

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) n/a
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): DSD - Facilities Financing	DATE: 11/07/2012
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SUBJECT: Reimbursement Agreement for Phase 3 of Project U-3, Del Mar Heights Pipeline Relocation in Pacific Highlands Ranch

PRIMARY CONTACT (NAME, PHONE): Frank January, 619.533.3699/MS 606F	SECONDARY CONTACT (NAME, PHONE): Tom Tomlinson, 619.533.3187/MS 606F
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COMPLETE FOR ACCOUNTING PURPOSES

FUND	400090				
DEPT / FUNCTIONAL AREA	OTHE-00000000-PR				
ORG / COST CENTER	2013131115				
OBJECT / GENERAL LEDGER ACCT	512204				
JOB / WBS OR INTERNAL ORDER	S-00070.06.01				
C.I.P./CAPITAL PROJECT No.	S-00070				
AMOUNT	\$3,192,000.00	0.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): City Administration		\$408,000
Design and Construction	\$2,992,000	
Pardee Administration	\$150,000	
Interest	\$50,000	
Total Budget	\$3,600,000	
Prior Expenses & Other Commitments	\$4,350,000	
This Request	\$3,192,000	

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	ORIG DEPT.	Broughton, Kelly	11/8/2012
Financial Management	CFO		
Comptroller	DEPUTY CHIEF		
Equal Opportunity Contracting	COO		
Liaison Office	CITY ATTORNEY	Vonblum, Heidi	

		COUNCIL PRESIDENTS OFFICE			
PREPARATION OF:	<input type="checkbox"/> RESOLUTIONS	<input checked="" type="checkbox"/> ORDINANCE(S)	<input type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)	
<p>1) The Mayor or his designee is authorized to execute an agreement with Pardee Homes for the design and construction of Phase 3 of CIP S00070, Project Del Mar Heights Pipeline Relocation in an amount not to exceed \$3,192,000; and 2) The payment in cash and/or credit per the Pacific Highlands Ranch financing plan (Public Facilities Financing Plan) is authorized for the purpose of executing this agreement up to aggregate amount of \$3,192,000 from CIP S00070, Del Mar Heights Pipeline Relocation, Fund 400090, Pacific Highlands Ranch Facilities Benefit Assessment, contingent upon the Chief Financial Officer furnishing one or more certificates that the funds necessary for expenditure are, or will be, on deposit in the City Treasury, and 3) The Chief Financial Officer is authorized upon advice from the administering department to transfer excess funds, if any, to the appropriate reserves.</p>					
<p>STAFF RECOMMENDATIONS: Approval of the requested actions</p>					
<p>SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)</p>					
COUNCIL DISTRICT(S):	1				
COMMUNITY AREA(S):	Pacific Highlands Ranch				
ENVIRONMENTAL IMPACT:	<p>The pipeline project that is the subject of the reimbursement agreement was included and anticipated to be constructed in EIR No. 96-7918 (SCH No. 97111077). Prior to issuance of any permits required to construct the pipeline, the City will conduct additional environmental review, if necessary, once sufficient details regarding the pipeline project to provide meaningful information for environmental assessment.</p>				
CITY CLERK INSTRUCTIONS:	<p>Please send a copy of the signed resolutions to Frank January, MS 606F. This item is subject to Charter Section 99 (10 day published notice, approval by Ordinance and 6 votes required)</p>				

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 11/07/2012

ORIGINATING DEPARTMENT: DSD - Facilities Financing

SUBJECT: Reimbursement Agreement for Phase 3 of Project U-3, Del Mar Heights Pipeline Relocation in Pacific Highlands Ranch

COUNCIL DISTRICT(S): 1

CONTACT/PHONE NUMBER: Frank January/619.533.3699/MS 606F

DESCRIPTIVE SUMMARY OF ITEM:

Requesting approval of the Reimbursement Agreement for Phase 3 of Project U-3, Del Mar Heights Pipeline Relocation in Pacific Highlands Ranch. Under the terms of the reimbursement agreement, Pardee Homes will design and construct the pipeline and the City will reimburse Pardee for those costs.

STAFF RECOMMENDATION:

Approval of the requested actions

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

In April 2012, the City Council approved the Fiscal Year 2013 Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment with the Pacific Highlands Ranch Transportation and Facility Phasing Plan. The Del Mar Heights Pipeline Relocation project is included as Project U-3 and is to be funded with the Pacific Highlands Ranch Facilities Benefit Assessment.

Pardee Homes has agreed to design and construct the improvements of Phase 3 of Project U-3, Del Mar Heights Pipeline Relocation in Pacific Highlands Ranch in two phases, Phase 3a and Phase 3c. Phase 3a will be the design and construction of the pipeline from 480 feet east of Lopelia Meadows Place to 150 feet east of Santa Fe Farms Road. Completion of Phase 3a is expected to occur in Spring 2014. Phase 3c is the design and construction of the pipeline from 670 feet east of Santa Fe Farms Road to 340 feet east of Via Abertura, and is expected to occur with the development of the adjacent subdivision and no earlier than Fiscal Year 2015. Phase 3b of the pipeline, the middle segment, has already been installed by Barratt American and is not a part of this agreement.

The reimbursement agreement, in the amount of \$3,192,000, includes all of the design, anticipated construction costs, contingencies, and interest.

FISCAL CONSIDERATIONS:

With approval of this action, Pardee Homes' anticipated costs to deliver Phase 3 of Project U-3, Del Mar Heights Pipeline Relocation will be reimbursed from the Pacific Highlands Ranch FBA fund. These costs are incorporated into the budget for this project and are included in the FY

2013 Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

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 (describe any changes made to the item from what was presented at committee):
None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The FY 2013 Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment includes the project as an FBA funded project. On February 23, 2012, the Carmel Valley Planning Group (CVPG) voted 12-0, with 1 recusal, to recommended approval of the updated Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment (FBA) for Fiscal Year 2013, which includes a revised, integrated Transportation and Facility Phasing Plan to ensure facilities are constructed before or concurrent with new development.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are the residents of Pacific Highlands Ranch and its neighboring communities, and Pardee Homes.

Broughton, Kelly
Originating Department

Deputy Chief/Chief Operating Officer

**REIMBURSEMENT AGREEMENT
FOR PHASE 3 OF PROJECT NO. U-3,
DEL MAR HEIGHTS PIPELINE RELOCATION
IN THE PACIFIC HIGHLANDS RANCH 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 design and construction of Phase 3 of Project No. U-3, the Del Mar Heights Pipeline Relocation, in the Pacific Highlands Ranch Community Plan area in accordance with the Pacific Highlands Ranch Public Facilities Financing Plan.

RECITALS

1. The Pacific Highlands Ranch Subarea Plan was approved by the City of San Diego City Council (City Council) on July 28, 1998 by Resolution R-290521.
2. On February 25, 2003, City Council adopted Resolution No. R-297680 granting Vesting Tentative Map No. 1693 for Pacific Highlands Ranch Units 12-16 [VTM 1693] subject to certain development conditions.
3. On September 21, 2004, City Council adopted Resolution No. R-299673 granting Vesting Tentative Map No. 4653 for Pacific Highlands Ranch Units 17-22 [VTM 4653] subject to certain development conditions.
4. On November 14, 2006, City Council adopted Resolution No. R-302095 granting Vesting Tentative Map No. 8878 for Pacific Highlands Ranch Units 23-28 [VTM 8878] subject to certain development conditions.
5. VTM 1693, VTM 4653, and VTM 8878 are herein referred to collectively as the VTMs.
6. Condition Number 38j of VTM 1693, Condition Number 69 of VTM 4653, and Condition Number 28 of VTM 8878 [VTM Conditions] require Subdivider to construct certain portions of the Del Mar Heights Pipeline as required for the VTMs, provided such pipeline has not been previously constructed. Copies of the VTM Conditions are attached as **Exhibit A-1**, **A-2** and **A-3** respectively.
7. On April 10, 2012, City Council adopted Resolution No. R-307364 with final passage occurring on April 23, 2012 approving the Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment for Fiscal Year 2013 [Financing Plan]. The Financing Plan identifies and includes the Del Mar Heights Pipeline Relocation as Project No. U-3 as shown in **Exhibit B**. This Agreement relates to a portion of Phase 3 of Project No. U-3, as further described in Recital 9 and as depicted in **Exhibit C**, which is referred to throughout this Agreement as the Project.
8. The Financing Plan includes a cost estimate of \$7,950,000 for Project No. U-3. \$4,350,000 has been expended for Project No. U-3, leaving \$3,600,000 of programmed funds available for completion of Project No. U-3. The City's Administrative Costs (as defined in section 12.1.5) are currently estimated at \$408,000. Of the remaining \$3,600,000 programmed

in Project No. U-3, \$408,000 is reserved for City's Administrative Costs. The balance of \$3,192,000 constitutes the total and maximum City funds potentially available for reimbursement to Subdivider for the [Maximum Funds]. Any amount in excess of the Maximum Funds may not be reimbursed through this Agreement and shall constitute a Non-Reimbursable Cost. The Maximum Funds includes an allocation of \$50,000 for potential interest payment as described in section 12.1.6.

The Project is to be completed in two phases as described in Recital No. 9 below. The Maximum Funds (less the \$50,000 interest allocation described above) are allocated for each phase. Subdivider is not automatically entitled to any reimbursement. Subdivider must satisfy all terms of this Agreement to become eligible for any portion of the Maximum Funds if and as they are collected and become available for reimbursement.

9. The Subdivider's Estimated Cost (as defined in Section 3.3) for completing the Project is \$3,142,000, excluding potential interest (as discussed in Section 12.1.6). The Project shall be completed and reimbursable under this Agreement in two phases. Phase 3a is 480 feet east of Lopelia Meadows Place to 150 feet east of Rancho Santa Fe Farms Road, and Phase 3c is 670 feet east of Rancho Santa Fe Farms Road to 340 feet east of Via Abertura. Phases 3a and 3c are depicted in **Exhibit C**. The Estimated Cost for Phase 3a [Phase 3a Estimated Cost] is not to exceed \$1,046,000, excluding potential interest (as discussed in Section 12.1.6). Other than the potential interest as discussed in Section 12.1.6, the Phase 3a Estimated Cost is the total and maximum amount available for reimbursement by City to Subdivider for Phase 3a of the Project. The Estimated Cost for Phase 3c [Phase 3c Estimated Cost] is \$2,096,000, excluding potential interest (as discussed in Section 12.1.6). The Phase 3 Estimated Cost is the total and maximum amount available for reimbursement by City to Subdivider for Phase 3c of the Project unless otherwise approved by City in accordance with the change order procedures set forth in Article III of this Agreement.

10. This Agreement is intended by the Parties to define the method, terms, and conditions of reimbursement to Subdivider for the funds to be expended for the planning, permitting, and construction of the Project.

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 agrees to design and construct a complete and operational Project fully suited to the purpose for which it was designed and in accordance with this Agreement; the Plans and Specifications; the Financing Plan; the VTMs, including applicable conditions of approval of each Vesting Tentative Map. Subdivider also agrees to design and construct the Project as depicted on **Exhibit C** within the timeframe established by the Project Schedule attached as **Exhibit D**, and for the Estimated Costs attached as **Exhibit E**.

1.2 **Operational Acceptance.** City's acceptance of Project shall occur upon Subdivider's receipt of a letter of acceptance from City after Subdivider complies with the Punch List (as defined in Section 15.2.1) and passes Final Inspection (as defined in Section 15.4)

confirming that the Project is substantially complete and operational [Operational Acceptance].

ARTICLE II. PROJECT SCHEDULE

- 2.1 Project Schedule.** Subdivider shall perform and complete the work under this Agreement according to the Project Schedule attached as **Exhibit D**, including its obligations and components as set forth in **Exhibit F**. The Project Schedule includes the meeting requirements in **Exhibit G**; and preconstruction, progress, and special meeting agendas in **Exhibit H**.
- 2.2 Project Completion.** Subdivider agrees that all work on the Project under this Agreement will be complete and ready for operational use according to the Project Schedule and the Project Schedule obligations and components.
- 2.3 Changes in Project Schedule.**
- 2.3.1 Changes in the Project Schedule that increase the Estimated Cost must be approved by City in writing in accordance with Section 3.3.3.
- 2.3.2 Changes in the Project Schedule that do not increase the Estimated Cost may be approved by the engineer designated by City's Engineering and Capital Projects Department, which shall be responsible for review and approval of the progress of, and changes to, the Project [Resident Engineer]; provided, however, that the Project is still completed in accordance with the Financing Plan (including any associated phasing plans) and all conditions of approval including, but not limited to, the VTM Conditions.
- 2.4 Notification of Delay.** If Subdivider anticipates or has reason to believe performance of work under this Agreement will be delayed, Subdivider shall immediately notify the City's representative designated to manage the Project on behalf of City [Project Manager]. Unless City grants Subdivider additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) calendar days of the initial notification and shall include: an explanation of the cause of the delay, a reasonable estimate of the length of the delay, any anticipated increased costs due to delay, all supporting data, and a written statement that the time adjustment requested is the entire time adjustment Subdivider needs as a result of the cause of the delay. If Subdivider anticipates or has reason to believe the delay will increase the Estimated Cost, Subdivider shall also give notice to City in accordance with Section 3.4.
- 2.5 Delay.** If delay in the performance of work required under this Agreement is caused by unforeseen events beyond the control of the Parties, such delay may entitle Subdivider to a reasonable extension of time. Any such extension of time must be approved in writing by City, and will not be unreasonably withheld. A delay in the performance of work or any activity by City or Subdivider that affects a deadline to perform imposed on the other party by this Agreement will entitle the other party to the number of days City or Subdivider failed to complete performance of the work. The following conditions may justify such a delay depending on their actual impact on Project: war; changes in law or

government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider's work; concealed conditions encountered in the completion of Project; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Subdivider. Any delay claimed to be caused by Subdivider's inability to obtain materials, equipment, labor, or additional required services shall not entitle Subdivider to an extension of time unless Subdivider furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of Subdivider's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Subdivider shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Subdivider, its consultants, contractors, subcontractors, employees, or other agents [collectively, "Subdivider's agents"]. A change in Project Schedule does not automatically entitle Subdivider to an increase in Reimbursable Costs (as defined in Section 3.2). If City determines that the delay materially affects the Project, City may exercise its rights under Section 2.7 of this Agreement.

2.6 Costs of Delay. City and Subdivider acknowledge construction delays may increase the cost of Project. Unless Subdivider informs City pursuant to Sections 2.4 and 3.4 of cost increases due to delay and such cost increases are determined by City to be reasonable and are fully recovered through assessed fees in the Financing Plan, funding will be insufficient to cover the cost increase. Notwithstanding that pursuant to San Diego Municipal Code section 61.2200 et seq. City may periodically update the Financing Plan to reflect changes in Estimated Costs of Project (including potential increasing Estimated Costs of Project based upon actual and reasonable costs as appropriate), Subdivider agrees to absorb any increase in Estimated Costs and/or Interest thereon not accounted for in the Financing Plan (or future updates of the Financing Plan) allowing City reasonable opportunity to assess and collect necessary FBAs because Subdivider failed to timely notify the City in writing as required under Sections 2.4 and 3.4.

2.7 City's Right to Terminate for Default.

2.7.1 If Subdivider fails to adequately perform any obligation required by this Agreement, Subdivider's failure constitutes a Default. Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default Subdivider undertakes all reasonable efforts to ensure the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement including all rights of Subdivider and any person or entity claiming any rights by or through Subdivider under this Agreement. A delay shall not constitute a Default if Subdivider has made good faith and reasonable efforts to adhere to the Project Schedule, has provided notice of delay in accordance with Section 2.4, and such delay was caused by unforeseen events that justify the delay as set forth in Section 2.5.

2.7.2 If City terminates the Agreement due to Subdivider's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered

into by Subdivider or Subdivider's agents for the construction of the Project. Subdivider shall include, and require its contractors and subcontractors to include, provisions in their contracts and subcontracts, that City is a third party beneficiary of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.

2.7.3 The rights and remedies of City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or waive or deny any right or remedy at law or in equity available to City against Subdivider, including any claims for damages against Subdivider that City may assert as a result of the Default.

2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors. If Subdivider files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to or demand upon Subdivider, immediately terminate this Agreement, and terminate all rights of Subdivider and any person or entity claiming any rights by or through Subdivider. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

2.9 Project Consists of Two Separate Phases. As indicated in Recital No. 8, Recital No. 9, and elsewhere throughout this Agreement, the Project is to be completed in two phases (i.e., Phase 3a and 3c). Each Phase, as appropriate, shall have its own Project Schedule (**Exhibit D**), Estimated Cost (see Recital No. 9 and Section 3.3), Project Completion (Refer to Article XV), Project and Operational Acceptance (Refer to Article XVI), Project Deliverables (Refer to Article XVII), Bonds (Refer to Article XVIII), Warranties (Refer to Article XXI), and Maintenance Period (Refer to Article XXIII).

ARTICLE III. PROJECT COSTS AND CHANGE ORDERS

3.1 Project Costs. Project Costs are Subdivider's reasonable costs of materials, engineering and design, and construction as necessary for the Project as approved by the City and depicted on **Exhibit C** and Project Costs set forth in **Exhibit E**. Project Costs do not include Subdivider's Administrative costs (as defined in Section 3.3.1).

3.2 Reimbursable Costs. Subdivider may seek reimbursement only for Reimbursable Costs. Reimbursable Costs shall consist only of the Estimated Costs (as defined in Section 3.3) reasonably expended by Subdivider and approved for reimbursement by City in the Financing Plan and under the terms of this Agreement.

3.2.1 ***Non-Reimbursable Costs.*** Non-Reimbursable Costs include: (1) Any cost in excess of the Maximum Funds; (2) any cost in excess of the Estimated Costs not approved in accordance with Section 3.3.3; (3) any cost identified in this Agreement as a Non-Reimbursable Cost; (4) any cost to remedy Defective Work (as defined in Section 23.1); (5) any cost incurred as a result of 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 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 this 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.

