

# AGENDA

City of El Cajon

Successor Agency – Oversight Board

8:00 a.m., Wednesday, June 19, 2013

## BOARD MEMBERS:

### **SAHAR ABUSHABAN**

*Chancellor of the California  
Community Colleges  
Representative*

### **SCOTT BUXBAUM**

*County Board of Education  
Representative*

### **GLORIA CHADWICK**

*Grossmont Healthcare District  
Representative*

### **JIM GRIFFIN**

*County Board of Supervisors  
Representative*

### **MICHAEL GRIFFITHS**

*City of El Cajon*

### **MANJEET RANU**

*(Former RDA/MMPEG  
Employee) City of El Cajon*

### **DEBRA TURNER-EMERSON**

*County Board of Supervisors  
Representative*

## OB LEGAL COUNSEL:

**MEYERS NAVE**

## SUCCESSOR AGENCY

### STAFF:

### **DOUGLAS WILLIFORD**

*Executive Director/  
City Manager*

### **MORGAN FOLEY**

*General Counsel*

### **JENNY FICACCI**

*OB Acting Secretary /  
Housing Manager*

### **HOLLY REED-FALK**

*Financial Operations Manager*

### **VICTORIA DANGANAN**

*Senior Accountant*

### **RON LUIS VALLES**

*Administrative Secretary*

**Meeting Location: El Cajon Police Station**

**Community Room #161**

**100 Civic Center Way, El Cajon, CA 92020**

## I. CALL TO ORDER & PLEDGE OF ALLEGIANCE:

## II. ROLL CALL:

## III. AGENDA CHANGES:

IV. PUBLIC COMMENT: (This is the opportunity for a member of the public to address the Oversight Board on any item of business within the jurisdiction of the Board that is not on the agenda. Under State law no action can be taken on items brought forward under Public Comment, except to refer the item to the staff for administrative action or to place it on a future agenda.)

## V. ACTION ITEMS:

1. Approval of Action Minutes – April 18, 2013, meeting
2. Conditional Approval of Purchase and Sale Agreement – Por Favor Inc.
3. Approval of Hold Harmless Agreement – City of El Cajon for the purpose of Installing One New Groundwater Monitoring Well and Operating and Maintaining Two Existing Groundwater Monitoring Wells.

## VI. OTHER ITEMS FOR CONSIDERATION:

## VII. STAFF COMMUNICATIONS:

1. ROPS 13-14A – DOF Determination subsequent to Meet & Confer held on May 7, 2013.
2. State Controller's Office – Asset Transfer Review
3. Upcoming work program

## VIII. BOARD REPORTS/COMMENTS:

## IX. ADJOURNMENT:

**We endeavor to be in total compliance with the Americans with Disabilities Act. If you require assistance or auxiliary aids in order to participate at Oversight Board meetings, please contact staff at (619) 441-1741 as far in advance of the meeting as possible.**



# **DRAFT SUMMARY MINUTES**

## **Successor Agency to the El Cajon Redevelopment Agency Oversight Board**

**Meeting - Thursday, April 18, 2013  
El Cajon Police Station Community Room #161  
100 Civic Center Way, El Cajon, CA 92020**

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**BOARD PRESENT:** Scott Buxbaum, Jim Griffin, Michael Griffiths, Manjeet Ranu, and Debra Turner-Emerson (Chair)

**BOARD ABSENT:** Sahar Abushaban and Gloria Chadwick

**LEGAL COUNSEL:** George Eiser III, representing law firm of Meyers Nave

**STAFF PRESENT:** Jenny Ficacci, Holly Reed-Falk, Victoria Danganan and Ron Luis Valles

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### **CALL TO ORDER AND PLEDGE OF ALLEGIANCE:**

The meeting was called to order at 8:01 a.m. by TURNER-EMERSON.

### **PUBLIC COMMENT:**

No public comment. No member of the public was present.

### **ACTION ITEM NO. 1: APPROVAL OF SUMMARY MINUTES – February 20, 2013**

GRIFFIN made a motion, seconded by RANU, to approve the minutes. **Motion carried 5-0 (ABUSHABAN and CHADWICK, absent).**

**ACTION ITEM No. 2: APPROVAL OF SETTLEMENT AGREEMENT AND GENERAL RELEASE; APPROVAL OF LICENSE AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND HOWARD FISHER FOR THE STORAGE AND MAINTENANCE OF SECURED PROPERTY; APPROVAL OF AMENDMENT TO THE SUCCESSOR AGENCY FISCAL YEAR 2012-2013 BUDGET; APPROVAL OF PROMISSORY NOTE TO OBLIGATE THE SUCCESSOR AGENCY TO REPAY A LOAN FROM THE CITY OF EL CAJON TO FUND PROJECT MANAGEMENT AND ADMINISTRATIVE COSTS OF THE SUCCESSOR AGENCY.**

FICACCI summarized the staff report. Discussion ensued from board and staff regarding interested buyers in the property, inventory and value of equipment. Staff noted that the Successor Agency will pay SDG&E, water, sewer and Waste Management invoice, plus related legal costs.

GRIFFIN made a motion, seconded by GRIFFITHS, to adopt Resolution No. OB-06-13 that approved the Settlement Agreement and General Release; approved the License Agreement between the Successor Agency and Howard Fisher for the storage and maintenance of Secured Property; approved amendment to the Successor Agency Fiscal Year 2012-2013 Budget; and, approved a Promissory Note to obligate the Successor Agency to repay a loan from the City of El Cajon to fund project management and administrative costs of the Successor Agency.

**Motion carried 5-0 (ABUSHABAN and CHADWICK, absent).**

### **STAFF COMMUNICATIONS:**

DANGANAN summarized the letter received from the Department of Finance for the Due Diligence Review – All Other Funds and Accounts. She noted that the City has to pay an additional \$119,108, which was an increase in the amount that was originally reported.

In separate correspondence, FICACCI noted that the State DOF granted the Finding of Completion. FICACCI updated the upcoming work program and informed that there are some pending items that might require an Oversight Board meeting on Wednesday, May 15, 2013. Board, staff and related parties will be notified.

In response to a board query, staff noted that the City of Arcadia was the only agency which had its Long Range Property Management Plan approved by the State of California's Department of Finance. There were only five properties in that plan.

### **BOARD REPORTS/COMMENTS:**

RANU noted that he will be absent from the May 15<sup>th</sup> Oversight Board meeting.

### **ADJOURNMENT:**

GRIFFIN made a motion, seconded by BUXBAUM, to adjourn the meeting of the El Cajon Successor Agency Oversight Board at 8:41 a.m. this 18th day of April, 2013, to 8:00 a.m., May 15, 2013, in the Police Station's Community Room, 100 Civic Center Way, El Cajon, California.

**Motion carried 5-0 (ABUSHABAN and CHADWICK, absent).**

APPROVED:

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Debra Turner-Emerson, Chairperson

ATTEST:

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Jennifer Ficacci, Oversight Board Acting Secretary

**AGENDA REPORT**  
**CITY OF EL CAJON SUCCESSOR AGENCY OVERSIGHT BOARD**  
**June 19, 2013, Meeting**

**SUBJECT: CONDITIONAL APPROVAL OF PURCHASE AND SALE AGREEMENT  
– POR FAVOR, INC.**

**RECOMMENDED ACTION:** That the Oversight Board adopt the proposed Resolution to:

1. Conditionally approve the proposed Purchase and Sale Agreement (“Sale Agreement”) between the City of El Cajon, as successor agency to the former El Cajon Redevelopment Agency (“Successor Agency”), and Por Favor Inc., for the sale of 156 E. Main Street and the adjacent lot, Assessor’s Parcel Numbers 488-083-15 and -16, with such changes approved by the Executive Director, subject to approval of the Long Range Property Management Plan by the California Department of Finance (“DOF”);
2. Authorize the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of chief executive officer for the Successor Agency, to execute the Sale Agreement and related documents necessary to complete the sale on behalf of the Successor Agency; and

**BACKGROUND:** On May 28, 1998, the former El Cajon Redevelopment Agency (“Agency” and “Lessor”) entered into a Lease Option Agreement (“Lease Option”) with Por Favor Restaurant (“Lessee”) for the purpose of constructing outdoor dining on a portion of Agency property known as 156 E. Main Street and the adjacent parcel, Assessor’s Parcel Numbers 488-083-15 and -16 (the “Properties”).

The terms of the Lease Option included a 10-year term, with one 10-year option period, for 4,356 square feet at a purchase price of \$38,250 (“Purchase Price”), provided that Lessee first obtains title to the property known as 148 E. Main Street, Assessor’s Parcel Number 488-083-14.

During the term of the Lease Option, Lessee agreed to pay rent of \$3,825 per year, to be paid over 120 months, to be credited to the Purchase Price. During the 10-year option period, Lessee further agreed to pay \$1.00 per year in rent plus any taxes due.

The Lessee has completed the conditions precedent under the Lease Option, including the full payment of the \$38,250 purchase price between 1998 to 2008, and by recently acquiring the property at 148 E. Main Street effective April 5, 2013. Lessee now desires to acquire the Successor Agency Properties.

Terms of the Sale Agreement, as provided under the Lease Option, include a purchase price of \$38,250, with credit to the Lessee/buyer of total rents paid in the amount of \$38,250. It is anticipated that normal costs of sale, including title, escrow and recording

fees, are to be paid by Lessee unless otherwise directed.

The Properties are identified as Site 1 and 2 of the Long Range Property Management Plan ("LRPMP") which were approved by the Oversight Board on November 21, 2012, as Resolution No. OB-09-12. Although the Lease Option is an enforceable obligation, the Oversight Board cannot authorize disposal of properties, as provided under California Health & Safety Code Section 34191.3, until approval of the LRPMP has been approved by the DOF. Therefore this report provides for conditional approval of the sale, subject to DOF approval of the LRPMP.

Sale of the property was approved by the Successor Agency at a public hearing held on June 11, 2013, and 10 days public notice of today's action was provided in accordance with California Health & Safety Code Section 34181(f).

**FISCAL IMPACT:** The requested action will result in sale of two of the 15 Successor Agency properties identified in the LRPMP and likely result in no cost to the Successor Agency upon sale. Consummation of the sale will not occur until approval of the LRPMP by the DOF.

