001517

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF _____

☐ Supplemental ☐ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

Ruffin Canyon Public Trail Tunnel

☒ Reviewed ☐ Initiated By NR&C On 10/15/08 Item No. 7

RECOMMENDATION TO:

Support the opening of the Ruffin Canyon Public Trail Tunnel, and to forward this item to the full City Council.

VOTED YEA: Frye, Faulconer, Peters, Atkins

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO. 08-144

INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

COUNCIL COMMITTEE CONSULTANT Donna Frye

001519

NR&C OCT 15 2008 #7

THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: October 8, 2008 REPORT NO. 08-144

ATTENTION: Natural Resources and Culture Committee
Agenda of October 15, 2008

SUBJECT: Ruffin Canyon Public Trail Tunnel

REQUESTED ACTION:
Provide a recommendation to City Council on whether the existing Friars Road undercrossing should be opened for public use as the Ruffin Canyon Public Trail Tunnel.

STAFF RECOMMENDATION:
Support the opening of the Ruffin Canyon Public Trail Tunnel and forward a recommendation to the City Council to that effect.

SUMMARY:

Background

An existing, improved undercrossing traverses Friars Road midway between Fenton Parkway and Northside Drive (Attachment 1). Originally constructed in 1968 as a truck crossing below Friars Road to serve adjacent mining operations, the undercrossing consists of two cell box culverts, with each cell measuring 15' by 15'. In the mid 1990s as mining operations were coming to a close and the site was being planned for development, the concept of utilizing the undercrossing as a pedestrian tunnel first emerged. Working closely with the Mission Valley Unified Planning Committee, planning consultants and City staff included the pedestrian tunnel in the Mission City Specific Plan, adopted by the City Council on April 21, 1998. The Specific Plan includes an extensive system of pedestrian trails and sidewalks that function as a cohesive element. The pedestrian tunnel is an integral component of the system, linking different land uses with one another and with public spaces, including nearby Ruffin Canyon. The pedestrian tunnel is recognized as critical to the establishment of a continuous pedestrian and bicycle linkage from the residential areas north of Friars Road, through commercial and office uses on the south side, and to the San Diego Trolley and the San Diego River corridor.

Policy Discussion

The Mission Valley Community Plan, the Mission City Specific Plan, and the Draft San Diego River Park Master Plan include policies for the creation of an extensive pedestrian circulation system, as well as specific policy language for the provision of a public trail connection from Ruffin Canyon through the Mission City development site and under Friars Road to Fenton Marketplace. The Mission Valley Community Plan acknowledges that, in the past, there has been little effort to encourage or provide for pedestrian circulation as a significant mode of transportation. Therefore, the Community Plan emphasizes the need to provide physical linkages in the form of pedestrian paths and bikeways between new and existing development, public and private amenities, and the San Diego River corridor. The River corridor is recognized by the Community Plan as the focal point or "spine" of an expansive open space linkage system for Mission Valley and surrounding communities. With pedestrian pathways along the San Diego River serving as the base for this open space linkage system, creating connections to these pathways, such as the opening of the pedestrian tunnel, is an integral component to promoting walkability in the developing urban node of Mission Valley.

In accordance with Mission Valley Community Plan policies, the Mission City Specific Plan includes policies for alternative circulation systems and mobility options which aim to provide a network for pedestrian and bicycle travel that would serve as a safe and convenient alternative to motor vehicle use. A key component of the Specific Plan's pedestrian and bicycle network is the Mission City Trail, which extends from the Serra Mesa community, through the residential component of the Mission City Specific Plan Area, under Friars Road through the pedestrian tunnel, and across Fenton Marketplace to such amenities as the Mission Valley Library, San Diego Trolley and the San Diego River. In addition to the mobility component of the trail, the Specific Plan also envisions that the extension of the Mission City Trail through this area would provide hiking and nature viewing opportunities, expanding the passive open space experience for area residents.

The Draft San Diego River Park Master Plan also includes numerous policies for establishing and expanding walkability throughout the communities adjacent to the River. The Draft Master Plan specifically states that pedestrian safety and continuity of pedestrian movement is improved by eliminating conflicts and interactions with vehicles, and that "the construction and use of grade separated pedestrian passages is encouraged, such as the one under Friars Road at Fenton Marketplace." (Pg. 50) The creation of similar passages are encouraged in order to improve pedestrian movement between the river valley and upland neighborhoods and canyons. Therefore, as cited in the Draft San Diego River Park Master Plan, the Ruffin Canyon Public Trail Tunnel should not only be opened to allow for public access, but should also serve as a model for possible future trail connections along the River.

Related Projects

The proposed opening of the Ruffin Canyon Public Trail Tunnel to the public will have a positive impact on the ongoing efforts of the San Diego River Conservancy to create a River Park along the entire length of the San Diego River, as well as with their efforts to establish rim-to-rim trail connections from communities adjacent to the river valley as part of their San Diego

River Tributary Canyons Project. The Conservancy is currently in the process of planning a continuous trail connection from Ruffin Canyon, located north of the River, to Mission Valley, and from Mission Valley south to Normal Heights Canyon. This project includes a proposed footbridge across the river, as well as wayfinding information and interpretive signage to demarcate the urban trail that will connect the upland communities to the canyons. Once implemented, the project would provide for a system of trails and sidewalks connecting adjacent upland communities such as Serra Mesa and Normal Heights to and across the San Diego River and the urban attractions of Mission Valley, including the trolley line. The opening of the pedestrian tunnel will be key to linking community centers north and south of the River to Mission Valley along canyon trails and designated urban paths with minimized pedestrian-automobile conflicts.

Next Steps

The process of opening the Ruffin Canyon Public Trail Tunnel to the public involves two steps: 1) completion of physical improvements to the tunnel, and 2) certification of a legal agreement covering the ongoing maintenance of the tunnel. The H.G. Fenton Company, developers of the adjacent property on the north side of Friars Road, have already completed several improvements to the tunnel and have agreed in principal to completing the construction of the remaining improvements, pursuant to their existing Encroachment and Maintenance Agreement (EMRA). The improvements completed to date include the construction of two concrete wing walls projecting at an angle away from the south side of the tunnel entrance; the installation of an electrical box; paving of the tunnel floor; and the placement of gates on both sides of the tunnel. The remaining improvements to be implemented by the H.G. Fenton Company include: the installation of ceiling-mounted lighting running the entire length of the tunnel, painting the walls and ceiling, and staining the floor. H.G. Fenton Company is currently working with the City Attorney's Office in drafting an agreement to replace the EMRA and to transfer the improvements to the City.

With regard to the ongoing maintenance of the tunnel, Sudberry Properties, developers of the adjacent property on the south side of Friars Road, have agreed in principal to accept the long-term maintenance responsibilities. The City Attorney is working with Sudberry to finalize a maintenance agreement which addresses issues of security, liability, opening hours, and specific maintenance duties. The maintenance agreement will address issues of security, liability, opening hours, and specific maintenance duties. This agreement will then be scheduled for a hearing of the City Council for approval, along with the recommendation from the Natural Resources and Culture Committee regarding the opening of the tunnel.

FISCAL CONSIDERATIONS:
None with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
On April 7, 2004, the Mission Valley Unified Planning Committee voted 11-0-3 to support the public tunnel under Friars Road. On September 5, 2007, the Mission Valley Unified Planning

Committee voted 16-0-0 to again reaffirm its support for the opening of the tunnel to the public. On February 21, 2008, the Serra Mesa Planning Group voted unanimously to support the opening of the pedestrian undercrossing.

KEY STAKEHOLDERS & PROJECTED IMPACTS: Key Stakeholders include: Mission Valley Unified Planning Committee, Serra Mesa Planning Committee, Friends of Ruffin Canyon, Friends of Normal Heights Canyon, San Diego River Conservancy, San Diego River Park Foundation.