3.3 **Estimated Cost(s)**. Subdivider's Estimated Costs shall consist only of: (i) Project Costs, (ii) Subdivider's Administrative Costs (as defined in Section 3.3.1), and (iii) the Project Contingency (as defined in Section 3.3.2). The total Estimated Cost of the Project is **\$3,142,000** excluding potential interest as set forth in Section 12.1.6. This total Estimated Cost is separated into costs for Phases 3a and Phase 3c as follows:

The Phase 3a Estimated Cost is not to exceed \$1,046,000. Other than potential interest that may be paid in accordance with section 12.1.6, any Phase 3a costs above the Phase 3a Estimated Cost shall not be reimbursed by the City.

The Phase 3c Estimated Cost is \$2,096,000. Other than potential interest that may be paid in accordance with Section 12.1.6, any increases to the Phase 3c Estimated Cost may only be approved in accordance with Section 3.3.3

3.3.1 ***Subdivider's Administrative Costs***. Subdivider's Administrative Costs are reasonably incurred Project-related administration and supervision expenditures totaling a flat five percent (5%) of Subdivider's Project Costs for the Project.

3.3.2 ***Project Contingency***. A Project Contingency of ten percent (10%) of estimated construction costs is included in the Estimated Cost. The Project Contingency shall not be available for: (i) work required due to Subdivider's or Subdivider's agents' failure to perform work or services according to the terms of this Agreement or in compliance with the Construction Documents; or (ii) uninsured losses resulting from the negligence of Subdivider or Subdivider's agents.

3.3.3 ***Change Orders and Adjustments to Estimated Cost***. The "Procedure for Processing Change Orders" is attached as **Exhibit I**. Change Orders shall be on a form acceptable to the City. Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with **Exhibit I**. The Estimated Cost may be increased if Subdivider provides documentation showing the increase is reasonable in nature and amount, and is due to causes beyond Subdivider's control or otherwise not the result of unreasonable conduct by Subdivider which may, based on actual impact on Project, include: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Subdivider's work; concealed conditions encountered in

the completion of Project; inability to reasonably obtain materials, equipment, labor, or additional required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Subdivider. Subdivider shall not be reimbursed, and no Change Order may be approved, for costs or expenses resulting from a design error or omission (unless such a design error or omission is the direct result of a City request for such design or omission), or Subdivider's or Subdivider's agents' negligence. Subdivider shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order. City may approve an increase in Estimated Costs and/or delineate a project which may be constructed within Estimated Costs. If City chooses not to pursue the above options, Subdivider may elect to construct Project and forgo any reimbursement in excess of Estimated Cost.

- 3.4 Notification of Increased Estimated Costs.** If Subdivider anticipates or has reason to believe the cost of the Project will exceed the Estimated Cost, Subdivider shall notify City in writing within fourteen (14) calendar days of becoming aware of the potential increase. Subdivider agrees to absorb any increase in Estimated Costs and/or Interest thereon not accounted for in the Financing Plan (or future updates of the Financing Plan). This written notification shall include an itemized cost estimate and a list of recommended revisions Subdivider believes will bring the construction cost to an amount within the Estimated Cost.

ARTICLE IV.

COMPETITIVE BIDDING, EQUAL OPPORTUNITY AND EQUAL BENEFITS

- 4.1 Compliance.** Subdivider shall bid and award contracts to complete the Project in accordance with the Charter of the City of San Diego and rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code and current City Council Resolutions and Policies, as well as any expressly applicable public contract laws, rules, and regulations [Required Contracting Procedures]. Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's small and local business program for public works contracts, and the City's Equal Benefits Ordinance. Prior to bidding the Project, Subdivider shall consult with City's Purchasing and Contracting Department. Subdivider shall work with City's Purchasing and Contracting Department to ensure that all Required Contracting Procedures are met. Subdivider understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a material breach of this Agreement, and any contract awarded not in accordance with the Required Contracting Procedures shall be ineligible for reimbursement.
- 4.2 Bidding Documents.** Following City review of the Construction Documents, Subdivider shall prepare final corrected Construction Documents to be submitted to City for review and approval, in accordance with City's standard review procedures prior to solicitation of bids.

- 4.2.1 ***Submission of Construction Documents.*** Subdivider shall submit bidding documents to City for approval before soliciting bids for work on Project. City retains the right to notify Subdivider of necessary corrections and will notify Subdivider of corrections within ten (10) Working Days of submittal date.
- 4.2.2 ***Obtain all Permits and Approvals.*** Subdivider shall obtain all necessary permits, including but not limited to environmental, grading, building, mechanical, electrical, and plumbing. Approval of Construction Documents will be evidenced by City's issuance of a letter indicating Subdivider may proceed with competitive bidding.
- 4.3 **Solicitation of Bids.** Subdivider shall solicit sealed bids for the construction of Project in accordance with all Required Contracting Procedures. With notice of at least five (5) Working Days. Subdivider shall notify City of the time and place of each bid opening. Subdivider shall work with City's Purchasing and Contracting Department to ensure that bids are solicited in the manner required in accordance with the Required Contracting Procedures.
- 4.4 **Bid Opening and Award of Contract.** Subdivider shall open bids and award contracts in accordance with all Required Contracting Procedures. Subdivider shall work with City's Purchasing and Contracting Department to ensure that bids are opened and contracts are awarded in the manner required in accordance with the Required Contracting Procedures. Subdivider shall publicly open sealed bids in the presence of City's authorized representative(s). The bidding contractors shall be permitted to be present at the bid opening. City's representative(s) shall be provided with all bids received immediately after the bid opening and with a copy of the tabulation of bid results upon Subdivider's completion. Contract(s) for the construction of the Project shall be awarded by Subdivider to the lowest responsible and reliable contractor(s) in accordance with Required Contracting Procedures, as mutually determined by Subdivider and City's authorized representative(s). In the event of a dispute, the City shall have ultimate authority to determine to which contractor Subdivider is to award the bid.
- 4.4.1 In the event that the lowest responsible and reliable bid exceeds the Estimated Cost, any reimbursement for said increase shall be subject to approval by Change Order pursuant to Section 3.3.3 following award of contract.
- 4.4.1.1 In the event City Council does not approve the increased cost, at the City's option:
- 4.4.1.1.1 City may terminate this Agreement. In the event the Agreement is terminated, the Subdivider's obligations pursuant to this Agreement for the construction of the Project shall be released without further liability. This release shall in no way affect the obligations of Subdivider with respect to any terms or conditions of the VTMs, TMs, Development Agreements, or other approvals and agreements with City. However, prior to termination of this Agreement, City shall reimburse Subdivider (at the City's option) with either FBA credits or cash reimbursement) for the engineering and design costs reasonably incurred and expended by Subdivider in accordance with this Agreement and within the Estimated

Cost in accordance with Section 3.3. Subdivider shall provide City with copies of all executed contracts.

4.4.1.1.2 City may work with Subdivider to rebid and/or redesign the Project; or.

4.4.1.1.3 With Subdivider's consent, Subdivider may award the bid and assume responsibility for the additional costs.

4.5 Nondiscrimination Requirements.

4.5.1 ***Compliance with the City's Equal Opportunity Contracting Program.*** Subdivider shall comply with the City's Equal Opportunity Contracting Program. Subdivider shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Subdivider shall provide equal opportunity in all employment practices. Subdivider shall ensure its consultants, contractors and their subcontractors comply 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.

4.5.2 ***Nondiscrimination Ordinance.*** Subdivider shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Subdivider shall provide 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 shall be in contracts between the Subdivider and any consultants, contractors, subcontractors, vendors, and suppliers.

4.5.3 ***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 the 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.

4.6 **Equal Benefits.** This Agreement is with a sole source and therefore, Subdivider is not subject to the City’s Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the San Diego Municipal Code [SDMC]. However, the Equal Benefits Ordinance is applicable to contracts that Subdivider enters into with respect to the Project. Therefore, Subdivider shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. Subdivider shall include in each of its contracts with its contractor(s) and consultant(s) provisions (1) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (2) stating that failure to maintain equal benefits is a material breach of those agreements; and (3) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. SDMC § 22.4304(e)-(f). In addition, Subdivider’s contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notify employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract. SDMC § 22.4304(a)-(b). Subdivider’s contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the EBO’s requirements. SDMC § 22.4304(c). Additionally, Subdivider’s contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the EBO. SDMC § 22.4304(d). Subdivider shall ensure that its contractor(s) and consultant(s) complete the Equal Benefits Ordinance Certification of Compliance included herein as **Exhibit J**.

ARTICLE V. PREVAILING WAGE

5.1 **Prevailing Wage.** The Project shall pay Prevailing Wage to the extent required by the California Labor Code, the Charter of the City of San Diego and the rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code, City of San Diego Resolutions and Ordinances, City of San Diego Council Policies, or if otherwise required by the City Council.

ARTICLE VI. CONSULTANTS

6.1 **Selection of Consultant.** Subdivider’s hiring of a consultant is subject to approval by City. Subdivider’s consultants shall be subject to all State and City laws, including regulations and policies applicable to consultants retained directly by City. Subdivider shall cause the provisions in **Exhibit K** “Consultant Provisions” to be included in its consultant contract(s) for the Project. The selection of any consultant is subject to all applicable public contract laws, rules, and regulations, including but not limited to, the City Charter, the San Diego Municipal Code, City Council Policies, and the City’s Administrative Regulations. Subdivider shall consult with City’s Purchasing and Contracting Department. Subdivider shall work with City’s Purchasing and Contracting Department to ensure that City’s consultant selection procedures are met. Subdivider understands that it must comply with all consultant selection procedures applicable to the City unless a waiver of those procedures is obtained. Failure to adhere to all applicable consultant selection procedures is a material breach of this Agreement, and any contract awarded not in accordance with the City’s consultant selection procedures shall be ineligible for reimbursement. Notwithstanding the foregoing, Subdivider is not required

to comply with the applicable consultant selection laws, rules, and regulations identified above with respect to those consultants with whom Subdivider entered into a contract for the Project at least one year prior to the Effective Date of this Agreement, but Subdivider is required to use its best efforts to cause the provisions of **Exhibit K** “Consultant Provisions” to be included in these consultant contract(s).

- 6.2 **Equal Benefits and Equal Opportunity.** The requirements of City’s Equal Benefits Ordinance apply to Subdivider’s consultant contracts. See Section 4.6. The nondiscrimination requirements set forth in Section 4.5 apply to Subdivider’s consultant contracts.
- 6.3 **Estimated Budget.** Subdivider shall require its consultant to prepare an estimated budget for Project.
- 6.4 **Schematic Drawings.** Subdivider shall require its consultant to prepare schematic drawings for the Project for City approval.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

- 7.1 **Standard of Care.** Subdivider agrees that the professional services provided under this Agreement shall be 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 shall comply with all laws and the most current editions of the Green Book, the City’s Standard Drawings and Design and Construction Standards, including those listed in **Exhibit L**. 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 M** “Certificate for Title 24/ADA Compliance.”
- 7.3 **Imputed Knowledge.** Subdivider shall be 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 will be imputed to Subdivider to the fullest extent allowed by law.
- 7.4 **City Approval.** Subdivider shall be required to obtain City approval of design, plans, and specifications in the manner required in **Exhibit N**. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be 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 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 AND DRUG-FREE WORKPLACE

- 8.1 Compliance with Project Schedule and Construction Requirements.** Subdivider shall commence construction of Project in accordance with the Project Schedule, as described in Article II, and be subject to the obligations in **Exhibit O** “Construction Obligations.” Subdivider shall diligently pursue such construction to completion. Failure to maintain Project Schedule constitutes a Default subject to Section 2.7. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City’s rights or remedies under any other provision of this Agreement or those available at law or in equity.
- 8.2 Drug-Free Workplace.** Subdivider agrees to comply 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. Subdivider shall ensure that its contractors comply with the requirements of City’s Council Policy 100-17. 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 P**.

ARTICLE IX. PRODUCTS

- 9.1 Product Submittal and Substitution.** To the extent product specification is not addressed by the most recent edition of the Standard Specifications for Public Works Construction (including the City of San Diego’s standard special provisions) [Green Book] or Project has aesthetic aspects requiring City review, comment, and approval, prior to the bidding process, Subdivider shall obtain City approval of products and substitution of products in the manner provided in **Exhibit Q** “Product Submittal and Substitution.”
- 9.1.1 *Not a Release of Liability.* City’s review of samples in no way relieves Subdivider of Subdivider’s responsibility for construction of Project in full compliance with all Construction Documents.

ARTICLE X. EXTRA WORK

- 10.1 City Authority to Order Extra Work.** Any City additions or modifications to work or Subdivider obligations under this Agreement not described within City-approved Construction Documents [Extra Work] may be ordered by City prior to completion pursuant to the terms and conditions listed in **Exhibit R** “Extra Work Provisions.”

ARTICLE XI. CHANGED CONDITIONS

11.1 Changed Conditions. Changed Conditions shall have the meaning as defined in the Green Book. The Parties acknowledge and agree that even if Changed Conditions are found to be present, Project shall not exceed the Estimated Cost without express City Council approval of an increase to the Estimated Cost in accordance with Section 3.3.3. Absent such express approval of additional funds, Subdivider shall provide City with value engineering and Parties shall return the Project to within the Estimated Cost.

ARTICLE XII. REIMBURSEMENT

12.1 Reimbursement to Subdivider.

12.1.1 Notification of Reimbursable Project. Along with the Project application to City's Development Services Department, and prior to commencement of any work on the Project (including hiring a consultant), Subdivider shall submit a "Notification of Reimbursable Project" form (attached as **Exhibit S**) to the Development Services Department, Facilities Financing, and the City department designated by City for individual Project approval and/or supervision [Responsible Department].

12.1.2 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 2017/2018. 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 unless and until 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 for the Project. Where FBA credits are requested and approved by City, credit reimbursement shall be made in accordance with the schedule in the Financing Plan. Subdivider acknowledges and agrees that in the event there are no additional FBA funds available for collection by City to fund the Project, Subdivider shall not be reimbursed by City for any portion of Subdivider's outstanding Project costs or expenditures, and Subdivider expressly agrees to fully absorb all such outstanding costs without any reimbursement from City.

12.1.3 Funds for Reimbursement. Subdivider shall only be entitled to reimbursement as set forth in this Agreement and only from FBA funds collected by City in accordance with the Financing Plan, as it may be amended, in the amount set forth in this Agreement and only as allocated for Project No. U-3 in the Financing Plan, if and as such funds become available for the Project, after the appropriate deductions and expenditures are made, pursuant to the method of reimbursement described in Section 12.1.7 and in the priority of reimbursement described in Section 12.1.9.

- 12.1.4 **Amount of Reimbursement.** Subdivider shall be entitled to only Reimbursable Costs in accordance with Section 3.2 in an amount not to exceed Estimated Costs in accordance with Section 3.3.
- 12.1.5 **City's Administrative Costs.** City's Administrative Costs shall be paid prior to any reimbursement to Subdivider and shall consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Project, (ii) review and approve the plans and specifications for the Project, and (iii) inspect and approve work performed on Project during construction until completion and acceptance of Project [City's Administrative Costs].
- 12.1.6 **Interest.** Interest shall begin to accrue from 90 days after the time the submittal of a Reimbursement Request for Reimbursable Costs is accepted and approved by City and shall continue to accrue until either the date FBA credits are made available for Subdivider's use or the date of cash reimbursement, whichever occurs first, up to a maximum of \$50,000 in aggregate over the two phases of the Project. Interest shall accrue at the rate identified in the assumptions of the Financing Plan in effect at the time interest is accruing. Interest shall not accrue under circumstances set forth in Sections 2.6 and 3.4. Interest shall accrue on the withholding amount set forth in Section 12.1.7.2. Notwithstanding the foregoing, interest shall only accrue if the Maximum Funds have not otherwise been exceeded.
- 12.1.7 **Method of Reimbursement.** Subdivider shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Project for which Subdivider was not previously reimbursed or granted FBA credit [Reimbursement Request]. 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 Article XII. City shall determine whether additional documentation is needed to support the Reimbursement Request or if the Reimbursement Request is otherwise incomplete, and shall notify Subdivider of such deficiencies within sixty (60) calendar days of Subdivider's Reimbursement Request submittal. Subdivider shall provide additional documentation within fourteen (14) calendar days of City's notification and request. However, even if City fails to notify Subdivider within sixty (60) calendar days regarding Subdivider's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Subdivider until City confirms receipt of all relevant documentation sufficient to support the Reimbursement Request. After all appropriate cost documentation has been received and City approves the Reimbursement Request [Reimbursement Request Approval], City shall reimburse Subdivider for those Reimbursable Costs within ninety (90) calendar days of the date of Reimbursement

Request Approval provided that funds are available in the FBA for the Project, and that the Project is scheduled in the Financing Plan for reimbursement at that time.

12.1.7.1 ***Withholding*** Subject to the limitations of Article XII, and at the City's discretion, Subdivider shall be entitled to cash reimbursement or FBA credits as follows:

12.1.7.1.1 Up to twenty-five percent (25%) of the Reimbursable Costs for the Project subject to the Subdivider satisfying all of the following requirements:

- All plans and specifications for the Project have been approved by the City
- Any right-of-way required for the Project has been secured and dedicated
- All required permits and environmental clearances necessary for the Project have been secured
- Provision of all performance bonds, payment bonds, and warranty bonds as described in Article XVIII
- Payment of all City fees and costs
- Subdivider has provided evidence satisfactory to the City that it has complied with and satisfied Article IV (Competitive Bidding, Equal Opportunity, and Equal Benefits) and Article VI (Consultant Selection) of the Agreement.

12.1.7.1.2 Up to fifty percent (50%) of the Reimbursable Costs for the Project subject to the Subdivider satisfying all of the above referenced requirements for the twenty-five percent (25%) reimbursement and Subdivider having received valid bids for the Project, which have been approved by the City, and has awarded the construction contract. Such cash reimbursement, or FBA credit, shall be based on the Reimbursable Costs.

12.1.7.1.3 At the time of Operational Acceptance, provided that Reimbursement Requests have been approved for such amounts, Subdivider shall be entitled to cash reimbursement or FBA credits, up to ninety percent (90%) of the Reimbursable Costs for the Project.