**ATTACHMENTS:**

1. Proposed Resolution
2. Lease Option Agreement
3. Request from Por Favor Restaurant to exercise the Lease Option Agreement
4. Grant Deed – 148 E. Main Street, APN 488-083-14
5. Draft Purchase and Sale Agreement
6. Property Profile – Site 1 and 2
7. Subject Photographs – Site 1 & 2
8. Proof of Public Notice

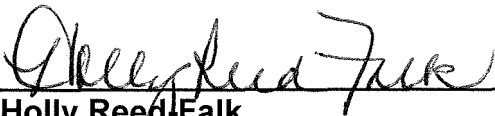
**Prepared by:**



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**Jenny Ficacci,  
Housing Manager**

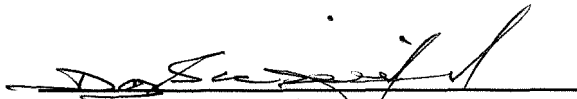
**Reviewed by:**



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**Holly Reed Falk,  
Financial Operations Manager**

**Approved by:**



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**Douglas Williford  
Executive Director/City Manager**

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RESOLUTION NO. OB-07-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE  
SUCCESSOR AGENCY OF THE FORMER EL CAJON  
REDEVELOPMENT AGENCY CONDITIONALLY  
APPROVING A PURCHASE AND SALE AGREEMENT  
WITH POR FAVOR INC.

WHEREAS, on May 28, 1998, the former El Cajon Redevelopment Agency ("Agency" and "Lessor") entered into a Lease Option Agreement ("Lease Option") with Por Favor Restaurant ("Lessee") for the purpose of acquiring and constructing outdoor dining on a portion of Agency property known as 156 E. Main Street and its adjacent parcel, Assessor's Parcel Numbers 488-083-15 and -16 ("Properties") for Por Favor Restaurant; and

WHEREAS, Lessee has completed all conditions precedent under the Lease Option by recently acquiring the property at 148 E. Main Street effective April 5, 2013, and now desires to acquire the Properties; and

WHEREAS, Sections 34177 (e) and 34181 (a) of the California Health and Safety Code provides that the Successor Agency shall dispose of assets and properties of the former redevelopment agency at the direction of the Oversight Board; and

WHEREAS, Assembly Bill 1484 amended Sections 34177 and 34181, as well as added Chapter 9 (commencing with Section 34191.1) to Part 1.85 of Division 24 of Health and Safety Code; and

WHEREAS, as amended, Section 34177 (e), which required a successor agency to dispose of assets and properties as directed by the Oversight Board, now states that these provisions shall not apply to a successor agency that has been issued a finding of completion by the California Department of Finance ("DOF"), and Section 34191.1 of the newly-added Chapter 9 states that the provisions of that chapter shall apply to a successor agency upon its receipt of a finding of completion; and

WHEREAS, Section 34191.3 provides that the requirements of Sections 34771 (e) and 34181 (a) shall be suspended, except as those provisions apply to transfers for governmental use, until DOF has approved a long-term property management plan pursuant to Section 34191.5 (b); and

WHEREAS, the Successor Agency received its finding of completion from the DOF on April 11, 2013, and resubmitted its approved Long Range Property Management Plan ("LRPMP") that was approved by the Oversight Board on November 21, 2012, to the DOF on April 11, 2013; and

WHEREAS, the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency held a meeting on June 19, 2013, at which time it considered conditionally approving a Purchase and Sale Agreement (“Sale Agreement”) under that certain Lease Option Agreement with the Lessee, consistent with the LRPMP, which is pending approval from the DOF; and

WHEREAS, proposed Sale Agreement would be in the best interests of the Successor Agency, the City of El Cajon, and all taxing entities by disposing of properties under enforceable obligations in an expeditious manner, upon approval of the LRPMP by the DOF.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

- A. The Oversight Board finds that:
  - 1. The recitals above are true and correct and have been incorporated herein by reference; and
  - 2. The proposed project is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because it will have no physical effect on the environment; and
  - 3. The proposed Sale Agreement would be in the best interest of the taxing entities because it will dispose of properties under enforceable obligations in an expeditious manner, upon approval of the LRPMP by the DOF.
- B. The Oversight Board hereby **CONDITIONALLY APPROVES** the proposed Sale Agreement substantially in the form as presented in **Attachment 1**, with such changes as may be approved by the Executive Director, subject to approval of the LRPMP by the DOF.
- C. The Executive Director of the Successor Agency is hereby authorized to execute such documents as are reasonably necessary and proper to complete the Sale Agreement with Por Favor Inc.

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PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 19<sup>th</sup> day of June, 2013, by the following vote to wit:

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

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Debra Turner-Emerson, Chairperson

ATTEST:

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Jennifer Ficacci, Acting Oversight Board Secretary

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## **POR FAVOR INC.**

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148 E. Main Street  
El Cajon, CA 92020

Phone 619-466-3515  
Fax 619-466-0817

April 17, 2008

El Cajon Redevelopment Agency  
200 E. Main St.  
El Cajon, CA 92020

Re: APN 488-083-15,16

Dear Sirs or Madam,

Our lease expires on May 28, 2008. We would like to continue leasing the property known as APN 488-083-15, 16 for an additional 10 year option.

Sincerely,

Gabriel Marrujo

## LEASE OPTION AGREEMENT

THIS LEASE, made and executed at El Cajon, California, on 5/28/98, between the CITY OF EL CAJON REDEVELOPMENT AGENCY, a municipal corporation, and POR FAVOR RESTAURANT, hereinafter called respectively Lessor and Lessee.

IT IS AGREED by and between the parties hereto as follows:

1. **DESCRIPTION OF PREMISES.** The Lessor hereby leases to Lessee, and Lessee leases from Lessor, on the terms and conditions hereinafter set forth, the real property situated in the City of El Cajon, State of California, commonly described as APN 488-083-15,16, hereinafter called the "Property."
2. **TERM.** The term of this lease shall be for ten (10) years with one 10 year option period, commencing on the date this lease is executed, and ending on 5/28/08 unless sooner terminated by Lessee's exercise of its option as provided for herein or otherwise terminated pursuant to the terms of this Agreement or under applicable law. If after the original ten year lease and the subsequent ten year option period, Lessee fails to exercise the Option to Purchase however desires to extend the terms of this Lease, both parties agree to negotiate in good faith the terms and conditions of a new lease.
3. **OPTION TO PURCHASE.** Lessor grants Lessee an exclusive option to purchase the Property any time during the term of this Lease for a purchase price of \$38,250 ("Purchase Price") provided that Lessee is in compliance with all the terms and obligations of this Agreement and first obtains title to the property known as APN 488-083-14 and all of the improvements contained thereon. In the event Lessee exercises such option, the sale of the Property shall be effectuated by a Disposition and Development Agreement satisfactory in form and content to the Lessor. Any rent payments paid by Lessor pursuant to this Lease shall be credited by Lessor in favor of Lessee toward the purchase price.
4. **RENT.** Lessee agrees to pay to Lessor \$3,825 per year, for the entire term of this Agreement (120 months) payable in monthly installments of \$318.75 in advance on or before the first day of each calendar month. Should Lessee exercise the 10 year option period Lessee agrees to pay Lessor \$1.00 per year for the entire term of that option period in exchange for Lessee's continued operation and maintenance of Property in conformance with all terms of this Agreement.
5. **USE.** The Property is leased to Lessee only for use as an outdoor dining facility and public thoroughfare in conjunction with a Por Favor Mexican Restaurant located on the adjacent parcel. Lessee hereby agrees that all improvements to the Property and the cost associated with construction and maintenance of such improvements is the sole responsibility of the Lessee. Lessee shall not use the Property for any purpose other than the purpose for which the Property is hereby leased.
6. **CONDEMNATION:** If all or part of the Property is acquired by eminent domain or purchase in lieu thereof, Lessee acknowledges that it shall have no claim to any compensation awarded for the taking of the Property or any portion thereof or for loss of or damage to Lessee's improvements.
7. **RELOCATION BENEFITS.** Lessee hereby acknowledges that it has been informed that Lessor is a public entity and that the Property has previously been acquired by Lessor for a public purpose. Lessee further acknowledges that any rights acquired under this Lease arose after the date of acquisition of the Property and that said rights are subject to termination when the Property is needed by Lessor. Lessee hereby acknowledges that at the time of said termination of this Lease by

a sublessee to waive relocation benefits in any sublease that may be executed with regard to the Property.

8. **ALTERATIONS, MECHANICS' LIENS.** Lessee shall not make, or cause to be made, any alterations to the Property, or any part thereof, without the prior written consent of Lessor. Lessee shall keep the Property free from any liens arising out of any work performed, material furnished, or obligations incurred by Lessee.

9. **APPROVAL OF PLANS AND SPECIFICATIONS.** Prior to the commencement of any construction requiring a permit of any kind from the City of El Cajon or any other public agency by Lessee on the Property, the plans and specifications pertaining to all buildings, structures and landscaping to be located on the property shall be approved by the Lessor. All construction shall conform to all applicable local, state and federal law.

10. **MAINTENANCE AND REPAIRS.** Lessee shall pay all costs associated with keeping and maintaining the Property and its appurtenances, and every part thereof in good and sanitary order, condition and repair, hereby waiving all right to make repairs at the expense of Lessor as provided in Section 1941 and 1942 of the California Civil Code.

11. **SIGNS.** Lessee shall not place any sign upon the property without prior written consent from Lessor's City Manager, or designee. Lessee shall pay for all costs of any approved signage and comply with all applicable sign codes and ordinances.

12. **POLITICAL SIGNS.** Lessee agrees and acknowledges that it will not place any political sign, banner, or similar device on the Property. Lessee expressly waives any and all rights that it may have to place such devices on the Property.

13. **ASSIGNMENT AND SUBLETTING.** Lessee shall be permitted to assign this Agreement, or any interest therein, and to sublet the Property, or any part thereof, for any lawful purpose provided all assigns and/or sublettors conduct businesses or operate uses that are permitted within the zone in which the Property is located and with approval of the Lessor. Lessee shall give Lessor at least fifteen (15) days' written notice of its intent to assign or sublet the Property. The notice shall include the assign's/sublettor's name and principal contact, as well as the nature of the assign's/sublettor's business or use.

14. **NON DISCRIMINATION AND NON SEGREGATION CLAUSE:** Lessee shall refrain from restricting the lease, sublease, rental, transfer, use, occupancy, improvement, tenure, or enjoyment of the Property or any part thereof, on the basis of sex, marital status, race, color, religion, creed, ancestry or national origin of any person. All subleases pertaining to any right of use or occupancy of the Property shall contain or be subject to substantially the following non-discrimination and non-segregation clause:

"The Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under and through it, and this Statement is made and accepted and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, religion, creed, natural origin, or ancestry in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall Lessee itself, or any person claiming under or through it, establish or permit such

practice or practices of discrimination or segregation with reference to the selection, location, number or occupancy of tenants, grantees, or vendees in the land hereby leased."

15. **HAZARDOUS/TOXIC WASTE.** Lessor has not, nor, to Lessor's knowledge, has any third party used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (as defined below) on, under, about or within Lessor's Property in violation of any law or regulation. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material (as defined below) on, under, about or within Lessor's Property in violation of any law or regulation. Lessee agrees to defend and indemnify Lessor, to the extent stated in Section 16, against any and all losses, liabilities, claims and/or costs arising from any breach of any warranty or agreement contained in this Section. As used in this Section, "Hazardous Material" shall mean any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including petroleum and asbestos).

