will also be contingent upon additional off-site improvements that are related to an aggregate total of dwelling units within the North City West Community Plan area. These additional improvements, that may become requirements of a unit within this subdivision, are as specified in a document entitled, "Transportation Phasing Plan for North City West," dated

March 25, 1981, which by this reference is made a part of this resolution.

21. Council approval of the final map of the first unit of this tentative map to record shall be contingent upon approval by the City Engineer of a drainage study encompassing the entire North City West Neighborhood 4A Precise Plan.
22. Prior to Council approval of the final map of the first unit of this tentative map to record, an Open Space Maintenance Assessment District shall be created encompassing the entire North City West Neighborhood 4A Precise Plan area. The approved tentative map shows a number of open space lots that are proposed to be maintained by this Open Space Maintenance Assessment District. These open space areas and any other open space area proposed to be maintained by the assessment district shall be in the form of individual lots that are to be deeded to the City for open space purposes. All of the lots to be deeded to the City shall meet the requirements of the City Engineer. The deeds conveying these lots to the City of San Diego are to be submitted to the City Council for acceptance concurrently with the filing of the final subdivision map of the applicable unit. The subdivider shall maintain new landscape planting and hydroseeded areas for a period of 2 years prior to the assumption of the maintenance responsibility by the assessment district. A bond may be posted, if necessary, to assure maintenance by the subdivider for any portion of the 2-year period after release of the subdivision bond. The maintenance of any recreation lots will not be included in the Open Space Maintenance Assessment District and shall not be the responsibility of the City. City's maintenance responsibility shall be limited to population-based park sites.
23. Prior to the filing of the final map, the subdivider shall demonstrate compliance with the North City West School Facilities Master Plan. Compliance may be evidenced through any of the following methods: 1) By obtaining a school letter stating such compliance; 2) By otherwise demonstrating the availability of school facilities to accommodate residents of the subdivision; or 3) By participating in the "School Deposit Procedure" alternative as provided in the Master Plan. A development agreement will implement the deposit procedure.
24. The drainage system proposed for this subdivision shown on the approved tentative map is subject to approval by the City Engineer.
25. The subdivider shall grant a 52-foot-wide street reservation as shown on the approved tentative map. The subdivider shall also grant slope easements adjacent to the street reservation as required by the City Engineer.

26. This tentative map shall become effective with Council approval of the vacating of portions of the old alignment of Black Mountain Road within the subdivision. In the event the street vacation is denied, this map shall be deemed denied.
27. The following mitigating measures from the project EIR shall be complied with in a manner satisfactory to the Deputy Director of the Environmental Quality Division.
 - a. To mitigate potential impacts to the paleontological record, a qualified paleontologist shall be present at the pre-grade meeting to consult with the grading and excavation contractors. A professional paleontologist shall be allowed to periodically examine cuts of the Eocene sedimentary material during grading. If well-preserved fossil materials are found, adequate time shall be allowed during grading for the recovery of significant finds. This can be achieved by the temporary diversion of heavy equipment from the location of significant resource sites. Materials salvaged during the grading shall be deposited in a scientific institution such as the San Diego Natural History Museum or the Natural History Museum of Los Angeles County. A report describing the results of the paleontological monitoring program shall be submitted to the Deputy Director of the Environmental Quality Division.
 - b. The off-site sewer line shall be revegetated with a native non-irrigated hydroseed mix. Any trees removed during construction shall be replaced with specimen trees of the same species.
28. Prior to the filing of the final map(s), the subdivider shall submit "Letter(s) of School Availability" from the San Dieguito Union High and Solana Beach Elementary in accordance with Council Policy 600-22.
29. Prior to recordation of any final subdivision map by the City Council, the subdivider shall provide evidence to ensure that an affirmative marketing program is established.
30. This tentative map shall conform to PD 85-0220.

EXHIBIT 'B'



NOT TO SCALE

STA. 103+57.50

30" WATERLINE

LANSDALE DRIVE

(PER DRAINING NO. 26903-D)

ASHLEY FALLS

STA. 122+78.00

WATER TRANSMISSION LINE RELOCATION
DEL MAR HEIGHTS ROAD



PROJECT DESIGN CONSULTANTS
1000 W. 10th Street, Suite 100
P.O. Box 1000
P.O. Box 1000
P.O. Box 1000
P.O. Box 1000

FBA Project No. W-1 (Formerly Project No. 21-41)

DATE: 10/15/10

EXHIBIT C

Description of Work

The Project provides for the construction of 1962 linear feet of a 30 inch diameter transmission waterline along Del Mar Heights Road from east of Carmel Canyon Road from approximately STA 103+57.59 to STA 122+78.00, approximately, at Ashley Falls Drive.