12.1.7.1.4 The remaining ten percent (10%) of the Reimbursable Costs shall be paid to Subdivider upon the later of:

(i) the recordation by Subdivider of the Notice of Completion and delivery of a conformed copy to City, or (ii) the City's written acceptance of the Project As-Built Drawings [Final Completion].

12.1.7.2 *Cutoff for Submission of Reimbursement Requests*

Subdivider shall submit all Reimbursement Requests within six (6) months after the Final Completion or earlier as set forth in Section 12.1.8. Any Reimbursement Request submitted after the Cutoff Date shall constitute a Non-Reimbursable Cost and Subdivider shall not be entitled to any reimbursement for those costs or expenses.

12.1.8 *Verification of Reimbursement Request* No later than seventy-five (75) calendar days after each of the milestones set forth in Section 12.1.7.1, Subdivider shall provide 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:

12.1.8.1 Subdivider shall submit one (1) copy of a Reimbursement Request (cover letter and documentation) to the City's Resident Engineer [RE] for work completed per the Plans and Specifications and/or Extra Work.

12.1.8.2 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 the Plans and Specifications. The RE shall also review as-builts and Best Management Practices (BMPs), and verify that a lien release has been prepared. The RE shall notify the Subdivider of any preliminarily disallowed costs so that the Subdivider has the opportunity to review items with the RE.

12.1.8.3 The RE shall initial the Reimbursement Request package, noting any disallowed costs, maintain a copy, and forward a copy to the Senior Civil Engineer for review. The RE shall send a copy of the final disallowed costs to the Subdivider.

12.1.8.4 The Senior Civil Engineer shall review cost documentation and monitor the RE's expenses charged to Project, as well as other City Administrative Costs. The Senior Civil Engineer shall also serve as the liaison between the RE and the Facilities Financing Project Manager [FF Project Manager].

12.1.8.5 After review and approval, the Senior Civil Engineer shall prepare a memorandum to Facilities Financing [FF] indicating the reimbursement amount and that the invoice is appropriate to pay if/as funds are/become available. The Senior Civil Engineer shall also send a copy of the memorandum to the Subdivider. 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 and identifying disallowed expenses. Subdivider shall then submit an invoice to the City for the reimbursement amount approved by City.

12.1.8.6 The FF Project Manager shall verify that reimbursements are scheduled in the Financing Plan and verify FBA cash/credits are available for reimbursement.

12.1.9 ***Priority of Reimbursement.*** Reimbursement to Subdivider from the FBA for Project will be subsequent to reimbursement of City's equipment purchases, Furniture Fixtures & Equipment (FF&E), and City's Administrative Expenses incurred in connection with the Project or Financing Plan and FBA, but takes priority over any Subdivider Reimbursable Project added to the FBA subsequent to the Effective Date (as defined in Section 27.1) of this Agreement, with the following exceptions:

12.1.9.1 Any State or Federally mandated project.

12.1.9.2 Appropriations for City administered, managed, and funded Capital Improvement Projects.

12.1.9.3 To the extent Subdivider failed to properly notify City in writing of any actual or anticipated increases in Estimated Costs as required under Sections 2.6 and 3.4, the reimbursement for the cost increases, if approved by City, will be subsequent in priority to those projects with agreements approved by the City Council prior to the City Council's approval of increased Estimated Costs.

12.1.9.4 The FBA identifies another project for funding in an earlier fiscal year than this Project prior to the Effective Date of this Agreement.

ARTICLE XIII. PUBLIC RELATIONS

13.1 Presentations. Subdivider, and Subdivider's agents, shall be available for all presentations required to be made to City Council, Council Committees, any other related committees, and citizen groups to provide them with information about the Project as well as presentations to any governing or regulatory body or agency for other approvals as may be required.

- 13.2 City as Primary Contact.** Subdivider agrees that City is the primary contact with the media regarding Project and Subdivider shall forward all questions regarding Project status to the Responsible Department's Senior Public Information Officer.
- 13.3 Advertising.** Subdivider acknowledges that advertising referring to City as a user of a product, material, or service by Subdivider and/or Subdivider's agents, material suppliers, vendors or manufacturers is expressly prohibited without City's prior written approval.
- 13.4 Recognition.** Subdivider shall place a sign, placard, or other similar monument on Project site during construction, which shall acknowledge Subdivider's and City's joint efforts in designing and constructing Project, and identifying that Project is funded with FBA funds. Subdivider shall properly recognize City and include City of San Diego's logo on permanent and temporary signs, invitations, flyers, or other correspondence. Any recognition of City shall be reviewed and approved by the Responsible Department's Senior Public Information Officer. For assistance with proper recognition, or if Subdivider is contemplating a dedication or ground breaking ceremony, Subdivider shall contact the Responsible Department's Senior Public Information Officer.
- 13.5 Dedication Ceremony.** City or Subdivider shall have the opportunity to conduct and host a public dedication ceremony, ground-breaking, or similar ceremony on Project site at any reasonable time following Operational Acceptance of Project, provided Subdivider receives prior approval from the Engineering & Capital Projects Department for the ceremony and provides an opportunity for appearances by the Mayor, Council Members and other appropriate City officials. Subdivider shall contact the Responsible Department's Senior Public Information Officer to arrange a mutually acceptable date and time for any ceremony. Invitation shall not be sent out or a date set until the Responsible Department's Senior Public Information Officer has approved the time and date for the ceremony.
- 13.6 Cleanup.** Subdivider shall be responsible for the clean up of the Project site and the restoration and repair of any damage to Project site attributable to any Subdivider sponsored ceremony.

ARTICLE XIV. INSPECTION

- 14.1 Inspection Team.** The Project shall be inspected by a team composed of representatives from (i) the City's Engineering and Capital Project Department, (ii) the Responsible Department, (iii) City's Development Services Department, (iv) Subdivider's consultant(s), and (v) Subdivider's construction superintendent [Inspection Team].
- 14.2 Inspection Schedule.** The Project shall be inspected by the Inspection Team in accordance with **Exhibit T**.

ARTICLE XV. PROJECT COMPLETION

- 15.1 Notice to City.** When Subdivider determines Project is substantially complete, Subdivider shall notify City in writing of Project's status within seven (7) calendar days of Subdivider's determination. The notice shall certify to City that Project has been completed in accordance with the Construction Documents; all applicable building codes and regulations; all permits; all licenses; all certificates of inspection, use, and occupancy; and ordinances relating to Project.
- 15.2 Walk-Through Inspection.** A preliminary Walk-Through Inspection shall be conducted by City within fourteen (14) calendar days following Subdivider's notice to City of completion. The Walk-Through Inspection will be conducted by the Inspection Team identified in Section 14.1.
- 15.2.1 ***Punch List.*** A Punch List, if necessary, shall be prepared by City during the Walk-Through Inspection. The Punch List shall be presented to Subdivider by the RE within five (5) calendar days of the Walk-Through Inspection. Subdivider shall correct the items listed on the Punch List within sixty (60) calendar days of receipt of the Punch List. City's Final Inspection of the Project (as defined in Section 15.4) shall be conducted within ninety (90) calendar days of written notification by Subdivider to City that Subdivider has corrected all items identified on the Punch List [Notice of Correction].
- 15.2.2 ***Failure to Identify Items.*** As to any items not included on the Punch List or later discovered, nothing in this Section is intended to limit Subdivider's obligations under this Agreement and City shall maintain all remedies available under this Agreement, at law, or in equity.
- 15.3 Equipment Demonstration and Cleaning.** Prior to Final Inspection, Subdivider shall demonstrate to City the operation of each system in the Project, and instruct City personnel in operation, adjustment and maintenance of equipment and systems, using the operation and maintenance data. Subdivider shall also professionally clean the Project, including (if applicable) mopping, sanitizing restrooms, polishing floors, dusting, vacuuming, cleaning glass and windows.
- 15.4 Final Inspection.** The Final Inspection for Project shall be scheduled and conducted within ninety (90) calendar days of the Notice of Correction. Subdivider shall be notified, by City, in writing, the date upon which Final Inspection is passed.

ARTICLE XVI. PROJECT ACCEPTANCE

- 16.1 Acceptance.** Upon Operational Acceptance, Subdivider shall do all of the following:
- 16.1.1 ***Notice of Completion.*** Subdivider shall execute and file with the County Recorder of San Diego County documentation indicating that the Project and all work depicted on the approved City drawings has achieved Final Completion and identifying the date of Project completion [Notice of Completion]. Subdivider

shall provide the City Engineer with a conformed copy of the recorded Notice of Completion.

16.1.2 ***Lien and Material Releases.*** Subdivider shall cause all contractors and subcontractors to provide lien and material releases as to the Project and provide copies of such lien and material releases to the City, 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.

16.2 **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; or (ii) 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 U**.

16.2.1 ***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.

16.3 **No Waiver.** Subdivider's obligation to perform and complete the 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.

16.4 **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 XVII. PROJECT DELIVERABLES

17.1 **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 U**.

17.2 **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 XVIII. BONDS AND OTHER ACCEPTABLE SECURITIES

- 18.1 Payment Bond.** Subdivider shall provide or require its construction contractor to provide City with a payment bond, letter of credit [LOC], cash or other acceptable security as determined by City for material and labor in favor of City for 100% of the proposed construction costs, as determined by competitive bidding [Payment Bond].
- 18.2 Performance Bond.** Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security as determined by City guaranteeing performance in favor of City for 100% of the proposed construction costs, as determined by competitive bidding [Performance Bond].
- 18.3 Warranty Bond.** Subdivider shall provide or require its construction contractor to provide City with a bond, LOC, cash or other acceptable security as determined by City guaranteeing Project during the warranty period in favor of City [Warranty Bond]. Subdivider shall provide the Warranty Bond to City upon release of the Performance Bond or commencement of the warranty periods, whichever occurs first.
- 18.4 Term.** The Payment Bond shall remain in full force and effect until Final Completion to ensure that all claims for materials and labor are paid, except as otherwise provided by law or regulation. The Performance Bond shall remain in full force and effect until Operational Acceptance of Project by City. Upon Operational Acceptance, City shall follow the procedures outlined in California Government Code section 66499.7 and release the Performance Bond. The Warranty Bond shall remain in full force and effect for the warranty periods provided in this Agreement.
- 18.5 Certificate of Agency.** All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 18.6 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 the 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.
- 18.7 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 the Project is located, Subdivider shall within seven (7) calendar days thereafter substitute or require the substitution of another bond or other acceptable security, acceptable to City.

ARTICLE XIX. INDEMNITY & DUTY TO DEFEND

- 19.1 Indemnification and Hold Harmless Agreement.** Other than in the performance of design professional services which shall be solely as addressed in Sections 19.2 and 19.3

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 Subdivider's agents), 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.

- 19.2 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, Subdivider shall require its Design Professional to 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 Subdivider's Design Professional or Design Professional's officers or employees.
- 19.3 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.
- 19.4 Insurance.** The provisions of this Article are not limited by the requirements of Article XX related to insurance.
- 19.5 Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in this Article.
- 19.6 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.
- 19.7 Enforcement Costs.** Subdivider agrees to pay any and all costs City incurs to enforce the indemnity and defense provisions set forth in this Article.

ARTICLE XX. INSURANCE

- 20.1 General.** Subdivider shall not begin work on Project under this Agreement until it has: (i) obtained, and upon City's request provided to City, insurance certificates reflecting evidence of all insurance required in this Article; (ii) obtained City approval of each company or companies; and (iii) confirmed that all policies contain specific provisions required by City pursuant to this Article.
- 20.2 Type and Amount of Insurance.** For each Project, the City Attorney shall confer with the City's risk management department and determine the appropriate dollar amount and type of insurance, including any endorsements or specific clauses, necessary for the Project [Required Insurance]. Subdivider shall obtain the Required Insurance prior to the commencement of construction. City's standard insurance provisions are attached as **Exhibit V**. If Subdivider is not informed otherwise in writing of Required Insurance, City's standard insurance provisions included in **Exhibit V** shall be the Required Insurance for the Project.
- 20.3 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.
- 20.3.1 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.
- 20.4 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.
- 20.5 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.
- 20.6 Additional Insurance.** Subdivider may obtain additional insurance not required by this Agreement.
- 20.7 Obligation to Provide Documents.** Prior to performing any work on Project, Subdivider shall provide copies of documents including but not limited to certificates of insurance and endorsements, and shall furnish renewal documentation prior to expiration of insurance. Each required document shall be 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.
- 20.8 Deductibles/Self Insured Retentions.** All deductibles and self-insurance retentions on any policy shall be the responsibility of Subdivider. Deductibles and self-insurance retentions shall be disclosed to City at the time the evidence of insurance is provided.

- 20.9 Policy Changes.** Subdivider shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Agreement.
- 20.10 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.
- 20.11 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.
- 20.12 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 up to ten (10) years from the Effective Date of this Agreement, may be treated by City as a material breach of this Agreement.

ARTICLE XXI. WARRANTIES

- 21.1 Warranties Required.** Subdivider shall require the construction contractor and its subcontractors and agents 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.
- 21.1.1 *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.
- 21.1.2 *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.
- 21.1.3 *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.
- 21.2 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.

- 21.2.1 **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.
- 21.2.2 **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.
- 21.2.3 **Index Tabs.** Each warranty shall be separated with index tab sheets keyed to the table of contents listing.
- 21.2.4 **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.
- 21.2.5 **Warranty Start Date.** This date shall be left blank until the date of Final Completion.
- 21.2.6 **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.
- 21.3 **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.
- 21.4 **Meetings.** During the one (1) year warranty period described in Section 21.3, 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, construction, or furnishing, fixtures, and equipment of Project during the one (1) year warranty period.

ARTICLE XXII. DEFECTIVE WORK

- 22.1 **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.
- 22.2 **City's Right to Correct.** If circumstances warrant, including an emergency or Subdivider's failure to adhere to Section 22.1, 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.

- 22.3 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.
- 22.4 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.
- 22.5 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.
- 22.6 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 XXIV.
- 22.7 Prior to Final Acceptance and Reimbursement to Subdivider.** Where Defective Work has been identified prior to the Final Completion of Project, Subdivider shall:
- 22.7.1 *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 XXIII. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK

- 23.1 Maintenance Period.** If the construction contractor is required to install or maintain landscaping and/or irrigation, Subdivider shall require the construction contractor to 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 the Landscaping and Irrigation is accepted, whichever is longer. The maintenance period shall be 120 calendar days if turf is seeded.

- 23.2 Maintenance Area.** Subdivider shall require the construction contractor to maintain all areas of Project, including areas impacted or disturbed by the Project.
- 23.3 Maintenance Required.** Subdivider shall require the construction contractor to 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.
- 23.4 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.
- 23.5 Extension of Maintenance Period.** Subdivider shall require the construction contractor to 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.
- 23.6 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.
- 23.6.1 *Same Kind and Size.*** Plants used for replacement shall be of the same kind and size as specified and shall be furnished, planted and fertilized as originally specified, unless otherwise directed in writing by City. 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 XXIV. RECORDS AND AUDITS

- 24.1 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.
- 24.2 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 are Non-Reimbursable Costs.
- 24.2.1 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, anticipated to be incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Agreement.

ARTICLE XXV. NOTICES

- 25.1 Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 25.2 Effective Date of Notice.** Except in relation to Change Orders as provided for in Section 3.3.3 or 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.
- 25.3 Recipients.** All demands or notices required or permitted to be given to the City or Subdivider shall be delivered to all of the following:
- 25.3.1 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

25.3.2 Facilities Financing Manager
Development Services Department, Facilities Financing
City of San Diego
1010 Second Avenue, Suite 600 M.S. #606F
San Diego, California 92101
Facsimile No: (619) 533-3687

25.3.3 Ms. Beth Fischer
Pardee Homes
Division President – San Diego
6025 Edgewood Bend Court
San Diego, CA 92130

25.3.4 Thomas F. Steinke, Esq.
Seltzer Caplan McMahon Vitek
750 B Street, Suite 2100
San Diego, CA 92101

25.4 Change of Address(es). Notice of change of address shall be given in the manner set forth in Article XXV.

ARTICLE XXVI. MEDIATION

26.1 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.

26.2 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.

26.3 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.

26.3.1 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.

26.3.2 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.

26.3.3 If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

26.4 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.

26.4.1 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.

26.4.2 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 XXVII. MISCELLANEOUS PROVISIONS

27.1 Term of Agreement. Following the adoption of the City Council Ordinance 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 ten (10) years.

27.2 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 bonds, 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.

- 27.3 Headings.** All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 27.4 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.
- 27.5 Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.
- 27.6 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.
- 27.7 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.
- 27.8 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.
- 27.9 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.
- 27.10 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.
- 27.11 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.

- 27.12 **Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.
- 27.13 **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.
- 27.14 **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.
- 27.15 **Exhibits.** Each of the Exhibits referenced and attached to this Agreement is fully incorporated herein by reference.
- 27.16 **Compliance with Controlling Law.** Subdivider shall require 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 inspection and land surveying work. In addition, Subdivider shall require 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.
- 27.17 **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 agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.
- 27.18 **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.
- 27.19 **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.
- 27.20 **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 shall incorporate this provision into its contracts, supply agreements and purchase orders.

- 27.21 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.
- 27.22 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.
- 27.23 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.
- 27.24 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.
- 27.25 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.
- 27.26 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.
- 27.27 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 Ordinance No. O-_____, 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 _____, 2012, and this date shall constitute the Effective Date of this Agreement.

