ORDINANCE NO. 3518

ORDINANCE OF THE CITY OF CHULA VISTA APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CHULA VISTA AND ACI SUNBOW, LLC (MPA21-0014) FOR THE SUNBOW II, PHASE 3 PROJECT

I. RECITALS

A. Project Site

WHEREAS, the area of land which is the subject of this Ordinance is represented in Exhibit A, attached hereto and incorporated herein by this reference, and is commonly known as Sunbow II, Phase 3, and for the purpose of general description consists of 135.7-acres within the Sunbow II Planned Community generally located at the southeast corner of Brandywine Avenue and Olympic Parkway (Project Site); and

B. Project; Application for Discretionary Approvals

WHEREAS, on February 20, 1990, the City Council of the City of Chula Vista approved the Sunbow II Sectional Planning Area (SPA) Plan (Resolution No. 15524), inclusive of a 46.0-acre parcel designated for an Industrial Park, known as Planning Area 23 (PA23); and

WHEREAS, since approval all other parcels covered by the Sunbow II SPA have been built out and the PA23 site has remained vacant; and

WHEREAS, on January 7, 2020, the City Council of the City of Chula Vista approved a Community Benefits Agreement (Resolution No. 2020-003) with ACI Sunbow, LLC (Applicant/Owner), to allow the Owner to process entitlements to consider the conversion of the PA23 land from industrial to residential uses and in exchange would provide funding that can be used by the City to direct the construction of a job enhancing use in Eastern Chula Vista or other signature project; and

WHEREAS, applications to consider such amendments to the City of Chula Vista General Plan (MPA20-0012), Sunbow II General Development Plan (MPA20-0013), Sunbow II, Phase 3 SPA Plan (MPA20-0006) and approval of an associated Tentative Map (PCS20-0002) and Development Agreement (MPA21-0014) were filed with the City of Chula Vista Development Services Department on February 26, 2020 by the Applicant; and

WHEREAS, the Applicant proposes to rezone 67.5-acres of developable land on the Project Site from light industrial to residential uses resulting in up to 534 multi-family medium-high-density and 184 multi-family high-density residential dwelling units (718 total units) on six parcels and designate the remaining 68.2-acres as Multiple Species Conservation Program (MSCP) land, Poggi Creek Conservation Easement areas and a conserved wetland resource area on sixteen parcels (Project); and

WHEREAS, immediately prior to this action, the City Council certified the EIR (FEIR20-0002), pursuant to Resolution No. 2022-017; and

WHEREAS, immediately prior to this action, the City Council approved a General Plan Amendment (MPA20-0012) and a Sunbow II General Development Plan Amendment (MPA20-0013), pursuant to Resolution No. 2022-018; and

WHEREAS, immediately prior to this action, the City Council approved the Sunbow II, Phase 3 SPA Plan Amendment (MPA20-0006), pursuant to Resolution No. 2022-019 and rezone pursuant to Ordinance No. 3517; and

WHEREAS, immediately prior to this action, the City Council approved the Tentative Map (PCS20-0002), pursuant to Resolution No. 2022-020; and

WHEREAS, due to waivers in Development Standards or fees related to, but not limited to, a Jobs Enhancement Fund, Park Benefit Fee, Community Purpose Facilities Benefit Fund, Affordable Housing obligations and purchase of City owned land, a Development Agreement between the City and Applicant was necessary; and

WHEREAS, approval of the Development Agreement serves as the final step in Project approval; and

C. Environmental Determination

WHEREAS, the Director of Development Services has reviewed the proposed project for compliance with the California Environmental Quality Act (CEQA) and has determined that there is substantial evidence, in light of the whole record, that the project may have a significant effect on the environment; therefore, the Director of Development Services has caused the preparation of an Environmental Impact Report (EIR20-0002); and

WHEREAS, the City Council has certified and hereby finds that the FEIR has been prepared in accordance with the requirements of CEQA, and the Environmental Procedures of the City of Chula Vista; and

D. Planning Commission Record of Application

WHEREAS, the Director of Development Services set the time and place for a public hearing on the Project, and notice of the public hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City, and its mailing to property owners within 500 feet of the exterior boundary of the Project Site at least ten (10) days prior to the public hearing; and

WHEREAS, the Planning Commission held an advertised public hearing and voted 0-6 recommending the City Council deny the approval of the Project, citing that further analysis related to the Jobs Enhancement Fund and a mix of land uses on the site be considered; and

WHEREAS, the proceedings and all evidence introduced before the Planning Commission at the public hearing on the Project and the Minutes and Resolution resulting therefrom, are incorporated into the record of this proceeding; and

E. City Council Record of Application

WHEREAS, the City Clerk set the time and place for a public hearing on the Project and notices of said hearing, together with its purposes given by its publication in a newspaper of general circulation in the City, and its mailing to property owners within 500 feet of the exterior boundaries of the Project Site at least ten (10) days prior to the public hearing; and

WHEREAS, the duly noticed and called public hearing on the Project was held before the City Council in the Council Chambers in the City Hall, Chula Vista Civic Center, 276 Fourth Avenue, to receive the recommendations of the Planning Commission, and to hear public testimony with regard to the same.

II. NOW, THEREFORE, the City Council of the City of Chula Vista does hereby find, determine and ordain as follows:

A. CONSISTENCY WITH GENERAL PLAN

The City Council finds that the proposed amendment to the Sunbow II, Phase 3 SPA Plan and related documents are consistent with the City of Chula Vista General Plan. The General Plan envisioned Sunbow II as an efficient self-contained village.

B. APPROVAL OF PROPOSED AGREEMENT

The City Council hereby approves the Development Agreement between the City of Chula Vista and ACI Sunbow, LLC as represented in Exhibit B attached hereto and incorporated herein by this reference.

III. EFFECTIVE DATE

This ordinance shall take effect and be in full force on the thirtieth day from and after its adoption.

[SIGNATURES ON THE FOLLOWING PAGE]

Presented by

DocuSigned by:
AA76F15D450845D...
Tiffany Allen
Director of Development Services

Approved as to form by

DocuSigned by:
CF40650850444BF...
Glen R. Googins
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 25th day of January 2022, by the following vote:

AYES:	Councilmembers:	Cardenas, McCann, Padilla, and Casillas Salas
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	Galvez

DocuSigned by:
062BFD7C0386456...
Mary Casillas Salas, Mayor

ATTEST:

DocuSigned by:
3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk

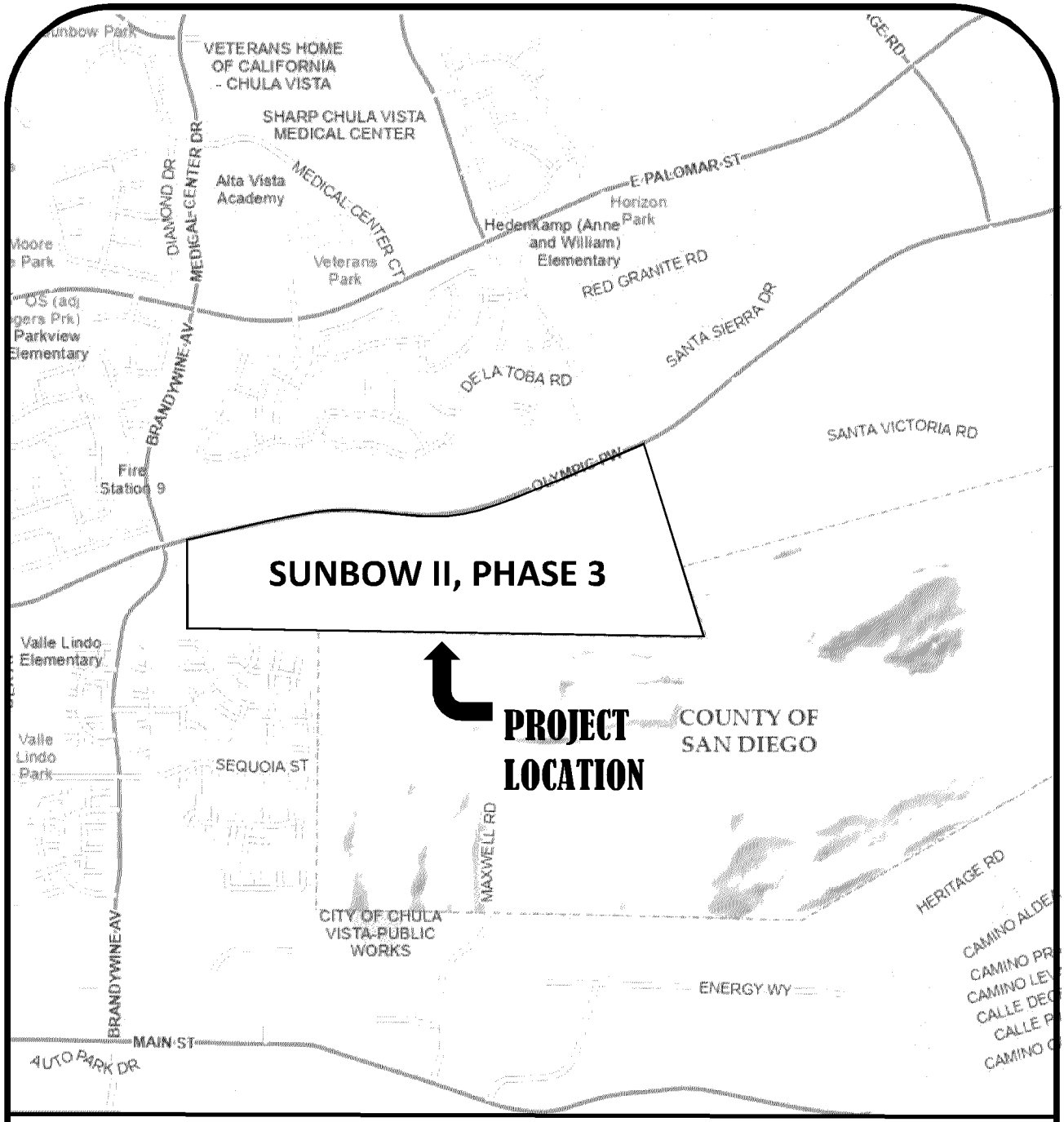
STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3518 had its first reading at a regular meeting held on the 18th day of January 2022, and its second reading and adoption at a regular meeting of said City Council held on the 25th day of January 2022; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

6/15/2022
Dated

DocuSigned by:
3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk

Exhibit A



Attachment 3 - Locator Map

Sunbow II, Phase 3

Exhibit B

DOC# 2022-0235131

Jun 03, 2022 09:53 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: $291.00 (SB2 Atkins: $0.00)

PAGES: 93

RECORDING REQUESTED BY:

City Clerk

WHEN RECORDED MAIL TO:

CITY OF CHULA VISTA
276 Fourth Avenue
Chula Vista, CA 91910

Above Space for Recorder's Use

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into by and between the CITY OF CHULA VISTA, a chartered California municipal corporation ("City") and ACI SUNBOW LLC, a limited liability corporation ("Owner"). City and Owner whenever referenced herein collectively shall be referred to as "Parties" and whenever referenced hereinafter individually may be referred to as "Party." The Parties agree as follows:

RECITALS

A. City's Authority to Enter into Development Agreement. City is authorized under California Government Code sections 65864 et seq. to enter into binding development agreements with persons having legal or equitable interests in real property for the purposes of assuring, among other things, (i) certainty as to permitted land uses in the development of such property, (ii) provides for the construction of adequate public facilities to service such property, and (iii) ensures the successful completion of the Sunbow General Development Plan, a 604.8 acre master planned community ("Sunbow Master Plan").

B. The Property: Owner's Interest. Owner has a legal or equitable interest or both in the approximately 135.7-acre site more particularly described in Exhibit "A" attached hereto (the "Property"). The Property is the subject of this Agreement and is located within Sunbow II Phase 3 of the Sunbow Master Plan. Owner intends that its successors in interest and all other persons holding legal or equitable interest or both in the Property benefit from and be bound by this Agreement, as more particularly described herein. The owner intends to develop, improve, build on, sell or lease the Property or portions thereof to various builders (as hereinafter defined) who may acquire portions of the Property and the benefits and burdens under this Agreement.

C. The Project. The Property is being planned as a community with a range of residential uses, open space and MSCP Preserve areas, and recreational opportunities (the "Project"). More particularly, the Project is located south of Olympic Parkway, east of Brandywine Avenue, and north and northwest of the Otay Landfill. The Project will provide 534 multi-family medium-high-density residential dwelling units and 184 multi-family high-density residential

dwelling units for a total of 718 units on the site. The Project will also include various passive and active recreational open space areas distributed throughout the residential areas to provide recreational opportunities within walking distance of the proposed residential uses.

D. Approval of Community Benefit Agreement. The Owner and City entered into that certain Community Benefit Agreement (approved by Resolution No. 2020-003, January 7, 2020) wherein the Owner would provide eight million dollars that can be used by the City to direct the construction of a project in furtherance of the goals set forth in the University Innovation District Master Plan, on a site located within the University Innovation District Master Plan or within the SR-125 corridor that is owned by the City or under the control or ownership of a non-profit entity that has been established to effectuate the goals of the University Innovation District Master Plan (the "Job Enhancement Funds"). By way of example only, such project could involve : (i) the construction of a Class "A" office building or an academic, commercial or innovation facility or building that will attract job enhancing uses into the SR-125 corridor or the University Innovate District Master Plan; (ii) such other uses that would enable the development of an Institute for International Studies; or (iii) some other notable project at the City's discretion consistent with the goals of the University Innovation District Master Plan.

E. Project Approvals. On January 18, 2022, the City approved a General Plan Amendment (by Resolution No. 2022-018), an amendment to the Sunbow General Development Plan, an amendment to Sunbow Sectional Planning Area (SPA) Plan, (by Resolution No. 2022-019), rezone (by Ordinance No. 3517), a Development Agreement (by Ordinance No. 3518), Tentative Map 20-0002 (by Resolution No. 2022-020), and other related entitlements for the Project.

E. Certification of EIR. Prior to the City's adoption of the Existing Project Approvals (as hereinafter defined) described above, the City Council (i) independently reviewed and considered the significant environmental impacts of the Project and several alternatives to the Project as described in that certain Final Environmental Impact Report ("Project EIR") and (ii) adopted Resolution No. 2022-017 on January 18, 2022 certifying the Project EIR as adequate and complete, making Findings concerning Mitigation Measures and Alternatives, adopting a Statement of Overriding Considerations and adopting a Mitigation Monitoring and Reporting Plan ("MMRP") all in accordance with the provisions of the California Environmental Quality Act, California Public Resources Code section 21000, et seq. ("CEQA")

F. City and Owner Acknowledge. City and Owner acknowledge this Agreement will provide the following mutual benefits:

1. Facilitate the efficient development of the Project that will ensure the City's timely receipt of the Job Enhancement Funds; and

2. Establish mechanisms that will help provide for the financing and construction of facilities necessary to provide for anticipated levels of service to residents of the Project; and

3. Provide Owner with assurances regarding the Existing Project Approvals and regulations that will be applicable to the development of the Project consistent with the existing land use regulations and the Existing Project Approvals; and.

4. Assure that the Project does not cause any conflict with City's growth management goals and objectives by, for example, ensuring the provision of adequate public facilities at the time of Development, proper timing and sequencing of Development, effective capital improvement programming, and appropriate Development incentives; and

5. Allow for the development of the Property, that has remained undeveloped for the last thirty (30) years, with 718 multifamily units, a 0.9-acre Community Purpose Facility site, 16 acres of open space, and 64 acres of MSCP Preserve open space land.

G. The Parties agree that the covenants, promises and other material requirements of this Agreement constitute adequate consideration that is fair, just, mutual, equitable and reasonable. In particular, Owner would not enter into this Agreement, nor agree to provide and furnish funds for the public and private Development and infrastructure described in this Agreement, if not for the promise of City that the Property can be developed pursuant to the Existing Project Approvals and Applicable Laws. Similarly, City would not enter into this Agreement if not for the promise of Owner to provide the public facilities, public infrastructure and other public benefits provided for in this Agreement.

H. Owner acknowledges and confirms that the timing and terms for City's approval, as more particularly described in the Existing Project Approvals, satisfy the requirements to trigger Owner's obligation to pay the Job Enhancement Funds described in Recital D.

I. Planning Commission. OnJuly 28, 2022, City's Planning Commission held a duly noticed public hearing on this Agreement and at the conclusion of the hearing recommended denial of the project which was subsequently appealed.

J. City Council Approval. On January 18, 2022, the City Council held a duly noticed public hearing on this Agreement, at the conclusion of which the Council introduced and conducted the first reading of the ordinance approving the Agreement, and subsequently, on January 25, 2022, adopted Ordinance No 3518approving the Agreement. As part of its initial hearing, the City Council considered and approved the environmental documentation for this Agreement as being in compliance with the California Environmental Quality Act.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and Owner hereby agree as follows:

ARTICLE 1
DEFINITIONS

In this Agreement, unless the context otherwise requires, the following terms shall mean:

"**Applicable Law**" means laws, rules, regulations and official policies of City (including General Plan policies, Administrative codes, ordinances, resolutions and other local laws, regulations, and policies of City) in force and effect on the Effective Date.

"City Council" means the Chula Vista City Council.

"City Laws" means any new rules, laws, regulations, policies, ordinances, resolutions and standards adopted by the City after the Effective Date of this Agreement that can be applied to decisions on Future Project Approvals or amendments to Existing Project Approvals as provided for herein.

"**Builder**" means the entity, person or persons to whom Owner will sell, lease or convey or has sold, leased or conveyed the Property or portions thereof, for purposes of its improvement for residential, commercial, industrial or other uses.

"**CEQA**" means the California Environmental Quality Act, California Public Resources Code sections 21000, et seq and State CEQA Guidelines, Title 14 of the California Code of Regulations, section 15000 et seq.

"**City**" means the City of Chula Vista, in the State of California.

"CFD" means a Community Facilities District formed pursuant to the provisions of the Mello-Roos Community Facilities District Act, California Government Code Section 53311, et seq.

"**Development**" means the construction, reconstruction, conversion, structural alteration, relocation, maintenance or enlargement of any structure; any mining, excavation, grading, landfill, or land disturbance; the construction of roadways, water and sewer infrastructure and other infrastructure improvements directly related to the Project whether located within or outside the Property; the installation of landscaping and other facilities and improvements necessary or appropriate for the Project; and any use or extension of the use of land.

"**Development Impact Fee" or "DIF"** means assessment, fee, charge or dedication imposed upon development within the City pursuant to a Development Impact Fee Program or equivalent program, adopted in accordance with the requirements of State law.

"Effective Date" means the first date on which all of the following are true: (a) the Owner has signed the Agreement and returned the signed Agreement to the City; (b) the City Council has adopted Ordinance No.3518, approving the Agreement.

"**Existing Project Approvals**" means the entitlements for the Project described in Recitals above, and in particular the following: (i) amendment to the General Plan, (ii) amendment to the Sunbow General Development Plan (iii) an amendment to Sunbow SPA II, (iv) the rezone of the Property, (v) Tentative Map NO. 20-0002, (vi) all associated documents that have been attached and made a part thereof, such as the PFFP, and (vii) the Project EIR, all as may be amended from time to time consistent with this Agreement.

"**Final Map(s)**" means any final subdivision map for all or any portion of the Property upon which the Project is located.

"**Future Project Approvals**" means all discretionary and ministerial permits and approvals requested by the Owner and approved by the City after the Effective Date of this Agreement, including, but not limited to: (i) grading permits; (ii) site plan reviews; (iii) design guidelines review; (iv) subdivisions of the Property, or re-subdivisions of the Property; (v) conditional use permits; (vi) variances; (vii) encroachment permits; (viii) rezoning's; and (ix) all other reviews, permits, and approvals of any type which may be required from time to time to authorize public or private on- or off-site development which is a part of the Project.

"**Growth Management Ordinance**" means Chapter 19.09 of City's Municipal Code, as it exists on the date the Development Agreement is adopted.

"**Job Enhancement Funds**" means the sum of eight million dollars to be paid by Owner in three payments as provided herein and as further defined in Recital D.

"**Owner**" means the person, persons, or entity having a legal or equitable interest in the Property, or parts thereof, and includes Owner's successors-in-interest and "Builder" as defined herein.

"**PFFPs**" means the Public Facilities Financing Plan for the Project, adopted as a part of the Project.

"**Planning Commission**" means the Planning Commission of the City of Chula Vista.

"**Project**" means the Development of the Project and all related private and public improvements on and off the Property as provided for in the Existing Project Approvals and as may be authorized by the City in Future Project Approvals.

"**Project Improvements and Infrastructure**" means public and private improvements and facilities (located on and off the Property) constructed to serve the Project as described in the Existing Project Approvals or as may be imposed, pursuant to the terms of this Agreement, as part of Future Project Approvals.

"**Property**" means the real property described in Exhibit "A."

"**Term**" of this Agreement means the period defined in Article 2, below.

ARTICLE 2
TERM

2.1. Term. This Agreement shall become effective as to the Property upon the Effective Date and shall continue for fifteen (15) years ("Term") thereafter. The Term may be extended at the Owner's sole option for two additional ten (10) year terms. In addition to the extensions herein provided, the Owner may request that the term of the Agreement be extended beyond the two additional extensions, which will be processed in the same manner as an amendment to this

Agreement. In the event of litigation challenging this Agreement or the Project, the Term is automatically suspended for the duration of such litigation and resumes upon final disposition of such challenge and any appeal thereof upholding the validity of this Agreement or the Project. In the event that a referendum petition concerning this Agreement or Project is duly filed in such a manner that the ordinance approving this Agreement or the Project is suspended, then the Term is deemed to commence upon City Council's certification of the results of the referendum election affirming this Agreement or the Project as the case may be.

2.2 Extension. The Term shall be extended for any period of time during which processing of applications for the Project, Future Project Approvals or issuance of building permits to Owner is suspended for any reason other than due to the actions or the default of the Owner, and for such period of time equal to the period of time during which any action by the City or court action limits the processing of such Project applications, Future Project Approvals, issuance of building permits or any other development of the Property consistent with this Agreement.

2.3. Covenants Running with the Land. As of the Effective Date, the terms and provisions of this Agreement are enforceable by the parties as equitable servitudes affecting the Property, constituting covenants running with the land pursuant to California law including, without limitation, Civil Code § 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Property, run with the Property, and are binding upon Owner and the successors and assigns of Owner during their respective ownership of the Property.

2.4. Execution and Recordation. The City shall promptly execute this Agreement within thirty (30) days after the Effective Date following City Council approval. The City may execute the Agreement in counterparts as set forth in Section 15.5 herein. Within 10 days after the Agreement has been executed by the City, the City Clerk shall notify the Owner of such execution and provide Owner the Agreement for recordation. The Owner shall cause the recordation of such Agreement and provide the City with a confirmed copy within ten (10) business days following its recordation.

2.5 Public Benefits. The Parties agree that the covenants, promises and other material requirements as set forth herein constitute adequate consideration that is fair, just, mutual, equitable and reasonable. The Owner would not enter into this Agreement, nor agree to provide and furnish funds for the public and private Development and infrastructure described in this Agreement, if not for the promise of City that the Property can be developed pursuant to the Existing Approvals and Applicable Laws. Similarly, City would not enter into this Agreement if not for the promise of Owner to provide the public facilities, public infrastructure and other public benefits provided for in this Agreement.

ARTICLE 3
VESTED RIGHTS

3.1. Vested Rights. In consideration of the benefits to City, as set forth herein, Owner is vested with the right to develop and maintain the Property to the land uses, densities and intensities of use, and the reservations and dedication of land for public purposes as provided in the Existing Project Approvals, as such approvals may be amended from time to time, and subject

to Applicable Laws and as further provided in Section 3.4 below. If Future Project Approvals are obtained by Owner, they shall be vested to the same extent as the Existing Project Approvals.

3.2. Maximum Height and Size of Structures. The maximum height and size of structures to be constructed on the Project will be governed by the Existing Project Approvals.

3.3. Applicable Law. As provided by this Agreement, the rules, regulations and official policies (including General Plan policies, Administrative codes, ordinances, resolutions and other local laws, regulations and policies of City) governing the permitted uses, the density and intensity of use, the design, improvement and construction standards and specifications of any improvements and the mitigation of impacts of the Project, shall be those in full force and effect on the Effective Date ("Applicable Law"). Applicable Law includes the Existing Project Approvals, as they may be issued or amended from time to time, in a manner consistent with both the terms and provisions of this Agreement. The City shall retain its discretionary authority as to amendments to Existing Project Approvals and to Future Project Approvals, provided however, such decisions shall be regulated by the Applicable Laws and as further provided in Section 3.4 below.

3.3.1. Amendments. By way of example, the following illustrate the application of amendments that would hinder, impede or cause an unreasonable delay of the Project as authorized by the Existing Project Approvals and would be considered in conflict with the Applicable Laws.