EXHIBIT D

Carmel Valley Public Facilities Financing Plan FY 2009

CITY OF SAN DIEGO FACILITIES FINANCING PROGRAM

TITLE: WATER TRANSMISSION LINE RELOCATION	PROJECT: W-1
	PRIOR #: 21-41
DEPARTMENT: WATER	COUNCIL DISTRICT: 1
CIP#: N/A	COMMUNITY PLAN: CV

DESCRIPTION:

PROVIDES FOR THE CONSTRUCTION OF A 30-INCH DIAMETER TRANSMISSION WATERLINE ALONG DEL MAR HEIGHTS ROAD EAST OF CARMEL CANYON ROAD FROM EXISTING 30 INCH WATERLINE AT APPROXIMATELY STATION 104 + 40 FOOT DEL MAR HEIGHTS ROAD AND RECONNECT TO EXISTING WATERLINE AT APPROXIMATELY 141 + 20 FEET DEL MAR HEIGHTS ROAD RIGHT-OF-WAY.

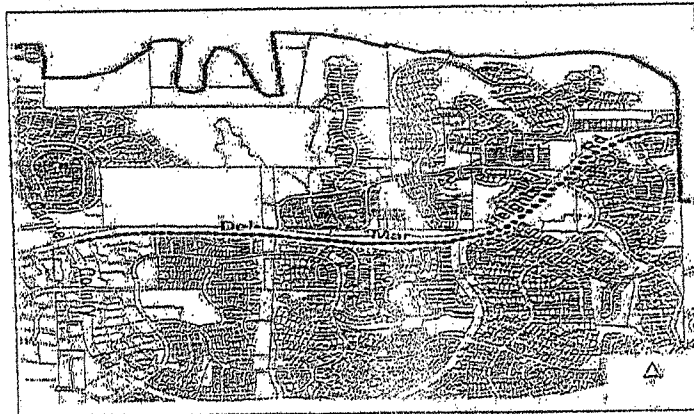
JUSTIFICATION:

THE WATERLINE RELOCATION WAS REQUIRED IN ORDER TO DEVELOP DEL MAR HEIGHTS ROAD WITHIN CARMEL VALLEY IN ACCORDANCE WITH THE COMMUNITY PLAN. THE EXISTING PIPE WAS REMOVED AND A NEW LINE PLACED WITHIN THE NEW DEL MAR HEIGHTS ROAD RIGHT-OF-WAY. THIS PROJECT IS CONSISTENT WITH THE COMMUNITY PLAN AND GENERAL PLAN GUIDELINES.

SCHEDULE:

REIMBURSEMENT FOR THE DESIGN AND CONSTRUCTION OF A PORTION OF THIS PROJECT OCCURRED IN FY 2001. REIMBURSEMENT FOR THE REMAINING PORTION (FUNDED IN FY 2009) IS SUBJECT TO APPROVAL OF A REIMBURSEMENT AGREEMENT.

SOURCE	AMOUNTS	EXPENDED	COMPLET	FY 2009	FY 2010	FY 2011	FY 2012
FEA-CVN	\$863,817	\$863,817	\$0	\$0	\$0	\$0	\$0
FBA-CV	\$621,183	\$0	\$0	\$621,183	\$0	\$0	\$0
TOTAL	\$1,485,000	\$863,817	\$0	\$621,183	\$0	\$0	\$0



Contact: Leonard Wilson
 Phone: 619-533-4287
 Email: LWilson@sandiego.gov

EXHIBIT E

WATER TRANSMISSION LINE RELOCATION
DEL MAR HEIGHTS ROAD - PROJECT W-1 (FORMERLY PROJECT 21-41)
(February 4, 2010)

Bond Exoneration	2,506.13
Soil Testing & Inspection	4,367.75
Engineering Staking	5,800.00
Engineering	7,528.43
Miscellaneous	961.00
Water System	<u>341,894.28</u>
Subtotal Improvement Costs	363,057.59
Administrative Costs (5%)	<u>18,152.88</u>
Grand Total	\$381,210.47