16. **INDEMNIFICATION AND INSURANCE.** (a) Lessee shall release, defend (with counsel satisfactory to Lessor), indemnify and hold Lessor harmless from and against any and all liability, costs, and expense for loss of or damage to the Property (including but not limited to the Property) and for injuries to or death of any person (including, but not limited to, the Property and employees of each party hereto) arising from, relating to, or resulting from:

(i) The use of the Property by Lessee, its agents, employees, or invitees;

(ii) Any work performed on the Property or materials furnished to the Property at the instance or request of Lessee or any agent or employee of Lessee;

(iii) Default under this Lease by Lessee, or by any agent or employee of Lessee, or failure by Lessee or any agent or employee of Lessee to comply with any requirement of Law; or

(iv) The condition of the Property or any part thereof, regardless of whether such liability, cost or expense is caused or contributed to by the negligence, active or passive, of Lessor.

(b) Upon written notice from Lessor, Lessee agrees to assume the defense of any lawsuit, administrative action, or other proceeding brought against Lessor by any public body, individual, partnership, corporation, or other legal entity relating to any matter covered by this Agreement for which the Lessee has an obligation to assume liability for and/or to indemnify and hold harmless Lessor pursuant to this Agreement. Lessee shall pay all the costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation expenses, settlement payments, and amounts paid in satisfaction of judgments. Any and all lawsuits or administrative actions brought or threatened on any theory of relief available at law, in equity, or under the rules of any administrative agency shall be covered by this Section, including, but not limited to, the theories on intentional misconduct, negligence, strict liability, nuisance, breach of statute, regulation, or ordinance, or any theory created by statute or ordinance, whether local, state, or federal.

(c) It is expressly understood and agreed that the foregoing provisions shall survive the termination of this Lease.

(d) The requirements as to the types and limits of insurance coverage to be maintained by Lessee as required herein, and any approval of said insurance by Lessor, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to this Agreement, including but not limited to the provisions concerning indemnification.



17. **PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.** Lessee shall provide proof of liability coverage which meets Lessor's insurance requirements of \$1,000,000 and designates Lessor as additional insured. Such policy shall insure against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use or occupancy of the leased Premises.
18. **COMPLIANCE WITH LAW.** Lessee shall, at its sole cost and expense, comply with all of the requirements of all local, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Property and shall faithfully observe in the use of the Property all regulations, ordinances and statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Lessor be a party thereto or not, that Lessee has violated any such ordinance or statute in the use of the Property shall be conclusive of that fact as between Lessor and Lessee.
19. **BREACH OF AGREEMENT.** The violation of any of the provisions of this Lease shall constitute a breach of this Agreement by Lessee, and in such event said lease shall automatically cease and terminate.
20. **WAIVER OF BREACH.** Any express or implied waiver of a breach of any term of this Agreement shall not constitute a waiver of any further breach of the same or other term of this lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this lease, except as to the payment of rent accepted.
21. **BINDING ON SUCCESSORS.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.
22. **UTILITIES.** Lessee shall pay all telephone, gas, electric, water, trash, and sewer costs, as well as any other costs incurred for services provided to the Property.
23. **ENTRY BY LESSOR.** Lessee shall permit Lessor and its agents to enter into and upon the Property at all reasonable times and upon reasonable notice to inspect the Property to determine if Lessee is complying with terms of lease, to do all other lawful acts to protect Lessor's interests, and to post notices of nonliability for alterations, additions or repairs.
24. **TAXES AND ASSESSMENTS.** Lessee shall be liable for all taxes and assessments levied against the Property and/or against personal property or improvements placed by Lessee in or about the Property.
25. **INSOLVENCY. RECEIVER.** Either the appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or a general assignment by the Lessee for the benefit of creditors, or any action taken or offered by Lessee under any insolvency or bankruptcy action, shall constitute a breach of this lease by Lessee, and in such event said lease shall automatically cease and terminate.
26. **ATTORNEY FEES.** If any action at law or in equity is brought to recover any rent or other sums under this Agreement, or for or on account of any breach of this Agreement, or to enforce or interpret any of the covenants, terms, or conditions of this lease, or for the recovery of the possession of the Property, the prevailing party shall be entitled to recover from the other party, as part of

prevailing party's costs, reasonable attorney fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

27. **NOTICES.** Except as otherwise expressly provided by law, all notices or other communications required or permitted by this lease or by law to be served on or given to either party to this Agreement by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to Lessee at:

Por Favor Restaurant  
2257 Fletcher Parkway  
El Cajon, CA 92020  
Attn: Ms. Lupe Marrujo

or to Lessor at:

El Cajon Redevelopment Agency  
City of El Cajon  
200 E. Main Street  
El Cajon, CA 92020  
Attn: David D. Cooksy, Redevelopment Manager

Either party, Lessee or Lessor, may change its address for the purpose of this Section by giving written notice of the change to the other party in the manner provided by this Section.

28. **HOLDING OVER.** Any holding over after the expiration of said term, with the consent of lessor, shall be construed to be a tenancy from month to month.

29. **PARTIAL INVALIDITY.** Should any provision of this lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this lease shall remain in effect, unimpaired by the holding.

30. **ENTIRE AGREEMENT.** This instrument constitutes the sole agreement between Lessor and Lessee respecting the Property, the leasing of the Property to Lessee, and the specified lease term, and correctly sets forth the obligations of Lessor and Lessee. Any agreement or representations respecting the Property or its leasing by Lessor to Lessee not expressly set forth in this instrument are void.

31. **TIME** is of the essence for this Agreement.

32. **NO PARTNERSHIPS or JOINT VENTURE.** The relationship between the Parties created by this Lease shall be strictly that of Lessor and Lessee and shall not be construed as a partnership or joint venture.

33. **COUNTERPARTS.** The Lease may be signed in counterparts or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

IN WITNESS WHEREOF Lessor and Lessee have executed this lease on the date written above.

EL CAJON REDEVELOPMENT AGENCY, a  
municipal corporation

POR FAVOR RESTAURANT

By *Bill Garrett*  
Bill Garrett, Executive Director

*Lynn McDougal*

ATTEST:

*Marilynn Linn*  
Marilynn Linn, Agency Secretary

Approved as to Content:

*David D. Cooksy*  
David D. Cooksy, Redevelopment Manager

Approved as to Form:

*Lynn McDougal*  
Lynn McDougal, Agency Counsel

Approved at El Cajon City Council Meeting of <u>4/28/98</u>
Resolution/Document No. <u>ECRA319</u>
<u><i>Marilynn Linn</i></u> Marilynn Linn, CMC, City Clerk

April 30, 2013

Douglas Williford, Executive Director  
City of El Cajon, Successor Agency  
To the former El Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon, CA 92020

Re: Lease Option Agreement dated May 28, 1998  
156 East Main Street & adjacent lot  
APN: 488-083-15 and 488-083-169


Dear Doug,


As a condition of exercising the Lease Option Agreement for the properties at 156 E. Main Street, El Cajon, and the adjacent lot, Assessor's Parcel Number 488-083-15 and 488-083-16 ("Properties"), we were required under Section 3 to acquire and obtain title to the property known as APN 488-083-14 ("148 E. Main Street"). As the acquisition of the 148 E. Main Street property occurred on April 5, 2013, as evidenced by the attached Grant Deed, please accept this as our written request to exercise our Option to Purchase under Section 3 of the enclosed Lease Option Agreement.

Title to the Properties should be conveyed in the name of Por Favor Inc. and we understand that completion of the sale will be subject to approval by the Successor Agency Oversight Board and the California Department of Finance's approval of the Long Range Property Management Plan.

Thank you for your consideration and in the event you have any questions regarding our request, please feel free to contact **Gabe Marrujo** at (619) 990-9202 or via email at [downtowncafe2002@aol.com](mailto:downtowncafe2002@aol.com).

Regards,

  
Lupe Marrujo,  
Treasure por favor inc

  
Gabriel Marrujo  
Sectary Por Favor, Inc.

  
Guillermo la Farga Marrujo  
President Por Favor, Inc

4

DOC # 2013-0216330



RECORDING REQUESTED BY  
Ticor Title Company of California

AND WHEN RECORDED, MAIL TO:

<sup>Mail Tax Statements</sup>  
G,G, & L MARRUJO, LLC, A California Limited  
Liability Company  
182 E. Main Street  
El Cajon, CA 92020

APR 05, 2013 3:27 PM

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
Ernest J. Dronenburg, Jr., COUNTY RECORDER  
FEES: 935.50  
DC: DC

1125.7 PAGES: 2



ORDER NO.: 134310  
ESCROW NO.: 00134310-002-SU

*[Handwritten initials]*

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED**

THE UNDERSIGNED GRANTOR(s) DECLARE(s)  
 unincorporated area  
 the City of El Cajon

Documentary Transfer Tax is \$907.50 City Tax is \$ 0.00  
 computed on full value of interest or property conveyed, or  
 full value less value of liens or encumbrances remaining at the  
time of sale

Parcel No. 488-083-14-00

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
Dawn C. Rougeron, Successor Trustee of the GENERAL REVOCABLE TRUST AGREEMENT OF CONRAD GEORG  
CONRAD, established by trust agreement dated November 3, 2008  
hereby GRANT(s) to  
G,G, & L MARRUJO, LLC, A California Limited Liability Company  
the following real property in the City of El Cajon County of San Diego, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

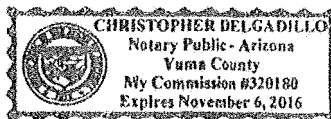
Dated: February 4, 2013

*[Handwritten Signature]*  
Dawn C. Rougeron, Successor Trustee

STATE OF ARIZONA }  
COUNTY OF Yuma } SS:

On February 4<sup>TH</sup> 2013 before me, CHRISTOPHER DELGADILLO,  
a Notary Public, personally appeared DAWN (CONRAD) ROUGERON  
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 paragraph is true and correct.  
WITNESS my hand and official seal.