Respectfully submitted,

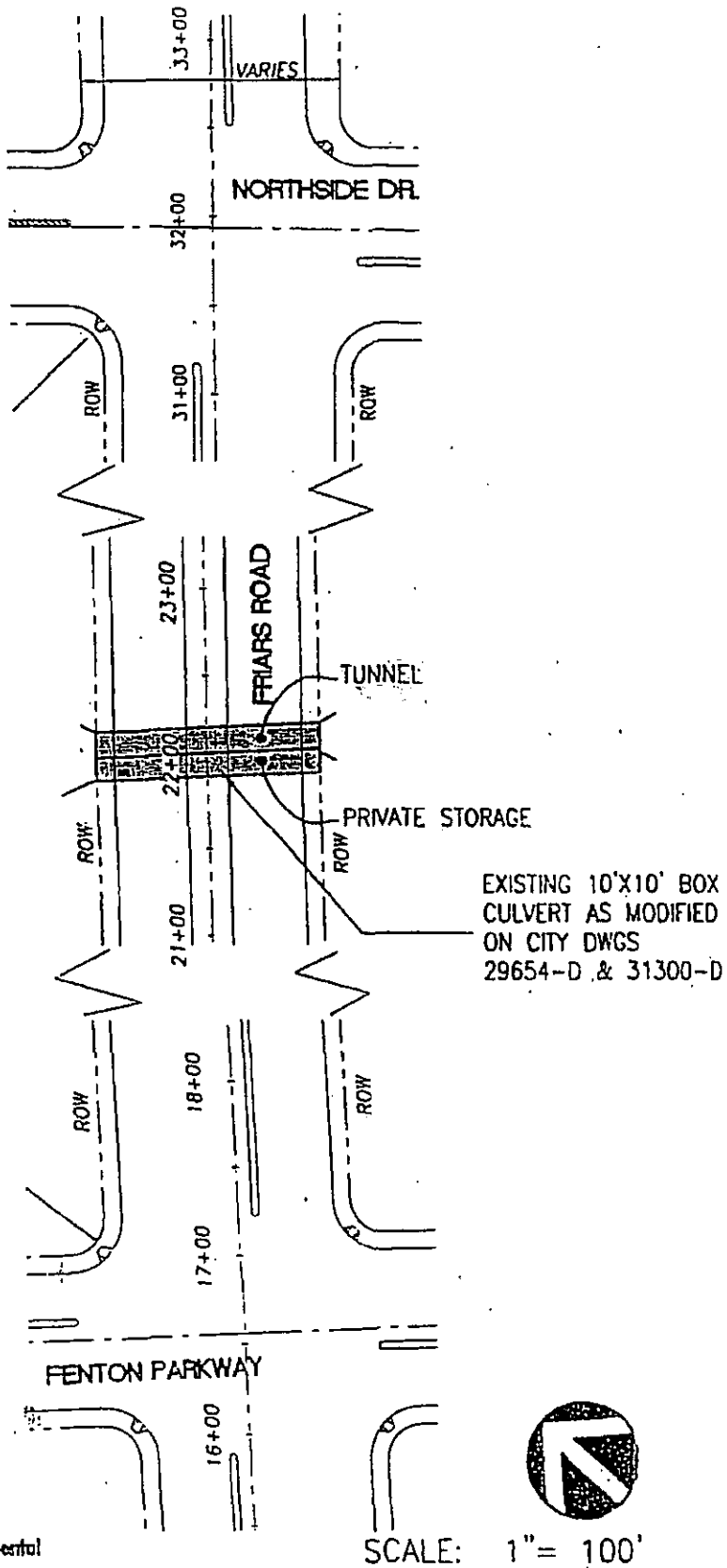
Mary P. Wright, AICP
Deputy Director
City Planning & Community Investment

William Anderson, FAICP
Deputy Chief Operating Officer
City Planning & Development

ANDERSON/WRIGHT/BSS

Attachments:
1. Project Location
2. April 7, 2004 MVUPC meeting minutes
3. September 5, 2007 MVUPC meeting minutes
4. February 16, 2008 Letter from Serra Mesa CPG
5. Mission Valley Community Plan Pedestrian Circulation Map
6. Mission City Specific Plan - Planning Area Map
7. Mission City Specific Plan - Circulation Plan
8. Site Photos

Attachment 1



REC Consultants, Inc.
Civil Engineering · Environmental
7445 Mission Valley Road, Suite 109
San Diego, CA 92108
(619)688-0305 (619)294-9354 Fax

001524

Attachment 2

MINUTES OF THE REGULAR MEETING OF THE MISSION VALLEY UNIFIED PLANNING COMMITTEE

April 7, 2004

MEMBERS PRESENT	MEMBERS ABSENT	CITY STAFF
Randall Dolph	Margo Ortiz	Karrie Carlson
Pat Grant		
Ron Grant		
Lisa Gualco		
Hank Hoxie		
Saul Kane		
Linda Kaufman		
Lynn Mulholland		
Joyce Nease		
Alison Prager	**MEMBERS EXCUSED**	**GUESTS**
Karen Ruggels	Robert Dipple	Marco Sessa
Robert Sanchez	Christine Evans	Nat Cohen
Tom Sudberry	Eve Hager	Brooke Erickson
Geoff Swortwood	John Pani	Jeff Harness
John Tessier	Patty Schreibman	
Gayne Wimer	Bruce Warren	

Linda Kaufman, Chair, called the regular meeting of the Mission Valley Unified Planning Committee (MVUPC) to order at 12:05 p.m. at the Mission Valley Library located at 2123 Fenton Parkway.

In the absence of Eve Hager, Alison Prager made motion to have Tom Sudberry act as Secretary pro tem. Robert Sanchez seconded the motion. The motion passed 12-0.

A. **CALL TO ORDER**
Verify Quorum – 14 members were present, a quorum.

B. **PLEDGE OF ALLEGIANCE** – Saul Kane led The Pledge of Allegiance.

C. **INTRODUCTIONS** – Guests and members introduced themselves.

D. **MEMBERSHIP BUSINESS**
Linda Kaufman announced that we have one opening for Property Owner. We have 90 days to fill the position. Resident or Business Property Owner can fill the position.

E. **TREASURER'S REPORT** – Bruce Warren (no report)

F. **NEW BUSINESS**

1. Sue Blackman passed out invitations to the Community Planning meeting on May 3, 2004. Will be reviewing proposed plans and discuss canyon access and alternatives for sewer systems in the Mission Center and Buchanan canyons.

2. San Diego River Park Master Plan – Jeff Harkness
One-fourth of the river is in the Mission Valley jurisdiction. The river has been divided into seven regions: River Run/Riverwalk; I-15 to Grantville; Friars Bridge to Admiral Kidd and Superior Mines; Carlton Oaks; etc.

4. Miscellaneous Mail
   a. Orientation for new members is April 24, 2004
   b. Rock and Roll Marathon

H. **DISCUSSION**

1. Tunnel under Friars Road between the Fenton Marketplace and Escala Development
   It was originally approved that the tunnel would be a public pedestrian passage way. Currently the City Development Services Department and City Attorney have declined to accept liability. The tunnel will be closed to the general public. Only Portofino Apartment residents will have access to it.

   Alison Prager made a motion to support the public tunnel under Friars Road and that the MVUPC do what they can to make this happen to uphold community plan. Karen Ruggels seconded the motion. One issue is with pedestrians using the tunnel during the night. Could be set up where tunnel is open during the day and closed at night. Suggest sending a letter to Donna Frye's office. Motion was amended to send a letter to Donna Frye to support the Community Plan and implement the Mission City Specific Plan. Karen Ruggels seconded the motion. Motion passed 11 for 3 recluses.

I. **PUBLIC INPUT**

1. Assembly Member's Office – Deanna Spehn

2. City Council Office – Lisa Gonzales

3. San Diego Police Department – Karrie Carlson

J. **ADJOURNMENT** – There being no further business to be brought before the Committee, the meeting was adjourned at 1:20 AM. Next meeting will be May 5, 2004, 12:00 p.m., at the Mission Valley Library, Community Room.