EXHIBIT F

Consultant Provisions

1. **Third Party Beneficiary.** The City of San Diego is an intended third party beneficiary of this contract. In addition, it is expected that upon completion of design and payment in full to Consultant by Subdivider, the City will become the owner of the Project design and work products, and City shall be entitled to enforce all of the provisions of this contract as if it were a party hereto. Except as expressly stated herein, there are no other intended third party beneficiaries of this contract.
2. **Competitive Bidding.** Consultant shall ensure that all design plans and specifications prepared, required, or recommended under this Agreement allow for competitive bidding. Consultant shall design such plans or specifications so that procurement of services, labor or materials are not available from only one source, and shall not design plans and specifications around a single or specific product, piece of major equipment or machinery, a specific patented design, or a proprietary process, unless required by principles of sound engineering practice and supported by a written justification that has been approved in writing by the City of San Diego. Consultant shall submit this written justification to the City of San Diego prior to beginning work on such plans or specifications. Whenever Consultant recommends a specific product or equipment for competitive procurement, such recommendation shall include at least two brand names of products that are capable of meeting the functional requirements applicable to the Project.
3. **Professional Services Indemnification.** Other than in the performance of design professional services which shall be solely as addressed in Sections 4 and 5 below, to the fullest extent permitted by law, Consultant shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, agents, departments, officials, and employees [Indemnified Parties] from and against all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Consultant or its subcontractors, agents, subagents and consultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any services performed under this Agreement by Consultant, any subcontractor, anyone directly or indirectly employed by them, or anyone they control. Consultant's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the active negligence, sole negligence or willful misconduct of the Indemnified Parties. As to Consultant's professional obligations, work or services involving this Project, Consultant agrees to indemnify and hold harmless the City of San Diego, and its agents, officers and employees from and against any and all liability, claims, costs, and damages, including but not limited to, attorney's fees, losses or payments for injury to any person or property, caused directly or indirectly from the negligent acts, errors or omissions of Consultant or Consultant's employees, agents or officers. This indemnity obligation shall apply for the entire time that any third party can make a claim against, or sue the City of San Diego for liabilities arising out of Consultant's provision of services under this Agreement.
4. **Indemnification for Design Professional Services.** To the fullest extent permitted by law (including, without limitation, California Civil Code section 2782.8), with respect to the performance of design professional services, Design Professional shall indemnify and hold harmless the City, its officers, and/or employees, from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
5. **Design Professional Services Defense.** Parties will work in good faith to procure applicable insurance coverage for the cost of any defense arising from all claims, demands or liability that arise out of, pertain to or relate to the negligence, recklessness, or willful misconduct of Design Professional or Design Professional's officers or employees.
6. **Enforcement Costs.** Consultant agrees to pay any and all reasonable costs the City of San Diego may incur to enforce the indemnity and defense provisions set forth in this Agreement.
7. **Professional Liability Insurance.** For all of Consultant's employees who are subject to this Agreement, Consultant shall keep in full force and effect, errors and omissions insurance providing coverage for

professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. Consultant shall ensure both that (1) this policy's retroactive date is on or before the date of commencement of the work to be performed under this Agreement; and (2) this policy has a reporting period of three (3) years after the date of completion or termination of this Agreement. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City of San Diego's exposure to loss.

8. **Commercial General Liability [CGL] Insurance.** Consultant shall keep in full force and effect, during any and all work performed in accordance with this Agreement, all applicable CGL insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of two million dollars (\$2,000,000) for general liability, completed operations, and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.
9. **Insurance Policy Requirements.** Except for professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. Additional insured status must be reflected on additional insured endorsement form CG 20 10, or equivalent, which shall be submitted to the City of San Diego. Further, all insurance required by express provision of this agreement shall be carried only by responsible insurance companies that have been given at least an "A" or "A-" and "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City of San Diego. The policies cannot be canceled, non-renewed, or materially changed except after thirty (30) calendar days prior written notice by Consultant or Consultant's insurer to the City of San Diego by certified mail, as reflected on an endorsement that shall be submitted to the City of San Diego, except for non-payment of premium, in which case ten (10) calendar days notice must be provided. Before performing any work in accordance with this Agreement, Consultant shall provide the City of San Diego with all Certificates of Insurance accompanied with all endorsements.
10. **Workers Compensation.** For all of the Consultant's employees who are subject to this Agreement and to the extent required by the State of California, the Consultant shall keep in full force and effect, a Workers Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employers liability coverage, and the Consultant shall provide an endorsement that the insurer waives the right of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents and representatives.
11. **Compliance Provision.** Consultant agrees, at its sole cost and expense, to perform all design, contract administration, and other services in accordance with all applicable laws, regulations, and codes, including, but not limited to, the Americans with Disabilities Act of 1990 [ADA] and title 24 of the California Code of Regulations as defined in Section 18910 of the California Health and Safety Code [Title 24]. Further, Consultant is responsible as designer and employer to comply with all parts of the ADA and Title 24.
12. **Maintenance of Records.** Consultant shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the rendering of services for the Project, throughout the performance of the services and for a period of five (5) years following completion of the services for the Project. Consultant further agrees to allow the City of San Diego to inspect, copy and audit such books, records, documents and other evidence upon reasonable written notice. In addition, Consultant agrees to provide the City of San Diego with complete copies of final Project design and construction plans and Project cost estimate.