Signature *[Handwritten Signature]*



MAIL TAX STATEMENTS AS DIRECTED ABOVE

**EXHIBIT A**

ALL THAT PORTION OF LOT "A" OF RANCHO EL CAJON, IN THE CITY OF EL CAJON, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP OF SAID RANCHO MADE IN THE CASE OF ISAAC LANKERSHIM ET AL VS LEVI CHASE ET AL, IN THE 18TH JUDICIAL DISTRICT ON FILE IN THE COUNTY RECORDER'S OFFICE OF SAN DIEGO COUNTY DESCRIBED AS FOLLOWS:

11258

CONNECTING AT A POINT 283 FEET EAST 50 FEET NORTH OF THE SOUTHWEST CORNER OF THAT TRACT OF LAND MARKED "LAMB" ON SAID PARTITION MAP; THENCE NORTH 90 FEET; THENCE EAST 50 FEET; THENCE SOUTH 90 FEET; THENCE WEST 50 FEET TO THE PLACE OF COMMENCEMENT

**PURCHASE AND SALE AGREEMENT**

**By and Between**

**CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE FORMER EL CAJON  
REDEVELOPMENT AGENCY  
("Seller")**

**and**

**POR FAVOR INC.  
("Buyer")**

## PURCHASE AND SALE AGREEMENT

This Agreement of Purchase and Sale ("Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2013. CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE FORMER EL CAJON REDEVELOPMENT AGENCY, a municipal corporation, ("Seller") agrees to sell to POR FAVOR INC., a California corporation, ("Buyer"), that certain real property located in the city of El Cajon, county of San Diego, state of California, described in Exhibit "A", attached hereto (the "Property").

### **I. Recitals**

The following recitals are true and correct and are hereby incorporated by reference.

A. Seller is the owner of the Property two commercially zoned parcels, located at 156 East Main Street, El Cajon, California and its adjacent parcel, identified by Assessor's Parcel Numbers ("APN") 488-083-15 and 488-083-16. The Property, and the improvements located on the Property, (collectively referred to as "Property") is depicted in the attached Exhibit "A."

B. Buyer desires to purchase and Seller desires to sell the Property on the terms and conditions of this Agreement,

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### **II. Purchase Price and Terms**

A. Subject to the terms of this Agreement and according to terms and conditions set out in that certain Lease Option Agreement ("Lease Option") executed May 28, 1998 between Buyer and Seller, hereby incorporated as if fully set forth herein, Buyer has agreed to buy, and Seller agreed to sell, the Property, as outlined in the Lease Option, for Thirty-eight Thousand, Two Hundred Fifty Dollars and No Cents (\$38,250.00) (the "Purchase Price"). The Lease Option provides that the Purchase Price is payable through credits of monthly rent installments of Three Thousand, Eight Hundred Twenty-five Dollars and No Cents (\$3,825.00) per year or Three Hundred Eighteen Dollars and Seventy-five Cents (\$318.75) per month, during the term of the Lease Option. Rent in an amount totaling Thirty-eight Thousand, Two Hundred Fifty Dollars and No Cents (\$38,250.00) was fully paid to Seller as of May 2008.

In addition to the payment of the Purchase Price the Lease Option conditions the Buyer's ability to purchase of the Property during the lease term upon the Buyer's compliance with all terms and obligations of the Lease Option, including Buyer's obtaining title to the property known as APN 488-083-14 or 148 East Main Street, El Cajon. Buyer has complied with all terms and obligations of the Lease Option, and completed the acquisition of the property at 148 East Main Street, El Cajon on April 5, 2013. Under the terms of the Lease Option, upon fulfillment of the condition precedent to the purchase of the Property requiring Buyer obtain title



to the property at 148 East Main Street, and the payment of the Purchase Price through the rent payments Buyer paid for the Property pursuant to the Lease Option, Buyer may exercise its option to purchase the Property. Seller will now sell the Property to Buyer at a purchase price of Thirty-eight Thousand Two Hundred Fifty Dollars and No Cents (\$38,250.00), with credit for rent paid of Thirty-eight Thousand Two Hundred Fifty Dollars and No Cents (\$38,250.00).

B. Deposits.

1. Initial Deposit. Upon signing this Agreement, Buyer shall deliver to Escrow Holder FIVE THOUSAND and 00/100 Dollars (\$5,000.00) [or such other amount as deemed appropriate by Escrow Holder] as a good faith deposit ("Initial Deposit"). Such deposit shall be deposited into Escrow and credited against costs chargeable to Buyer at the Close of Escrow.

2. Deposit. The Initial Deposit and any subsequent deposit made by the Buyer (the "Second Deposit") are sometimes referred to herein as the "Deposits." The Deposits shall, if requested by Buyer, be deposited by Escrow Holder in an interest-bearing bank or savings and loan association account and the accrued interest shall become part of the Deposits. If there is no Second Deposit, "Deposits" means the Initial Deposit. All Deposits shall be made by cash, check or wired funds.

C. Buyer's Entry onto Property. While this Agreement is in effect, Buyer, its agents, contractors and subcontractors shall have the right to enter upon the Property, at reasonable times during ordinary business hours and upon prior written notice to Seller, to make any and all inspections and tests as Buyer reasonably deems desirable and which may be accomplished without causing any material alteration or damage to the Property. Buyer agrees to indemnify, defend and hold Seller and the Property harmless from any and all costs, loss, liability, damages or expenses, of any kind or nature, arising solely out of or resulting from such entry.

**III. Escrow**

A. Opening of Escrow. The "Escrow Holder" shall be Oak Tree Escrows, Inc. in El Cajon, California. For purposes of this Agreement, the Escrow shall be deemed opened on the date Escrow Holder shall have received a fully executed copy of this Agreement (or signed duplicate counterparts) from both Buyer and Seller. Buyer and Seller agree to deposit this Agreement with Escrow Holder within ten (10) days after this Agreement has been signed by both parties ("Execution Date"). Escrow Holder shall confirm to Buyer and Seller, in writing, the date Escrow is opened, the expiration date of any review periods, and the Closing Date. In addition, Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement; Buyer and Seller agree to sign and deliver such supplemental escrow instructions to Escrow Holder within ten (10) days after receipt thereof. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control as between Buyer and Seller unless such supplemental instructions expressly state that they supersede or

modify this Agreement.

B. Conditions Precedent. Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedents, which are for Buyer's benefit only:

1. Conditions of Title. It shall be a condition to the Close of Escrow that title to the Property is conveyed to Buyer by Seller by Grant Deed subject only to any of the following approved conditions of title ("Approved Conditions of Title"):

a. All nondelinquent real estate taxes and assessments.

b. Building use or occupancy restrictions and zoning and building laws and ordinances of the Federal, state, municipal, city and other governmental authorities having jurisdiction over the Property.

c. All matters which would be disclosed by an inspection or survey of the Property.

2. Title. Within ten (10) Business Days of the date of this Agreement, Buyer shall obtain at Buyer's expense a preliminary report for the Property ("Preliminary Report") issued by \_\_\_\_\_ ("Title Company"), together with copies of all exceptions and the documents supporting the exceptions ("Exceptions") in the Preliminary Report. Within ten (10) Business Days after receipt, Buyer shall review the Preliminary Report and approve or disapprove of the conditions of the title reflected in the report ("Conditions of Title"). Should a supplemental report be issued disclosing additional title exceptions that significantly affect the operation of the Property or involve a material surface encroachment or impairment of access, then (i) the foregoing procedures shall apply to the new exceptions disclosed by the supplemental report, except that the above-referenced ten-day periods shall be reduced to five (5) days, and (ii) if necessary, the Close of Escrow shall be extended to the extent necessary to accommodate the foregoing procedures.

Seller agrees to pay and discharge upon Close of Escrow all deeds of trust, mortgages, mechanics' liens, judgments and attachment liens and other encumbrances securing an obligation to pay money which exist as of the date hereof or are created or suffered by Seller (other than (i) the Lease Option; (ii) taxes on Buyer's possessory interest in the Property, whether delinquent or non-delinquent; and non-delinquent taxes, special assessments, and other fees and assessments which are to be prorated as provided herein, and liens and encumbrances created or suffered by Buyer).

3. Title Policies. On or before the Completion of the Sale, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of Title Company's regularly scheduled premium, a California Land Title Association ("CLTA") extended owner's policy of title insurance ("Owner's Policy") for the parcel, in the face amount of the Purchase Price (the "Title Policy") with the endorsements Buyer

may require ("Endorsements"), showing title to the Property vested in Buyer subject only to the Condition of Title, the lien of real property taxes for the current fiscal year not yet due or payable, and the standard preprinted exceptions and stipulations of the Title Policies.

4. Physical Condition of the Property. Within five (5) Business Days of the date of this Agreement, Buyer shall review and approve or disapprove of the physical condition of the Property. Seller shall not cause the physical condition of the Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buyer.

5. Property Documents. Within ten (10) Business Days of this Agreement, Seller shall deliver to Buyer copies of all permits, soils reports, licenses, maintenance contracts, utility contracts, operating contracts, management contracts, service contracts, and other contracts pertaining to the Property, together with any amendments or modifications (collectively, "Property Documents"). Within ten (10) Business Days after receipt of each Property Document from Seller, Buyer shall review and approve or disapprove each Property Document. On or before the Close of Escrow, Seller shall assign to Buyer all of Seller's rights and remedies under the Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property ("Assignment of Contracts") in form and substance satisfactory to Buyer. At Buyer's request, the Assignment of Contracts shall exclude Seller's rights under any Property Documents designated by Buyer. At Buyer's request, Seller shall obtain the consent to assignment of any other parties to the Property Documents that Buyer specifies. At Buyer's request, Seller shall terminate the Property Documents that Buyer specifies by delivering notices to the other parties under the Property Documents in sufficient time to terminate the Property Documents prior to the Close of Escrow.

6. [Reserved]

7. [Reserved]

8. [Reserved]

9. [Reserved.]

10. Warranty Bill of Sale. [Intentionally Omitted]

11. Failure of Conditions Precedent. If any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Buyer disapproves of matters for which Buyer's approval is required, Buyer may:

a. Waive and Close. Waive the condition or disapproval and close Escrow in accordance with this Agreement, without adjustment or abatement of the Purchase Price; or

b. Cure and Close: Cure the failure of condition or representation and reduce the Purchase Price by an amount equal to the cost of cure; or

c. Terminate. Terminate this Agreement by written notice to Seller and to Title Company ("Buyer's Termination Notice").

C. Title Policy. Title shall be evidenced by the willingness of the Title Company to issue its standard coverage CLTA Owner's Form Policy of Title Insurance ("Title Policy") in the aggregate amount of the Purchase Price showing title to the Property vested in Buyer. Buyer may elect to request that Title Company issue an extended coverage title policy provided the issuance thereof does not delay the Close of Escrow.

D. Close of Escrow. For purposes of this Agreement, the "Close of Escrow" shall be defined as the date that the grant deed or deeds conveying the Property to Buyer is or are recorded in the Official Records of San Diego County, California. Escrow shall close on or before thirty (30) business days after the Execution Date (the "Closing Date").

E. Conditions to Close of Escrow.

Conditions to Buyer's Obligations. Buyer's obligation to consummate the transaction contemplated by this Agreement is subject to the satisfaction of the following conditions for Buyer's benefit on or prior to the dates designated below for the satisfaction of such conditions (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions by written waiver):

1. Seller's Obligations. As of the Close of Escrow, Seller shall have performed all of the obligations required to be performed by Seller under this Agreement.