Respectfully Submitted,

Eve Hager
Secretary

MINUTES OF THE REGULAR MEETING OF THE MISSION VALLEY UNIFIED PLANNING COMMITTEE

September 5, 2007

MEMBERS PRESENT	MEMBERS ABSENT	GUESTS
Jason Broad	Paul Dugas	Timothy Bertch
Paul Brown	Emmett Durnan	Dan Wery
Nat Cohen	Lisa Gualco	Danielle Wegenstein
Gina Cord	Alison Prager	Richard Dhe
Randall Dolph	Karen Ruggels	Stephen Haase
Christine Evans	John Tessier	Dottie Surdi
Pat Grant	Gail Thompson	Marco Sessa
Ronald Grant	Bruce Warren	Chuck Todd
Eve Hager		Trace Wilson
Hank Hoxie		
Linda Kaufman	MEMBERS EXCUSED	
Lynn Mulholland		
Alex Kacur		
Tom Sudberry	CITY STAFF	
Mark Silverman	Lisa Gonzalez	
Jennifer White	Brian Schoenfisch	

Linda Kaufman, Chair, called the regular meeting of the Mission Valley Unified Planning Committee (MVUPC) to order at 12:08 p.m. at the Mission Valley Library located at 2123 Fenton Parkway.

Christine Evans made a motion to amend the agenda-Old Business # 3 should not be an action item but item # 4 should be an action item (Fenton Tunnel). Motion passed 13-0-0.

A. **CALL TO ORDER**
Verify Quorum – 13 members were present, a quorum.

B. **PLEDGE OF ALLEGIANCE** – Gina Cord led The Pledge of Allegiance.

C. **INTRODUCTIONS** – Guests and members introduced themselves.

D. **MEMBERSHIP BUSINESS** – Lisa Gualco – no report

E. **PUBLIC INPUT**
Marco Sessa informed the group that the Quarry Falls project could be out for public review in approximately thirty days.

F. **TREASURER'S REPORT** – Alison Prager – no report (same balance as last month)

G. **PUBLIC SAFETY REPORTS**

1. Police Department – no report

2. Fire Department – no report

H. **NEW BUSINESS** –

1. Wastewater Treatment at the Point Loma Wastewater Treatment Plant – Dr. Timothy C Bertch, Metropolitan Wastewater Department

Timothy Bertch made a presentation regarding the possibility of converting the Point Loma Wastewater Plant to a secondary treatment facility.

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2. Mission City Corporate Center (tentative map) – Dan Wery, RBF Consulting
Randall Dolph recused himself from the discussion due to of an affiliation with the project.

Dan Wery made a presentation regarding the Mission City Corporate Center tentative map.

Tom Sudberry made a motion to recommend approval of the tentative map. Motion passed 14-1-1.

I. **OLD BUSINESS**

1. Approval of August 1, 2007 Minutes:
The draft minutes were tabled until the next meeting.

Preparation of the Minutes - Pat Grant
Pat Grant made a presentation regarding Robert Rules of Order.

Nat Cohen made a motion that it is the policy of this group to follow the Robert Rules of Order in the recording of the meeting minutes. Motion Passed 15-0-1. (Jennifer White abstained due to lack of information)

2. Community Plan Update – Brian Schoenfisch
The Hearing Officer will hold a public hearing to approve, conditionally approve or deny and application for a wireless communication facility for the American Tower Project on September 12, 2007, at 9:30 AM.

Brian Schoenfisch updated the group on the status of the Community Plan Update.

Police Department would like to ask the community if this group will support the City Staff in moving forward to open the Fenton Tunnel.

Eve Hager made a motion to support the opening of the Friars Road pedestrian tunnel from the hours of 6 am – 10 pm. Motion passed 16-0-0.

3. Subcommittee Reports:
   a. By-Laws Subcommittee – Linda Kaufman – no report

      Design advisory board – Bruce Warren - no report

   b. Transportation and Zoning/Community Plan Update – Karen Ruggels – no report

   c. Stadium Committee – Randall Dolph,
      Randall Dolph reported on an article from the San Diego Union Tribune regarding the Chargers and a new stadium.

   d. PAC Committee – Paul Dugas – no report

   e. Mission Valley Community Council – Lynn Mulholland
      The next Mission Valley Community Council meeting will be held on September, 19, 2007, at 6:15 PM.

   f. San Diego River Coalition – Rob Hutsel
      The annual celebration will be held on September 18, 2007, at River Walk Golf Course from 5:30 PM to 8:30 PM.

   g. I-5 & 805 Working Group – no report.

   h. Community Planning Chairs – Linda Kaufman & Karen Ruggels – no report

   i. Parks Subcommittee – Jason Broad

Serra Mesa Planning Group

A Recognized San Diego City Planning Group - Serving the Citizens of Serra Mesa

Post Office Box 23315 San Diego, CA 92123

February 16, 2008

Councilmember Donna Frye
District Six Council Office
City of San Diego
202 C Street
San Diego, CA 92101

RE: Friars Road Undercrossing at Escala

Dear Councilmember Frye:

On Thursday, February 21, 2008, the Serra Mesa Planning group voted to support the permanent opening of the Friars Road pedestrian undercrossing at Escala. This tunnel has been fully functional for at least two years, and yet unusable due to gates at both ends. We urge the parties involved to sit down immediately and find a solution to opening this tunnel.

This tunnel is an important link to the Fenton Marketplace, the proposed San Diego River Park and Trail, and to the San Diego Trolley.

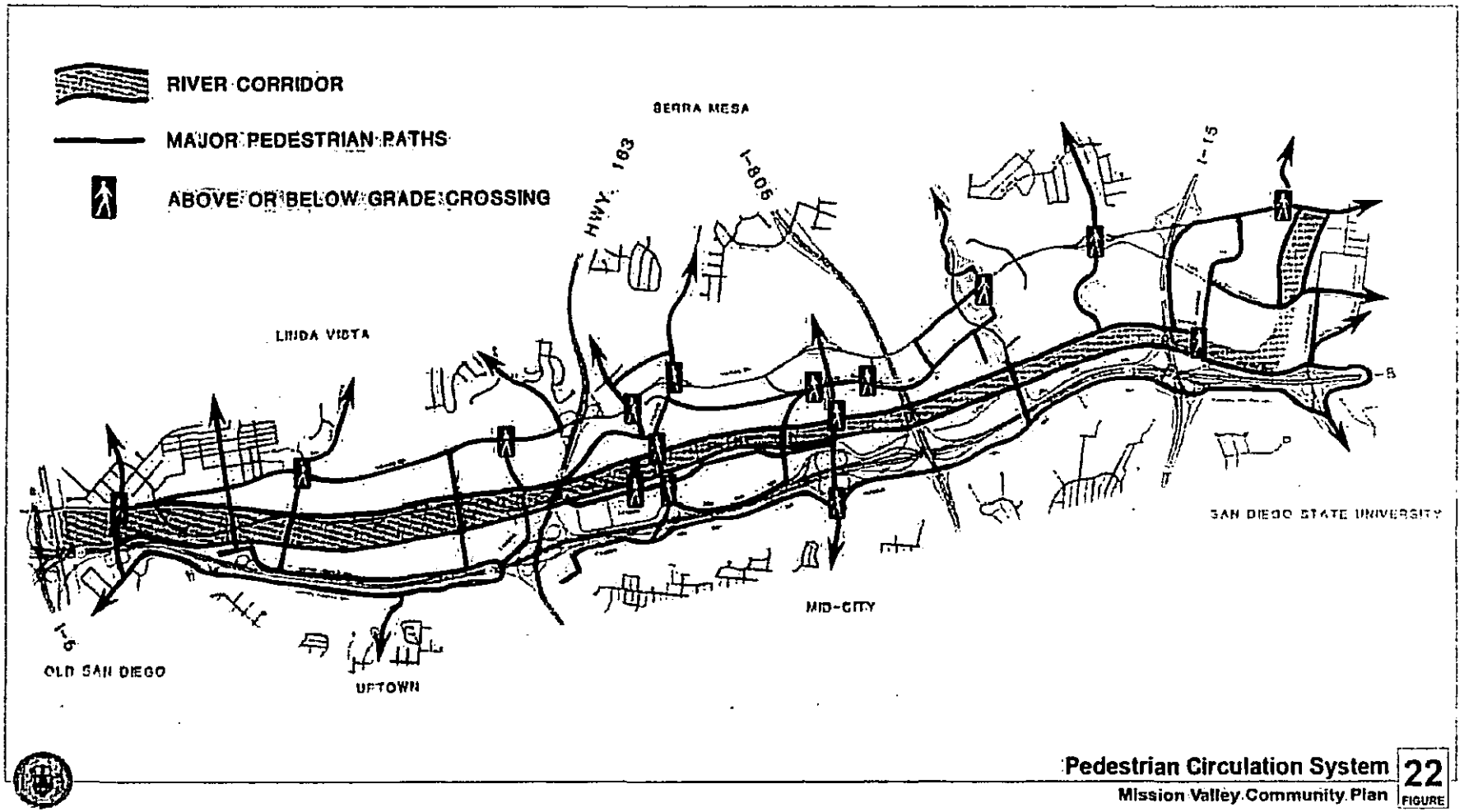
Should you have any questions, please call me at (858) 361-8462.