(i) Prevent all or a portion of the Project or the Property from being developed, used, operated or maintained in accordance with the terms and provisions of this Agreement, Existing Project Approvals, or Applicable Laws;

(ii) Limit or reduce the overall density, intensity or unit count of the Project, or any part thereof, to a density, intensity or unit count that is lower than that specified in this Agreement, Existing Project Approvals or Applicable laws;

(iii) Modify any land use designation or conditional use of the Property in a manner inconsistent with this Agreement, Existing Project Approvals, or Applicable Laws;

(iv) Limit or control the rate, timing, phasing or sequencing of the approval, development, construction or occupancy of all or any portion of the Project or Property except as specifically permitted by this Agreement;

(v) Impose any condition, dedication or exaction that would conflict with this Agreement, Existing Project Approvals, or Applicable Law;

(vi) Require the issuance of discretionary permits or nondiscretionary permits, to the extent such permits impose new or different substantive requirements on Owner or the Project that are not otherwise required by Applicable Laws, Existing Project Approvals, or this Agreement;

(vii) Apply to the Project any provision, condition or restriction that would be inconsistent with this Agreement, Existing Project Approvals, or Applicable Law;

(viii) Apply to the Project any rent control or price control provisions or uniform or prevailing wage requirements except to the extent required under state law, unless otherwise permitted by this Agreement;

(ix) Limit or control the location of buildings, structures, grading, or other improvements of the Project or the Property in a manner that is inconsistent with or more restrictive than the limitations included in this Agreement, Existing Project Approvals, or Applicable Laws;

(x) Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services or facilities in a manner other than as specifically set forth in this Agreement or Applicable Law (for example, water rights, water connections or wastewater treatment capacity rights, sewer connections, etc.) for the Project or the Property;

(xi) Apply to the Project or the Property any City Law allowed by this Agreement that is not uniformly applied on a City-wide basis to other development projects and properties;

(xii) Establish, enact, increase, or impose against the Project any fees, Development Impact Fees, assessments, liens or other monetary obligations other than (i) those specifically permitted by this Agreement, and (ii) City-wide taxes and assessments (provided such City-wide taxes or assessments are not disproportionately applied to the Property); or

(xi) Limit the processing or issuance of amendments to Existing Project Approvals or Future Project Approvals other than as specifically set forth in this Agreement or Applicable Law.

3.4. Development Impact Fees. Except as otherwise provided in this Agreement, only those Development Impact Fee in effect as of the Effective Date and as described on attached Exhibit B may be applied to the Project or the Property. All Project Development Impact Fees will be paid at the time the City issues certificates of occupancy unless otherwise noted in this Agreement. Any increase in a Development Impact Fee can be challenged by Owner, pursuant to City ordinance and state law. The Parties acknowledge that the provisions contained in this paragraph 3.4, and as set forth in Exhibit B, are intended to implement the intent of the Parties that Developer has the right to develop the Project pursuant to specified and known criteria and rules, and that the City receive the benefits which will be conferred as a result of such Development without abridging the right of the City to act in accordance with its powers, duties and obligations, except as specifically provided in this Agreement.

3.5. Reserved Authority. The City may apply changes in City Laws, regulations, ordinances, standards or policies specifically mandated by changes in state or federal law in compliance with Article 12 herein. If City amends its Growth Management Ordinance, the amended Growth Management Ordinance shall apply to the Project upon Owner's written

acceptance, which acceptance shall not constitute an amendment to this Agreement. This provision shall not affect any mitigation measures required of Owner under the environmental document certified for the Project.

3.6. Owner's Option to Apply New Rules. Owner may elect, with the City Manager, or their designee, consent to have applied to the Project any rules, regulations, policies, ordinances or standards enacted after the Effective Date of this Agreement. The City Administrative Officer shall not unreasonably withhold said consent.

3.7. Modifications to Existing Project Approvals. It is contemplated by the Parties to this Agreement that the Owner may seek modifications to the Existing Project Approvals from time to time. These modifications are contemplated as within the scope of this Agreement and shall, if approved by the City, be incorporated into and constitute for all purposes an Existing Project Approval. Owner and City agree that any such modifications to Existing Project Approvals will not constitute an amendment to this Agreement nor require an amendment to the Agreement. The City shall process and act on such applications in accordance with the applicable provisions of the Applicable Law.

3.8. Moratorium and other Limitations. This Project is exempt from any moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits, certificates of occupancy or other land use entitlements that are approved or to be approved, issued or granted within the City. To the maximum extent permitted by law, City must prevent any City Law from invalidating or prevailing over all or any part of this Agreement, and City must cooperate with Owner and undertake such actions as needed to ensure this Agreement remains in full force and effect. If City applies to the Project a City Law that Owner believes to conflict with Applicable Laws or this Agreement, Owner may take such action as may be permitted under Section 15.16 and Article 10 herein. City must not support, adopt or enact any City Law, or take any other action, which would violate the express provisions of this Agreement or the Existing Project Approvals. Owner may also challenge in court any City Law that would conflict with Applicable Laws or this Agreement or reduce the development rights provided by this Agreement, in accordance with the dispute resolution provisions of Section 15.19 below.

3.9. State and Federal Law. As provided in Government Code § 65869.5, in the event that state or federal laws or regulations, enacted after the Effective Date ("Changes in the Law") prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement will be, by operation of law, modified or suspended, or performance thereof delayed, as and to the extent that may be necessary to comply with such Changes in the Law. In the event any state or federal resources agency (i.e., California Department of Fish and Game, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Regional Water Quality Control Board/State Water Resources Control Board), in connection with its final issuance of a permit or certification for all or a portion of the Project, imposes requirements ("Permitting Requirements") that require modifications to the Project, then the parties will work together in good faith to incorporate such changes into the Project; provided, however, that if Owner appeals or challenges any such Permit Requirements, then the Parties may defer such changes until the completion of such appeal or challenge. As set forth in Section 3.6 herein, such modifications are contemplated to be within the scope of this Agreement and shall, upon written acceptance by the Parties,

constitute for all purposes the Existing Project Approval and will not require an amendment to the Agreement.

3.10. Further Assurances. To the extent permitted by law, City must take all actions needed to ensure that the vested rights provided by this Agreement can be enjoyed by Owner including, without limitation, any actions needed to ensure the availability of public services and facilities to serve the Project or the Property as development occurs. Should any initiative, referendum, or other measure be enacted that would affect the Project or the rights provided by this Agreement, Owner agrees to fully defend the City against such a challenge in a manner consistent with Section 15.18 below. The City must not take any actions relative to the Property whether or not covered by this Agreement that would impede, hinder or frustrate Owner's ability to develop or use the Property in a manner consistent with this Agreement.

3.11. Time for Construction and Completion of Project. Development of the Project shall be subject to all timing and phasing requirements established by the Existing Project Approvals. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), that the failure of the parties to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the intention of the City and Owner to cure that deficiency by specifically acknowledging that timing and phasing of development is completely and exclusively governed by the Existing Project Approvals, and that Owner has the right to develop the Project at such time as Owner deems appropriate within the exercise of its subjective business judgment. Nothing in this Agreement shall be deemed to require Owner to proceed with the development of any portion of the Project or make any financial commitment associated with any such development if, in Owner's sole and absolute discretion, Owner determines that it is not in Owner's best financial or other interest to do so. The City and Owner agree that the Project and related infrastructure is expected to be built in phases in response to existing market conditions over the term of this Agreement, there is no requirement that Owner initiate or complete development of the Project or any particular phase of the Project within any particular period of time, and City will not impose such a requirement on any Project Approval. The Parties acknowledge that Owner cannot at this time predict when or the rate at which or the order in which phases will be developed. Such decisions depend upon numerous factors which are not within the control of the Owner, such as market demand, interest rates, competition and other factors. The provisions of the foregoing sentence do not, however, limit any obligation of Owner under this Agreement with respect to any development activities that are chosen by Owner to be undertaken hereunder.

3.12. Development and Sale of Project Units. Owner agrees that the Project will be processed and permitted through the California Department of Real Estate ("DRE") as a "for-sale" product. Owner shall provide City with copies of the Preliminary ("Pink") Report and Final ("White") Report issued by the DRE with respect to each Phase of the Project within five (5) business days after receipt thereof. Each residential unit within the Project (each a "Project Unit") will initially be sold to a "bona fide third party purchaser" (defined below). Notwithstanding the foregoing, after Owner's initial sale of a Project Unit to a bona fide third party purchaser, such purchaser, or any subsequent purchaser, shall be entitled to rent out such unit in accordance with, all applicable federal, state and local laws. For purposes of this Section, a "bona fide third party purchaser" shall be a purchaser for value of five or fewer Project units, or any purchaser of greater

than five Project Units that is not an officer or employee of Owner, nor any entity that is twenty percent (20%) or greater owned or controlled by one or more officers or employees of Owner.

ARTICLE 4
PROCESSING PROJECT

4.1. Processing of Future Project Approvals. City will accept for processing development applications and requests for Future Project Approvals, or other entitlements with respect to the development and use of the Property and will consider such matters in accordance with the appropriate process set forth in the Applicable Laws. The City will diligently work towards the timely issuance of such entitlements, including grading plans, improvement plans, and other plans or permits, as needed to issue building permits such efforts will include the City's expedited processing of grading plans, improvement plans, and other plans or permits, as needed to issue a building permit. City shall treat the Project as a priority and shall make best efforts to dedicate sufficient attention and resources to the Project to facilitate the expeditious development thereof, as contemplated by this Agreement. The costs for processing work related to the Project, including hiring of additional City personnel to dedicate to the Project and/or the retaining of professional consultants, will be reimbursed to City by Owner in a manner consistent with the City Laws and applicable State law. City shall retain its discretionary authority to act on Future Project Approvals and apply City Laws to such matters, provided the City Laws do not conflict with Applicable Laws or the rights provided by this Agreement. By way of example, the application of City Laws that would prevent the uses, densities or intensities of development specified herein or as authorized by the Existing Project Approvals or would unreasonably delay development of the Project would be considered in conflict with the rules, regulations and official policies in effect as of the Effective Date of this Agreement and to the intent of the Parties. In addition, the City may also apply changes in City Laws, regulations, ordinances, standards or policies specifically mandated by changes in state or federal law in compliance with Article 12 herein.

4.2 Length of Validity of Tentative Subdivision Maps. Government Code section 66452.6 provides that tentative subdivision map(s) may remain valid for a length up to the term of a Development Agreement. The City agrees that all tentative subdivision maps (vesting or otherwise) for the Project, shall be for a term coterminous with the length of this Agreement.

4.3 Pre-Final Map Development. If Owner desires to do certain work on the Property (for example, grading) after approval of a tentative map, but prior to the recordation of a final map, it may do so by obtaining a grading and/or other required approvals from the City prior to recordation of a final map. The permit or approval may be approved or denied by the City in accordance with the requirements of the Applicable Laws and other City regulations or policies as may be applicable; provided the Owner is in compliance with this Agreement and with the terms of all Existing Project Approvals and Future Project Approvals. In addition, the Owner shall be required to post a bond or other reasonably adequate security required by City in an amount reasonably determined by the City to assure the rehabilitation of the land if the applicable final map does not record.

4.4 Transfer of Rights and Obligations of Development. Whenever Owner conveys a portion of the Property, the rights and obligations of this Agreement shall transfer in accordance with Article 7 herein.

4.5. Cooperation with respect to Project Improvements and Infrastructure. City shall cooperate with Owner to take all actions necessary and appropriate to facilitate the timely development of Project Improvements and Infrastructure. Such cooperation includes, without limitation, the following actions as may be applicable to the City in the exercise of its legislative discretion: (i) the diligent and timely commencement of the City's exercise of its power of eminent domain authority in a manner consistent with the laws of the State of California (and subject to the City's exercise of its discretion, the making of all necessary findings and determinations required to exercise such power), to acquire any rights of way or other real property interests identified by Owner to be necessary or appropriate for the Project Facilities and Infrastructure; and (ii) City's diligent efforts to work with other landowners and governmental and quasi-governmental agencies to ensure the timely approval and construction of such Project Facilities and Infrastructure. Owner must notify City as to when a right of way will be required to meet Owner's construction schedule. Upon Owner's notice and as provided for by law, City agrees to use its best efforts to take such actions in a timely manner as needed to consider the acquisition of any and all necessary right of ways, provided however, the City shall not be obligated under this Section to exercise its power of eminent domain with respect to any real property.

4.6. City's Acceptance of Dedications. City agrees to accept the easements to be provided by the Owner for conservation of portions of the Poggi Creek channel within ninety (90) calendar days of such offer by Owner. All other Owner offers of dedication required by this Agreement or the Existing Project Approvals must be accepted by City within a reasonable time, provided that the applicable improvements are completed consistent with Applicable Law.

4.7. Affordable Housing Obligation. Because of the special benefits provided by the Project as described in this Agreement, the City has provided the Project with a variance from its affordable housing obligations as permitted by the Balanced Communities Policy and Guidelines. The Project shall hereafter satisfy its affordable housing obligations by the following two requirements:

(i) Prior to the issuance of the two hundredth (200^{th}) building permit for the Project, the Owner shall execute an amendment to the covenants and restrictions ("Affordability Covenant") set forth in that certain Regulatory Agreement dated June 1, 2000 between the California Tax Credit Allocation Committee and Serena Sunbow, L.P. (recorded as Document No. 20000-0641390 in the San Diego County Recorder's Office, Nov. 27, 2000) to be extended for sixty-seven (67) low-income housing units in the Villa Serena residential housing project to June 1, 2055. The extended Affordability Covenant for the sixty-seven (67) units shall be recorded as a restrictive covenant in the official records of the County of San Diego.

(ii) The Owner shall implement an outreach program, including advertising and marketing, that would encourage buyers of all majority and minority groups, regardless of sex, handicap, and familial status.

4.8. Community Purpose Facilities. Owner is required to provide approximately 3.2 acres of land of CPF land for community purpose facilities ("CPF") based upon a ratio of 1.39 acres per 1,000 residents in accordance with Section 19.48.025 of the City's Municipal Code. The City has agreed that the CPF on-site obligation will be reduced to require Owner to provide a 0.9-acre parcel, including private recreational facilities, designated for CPF land uses in perpetuity as a part of the SPA. The City Council hereby waives the remaining CPF obligation of 2.3 acres because of the extraordinary public benefit provided by the payment from the Owner to the City of one million seven hundred fifty-nine thousand, one hundred thirty-four dollars ($1,759,134.00) based upon the evaluation described on Exhibit "B" attached hereto (the "CPF Benefit Funds"). The CPF Benefit Funds shall be due and payable before the issuance of the building permit for the 240th unit. The CPF Benefit Funds satisfies the goals of CPF requirement by providing a community serving facility on land in the City's western territories that would not otherwise have been available for such community service use. The CPF Benefit Funds may be utilized by the City at its discretion for CPF uses in perpetuity. Therefore, the City hereby determines that the Owner is in compliance with the CPF requirements of Chapter 19.48. of the Municipal Code.

4.9. Park Facilities. The City shall waive the Parkland Acquisition and Development Fees/Quimby Fees ("PAD Fees") set forth in Chapter 17.10 and in- lieu thereof, the Owner shall pay the City a Park Benefit Fee, equal to the PAD fees that would have otherwise been due pursuant to Chapter 17.10, using the PAD fee rates in effect as of the Effective Date. The Park Benefit Fee shall be paid by Owner no later than final inspection for each unit. Park Benefit Fees may be utilized by the City to acquire or develop parkland, as the City determines appropriate and in the best interest of the City.

4.10. TDIF Obligations. The Transportation Development Impact Fee ("TDIF") credits for each development neighborhood within the Sunbow master plan was calculated as of February 1, 2003. The City acknowledges and agrees that the Owner is entitled to $455,330.67 in cash credits and 109.41 EDU ("Equivalent Dwelling Units") credits resulting from construction of improvements, such as East Palomar Street phases l B and 1 C, which may be used for the Project.

4.11. Job Enhancement Funds. The Owner shall provide the Job Enhancement Funds to the City in three payments. The first payment of up to one million dollars will be made upon the City's issuance of the first (1st) building permit based upon the City's sole determination that such amount is needed to provide start-up funding for a first phase of a University Innovation District opportunity. The second payment of one million dollars will be made upon the issuance of the one-hundredth (100th) building permit. The third payment of six million dollars plus any amount not requested by the City in the first payment will be made upon the issuance of the two-hundredth (200th) building permit for the Project. The Job Enhancement Funds shall be held by the City in a separate account to be used pursuant to the terms set forth in this paragraph. Should Job Enhancement Funds still be owed to the City by January 1, 2024 and such delay is not the result of the City's failure to expedite the approvals described in paragraph 4.11.1 below, said amount will be increased based on the annual index change from the prior year (January 2023) of the Engineering News-Record, Building Cost Index (BCI) for the Los Angeles Area; or, in the event that such index is no longer published or otherwise available, the United States Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the San Diego – Carlsbad, California region. Each January thereafter, the remaining amount of the Job Enhancement Funds due to the City shall be increased based upon the annual index change from

the prior year as herein described. The adjustments shall be automatic and shall not require further action by the City Council. The provisions described in this paragraph shall supersede the provisions of the Community Benefit Agreement (approved by Resolution No. 2020-003, January 7, 2020).

4.11.1. Diligently process permits. The Parties agree to diligently work towards the timely issuance of the first building permit, the one-hundredth (100^{th}) building permit and the two hundred (200^{th}) building permits needed to trigger the Owner's obligation to deposit the Job Enhancement Funds with the City, such efforts will include the City's expedited processing of grading plans, improvement plans, and other plans or permits, as needed to issue a building permit as described in paragraph 4.1 above.

4.11.2. Investment of Funds. The City will invest the Job Enhancement Funds into the construction of a project in furtherance of the goals set forth in the University Innovation District Master Plan, on a site located within the University Innovation District Master Plan or within the SR-125 corridor that is owned by the City or under the control or ownership of a non-profit entity that has been established to effectuate the goals of the University Innovation District Master Plan. The Parties understand that the Owner shall not be required to provide any other additional funds or investments into such project identified by the City and as described herein. By way of example only, such projects could involve: (i) the construction of a class "A" office building, or an academic, commercial or innovation facility or building that will attract job enhancing uses into the SR-125 corridor or the University Innovation District Master Plan; (ii) such other building or facility that would enable the development of the Institute for International Studies; or (iii) some other notable project at the City's discretion consistent with the goals of the University Innovation District Master Plan.

ARTICLE 5
FINANCIAL MECHANISMS

5.1. Initiation of a CFD. Owner may, at its option, submit a written request to City on City's standard application form requesting that City establish a Community Facilities District to finance the Development Impact Fees described on Exhibit "C" to this Agreement, or the acquisition and construction of public facilities. To the extent the City determines it cannot meet the requirements under federal tax code to allow any Development Impact Fees to qualify under tax-exempt bonds, the City shall permit the issuance of taxable bonds to fund such fees (or portion thereof).

5.2. Establishment of CFD. City shall use reasonable good efforts to: (a) initiate and diligently pursue proceedings to establish such a Community Facilities District in accordance with the goals and policies in effect as of the Effective Date as set forth in Council Policy 505, April 4, 2019, attached hereto as Exhibit "D" ("Goals and Policies"), and (b) if the establishment of such Community Facilities District is approved by the City Council and the levy of special taxes and the issuance of bonds for or by such a District are approved by the qualified electors of such District, to thereafter levy and collect special taxes and issue bonds of such District in accordance with the Goals and Policies. The bonds of the CFD shall be sized based upon the estimated annual special tax revenues from the CFD at build-out being equal to one-hundred ten percent (110%) of (i) the projected annual gross debt service on any bonds of the CFD, plus (ii) priority annual

administrative expenses. Priority annual administrative expenses to be funded from special taxes shall not exceed $75,000.

5.3. Failure to complete. If City fails to complete the CFD proceedings and record the notice of special tax lien within two hundred ten (210) days following Owner's submittal of a complete application, other than due to delays caused by Owner's failure to provide necessary information or inaction by Owner or by other circumstances outside the control of City, or if City establishes the CFD in a manner, structure or subject to conditions that are expressly inconsistent with the Goals and Policies or this Agreement, then (a) City and Owner shall meet and confer and reasonably consider the creation of another financing mechanism to finance the Development Impact Fees or such public facilities, including, but not limited to, reasonable efforts to consider assisting Owner to establish an alternative financing mechanism.

ARTICLE 6
PUBLIC INFRASTRUCTURE

6.1. Construction of Project Improvements and Infrastructure. The City may require Owner to construct or fund the construction of any Project Improvements, and Infrastructure pursuant to the conditions of the Existing Project Approvals provided any off-site improvements are based upon the Project's fair share obligation and are needed to serve the Project. To the extent Owner may be required to provide appropriate improvement security pursuant to the requirements of the Existing Project Approvals or as required by Applicable Laws, City agrees to use its best efforts to ensure the release of any improvement security provided by Owner upon the performance of the secured act or the City's good faith acceptance of the secured improvement. Owner may submit a request to reduce the amount of improvement securities every six (6) months subject to the City's review and approval. Project Improvements or Infrastructure, such as street improvements, shall be designed and constructed, in accordance with the provisions and standards set forth in the Existing Project Approvals as applicable. Notwithstanding the foregoing, the Project shall not be conditioned to fund or construct any public infrastructure including, without limitation, streets, sewer, storm drain, basins, water connections, park, open space, landscaping, and dry utility facilities, that may be needed to serve the site upon which the class "A" building or such other project will be constructed within the University Innovation District Master Plan,

6.2. Pioneering of Project Improvements and Infrastructure. City shall use its reasonable best efforts to ensure that the Owner is not required to finance or construct any Project Improvements and Infrastructure in excess of its fair share costs as established by Applicable Law, including, without limitation, the legal requirements of "essential nexus" and "rough proportionality" ("Fair Share"). To the extent Owner is required to construct, install, or otherwise provide financing (i.e., "Pioneers") for any Project Improvement and Infrastructure that is oversized so as to benefit an area larger than the Project, the City shall take one of the following actions: (1) City will use its best good faith efforts to secure funding from other landowners or developers for that portion of the cost of such oversized improvements that is attributable to projects or areas owned, developed or proposed for development by such other landowners or developers by requiring such landowners or developers to enter into reimbursement agreements directly with Owner; (2) establish a Reimbursement District that includes the other landowners or developers that are benefited from the oversized facilities so that the Owner may be reimbursed for the pro-rata share of benefits conferred to the other landowners or developers by the oversized

facility; or (3) include said improvements in a Development Impact Fee Program adopted by the City and provide Owner with reimbursement from the amounts collected from said fee, equal to the pro-rata share of the benefits conferred to the other landowners or developers. If the Project Improvements and Infrastructure is covered by a future Development Impact Fee Program adopted by the City, Owner shall be reimbursed from the amounts received from such fee program, subject to the City's Director of Public Works reasonable determination that such costs are allowable under the applicable Fee Program. The fact that such improvements may be financed by an assessment district, Community Facility District or other financing district shall not prevent said reimbursement to the Owner.

6.3. Reasonable Relationship between Project and Requirement. The cost of providing Project Improvements and Infrastructure to the Project or the Property shall be consistent with the following principles: (i) there shall be a reasonable relationship between the Project and any Public Improvement or Infrastructure required to by constructed by the Project; (ii) there shall be a reasonable relationship between the services and the Project; (iii) the costs that are to be borne for such services by the Project shall not exceed the estimated reasonable cost of providing such services; (iv) the level of municipal services provided to the Project, including the level of operation and maintenance of Project Improvements and Infrastructure, shall be equal to the level of service provided within the City limits; and (v) there shall be a reasonable relationship between any fee required to finance Project Improvements or Infrastructure or municipal services and the cost of such improvements or services funded by such fee. For purposes of this paragraph "reasonable relationship" between the Project and any requirement imposed thereon, shall mean an "essential nexus" and "rough proportionality" between the Project and such requirement in accordance with State law.

ARTICLE 7
TERMINATION UPON SALE TO PUBLIC

7.1. Termination of Agreement with Respect to Lots to Public. The provisions of Article 7 shall not apply to the sale, or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user who intends to occupy the parcel. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction by Owner of both of the following conditions:

(i) The lot has been finally subdivided and individually or in bulk sold, or leased (for a period equal to or longer than one year) to a homebuilder, or to a member of the public or other ultimate user; and

(ii) All benefits set forth under Section 2.5 of this Agreement required at that point in time have been provided by Owner.

7.2 Partial Termination. The Owner has the right to request that the City approve a partial termination of this Agreement, to release a portion(s) of the Property from the Agreement's obligations and benefits. A partial termination shall be approved by the City if Owner demonstrates to City that the portion(s) of the Property to be released from the Agreement's

obligations is/are not needed to satisfy any of the obligations established in this Agreement. If City makes such a determination, such released property shall not be subject to any of the obligations created in this Agreement, and, similarly, shall not receive any of the benefits granted in this Agreement.

ARTICLE 8
ANNUAL REVIEW

8.1. City and Owner Responsibilities. The City will, at least every twelve (12) months during the Term of this Agreement, pursuant to California Government Code section 65865.1, review the extent of good faith substantial compliance by Owner with the terms of this Agreement. Pursuant to California Government Code section 65865.1, as amended, Owner shall have the duty to demonstrate by substantial evidence its good faith compliance with the terms of this Agreement at the periodic review. Either City or Owner may address any requirement of the Agreement during the review.

8.2. Review Letter. If Owner is found to be in compliance with this Agreement after the annual review, City shall, within forty-five (45) days after Owner's written request, issue a review letter in recordable form to Owner ("Letter") stating that based upon information known or made known to the City Council, the City Planning Commission and/or the City Administrative Officer, this Agreement remains in effect and Owner is not in default. The owner may record the Letter in the Official Records of the City of Chula Vista.

8.3. Failure of Periodic Review. City's failure to review at least annually Owner's compliance with the terms and conditions of this Agreement shall not constitute, or be asserted by City or Owner as, a default by Owner or City with respect to the Agreement.

ARTICLE 9
ENCUMBRANCES AND RELEASES ON PROPERTY

9.1. Discretion to Encumber. This Agreement shall not prevent or limit Owner in any manner at Owner's sole discretion, from encumbering the Property, or any portion of the Property, or any improvement on the Property, by any mortgage, deed of trust, or other security device securing financing with respect to the Property or its improvement.