2. Seller's Representations. All representations and warranties made by Seller to Buyer in this Agreement shall be true and correct as of the Closing Date and shall survive the closing. Seller represents and warrants to Buyer that as of the date of this Agreement and as of the Completion of Sale:

a. Disclosure. Seller has disclosed to Buyer all information concerning the Property to which Seller has access, and all information concerning the Property that Seller has provided to Buyer is complete and correct in all respects.

3. Condition of Property. The Property is in good condition and free from any defects, including without limitation, erosion, drainage or soil problems, physical, mechanical or electrical defects, defects in the pavement, or defects in utility systems.

4. Special Assessments or Condemnation. There are not presently pending (i) any special assessments, except as expressly stated in the Property Documents or

Preliminary Report, or (ii) condemnation actions against the Property or any party. Moreover, Seller has not received notice of any special assessments or condemnation actions being contemplated. There are no existing, proposed, or contemplated eminent domain proceedings that would affect the Property. Moreover, Seller has not received any notice of existing, proposed, or contemplated eminent domain proceedings that would affect the property.

5. Title.

a. Ownership. Seller is the legal and equitable owner of the Property, with full right to convey. Seller has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Property.

b. Authorization to Sell. Seller has obtained authorization from the Successor Agency Oversight Board to sell the Property to Buyer as provided under Resolution No. OB-06-13. Seller has also received approval of the Long Range Property Management Plan, as it relates to Site 1 and 2 for the Property (the "LRPMP"), pursuant to communication from the California Department of Finance dated \_\_\_\_\_.

c. Encumbrances. The Property is free and clear of all liens, encumbrances, claims, rights, demands, easements, leases, agreements, covenants, conditions, and restrictions of any kind, unless otherwise expressly stated in the Property Documents.

d. Encroachments. Except as shown on a survey, if obtained by the Buyer, there are no encroachments on the Property from adjoining properties, and the Property does not encroach on adjoining properties, easements, or streets.

e. Streets. There are no existing, proposed, or contemplated plans to widen, modify, or realign any street or highway which affects the contemplated size of, use of, or set-backs on the Property and the improvements.

6. Compliance with Laws. All laws, ordinances, rules, and regulations of any government or agency, body, or subdivision thereof, bearing on the construction, operation, ownership, or use of the Property, have been complied with by Seller.

7. Utilities. All water, sewer, electric, telephone, and drainage facilities, and all other utilities required by law or for the normal operation of the Property are installed to the property lines of the Property, have been connected, are connected with valid permits, are in good working order, and are adequate to service the Property.

8. Permits. Seller has obtained all appropriate licenses, permits, easements, and rights of way, including proofs of dedication, which are required to use and operate

the Property. There are no commitments or agreements affecting the Property that have not been disclosed by Seller to Buyer in writing.

9. State of Facts. Seller is not in default of Seller's obligations or liabilities pertaining to the Property; nor are there facts, circumstances, conditions, or events, which, after notice or lapse of time, would constitute default. Seller has not received notice or information that any party to any of the Property Documents considers a breach or default to have occurred; nor has Seller any reason to believe that there is likely to be a default under any of the documents.

10. Consents and Release. Seller has obtained all required consents, releases, and permissions to convey good and marketable title to Buyer.

11. Litigation. Seller is not involved in or aware of pending or threatened litigation that could affect the Property, or title to the Property. Furthermore, there are no proceedings pending or threatened against Seller before any court or administrative agency relating to the Property that may adversely affect the Property, now or in the future, or that may adversely affect Seller's ability to fulfill all obligations under this Agreement and the related documents.

12. Authority. This Agreement and all other documents delivered prior to or at the Completion of Sale (i) have been duly authorized, executed, and delivered by Seller; (ii) are binding obligations of Seller; (iii) are collectively sufficient to transfer all of Seller's rights to the Property; and (iv) do not violate the provisions of any agreement to which Seller is a party or that affect the Property, and do not violate State laws, articles of incorporation and bylaws subject, however, to applicable bankruptcy, insolvency, and other similar laws affecting the enforcement of creditors' rights generally, and to principles of equitable remedies.

13. Foreign Investment in Real Property Tax Act. Seller is not a "foreign person" within the meaning of Internal Revenue Code § 1445.

14. Toxic or Hazardous Waste.

a. To the best of Seller's knowledge, the Property is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws.

b. To the best of Seller's knowledge, there are no buried or partially buried storage tanks located on the Property.

c. Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property are or have been in violation of any Environmental Law, or informing Seller that the Property is subject to

investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

d. There is no monitoring program required by the Environmental Protection Agency (EPA) or any similar state agency concerning the Property.

e. No toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under, or at the Property, whether by accident, burying, drainage, or storage in containers, tanks or holding areas, or by any other means.

f. The Property has never been used as a dump or landfill.

#### IV. Seller's Covenants.

Seller agrees as follows:

A. Payment of All Obligations. Seller shall have discharged all mechanics' and materialmen's liens arising from labor and materials furnished prior to the Completion of Sale. Seller will discharge all of Seller's obligations and liabilities under the Property Documents and any related documents arising prior to the Completion of Sale.

B. Brokers. Seller shall indemnify, defend, and hold Buyer harmless from loss, cost, or expense, including but not limited to attorney fees and court costs, resulting from any fee or commission claim by a broker or finder claiming through Seller.

C. Litigation. Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, known to Seller that might affect the Property or any interest of Buyer.

D. Conditions to Seller's Obligations. For the benefit of Seller, the Close of Escrow shall be conditioned upon the occurrence and/or satisfaction of each of the following conditions (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions by written waiver):

1. Buyer's Obligations. Buyer shall have timely performed all of the obligations required by the terms of this Agreement to be performed by Buyer.

2. Buyer's Representations. All representations and warranties made by Buyer to Seller in this Agreement shall be true and correct as of the Close of Escrow. Buyer represents to Seller the following:

a. Brokers. Buyer shall indemnify, defend, and hold Seller harmless from and against any loss, cost, or expense, including but not limited to, attorney fees and court costs, resulting from a fee or commission claim by a broker or

finder claiming through Buyer.

b. Authority. This Agreement and all other documents delivered prior to or on the Completion of Sale, (i) have been authorized, executed, and delivered by Buyer; (ii) are binding obligations of Buyer; and (iii) neither violate the provisions of any agreement to which Buyer is a party, nor violate any articles of incorporation or trust agreement of Buyer; subject, however, to applicable bankruptcy, insolvency, and other similar laws for enforcement of creditors' rights, and to principles of equitable remedies.

F. Deposits by Seller. At least five (5) days prior to the Close of Escrow, Seller shall deposit or cause to be deposited with Escrow Holder the following documents and instruments:

1. Grant Deed. The Grant Deed in the form attached as Exhibit "B" conveying the Property to Buyer duly executed by Seller, acknowledged and in recordable form.

2. Seller's Certificate - Federal. A federal certificate of non-foreign status ("Federal Certificate"), duly executed by Seller, in the form normally used by the Escrow Holder.

3. Seller's Certificate - State. A California Franchise Tax Board Form 597-W, duly executed by Seller ("State Certificate").

G. Deposits by Buyer. At least three (3) days prior to the Close of Escrow, Buyer shall deposit or cause to be deposited with Escrow Holder (a) in cash or cash equivalent the amount set out in Escrow Holder's estimate of Buyer's share of closing costs and proration charges payable pursuant to this Agreement, and the signed Natural Hazards Disclosure Statement if provided by Seller.

**V. Costs and Expenses.**

A. The cost and expense of the Title Policy shall be paid by Buyer, including additional costs for the Title Policy if Buyer elects to obtain any endorsements or extended coverage, in which event the premium and any additional cost for endorsements or extended coverage in excess of the premium for standard coverage as well as the cost of any survey necessary for the issuance of such policy shall also be paid by Buyer. Escrow Holder's fee shall be paid by Buyer. Buyer shall pay all documentary transfer taxes payable in connection with the recordation of the Grant Deed. Buyer shall pay the Escrow Holder's customary charges for document drafting, recording and miscellaneous charges. If, as a result of no fault of Buyer or Seller, Escrow fails to close, Buyer shall be responsible for all of Escrow Holder's and Title Company's fees and charges.

B. Prorations. Except for current and delinquent (if any) possessory interest taxes, which remain the responsibility of the Buyer, real and personal property taxes, special



assessments, and any owners' association and landscape maintenance district assessments on the Property (as appropriate) ("Taxes") shall be prorated on the basis that Seller is responsible for (i) all Taxes for the fiscal year of the applicable taxing authorities occurring prior to the "Current Tax Period", and (ii) that portion of Taxes for the Current Tax Period determined on the basis of the number of days which have elapsed from the first day of the Current Tax Period to the Close of Escrow, inclusive, whether or not the same shall be payable prior to the Close of Escrow. The phrase "Current Tax Period" refers to the fiscal year of the applicable taxing authority in which the Close of Escrow occurs. In the event that as of the Close of Escrow the actual Tax bills for the year or years in question are not available and the amount of Taxes to be prorated as aforesaid cannot be ascertained, then rates, mileages and assessed valuation of the previous year, with known changes, shall be used, and when the actual amount of Taxes for the year or years in question shall be determinable, then Taxes will be re-prorated between the parties to reflect the actual amount of Taxes, provided that a party makes written demand on the one from whom it is entitled to such adjustment within one (1) year after the Close of Escrow. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto.

Seller agrees to pay all taxes and assessments with respect to the Property that are allocable to the period before the Close of Escrow and to indemnify, defend and hold harmless Buyer from all loss, liability and expense arising from Seller's failure to pay such taxes and assessments.

Buyer agrees to pay all real property transfer taxes payable upon recordation of the Deed; and any sales and use taxes connected with the completion of sale.

C. Disbursements and Other Actions by Escrow. Upon the Close of Escrow, the Escrow Holder shall promptly undertake all of the following in the manner indicated:

1. Prorations. Prorate all matters referenced above based upon the statement delivered into Escrow signed by the parties.
2. Recording. Cause the Grant Deed in the form of Exhibit "B" attached hereto, and any other documents which the parties hereto may mutually direct, to be recorded in the Official Records of San Diego County, California.
3. Funds. Disburse from funds deposited by Buyer with Escrow Holder towards payment of all items chargeable to the account of Buyer pursuant hereto in payment of such costs to Seller, and disburse the balance of such funds, if any, to Buyer.
4. Documents to Buyer. Deliver the Federal Certificate and the State Certificate to Buyer.
5. Documents to Seller. [Intentionally Omitted]

6. Title Policy. Direct the Title Company to issue the Title Policy to Buyer.

D. Seller's Representations and Warranties. BUYER ACKNOWLEDGES AND AGREES THAT EXCEPT AS SET FORTH HEREIN SELLER HAS MADE ABSOLUTELY NO REPRESENTATIONS OR WARRANTIES REGARDING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ITS CONDITION, ITS PAST USE, OR ITS SUITABILITY FOR BUYER'S INTENDED USE, AND THAT BUYER IS PURCHASING THE PROPERTY ON AN "AS-IS" BASIS. Notwithstanding the foregoing, Seller makes the following representations to Buyer: Assuming the approval of the its LRPMP on the part of the DOF, Seller has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby; the execution, delivery and performance of this Agreement have been duly authorized and no other action by Seller is requisite to the valid and binding execution, delivery and performance of this Agreement; Seller has no actual knowledge of any Hazardous Materials on or under the Property or any underground tanks on the Property or of any claims, easements, leases or other liens or encumbrances affecting the Property that are not disclosed by the public records.