THE CITY OF SAN DIEGO, a Municipal Corporation

Dated: _____

By: _____
Jay Goldstone, Chief Operating Officer

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

Dated: _____

By: _____
Heidi K. Vonblum, Deputy City Attorney

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

By: 

Title: Beth Fischer
Vice President

Dated: 10/25/12

Law Offices of SELTZER CAPLAN MCMAHON VITEK

Dated: 10/25/12

By: 

Thomas F. Steinke, Attorneys for Pardee Homes

Or. Dept: Facilities Financing

EXHIBIT LIST

EXHIBITS 'A-1 through A-3'

VTM Resolutions

- A-1) Conditions for Vesting Tentative Map No. 1693 Adopted by Resolution Number R-297680 on February 25, 2003
 - A-2) Conditions for Tentative Map No. 4653 Adopted by Resolution Number R-299673 on September 21, 2004
 - A-3) Conditions for Vesting Tentative Map No. 8878 Adopted by Resolution Number R-302095 on November 14, 2006
-

EXHIBIT B'

Pacific Highlands Ranch Financing Plan
Del Mar Heights Pipeline Relocation
Project No. U-3

EXHIBIT 'C'

Limits of Construction of Del Mar Heights Pipeline

(480 Feet East of Lopelia Meadows to 150 Feet East of Rancho Santa Fe Farms Rd.
and
670 Feet East of Rancho Santa Fe Farms Road to 340 Feet
East of Via Abertura)

EXHIBIT 'D'

Project Schedule

EXHIBIT 'E'

Estimated Costs for Project

EXHIBIT 'F'

Project Schedule Obligation and Components

EXHIBIT 'G'

Meeting Requirements

EXHIBIT LIST

EXHIBIT 'H'

Preconstruction, Progress & Special Meeting Agenda

EXHIBIT 'I'

Procedure for Processing Change Orders

EXHIBIT 'J'

Equal Benefits Ordinance Certificate of Compliance

EXHIBIT 'K'

Consultant Provisions

EXHIBIT 'L'

Design and Construction Standards

EXHIBIT 'M'

Certification for Title 24/ADA Compliance

EXHIBIT 'N'

Approval of Design, Plans and Specifications

EXHIBIT 'O'

Construction Obligations

EXHIBIT 'P'

Certification for a Drug-Free Workplace

EXHIBIT LIST

EXHIBIT 'Q'

Project Submittal and Substitution

EXHIBIT 'R'

Extra Work Provisions

EXHIBIT 'S'

Notification of Reimbursable Project

EXHIBIT 'T'

Inspection Schedule

EXHIBIT 'U'

Project Deliverables

EXHIBIT 'V'

Typical Insurance Provisions

EXHIBIT A-1

CITY COUNCIL CONDITIONS FOR VESTING TENTATIVE MAP NO. 1693
PACIFIC HIGHLANDS RANCH, UNITS 12-16 PROJECT
ADOPTED BY RESOLUTION NO. R-297680 ON FEBRUARY 25, 2003

1. This vesting tentative map will expire September 8, 2018.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the first final map, unless otherwise noted.
3. Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this tentative map, may protest the imposition within ninety days of the approval of this tentative map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.
4. The final map shall conform to the provisions of PDP Permit No. 9181 & SDP Permit No. 9182.
5. The "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 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.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. 769830.

6. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
7. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
8. Every final map shall:
 1. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true meridian (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomical observations.
 2. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other

distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

9. The approval of this tentative map by the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies, including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 USC § 1531 et seq.).
10. The subdivider is permitted to file up to five final maps. 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 in connection with each unit.
11. The subdivider has reserved the right to record multiple final maps over the area shown on the approved tentative map. In accordance with Article 66456.1 of the Subdivision Map Act, the City Engineer shall retain the authority to review the areas of the tentative map the subdivider is including in each final map. The City Engineer may impose reasonable conditions relating to the filing of multiple final maps, in order to provide for orderly development, such as off-site public improvements, that shall become requirements of final map approval for a particular unit.
12. This resolution shall not take effect until the First Amendment to Pacific Highlands Ranch - Subarea III NCFUA Community Park Site Purchase Agreement is approved by the City Council and executed by the City Manager and ownership of the Gonsalves Property, identified on Vesting Tentative Map [VTM] No. 1693 as Unit 16c, is transferred to Pardee Homes. Should the First Amendment to Pacific Highlands Ranch - Subarea III NCFUA Community Park Site Purchase Agreement not be approved by the City Council and executed by the City Manager and ownership of the Gonsalves Property, identified on VTM No. 1693 as Unit 16c, not be transferred to Pardee Homes, then this VTM shall be deemed denied.
13. Prior to the recording of any final map and issuance of any grading permits, the First Amendment to Pacific Highlands Ranch - Subarea III NCFUA Community Park Site Purchase Agreement shall be approved by the City Council and executed by the City Manager and ownership of the Gonsalves Property, identified on VTM No. 1693 as Unit 16c, shall be transferred to Pardee Homes.
14. To the extent that portions of parcels identified in Exhibit B of the Normalization Agreement (approved by the City Council on December 10, 2001 by Resolution R-295871 on file in the Office of the City Clerk as Document No. RR-295871) are determined to be excess rights-of-way to be deeded back to Pardee as set forth in the Normalization

Agreement, such reconveyance can occur without the need for subsequent City Council action, pursuant to that agreement, however, written approval from Caltrans is required prior to any rights-of-way being deeded back to the Pardee.

15. Should it be determined that portions of existing rights-of-way and/or easements need to be vacated, which are identified in the Cooperative Agreement for Funding the State Route 56/ Camino Santa Fe Road Interchange (approved by the City Council by Resolution No. R-295869 on file in the Office of the City Clerk as Document No. RR-295869) such rights-of-way and/or easements shall be vacated after receiving written approval of the proposed vacation from Caltrans and prior to approval of the final map which is adjacent to such right-of-way.
16. The subdivider must provide a geologic (geotechnical) investigation report on the subject property to discover and address potential geological hazards. The report must be prepared in accordance with the most recent edition of the City of San Diego "Technical Guidelines for Geotechnical Reports." All slopes shall be constructed in accordance with the provisions of the City of San Diego Municipal Code [SDMC].
17. Undergrounding of the existing and proposed public utility systems and service facilities is required according to the SDMC.
18. The subdivider shall obtain a bonded and grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the SDMC in a manner satisfactory to the City Engineer.
19. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the subdivider to provide the right-of-way free and clear of all encumbrances and prior easements. The subdivider must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.
20. The applicant shall comply with the Mitigation, Monitoring and Reporting Program [MMRP] as specified in the Findings to the Master Environmental Impact Report [MEIR], LDR No. 41-0962, satisfactory to the City Manager and City Engineer. Prior to issuance of any grading permits and/or building permits, mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Transportation/Circulation
Hydrology/Water Quality
Biological Resources
Land Form Alteration/Visual Quality
Paleontological Resources

Public Services/Facilities
Water and Sewer Facilities
Solid Waste
Public Safety
Noise
Geology/Soils

21. The subdivider shall provide evidence to ensure that an affirmative marketing program is established.
22. All driveways and curb openings shall comply with City standard drawing G-16 and SDG-100 and with the SDMC.
23. The final map and grading plans for projects abutting State Route 56 shall be submitted to Caltrans for review.
24. There shall be a notes on the grading plans that state, a) All grading within SR-56 right-of-way shall conform to Section 19 of the California Standard Specifications, b) The subdivider shall contact Caltrans prior to the start of grading for this subdivision.
25. All utilities within the SR-56 right-of-way shall be designed satisfactory to Caltrans and the City Engineer.
26. The subdivider shall install all utilities within SR-56 right-of-way, before SR-56 is paved. If Caltrans proceeds prior to the development of this subdivision, the subdivider shall coordinate the construction of the utilities with Caltrans.
27. The approval of this tentative map does not constitute the approval of SR-56 alignment and grade. These final alignments and grades may have an impact on the subject development.
28. Any work within the SR-56 right-of-way is subject to the terms of the Normalization Agreement.
29. The subdivider shall provide an access for APN 305-040-02 to Sheet "A."
30. The subdivider shall construct Del Mar Heights Road from Old Carmel Valley Road to Carmel Valley Road as a four lane modified major street. The subdivider shall dedicate 122 feet of right-of-way and shall provide curb to curb pavement width of 102', curb, gutter, and a 5 foot sidewalk within a 10 foot curb to property line distance.

31. The subdivider shall construct Carmel Valley Road from SR-56 to Subarea IV/ Torrey Highlands boundary as a six lane/four lane modified major street. The subdivider shall dedicate 146 feet of right-of-way and shall provide 126 feet curb to curb pavement including curb, gutter and a 5 foot sidewalk within a 10 foot curb to property line distance, then transitioning to a minimum curb to curb width of 102 feet within 122 feet of right-of-way east of Del Mar Heights Road.
32. The subdivider shall construct Street "A" (Village Loop Road) as a modified 4-lane urban collector street. The subdivider shall dedicate 110 feet of right-of-way and shall provide 80 feet curb to curb pavement including curb, gutter, and a 5 foot sidewalk with a 15 foot curb to property line distance.
33. The subdivider shall construct Street "B" as a four-lane collector from Carmel Valley Road then transitioning to two-lane collector with a two-way left turn lane. The subdivider shall dedicate 92-70 feet of right-of-way and shall provide 72-50 feet of pavement including curb, gutter, and a 5 foot sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.
34. The subdivider shall construct a cul-de-sac at the end of Street "B." The subdivider shall dedicate a 60 foot right-of-way radius and shall provide a 50 foot curb radius, including pavement curb, gutter, and a 5 foot sidewalk within a 10 foot curb to property line distance.
35. Prior to issuance of any building permits, the applicant shall design the proposed project to accommodate the planned SR-56 freeway and Carmel Valley Road/Camino Santa Fe interchange, satisfactory to the City Engineer.
36. The subdivider shall assure the establishment of school zone in the vicinity of the school's site. The school zone should include appropriate pavement markings, signage and traffic control devices (which may include devices such as flashing beacons and traffic signals).
37. The subdivider shall construct traffic signals at the following locations:
 - a. Carmel Valley Road and Street "A" (Village Loop Road North).
 - b. Carmel Valley Road, Del Mar Heights Road and Street "A" (Village Loop Road).
 - c. Carmel Valley Road and Street "B."
 - d. Carmel Valley Road and Unit 15 main access point.
 - e. Old Carmel Valley Road and Del Mar Heights Road.

- f. Street "A" (Village Loop Road) and San Dieguito Union High School access.
- g. Street "A" (Village Loop Road) and the future Community Park access.
- h. Street "A" (Village Loop Road) and Unit 16 main access point.
- i. Street "A" (TM 41-0185 Units 5 and 11) and Carmel Valley Road.

38. Water Requirements

- a. Prior to the approval of any public improvement drawings, the Subdivider shall provide acceptable potable and reclaimed water studies satisfactory to the Director of the Water Department. The studies shall plan the pressure zone(s) and water facilities necessary to serve this development, including potable redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the studies. All water facilities within Units 13 and 16 (multi-family sites) shall be private unless proposed facilities comply with public standards, including easements.
- b. The Subdivider shall design and construct all public water facilities, both potable and reclaimed, as required in the accepted water studies for Pacific Highlands Ranch Subarea III, necessary to serve this development. Water facilities, as shown on the approved tentative map, will require modification based on the accepted water studies and to maintain redundancy throughout construction phasing at final engineering.
- c. The Subdivider shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two fire hydrants or thirty dwelling units are located on a dead-end main, then the Subdivider shall install a redundant water system satisfactory to the Director of the Water Department.
- d. The Subdivider shall grant adequate water easements, including vehicular access to each appurtenance (meters, blow offs, valves, fire hydrants, etc.), for all public water facilities that are not located within fully improved public right-of-way, satisfactory to the Director of the Water Department. Easements shall be located within single lots.
- e. Grants of water easements shall have the following minimum widths: water mains with mains services or fire hydrants - 30 feet with 24 feet of paving and full height curbs; across Unit 15/School site - 30 feet with 20 feet of paving; Unit 14 - 50 feet with 40 feet of paving. All paving shall conform to schedule "J" or better. Water

easements, as shown on the approved tentative map, will require modification based on standards at final engineering.

- f. The Subdivider shall provide keyed access to the Water Operations Division, in a manner satisfactory to the Director of the Water Department, on all gates located within easements containing public water facilities. The City will not be held responsible for any issues that may arise relative to the availability of keys.
- g. The Subdivider agrees to design and construct all proposed public water facilities, including services, meters, and easements, in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards, and practices pertaining thereto. Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private or modified at final engineering to comply with standards.
- h. The Subdivider shall design and construct all irrigations systems, served by irrigation services, to utilize reclaimed water in a manner satisfactory to the Director of the Water Department.
- i. The Subdivider shall provide CC&Rs for the operation and maintenance of on-site private water facilities that serve or traverse more than one lot or unit.
- j. Providing water for this development is dependent upon prior construction of certain water facilities in previously approved developments in this area including, but not limited to, the completion of the 36-inch pipeline in Del Mar Heights Road and Carmel Valley Road and a pressure regulating station. If facilities have not been constructed when required for this development, then the construction of certain portions of these previously approved water facilities, as required by the City Engineer, will become off-site improvements required for this development.

39. Wastewater Requirements

- a. The Subdivider shall construct their fair share of the Carmel Valley Trunk Sewer and enter into a Reimbursement Agreement with all developments that construct more than their fair share of the Carmel Valley Trunk Sewer.
- b. The Subdivider shall install all sewer facilities required by the accepted sewer study, necessary to serve this development. Sewer facilities as shown on the approved tentative map will require modification based on the accepted sewer study.

- c. The Subdivider shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's sewer design guide. Proposed facilities that do not meet the current standards shall be private or re-designed.
 - d. The Subdivider shall grant adequate sewer, and/or access easements, including vehicular access to each manhole, for all public sewer facilities that are not located within public right-of-way, satisfactory to the Director of the Metropolitan Wastewater Department. Minimum easement width for sewer mains with manholes - 20 feet. The easements shall be located within single lots.
 - e. Vehicular access roadbeds shall be a minimum of 20 feet wide and surfaced with suitable approved material satisfactory to the Director of the Metropolitan Wastewater Department. Vehicular access roadbeds to sewer mains with laterals shall be a minimum of 24 foot wide and paved full width. An additional 5 feet width per additional utility is required for easements containing more than one utility. For sewer mains more than 10 feet deep, 2 feet of additional easement width for each foot of depth over 10 feet shall be required.
 - f. No structures or landscaping that would inhibit vehicular access shall be installed in or over any sewer access easement.
 - g. No structures or landscaping, including private sewer facilities and enhanced paving, shall be installed in or over any easement prior to the applicant obtaining an Encroachment Maintenance and Removal Agreement.
 - h. No trees or shrubs exceeding 3 feet in height at maturity shall be installed within ten feet of any public sewer facilities.
 - i. Providing sewer for this development is dependent upon prior construction of certain sewer facilities in previously approved developments in the area. If they have not been constructed when required for this development, then the construction of certain portions of these previously approved sewer facilities, as required by the City Engineer, will become off-site improvements required for this development.
40. The subdivider shall provide adequate corner sight distance at all streets and driveways.
41. A hydrology report must be developed using the Rational and Modified Rational Method for each unit within Pacific Highlands Ranch, subject to the approval of the City Engineer.

42. Private storm drain systems and detention basins shall be privately maintained. Storm drains not located within a public street shall be private.
43. The drainage system proposed for this subdivision, is subject to approval by the City Engineer.
44. The 100 foot buffer requirements adjacent to SR-56 as shown on VTM No. 1693 are not approved. The 100 foot buffer requirements are subject to Caltrans and the City Engineer's approval.
45. A portion of this project has been identified as being within the Floodway of a Special Flood Hazard Area. No increases to base flood elevations are allowed. A Registered Professional Engineer shall submit a no rise certification along with a detailed engineering analysis to substantiate the certification. The analysis is subject to the approval of the City Engineer.
46. If the engineering analysis shows the development will alter the floodway or floodplain boundaries of the Special Flood Hazard Area, the developer must obtain a Conditional Letter of Map Revision from the Federal Emergency Management Agency [FEMA] prior to issuance of a grading, engineering, or building permits. The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.
47. No certificates of occupancy will be granted or bonds released for development associated with this project until a Letter of Map Revision [LOMR] is obtained from FEMA. The LOMR is issued based upon as-built site conditions, therefore, the applicant must allow time to complete this process. The developer must provide all documentation, engineering calculations, and fees which are required by FEMA.
48. No structures except those allowed by Section 131.0222 (Use Regulations for Open Space Zones) of the Land Development Code shall be built within the Floodway.
49. All structures built within the Special Flood Hazard Area must have the lowest floor elevated 2 feet above the base flood elevation or if the structure is nonresidential it may be flood proofed to that same elevation.
50. All fill placed within the Special Flood Hazard Area must be compacted to 95% relative compaction.
51. The subdivider shall denote on the final map and the improvement plans "Subject to Inundation" all areas lower than the base flood elevation plus 1 foot.

52. The subdivider shall grant flowage easements, satisfactory to the City Engineer.
53. The developer shall provide a downstream drainage study, satisfactory to the City Engineer, that demonstrates that no adverse impacts will occur to downstream properties as a result of the increased runoff from this development or, if substantial impacts are anticipated, what measures must be taken to mitigate such impacts.
54. Development of this project shall comply with all requirements of State Water Resources Control Board [SWRCB] Order No. 99-08-DWQ and the Municipal Storm Water Permit, Order No. 2001-01 (NPDES General Permit No. CAS000002 and CAS0108758), *Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity*. In accordance with said permit, a Storm Water Pollution Prevention Plan [SWPPP] and a Monitoring Program Plan shall be implemented concurrently with the commencement of grading activities, and a Notice of Intent [NOI] shall be filed with the SWRCB.

A copy of the acknowledgment from the SWRCB that an NOI has been received for this project shall be filed with the City of San Diego when received; further, a copy of the completed NOI from the SWRCB showing the permit number for this project shall be filed with the City of San Diego when received. In addition, the owner(s) and subsequent owner(s) of any portion of the property covered by this grading permit and by SWRCB Order No. 99-08-DWQ, and any subsequent amendments thereto, shall comply with special provisions as set forth in SWRCB Order No. 99-08-DWQ.