9.2. Mortgagee Rights and Obligations. The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any default by Owner of the performance of Owner's obligations under the Agreement which has not been cured within thirty (30) days following the date of default. If there are no such defaults by Owner, the City Administrative Officer shall notify the requesting Party of that fact in writing.

9.3. Releases. City agrees that upon written request of Owner and provided that all payments and the requirements and conditions required by this Agreement have been performed, City may execute and deliver to Owner appropriate release(s) of obligations imposed by this Agreement in form and substance acceptable to the City Recorder and title insurance company, if any, or as may otherwise be necessary to effect the release of a portion of the Property to an

individual home buyer or parcel of property that has been built out and sold to an ultimate consumer. City Administrator Officer shall not unreasonably withhold approval of such release(s).

9.4. Subordination. Owner agrees to enter into subordination agreements with all lenders having a lien on the Property to ensure that the provisions of this Agreement bind such lienholders should they take title to all or part of the Property through a quitclaim deed, sale, foreclosure or any other means of transfer of property. As a condition precedent to obtaining the benefits that accrue to the Owner or the Property under this Agreement, this Agreement by and through said subordination agreements shall be prior and superior to such liens on said Property. The owner shall deliver to the City the fully executed subordination agreements for the Property in a form acceptable to the City Council and suitable for recording, prior to the second reading of the ordinance adopting the Agreement.

ARTICLE 10
DEFAULT

10.1. Events of Default. A default under this Agreement shall be deemed to have occurred upon the happening of one or more of the following events or conditions:

(i) A warranty, representation or statement made or furnished by Owner to City is false or proves to have been false in any material respect when it was made.

(ii) A finding and determination by City made following a periodic review under the procedure provided for in California Government Code section 65865.1 that upon the basis of substantial evidence Owner has not substantially complied with one or more of the terms or conditions of this Agreement.

(iii) City does not accept, timely review, or consider requested development permits or entitlements submitted in accordance with the provisions of this Agreement.

(iv) Owner does not make a Job Enhancement Fund payment when due pursuant to paragraph 4.11 of this Agreement.

(v) Owner fails to comply with any other material Owner obligation under the terms of this Agreement, including, without limitation, Owner's obligations under Section 3.12 hereof.

If either Party defaults under this Agreement, the Party alleging such default will give the breaching Party not less than thirty (30) days' notice of default in writing. The notice of default will specify the nature of the alleged default, and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. During any period of cure, the Party charged will not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default will exist and the noticing Party will take no further action.

10.2. Option to Set Matter for Hearing or Institute Legal Proceedings. After proper notice and the expiration of the cure period, the noticing Party to this Agreement, at its option, may (i) institute legal proceedings or (ii) schedule hearings before the Planning Commission and

the City Council for a determination as to whether this Agreement should be modified, suspended, or terminated as a result of such default.

10.3. Waiver. Nothing in this Agreement shall be deemed to be a waiver by Owner or City of any right or privilege held by Owner or City pursuant to federal or state law, except as specifically provided herein. Any failure or delay by a Party in asserting any of its rights or remedies as to any default by the other Party will not operate as a waiver of any default or of any such rights or remedies or deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

10.4. Remedies upon Default. In the event of a default by either Party to this Agreement, the Parties shall have the remedies of specific performance, mandamus, injunction and other equitable remedies. In the event of a default pursuant to Section 10.1(ii),10.1(iv) or 10.1(v), City shall have the additional remedy, in its sole and unfettered discretion, of withholding issuance of building permits and/or the inspection of previously issued permits. Neither Party shall have the remedy of monetary damages against the other; provided, however, that the specific performance of payment of Job Enhancement Funds due pursuant to this Agreement and the award of costs of litigation and attorneys' fees shall not constitute monetary damages.

10.5. Remedies for Breach. All remedies at law or in equity which are consistent with the provisions of this Agreement are available to City and Owner to pursue in the event there is a breach provided, however, neither Party shall have the remedy of monetary damages against the other except for an award of litigation costs and attorneys' fees as provided for by this Agreement.

ARTICLE 11
MODIFICATION OR SUSPENSION

11.1. Modification to Agreement by Mutual Consent. Except as specifically provided for herein, this Agreement may be modified, from time to time, by the mutual consent of the Parties only in the same manner as its adoption by an ordinance as set forth in California Government Code sections 65867, 65867.5 and 65868. The term, "Agreement" as used herein, will include any such modification properly approved and executed.

11.2. Minor Modifications. The Parties to this Agreement contemplate that there may be periodic clarifications and minor modifications to this Agreement. Such minor clarifications or modifications when agreed upon by the Parties hereto are anticipated and shall not constitute an amendment to this Agreement or a modification pursuant to this Article 11 but shall automatically be incorporated herein upon execution in writing by the Parties.

11.3. Unforeseen Health or Safety Circumstances. If, as a result of facts, events, or circumstances City finds that failure to suspend or modify this Agreement would pose an immediate threat to the health or safety of the City's residents or the City, the following shall occur:

(a) Notification of Unforeseen Circumstances. Notify Owner of (i) City's determination; and (ii) the reasons for City's determination, and all facts upon which such reasons are based; and

(b) Notice of Hearing. Notify Owner in writing at least fourteen (14) days prior to the date, of the date, time and place of the hearing and forward to Owner a minimum of ten (10) days prior to the hearings described in paragraph 12.3(c) below, all documents related to such determination and reasons therefor; and

(c) Hearing. Hold a hearing on the determination, at which hearing Owner will have the right to address the City Council. At the conclusion of said hearing, City may take action to suspend this Agreement as provided herein. The City may suspend this Agreement if, at the conclusion of said hearing, based upon the evidence presented by the Parties, the City finds failure to suspend would pose an immediate threat to the health or safety of the City's residents or the City.

ARTICLE 12
CHANGE IN STATE OR FEDERAL LAW OR REGULATIONS

12.1. State or Federal Law or Regulation. If any state or federal law or regulation enacted during the Term of this Agreement, or the action or inaction of any other affected governmental jurisdiction, precludes compliance with one or more provisions of this Agreement, or requires changes in plans, maps, or permits approved by City, the Parties will act pursuant to paragraphs 12.1(a) and 12.1(b), below.

(a) Notice; Meeting. The Party first becoming aware of such enactment or action or inaction will provide the other Party (ies) with written notice of such state or federal law or regulation and provide a copy of such law or regulation and a statement regarding its conflict with the provisions of this Agreement. The Parties will promptly meet and confer in a good faith and reasonable attempt to modify or suspend this Agreement to comply with such federal or state law or regulation.

(b) Hearing. If an agreed-upon modification or suspension would not require an amendment to this Agreement, no hearing shall be held. Otherwise, the matter of such federal or state law or regulation will be scheduled for hearing before the City Council. Fifteen (15) days' written notice of such hearing shall be provided to Owner, and the City Council, at such hearing, will determine and issue findings on the modification or suspension which is required by such federal or state law or regulation. The owner, at the hearing, shall have the right to offer testimony and other evidence. Any modification or suspension shall be taken by the affirmative vote of not less than a majority of the authorized voting members of the City Council. If the Parties fail to agree after said hearing, the matter may be submitted to nonbinding mediation pursuant to subsection 15.19, prior to the filing of any legal action by any Party. Any suspension or modification may be subject to judicial review in conformance with this Agreement.

ARTICLE 13
ASSIGNMENT, TRANSFER AND NOTICE

13.1. Assignment of Interests, Rights and Obligations. Owner may transfer all or any portion of its interest in, and rights and obligations under, this Agreement to any person acquiring an interest or estate in all or any portion of the Property (any such portion, a "Transfer Property"), including, without limitation, purchasers or ground lessees of such Transfer Property (a

"Transferee") without any act or concurrence by City. Any such transfer must, as and to the extent set forth below, relieve the transferring party (a "Transferor") of any and all rights and obligations under this Agreement insofar as they pertain to the Transfer Property. No sale, transfer or assignment shall require the amendment of this Agreement.

13.2. Transfers to Third Persons in General. In connection with any transfer by a Transferor of all or any portion of the Property, the Transferor and the Transferee may enter into a written agreement regarding the respective rights and obligations of the Transferor and the Transferee in and under this Agreement (a "Transfer Agreement"). Any such Transfer Agreement may contain provisions (i) releasing the Transferor from any rights and obligations under this Agreement that relate to the Transfer Property, provided the Transferee expressly assumes all such rights and obligations, (ii) transferring to the Transferee a vested right to improve and use that portion of the Property being transferred and any other rights or obligations of the Transferor arising under this Agreement, and (iii) addressing any other matter deemed necessary or appropriate in connection with the Transfer of the Transfer Property.

13.3. Release Provisions. A Transferor has the right, but not the obligation, to seek City's consent to those provisions of any Transfer Agreement purporting to release such Transferor from any obligations arising under this Agreement (the "Release Provisions"). If a Transferor fails to seek City's consent or City fails to consent to any of such Release Provisions, then such Transferor may nevertheless transfer to the Transferee any and all rights and obligations of such Transferor arising under this Agreement.

13.4. City Consent. City will review and consider promptly and in good faith any request by a Transferor for City's consent to any Release Provisions. City's consent to any such Release Provisions may be withheld only if, in light of the proposed Transferee's reputation and financial resources, such Transferee would not in City's reasonable opinion be able to perform the obligations proposed to be assumed by such Transferee. In no event will City's consent to any Release Provisions be unreasonably be withheld.

13.5. Non-Assuming Transferees. Except as otherwise required by Owner in Owner's sole discretion, the burdens, obligations and duties of Owner under this Agreement terminate with respect to, and neither a Transfer Agreement nor City's consent is required in connection with, (i) any individual single-family residence (and its associated lot) that has received a certificate of occupancy and been conveyed to a third party, (ii) any property that has been established as a separate legal parcel for other nonresidential uses. The transferee in such a transaction and its successors ("Non-Assuming Transferees") are deemed to have no obligations under this Agreement but continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this section exempts any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.

ARTICLE 14
DISPOSAL OF LAND

14.1. Disposal of Land. Pursuant to City Council Resolution No. 22-020, attached hereto as Exhibit "E", the City determined that certain real property consisting of approximately 7,000 square feet of slope area, more particularly described in the attached Exhibit "F" ("Land"), falls within the definition of "surplus land" pursuant to Government Code section 54221 and is not

necessary for the City's use. As such, the City is considering the disposal of the Land in accordance with the process and requirements set forth in the California Surplus Land Act, Government Code sections 54220 et seq. ("SLA"). The City intends to send a written notice of availability of the Land by electronic mail or by certified mail to all of the entities identified in Government Code section 54222 within two (2) days of the Effective Date of this Agreement. At the conclusion of the process set forth in the SLA if no qualified entities/agencies desire to purchase or lease the Land, the City shall begin good faith negotiations with the Owner, to purchase the Land; provided however, nothing herein shall be construed to bind the Parties to either the purchase or sell of the Land. The total purchase price ("Purchase Price") for the Land shall be based on the fair market value of comparably designated land located in the City of Chula Vista as determined by an appraisal conducted by an appraiser contracted by the City and paid for by the Owner. The Owner may provide information to the appraiser to assist in obtaining an appraisal that reflects fair market value of the Land. If the Land is transferred to an entity other than the Owner, the City shall reimburse the Owner for the cost of the appraisal within ten (10) days of the execution of the sales agreement with the other entity. The appraisal process will allow the City to sell or lease the Land at fair market value and is not considered negotiations with respect to the sell or lease of the Land.

Should the Owner agree to the Purchase Price, the City shall convey to Owner a grant deed transferring fee simple title to the Land in recordable form, duly executed by the City, free and clear of all recorded liens, encumbrances, assessments, easements, leases and taxes; except those which are reasonably approved by the Owner. Should the Parties ultimately agree to a transfer of the Land, other terms to be negotiated shall include but not be limited to: (a) transfer of the Land in "as-is" condition; (b) the opportunity for Owner to conduct due diligence with respect to the legal and physical condition of the Land and to accept or reject the same; (c) the establishment of an escrow to coordinate the transfer; and (d) other standard and appropriate terms for transactions of this nature.

14.2. The City hereby grants Owner, and its employees, contractors, consultants and agents (each an "Owner Party"; collectively, the "Owner Parties"), at Owner's sole cost and risk, permission to access to the Land prior to the conclusion of the SLA process for disposal of the Land, to perform clearing, grading, and geotechnical mitigation measures on the Land provided however no buttress construction work shall be allowed (collectively, the "Early Access Activities"). Notwithstanding the foregoing, the Owner agrees to make any changes as necessary, to the Entitlements for the City's approval or denial prior to the issuance of any building permit if construction of the slope buttress on the Land is necessary for conformance with the Entitlements and the purchase of the Land or the transfer of the Land to Owner does not occur or is rendered impossible for any reason. The Owner further agrees to be responsible for any and all costs associated with or related to early access to the Land, including but not limited to: (i) any and all Early Access Activities, (ii) implementing all further construction and work necessary to restore the Land to a condition that existed prior to Owner's access to the Land, if needed, (iii) implementing all necessary modifications to the Project Entitlements and other Project requirements, and (iv) compliance with the Subdivision Map Act and all other applicable laws and regulations. The permission hereby granted by the City will be considered as Permission to Access the Land for purposes of applying for a separate grading permit for the Project, including for the Land. Notwithstanding the foregoing, Owner understands that a grading permit is needed prior to performing any clearing, grading and geotechnical mitigation measures on the Land.

14.3 Owner agrees to defend, indemnify, and hold harmless City from and against any and all claims, actions, causes of action, loss, damage, injury, liability, cost or expense, including without limitation, attorneys' fees, arising from, connected with, or in any way related to: (i) City's grant of access to the Land; (ii) Owner's access to or possession of the Land; (iii) any Early Access Activities; (iv) the performance, condition, or existence of any work or improvements performed by the Owner on the Land; (v) the maintenance or lack of maintenance of the Land resulting for the Early Access Activities; or (vi) any Owner Parties' use of the Land, excepting, however, that City shall not be indemnified, saved, defended or kept free and harmless from any loss or liability resulting from City's own sole negligence or the sole negligence of the City's contractors, employees or agents.

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1. Relationship of City and Owner. The contractual relationship between City and Owner arising out of this Agreement is not of agency. This Agreement does not create any third-party beneficiary rights.

15.2. Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person, or mailed by first-class or certified mail, postage prepaid, addressed as follows:

If to City:
Attention: City Administrative Officer
276 Fourth Avenue
Chula Vista, CA 91910

If to Owner:
ACI SUNBOW, LLC
2356 Moore St., Suite 200
San Diego, CA 92110
Attn: Keith J. Horne, President
Ayres Advisors, Manager

City or Owner may change its address by giving notice in writing to the other. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery, or, if mailed, two (2) business days following deposit in the United States mail.

15.3. Rules of Construction. In this Agreement, the use of the singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

15.4. Entire Agreement, Waivers, and Recorded Statement. This Agreement constitutes the entire understanding and agreement of City and Owner with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Owner respecting this Agreement. All waivers of the provisions of this Agreement must be

in writing and signed by the appropriate authorities of City and Owner. Upon the completion of performance of this Agreement, or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the City Administrative Officer shall be recorded in the Official Records of the City. Unless otherwise specifically stated, nothing herein shall be construed to supersede, modify or amend other existing agreements between the Parties.

15.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to the original and all of which together shall constitute one and the same instrument.

15.6. Incorporation of Recitals. The recitals set forth in this Agreement are incorporated herein to this Agreement.

15.7. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

15.8. Consent. Where the consent or approval of City or Owner is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld, delayed, or conditioned.

15.9. Covenant of Cooperation. City and Owner shall cooperate and deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

15.10 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Office of the City Recorder of the City, within ten (10) days following the Effective Date.

15.11 Delay, Extension of Time for Performance (Force Majeure). In addition to any specific provision of this Agreement, performance by either City or Owner of its obligations hereunder shall be excused during any period of delay caused at any time by reason of any event beyond the control of City or Owner which prevents or delays and impacts City's or Owner's ability to perform obligations under this Agreement, including, but not limited to the following: acts of God, enactment of new conflicting federal, state or local laws or regulations (such as: listing of a species as threatened or endangered), judicial actions (such as the issuance of restraining orders and injunctions), or riots, strikes, pandemics, or damage to work in process by reason of fire, floods, earthquake, or other such casualties. In addition, any delay in Owner's performance herein may be excused if such delay is caused by City's failure to process any required plans, documents or approvals, provided, however, City's delay is not caused by Owner's failure to submit such plans or documents in a timely manner or is due to Owner's changes or amendments to said documents. If City or Owner seeks excuse from performance, it shall provide written notice of such delay to the other Party within thirty (30) days of the commencement of such delay. If the delay or default is beyond the control of City or Owner, and is excused, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

15.12. Covenant of Good Faith and Fair Dealings. No Party shall do anything which shall have the effect of harming or injuring the right of the other Parties to receive the benefits of this Agreement; each Party shall refrain from doing anything which would render its performance

under this Agreement impossible; and each Party shall do everything which this Agreement contemplates that such Party shall do in order to accomplish the objectives and purposes of this Agreement.

15.13 Time of Essence Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

15.14. Cancellation of Agreement. This Agreement may be canceled by the mutual consent of City and Owner only in the same manner as its adoption, by an ordinance as set forth in California Government Code section 65868 and shall be in a form suitable for recording in the Official Records of the City. The term "Agreement" shall include any such amendment properly approved and executed.

15.15. Estoppel Certificate. Within thirty (30) calendar days following a written request by any of the Parties, the other Parties to this Agreement shall execute and deliver to the requesting Party a statement certifying that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; (ii) there are no known current uncured defaults under this Agreement, or specifying the dates and nature of any such default; and (iii) any other reasonable information requested. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the Party which fails to deliver such statement that this Agreement is in full force and effect without modification, except as may be represented by the requesting Party, and that there are no uncured defaults in the performance of the requesting Party, except as may be represented by the requesting Party.

15.16 Institution of Legal Proceeding. In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any default, to enforce any covenants or agreements herein, or to enjoin any threatened or attempted violation thereof; to recover damages for any default as allowed by this Agreement or to obtain any remedies consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California.

15.17. Attorneys' Fees and Costs. If any Party commences litigation or other proceedings (including, without limitation, arbitration) for the interpretation, reformation, enforcement, or rescission of this Agreement, the prevailing Party, as determined by the court, will be entitled to its reasonable attorneys' fees and costs.

15.18. Hold Harmless. In addition to any defense, indemnity, and hold harmless obligations of Owner, whether at contract or at law, Owner agrees to and shall hold City, its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury, including death, and claims for property damage which may arise from the direct or indirect operations of Owner or those of its contractors, subcontractors, agents, employees or other persons acting on Owner's behalf, on the Project. Owner agrees to and shall defend City and its officers, agents, employees and representatives from actions for damage caused or alleged to have been caused by reason of Owner's activities on the Project. Owner agrees to indemnify, hold harmless, pay all costs and provide a defense for City in any legal action filed in a court of competent jurisdiction by a third Party challenging the validity of this Agreement. The

provisions of this paragraph 15.18 shall not apply to the extent such damage, liability or claim is caused by the sole negligence or willful misconduct of City, its officers, agents, employees or representatives.

15.19. Non-binding Mediation. If this Agreement requires mediation in order to resolve a disagreement between the Parties, such mediation shall comply with the following provisions:

(a) Meet and Confer. The Parties shall meet and confer in good faith to attempt to resolve their disagreement. If the Parties are not able to resolve their disagreement within thirty (30) calendar days after their first meeting on the subject, the matter shall be submitted for non-binding mediation in accordance with the terms and conditions set forth below.

(b) Non-binding Mediation. In the event that the Parties are unable to resolve their disagreement by meeting and conferring among themselves as provided above, the Parties shall meet to select a mediator who will attempt to resolve the disagreement. Unless otherwise agreed by the Parties, the mediator shall have no affiliation with either of the Parties and preferably have experience in municipal or resource and habitat management. In the event that the Parties are unable to agree on a mediator within ten (10) calendar days after the expiration of the meet and confer period, the Parties shall petition the presiding Judge of the Superior Court of the City of Chula Vista to appoint a mediator who possesses the above-described qualifications.

(c) Mediation. The mediation shall occur at times and locations agreed upon by the Parties. The Parties shall submit to the mediator their respective relevant documents or evidence supporting their position that each may choose to provide. Neither Party, nor the mediator, shall have any discovery powers in the proceeding. The mediator shall meet with the Parties and attempt to resolve their disagreement by facilitating discussions between them. The mediator shall not take a position on the dispute unless requested to do so by both Parties. In the event that mediation process does not resolve the disagreement within twenty (20) days after first meeting with the mediator, unless extended by mutual agreement of the Parties, the mediation process shall terminate. All discussions at the mediation shall be kept confidential, as may be allowed by state and federal law, and shall not be discoverable in any subsequent proceedings. Each Party shall bear their own costs in the mediation and the Parties shall share equally in any and all costs charged by the mediator. In the event that a resolution of the disagreement at issue is not reached, each Party reserves the right to pursue any and all remedies available at law or in equity with respect thereto.

Dated this 24th day of May, 2022.

City of Chula Vista

Mary Salas
Mayor

ACI Sunbow, LLC

By: Ayres Land Company, its Manager

By: Keith J. Horne
President

ATTEST:

Kerry K. Bigelow, MMC
City Clerk

APPROVED AS TO FORM:

Glen R. Googins
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of San Diego

On 5-20-2022 before me, Eugene Bernard Altiery, Jr., a notary public, personally appeared Keith Jackson Horne, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.

EUGENE BERNARD ALTIERY JR.
Notary Public - California
San Diego County
Commission # 2333169
My Comm. Expires Oct 1, 2024

Signature Eugene Bernard Altiery Jr. (Seal)

Exhibit B

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN DIEGO)

On May 24, 2022, before me, Kerry K. Bigelow, City Clerk, personally appeared, Mary Salas, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct

WITNESS my hand and official seal

Kerry K. Bigelow, City Clerk
City of Chula Vista

(SEAL)

Lennar - Sunbow II, Phase 3 | Proposed Chula Vista CFD Bond Sizing and Total Tax Rate Analysis | May 3, 2022

Assumes Annual CMFA CFD with 2% Escalating Tax Rates; 1.88% Total Tax Rate w/o Maint.; 2.00% Total Tax Rate All-In; Assumes a Mix of Tax-Exempt Bonds @ 5.00% Interest Rate and Taxable Bonds @ 6.50% Interest Rate

LAND USE INFORMATION																			
Product	Units	Est. Avg Home Size	Proposed RMA Categories	Est. Base Price	Less Home-owner's Exemption	Net Taxable Value	Ad Valorem Taxes 1.16168% (a)	Fixed Charges/ Assmts. (b)	Chula Vista CFD No. 98-3 (Maint.) (c)	CVESD CFD No. 4 (d)	CVESD CFD No. 4 GO Bond Credit (e)	SUHSD CFD No. 4 (f)	SUHSD CFD No. 4 GO Bond Credit (g)	Proposed CFD Special Tax (h)	Proposed CFD Special Tax as a % of Home Price (i)	Total Property Taxes per Unit	Total Tax Rate (All-In)	Total Tax Rate excluding Maint.	Proposed CFD Revenue
TAX ZONE 1:																			
Product A																			
Plan 1	27	1,182	≤ 1,300	$ 445,760	$ (7,000)	$ 438,760	$ 5,097	$ 32	$ 556	$ 444	$ (124)	$ 643	$ (103)	**$ 2,157**	*0.48%*	$ 8,702	1.95%	1.83%	$ 58,252
Plan 2	27	1,215	≤ 1,300	441,040	(7,000)	434,040	5,042	32	556	457	(123)	661	(102)	**2,157**	*0.49%*	8,680	1.97%	1.84%	58,252
Plan 3	27	1,265	≤ 1,300	430,420	(7,000)	423,420	4,919	32	556	476	(120)	688	(99)	**2,157**	*0.50%*	8,608	2.00%	1.87%	58,252
Plan 4	27	1,504	> 1,300 SF	484,700	(7,000)	477,700	5,549	32	556	566	(135)	818	(112)	**2,421**	*0.50%*	9,694	2.00%	1.89%	65,361
Plan 5	44	1,616	> 1,300 SF	516,560	(7,000)	509,560	5,919	32	556	608	(144)	879	(120)	**2,421**	*0.47%*	10,151	1.97%	1.86%	106,514
Plan 6	32	1,675	> 1,300 SF	534,260	(7,000)	527,260	6,125	32	556	630	(149)	911	(124)	**2,421**	*0.45%*	10,401	1.95%	1.84%	77,465
Subtotal/Avg. - Product A:	184	1,436		$ 480,852	$ (7,000)	$ 473,852	$ 5,505	$ 32	$ 556	$ 540	$ (134)	$ 781	$ (111)	**$ 2,305**	*0.48%*	$ 9,473	1.97%	1.85%	$ 424,097
TAX ZONE 2:																			
Product B																			
Plan 1	79	1,306	≤ 1,500	$ 495,320	$ (7,000)	$ 488,320	$ 5,673	$ 32	$ 556	$ 491	$ (138)	$ 710	$ (115)	**$ 2,666**	*0.54%*	$ 9,875	1.99%	1.88%	$ 210,641
Plan 2	63	1,470	≤ 1,500	521,280	(7,000)	514,280	5,974	32	556	553	(146)	800	(121)	**2,666**	*0.51%*	10,314	1.98%	1.87%	167,979
Plan 3	93	1,599	1,501 - 1,700 SF	538,980	(7,000)	531,980	6,180	32	556	601	(151)	870	(125)	**2,817**	*0.52%*	10,780	2.00%	1.90%	261,937
Subtotal/Avg. - Product B:	235	1,466		$ 519,558	$ (7,000)	$ 512,558	$ 5,954	$ 32	$ 556	$ 551	$ (145)	$ 797	$ (120)	**$ 2,726**	*0.52%*	$ 10,351	1.99%	1.89%	$ 640,557
Product C																			
Plan 1	54	1,681	1,501 - 1,700 SF	$ 568,340	$ (7,000)	$ 561,340	$ 6,521	$ 32	$ 556	$ 632	$ (159)	$ 914	$ (132)	**$ 2,817**	*0.50%*	$ 11,181	1.97%	1.87%	$ 152,093
Plan 2	69	1,816	1,701 - 1,900 SF	600,200	(7,000)	593,200	6,891	32	556	683	(168)	988	(139)	**3,162**	*0.53%*	12,004	2.00%	1.91%	218,166
Plan 3	68	2,046	> 1900 SF	629,700	(7,000)	622,700	7,234	32	556	769	(176)	1,113	(146)	**3,213**	*0.51%*	12,594	2.00%	1.91%	218,471
Subtotal/Avg. - Product C:	191	1,860		$ 601,695	$ (7,000)	$ 594,695	$ 6,908	$ 32	$ 556	$ 699	$ (169)	$ 1,012	$ (140)	**$ 3,082**	*0.51%*	$ 11,981	1.99%	1.90%	$ 588,729
Product D																			
Plan 1	36	1,454	≤ 1,500	$ 507,120	$ (7,000)	$ 500,120	$ 5,810	$ 32	$ 556	$ 547	$ (142)	$ 791	$ (117)	**$ 2,666**	*0.53%*	$ 10,142	2.00%	1.89%	$ 95,988
Plan 2	36	1,716	1,701 - 1,900 SF	592,080	(7,000)	585,080	6,797	32	556	645	(166)	934	(137)	**3,162**	*0.53%*	11,822	2.00%	1.90%	113,826
Plan 3	36	2,005	> 1900 SF	632,200	(7,000)	625,200	7,263	32	556	754	(177)	1,091	(147)	**3,213**	*0.51%*	12,584	1.99%	1.90%	115,661
Subtotal/Avg. - Product D:	108	1,725		$ 577,133	$ (7,000)	$ 570,133	$ 6,623	$ 32	$ 556	$ 649	$ (162)	$ 938	$ (134)	**$ 3,014**	*0.52%*	$ 11,516	2.00%	1.90%	$ 325,475
Project Total / Wtd. Avg.	**718**	**1,602**		**$ 540,149**	**$ (7,000)**	**$ 533,149**	**$ 6,193**	**$ 32**	**$ 556**	**$ 602**	**$ (151)**	**$ 871**	**$ (125)**	$ 2,756	*0.51%*	**$ 10,735**	**1.99%**	**1.88%**	**$ 1,978,857**

