

000327

105
03/11
REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO
1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)TO:
CITY OF SAN DIEGO2. FROM (ORIGINATING DEPARTMENT):
CITY ATTORNEY'S OFFICE3. DATE:
February 13, 2008

4. SUBJECT:

Settlement of La Jolla Alta Master Council v. City of San Diego

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)

Jane Boardman (619) 533-5899

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)

Maria Severson (619) 533-5816

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT	JOB ORDER	C.I.P. NUMBER	AMOUNT	9. ADDITIONAL INFORMATION / ESTIMATED COST:

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>Karen Henderson</i>	2/28/08	8	DEPUTY CHIEF	<i>CFD Mary Henry</i>	2/26/08
2	DSD	<i>Allison Sherwood</i>	2/26/08	9	COO	<i>[Signature]</i>	2/28/08
3	ECP	<i>[Signature]</i>	2/20/08	10	CITY ATTORNEY	<i>[Signature]</i>	2/28/08
4	FINANCIAL MANAGER	<i>[Signature]</i>	2/28/08	11	ORIG. DEPT	<i>Karen Henderson</i>	2/28/08
5	GEN SERVICES	<i>[Signature]</i>	2/28/08	DOCKET COORD: _____ COUNCIL LIAISON _____			
6	RISK	<i>[Signature]</i>	2-28-08	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION			
7	AUDITOR	<i>Debra McClean</i>	2.28.08	REFER TO: _____ COUNCIL DATE: 3/11/08			

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

Enter into a settlement agreement with Plaintiff La Jolla Alta Master Council wherein the City would pay Plaintiff \$4.5 million from its excess liability carrier for Phase I repairs and attorney's fees, assume the permanent "Phase II" repair obligation to the lower canyon, and accept drainage easements in the lower and upper canyons that were the subject of the litigation so the City could maintain those easements on a going-forward basis.

11A. STAFF RECOMMENDATIONS:

Approve Resolution

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

COUNCIL DISTRICT(S): 2

COMMUNITY AREA(S): La Jolla Alta

ENVIRONMENTAL IMPACT: This activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3). Any construction activities related to Phase II of this project are subject to further environmental review.

HOUSING IMPACT: None**OTHER ISSUES:** None

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: February 12, 2008 REPORT NO:
 ATTENTION: Council President and City Council
 ORIGINATING DEPARTMENT: City Attorney's Office
 SUBJECT: Settlement of *La Jolla Alta Master Council v. The City of San Diego*
 City File #: LP04-0534-0724

COUNCIL DISTRICT(S): 2
 CONTACT/PHONE NUMBER: Jane Boardman (619) 533-5899

REQUESTED ACTION: Authorizing the settlement of each and every claim against the City, its agents and employees, resulting from the lawsuit entitled *La Jolla Alta Master Council v. The City of San Diego*, Superior Court Case No. GIC 822281.

STAFF RECOMMENDATION: Approve the resolution.

EXECUTIVE SUMMARY: The proposed settlement would resolve all claims arising from the lawsuit entitled *La Jolla Alta Master Council v. The City of San Diego*, Superior Court Case No. GIC 822281.


FISCAL CONSIDERATIONS: Settlement will be paid from the City's excess insurance carrier(s) as set forth in Resolution Number R-303299.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: This item was considered in closed session on January 15, 2008. The Council voted 6 to 0, on motion by Councilmember Atkins with a second by President Pro Tem Madaffer, to authorize the City Attorney's Office to enter into a settlement agreement with Plaintiff La Jolla Alta Master Council wherein the City would pay Plaintiff \$4.5 million from its excess liability carrier for Phase I repairs, and attorney's fees, assume the permanent "Phase II" repair obligation to the lower canyon, and accept drainage easements in the lower and upper canyons that were the subject of the litigation so the City could maintain those easements on a going-forward basis; and Plaintiff would dismiss its lawsuit against the City.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: La Jolla Alta Master Council


Originating Department


Deputy Chief/Chief Operating Officer

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
DIEGO AUTHORIZING THE SETTLEMENT OF THE
LITIGATION ENTITLED LA JOLLA ALTA MASTER
COUNCIL V CITY OF SAN DIEGO

WHEREAS, the homeowners association of La Jolla Alta Master Council has brought litigation against the City of San Diego in the lawsuit entitled *La Jolla Alta Master Council v City of San Diego, et al.*, San Diego Superior Court Case No. GIC 822281 for damage to its canyon property as an alleged result of the City's storm drain systems; and

WHEREAS, San Diego Superior Court Judge Linda Quinn, after a court trial on the issues of liability, found that the City of San Diego was liable to plaintiff in inverse condemnation for damage to Plaintiff's property caused by the City's failure to maintain its storm drain system at that location; and

WHEREAS, a jury trial was due to commence on the damages phase of trial, which included Plaintiff's claim for the cost of a temporary "Phase I" fix to the lower canyon and a permanent "Phase II" fix thereafter, and claim for attorney's fees; and

WHEREAS, the City of San Diego entered into an agreement with the City of San Diego's excess liability insurer, CSAC-EIA, wherein the City agreed to pay the excess carrier the remaining retained self-insured limit in exchange for the carriers' agreement to defend the City without a reservation of rights and pay any judgment and attorney's fees that resulted in the lawsuit, and that agreement was approved in Resolution R-303299 on January 18, 2008; and

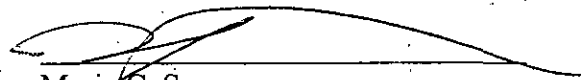
WHEREAS, in the Closed Session Meeting of January 15, 2008, the Council voted 6 to 0, on motion by Councilmember Atkins with a second by President Pro Tem Madaffer, to

authorize the City Attorney's Office to enter into a settlement agreement with Plaintiff La Jolla Alta Master Council wherein the City would pay Plaintiff \$4.5 million from its excess liability carrier for Phase I repairs, and attorney's fees, assume the permanent "Phase II" repair obligation to the lower canyon, and accept drainage easements in the lower and upper canyons that were the subject of the litigation so the City could maintain those easements on a going-forward basis; and Plaintiff would dismiss its lawsuit against the City.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of San Diego, that the agreement attached hereto as Exhibit 1 in furtherance of the closed session vote be formally approved by the City Council.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Maria C. Severson
Deputy City Attorney

MCS:gb
02/11/08
Or.Dept: City Attorney's Office

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

SETTLEMENT AGREEMENT AND LIMITED RELEASE

This Settlement Agreement and Limited Release is entered into by and between the La Jolla Alta Master Council and the City of San Diego.

1. DEFINITIONS

The following terms used in this Settlement Agreement and Limited Release shall have the meanings set forth below:

1.1 "Action": The term "Action" means the civil action filed by the La Jolla Alta Master Council on December 8, 2003, in the Superior Court of the State of California, County of San Diego, Central Division, entitled La Jolla Alta Master Council v. The City of San Diego; and Does 1 through 20, inclusive, Case Number GIC 822281;

1.2 "Agreement": The term "Agreement" means this "Settlement Agreement and Limited Release;"

1.3 "Canyon": The term "Canyon" means both the "Lower Canyon" or "Lot 1" defined as that portion of the La Jolla Alta Canyon that is bounded at the north by Alta La Jolla Drive and at the south by the cul-de-sac at Vickie Drive in La Jolla, California, also known as Pueblo Lot 1780, Lot 1 of P.R.D. Unit 15, depicted on Map No. 12751, and which is owned by the Council (defined below in section 1.8); and the "Upper Canyon" defined as that portion of the La Jolla Alta Canyon which lies north of Alta La Jolla Drive, which the Council owns, also known as Lot 15 of La Jolla Alta P.R.D. Unit No. 6, depicted on Map No. 85281; as Lot 16 of La Jolla Alta P.R.D. Unit 6, depicted on Map No. 8528; and as Lot 25 of La Jolla Alta P.R.D. Unit Nos. 9 and 10, depicted on Map 8948. Throughout this document terms "Lower Canyon" and "Lot 1" may be used interchangeably;

1.4 "City": The term "City" means the City of San Diego;

1.5 "Complaint": The term "Complaint" means the Second Amended Complaint for Inverse Condemnation, Declaratory Relief and Injunctive Relief dated April 11, 2005;

1.6 "Completion of the Phase I Work": The term "Completion of the Phase I Work" means the date of approval by the City of the as-built plans and the date the City is provided with the as-graded soils report for the Phase I work (defined below in section 1.15) or thirty (30) days from the submission of said plans and report, whichever occurs first. The thirty (30) day period will be tolled while the Resident Engineer satisfactorily responds to any questions or completes any requirements initiated by the City during its review process.

1.7 “Completion of the Phase II Work”: The term “Completion of the Phase II Work” means the date on which the Phase II Work (defined below in section 1.16) is completed by the City and determined to be in compliance with the requirements of any county, state or federal agency or department with jurisdiction over the work;

1.8 “Council”: The term “Council” means the La Jolla Alta Master Council, a mutual benefit non-profit corporation;

1.9 “Court”: The term “Court” means the Superior Court of the State of California, County of San Diego;

1.10 “Easement”: The term “Easement” means an exclusive permanent or temporary right of way to reasonably use real property and/or the restriction of such use in the Canyon granted by the Council and accepted by the City, and thereafter recorded, for the purposes of safely operating and reasonably maintaining a Storm Drain System (defined below in section 1.13) in the Canyon. The easements described in this section are in addition to the already existing recorded permanent drainage easements owned by the City in the Canyon. The temporary easement described below will remain in effect until replaced by a permanent easement subject to the covenants described below and at Sections 3.3, *et seq.*;

1.10.1 Temporary Exclusive Drainage Easement in Lot 1: Upon completion of the Phase I Work, the Council shall grant and the City shall accept and thereafter record, the temporary exclusive drainage easement in Lot 1 (in the form attached hereto as Exhibit A), which is incorporated herein;

1.10.2 Temporary Exclusive Open Channel Drainage Easement in Upper Canyon: Upon execution of this Agreement, the Council shall grant and the City shall accept and promptly record, the temporary exclusive open channel drainage easement in the form and to the dimensions set forth in Exhibit B, which is incorporated herein, consisting of an unimproved open storm drain channel plus 20 feet in width on either side. The purpose of this easement, in addition to the general purpose described above in section 1.10 is to identify the boundaries of the existing open unimproved drainage channel (defined below in section 1.20) in the Upper Canyon which is used and expanded by the operation of the Storm Drain System (defined below in section 1.13). The City may improve this channel as part of a permanent repair in the future at its sole discretion;

1.10.3 Permanent Exclusive Drainage Easement in Lot 1: Not later than ninety (90) days after the earlier of the first business day in January, 2011 or completion of the Phase II Work, the City shall provide the Council with a proposed Permanent Exclusive Drainage Easement over Lot 1 in the form set forth in Exhibit C which is incorporated herein. The easement will include an accurate legal description of the proposed permanent easement area and will comply with the conditions of section 3.3.1 and 3.3.2. If applicable, the dimensions of the permanent exclusive drainage easement in

Lot 1 shall be based, in part, on the completed Phase II Work, a drainage study and water surface evaluation calculation performed by the City (or by an engineer of its selection) at the City's expense, and which conforms to the then-current City Design Drainage Manual. The intended purpose of this provision is that the permanent drainage easement acquired by the City for the Lower Canyon shall not be larger than that which is reasonably necessary to maintain the Storm Drain System in the Lower Canyon. If the City does not prepare and submit the permanent drainage easement to the Council in the time period set forth in this paragraph, then the Temporary Exclusive Drainage Easement in Lot 1 shall become the Permanent Exclusive Drainage Easement in Lot 1 of the same size and specifications;

1.10.4 Permanent Exclusive Drainage Easement in Upper Canyon: Not later than ninety (90) days after the first business day in January, 2011, the City shall provide the Council with the permanent exclusive drainage easement (in the form attached hereto as Exhibit D) which is incorporated herein. The easement will include an accurate legal description of the proposed permanent easement area and will comply with the conditions of sections 3.3.1 and 3.3.2. If applicable, the dimensions of the permanent drainage easement in the Upper Canyon shall be based, in part, upon the improvements made or to be made, if any, to the existing open channel, a drainage study and water surface evaluation calculation performed by the City (or by an engineer of its selection) at the City's expense, which conforms to the then-current City Design Drainage Manual. The intended purpose of this provision is that the permanent drainage easement acquired by the City for the Upper Canyon shall not be larger than that which is reasonably necessary to maintain the Storm Drain System in the Upper Canyon. If the City does not prepare and submit the permanent exclusive drainage easement to the Council as required by this paragraph, then the Temporary Exclusive Open Channel Drainage Easement in the Upper Canyon shall become the Permanent Exclusive Open Channel Drainage Easement in the Upper Canyon of the same size and specifications;

1.11 "Execution of this Agreement": The term "Execution of this Agreement" means the date on which this Agreement is signed by the President and Treasurer of the Board of Directors of the Council and the City identified person in the Notices Section of this Agreement;

1.12 "Interim Maintenance Period": The term "Interim Maintenance Period" means the period commencing upon the Completion of the Phase I Work and ending upon the Completion of the Phase II work;

1.13 "Storm Drain System": The term "Storm Drain System" or "System" means the drainage system operated by the City that discharges storm waters into the Canyon at various locations by way of various received drainage easements and discharges waters out of the Canyon at Vickie Drive. The City created and operates the Storm Drainage System, which incorporates the Canyon and the easement areas described in section 1.10 et. seq. as an integral part. The System includes public streets,

sidewalks, culverts, pipes, and improved and unimproved open channels that collect and direct storm water to the Canyon at several locations within the Upper and Lower Canyon. The System funnels storm waters under and around Alta La Jolla Drive and into Lot 1. The City owns permanent drainage easements in the Canyon which end at the discharge points of its pipes, which include City approved energy dissipaters. Those easements join the new easements described in Section 1.10 above;

1.14 "Maintenance": The term "Maintenance" or "maintain" or "maintaining" (whether capitalized or not) means the provision of all services, labor and materials reasonably necessary to maintain, restore, and repair the structural and operational integrity of the Phase I Work during the Interim Maintenance Period, the Phase II Work following Completion of the Phase II Work and also includes the provision of all services, labor and materials reasonably necessary to repair, restore, and maintain the Storm Drain System. The term "Maintenance" or "maintain" also includes the maintenance of any vegetation required to be planted in Lot 1 as a condition of the SDP (defined below in section 1.18) or as required by any county, state or federal department or agency with jurisdiction over the work for the Vegetation Maintenance Period (as defined in section 1.19) but only for the period set forth in section 1.19;

1.15 "Phase I Work": The term "Phase I Work" means the emergency repairs to the damage in Lot 1 of the Canyon performed pursuant to the City-approved Grading Plans for Phase I (Emergency) Alta La Jolla Restoration, Lot 1, Map No. 12751, Sheets 34452-1-D through 7-D, dated August 22, 2007 (attached hereto as Exhibit E) and pursuant to Municipal Code section 143.0126 (attached hereto as Exhibit F) prepared by Land Design Consultants and approved by the City on August 30, 2007, as well as any Change Orders and other amendments thereto, and which is being performed by Nautilus General Contractors, Inc., pursuant to a written contract between the Council, as owner, and Nautilus General Contractors, Inc., as general contractor, dated September 2007, a copy of which is attached as Exhibit G to this Agreement;

1.16 "Phase II Work": The term "Phase II Work" means the permanent repairs or restoration in Lot 1 of the Canyon that will be the subject of an SDP application filed by the City and will be performed following completion of the Phase I Work. The Phase II Work includes obtaining all necessary permits, investigations, design and construction of all aspects of the permanent repairs, as well as any mitigation measures required by the City or any county, state or federal department or agency including, but not limited to, the California Department of Fish & Game, California Regional Water Quality Control Board, and United States Army Corps of Engineers;

1.17 "Mitigation Measures": The term "mitigation measures" includes, for example, (a) planting and maintenance of vegetation, (b) construction of improvements, (c) maintenance of such improvements, and/or (d) the purchase of real property and any other acts that may be required by the City or any county, state or federal department or agency including, but not limited to, the California Department of Fish & Game,

California Regional Water Quality Control Board, and United States Army Corps of Engineers as a result of the Phase I Work or Phase II Work;

1.18 "SDP": The term "SDP" means a Site Development Permit issued by the City to perform the Phase II Work in Lot 1; and

1.19 "Vegetation Maintenance Period": The term "Vegetation Maintenance Period" means the period commencing upon planting any vegetation in the Canyon pursuant to any mitigation or maintenance requirements of the City or any county, state or federal agency or department and shall continue for a period of one (1) year thereafter or for such other period as may be required by any city, county, state or federal agency or department;

1.20 "Unimproved Open Drainage Channel": The City is operating the System in the Upper Canyon using an unimproved open drainage channel to transport storm waters from the outfall of pipes upstream to culvert inlets downstream. The channel changes dimensions following storm events.

2 RECITALS

2.1 WHEREAS, the Council is the owner of the Canyon;

2.2 WHEREAS, the Council commenced the Action against the City alleging claims against the City as a result of the failure of the City to reasonably operate the Storm Drain System resulting in damage in Lot 1 of the Canyon;

2.3 WHEREAS, the Complaint alleges claims against the City for damage in Lot 1 of the Canyon for inverse condemnation, and for declaratory relief regarding the City's duty to maintain and repair damages caused by the City's operation of the Storm Drain System in Lot 1;

2.4 WHEREAS, the Complaint also alleges claims against the City for declaratory relief regarding the City's duty to maintain and repair damages caused by the City's operation of the Storm Drain System in the Upper Canyon;

2.5 WHEREAS, the City denied, and continues to deny, liability to the Council for the damage in the Canyon;

2.6 WHEREAS, trial of the Council's claims against the City was bifurcated into separate phases for determining liability and damages;

2.7 WHEREAS, trial of liability issues commenced on or about November 14, 2006, and concluded on or about December 4, 2006, with post-trial briefs accepted by the Court up to December 29, 2006;

- 2.8 WHEREAS, the Council dismissed from the Action its claims sounding in injunctive relief without prejudice;
- 2.9 WHEREAS, the Court, in a written Statement of Decision filed on April 27, 2007, found the City liable to the Council under theories of inverse condemnation and declaratory relief for damage in the Canyon. A true and correct copy of the Statement of Decision is attached as Exhibit G to this Agreement;
- 2.10 WHEREAS, trial of the damages phase commenced on October 15, 2007, with a mistrial declared on October 29, 2007, because of wildfires in San Diego County that resulted in closure of the courthouse from October 22 through 26, 2007; and
- 2.11 WHEREAS, the Council and the City participated in a judicial settlement conference before the Honorable Linda B. Quinn on October 18, 2007 and a mediation before Steven Kruis on November 14, 2007;
- 2.12 NOW THEREFORE, the Council and the City desire to resolve the Action without further litigation proceedings and do hereby agree to resolve the Action as follows:

3 AGREEMENTS AND COVENANTS

- 3.1 Dismissal, Payments and Basic Obligations: Upon execution of this Agreement, and its approval by the City Council, the Council shall dismiss the Action with prejudice. In consideration for a dismissal of the Action, with prejudice, and the other agreements and covenants set forth herein, the City shall pay to the Council the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) in two installments as follows: (a) the sum of One Million Dollars (\$1,000,000.00) shall be paid on or before February 7, 2008; and (b) the sum of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) shall be paid on or before March 15, 2008; and the City hereby waives any right to appeal and shall perform the Interim Maintenance, the Phase II Work, and the Maintenance as described herein and comply with the other agreements and covenants set forth herein;
- 3.2 Phase I Work: The Council shall remain solely responsible for the Phase I Work, and assumes all liabilities therefor and resulting therefrom, until Completion of the Phase I Work. Upon completion of the Phase I Work, per section 1.6, the City Engineer, or his designated Deputy City Engineer shall be substituted as the "Resident Engineer" or engineer of work for the Phase I Work. Upon completion of the Phase I Work and delivery to the City of the Temporary Exclusive Drainage Easements, the City shall maintain the Phase I Work during

the Interim Maintenance Period. The Council has provided herewith written evidence that the City is named as an additional insured on all insurance policies pertaining to the Phase I Work for Nautilus General Contractors, and is attached hereto as Exhibit I. In addition, the Council hereby assigns to the City the indemnity, hold harmless, and defense provisions of each of the Council's contracts with Nautilus General Contractors and Land Design Consultants, and hereby assigns paragraphs 13 through 16 of the Standard Work Agreement between the Council and GEI. The Council also hereby assigns to the City all rights, if any, that the Council has as against the hydro seed subcontractor for the Phase I Work. The Council shall obtain written consents, if necessary, to such assignment from Nautilus General Contractors, GEI and Land Design Consultants. As between the Council and the City, the City shall be responsible for the Phase I improvements but shall stand in the Council's shoes by acquiring all rights the Council has against Nautilus General Contractors, GEI, and Land Design Consultants as concerns the investigation, design and construction of the Phase I Work. True and correct copies of the contracts entered into between the Council and Nautilus General Contractors, Land Design Consultants, and GEI, respectively, are attached hereto as Exhibits G, J, and K.

3.3 Maintenance of the Storm Drainage Easements: The City shall be responsible for the Maintenance of all areas within all the storm drainage easements it holds in the Canyon. Nothing in this Agreement shall be construed to alter the Parties' rights and obligations pursuant to the Negative Open Space Easement in Lot 1 (attached hereto as Exhibit L) and which is incorporated herein;

3.3.1 Reduction in Size of Temporary Exclusive Drainage Easements in the Canyon: The temporary exclusive drainage easement in Lot 1 (Exhibit A) and the temporary exclusive open channel drainage easement in the Upper Canyon (exhibit B) may be reduced in size at the sole expense of the City and only by use of the easement forms attached as Exhibit C and D, respectively. The acceptable dimensions of these easements however will depend upon the nature and extent of the permanent repairs made by the City in the Canyon and the reasonable maintenance requirements of the City's adopted design. The size of the permanent exclusive drainage easement in Lot 1 (Exhibit C) may be smaller than the temporary exclusive drainage easement in Lot 1 (Exhibit A) provided the permanent easement area reserved is sufficient to allow for on-going maintenance by the City of the System in Lot 1 without damage to the fee. Similarly, the size of the permanent exclusive drainage easement in the Upper Canyon (Exhibit D) may be smaller than the temporary exclusive open channel drainage easement in the Upper Canyon (Exhibit B) provided the permanent easement area reserved is sufficient to allow for on-going

maintenance by the City of the System in the Upper Canyon without damage to the fee. If these conditions and the conditions in section 3.3.2 are met, the Council will promptly grant and the City will accept and record the permanent easements (Exhibits C and D) that will include a legal description provided at the City's expense and which is plotted based on the same maps and datum points used to plot the respective temporary easements. These permanent easements will include a quitclaim of the temporary exclusive drainage easements in the Canyon thereby dissolving them. The City's right to propose a reduced permanent easement in Lot 1 is not dependent upon improvements to the Upper Canyon;

3.3.2 Repairs to the Canyon Area Formerly Included Within Temporary Easement Upon Conversion to Permanent Easement: Prior to conversion of the Temporary Easements to Permanent Easements, the City, at its sole expense, will repair any damage to the fee and remove any dangerous condition, within the Temporary Easement boundaries that will be excluded from the boundaries of the Permanent Easements caused by the Phase II Work in Lot 1 or the operation of the Storm Drain System in the Canyon.

3.4 Substitution of Responsible Party: Upon execution of this Agreement and upon receipt by the City of payment of all charges due and owing as of January 15, 2008 on Job Order Account number 42-7767, the City will substitute in as applicant of the Council's SDP by filing a "Change in Responsible Party" form signed and notarized by both parties (attached hereto as Exhibit M). The Council represents that it will supply to the City all consents, and authorizations reasonably necessary to enable the City to file the SDP application for the Phase II Work and to obtain the issuance of an SDP for the Phase II Work;

3.5 Delivery of Investigative Materials: The Council has authorized and the Council's consultants referenced below have agreed to deliver, or cause to be delivered, to the City's representative designated in the Notices section of this Agreement, at the City's expense and upon its payment, legible copies of all geotechnical, geology, vegetation, biological, environmental, hydraulic and hydrology work performed by GEI, Rivertec Engineering, and Land Design Consultants, and any subcontractor or independent contractor thereof in connection with the SDP application by the Council, the Phase I Work, and the Phase II Work based on the design by Land Design Consultants, as well as all calculations (including, but not limited to, slope stability and hydrology) bearing on conditions existing prior to commencement of the Phase I Work, during construction of the Phase I Work, prepared in connection with the design of the

Phase I Work (including upon completion of the Phase I Work), and prepared in connection with the design for the Phase II Work by Land Design Consultants;

3.6 Delivery of Applications: The Council has authorized and the Council's consultants referenced below have agreed to deliver, or cause to be delivered, to the City's representative designated in the Notices section of this Agreement, at the City's expense and upon its payment, a copy of all permit and other applications to any City, county, state or federal department or agency, as well as legible and complete copies of all correspondence, email and deliverables to or from any such department or agency, including but not limited to the California Department of Fish & Game, California Regional Water Quality Control Board, and United States Army Corps of Engineers, that pertain to the Phase I Work, the SDP or the design of the Phase II work by Land Design Consultants. This includes all correspondence, email and other deliverables exchanged between any City, county, state or federal agency or department and any of the Council's agents, including, but not limited to, Land Design Consultants, Rivertec Engineers, and GEI;

3.7 Phase II Work: The City will design and construct the Phase II Work, shall substitute for the Council as the permittee on the permit granted by the Army Corps of Engineers, and, shall be responsible for accomplishing all acts necessary to obtain approval of the SDP, including any approvals required by any City, county, state or federal agency and department, including but not limited to the California Department of Fish & Game, the California Regional Water Quality Control Board, and the United States Army Corps of Engineers. The City shall have the right, at its sole discretion, to select the appropriate design for the Phase II Work, to select the design professionals to design the Phase II Work and perform any services reasonably necessary to obtain the SDP, and to select the general contractor to perform the Phase II Work and will be solely responsible for its action or failures to act in that regard. The Council expressly acknowledges and agrees that the City shall not be required to accept or construct the Phase II design prepared by Land Design Consultants and further represents that it has no expectation that the City will construct the Phase II design prepared by Land Design Consultants. The Council has not obligated either itself or the City, in communications with any county, state or federal department or agency, to construct the Phase II design prepared by Land Design Consultants;

However, the City acknowledges and agrees that upon completion of the Phase I Work the City will notify the regulatory agencies described above that it has substituted in place of the Council as responsible party for the completion of the Phase II Work and as permittee on permits granted by those agencies prior to the completion of the Phase I Work and will provide the

Council with a copy of all such notices at the Council's expense;

In addition, the City acknowledges and agrees that it will be solely responsible for all fines or penalties, levied by any of the above regulatory agencies, arising out of the Phase II Work or failure to complete that work, and will defend, indemnify and hold the Council, as owner, harmless from any liability to the above agencies arising out of the Phase II Work or the City's elections in making permanent repairs in Lot 1;

3.8 Indemnity: The City shall make available for review and copying at the Council's expense, to the Council's representative designated in the Notices section of this Agreement, a copy of each contract between the City and any outside design professional and general contractor who is participating in the Phase II Work or SDP and further represents and warrants that each such contract will contain an indemnity, hold harmless and defense provision that complies with the City's requirements, including minimum insurance requirements, and that said provisions will run in favor equally of the City and of the Council. In addition, the City represents and warrants that each outside design professional and general contractor with which the City contracts to perform services in connection with the Phase II Work or SDP shall name the Council as an additional insured on its general liability policy to the same extent that the City is named an additional insured. The City shall promptly provide copies of all additional insured endorsements to the Council's representative designated in the Notices section of this Agreement;

3.9 Maintenance of the Phase II Work: The City shall be required to maintain the Phase II work in accordance with section 1.14, above. The Council represents and agrees that it will provide any authorization, consent, access or other documentation that is reasonably necessary for the City to perform any Maintenance required by this subsection that have not already been provided by pre-existing easements or the easements accepted as part of this Agreement

3.9.1 Maintenance of the Open Channel in the Upper Canyon: The City shall be required to maintain the unimproved open drainage channel described within the boundaries of Exhibit B as described in section 1.14;

3.10 Maintenance of Vegetation: The City shall be required to plant and maintain any vegetation required pursuant to any mitigation measure imposed by any City, county, state or federal agency or department in connection with the Phase II Work or the SDP during any required Vegetation Maintenance Period as defined in Section 1.19 above;

- 3.11 Each Party to Bear Own Fees, Costs and Expenses: The Council and the City hereby represent and agree that, except for the payments referenced in section 3.1 above, each party shall bear its own attorneys' fees, costs and expenses in connection with this Agreement and the Action, that neither party shall be deemed a "prevailing party" for purposes of attorney's fees, costs or expenses in connection with the Action, and that the payments set forth above in section 3.1 constitute a full accord and satisfaction of any claim or right to payment, damages or reimbursement for the Phase I Work and any claim the Council, or any of its attorneys, has or may have against the City for attorneys' fees, costs and/or expenses arising out of or in connection with the Action or pursuant to any contract or statute that applies to the Action;
- 3.12 Disputes Arising Out of Agreement: The Superior Court of the City and County of San Diego, by and through the Hon. Linda B. Quinn shall retain jurisdiction to address and resolve any and all disputes arising out of this Agreement or the City's operation of the System or any part thereof before completion of the Phase I Work. The Parties retain all rights they may have arising out of any disputes regarding the performance of this Agreement or otherwise;
- 3.13 Attorneys' Fees in the Event of Dispute: In the event of a dispute arising out of, or in connection with, this Agreement, the prevailing party in a civil proceeding shall be entitled to recover its reasonable attorneys' fees as an item of costs;
- 3.14 Governing Law: This Agreement shall be governed by, interpreted, construed and enforced according to the laws of the State of California;
- 3.15 Entire Agreement: This Agreement and Exhibits hereto constitutes the entire agreement between the Council and the City pertaining to the Action and the Canyon, as well as any other subject contained herein, and fully supersedes and supplants any and all prior negotiations, understandings, agreements, statements, representations, warranties, and promises, whether written or oral;
- 3.16 No Amendment Except in Writing: The Council and the City represent and agree that this Agreement cannot be amended or modified except in a writing that is signed by the party to be charged. This means, for example, that this Agreement cannot be amended or modified orally or by conduct. The Council and the City each hereby represent and agree that neither of them will make any claim or assertion, at any time or place, that this Agreement has been modified or amended orally or by a party's conduct;

- 3.17 No Assignment: The Parties represent and warrant that they have not made, and will not make in the future, an assignment of any of their respective rights or obligations under this Agreement;
- 3.18 Neutral Construction: The Council and the City, as well as their respective attorneys, each contributed to and participated in the drafting of this Agreement. The Council and the City represent and agree that Civil Code section 1654 shall not apply concerning any dispute over the terms of this Agreement or their construction or interpretation;
- 3.19 Severability: If for any reason any provision of this Agreement is declared to be invalid or unenforceable, the Council and the City hereby agree that the remaining provisions of this Agreement shall continue in full force and effect, and that this Agreement shall be construed as if the invalidated or unenforceable provision(s) had never been a part of this Agreement;
- 3.20 Further Assurances: The Council and the City each agree to promptly execute, provide or supply any information, authorizations or consents that may be reasonably required to achieve the purposes set forth in this Agreement;
- 3.21 Advice of Counsel: The Council and the City each represents and warrants that it and its duly qualified and authorized representatives have read this Agreement, has had it reviewed by counsel of its choice and that counsel has fully explained the provisions of this Agreement to them, that they understand the provisions of this Agreement, and that the Council and the City are signing this Agreement freely and voluntarily;
- 3.22 No Reliance on Other Party: The Council and the City, in entering into this Agreement, each expressly represents and agrees that it is not relying upon any representation, statement, covenant, agreement, promise or warranty, except as expressly contained in this Agreement, and that it has not relied upon any statement, comment, or representation by the other in deciding to enter into this Agreement or concerning the terms of this Agreement;
- 3.23 Signatories Duly Authorized: The Council represents that the Director signatories to this Agreement on its behalf has been duly authorized by the board of directors of the Council to sign this Agreement on its behalf and shall provide a copy of the minutes or resolution verifying the same to the City and which shall be appended as Exhibit 'N' to this Agreement. Likewise, the City represents that the signatory to this Agreement on its behalf has been duly authorized by the City Council to sign this Agreement on its behalf and shall provide a copy of the minutes or resolution verifying the same to the Council and which shall be appended as Exhibit 'O' to this Agreement;

3.24 City Council Approval: The City represents, warrants and agrees that the City Attorney's Office will execute this Agreement as to form on behalf of the City and promptly submit it to the San Diego City Council with the recommendation that the Agreement be promptly approved by the City Council. This Agreement will not be binding on any Party unless and until it is approved by the City Council;

3.25 Notices: The Council and the City, respectively, designate the following persons to execute and receive notices in connection with this Agreement:

For the Council:

John F. McGuire, Esq. (or his designee)
Thorsnes Bartolotta McGuire
2550 Fifth Avenue, 11th Floor
San Diego, CA 92103
Ph. (619) 236-9363
Fax. (619) 236-9653
mcguire@tbmlawyers.com

For the City:

Michael Aguirre, Esq. (or his designee)
Mia Severson, Esq. (or her designee)
Office of the City Attorney
1200 Third Avenue, Suite 1100
San Diego, CA 92101-4100
Ph. (619) 533-5800
Fax 619-533-5856
mseverson@sandiego.gov

The individuals named above may be changed or supplemented by unilateral amendment to this Section upon reasonable notice.