Thank you for your consideration.

Sincerely,

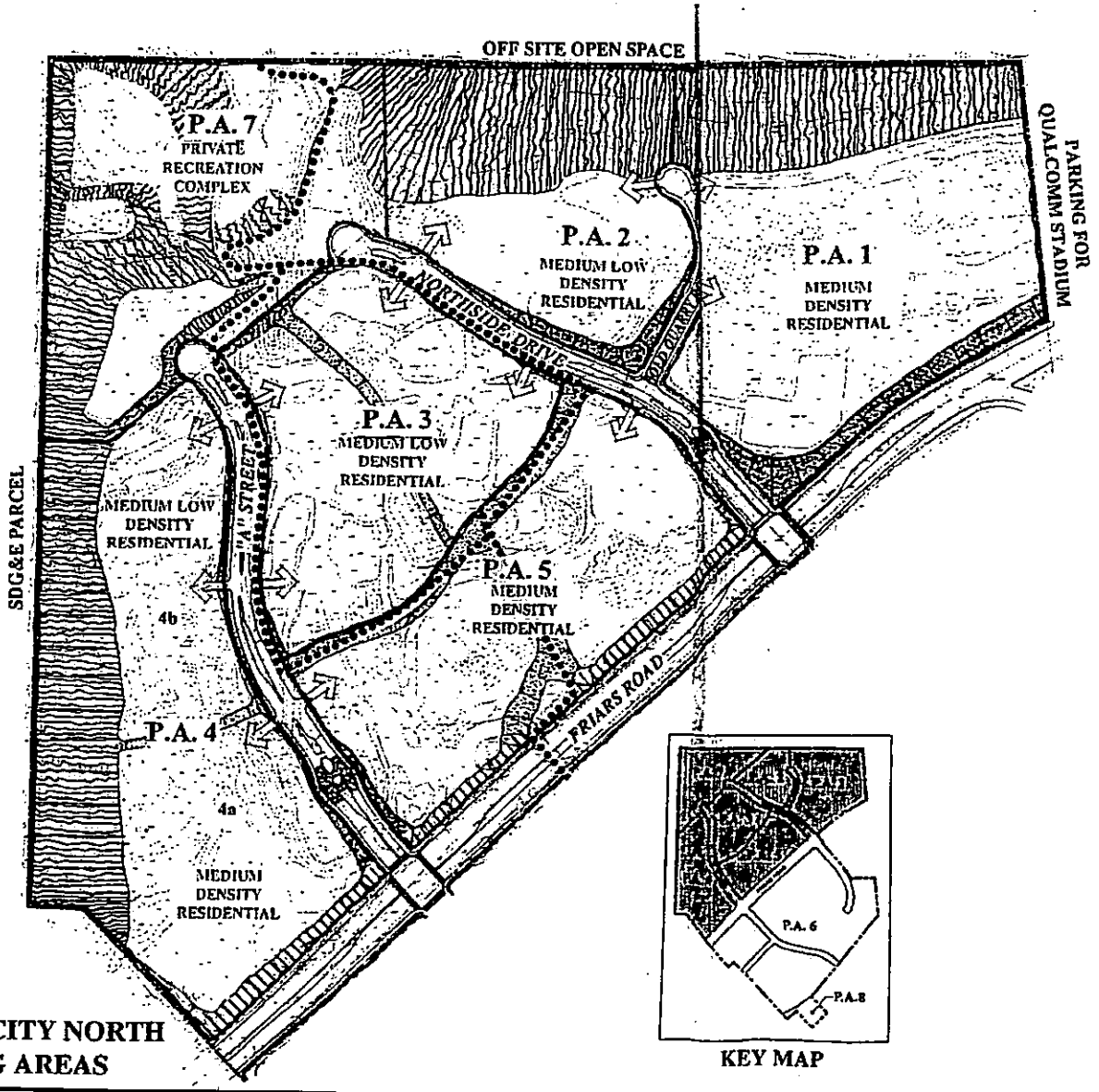
Doug Wescott
Chair

cc: (via U.S. mail)
Mr. Rob Hutsel, Executive Director, San Diego River Park Foundation (via email)
Ms Linda Kaufman, Chair, Mission Valley Unified Planning Group (via e-mail)



Pedestrian Circulation System 22 FIGURE
Mission Valley Community Plan

001530

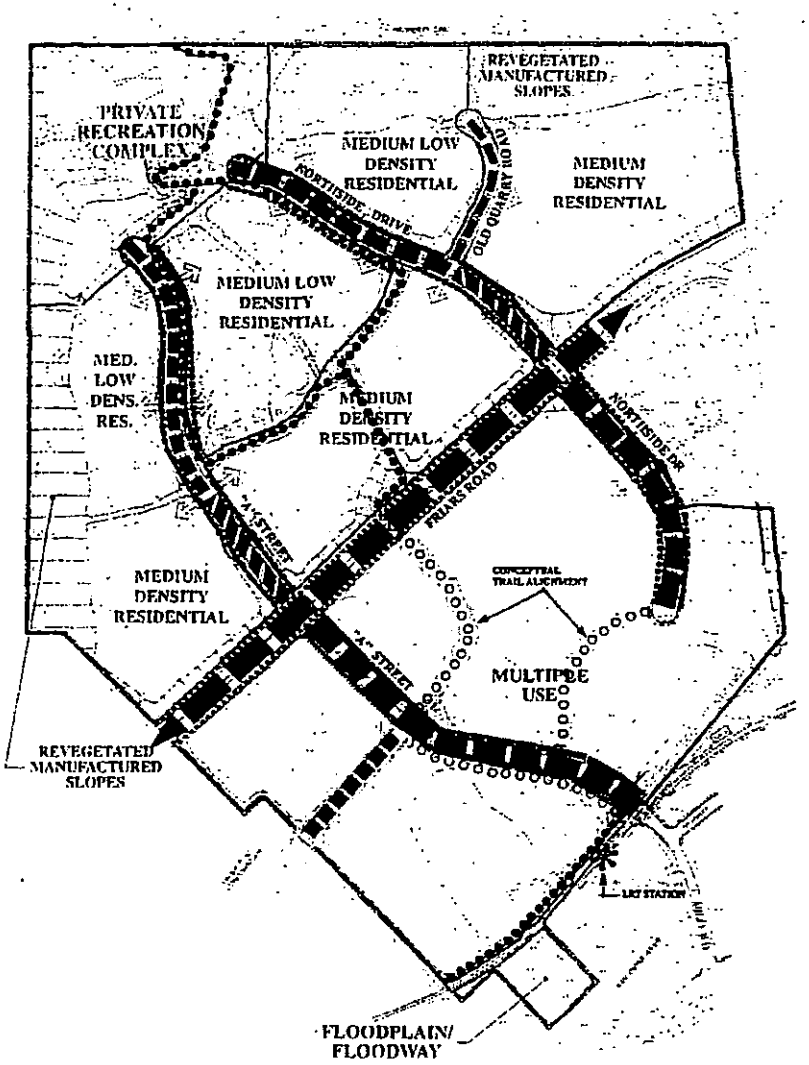


MISSION CITY NORTH
PLANNING AREAS

FIGURE II-3

MISSION CITY

Attachment 6



LEGEND

- 6 LANE ARTERIAL
  FRIARS ROAD - 136' R.O.W.
- 4 LANE COLLECTOR
  NORTHSIDE DRIVE - 96' R.O.W. &
  "A" STREET - 108' R.O.W. (SOUTH OF FRIARS RD
- 4 LANE COLLECTOR
  ENTRIES TO MISSION CITY NORTH
- MODIFIED 4 LANE COLLECTOR
  RIO SAN DIEGO DRIVE (98' ROW)
- 2 LANE ENHANCED COLLECTOR (PRIVATE)
  NORTHSIDE DRIVE (NORTH OF FRIARS RD.) - 82' R.O.W.
- 2 LANE ENHANCED COLLECTOR (PRIVATE)
  "A" STREET (NORTH OF FRIARS RD.) - 80' R.O.W.
- 2 LANE RESIDENTIAL (PRIVATE)
  OLD QUARRY ROAD - 60' R.O.W.
- EXISTING CLASS II BIKEWAY
- 8' WIDE TRAILS
  (SOLID DOTS SHOW ALIGNMENT, OUTLINE DOTS SHOW TENTATIVE ALIGNMENT)
  (ACTUAL ALIGNMENT TO BE DETERMINED AS PART OF DEVELOPMENT PLAN IN THIS AREA)
- PROPOSED CLASS II BIKEWAYS
- PROPOSED CLASS III BIKEWAYS