CFD BOND SIZING AND NET CONSTRUCTION PROCEEDS	TAX-EXEMPT BONDS	TAXABLE BONDS	TOTAL
Total Special Tax Rev. for Bonding [(1) - $40,000 Admin. Charge) ÷ 110%]	$ 1,019,091	$ 743,507	$ 1,762,598
Bond Interest Rate	**5.00%**	**6.50%**	
Bond Amount (30 Year Term w/ 2% Annual Escalation)	**$ 19,840,000**	**$ 12,620,000**	**$ 32,460,000**
Underwriter Discount (2.00%)	(396,800)	(252,400)	(649,200)
Reserve Fund (Annual Debt Service)	(1,019,091)	(743,507)	(1,762,598)
Capitalized Interest (9 mos.)	(744,000)	(615,225)	(1,359,225)
Incidental Costs (Estimate)	(244,486)	(155,514)	(400,000)
Total Net Construction Proceeds (j)	**$ 17,435,624**	**$ 10,853,354**	**$ 28,288,977**
Total Net Construction Proceeds Per Unit	**$ 24,284**	**$ 15,116**	**$ 39,400**

Footnotes:

(a) Total Fiscal Year 2021/22 Ad-Valorem tax rate of 1.14168% includes the general 1.00000% Prop. 13 tax plus a 0.04143% tax levied by the Chula Vista Elementary School District, a 0.04611% tax levied by the Sweetwater Union High School District, a 0.04854% tax levied by the Southwestern Community College District, a 0.00210% tax levied by the Otay Water District, and a 0.00350% tax levied by Metropolitan Water District. In addition, this analysis includes the estimated tax rate of 0.02000% for CVESD GO Bond Measure VV which was passed in November 2018. Measure VV is not reflected in the FY 20-21 ad valorem rate as Measure VV GO bonds have not been issued.

(b) Fixed Charges and Assessments: (1) The CWA imposes an annual direct assessment of $10.00 per parcel for parcels less than one acre; (2) The MWD imposes an annual direct assessment of $11.50 per year for parcels less than one acre; (3) Represents Mosquito and Disease Control charge of $2.28 per parcel per year; (4) Represents Vector Disease Control charge of $8.36 per parcel per year.

(c) Represents the estimated FY 2021/22 maximum special tax for Chula Vista CFD No. 98-3 (Open Space Maintenance District No. 35) to fund maintenance and servicing of parkway and median, landscaping, drainage facilities, and open space slopes, trails, and walls. This analysis assumes condos are assigned .8 EDU for street medians and parkways and 1 EDU for all other maintenance services. This special tax escalates annually by the lesser of the San Diego Metropolitan Area All Urban CPI or the annual change in the estimated California Fourth Quarter Per Capita Personal Income contained in the Governor's budget, and there is no specified termination date.

(d) Represents the FY 2021/22 maximum base special tax for CVESD CFD No. 4 of $0.376 per square foot for duplexes, triplexes, fourplexes, condos, and townhomes. Until a parcel is classfied as "Developed Property," the special tax is subject to escalate annually by the Building Cost Index, but not less than 2% or more than 7% each year. Once property is classified as Developed Property (i.e., subject to final building permit), tax rate shall be subject to annual escalation not to exceed 2%. The special tax is authorized to be levied for a period not to exceed 25 years.

(e) Represents a credit of 0.02834% of net taxable value. Per the school mitigation agreement, CVESD shall not levy any general obligation bonded indebtedness on the subject property, or shall reduce the special tax imposed in such an amount equivalent to the amount of such additional tax or assessment. Per CFD Administrator, 1998 GO Bonds levied at 0.04143% are credited against the special taxes, but any future bonds under Measure VV approved in November 2018 would not be credited.

(f) Represents the FY 2021/22 maximum base special tax for SUHSD CFD No. 4 of $0.544 per square foot for duplexes, triplexes, fourplexes, condos, and townhomes. Until a parcel is classfied as "Developed Property," the special tax is subject to escalate annually by the Building Cost Index, but not less than 2% or more than 7% each year. Once property is classified as Developed Property (i.e., subject to final building permit), tax rate shall be subject to annual escalation not to exceed 2%. The special tax is authorized to be levied for a period not to exceed 25 years.

(g) Represents a credit of 0.02346% of net taxable value. Per the school mitigation agreement, SUHSD shall not levy any general obligation bonded indebtedness on the subject property, or shall reduce the special tax imposed in such an amount equivalent to the amount of such additional tax or assessment. Per CFD Administrator, Prop BB bonds levied at 0.02346% are credited against the special taxes, but Prop O bonds levied at 0.02265% are not.

(h) Proposed City CFD to fund City fees. Assumes special tax remains level (i.e., no annual escalator).

(i) Proposed CFD Special tax as a percentage of home price is shown for illustrative purposes only. Actual CFD special tax will be a fixed amount based on square footage categories pursuant to the RMA.

(j) The City charges a CFD origination fee equal to one percent (1%) of the principal amount of bonds issued. The fee is due at the time of bond issuance and cannot be paid with bond proceeds, therefore, the amount of bond proceeds shown above is not reduced by the CFD origination fee.

Note: This analysis assumes all project-specific maintenance will be covered by an HOA and no new City maintenance CFD would be required.

Exhibit B

Exhibit A – Property

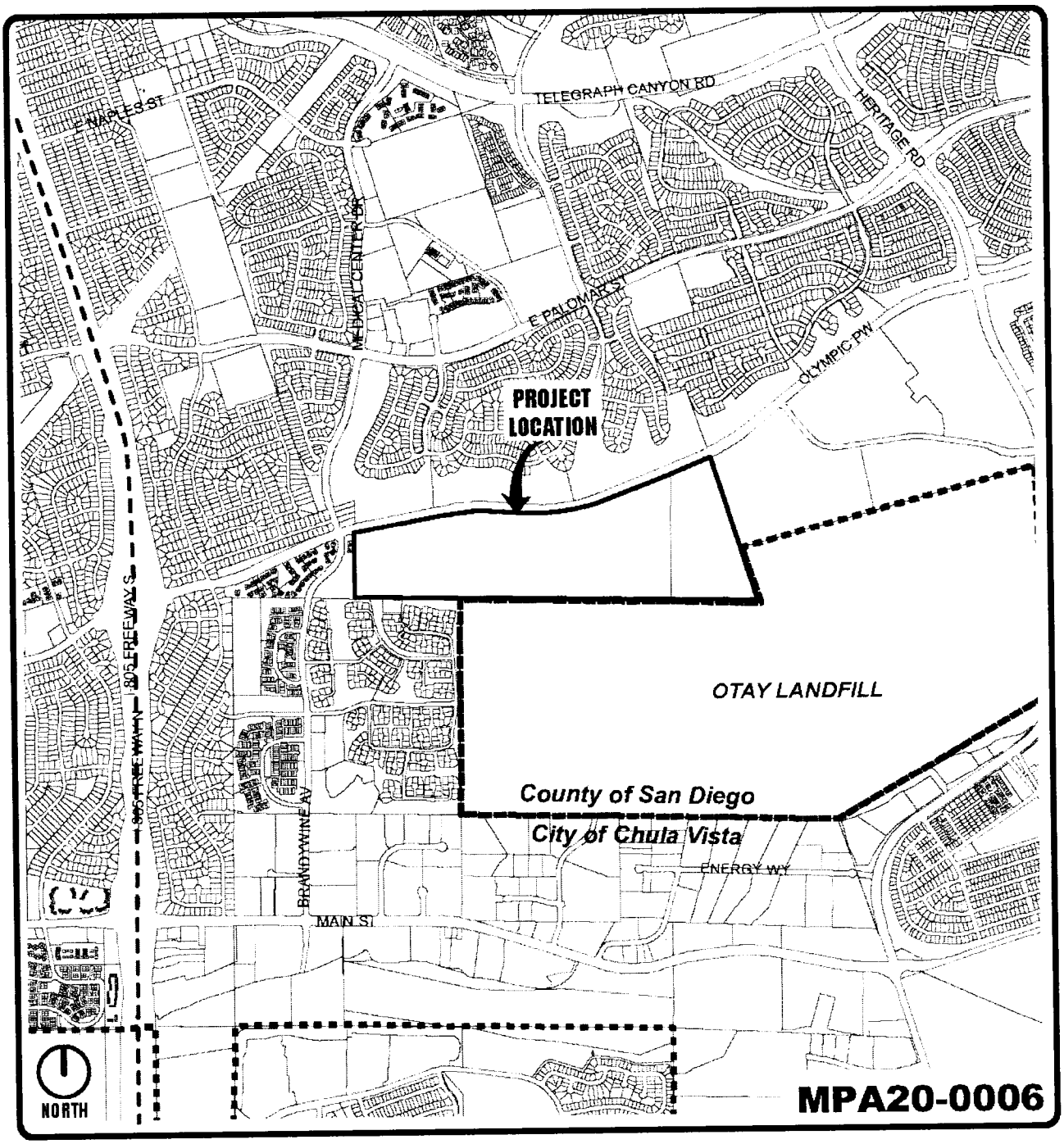


Exhibit B

Lennar - Sunbow II, Phase 3
Proposed CFD Eligible City Fees
5/3/2022

Draft

Unit Count: 718 Multifamily Units

Impact Fee Description	Per Unit	Total
Eligible under Tax-Exempt Bonds:		
Eastern Transportation Fees (a)	$ 12,642	$ 9,076,956
Less: TDIF Cash Credit (b)	*(634)*	*(455,331)*
Less: TDIF EDU Credit (c)	*(2,408)*	*(1,728,897)*
Traffic Signal Fees (d)	352	252,449
Park Benefit Fee (e)	15,858	11,386,044
Poggi Sewer Basin DIF	265	190,270
Subtotal - Tax-Exempt Bonds	**$ 26,075**	**$ 18,721,491**
Eligible under Taxable Bonds:		
Public Facilities DIF (f)		
Civic Center	*$ 3,436*	*$ 2,467,048*
Police	*2,191*	*1,573,138*
Corporation Yard	*436*	*313,048*
Libraries	*2,085*	*1,497,030*
Fire Suppression System	*1,319*	*947,042*
Program Administration	*690*	*495,420*
Recreation Facilities	*1,583*	*1,136,594*
Subtotal - Public Facilities DIF	*11,740*	*8,429,320*
Sewer Capacity Charges (g)	3,075	2,207,620
Subtotal - Taxable Bonds	**$ 14,815**	**$ 10,636,940**
Total	**$ 40,889**	**29,358,432**

Footnotes:

(a) Assumes Medium Density ETDIF (6.1 - 18 DU/acre).

(b) Per Section 4.2 of the Community Benefit Agreement dated 1/7/2020, the project is entitled to receive a cash credit against the TDIF in the amount of $455,330.67.

(c) Per Section 4.2 of the Community Benefit Agreement dated 1/7/2020, the project is entitled to receive credit for 109.41 EDUs against the TDIF. Per Fee Bulletin 16-100 of the Chula Vista Fee Schedule dated 10/2021, one TDIF EDU is equivalent to $15,802. The total TDIF EDU credit assumed for the project is $1,728,897 [$15,802 * 109.41 EDU = $1,728,897].

(d) Traffic Signal Fee assumes 8 trips per multifamily unit per Bulletin 16-200. The fee is $43.95 x 718 units x 8 trips = $252,449.

(e) Per Section 2.4 of the Community Benefit Agreement dated 1/7/2020, the project will be responsible for paying a Park Benefit Fee which will be equal to the Parkland Acquisition & Development fee rates in effect as of the date of payment. Park Benefit Fees may be utilized by the City to acquire or develop parkland, as the City determines appropriate and in the best interest of the City.

(f) Per the City of Chula Vista Master Fee Schedule dated April 2022.

(g) The City of Chula Vista Master Fee Schedule states that Multi-Family Unit calculation for sewer capacity charge is .79 of 1 EDU. 1 EDU is $3,892.

Note: Eligibility of fees under Tax-Exempt vs. Taxable bonds based on feedback received from City staff as of 5/6/2020.

COUNCIL POLICY
CITY OF CHULA VISTA

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BACKGROUND

The Mello-Roos Community Facilities Act of 1982 (the "Mello-Roos Act") and Ordinance No. 2730, as amended from time to time and codified in Chapter 3.60 of the Chula Vista Municipal Code (the "CFD Ordinance") allows for the creation of Community Facilities Districts (CFDs) to finance certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation. As a prerequisite to forming CFDs pursuant to the Mello-Roos Act, each local jurisdiction must first consider and adopt local goals and policies as described therein. The City first adopted the City of Chula Vista Statement of Goals and Policies Regarding the Establishment of Community Facilities Districts (the "Goals and Policies") on January 13, 1998, via Resolution No. 18860. The Goals and Policies were subsequently amended in July 1998, December 1998, and November 2013 via Resolution Nos. 19103, 19300, and 2013-225, respectively. Inclusion of the "Goals and Policies" in the City Council Policy Manual is recommended and are applicable to CFDs formed under the Mello-Roos Act and the CFD Ordinance.

PURPOSE

The purpose of this Statement of Goals and Policies is to provide the City staff, the residents of the City, and the owners and developers of property located within the City with guidance in the application for, and consideration of, the establishment of community facilities districts for the purpose of financing or assisting in financing the acquisition or construction of public infrastructure or the provision of authorized public services to benefit and serve either existing or new development or a combination thereof. The underlying principals behind this policy are the protection of the public interest, assuring fairness in the application of special taxes to current and future property owners, assuring full disclosure of the existence of any special tax liens, ensuring the creditworthiness of any community facilities district special tax bonds, protecting the City's credit rating and financial position and assuring that applicants for all community facilities district proceedings other than City initiated proceedings pay all costs associated with the formation of any community facilities district.

POLICY

The City Council of the City of Chula Vista (hereafter the "City Council") hereby establishes and states its goals and policies concerning the use of Chapter 2.5 of Part I of Division 2 of Title 5 of the Government Code of the State of California (hereafter the "Act") in providing adequate public infrastructure improvements and public services for the City of Chula Vista (the "City"). The following goals and policies shall apply to all community facilities districts hereafter formed or proposed to be formed by the City. Any policy or goal stated herein may be supplemented or amended

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by resolution of the City Council.

The scope of this policy is limited to the proposed formation of community facilities districts for the limited purpose of financing or assisting in financing the acquisition or construction of public infrastructure and/or the provision of authorized public services.

Introductory Statement

The City will consider applications initiated by owners or developers of vacant property proposed to be developed, owners of property within existing developed areas, registered voters residing in existing developed areas, or the City itself for the establishment of community facilities districts to finance authorized public improvements or to provide authorized public services which benefit or serve existing or new development or a combination thereof. A community facilities district or an improvement area within a community facilities district proposed to be established to finance public improvements or authorized services to serve new development may be referred to as a "Development Related CFD."

Each application for the establishment of a community facilities district must comply with the applicable goals and policies contained herein unless the City Council expressly grants an exception to such policy or policies as they apply to a specific application.

Finding of Public Interest or Benefit

The City Council may authorize the initiation of proceedings to form a community facilities district to finance authorized public improvements or to provide authorized public services if the City Council determines that the public improvements to be financed or public services to be provided or, in the case of a Development Related CFD, the attributes of the new development will provide, in the opinion of the City Council, a public benefit to the community at large as well as the benefit to be derived by the properties within the community facilities district.

Examples of public benefit to the community at large may include, but are not limited to the following:

1. Construction of a major public facility which meets a community need including, but not limited to, a major arterial which will provide a vital roadway facility to alleviate congestion, water storage facilities which will remedy inadequate fire flow, and storm drainage facilities which are a part of the storm drainage master plan.

2. Provision of public infrastructure sooner than would otherwise be required for a

particular development project.

3. Construction of public infrastructure to serve commercial or industrial projects which will expand the City's employment and/or sales tax base.

4. Provision of maintenance or other authorized public services such as landscaping, lighting, storm drain, flood control or open space maintenance necessary to promote or maintain quality of life and public safety within existing or developing areas of the City.

Authorized Public Facilities

Improvements proposed to be financed through a community facilities district must be public improvements which will be owned, operated or maintained by the City or another public agency or public utility or to which the City is authorized to contribute revenue. The types of improvements eligible to be financed must serve a whole neighborhood or commercial or industrial area or greater. Such improvements include:

1. Streets and highways satisfying one or more of the following criteria:

   A. identified in the Circulation Element of the City as collectors or arterials;

   B. no direct access by abutting properties; or

   C. minimum daily traffic volume of 3,500 ADT.

2. Sewer lines or other sewer facilities serving a minimum of 500 single family dwellings or equivalent dwelling units or such other area of the community as the City Manager, or his or her designee, may determine to otherwise be consistent with the intent of these goals and policies to be located within authorized streets and highways or within other public rights-of-way shown on the master plan of sewer facilities.

3. Water mains with a minimum diameter of 10" or other water facilities to be located within authorized streets and highways or within other public rights-of-way shown on the master plan of water facilities.

4. Drainage facilities serving a minimum of 100 acres or such other area of the community as the City Manager, or his or her designee, may determine to otherwise be consistent with the intent of these goals and policies or draining an eligible street.

5. Landscaping and irrigation facilities meeting one of the following criteria:

   A. Located within the right-of-way of a street or highway shown on the

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Circulation Element of the City's General Plan;

B. Located adjacent to an adopted scenic route; or

C. Located within dedicated open space.

6. Reclaimed water facilities serving an area which benefits the area within the proposed community facilities district.

7. Dry utilities serving a minimum of 500 single family dwelling units or equivalent dwelling units or such other area of the community as the City Manager, or his or her designee, may determine to otherwise be consistent with the intent of these goals and policies; provided, however, the amount of special tax bond proceeds allocable to such dry utilities may not exceed that amount permitted under Federal tax law and regulations to ensure the tax exempt status of interest on the applicable special tax bonds.

8. Grading for eligible public streets; provided, however, grading for a Development Related CFD must meet one of the following criteria:

A. Grading within the vertical planes of the right-of-way;

B. Slopes to City-owned open space or open space easement areas; or

C. Offsite roadway grading.

If the cut and fill within (A) and (B) do not balance, the cost of excavating, hauling and compacting fill in the street is authorized to be financed. If there is excess material in the street right-of-way, only the cost of excavating and hauling to private property within the development project is eligible to be financed. The determination of balance will be made on a total eligible street grading basis, not on an individual street basis.

9. Such other improvements as may be authorized by law and which the City Council determines are consistent with the policies herein.

The City Council shall have the final determination as to the eligibility of any improvement for financing, as well as the prioritization of financing of such improvements. Generally, "in-tract" (e.g., local streets or utilities) improvements which serve residential development will not be considered eligible to be financed through a community facilities district unless requested by the owners or registered voters of an existing residential development to remedy a threat, found to exist by the City Council, to the public health or safety resulting from an existing deficiency in public improvements to serve such existing development.

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Any public improvements proposed to be financed through a community facilities district must meet all design and construction requirements and standards as may be established by the City. Any public improvement, the construction of which is completed following the adoption of the resolution of formation of a community facilities district, proposed to be acquired by the City from the owner or developer of property within a Development Related CFD must be constructed as if such improvements had been constructed under the direction and supervision, or under the authority of, the City.

Public improvements proposed to be acquired from the proceeds of special tax bonds or special taxes shall not be acquired until all improvements for a particular Project (as defined below) are completed and accepted by the City and the City Manager, or his or her designee, has certified the final cost of such improvements. For purposes of this paragraph, a "Project" shall be defined as all improvements within a particular street or easement including street improvements, sewer, drainage, utilities and grading and which are authorized to be acquired by the community facilities district pursuant to an acquisition and financing agreement by and between the City, acting on behalf of itself and the community facilities district, and the property owner or developer who is responsible for the construction of the public improvements (the "'Acquisition/Financing Agreement"). If improvements within more than one (1) Project are authorized to be acquired through the community facilities district, then the improvements within each Project may be acquired separately as all improvements within such Project are completed and accepted by the City and the final costs certified. Each Project established for any community facilities district and all improvements included within each such Project must be described in the Acquisition/Financing Agreement for such community facilities district. If the Acquisition/Financing Agreement has established more than one (1) Project for any community facilities district, the Acquisition/Financing Agreement may authorize the partial release of funds to pay for the acquisition of each Project when such Project is completed and accepted by the City.

The City Council may, in its sole discretion, elect to deviate from or waive the foregoing policy in its consideration of the approval of an Acquisition/Financing Agreement for a community facilities district to authorize the payment of the purchase price for each discrete component of a Project, i.e., an individual improvement within a Project such as a sewer line within a Project which also includes street, water and drainage improvements. In electing to deviate from or waive the foregoing policy, the City Council may condition the payment of the purchase price for discrete components as the City Council deems necessary to ensure the financial integrity of the community facilities district financing.

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Prioritization of Public Improvements

It is the policy of the City to give first priority to the provision of public improvements benefiting the City in any community facilities district established by the City. It is secondarily the policy of the City, in any community facilities district established by the City, to assist in the provision of other public improvements to be owned, operated or maintained by other public agencies or public utilities.

Authorized Public Services

Public services proposed to be financed through a community facilities district may include:

1. Maintenance of parkways, medians and open space, including but not limited to, maintenance of walls, fences, trail systems, pedestrian access systems and other facilities within such open space, maintenance and preservation of habitat within such open space, and biota and other forms of monitoring of plants, wildlife, use of wildlife corridors and habitat quality as a part of any such open space maintenance program.

2. Maintenance of naturalized drainage and flood control facilities including, but not limited to, channels and detention and desiltation basins.

3. Such other services as may be authorized by the Mello-Roos Act or by ordinance of the City adopted pursuant to the charter authority of the City and which the City Council determines are consistent with the goals and policies herein and are in the best interest of the City and the residents and property owners within the community facilities district.

Incidental Costs

Eligible Incidental Costs

Eligible incidental costs which may be financed from the proceeds of special tax bonds issued for a Development Related CFD or the special tax levied within a Development Related CFD shall be limited to those incidental costs directly related to the improvements financed from the proceeds of such special tax bonds or special tax revenues and may include:

1. Usual and customary design and engineering costs not to exceed the following percentages:

   A. Civil engineering - 7.5% of the cost of the improvements for which the engineering was performed.

B. Soils engineering - 15% of the cost of the applicable grading.

C. Landscape architecture - 10% of the cost of the applicable landscaping and irrigation.

D. Surveying and construction staking - 2% of the combined cost of the civil engineering improvements and grading for the applicable street and wet utilities.

E. Utility engineering/coordination - 3% of the cost of the applicable dry utilities.

2. Construction administration and supervision not to exceed, in aggregate, 1.75% of the total construction cost of the applicable public improvements.

3. Special engineering studies related to "collector" or "transmission" facilities. Eligibility of such studies must be reviewed and approved by the Director of Development Services, or his or her designee.

4. Plan check and inspection fees (less any refunds).

5. Capacity or connection fees related solely to the public improvements being acquired or constructed as permitted under the Mello-Roos Act.

6. Capitalized interest on any community facilities district special tax bonds as authorized by the City Council pursuant to these goals and policies.