3.26 Counterparts: This Agreement may be executed in counterparts. However, this Agreement shall not be binding upon any party until it has been executed by both by the President of the Board of Directors of the Council and City, by the person in the Notices Section of this Agreement, and promptly thereafter approved by the City Council;

3.27 Duplicate Originals: There shall be two originals of this Agreement, with one received by the Council and the other received by the City.

3.28 Waiver: Voluntary written waiver of any condition precedent or condition subsequent contained herein shall be limited to that condition and shall not constitute a waiver of any other condition.

Signatures on the following page....

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date indicated.

LA JOLLA ALTA
MASTER COUNCIL

THE CITY OF SAN DIEGO

By: [Signature]
Its: President
Dated: February 6, 2008

By: [Signature]
Its: Chief Operating Officer
Dated: February 7, 2008

By: Maria Santacosta
Its: Treasurer
Dated: February 6, 2008

APPROVED AS TO FORM:

For the Council:

For the City:

John F. McGuire, Esq.
Attorney for the La Jolla Alta Master Council

[Signature]
Mia Severson, Esq.
Chief Deputy City Attorney

For CSAC Excess Insurance Authority

For AIG Domestic Claims, Inc.

Doug Taylor

Tim Owens

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date indicated.

LA JOLLA ALTA
MASTER COUNCIL

THE CITY OF SAN DIEGO

By: _____
Its: _____
Dated: February ___, 2008

By: _____
Its: _____
Dated: February ___, 2008

By: _____
Its: _____
Dated: February ___, 2008

APPROVED AS TO FORM:

For the Council:


For the City:

John F. McGuire, Esq.
Attorney for the La Jolla Alta Master Council

Mia Severson, Esq.
Chief Deputy City Attorney

For CSAC Excess Insurance Authority

For AIG Domestic Claims, Inc.



Doug Taylor

Tim Owens

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date indicated.

LA JOLLA ALTA
MASTER COUNCIL

THE CITY OF SAN DIEGO

By: _____
Its: _____
Dated: February __, 2008

By: _____
Its: _____
Dated: February __, 2008

By: _____
Its: _____
Dated: February __, 2008

APPROVED AS TO FORM:

For the Council:

For the City:


John F. McGuire, Esq.
Attorney for the La Jolla Alta Master Council

Mia Severson, Esq.
Chief Deputy City Attorney

For CSAC Excess Insurance Authority

For AIG Domestic Claims, Inc.

Doug Taylor



Tim Owens

La Jolla Alta Master Council vs. City of San Diego
Index to Exhibits to
Settlement Agreement and Limited Release

- A. Temporary Exclusive Drainage Easement in Lot 1
- B. Temporary Exclusive Open Channel Drainage Easement in Upper Canyon
- C. Permanent Exclusive Drainage Easement in Lot 1
- D. Permanent Exclusive Drainage Easement in Upper Canyon
- E. Phase I Emergency Grading Plans, approved August 30, 2007
- F. Municipal Code § 143.0126 for Emergency Grading in Environmentally Sensitive Land
- G. Contract for Phase I Emergency Repairs Between LJAMC and Nautilus Construction, dated September, 2007
- H. Statement of Decision dated April 27, 2007
- I. Certificate of Liability Insurance
- J. Contract for Phase I work Between Council and Land Design Consultants, dated May 15, 2007
- K. Contract for Phase I work Between Council and GEI, dated September 14, 2007
- L. Negative Open Space Easement
- M. Change of Responsible Party Form
- N. Minutes from Council re Duly Authorized Signatory
- O. Minutes from City re Duly Authorized Signatory

GRANT DEED -
TEMPORARY DRAINAGE EASEMENT IN LOT 1

For valuable consideration, receipt of which is hereby acknowledge, La Jolla Alta Master Council

HEREBY GRANTS to the City of San Diego, a municipal corporation in the County of San Diego, State of California, an exclusive temporary easement, and a right of way for access to construct, reconstruct, maintain, operate, and repair a storm drain system consisting of a partially improved drainage system and an unimproved storm drain open channel and related facilities including any or all appurtenances thereto, together with the right of ingress and egress, over, under, along and across all that real property situated in the City of San Diego, County of San Diego, State of California, described as follows:

[Legal Description Attached Hereto As Exhibit "A"]

Reserving unto the Grantor herein, its heirs, assigns, and members all rights and remedies it would otherwise have regarding its fee interest in the Canyon. The Grantee shall have the exclusive right within its easement to erect buildings, masonry walls, and other permanent structures, the planting, replanting or growing of trees; the changing of the surface grade; and the installation of other drainage structures and improvements.

La Jolla Alta Master Council

Dated _____

Grantor: _____

By: _____

This is to certify that the interest in real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego, pursuant to authority conferred by the Municipal Code, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

For the City Engineer or his Designee

By: _____

EXHIBIT "A"

STORM DRAINAGE SYSTEM LOWER CANYON EASEMENT
LEGAL DESCRIPTION

THAT PORTION OF LOT 1 OF LA JOLLA ALTA P.R.D. UNIT NO. 15, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 12751, FILED IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF SAN DIEGO, ON NOVEMBER 30, 1990, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 1; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT, NORTH 76°16'20" EAST 73.64 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID SOUTHERLY LINE, NORTH 05°45'15" WEST 130.22 FEET; THENCE NORTH 13°54'18" EAST 66.41 FEET; THENCE NORTH 02°34'01" EAST 133.49 FEET; THENCE NORTH 16°14'37" EAST 71.66 FEET; THENCE NORTH 11°16'08" EAST 57.88 FEET; THENCE NORTH 30°55'49" EAST 66.52 FEET; THENCE NORTH 08°37'31" EAST 78.36 FEET; THENCE NORTH 36°01'25" EAST 71.52 FEET; THENCE NORTH 45°34'48" EAST 113.98 FEET; THENCE NORTH 07°54'13" EAST 85.33 FEET; THENCE NORTH 04°58'00" WEST 67.12 FEET; THENCE NORTH 15°17'54" WEST 40.33 FEET; THENCE NORTH 42°15'33" EAST 123.19 FEET; THENCE NORTH 12°19'15" WEST 183.65 FEET; THENCE NORTH 48°14'06" WEST 36.88 FEET; THENCE NORTH 41°41'42" WEST 52.79 FEET; THENCE NORTH 19°49'07" EAST 12.36 FEET; THENCE NORTH 89°06'45" EAST 41.34 FEET; THENCE NORTH 10°20'18" WEST 179.62 FEET; THENCE NORTH 10°16'10" EAST 143.89; THENCE 07°23'02" EAST 155.53 FEET; THENCE 13°04'10" EAST 51.86 FEET; THENCE NORTH 32°39'15" WEST 33.45 FEET; THENCE NORTH 01°08'03" WEST 36.28 FEET; THENCE NORTH 29°11'52" WEST 15.96 FEET; THENCE NORTH 15°44'56" EAST 73.50 FEET; THENCE NORTH 60°51'52" EAST 19.84 FEET; THENCE NORTH 15°31'03" EAST 70.07 FEET; THENCE NORTH 05°51'01" EAST 71.08 FEET; THENCE NORTH 67°37'50" EAST 16.40 FEET; THENCE SOUTH 40°46'39" EAST 54.73 FEET; THENCE SOUTH 18°10'26" EAST 55.10 FEET; THENCE SOUTH 09°11'25" EAST 41.44 FEET; THENCE SOUTH 27°13'14" EAST 66.35 FEET; THENCE SOUTH 02°45'25" EAST 34.14 FEET; THENCE SOUTH 50°29'03" EAST 30.60 FEET; THENCE SOUTH 00°09'20" EAST 11.78 FEET; THENCE SOUTH 31°11'18" WEST 23.23 FEET; THENCE SOUTH 11°30'26" WEST 29.12 FEET; THENCE SOUTH 75°48'09" WEST 11.50 FEET; THENCE 39°29'12" WEST 30.60 FEET; THENCE SOUTH 18°02'05" WEST 71.47 FEET; THENCE SOUTH 02°51'45" WEST 59.24 FEET; THENCE SOUTH 08°39'36" EAST 39.81 FEET; THENCE SOUTH 06°14'28" EAST 70.15 FEET; THENCE SOUTH 01°27'24" EAST 27.29 FEET; THENCE SOUTH 16°07'31" EAST 75.46 FEET; THENCE SOUTH 10°18'47" EAST 79.24 FEET; THENCE SOUTH 00°09'20" EAST 21.70 FEET; THENCE SOUTH 19°00'51" EAST 30.20 FEET; THENCE SOUTH 08°18'27" EAST 96.15 FEET; THENCE SOUTH 11°14'41" EAST 72.55 FEET; THENCE SOUTH 03°02'51" EAST 85.99 FEET; THENCE SOUTH 15°26'02" WEST 91.09 FEET;

EXHIBIT "A"

STORM DRAINAGE SYSTEM LOWER CANYON EASEMENT
LEGAL DESCRIPTION

THENCE SOUTH 14°27'21" WEST 222.57 FEET; THENCE SOUTH 38°40'28" WEST 98.47 FEET; THENCE SOUTH 01°12'05" EAST 67.91 FEET; THENCE SOUTH 27°57'20" WEST 250.78 FEET; THENCE SOUTH 33°01'02" WEST 102.10 FEET; THENCE SOUTH 21°56'37" WEST 42.83 FEET; THENCE SOUTH 00°33'05" WEST 75.34 FEET; THENCE SOUTH 10°25'39" EAST 57.34 FEET; THENCE SOUTH 48°24'16" EAST 33.23 FEET; THENCE SOUTH 09°55'26" EAST 59.27 FEET TO SAID SOUTHERLY LINE OF LOT 1; THENCE ALONG SAID SOUTHERLY LINE, SOUTH 76°16'20" WEST 129.85 FEET TO THE **TRUE POINT OF BEGINNING.**

SEE EXHIBIT EASEMENT PLAT, ATTACHED HERETO AS SHEETS 3, 4 AND 5 OF 5, AND MADE A PART HEREOF.

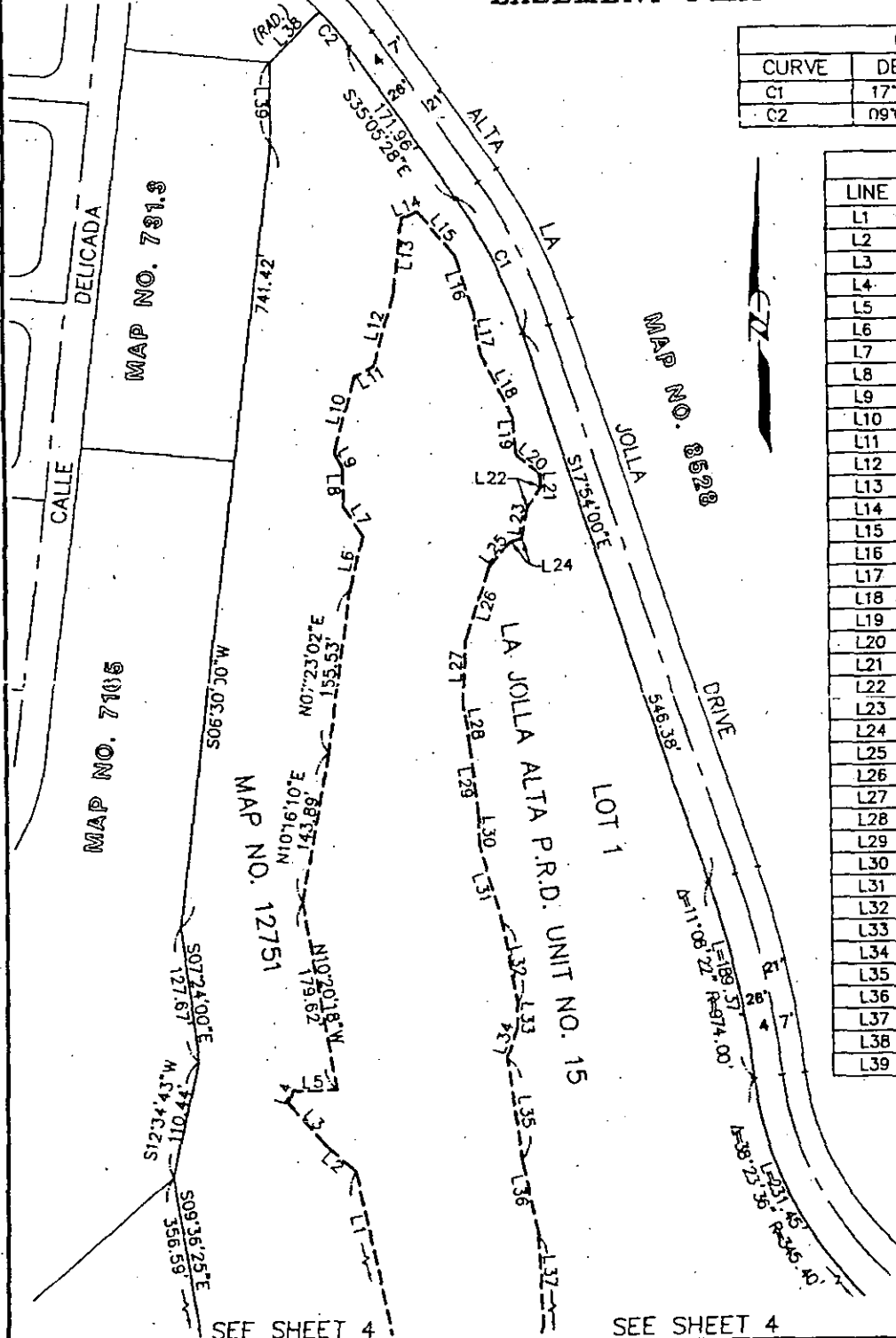
ROBERT R. SIMS, R.C.E. 21649
LICENSE EXPIRES: 9-30-09

Dated: _____

SCALE: 1"=150'

EASEMENT PLAT

SHEET 5 OF 5 SHEETS



CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	171°1'28"	474.00'	142.22'
C2	09°02'39"	274.00'	43.25'

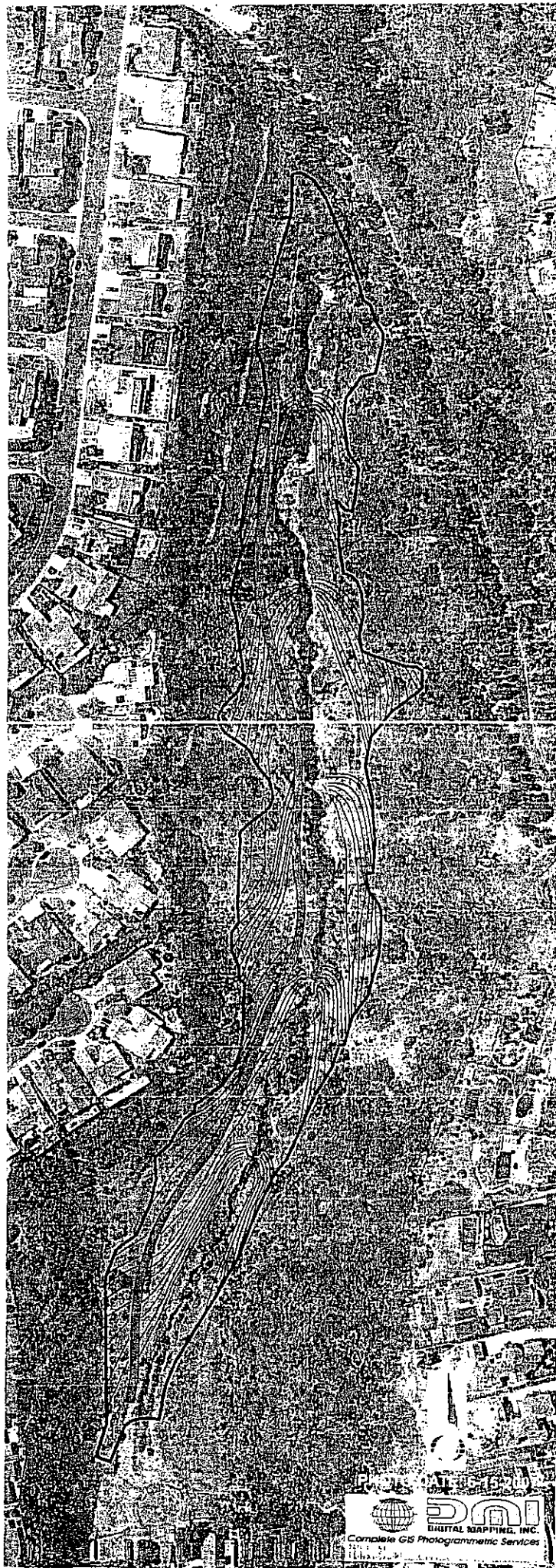
LINE TABLE		
LINE	BEARING	LENGTH
L1	N12°19'15"W	183.65'
L2	N48°14'06"W	36.88'
L3	N41°41'42"W	52.79'
L4	N19°49'07"E	12.36'
L5	N89°06'45"E	41.34'
L6	N13°04'10"E	51.86'
L7	N32°39'15"W	33.45'
L8	N01°08'03"W	36.28'
L9	N29°11'52"W	15.96'
L10	N15°44'56"E	73.50'
L11	N60°51'52"E	19.84'
L12	N15°31'03"E	70.07'
L13	N05°51'01"E	71.08'
L14	N67°37'50"E	16.40'
L15	S40°46'39"E	54.73'
L16	S18°10'26"E	55.10'
L17	S09°11'25"E	41.44'
L18	S27°13'14"E	66.35'
L19	S02°45'25"E	34.14'
L20	S50°29'03"E	30.60'
L21	S00°09'20"E	11.78'
L22	S31°11'18"W	23.23'
L23	S11°30'26"W	29.12'
L24	S75°48'09"W	11.50'
L25	S39°29'12"W	30.60'
L26	S18°02'05"W	71.47'
L27	S02°51'45"W	58.24'
L28	S08°39'36"E	39.81'
L29	S06°14'28"E	70.15'
L30	S01°27'24"E	27.29'
L31	S16°07'31"E	75.46'
L32	S10°18'47"E	79.24'
L33	S00°09'20"E	21.70'
L34	S19°00'51"W	30.20'
L35	S08°18'27"E	96.15'
L36	S11°14'41"E	72.55'
L37	S03°02'51"E	85.99'
L38	N45°51'53"E	66.96'
L39	S00°11'42"E	74.51'

PREPARED BY:
 LAND DESIGN CONSULTANTS, INC.
 199 SOUTH LOS ROBLES AVENUE, SUITE 250
 PASADENA, CALIFORNIA 91101
 (626) 578-7000

STORM DRAINAGE SYSTEM
 LOWER CANYON
 EASEMENT AREA

3/10/04 12:00 PM 12/18/07 10:12:19 AM

000358



PROFESSIONAL SURVEYING
DIGITAL MAPPING, INC.
Complete GIS Photogrammetric Services

**GRANT DEED -
TEMPORARY DRAINAGE EASEMENT
IN THE UPPER CANYON**

For valuable consideration, receipt of which is hereby acknowledge, La Jolla Alta Master Council

HEREBY GRANTS to the City of San Diego, a municipal corporation in the County of San Diego, State of California, an exclusive temporary easement, and a right of way for access to construct, reconstruct, maintain, operate, and repair a storm drain system consisting of a partially improved drainage system and an unimproved storm drain open channel plus twenty (20) feet in width on either side, together with the right of ingress and egress, over, under, along and across all that real property situated in the City of San Diego, County of San Diego, State of California, described as follows:

[Legal Description to be Provided by LJAMC]

Reserving unto the Grantor herein, its heirs, assigns, and members all rights and remedies it would otherwise have regarding its fee interest in the Canyon. The Grantee shall have the exclusive right within its easement to erect buildings, masonry walls, and other permanent structures, the planting, replanting or growing of trees; the changing of the surface grade; and the installation of other drainage structures and improvements.

La Jolla Alta Master Council

Dated _____

Grantor: _____

By: _____

This is to certify that the interest in real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego, pursuant to authority conferred by the Municipal Code, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

For the City Engineer or his Designee

By: _____

LEGAL DESCRIPTION

All the records and property situated in the vicinity of the City of San Diego, State of California, described as follows:

LOT 14 of LA JOLLA ALTA P.R.D. Unit No. 6 in the City of San Diego, State of California, according to map thereof No. 8128 filed in the office of the County recorder of San Diego County, on April 9, 1977.

Said legal description was recorded by Certification of Corrections recorded October 26, 1978 as Instrument No. 79-428412 of Official Records.

Resurvey boundaries of adjacent, Old, Old and other subdivisions shown on this plan a copy of which may be obtained from the office of the City Engineer at the City of San Diego.

EASEMENT

An easement in favor of the public over any existing road (not shown) and (not shown).

An easement for the purpose shown herein and right incidental thereto as set forth in a Declaration.

Created by: City of San Diego, a Municipal Corporation.
Project: A New Area of Public
Recorded: Jan. 21, 1978 as Instrument No. 8458

An easement for the purpose shown herein and right incidental thereto as shown on or as affected by subdivision as described on a plan or map filed in the office of the County recorder of San Diego County, California.

Created by: The public, California and California Co.
Project: A New Area of Public
Recorded: Nov. 21, 1977 as Instrument No. 77-48894

An easement for the purpose shown herein and right incidental thereto as shown on or as affected by subdivision as described on a plan or map filed in the office of the County recorder of San Diego County, California.

Created by: A New Area of Public
Project: A New Area of Public
Recorded: Jan. 1, 1977 as Instrument No. 77-13428

An easement for the purpose shown herein and right incidental thereto as shown on or as affected by subdivision as described on a plan or map filed in the office of the County recorder of San Diego County, California.

SURVEY MAPS

THE BASIS OF RECORDS FOR THIS SURVEY IS THE GROUND PLAN OF THE CALIFORNIA STATE PLANNING COMMISSION (1962) (S.M.P.) ESTABLISHED FROM OBSERVATIONS ON PHOTOGRAPHS OF AERIAL PHOTOGRAPHS. THE BOUNDARY BETWEEN LOT 14 & S.E. 1/4 OF LOT 15, MAP NO. 17728, ARE TO BE ROTATED CLOCKWISE 0.0071° TO MATCH THE GROUND PLAN SURVEY.

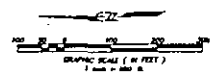
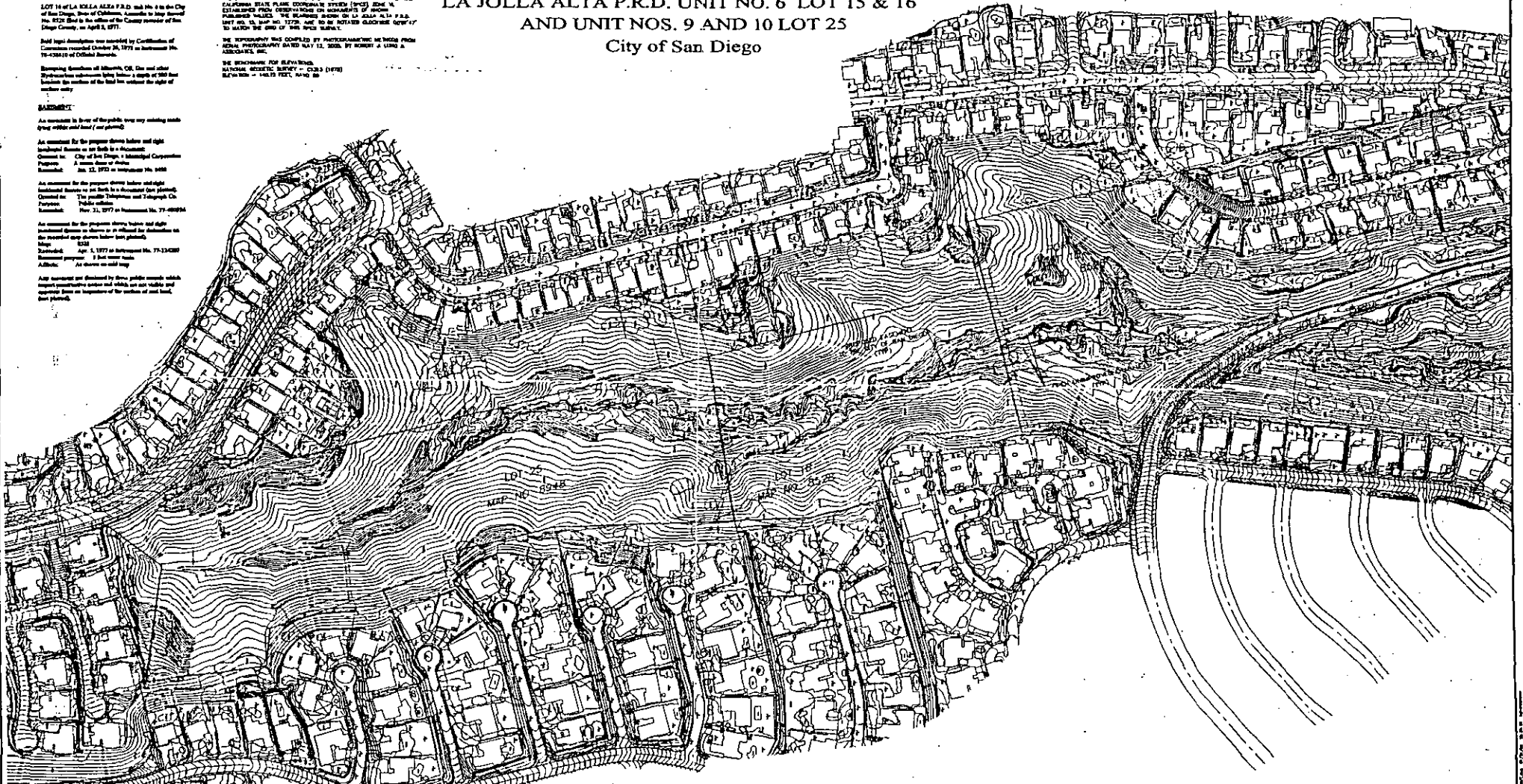
THE PHOTOGRAPHY WAS OBTAINED BY PHOTOGRAMMETRIC METHODS FROM AERIAL PHOTOGRAMMETRY BASED ON 11, 2005, BY ROBERT A. LONG, A SURVEYOR, INC.

THE BOUNDARY FOR SURVEYING: NATIONAL GEODETIC SURVEY - (1243) (1978) SURVEYING - 14675 FEET, 14100 00

PROPOSED EASEMENT EXHIBIT

LA JOLLA ALTA P.R.D. UNIT NO. 6 LOT 15 & 16 AND UNIT NOS. 9 AND 10 LOT 25

City of San Diego



LDC LAND DESIGN CONSULTANTS INC.
 Land Planning, Civil Engineering, Surveying & Environmental Services
 189 South Low Roadway Avenue, Suite 200, Pasadena, CA 91101
 Ph. (826) 578-7000 Fax: (826) 578-7373

La Jolla Alta Master Council
 1320 Camino Arista
 La Jolla, California 92037

PROJECT NO. 85035-001

DESIGNED BY	DATE	SCALE	APPROVED BY	PH. NO.	SHEET	OF
	Jan 21, 2008	1" = 100'	C.C.			

000360

GRANT DEED -
PERMANENT DRAINAGE EASEMENT IN LOT 1

For valuable consideration, receipt of which is hereby acknowledge, La Jolla Alta Master Council.

HEREBY GRANTS to the City of San Diego, a municipal corporation in the County of San Diego, State of California, an exclusive permanent easement, and a right of way for access to construct, reconstruct, maintain, operate, and repair a storm drain system and related facilities including any or all appurtenances thereto, together with the right of ingress and egress, over, under, along and across all that real property situated in the City of San Diego, County of San Diego, State of California, described as follows:

[Legal Description to be Provided by the City]

Reserving unto the Grantor herein, its heirs, assigns, and members all rights and remedies it would otherwise have regarding its fee interest in the Canyon. The Grantee shall have the exclusive right within its easement to erect buildings, masonry walls, and other permanent structures, the planting, replanting or growing of trees; the changing of the surface grade; and the installation of other drainage structures and improvements. The City hereby quitclaims the exclusive temporary drainage easement in Lot 1 which is attached hereto as Exhibit 1 thereby dissolving said easement.