E. Buyer's Covenants, Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following covenants, representations and warranties (item 5 below, being a covenant running with the land, which may be included in the Grant Deed):

1. Authority. Buyer has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and the execution, delivery and performance of this Agreement have been duly authorized and no other action by Buyer is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth herein.

2. Physical Condition. Buyer shall inspect the Property to the extent Buyer deems necessary or desirable. Buyer's closing of Escrow shall constitute Buyer's representation to Seller that Buyer is satisfied in all respects with the Property, including, without limitation, size, the physical condition and condition of any and all improvements.

3. "AS-IS" Nature Of Sale. Buyer acknowledges and agrees that except as set forth herein, or in referenced documents, Seller has not made, does not make and specifically negates and disclaims any representations, warranties, or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the value, nature, quality of condition of the Property, including, without limitation, the water, soil and geology; (b) the income to be derived from the Property; (c) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon; (d) the compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property; (f) the manner or quality of

the construction or materials, if any, incorporated into the Property; (g) the manner, quality, state of repair or lack of repair of the Property; or (h) any other matter with respect to the Property, and specifically (except as set forth herein) that Seller, except as specifically stated herein or in related documents, has not made, does not make, and specifically disclaims any representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R., Part 261, or the disposal or existence, in or on the Property, of any hazardous substance, as defined by the Comprehensive Environmental Response Compensation And Liability Act of 1980, as amended, and regulations promulgated thereunder. (The substances, wastes and materials that are regulated by the foregoing laws or any other state and/or federal laws are herein referred to as "Hazardous Materials.") Buyer further acknowledges and agrees that any information provided or to be provided by or on behalf of Seller with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. Buyer further acknowledges and agrees that the sale of the Property as provided for herein is made on an "AS-IS" condition and basis with all faults.

4. Except for Seller's representations and warranties set forth herein, Buyer and anyone claiming by, through or under Buyer hereby fully and irrevocably releases Seller, its partners, employees, officers, directors, shareholders, representatives, agents, successors and assigns, from any and all claims that it may now have or hereafter acquire against such persons and entities for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to any construction defects, errors, omissions or other conditions, including, but not limited to, Hazardous Materials and environmental matters, affecting the Property, or any portion thereof. This release includes claims of which Buyer is presently unaware or that Buyer does not presently suspect to exist in its favor, which, if known by Buyer, would materially affect Buyer's release of Seller. Buyer specifically waives the provision of California Civil Code §1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

5. Buyer agrees that said Property is to continue to be used solely for purposes of an outdoor dining and a public thoroughfare as provided in the approved Site Plan for Conditional Use Permit 1745.

6. Intentionally Omitted.

7. Intentionally Omitted.

8. Intentionally Omitted.

9. The representations and warranties of Buyer and Seller set forth in this Agreement shall be true on and as of the Close of Escrow and shall survive the closing.

10. Buyer's Indemnity. Buyer agrees to indemnify, protect and defend Seller against and hold Seller harmless from any claims, losses, damages, costs or expenses including, without limitation, any reasonable attorneys' fees, asserted against, incurred or suffered by Seller resulting from any breach by Buyer following the Closing Date of express obligations of Buyer arising under this Agreement. Buyer's obligations under this Section 10 shall survive Close of Escrow or termination of this Agreement for a period of one year. In the event of a material breach by Buyer of this Agreement prior to the Closing Date, Seller shall have as its sole and exclusive remedy the right to retain the Deposit as liquidated damages to the extent and as provided below.

11. Seller's Indemnity. Seller agrees to indemnify, protect and defend Buyer against and hold Buyer harmless from any and all claims, demands, liabilities, losses, damages, costs and expenses including, without limitation, all reasonable attorneys' fees, asserted against, incurred or suffered by Buyer resulting from (i) any breach by Seller of this Agreement, (ii) any liability or obligation of Seller that Buyer is not required to assume under this Agreement or accruing prior to such assumption, (iii) any personal injury or property damage occurring in, on or about the Property or relating thereto on or before the Close of Escrow, from any cause whatsoever except Buyer's inspection or other activities on or about the Property, or (iv) the untruth, inaccuracy or breach of any of the representations, warranties, covenants and agreements made by Seller pursuant to this Agreement. Seller's obligations under this Section 11 shall survive Close of Escrow or termination of this Agreement for a period of one year. Neither the foregoing nor any other provision of this Agreement shall limit the rights and remedies available to Buyer at law or in equity, whether by statute or otherwise, and all such rights and remedies shall be cumulative and non-exclusive.

12. Indemnification of Escrow Holder. If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold Escrow Holder free and harmless from any loss or expense, including attorneys' fees, that may be suffered by it by reason thereof except for losses or expenses as may arise from Escrow Holder's negligent or willful misconduct. If conflicting demands are made or notices served upon Escrow Holder with respect to this Agreement, the parties expressly agree that Escrow Holder shall be entitled to file a suit in interpleader and obtain an order from the court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the filing of the action in interpleader, Escrow Holder shall be fully released and discharged from any obligations imposed upon it by this Agreement.

13. Damage or Condemnation Prior to Closing. Seller shall promptly notify Buyer of any casualty to the Property or any condemnation proceeding commenced prior to the Close of Escrow of which Seller obtains actual knowledge. If any such damage or proceeding relates to or may result in the loss of any material portion of the Property, Buyer may, at its option, elect either to: (i) terminate this Agreement, in which event neither party shall have any further rights or obligations hereunder and Buyer's Initial Deposit, Second Deposit (if made), and any extension fee(s) shall be refunded to Buyer, or (ii) continue this Agreement in effect, in which event upon the Close of Escrow, Buyer shall be entitled to any compensation, awards, or other payments or relief resulting from such casualty or condemnation proceeding.

**VI. Further Assurances**

Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and any other instruments and documents as may be necessary, expedient, or proper, to complete any conveyance, transfer, sale, or assignment contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

**VII. Miscellaneous**

A. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, delivered by reputable overnight carrier, sent by certified mail, postage prepaid, return receipt requested, or sent by telecopy, and shall be deemed received upon the earlier of (i) if personally delivered or delivered by overnight courier, the date of delivery to the address of the person to receive such notice, (ii) if mailed, two (2) business days after the date of posting by the United States post office, (iii) if given by telecopy, when sent. Any notice, request, demand, direction or other communication sent by telecopy must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing.

To Buyer: Por Favor Inc.  
182 E. Main Street  
El Cajon, CA 92020  
Attention: Gabe Marrujo

To Seller: City of El Cajon as Successor Agency to the Former El  
Cajon Redevelopment Agency  
200 Civic Center Way  
El Cajon CA 92020  
Attention: Douglas Williford

with a copy to: Morgan L. Foley, Esq.  
McDougal, Love Eckis, Boehmer & Foley  
8100 La Mesa Blvd., Suite 200  
La Mesa, CA 91942

To Escrow Holder: Oak Tree Escrows, Inc.  
166 E. Wells Avenue  
El Cajon CA 92020

Notice of change of address shall be given by written notice in the manner detailed in this Paragraph. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

B. Brokers. Buyer and Seller each represents and warrants to the other that there will be no brokers' or finders' fees payable in respect of this transaction based upon any statement, representation or agreement made by Buyer or Seller, respectively. Any commission shall be paid by Seller upon Close of Escrow. If any claims for brokers' or finders' fees for the consummation of this Agreement arise, then Buyer hereby agrees to indemnify, save harmless and defend Seller from and against such claims if they shall be based upon any statement or representation or agreement by Buyer, and Seller hereby agrees to indemnify, save harmless and defend Buyer if such claims shall be based upon any statement, representation or agreement made by Seller.

C. Legal Fees. In the event any lawsuit or arbitration proceeding is brought by a party hereto against another party hereunder by reason of any breach of any of the covenants or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, or for declaratory relief, the prevailing party in such action or proceeding shall be entitled to have and recover of and from the other party its costs and reasonable attorneys' fees.

D. Assignment. At any time Buyer is not in default hereunder, Buyer may assign its rights under this Agreement to a third party assignee. Seller shall not have the right to assign or mortgage this Agreement or any portion of this Agreement without Buyer's prior written consent.

E. Other Fees and Assessments. [Intentionally Omitted]

F. Survival of Covenants. The covenants, representations and warranties of both Buyer and Seller set forth in this Agreement shall survive the recordation of the Grant Deed and the Close of Escrow.

G. Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use their reasonable best efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

H. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.

I. Counterparts. This Agreement (and any amendments and escrow instructions) may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Documents delivered by telephonic facsimile transmission shall be valid and binding.

J. Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof. This Agreement shall be interpreted in accordance with its reasonable meaning, and not strictly for or against either party.

K. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties thereto, to any person or entity other than the parties hereto.

L. Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference.

M. Amendment to this Agreement. This Agreement, together with all referenced and/or attached documents, contains the entire understanding of the parties regarding the subject matter and may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

N. Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

O. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

P. Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

Q. Agreement. No agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party, shall be of any effect unless it is in writing and executed by the party to be bound thereby.

R. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

S. Confidentiality. Buyer shall keep all information and reports obtained from Seller or relating to the Property or the proposed transaction confidential and will not disclose any such

confidential information to any other person or entity without obtaining the prior written consent of Seller, unless required to disclose documents or reports by operation of law or by order of a court of competent jurisdiction.

T. Authority. Each individual who signs this Agreement on behalf of an entity represents and warrants that he/she is authorized to do so and to bind such entity.

U. Special Tax. There are no special taxes levied against the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Diego County, California as of the day and year first-above written.

**"BUYER"**

**"SELLER"**

POR FAVOR INC.  
a California corporation

CITY OF EL CAJON AS SUCCESSOR  
AGENCY TO FORMER EL CAJON  
REDEVELOPMENT AGENCY,  
a municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

APPROVED AS TO LEGALITY AND  
FORM:

By: \_\_\_\_\_  
Morgan L. Foley, City Attorney



ACCEPTANCE BY ESCROW HOLDER

OAK TREE ESCROWS, INC. hereby acknowledges that it has received a fully executed counterpart of the foregoing Purchase and Sale Agreement and agrees to act as Escrow Holder thereunder and to be bound by and perform the terms thereof as such terms apply to Escrow Holder.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
OAK TREE ESCROWS, INC.