7. Costs of acquisition of off-site rights-of-way and/or easements including the following:

A. Appraisal costs, including title reports.

B. Costs of preparing acquisition plats.

C. Appraised value or actual cost of right-of-way or easement, whichever is less.

D. Legal fees and cost related to eminent domain proceedings approved by the City Attorney.

8. Reimbursement of funds advanced by the applicant to pay for (i) preformation costs and/or (ii) costs of issuance incurred by or on behalf of the City.

9. Costs of environmental review, permitting and mitigation limited to the specific public improvements proposed to be financed through the community facilities district.

Unless specified otherwise above, the City Manager, or his or her designee, shall review all incidental

costs to ensure that such costs are customary and reasonable.

Ineligible Incidental Costs

The following costs are not eligible to be financed from the proceeds of community facilities district special tax bonds:

1. Development impact fees; provided, however, the City Council may, in its sole discretion, grant credit in an amount not to exceed the obligation for the payment of such fees if improvements which would otherwise be financed from the proceeds of such fees are financed from the proceeds of community facilities district special tax bonds or special taxes.

2. Administrative or overhead expenses, financial or legal fees incurred by an applicant for the formation of a community facilities district. This limitation does not apply to amounts advanced by the applicant to the City pursuant to the provisions of this policy to pay for preformation costs incurred by the City. (See "Preformation Cost Deposits and Reimbursements" below.)

3. Land use planning and subdivision costs and environmental review costs related to such land use planning and subdivision.

4. Planning Studies unless off-site.

5. Environmental impact reports unless off-site.

6. Construction loan interest.

7. Subdivision financial analysis.

8. Attorneys' fees related to the land use entitlement or subdivision process unless off-site.

9. On site right-of-way and easements.

10. Any compensation payable to the City as consideration for the City's agreement to provide the financing mechanism for the financing of the authorized improvements and eligible incidental expenses and to acquire the authorized improvements pursuant to the terms and conditions of an agreement with the City and the property owner or developer as appropriate.

11. Other overhead expenses incurred by the applicant.

Required Value-To-Debt Ratio

It is the policy of the City that the value-to-debt ratio for a community facilities district must be at

least 4:1. The calculated value-to-debt ratio shall reflect the full cash value of the properties subject to the levy of special taxes, including the value of the improvements to be financed from the proceeds of the issue or series of special tax bonds for which the value-to-debt ratio is being computed, compared to the aggregate amount of the special tax lien proposed to be created plus any prior fixed assessment liens and/or special tax liens. The required value-to-debt ratio shall be determined with respect to all taxable property within the community facilities district in the aggregate and with respect to each development area for which no final subdivision map has been filed.

A community facilities district with a value-to-debt ratio of less than 4:1 but equal to or greater than 3:1 may be approved, in the sole discretion of the City Council, upon a determination by the City Manager, after consultation with the Finance Director, the bond counsel, the underwriter and the financial advisor, that a value-to-debt ratio of less than 4:1 is financially prudent under the circumstances of the particular community facilities district. In addition, the City Council may, in its sole discretion, accept a form or forms of credit enhancement such as a letter of credit, bond insurance or the escrow of bond proceeds to offset a deficiency in the required value-to-debt ratio as it applies to the taxable property within the community facilities district in the aggregate or with respect to any development area.

The value-to-debt ratio shall be determined based upon the full cash value of the properties subject to the levy of the special tax as shown on the ad valorem assessment roll or upon an appraisal of the properties proposed to be assessed; provided, however, the City Manager may require that the value-to-debt ratio be determined by an appraisal if, in his or her judgement, the assessed values of the properties proposed to be assessed do not reflect the current full cash value of such properties. The appraisal shall be coordinated by, done under the direction of, and addressed to the City. The appraisal shall be undertaken by a state certified real estate appraiser, as defined in Business and Professions Code Section 11340. The appraiser shall be selected and retained by the City or the City's financial advisor. The costs associated with the preparation of the appraisal report shall be paid by the applicant for the community facilities district and shall be subject to possible reimbursement as provided for herein. The appraisal shall be conducted in accordance with assumptions and criteria established by the City, based upon generally accepted appraisal standards or state recommended standards for similar appraisals conducted for the same purpose.

The City reserves the right to require a market absorption study for any Development Related CFD. In any such case the City shall retain, at the applicant's sole expense but subject to reimbursement as provided for herein, a consultant to prepare a report to verify or establish the projected market absorption for and the projected sales prices of the properties proposed to be included within the

community facilities district. If a market absorption study is conducted, the appraiser shall utilize the conclusions of the market absorption study in conducting the appraisal of the properties within the proposed community facilities district or shall justify, to the satisfaction of the City Manager, why such conclusions were not utilized in conducting such appraisal.

Criteria for Appraisals

Definition of Appraisal

For purposes of these goals and policies, an appraisal shall mean a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

Contents of the Appraisal

An appraisal should reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Standards of Professional Appraisal Practice. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of such data, to support the appraiser's opinion of value. At a minimum, the appraisal shall contain the following:

1. Purpose of the Appraisal. This should include the reason for the appraisal, a definition of all values required, and the property rights being appraised.

2. Area, City and Neighborhood Data. These data should include such information as directly affects the appraised property together with the appraiser's conclusions as to significant trends.

3. Property Data. This should include a detailed physical description of the property, its size, shape, soil conditions, topography, improvements, and other physical characteristics which affect the property being appraised. The availability, capacity of, and proximity to, utilities and other infrastructure should also be discussed.

4. Title Condition. The condition of title to the property appraised should be discussed based upon the appraiser's examination of a title report of the property appraised. The appraiser should analyze and discuss those title issues which are concluded to impact the value of the property being appraised.

5. Improvement Condition.

A. The appraiser shall value the property within the community facilities district

on an "as-is" basis taking into consideration the value associated with the public improvements to be funded from the proceeds of the issue of bonds for which the appraisal is being undertaken. The property in the community facilities district shall be valued as if it were free and clear of any special taxes and assessments, if any, so that a proper comparison of value-to-debt can be determined. In determining his or her conclusion of value, the appraiser may consider the value of the property in the community facilities district under different market conditions. This may consist of valuing the property as if it were sold to a single purchaser in bulk or sold to several purchasers in portions or pieces.

B. Land parcels which have been developed with residences and subsequently sold should at a minimum indicate land parcel size, number of lots, density, number of plans, square footage, room counts, year construction was initiated, year of completion, and when sales were initiated.

C. Land parcels with residential product under construction or with standing inventory should be described as in A. above and include a summary of the stage of development regarding the number of units completed, number of models, status of units under construction, finished lots and mass-graded or raw lots. In addition, a comment on the marketability of the units (architecture, size, etc.) is appropriate.

D. Land parcels which have been developed with income-producing (or owner-occupied) commercial/retail, industrial, hotels, apartments, offices, etc., should be described as follows:

i. Commercial-Retail - Land parcel size; basic construction type; typical tenant improvements (and who is responsible for their construction); leasable area, when construction was initiated; and date of completion.

ii. Industrial - Land parcel size; basic construction type, whether single or multi-tenant; typical office build-out as percentage of total area, when construction was initiated; and date of completion.

iii. Hotels – Land parcel size; basic construction type; number of rooms; dining, recreation, convention space, meeting rooms, and other amenities.

iv. Apartments - Land parcel size; basic construction type; number of stories; number of units; unit mix; size; total rentable area, when construction was initiated; and date of completion.

v. Office - Land parcel size; basic construction type; typical tenant improvements/allowance; net rentable area, when construction was initiated; and date of completion.

6. General Plan Classification. Describe the General Plan classification of the subject and comparable properties.

7. Zoning. Describe the zoning for the subject and comparable properties. Note any discrepancy between General Plan classification and zoning. If rezoning is imminent, discuss further under Item 8 below.

8. Analysis of Highest and Best Use. The report should state and support the highest and best use to which a property can be put and recognize that land is appraised as though vacant and available for development to its highest and best use, and the improvements are based on their actual contribution to the site.

9. Statement of Value. The appraiser's opinion of the value of the specified property rights, prepared according to all relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. If a discounted cash flow analysis is used, it should be supported by at least one other valuation method such as sales comparison approach utilizing sales of properties that are in the same stage of development. If more than one valuation approach is used, the appraiser shall include an analysis and reconciliation of such approaches to support the appraiser's opinion of value.

10. Certification. Certification of appraiser and permission to reproduce and use the appraisal report as required for bond issuance.

Maximum Aggregate Taxes and Assessments

It is the policy of the City that the maximum annual special tax installment applicable to any parcel used for residential purposes (not including motels, hotels, campsites, or other short-term lodging, as determined by the City) shall not exceed one percent (1%) of the sale price of newly developed properties subject to the levy of the special tax (the "Newly Developed Properties") as of the date of the close of escrow of the initial sale of any residential dwelling unit to such residential home owner. As a distinct and separate requirement, the total of the following taxes, assessments described in 4.

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below and special taxes appearing on the property tax bill, shall not exceed two (2%) of such initial sales price of Newly Developed Properties:

1. Ad valorem property taxes.

2. Voter approved ad valorem property taxes in excess of one percent (1%) of the assessed value of the subject properties.

3. The maximum annual special taxes levied by the community facilities district under consideration and any other community facilities district or other public agency excepting therefrom special taxes levied by a community facilities district formed or under consideration for formation for the purpose of providing services such as open space maintenance, landscape maintenance and preserve maintenance.

4. The annual assessment installments, including any administrative surcharge, for any existing assessment district where such assessment installments are utilized to pay debt service on bonds issued for such assessment district. Annual assessment installments for maintenance and services shall not be included in the assessments calculated in determining the aggregate tax, assessment and special tax obligation for a parcel.

The applicant for the establishment of any Development Related CFD which includes residential development subject to the foregoing limitations shall be required to enter into an agreement with the City or the community facilities district requiring the prepayment by the applicant of that portion of the special tax obligation applicable to any parcel used for residential purposes in order to reduce the annual maximum special tax obligation so that the maximum annual special tax installment shall not exceed 1% of the sales price for such parcel and the total taxes, assessments and special taxes does not exceed 2% of such sales price.

Special Tax Requirements

The rate and method of apportionment of the special tax for any community facilities district shall adhere to the following requirements:

1. The maximum special tax shall be adequate to include an amount necessary to pay for the expenses incurred by such community facilities district in the levy and collection of the special tax and the administration of the special tax bonds and the community facilities district.

2. The maximum projected annual special tax revenues must equal 110% of the projected annual gross debt service on any bonds of the community facilities district.

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3. A backup special tax shall be required for any Development Related CFD to protect against changes in density resulting in the generation of insufficient special tax revenues to pay annual debt service and administrative expenses, unless the City Manager, or his or her designee, based on the advice of the financial advisor, special tax consultant or underwriter determines that a backup special tax is not needed under the special tax formula for such Development Related CFD. The City Council may additionally or alternatively require that as a condition of approval of the downsizing of the development in a Development Related CFD at the request of the applicant or the applicant's successor-in-interest, the applicant or the applicant's successor-in-interest, as applicable, may be required to prepay such portion of the special tax obligation as may be necessary in the determination of the City to ensure that adequate debt service coverage exists with respect to any outstanding bonds or otherwise provides security in a form and amount deemed necessary by the City Council to provide for the payment of debt service on the bonds.

4. All developed and undeveloped property within any community facilities district which is not otherwise statutorily exempt from the levy of special taxes shall bear its appropriate share of the community facilities district's aggregate special tax obligation from the date of formation of the community facilities district consistent with the other goals and policies set forth herein.

5. A partial and/or total prepayment option shall be included in any rate and method of apportionment of special taxes to pay for public facilities. No prepayment shall be permitted of a special tax levied to finance authorized services and/or maintenance.

6. The maximum special tax to pay for public facilities shall be levied against any parcel used for private residential purposes in the first fiscal year following the fiscal year in which the building permit for the construction of a residential dwelling unit on such parcel is issued and such maximum special tax may not escalate after the first fiscal year in which such special tax is so levied.

7. The rate and method of apportionment of a special tax to pay for public facilities shall specify a fiscal year beyond which the special tax may not be levied on any parcel used for private residential purposes. A special tax to pay for public services and/or maintenance shall have no termination date unless established by the City Council.

8. The rate and method of apportionment of a special tax to pay for public services and/or maintenance shall include life-cycle replacement costs for maintained facilities, as determined by the City Manager, or his or her designee.

9. The rate and method of apportionment of a special tax to pay for public services and/or maintenance shall authorize annual inflationary adjustments to the maximum special tax. The

authorized adjustments shall be based upon industry standard published indices, or such other data as may be approved by the City Manager, or his or her designee. In all instances, it shall be the policy of the City to employ the most specific applicable index. Examples include applying the Consumer Price Index for Urban Wage Earners and Clerical Workers to labor costs and applying the Construction Cost Index to asset replacement costs.

Terms and Conditions of Special Tax Bonds

All terms and conditions of any special tax bonds issued by the City for any community facilities district, including, without limitation, the sizing, timing, term, interest rates, discount, redemption features, flow of funds, investment provisions and foreclosure covenants, shall be established by the City. Each special tax bond issue shall be structured to adequately protect bond owners and to avoid negatively impacting the bonding capacity or credit worthiness of the City. Unless otherwise approved by the City Council, the following shall serve as minimum bond requirements:

1. A reserve fund shall be established for each bond issue to be funded out of the bond proceeds in an amount equal to 10% of the original proceeds of the bonds or such lesser amount as may be required by federal tax law.

2. Interest shall be capitalized for a bond issue only so long as necessary to place the special tax installments on the assessment roll; provided, however, interest may be capitalized for a term to be established in the sole discretion of the City Council on a case-by-case basis, not to exceed an aggregate of 24 months, taking into consideration the value-to-debt ratio, the expected timing of initial occupancy dates for the private improvements being constructed, expected absorption and buildout of the project, the expected construction and completion schedule for the public improvements to be funded from the proceeds of the bond issue in question, the size of the bond issue, the development pro forma and the equity position of the applicant and such other factors as the City Council may deem relevant.

3. In instances where multiple series of bonds are to be issued, the City shall determine what improvements shall be financed from the proceeds of each series of bonds.

4. Neither the faith, credit or taxing power of the City shall be pledged to the payment of the bonds. The sole source of revenue for the payment of the bonds shall be the special taxes, capitalized interest, if any, and moneys on deposit in the reserve fund established for such bonds.

Discharge of Special Tax Obligation

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CITY OF CHULA VISTA

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It is the policy of the City that the special tax obligation related to the financing of the acquisition or construction of public improvements may be prepaid and discharged in whole or in part at any time. The applicant for the formation of a Development Related CFD must provide notice and opportunity for the purchasers of property within such community facilities district to prepay the special tax obligation applicable to such property at the time of the close of escrow.

The applicant for the formation of a Development Related CFD must prepare and present a plan, satisfactory to the City Council, prior to the public hearing to consider the formation of such community facilities district describing how the prospective purchaser will be notified of the existence of the special tax lien and the options which the prospective purchaser has regarding the prepayment and discharge of the special tax obligation.

Disclosure to Property Purchasers in Development Related CFD's

The applicant for the formation of a Development Related CFD will be required to demonstrate to the satisfaction of the City Manager (when the term City Manager is used herein it shall mean the City Manager or his or her designee) that there will be full disclosure of the special tax obligation for such community facilities district and of any and all other special taxes or assessments on individual parcels to prospective purchasers or lessees of property within such community facilities district, including interim purchasers, merchant builders, residential homeowners and commercial or industrial purchasers or lessees.

Such notice must include all of the following in addition to such other provisions as may be required by the Mello-Roos Act, the Municipal Code of the City or the applicant may deem necessary:

1. Provide for full disclosure of the existence of the special tax lien and any other assessment or special tax obligation applicable to the properties within the community facilities district (whether imposed by the City or any other public agency), including the principal amount of the special tax obligation and any other applicable assessment or special tax obligation, term of each of the assessment or special tax liens and the amount of the expected payments of the special taxes and the maximum authorized special tax.

2. Disclose the option to prepay the special tax to pay for public facilities or allow the special tax to pay for public facilities to be passed through to the purchaser of such property and the adjustment, if any, in the sales price of the homes or other property which will apply if the special tax lien is passed through. Provide the ability for the prospective purchaser to elect to exercise the option either to prepay the special tax obligation for facilities at the close of escrow or to have the special taxes included in the property taxes for the property. Such disclosure shall be placed in all sales

brochures, all other on-site advertising and all purchase documents.

3. Specify in all disclosure documents the name, title, telephone number and address of a representative of the City as provided to the applicant who may be contacted by any prospective purchaser of property within the community facilities district for further information regarding the community facilities district and the special tax liens.

The applicant must agree to provide an original copy of all applicable disclosure documents to the City prior to initiating property sales.

Preformation Cost Deposits and Reimbursements

Except for those applications for community facilities districts where the City is the applicant, all City and consultant costs incurred in the evaluation of applications and the proceedings to form a community facilities district and issue special tax bonds therefor will be paid by the applicant by advance deposit with the City of moneys sufficient to pay all such costs.

Each application for the formation of a community facilities district shall be accompanied by an initial deposit in an amount to be determined by the City Manager to be adequate to fund the evaluation of the application and undertake the proceedings to form the community facilities district and issue the special tax bonds therefor. The City Manager may, in his or her sole discretion, permit an applicant to make periodic deposits to cover such expenses rather than a single lump sum deposit; provided, however, no preformation costs shall be incurred by the City in excess of the amount then on deposit for such purposes. If additional funds are required to pay required preformation costs, the City Manager may make written demand upon the applicant for such additional funds and the applicant shall deposit such additional funds with the City within five (5) working days of the date of receipt of such demand. Upon the depletion of the funds deposited by applicant for preformation costs, all proceedings shall be suspended until receipt by the City of such additional funds as the City Manager may demand.

The deposits shall be used by the City to pay for costs and expenses incurred by the City incident to the evaluation of the application and the proceedings for the formation of the community facilities district and the issuance of the special tax bonds therefor, including, but not limited to, legal, special tax consultant, engineering, appraisal, market absorption, financial advisor, administrative and staff costs and expenses, required notifications, printing and publication costs.

The City shall refund any unexpended portion of the deposits upon the occurrence of one of the following events:

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1. The formation of the community facilities district or the issuance of the special tax bonds;

2. The formation of the community facilities district or the issuance of the special tax bonds is disapproved by the City Council;

3. The proceedings for the formation of the community facilities district and the issuance of the special tax bonds are abandoned at the written request of the applicant; or

4. The City has determined that the special tax bonds will not be issued and sold.

Except as otherwise provided herein, the applicant shall be entitled, at the option of the applicant, to reimbursement of, or credit against, special taxes for all amounts deposited with the City to pay for costs incident to the evaluation of the application and the proceedings for the formation of the community facilities district and the issuance of the special tax bonds therefor upon the formation of the community facilities district and the successful issuance and sale of the special tax bonds for the community facilities district. Any such reimbursement shall be payable solely from the proceeds of the special tax bonds.

The City shall not accrue or pay interest on any moneys deposited with the City.

Selection of Consultants

The City shall select and retain all consultants necessary for the evaluation of any application and the proceedings for the formation of a community facilities district and the issuance of the special tax bonds therefor, including, but not limited to, special tax consultant, bond counsel, financial advisor, underwriter, appraiser, and market absorption analyst after consultation with the applicant.

Land Use Approvals

Properties proposed to be included in a Development Related CFD must have received such discretionary land use approvals as may, in the determination of the City Manager, or his or her designee, be necessary to enable the City to adequately evaluate the community facilities district including the properties to be included and the improvements proposed to be financed. The City will issue bonds secured by the levy of special taxes within a Development Related CFD when (i) the properties included within such community facilities district have received those applicable discretionary land use approvals which would permit the development of such properties consistent with the assumptions utilized in the development of the rate and method of apportionment of the special taxes for such community facilities district; (ii) applicable environmental review has been

completed; and (iii) the City has determined that the other prerequisites to a bond sale have been satisfied.

It is the policy of the City Council in granting approval for development such as zoning, specific plan or subdivision approval to grant such approval as a part of the City's ongoing planning and land use approval process. In granting such approval, the City reserves such rights as may be permitted by law to modify such approvals in the future as the City Council determines the public health, safety, welfare and interest may require. Such approval when granted is subject to a condition that the construction of any part of the development does not, standing alone, grant any rights to complete the development of the remainder of such development. Construction of public improvements to serve undeveloped land financed through a community facilities district shall not vest any rights to the then existing land use approvals for the property assessed for such improvements or to any particular level, type or intensity of development or use. Applicants for a Development Related CFD must include an express acknowledgment of this policy and shall expressly waive on their behalf and on behalf of their successors and assigns any cause of action at law or in equity including, but not limited to, taking or damaging of property, for reassessment of property or denial of any right protected by USC Section 1983 which might be applicable to the properties to be assessed.

Application Procedure for Development Related CFD's

Any application for the establishment of a community facilities district shall contain such information and be submitted in such form as the City Manager may require. In addition to such information as the City Manager may require, each application must contain:

1. Proof of authorization to submit the application on behalf of the owner of the property for which the application is submitted if the applicant is not the owner of such property.

2. Evidence satisfactory to the City Manager that the applicant represents or has the consent of the owners of not less than 67%, by area, of the property proposed to be subject to the levy of the special tax.

3. For any Development Related CFD proposed to finance improvements to benefit new development, a business plan for the development of the property within the proposed community facilities district and such additional financial information as the City Manager may deem necessary to adequately review the financial feasibility of the community facilities district. For Development Related CFD's proposed to finance improvements to benefit new development, the applicant must demonstrate to the satisfaction of the City Manager the ability of the owner of the property proposed to be developed to pay the special tax installments for the community facilities district and any other

assessments, special taxes and ad valorem taxes on such property until full build out of the property.

It is the intention of the City Council that applicants for a community facilities district have an early opportunity to have the application reviewed by City staff for compliance with this policy. In that regard, the City Council hereby directs the City Manager to create a community facilities district application review committee composed of the City Attorney, Director of Public Works, City Engineer, Director of Development Services, and Finance Director, or their designees, and such additional persons as the City Manager may deem necessary. The committee may meet with the applicant for a community facilities district for the purpose of reviewing an application to form a community facilities district following the determination by the City Manager, or his or her designee, that the information contained in the application for such community facilities district complies with the requirements of this policy. Following the review of such an application, the committee shall prepare and submit a report to the City Manager containing the findings and recommendations of the committee regarding the application.

Following review of the committee report, the City Manager shall place the application on the City Council agenda for review. After review of the application and consideration of the committee report, the City Council shall determine whether or not to approve the initiation of proceedings to form the community facilities district. The decision of the City Council pertaining to the application shall be final.

The ability of a property owner or developer to obtain financing of public improvements from the proceeds of tax-exempt bonds provides substantial economic benefits to such owner or developer not the least of which may be the financing of such improvements at interest rates substantially lower than conventional financing interest rates, if such conventional financing is available, and/or the ability to obtain financing without providing equity compensation to the lender. In providing such financing for a Development Related CFD the City Council believes that the City is providing valuable consideration to the property owner or developer and should be receive consideration in exchange. It is the goal of the City to ensure that the City and the remainder of its residents, property owners and taxpayers are compensated for the consideration provided to the property owner or developer of a Development Related CFD and that such compensation should be one percent (1%) of the total authorized bonded indebtedness for such a community facilities district. Prior to the issuance of special tax bonds for any Development Related CFD, the applicant shall pay to the City the pro rata amount of any compensation payable to the City as consideration for the City's agreement to provide the financing mechanism for the financing of the authorized improvements and eligible incidental expenses and to acquire the authorized improvements pursuant to the terms and conditions of an

agreement between the City and the property owner or developer as appropriate. For example, if the compensation payable to the City for such consideration is $100,000 for a Development Related CFD where the total authorized bonded indebtedness is $10,000,000 and the series of special tax bonds to be initially issued is $5,000,000, the compensation payable to the City prior to the issuance of the initial series of bonds will be the principal amount of the initial bond issue ($5,000,000) divided by the total amount of the authorized bonded indebtedness ($10,000,000) multiplied by the total compensation for such Development Related CFD ($100,000). In this example, the compensation payable prior to the issuance of the first series of bonds would be:

$$\frac{\$5{,}000{,}000}{\$10{,}000{,}000} \times \$100{,}000 = \$50{,}000$$

Community Facilities Districts for Energy Efficiency, Water Conservation, and Renewable Energy Improvements

Introductory Statement

Senate Bill No. 555 (Statutes 2011, Chapter 493) amended the Mello-Roos Act to authorize the use of community facilities districts for financing energy efficiency, water conservation, and renewable energy improvements to privately or publicly owned real property and buildings.

In particular, Senate Bill No. 555 added section 53328.1 to the Mello-Roos Act, thereby authorizing special taxes to be levied only with the unanimous consent of all owners of property to be taxed by such a district.

In light of the legislative findings in section 8 of Senate Bill No. 555, the City Council may determine to establish one or more programs through which the City may use section 53328.1 of the Mello-Roos Act and the related provisions added to the Mello-Roos Act by Senate Bill No. 555 to provide special tax financing for improvements and properties that meet the criteria set forth in the hearing report prepared in connection with the establishment of any such program (each a "Program"). The City will administer each Program or contract with a third-party to administer such program (a "Program Administrator").

With respect to financings done through a Program, the goals and policies set forth in this section, as such goals and policies may be amended from time to time, supersede any other goals and policies adopted by the City concerning the use of the Mello-Roos Act.