EXHIBIT G

Design and Construction Standards

1. **Laws.** All local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including but not limited to, Development Services Department permits, hazardous material permits, site safety, state and local Building Codes, stormwater regulations, etc.
 - A. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code.* It is the sole responsibility of Subdivider to comply with all ADA and Title 24 regulations. [Subdivider Certification attached as Exhibit H].
 - B. *Environmental.* Subdivider shall complete all environmental measures required by CEQA (State requirements), NEPA (Federal requirements), and the local jurisdiction, including but not limited to, mitigation measures, and site monitoring.
 - C. *Air, Water, and Discharge.* Subdivider shall comply with the Clean Air Act of 1970, the Clean Water Act (33 USC 1368)-Executive Order 11738, and the Stormwater Management and Discharge Control-Ordinance No. 0-17988.
 - D. *ESBSSA.* Subdivider shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
 - E. *City Directives.* Subdivider shall comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations.
2. **Standard Specifications.** Subdivider shall comply with the most current editions of the following reference specifications when designing and constructing the Project, including:
 - A. *Greenbook.* Standard Specifications for Public Works Construction, including the Regional and City of San Diego Supplement Amendments.
 - B. *DOT.* California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones.
3. **City Standards.** Subdivider's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:
 - A. *City of San Diego's Drainage Design Manual.*
 - B. *City of San Diego's Landscape Technical Manual produced by the Planning Department.*
 - C. *City of San Diego's Street Design Manual.*
 - D. *City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.*
 - E. *City of San Diego's Technical Guidelines for Geotechnical Reports.*
 - F. *City of San Diego Standard Drawings including all Regional Standard Drawings.*
 - G. *City of San Diego Data Standards for Improvement Plans.*

H. *The City of San Diego Consultant's Guide to Park Design and Development.*

EXHIBIT H

Certification for Title 24/ADA Compliance

Water Transmission Line Relocation, Del Mar Heights Road (the "Project")

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for of the Project by Pardee Homes meet all current California Building Standards Code, California Code of Regulations, Title 24 and Americans with Disabilities Act Accessibility Guidelines requirements, and shall be in compliance with The Americans with Disabilities Act of 1990.

Dated: 2/24/10

By: *Beth Fischer*
Beth Fischer
Vice President

EXHIBIT I

Approval of Design, Plans, and Specifications

UNLESS OTHERWISE DIRECTED BY THE CITY, SUBDIVIDER SHALL OBTAIN APPROVAL OF DESIGN, PLANS, AND SPECIFICATIONS IN THE MANNER IDENTIFIED BELOW:

1. **City Approval.** Subdivider shall obtain City approval of the design, in writing, at schematic design, 60% Design, and 90% Design.
 - A. *Condition Precedent.* City approval of the Schematic Design Documents is a condition precedent to authorization to proceed with subsequent work on the Project. City will notify Subdivider in writing within four weeks after receipt of Design Documents of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Schematics for City approval.
 - B. *Sixty (60) Percent Design.* At 60% design, City will notify Subdivider in writing within eight weeks after receipt of Design Documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Design Documents for City approval.
 - C. *Ninety (90) Percent Design.* At 90% design, City will notify Subdivider in writing within ten weeks after receipt of design documents at each required stage of design, of approval, or of request for modifications. If modifications are requested, Subdivider shall modify and resubmit Design Documents for City approval.
2. **Submittal of Plans, Specifications, and Budget.** Subdivider certifies it has delivered to City complete Plans and Specifications, Estimated Costs, and bid documents, consistent with the Schematic Drawings, for the design and construction of Project.
3. **Citywide Review of 100% Plans and Specifications.** Subdivider certifies City has reviewed the Plans and Specifications, and the Plans and Specifications included City's standard drawings and specifications as described in Exhibit I.
4. **Final Approval.** Subdivider certifies the City approved the Plans and Specifications.