La Jolla Alta Master Council

Dated _____

Grantor: _____

By: _____

This is to certify that the interest in real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego, pursuant to authority conferred by the Municipal Code, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

For the City Engineer or his Designee

By: _____

**GRANT DEED -
PERMANENT DRAINAGE EASEMENT
IN THE UPPER CANYON**

For valuable consideration, receipt of which is hereby acknowledge, La Jolla Alta Master Council

HEREBY GRANTS to the City of San Diego, a municipal corporation in the County of San Diego, State of California, an exclusive permanent easement, and a right of way for access to construct, reconstruct, maintain, operate, and repair a storm drain system consisting of _____ including any or all appurtenances thereto, together with the right of ingress and egress, over, under, along and across all that real property situated in the City of San Diego, County of San Diego, State of California, described as follows:

[Legal Description to be Provided by the City]

Reserving unto the Grantor herein, its heirs, assigns, and members all rights and remedies it would otherwise have regarding its fee interest in the Canyon. The Grantee shall have the exclusive right within its easement to erect buildings, masonry walls, and other permanent structures, the planting, replanting or growing of trees; the changing of the surface grade; and the installation of other drainage structures and improvements. The City hereby quitclaims the exclusive temporary drainage easement in the Upper Canyon which is attached hereto as Exhibit 1 thereby dissolving said easement.

La Jolla Alta Master Council

Dated _____

Grantor: _____

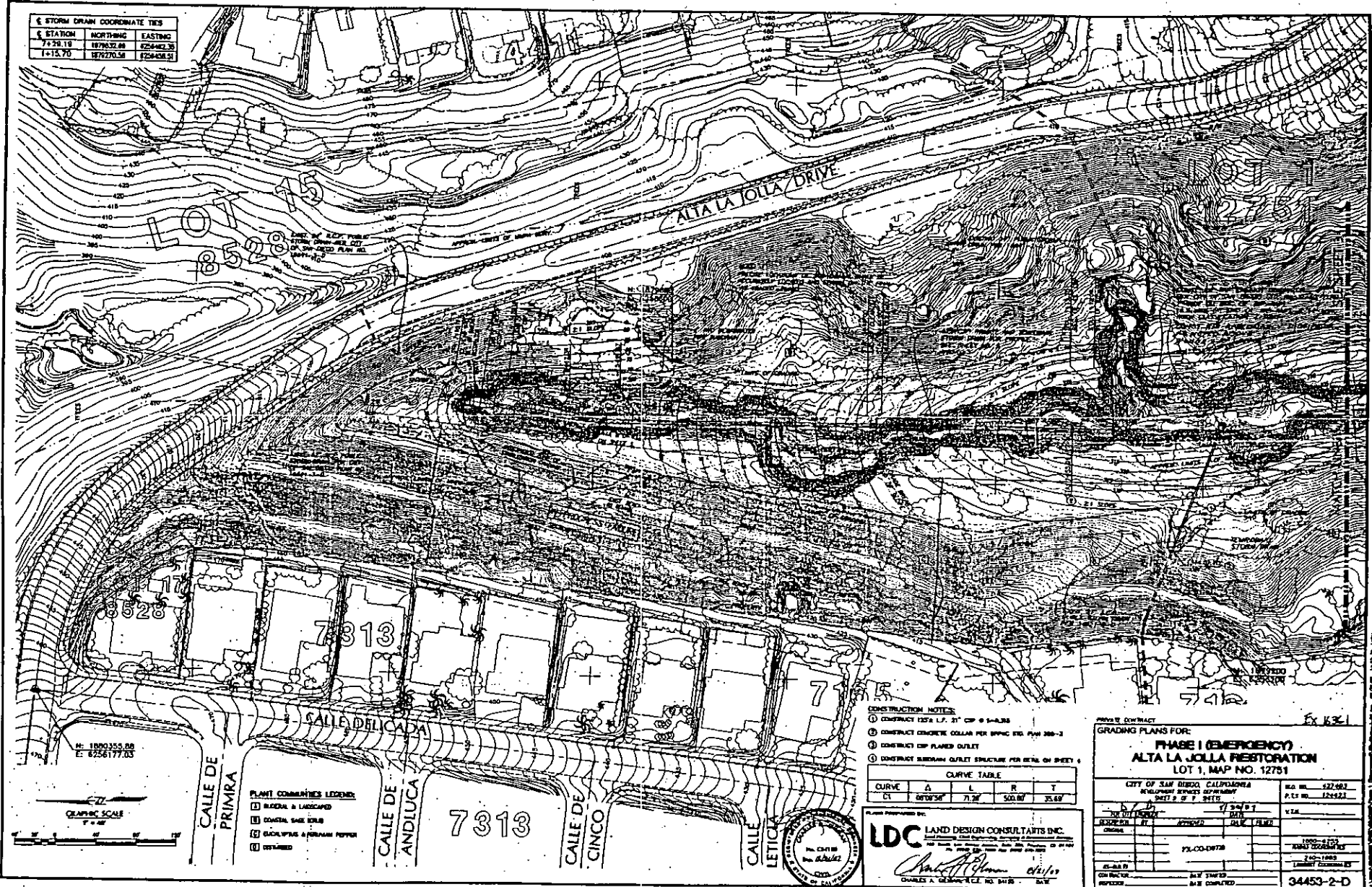
By: _____

This is to certify that the interest in real property conveyed by this instrument to the City of San Diego, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of San Diego, pursuant to authority conferred by the Municipal Code, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

For the City Engineer or his Designee
By: _____

E STORM DRAIN COORDINATE TIES			
E STATION	NORTHING	EASTING	
7+29.19	1879432.68	623462.38	
1+15.70	1879270.56	623468.51	



N: 1800355.88
E: 6256177.03



- PLANT COMMUNITIES LEGEND:
- 1 BUCKLE & LANDSCAP
 - 2 CENTRAL BARE SOIL
 - 3 BACKLAPPING & HERBARIUM PAPER
 - 4 DETAINED

- CONSTRUCTION NOTES:
- 1 CONSTRUCT 125# L.P. 21" CIP @ 5'-4.25'
 - 2 CONSTRUCT CONCRETE COLLAR FOR SPINAC STD. PUMP 200-2
 - 3 CONSTRUCT CIP FLARED OUTLET
 - 4 CONSTRUCT SUBIRRIAN OUTLET STRUCTURE FOR RET. ON SHEET 4

CURVE TABLE

CURVE	A	L	R	T
CL	02.05%	71.36'	500.00'	35.69'

PLANNED PROFESSIONAL INC.

LDC LAND DESIGN CONSULTANTS INC.

1000 S. 11TH ST. SUITE 100
SAN DIEGO, CALIFORNIA 92108

CHARLES A. GERRARD, C.E. NO. 84185 - STATE



PRIVATE CONTRACT

GRADING PLANS FOR:

PHASE I (EMERGENCY)
ALTA LA JOLLA RESTORATION
LOT 1, MAP NO. 12751

CITY OF SAN DIEGO, CALIFORNIA
DEVELOPMENT SERVICES DEPARTMENT
SHEET 2 OF 7 SHEETS

NO. 1800355.88
E. 6256177.03

7/3/07

DATE: 07/20/07

FILE: 12751

PROJECT NO.: 73-CO-04778

CONTRACT NO.: 34453-2-D

DATE STARTED: 04/12/07

DATE COMPLETED: 04/12/07

SEP 24 2007

000364

SWPPP NOTES

1. REQUIRING EROSION-CONTROL MEASURES WHICH WILL CONTRIBUTE TO AN ENHANCEMENT OF THE APPLICABLE PROJECT'S WATER PLANS FROM A NEARBY SOURCE OF SEDIMENT WASH/SPILL INTO ANY STREAM OR RIVER OR FROM ANY OTHER SOURCE OF POLLUTION.
2. THE CONTRACTOR SHALL ADVISE THE SWPPP MANAGER BEFORE A CHANGE IN CONSTRUCTION OR OPERATIONS WHICH MAY AFFECT THE EFFECTIVENESS OF POLLUTION CONTROL MEASURES, INCLUDING, BUT NOT LIMITED TO, A CHANGE IN THE CONSTRUCTION SCHEDULE OR THE LOCATION OF POLLUTION CONTROL MEASURES. ANY CHANGE IN THE CONSTRUCTION SCHEDULE OR THE LOCATION OF POLLUTION CONTROL MEASURES SHOULD BE SAID AND SWPPP ATTACHED TO THE SWPPP.
3. EROSION-CONTROL MEASURES TO BE INSTALLED SHALL BE DESIGNED TO COMPLY WITH CITY REQUIREMENTS TO CONTROL EROSION TO RETURN PLACES TO THEIR ORIGINAL DRAINAGE CAPACITY, AND TO PREVENT DAMAGE TO SURROUNDING PROPERTIES.
4. EROSION-CONTROL MEASURES SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.
5. EROSION-CONTROL MEASURES SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

6. THE CONSTRUCTION PROJECT HAS BEEN COMPLETED AND THE FOLLOWING CONDITIONS HAVE BEEN MET: ALL ELEMENTS OF THE EROSION CONTROL MEASUREMENT PLAN HAVE BEEN COMPLETED; CONSTRUCTION MATERIALS AND EQUIPMENT REMOVED FROM THE SITE; ALL EROSION CONTROL MEASUREMENTS HAVE BEEN MAINTAINED THROUGHOUT THE PROJECT; EROSION CONTROL MEASUREMENTS AND THE APPROPRIATE USE PERMITS HAVE BEEN OBTAINED; AND A POST-CONSTRUCTION EROSION CONTROL AND MAINTENANCE PLAN IS IN PLACE.

7. CONSTRUCTION ACTIVITIES HAVE BEEN SUSPENDED, OTHER CONSTRUCTION IS INSTALLED AND THE FOLLOWING CONDITIONS HAVE BEEN MET: ALL ELEMENTS OF THE EROSION CONTROL MEASUREMENT PLAN HAVE BEEN COMPLETED; CONSTRUCTION MATERIALS AND EQUIPMENT REMOVED FROM THE SITE; ALL EROSION CONTROL MEASUREMENTS HAVE BEEN MAINTAINED THROUGHOUT THE PROJECT; EROSION CONTROL MEASUREMENTS AND THE APPROPRIATE USE PERMITS HAVE BEEN OBTAINED; AND A POST-CONSTRUCTION EROSION CONTROL AND MAINTENANCE PLAN IS IN PLACE.

8. CONSTRUCTION SITE HAS BEEN RESTORED TO ORIGINAL CONDITION OR BETTER.

9. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

10. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

11. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

12. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

13. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

14. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

15. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

16. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

17. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

18. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

19. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

20. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

21. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

22. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

23. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

24. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

25. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

26. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

27. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

28. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

29. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

30. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

SWPPP NOTES (CONTINUED)

31. THE SWPPP PERSON SHALL CONTACT REGULAR INSPECTIONS OF THE PROJECT SITE IN ACCORDANCE WITH REGULATIONS OUTLINED IN THE SWPPP. EACH INSPECTION SHALL BE DOCUMENTED IN THE SWPPP. IF ANY VIOLATIONS ARE FOUND, THE SWPPP SHALL BE REVISED TO CORRECT THE VIOLATIONS AND TO PREVENT REPEATED VIOLATIONS.
32. THE CONTRACTOR SHALL HAVE EMERGENCY MATERIALS AND EQUIPMENT ON HAND FOR UNEXPECTED SITUATIONS SUCH AS DAMAGE TO UNDERGROUND UTILITIES AND OTHER UNEXPECTED SITUATIONS WHICH MAY OCCUR DURING CONSTRUCTION.
33. THE CONTRACTOR SHALL PROVIDE PROTECTION OF CONTIGUOUS AREAS UNDER GENERAL CONSTRUCTION METHODS. POLLUTION PREVENTION MEASURES SHALL BE INSTALLED TO PREVENT POLLUTION OF THE SOIL AND TO PREVENT DAMAGE TO SURROUNDING PROPERTIES.
34. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.
35. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

PERMANENT POST-CONSTRUCTION BMP NOTES

1. OPERATION AND MAINTENANCE SHALL BE INSTALLED BY AN EXISTING OR RECORDED EROSION CONTROL MEASUREMENT AND POLLUTION PREVENTION PLAN (ECP) OR POLLUTION PREVENTION PLAN (PPP) FOR THE LAND DEVELOPMENT PROJECT. THE ECP OR PPP SHALL BE MAINTAINED IN PERMANENT FORM FOR THE LIFE OF THE PROJECT.
2. PERMANENT POST-CONSTRUCTION BMP DEVICES SHALL BE INSTALLED OR RECORDED BEFORE THE APPROVAL OF THE CITY ENGINEER OR RESIDENT ENGINEER AT THE END OF THE PROJECT.

EROSION AND SEDIMENT CONTROL NOTES

1. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

2. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

3. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

4. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

5. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

6. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

7. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

8. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

9. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

10. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

11. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

12. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

13. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

14. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

15. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

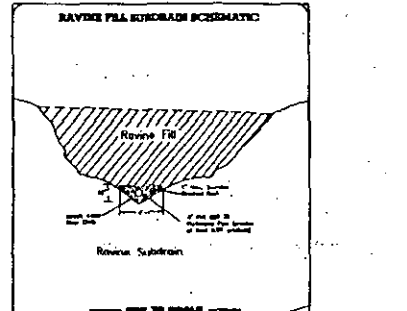
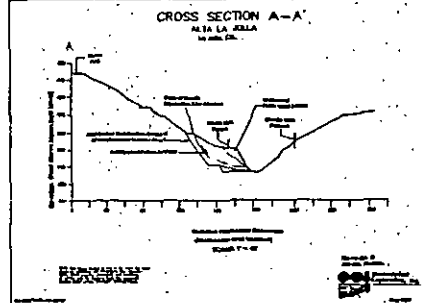
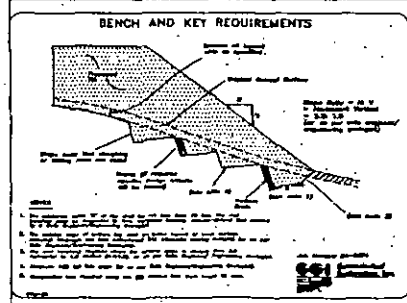
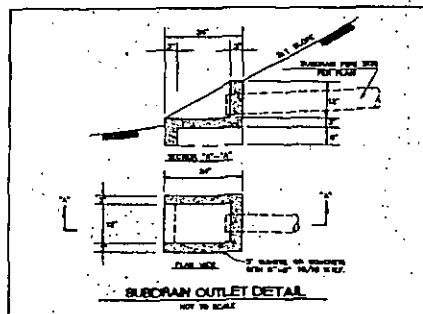
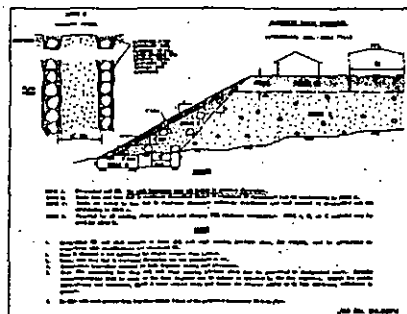
16. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

17. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

18. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

19. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.

20. EROSION-CONTROL MEASUREMENTS SHALL BE DESIGNED TO PREVENT POLLUTION OF THE SOIL.



MINIMUM POST-CONSTRUCTION MAINTENANCE PLAN

1. ESTABLISHMENT OF ALL PLANTS, TREES, AND OTHER VEGETATION SHALL BE COMPLETED PRIOR TO THE END OF EACH YEAR AND AFTER EACH YEAR'S END OF EACH YEAR IS RECORDED AND MAINTAINED AS NECESSARY TO MAINTAIN THE VEGETATION IN PLACE.
2. STRUCTURAL PRACTICES WITH THE MAINTENANCE OF THE STRUCTURE SHALL BE MAINTAINED AND MAINTAINED AS NECESSARY TO MAINTAIN THE STRUCTURE IN PLACE.
3. OPERATION AND MAINTENANCE, INCLUDING POST-CONSTRUCTION MAINTENANCE MEASURES AND THE RESPONSIBILITY OF THE DEVELOPER UNDER THE PROVISIONS OF RESPECTIVE LAWS TO MAINTAIN THE STRUCTURE UNDER MAINTENANCE AGREEMENTS, SHALL BE MAINTAINED AND MAINTAINED AS NECESSARY TO MAINTAIN THE STRUCTURE IN PLACE.

AT THE COMPLETION OF THE WORK SHOWN, THE FOLLOWING PLAN SHALL BE FURNISHED TO THE CITY ENGINEER OR RESIDENT ENGINEER FOR REVIEW AND APPROVAL FOR THE LIFE OF THE PROJECT.

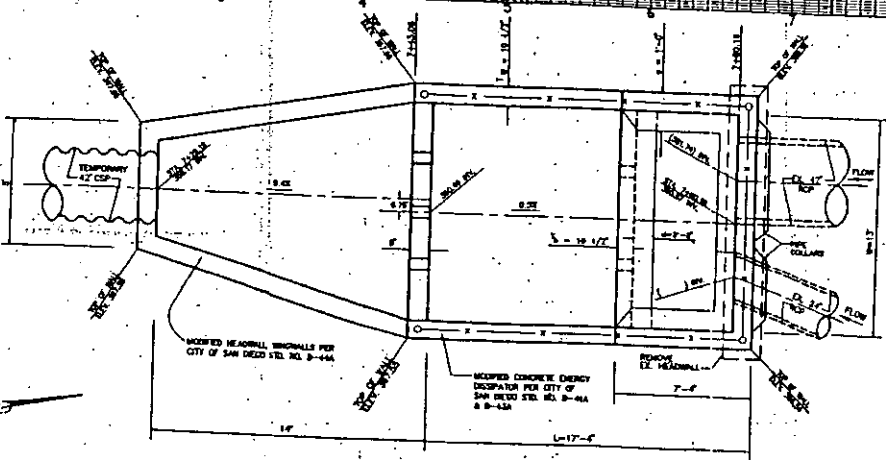
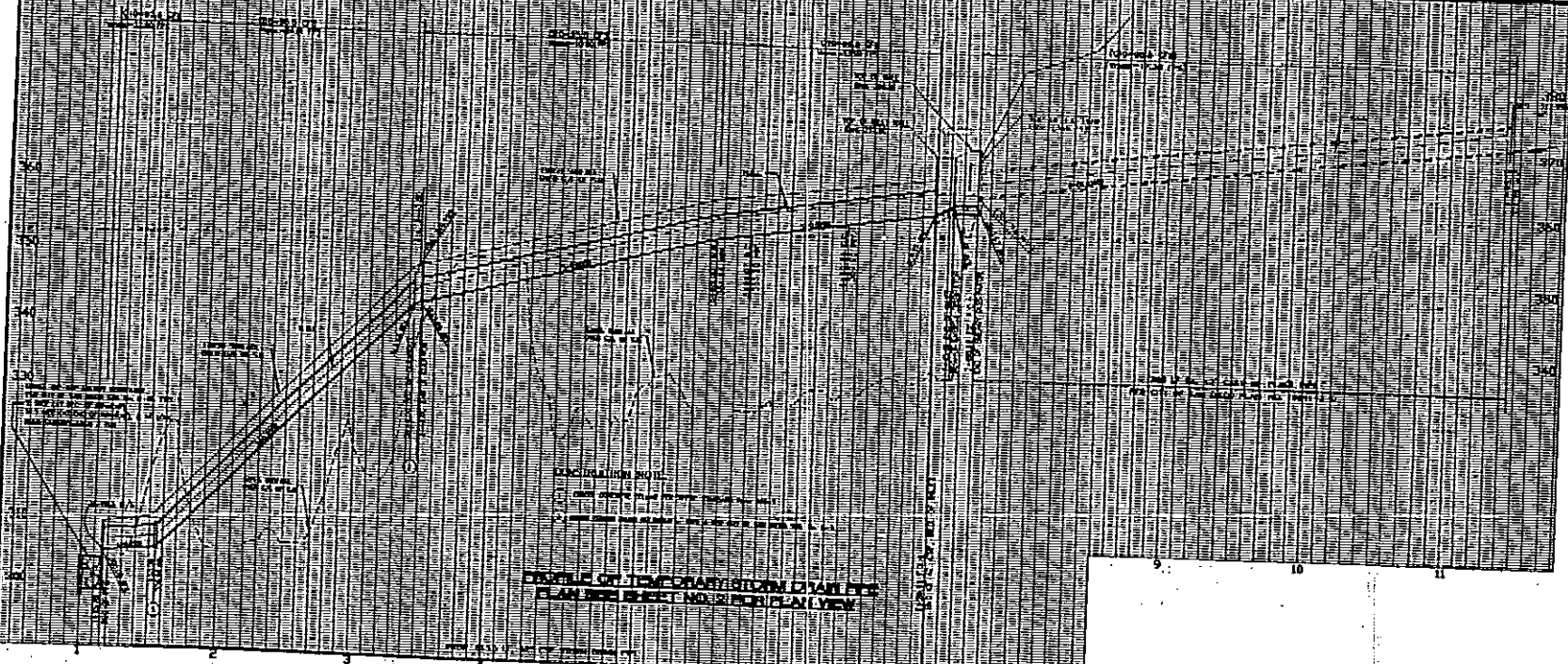
LAND DESIGN CONSULTANTS INC.
 1000 S. GARDEN ST. SUITE 100
 ANAHEIM, CA 92805
 (714) 771-1111
 FAX: (714) 771-1112
 www.landscape.com
 LDC LAND DESIGN CONSULTANTS INC.
 1000 S. GARDEN ST. SUITE 100
 ANAHEIM, CA 92805
 (714) 771-1111
 FAX: (714) 771-1112
 www.landscape.com

PHASE I (EMERGENCY)
 ALTA LA JOLLA RESTORATION
 LOT 1, MAP NO. 12781 Ex 1636.5

CITY OF SAN DIEGO, CALIFORNIA DEVELOPMENT SERVICES DEPARTMENT SHEET 4 OF 7 SHEETS		MAP NO. 427263 P. 14 AND 124423
DATE: 08/10/07	SCALE: AS SHOWN	DATE: 08/10/07
DESIGNED BY: [Signature]	CHECKED BY: [Signature]	DATE: 08/10/07
PROJECT NO.: P12-00072	DATE SHOWN: [Blank]	DATE COMPLETED: 08/10/07
DATE SHOWN: [Blank]	DATE COMPLETED: [Blank]	34453-4-D

000366

SCALE 1/8" = 1'-0"
VERT. 1" = 10'



MODIFIED CONCRETE ENERGY DISSIPATOR
AND INLET PLAN VIEW
N.T.S.

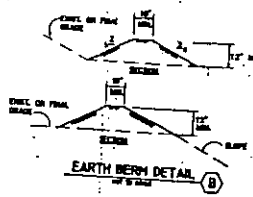
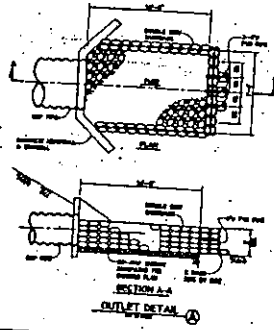
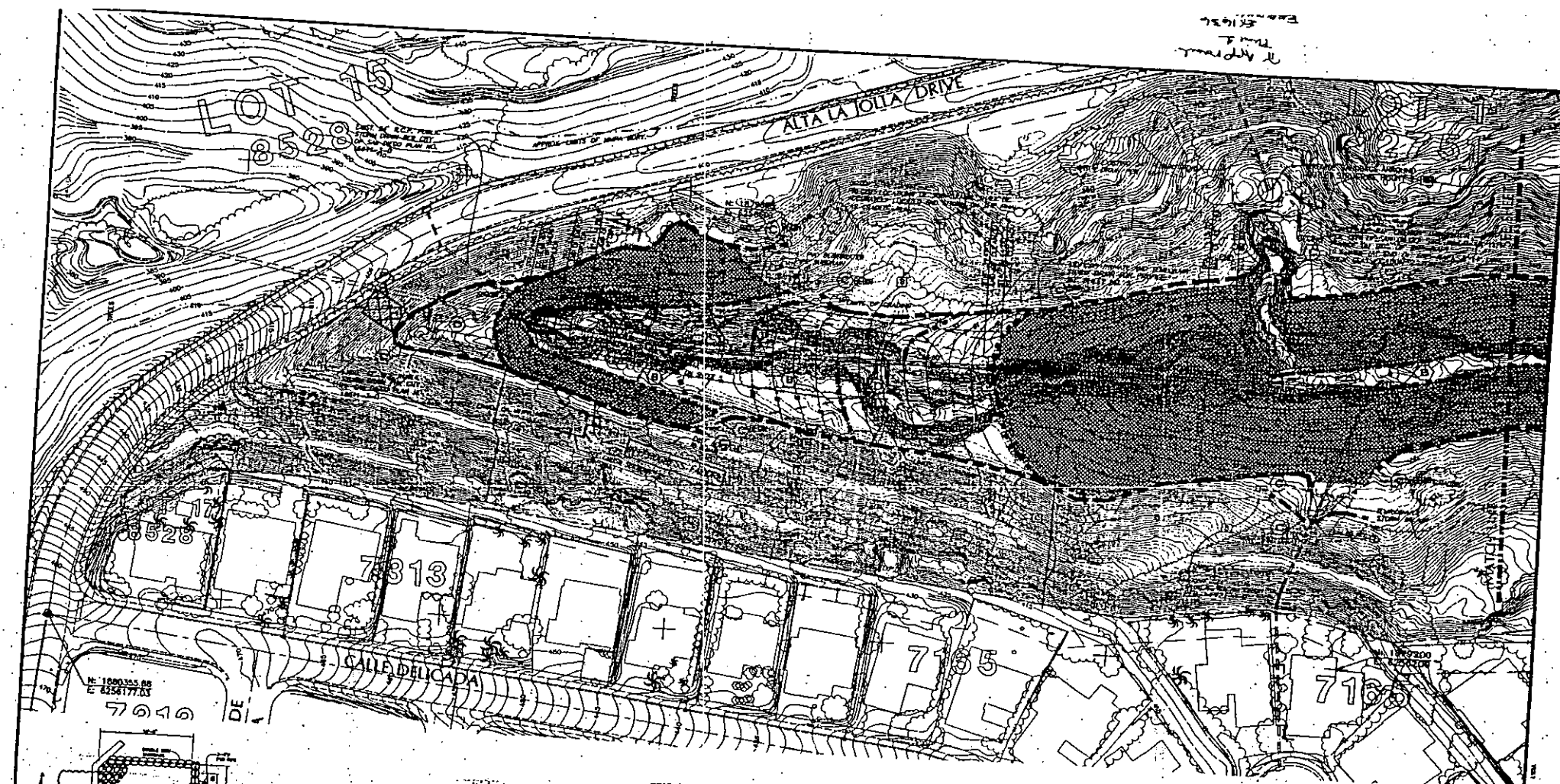


Prepared by:
LDC LAND DESIGN CONSULTANTS INC.
1000-8225
240-1696
LARGEST CONSULTING FIRM IN CALIFORNIA
Charles A. D'Amico
8/11/07
DATE

PRIVATE CONTRACT			
IMPROVEMENT PLANS FOR: PHASE I (EMERGENCY) ALTA LA JOLLA RESTORATION LOT 1, MAP NO. 12751			
CLIENT STRUCTURE A STONY BROOK PEOPLE		EX 1636.4	
CITY OF SAN DIEGO CALIFORNIA EMERGENCY SERVICES DEPARTMENT SHEET # OF 7 SHEETS		REG. NO. 52793	AREA NO. 126422
DATE: 8/10/07	SCALE: N.T.S.	1987-8225	8/10/07
PROJECT NO. 001	ATTACHED: G&E, T&E	240-1696	LARGEST CONSULTING FIRM IN CALIFORNIA
PROJECT NO. 001-001	DATE: 8/11/07	34453-6-D	
CONTRACTOR: [Blank]	DATE COMPLETED: [Blank]		

000367

7/ Approval
 1/28/24
 1/28/24



NOTES:

1. CONSTRUCT THE SELF-FENCE WITH A 12" MIN. THICKNESS.
2. ALL FENCES SHALL BE BUILT TO THE GRADE AND BE PROTECTED BY A 12" MIN. THICKNESS CONCRETE CURB ON THE INSIDE OF THE FENCE. THE CURB SHALL BE BUILT TO THE GRADE AND BE PROTECTED BY A 12" MIN. THICKNESS CONCRETE CURB ON THE INSIDE OF THE FENCE.
3. THE CURB SHALL BE BUILT TO THE GRADE AND BE PROTECTED BY A 12" MIN. THICKNESS CONCRETE CURB ON THE INSIDE OF THE FENCE.
4. ALL SELF-FENCES IN THE TRAIL OR APPROVED ACCESS ROADS.
5. ALL FENCES SHALL BE BUILT TO THE GRADE AND BE PROTECTED BY A 12" MIN. THICKNESS CONCRETE CURB ON THE INSIDE OF THE FENCE.

- LEGEND:**
- Ⓐ OUTLET DETAIL PER DETAIL A HEREIN
 - Ⓑ EARTH BERM PER DETAIL B HEREIN
 - Ⓒ SELF-FENCE PER DETAIL C HEREIN
 - Ⓓ HYDRONIZED PER TABLE AND INSTRUCTIONS ON SHEET 7.
 - Ⓔ COGS MATING PER CONSTRUCTION, ERM, TYPE SCOD ON APPROVED EQUAL.
 - Ⓕ CONSTRUCT STABILIZED CONSTRUCTION ENTRANCE PER DETAIL NO. 7 ON SHEET 7.