By: \_\_\_\_\_

Name: Bobbi Pearson

Title: Owner/Escrow Officer

**EXHIBIT A**

(Description of Property)

**EXHIBIT B**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_

\_\_\_\_\_ Computed on the consideration or value of property conveyed; OR

\_\_\_\_\_ Computed on the consideration or value less liens or  
encumbrances remaining at time of sale.

\_\_\_\_\_  
Signature of Declarant or Agent determining tax - Firm Name

APN: 488-083-15  
488-083-16

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The CITY OF EL CAJON AS SUCCESSOR AGENCY TO THE FORMER EL CAJON  
REDEVELOPMENT AGENCY, a municipal corporation

hereby GRANT(S) to POR FAVOR INC., a California corporation

the real property in the City of El Cajon, County of San Diego, State of California, described as:

SEE LEGAL DESCRIPTION IN ATTACHMENT A, ATTACHED HERETO AND MADE A PART HEREOF

This conveyance is made subject to easements, restrictions and other matters of record, including, but not limited to,  
the following:

Property shall be used solely for purposes of an outdoor dining and public thoroughfare. The foregoing covenant  
shall run with the land.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

its

By: \_\_\_\_\_

Its: \_\_\_\_\_

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2013 before me, \_\_\_\_\_ (insert name and title of the officer), personally appeared \_\_\_\_\_, 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 paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## PROPERTY PROFILE

<b>Site # 1</b>	<b>One of two parcels leased to Por Favor Restaurant under Lease Purchase Agreement</b>
<b>Location:</b>	156 E. Main Street and adjacent lot, El Cajon, CA 92020
<b>APN:</b>	488-083-15-00
<b>Lot Size (SF):</b>	3,500
<b>Building SF:</b>	Not applicable
<b>General Plan:</b>	SDA # 9 (Also within Specific Plan 182)
<b>Zoning:</b>	C-R, Regional Commercial
<b>Highest/Best Use:</b>	Patio dining for Por Favor Restaurant
<b>Date Acquired:</b>	May 14, 1986
<b>Purchase Price:</b>	\$150,000.00 <sup>1</sup>
<b>Source of Funds:</b>	Loan obtained from City of El Cajon for acquisition which was subsequently paid with \$2M in taxable and \$11M in tax-exempt financing from California Federal Savings & Loan Assoc (CalFed). CalFed was satisfied with \$35,600,000 in tax exempt bond proceeds of the Tax Allocation Refunding Bonds Issue of 1992. The 1992 bonds were refinanced with \$35,745,000 in tax exempt bond proceeds of the Tax Allocation Refunding Bonds Issue of 1997. The 1997 bonds were satisfied with \$40,000,000 in tax exempt bond proceeds of the Tax Exempt Allocation Refunding Bonds Issue of 2005 and remain an outstanding enforceable obligation.
<b>Purpose of Acquisition:</b>	The property was acquired for purposes of redevelopment in the Civic Center Superblock where City Hall, the County Regional Courthouse, and the El Cajon Performing Arts Center are located.
<b>Status &amp; Revenues:</b>	<p>Land with leasehold improvements; Currently leased to Por Favor Restaurant at \$1.00 per year plus reimbursement of Property Business Improvement (PBID) assessments of approximately \$356.00.</p> <p>The Agency entered into a 10-year Lease Option Agreement with Por Favor Restaurant for a price of \$38,250.00 on May 28, 1998, with one 10-year extension. Lessee was required to pay \$3,825 per year until the lease-option price was paid. The 10-year extension was requested on April 17, 2008, and now expires on May 28, 2018, if not exercised. Lessee now pays \$1.00 per year, plus any PBID taxes assessed to the property.</p> <p>If Lessee does not acquire the property by May 28, 2018, under the Lease-Option period, the Lease provides both parties will negotiate in good faith for new terms and conditions.</p>
<b>Environmental issues, Brownfield or other Restrictions:</b>	<p><b>Environmental:</b> None known</p> <p><b>Brownfield:</b> None known</p> <p><b>Restrictions:</b> Sales proceeds, if any, must be used in accordance with bond covenants.</p>
<b>Transit Oriented Development Site:</b>	Not applicable; currently utilized for patio dining for Por Favor restaurant.
<b>Discussion &amp; History:</b>	The Agency acquired this property on May 14, 1986 jointly with APN 488-083-16-00 for \$150,000 plus closing costs.

## PROPERTY PROFILE

<b>Site # 1</b>	<b>One of two parcels leased to Por Favor Restaurant under Lease Purchase Agreement</b>
<b>Classification:</b>	<b>Enforceable Obligation; Retain by Successor Agency:</b> The properties are subject to a 10-year Lease Option Agreement dated 5/28/1998 with Por Favor Restaurant, with one 10-year extension that expires on May 28, 2018 and requires Lease renegotiation.
<b>Use of Broker:</b>	See Disposal Strategy
<b>Value As-Is:</b>	1. Not applicable at this time
<b>Disposal Strategy:</b>	<p>In accordance with requirements for property acquired/satisfied with tax exempt bond proceeds, authorize the Successor Agency to:</p> <ol style="list-style-type: none"> <li>2. Maintain ownership of the property until 5/28/2018;</li> <li>3. If the option to purchase is not exercised by 5/28/2018, then:               <ol style="list-style-type: none"> <li>a. Appraise the property;</li> <li>b. Negotiate with Lessee for new Lease terms and conditions;</li> <li>c. Offer for sale to the adjacent property owner (owner of Por Favor Restaurant property, APN 488-083-14);</li> <li>d. Offer for sale in the open market through an approved Broker</li> </ol> </li> </ol> <p>Utilize all sales proceeds, if any, in accordance with bond covenants.</p>
<b>Appendices:</b>	3,22,23,24

<sup>1</sup> The purchase price for this property includes the acquisition of both APN 488-083-15-00 and 488-083-16-00

## PROPERTY PROFILE

<b>Site # 2</b>	<b>One of two parcels leased to Por Favor Restaurant under Lease Purchase Agreement</b>
<b>Location:</b>	156 E. Main Street and adjacent lot, El Cajon, CA 92020
<b>APN:</b>	488-083-16-00
<b>Lot Size (SF):</b>	3,500
<b>Building SF:</b>	Not applicable
<b>General Plan:</b>	SDA # 9 (Also within Specific Plan 182)
<b>Zoning:</b>	C-R, Regional Commercial
<b>Highest/Best Use:</b>	Patio dining for Por Favor Restaurant
<b>Date Acquired:</b>	May 14, 1986
<b>Purchase Price:</b>	See APN 488-053-15-00 <sup>1</sup> for acquisition terms
<b>Source of Funds:</b>	Loan obtained from City of El Cajon for acquisition which was subsequently paid with \$2M in taxable and \$11M in tax-exempt financing from California Federal Savings & Loan Assoc (CalFed). CalFed was satisfied with \$35,600,000 in tax exempt bond proceeds of the Tax Allocation Refunding Bonds Issue of 1992. The 1992 bonds were refinanced with \$35,745,000 in tax exempt bond proceeds of the Tax Allocation Refunding Bonds Issue of 1997. The 1997 bonds were satisfied with \$40,000,000 in tax exempt bond proceeds of the Tax Exempt Allocation Refunding Bonds Issue of 2005 and remain an outstanding enforceable obligation.
<b>Purpose of Acquisition:</b>	The property was acquired for purposes of redevelopment in the Civic Center Superblock where City Hall, the County Regional Courthouse, and the El Cajon Performing Arts Center are located.
<b>Status &amp; Revenues:</b>	<p>Land with leasehold improvements; Currently leased to Por Favor Restaurant at \$1.00 per year plus reimbursement of Property Business Improvement (PBID) assessments of approximately \$356.00.</p> <p>The Agency entered into a 10-year Lease Option Agreement with Por Favor Restaurant for a price of \$38,250.00 on May 28, 1998, with one 10-year extension. Lessee was required to pay \$3,825 per year until the lease-option price was paid. The 10-year extension was requested on April 17, 2008, and now expires on May 28, 2018, if not exercised. Lessee now pays \$1.00 per year, plus any PBID taxes assessed to the property.</p> <p>If Lessee does not acquire the property by May 28, 2018, under the Lease-Option period, the Lease provides both parties will negotiate in good faith for new terms and conditions.</p>
<b>Environmental issues, Brownfield or other Restrictions:</b>	<p><b>Environmental:</b> None known</p> <p><b>Brownfield:</b> None known</p> <p><b>Restrictions:</b> Sales proceeds, if any, must be used in accordance with bond covenants.</p>
<b>Transit Oriented Development Site:</b>	Not applicable; currently utilized for patio dining for Por Favor restaurant.
<b>Discussion &amp; History:</b>	The Agency acquired this property on May 14, 1986 jointly with APN 488-083-15-00 for \$150,000 plus closing costs.

## PROPERTY PROFILE

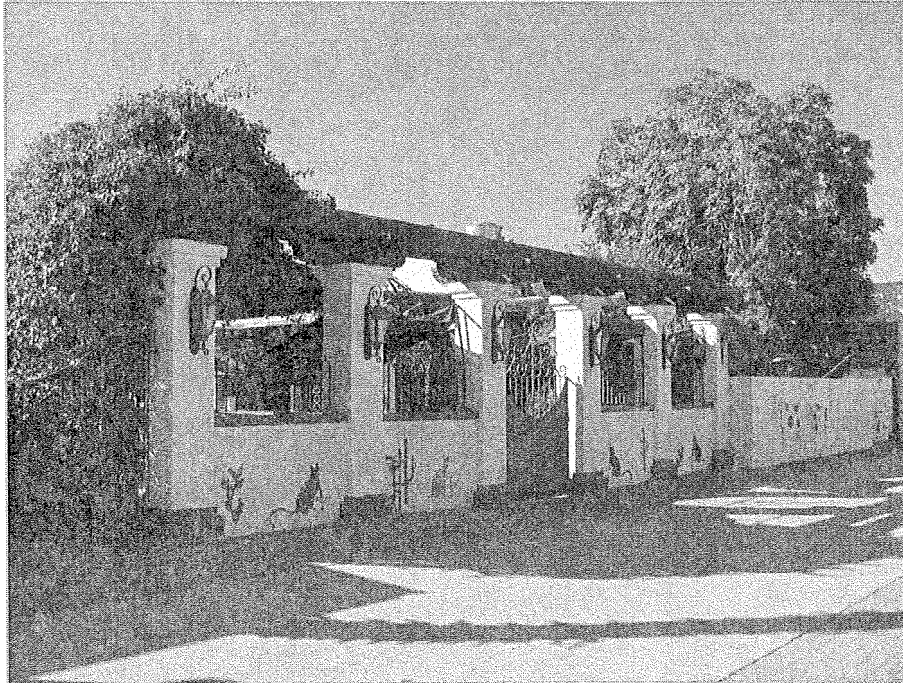
<b>Site # 2</b>	<b>One of two parcels leased to Por Favor Restaurant under Lease Purchase Agreement</b>
<b>Classification:</b>	<b>Enforceable Obligation; Retain by Successor Agency:</b> The properties are subject to a 10-year Lease Option Agreement dated 5/28/1998 with Por Favor Restaurant, with one 10-year extension that expires on May 28, 2018 and requires Lease renegotiation.
<b>Use of Broker:</b>	See Disposal Strategy
<b>Value As-Is:</b>	1. Not applicable at this time
<b>Disposal Strategy:</b>	<p>In accordance with requirements for property acquired/satisfied with tax exempt bond proceeds, authorize the Successor Agency to:</p> <ol style="list-style-type: none"> <li>2. Maintain ownership of the property until 5/28/2018;</li> <li>3. If the option to purchase is not exercised by 5/28/2018, then:               <ol style="list-style-type: none"> <li>a. Appraise the property;</li> <li>b. Negotiate with Lessee for new Lease terms and conditions;</li> <li>c. Offer for sale to the adjacent property owner (owner of Por Favor property);</li> <li>d. Offer for sale in the open market through an approved Broker</li> </ol> </li> </ol> <p>Utilize all sales proceeds, if any, in accordance with bond covenants.</p>
<b>Appendices:</b>	3,22,23,24

<sup>1</sup> The purchase price for this property includes the acquisition of both APN 488-083-15-00 and 488-083-16-00



## SUBJECT PHOTOGRAPHS

November 5, 2012



Looking southwesterly toward sites from alley.