EXHIBIT J

Construction Obligations

1. **Site Safety, Security, and Compliance.** Subdivider shall be responsible for site safety, security, and compliance with all related laws and regulations.
 - A. *Persons.* Subdivider shall be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by Subdivider to access the Project site.
 - B. *Other.* Subdivider is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been Accepted by the City pursuant to Article I.
 - C. *Environment.* Subdivider shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including the Clean Air Act of 1970, the Clean Water Act, Executive Order number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988, and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Furthermore, the Subdivider shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan [SWPPP] to be implemented by the Subdivider during Project construction. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and any municipal regulations adopted pursuant to the permits.
2. **Access to Project Site.**
 - A. *Field Office.* Subdivider shall provide in the construction budget a City field office (approximately 100 square feet) that allows City access to a desk, chair, two drawer locking file cabinet with key, phone, fax, computer, copy machine and paper during working hours.
 - B. *Site Access.* City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Subdivider.
 - C. *Site Tours.* Site tours may be necessary throughout completion of the Project. Subdivider shall allow City to conduct site tours from time to time as the City deems necessary. City will give Subdivider notice of a prospective tour and a mutually agreeable time shall be set. Subdivider is not obligated to conduct tours or allow access for tours when City failed to give prior notice.
3. **Surveying and Testing.** Subdivider shall coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:
 - A. *Existing Conditions.* Subdivider shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The Soils Consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.
 - B. *Utilities.* Subdivider shall provide all required information for the construction or relocation of Public or private utility facilities that must be constructed or relocated as a result of this Project. Subdivider shall file all of the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project.
 - C. *Geotechnical Information.* Subdivider shall obtain all necessary geotechnical information required for

the design and construction of the Project. The Project Engineering Geologist and/or Project Soils Engineer (qualified R.C.E. or R.G.E.) shall prepare a statement, that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.

4. **Public Right of Way.** All work, including, materials testing, special testing, and surveying to be conducted in the Public right of way shall be coordinated with the City.
 - A. **Materials Testing.** Subdivider shall pay for and coordinate with City to have all material tests within the Public right of way and any asphalt paving completed by City's Material Testing Laboratory.
 - B. **Surveying.** Subdivider shall pay for and coordinate with City's Survey Section all surveying required within the Public right of way.
 - C. **Follow all Laws, Rules, and Regulations.** Subdivider agrees to follow all City standards and regulations while working in the Public right of way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.
5. **Traffic Control.** Subdivider shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans and/or notes.
6. **Inspections.** Subdivider shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the Contract Documents.
 - A. **Reports.** Subdivider shall provide City all special inspection reports within seven (7) calendar days of inspection. Subdivider shall report all failures of special inspections to City.
 - B. **Remedies.** Remedies for compliance shall be approved by Subdivider, Subdivider's consultants, City's Development Services Department, and City representatives.
 - C. **Concealing Work.** Prior to concealing work, Subdivider shall obtain approval of work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as stipulated in this Agreement. This approval is general approval only and in no way relieves Subdivider of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Subdivider shall fulfill all requirements of each of these three agencies.
7. **Property Rights.** Subdivider shall provide all required easement documents, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements, as required by City of San Diego Real Estate Assets Department requirements and Council Policy 600-04, "STANDARDS FOR RIGHTS OF WAY AND IMPROVEMENTS INSTALLED THEREIN". City shall not require Subdivider to provide any easement documents for land to which Subdivider does not have title; however, Subdivider shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Public Facilities Financing Plans or any applicable Development Agreement.
8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Subdivider in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Subdivider. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Subdivider is relieved from its obligation to construct those improvements covered by the denial of said permit(s). All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon Subdivider's receipt of payment in full as described above.

9. **Maintenance.** Subdivider shall maintain and be responsible for the Project site until Acceptance of the Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.
10. **Drug-Free Workplace.** The Subdivider agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. The Subdivider shall certify to the City that it will provide a drug-free workplace by submitting a Subdivider Certification for a Drug-Free Workplace form [Exhibit K].
- A. *Subdivider Notice to Employees.* The Subdivider shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.
- B. *Drug-Free Awareness Program.* The Subdivider shall establish a drug free awareness program to inform employees about all of the following:
- i. The dangers of drug abuse in the work place.
 - ii. The policy of maintaining a drug free work place.
 - iii. Available drug counseling, rehabilitation, and employee assistance programs.
 - iv. The penalties that may be imposed upon employees for drug abuse violations.
 - v. In addition to section 10(A) above, the Subdivider shall post the drug free policy in a prominent place.
- C. *Subdivider's Agreements.* The Subdivider further certifies that each contract for Consultant or Contractor Services for this Project shall contain language that binds the Consultant or Contractor to comply with the provisions of section 10 "Drug-Free Workplace, as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and Contractors shall be individually responsible for their own drug free work place program.