- SYMBOL:**
- SELF-FENCE
 - EARTH BERM
 - COGS MATING WITH HYDRONIZATION PER NOTE 7, HEREIN
 - STABILIZED CONSTRUCTION ENTRANCE



PLANS PREPARED BY:

LDC LAND DESIGN CONSULTANTS INC.
 10000 JOLLA BLVD., SUITE 100, SAN DIEGO, CA 92121
 TEL: 619-451-1111 FAX: 619-451-1112
 WWW.LDCONLINE.COM

Charles A. Delgado 02/10/24
 CHARLES A. DELGADO, P.E. 5410 DATE



PROVIDE CONTRACT

EROSION CONTROL PLANS FOR:
PHASE I (EMERGENCY) Ex 1636-S
ALTA LA JOLLA RESTORATION
 LOT 1, MAP NO. 12751

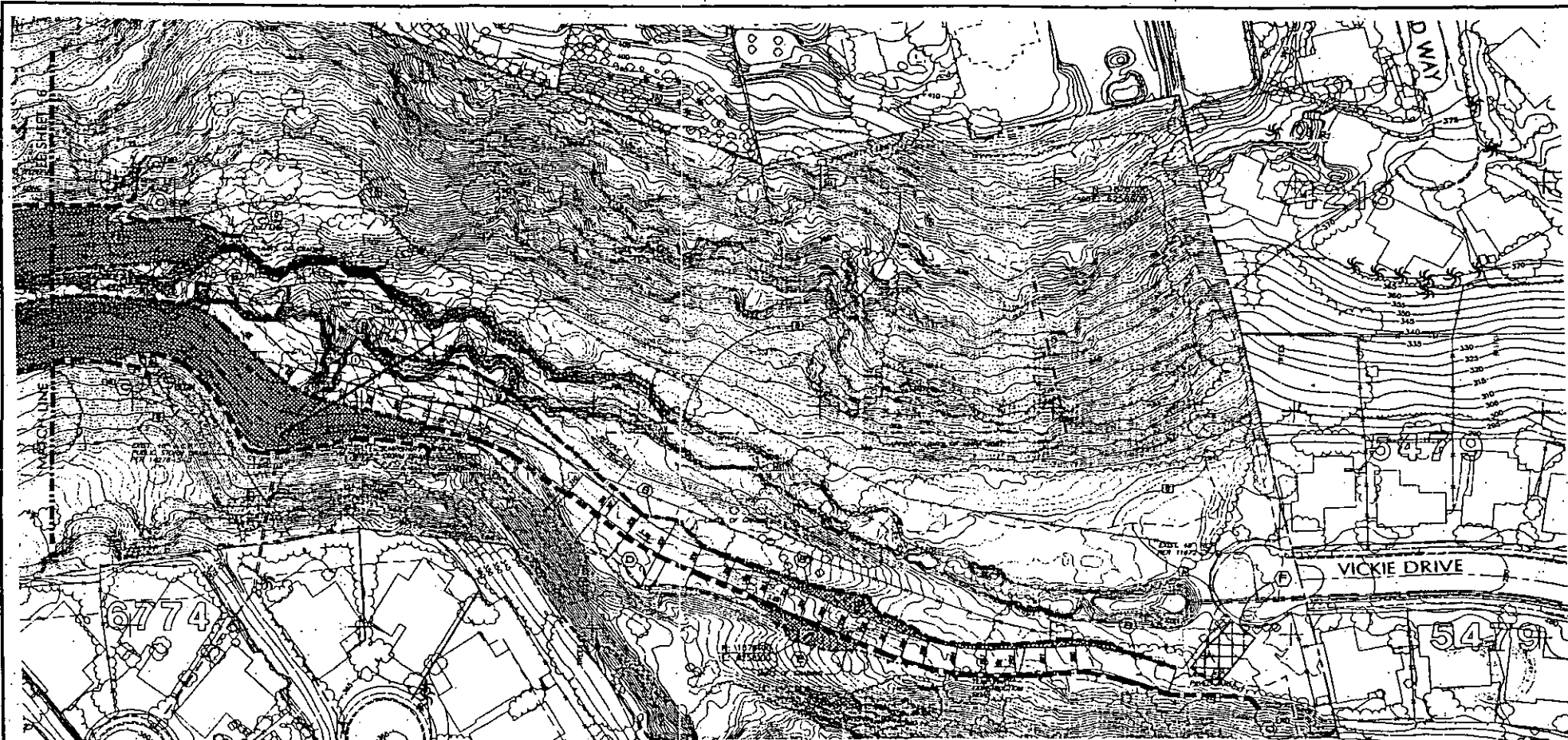
CITY OF SAN DIEGO, CALIFORNIA
 DEVELOPMENT SERVICES DEPARTMENT
 SHEET 8 OF 7 SHEETS

MA NO. 12751
 P.E. NO. 124122

REVISION	BY	DATE	DESCRIPTION

DATE: 02/10/24
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]

000368

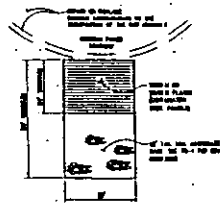


PROPOSED MIX TABLE

Material	Quantity	Unit	Notes
Aggregate	1000	cu yd	
Steel	100	lb	
Water	100	gal	
Slurry	100	cu yd	
Gravel	100	cu yd	
Sand	100	cu yd	
Grass Seed	100	lb	
Hydrogel	100	lb	
Stabilizer	100	lb	
Geotextile	100	sq yd	
Check Dam	100	ft	
Stabilized Construction Entrance	100	ft	

HYDROGEL/SLURRY PROCEDURES

1. SEED MIXES SHALL BE SPECIFIED BY THE PLAIN LINE SIZE OF EACH SEEDS.
2. FRESH SLURRY SHALL BE APPLIED AT A STANDARD RATE OF 2,000 POUNDS PER ACRE EXCEPT WHEN USED IN CONJUNCTION WITH STRAW MULCH, WHEN IT SHALL BE APPLIED AT A STANDARD RATE OF 400 POUNDS PER ACRE.
3. A WETTING AGENT CONSISTING OF 10 PERCENT ALKYLE POLYETHYLENE SULFONATE SHALL BE APPLIED AS PER MANUFACTURERS RECOMMENDATIONS.
4. EQUIPMENT USED FOR THE APPLICATION OF SLURRY SHALL HAVE A 3/4-IN. ORATION SYSTEM TO SLURRY AND HOMOGENEOUSLY MIX THE SLURRY. THE SLURRY MIX SHALL BE DIED OFF. THE EQUIPMENT MUST HAVE A PUMP CAPABLE OF APPLYING SLURRY UNIFORMLY.



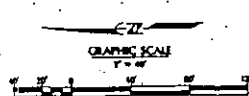
AGGREGATE AND STEEL BALLS

LEGEND:

- ① RAVELT DETAIL PER DETAIL A ON SHEET A.
- ② LATCH BERM PER DETAIL B ON SHEET A.
- ③ RLY PERCE PER DETAIL C ON SHEET A.
- ④ HYDROGEL PER TABLE AND INSTRUCTIONS HEREIN.
- ⑤ COOL MATING PER ENVIROSCOPE, EXCL. TYPE SCHEM IS APPROVED EQUAL.
- ⑥ CONSTRUCT STABILIZED CONSTRUCTION ENTRANCE PER DETAIL F HEREIN.

SYMBOL:

- ① 3/4" PERCE
- ② LATCH BERM
- ③ STABILIZED CONSTRUCTION ENTRANCE
- ④ COOL MATING PER ENVROSCOPE PER NOTE "F" HEREIN



Prepared by:

LDC LAND DESIGN CONSULTANTS INC.
 1000 Broadway, Suite 1000, San Diego, CA 92101
 619 594 1000 FAX 619 594 1001

Charles A. Deane 8/2/10
 CHARLES A. DEANE, P.E. REG. NO. 54155 DATE



FORM E-1 CONTRACT

EROSION CONTROL PLANS FOR: **Ex 1636-6**

PHASE I (EMERGENCY)
ALTA LA JOLLA RESTORATION
 LOT 1, MAP NO. 12751

CITY OF SAN DIEGO, CALIFORNIA
 DEVELOPMENT SERVICES DEPARTMENT
 SHEET 7 OF 7 SHEETS

NO. 477583
 PLAN NO. 126673

DATE: 8/2/10
 APPROVED BY: [Signature]
 CHECKED BY: [Signature]

PL-CO-00725
 1980-8225
 1980-8225
 LARGEST DIMENSIONS

CONTRACTOR: [Blank]
 INSPECTOR: [Blank]

34453-7-D

000369

§143.0126 Emergency Authorization to Impact Environmentally Sensitive Lands

Whenever *development* activity within *environmentally sensitive lands* is deemed necessary by order of the City Manager to protect the public health or safety, the City Manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety, subject to the following:

- (a) If the emergency work involves only temporary impacts to *environmentally sensitive lands*, a Neighborhood Development Permit or Site Development Permit is not required provided the *environmentally sensitive lands* are restored, in a timely manner to their natural state, to the satisfaction of the City Manager. Restoration shall be in accordance with a restoration plan that conforms with the Biology Guidelines and is approved by the City Manager. The restoration plan shall be submitted to the City Manager within 60 days of completion of the emergency work and work on the approved restoration plan shall be initiated within 90 days of project completion or prior to the beginning of the next rainy season, whichever is greater.
- (b) If the emergency work results in permanent impacts to *environmentally sensitive lands*, a subsequent Neighborhood Development Permit or Site Development Permit is required in accordance with all regulations of this division. The application for the Neighborhood Development Permit or Site Development Permit shall be submitted within 60 days of completion of the emergency work.
- (c) Within the Coastal Overlay Zone, a Coastal Development Permit is required for any emergency *coastal development* in accordance with Section 126.0718. (Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.) (Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

§143.0130 Uses Allowed Within Environmentally Sensitive Lands

Allowed uses within *environmentally sensitive lands* are those allowed in the applicable zone, except where limited by this section.

- (a) *Sensitive Coastal Bluff Areas*. Permitted uses and activities in *sensitive coastal bluff areas*, as indicated on Map Drawing No. C-713, are limited to the following:
 - (1) Single Dwelling Units together with accessory structures and landscape features incidental to residential uses;
 - (2) Bicycle storage facilities;
 - (3) Public comfort stations;
 - (4) Public pergolas and gazebos;
 - (5) Public parking lots;

Ch.	Art.	Div.	
14	3	1	12

Court's Ex. 492
 Case # GTC 822281
 Rec'd _____
 Dept 74 Clk _____

**AGREEMENT FOR RECONSTRUCTION
BETWEEN
LA JOLLA ALTA MASTER COUNCIL
AND
NAUTILUS GENERAL CONTRACTORS, INC.
(Fixed Price Contract)**

This Agreement is the property of
Epsten Grinnell & Howell, APC.
No part of this document may be copied or used without
permission of Epsten Grinnell & Howell, APC.

**AGREEMENT FOR RECONSTRUCTION
(Fixed Price Contract)**

This Agreement is made effective this September, 2007, between the LA JOLLA ALTA MASTER COUNCIL (hereinafter referred to as "Association"), a California mutual benefit non-profit corporation, and NAUTILUS GENERAL CONTRACTORS, INC. (hereinafter referred to as "Contractor"), for the completion of the Work. The Work to be completed is the construction or reconstruction described in the Contract Documents.

THE ASSOCIATION AND CONTRACTOR AGREE AS SET-FORTH BELOW.

ARTICLE I

DEFINITIONS

In this Agreement, the following words or phrases will have the following meanings:

1.1 "Addendum" or "Addenda" are written or graphic instrument(s) issued prior to the execution of this Agreement which modify or interpret the Bid Documents by additions, deletions, clarifications or corrections.

1.2 The "Engineer" is the person or entity appointed or engaged from time to time by the Association to administer this Agreement. Unless otherwise designated, the specific Engineer appointed to administer this Agreement will be either Chuck Gilman, Land Design Consultants or Les Reed, Geotechnical Explorations, Inc.

1.3 "Application for Payment" means the separate or combined form of application for a progress or final payment completed and served by the Contractor on the Association and Engineer which document is in the form of AIA Document G702 and continuation sheets or such other form and containing such other information or evidence as the Engineer reasonably requires, but which application has not been certified (approved, signed and dated) by the Engineer.

1.4 "Association" shall mean and refer to the "Owner," specifically the LA JOLLA ALTA MASTER COUNCIL, and the terms "Association" and "Owner" shall be synonymous and interchangeable. For the purposes of this Agreement, Association's designated representative is Gary Roth, President of the Board of Directors. Association is governed by its Board of Directors who make all decisions pertaining to the Project.

1.5 "Authority" means any governmental agency or public or private body or any entity subservient or supplemental thereto (except the Association) with jurisdiction over the Project or Work by virtue of any law, statute, ordinance, regulation, rule or order.

1.6 "Basic Construction Cost" means the total or estimated cost to the Association of the Work except for any costs relating to or consequent upon Change Orders or Construction Change Directives and excluding costs payable or attributable to the Engineer, the Consultants, the Site, any Authority, insurance or bonding company or other costs which are the responsibility of the Association as provided hereunder.

1.7 "Bid Documents" mean all documents and written statements provided by the Association or Engineer to contractors or the Contractor in connection with and necessary and/or appropriate for inclusion in the Association's request for proposals and/or bids from contractors, which documents generally include, but are not limited to, Drawings, Specifications, bidders' instructions, contractor's qualification forms, and bid forms. Bid forms may include line item pricing for major components of construction, and such other requirements or forms included in any of these documents.

1.8 "Bulletins" are written or graphic instruments issued by the Engineer after the execution of the Construction Agreement which requests a proposal from the Contractor that, if accepted by the Association, will cause a Modification. Bid Bulletins issued during the bid process are not included within the definition of this paragraph.

1.9 "Certificate for Payment" means the document (either separate or incorporated within the form of Application for Payment) signed and dated by the Engineer as certifying the sum approved by him due from the Association to the Contractor in respect of a specific Application for Payment.

1.10 A "Change Order" is a written authorization prepared by the Engineer and approved and executed by the Association, Engineer and Contractor to change the scope of the Work, the Contract Sum, or the Contract Time.

1.11 "Claim" means any dispute, issue or question between the Contractor and the Association arising out of any Construction Agreement, or any dispute, issue or question between the Engineer, the Association, and/or any member or resident of Association arising out of this Agreement.

1.12 "Construction Agreement" or "Agreement" means this agreement between the Association and the Contractor to perform the Work or services necessary or desirable to repair or correct the Defective Conditions. Construction Agreement does not include agreements with Engineer or Consultants. "Construction Agreement" shall mean the same as, and be interchangeable with, the terms "Agreement for Construction," "Agreement for Reconstruction" and "Construction Contract."

1.13 A "Construction Change Directive" is a written instruction prepared by the Engineer and signed by the Association and the Engineer, but not yet approved by Contractor, that directs Contractor to change, add to or delete from the Work, the Contract Sum or the Contract Time.

1.14 "Construction Documents" shall mean and refer to those certain Drawings, Specifications, schematics, Project Manual and other necessary documents, prepared for the Project by Engineer or Consultants under related agreements between the Association and the Engineer or Consultants.

1.15 "Consultants" means one or more individuals or entities providing professional consulting services in any capacity including any architecture, engineering, construction management, building inspection, or other field as the Association may from time to time engage in connection with the Project.

1.16 "Contract Documents" is as defined in Paragraph 2.1 of this Agreement.

1.17 "Contract Sum" means the sum as specified in Paragraph 5.1 and payable by the Association to the Contractor in consideration for the Work.

1.18 The "Contract Time" is that period of time as specified in Paragraph 11.4, allowed in the Contract Documents for Contractor to complete the Work.

1.19 "Contractor" means the persons or entity(ies) directly engaged by the Association, to perform the Work. "Contractor" means the same as, and may be interchanged with, the terms "General Contractor" and "Construction Contractor."

1.20 The term "day" means calendar day, "week" means seven (7) consecutive calendar days, and "month" means calendar months, all including weekends and legal holidays.

1.21 "Defective Conditions" means the conditions referred to in the Contract Documents to be repaired or replaced by Contractor.

1.22 "Drawings" are the pictorial and graphic description of the Work or proposed Work prepared by Architect or Consultants. The Drawings show the design, location, dimensions and possibly the quantifications of the Work and include diagrams, specifications, plans, details, elevations, sections and schedules.

1.23 "Final Completion" is that stage of the Work when Contractor has completed all obligations under the Agreement except for warranty obligations, including, but not limited to, completion of all punch-list items following the Substantial Completion inspection and submission of all Project close-out documents, and the Engineer has certified the same.

1.24 "Indemnitees" means and refers to the Association and its agents, employees, directors, officers, attorneys and the Engineer and its directors, officers and employees.

1.25 "Intended purpose, appearance or results" means that which the Association has expressed or which is expressed or can be reasonably inferred from the Contract Documents.

1.26 The terms "knowledge," "recognize," "discover" and "believe," including their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), believes (or should believe) and discovers (or should discover) in exercising all care, skill, and diligence required by the Contract Documents or otherwise. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents or otherwise.

1.27 "Legal Requirements" means all laws, statutes, ordinances, regulations, rules or orders which bear upon the Engineer, Consultants or Contractor or the Engineer's, Consultant's or Contractor's performance of the Work or the services under this Agreement, as the case may be.

1.28 "Lien" means any lien, claim, encumbrance or security interest in favor of the Contractor, Subcontractor, material suppliers, design professionals, wage earners, or other entities having provided labor, materials, equipment and/or supplies for the Work which are or may be filed or pursued against the Work, the Site, the Project and any improvements thereon.

1.29 "Minor Change Order" means minor variations to the Work issued by the Engineer in writing which do not or ought not to materially increase the time or cost of performing the Work.

1.30 "Modifications" are written amendments to the Construction Agreement signed by both parties, a Change Order, a Construction Change Directive, or a Minor Change Order.

1.31 "No fault" shall mean and refer to delays due to acts of God, construction disputes or other instances where a party to this Agreement has not caused, instigated or actually participated in, or could not reasonably have prevented the chain of events leading up to a delay.

1.32 The phrase "persistently or consistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, which causes the Association or the Engineer to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the Contract Documents.

1.33 "Product Data" is information furnished by the Contractor necessary to fully illustrate and evaluate materials or equipment for some portion of the Work.

1.34 The "Project" is the entire investigation, design, bidding and construction intended by the Association to be performed at the Site, including construction by the Association or by separate contractors other than the Contractor.

1.35 "Project Manual" includes the Bid Documents, sample forms, Specifications, Drawings, contract conditions and all documents usually assembled by a Contractor and Engineer for a similar contract and project.

1.36 "Provide" or "perform," including derivatives thereof, mean to properly undertake, fabricate, complete, transport, deliver, install, erect, construct and furnish all labor, materials, equipment, utilities, apparatus and appurtenances necessary to properly complete the Work or requirements of the Contract Documents.

1.37 "Samples" are physical examples that demonstrate specific workmanship, materials or equipment and which establish standards by which the Work must be performed.

1.38 "Schedule" shall mean and refer to those certain written or graphic statements designating a time upon which a task or duty is to be accomplished or completed.

1.39 "Shop Drawings" are diagrams, drawings, and other data prepared by Contractor for the Work to illustrate some portion of the Work, or the method or means whereby the Work will be performed.

1.40 "Site" shall refer to the area (buildings and grounds) within the boundaries of the common interest subdivision managed and controlled by Association more fully described in the Association's governing documents.

1.41 "Specifications" are those portions of the Contract Documents that contain the written requirements for the performance of the Work, including requirements for materials, techniques, equipment, construction systems or methods, standards and workmanship, as appropriate for each respective discipline involved in the Work.

1.42 A "Subcontractor" shall mean a person or entity that has a direct contract with the Contractor or who has a contract (however far removed) with any Subcontractor to provide labor, materials, and equipment for a portion of the Work.

1.43 "Submittal" means any proposal including, but not limited to, Product Data, proposed substitutions, Samples and Shop Drawings by the Contractor to the Association and Engineer with regard to any aspect of the performance, materials or content of the Work which expands upon, modifies or changes the Work.

1.44 "Substantial Completion" means the date when the Work has been completed to the Engineer's reasonable satisfaction, and all requirements of permits, approvals, and licenses issued by any Authority have been fulfilled.

1.45 Technical terms have their well known meanings within the construction industry unless otherwise defined herein. Terms not defined herein shall mean the same as the term is defined in AIA Form A201, General Conditions of the Agreement for Construction, current as of the date of this Agreement, whenever the term is defined in said document.

1.46 "Work" means the scheme of improvement as a whole to be undertaken by Contractor, and the services, material or requirements to be performed or provided to correct or remedy the Defective Conditions and specifically including the scope of work described in this Agreement. The Engineer will be deemed to have the responsibilities set out herein in respect of all Construction Agreements pertaining to the Project unless any one or more such Construction Agreements are specifically excluded herein.

ARTICLE 2

THE CONTRACT DOCUMENTS

2.1 The Contract Documents consist of this Agreement, the Drawings, Specifications, Addenda, Bid Documents, and the following documents, all of which are listed below and are to be considered as one integrated, comprehensive contract:

2.1.1 Declaration to Procure Payment, consisting of one (1) page, attached hereto as Exhibit "A" and incorporated herein by reference.

2.1.2 Schedule of Contractor's Hourly Rates, consisting of one (1) page, attached hereto as Exhibit "B" and incorporated herein by reference.

2.1.3 Compliance Schedule of Required Provisions, consisting of one (1) page, attached hereto as Exhibit "C" and incorporated herein by reference.

2.1.4. Grading Plans for Phase 1 (Emergency) Alta La Jolla Restoration, Lot 1, Map No. 12751, sheets labeled 1-D through 7-D inclusive, prepared by Land Design Consultants, dated June 28, 2007, consisting of seven (7) sheets

2.1.5. Bid Proposal prepared by Contractor, consisting of five (5) pages, dated July 10, 2007, attached hereto, marked Exhibit "D" and incorporated herein by reference.

2.2 In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards and Legal Requirements, the Contractor shall (1) provide the better quality or greater quantity of Work, and (2) comply with the more stringent requirement, standard, or Legal Requirement, either or both in accordance with the Engineer's determination.

ARTICLE 4

ASSOCIATION'S RESPONSIBILITIES

- 4.1 The Association, upon reasonable written request, shall furnish to the Contractor within a reasonable time with the following: (1) information necessary for Contractor to give Association's notice of Contractor's mechanic's lien rights; (2) evidence that financial arrangements have been made to fulfill the Association's obligations under this Agreement; and (3) a legal description of the Site.
- 4.2 Association will provide Contractor and Subcontractors, upon the request of Contractor, reasonable access to the Site prior to commencement of the Work.
- 4.3 Association agrees to advise its members, owners, tenants and residents to remain clear of the Work as is practical.
- 4.4 Association represents that it has the authority under its governing documents to enter into this Agreement.
- 4.5 Association shall purchase and maintain property insurance as required by its corporate governing documents, until final payment under this Agreement has been made. This property insurance shall be a broad form policy readily available to common interest developments. Coverage for other perils is not required except to the extent specifically required by this Agreement or the Contract Documents.

ARTICLE 5

CONTRACT SUM AND CHANGES TO CONTRACT SUM - FIXED PRICE

- 5.1 Contract Sum. The Association shall pay to the Contractor for the Contractor's performance of the Contract, the Contract Sum of Two Million Seventy-Seven Thousand Five Hundred Twenty and 84/100 Dollars (\$2,077,520.84), subject to adjustment for additions and deductions pursuant to Change Orders and Construction Change Directives. The Contract Sum shall include, but is not limited to, the Contractor's profit, overhead, supervision, and general and administrative costs. In addition to any adjustments pursuant to Change Orders or Construction Change Directives, the Contract Sum may be reduced or extinguished by breach or default of the Contractor under this Agreement.
- 5.2 Additional charges or credits to the Contract Sum shall be made by Change Order on a unit price basis calculated according to the unit prices listed in the Contract Documents (or if not so listed, then the reasonable value of the Work as calculated in Paragraph 5.3, below). Any changes which add to the cost of the Work shall increase the Contract Sum and any changes which omit or reduce the cost of the Work shall decrease the Contract Sum according to the unit price of such changes. Contractor shall process all unit price Change Orders as provided in Paragraph 10.1 hereof, and Association will have no obligation to pay Contractor for unit price Change Order work performed prior to receiving the necessary approval outlined in Paragraph 10.1.
- 5.3 For any adjustments to the Contract Sum for which unit prices are not specified in the Contract Documents, the following percentages of costs shall be attributable to the change in the Work:
- 5.3.1 Changes which add to the cost of the Work shall be reimbursable at Contractor's cost plus seventeen percent (17%) for profit, overhead, insurance, and administrative costs (but not Contractor's general conditions), and changes which reduce the cost of construction shall reduce the Contract Sum by an amount equal to the cost savings plus seventeen percent (17%).
 - 5.3.2 When both additions and credits are involved in any one change, the allowance for overhead, profit, supervision, and administrative costs, shall be figured on the basis of the net difference, if any.
- 5.4 Overtime, when specifically authorized by the Association and not as an Extraordinary Measure as defined in Paragraph 11.5, shall be paid for by the Association on the basis of Contractor's actual labor expense, including Contractor's actual employer's payroll burden. Overhead, profit, supervision, and general and administrative costs will not be paid by the Association for overtime.

ARTICLE 6

PROVISIONS FOR PAYMENT

6.1 There are no start-up costs to be paid under this Agreement.

6.2 The Contractor shall be entitled to apply for progress payments by serving an Application for Payment not more than once per month starting on the last day of the month following the Commencement Date.

6.3 All payments to Contractor (except the Final Payment) shall be subject to a retention in the amount of ten percent (10%) of the amount of the Application for Payment.

6.4 Prior to submission of the first Application for Payment and as a precondition for the issue of any Certificate of Payment, the Contractor will submit an itemized Schedule of Values to the Engineer for review and approval. The Schedule of Values will be the basis of payment to Contractor in the Applications for Payment, and shall (1) apportion the total cost of the Work among the various portions of the Work so as to fairly and accurately allocate the total Contract Sum across all of the Work, and (2) shall be supported by such data in order to substantiate its accuracy as Association and Engineer may reasonably require. The parties agree that Exhibit "D" will constitute an acceptable Schedule of Values. Applications for Payment (1) may include requests for payment authorized by Construction Change Directives, even though these Construction Change Directives have not yet been included in approved Change Orders; (2) shall not include amounts that Contractor does not intend to forthwith pay to Subcontractors; and (3) subject to Paragraph 6.5 below, may include the cost of materials and equipment purchased in reasonable amounts and to be used exclusively for the Work as delivered and stored on or off the Site, provided as regards all materials stored off Site, the Contractor first provides reasonable access for inspection thereof as requested from time to time by the Engineer.

6.5 Title to all Work materials and equipment covered by an Application for Payment will pass to the Association immediately upon Association's payment therefor; but Contractor shall remain totally liable for all risk of loss or damage until incorporation of the materials or equipment into the Work.

6.6 Provided that an Application for Payment is received by the Engineer not later than the last day of a month, the Association shall make payment to the Contractor not later than the twentieth (20th) day of the following month. If an Application for Payment is received by the Association and the Engineer after the application date fixed above and subject to the issuance of the Certificate of Payment as above, payment shall be made by the Association not later than twenty (20) days after receipt of the Application for Payment. In all cases, payment by Association shall not be due to Contractor until Engineer has issued a Certificate of Payment indicating that Contractor is entitled to receive the sum requested.

6.7 Notwithstanding the provisions of Section 6.6, Contractor and Association acknowledge and agree that Association is collecting the Contract Sum from the Unit owners pursuant to a special assessment in which the last payment is not due until August, 2008. As such, it is anticipated that Contractor will invoice for Work completed in excess of funds available and that Contractor will complete all Work before the final assessment becomes due. The parties agree that Association shall not be in breach of its obligations to pay Contractor for Work performed provided that Association complies with the following special provisions. The parties further agree that in case of a conflict between the provisions of this Section 6.7 and the provisions of any other section of this Agreement, the provisions of Section 6.7 and its sub-parts shall prevail.

6.7.1 Association will pay Contractor for the amounts invoiced for Work completed to the extent it has collected special assessment payments from the Unit owners up to the amount of the accumulated invoice amounts;

6.7.2 Until the Association obtains the line of credit described in Section 6.7.4, Association will supplement the collected special assessment amounts with existing Association reserve funds, up to a maximum of \$300,000;

6.7.3 Provided Contractor has invoiced in any given month, or has accumulated unpaid amounts over multiple invoices in excess of \$175,000, Association shall pay a minimum of \$175,000 each month until the Contract Sum has been paid in full. Nothing in this paragraph allows Association to pay only \$175,000 if additional funds are available to pay the earned and invoiced amounts;

- 6.7.4 Association will apply for, and attempt to obtain, a line of credit from a commercial bank in an amount necessary for Association to keep current or bring all accumulated invoices current, up to \$1.0 million. Contractor acknowledges that the consent of the Unit owners is required in addition to the consent of the commercial bank will be required before any line of credit funds can be obtained, which process will take a minimum of 60 - 90 days from the date this Agreement is executed by the parties;
- 6.7.5 Association agrees to notify Contractor of any unusual or unexpected problems with the collection of the special assessment. Unusual and unexpected problems are defined as unpaid accumulated receivables in excess of ten percent (10%) of the accumulated amounts due and payable or a lawsuit being filed seeking an injunction to halt the special assessment or the issuance of a temporary restraining order by a court of competent jurisdiction halting collection of the special assessment;
- 6.7.6 Provided Association fulfills the above terms, Contractor will carry up to \$400,000 in unpaid receivables for up to ninety (90) days, without interest.

6.8 Within ten (10) days of Contractor's submission of an Application for Payment, the Engineer will review the Application for Payment and will: (1) issue a Certificate for Payment to Association; or (2) advise Contractor and Association of the reasons why the Certification for Payment is being withheld, either in whole or in part. The Association agrees not to withhold payment of the entire Application for Payment if the disapproved portion can be segregated from the approved portion of the Application. If certification is withheld, Engineer and Contractor shall attempt to agree on a revised amount that can be certified. If agreement between Engineer and Contractor is not achieved, Engineer shall certify the amount to the extent which Engineer considers appropriate.

6.9 Engineer may decide to withhold certification, in whole or in part if, in the Engineer's reasonable view, the Contractor is not entitled to payment in the amount applied for in any Application for Payment as: (1) the Contractor has not completed Work to the point indicated in the Application for Payment; (2) the Contractor has not expended or used the time and materials claimed; (3) defective work has not been remedied; 4) third party claims have been filed or may be filed; 5) Contractor's failure to pay Subcontractors or material suppliers; 6) Engineer has a reasonable belief that Contractor cannot finish the Work for the unpaid balance of the Contract Sum; 7) there is unrepaired damage to the Association's buildings or common areas caused by Contractor; 8) Engineer has a reasonable belief that Contractor cannot finish the Work within the Contract Time; 9) the Contractor has consistently failed to do the Work in accordance with the Contract Documents. Engineer may certify any amounts withheld once the condition causing the withholding of certification has been removed.

6.10 Payments due and unpaid shall bear interest from the date due at the rate of ten percent (10%) per annum unless such rate or rates exceed the maximum lawful rate of interest when the rate of interest shall be the maximum allowable by law.

ARTICLE 7

LIENS, WARRANTIES AND INDEMNITIES

7.1 Applications for Payment shall include a current statement from the Contractor setting forth all Subcontractors and materialmen with whom the Contractor has subcontracted, the amount requested for any Subcontractor or materialman in the Application for Payment and the amount to be paid to the Contractor from such progress payment, together with a current, duly executed conditional or unconditional waiver of Lien from the Contractor and all Subcontractors and materialmen establishing satisfaction of the payment requested by the Contractor in the current Application for Payment. All such Lien releases submitted by Contractor and all Subcontractors and material suppliers must be submitted on statutory forms without changes of any kind and shall include the "Declaration to Procure Payment" of the Contractor's, Subcontractor's or material suppliers' Association or principal that there are no extras furnished before the release date for which payment has not been received and that there are no furnished labor, services, equipment or material that was not compensated by the progress payment, except as are specifically identified in the Declaration to Procure Payment, a copy of which is attached to this Agreement as Exhibit "A." For the second and all subsequent Applications for Payment, Contractor and all Subcontractors and material suppliers shall be required to submit Unconditional Waiver and Release upon Progress Payment forms for the prior month's work for which conditional Lien releases were previously submitted.

7.2 Contractor warrants that all Work contained in an Application for Payment is or immediately on payment will be free and clear of all Liens. To the extent that the Association is current on all payments to Contractor or Subcontractors (in case of assignment),

the Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against Indemnitees relating to Liens. The Contractor hereby agrees to indemnify and hold Indemnitees harmless against any such Liens or claims relating thereto and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

7.3 The Association shall be entitled to withhold any payments otherwise owed to the Contractor due to a Lien but may release such payment if the Contractor (but without prejudice to Paragraph 7.2) obtains and pays for security acceptable to the Association or a Lien bond which is: (1) issued by a State of California admitted surety and in a form acceptable to the Association, and (2) in an amount not less than One Hundred Fifty percent (150%) of such Lien claim.