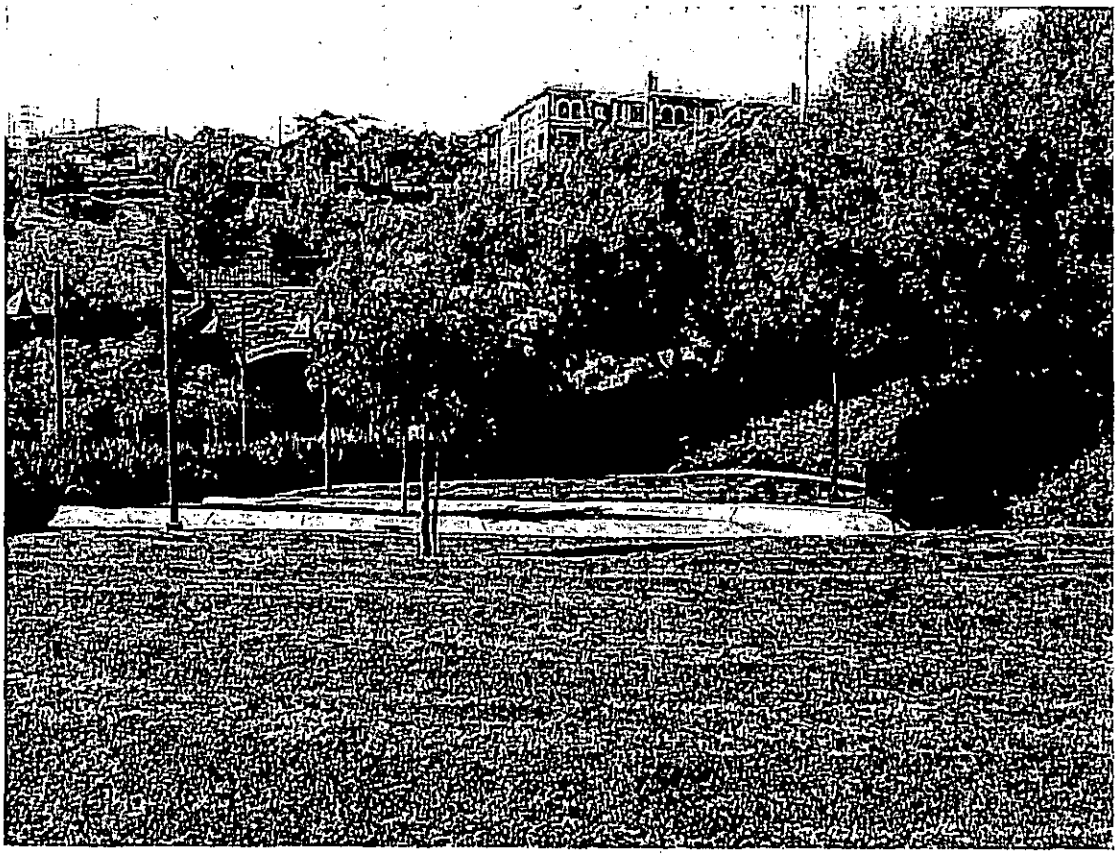
CIRCULATION PLAN

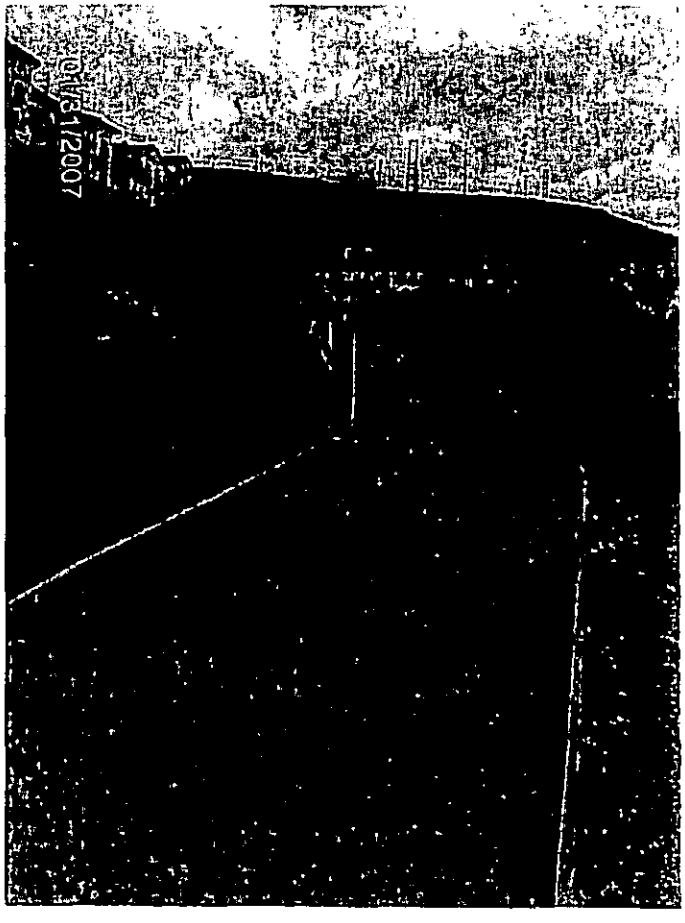
FIGURE IV-2





001533





C01535

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 108 12/02

TO:	2. FROM: (ORIGINATING DEPARTMENT)	3. DATE
CITY ATTORNEY	CITY PLANNING & COMMUNITY INVESTMENT	October 30, 2008

4. SUBJECT: (MAXIMUMM OF 10 WORDS)
Approval of Maintenance Agreement for the Ruffin Canyon Public Trail Tunnel

5. PRIMARY CONTACT (NAME, PHONE, MAIL STA.)	6. SECONDARY CONTACT (NAME, PHONE, MAIL STA.)	7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED:
Brian Schoenfisch, 533-6457, MS4A (City Planning & Community Investment)	Kimberly Davies, 533-5814, MS 59 (City Attorney's Office)	

8. COMPLETE FOR ACCOUNTING PURPOSES

					9. ADDITIONAL INFORMATION / ESTIMATED COST:
FUND	N/A				Approval of legal agreement. No cost to City.
DEPARTMENT	065				
ORGANIZATION	N/A				
OBJECT ACCOUNT	N/A				
JOB ORDER	N/A				
C.I.P NUMBER.	N/A				
AMOUNT	N/A				

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	MARY P. WRIGHT	11/5/08	8	DEPUTY CHIEF	WILLIAM ANDERSON	11/5/08
2	DSD/EAS	MARTHA BLAKE	11/6/08	9	~~COO~~		
3	COUNCIL LIAISON	ED PLANK		10	CITY ATTORNEY		11/17/08
4	AUDITOR		11/13/08	11	ORIGINATING DEPARTMENT	CHRISTINE ROTHMAN	11/4/08
5	EOCP	EXEMPT PER MEMO DATED 1-15-05			DOCKET COORD:	COUNCIL LIAISON: SC	11/19/08
6	READ		11/19/08	√	COUNCIL PRESIDENT	☐ SPOB ☒ CONSENT ☐ ADOPTION	
7						☐ REFER TO:	COUNCIL DATE: 12/2/08

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

Resolution approving a Maintenance Agreement between Sudberry Properties and the City of San Diego to provide ongoing maintenance for the Ruffin Canyon Public Trail Tunnel.

11A. STAFF RECOMMENDATIONS:
ADOPT the Resolution.