1. Eligible Improvements. A program may be used to finance or refinance the acquisition, installation, and improvement of energy efficiency, water conservation, and renewable

energy improvements on real property and in or on buildings, whether the real property or buildings are privately or publicly owned, subject to the following:

A. For privately owned real property and buildings, each owner must consent in advance to the financing, in writing.

B. Financing through a Program is not available for the initial construction of privately-owned residential buildings unless that initial construction is undertaken by the intended owner or occupant.

The City is not establishing any priorities with respect to the financing of Eligible Improvements. Priority for financing shall be considered on a case by case basis as determined by the City or the applicable Program Administrator in accordance with the hearing report prepared in connection with the related Program, as amended or modified from time to time (each a "Hearing Report"). No services (as defined by Government Code Section 53313) will be financed through any Program.

1. Notice to Prospective Owners. To ensure that prospective purchasers of property subject to a special tax levied through a Program are fully informed about the tax, the related Program Administrator will record a notice of special-tax lien for each participating property as required by the Mello-Roos Act and will provide the seller of each with a disclosure notice that satisfies section 53340.2 of the Mello-Roos Act and California Civil Code section 1102.6b.

2. Financing Limits. For each property. the minimum funding request and maximum amount financed shall be determined in accordance with the Hearing Report. It is not expected that the City will issue bonds in connection with any Program. If the City issues bonds in connection with a Program, the City will establish policies concerning the credit quality of such bonds on a case by case basis.

3. Underwriting Requirements for Financings. For each property, the financing of Eligible Improvements on that property must meet the eligibility requirements set forth in the Hearing Report. The Hearing Report may be amended or modified from time to time as specified therein or the City Council may waive or modify any requirement in the Hearing Report on a case by case basis.

4. Maximum Annual Special Tax. The total annual aggregate amount of property taxes and assessments on each property that participates in a Program, including the special tax imposed through such Program may not exceed five percent (5%) of the value of the property. The value of the property will be derived from the assessed value, the appraised value, or an estimate of value based upon data supplied by a reputable real estate information service. If appraisals are used to determine value for any purpose of a Program, the definitions, standards, and assumptions to be used

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in such appraisals shall be determined on a case by case basis by the City or the related Program Administrator.

5. Administration Costs. The annual special tax for each property that participates in a Program must be in an amount sufficient (i) to finance or refinance the Eligible Improvements for such property and (ii) to pay the property's pro-rata share of the City's and the related Program Administrators costs to administer such Program.

6. Minimum Standards; Waiver and Amendment. The policies set forth in this section reflect the minimum standards under which the City will make use of the Mello-Roos Act to finance Eligible Improvements. The City may, in its discretion, require additional measures and procedures, enhanced security and higher standards in particular cases. The City may, in its discretion and to the extent permitted by law, waive any of the policies set forth herein. Such waivers are granted only by action of the City Council. The goals and policies set forth in this section may be amended at any time and from time to time by the City.

Exhibit B

DOC# 2022-0159337

Apr 12, 2022 10:07 AM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: $0.00 (SB2 Atkins: $0.00)

PAGES: 22

Recording requested by:
City of Chula Vista
After recording return to:
City Clerk's Office
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

This space for Recorder's use only

RESOLUTION NO. 2022-020

RESOLUTION NO. 2022-020

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING TENTATIVE SUBDIVISION MAP CVT20-0002 (PCS20-0002) FOR A 135.7-ACRE SITE FOR (718) MULTI-FAMILY RESIDENTIAL UNITS, KNOWN AS THE SUNBOW II, PHASE 3 PROJECT

WHEREAS, the area of land which is the subject of this Resolution is represented in Exhibit A, attached hereto and incorporated herein by this reference, and commonly known as Sunbow II, Phase 3, and for the purpose of general description consists of 135.7-acres within the Sunbow II Planned Community generally located at the southeast corner of Brandywine Avenue and Olympic Parkway (Project Site); and

WHEREAS, on February 20, 1990, the City Council of the City of Chula Vista approved the Sunbow II Sectional Planning Area (SPA) Plan (Resolution No. 15524), inclusive of a 46.0-acre parcel designated for an Industrial Park, known as Planning Area 23 (PA23); and

WHEREAS, since approval all other parcels covered by the Sunbow II SPA have been built out and the PA23 site has remained vacant; and

WHEREAS, on January 7, 2020, the City Council of the City of Chula Vista approved a Community Benefits Agreement (Resolution No. 2020-003) with ACI Sunbow, LLC (Applicant/Owner), to allow the Owner to process entitlements to consider the conversion of the PA23 land from industrial to residential uses and in exchange would provide funding that can be used by the City to direct the construction of a job enhancing use in Eastern Chula Vista or other signature project; and

WHEREAS, applications to consider such amendments to the City of Chula Vista General Plan (MPA20-0012), Sunbow II General Development Plan (MPA20-0013), Sunbow II, Phase 3 SPA Plan (MPA20-0006) and approval of an associated Tentative Map (PCS20-0002) and Development Agreement (MPA21-0014) were filed with the City of Chula Vista Development Services Department on February 26, 2020 by the Applicant; and

WHEREAS, the Applicant proposes to rezone 67.5-acres of developable land on the Project Site from light industrial to residential uses resulting in up to 534 multi-family medium-high-density and 184 multi-family high-density residential dwelling units (718 total units) on six parcels and designate the remaining 68.2-acres as Multiple Species Conservation Program (MSCP) land, Poggi Creek Conservation Easement areas and a conserved wetland resource area on sixteen parcels (Project); and

WHEREAS, the Director of Development Services has reviewed the proposed project for compliance with the California Environmental Quality Act (CEQA) and has determined that there is substantial evidence, in light of the whole record, that the Project may have a significant effect on the environment; therefore, the Director of Development Services has caused the preparation of an Environmental Impact Report, EIR20-0002; and

WHEREAS, the Applicant requests approval of Tentative Map CVT20-0002 (PCS20-0002) to subdivide the Project Site into twenty-two lots for the development of 718 residential units (6 lots), a community purpose facility (1 lot), Poggi Creek Conservation Easement (3 lots), open space (9 lots) and open space preserve (3 lots); and

WHEREAS, a hearing time and place was set by the Planning Commission for consideration of the Project and notice of said hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City, and its mailing to property owners and residents within 500-feet of the exterior boundaries of the property, at least ten (10) days prior to the hearing; and

WHEREAS, the Planning Commission held an advertised public hearing on the Project and voted 0-6 recommending the City Council deny the approval of the Project, citing that further analysis related to the Jobs Enhancement Fund and a mix of land uses on the site be considered; and

WHEREAS, the proceedings and all evidence introduced before the Planning Commission at the public hearing on the Project, and the Minutes and Resolution resulting therefrom, are incorporated into the record of this proceeding; and

WHEREAS, the City Clerk set the time and place for the City Council hearing on the Project application and notice of said hearing, together with its purpose, given by its publication in a newspaper of general circulation in the City and its mailing to property owners within 500-feet of the exterior boundaries of the Project Site at least ten (10) days prior to the hearing; and

WHEREAS, the City Council of the City of Chula Vista held a duly noticed public hearing to consider the Project at the time and place as advertised in the Council Chambers, 276 Fourth Avenue, and said hearing was thereafter closed; and

WHEREAS, immediately prior to this action, the City Council considered Final Environmental Impact Report (EIR20-0002), pursuant to Resolution No. 2022-017; and

WHEREAS, immediately prior to this action, the City Council approved a General Plan Amendment (MPA20-0012) and Sunbow II General Development Plan Amendment (MPA20-0013), pursuant to Resolution No. 2022-018; and

WHEREAS, immediately prior to this action, the City Council approved the Sunbow II, Phase 3 SPA Plan Amendment (MPA20-0006), pursuant to Resolution No. 2022-019; and

WHEREAS, the final step of Project approval will include the consideration of a Development Agreement between the City and Applicant (MPA21-0014).

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Chula Vista that it does hereby find and determine, as follows:

I. TENTATIVE SUBDIVISION MAP FINDINGS

A. Pursuant to Government Code Section 66473.5 of the Subdivision Map Act, the City Council finds that the Tentative Subdivision Map, as conditioned herein, is in conformance with the elements of the City's General Plan, based on the following:

1. Land Use

The General Plan land use designation is Residential Medium-High (11-18 dwelling units per gross acre) and High (18-27 dwelling units per gross acre). Five of the proposed parcels will be developed at a medium-high density range of 13.3 to 15.4 dwelling units per gross acre and the remaining at a high density of 24.1 dwelling units per gross acre, which is within the allowable density and permitted number of dwelling units.

2. Circulation

All off-site public streets required to serve the subdivision already exist or will be constructed or paid for by the Applicant in accordance with the Conditions of Approval. The on-site public streets are designed in accordance with the City design standards and/or requirements and provides for vehicular and pedestrian connections. The on-site private streets are designed consistent with the Sunbow II SPA Plan and Tentative Map.

3. Public Facilities

The Project has been conditioned to ensure that all necessary public facilities and services will be available to serve the Project concurrent with the demand for those services.

The Project Area is within the boundaries of the Otay Water District (OWD) for water service. The OWD has existing and planned facilities in the vicinity of the Proposed Project and water service can be provided by expanding the existing system.

4. Housing

The Project is consistent with the density prescribed within the Residential Medium-High and High General Plan designation and provides additional opportunities for multi-family residential home ownership in the eastern portion of the City. The Project will also comply with the City's Balanced Communities Policy through alternative compliance as specified in the Project's Development Agreement. The deed restricted residential units are to remain within this identified area of the SPA and are non-transferrable.

5. Growth Management

A Supplemental Public Facilities Finance Plan (PFFP) has been prepared for the Project, as required by the Grown Management Element. The PFFP requirements have been included in the Project's Conditions of Approval.

Circulation
The surrounding street segments and intersections including those along Olympic Parkway will continue to operate at the current Level of Service in compliance with the City's traffic threshold standard with the proposed project traffic. No adverse impact to the City's traffic threshold standards would occur as a result of the proposed project.

Schools
The Project Site is located in the attendance area of Valle Lindo Elementary School, within the boundaries of the Chula Vista Elementary School District (CVESD). The Project is also within the attendance area of Rancho Del Rey High School, Otay Ranch High School, and Chula Vista Adult School, within the Sweetwater Union High School District (SUHSD). The Project is within the boundaries of CVESD Community Facility District (CFD) No. 4 and SUHSD CFD No. 4, which will fully mitigate the Project's impact on local schools.

Sewer System
The proposed onsite sewer system consists of gravity sewer lines within Streets "A" and "B" that will convey flow to the existing Poggi Canyon Interceptor in Olympic Parkway. Based on the average flow presented in Table 6 and a peak factor of 2.33 per the City Subdivision Manual, the projected peak flow for the Proposed Project is 0.31 mgd. An 8-inch gravity sewer line within Street "A" with a minimum slope of 1.0 percent is adequate to convey total project flow. Private sewer lines will be connected to this 8-inch public sewer line and extended to the building sewer laterals.

Drainage
The drainage system will collect stormwater through a series of swales, catch basins, inlets and culverts that direct stormwater flows to two onsite basins for purposes of water quality and hydromodification. Onsite storm drain facilities include a series of storm drainpipes within Streets "A" and "B" and the private streets within the residential parcels. A by-pass system of pipes carries natural or treated runoff in separate pipes to discharge into Poggi Creek.

6. Open Space and Conservation

The Project proposes multi-family homes that meet the minimum open space requirement per the Sunbow II SPA Plan, Planned Community District Regulations. The Project includes 63.6-acres designated MSCP Preserve open space, 4.3-acres of Poggi Creek Conservation Easements and a 0.3-acre conserved wetland resource area. The development of the site is consistent with the goals and policies of the Conservation Element.

7. Parks and Recreation

The Project would increase population growth, with each multi-family unit generating the need for 341 square feet of development parkland. The 718 multi-family units within Planning Area 23 of the Sunbow II Phase 3 SPA Plan generates a parkland obligation of 5.6 acres. In order to satisfy this obligation, the Project is required to pay a Park Benefit Fee in accordance with the Project's Development Agreement and will not be providing the 5.6 acres of development parkland within the development.

8. Safety

The City Engineer, Fire and Police Departments have reviewed the proposed subdivision for conformance with City safety policies and have determined that the proposal meets those standards.

9. Noise

The Project has been reviewed for compliance with the Noise Element and will comply with applicable noise measures at the time of issuance of Building Permits.

10. Scenic Highway

The Project Site is not located adjacent to or visible from a designated scenic highway.

B. Pursuant to Government Code Section 66473.1 of the Subdivision Map Act, the configuration, orientation, and topography of the site allows for the optimum siting of lots for natural and passive heating and cooling opportunities and that the development of the site will be subject to site plan and architectural review to ensure the maximum utilization of natural and passive heating and cooling opportunities.

C. Pursuant to Government Code Section 66412.3 of the Subdivision Map Act, the City Council certifies that it has considered the effect of this approval on the housing needs of the region and has balanced those needs against the public service needs of the residents of the City and the available fiscal and environmental resources.

D. The site is physically suited for residential development because it is generally level and is located adjacent to existing residential developments. The Project conforms to all standards established by the City for a residential development. The conditions herein imposed on the grant of permit or other entitlement herein contained is approximately proportional both in nature and extent to the impact created by the proposed development.

F. Pursuant to Government Code Section 66474 (a)-(g) of the Subdivision Map Act, the City Council hereby finds that the proposed project:

1. Is consistent with the Chula Vista General Plan, as specified in Section 65451, and land use, transportation, economic development, housing, public facilities and services, environmental and growth management objectives and policies.

2. Design or improvement is consistent with the General Plan. The General Plan establishes the vision for the City, and the Project defines the land use character and mix of uses, design criteria, circulation system, and public infrastructure requirements for the Project. The Tentative Map is consistent with the General Plan.

3. The Project Site is suitable for the proposed density of development. The Project's zoning supports the design of a viable residential project that will create a strong sense of place for residents. The densities are in accordance with the General Plan for the area.

4. The Project Site is physically suitable for the type of development. The Project is surrounded by other in-fill residential projects. The Project is designed to be compatible with the surrounding community.

5. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The Project has been designed to provide a landscaped buffer for the surrounding in-fill residential projects and to comply with CEQA.

6. The design of the subdivision or type of improvements is not likely to cause serious public health problems because the Project has been designed to provide quality open space and amenities.

7. Neither the Subdivision nor the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

II. TENTATIVE SUBDIVISION MAP CONDITIONS OF APPROVAL

Unless otherwise specified or required by law: (a) the Conditions of Approval and Code requirements set forth below shall be completed prior to recordation of the related Final Map as determined by the Director of Development Services and the City Engineer, or designees, unless otherwise specified, "dedicate" means grant the appropriate easement, rather than fee title. Where an easement is required, the Applicant shall be required to provide subordination of any prior lien and easement holders in order to ensure that the City has a first priority interest and rights in such land unless otherwise excused by the City. Where fee title is granted or dedicated to the City, said fee title shall be free and clear of all encumbrances, unless otherwise excused by the City.

Should conflicting wording or standards occur between these Conditions of Approval, any conflict shall be resolved by the City Manager or designee.

A. GENERAL/DEVELOPMENT SERVICES

1. The Applicant, or his successor in interest, shall improve the Project Site in accordance with the approved Sunbow II, Phase 3 Tentative Subdivision Map No. CVT20-0002 (PCS20-0002), on file in the Planning Division, the conditions contained herein, and Title 19 of the Chula Vista Municipal Code ("CVMC" or "Municipal Code").

2. The Project shall comply with the General Development Plan Amendment and the Sunbow II, Phase 3 SPA Plan Amendment.

3. The Applicant shall implement, to the satisfaction of the Director of Development Services and the City Engineer, the mitigation measures identified in EIR20-0002 Mitigation Monitoring and Reporting Program (MMRP) for the Project, within the timeframe specified in the MMRP.

4. Prior to initiating any construction related activities requiring a clearing and grubbing or Grading Permit, the Applicant shall obtain a Habitat Loss Incidental Take Permit pursuant to Section 17.35 of the Municipal Code for impacts to Chula Vista MSCP Tier I, II, and II vegetation communities as shown in Table 5.3-11, in accordance with Project Habitat Mitigation Ratios and Acreages of the EIR and in accordance with Table 5-3 of the City of Chula Vista MSCP Subarea Plan.

5. Prior to Final Map approval, the Applicant shall pay all applicable fees, including any unpaid balances of permit processing fees for deposit account DDA0637.

6. The project will be serviced for domestic water and fire with a public waterline constructed in Streets A and B, in accordance with Otay Water District (OWD) standards. The applicant shall conform all project related documents to show such waterlines as public. Private domestic and fire waterlines can cross Streets A and B as needed to provide OWD looping requirements.

7. Prior to issuance of the first residential building permit for the Project, the Developer shall record a nuisance easement against the Property addressing noise, odor, and visual impacts from the Otay Landfill (the "Nuisance Easement"). The Nuisance Easement shall name the City and the County of San Diego as express beneficiaries and shall be in a form approved by the Director of Development Services and the City Attorney.

8. The Developer acknowledges and agrees that no residential building permits shall be issued for the construction of homes within 1,000 feet of the permitted limits of waste, as shown in Exhibit B (the "Permitted Limit of Waste") of the Otay Landfill (the "Landfill") until the earlier of:

a) December 31, 2026. This shall be a firm date and not subject to extension. By way of explanation, such date being the date by which the operator of the Landfill (Otay Landfill, Inc., or "the Landfill Operator") has indicated to the City that it anticipates permanently ceasing all waste disposal activities within 1,000 feet of the Permitted Limit of Waste (a partial closure, as contemplated by the Landfill's 2017 Preliminary Closure and Post-Closure Maintenance Plan); or

b) a date set forth in a future agreement, which may be entered into between the Developer and the Landfill Operator, which shall include a commitment by the Landfill Operator to permanently cease waste disposal activities within 1,000 feet of the Permitted Limit of Waste (the "Landfill Agreement"), the final form of which shall be subject to approval by the Director of Development Services and the City Attorney. If this provision is to be exercised, the Landfill Agreement shall include a waiver of claims by the Landfill Operator against the City and the City shall be designated as a third-party beneficiary of the Landfill Agreement, with the right, but not the obligation to enforce each party's performance obligations; or

c) such time that the Developer is able to demonstrate to the sole satisfaction of the Director of Development Services that the proposed home is not within 1,000 feet of the current or future active waste disposal area of the Landfill.

Land Development Division/Landscape Architecture Division:

9. The Applicant shall comply with all applicable City of Chula Vista Standard Tentative Map Conditions (STMC) per Section 5-300 of the City Subdivision Manual as referenced hereto and incorporated herein and as approved and amended from time to time, to the satisfaction of the Director of Development Services and City Engineer or their designees.

10. Prior to the First Building Permit the Applicant shall pay the fair share contribution to the Adaptive Traffic Signal Control (ATSC) modules to each signalized intersection along the Olympic Parkway corridor between the I-805 Ramps and La Media Road. The Applicant's fair share contribution is shown in the table below:

Intersection	Peak Hour	Project % Traffic Entering [a]	Project Fair Share
1. Olympic Pk./I-805 SB Ramps	AM	2.6%	3.1%
	PM	3.6%	
2. Olympic Pk./I-805 NB Ramps	AM	3.8%	4.2%
	PM	4.6%	
3. Olympic Pk./Oleander Av.	AM	5.0%	5.4%
	PM	5.8%	
4. Olympic Pk./Brandywine Av.	AM	5.3%	6.0%
	PM	6.6%	
5. Olympic Pk./project driveway (west)	AM	[b]	[b]
	PM	[b]	
6. Olympic Pk./project driveway (east)	AM	[b]	[b]
	PM	[b]	

7. Olympic Pk./Heritage Rd.	AM	1.6%	1.9%
	PM	2.1%	
8. Olympic Pk./Santa Venetia St.	AM	1.3%	1.5%
	PM	1.6%	
9. Olympic Pk./La Media Rd.	AM	1.0%	1.1%
	PM	1.2%	
[a] Near-Term conditions, Table 14-1, Transportation Impact Analysis, Sunbow II, Phase 3 (June 22, 2020).			
[b] Traffic signal to be constructed by the project with adaptive system incorporated and fully funded by the applicant.			

11. Prior to final inspection for each unit and in accordance with the Development Agreement, the Applicant shall pay a Park Benefit Fee equal to the PAD fees that would have otherwise been due pursuant to Chapter 17.10, using the PAD fee rates in effect as of the Effective Date of the Development Agreement.

12. In accordance with and as defined in the Development Agreement, the Owner shall pay the Jobs Enhancement Fund in three separate payments prior to issuance of the first (1st) building permit, one-hundredth (100th) building permit and two-hundredth (200th) building permit.

13. Prior to approval of a Grading Plan or Building Permit which includes any private facilities within the public right-of-way or City easement, the Applicant shall enter into an Encroachment Agreement with the City.

14. Proposed Fire Access Road(s) shall meet H-20 Loading requirements or shall be designed for a Traffic Index (T.I.) of 5.

15. The Applicant shall add the following note on the Public Improvement Plans: Public Works Operations Department shall inspect any existing sewer laterals and connections that are to be used by the new development. Laterals and connections may need replacement as a result of this inspection which shall be accomplished by the Applicant at the Applicant's sole expense.

16. Prior to beginning any earthwork activities at the site and before issuance of Building Permits in accordance with Municipal Code Title 15.04 the Applicant shall submit Grading Plans and associated slope Landscape and Irrigation Plans to the City. Plans shall be in conformance with the City's Subdivision Manual and the City's most current Best Management Practices; BMP Design Manual. A copy of the BMP Design Manual is available on the City of Chula Vista website at: http://www.chulavistaca.gov/departments/public-works/services/storm-water-pollution-prevention/documents-and-reports.

17. Prior to the issuance of the first Grading or Construction Permit, the Applicant shall enter into a Storm Water Management Facilities Maintenance Agreement to perpetually maintain and fund all Post Construction Permanent BMP facilities located within the Project to the satisfaction of the Director of Development Services.

18. Prior to approval of the Final Map, the Applicant shall enter into an agreement, in a form acceptable to the City Engineer and City Attorney, granting permission for the City of Chula Vista to permit the construction of drainage/improvements that will discharge drainage onto Owner's property as shown on the CVT # 20-0002 and agreeing to indemnify, defend, and hold harmless the City, its agents and employees from and against any and all liability, claims, damages or injuries to any person, including injury to any City employees, and any and all claims which arise from, are connected with, or are in any way related to the performance of or failure to perform the work or other obligations, or are caused or claimed to be caused by the acts or omissions of Owner, or Owner's agents or employees, and all expenses of investigating and defending against same; provided, however, that this indemnification and hold harmless shall not include any claim arising from the sole negligence or willful misconduct of the City, its agents or its employees.

19. The Applicant shall provide a minimum 3-foot wide level bench on Grading Plans, for landscaping maintenance access adjacent to freestanding walls, fencing or sound walls to be constructed adjacent to perimeter open space slopes (OS-7 through OS-12) with a gradient of 2:1 or greater.

20. Prior to issuance of any Grading or Building Permit based on plans proposing the creation of down slopes adjacent to public or private streets, the Applicant shall obtain the City Engineer's approval of a study to determine the necessity of providing guard rail improvements at these locations. The Applicant shall construct and secure any required guard rail improvements in conjunction with the associated Construction Permit as determined by and to the satisfaction of the City Engineer. The guard rail shall be installed per CalTrans Traffic Manual and Roadside Design Guide requirements and American Association of State Highway and Transportation Officials (AASHTO) standards to the satisfaction of the City Engineer.

21. Prior to the issuance of any Grading Permit, the Applicant shall provide a notarized letter of permission for all off-site grading work.

22. The Applicant shall apply for Grading Permit(s) consistent with the applicable provisions of the City's Municipal Code and Subdivision Manual, reviewed and approved by the Land Development Division. These permit(s) shall reflect all grading required to create building pads, private roads and storm drainage system necessary to address drainage leaving the site.

23. Prior to issuance of any Grading Permit impacting on-site existing monitoring wells, the Applicant shall submit and gain approval of a Well Destruction Permit from the County of San Diego Department of Environmental Health and shall provide the City with a Closure Memorandum from the County of San Diego Department of Environmental Health upon completion of the Well Destruction Permit.

24. The Applicant shall dedicate for public use all the public streets and public utilities within the subdivision boundary on the Final Map as shown on the approved Tentative Map (CVT No. 20-0002) and shall construct or enter into an agreement to construct and secure all streets, utilities, traffic signals, and intersection improvements as shown on the approved Tentative Map (CVT No. 20-0002) to the satisfaction of the City Engineer and City Attorney.

25. Prior to issuance of any Construction Permit, the Applicant shall submit, for review, street cross-sections at 25' intervals depicting existing and proposed street cross-fall and limits of grind and overlay required for the intersection improvements at Olympic Parkway and Streets 'A' and 'B' to the satisfaction of the City Engineer.

26. Prior to approval of the First Final Map or Improvement Plan, the Applicant shall provide the City with a Stopping Sight Distance and a Corner Sight Distance analysis which demonstrates compliance with Chula Vista Standard Drawing RWY-05 for Corner Sight Distance and Stopping Sight Distance and shall provide easements on the Final Map, as applicable, to the satisfaction of the City Engineer.

27. All private sewer laterals and storm drains connecting each building unit to the City-maintained public facilities shall be privately maintained.

28. All proposed sidewalks, walkways, pedestrian ramps, and disabled parking shall be designed to meet the City of Chula Vista Design Standards, American's with Disabilities Act (ADA) Standards, and Title 24 standards, as applicable.

29. Prior to approval of Improvement Plans for the Project, the Engineer of Work shall submit and obtain approval by the City Engineer a waiver request for all subdivision design for public improvements not specifically waived on the Tentative Map, and not conforming to adopted City standards. The Engineer of Work request shall outline the requested subdivision design deviations from adopted City standards and state that in his/her professional opinion, no safety issues will be compromised. The waiver is subject to approval by the City Engineer in the City Engineer's sole discretion.