7.4 Without prejudice to the above, the Association shall have the right to settle any actual or potential Lien or Lien claim by payments to the actual or potential lien claimant or by such other means as the Association in the Association's sole discretion, after providing a minimum of seventy-two (72) hours notice to Contractor and allowing Contractor a reasonable opportunity to resolve the same, determines is the most economical or advantageous method of settling the dispute. The Contractor shall reimburse the Association, upon demand, for any payments so made. Association shall not be entitled to the relief described in this paragraph if, during said seventy-two (72) hour period, Contractor provides a bond to protect against the Lien.

7.5 Should Contractor fail to submit all Lien releases or should Contractor submit other than Unconditional Lien Releases Upon Progress Payment (or Final Payment), Association may, as a matter of right, issue checks payable to both the Contractor and to the Subcontractors and materialmen who have not submitted Unconditional Lien Releases Upon Progress Payment (or Final Payment) in payment of the amounts due under the Application for Payment.

7.6 Upon receipt of the payment from Association, Contractor shall immediately pay all Subcontractors and material suppliers the portion of the payment to which they are entitled. Should Contractor fail to pay any Subcontractor or material supplier, the Association is entitled (but not obliged) to pay the Subcontractor or material supplier directly.

ARTICLE 8

PAYMENTS TO ASSOCIATION

8.1 If the Association is entitled to reimbursement or payment from the Contractor, such payment shall be made within ten (10) days after demand by the Association. Without prejudice to the Association's other rights, if the Contractor fails to promptly make any payment due the Association, or the Association incurs any costs and expenses to recover any sums due, cure any default of the Contractor or to correct defective Work, the Association shall have the right to offset such amount against the Contract Sum and, in the Association's sole discretion elect either to (1) deduct such payment due and costs and expenses incurred from any payment then or thereafter due the Contractor from the Association, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Association is entitled.

8.2 All payments due to the Association and unpaid shall bear interest from the date due at the rate of ten percent (10%) per annum unless such rate or rates exceed the maximum lawful rate of interest when the rate of interest shall be the maximum allowable by law.

ARTICLE 9

SUBSTANTIAL AND FINAL COMPLETION

9.1 Substantial Completion. When the Contractor considers that the Work has reached Substantial Completion, it shall serve notice to this effect on the Engineer who shall inspect the Work within 10 days thereafter. When the Engineer agrees that the Work is at Substantial Completion, Engineer shall issue a Certificate of Substantial Completion and immediately serve copies on the Association and Contractor.

9.2 Final Completion. Once Contractor has completed all of the Work, including all "punch-list" items, Contractor shall serve notice on the Engineer who shall conduct a final inspection within 10 days thereafter. If Engineer agrees that Contractor has

completed all of the Work and all other requirements of the Contract Documents; the Engineer shall issue a Notice of Final Completion and serve copies on the Association and Contractor.

9.3 Except as provided in Article 6 hereof, the ten percent (10%) retention shall be paid by Association as part of the Final Payment.

9.4 Final Payment. Final Payment shall be made (a) thirty-five (35) days after recordation of a Notice of Completion, or (b) ten (10) days after the Engineer issues the Certificate of Final Payment, whichever occurs later. Association shall record the Notice of Completion within five (5) days after receiving from the Engineer the Certificate of Final Payment.

9.5 Acceptance of the Final Payment by the Contractor, Subcontractor or a material supplier shall constitute a waiver of any and all Claims the Contractor, Subcontractor or material supplier has or may have, which are known (whether submitted or not) to Contractor at the time of the Final Payment.

ARTICLE 10

CHANGES IN THE WORK

10.1 Changes of any size and scope may be made in the Work by the Association and Contractor after this Agreement is executed and shall not affect the validity of this Agreement. All such changes in the Work shall be in writing in the form of a Change Order, Construction Change Directive or a Minor Change Order. Unless other written instructions are provided to Contractor by Association, no Change Order work shall be commenced by Contractor until the written Change Order has been approved and signed by Contractor, Engineer and Association. For the purposes of this provision, Engineer's and Association's consent to a Change Order will be considered obtained if there are field notes or other document that will ultimately lead to a formal Change Order that has been signed by Engineer's on-Site representative and any one of the following for the Association: Art Stromberg, Gary Roth or Marie Trentacosta. In the event Contractor commences work on a Change Order prior to receiving the requisite consents, Contractor shall not be paid for said work. Contractor shall complete all such Change Orders, Construction Change Directives and Minor Change Orders in a reasonably prompt time. A change in the Contract Sum or the Contract Time shall be accomplished only by Change Order or Construction Change Directive. No course of conduct or dealings between the parties, nor express or implied acceptance of alternations or additions to the Work, and no claim that the Association has been unjustly enriched by any alteration or addition to the Work, whether or not there is any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amount due under the Contract Documents or a change in any time period provided for in the Contract Documents.

10.2 Should Contractor disagree with the adjustment in the Contract Time, Contract Sum, or the work contained in the Construction Change Directive, Contractor shall notify Engineer in writing of the basis for the disagreement and shall present Contractor's proposed change in the Work, Contract Sum or Contract Time. Should the parties not ultimately agree, the Contractor shall keep an itemized accounting, with supporting data, of all work performed under the Construction Change Directive including the following: (1) costs of labor, including insurance, benefits, worker's compensation insurance, and wage expenses; (2) costs of materials, supplies and equipment; (3) rental costs of machinery and equipment, exclusive of hand tools; (4) costs of premiums for bonds and insurance, permit fees and taxes related to the Work; and (5) costs of supervision and office or field personnel that is attributed to the Construction Change Directive.

ARTICLE 11

COMMENCEMENT AND COMPLETION

11.1 The Commencement Date shall be established in a Notice To Proceed issued by the Engineer or Association. The Notice to Proceed shall provide Contractor at least seven (7) days advance notice prior to the actual commencement the Work.

11.2 Notwithstanding Section 11.1, this Agreement shall not take effect and Contractor shall undertake no work for which Contractor anticipates receiving any compensation until Association notifies Contractor that Association has obtained funding for the project. Association will notify Contractor in writing when said funding has been obtained. Said notice may be in the form of a Notice to Proceed. The Commencement Date will then be set at ten (10) days after Contractor receives the Notice to Proceed or such later date as may be specified in the Notice to Proceed.

11.3 The Contractor shall not commence the Work prior to the effective date of insurance or bonding required by Article 21. However, Contractor's failure to produce evidence of the required insurance or bonding shall not change the Commencement Date or allow Contractor additional time to complete the Work.

11.4 The Contractor shall proceed expeditiously with sufficient personnel and equipment and shall achieve Final Completion of the entire Work not later than seven (7) months after the Commencement Date, subject to adjustments of this Contract Time pursuant to Change Orders and Construction Change Directives, and subject to Association's right to terminate the Agreement as provided in Article 14 hereof.

11.5 In the event and so often as the Engineer reasonably determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents or as specified in the construction schedule for the Work or there is otherwise cause for the Association to reasonably determine that the Work will not be completed in accordance with the Contract Documents, the Engineer shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work as determined above is satisfactory to the Engineer. The Association's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule or Contract Documents and the Contractor shall not be entitled to an adjustment in the Contract Sum or the Contract Time in connection with Extraordinary Measures required by the Association pursuant to this Article.

11.6 Time is of the essence to this Agreement and all obligations thereunder. The Contractor will prosecute the Work uninterrupted and diligently until completed.

11.7 There are no liquidated damages or performance bonuses payable under this Agreement.

11.8 Subject to Paragraph 11.9, the Contract Time shall be extended by such extent as shall be determined by the Engineer as is reasonable due to: (1) the acts or omissions of Association to the extent that these are breaches of the terms herein, (2) Acts of God, (3) fire not caused by the Contractor, (4) precipitation falling on the Site as provided in Paragraph 11.10.

11.9 Extensions of the Contract Time will be given by Change Order to the extent delays described in Paragraph 11.8 will prevent the Contractor from achieving Final Completion within the Contract Time and (1) if the performance of the Work is solely due to a cause listed in Paragraph 11.8, and (2) is not caused, or could not have been anticipated, by the Contractor, or (3) could not be limited or avoided by the Contractor's timely notice to the Association of matters which would have avoided the delay, and (4) is of a duration of at least one (1) day.

11.10 Weather Delays - Contractor shall be entitled to additional time to complete the Work of this Agreement when precipitation, moisture, wind or other climatic condition prevents Contractor from performing the Work in a safe or quality manner. The amount of precipitation falling on the site shall be considered equivalent to the amount of precipitation officially reported as having fallen at the official U.S. Weather Reporting Station located nearest the Site.

For each day of rain, defined as any measurable precipitation, the Contract Time shall be extended for such duration as Engineer shall determine as reasonable and necessary. All such rain delays must be certified by Association or Engineer, and Contractor is responsible for notifying Engineer of its request for an extension of the Contract Time. For weather delays other than rain, Contractor must notify Engineer on the day of the delay and receive Engineer's approval for the delay the length of which shall be determined by Engineer. Extensions of time based on weather delays must be approved by Change Order. Contractor shall not be entitled to a delay day should Contractor elect to work on a day that would otherwise have qualified as a weather delay day, or if, in the Engineer's opinion, adverse weather would not materially affect the Contractor's ability to perform the Work scheduled for that day.

As to any request for an extension of the Contract Time, Engineer may increase the number of allowable delay days when, in the Engineer's opinion, the time allotted herein would not be sufficient to allow Contractor to perform the Work in a quality manner.

11.11 Except as expressly allowed in this paragraph a permitted extension in the Contract Time shall be the sole remedy of the Contractor for any hindrance, obstruction or delay (collectively referred to in this Article as Delays) in performing the Work, whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Association constituting active interference with

the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Association with written notice of such interference. For delays in excess of 2 consecutive work days, Contractor will be entitled to compensation (by way of Change Order) for standby rates as set forth in the Caltrans Rental Rate Book for the period April 1, 2007 through March 31, 2008, or the actual standby rental rates incurred by Contractor (without markup), whichever is less. Contractor will make every reasonable effort to avoid any standby costs whatsoever. In no event shall the Contractor be entitled to any additional compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Association's exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Association's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

ARTICLE 12

TERM

12.1 Without prejudice to the provisions of Articles 13 and 14, the Agreement shall be for an initial twelve (12) month term and is effective as of the Commencement Date.

12.2 Extensions. If the Contractor has not reached Final Completion prior to the end of the initial term, and except as provided below, this Agreement will be renewed for an additional six (6) month period, or until the Contractor reaches Final Completion, whichever is the earlier date. The Association may notify the Contractor of its intent not to renew this Agreement by providing Contractor with written notice of its intent not to renew at least thirty (30) days prior to the end of any term.

ARTICLE 13

TERMINATION AND SUSPENSION BY ASSOCIATION

13.1 Notwithstanding the provisions of Article 13, the Association solely may terminate the Contract in whole or in part for the Association's convenience and without cause or reason ("Termination at Will"), on seven (7) day written notice to Contractor.

A Termination at Will shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

13.1.1 Upon receipt of a notice of Termination at Will, the Contractor shall immediately, in accordance with instructions from the Association, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this paragraph: (1) cease operation as specified in the notice; (2) place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract; (3) terminate all subcontracts and orders to the extent they relate to the Work terminated; (4) proceed to complete the performance of Work not terminated; and (5) take action that may be necessary, or the Association may direct, for the protection and preservation of the Work and the Site.

13.1.2 Upon Termination at Will, the Contractor shall recover as its sole remedy, payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of Termination at Will and for items properly and timely fabricated off the Site, delivered and stored in accordance with the Association's instructions. The Contractor shall additionally be entitled to be compensated for Contractor's actual cost, without mark-up, of removing the equipment from the Site. The Contractor hereby waives and relinquishes all other claims for payment and damages, including, without limitation, anticipated profits.

13.1.3 The Association shall be credited for (1) payments previously made to the Contractor for the completed portion of the Work, (2) claims which the Association has against the Contractor under the Contract, and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

13.2 Suspension at Will. The Association may, with or without cause or reason, suspend the Work for such period of time as the Association may deem appropriate not to exceed fifteen (15) days. Association shall notify Contractor in writing should Association elect to suspend the Work for any reason. For suspensions in excess of 2 consecutive work days, Contractor will be entitled to compensation (by way of Change Order) for standby rates as set forth in the Cairns Rental Rate Book for the period April 1, 2007 through March 31, 2008, or the actual standby rental rates incurred by Contractor (without markup), whichever is less. Contractor will make every reasonable effort to avoid any standby costs whatsoever.

13.3 Redirection of Work. The Association shall be entitled to direct postponement or rescheduling of part of the Work when, in the Association's discretion, postponement or rescheduling is reasonably necessary to accommodate special circumstances of any one or more member(s) or resident(s).

13.4 The Association may terminate this Agreement for cause (Termination for Cause) upon five days written notice to the Contractor and Contractor's surety if the Contractor: (1) consistently fails or refuses to supply sufficiently skilled workers or the proper materials; (2) fails to make timely payments to Subcontractor's or Contractor's employees or material suppliers; (3) fails to comply with Legal Requirements; (4) commits a substantial or material breach of this Agreement; (5) breaches any express warranty made under the Contract Documents; (6) fails when requested to furnish the Association with assurances satisfactory to the Association evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents; (7) fails, after commencement of the Work, to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents; (8) fails to consistently perform quality workmanship with skilled personnel and specified or higher-quality materials; and/or (9) fails to have, keep or maintain any of the required insurance policies or bonds in full force and effect as provided in Article 21.

13.5 Termination for Cause by Association shall not prejudice any of Association's rights or remedies under the Agreement or in law. After the five-day notice period, Association may take possession of the Site and all materials, tools, construction machinery or other property of the Contractor that remain on the Project. Association may accept assignment of the Subcontractor agreements outlined in Article 16 of this Agreement and may proceed to finish the Work. Contractor shall not be entitled to receive any further payment until the Work has been completed. All additional expenses incurred by Association, including, but not limited to, ~~expenses of the Engineer, Consultants, agents, and construction costs, shall be deducted from any unpaid balance on the Contract Sum, before any balance remaining is paid to Contractor. If no balance remains, Contractor shall immediately pay to Association the amount that the additional costs exceed the Contract Sum.~~

ARTICLE 14

TERMINATION AND SUSPENSION BY CONTRACTOR

14.1 The Contractor may terminate this Agreement upon seven (7) days written notice to the Association if the Work has been suspended or halted for a period of more than fifty (50) days through no fault of the Contractor or any Subcontractor by: (1) the Association; (2) issuance of an order from any Authority; and/or an act of any Authority that makes the acquisition of necessary materials impossible.

14.2 If the Engineer does not issue a Certificate for Payment within the time specified in Paragraph 6.8, or if the Association does not pay the Contractor the amount certified by the Engineer, then the Contractor may, upon seven additional days' written notice to the Association and Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up.

ARTICLE 15

ADMINISTRATION OF THE CONTRACT

15.1 The Association will procure the services of an Engineer who will provide administration of this Agreement and the Work. Association may elect to complete some of the items listed below, itself, or may designate another construction management firm or individual to perform some or all of these tasks. In the event anyone other than Engineer is assigned the responsibility for performance of any of these tasks, Association will provide Contractor with written notification of the reassignment.

15.2 Engineer will carry out such actions as are designated herein to be performed by the Engineer within the time limits specified or within fifteen (15) days, whichever is the earlier.

15.3 Engineer will be available throughout the Work, to receive and give communications to and from the Association and Contractor on those matters concerning the Engineer or his duties hereunder.

15.4 Under a separate agreement with Association, Engineer is obligated to perform specific functions, duties and responsibilities which will or may affect Contractor's performance of the Work and Contractor agrees to: (1) cooperate with Engineer in every reasonable way; and (2) follow the Engineer's instructions, so as to permit Engineer to accomplish its required functions, duties and responsibilities. These functions, duties and responsibilities may include, but are not necessarily limited to, the following:

- 15.4.1 Conducting and attending pre-construction meetings and construction progress meetings;
- 15.4.2 Review of, approval or rejection of Contractor Submittals;
- 15.4.3 Review, approval or rejection of Change Orders and Construction Change Directives;
- 15.4.4 Review, approval, rejection or certification of Contractor's Applications for Payment, including Lien release requirements;
- 15.4.5 Directing the sequence, order or timing of Work by the Contractor and/or between the Contractor and other contractors working at the Site;
- 15.4.6 Rejection of non-conforming work;
- 15.4.7 Conducting periodic on-site inspections of the Work;
- ~~15.4.8 Certifying Substantial Completion and Final Completion of the Work;~~
- 15.4.9 Review and determination of validity of Claims;
- 15.4.10 Conducting tests and inspections to verify Contractor's conformance with the Contract Documents; and
- 15.4.11 Such other tasks as Association shall require or otherwise consider beneficial to the completion of the Project.

ARTICLE 16

SUBCONTRACTORS

16.1 Not less than ten days prior to entering into any agreement with any Subcontractor, Contractor shall provide Association with: (1) copies of all proposed Subcontractors' Agreements (in their final form) between Contractor and any Subcontractor; (2) copies of all Subcontractor's contractor's licenses; and (3) copies of Certificates of Insurance for all Subcontractors, and (3) the names of all entities proposed as manufacturers of the products identified in the Specifications and, where applicable, the name of the installing Subcontractor.

16.2 The Association will be entitled (for good reason) to object to any of the proposed Subcontractors, provided that the Association serves written notice of objection within seven (7) days of Contractor's submissions.

16.3 Should the Association object to a proposed Subcontractor, Contractor shall nominate another Subcontractor to whom Association has no objection. Contractor shall not enter into a contract with any Subcontractor with whom Association has any reasonable objection, and upon a proposed change of Subcontractor for the Contractor's convenience or benefit, the Contractor shall reimburse Association for any and all costs accruing to Association as a result thereof, including but not limited to, the costs charged by Engineer for qualifying the new Subcontractor.

16.4 All subcontracts (1) shall be on the Contractor's usual and customary subcontract form or on the AIA Document A401, Standard Form of Agreement Between Contractor and Subcontractor, 1987 Edition, or such other form as the Association shall reasonably require, and (2) shall specifically provide that the Association is an intended third party beneficiary of such subcontract. All subcontracts shall, at a minimum, require the Subcontractor to abide by the provisions of Paragraphs 2.2, 3.2, 3.11, 3.12, 3.16, 5.2, 7.1, 10.1, 11.2, 11.3, 18.3, 18.5, 21.4, 21.6, and 21.9, and the entirety of Articles 1, 14, 17, 20, 23 and 24. When appropriate, the word "Subcontractor" shall be substituted for the word "Contractor" when necessary to give the provisions meaning in the subcontract. Whenever appropriate, the Subcontractor agreement shall require the Subcontractor to include the same provisions in all Sub-subcontractor agreements.

16.5 Contractor shall make the Contract Documents available to Subcontractors whenever the Subcontractor is to be bound by the Contract Documents. Contractor shall also advise Subcontractor of any Contract Documents and Subcontractor agreement terms that are at variance with each other to the extent Contractor is aware of any such variances.

16.6 Contractor shall permit the assignment to the Association of every Subcontractor agreement after Termination for Cause by the Association and provided that such assignment applies only for those subcontracts which the Association accepts by notifying the Subcontractor. All such assignments are subject to any prior rights of any surety obligated under any bond under this Agreement. Each subcontract shall specifically provide that the Association shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Association's exercise of any assignment.

ARTICLE 17

PERSONNEL, MATERIAL AND USE OF THE SITE

17.1 The Contractor shall only employ and retain labor on the Project or in connection with the Work capable (in the reasonable opinion of the Engineer) of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

17.2 Contractor will only use, employ, engage, or hire persons for this work that are lawfully entitled to work in the United States, and will provide Association on request with a copy of all "I-9" forms for all persons performing the Work. Contractor will reimburse Association for any loss, penalty, costs, fines, attorney fees, judgements, damages, or assessments incurred by Association as a result of Contractor or Contractor's Subcontractors' breach of this provision.

17.3 The Contractor, and any entity for whom the Contractor is responsible, shall not erect any sign on the Site without the prior written consent of the Association.

17.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Site shall be free from all debris, building materials and equipment. Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the Site or buildings within the Site which are occupied in whole or part.

17.5 Except as may be designated in writing by the Association, the Contractor shall not permit any workers to use any existing facilities at the Site, including, without limitation, lavatories, toilets, entrances and parking areas (except on La Jolla Alta Drive) and shall use its best efforts to comply with all rules and regulations (as amended from time to time) promulgated by the Association in connection with the use of the Site. Contractor may use common area electricity and water, but Contractor may not use any separately-metered, private utility without the express consent of the affected resident.

17.6 Contractor shall enforce discipline and order among the Contractor's employees, Subcontractor's employees and other persons performing any of the Work and shall not use persons on the job who are not trained and skilled to perform the assigned tasks.

17.7 Conduct of Contractor's Personnel. Contractor accepts responsibility for the conduct of any and all persons performing Work on Site whether employed by the Contractor or not. Contractor will ensure or procure that:

17.7.1 As the Site is a residential complex in which many homes are occupied during the day, Contractor shall make every effort to minimize noise and interference with use and enjoyment of the Site by the residents and ensure that

no one performing the Work on Site shall swear or use, personal audio devices or otherwise make unnecessary noise or sounds audible to residents.

- 17.7.2 As the Site is private property, Contractor will only stage material and equipment at points within the Site as approved by Association or Engineer or as designated in the Contract Documents, and neither Contractor nor Contractor's personnel shall park in any fire lanes or in any space on the property, or in any portion of the property which is not a parking space designated for Contractor's use, except as specifically approved by Association. Association shall be entitled to tow away any vehicle improperly parked at the Contractor's expense without recourse for cost or loss of use.
- 17.7.3 On the Site or any adjacent area (1) no illegal drugs or alcohol will be used; (2) no pets or animals of any kind will be brought thereon; (3) all personnel will exhibit reasonable decorum in dress with recognition of the work to be performed; (4) all personnel, including Subcontractor's employees, shall wear Contractor's or the Subcontractor's standard shirts, hats or other identifying clothing, and badges or other identification as determined by the parties; (5) all personnel shall check in and out of the Site each day at the designated sign-in location.
- 17.7.4 Contractor will ensure that any person seriously or persistently violating any portion of this Article will be excluded from the Site upon the Association's request.

ARTICLE 18

PROTECTION OF PERSONS AND PROPERTY

18.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by any Authority or industry custom in connection with the performance of this Agreement and will comply with all Legal Requirements.

18.2 Contractor shall appoint a person of responsibility on the Site whose duties shall include the prevention of accidents. Unless another person is specifically designated, this person shall be the Construction Superintendent.

18.3 Contractor shall take all reasonable precautions for the safety and protection of Contractor's employees, Subcontractor's employees, Association members, directors, employees, agents, contractors and other users of the Site, so as to prevent loss, damage or injury to all such persons including posting all notices or signs required by law or good practice. Contractor shall also protect the Work and the materials and equipment used in connection therewith, whether in the course of installation or storage on or off-Site. Contractor shall take all reasonable precautions for the safety and protection of the Site, whether or not included within the immediate area of the Work.

18.4 Except for the public streets, Contractor shall immediately, at its sole cost, repair, replace and restore any and all property damaged or lost, which damage or loss is caused by the Contractor, any Subcontractor, any sub-Subcontractor, material supplier, or anyone employed by any of them, whether or not negligence exists. Contractor shall, at its sole cost, repair, replace and restore any and all damage or loss to or on the public streets, when such damage or loss is caused by the negligence act or failure to act of Contractor, any Subcontractor, any sub-Subcontractor, material supplier, or anyone employed by any of them.

18.5 The Contractor shall promptly report in writing to the Association and Engineer all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injury, and/or serious property damage is caused, the accident shall be reported immediately by telephone or messenger to the Association, Engineer and the Association's attorney.

18.6 In the event Contractor encounters material believed to be or contain asbestos or polychlorinated biphenyl, which has not been rendered harmless, Contractor shall stop work in that area and immediately submit a written report of Contractor's findings to Association. If the material is found not to be asbestos or polychlorinated biphenyl or, if the asbestos or polychlorinated biphenyl has been rendered harmless Contractor will, upon the written instruction from Engineer, resume Work in the area.

18.7 The Contractor shall not use or permit or suffer any fill or other materials to be incorporated into the Work which are hazardous, toxic or comprised of any items that are hazardous or toxic.

ARTICLE 19

INSPECTIONS AND CORRECTIONS OF THE WORK

19.1 Uncovering Work. Contractor shall, upon the request of Engineer, uncover the Work to allow Engineer to observe and inspect the Work. All such uncovered Work will be replaced at Contractor's sole expense, unless such portion of the Work was not specifically required by the Engineer or under the Contract Documents to be left uncovered for Engineer's observation and inspection.

19.2 Correction of Work. Contractor shall promptly correct any Work that is rejected by Engineer so that it conforms to the Contract Documents, all at Contractor's sole expense. Contractor's obligation to correct rejected Work shall arise regardless of whether the rejection occurs prior to, or after, Final Completion. Any costs associated with uncovering, inspecting or re-inspecting, removing and/or replacing rejected Work shall be borne by the Contractor, including the costs of Engineer or any Consultant.

19.3 If the Contractor, a Subcontractor or anyone for whom either is responsible uses, destroys or damages any portion of the Work or the Site, the Contractor shall immediately cause such item to be repaired or replaced at the Contractor's sole expense.

19.4 Should Contractor fail to correct nonconforming Work within a reasonable time and after notice from the Association, Association may correct the Work and charge the Contractor for the cost thereof. Association may also remove any nonconforming Work and store any salvageable materials or equipment at Contractor's expense. Association shall be entitled to sell or otherwise dispose of any such stored materials or equipment if Contractor fails to pay for the cost of the storage and the removal within ten (10) days of notification from Association. The Association shall be entitled to deduct such costs incurred from any sums still owed to Contractor. If there are insufficient sums still owing to Contractor, Contractor shall pay the amount of the deficiency to Association upon demand.

19.5 Association reserves the right to accept nonconforming Work, in lieu of requiring it to be removed and replaced provided that ~~(1) the Association's acceptance in any one instance shall not be considered a waiver of Association's rights to demand removal and correction of nonconforming or deficient work in any other instance; (2) upon acceptance of nonconforming Work, the Contract Sum shall be adjusted as appropriate and equitable, whether or not Final Payment has been made to Contractor.~~

ARTICLE 20

DISPUTE RESOLUTION

20.1 Claim Procedure. During the course of the Work and prior to initiating mediation, Claims shall be submitted to Engineer for informal resolution. The parties agree to reasonably determine any special procedures to be used in this process. All such Claims will be decided by Engineer within thirty (30) days of the original submission of the Claim. Either party may proceed to mediation of a Claim if Engineer fails to render its decision within the thirty (30) day period. Either party dissatisfied with the Engineer's decision may proceed to more formal Claim resolution procedures as outlined below.

20.2 Mediation. Prior to submitting a Claim to litigation, the parties must first attempt to settle any Claim by mediation in accordance with the rules of the Judicial Arbitration & Mediation Services ("JAMS") currently in effect unless the parties mutually agree to another mediator or another set of rules or approach to mediation. Demand for mediation shall be filed in writing with the other party to this Agreement and with JAMS. A demand for mediation shall be made within a reasonable time after the Claim has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statutes of limitations. If any party files a lawsuit without complying with the foregoing requirement, that party shall waive its right to any attorneys' fees to which such party might otherwise be entitled in such lawsuit under Paragraph 26.10 of this Agreement. Notwithstanding the foregoing, if a party submits a written request to mediate a dispute to the other party and the latter fails to respond in good faith and to take reasonable steps to initiate mediation within thirty (30) days of receipt of such notice, the party requesting the mediation shall then be free to file a lawsuit and there shall be no waiver of any entitlement to attorneys' fees under the preceding sentence.

20.3 Tolling of Statute of Limitations. The parties hereto agree that any applicable statute of limitations shall be tolled during the pendency of any mediation proceedings.

ARTICLE 21

INSURANCE AND BONDS

21.1 The Contractor shall purchase from and maintain in full force and effect at all times until Final Completion in a company or companies authorized to do business in California with a published A.M. Best's rating of A or above, such insurance as in the reasonable opinion of the Association will reasonably protect the Contractor and Association and Indemnitees from claims which may arise out of or result from the Contractor's operations under this Agreement and for which the Contractor, Subcontractors, and/or their employees (or anyone for whose acts any of them are liable) may be legally liable. Such insurance shall, without limitation to the above, provide coverage of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000) aggregate, and include but not be limited to claims: (1) for workers' compensation; (2) for damages due to bodily injury, sickness, disease, or death of any person, including, but not limited to, claims resulting from use of a motor vehicle; (3) for other damages usually insured by personal injury liability coverage; (4) for damages to property, including loss of use thereof; and (5) involving contractual liability. Contractor's liability insurance shall be comprehensive broad form coverage and shall include, without limitation: (1) Premises/Operations; (2) Products and Completed Operations; (3) Bodily and Personal Injury Liability; (4) Contractual, including a specified provision for Contractor's obligations under Article 23; and (5) Broad Form Property Damage; (6) Owned, non-owned and hired motor vehicles; and (7) Workers Compensation. The Association and Engineer shall be named as additional insureds under all of the above-required policies.

21.2 The Contractor will deliver to the Association, within ten (10) days of the execution of this Agreement and prior to any equipment or personnel being brought onto the Site, and also within ten (10) days of the expiration on any such policy, true and complete copies of all insurance policies and Certificates of Insurance and renewals thereof as appropriate procured or held by the Contractor under or pursuant to this Article. The coverage afforded under any insurance policy obtained under or pursuant to this Paragraph shall be expressed to be primary to any valid insurance carried separately by any of the Indemnitees and shall expressly provide that no less than thirty (30) days prior written notice shall be given the Association by the Insurers in the event of material alteration, cancellation, non-renewal or expiration of the coverage contained in such policy or evidenced by such true and complete copy or Certificate of Insurance.

21.3 In no event shall any failure of the Association to receive true and complete copies or Certificates of Insurance required under Paragraph 21.2, or to demand receipt of such copies or Certificates prior to the Contractor commencing the Work, be construed as a waiver by the Association or Engineer of the Contractor's obligations to obtain insurance pursuant to this Article. The obligation to have and maintain any insurance required by this Article is a separate responsibility of the Contractor and independent of the duty to furnish a copy or Certificate(s) of such insurance policies.

21.4 If the Contractor fails to procure, have and/or maintain any insurance required under this Article, Association may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand or may deduct such payments from any Application for Payment.

21.5 Any aggregate limit under the Contractor's liability insurance shall, if requested by Association, by endorsement, apply to this Project separately.

21.6 The Contractor shall cause each Subcontractor to (1) procure, have and maintain broad form general liability and completed operations insurance in an amount not less than One Million Dollars (\$1,000,000) each, and, when required by law, workers compensation insurance; (2) provide all of the coverages required of the Contractor as described in Paragraph 21.1; and (3) name the Association and Engineer as additional insureds under all such policies. Prior to commencement of Work by any Subcontractor, Contractor shall provide Association with copies of Certificates of Insurance for such Subcontractor's insurance evidencing the above requirements. The additional insured endorsement included on the Subcontractor's policies shall state that coverage is afforded the additional insureds with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis, and Subcontractor's insurance shall be primary to any insurance policy carried separately by any Indemnitee. The amount of the insurer's liability under this insurance policy shall not be reduced by the existence of such other insurance.