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

COUNCIL DISTRICT(S): 6

COMMUNITY AREA(S): Mission Valley

ENVIRONMENTAL IMPACT: **This activity is categorically exempt from CEQA pursuant to state CEQA guidelines section 15060 (c) (3).**

HOUSING IMPACT: None

OTHER ISSUES: None

C01537

REPORT TO THE CITY COUNCIL
EXECUTIVE SUMMARY SHEET

DATE ISSUED:	November 13, 2008
ATTENTION:	Honorable President Peters and Members of the City Council Docket of December 2, 2008
ORIGINATING DEPT.:	City Planning & Community Investment
SUBJECT:	Ruffin Canyon Public Trail Tunnel – Maintenance Agreement
Council District:	6
Staff Contact:	Brian Schoenfisch, (619) 533-6457

REQUESTED ACTION:
Approval of Maintenance Agreement for the Ruffin Canyon Public Trail Tunnel.

STAFF RECOMMENDATION:
Approve the requested action.

EXECUTIVE SUMMARY:
An existing, improved pedestrian tunnel traverses under Friars Road midway between Fenton Parkway and North Side Drive within the Mission Valley Community planning area. This pedestrian tunnel is identified in the Mission City Specific Plan and is recognized as critical to the establishment of a continuous pedestrian and bicycle linkage from the residential areas north of Friars Road, through commercial and office uses on the south side, and to the Trolley and the San Diego River corridor.

Currently, the tunnel is closed due to security and maintenance issues that have not, as of yet, been formerly addressed. A Maintenance Agreement for the Ruffin Canyon Public Trail Tunnel has been drafted by the City Attorney, working with Sudberry Properties (the GRANTEE), to address issues of security, liability, opening hours, and specific maintenance duties. Specifically, the agreement proposes that the GRANTEE provide security services, including a provision to unlock the tunnel gates at five a.m. and lock the gates at ten p.m. seven days a week, as well as lighting the tunnel twenty-four hours a day, seven days a week. Further, the agreement states that the GRANTEE shall maintain the tunnel in a sanitary condition, through specific maintenance services including: litter control (seven days per week); graffiti control (seven days per week); cleaning of the flooring (weekly or as needed); as well as the reporting of any material repairs, accidents, vandalism or other incidents. The City Council's approval of this Maintenance Agreement will allow for the much-anticipated opening of the Ruffin Canyon Public Trail Tunnel to take place.

FISCAL CONSIDERATIONS:
None with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:
On October 15, 2008, the Natural Resources and Culture Committee voted 4-0 to support the opening of the Ruffin Canyon Public Trail Tunnel and forward this item to the City Council.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:
On April 7, 2004, the Mission Valley Unified Planning Committee voted 11-0-3 to support the public tunnel under Friars Road. On September 5, 2007, the Mission Valley Unified Planning Committee voted 16-0-0 to again reaffirm its support for the opening of the tunnel to the public. On February 21, 2008, the Serra Mesa Planning Group voted unanimously to support the opening of the pedestrian undercrossing.

C 31538

KEY STAKEHOLDERS and PROJECTED IMPACTS (if applicable):

Key Stakeholders include: Mission Valley Unified Planning Committee, Serra Mesa Planning Committee, Friends of Ruffin Canyon, Friends of Normal Heights Canyon, San Diego River Conservancy, San Diego River Park Foundation.

Mary P. Wright, AICP
Deputy Director – Planning Division
City Planning & Community Investment

William Anderson, FAICP
Deputy Chief Operating Officer
Land Use and Economic Development

Attachments:

Attachment A: Draft Resolution
Attachment B: Draft Agreement

001539

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A GRANT OF MAINTENANCE EASEMENT AND AGREEMENT WITH SUDBERRY PROPERTIES, INC. FOR THE RUFFIN CANYON PUBLIC TRAIL TUNNEL.

WHEREAS, the City of San Diego [City] owns certain real property under Friars Road in Mission Valley, known as the Ruffin Canyon Public Trail Tunnel [Tunnel]; and

WHEREAS, the Tunnel was included as an integral component of the Mission City Specific Plan, adopted by the Council of The City of San Diego on April 21, 1998; and

WHEREAS, the Tunnel is recognized as critical to the establishment of a continuous pedestrian and biking linkage from the residential areas north of Friars Road, through commercial and office uses on the south side, and to the San Diego Trolley and the San Diego River corridor; and

WHEREAS, opening the Tunnel to the public will serve a public purpose and will benefit the public health, safety, or general welfare; and

WHEREAS, on April 7, 2004, the Mission Valley Unified Planning Committee voted 11-0-3 to support opening the Tunnel to the public; and

WHEREAS, on September 5, 2007, the Mission Valley Unified Planning Committee voted 16-0-0- to reaffirm its support for opening the Tunnel to the public, and

WHEREAS, on February 21, 2008, the Serra Mesa Planning Group voted unanimously to support the opening of the Tunnel to the public; and

WHEREAS, on October 15, 2008, the Natural Resources and Culture Committee voted 4-0-0 to support opening the Tunnel to the public; and

WHEREAS, the H. G. Fenton Company, developer of the adjacent property on the north side of Friars Road, has agreed to complete construction of the remaining improvements to the Tunnel in accordance with the terms of its Encroachment Maintenance and Removal Agreement with the City dated October 11, 2005; and

WHEREAS, Sudberry Properties, Inc., developer of the adjacent property on the south side of Friars Road, has agreed to accept the long-term maintenance responsibilities for the Tunnel; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, the Mayor or his designee is authorized to execute and deliver that GRANT OF MAINTENANCE EASEMENT AND AGREEMENT with Sudberry Properties, Inc., filed in the Office of the San Diego City Clerk as Document No. RR-_____;

BE IT FURTHER RESOLVED, that the Council of the City of San Diego finds that this activity is not a project and is therefore not subject to the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Kimberly Ann Davies
Deputy City Attorney

KAD:mm
11/17/08
Aud. Cert: N/A
Or. Dept. P&R
2009-649
MMS: 7058

C01541

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By_____
Deputy City Clerk

Approved: _____
(date)

_____
JERRY SANDERS, Mayor

Vetoed: _____
(date)

_____
JERRY SANDERS, Mayor

C01543

Recording Requested by, and
When Recorded Mail to:

Space above is for Recorder's use.

PLAN FILE NO.: _____
NO DOCUMENT TAX DUE
R&T 11922 (Amended)
Presented for Record by the City of San Diego

NO FEE FOR GOVERNMENT AGENCY
CODE 27383

GRANT OF MAINTENANCE EASEMENT AND AGREEMENT

THIS GRANT OF MAINTENANCE EASEMENT AND AGREEMENT ("Grant") is made by and between THE CITY OF SAN DIEGO, a California Municipal Corporation ("GRANTOR"), and FMP, LLC, a California limited liability company ("GRANTEE"), to be effective when executed by the parties and approved by the San Diego City Attorney, and as of the date of its recordation in the Office of the San Diego County (California) Recorder (the "Effective Date"), as follows:

RECITALS

A. GRANTOR holds fee title to that certain real property consisting of the existing tunnel under Friars Road located east of Fenton Parkway and west of Northside Drive, in the City of San Diego, California, more particularly described in Exhibits A and B, attached hereto (the "City Property").

B. The Mission City Specific Plan, as updated July 20, 1989, provides for a pedestrian and bicycle trail system connecting the entire Specific Plan area, with the north and south trail linkages connecting at the tunnel.

C. On April 21, 1998, the San Diego City Council adopted Resolution No. R-289996, approving Tentative Map No. 96-0544, granting Mission City to H. G. Fenton Company ("Fenton"), subject to certain conditions, including Condition Number 27, requiring Fenton to maintain the underground mid-block pedestrian link between the developments on the north and south sides of Friars Road as shown and described on Figure IV-2 and Page IV-5 of the Mission City Specific Plan.

D. On October 12, 2005, GRANTOR and Fenton entered into an Encroachment Maintenance and Removal Agreement in which GRANTOR permitted Fenton to install improvements and maintain the tunnel as a private pedestrian undercrossing.

E. GRANTOR and GRANTEE desire to open the tunnel to the public, and GRANTEE is willing to provide maintenance services for the tunnel.