55. The subdivider shall submit a Water Quality Technical Report and show the type and location of all post-construction Best Management Practices [BMPs] on the final construction drawings. All runoff from the site shall be filtered/treated for removal of pollutants prior to leaving the site. The Report shall address but not be limited to, how site design and source control have been incorporated into the project BMPs maintenance schedule, maintenance costs and who will be responsible for the future maintenance and associated costs. The report also needs to address water quality. Describe the type of pollutants that will be generated post development, the pollutants to be captured by the BMPs and the quality of the resultant discharge.
56. Prior to any issuance of any construction permit, the Subdivider shall incorporate any construction BMPs necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the SDMC into the construction plans or specifications.
57. Prior to the issuance of any construction permit, the subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMPs maintenance.
58. Park and Recreation Requirements:

- a. Developer shall rough grade the park site, Unit 16c, Lot "1," to a minimum thirteen usable acre site containing a maximum 2% slope acceptable to the Park and Recreation Department, and construct the adjacent contiguous local street improvements including storm, sewer, water, paving and stub-outs for same serving the park site. Developer shall define the amount, and costs, for the work done on and adjacent to the future park site, excluding storm sewers, prior to the recordation of any final map within the subdivision. Developer may elect to enter into an agreement, acceptable to the Facilities Financing, for compensation of these costs. Costs of grading shall be based on the pro-rata share of the entire cost of the grading.
 - b. The developer may design and construct the community park in its entirety. The developer, should they elect to design and construct the community park, shall hire a consultant, acceptable to the Park and Recreation Department, to prepare construction documents including a General Development Plan [GDP] for Pacific Highlands Ranch Units 12-16 Community Park. A separate reimbursement agreement, acceptable to the Facilities Financing, may be requested from the City by the developer.
59. The subdivider shall submit complete landscape construction documents, including plans, details, and specifications (including a permanent automatic irrigation system unless otherwise approved), for the required right-of-way and median (if applicable) improvements, slope revegetation and hydroseeding of all disturbed land in accordance with the Landscape Technical Manual and to the satisfaction of the City Manager. The landscape construction documents shall be in substantial conformance with Exhibit "A," Landscape Development Plan, dated February 25, 2003, on file in the Office of the Development Services Department. The Subdivider shall assure by permit and bond the installation of landscaping per landscape construction documents.
60. The subdivider shall submit for review, a Landscape Maintenance Agreement for all landscape improvements within and adjacent to the public right-of-way. The approved Landscape Maintenance Agreement shall be recorded and bonded prior to recording of the final map.
61. Open Space Requirements
- a. Lot A is to be granted in fee, to the City, at no cost, for open space. Said lot shall be free and clear of all private easements, private encroachments, private agreements and liens.
 - b. Lot B shall have an Building Restriction Easement and be owned and maintained by the Home Owners Association.

- c. No Brush Management is permitted on City fee owned open space. All brush management must be located on private property, Lots 1-16 of Unit 12.
62. The Affordable Housing Requirements of Planned Development Permit No. 9181/Site Development Permit No. 9182, dated February 25, 2003, on file in the Office of the Development Services Department, are hereby incorporated by reference into this VTM. The subdivider shall comply with the affordable element of the Pacific Highlands Ranch Subarea Plan. Prior to the recordation of the final map, the subdivider shall enter into an agreement with the Executive Director of the Housing Authority of the City of San Diego, or designee and the City Manager of the City of San Diego, or designee. The Affordable Housing Requirements are more thoroughly described through conditions of the accompanying PDP Permit No. 9181/SDP Permit No. 9182. Such Permit shall become utilized upon recordation of the Final Map.
63. This subdivision is in a community plan area designated in the General Plan as Planned Urbanizing. As such, special financing plans have been, or will be, established to finance the public facilities required for the community plan area.
- Therefore, in connection with Council approval of the final map, the subdivider shall comply with the provisions of the financing plan then in effect for this community plan area, in a manner satisfactory to the Development Services Manager. This compliance shall be achieved by entering into an agreement for the payment of the assessment, paying a Facilities Benefit Assessment [FBA] or such other means as may have been established by the City Council.
64. This tentative map is a vesting tentative map. As such, the subdivider shall pay an additional \$300 fee to the Development Services Department for each final map processed in connection with this .

FOR INFORMATION:

- This development may be subject to payment of a park fee prior to the filing of the final subdivision map in accordance with SDMC. This property is also subject to a building permit park fee in accordance with the SDMC.
- This development may be subject to payment of School Impact Fees at the time of issuance of building permits, as provided by Education Code section 17620, in accordance with procedures established by the Director of Building Inspection.
- This development may be subject to impact fees, as established by the City Council, at the time of issuance of building permits.

- This will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.

EXHIBIT A-2

CONDITIONS FOR TENTATIVE MAP NO. 4653

PACIFIC HIGHLANDS RANCH, UNITS 17-22 PROJECT

ADOPTED BY CITY COUNCIL RESOLUTION NO. R-299673

ON SEPTEMBER 21, 2004

1. This vesting tentative map will expire on (three years from the date of approval by City Council).
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the first final map, unless otherwise noted.
3. Any party, on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this vesting tentative map, may protest the imposition within ninety days of the approval of this vesting tentative map by filing a written protest with the City Clerk pursuant to California Government Code section 66020.
4. The final maps shall conform to the provisions of Planned Development Permit No. 4651/Site Development Permit No. 4652.
5. The "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 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.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. 769830.

6. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 (NAD 83).
7. "California Coordinate System" means the coordinate system as defined in Sections 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
8. Every final map shall:
 - a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true median (theta or mapping angle) and the north point of said

map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.

b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.

9. The Subdivider shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the Findings to Environmental Impact Report, LDR NO. 2692, satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit and/or recording of the first final map and/or issuance of a building permit, as such timing is described in the MMRP, all conditions of the MMRP shall be adhered to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Biological Resources
- Geology/Soils
- Hydrology/Water Quality
- Landform Alteration/Visual Quality
- Paleontological Resources
- Noise
- Public Services/Facilities
- Public Safety
- Transportation/Circulation

10. The approval of this tentative map by the City of San Diego does not authorize the subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies, including, but not limited to, the Endangered Species Act of 1973 and any amendments thereto (16 U.S.C. § 1531 et seq.).

11. No final map shall be recorded on Unit 22 until the Fire Station Purchase Agreement is approved and executed.

12. The design of the subdivision shall include private easements, if any, serving parcels of land outside the subdivision boundary or such easements must be removed from the title of the subdivided lands prior to filing any parcel or final map encumbered by these easements.

13. The subdivider has reserved the right to record multiple final maps over the area shown on the approved tentative map. In accordance with Article 66456.1 of the Subdivision Map Act, the City Engineer shall retain the authority to review the areas of the tentative map the subdivider is including in each final map. The City Engineer may impose reasonable conditions relating to the filing of multiple final maps, in order to provide for orderly development, such as

off site public improvements, that shall become requirements of final map approval for a particular unit.

14. The subdivider is permitted to file up to seven (7) final maps. 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 in connection with each unit.

15. Pursuant to City Council Policy 600-20, the subdivider shall provide evidence to ensure that an affirmative marketing program is established.

16. The subdivider shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

17. Prior to issuance of grading permits, a geotechnical investigation report shall be required that specifically addresses the proposed grading plans and cites the City's Work Order and Drawing No. The geotechnical investigation shall provide specific geotechnical grading recommendations and include geotechnical maps, using the grading plan as a base, that depict recommended location of subdrains, location of outlet headwalls, anticipated removal depth, anticipated over- excavation depth, and limits of remedial grading.

18. Undergrounding of existing and proposed public utility systems and service facilities is required according to the San Diego Municipal Code.

19. Whenever street rights-of-way are required to be dedicated, it is the responsibility of the subdivider to provide the right-of-way free and clear of all encumbrances and prior easements. The subdivider must secure "subordination agreements" for minor distribution facilities and/or "joint-use agreements" for major transmission facilities.

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

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

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

TRANSPORTATION REQUIREMENTS

22. Prior to the recordation of the first final map, the subdivider shall assure the construction of Carmel Valley Road from State Route 56 to Subarea IV/Torrey Highlands boundary as a six lane/four lane modified major street. The subdivider shall dedicate 146 feet of right-of-way and shall provide a minimum of 126 feet of curb to curb, curb, gutter and five foot wide sidewalk within ten foot curb to property line distance then transitioning to a minimum curb to curb width of 102 feet within 122 feet of right-of-way east of Del Mar Heights Road, satisfactory to the City Engineer.

23. Prior to issuance of any building permit, the project shall conform to the Subarea III/Pacific Highlands Ranch Transportation Phasing Plan and the approved Traffic Study/final EIR.

24. Prior to the recordation of the first final map, the subdivider shall assure the construction of the traffic signal at the intersection of Carmel Valley Road and Street "A", satisfactory to the City Engineer.

25. Prior to the recordation of the first final map, the subdivider shall assure the construction of the traffic signal at the intersection of Carmel Valley Road and Del Mar Heights Road, satisfactory to the City Engineer.

26. Prior to the recordation of the first final map, the subdivider shall assure the construction of the traffic signal at the intersection of Carmel Valley Road and Street "C", satisfactory to the City Engineer.

27. Prior to the recordation of the first final map, the subdivider shall assure the construction of the traffic signal at the intersection of Carmel Valley Road and Rancho Santa Fe Farms Road, satisfactory to the City Engineer.

28. Prior to the recordation of the first final map, the subdivider shall construct Street "C" from Street "R" to Street "Q" as a modified two lane collector street. The subdivider shall dedicate 130 feet of right-of-way and shall provide 68 feet of pavement including 12 foot median, curb, gutter and a 8-15 foot sidewalk with a 28-34 foot curb to property line distance for sections with parallel parking and 52 feet of pavement including a 12 foot median, curb and gutter and 8-15 foot sidewalk within a 36-42 foot curb to property line distance for section without parking at the intersections with Street "R" and Street "Q", satisfactory to the City Engineer.

29. The subdivider shall provide a minimum of 100 foot curve radius for all the proposed residential streets, satisfactory to the City Engineer.

30. Prior to the recordation of the first final map, the subdivider shall design Street "A" as a two-lane modified collector street from Station 50+07 to Station 57+39. The subdivider shall dedicate 101 feet of right-of-way and shall provide 56 feet curb to curb width including

curb, gutter and five-ten foot wide sidewalk within 15-30 feet of curb to property line distance, satisfactory to the City Engineer.

31. Prior to the recordation of the first final map, the subdivider shall assure the construction of Street "C" north of Street "Q" as a two lane collector street. The subdivider shall dedicate 100 feet of right-of-way and shall provide 56 feet of pavement, curb, gutter and a five-ten foot sidewalk with a 15.5-28.5 foot curb to property line distance, satisfactory to the City Engineer.

32. Prior to the recordation of the first final map, the subdivider shall assure the construction of Street "C" from Carmel Valley Road to Street "R" as a modified two lane collector street. The subdivider shall dedicate 106 feet of right-of-way and shall provide 40 feet of pavement including 12 feet median, curb, gutter and a 5-15 foot sidewalk with a 12-42 foot curb to property line distance, satisfactory to the City Engineer.

33. Prior to the recordation of the first final map, the subdivider shall assure the construction of the Public Alleys "A" thru "E" with a minimum of 24 feet of concrete, satisfactory to the City Engineer.

34. Prior to the recordation of the first final map, the subdivider shall assure the construction of the traffic signal at the intersection of Old Carmel Valley Road and Del Mar Heights Road, satisfactory to the City Engineer.

35. The driveway opening shall not exceed 40% of the frontage property for each lot, except for lots with shared driveways and lots with constricted frontage such as horizontal curvature or along cul-de-sacs.

36. To prevent vehicles from encroaching onto the sidewalk, the minimum driveway length behind the property is 20 feet (18 feet with roll-up garage doors).

37. Prior to the recordation of the first final map, the subdivider shall assure the construction of the cul-de-sac at the northern end of Street "A" with a minimum curb to curb radius of 70 feet within right-of-way radius of 80 feet satisfactory to the City Engineer.

38. The subdivider shall provide and maintain a site distance easement for Unit 22, Lot 64, to the satisfaction of the City Engineer.

39. Prior to the recordation of the first final map, the subdivider shall assure the construction of Street "B", Street "D", Street "E", Street "F", Street "G", Street "H", Street "I", Street "J", Street "K", Street "L", Street "N", Street "O", Street "P", Street "Q", Street "R", Street "S", Street "T", Street "W" and Street "X" as a two lane residential street. The subdivider shall dedicate 54 feet of right-of-way and shall provide 52 feet of pavement, curb, gutter and five-foot sidewalk within eleven-foot curb to property line distance, satisfactory to the City Engineer.

40. Prior to the recordation of the first final map, the subdivider shall assure the construction of Del Mar Heights Road from Old Carmel Valley Road to Carmel Valley Road as a four lane modified major street. The subdivider shall dedicate 125 feet of right-of-way, and shall provide 97 feet of pavement, curb, gutter and a five-foot sidewalk within a 15 foot curb to property line distance, satisfactory to the City Engineer.

41. Prior to the recordation of the first final map, the subdivider shall assure the construction of Street "A" from Station 28+56 to Station 29+19 (Private Drive Z, VTM 41-0185) as a modified two lane collector street. The subdivider shall dedicate 101 feet of right-of-way and shall provide 56 feet of pavement including curb, gutter and a five-foot sidewalk with a 15-30 foot curb to property line distance, satisfactory to the City Engineer.

42. Prior to the recordation of the first final map, the subdivider shall assure the construction of Street "A" from Carmel Valley Road to private drive "A" as a modified four-lane collector street. The subdivider shall dedicate 160 feet of right-of-way and shall provide 90 feet of curb to curb width including curb, gutter and a 5-10 foot sidewalk with a 15-55 foot curb to property line distance, satisfactory to the City Engineer.

43. Prior to the recordation of the first final map, the subdivider shall assure the construction of Street "V" as a two lane modified collector street. The subdivider shall dedicate 85 feet of right-of-way and shall provide 40 feet of pavement plus a ten-foot median, curb, gutter and a five-foot sidewalk within 17.5 foot parkway, satisfactory to the City Engineer.

44. Prior to the recordation of the first final map, the subdivider shall assure the construction of Ranch Santa Fe Farms Road as a modified two lane collector street. The subdivider shall dedicate 65 feet of right-of-way and shall provide 45 feet of pavement including curb, gutter and a five-foot sidewalk with a ten-foot curb to property line distance, satisfactory to the City Engineer.

ENGINEERING REQUIREMENTS

45. No structures except those allowed by Section 131.0222 (Use Regulations for Open Space Zones) of the Land Development Code shall be built within the floodway.

46. All structures built within the Special Flood Hazard Area must have the lowest floor elevated two (2) feet above the base flood elevation or if the structure is nonresidential it maybe flood proofed to that same elevation.

47. All fill placed within the Special Flood Hazard Area must be compacted to 95% relative compaction.

48. The Subdivider/Owner shall denote on the final map and the improvement plans "Subject to Inundation" all areas lower than the base flood elevation plus one foot.

49. The Subdivider/Owner shall enter into an agreement with the City waiving the right to oppose a special assessment initiated for the construction of flood control facilities and their perpetual maintenance.

50. The Subdivider/Owner shall grant a flowage easement, satisfactory to the City Engineer, over property within the floodway.

51. The Subdivider shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to the requirements of the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

52. The preliminary drainage system for this development is approved per condition of approval of the "Runoff Management Plan" provided that, in the final design, the following requirement is satisfied: A hydrology report must be developed using the Rational and Modified Rational Method for each unit within Pacific Highlands Ranch, subject to the approval of the City Engineer.

53. All drainage facilities within this subdivision and outside of the public right-of-way shall be private and privately maintained.

54. Prior to the issuance of any construction permits, the Subdivider shall provide evidence of coverage under the General Industrial National Pollutant Discharge Elimination System, in the form of a Notice of Intent (NOI) filed with the State Water Resources Control Board.

55. Prior to the issuance of any construction permit, the Subdivider shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the Municipal Code, into the construction plans or specifications.

56. Prior to the issuance of any construction permit, the Subdivider shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, consistent with the approved Runoff Management Plan.

57. Prior to the issuance of any construction permit, the Subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance, satisfactory to the City Engineer.

WATER REQUIREMENTS

58. Prior to the submittal of any public improvement drawings, the Subdivider shall provide acceptable potable and reclaimed water studies satisfactory to the Water Department Director. The studies shall plan the pressure zone(s) and water facilities necessary to serve this development, including potable redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the studies.

59. The Subdivider shall design and construct all public water facilities, both potable and reclaimed, as required in the accepted water studies for Pacific Highlands Ranch Subarea III, necessary to serve this development. Water facilities, as shown on the approved tentative map, will require modification based on the accepted water studies and to maintain potable redundancy throughout construction phasing at final engineering.

60. The Subdivider shall install fire hydrants at locations satisfactory to the Fire Department, the Water Department Director and the City Engineer. At no time shall more than two (2) fire hydrants or thirty (30) dwelling units be located on dead-end water facilities.

61. The Subdivider shall grant adequate water easements, including vehicular access to each appurtenance (meters, blow offs, valves, fire hydrants, etc.), for all public water facilities that are not located within fully improved public rights-of-way, satisfactory to the Water Department Director. Easements shall be located within single lots.

62. Grants of water easements shall have the following minimum widths: water mains with no appurtenances of any kind - 15 feet plus five (5) feet for each additional utility; water mains with services or fire hydrants - 52 feet with 24 feet of paving and full height curbs. All paving shall conform to grasscrete or schedule "J" or better. Water easements, as shown on the approved tentative map, will require modification based on standards at final engineering.

63. The Subdivider shall grant water easements over the entire areas of Unit 18 Lot "D", Unit 19 Lot "B", and Unit 20 Lot "E" in a manner satisfactory to the Water Department Director and the City Engineer.

64. The Subdivider shall provide a minimum pavement width of 24-feet within the Rancho Santa Fe Farms Road right-of-way, from Carmel Valley Road to Private Driveway "H", in a manner satisfactory to the Water Department Director and the City Engineer.

65. The Subdivider shall provide keyed access to the Water Operations Division, in a manner satisfactory to the Water Department Director, on all gates located within easements containing public water facilities. The City will not be held responsible for any issues that may arise relative to the availability of keys.

66. The Subdivider agrees to design and construct all proposed public water facilities, including services, meters, and easements, in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards, and practices pertaining thereto. Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private or modified at final engineering to comply with standards.

67. The Subdivider shall design and construct all irrigations systems, served by irrigation services, to utilize reclaimed water in a manner satisfactory to the Water Department Director.