21.7 In the event any claim is filed and paid under any of Association's policies, the Contractor shall pay all deductibles associated with the claim, unless Contractor is less than fifty percent (50%) responsible for such claim.

21.8 If permitted by the Association's and Contractor's insurance companies, without penalties, the Association and Contractor waive all rights against each other and their Subcontractors, agents, Engineer, Consultants and employees of each of them for damages caused by insured perils to the extent of the insurance coverage provided by these policies.

21.9 The Contractor shall not take any action that would cause cancellation, lapse or reduction of Contractor's insurance.

21.10 The Contractor shall furnish bonds covering faithful performance of this Agreement and payment of obligations arising thereunder as stipulated in Bid Documents or specifically required in the Contract Documents on the date of execution of this Agreement. Said bond shall be carried, at Contractor's sole expense, with a company with an A.M. Best Class rating of V or higher that is admitted to do business in the State of California. The required bonds are listed below:

21.10.1 A performance bond and a payment bond, both in the amount of one hundred percent (100%) of the Contract Sum shall be provided prior to commencing any Work. However, if Contractor is unable to provide said bonds due to Association's proposed method of funding the Project (by special assessment without having all necessary funds on hand at the beginning of the Project), Contractor shall be excused from having to provide said bonds, and the anticipated cost thereof, as shown on Exhibit "D" shall be deducted from the Contract Sum.

ARTICLE 22

WARRANTIES

22.1 The Contractor warrants:

22.1.1 That it is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to perform the Work and perform all obligations set forth in this Agreement.

~~22.1.2 That it is able to furnish the proper facilities, tools, materials, supplies, equipment and labor required to perform the Work and its obligations hereunder;~~

22.1.3 That it and all Subcontractors are authorized to do business in the State of California and are properly licensed in all areas of work to be undertaken by them respectively in accordance with the regulations of the Contractor's Licensing Board of the State of California and any Authority;

22.1.4 That its execution of this Agreement and its performance thereof is within its duly authorized powers;

22.1.5 That it has visited the Site, is familiar with the local and special conditions under which the Work is to be performed and has correlated on-Site observations with the requirements of the Contract Documents; and

22.1.6 That it is a contractor who possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project, and that it will perform the Work with the care, skill and diligence of such a contractor.

22.1.7 That it has completed the information listed required by Labor Code §2810 as listed on Exhibit "C", that all of said information is true and correct and that Contractor will fully comply with all Legal Requirements of said Labor Code section. Contractor further warrants that if any of the information listed on Exhibit "C" is estimated, Contractor will continually attempt to ascertain the information required and will reduce that information to writing and provide same to Association once the information becomes known.

22.2 The foregoing warranties are in addition to, and not in lieu of, any and all other liability imposed upon the Contractor by law with respect to the Contractor's duties, obligations and performance hereunder. The Contractor's liability hereunder shall survive the Association's final acceptance of and payment for the Work. All representations and warranties set forth in this Agreement, including, without limitation, this Article, shall survive the Final Completion or the earlier termination of this Agreement. The Contractor acknowledges that the Association is relying upon the Contractor's skill and experience in connection with the Work.

22.3 Contractor warrants to Association that the Work and all materials and equipment used therein (1) will be of good quality, (2) will be free of defects in materials and workmanship, and (3) will conform with the Contract Documents. Work that does not conform will be considered defective. Contractor's warranty shall exclude damages or defects caused by abuse, modifications to the Work not completed by Contractor, improper or insufficient maintenance, improper operation, and normal wear and tear under normal usage. At Engineer's request, Contractor shall furnish satisfactory evidence of the kind and quality of materials and equipment used. This warranty shall be in effect for a period of one (1) year(s) from the date of Final Completion (the "Warranty Period"). This express warranty shall in no way limit or reduce Contractor's obligations or liability for latent defective conditions.

22.4 If, within the Warranty Period, any of the Work is found to be not in conformance with the Contract Documents, the Contractor shall immediately repair all such defects and deficiencies until compliance with the Contract Documents is obtained. The Warranty Period for repairs to all such portions of the Work shall then be extended to equal the original warranty period, so that the Association shall be entitled to the full time period for warranty protection for all Work performed. These provisions shall survive acceptance of the Work and shall further survive the termination of this Agreement.

22.5 The Contractor agrees to assign to the Association at the time of Final Completion, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

22.6 The Contractor shall furnish warranty repairs and maintenance and seven (7) day call back service for the equipment provided, installed, or removed and reinstalled, by Contractor for a period of one (1) year(s) after completion and acceptance of the Work. As to all used equipment that Contractor is only reinstalling after its removal to allow the Work to be completed, Contractor shall provide this service only until the equipment has been tested and accepted by Engineer, or for twelve months after Final Completion, whichever comes first. This service shall include regular examinations of the installation by competent and trained employees of the Contractor, and is not in lieu of, nor shall it affect any warranty or guaranty applicable to the Work or any materials used in the Work.

22.7 This Article is not to be interpreted as limiting the rights of the Association to prosecute proceedings against Contractor to ~~enforce compliance with the Contract Documents or to establish Contractor's liability with respect to any obligations other than the~~ correction of the Work. Time limits contained in this Article relate only to Contractor's obligations to correct deficiencies in the Work.

ARTICLE 23

INDEMNIFICATION

23.1 To the fullest extent allowed by law, Contractor agrees expressly and unequivocally to release, indemnify and hold harmless the Indemnitees from and against any and all actual or alleged liabilities, claims, damages, losses, expenses, judgements, and attorney's fees, however the same may occur, arising out of, attributable to, or resulting from the performance of the Work that results in bodily injury, sickness, disease, death, or injury, damage or destruction of property, including loss of use thereof or other economic loss, to the extent the damage or injury is the result of Contractor's passive or active negligence or intentional acts or omissions, or the negligent or intentional acts or omissions of Contractor's Subcontractors, Sub-subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable and further including the Indemnitee's active or passive negligence alone or as a result of Indemnitees co-negligence with Contractor. This indemnification requirement shall apply regardless of whether the claim, damage, loss, expense, judgement or attorney's fees is caused in part by a party being indemnified. This indemnification obligation shall not be construed as reducing or eliminating any other right or obligations of indemnity which would otherwise exist to the Indemnitees. This obligation of indemnification shall not apply to the gross negligence or intentional misconduct of the Indemnitees.

ARTICLE 24

SPECIAL CONDITIONS

24.1 Should any of the Work require excavation of any part of the Site, Contractor shall be responsible for ensuring that an authorized utility locating service has marked the exterior underground utilities in the area where the excavation is to occur in advance of the excavation. On due compliance, Contractor shall be entitled to rely upon such markings and will not be responsible, in the absence of negligence, for damage to any underground utility. In all other circumstances, Contractor shall be responsible for any and all damage to any exterior underground utility that occurs as a result of the excavation.

24.2 The parties agree that as the Work relates to repair or reconstruction of the Defective Conditions, the Association shall not be deemed to be occupying or using the work of improvement until Final Completion or termination of this Agreement.

24.3 Any unused allowances as listed in Exhibit "D" shall be returned to Association in the form of a reduction in the Contract Sum.

24.4 Contractor shall provide unarmed security of the Site at all times other than Contractor's normal hours of work, defined as Monday through Friday, 7:00 a.m. through 4:00 p.m.

24.5 Pre-determined unit prices are listed in Exhibit "D"

24.6 The Association shall obtain and pay for any City-required permit bond prior to the Commencement Date. In the event Association is unable to obtain any such required bond, Contractor will attempt to obtain same if Contractor and Association are able to agree on procedures to ensure that Contractor is not required to jeopardize personal or corporate assets of Contractor or Contractor's principals in guaranteeing performance under said bond. Should Contractor obtain said bond, the cost thereof is not part of the Contract Sum and the cost thereof shall be reimbursed to Contractor.

ARTICLE 25

GENERAL PROVISIONS

25.1 Representatives. Reference to the parties or any third party shall be deemed to include their authorized representatives.

25.2 All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa. Titles of articles, paragraphs and subparagraphs are for convenience only, and neither limit nor amplify the provisions of this Agreement in itself. The use herein of the word "including" when following any general statement, term, or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

25.3 Whenever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

25.4 Any specific requirement in this Agreement that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

25.5 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which such notice was intended, or if delivered or sent by facsimile or registered or certified mail to the addresses or facsimile numbers listed herein unless otherwise notified in writing. Notices sent by facsimile shall be deemed received upon transmission if sent during normal working hours. If sent at other times, facsimiles will be deemed received at the beginning of the next working day thereafter.

25.5.1 Association: La Jolla Alta Master Council
1570 Alta La Jolla Drive
La Jolla CA 92037
Tel: 858-459-6903 / Fax: 858-459-3416
E-Mail: clubmanager@liamc.com

25.5.2 Contractor: Nautilus General Contractors Inc.,
2045 First Avenue
San Diego, California 92101
Tel: 619-564-5500 / Fax: 619-564-5526
E-Mail: gustafson@nautilusgeneral.com

25.5.3 Association's Attorney: Thomas S. Gatlin, Esq.
EPSTEN GRINNELL & HOWELL, APC
9980 Carroll Canyon Road, Second Floor
San Diego, CA 92131
Tel: 858-527-0111 / Fax: 858-527-1531
E-Mail: tgatlin@epsten.com

25.6 No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties to it may be exercised from time to time and as often as may be deemed expedient by those parties.

25.7 The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of California.

25.8 Assignment. Except as provided in Article 16, neither the Association nor the Contractor may assign this Agreement without the express prior written consent of the other. Should either party attempt to assign this Agreement to any other person or entity, the party attempting to assign shall remain legally obligated and responsible under the Agreement. By signing this Agreement, both the Contractor and the Association bind themselves, their successors, partners, assigns, and legal representatives to the other party hereto as respects the covenants, conditions, agreements, and obligations contained in this Agreement and the Contract Documents.

25.9 Waiver. The Association's, Engineer's and/or Contractor's acts or failures to act to enforce any right or duty under this Agreement shall not be considered or deemed a waiver of the right to enforce any other right or duty, nor is the act or failure to act to be interpreted as approval of the breach by any other party, unless specifically agreed to in writing.

25.10 Attorneys' Fees. Should any action, proceeding or arbitration be necessary to construe or enforce the provisions of this Agreement, or the rights of the parties hereunder, the party prevailing in such action shall be entitled to recover all court costs and reasonable attorneys' fees to be fixed by the court or arbitrator and taxed as part of the judgment thereunder.

25.11 This Agreement, including any specified attachments or other specified documents, constitutes the entire agreement between the Association and Contractor with respect to the work to be performed under the Agreement. No change to this Agreement shall

be valid unless made by supplemental written agreement executed and approved by the Association and Contractor. Except as otherwise provided herein, any and all amendments, additions or deletions to this Agreement shall be null and void unless approved by the Association and Contractor in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has not relied upon any warranties, representations, covenants or agreements, express or implied to such party, other than those expressly set forth herein.

25.12 Each party to this Agreement and its legal counsel have reviewed and revised, or had the opportunity to revise, this Agreement. The rule of construction that ambiguities are to be resolved against the drafting party or in favor of a party receiving particular benefit under an agreement may not be employed in the interpretation of this Agreement or any amendment of this Agreement.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Engineer for use in overseeing the Contract, and the remainder to the Association. Each is to be considered a fully enforceable original.

ASSOCIATION: LA JOLLA ALTA MASTER COUNCIL
a California non-profit mutual benefit corporation

By: [Signature]
President

By: [Signature]
Vice President

By: [Signature]
Secretary

By: [Signature]
Treasurer

CONTRACTOR: NAUTILUS GENERAL CONTRACTORS, INC.
a California corporation
Contractor's license number: 807552

By: [Signature]

READ AND APPROVED AS TO FORM:

Engineer: LAND DESIGN CONSULTANTS
a California corporation

By: _____

DECLARATION TO PROCURE PAYMENT

(1)

(Name of releasing company as it appears on the Release)

(2)

(Project)

(3)

(Through date as it appears on the Release)

The company named above has executed a form of Conditional Waiver and Release Upon Progress Payment through the date shown above. The statutory form of release provides that it does not cover extras furnished before the Through Date for which payment has not been received or the right to recover compensation for furnished labor, services, equipment or material that was not compensated by the progress payment.

In order to induce payment of the amount shown in the release, the undersigned individual does hereby declare that the company named above did not furnish any extras before the Through Date for which payment has not been received, and that the company named above did not furnish any labor, services, equipment or material before the Through Date that was not compensated by the progress payment. This declaration is conditional, and shall be effective only when the check described on the Conditional Waiver and Release has been properly endorsed and paid by the bank upon which it is drawn.

EXCEPTIONS

(4)

(Record any exceptions in this space. If no exceptions, write "None.")

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was signed at (5) _____, California on (6) _____.

(7)

(Personal Signature)

NOTE: This form is designed to accompany a statutory
CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

EXHIBIT "B"
SCHEDULE OF CONTRACTOR'S HOURLY RATES

JOB DESCRIPTION	HOURLY RATE
CONSTRUCTION LABOR	
<i>Semi-Skilled Labor</i>	\$35.00/hour
<i>Skilled Labor</i>	\$55.00/hour
<i>Supervision</i>	\$65.00/hour
<i>Project Management</i>	\$85.00/hour
SUBCONTRACTORS	
Subcontractors	Direct Cost, plus Overhead, Profit & Insurance
EQUIPMENT or MATERIALS	
Equipment or Materials	Direct Cost, plus Overhead, Profit & Insurance
Nautilus-owned equipment will be charged at standard industry rental rates	
OVERHEAD, PROFIT & INSURANCE	
Overhead & Profit	15%
Insurance	2%
Overhead/profit & insurance markup is applied to all hard costs, including labor, materials, equipment, subcontractors and reimbursable expenses.	

EXHIBIT "C"
Labor Code §2810
Compliance Schedule of Required Provisions

- (1) Name, address, and telephone number of the contracting parties: Listed in body of contract.
- (2) Description of the labor or services to be provided and statement of when those services are to be commenced and completed: Listed in body of contract.
- (3) The State Tax Employer identification number of the Contractor: _____
- (4) Contractor's Workers Compensation Insurance policy number and the name, address, and telephone number of the Contractors Workers Compensation Insurance Carrier:

(5) Vehicle identification number of any vehicle that is owned by the construction, janitorial, or security guard contractor and used for transportation in connection with any service provided pursuant to the contract or agreement, the number of the vehicle liability insurance policy that covers the vehicle, and the name, address, and telephone number of the insurance carrier (attach additional sheets if necessary):

(6) The total number of workers to be employed under the contract or agreement, the total amount of all wages to be paid, and the date or dates when those wages are to be paid:

(7) The amount of the total contract price to be paid to the Contractor: Listed in body of contract.

(8) The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

F I L E D

Clerk of the Superior Court

APR 27 2007

By. M. BARHAM, Deputy

RECEIVED

MAY 3 2007

Thorsnes, Bartolotta & McGuire

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

LA JOLLA ALTA MASTER COUNCIL, a
California Nonprofit Mutual Benefit
Corporation,

Plaintiff,

v.

THE CITY OF SAN DIEGO, a public entity,
and DOES 1 through 20, Inclusive,

Defendants.

CASE NO. GIC 822281

STATEMENT OF DECISION

Judge: Linda B. Quinn
Dept.: 74.

Evidence, including a view of the Canyon by the Court, and oral arguments were submitted to the Court on December 4, 2006. The Court accepted for filing three additional briefs from the parties, the last being filed on December 29, 2006.

Judgment on the issue of the taking under inverse condemnation is entered in favor of the Plaintiff.

Judgment on the issue of the parties' rights and responsibilities to maintain the storm drainage system that discharges storm waters into the La Jolla Alta canyon at various locations and discharges storm waters out of that canyon at Vickie Drive "System") is entered in favor of the Plaintiff. The Defendant has the obligation to maintain and repair the System and to repair the damages to Lot 1 of the System.

Court's Ex. 396
Case # GIC 822281
Rec'd
Dept. 74 Clk

1 In making this decision, the Court relies on the following findings:

2 1. The La Jolla Alta Canyon consists of Lots 15, 16, 25 and 1 of the La Jolla Alta
3 Planned Residential Development No. 80 ("Canyon"). The Canyon is bisected by a public street,
4 Alta La Jolla Drive, such that Lots 15, 16 and 25 are north of the street ("Upper Canyon") and
5 Lot 1 is south of the street ("Lower Canyon").

6 The City of San Diego ("City") created and operates the System, which incorporates the
7 Canyon as an integral part. The System includes public streets, sidewalks, culverts and pipes that
8 collect and direct storm water to the Canyon at several locations within the Upper and Lower
9 Canyon. The System funnels storm waters under and around Alta La Jolla Drive and into Lot 1.
10 The City owns permanent easements in the Canyon at the discharge points of its pipes, which
11 include City approved energy dissipaters. The area downstream of all of these easements in the
12 Canyon is private property owned by the Plaintiff, La Jolla Alta Master Council ("Association").
13 Lot 1 carries all storm waters discharged into the Canyon, including storm waters the System
14 diverts to Lot 1 from outside its historical watershed to a 48 inch culvert located at the southern
15 boundary of Lot 1 at the northern terminus of Vickie Drive.

16 2. The Association is a homeowners' association which holds legal title to the Canyon
17 for the benefit of its members. Lot 1 of the Canyon is subject to a Negative Open Space Easement
18 ("NOE") and several Storm Drainage Easements owned by the City. The Upper Canyon is not
19 subject to the NOE, but is subject to several Storm Drainage Easements. The Association sued the
20 City, alleging that the City acted unreasonably in operating the System and is liable for property
21 damage in Lot 1 on a theory of inverse condemnation. The Association also requested the Court
22 provide a Declaration of Rights and Responsibilities regarding the legal responsibility for
23 maintaining the System in the Canyon and for repairing erosion damage to Lot 1. The Association
24 also pled a cause of action for injunctive relief which was abandoned at the commencement of the
25 trial.

26 3. The City did not act reasonably in its creation and operation of the System. The
27 City knew, or should have known, that the development of the Canyon rim and the operation of the
28 System serving those developments would substantially increase the amount of storm drainage

1 carried to the Canyon and, in particular, to Lot 1 but failed to take any reasonable steps to mitigate
2 damage caused by the increased discharge burden on Lot 1.

3 4. The Court reaches the conclusions set forth above by examining the factors
4 mandated in the case of Locklin vs. City of Lafayette (1994) 7 Cal.4th 327, as more fully
5 addressed below.

6 5. The evidence established that (a) the elements of the System that were constructed
7 over the years were all approved, inspected and, upon completion, required to be dedicated to the
8 City as part of its System of storm drainage; (b) the System, as a whole, is operating as designed,
9 approved and constructed; (c) the System redirects and diverts storm water from various sources
10 inside and outside the original natural watershed to the Canyon; (d) the diversion and redirection
11 of storm water is such that the intensity and volume is greater, and the location of discharge
12 different, than Lot 1 received naturally; (e) the System's approval and operation was a substantial
13 factor in shifting the storm flow in Lot 1 from a naturally armored original streambed to an
14 unprotected location east of its historical location; and (f) the System delivers twenty (20) times
15 more storm water to Lot 1 than would have occurred naturally.

16 6. ~~_____~~
17 ~~_____~~ The Canyon rim is completely
18 developed by residential communities which were all approved by the City. The City has operated
19 storm drainage systems in all these communities since 1959. Most of the residential owners of
20 property surrounding the Canyon rim, which contribute storm waters to the System and eventually
21 to Lot 1, are not members of the Association. Moreover, 100% of the storm water delivered to
22 Lot 1 is delivered by way of public improvements which are part of the System. Therefore, if
23 uncompensated, the Association and, indirectly, its members, would be required to contribute far
24 more than its share to correct and repair the damage to Lot 1 compared to its or their own use.

25 7. The City has unreasonably over-burdened Lot 1 and its owner. The benefit of Lot 1
26 to the Association is insignificant compared to the loss it is asked to assume by the City.

27 8. The damage the Association has sustained is not a normal risk of land ownership.
28 The evidence was uncontroverted that the severe erosion conditions caused by the System

1 threatens life and limb, as well non-parties' property, unless substantial and expensive repairs are
2 immediately undertaken.

3 9. La Jolla Alta Planned Residential Development No. 80 ("PRD 80") was one of the
4 last in the La Jolla area to be approved. The City knew, or should have known, of the erosion
5 propensity of the land similar to Lot 1. In addition, the City had actual knowledge that the System
6 could create dangerous conditions in Lot 1; had the means and methods available to it to prevent
7 these conditions from occurring; and unreasonably failed to implement those means and methods.

8 10. The evidence established that the cost of repairing the damages caused is more
9 fairly absorbed by the City than by the Association in light of all the circumstances.

10 11. The evidence also established that the City unreasonably failed to physically
11 maintain its easements and failed to review or monitor the erosion damage its System was causing
12 to Lot 1. The City's approval of streets, culverts and drains, coupled with the requirement of
13 having individual residential lots to drain towards the street, created a System that must be
14 reasonable when operated as intended. The City has not reasonably operated the System because it
15 has created and operates a complex storm drainage system and then attempts to limit its
16 responsibility for that operation to only individual drains and the footage included within the
17 easements it requires to be dedicated to it as part of the development process.

18 12. The City's contention that the Association is entirely responsible for the erosion of
19 Lot 1 lacks any support in the evidence. The amendment of PRD 80 dated January 24, 1989 which
20 created Unit 15, Lot 1, was drafted by the City and provided a NOE to be created over Lot 1 for
21 the benefit of the City. The Amendment provided:

22 Lot 1 shall have a negative open space easement over it in a manner
23 satisfactory to the Park and Recreation Department. The easement
24 shall be maintained by the Homeowners' Association.

25 The subdivision map dated the same date as the amendment to the PRD provides:

26 The subdivider shall correct the existing erosion hazards prior to the
27 City's acceptance of this easement, in a manner satisfactory to the

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

City Engineer. This easement is to be maintained in accordance with the PRD permit.

13. The City Engineer corrected the hazard by requiring the developer to build a fence twenty-five (25) feet on either side of the eroded area. When the final map for Lot 1 was recorded in December, 1990, it contained the following language for the NOE:

We hereby grant and relinquish to the City of San Diego, a Municipal Corporation, any and all rights to construct, erect or maintain any structure; to construct, erect or maintain fences; to remove live trees and shrubs, to change the grade; or to otherwise change the open space character of the land over, upon or across Lot 1 as shown on this map and designated as "open space easement granted hereon," reserving to the owner of the fee underlying said easement herein granted the continued use of said real property; the right to grant easements to any public utility company for distribution facilities provided the same are installed underground; and the right to maintain firebreaks, trim or remove brush and otherwise perform preventative measures required by the Fire Department to protect structures and other improvements from potential fires. Responsibility for maintenance of said lands shall remain with the owner of the fee title of said land and nothing contained herein shall be construed to assign any maintenance responsibility to the City of San Diego, nor shall anything contained herein be construed to confer any rights to the general public.

14. The provisions cited above are to be interpreted according the rules of construction applicable to contracts. Civil Code § 1642 is among the rules that must be considered. Several contracts relating to the same matters pertaining to the same parties and made as part of one transaction, are to be taken together. In addition, the City required separate easements for each of the storm drains that drain into the Canyon, including those that drain into Lot 1, which is a factor

1 to be considered in determining the rights and obligations of the parties under the provisions
 2 described above. The easements creating storm drainage rights and responsibilities are
 3 substantially similar and were established prior to the NOE. Those easements required developers
 4 to:

5 Grant to the City . . . the permanent easement and right of way to
 6 construct, reconstruct, maintain, operate and repair a storm drain or
 7 drains including all appurtenances thereto, together with the right of
 8 ingress and egress, over, under, along and across all that real
 9 property described as follows . . . reserving to the grantor and its
 10 heirs and assigns the continued use of the above described parcel of
 11 land. . . (Exhibit 762)

12 In this case, the Court may properly consider extrinsic evidence in interpreting uncertainty
 13 in the construction of the contracts. The existence of competing easement rights and duties creates
 14 uncertainty in this case. ~~The City of Redondo Beach and the City of Torrance is~~
 15 ~~the defendant in this case.~~

16 15. On April 13, 1988, the City advised the then owner of Lot 15, the developer
 17 TechBilt, of "eroded areas . . . that may endanger youngsters playing in the canyon." (Exhibit 516).
 18 The City advised that it would not accept the NOE on Lot 1 until TechBilt fenced in the hazard.
 19 Thereafter, TechBilt constructed a fence (Exhibit 509), surrounding the erosion hazard referred to
 20 in Exhibit 516. Moreover, it was established by an unopposed offer of proof that the erosion
 21 hazard referred to in Exhibit 516 was a drainage ditch that was 3 to 6 feet deep and 8 feet wide,
 22 which is consistent with a natural and presumably acceptable rate of erosion that did not require
 23 reversal or efforts to slow or stop, but a problem that needed to be fenced in to provide a safe place
 24 for children to play. ~~There is no evidence that the City of Redondo Beach or the City of Torrance~~

25 16. The evidence also established that discussions at board meetings; statements made
 26 at a City Council meeting on January 24, 1989; concerns about insurance; and questions about the
 27 cost of clearing brush off Lot 1, contemplated that the only maintenance responsibility of the
 28 Association was to manage brush growth in Lot 1 and irrigate limited areas along Alta La Jolla

1 Drive. [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 17. The Court concludes, based on all the evidence, that when the NOE was created,
5 neither the City nor TechBilt intended TechBilt or its successor to have any obligation to slow,
6 stop or reverse erosion in Lot 1. Furthermore, the NOE did not create an obligation on the part of
7 the Association to slow, stop or reverse erosion caused by the System operating as intended.

8 18. The Association's claims are not defeated by the statute of limitations as claimed by
9 the City. The erosion in Lot 1 has been continuous, but the resulting damage has accelerated in
10 recent years. Until 2003, the Association had no knowledge that erosion was occurring at anything
11 but an acceptable natural rate, nor that the fence erected in 1990 had been undermined. The statute
12 of limitations can be triggered by discovery of both the injury and its cause. However, the City has
13 the burden of proof on affirmative defenses such as the statute of limitations. The Association was
14 not aware of the accelerated erosion until 2003. The theories substantiating the causal mechanism
15 of erosion are complex, technical and controverted. The evidence further confirmed that the
16 Association had neither obligation to monitor the erosion rate in Lot 1, nor anywhere else in the
17 Canyon; this was the City's responsibility. Moreover, by listing the issue on its deferred
18 maintenance list in 2004, the City admitted its responsibility for overseeing the erosion issue and
19 maintaining the Canyon as part of its operation of the System. Damage to Lot 1 did not
20 substantially interfere with the use and enjoyment of Lot 1 until the Association was improperly
21 cited regarding the failure of the protective fence. The NOE requires the City, not the Association,
22 to erect and maintain fences in Lot 1. On receipt of the citation on or about April 23, 2003
23 (Exhibit 546), the statute of limitations on the cause of action for inverse condemnation was
24 triggered and the damages to Lot 1 were sufficiently stabilized to a point that emergency repairs
25 were needed. The notice of claim was timely filed on September 24, 2003 (Exhibit 226) and the
26 Complaint timely filed thereafter.

27 19. The City is the only public agency contributing to the taking or damaging of Lot 1.
28 Therefore, there is no apportionment issue in this case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

~~_____~~
~~_____~~
~~_____~~

CONCLUSION

20 ~~21.~~ The Court holds that the City is liable for inverse condemnation because it unreasonably created and operates a storm water drainage system which utilizes the Canyon as an integral part. Under an analysis of all the evidence presented that relate to the factors presented in Locklin vs. City of Lafayette (1994) 7 Cal.4th 327, the Court concludes:

a. The overall purpose being served by the project under scrutiny in this case is storm drainage for the general public;

b. The damage to Lot 1 and risk of future injury and additional damage likely to occur unless substantial repairs are immediately undertaken greatly outweighs any benefit obtained by the Plaintiff individually or its members as a whole;

c. The City had feasible alternatives available to it with lower risk of damage to Lot 1 that it could have required to be implemented in Lot 1 both originally in 1975 when the PRD was approved and the drainage improvements were constructed and accepted, and in 1990 when the NOE was granted. The City failed to exercise those reasonable options;

d. The Association has limited assets and its ability to raise revenue is restricted by its CC&R's. The cost of repair is, more likely than not, greater than the Association's ability to reasonably bear these responsibilities and risks.

e. The damage incurred is not the kind generally considered a normal risk of land ownership;

f. The damages caused by the System are peculiar to the Association. ~~THE~~ MANY of the residences that contribute storm waters via the City's public system are owned by persons who are not Association members or is the City itself. The Association bears 100% of the risk and damages but enjoys little of the benefits; and

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

g. The Association acted reasonably in attempting to mitigate the damage to Lot 1.

21 ~~22~~ The failure of the City to act in a reasonable manner was and is a substantial factor in causing damage to Lot 1, creating the need for emergency and permanent repairs to Lot 1.

22 ~~23~~ The Court further holds that the NOE is uncertain when compared to contemporaneous and prior existing Storm Drain Easements between the same parties addressing the same general matter. Considering all the evidence presented, the Court finds that the City has the obligation to maintain the System and its parts and the obligation to repair damages caused by the System's operation in Lot 1.

23 ~~24~~ The Court further holds that the City has failed to establish the presence of any affirmative defenses that bar or limit recovery by the Association.

Dated: 4-27-07

Linda B. Quinn

JUDGE OF THE SUPERIOR COURT
JUDGE LINDA B. QUINN

- SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
- COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101-3814
 - HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3294
 - FAMILY COURT, 1555 6TH AVE, SAN DIEGO, CA 92101-3294
 - MADGE BRADLEY BLDG., 1409 4TH AVE., SAN DIEGO, CA 92101-3105
 - KEARNY MESA BRANCH, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123-1187
 - NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92083-6643
 - EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941
 - RAMONA BRANCH, 1428 MONTECITO RD., RAMONA, CA 92065-5200
 - SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649
 - JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792
 - JUVENILE COURT, 325 S. MELROSE DR., VISTA, CA 92083-6634

FOR COURT USE ONLY

FILED

Clerk of the Superior Court

APR 30 2007

By: M. BARHAM, Deputy

PLAINTIFF(S)/PETITIONER(S)
LA JOLLA ALTA MASTER COUNCIL

DEFENDANT(S)/RESPONDENT(S)
THE CITY OF SAN DIEGO

JUDGE: LINDA B. QUINN

DEPT: 74

CASE NUMBER: GIC822281

RECEIVED

MAY 3 2007

Thorsnes, Bartolotta & McGuire

CLERK'S CERTIFICATE OF SERVICE BY MAIL
(CCP 1013a(4))

I, certify that: I am not a party to the above-entitled case; that on the date shown below, I served the following document(s):
STATEMENT OF DECISION

on the parties shown below by placing a true copy in a separate envelope, addressed as shown below; each envelope was then sealed and, with postage thereon fully prepaid, deposited in the United States Postal Service at: San Diego Vista El Cajon Chula Vista Ramona, California.