F. Under the terms and conditions of this Grant, GRANTOR will grant to GRANTEE a non-exclusive maintenance easement (the "Easement") on and across the tunnel (the "Easement Area") solely for the purpose of the maintenance of the tunnel (the "Easement Use").

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

1. Grant. GRANTOR hereby grants to the GRANTEE a non-exclusive easement over, across and through the real property described as Exhibit A, attached to and a part of this deed. The purpose of the Easement Area is for all uses connected with the maintenance of improvements relating to the tunnel, as set forth in Section 2, below.

The use of the word "grant" shall not imply any warranty on the part of GRANTOR with respect to the Easement or the Easement Area.

2. Maintenance of the Easement Area. GRANTEE shall maintain the Easement Area, at GRANTEE'S sole cost and expense and to GRANTOR'S reasonable satisfaction, in a decent and sanitary condition as specifically provided below.

a. Ongoing Maintenance Services. GRANTEE shall provide only the following maintenance services within the Easement Area:

(1) Litter Control (seven days per week): All litter shall be removed from the Easement Area and disposed of at a City-approved waste site. Trash receptacles shall be repaired or replaced as needed on a commercially reasonable basis.

(2) Graffiti Control (seven days per week): All graffiti shall be reported to the SD Police Department of GRANTOR for GRANTOR to remove from the Easement Area.

(3) Flooring: Flooring within the easement Area shall be hosed off weekly or as needed to keep clean and prevent dirt build-up. All flooring surfaces requiring repair which are observed during the course of providing maintenance services described in this Grant shall be barricaded immediately and repaired within seven days, or longer if reasonably required to effect such repairs in a safe and workmanlike manner.

(4) Lighting: GRANTEE will use commercially reasonable efforts to cause lights to remain on twenty-four hours a day, seven days a week. Lights observed to be out shall be promptly replaced/repaired.

(5) Inspections: GRANTOR shall conduct four inspections per year of the Easement Area to evaluate compliance with the above maintenance standards. A City inspection report shall be submitted to GRANTEE , and GRANTEE will correct any deficient standard reported therein within a reasonable time.

(6) Incident Reports: GRANTEE shall provide to the SD Police Department of GRANTOR with quarterly Incident Reports listing all material repairs, accidents, vandalism and other incidents relating to the condition of the Easement Area known to GRANTEE.

(7) Security and Gates. GRANTEE shall include the Easement Area within its current security services for the Fenton Marketplace Shopping Center, ["FMPSC"] (but shall not be required to incur additional expense for security or to provide security services at a level different from those provided within FMPSC), and shall unlock the gates at five a.m. and lock the gates at ten p.m. GRANTEE shall not be required to provide specific security for the Easement Area, and the cost of any increase in security services reasonably required for the Easement Area shall be paid by GRANTOR.

b. No Interference. GRANTEE will provide the maintenance services required herein in a manner which results in the least interference with the GRANTOR'S and the public's use of the Easement Area. Closures of the Easement Area shall be permitted as reasonably required, and on reasonable notice to GRANTOR, unless due to emergency conditions.

c. Encroachments. Immediately upon GRANTOR'S demand, GRANTEE shall promptly remove any improvement constructed by GRANTEE that encroaches upon the Easement Area.

3. Rights Reserved. GRANTOR expressly reserves for itself, its successors and its assigns, the right to enter upon and use the Easement Area to maintain, repair, and improve the City Property, including without limitation the Easement Area, and to grant other easements or licenses in and to the Easement Area, provided such uses do not unreasonably interfere with GRANTEE'S rights granted herein or place additional burdens upon GRANTEE.

4. Default. GRANTEE shall be in default of this Grant if GRANTEE breaches any of its obligations under this Grant and fails to cure the breach within thirty (30) days following written notice thereof from GRANTOR, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion as soon as reasonably practicable. If GRANTEE fails to actually and timely cure the breach, GRANTOR may terminate this Grant.

5. Termination. GRANTOR may terminate the Easement and this Grant: (a) at any time after any change in use of the Easement Area by GRANTEE, or (b) upon GRANTEE'S default under Section 4. GRANTEE may terminate this Grant and lock the security gates to the Easement Area at any time that the GRANTEE determines that the maintenance of the Easement Area is cost prohibitive or commercially unreasonable, or if GRANTEE considers the risks of liability are too great for the continuation of the Grant.

a. Quitclaim. Upon termination of the Easement, GRANTEE shall deliver to GRANTOR a recordable quitclaim deed in form and content satisfactory to GRANTOR granting to GRANTOR any and all interest GRANTEE may have in and to the City Property and the Easement.

b. Costs. In the event GRANTOR terminates this Grant for default, GRANTEE shall pay all costs and expenses incurred by GRANTOR in obtaining performance of GRANTEE'S obligations under this Grant, including costs of suit and reasonable attorney's fees.

c. No Liability. GRANTOR and GRANTEE shall not be obligated for any loss, financial or otherwise, which the other may incur as a result of the termination of the Easement, except for the indemnifications provided below. GRANTEE and GRANTOR expressly waive any claim against the other for expense or loss which it might incur as a result of the termination of the Easement, but such waiver shall not extend to or include any indemnification to which either party may be entitled from the other.

6. Restoration. Upon the termination of the Easement, on GRANTOR'S demand, GRANTEE shall promptly remove any and all improvements it installed in, on, under, or above the Easement Area and restore the Easement Area to its condition immediately before the Grant, all at GRANTEE'S sole cost and expense.

7. Superior Interests. The Easement is subject to those liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, easements, and rights-of-way pertaining to the City Property, whether or not of record, identified by GRANTOR on Exhibit C attached hereto and incorporated by reference herein. GRANTOR further warrants and represents that this Grant does not violate, breach nor conflict with any pre-existing right or contract and that GRANTOR has the full right and authority to enter into this Grant. GRANTOR further represents and warrants that GRANTEE shall have no obligation to obtain any licenses, permits, and Grants from such third parties in order to maintain the Easement Area and perform any of its duties under this Grant..

a. Accommodation. If GRANTEE'S maintenance of the Easement Area is or becomes inconsistent or incompatible with a preexisting, superior interest, GRANTOR shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

b. Conflicting Repairs; Notice. Except in the case of an emergency, if any facilities on, in, or under the City Property are to be repaired, replaced, or relocated, and such work may adversely affect GRANTEE'S maintenance of the Easement Area, as reasonably determined by GRANTOR, GRANTOR shall notify GRANTEE in writing at least ten (10) days prior to commencement of the work. Such notice shall state the scope and expected duration of such work.

8. Governmental Approvals. By entering into this Grant, neither GRANTOR nor GRANTOR'S City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Easement, or to GRANTEE'S maintenance of the Easement Area. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required.

9. Hazardous Substances. GRANTEE shall not allow the installation or release of hazardous substances in, on, under, or from the Easement Area or the City Property by GRANTEE'S employees, agents and/or contractors. GRANTEE and GRANTEE'S employees, agents, and/or contractor's, shall not store, utilize, or sell any hazardous substance on the Easement Area or the City Property, except such items which are normally used for commercial cleaning purposes, without GRANTOR'S prior written consent. For the purposes of this provision, a release shall include but not be limited to

any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Grant.

a. Remediation. If GRANTEE'S maintenance of the Easement Area results in a release of a hazardous substance, GRANTEE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws, rules, and regulations of governmental authorities.

b. Indemnity. GRANTEE shall protect, defend, indemnify, and hold GRANTOR harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from GRANTEE'S maintenance of the Easement Area, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies. Notwithstanding the foregoing, GRANTEE shall have no liability of any kind or nature with respect to the release of hazardous substances by any person or entity except for GRANTEE's employees, agents, and/or contractors.

c. Notice of Release. If GRANTEE knows or has reasonable cause to believe that a hazardous substance has been released on or beneath the Easement Area or the City Property, GRANTEE shall immediately notify GRANTOR and deliver a written notice thereof to GRANTOR within three (3) days of receipt of the knowledge or cause for belief. If GRANTEE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, GRANTEE shall take all actions reasonably necessary to protect the public against the danger. GRANTEE shall notify GRANTOR immediately of any notice of violation received or initiation of environmental actions or private suits related to the Easement Area or the City Property.

d. Environmental Assessment. Upon reasonable cause to believe that GRANTEE'S maintenance of the Easement Area ("GRANTEE'S Operations"), resulted in any hazardous substance being released on or beneath the Easement Area or the City Property, GRANTOR may cause an environmental assessment of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at GRANTEE'S sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by GRANTEE'S Operations on, in, or under the Easement Area or the City Property, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or

removal. With respect to any release of hazardous substances proven to have been caused by GRANTEE'S Operations, GRANTEE shall cause, or if GRANTEE fails to do so within a reasonable period of time, GRANTOR may cause, the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and GRANTEE shall pay all costs and expenses therefor.