EXHIBIT K

Certification for a Drug-Free Workplace

PROJECT TITLE: Water Transmission Line Relocation, Del Mar Heights Road (the "Project")

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the request for proposals, and that: PARDEE HOMES has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for the Project contains language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Section 4.9.1 subdivisions A through C of the policy as outlined.


Signed 
Printed Name Beth Fischer
Title Vice President
Date 2/24/10

EXHIBIT L

Project Deliverables

1. Master Contract Documents.

- A. *Working Drawings.* Subdivider shall prepare Working Drawings in accordance with City's most current drawing format as outlined in City of San Diego's Manual of Preparation of Land Development and Public Improvement Plans.
- i. *Quality.* Subdivider shall make Working Drawings by one of the following methods: permanent ink, Computer Aided Drafting, a permanent photographic reproduction process, or with pencil made for use on drafting film and permanently fixed with spray coating. Scale and clarity of detail shall be suitable for half-size reduction.
 - ii. *Font and Contents.* Specifications shall be typewritten with one type face, using carbon ribbon or equivalent on bond paper utilizing Greenbook format. Subdivider will furnish only the technical "Special Provisions" section of the Specifications to supplement or modify the Greenbook standards as needed.
- B. *Surveys.* Subdivider shall provide all surveying services required for the design of this Project in accordance with all applicable legal regulations, the Technical Guidelines produced by the California Council of Civil Engineers & Land Surveyors under the title "A Guide to Professional Surveying Procedures," and the City of San Diego Engineering and Capitol Projects Department's "Data Standards for Improvement Plans," August 2004.
- C. *Schematic Design Documents.* Subdivider shall consult with City to ascertain requirements of the Project and to prepare Schematic Design Documents.
- i. Schematic Design Documents shall include, but not be limited to the following:
 - a. Sketches with sufficient detail to illustrate the scale and location of Project components.
 - b. Floor plans with sufficient cross-sections to illustrate the scale and relationship of building components, exterior elevations and exterior colors and textures.
 - c. Analysis of parameters affecting design and construction for each alternate considered.
 - d. Description and recommendation for structural, mechanical and electrical systems, showing alternatives considered.
 - e. Probable construction costs for the base Project and all additive alternates considered.
 - f. Summary of Project requirements and a recommendation.
 - g. Artistic renderings of the Project.
 - ii. *Form.* Subdivider's Schematics shall conform to the quality levels and standards in size, equipment, and all facets of its design and deliverables as set forth in City specifications and as may be updated prior to commencement of construction.
- D. *Design Development Documents.* Subdivider shall prepare from the approved Schematic Design Documents, for approval by City, Design Development Documents to fix and describe the size and character of the entire Project. These documents shall contain, at a minimum, the following:
 - i. Site plan, indicating the nature and relational location, via dimensions, of all proposed Project components.
 - ii. Traffic circulation and landscaping should also be indicated at this stage if applicable.
 - iii. Plans, elevations, cross-sections, and notes as required to fix and describe the Project components.