30. The Applicant shall provide, Public Drainage and Access Easements on the Final Map over Open Space Lots OS-1, 2, 3, 4, 5, 6a, 6b, 7 and 8 for the existing Poggi Creek channel storm drains laterals and the two (2) existing box culverts within the subdivision boundary to the satisfaction of the City Engineer.

31. On the Final Map, the Applicant shall provide an easement for private access and utility purposes, to serve lots not feasibly served by a public street. If the engineering design of the lot has not been finalized, at the time of Final Map approval, a note, approved by the City Engineer, shall be placed on the Final Map, stating that such an easement will be granted by the Applicant or HOA for these lots as required in the CC&Rs. Said note shall reference Chula Vista Municipal Code Sections 18.32.030 and 18.44.010.

32. Prior to approval of any Final Map, the Applicant shall enter into a Grant of Easements, Access and Maintenance Agreement which shall cover all Homeowners Association (HOA) maintained improvements and shall also include all storm water BMP infrastructure constructed and located in any public right-of-way to the satisfaction of the City Engineer.

33. The Applicant shall provide easements on the Final Map over portions of Private Open Space Lots 5 and 8 to ensure access to public storm drain facilities, to the satisfaction of the City Engineer.

34. Prior to the issuance of the First Building Permit, the Applicant shall provide documentation to the City of meetings and correspondence with MTS regarding implementation of local bus stops or other transit service to the Project, to the satisfaction of the Director of Development Services.

35. Prior to approval of any Final Map, the Applicant shall present verification to the City Engineer in the form of a letter from the Otay Water District that the subdivision will be provided adequate water service and long-term water storage facilities.

36. Prior to the issuance of any Grading Permit impacting the existing on-site Otay Water District recycled water line, the Applicant shall provide evidence to the satisfaction of the City Engineer, that the Applicant has complied with the following:

    a. The Otay Water District has approved plans to relocate the existing Otay Water District Recycled Water line as shown on the approved Tentative Map (CVT No. 20-0002).
    b. The Applicant has entered into an agreement with Otay Water District to construct and secure the relocation of the Otay Water District Recycled Water line.
    c. The Applicant has provided evidence that Otay Water District has abandoned or has agreed to abandon any water main easements or portions thereof not needed as a consequence of the relocation of the Otay Water District Recycled Water line and the dedication of new right-of-way.
    d. The Applicant has entered into an agreement with the City of Chula Vista to defend, indemnify and hold harmless the City, its elected and appointed officers and employees, from and against any and all claims, causes of action, demands, suit, actions or proceedings, judicial or administrative, for writs, orders, injunction or other relief, damages, liability, cost and expense (including without limitation attorneys' fees) arising out of, connected with or incidental to the relocation of the Otay Water District recycled water line and the closure and abandonment of the old waterline, or from any and all City action, conduct or matter related thereto.
    e. The Applicant shall maintain recycled water service that is to be relocated throughout the duration of construction or provide temporary service in accordance with Otay Water District Regulations.

37. Prior to approval of the Final Map, the Applicant shall provide an easement to the Otay Water District on the Final Map, or in the alternative, by separate instrument for the portion of the public recycled water main adjacent to Street A right of way as shown on the Tentative Map, to the satisfaction of the City Engineer. If the easement is provided by separate instrument, said easement shall be shown on the Final Map. Said easement shall be sufficiently wide to enable the public recycled water line to be located clear of the parkway tree planting.

38. Prior to City approval of Streets A & B Improvement Plans showing the project's public recycled water line, the Applicant shall obtain Otay Water District signatures on said improvement plans.

39. The Applicant shall use benchmarks within the City of Chula Vista Benchmark network for all mapping purposes.

40. Prior to approval of any Final Map showing public or private streets, the Applicant shall obtain approval of street names to the satisfaction of the Director of Development Services and City Engineer.

41. With the approval of each, the Final Map, Grading Plan and Improvement Plan, the Applicant shall upload digital files in a format such as AutoCAD DWG or DXF (AutoCAD version 2000 or above), ESRI GIS shapefile, file, or personal geodatabase (ArcGIS version 9.0 or above). The files should be transmitted directly to the GIS section using the city's digital submittal file upload website @ http://www.chulavistaca.gov/goto/GIS. The data upload site only accepts zip formatted files.

42. Prior to approval of any Final Map, the Applicant shall submit Covenants, Conditions and Restrictions (CC&Rs) as approved by the City Attorney to the City Engineer and the Director of Development Services Department. Said CC&Rs shall include the following:

    a. Indemnification of City for private sewer spillage.
    b. Indemnification of City – General.
    c. Listing of maintained private facilities.
    d. The City's right but not the obligation to enforce CC&Rs.
    e. Provision that no private facilities shall be requested to become public unless all homeowners and 100% of the first mortgage obligee have signed a written petition.
    f. Maintenance of all walls, fences, lighting structures, paths, recreational amenities and structures, private sewage facilities, drainage structures and landscaping.
    g. Implement education and enforcement program to prevent the discharge of pollutants from all on-site sources to the storm water conveyance system.
    h. Said CC&Rs shall be consistent with CVMC Chapter 18.44, the Subdivision Ordinance, and shall be recorded concurrently with the Final Map.
    i. Trip reduction strategies:

        1. Provide ride share coordination services to match residents interested in carpooling;
        2. Coordinate with nearby schools to match residents interested in carpooling to/from schools;
        3. Provide on-site transit opportunities information; and
        4. Encourage bicycling by providing on-site bicycle infrastructure such as bike racks

43. The CC&Rs shall contain a provision that provides all new residents with a disclosure document that discloses the following intonation during any real estate transaction or prior to lease signing:

    a. NOTICE OF AIRPORT VICINITY - as required by the Brown Field Airport Land Use Compatibility Plan (ALUCP), this property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase or lease and determine whether they are acceptable to you. Prior to the First Final Map, the Applicant shall record the "Airport Overflight Agreement" with the San Diego County Recorder's Office and provide the City of Chula Vista with a conformed copy. Each prospective homeowner shall acknowledge receipt of the Airport Overflight Agreement, confirming they have been informed of the vicinity of the airport prior to the purchase or lease of a home.

    b. NOTICE OF LANDFILL – This property is located in the vicinity of the Otay Landfill which is a solid waste disposal facility. Customary solid waste disposal operations may include, but are not limited to, noise, odors, dust, vibrations, birds and vectors. Individual sensitivities to those annoyances can vary from person to person. You may wish to consider which of these annoyances, if any, are associated with the property before you complete your purchase or lease and determine whether they are acceptable to you. A copy of this disclosure document shall be recorded with the San Diego County Recorder's Office and a conformed copy submitted to the City of Chula Vista as part of the Project approval. Each prospective homeowner shall sign the disclosure document confirming they have been informed of the vicinity of the landfill prior to the purchase or lease of a home.

44. The Applicant shall submit a HOA budget for review and approval by the City Engineer. Said budget shall include the following maintenance activities:

    a. Private streets, private sewer and storm drain maintenance
    b. Water quality facility maintenance and inspection.

45. The Applicant shall underground all utilities serving the subject property and existing utilities located within or adjacent to the subject property in accordance with the applicable Municipal Code Sections. Further, all new utilities serving the subject property shall be under grounded prior to the issuance of Building Permits.

46. Prior to approval of any Design Review Applications, the Applicant shall submit the Landscape Master Plan to the City for approval.

47. Prior to submittal of the first Landscape and Irrigation Plans for the Project, the Landscape Master Plan shall be sufficiently complete to enable approval by the Director of Development Services.

48. Prior to approval and issuance of the first Building Permit, the Applicant shall submit complete landscape construction documents for approval demonstrating that the installed landscape will comply with the City of Chula Vista Landscape Water Conservation Ordinance (LWCO), Chapter 20.12 of the Municipal Code.

49. No building permit shall be issued until the City has approved any changes to the Entitlements that may be necessary should the Applicant not be granted a deed transferring fee simple title of land (the proposed buttress along the southern property line of the project) in recordable form, duly executed by the City, free and clear of all recorded liens, encumbrances, assessments, easements, leases and taxes; except those which are reasonably approved by the Applicant and such transfer of land is necessary to be in conformance with the Entitlements.

Planning:

50. Prior to issuance of the 240th Building Permit, the Applicant shall construct the on-site Community Purpose Facility (CPF) consistent with Exhibit 23: Conceptual Community Recreation Area as depicted in the Sunbow II, Phase 3 SPA Plan Amendment and pay the applicable CPF Benefit Fee for the remaining obligation in accordance with the Development Agreement.

51. Prior to issuance of any Building Permit, the Applicant shall submit separate Design Review Applications for each of the six residential neighborhoods to facilitate the City's issuance of separate Design Review project numbers for each residential neighborhood. The Applicant shall package said separate Design Review Applications into one master Design Review Package to facilitate the City's comprehensive review of the entire Project Site.

52. Prior to the issuance of the two hundredth (200th) Building Permit for the Project, the Owner shall execute an amendment to the covenants and restrictions (Affordability Covenant) set forth in that certain Regulatory Agreement dated June 1, 2000, between the California Tax Credit Allocation Committee and Serena Sunbow, L.P. (Document No. 20000-0641390 in the San Diego County Recorder's Office, Nov. 27, 2000), in accordance with the Development Agreement.

Fire Department:

53. The Applicant shall include the design and permitting of underground fire service utilities as part of Development Services Department Private Improvement Plans or Building Permit Plans.

III. The following on-going conditions shall apply to the Project Site as long as it relies on this approval:

54. With the exception of those items as defined in the Development Agreement, approval of this request shall not waive compliance with any sections of the CVMC, nor any other applicable City Ordinances in effect at the time of Building Permit issuance.

55. The Property Owner and Applicant shall and do agree to indemnify, protect, defend and hold harmless City, its City Council members, Planning Commission members, officers, employees and representatives, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney's fees (collectively, liabilities) incurred by the City arising, directly or indirectly, from (a) City's approval and issuance of this Tentative Subdivision Map; (b) the City's approval of any environmental document prepared for this Project and (c) City's approval or issuance of any other permit or action, whether discretionary or non-discretionary, in connection with the Tentative Subdivision Map contemplated on the Project Site. The Property Owner and Applicant shall acknowledge their agreement to this provision by executing a copy of this Tentative Subdivision Map where indicated below. The Property Owner's and Applicant's compliance with this provision shall be binding on any and all of the Property Owner's and Applicant's successors and assigns.

56. All of the terms, covenants and conditions contained herein shall be binding upon and inure to the benefit of the heirs, successors, assigns and representatives of the Developer as to any or all of the Property.

57. The Applicant shall comply with all requirements and guidelines of the City of Chula Vista General Plan; the City's Growth Management Ordinance; Chula Vista Landscape Manual, Chula Design Plan and the Non-Renewable Energy Conservation Plan in effect on the Effective Date, as defined and as set forth in the Development Agreement. Plans may be subject to minor modifications by the appropriate department head, with the approval of the City Manager, however, any material modifications shall be subject to approval by the City Council.

58. If any of the terms, covenants or conditions contained herein shall fail to occur or if they are, by their terms, to be implemented and maintained over time, if any of such conditions fail to be so implemented and maintained according to their terms, the City shall have the right to revoke or modify all approvals herein granted including issuance of Building Permits, deny, or further condition the subsequent approvals that are derived from the approvals herein granted; institute and prosecute litigation to compel their compliance with said conditions; and/or seek damages for their violation. The Applicant shall be notified 10 days in advance prior to any of the above actions being taken by the City and shall be given the opportunity to remedy any deficiencies identified by the City.

IV. GOVERNMENT CODE SECTION 66020 NOTICE

Pursuant to Government Code Section 66020(d)(1), NOTICE IS HEREBY GIVEN that the 90 day period to protest the imposition of any impact fee, dedication, reservation, or other exaction described in this resolution begins on the effective date of this resolution and any such protest must be in a manner that complies with Government Code Section 66020(a) and failure to follow timely this procedure will bar any subsequent legal action to attack, set aside, void or annual imposition. The right to protest the fees, dedications, reservations, or other exactions does not apply to planning, zoning, grading, or other similar application processing fees or service fees in connection with the project; and it does not apply to any fees, dedication, reservations, or other exactions which have been given notice similar to this, nor does it revive challenges to any fees for which the Statute of Limitations has previously expired.

V. EXECUTION AND RECORDATION OF RESOLUTION OF APPROVAL

The Property Owner and Applicant shall execute this document signing on the lines provided below, indicating that the Property Owner and Applicant have each read, understood and agreed to the conditions contained herein, and will implement same. Upon execution, this document shall be recorded with the County Recorder of the County of San Diego, at the sole expense of the Property Owner and/or Applicant, and a signed, stamped copy returned to the City's Development Services Department. Failure to return the signed and stamped copy of this recorded document within 10 days of recordation shall indicate the Property Owner/Applicant's desire that the project, and the corresponding application for building permits and/or a business license, be held in abeyance without approval.

Bill Hamlin, Executive Vice President — Date: 3/24/22
ACI Sunbow, LLC by Ayres Land Company, Inc.
Property Owner

Bill Hamlin, Executive Vice President — Date: 3/24/22
ACI Sunbow, LLC by Ayres Land Company, Inc.
Applicant

VI. CONFORMANCE WITH CITY SUBDIVISION MANUAL

The City Council does hereby find that the Project is in conformance with the City of Chula Vista Subdivision Manual, CVMC Chapter 18.12 and the requirements of the Zoning Ordinance.

VII. INVALIDITY; AUTOMATIC REVOCATION

It is the intention of the City Council that its adoption of this Resolution is dependent upon the enforceability of each and every term, provision, and condition herein stated; and that in the event that any one or more terms, provisions, or conditions are determined by a Court of competent jurisdiction to be invalid, illegal, or unenforceable, this Resolution and the permit shall be deemed to be automatically revoked and of no further force and effect ab initio.

BE IT FURTHER RESOLVED that the City Council of the City of Chula Vista does, based on the findings, and the general and specific conditions included herein, hereby approve Tentative Subdivision Map (CVT20-0002) for Sunbow II, Phase 3 in conjunction with the General Plan Amendment (MPA20-0012), Sunbow II General Development Plan Amendment (MPA20-0013), Sunbow II Sectional Planning Area (SPA) Plan (MPA20-0006) and FEIR (FEIR20-0002).

[SIGNATURES ON THE FOLLOWING PAGE]

Presented by

Tiffany Allen
Director of Development Services

Approved as to form by

Glen R. Googins
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 18th day of January 2022 by the following vote:

AYES:	Councilmembers:	Cardenas, McCann, Padilla and Casillas Salas
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None
ABSTAIN:	Councilmembers:	Galvez

Mary Casillas Salas, Mayor

ATTEST:

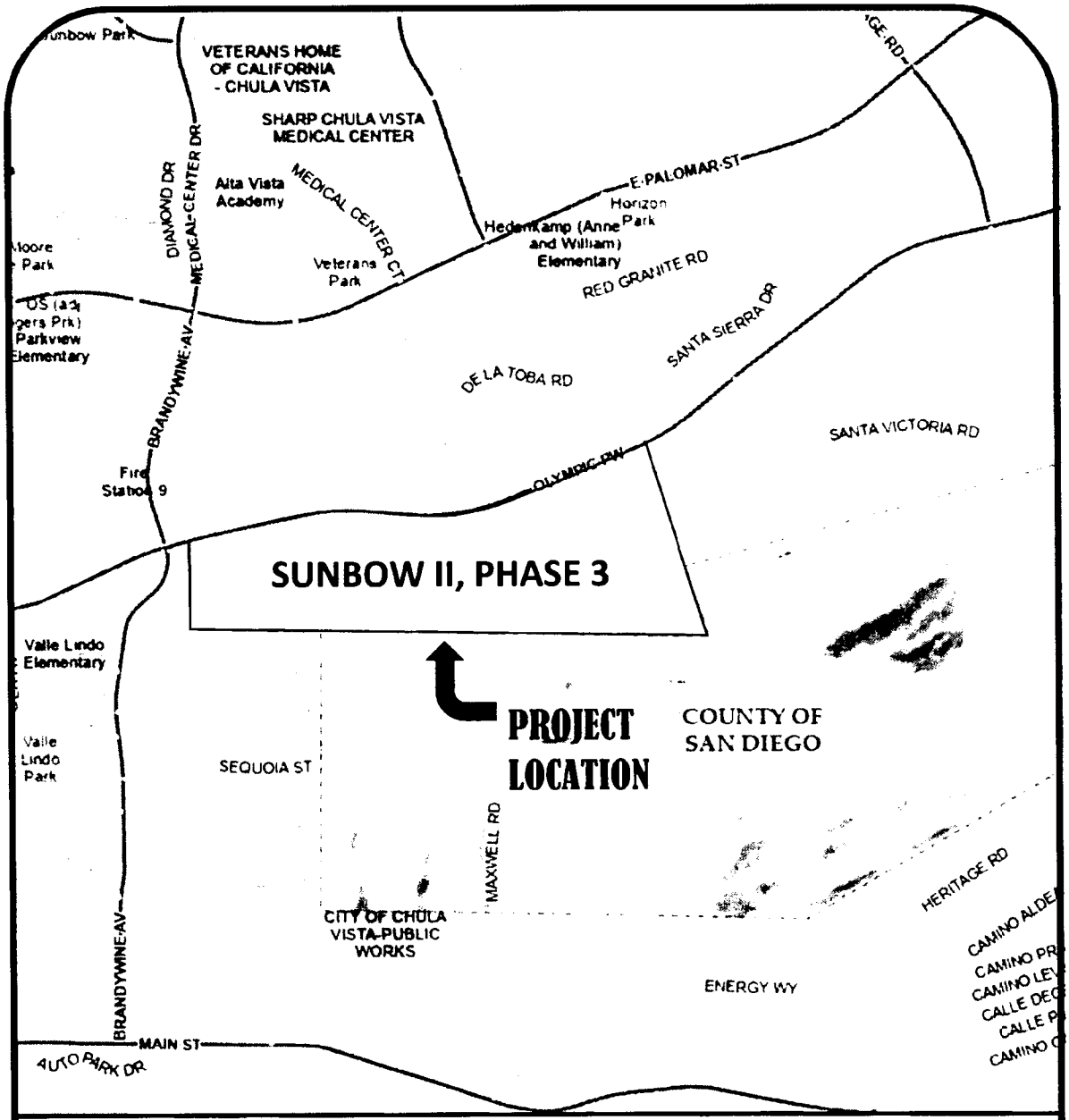
Kerry K. Bigelow, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Resolution No. 2022-020 was duly passed, approved, and adopted by the City Council at a regular meeting of the Chula Vista City Council held on the 18th day of January 2022.

Executed this 18th day of January 2022.

Kerry K. Bigelow, MMC, City Clerk



Attachment 3 - Locator Map

Sunbow II, Phase 3

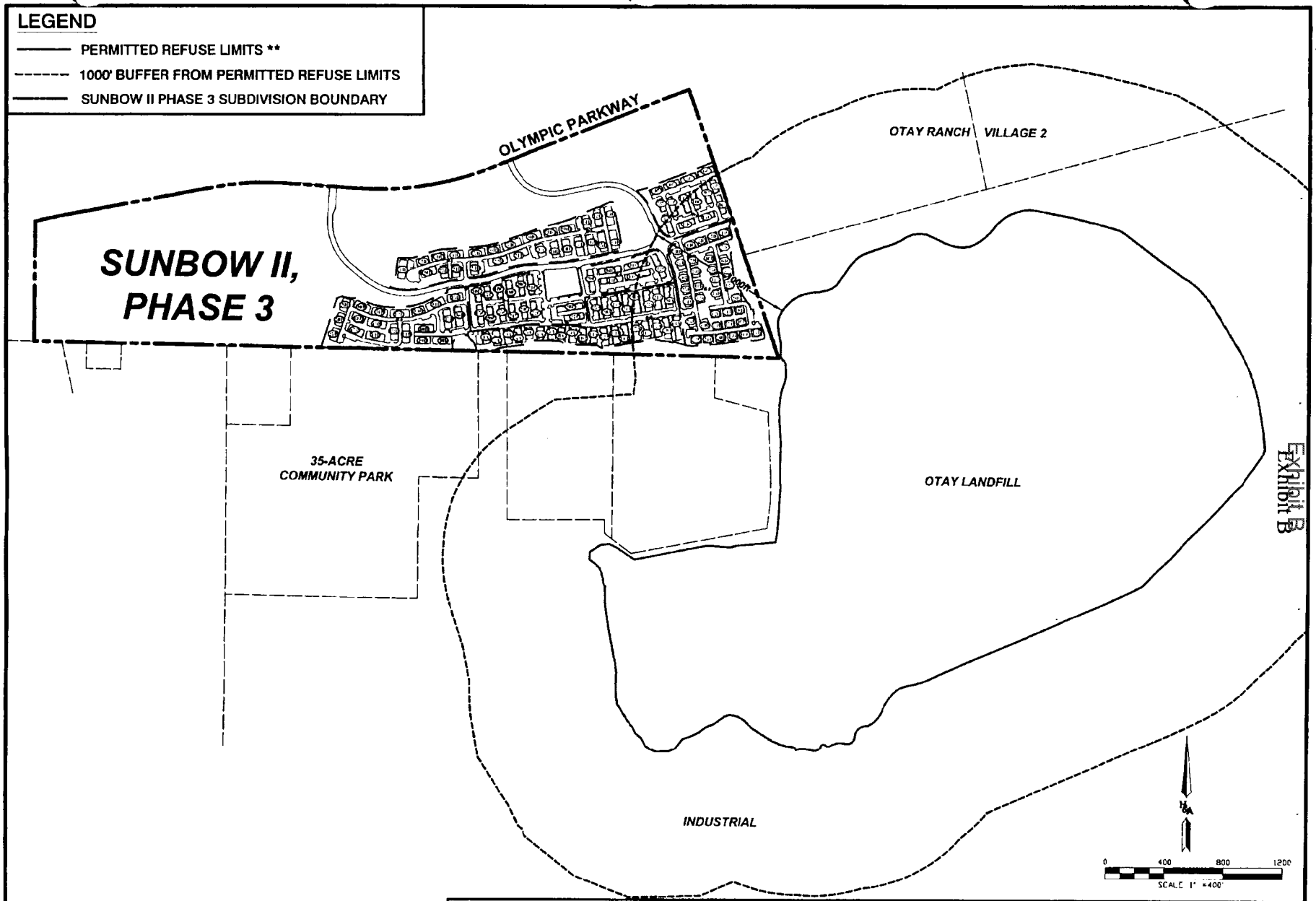


Exhibit B

** SOURCE: PRELIMINARY CLOSURE AND POST-CLOSURE MAINTENANCE PLAN FOR THE OTAY LANDFILL (DATED APRIL 2012)
FIGURE 2-2, TITLED "PRELIMINARY CLOSURE PLAN, SITE PLOT PLAN"
PREPARED BY: A-MEHR, INC., DATED: 4/4/2012

SUNBOW II PHASE 3

OTAY LANDFILL PERMITTED REFUSE LIMITS WITH 1000' BUFFER TO RESIDENTIAL AREA

SHEET 1 OF 1

R:\1561\dPln\Exhibits\EX 63d - Aerial Exh_1000' OFFSET_ENC_Permitted Refuse Limits_No ortho.dwg[]Mar-08-2022 12:13

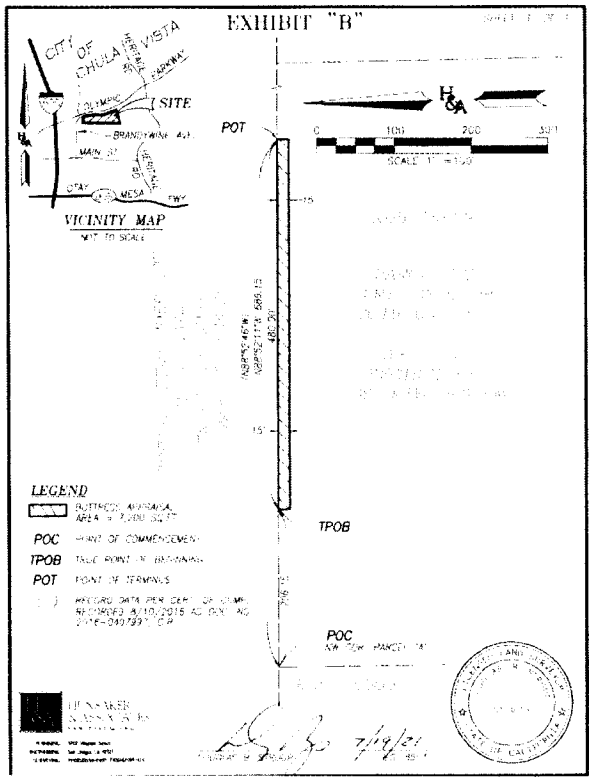
Exhibit F - Land

Legal Description

BEING A 15.00 FOOT WIDE STRIP OF LAND WITHIN THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, SHOWN AND DESCRIBED AS PARCEL "A" OF CERTIFICATE OF COMPLIANCE RECORDED AUGUST 10, 2016 AS DOCUMENT NO. 2016-0407997, OF OFFICIAL RECORDS, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, THE NORTHERLY LINE OF SAID 15.00 FOOT WIDE STRIP OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL "A", SAID CORNER BEING ON THE NORTHERLY BOUNDARY OF SAID SOUTHEAST QUARTER OF SECTION 18; THENCE ALONG SAID NORTHERLY BOUNDARY SOUTH 88°52'11" EAST, 206.15 FEET (RECORD SOUTH 88°52'46" EAST PER SAID CERTIFICATE OF COMPLIANCE) TO THE **TRUE POINT OF BEGINNING**; THENCE CONTINUING SOUTH 88°52'11" EAST, 480.00 FEET TO THE **POINT OF TERMINUS**.