68. The Subdivider shall install a water service to serve each lot or provide CC&Rs for the operation and maintenance of on-site private water facilities that serve or traverse more than one lot or unit.

69. Providing water for this development is dependent upon prior construction of certain water facilities in previously approved developments in this area including, but not limited to, the completion of the 36-inch pipeline in Dei Mar Heights Road and Carmel Valley Road and a pressure regulating station. If facilities have not been constructed when required for this development, then the construction of certain portions of these previously approved water facilities, as required by the City Engineer, will become off-site improvements required for this development.

WASTEWATER REQUIREMENTS

70. Concurrent with pulling permits for each structure, the subdivider shall pay their fair share costs associated with design, administration, inspection and re-construction of sewer Pump Station 79, and related costs for establishing a mechanism for cost recovery, and distribution of credits for associated work.

71. The subdivider shall install all sewer facilities required by the accepted sewer study, necessary to serve this development. Sewer facilities as shown on the approved tentative map will require modification based on the accepted sewer study.

72. The subdivider shall design and construct any proposed public sewer facilities to the most current edition of the City of San Diego's Sewer Design Guide.

73. The subdivider shall provide Geotechnical and Geological reports, with loading calculations and a seismic risk assessment, signed and stamped by a registered Geotechnical Engineer to demonstrate that the proposed geogird walls, grading, and slopes in Unit #22 will not adversely impact the proposed sewer main, nor an open trench during repairs for the main, located immediately adjacent to and northerly to the optional school site.

74. The subdivider shall grant adequate sewer, and/or access easements, including vehicular access to each manhole, for all public sewer facilities that are not located within public rights of way, satisfactory to the Metropolitan Wastewater Department Director. Minimum easement width for sewer mains with manholes - 20 feet. The easements shall be located within single lots.

75. Vehicular access roadbeds shall be a minimum of 20 feet wide and surfaced with suitable approved material satisfactory to the Metropolitan Wastewater Department Director. Vehicular access roadbeds to sewer mains with laterals shall be a minimum 24 foot wide and paved full width. An additional five feet of width per additional utility is required for easements containing more than one utility. For sewer mains more than ten feet deep, two feet of additional easement width for each foot of depth over ten feet shall be required.

76. The subdivider shall provide an Encroachment Removal Agreement for and prior
to proposed improvements of any kind, including utilities, landscaping, enriched paving, and
electrical conduits to be installed within the public right-of-way or public easement.

77. No structures or landscaping that would inhibit vehicular access will be installed
in or over any sewer easement. No shrubs more than two feet in height at maturity are allowed
within any sewer easements. No trees are allowed within ten feet of any Public Sewer Mains or
Sewer Laterals. No pressurized landscape irrigation mains or electrical facilities are allowed
within any Sewer Easements.

78. The subdivider shall design and construct all proposed private sewer facilities
serving more than one lot to the most current edition of the City of San Diego's Sewer Design
Guide.

79. The subdivider will be required to provide evidence, satisfactory to the
Metropolitan Wastewater Department Director, indicating that each dwelling unit will have its
own sewer lateral or provide CC&R's for the operation and maintenance of on-site private sewer
facilities that serve more than one ownership.

AFFORDABLE HOUSING REQUIREMENTS

80. The Owner and Developer of Units 17 through 22A in conjunction with the
Executive Director of the Housing Authority and City Staff, have developed an Affordable
Housing Tentative Map Condition which provides for a mechanism to fulfill the Affordable
Housing obligation. The Affordable Housing obligation will be fulfilled either on Unit 22-A or
within the Pacific Highlands Ranch Village.

FOR INFORMATION:

- This development may be subject to payment of a park fee prior to the filing of the final
subdivision map in accordance with San Diego Municipal Code. This property is also
subject to a building permit park fee in accordance with San Diego Municipal Code.
- This development may be subject to payment of School Impact Fees at the time of
issuance of building permits, as provided by Education Code section 17620, in
accordance with procedures established by the Director of Building Inspection.
- This development may be subject to impact fees, as established by the City Council, at
the time of issuance of building permits.
- This vesting tentative map will be subject to fees and charges based on the rate and
calculation method in effect at the time of payment.

EXHIBIT A-3

CONDITIONS FOR VESTING TENTATIVE MAP NO. 8878

PACIFIC HIGHLANDS RANCH UNITS 23-28 – PROJECT NO. 5382

ADOPTED BY RESOLUTION NO. R 302095 ON NOV 14 2009

GENERAL

1. This Tentative Map will expire on NOV 14 2009.
2. Compliance with all of the following conditions shall be assured, to the satisfaction of the City Engineer, prior to the recordation of the Final Map, unless otherwise noted.
3. Prior to the Tentative Map expiration date, a Final Map to consolidate the existing lots into one lot shall be recorded in the Office of the County Recorder.
4. A Final Map shall be recorded in the Office of the County Recorder, prior to the Tentative Map expiration date.
5. The Final Map shall conform to the provisions of Planned Development Permit No. 8880/Site Development Permit No. 8881/Coastal Development Permit No. 8879.

ENGINEERING

6. Prior to recording a final map for Unit 26, the Subdivider shall acquire the remaining offsite right-of-way at the terminus of Street "K" between Street "K" and Rancho Santa Fe Farms Road in order to construct Street "K" to connect to Ranch Santa Fe Road satisfactory to the City Engineer.
7. The Subdivider shall underground any new service run to any new or proposed structures within the subdivision.
8. Conformance with the "General Conditions for Tentative Subdivision Maps," filed in the Office of the City Clerk under Document No. 767688 on May 7, 1980, is required. Only those exceptions to the General Conditions which are shown on the tentative map and covered in these special conditions will be authorized.

All public improvements and incidental facilities shall be designed in accordance with criteria established in the Street Design Manual, filed with the City Clerk as Document No. 769830.

R. 302095

MAPPING

9. "Basis of Bearings" means the source of uniform orientation of all measured bearings shown on the map. Unless otherwise approved, this source will be the California Coordinate System, Zone 6, North American Datum of 1983 [NAD 83].
10. "California Coordinate System" means the coordinate system as defined in Section 8801 through 8819 of the California Public Resources Code. The specified zone for San Diego County is "Zone 6," and the official datum is the "North American Datum of 1983."
11. Every Final Map shall:
 - a. Use the California Coordinate System for its "Basis of Bearing" and express all measured and calculated bearing values in terms of said system. The angle of grid divergence from a true meridian (theta or mapping angle) and the north point of said map shall appear on each sheet thereof. Establishment of said Basis of Bearings may be by use of existing Horizontal Control stations or astronomic observations.
 - b. Show two measured ties from the boundary of the map to existing Horizontal Control stations having California Coordinate values of Third Order accuracy or better. These tie lines to the existing control shall be shown in relation to the California Coordinate System (i.e., grid bearings and grid distances). All other distances shown on the map are to be shown as ground distances. A combined factor for conversion of grid-to-ground distances shall be shown on the map.
12. The design of the subdivision shall include private easements, if any, serving parcels of land outside the subdivision boundary or such easements must be removed from the title of the subdivided lands prior to filing any parcel or final map encumbered by these easements.

WASTEWATER

13. Prior to issuance of any engineering permit for public improvements, the Subdivider is required to provide an accepted sewer study, satisfactory to the Metropolitan Wastewater Department Director, for all proposed public sewer facilities in accordance with the City of San Diego's current sewer design guide to determine appropriate sewer facilities needed to serve this development.
14. The Subdivider shall install all sewer facilities required by the accepted sewer study, necessary to serve this development. Sewer facilities as shown on the approved tentative map will require modification based on the accepted sewer study.

15. The Subdivider shall design and construct all proposed public sewer facilities to the most current edition of the City of San Diego's sewer design guide. Proposed facilities that do not meet the current standards shall be re-designed.
16. Proposed private underground sewer facilities located within a single lot shall be designed to meet the requirements of the California Uniform Plumbing Code and shall be reviewed as part of the building permit plan check.
17. The Subdivider shall provide evidence, satisfactory to the Metropolitan Wastewater Department Director, indicating that each lot/condominium will have its own sewer lateral or provide CC&R's for the operation and maintenance of on-site private sewer mains that serve more than one lot/condominium.
18. No approved structures or landscaping, including private sewer facilities and enhanced paving, shall be installed in or over any public right-of-way prior to the Subdivider obtaining an Encroachment Maintenance and Removal Agreement.
19. No trees or shrubs exceeding three feet in height at maturity shall be installed within ten feet of any public sewer facilities.

WATER

20. Prior to the approval of any public improvement drawings, the Subdivider shall provide acceptable potable and reclaimed water studies satisfactory to the Water Department Director. The studies shall plan the pressure zone(s) and water facilities necessary to serve this development, including potable redundancy, consistent with previously accepted studies in this area. If phasing of the development is proposed, then a phasing plan shall be included in the studies.
21. The Subdivider shall design and construct all public water facilities, both potable and reclaimed, as required in the accepted water studies for Pacific Highlands Ranch Subarea III, necessary to serve this development. Water facilities, as shown on the approved tentative map, will require modification based on the accepted water studies and to maintain redundancy throughout construction phasing at final engineering.
22. The Subdivider shall install fire hydrants at locations satisfactory to the Fire Department and the City Engineer. If more than two fire hydrants or thirty dwelling units are located on a dead-end main then the Subdivider shall install a redundant water system satisfactory to the Water Department Director.
23. The Subdivider shall grant adequate water easements, including vehicular access to each appurtenance (meters, blow offs, valves, fire hydrants, etc.), for all public water facilities that are not located within fully improved public rights-of-way,

satisfactory to the Water Department Director. Easements shall be located within single lots.

24. Grants of water easements shall have the following minimum widths: water mains with services or fire hydrants - 30 feet with 24 feet of paving and full height curbs. All paving shall conform to schedule "J" or better. Water easements, as shown on the approved tentative map, will require modification based on standards at final engineering.
25. The Subdivider agrees to design and construct all proposed public water facilities, including services, meters, and easements, in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards, and practices pertaining thereto. Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private or modified at final engineering to comply with standards.
26. The Subdivider shall design and construct all irrigation systems, served by irrigation services, to utilize reclaimed water in a manner satisfactory to the Water Department Director.
27. The Subdivider shall provide CC&Rs for the operation and maintenance of on-site private water facilities that serve or traverse more than one lot or dwelling unit.
28. Providing water for this development is dependent upon prior construction of certain water facilities in previously approved developments in this area including, but not limited to, the completion of the 36-inch pipeline in Del Mar Heights Road and Carmel Valley Road and a pressure regulating station. If facilities have not been constructed when required for this development, then the construction of certain portions of these previously approved water facilities, as required by the City Engineer, will become off-site improvements required for this development.

GEOLOGY

29. Prior to the issuance of a grading permit, a geotechnical report shall be submitted and approved by the City Engineer in accordance with the City of San Diego's Technical Guidelines for Geotechnical Reports."

OPEN SPACE

30. All open space lots deeded to the City shall be free and clear of all private easements, liens and private agreements.

TRANSPORTATION

31. Prior to recording the first final map, the Subdivider shall assure, through permit and bond, the construction of Carmel Valley Road from SR-56 to Subarea IV /Torrey Highlands boundary as a 6-lane/4-lane modified major street. The Subdivider shall dedicate 146' of right-of-way and shall provide a minimum distance of 126' curb to curb, gutter and 5' wide sidewalk within 10' curb to property line distance then transitioning to a minimum curb to curb width of 102 feet within 128 feet of right-of-way east of Del Mar Heights Road, satisfactory to the City Engineer.
32. Prior to recording the first final map, the Subdivider shall assure, through permit and bond, the construction of the traffic signal at the intersection of Carmel Valley Road and Del Mar Heights Road, satisfactory to the City Engineer.
33. Prior to recording the first final map, the Subdivider shall assure, through permit and bond, the construction of the traffic signal at the intersection of Old Carmel Valley Road and Del Mar Heights Road, satisfactory to the City Engineer.
34. Prior to recording the first final map, the Subdivider shall assure, through permit and bond, the construction of the traffic signal at the intersection of Carmel Valley Road and Street "K," satisfactory to the City Engineer.
35. Prior to recording the first final map, the Subdivider shall assure, through permit and bond, the construction of the traffic signal at the intersection of Carmel Valley Road and Rancho Santa Fe Farms Road, satisfactory to the City Engineer.
36. Prior to recording each final map, the Subdivider shall provide a minimum of 100 foot curve radius for all the proposed public and private residential streets, satisfactory to the City Engineer.
37. Prior to recording each final map, the Subdivider shall assure, through permit and bond, the construction of public alleys with a minimum of 24' of concrete, satisfactory to the City Engineer.
38. Prior to recording each final map, the Subdivider shall assure, through permit and bond, the construction of the driveway openings shall not exceed 40 percent of the frontage property for each lot.
39. Prior to recording the first final map, the Subdivider shall assure, through permit and bond, the construction of the traffic signal at the intersection of Carmel Valley Road and Via Abetura, satisfactory to the City Engineer.
40. Prior to recording the final map for Unit 26, the Subdivider shall connect Street "K" to Rancho Santa Fe Farms Road per the Pacific Highlands Ranch Subarea Circulation Plan, satisfactory to the City Engineer.

41. Prior to recording the final map for Unit 27, the Subdivider shall assure, through permit and bond, the construction of Street "T" with a dedication of 74 feet of right-of-way and shall provide 50 feet curb to curb with a 10 foot median, curb, gutter and 5' sidewalk within 12' curb to property line distance, satisfactory to the City Engineer.
42. Prior to recording the final map for Unit 28, the Subdivider shall assure, through permit and bond, the construction of Street "U" as a 2-lane sub-collector street. The Subdivider shall dedicate 56 feet of right-of-way and shall provide 34 feet of pavement, curb, gutter and 5 feet sidewalk on the east side with a 10 feet sidewalk on the west side within 11 feet curb to property line distance, satisfactory to the City Engineer.
43. Prior to recording the final map for Unit 26, the Subdivider shall assure, through permit and bond, the construction of connect Street "K" to Rancho Santa Fe Farms Road per the Pacific Highlands Ranch Subarea Circulation Plan, satisfactory to the City Engineer.
44. Prior to recording the final map for which each of the following streets are shown on the Tentative Map, the Subdivider shall assure, through permit and bond, the construction of Street "O," Street "P," Street "Q," Street "R," Street "S," Street "V," Street "W" and Street "X" as a two lane residential street. The Subdivider shall dedicate 56 feet of right-of-way and shall provide 34 feet of pavement, curb, gutter and 5 feet sidewalk within 11 feet curb to property line distance, satisfactory to the City Engineer.
45. Prior to recording the first final map, the Subdivider shall assure, through permit and bond, the construction of Street "K" south of Carmel Valley Road to SR-56 shall be constructed with 40 feet curb to curb within 78 feet right of way; transitioning to 40 feet curb to curb within 60 feet of right of way under SR-56 to Street "S"; then transitioning to a 40 feet curb to curb within 93 feet right of way to Street U, then transitioning to a 40 feet curb to curb within 78 feet right of way to Street P, then transitioning to a 40 feet curb to curb within 60 feet right of way to Rancho Santa Fe Farms Road, with curb, gutter and minimum 5 foot sidewalk, to the satisfaction of the City Engineer.
46. Prior to recording the first final map, the Subdivider shall assure, through permit and bond, the construction of a standard 25-foot wide driveway for Private Driveway "B" at Carmel Valley Road, to the satisfaction of the City Engineer.
47. Prior to recording the first final map, the Subdivider shall assure, through permit and bond, the construction of Del Mar Heights Road from Old Carmel Valley Road to Carmel Valley Road as a four lane modified major street. The applicant shall dedicate 122 feet of right-of-way, and shall provide 102 feet of pavement,

curb, gutter and a 5 foot sidewalk within a 10 foot curb to property line distance, satisfactory to the City Engineer.

PLANNING

48. Prior to recording any final map for any unit adjacent to State Route 56, long term maintenance of "standard highway planning" and irrigation systems in the portion of the 100-foot buffer that lies within future developments shall be accomplished through a landscape maintenance district, to the satisfaction of the City Engineer.

ENVIRONMENTAL

49. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program [MMRP] as specified in the Units 23-28 Project Findings to the Pacific Highlands Ranch Subarea III Plan Master EIR (LDR No. 96-7918) satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered complied with, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

- Land Use
- Biological Resources
- Transportation/Circulation
- Hydrology/Water Quality
- Landform Alteration/Visual Quality
- Cultural Resources
- Geology
- Paleontological Resources
- Noise
- Public Services/Facilities
- Water Conservation
- Public Safety

MULTIPLE SPECIES CONSERVATION PROGRAM [MSCP]

50. Prior to recordation of the first final map and/or issuance of any grading permits, the adjusted on-site Multiple Habitat Planning Area [MHPA] shall be conserved and conveyed to the City's MHPA, through either dedication in fee to the City, OR placement in a conservation easement OR covenant of easement, which is then recorded on the property. For areas within the adjusted MHPA that are governed by the Master Restoration Plan for Pacific Highlands Ranch and in accordance with Section 5.2.6 of the Development Agreement (September 8, 1998) and previous conveyances for Units 1-4, 5-11 and 12-16, and 17-22, MHPA lands within the 131-acre on-site mitigation bank shall only be transferred to the City in fee title upon successful completion of the restoration program and utilization of all the restoration acreage in the bank.

Conveyance of any MHPA land in fee shall exclude detention basins or other storm water control facilities, brush management areas, landscape/revegetation areas, and graded slopes; these features shall have conservation easements recorded over them if accepted into the MHPA, with maintenance and management responsibilities retained by the Subdivider unless otherwise agreed to by the City.

INFORMATION:

- The approval of this Vesting Tentative Map by the Council of the City of San Diego does not authorize the Subdivider to violate any Federal, State, or City laws, ordinances, regulations, or policies including but not limited to, the Federal Endangered Species Act of 1973 and any amendments thereto (16 USC Section 1531 et seq.).
- If the Subdivider makes any request for new water and sewer facilities (including services, fire hydrants, and laterals), then the Subdivider shall design and construct such facilities in accordance with established criteria in the most current editions of the City of San Diego water and sewer design guides and City regulations, standards and practices pertaining thereto. Off-site improvements may be required to provide adequate and acceptable levels of service and will be determined at final engineering.
- This development may be subject to payment of a park fee prior to the filing of the Final Map in accordance with San Diego Municipal Code.
- Subsequent applications related to this Vesting Tentative Map will be subject to fees and charges based on the rate and calculation method in effect at the time of payment.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of the Vesting Tentative Map, may protest the imposition within ninety days of the approval of this Tentative Map by filing a written protest with the City Clerk pursuant to California Government Code Section 66020.