NAME & ADDRESS

JOHN F. MCGUIRE, JR., ESQ.
THORSNES BARTOLOTTA MCGUIRE
2550 FIFTH AVE., 11TH FLOOR
SAN DIEGO, CA 92103

NAME & ADDRESS

THOMAS R. LAUBE, ESQ.
SANDLER, LASRY, LAUGE, BYER & VALDEZ
402 WEST BROADWAY, SUITE 1700
SAN DIEGO, CA 92101-3542

CLERK OF THE SUPERIOR COURT

Date: April 30, 2007

by M. Barham Deputy
M. BARHAM

CLERK'S CERTIFICATE OF SERVICE BY MAIL

000407

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID VE NAUTI-1	DATE (MM/DD/YYYY) 10/24/07
PRODUCER Rancho Mesa Insurance Agency 910 Gillespie Way, Suite 108 Cajon CA 92020 Phone: 619-937-0164 Fax: 619-937-0168		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW	
INSURED Nautilus General Contractors Inc 2045 First Avenue San Diego CA 92101		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Gemini Insurance Company	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

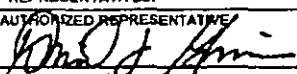
COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	VCGP014632	07/14/07	07/14/08	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE: OPERATIONS OF THE NAMED INSURED AS CERTIFICATE HOLDERS INTEREST MAY APPEAR CERTIFICATE HOLDER IS INCLUDED AS ADDITIONAL INSURED PER FORM VE01820304 ATTACHED *10 DAYS FOR NON PAYMENT OF PREMIUM

CERTIFICATE HOLDER LAJOLAL LA JOLLA ALTA MASTER COUNCIL Attn: Gary Roth President 1570 ALTA LA JOLLA DRIVE LA JOLLA CA 92037	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
--	--

000408

CERTIFICATE OF LIABILITY INSURANCE

OP ID VR
NAUTI-1

DATE (MM/DD/YYYY)
10/29/07

Mesa Insurance Agency
Gillespie Way, Suite 108
Cajon CA 92020
Phone: 619-937-0164 Fax: 619-937-0168

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Gemini Insurance Company
INSURER B:
INSURER C:
INSURER D:
INSURER E:

INSURED

Nautilus General Contractors
Inc.
2045 First Avenue
San Diego CA 92101

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	VCGP014632	07/14/07	07/14/08	EACH OCCURRENCE \$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <small>If yes, describe under SPECIAL PROVISIONS below</small>				WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE: LA JOLLA ALTA MASTER COUNCIL PROJECT. CERTIFICATE HOLDER IS INCLUDED AS ADDITIONAL INSURED PER FORM VE01820304 ATTACHED.

*10 DAYS FOR NON PAYMENT OF PREMIUM

CERTIFICATE HOLDER

LANDES

LAND DESIGN CONSULTANTS, INC.
199 SOUTH LAS ROBLES AVE #250
PASADENA CA 91101

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPDSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[Signature]

007409

ACORD CERTIFICATE OF LIABILITY INSURANCE

OF ID. VE
NAUTI-1
DATE (MM/DD/YY)
11/30/07

PRODUCER

RECEIVED

Rancho Mesa Insurance Agency
1810 Gillespie Way, Suite 108
El Cajon CA 92020
Phone: 619-937-0164 Fax: 619-937-0168

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

INSURED

Nautilus General Contractors
Inc.
2045 First Avenue
San Diego CA 92101

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Gemini Insurance Company

INSURER B:

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TRK	ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC	VCGP014632	07/14/07	07/14/08	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
			AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
			GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
			EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$ WC STATE/TORY LIMITS OTH-ER
			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
			OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 RE: LA JOLLA MASTER COUNCIL. CERTIFICATE HOLDER IS INCLUDED AS ADDITIONAL INSURED PER FORM VE01820304 ATTACHED. *10 DAYS FOR NON PAYMENT OF PREMIUM

CERTIFICATE HOLDER

CITY OF SAN DIEGO
202 C STREET
SAN DIEGO CA 92101-4806

CITYSA2

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
[Signature]

000410

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP NO VE
NAUTI-1
DATE (MM/DD/YYYY)
11/30/07

PRODUCER
Rancho Mesa Insurance Agency
1810 Gillespie Way, Suite 108
El Cajon CA 92020
Phone: 619-937-0164 Fax: 619-937-0168

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

INSURED
Nautilus General Contractors
Inc.
2045 First Avenue
San Diego CA 92101

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Gemini Insurance Company	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

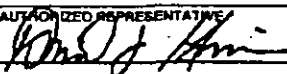
COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSTRUMENT NO.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	VCGP014632	07/14/07	07/14/08	EACH OCCURRENCE \$ 1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/PROP AGG \$ 2,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 RE: LA JOLA ALTA MASTER COUNCIL. CERTIFICATE HOLDER IS INCLUDED AS
 ADDITIONAL INSURED PER FORM VE 0182 03 04 ATTACHED *10 DAYS FOR NON PAYMENT OF PREMIUM

CERTIFICATE HOLDER
 GEOTECH
 GEOTECH EXPLORATION, INC.
 7420 TRADE STREET
 SAN DIEGO CA 92007

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE


000411

ACORD CERTIFICATE OF LIABILITY INSURANCE

PRODUCER
 Rancho Mesa Insurance Agency
 1810 Gillespie Way, Suite 108
 El Cajon CA 92020
 Phone: 619-937-0164 Fax: 619-937-0168

INSURED
 Nautilus General Contractors
 Inc.
 2045 First Avenue
 San Diego CA 92101

OP ID VE
 NAUTI-1

DATE EXPIRES
 11/30/07

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW

INSURERS AFFORDING COVERAGE

INSURER A:	Gemini Insurance Company	NAIC #
INSURER B:		
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	COU	TR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	X			GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	VCGP014632	07/14/07	07/14/08	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
				AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
				GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
				EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
				WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS \$ OTHER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
				OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 RE: LA JOLA ALTA MASTER COUNCIL. CERTIFICATE HOLDER IS INCLUDED AS ADDITIONAL INSURED PER FORM VE 0182 03 04 ATTACHED. *10 DAYS FOR NON PAYMENT OF PREMIUM

CERTIFICATE HOLDER

RIVERTECH, INC.
 23332 MILL CREEK DRIVE STE 210
 LAGUNA HILLS CA 92653

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL *30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
[Signature]

ACORD 25 (2001/08)

007412

ACORD. CERTIFICATE OF LIABILITY INSURANCE		OP ID CA JCBAL-1	DATE (MM/DD/YYYY) 10/01/07
PRODUCER Vignac & Associates 10 B Street, Suite 1800 San Diego CA 92101-3547 Phone: 619-234-6848 Fax: 619-234-8601		RECEIVED THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW	
INSURED J.C. Baldwin Construction 2469 Impala Drive Carlsbad CA 92010		INSURERS AFFORDING COVERAGE INSURER A: Axis Surplus Insurance Company INSURER B: Peerless Insurance Company INSURER C: INSURER D: INSURER E:	NAIC # 26620 24198

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

DESCRIPTION / LTR / INSUR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ. <input type="checkbox"/> LOC	EAP72984107	10/01/07	10/01/08	EACH OCCURRENCE \$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
					MED EXP (Any one person) \$ Excluded
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	BAB233596	10/01/07	10/01/08	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					OTHER THAN AUTO ONLY: EA ACC \$
					AGG \$
	<input type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$
					AGGREGATE \$
					\$
					\$
					\$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS OTHER
					E.L. EACH ACCIDENT \$
					E.L. DISEASE - EA EMPLOYEE \$
					E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Re: La Jolla Alta, 1570 Alta La Jolla Dr., La Jolla, CA 92037. Nautilus General Contractors, Inc. (General Contractor) and La Jolla Alta Master Council (Owner) are named as additional insureds primary/non-contributory as respects general liability per CG2010 07/04 and additional insureds as respects auto liability per GECA701 09/04. Per Project Aggregate (cont.)

CERTIFICATE HOLDER NAUTI-3 Nautilus General Contractors, Inc. 2045 First Ave. San Diego CA 92101	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE:
---	--

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/07/2007

PRODUCER Phone: (619) 460-1240 Fax: (619) 462-4536
ASPEN INSURANCE BROKERS, INC.
422 SOUTH PIERCE STREET
EL CAJON CA 92020-4129

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC #

INSURED
KIRK PAVING, INC.
8722 WINTER GARDENS BLVD
LAKESIDE CA 92040

INSURER A: Navigators Specialty Insurance Company
INSURER B: National Union Fire Ins. Co. of Pittsburgh, PA
INSURER C:
INSURER D:
INSURER E:

619-938-0767

Agency Lic#: 0060834

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

WSPR LTR	ADDL INFO	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A	YES	GENERAL LIABILITY	OC07CGL007028-00	02/07/07	02/07/08	EACH OCCURRENCE	\$ 1,000,000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (EA OCCURRENCE)	\$ 50,000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED. EXP (Any one person)	\$ 5,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY	\$ 1,000,000
		<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC				GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS-COMP/OP AGG.	\$ 2,000,000
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (EA accident)	\$
		ANY AUTO				BODILY INJURY (Per person)	\$
		ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		HIRE AUTOS					
NON-OWNED AUTOS							
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
B		EXCESS / UMBRELLA LIABILITY	BE6274230	02/07/07	02/07/08	EACH OCCURRENCE	\$ 1,000,000
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 1,000,000
		<input type="checkbox"/> DEDUCTIBLE					\$
		<input checked="" type="checkbox"/> RETENTION \$ 10,000					\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTHER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICERS/EMBER EXCLUDED?				EL EACH ACCIDENT	\$
		If yes, describe under SPECIAL PROVISIONS below				EL DISEASE-EA EMPLOYEE	\$
		OTHER:				EL DISEASE-POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/ SPECIAL PROVISIONS
CERTIFICATE HOLDER IS ADDITIONAL INSURED & PRIMARY PER FORMS ANF 160 05/2006 & ANF ES 043 05/2006, ATTACHED. RE: PAVING OPERATIONS, 1570 ALTA LA JOLLA DRIVE, LA JOLLA, CA 92037

*10 DAY NOTICE OF CANCELLATION APPLIES TO NON PAYMENT OF PREMIUM

CERTIFICATE HOLDER

NAUTILUS GENERAL CONTRACTORS INC.
2045 FIRST AVENUE
SAN DIEGO, CA 92101

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[Signature]
Marc Kaplan

Attention: STACEY 619-564-5310

000414

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YY) 10/02/07
PRODUCER DA99520 1-619-234-6848 Cavignac & Associates 450 B Street, Suite 1800 San Diego, CA 92101-8005 Jolinda Krosner	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Morrison Engineering, Inc. 1927 Frankfort Street, Suite A San Diego, CA 92110	INSURERS AFFORDING COVERAGE	
	INSURER A: The Travelers Indemnity Company of Connecticut	
	INSURER B: XL Specialty Insurance Company	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> No Deductible <input checked="" type="checkbox"/> Cross Liab. included GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-ECT <input type="checkbox"/> LOC	6802712L673	07/08/07	07/08/08	EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one tra) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> No Company Owned autos <input checked="" type="checkbox"/> Included in Gen. Liab.	6802712L673	07/08/07	07/08/08	COMBINED SINGLE LIMIT (Ea accident) \$ Included BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ GARAGE LIABILITY <input type="checkbox"/> ANY AUTO AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
B	OTHER Professional Liability	DPS9605693	07/08/07	07/08/08	Each Claim \$ 500,000 Aggregate \$ 500,000 \$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLE/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 Professional Liability - claims made form, aggregate limit policy, defense costs included within limits of liability.
 Certificate Holder is Additional Insured with respect to General Liability per attached.

CERTIFICATE HOLDER <input checked="" type="checkbox"/> ADDITIONAL INSURED, INSURER LETTER: A Nautilus General Contractors, Inc. 2045 First Ave. San Diego, CA 92101 USA	CANCELLATION 10 days ROC for non-payment of premium SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Jolinda Krosner</i>
---	--

LAND DESIGN CONSULTANTS, INC.
Land Planning, Civil Engineering, Surveying & Environmental Services

REVISED AGREEMENT BETWEEN CLIENT AND CONSULTANT

Agreement entered into at San Diego, California, made this 15th day of May 2007, by and between.

CLIENT:

Name: La Jolla Alta Master Council
Address: 1320 Caminito Arriata
La Jolla, CA 92037
Phone: (858) 527-0111
Fax: (858) 527-1531

CONSULTANT:

Name: Land Design Consultants, Inc. (LDC)
Address: 199 South Los Robles Ave., Suite 250
Pasadena, CA 91101
Phone: (626) 578-7000
Fax: (626) 578-7373

CLIENT proposes to:

Repair the eroded property located south of Alta La Jolla Drive, in La Jolla, California.

CONSULTANT agrees to perform the following scope of services:

See Summary of Services consisting of six (6) pages.

CLIENT agrees to compensate CONSULTANT for such services as follows:

See Summary of Services consisting of six (6) pages.

This Agreement is subject to all standard engineering and land planning practices and the terms and conditions contained in initialed exhibits attached herewith and made a part hereof. (List of exhibits below.)

- Cover letter dated May 15, 2007
- Summary of Services
- Standard Hourly Rates Schedule
- General Terms of Agreement

IN WITNESS WHEREOF, the parties hereby execute this agreement dated May 15, 2007 upon the terms and conditions stated above.

Client: La Jolla Alta Master Council
By: [Signature]
Name/Title: Gary Roth, President
Date Signed: 6/13/07
Client Project No.: _____

Consultant: Land Design Consultants, Inc.
By: [Signature]
Name/Title: Robert B. Sims, P.E., President
Date Signed: 5/15/07
By: [Signature]
Name/Title: Larry L. Mar, P.E., P.L.S., Vice President
Date Signed: 5/16/07

Consultant's California Engineering License RCE 21649 LDC Project Number: 05055-003

P:\work\Projects\05055-003\Proposal\Agreement 1.doc

199 South Los Robles Avenue, Suite 250, Pasadena, California 91101 / 626-578-7000 Fax 626-578-7373
25570 Rye Canyon Road, Suite G, Valencia, California 91355 / 661-775-3940 Fax 661-775-3942
e-mail: ldc@ldcla.com • http://www.ldcla.com

LAND DESIGN CONSULTANTS, INC.

Land Planning, Civil Engineering, Surveying & Environmental Services

REVISED SUMMARY OF SERVICES

Page 1 of 6

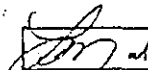
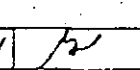
To Accompany Agreement Between
 La Jolla Alta Master Council (CLIENT)
 Land Design Consultants, Inc. (CONSULTANT)
 Alta La Jolla Creek Restoration
 City of San Diego, California
 Consultant's Project Number: 05055-003
 May 15, 2007

SERVICES:

CONSULTANT agrees to provide the following services for the CLIENT:

Environmental Permitting:***Environmental Analysis and Permitting (T&M)***

- It is anticipated that the City will arrange to prepare required CEQA analysis and documentation. CONSULTANT will define CEQA regulatory strategy for the permitting process.
- CONSULTANT will prepare and submit permit applications to California Department of Fish and Game, the U.S. Army Corps of Engineers, and the State Regional Water Quality Control Board for the 1600 Streambed Alteration Agreement, the 404 Permit, and the 401 Water Quality Certification, respectively. The application packages shall include, but not be limited to, the following: a copy of CONSULTANT'S jurisdictional delineation map, appropriate application forms, a discussion of the proposed restoration activity, restoration plan exhibits, photo exhibits, and a copy of the proposed mitigation plan.
- Coordinate with ACOE, CDFG and RWQCB regarding conditions of restoration. Applications will be revised as required to obtain the necessary approvals.
- Identify areas for restoration of jurisdictional Waters. The eroded stream course will be analyzed and mitigation options developed and negotiated.

	
--	---

P:\2007\Projects\05-05055-003\Permitting\05055-003-1.doc

Consultant's Initials Client's Initials

199 South Los Rubles Avenue, Suite 250, Pasadena, California 91101 / 626-578-7000 Fax 626-578-7373
 25570 Rye Canyon Road, Suite G, Valencia, California 91355 / 661-775-3940 Fax 661-775-3942
 e-mail: ldc@ldcl.com • http://www.ldcl.com

REVISED SUMMARY OF SERVICES

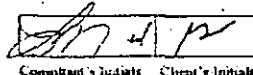
Page 2 of 6

Prepare Revegetation Plan and Mitigation Plan Report

- A comprehensive mitigation and monitoring plan will be developed and will include the following components:
 - A general restoration plan for wetland and riparian vegetation in coordination with the appropriate permitting agencies. The plan will include, but not be limited to, a discussion of available restoration areas and enhancement opportunities onsite, implementation of vegetated buffer zones, discussion of planting palettes and detailed mitigation implementation techniques, and illustrations through various exhibits, where appropriate.
 - A plan for upland revegetation of coastal sage scrub in coordination with the appropriate permitting agencies. The plan will include, but not be limited to, a discussion of available restoration areas and enhancement opportunities onsite, implementation of vegetated buffer zones, discussion of planting palettes and detailed mitigation implementation techniques, and illustrations through various exhibits, where appropriate.
 - A comprehensive planting plan including varying calipers of the different species and understory vegetation to create ecologically valuable habitat.
 - Review all pertinent project documentation and prepare a comprehensive matrix and timeline for compliance with all biological mitigation measures to the specifications of the CDFG Streambed Alteration Agreement, 404 Permit, and 401 Certification, project Conditions of Approval, and the CEQA documentation. This document will be used to monitor and record the ongoing status of compliance with all of the pertinent mitigation measures and as an attachment in the final reports on compliance to the City and other agencies, as needed.¹⁸
- CONSULTANT will process with agencies and coordinate their comments for a final plan and report.

Mitigation/Monitoring

- Coordination and monitoring installation of restoration vegetation per requirements of the project's 1600 Agreement, 404 Permit, 401 Certification, and most current CEQA documentation (including restoration for upland impacts). Provide coordination with the project's landscaper architect and revegetation contractor.



Consultant's Initials Client's Initials

P:\Data\Project\2025015-0039\Report\2025 2.doc

REVISED SUMMARY OF SERVICES

Page 3 of 6

- Conduct surveys following final build out. Surveys will include accounts of plant and animal species present, distribution of natural vegetation, and other observations related to the health of the preserved habitat following the project build out. The surveys will consist of three visits at one-week intervals during late spring.
- Monitor the hand removal of nonnative weeds as part of the enhancement plan within all preserved areas.
- Monitor installation of replacement trees.
- Provide mandated minimum five (5) year monitoring and reporting as required by the project's 1600/404/401 permits and the approved ACOE/CDFG Mitigation and Monitoring Plan. The Project Biologist/Restoration Specialist and one biological assistant will check the mitigation sites monthly from the 4th through the 12th month to perform quantitative measurements, prepare photo exhibits and reporting as required by the project's 1600/404/401 permits (9 site visits & reports). The Project Biologist/Restoration Specialist will check the mitigation sites quarterly after the first year until the five-year monitoring period is completed (16 site visits & reports), or until the agencies agree that the mitigation project is successful and has fulfilled the requirements of the permits. If additional monitoring site visits and reports are required due to replanting of failed portions of the mitigation site, an addendum shall be prepared for the additional work.

Civil Engineering:*Aerial Topography of Open Space Lot 1*

- Contract with aerial photogrammetrist to prepare lidar-mapped topography. Deliverables will be a digital map with 1' contours suitable for use at 1" = 40' and DEM file. Ground control procedure to be overseen by LDC personnel on-site. Prepare topography exhibit with property boundaries. (Note: this task replaces CONSULTANT'S Addendum 1)

Project Management, Meetings & Processing (T&M)

- Meetings with City and other agencies. Process to final approval. Permit and application preparation.

Consultant's Initials	Client's Initials

P:\Data\Project\040451-000\Report\SCS 2.doc

REVISED SUMMARY OF SERVICES

Page 5 of 6

CONDITIONS:

The following items are exclusions to the agreement; however, they could be included on a time and material basis or per an addendum to this agreement if requested by the CLIENT. Prior to excluded work being performed, CONSULTANT shall obtain CLIENT'S written consent to perform said work. In the event that excluded work is necessary to be performed to complete this Agreement, CONSULTANT shall promptly notify CLIENT that additional work is necessary.


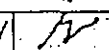
- All governmental agency permits not specifically included in the Summary of Services.
- Major revisions due to changes in project design, by client, updated outside consultant's reports, new governmental requirements, new issue areas or client requests covered under separate amendments to this contract.
- Other services or additional work outside the scope of services may also be required. Client will be notified of these items if they occur.

The following list represents certain assumptions of LDC in preparing this contract.

- Except as to previously entered contracts or agreements, other outside consultant reports (title, soils, geology, traffic, etc.) will be contracted directly with the client, if required. CONSULTANT shall notify CLIENT of any outside consultants' reports that CONSULTANT feels are necessary for the performance of this Agreement.
- Permit processing fees, fee updates and other such fees are not included and are to be paid by client.

Without attempting to be all-inclusive, the following items are to be supplied by the CLIENT:

- Title reports and title services.
- Permission letters from property owners, if client is not the property owner.
- Soils & Geology report for property.
- Permits, printing, processing and other fees.

	
Consultant's Initials	Client's Initials

REVISED SUMMARY OF SERVICES

Page 6 of 6

FEES:

Listed below are CONSULTANT'S estimated fees for services. Unless otherwise stated, the fees stated below are based upon the time estimated to be spent on the project and shall not exceed the amount estimated without CLIENT'S written consent. Each service provided below shall be assigned a separate billing number. For example, under Environmental Permitting, there shall be three billing or matter numbers representing billing on each item listed below.

Client agrees to pay Consultant as compensation for services performed as follows:

Environmental Permitting

Environmental Analysis and Permitting (T&M)	\$ 65,000
Prepare Re-vegetation Plan and Mitigation Plan Report	19,000
Mitigation/Monitoring	<u>110,000</u>

Environmental Permitting Fixed Fee Subtotal: \$129,000

Environmental Permitting T&M Subtotal: \$65,000

Civil Engineering

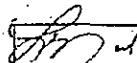
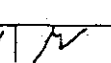
Aerial Topography of Open Space Lot 1	\$ 16,000
Project Management, Meetings & Processing (T&M)	14,000
Prepare Construction Drawings and Supporting Calculations	51,000
Prepare Earthwork Estimate	2,500
Prepare Winterization and Temporary Construction Access & Staging Plans	12,000
Prepare Erosion Control and SUSMP Plans	8,500
Prepare Specifications	5,000
Prepare Cost Estimate for Bonding Purposes	2,000
Provide Construction Services	<u>17,500</u>

Civil Engineering Fixed Fee Subtotal: \$114,500

Civil Engineering T&M Subtotal: \$14,000

TOTAL FIXED FEE ITEMS: \$243,500

TOTAL T&M ITEMS: \$79,000

	
--	---

Consultant's Initials Client's Initials

P:\Data\Projects\050505\1-003\Report\SOE 2.doc

LAND DESIGN CONSULTANTS, INC.

Land Planning, Civil Engineering, Surveying & Environmental Services

HOURLY RATE SCHEDULE

Effective August 1, 2006 through July 31, 2007

Principal	\$250.00 per hour
Director	\$183.00 per hour
Project Manager	\$163.00 per hour
Assistant Project Manager	\$147.00 per hour
Environmental Manager	\$147.00 per hour
Project Engineer/Project Surveyor	\$139.00 per hour
Assist. Project Surveyor	\$115.00 per hour
Natural Resources Manager	\$147.00 per hour
Senior Biologist	\$142.00 per hour
Project Biologist	\$78.00 per hour
Associate Biologist	\$68.00 per hour
Design Engineer	\$121.00 per hour
Project Planner	\$121.00 per hour
Designer	\$105.00 per hour
Assistant Project Planner	\$105.00 per hour
Environmental Planner II	\$105.00 per hour
Environmental Planner I	\$89.00 per hour
Planner	\$100.00 per hour
Designer/Drafter	\$100.00 per hour
Drafter	\$89.00 per hour
Research and Processing	\$84.00 per hour
Report Production	\$82.00 per hour
Desktop Publishing	\$66.00 per hour
Delivery Services	\$63.00 per hour
One-Man Survey Party	\$160.00 per hour
One-Man Survey Party with GPS	\$180.00 per hour
Two-Man Survey Party	\$220.00 per hour
Three-Man Survey Party	\$255.00 per hour
Expert Witness	\$500.00 per hour

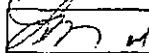
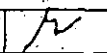
(Before a court of law and decision making governing bodies)

The above hourly rate schedule is for normal working hours. If overtime work is requested by the client, the rate charged will be 1½ times the hourly rates for off hours, and 2 times the hourly rates shown for Sundays and holidays.

The above rates include overhead and are valid until July 31, 2007, at which time a rate change may occur.

A finance charge of 1½% per month will be applied to any unpaid balance, commencing 30 days after the date of the original invoice.

Direct costs such as map prints, reproductions, outside messenger services, sub-consultants, and other out-of-pocket expenses will be charged at direct cost plus 15% to provide for the cost of administration, consultation and insurance.

	
--	---

Consultant's Initials Client's Initials

P:\Doc\Consent\98\074_2006-2007_Rate_Schedule.doc

199 South Los Robles Avenue, Suite 250, Pasadena, California 91101 / 626•578•7000 Fax 626•578•7373
 25570 Rye Canyon Road, Suite C, Valencia, California 91355 / 661•775•3940 Fax 661•775•3942
 e-mail: ldc@ldcla.com • http://www.ldcla.com

PX-CG-D0519

LAND DESIGN CONSULTANTS, INC.

Land Planning, Civil Engineering, Surveying & Environmental Services

Page 1 of 4

GENERAL TERMS OF AGREEMENT

These terms are applicable to and made a part of the contract to which they are attached. Any items in the contract that conflict with these general terms shall prevail.

1. Responsibility of Land Design Consultants, Inc. (LDC)

- a. Consultant's waiver of any term, condition or covenant, or breach of any term, condition or covenant, shall not constitute the waiver of any other term, condition or covenant, or the breach of any other term, condition or covenant.
- b. Consultant shall only act as an advisor in all governmental relations. If Consultant's assistance in applying for governmental permits or approvals is pursuant to this agreement, consultant's assistance shall not constitute a representation, warranty or guarantee and such permits or approvals will be acted upon favorably by any governmental agency.

2. Responsibility of Client

- a. Client acknowledges that its right to utilize the services and work product provided pursuant to this agreement will continue only so long as client is not in default pursuant to the terms and conditions of this agreement and client has performed all obligations under this agreement. Client further acknowledges that consultant has the unrestricted right to use the services provided pursuant to this agreement as well as all work products provided pursuant to this agreement.
- b. Upon consultant's written request, client shall execute and deliver, or cause to be executed and delivered, such additional instruments, documents, information or governmental fees and charges, which are necessary for consultant to perform the terms of this agreement.
- c. Client agrees not to use or permit any other person to use plans, drawings or other work product prepared by consultant, which plans, drawings or other work product are not final and which are not signed and stamped or sealed by consultant. Client agrees to be liable and responsible for any such use of non-final plans, drawings or other work product not signed and stamped or sealed by consultant and waives liability against consultant for use of non-final plans, drawings or other work product not signed stamped or sealed by consultant. Client further agrees that final plans, drawings or other work product are for the exclusive use of client and may be used by client only for the project described on the face hereof. Such final plans, drawings or other work product may not be changed nor used on a different project without the written authorization or approval by consultant. If consultant's work product exists in electronic or computerized format, or is transferred in electronic or computerized format, the stamp, seal and signature shall be original and may not be a computer-generated copy, photocopy, or facsimile transmission of the original.
- d. If the scope of services to be provided by consultant pursuant to the terms of this agreement include the preparation of grading plans but exclude construction staking services, client acknowledges that such services normally include coordinating

civil engineering services and the preparation of as-built drawings pursuant to Uniform Building Code Appendix, Chapter 33, and client will be required to retain such services from another consultant or pay consultant pursuant to this agreement for such services as extra work, in accordance with Provision 6b.

- e. If payment for consultant's services is to be made on behalf of client by a third-party lender, client agrees that consultant shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition for receiving payment for services. Consultant is entitled to payment of their fees regardless of client's receipt of payment from a lender.

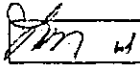
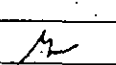
Client agrees to pay a monthly late payment charge, which will be the lesser of one and one-half percent (1 1/2%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing sixty (60) days after the date of the original billing.

- f. Client shall pay the costs of checking and inspection fees, zoning and association application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees and all other fees, permits, bond premiums, applicable taxes on professional services, title company charges, blueprints and reproductions, and all other charges not otherwise covered by the terms of this agreement.

- b. Client agrees that in accordance with generally accepted construction practices, construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, that this requirement shall be made to apply continuously and not be limited to normal working hours. Neither the professional activities of consultant nor the presence of consultant, its employees or subconsultants at a construction site shall relieve the contractor and its subcontractors of their duties, responsibilities and obligations necessary for performing, coordinating or superintending all portions of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.

- i. In the event client discovers or becomes aware of changed field or other conditions which necessitate clarification, adjustments, modifications or other changes during the construction phase of the project, client agrees to notify consultant and engage consultant to prepare the necessary clarifications, adjustments, modifications or other changes to consultant's work before construction activities commence or further activity proceeds. Client agrees to pay for such additional services as extra work, in accordance with Provision 6b. Consultant will have an opportunity to review contractor's contract prior to its execution by client.

- j. Client agrees to require contractor to purchase and maintain during the course of construction, builder's risk "all risk" insurance, which will name consultant as an additional insured, and their interest may appear.