THERE HEREINABOVE DESCRIBED STRIP OF LAND CONTAINS 7,200 SQUARE FEET, MORE OR LESS.



CITY OF CHULA VISTA

Development Services Department
Facilities Financing | Development Processing

Development Checklist for Municipal Code Requirements
FORM 5509

Project Location: _____

Project Name: _____

Related Records
GR: _____
B/BR: _____
DR: _____
LA: _____

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1. PROJECT REQUIREMENTS

According to the plans you recently submitted to the Development Services Department for review, the items noted below will be included as conditions of approval of your Building Permit under the authority of the Chula Vista Municipal Code (CVMC). For further questions regarding this checklist, please contact the person listed at the bottom of the last page.

1.1 Dedication Requirements

☐ Dedication OR ☐ Irrevocable Offer of Dedication of street right-of-way
(Brief description) _____

Note: Prior to issuance of a Building Permit, City must review and approve grant deeds for completeness, signed by owner(s), with all signatories notarized and accepted by the City. Call the Engineering Technician at (619) 409-5885 for the required supporting documents to be submitted.

1.2 Public Improvement Requirements

In accordance with Section 12.24.040 of the Chula Vista Municipal Code (CVMC) and Council Policy No. 563-02, if a Building Permit is issued for the on-site work valued at more than the threshold indicated in CVMC 12.24.030 ($50,000 plus the percentage increase in the "20-City Average Building Code Index") the City may impose the requirement to construct certain public improvements, which may include, but not necessarily be limited to, the following:

☐ Curb & gutter	☐ Sidewalk (_____feet wide)	☐ Raised concrete/asphalt median
☐ Driveway approach	☐ Street widening	☐ Signal relocation
☐ PCC alley paving	☐ ADA ramps	☐ Alley type approach
☐ Storm drain	☐ Asphalt & base in street	☐ Water Facilities
☐ Replace existing driveway with curb, gutter, sidewalk		☐ Fire Protection
☐ Street light(s)____(required)		☐ _____

Notes: A) The Construction Permit must be obtained prior to issuance of a Building Permit.
B) See Page 8 for information regarding deferring the requirement to install public improvements.

1.2.a Surety Requirements:

- Submit security in the amount of 110% of the approved engineer's estimate of the work to be done. Security may be in any of the following forms: Surety bond from a surety company holding a Best's rating in accordance with CVMC 12.20.090; letter of credit; U.S.Currency; savings passbook; certificate of deposit; or bank's certified check (NOTE: personal, company or third party checks are not acceptable for cash bonds).
- A properly licensed contractor must obtain the permit. The contractor must first submit a Certificate of Insurance with the City of Chula Vista named as additional insured and with the following minimum liability limits as set forth in "Specifications for Public Works Construction" (Commonly referred to as the "Green Book"):

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Development Checklist for Municipal Code Requirements
FORM 5509

Surety Requirements - Continued:

Bodily Injury: $500,000 each person
$1,000,000 each occurrence
$1,000,000 aggregate products and completed operations

Property Damage: $250,000 each occurrence
$500,000 aggregate

Note: A combined single limit policy with the aggregate limits in the amount of $2,000,000 will be considered equivalent to the required minimum. This amount may be adjusted (by written request) at the discretion of the City Engineer

1.2.b Construction Permit Requirements

☐ **Minor Construction Permit**

No engineered improvement plans are necessary and you are to submit the following items:

- Inspection fee/deposit (amount is determined based on estimated value of work to be done);
- Traffic Control Plan for Engineering's review and approval; (Submit at least 3 days prior to requesting Construction Permit to provide time for review and corrections, if necessary);
- Satisfaction of Surety Requirements outlined above.

☐ **Major Construction Permit**

The following items will be required prior to issuance of the Construction Permit: (Note: improvement plans are not required if curbs have been constructed in their ultimate location and installed under previous improvement plans)

- Improvement plans prepared by a registered civil engineer for review and approval (City's average processing time: 3 to 4 weeks for first review; approximately 2 weeks for any subsequent reviews);
- Plan check deposit amount depends on the value of work ($4,500 minimum);
- Satisfaction of Surety Requirements outlined above.

1.3 Grading Requirements

☐ **Grading Permit Not Required**

☐ **Grading Permit Required**

It appears from your plans that a Grading Permit (CVMC 15.04) may be required. For information regarding limits to grading without a permit, please see Form 5516. The following items must be completed to obtain the permit:

- Submit a grading plan prepared by a registered civil engineer and submitted to this department for review; (City's average processing time: 3 to 4 weeks for first review; approximately 2 weeks for any subsequent reviews)
- Fulfill landscaping requirements as set forth by the City Landscape Architect. (Contact: 619-409-3890)
- Submit a plan-check deposit. Amount depends on the project's complexity and scope, in accordance with the City's Full Cost Recovery Program ($6,000 minimum);
- Provide security in the amounts of: 25% of estimated earthwork costs; 100% of the estimated costs of appurtenant structures (i.e. retaining walls, culverts, inlet structures, etc.) as determined by the approved engineer's estimate;
- Provide security in the amounts of 100% of landscaping and irrigation facilities; and 100% of landscape maintenance for the period stated on the Grading Permit;
- Provide security in the amount of 10% contingency on the total security amount;
- Provide plans and technical reports in accordance with the City of Chula Vista Subdivision Manual Section 4-200;
- Provide a Storm Water Quality Management Plan in accordance with the City of Chula Vista BMP Design Manual.

Note: *A Building Permit cannot be issued until certification (Form PW-E-106A) that the rough grading has been completed. The form is available at the Development Services Counter and must be signed by the applicant's civil and soil engineers, and then submitted to the Engineering Construction Inspection Section.*

☐ **Grading Not Provided**

Since the plans submitted for review showed no information regarding proposed grading of the site, it may be determined at the Building Permit stage that a Grading Permit is required (if this is the case, see above for requirements).

1.4 General Requirements

☐ Undergrounding of existing overhead utility lines on site.
☐ Undergrounding of distribution lines and other overhead utilities in the right-of-way adjacent to your site.
☐ An Encroachment Permit for your proposed private facilities within the City's street right-of-way and/or easement (call for details).

1.5 Water Capacity Fees

The project may be subject to the collection of water capacity fees by the respective water authority, as required to acquire new or additional capacity from the water system. The applicability and amount of fees are to be confirmed with the water agency checked below.

☐ **Sweetwater Authority** ☐ **Otay Water District**

CITY OF CHULA VISTA

Exhibit B

Development Services Department
Facilities Financing | Development Processing

Development Checklist for Municipal Code Requirements
FORM 5509

2. ENGINEERING FEES APPLICABLE ON BUILDING PERMIT(S)

The following fees are applicable to your project, and they are required to be paid at the time of issuance of the Building Permit under the authority of the City of Chula Vista's Master Fee Schedule, applicable ordinances, and other fees and assessments as approved by the City Council.

If your plans call for a change to an existing structure, fees will be calculated on the difference in use/size. No refunds will be given for reduced-sized structures.

Please note that the fees listed are based only on the plans submitted and are subject to change to reflect items shown on the final building plans. This list may not include other Non-Engineering fees that may apply to your project.

Many engineering fees are generally ***adjusted annually on October 1*** *to reflect current building industry cost indices.*

2.1 Sewer Fees (See Fee Schedule 12-100)

Administrative Fee:

- ☐ $45 for Residential Sewer Connection Permit
- ☐ $220 for Commercial/Industrial Sewer Connection Permit

Sewer Lateral Installation Fee for lateral from main to property line (one required for each building proposed):

- ☐ 4-inch: $9,160 plus $229.10 per foot of chargeable length over 40 feet
- ☐ 6-inch: $9,160 plus $236.91 per foot of chargeable length over 40 feet
- ☐ 10-inch or larger: $9,160 plus $355.10 per foot of chargeable length over 40 feet
- ☐ Tap into main over nine (9) feet in depth: Add $995
- ☐ Tap into main without City lateral installation: 4" lateral - $600; 6" lateral - $760

☐ ***Sewer Main Assessment per Ordinance 997:*** $16.00 per foot of property frontage

☐ ***Sewer Repayment District No._____*** (Call for details)

☐ ***Spring Valley Sanitation District:*** $130 per acre (area to include ½ of street right-of-way along property frontage)

☐ ***Montgomery Sewer Service Charges*** (Call for details)

2.2 Sewer Capacity Charge (See Fee Schedule 12-100)

☐ ***Sewer Capacity Charge*** ..... ***$4,182 per Equivalent Dwelling Unit (EDU)***

The following is to be used as a guide in calculating the fee for your project; however, the final charges will be based upon the plans submitted for a building permit:

Land Use Category		
Residential:	Single-family Dwellings	1.00 EDU
	Multi-Family	0.79 EDU
	Mobile Home/Trailer	0.79 EDU
Commercial	Self-service laundries, Coin Operated[1]	0.5 EDU per washer plus non-washer EFUs
	R.V. Parks	0.79 EDU per hook-up plus EFUs in bldgs
Restaurants:	Minimum rate, all categories	0.60 EDU
	Fast food w/ drive thru	18.8 GPD/seat[2]
	Fast food w/o drive thru	21.2 GPD/seat[2]
	Buffet	14.5 GPD/seat[2]
	Sit down w/ waiter	17.7 GPD/seat[2]
	Coffee shop w/ juice bar	19.9 GPD/seat[2]
	Bar/night club	7 GPD/seat[2]
Car wash:	Self-serve	2.0 EDUs per stall
	Automatic w/ water recycling	6.5 EDUs
	Automatic w/o water recycling[3]	EFUs case by case
Transient/Temporary Residence Facility:	Hotel, Motel, Inn, Boarding House	By EFU
	Convalescent Hospital, Hospital	By EFU
	Dormitories and other Temporary Residences	By EFU
Other	Government, Institutional	By EFU
	Commercial, Industrial	By EFU
	Manufacturing, Tenant Improvement	By EFU
	All other uses not described above	By EFU

Source: Wastewater Collection System Master Plan (City of Chula Vista, May 2014)

1 Facilities with water recycling systems shall be assessed individually. Information required for the assessment shall be provided by the applicant.

2 230 GPD/EDU.

3 Facilities using water for processing purposes shall be assessed individually by the Director.

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Development Checklist for Municipal Code Requirements
FORM 5509

2.2 Sewer Capacity Charge - Continued

Table for calculating EFUs:			
Fixture	**EFU**	**Fixture**	**EFU**
Bar sink (Commercial)	2	Sink (mop basin)	3
Bathtub	2	Sink (wash-up, each set of faucet)	2
Dental unit or Cuspidor	1	Sink or Dishwasher	2
Drinking fountain (each head)	.5	Urinal (stall)	2
Laundry tub or clothes washer	3	Urinal (wall)	2
Lavatory	1	Toilet (tank)	4
Lavatory (Dental)	1	Toilet (valve)	4
• Multiply total EFUs by 12.1 GPD to get total GPD • Divide GPD by 230 GPD/EDU to get total EDUs • Multiply result by Sewer Capacity Charge to calculate total fee			

2.3 Sewer & Drainage Basin Development Impact Fees (DIFs)

Projects located within the Poggi Canyon sewer basin and/or the Salt Creek sewer basin are also subject to Sewer & Drainage Basin DIFs, which are in addition to the Sewer Capacity Charge described above in Section 2.2. Sewer & Drainage Basin DIFs are calculated using basin-specific DIF rates, sewer flow rates, and EDUs as shown below:

☐ **Poggi Canyon Sewer Basin**
DIF to cover the costs of improvements to the sewerage system in Poggi Canyon ..... **$265 per Basin EDU**

☐ **Salt Creek Sewer Basin**
DIF to cover the costs of improvements to the sewerage system in Salt Creek Basin ..... **$1,612 per Basin EDU**

Sewer Basin DIF EDU Factors

Land Use Classification	Poggi Canyon Sewer Basin[(a)]		Salt Creek Sewer Basin[(b)]	
	Flow Rate	**Basin EDU**	**Flow Rate**	**Basin EDU**
Residential Single-Family Dwelling*	265 GPD/DU	1.00 per DU	230 GPD/DU	1.00 per DU
Residential Multi-Family Dwelling	199 GPD/DU	0.75 per DU	182 GPD/DU	0.79 per DU
Commercial/Industrial	2,500 GPD/Acre	9.43 per Acre	1,401 GPD/Acre	6.09 per Acre
Multi-Story Commercial	0.072 GPD/SF	0.272 per 1,000 sq. ft.	N/A	N/A
High School	20 GPD/Student	0.08 per Student	13 GPD/Student	0.06 per Student
Junior High School	20 GPD/Student	0.08 per Student	13 GPD/Student	0.06 per Student
Elementary School	15 GPD/Student	0.06 per Student	12 GPD/Student	0.05 per Student
Park	500 GPD/Acre	1.89 per Acre	410 GPD/Acre	1.78 per Acre
Community Purpose Facility	2,500 GPD/Acre	9.43 per Acre	1,313 GPD/Acre	5.71 per Acre

* Dettached and Attached.

(a) Source: Poggi Basin Gravity Sewer Development Impact Fee (City of Chula Vista, April 2009)
(b) Source: Salt Creek Sewer Basin Development Impact Fee Study (Bartle Wells Associates, June 2015)

2.4 Traffic Signal Fee *(See Fee Schedule 16-200)*

New projects proposed in the City are subject to a **Traffic Signal Fee** based on expected trip generation ..... **$43.95 per Trip**

☐ Your plans call for _____ additional trips generated.

Development Checklist for Municipal Code Requirements
FORM 5509

TRIP GENERATION TABLE

This is not an exhaustive list and includes the most commonly applied trip generation counts. To view the complete table, please refer to the *Fee Schedule 16-200*

Major Commercial, per 1,000 SF	
Commercial/retail center (also strip commercial)	40 T
Community shopping center (30-60 acres,100K-300K SF)	80 T
Neighborhood shopping center (< 10 acres, < 100K SF)	120 T
Commercial shops, per 1,000 SF	
Supermarket	150 T
Convenience market	700 T
Discount club	60 T
Discount store	60 T
Furniture store	6 T
Lumber store	30 T
Hardware or paint store	60 T
Garden Nursery	40 T
Industrial, per 1,000 SF or other factor as designated	
Industrial/business park (commercial included)	16 T
Industrial park (no commercial)	8 T
Industrial plant, multiple shifts	10 T
Manufacturing/assembly	4 T
Warehousing	5 T
Storage	2 T
Storage, per vault	0.2 T
Science R&D	8 T
Residential, per unit	
Single family detached	10 T
Condo/duplex	8 T
Apartments	6 T
Mobile home, adults only	3 T
Mobile home, family	5 T
Retirement community	4 T
Congregate care facility	2.5 T
Lodging, per room	
Hotel, with convention facilities and restaurants	10 T
Motel	9 T
Resort hotel	8 T
Offices	
Standard office, < 100,000 SF, per 1,000 SF	20 T
Standard office, < 100,000 SF, per acre	300 T
Standard office, > 100,000 SF, per 1,000 SF	17 T
Standard office, > 100,000 SF, per acre	600 T
Corporate office, single user, per 1,000 SF	14 T
Corporate office, single user, per acre	180 T
Medical/dental office, per 1,000 SF	50 T
Medical/dental office, per acre	500 T
Restaurant/Lounge	
Low turn-over, quality, per 1,000 SF	100 T
Low turn-over, quality, per seat	3 T
Low turn-over, quality, per acre	500 T
High turn-over, sit down, per 1,000 SF	160 T
High turn-over, sit down, per seat	6 T
High turn-over, sit down, per acre	1,000 T
Fast-food with drive-through, per 1,000 SF	650 T
Fast-food with drive-through, per seat	20 T
Fast-food with drive-through, per acre	3,000 T
Fast-food w/out drive-through, per 1,000 SF	700 T
Lounge, per 1,000 SF gross floor area	100 T

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2.5 Transportation DIFs

As required by the TransNet Extension Ordinance approved by San Diego County voters in 2004, the City is required to collect a minimum of $2,583.82 per residential unit for contribution to the SANDAG Regional Transportation Congestion Improvement Program. This minimum amount is indexed annually at the start of the fiscal year. Certain residential land uses are exempted from this fee collection as described in Chapter 3 of the RTCIP Impact Fee Nexus Study Final Report (November 26, 2007)..

☐ **Eastern Transportation DIF (ETDIF)**

Your proposed project lies within the Eastern Territories (generally to the east of I-805) and is subject to the ETDIF to cover the costs of improvements on certain roads in the City east of I-805 (Fee to be assessed with application of Building Permit). The ETDIF is assessed at a rate of $1,580.30 per daily vehicular trip. Example ETDIF calculations for selected residential land use types are provided in the table below. For other land uses, please consult SANDAG's Not So Brief Guide of Vehicular Traffic Generation Rates, excerpts of which are provided above in Section 2.4.

Example ETDIF Calculations, Selected Residential Land Uses*

Land Use Classification		ETDIF
Residential (LOW)	0 to 6 DU/Acre	$15,802 / DU
Residential (MED)	6.1 - 20 DU/Acre	$12,642 / DU
Residential (HIGH)	20+ DU/Acre	$9,481 / DU
Senior Housing	8 DU/Acre	$6,321 / DU
Residential Mixed Use	20+ DU/Acre**	$6,321 / DU

* Examples only; please contact Facilities Financing for a project specific DIF estimate.

** For multi-family residences located within the same building as commercial retail land uses; coordinate with Facilities Financing for additional details.

☐ **Western Transportation DIF (WTDIF)**

Your proposed project lies within the City's Western Territories (generally between I-5 and I-805) and is subject to the WTDIF to cover the costs of improvements on certain roads in the City west of I-805 (Fee to be assessed with application of Building Permit). The WTDIF is assessed a rate of $492.87 per daily vehicular trip. See the table below for calculations for selected residential land uses.

☐ **Bayfront Transportation DIF (BFDIF)**

Your proposed project lies within the City's Bayfront and is subject to the DIF to cover the costs of improvements on certain roads in the City west of I-5 (Fee to be determined with application of Building Permit). The BFDIF is assessed a rate of $1,191.37 per daily vehicular trip. Refer to Table 2 for calculations for selected land uses.

Example WTDIF and BFDIF Calculations, Selected Residential Land Uses*

Land Use Clasification		WTDIF Rate	BFDIF Rate
Residential (LOW)	0-6 DU/Acre	$4,928/DU	$11,913/DU
Residential (MED)	6.1-20 DU/Acre	$3,942/DU	$9,530/DU
Residential (HIGH)	20+ DU/Acre	$2,957/DU	$7,148/DU
Mobile Home		$2,464/DU	$5,956/DU
Residential Mixed	20+ DU/Acre **	$1,971/DU	$4,765/DU

* Examples only; please contact Facilities Financing for a project specific DIF estimate.

** For multi-family residences located within the same building as commercial retail land uses; coordinate with Facilities Financing for additional details.

2.6 Parkland Acquisition and Development (PAD) Fees *(See Fee Schedule 16-100)*

PAD Fees shall be paid at the time stated in the latest version of CVMC 17.10.
Per the CVMC 17.10, a single-family home includes single-family detached homes and detached condominiums. Multi-family homes include attached condominiums, attached townhouses, duplexes, triplexes and apartments.

Development Checklist for Municipal Code Requirements
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☐ **Eastern PAD Fee**

Your proposed project is located within the City's Eastern Territories (East of I-805) and is subject to PAD Fees to cover the cost of new parkland acquisition and development as follows:

Proposed Type of Project	Parkland Obligation (Dedicate parkland to the City)		Park Development Fees*	Total PAD
Single-Family Home	$12,676/DU	+	$8,690/DU=	$21,366/DU
Multi-Family Home	$9,408/DU	+	$6,450/DU=	$15,858/DU
Mobile Home	$5,932/DU	+	$4,067/DU=	$ 9,999/DU

☐ **Western PAD Fee**

Your proposed project is located within the City's Western Territories (West of I-805) and is subject to PAD Fees to cover the cost of new parkland acquisition and development as follows:

Proposed Type of Project	Parkland Obligation (Dedicate parkland to the City)		Park Development Fees*	Total PAD
Single-Family Home	$4,994/DU	+	$8,690/DU=	$13,684/DU
Multi-Family Home	$3,707/DU	+	$6,450/DU=	$10,157/DU
Mobile Home	$2,337/DU	+	$4,067/DU=	$ 6,404/DU

*Development fees are revised annually on October 1st to reflect current building industry cost indexes.

2.7 Public Facilities DIF

☐ Your proposed project is subject to the Public Facilities DIF to cover the costs of expanding the City's facilities:

Component	Single-Family	Multi-Family	Commercial	Industrial
Civic Center	$3,627/DU	$3,436/DU	$11,572/Acre	$3,656/Acre
Police	$2,029/DU	$2,191/DU	$9,585/Acre	$2,067/Acre
Corporation Yard	$ 544/DU	$ 436/DU	$9,266/Acre	$4,364/Acre
Libraries (Residential Only)	$2,085/DU	$2,085/DU	$0	$0
Fire Suppression System	$1,833/DU	$1,319/DU	$4,845/Acre	$964/Acre
Administration	$ 729/DU	$690/DU	$2,327/Acre	$736/Acre
Recreation (Residential Only)	$1,583/DU	$1,583/DU	$0	$0
Total per Residential Unit	**$12,430**	**$11,740**	———	———
Total per Commercial/Industrial Acre	———	———	**$37,595**	**$11,787**

2.8 Pedestrian Bridge DIFs

Your proposed project lies within one of the following Pedestrian Bridge benefit areas:

		Total
☐ **Otay Ranch Village 1, 2, 5, or 6**	Single-Family	$1,000/DU
	Multi-Family	$741/DU
☐ **Otay Ranch Village 11**	Single-Family	$2,839/DU
	Multi-Family	$2,105/DU
☐ **Otay Ranch Millenia Eastern Urban Center (EUC)**	Single-Family	$615.13/DU
	Multi-Family	$456.10/DU

Development Checklist for Municipal Code Requirements
FORM 5509

2.9 DIF Deferral Program

To assist in the funding for development projects in the City of Chula Vista, certain Development Fees that are due at permit issuance may be deferred until it is time to schedule the final inspection. The applicant must notify a Development Services representative in writing, if they would like to defer eligible fees prior to permit issuance.

Deferrable Fees

- **Transportation DIFs for the following locations:**
  - Eastern (ETDIF)
  - Western (WTDIF)
  - Bayfront (BFDIF)
- **Sewer Basin DIFs for the following basins:**
  - Salt Creek Sewer Basin
  - Poggi Canyon Sewer Basin
- **Pedestrian Bridge DIFs for the following communities:**
  - Otay Ranch Village 1, 2, 5, & 6
  - Otay Ranch Village 11
  - Otay Ranch Millenia Eastern Urban Center (EUC)
- **Parkland Acquisition and Development Fee (PAD)**
- **Telegraph Canyon Drainage DIF**
- **Public Facilities Development Impact Fee (PFDIF)**
  - Administration
  - Library
  - Police
  - Fire Suppression
  - Corporation Yard
  - Civic Center
- **Sewerage Capacity Charge**

Non-Deferrable Fees[1]

- **Residential Construction Tax**
- **Traffic Signal Fee**[2]
- **Sewer Administrative Fee**
- **Planning Fees**
- **Fire Administration Fees**
- **Environmental Fees**
- **Building Fees**

[1] This list is not exhaustive and may include other fees due at permit issuance.

[2] Credit for Traffic Signal Fees must be allocated and applied prior to permit issuance. No Traffic Signal credit allocation requests will be accommodated if received after permit issuance.

Pursuant to City of Chula Vista Ordinance No. 3163, the amount of the Development Fees due and payable by the Applicant at final inspection shall be the amount of the fee at the time of payment, and not at the time of building permit issuance. Deferred fees are subject to change due to fee increases and application of DIF credits.

Most development fees are adjusted annually on October 1st based on the one-year change of applicable cost indices in accordance with the Ordinances that established the fees.

For questions, contact:
Facilities Financing
619-476-5377

For project-specific DIF estimate, contact:
Tom Doyle
tdoyle@chulavistaca.gov

LENNAR

May 5, 2022

Ms. Tiffany Allen
Director
City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910

VIA Email: tallen@chulavista.gov

RE: Proposed California Municipal Finance Authority BOLD CFD

Dear Tiffany:

The purpose of the letter is to request the City of Chula Vista ("City") approve our pending application to California Municipal Finance Authority ("CMFA") to participate in their BOLD program and form a Community Facility District ("CFD") for the recently approved Sunbow project. We are requesting that the CFD would be formed with similar terms as the recently formed CFD for Village 8 West. It is anticipated that the proceeds generated through the proposed CFD would be used primarily to finance City impact fees. For your convenience, we have attached a recent total tax and CFD sizing analysis as Exhibit 1 and our proposed list of CFD eligible costs as Exhibit 2. Please let us know if you have any questions or need any additional information.

Sincerely,

David W. Shepherd, Lennar Homes of California, LLC

Cc:
Laura Black, City of Chula Vista
Kim Elliot, City of Chula Vista
Bill Hamlin, Ayres Advisors
Ryan Green, Lennar Homes of California, LLC
Alex Plishner, Lennar Homes of California, LLC
Lisa Sanders, Lennar Homes of California, LLC
Tyler Martin, Lennar Homes of California, LLC
John Yeager, O'Neil, LLP
Sandra Galle, O'Neil, LLP
Peter Piller, DPFG LLC