10. Non-interference. GRANTEE shall not materially interfere with GRANTOR'S use, operations, and activities on the City Property, and GRANTEE shall use such reasonable routes and follow such reasonable procedures on the City Property as shall result in the least interference and inconvenience to GRANTOR.

11. Property Damage. GRANTEE shall pay for all damage to the City Property, GRANTOR'S personal property on the City Property, and the personal property of third parties on the City Property (pursuant to the Indemnity set forth in Section 12 below) resulting from GRANTEE'S maintenance of the Easement Area.

12. Indemnity. GRANTEE shall protect, indemnify, defend and hold GRANTOR harmless for damages caused by the acts or omissions of GRANTEE'S officers, employees, and agents occurring in the maintenance of the Easement Area. GRANTOR shall protect, indemnify, defend and hold GRANTEE harmless for actions, claims, demands, expenses, liabilities, and damages caused by the acts or omissions of GRANTOR'S officers, employees, and agents occurring in the performance of this Grant or otherwise relating to Easement Area and the use thereof, and/or including without limitation matters arising from any structural defects in the City Property, and/or soil erosion, subsidence, or damage resulting thereby, and/or personal injury and/or property damage arising from or occurring upon the Easement Area, except for those injuries, damages and claims directly caused by the negligence of GRANTEE's employees, agents and contractors . It is the intention of GRANTEE and GRANTOR that the provisions of this paragraph be interpreted to impose on each party responsibility for the acts of their respective officers, employees and agents. It is also the intention of GRANTEE and GRANTOR that where comparative negligence is determined to have been contributory, principles of comparative negligence will be followed and each party will bear the proportionate cost of any damage attributable to the negligence of that party, its officers, employees and agents.

13. Encumbrances. GRANTEE shall keep the City Property free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with GRANTEE'S maintenance of the Easement Area. GRANTEE shall protect, defend, indemnify, and hold GRANTOR harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the City Property, including without limitation GRANTEE'S failure or the failure of any contractor or subcontractor hired by GRANTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

14. Insurance. On or before the Effective Date, GRANTEE shall deliver to GRANTOR a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars ($2,000,000) per occurrence, subject to an annual aggregate of Four Million Dollars ($4,000,000).

a. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its officials, officers, representatives, agents, contractors and employees" shall be named as additional insureds in all policies.

b. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by GRANTOR. The policies shall be kept in force for the duration of the Easement. The certificate(s) of insurance shall be filed with GRANTOR upon execution of this Grant.

c. Qualified Insurer(s). All insurance required by the terms of this Grant must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to GRANTOR. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet GRANTOR'S requirements.

d. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of GRANTEE and must be disclosed and acceptable to GRANTOR at the time evidence of insurance is provided.

e. Continuity of Coverage. All policies shall be in effect on or before the Effective Date. At least thirty (30) days prior to the expiration of each insurance policy, GRANTEE shall furnish to GRANTOR a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Grant. Immediately upon receipt of notice that a policy is being or may be terminated or cancelled, GRANTEE shall notify GRANTOR in each instance.

f. Accident Reports. In addition to the quarterly Incident Reports required under Section 2b(6), GRANTEE shall immediately report to the SD Police Department of GRANTOR any accident causing property damage or injury to persons on the Easement Area, if and when such information becomes known to GRANTEE and is not otherwise included in a report by law enforcement. Such report shall contain, if known to GRANTEE, the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information. GRANTOR shall also cause the law enforcement agencies to notify GRANTEE and provide comparable reports to GRANTEE. In the event of a serious accident or injury, GRANTEE may close the

Easement Area to public use and keep both gates locked until GRANTEE and GRANTOR review the circumstances and mutually agree to the terms, conditions, and circumstances under which the Easement Area should be opened to the public.

g. Failure to Comply. If GRANTEE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, GRANTOR may obtain the insurance. GRANTEE shall reimburse the obtaining party for the premiums paid, with interest at the maximum allowable legal rate then in effect in California. Such obtaining party shall notify GRANTEE of such payment of premiums stating the amount paid, the name(s) of the insurer(s), and the rate of interest. GRANTEE shall pay such reimbursement and interest within thirty (30) days after demand therefor. Notwithstanding any other provision of this Grant, if GRANTEE fails or refuses to obtain or maintain insurance as required by this Grant, or fails to provide proof of insurance, GRANTOR may terminate this Grant and the Easement immediately upon such breach. In the event that GRANTEE cannot obtain such insurance at commercially reasonable rates, GRANTEE may terminate the Grant and permanently lock both gates to the Easement Area.

15. Compliance with Law. GRANTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to GRANTEE'S maintenance operations on the Easement Area.

16. Assignment. GRANTEE shall be permitted to assign any rights granted by this Grant or any interest herein to a successor purchaser of the FMPSC without GRANTOR'S prior written consent; provided, however, that GRANTEE shall give GRANTOR thirty (30) days prior written of notice of an assignment.

17. Signs. No signs may be displayed on the Easement Area without GRANTOR'S and GRANTEE's prior written consent.

18. Waiver. GRANTOR'S failure to insist upon the strict performance of any of GRANTEE'S obligations under this Grant, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Easement Area is publicly-owned and held in trust for the benefit of GRANTOR'S citizens. GRANTOR'S failure to discover a breach of any obligation of this Grant or to take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but GRANTOR may at any and all times require the cure of any such breach prior to the termination of this Grant.

19. Survival. Any obligation which accrues under this Grant prior to its termination shall survive such termination within the applicable statute of limitations. All obligations under Paragraph 12 above shall survive termination of the Grant.

20. Entire Grant. This Grant, including exhibits, contains the entire Grant between the parties relating to the rights granted hereby and the obligations assumed herein. This Grant supercedes the Encroachment Maintenance and Removal Agreement dated October 11, 2005 ("Encroachment Agreement"). GRANTOR warrants and represents that the Encroachment Agreement does not create rights of any kind against GRANTEE and that

this Grant does violate or infringe upon the Encroachment Agreement in any respect. No modification of this Grant shall be valid unless in writing and signed by the party to be charged.

21. Successors and Assigns. This Grant shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

22. Legal Proceedings. In the event of any controversy, claim, or dispute relating to the Easement or this Grant, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation attorney fees and costs.

23. Notices. Any notice, request, payment, demand, or other communication required or permitted to be given under this Grant shall be in writing and deemed received upon personal service, delivery by a reputable overnight service, or delivery by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the parties as follows:

GRANTOR: THE CITY OF SAN DIEGO
Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

With a copy by First Class mail to: SAN DIEGO CITY ATTORNEY
Attention: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

GRANTEE: FMP,LLC
% Sudberry Properties, Inc.
5465 Morehouse Drive, Suite 260
San Diego, California 92121-4714
Attn: Thomas W. Sudberry, Jr., President

With a copy by First Class mail to: Sudberry Properties, Inc.
5465 Morehouse Drive, Suite 260
San Diego, California 92121-4714
Attention: Chief Operating Officer

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

IN WITNESS WHEREOF, this Grant is executed to be effective as of the Effective Date.

GRANTEE:

FMP, LLC,

A California Limited Liability Company

By: Sudberry Properties, Inc., a California Corporation and the Managing Member

BY: _____

Thomas W. Sudberry, Jr.

President

Approved as to form:

_____

Charles J. Todd, COO & General Counsel

001553

GRANTOR: THE CITY OF SAN DIEGO, a California Municipal Corporation

BY: _____

William Anderson, FAICP
Deputy Chief Operating Officer
Land Use and Economic Development

APPROVED AS TO FORM AND LEGALITY:

Date: _____ MICHAEL J. AGUIRRE, City Attorney

BY: _____

Kimberly Ann Davies
Deputy City Attorney