Passed by the Council of The City of San Diego November 14, 2006, by the following vote:

YEAS: PETERS, FAULCONER, ATKINS, YOUNG, MAIENSCHIN,
FRYE, MADAFFER, HUESO.

NAYS: NONE.

NOT PRESENT: NONE.

VACANT: NONE.

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Debbie Levenson-Cruz, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-302095 approved by the Mayor of the City of San Diego, California on
November 14, 2006.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: Debbie Levenson-Cruz, Deputy

EXHIBIT B

Pacific Highlands Ranch Public Facilities Financing Plan FY 2013

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

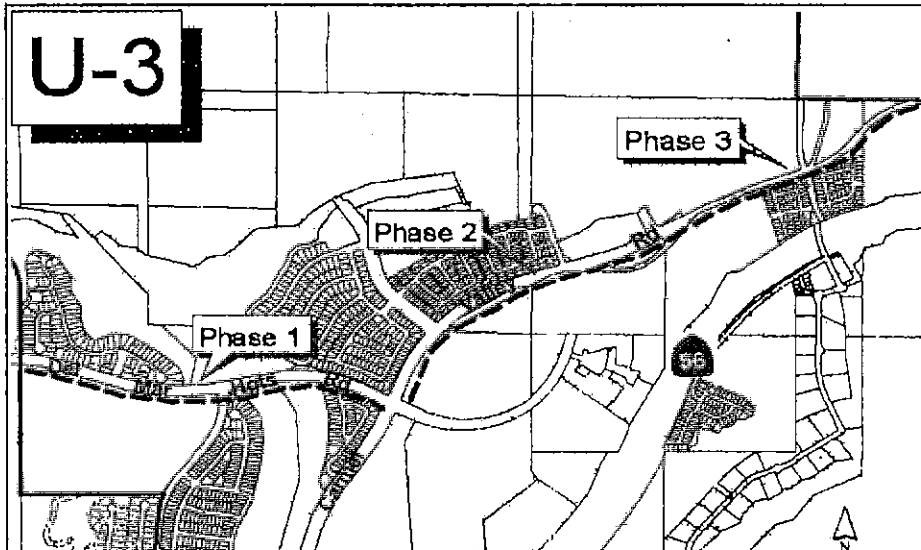
TITLE: DEL MAR HEIGHTS PIPELINE RELOCATION

DEPARTMENT: PUBLIC UTILITIES
CIP, JO, or WBS #: 70-971.0/S-00070

PROJECT: U-3
COUNCIL DISTRICT: 1
COMMUNITY PLAN: PHR

FBA-PHR	\$7,900,000	\$4,257,207		\$92,793				\$900,000
FBA-BMR								
FBA-TH								
FBA-DMM								
FBA-RP								
DEV. ADV		\$97,841	-\$3,000	-\$92,841				
DEV/SUBD								
COUNTY								
STATE								
OTHER								
UNIDEN								

FBA-PHR	\$2,700,000							
FBA-BMR								
FBA-TH								
FBA-DMM								
FBA-RP								
DEV. ADV								
DEV/SUBD								
COUNTY								
STATE								
OTHER								
UNIDEN								



CONTACT: CHRIS GABCON

TELEPHONE: (619) 533-7417

EMAIL: CGabcon@resilius.gov

CITY OF SAN DIEGO
FACILITIES FINANCING PROGRAM

TITLE: DEL MAR HEIGHTS PIPELINE RELOCATION

DEPARTMENT: PUBLIC UTILITIES
CIP, IO, or WBS #: 70-971.0/S-00070

PROJECT: U-3
COUNCIL DISTRICT: 1
COMMUNITY PLAN: PHR

DESCRIPTION:

THE EXISTING DEL MAR HEIGHTS PIPELINE WILL NO LONGER FOLLOW THE ALIGNMENT OF (OLD) CARMEL VALLEY ROAD ONCE CARMEL VALLEY ROAD IS IMPROVED TO FOUR LANES. THIS PROJECT WILL PROVIDE FOR THE RELOCATION AND UPSIZING OF THIS PIPELINE (36") INTO THE ULTIMATE RIGHT-OF-WAY FOR CARMEL VALLEY ROAD. THE PROJECT IS ANTICIPATED TO BE CONSTRUCTED IN 3 PHASES FROM WEST TO EAST AS THE ARTERIAL ROADS ARE BUILT. THE TEMPORARY BY-PASS AT NEW DEL MAR HEIGHTS ROAD WILDLIFE BRIDGE (APPROXIMATELY 1,500 FEET) IS ALSO INCLUDED.

JUSTIFICATION:

PIPELINE UPSIZING PROVIDES ADDITIONAL CAPACITY FOR DEVELOPMENT IN PACIFIC HIGHLANDS RANCH, WHILE FUTURE MAINTENANCE OF THIS FACILITY IS ENHANCED WHEN IT IS IN AN ACCESSIBLE AND CONVENIENT LOCATION SUCH AS A PUBLIC STREET RIGHT-OF-WAY. THIS PROJECT WILL RELOCATE THE PIPELINE SO THAT IT CAN BE EASILY MAINTAINED, REPAIRED, AND SERVICED IN THE FUTURE.

FUNDING ISSUES:

DEVELOPER (PARDEE) ADVANCED FUNDING FOR PORTIONS (PHASE I & II) OF THIS PROJECT AND WILL BE REIMBURSED FROM THE PACIFIC HIGHLANDS RANCH FACILITIES BENEFIT ASSESSMENT UNDER THE TERMS OF A REIMBURSEMENT AGREEMENT.

NOTES:

PHASE I: IN DMHR FROM WEST COMMUNITY PLAN BOUNDARY TO CVR (NEW) -	3,800 LF
BRIDGE BY-PASS -	1,500 LF
PHASE II: IN CVR FROM DMHR TO COSTA DEL SOL -	5,800 LF
PHASE III: IN CVR FROM COSTA DEL SOL TO EAST COMMUNITY PLAN BOUNDARY -	2,800 LF
TOTAL PROJECT	13,900 LF

SCHEDULE:

PHASE I COMPLETED IN FY 2002; PHASE II COMPLETED IN FY 2005; REIMBURSEMENT OF PHASE I & II IN FY 2006 AND 2007.
PHASE III IS ESTIMATED TO BE COMPLETE IN FY 2018

CONTACT: CHRIS GASCON

TELEPHONE: (619) 533-7417

EMAIL: CGascon@sanidiego.gov

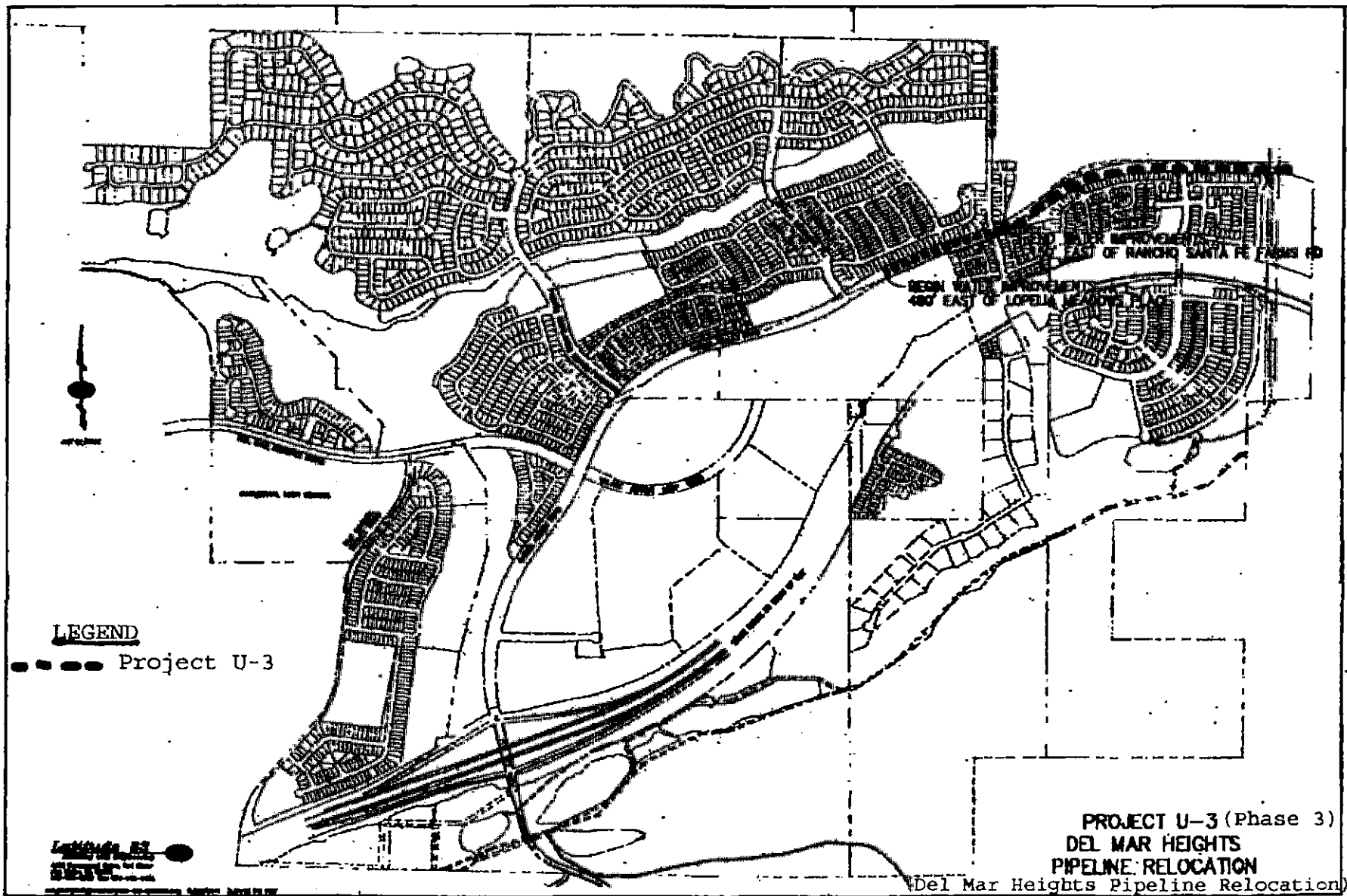


EXHIBIT C

U-3 Phase 3a: 480 Feet East of Lopelia Meadows to 150 Feet East of Rancho Santa Fe Farms Road.

U-3 Phase 3c: 670 Feet East of Rancho Santa Fe Farms Road to 340 Feet East of Via Abertura.

EXHIBIT D

Estimated Project Schedule

Pacific Highlands Ranch FBA Project U-3 (Phase 3)	
Del Mar Heights Pipeline Relocation	
(Phase 3a)	
(From 480 feet east of Lopella Meadows Place to 150 feet east of Rancho Santa Fe Farms Road)	
ACTIVITY	SCHEDULE
Bid Project	Fall 2011
Award Contracts	July 2012
Commence Construction (Start Pipe Fabrication)	October 2012
Complete Pipeline Improvements	June 2013
Date Given to City for all Improvements (minus landscape maintenance)	March 2014
Date Including Bond Exoneration (not including landscape maintenance)	May 2014

NOTE: Phase 3c of Project No. U-3 (Phase 3) (from 670 feet east of Rancho Santa Fe Farms Road to 340 feet east of Via Abertura) is anticipated to be constructed with adjacent subdivision development estimated to occur no sooner than Fiscal Year 2015 and in conjunction with Phase II of PHR PFFP/FBA Project No. T-4.4. At the time that work on Project No. T-4.4 commences, Subdivider shall submit a project schedule for review and approval by City for Phase 3c.

EXHIBIT 'E'

Estimated Cost of Carmel Valley Road East Improvements Project No. U-3 (Phase 3)

PHASE 3a and 3c: Lopelia Meadows Place to Via Abertura

Item	Description	Phase 3a*	Phase 3c**	Amount
1	Hard Costs			
	Street Demolition	\$62,000	\$176,000	\$238,000
	36" Water Main & Connections	\$475,000	\$915,000	\$1,390,000
	Intallation of Valves & Parts	\$100,000	\$160,000	\$260,000
	Pressure Reducing Station	\$0	\$250,000	\$250,000
	Cathodic Protection	\$15,000	\$79,000	\$94,000
	Traffic Control	\$11,000	\$35,000	\$46,000
	Subtotal Hard Costs	\$663,000	\$1,615,000	\$2,278,000
2	Soft Costs			
	Soils Testing & inspection	\$15,000	\$25,000.00	\$40,000
	Surveying - Staking	\$18,000	\$27,000.00	\$45,000
	Engineering	\$120,000	\$120,000.00	\$240,000
	Bond Premiums	\$20,000	\$15,000.00	\$35,000
	Estimating Consultants	\$25,000	\$0	\$25,000
	Document Preparation	\$50,000	\$0	\$50,000
	Loss Damage	\$5,000	\$7,000	\$12,000
	Plan Check, Permit, & Inspection Fees	\$14,000	\$25,000	\$39,000
	Subtotal Soft Costs	\$267,000	\$219,000	\$486,000
	<u>Phase 3a & 3c</u>			
	Subtotal (Hard & Soft Costs)	\$930,000	\$1,834,000	\$2,764,000
	10% Contingency on Hard Costs	\$66,000	\$162,000	\$228,000
	Subtotal	\$996,000	\$1,996,000	\$2,992,000
	5% Administration Fee	\$50,000	\$100,000	\$150,000
	Phase 3a & 3c Grand Total	\$1,046,000	\$2,096,000	\$3,142,000
	<i>Interest (Not To Exceed)</i>			\$50,000
	CVRE Phase 3a & 3c Grand Total			\$3,192,000

*Phase 3a: 480 Feet East of Lopelia Meadows Place to 150 Feet East of Rancho Santa Fe Farms Road

**Phase 3c: 670 Feet East of Rancho Santa Fe Farms Road to 340 Feet East of Via Abertura

Note 1: The portion of the Carmel Valley Road East Water Main Project No. U-3 (Phase 3) between Phases 3a and 3c was completed by Baratt Homes

Note 2: Cost savings on any line item, whether a hard cost or a soft cost or contingency, can be used to reimburse excess costs on other line items so long as the total project costs do not exceed the Maximum Funds under this Agreement.

Note 3: All figures are rounded to the nearest \$1,000.

EXHIBIT F
Project Schedule Obligations and Components

1. **Subdivider's Obligation.** To the extent required by City, Subdivider shall provide, coordinate, revise, and maintain the Project Schedule for all phases of the Project.
 - A. *Project Initiation.* During Project initiation and design phases, Subdivider shall submit an updated Project Schedule on a quarterly basis to City for approval.
 - B. *Construction Phase.* During Construction, Subdivider shall submit an updated Project Schedule monthly to City and shall include:
 - i. Forecast Data with the intended plan for the remainder of the contract duration.
 - ii. Actual Data with indications of when and how much Work and/or Services was performed (% complete)
 - iii. Logic changes or other changes required to maintain the Project Schedule
2. **Detail and Format.** Unless otherwise directed by City, the Project Schedule shall include all phases of the Project. It shall be in a precedence diagram format, plotted on a time-scaled calendar, detailed to activity level, and shall include:
 - A. Identification of *design and construction activities and their sequence:*
 - i. Work shall be divided into a minimum of 5 activities.
 - ii. Activities shall not exceed 21 calendar days in duration or \$50,000 in value, except long lead procurement and submittal activities or those accepted by City.
 - iii. Each Activity shall be assigned a budget value in accordance with Agreement requirements and activity descriptions.
 - a. The sum of all budget values assigned shall equal Estimated Cost.
 - b. Each construction activity shall indicate the estimated labor days and materials quantities required.
 - iv. Incorporate specific activity and time requirements.
 - v. Include 10 weather/delay days, commonly known as "rain days." The late finish date shall be the fully elapsed Contract Time.
 - B. *Float Time.* Show activities on their early dates with corresponding Total Float Time noted beside them.
 - i. Project Schedule shall not include more than 40 calendar days of Float Time absent City approval.
 - C. *Milestones.* Show Milestones with beginning and ending dates.
 - i. Milestones shall include schematic plans, 60% design, 90% design, 100% design; bid opening; Notice to Proceed; start construction; end construction; and Project Completion and Acceptance.
 - D. *Relationships.* Show all appropriate definable relationships with separate explanation of constraints and each start-start, finish-finish, or lag relationship. Relate all activities to each other and to the first appropriate Milestone.
 - E. *Procurement.* Show the procurement of major equipment and materials.
 - F. *Submittals.* Include all submittals required and identify the planned submittal dates, adequate review time, and the dates acceptance is required to support design and construction.

EXHIBIT G

Meeting Requirements

1. **Preconstruction Meeting.** Subdivider shall conduct a preconstruction meeting with its officers, agents and employees and City. The purpose of this meeting is to discuss: (1) the Agreement conditions, (2) Scope of Work clarifications, and (3) City policies, inspection requirements, and procedures.
 - A. *Attendance.* Subdivider shall ensure that its construction contractor and major subcontractors, the Project Superintendent, and the City Inspection Team as set forth in the Agreement, and all other persons necessary as determined by Subdivider or City attend the preconstruction meeting.
 - B. *Minutes.* Subdivider shall take corresponding meeting minutes and distribute copies to all attendees.
2. **Progress Meetings.** Subdivider shall conduct weekly progress meetings at dates and times scheduled at the preconstruction meeting with the following necessary parties: Subdivider's Construction Superintendent, Subdivider's Project Manager, Subdivider's Design Consultant, City representatives including Responsible Department representatives, the Engineering and Capital Projects Project Manager and the Resident Engineer.
 - A. *As-Builts.* Subdivider shall bring updated As-Builts and verify that the latest changes have been made.
 - B. *Special Meetings.* Special meetings shall occur at Project phases as outlined in **Exhibit I**.
 - C. *Rescheduling.* Progress and Special Meetings may be rescheduled if rescheduled meeting times are convenient for all necessary parties, and Subdivider has given no less than seven calendar days prior written notice of the rescheduled meeting.
3. **Agenda.** All meetings shall include at a minimum the agenda identified in **Exhibit I**.