- iv. Proposed construction schedules.
 - v. Technical 'Special Provisions' section of the Specifications.
 - vi. Outline of Specifications prepared in accordance with the latest recommended format of the Construction Specification Institute.
 - vii. Probable Project construction costs, for each component of the Project being considered in this phase.
 - viii. Color board with material samples.
- E. *Construction Documents.* Subdivider shall provide, based on the approved Design Development documents, Working Drawings and Contract Specifications [throughout the Agreement and attached exhibits referred to as Construction Documents] setting forth in detail the requirements for construction of the Project, including the necessary bidding information.
- F. *Utility Location Requests.* Along with initial submission of Construction Documents, Subdivider shall furnish copies of the Service and Meter Location Request and all utility companies verifications.
- G. *Cost Estimate.* Subdivider shall provide a construction cost estimate based on the Construction Documents.
- H. *H, G, & E Reports.* Subdivider shall provide hydrologic, geotechnical, environmental documents, and other related documents or reports as required by City.
- I. *As-Builts.* Subdivider shall provide As-Builts.
- i. As-Builts shall show by dimension accurate to within one (1) inch, the centerline of each run of conduits and circuits, piping, ducts, and other similar items as determined by City, both concealed and visible. Subdivider shall clearly identify the item by accurate note such as "cast iron drain," galvanized water, etc. Subdivider shall clearly show, by symbol or note, the vertical location of the item ("under slab," "in ceiling," "exposed," etc.), and make all identification sufficiently descriptive that it may be related reliably to the specification. Subdivider shall thoroughly coordinate all changes on the As-Builts making adequate and proper entries on each page of specifications and each sheet of drawings and other documents where entry is required to properly show the change.
 - ii. Subdivider shall include all of the following on the As-Builts:
 - a. Depth of foundation in relation to finished first floor.
 - b. Horizontal and vertical locations of underground utilities and appurtenances, with references to permanent surface improvements.
 - c. Locations of internal utilities and appurtenances, with references to visible and accessible features of the structure.
 - d. Field changes of dimensions and details.
 - e. Changes authorized by approved proposal requests, construction change orders, discussion with City that resulted in any change/deviation from City's program, specifications, approved plans, equipment or materials.
 - f. Details not issued with original contract drawings, design/build plans, deferred approvals, etc.
 - g. Upon completion of work, obtain signature of licensed surveyor or civil engineer on the Project record set verifying layout information.
 - h. Show locations of all utilities on-site with size, and type of pipe, if different than specified, and invert elevations of pipe at major grade and alignment changes.
 - i. The title "PROJECT RECORD" in 3/8" letters.
 - iii. Subdivider shall maintain a set of As-Builts at the Project site for reference. Subdivider shall ensure that changes to the As-Builts are made within twenty-four hours after obtaining information. Changes shall be made with erasable colored pencil (not ink or indelible pencil), shall

clearly describe the change by note (note in ink, colored pencil or rubber stamp) and by graphic line, shall indicate the date of entry, shall circle the area or areas affected and, in the event of overlapping changes, use different colors for each change.

- J. *Operation and Maintenance Manuals.* Subdivider shall submit all Operation and Maintenance manuals prepared in the following manner:
- i. In triplicate, bound in 8½ x 11 inch (216 x 279 mm) three-ring size binders with durable plastic covers prior to City's Final Inspection.
 - ii. A separate volume for each system, including but not limited to mechanical, electrical, plumbing, roofing, irrigation, and any other system as determined by City, with a table of contents and index tabs in each volume as follows:
 - a. Part 1: Directory, listing names, addresses, and telephone numbers of Subdivider's agents, suppliers, manufacturers, and installers.
 - b. Part 2: Operation and Maintenance Instructions, arranged by specification division or system. For each specification division or system, provide names, addresses and telephone numbers of Subdivider's agents, suppliers, manufacturers, and installers. In addition, list the following: 1.) appropriate design criteria; 2) list of equipment; 3) parts list; 4) operating instructions; 5) maintenance instructions, equipment; 6) maintenance instructions, finishes; 7) shop drawings and product data; and 8) warranties.

EXHIBIT M

Typical Insurance Provisions

1. Types of Insurance. At all times during the term of this Agreement, Subdivider shall maintain insurance coverage as follows:
 - 1.1 Commercial General Liability. Subdivider shall provide at its expense a policy or policies of Commercial General Liability [CGL] Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad and which shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse) independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured's contract (including the tort liability of another assumed in a business contract). There shall be no endorsement or modification of the CGL Insurance limiting the scope of coverage for either "insured vs. insured" claims or contractual liability. Subdivider shall maintain the same or equivalent CGL Insurance as described herein for at least ten (10) years following substantial completion of the work. All costs of defense shall be outside the policy limits. The Policy shall provide for coverage in amounts not less than the following: (i) General Annual Aggregate Limit (other than Products/Completed Operations) of two million dollars (\$2,000,000); (ii) Products/Completed Operations Aggregate Limit of two million dollars (\$2,000,000); (iii) Personal Injury Limit one million dollars (\$1,000,000); and (iv) Each Occurrence one million dollars (\$1,000,000).
 - 1.2 Commercial Automobile Liability. For all of Subdivider's automobiles used in conjunction with the Project including owned, hired and non-owned automobiles, Subdivider shall keep in full force and effect, a policy or policies of Commercial Automobile Liability Insurance written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad in the amount of one million dollars (\$1,000,000) combined single limit per occurrence, covering bodily injury and property damage for owned, non-owned and hired automobiles ["Any Auto"]. All costs of defense shall be outside the policy.
 - 1.3 Architects and Engineers Professional Liability. For all of Subdivider's employees who are subject to this Agreement, Subdivider shall keep in full force and effect, or Subdivider shall require that its architect/engineer(s) of record keep in full force and effect errors and omissions insurance providing coverage for professional liability with a combined single limit of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) annual aggregate. Subdivider shall ensure both that (i) this policy retroactive date is on or before the date of commencement of the Project; and (ii) this policy has a reporting period of three (3) years after the date of completion or termination of this Contract. Subdivider agrees that for the time period defined above, there will be no changes or endorsements to the policy that increases the City's exposure to loss.
 - 1.4 Worker's Compensation. For all of Subdivider's employees who are subject to this Contract and to the extent required by the State of California, Subdivider shall keep in full force and effect, a Workers' Compensation Insurance and Employers' Liability Insurance to protect Subdivider against all claims under applicable state workers' compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by the failure of the Subdivider to comply with the requirements of this section. That policy shall provide at least the Statutory minimums of \$ 1,000,000 million for Bodily Injury by Accident for each accident, one million dollars (\$1,000,000) for Bodily Injury by Disease each employee, and a one million dollars (\$1,000,000) for Bodily Injury by Disease policy limit. Subdivider shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.
 - 1.4.1 Prior to the execution of the Agreement by the City, the Subdivider shall file the following signed certification:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance, in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of the Contract."