	
Consultant's initials	Client's initials

P:\Data\Projects\09052015-003\Proposals\General Terms.doc

199 South Los Robles Avenue, Suite 250, Pasadena, California 91101 / 626•578•7000 Fax 626•578•7373
 25570 Rye Canyon Road, Suite G, Valencia, California 91355 / 661•775•3940 Fax 661•775•3942
 e-mail: ldc@ldcl.com • http://www.ldcl.com

PX-CG-D0520

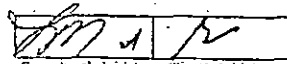
GENERAL TERMS OF AGREEMENT

- k. In accepting and utilizing any work or data on any form of electronic media provided by consultant, client agrees that all such electronic files are instruments of service of consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights. Client agrees not to use these electronic files in part or in whole, for any purpose or project not pursuant to this agreement. Client agrees not to transfer these electronic files to others without the prior written consent of the consultant. Further, client agrees to waive all claims against consultant resulting in any way from any unauthorized changes or reuse of the electronic files for any other project by anyone other than consultant. Client and consultant agree that any electronic files furnished by either party shall conform to the necessary CADD specifications. Any changes to the CADD specifications by either client or consultant are subject to review and acceptance by either party. Additional services by consultant made necessary by changes to the CADD or other software specifications shall be compensated by client as extra work, in accordance with Provision 6b. Electronic files furnished by either party shall be subject to a fifteen (15) day acceptance period. During the acceptance period the receiving party agrees to perform the appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period has expired the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. Client is aware that differences may exist between the electronic files delivered and the printed hard copy construction documents. In the event that a conflict arises between the signed construction documents prepared by consultant and electronic files, the signed and stamped or sealed hard copy construction documents shall prevail. Client agrees to indemnify and hold harmless consultant, its officers, directors, employees, agents and subconsultants against all damages, liabilities or costs arising from any unauthorized changes made by anyone other than consultant or from any reuse of the electronic files without the prior written consent of consultant. Under no circumstances shall delivery of electronic files for use by client be deemed a sale by consultant. In no event shall consultant be liable for indirect or consequential damages as a result of client's use or reuse of the electronic files.
3. Responsibility of Land Design Consultants, Inc. (LDC) and Client.
- This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of client and consultant.
 - This agreement shall not be assigned by either client or consultant without the prior written consent of the other.
 - This agreement contains the entire agreement between client and consultant relating to the project and the provisions of services to the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both client and consultant.
 - If any term, condition or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on client and consultant.
 - Client and consultant agree to cooperate with each other in every way on the project.
- f. This agreement shall not be construed to alter, affect or waive any lien or stop notice right which consultant may have for the performance of services pursuant to this agreement.
4. General Terms
- Consultant makes no representations concerning soil conditions unless specifically included in writing in this agreement or by amendments to this agreement, and he is not responsible for any liability that may arise out of the making or failure to make soil surveys, or subsurface soil tests, or general soil testing. Notwithstanding the foregoing consultant acknowledges that it has been working closely with client's consultants on this matter including GEL.
 - Consultant is not responsible for delay caused by activities or factors beyond consultant's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of client to furnish timely information or approve or disapprove of consultant's services or work product promptly, faulty performance by client or other contractors or governmental agencies. When such delays beyond consultant's reasonable control occur, client agrees consultant is not responsible for damages nor shall consultant be deemed to be in default of this agreement. Further, client agrees that should such delays cause consultant to perform extra services, client shall compensate consultant for such services as extra work, in accordance with Provision 6b.
 - In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the client and the consultant agree that all disputes between them arising out of or relating to this agreement shall be submitted to mediation or other form of Alternative Dispute Resolution as agreed to by the parties. The client and the consultant further agree to include, where practicable, a similar mediation provision in all agreements with independent contractors and consultants retained for the project and with other successive third parties including but not limited to construction contractors, lenders and homeowners associations and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing assistance as the primary method for dispute resolution between the parties to those agreements.
 - If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees, which fees may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which he may be entitled.
 - Client agrees that in the event client institutes litigation to enforce or interpret the provisions of this agreement, such litigation is to be brought and adjudicated in San Diego County.
 - Consultant makes no representation concerning the probable costs made in connection with maps, plans, specifications or drawings other than that all such figures are estimates only and actual costs will vary. It is the responsibility of client to verify costs.
 - Client acknowledges that consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.

	
Consultant's Initials	Client's Initials

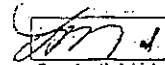
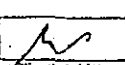
GENERAL TERMS OF AGREEMENT

- b. Estimates of lead areas provided under this agreement are not to be considered precise unless consultant specifically agrees to provide the precise determination of such areas.
- c. Client acknowledges that consultant's scope of services for this project does not include any work related in any way to asbestos and/or hazardous waste. Should consultant or any other party encounter such materials on the job site, or should it in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect consultant's services, consultant may, at its option, terminate work on the project until such time as client retains a specialist contractor to abate and/or remove the asbestos and/or hazardous materials and warrant that the job site is free from any hazard which may result from the existence of such materials.
- d. This agreement shall be governed by and construed in accordance with the laws of the State of California.
- e. All original papers, documents, drawings and other work product of consultant, and copies thereof, including all such documents on electronic media, produced by consultant pursuant to this agreement shall remain the property of consultant and may be used by consultant without the consent of client. Upon request and payment of the undisputed costs involved, client is entitled to a copy of all papers, documents and drawings provided client's account is paid current.
5. Compensation
- a. All fees and other charges will be billed monthly and shall be due at the time of billing unless otherwise specified in this agreement.
- b. In the event all or any portion of the work prepared or partially prepared by consultant be suspended, abandoned or terminated, client shall pay consultant for all fees, charges and services provided for the project, not to exceed any contract limit specified herein.
6. Extra Work
- a. If consultant, pursuant to this agreement, produces plans, specifications or other documents and/or performs field work, and such plans, specifications and other documents and/or field work are required by one or more governmental agency, and one or more such governmental agency changes its ordinances, policies, procedures or requirements after the date of this agreement, any additional office or field work thereby required shall be paid for by client as extra services.
- b. Client agrees that if client requests services not specified pursuant to the scope of services description within this agreement, client agrees to pay for all such additional services as extra work.
- c. Client acknowledges if the project work is suspended and restarts, there will be additional charges due to suspension of the work, which shall be paid for by client as extra work.
- d. In the event that any staking or record monuments are disturbed, damaged or destroyed by an act of God or parties other than consultant, the cost of restaking shall be compensated by client as extra work.
7. Special Surveying Services Provisions
- a. If the scope of services to be provided by consultant pursuant to the terms of this agreement included an ALTA survey, client agrees that consultant may sign one of the two ALTA Survey Statements attached hereto and incorporated herein by reference. In the event that consultant is required to sign a statement or certificate which differs from the ALTA Survey Statements contained in the attachment, client hereby agrees to indemnify and hold consultant harmless from any and all liability arising from or resulting from the signing of any statement which differs from those statements contained in the attachment.
- b. Client acknowledges and agrees that if consultant provides surveying services, which services require the filing of a Record of Survey in accordance with Business and Professions Code Section 8762, that all of the costs of preparation, examination and filing for the Record of Survey will be paid by client as extra work in accordance with Provision 6b.
8. Termination
- a. Either party may terminate this agreement with seven days notice except that consultant cannot terminate this agreement, except for client's breach, within one hundred and eighty (180) days of trial.
- b. Consultant shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this agreement if client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with the final order of judgment issued by the Bankruptcy Court.
- c. If suspension of services of consultant's obligation pursuant to this agreement continues for a period in excess of ninety (90) days, consultant shall have the right to terminate all services pursuant to this agreement.
- d. If client fails to pay consultant within sixty (60) days after invoices are rendered, client agrees consultant shall have the right to consider such default in payment a material breach of this entire agreement, and, upon written notice, the duties, obligations and responsibilities of consultant under this agreement are suspended or terminated. In such event, client shall reimburse consultant for all fees, charges and services provided by consultant.
- e. Termination of this contract shall be provided in writing by the terminating party.
9. Liability
- a. Consultant shall not be liable for damages resulting from the actions or inaction of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals and building permits. The client agrees that it is the responsibility of the client to maintain in good standing all government approvals and permits and to apply for any extensions thereof.
- b. In the event the client agrees to, authorizes, constructs or permits construction of changes in the plans, specifications, reports and documents or does not follow recommendations or reports prepared by consultant pursuant to this agreement, which changes are not consented to in writing by consultant, client acknowledges that the changes and their effects are not the responsibility of consultant.
- c. Client acknowledges that the design work performed pursuant to this agreement is based upon field and other conditions existing at


 Consultant's Initials Client's Initials

GENERAL TERMS OF AGREEMENT

- the time of preparation of consultant's work. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modification, discrepancies or other changes may be necessary to reflect changed field or other conditions. If the scope of services pursuant to this agreement does not include re-sit construction review, construction management, observation of construction of engineering structures or other construction supervision of this project, or if subsequent to this agreement client retains other persons or entities to provide such construction services, then client acknowledges that such services will be performed by others and client will defend, indemnify and hold consultant harmless from any and all claims arising from or resulting from the performance of such services by other persons or entities except claims caused by the sole negligence or willful misconduct of consultant; and from any and all claims arising from or resulting from clarifications, adjustments, modifications, discrepancies or other changes which may be necessary to reflect changed field or other conditions, except claims caused by the sole negligence or willful misconduct of consultant.
- d. Client agrees to limit liability of consultant, its principals, employees, for any claim or action arising in tort, contract or strict liability, to the sum of the greater of the amount the amount of this agreement, or \$50,000 or consultant's insurance policy limits.
- Client and consultant acknowledge that this provision was expressly negotiated and agreed upon.
- e. Consultant hereby states and client hereby acknowledges that consultant does have professional liability insurance for claims arising out of the performance of, or failure to perform professional services. Consultant shall maintain throughout the term of this agreement and for a period of three years thereafter (a) professional liability insurance and (b) general liability insurance in an amount of no less than one million dollars (1,000,000) each. Client shall be provided evidence of insurance prior to or at the time of executing this agreement.
- f. Consultant shall not be required to execute any documents subsequent to the signing of this agreement that may, in any way, in the judgment of the consultant, increase consultant's contractual or legal obligations or risks, or the availability or costs of consultant's professional or general liability insurance.
18. Warranty
- a. Consultant makes no warranty, either express or implied, as to his findings, recommendations, plans, specifications or professional advice except that the services or work were performed pursuant to generally accepted standards of practice in effect at the time of performance.

	
Consultant's Initials	Client's Initials



Geotechnical Exploration, Inc.

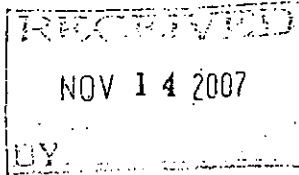
SOIL AND FOUNDATION ENGINEERING • GROUNDWATER • ENGINEERING GEOLOGY

000428

14 September 2007

(Revised 31 October 2007)

La Jolla Alta Master Council
Board of Directors
1320 Caminita Aviata
La Jolla, CA 92037
Attn: Mr. Gary Roth



RETURN COPY

Job No. 04-8674

COPY

Subject: **Proposal for Grading Observation, Field & Laboratory Soil Testing Services and Geotechnical Engineering Services**

Proposed Alta La Jolla Restoration, Phase I
Assessor's Parcel No. 358-25-113 (Lot 1)
West of Alta La Jolla Drive and East of Calle Delicada
La Jolla, California

As requested, *Geotechnical Exploration, Inc.* has reviewed the project grading plan and has utilized this information, as well as updated verbal information provided by Mr. Jason Harris, of Nautilus General Contractor, Inc. and information presented in our "Report of Preliminary Geotechnical Investigation" for the subject project, for the presentation of this proposal to perform the grading observation, soil testing, and geotechnical engineering on the canyon restoration project, Phase I. With the above in mind, we proposed to perform the following services:

ROUGH GRADING PHASE

1. Attendance at pre-construction meetings with the owner's representative, general contractor, City representatives, grading contractor, and others to define a mutual understanding of construction procedures, schedules, specification requirements, and our observation responsibilities.

2. Perform field density tests and observations on a part-time or full-time basis, as necessary, during grading operations including checks during removal of unsatisfactory soils, observations of the excavation before placement of compacted fill, observations during placement of compacted fill, and field density tests on the compacted fill or backfill as it is placed or shortly thereafter.
3. Perform the necessary laboratory testing of the on-site soils and/or imported soils utilized in the grading operations for determination of their engineering properties. Proposed tests will include, among others, maximum dry density of the encountered soils, optimum moisture content, sieve gradation, direct shear tests, and expansion index. Some of the tests may be waived if they are considered unnecessary during grading.
4. Perform the necessary engineering or geologic review and analysis during grading, after performing site visits to observe exposed areas that may present geologic problems such as groundwater, adverse bedding, adverse jointing, sliding, etc.
5. Preparation of an "as built" geotechnical plan based on the available grading plan and the test results, observations, analysis and our geotechnical experience.
6. Compilation of a final rough grading report presenting all test results and documentation, including our recommendations and opinions as far as the site being graded in general compliance with the geotechnical report, the City of San Diego requirements, and in accordance with our recommendations.



000430

ANTICIPATED FEES FOR GRADING OBSERVATIONS AND FIELD DENSITY TESTING

Our fees for field density testing and field observations, as outlined above, are primarily controlled by the amount of time required to complete the grading operation, the number of site visits and office time provided by our professional level people, laboratory soil testing, and the time required by our soils technician to provide adequate observations and testing.

Based on updated information provided by Mr. Jason Harris, with Nautilus General Contractors, Inc., the grading operation for Phase I has been anticipated to last 90 working days. Herein, we provide our cost estimate based on that anticipated duration. The actual cost of our services will depend on actual duration and the total charges made to the project. For budget purposes, we are providing a daily geotechnical services cost for full-time coverage by one field technician (8 hours/day), daily site visits by a geologist and/or a geotechnical engineer, field and lab soil testing, geotechnical engineering consultations, and report preparation. The estimated daily cost including all those services would be approximately **\$1,150/day**. Part-time coverage can be provided if progress is slow and does not warrant full-time observation, or, if due to mechanical breakdown or bad weather, the work is stopped. Our invoices at the end of every month will reflect the actual charges made.

Based on 90 working days (18 weeks) of rough grading, the estimated cost of geotechnical services for the proposed grading observations and field density testing will be approximately **\$110,000**. This estimate includes driving time from our office to the site and back. No vehicle-use charge will be added and no charge will be made for the use of nuclear gauge for field density testing. If the actual grading time extends beyond 90 working days (or is less than 90 working days),



000431

our charges will be adjusted accordingly. Driving time of 1 hour (round trip) will be included as part of the technician's time per visit or per day when providing full-time coverage.

The technician's cost also includes routine re-testing during the grading operations. Also, our cost estimate assumes normal working hours between 8:00 a.m. and 4:30 p.m. or between 7:00 a.m. and 3:30 p.m. (excluding Saturdays, Sundays and holidays). Services performed outside normal working hours or on Saturdays will be charged at time and one-half. Services performed on Sundays and holidays will be charged as double time rate.

The minimum charge per technician's site visit is two hours. The final cost of our services will depend upon the actual time spent on the project. If requested, our field technician can submit daily time slips at the job site to the owner's on-site representative or to the contractor.

If contaminated soils are encountered during grading, a consultant specializing in hazardous soils will be required to assess the findings and to indicate tests required to confirm the type of contaminant and any required disposal.

Charges made by any other consultants that may need to be retained by our firm are not included in this proposal. Our firm would present a separate work agreement to the Board of Directors if retaining other consultants were required.

**HOURLY RATES OF FEES FOR OBSERVATIONS, FIELD AND LABORATORY
SOIL TESTING AND GEOTECHNICAL SERVICES**

Engineer's time, geologist's time, technician's time, laboratory testing and other geotechnical engineering services including report(s) preparation, project



000432

coordination, technician supervision, consultations, calculations, etc., will be charged on an hourly or unit basis, as explained in our fee schedule (attached). Our total cost estimate for the duration of Phase I grading lasting 90 days is **\$110,000** phase, based on our hourly rates (see attachment).

PHASE II GRADING PHASE

Grading observations, field and laboratory testing, and geotechnical engineering services may also be provided by our firm for Phase II of the restoration work. A proposal will be prepared for that phase after completing Phase I.

LIMITATIONS

Our work will not include supervision or direction of the earthwork contractor, their employees or agents. The earthwork contractor should be so advised. Furthermore, our work will not undertake the guarantee of the construction work done by the contractor, nor will it relieve the contractor of the responsibility to produce a completed project conforming to the contract plans and specifications. The earthwork contractor should be informed and their contract should mention that neither the presence of our field representative nor the observation and testing by our firm shall excuse the earthwork contractor, in any way, of the primary responsibility to perform all work in accordance with the specifications.

Testing services allow the actual testing of a very small percentage of the compacted fill to be placed at the site. Therefore, we cannot guarantee the performance of the project in any respect. Our recommendations and professional judgments, as well as our testing, will be done in accordance with currently accepted professional standards in geotechnical engineering practice within the City of San Diego. No other warranty, either expressed or implied, is made.



000433

HAZARDOUS WASTE

Although no hazardous waste has been encountered during the exploratory work, hazardous materials may exist at a site where there is not reason to believe they could or should be present. **Geotechnical Exploration, Inc.** and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work, or termination of services.

If any hazardous wastes or indication thereof are encountered during our grading observations and soil testing, grading operations may be suspended and the appropriate parties may be notified as required by law. Any costs for the evaluation of the type or extent of contamination and all cleanup will be borne by the client. **Geotechnical Exploration, Inc.** accepts no responsibility for any delays or subsequent costs that might arise from the discovery of hazardous materials. Any field equipment that becomes contaminated by hazardous materials from the project site must be decontaminated. The Client agrees to reimburse **Geotechnical Exploration, Inc.** for all costs associated with the decontamination of any field equipment.

The Client understands that the field investigation or grading operation could result in the unavoidable contamination of the groundwater, as when a probe or boring or excavation device moves through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated, and is capable of spreading hazardous materials off-site. Since nothing can be done to completely eliminate the risk of such an occurrence, and because subsurface sampling is a necessary aspect of the work which we will perform on the Client's behalf, the Client waives any claim against **Geotechnical Exploration, Inc.** in connection with any claim or liability for injury or loss which may arise as a result of alleged cross-contamination caused by sampling or grading operation.



000434

If this proposal meets with your approval, please indicate your authorization to commence work by endorsing and forwarding to us the Return Copy of our Work Authorization Form (attached). We will proceed with scheduling field work upon receipt of this form. We reserve the right to revise, if necessary, our estimated fees and schedule of work for the proposed services after a period of 90 days.

If you have any questions concerning this proposal, please contact us at your convenience. Reference to our **Job No. 04-8674** will help to expedite a response to your inquiry.

Respectfully submitted,

GEOTECHNICAL EXPLORATION, INC.

Jaime A. Cerros, P.E., R.C.E. 34422/G.E. 2007
Senior Geotechnical Engineer

Leslie D. Reed, President
C.E.G. 999[exp. 3/31/09]/R.G. 3391

Enclosures: Fee Schedule
Work Authorization Form

cc: Mr. Mickey McGuire
Mr. Jon Epsten



STANDARD WORK AGREEMENT**A. RIGHT OF ENTRY**

1. The Client will provide right of entry and access to the site for the Consultant personnel and all required equipment, in order to complete the work.
2. Although the Consultant will make all reasonable efforts to minimize any damage to the site and improvements thereon, it is understood by the Client that some damage is anticipated during the normal course of work, and that restoration of the site or repair of any damage is the responsibility of the Client, and not part of this Agreement.

B. SUBJECT SITE

3. Client shall furnish us plans showing the locations of all existing underground structures and utility lines. An alternative would be to have the utility lines marked out by the appropriate utility companies. Where the plans are not available or are inaccurate, the Consultant will not be held liable for damage to underground structures or utilities encountered during the investigation.
4. The Consultant shall not be held liable for any incorrect advice, judgment or decision based on any inaccurate information provided by the Client or his agents. The Consultant shall be entitled to rely upon all such information, without re-performing any of the geotechnical work reflected in any reports, data, or information so furnished.

C. INVOICES

5. The Consultant will periodically submit invoices to Client. Invoices will show hours and charges for each fee schedule classification. Payment of invoices is due upon presentation of invoice and is past due thirty (30) days from invoice date. Client agrees to pay a service charge on any past-due balance of 1.5 percent per month to cover additional handling and carrying costs. Any attorney's fees or other costs incurred in collecting any delinquent account will be paid by Client.
6. Client shall inform the Consultant in writing if the services provided in this agreement are subject to State of California prevailing wages. The Client agrees to pay for any and all prevailing wage costs associated with this agreement.
7. Any disputes to invoices must be presented to our office within 60 calendar days of the invoice date. After 60 calendar days from the invoice date, the invoice shall be considered undisputed and shall be paid in full. Client shall pay the undisputed portion of any invoice that is disputed. Company may suspend work and/or issuance of report(s) until past due invoices are paid in full.

D. DOCUMENTS

8. All reports, boring logs, field data, field notes, laboratory test data, calculations, estimates, and other documents prepared by the Consultant shall remain the property of the Consultant.
9. Client agrees that all reports and other work furnished to the Client or his agents, which are not paid for, will be returned upon demand and will not be used by the Client for any purpose whatever.
10. All reports and other work furnished to the Client may not be transmitted or furnished to other persons or entities without the consent of Consultant. The Client shall hold harmless **Geotechnical Exploration, Inc.** from any claims, damages, costs, or expenses arising out of the unauthorized transmittal of the Consultant's reports. The Client has the right to provide the information contained in all reports to persons or corporations (contractors) who need this information to perform their work on the subject site and to government agencies that require this information. This information may not be transmitted or furnished to persons or entities without the consent of Consultant. In the event that the Client or anyone to whom it transmits the information pursuant to this Agreement becomes legally required to disclose any such



000436

information; the Client shall provide the Consultant with prompt notice so that the Consultant may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, the Client shall furnish only that portion of the information which is legally required to be furnished in the opinion of the Client's counsel.

11. The Consultant will retain all pertinent records relating to the services performed for a period of three (3) years following issuance of the report.

E. DISPUTES

12. In the event that a dispute should arise relating to the performance of the services to be provided under this Agreement, and should that dispute result in litigation, it is agreed that the prevailing party shall be entitled to recover all reasonable costs incurred in the defense of the claim, including court costs and attorney's fees.

F. STANDARD OF CARE

13. Service performed by Consultant under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.
14. The Consultant will be reporting the findings actually observed, and will not render a professional opinion concerning site conditions other than those actually observed.
15. Client recognizes that subsurface conditions may vary from those encountered at the location where excavations or surveys are made, and that the data, interpretations, and recommendations of Consultant are based solely on the available information. The Consultant shall not be held responsible for the consequences arising from differing interpretations others may make with the same or additional information developed.

G. CERTIFICATE OF MERIT

16. The Client shall make no claim for professional negligence, either directly or in a third party claim, against the Consultant unless the Client has first provided the Consultant with a written certification executed by an independent design professional currently practicing in the same discipline as the Consultant and licensed in the State of California. This certificate of merit shall: (a) contain the name and license number of the certifier; (b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a design professional performing professional services under similar circumstances; and (c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to the Consultant not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding.

H. INDEMNIFICATION

17. THIS PARAGRAPH HAS BEEN INTENTIONALLY DELETED

I. HAZARDOUS WASTE

18. Hazardous materials may exist at a site where there is not reason to believe they could or should be present. The Consultant and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work, or termination of services.



00-1437

19. If any hazardous wastes or indication thereof are encountered during our investigation, the investigation may be suspended and the appropriate parties may be notified as required by law. Any costs for the evaluation of the type or extent of contamination and all cleanup will be borne by the client. The Consultant accepts no responsibility for any delays or subsequent costs that might arise from the discovery of hazardous materials. Any field equipment that becomes contaminated by hazardous materials from the project site must be decontaminated. The Client agrees to reimburse Consultant for all costs associated with the decontamination of any field equipment.

20. Client understands that the field investigation could result in the unavoidable contamination of the groundwater, as when a probe or boring device moves through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated, and is capable of spreading hazardous materials off-site. Since nothing can be done to completely eliminate the risk of such an occurrence, and because subsurface sampling is a necessary aspect of the work which Consultant will perform on Client's behalf, Client waives any claim against Consultant in connection with any claim or liability for injury or loss which may arise as a result of alleged cross-contamination caused by sampling.

J. LIMITS OF LIABILITY

21. In recognition of the relative risks, rewards and benefits of the project to both the Client and the Consultant, the risks have been allocated such that the Client agrees to limit the Consultant's liability to Client due to professional negligence, acts, errors or omissions of the Consultant to the face amount of Consultant's errors and omissions insurance policy in effect at the time this contract is executed. Consultant agrees not to reduce or eliminate the amount of Consultant's errors and omissions insurance during the term of this contract.

K. INSURANCE

22. The Consultant represents and warrants that it and its agents, staff, and consultants employed by it is and are protected by worker's compensation insurance, and that the Consultant has such coverage under public liability and property damage insurance policies which the Consultant deems to be adequate.

Certificates for all such policies of insurance shall be provided to Client upon request in writing. The Consultant shall not be responsible for any loss, damage, or liability beyond the amounts, limits, and conditions of such Insurance. The Consultant shall not be responsible for any loss, damage, or liability arising from any acts by Client, its agents, staff, and other consultants under its employ.

L. TERMINATION

23. This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, the Consultant shall be paid for services performed to the termination notice date plus reasonable termination expenses.

24. In the event of termination, or suspension for more than three (3) months, prior to completion of all report contemplated by this Agreement, the Consultant may complete such analyses and records as are necessary to complete its files and may also complete a report on the services performed to the date of notice of termination or suspension. The expenses of termination or suspension shall include all costs of the Consultant in completing such analyses, records, and reports.

M. ASSIGNS

25. The Client may not delegate, assign, sublet, or transfer its duties or interest in this Agreement without the written consent of the Consultant.



007438

N. ESTIMATES

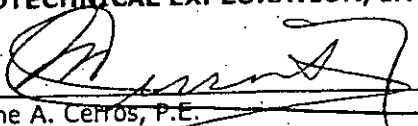
26. Unless otherwise stated, quoted fees are for estimate purposes only. Actual fees may vary based on project requirements, and will be billed on an hourly basis in accordance with the standard Schedule of Fees incorporated herein.

O. SEVERABILITY

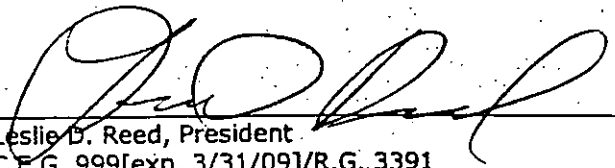
27. No provision of this Agreement in violation of any law or ordinance shall invalidate this Agreement, and any such provision shall be deemed stricken from this Agreement.

The Proposal, Standard Work Agreement, and the accompanying Schedule of Fees comprise the contract between the Client and the Consultant. If you have any questions, please contact us at your convenience. Jaime A. Cerros is licensed by the California Board for Professional Engineers and Land Surveyors. Reference to our Job No. 04-8674 will help expedite a response to your inquiry.

GEOTECHNICAL EXPLORATION, INC.



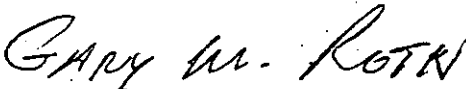
Jaime A. Cerros, P.E.
R.C.E. 34422/G.E. 2007
Senior Geotechnical Engineer



Leslie D. Reed, President
C.E.G. 999[exp. 3/31/09]/R.G. 3391

COPY

AGREED AND ACCEPTED:



(please print firm name)



Signature

Title: PRESIDENT

Date: 11/06/07



WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF OR ARE INTERESTED IN THE LAND EMBRACED WITHIN THE SUBDIVISION TO BE KNOWN AS LA JOLLA ALTA P.R.D. UNIT NO. 15, AND WE HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP CONSISTING OF 3 SHEETS AND DESCRIBED IN THE CAPTION THEREOF.

THIS IS A MAP OF A PLANNED RESIDENTIAL DEVELOPMENT PROJECT AS DEFINED IN CHAPTER X, ARTICLE I, DIVISION 9 OF THE SAN DIEGO MUNICIPAL CODE.

WE HEREBY GRANT AND RELINQUISH TO THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, ANY AND ALL RIGHTS TO CONSTRUCT, ERECT OR MAINTAIN ANY STRUCTURE; TO CONSTRUCT, ERECT OR MAINTAIN FENCES; TO REMOVE LIVE TREES AND SHRUBS, TO CHANGE THE GRADE, OR TO OTHERWISE CHANGE THE OPEN SPACE CHARACTER OF THE LAND OVER, UPON OR ACROSS LOT 1, AS SHOWN ON THIS MAP WITHIN THIS SUBDIVISION AND DESIGNATED "OPEN SPACE EASEMENT GRANTED HEREON," RESERVING TO THE OWNER OF THE FEE UNDERLYING SAID EASEMENT HEREIN GRANTED THE CONTINUED USE OF SAID REAL PROPERTY; THE RIGHT TO GRANT EASEMENTS TO ANY PUBLIC UTILITY COMPANY FOR DISTRIBUTION FACILITIES PROVIDED THE SAME ARE INSTALLED UNDERGROUND; AND THE RIGHT TO MAINTAIN FIREBREAKS, TRIM OR REMOVE BRUSH AND OTHERWISE PERFORM PREVENTATIVE MEASURES REQUIRED BY THE FIRE DEPARTMENT TO PROTECT STRUCTURES AND OTHER IMPROVEMENTS FROM POTENTIAL FIRES. RESPONSIBILITY FOR MAINTENANCE OF SAID LANDS SHALL REMAIN WITH THE OWNER OF THE FEE TITLE OF SAID LAND AND NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO ASSIGN ANY MAINTENANCE RESPONSIBILITY TO THE CITY OF SAN DIEGO, NOR SHALL ANYTHING CONTAINED HEREIN BE CONSTRUED TO CONFER ANY RIGHTS TO THE GENERAL PUBLIC.

TICOR TITLE INSURANCE COMPANY OF CALIFORNIA, FORMERLY TITLE INSURANCE AND TRUST COMPANY, A CALIFORNIA CORPORATION, TRUSTEE UNDER HA NO. 78, AS OWNER.

BY: *William W. Crosby*
WILLIAM W. CROSBY
VICE PRESIDENT

BY: *Ronnie Perna*
RONNIE PERNA
ASSISTANT SECRETARY

TECHBILT CONSTRUCTION CORPORATION, A CALIFORNIA CORPORATION, AS OWNER

BY: *Paul K. Tchang*
PAUL K. TCHANG
PRESIDENT



City of San Diego
Development Services Department
Attn.: Deposit Accounts
1222 First Ave. MS-401
San Diego, CA 92101
(619) 446-5000

Change of Financially Responsible Party

NOTE: NOTARY ACKNOWLEDGMENTS (FOR ALL SIGNATURES) MUST BE ATTACHED, PER CIVIL CODE SEC. 1180.SEQ. ORIGINAL DOCUMENTS MUST BE MAILED TO THE ABOVE ADDRESS

Please print legibly or type information

1. Project Title:			
2. Project Number:		3. Job Order Number: (Deposit Account)	
4. Current Responsible Party:			
5. Address:	City	State	ZIP Code
6. New Responsible Party:			
7. Address:	City	State	ZIP Code
8. Telephone No.	9. Fax No.	10. E-mail Address:	

Current Responsible Party

I/We _____ agree to transfer all funds, and/or liabilities in the above named customer account, including any Lot Stakes and Monument Surety (if applicable). The entire amount of funds, and/or liability is to be transferred to the above named New Responsible Party.

For Lot Stakes and Monument *only* in the amount of \$ _____

* Subject to Subdivisions Approval

_____	_____	_____
Print Name	Signature	Date

New Responsible Party

I/We _____ agree to accept all funds and/or liabilities, of the above customer account and the obligation to deposit additional funds when requested by the City of San Diego. I/We agree to obtain new agreement and surety (or new permit(s) and surety, if applicable) in my/our name to replace one issued to above named current responsible party in connection with this account.

_____	_____	_____
Print Name	Signature	Date

000441

To Be Appended By The
Council

000442

To Be Appended By The
City