3. Submittal. Project Schedule shall be submitted to City on a computer disk in PRIMAVERA Project Planner P3e/c Release Version 4.1 SP1 software in conformance with Construction Plans & Scheduling by AGC or America, or other software specifically designated by City.

EXHIBIT H

Preconstruction, Progress, & Special Meeting Agenda

1. Preconstruction. The issues below should be made part of the Preconstruction Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.
 - 1.1 Permits and Utility Issues, including telephone, cable, gas, and electric. RE to announce to Subdivider that franchise companies may be working in the area of the Project and that coordination regarding such a situation may need to be done.
 - 1.2 Parking areas established for construction employees and possibly patrons/others.
 - 1.3 Subdivider's payment procedure and forms.
 - 1.4 Format for Request for Proposals (RFPs) using the sample in the back of the contract documents.
 - 1.5 Collection of emergency numbers for off-hour emergencies from the prime (with an alternate contact person).
 - 1.6 Distribution and discussion of the construction schedule.
 - 1.7 Procedure for maintaining the Project record documents.
 - 1.8 Distribution of the Second Opinion Option Form.
 - 1.9 Designation of persons authorized to represent and sign documents for the RE and Subdivider and the respective communication procedures between the parties.
 - 1.10 Safety and first aid procedures including designation of Subdivider's safety officer.
 - 1.11 Temporary barricades, fencing, signs, and entrance and exit designations, etc.
 - 1.12 Testing laboratory or agency and testing procedures.
 - 1.13 Establish schedule for progress meetings.
 - 1.14 Procedure for changes in work requested by Subdivider, notice to RE, timing, etc.
 - 1.15 Procedure for changes in work requested by City.
 - 1.16 Public safety.
 - 1.17 Housekeeping procedures and Project site maintenance.
 - 1.18 Protection and restoration of existing improvements.
 - 1.19 Sanitation, temporary lighting, power, water, etc.
 - 1.20 Procedure for encountering hazardous substances.
 - 1.21 Any items requested by attendees of preconstruction meeting/open discussion.

2. Progress Meetings. The issues below should be made part of the Progress Meeting Agenda, provided however that the agenda may deviate depending on the circumstances that exist at that time.
 - 2.1 Review progress of construction since the previous meeting.
 - 2.2 Discuss field observations, problems, conflicts, opportunities, etc.
 - 2.3 Discuss pre-planning opportunities.
 - 2.4 Identify problems that impede planned progress and develop corrective measures as required to regain the projected schedule; revise the schedule if necessary.
 - 2.5 Discuss Subdivider's plan for progress during the next construction period and the corresponding inspections necessary.
 - 2.6 Discuss submittal status.
 - 2.7 Discuss request for information (RFI) status.
 - 2.8 Progress of schedule.
 - 2.9 Disputed items.
 - 2.10 Non-conformance/non-compliance items.
 - 2.11 New business of importance from any member of the meeting.
 - 2.12 Deferred approvals and their coordination.
 - 2.13 Discuss request for proposals, change orders, and progress payment status.

3. Special Meetings.
 - 3.1 Grading. Prior to grading the site, the RE shall call a grading mini-preconstruction meeting. This meeting applies when surveying is being supplied by the City. The superintendent, the Subdivider's appropriate subcontractors, the RE, the City's survey crew, and any appropriate consultants (if deemed

- necessary by the RE) will attend. Unless otherwise noted, the agenda will be to coordinate the staking, reference markers, bearings, various site conditions, etc. as defined in the contract documents and any necessary coordination of scope or scheduling between the respective parties.
- 3.2 Roofing. Upon completion of the roofing structural diaphragm and prior to installing flashing, and/or any other roofing materials, the RE shall call a roof **mini-preconstruction** meeting. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, the roof suppliers manufacturer's representative, and any appropriate consultants (if deemed necessary by the RE) will attend. The agenda will be to coordinate the flashing, caulking, sealing, and different roofing materials and/or contractors on site with the various field conditions.
 - 3.3 Landscaping. Upon completion of the grading and prior to the installation of any landscaping equipment, supplies, etc., the RE shall call a **landscaping mini-preconstruction** meeting. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The agenda will be to coordinate all landscape materials, plant and irrigation coverage, visual planting procedures, etc. and/or contractors on site with the various field conditions.
 - 3.4 Mini-Preconstruction Meeting. Prior to the installation of any mechanical, electrical, plumbing, and sprinkler system equipment, the Subdivider shall call a **mini-preconstruction** meeting. The superintendent, the Subdivider's appropriate contractors, the RE, any City representative deemed appropriate by the RE, and any appropriate consultants (if deemed necessary by the RE) will attend. The intent of this meeting is to ensure that the prime contractor is adequately coordinating the space of the facility so as to not impede the visual integrity of the overall product.
 - 3.5 Other. Upon appropriate notice to other parties, the RE may call special meetings at times agreed to by all parties involved.

EXHIBIT I

Procedure for Processing Change Orders

1. **Forms Required.** All Change Orders shall be in writing on the appropriate City form and must be approved or rejected by City in writing as provided in Section 3, below, and delivered to Subdivider.
2. **Written Approval of Change Orders.** Change Orders that will not result in an increase in the Estimated Cost may be approved by the RE. If a requested Change Order would result in an increase in the Estimated Cost, approval of the Change Order shall require City Council approval.
3. **Process for Approval of Change Orders.** Subdivider shall notify the RE in writing of the need for a Change Order. A Change Order must indicate whether the change will result in any change to the Estimated Cost, Project Schedule, or Project quality established during the design and submittal review process.
 - 3.1 ***Resident Engineer Approval.*** If the Change Order request does not result in an increase in the Estimated Cost, the RE shall either approve or reject the Change Order in writing within fourteen (14) calendar days of receiving Subdivider's written notice, provided Subdivider has submitted complete documentation substantiating the need for such Change Order. If City fails to respond to Subdivider's written notice within the fourteen (14) calendar days, the Change Order request shall automatically be deemed denied.
 - 3.2 ***City Council Approval.*** For Change Orders not subject to Section 3.1, above, City Council approval is required. In such cases, for Change Orders is preliminarily approved by the appropriate City staff, the appropriate City staff shall process the Change Order along with any required amendments to the Financing Plan and this Agreement as a 1472 (Request for Council Action). At a hearing on such Request for Council Action, City Council may either approve or reject such Change Orders. Council Approval shall not be subject to the fourteen (14) calendar day response time set forth above in Section 3.1. Furthermore, nothing in this Agreement shall compel the City Council to take any particular action.

Exhibit J

Equal Benefits Ordinance Certification of Compliance

EQUAL BENEFITS ORDINANCE CERTIFICATION OF COMPLIANCE



For additional information, contact:
CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
 202 C Street, MS 9A, San Diego, CA 92101
 Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION		
Company Name:	Contact Name:	
Company Address:	Contact Phone:	
	Contact Email:	
CONTRACT INFORMATION		
Contract Title:	Start Date:	
Contract Number (if no number, state location):	End Date:	
SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS		
<p>The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:</p> <ul style="list-style-type: none"> ■ Contractor shall offer equal benefits to employees with spouses and employees with domestic partners. <ul style="list-style-type: none"> ▪ Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit. ▪ Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner. ■ Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods. ■ Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements. ■ Contractor shall submit <i>EBO Certification of Compliance</i>, signed under penalty of perjury, prior to award of contract. <p>NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at www.sandiego.gov/administration.</p>		
CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION		
<p>Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.</p> <p><input type="checkbox"/> I affirm compliance with the EBO because my firm (<i>contractor must select one reason</i>):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Provides equal benefits to spouses and domestic partners. <input type="checkbox"/> Provides no benefits to spouses or domestic partners. <input type="checkbox"/> Has no employees. <input type="checkbox"/> Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired. <p><input type="checkbox"/> I request the City's approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.</p> <p>It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]</p> <p>Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.</p>		
Name/Title of Signatory	Signature	Date
FOR OFFICIAL CITY USE ONLY		
Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved – Reason:

rev 02/15/2011

EXHIBIT K

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 L
Design and Construction Standards

1. **Laws.** Subdivider shall comply with all local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including, but not limited to, the following:
 - A. *Permits.* Development Services Department permits, hazardous material permits, site safety
 - B. *Building Codes.* State and local Building Codes
 - C. *The Americans with Disabilities Act [ADA] and Title 24 of the California Building Code [Title 24].* It is Subdivider's sole responsibility to comply with all ADA and Title 24 regulations. See Subdivider Certification attached as **Exhibit M**.
 - D. *Environmental.* Subdivider shall complete all environmental measures required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), and the local jurisdiction, including but not limited to, implementation of mitigation measures, and conducting site monitoring.
 - E. *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 (San Diego Municipal Code Chapter 4, Article 3, Division 3).
 - F. *ESBSSA.* Subdivider shall comply with the Essential Services Building Seismic Safety Act, SB 239 & 132.
 - G. *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 Water Department Guidelines and Standards*

EXHIBIT M

Certification for Title 24/ADA Compliance

Del Mar Heights Pipeline Relocation, Project No. U-3 (Phase 3)

in the Pacific Highlands Ranch Community (the "Project")

I HEREBY WARRANT AND CERTIFY that any and all plans and specifications prepared for the Project shall 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: _____

By: _____
Authorized Representative

Print Name and Title

EXHIBIT N

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.** Within six (6) months of City Council approval of this Agreement, Subdivider shall deliver to City complete Plans and Specifications, Estimated Costs, and bid documents, consistent with the Schematic Drawings, for the design and construction of the Project.
3. **Citywide Review of 100% Plans and Specifications.** City agrees to review the Plans and Specifications and provide City's written comments to Subdivider within ninety (90) calendar days of the date such Plans and Specifications are delivered to City in accordance with the notice provisions in Article XXVI. Plans and Specifications shall include City's standard drawings and specifications as described in Exhibit L. If requested by City, Subdivider shall make changes to the Plans and Specifications, but Subdivider shall not be responsible for implementing such changes if they would increase the Estimated Cost by more than 5%. In such a case, the changes to the Plans and Specifications shall be considered additive or deductive bid alternatives to the Project.
4. **Final Approval and Permit Review.** City approval of the Plans and Specifications is a condition precedent to authorization to proceed with subsequent work on the Project. Approval and permit review will require a minimum of ninety (90) calendar days from the date that the Plans and Specifications were submitted to the City review, if no changes are required, or ninety (90) days from the date the requested changes are submitted to the City.

EXHIBIT O

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, but not limited to, 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 the 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), and City shall reimburse Subdivider in accordance with the terms of the Agreement for the work completed. 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 reimbursement as set forth 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 P].
- 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 P

Certification for a Drug-Free Workplace

PROJECT TITLE: Del Mar Heights Pipeline Relocation, Project No. U-3 (Phase 3) in the Pacific Highlands Ranch Community (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, a California corporation

has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

Signed _____
Printed Name _____
Title _____
Date _____

EXHIBIT Q

Product Submittal and Substitution

1. **Product Submittal.** Prior to the bidding process, Subdivider shall submit for City approval a list of products intended for use in the Project. Upon Subdivider's completion of plans and specifications, City will review and approve products specified therein. Subdivider shall provide City a copy of each submittal for City approval throughout the duration of construction within twenty (20) Calendar Days of Subdivider's receipt of submittal. 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.
2. **Substitutions.** Subdivider shall submit all requests for product substitutions to City in writing within thirty (30) Calendar Days after the date of award of the construction contract. After expiration of the thirty (30) calendar days, City will allow substitution only when a product becomes unavailable due to no fault of Subdivider's contractor. City shall review substitution requests within thirty (30) Calendar Days of submission of such requests. Subdivider agrees that City requires Consultant's input and as such Subdivider shall coordinate a seven (7) calendar review by its Consultant.
 - A. *Substantiate Request.* Subdivider shall include with each substitution request complete data that substantiates that the proposed substitution conforms to requirements of the Contract Documents.
 - B. *Subdivider Representations.* By submitting a substitution request, Subdivider is representing to City all of the following: (a) Subdivider has investigated proposed product and determined that in all respect the proposed product meets or exceeds the specified product; (b) Subdivider is providing the same warranty for the proposed product as was available for the specified product; (c) Subdivider shall coordinate installation and make any other necessary modifications that may be required for work to be complete in all respects; and (d) Subdivider shall waive any claims for additional costs related to the substituted product, unless the specified product is not commercially available.
 - C. *Separate Written Request.* City will not consider either substitutions that are implied in the product data submittal without a separate written request or substitutions that will require substantial revision of construction contract documents.
3. **Samples.**
 - A. *Postage.* Samples shall be sent to Subdivider's office, postage prepaid.
 - B. *Review.* Subdivider shall furnish to City for review, prior to purchasing, fabricating, applying or installing, two (2) samples (other than field samples) of each required material with the required finish.
 - i. Where applicable, all samples shall be 8" x 10" in size and shall be limited in thickness to a minimum consistent with sample analysis. In lieu thereof, the actual full-size item shall be submitted.
 - ii. Subdivider shall assign a submittal number. Subdivider shall include with each submission a list of all samples sent, a statement as to the usage of each sample and its location in the Project, the name of the manufacturer, trade name, style, model, and any other necessary identifying information.
 - iii. All materials, finishes, and workmanship in the complete building shall be equal in every respect to that of the reviewed sample.
 - iv. City will return one submitted sample upon completion of City review.
 - v. Subdivider's; or Subdivider's agents' field samples shall be prepared at the site. Affected finish work shall not commence until Subdivider or its agents have been given a written review of the field samples.

EXHIBIT R

Extra Work Provisions

1. **Extra Work.** City may at any time prior to Project Completion order Extra Work on the Project. The sum of all Extra Work ordered shall not exceed five percent (5%) of the Estimated Cost at the time of Bid Award, without invalidating this Agreement and without notice to any surety.
 - A. *Requests in Writing.* All requests for Extra Work shall be in writing, and shall be treated as and are subject to the same requirements as Change Orders. Subdivider shall not be responsible for failure to perform Extra Work, which was requested in a manner inconsistent with this Section.
2. **Bonds Required for Extra Work.** Subdivider's and its agents' bonds, under Article XIX, shall cover any Extra Work provided that the Extra Work is paid for by the Project Budget
3. **Reimbursement for Extra Work.** Work performed by Subdivider as Extra Work is reimbursable in the same manner described as in Article XIII. The Project Contingency as described in Article III, Section 3.3.2, will be used first to cover the costs of Extra Work.
4. **Markup.** Subdivider will be paid a reasonable allowance for overhead and profit. The allowance shall not exceed five percent (5%) and shall be added to the Subdivider's costs for Extra Work.
5. **Impact on Schedule.** Subdivider shall not have an obligation to perform Extra Work that will result in a delay unless the City approves an extension of time as provided for in the Agreement.

EXHIBIT S

Notification of Reimbursable Project

Pursuant to Section 12.1.1 of the "Reimbursement Agreement" [Agreement], adopted pursuant to Ordinance No. O-_____ and executed on _____, 201__, Pardee Homes [Subdivider] hereby notifies the City of San Diego that work will begin on the following Project, [Del Mar Heights Pipeline Relocation], also known as Project No. U-3 from the Pacific Highlands Ranch Public Facilities Financing Plan and Facilities Benefit Assessment on or about _____, 201__

Pardee Homes (formerly known as Pardee Construction Company)
a California corporation

By: _____

Title: _____

Dated: _____

EXHIBIT T

Inspection Schedule for Uncompleted Portion of Project No. U-3

Description	Pipeline Notice to Proceed	Construction (Time Period = Estimated 12 Months)	Notice of Completion	Preliminary Walk-Thru	Punch List	Operational Acceptance	Final Inspection
City Inspection							
Resident Engineer	X	Continual	X	X	X	X	X
Testing: Compaction		Periodic					
Bac-T		Close Out				X	
Operations:							
Water		Close Out			X	X	
Sewer		Close Out			X	X	
Storm Drain		Close Out			X	X	
Pardee Inspection							
Engineer of Record: Pipeline	X	Periodic	X		X	X	
Survey Engineer	X	Continual					
Soils Engineer	X	Continual					
Project Manager	X	Continual	X	X	X	X	X
Project Site Manager	X	Continual	X	X	X	X	X

EXHIBIT U

Project Deliverables

I. 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 V

Typical Insurance Provisions

- I. 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 one million dollars (\$1,000,00) 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.

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

DATE: November 19, 2012

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

SUBJECT: Reimbursement Agreement for Phase 3 of Project U-3, Del Mar Heights Pipeline Relocation in Pacific Highlands Ranch (1472)

GENERAL CONTRACT INFORMATION

Recommended Consultant: Pardee Homes (Not Certified)

Amount of this Action: \$ 3,192,000 (not-to-exceed)

City Administration: \$ 408,000

Design and Construction: \$2,992,000

Pardee Administration: \$ 150,000

Interest: \$ 50,000

Total Budget: \$3,600,000

Prior Expenses & Other Commitments: \$4,350,000

Funding Source: City of San Diego (reimbursed from Facilities Benefit Assessment (FBA) fund)

Goal: TBD prior to award

SUBCONSULTANT PARTICIPATION

There is no current subcontractor activity associated with this action.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required

Pardee Homes submitted a Work Force Report for their San Diego employees dated, August 16, 2012, indicating a total of 46 employees in their Admin Work Force. The Administrative Work Force indicates under representation in the following categories:

Asian, Filipino and Female in Professional; and Administrative support

Mandatory subcontracting goals (SLBE/ELBE) for this project will be calculated by the City's Engineering and Capital Improvements Projects Department and approved by Administration Department Director prior to advertisement.

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

ADDITIONAL COMMENTS

The reimbursement agreement, in the amount of \$3,192,000, includes all of the design, anticipated construction costs, contingencies, and interest.

RLL