- 1.5 **Builder's Risk.** To the extent commercially available, Subdivider shall provide a policy of "all risk" Builders Risk Insurance. Subdivider shall add City and its respective elected officials, officers, employees, agents, and representatives to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. Subdivider shall also add its construction contractor, and the construction contractor's subcontractors to the policy as additional named insureds or loss payees, to the extent such insurance is commercially available. The insurance may provide for a deductible which shall not exceed fifty thousand dollars (\$50,000). It shall be Subdivider's responsibility to bear the expense of this deductible. The Builders Risk coverage shall expire at the time such insured property is occupied by City, or a Notice of Completion is filed, whichever occurs first.
2. **Endorsements Required.** Each policy required under Section 1, above, shall expressly provide, and an endorsement shall be submitted to the City, that:
 - 2.1 ***Additional Insureds.*** Except as to Architects and/or Engineers professional liability insurance and Workers Compensation, the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds.
 - 2.1.1 **Commercial General Liability.** The policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives. The coverage for Projects for which the Engineer's Estimate is one million dollars (\$1,000,000) or more shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, (iii) Your work, including but not limited to your completed operations performed by you or on your behalf, or (iv) premises owned, leased, controlled, or used by you; the coverage for Projects for which the Engineer's Estimate is less than one million dollars (\$1,000,000) shall include liability arising out of: (i) Ongoing operations performed by you or on your behalf, (ii) Your products, or (iii) premises owned, leased, controlled, or used by you; Except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil Code apply, these endorsements shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.
 - 2.1.2 **Commercial Automobile Liability Insurance.** Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives, with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Subdivider; except that in connection with, collateral to, or affecting any construction contract to which the provisions of subdivision (b) of Section 2782 of the California Civil

Code apply, this endorsement shall not provide any duty of indemnity coverage for the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives in any case where an agreement to indemnify the City of San Diego and its respective elected officials, officers, employees, agents, and representatives would be invalid under subdivision (b) of Section 2782 of the California Civil Code. In any case where a claim or loss encompasses the negligence of the Insured and the active negligence of the City of San Diego and its respective elected officials, officers, employees, agents, and representatives that is not covered because of California Insurance Code section 11580.04, the insurer's obligation to the City of San Diego and its respective elected officials, officers, employees, agents, and representatives shall be limited to obligations permitted by California Insurance Code section 11580.04.

- 2.2 *Primary and Non-Contributory.* The policies are primary and non-contributing to any insurance or self-insurance that may be carried by the City of San Diego, its elected officials, officers, employees, agents, and representatives with respect to operations, including the completed operations if appropriate, of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of Subdivider's insurance and shall not contribute to it.
- 2.3 *Project General Aggregate Limit.* The CGL policy or policies must be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the work performed under this Agreement. Claims payments not arising from the work shall not reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.
- 2.4 *Written Notice.* Except as provided for under California law, the policies cannot be canceled, non-renewed or materially changed except after thirty (30) calendar days prior written notice by Subdivider to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) calendar days notice shall be provided.
- 2.5 The words "will endeavor" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