Looking northerly toward sites from E. Main Street.



**CITY OF EL CAJON**  
Community Development Department  
200 Civic Center Way, El Cajon, CA 92020 (619) 441-1741

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**VERIFICATION OF ADVERTISING, POSTING & MAILING**

Pursuant to Assembly Bill 1484, the actions listed below were taken for the 8 a.m. Public Meeting on June 19, 2013 to consider:

Approval of a Purchase and Sale Agreement between the Successor Agency and Por Favor, Inc., (Lessee) for sale of property at 156 E. Main Street and the adjacent lot, Assessor's Parcel Number 488-083-15 and -16

**Legal Advertisement**

The Public Hearing Notice was published in the East County Gazette on Thursday, June 6, 2013.

**Posting**

A copy of the Notice was posted in the kiosk in front of City Hall, 200 Civic Center Way, El Cajon, CA 92020, and in the City's website under "Public Hearings / Public Notices" ([www.cityofelcajon.us](http://www.cityofelcajon.us)).

**Mailing**

A copy of the notice was mailed to the two public libraries in El Cajon, located at 201 East Douglas and 576 Garfield.

A handwritten signature in cursive script that reads "Ron Luis Valles".

---

RON LUIS VALLES  
Administrative Secretary

Dated: June 6, 2013

**AGENDA REPORT**  
**CITY OF EL CAJON SUCCESSOR AGENCY OVERSIGHT BOARD**  
**June 19, 2013, Meeting**

**SUBJECT: APPROVAL OF HOLD HARMLESS AGREEMENT – CITY OF EL CAJON FOR THE PURPOSE OF INSTALLING ONE NEW GROUNDWATER MONITORING WELL AND OPERATING AND MAINTAINING TWO EXISTING GROUNDWATER MONITORING WELLS.**

**RECOMMENDED ACTION:** That the Oversight Board adopt the proposed Resolution to:

1. Approve the proposed Hold Harmless Agreement (“Agreement”) between the City of El Cajon, as successor agency to the former El Cajon Redevelopment Agency (“Successor Agency”), and the City of El Cajon, for the purpose of installing one new groundwater monitoring well and operating and maintain two existing groundwater monitoring wells in the public right-of-way;
2. Approve execution of the Hold Harmless Agreement and additional necessary documentation by the City Manager of the City of El Cajon, or such person designated by the City Manager, acting in the capacity of chief executive officer for the Successor Agency .

**BACKGROUND:** On January 29, 2003, the former El Cajon Redevelopment Agency (“Agency”) entered into a Disposition and Development Agreement (“DDA”) with Priest Development Corporation (“Developer”) for the sale of 5.85 acres and the development of 103 single-family units on Agency property bounded by Wells Avenue, Ballantyne Street, and Park Avenue, Assessor’s Parcel Numbers 488-040-04 to -05 (the “Site”).

On December 16, 2003, the Agency entered into a Reimbursement and Indemnity Agreement (“Indemnity Agreement”) with Developer for the purpose of completing contamination cleanup of the Site in a manner consistent with, and in complete accordance with, a plan approved by the County Department of Environmental Health (“DEH”). The DEH case for the Site is referred to as 315-327 North Magnolia Avenue.

The former Agency, and now the Successor Agency as successor in interest, has complied with ongoing DEH requests for monitoring and testing for soils and groundwater contamination and a Revised Workplan for Additional Site Assessment for 315 North Magnolia Avenue (“Workplan”) was approved by DEH on July 3, 2012, which required installation of two groundwater monitoring wells North of the Site in the public right-of-way.

As a result of a semi-annual groundwater monitoring report dated February 27, 2013, DEH required reconstruction of Monitoring Well 11 (“MW-11”) on March 14, 2013.

As a condition of the Reimbursement and Indemnity Agreement, the Workplan and DEH directives, the Successor Agency's consultant, SCS Engineers, is requesting to install one new groundwater monitoring well (identified as "MW-11R") and to operate and maintain two existing groundwater monitoring wells (identified as "MW-10" and "MW-11") in the vicinity of the Site in the public right-of-way for the purpose of determining and monitoring the ongoing presence of petroleum product contamination.

This requested action will allow the Successor Agency to comply with conditions of the Reimbursement and Indemnity Agreement, an existing enforceable obligation, the Workplan and a Site that remains an open and active case with DEH.

**FISCAL IMPACT:** The requested action will result in the completion of work identified in the Workplan through a contract with SCS Engineers and budgeted under Project/Activity RD0704S – Hazmat Testing Park/Ballantyne.

**ATTACHMENTS:**

1. Proposed Resolution
2. Hold Harmless Agreement, Exhibit "A" and Exhibit "B"
3. Reimbursement and Indemnity Agreement
4. Revised Workplan for Additional Site Assessment for 315 North Magnolia Avenue, El Cajon, California (DEH Case Number: H20184-001)
5. DEH Correspondence dated July 3, 2012
6. DEH Correspondence dated March 14, 2013

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RESOLUTION NO. OB-08-13

A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CAJON REDEVELOPMENT AGENCY APPROVING A HOLD HARMLESS AGREEMENT WITH THE CITY OF EL CAJON FOR THE PURPOSE OF INSTALLING ONE NEW GROUNDWATER MONITORING WELL AND OPERATING AND MAINTAINING TWO EXISTING GROUNDWATER MONITORING WELLS.

WHEREAS, on January 29, 2003, the former El Cajon Redevelopment Agency ("Agency") entered into a Disposition and Development Agreement ("DDA") with Priest Development Corporation ("Developer") for the sale of 5.85 acres and the development of 103 single-family units on Agency property bounded by Wells Avenue, Ballantyne Street, and Park Avenue, Assessor's Parcel Numbers 488-040-04 to -05 (the "Site"); and

WHEREAS, on December 16, 2003, the Agency entered into a Reimbursement and Indemnity Agreement ("Indemnity Agreement") with Developer for the purpose of completing contamination cleanup of the Site in a manner consistent with, and in complete accordance with, a plan approved by the County Department of Environmental Health ("DEH"). The DEH case for the Site is now and in the past has been referred to as 315-327 North Magnolia Avenue; and

WHEREAS, as a result of the Revised Workplan for Additional Site Assessment for 315 North Magnolia Avenue ("Workplan") that was approved by DEH on July 3, 2012, which required installation of two groundwater monitoring wells North of the Site in the public right-of-way; and

WHEREAS, as a result of a semi-annual groundwater monitoring report dated February 27, 2013, DEH required reconstruction of Monitoring Well 11 ("MW-11") on March 14, 2013; and

WHEREAS, as a condition of the Reimbursement and Indemnity Agreement, the Workplan and DEH directives, the Successor Agency's consultant, SCS Engineers, is requesting to install one new groundwater monitoring well (identified as "MW-11R") and operating and maintain two existing groundwater monitoring wells (identified as "MW-10" and "MW-11") in the vicinity of the Site in the public right-of-way for the purpose of determining and monitoring the ongoing presence of petroleum product contamination; and

WHEREAS, Section 34171(d)(1)(e) of the California Health and Safety Code defines any legally binding and enforceable agreement or contract that is not otherwise void or violating the debt limit or public policy as an enforceable obligation; and

WHEREAS, the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency held a meeting on June 19, 2013, at which time it considered approving a Hold Harmless Agreement (“Agreement”) in order to comply with the Indemnity Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF THE FORMER CITY OF EL CAJON REDEVELOPMENT AGENCY AS FOLLOWS:

- A. The Oversight Board finds that:
  - 1. The recitals above are true and correct and have been incorporated herein by reference; and
  - 2. The proposed project is exempt from the California Environmental Quality Act (CEQA) under Section 15061 (b) (3) (General Rule) of the CEQA Guidelines because it will have no physical effect on the environment; and
  - 3. The Reimbursement and Indemnity Agreement is an existing enforceable obligation and requires the Successor Agency to undertake the work identified in the Hold Harmless Agreement and an approved Workplan approved by the County Department of Environmental Health; and
  - 4. The proposed Hold Harmless Agreement would be in the best interest of the taxing entities and the public because it will continue to monitor the presence of petroleum product contamination in soils and groundwater samples under enforceable obligations.
- B. The Oversight Board hereby APPROVES the Hold Harmless Agreement substantially in the form as presented in **Attachment 1**, with such changes as may be approved by the Chair/Legal Counsel of the Oversight Board. The Hold Harmless Agreement is subject to approval of the Department of Finance and, upon such approval, shall be a binding obligation of the Successor Agency.
- C. The Oversight Board hereby APPROVES execution of the Hold Harmless Agreement and additional necessary documents by the City Manager, or such person acting designated by the City Manager, acting in the capacity of chief executive officer of the Successor Agency.

[The remainder of this page intentionally left blank.]

PASSED AND ADOPTED by the Oversight Board of the Successor Agency of the former El Cajon Redevelopment Agency at a regularly-scheduled meeting held this 19<sup>th</sup> day of June, 2013, by the following vote to wit:

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

---

Debra Turner-Emerson, Chairperson

ATTEST:

---

Jennifer Ficacci, Acting Oversight Board Secretary



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HOLD HARMLESS AGREEMENT  
(315-327 North Magnolia Avenue)

THIS AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the CITY OF EL CAJON, a California charter city and municipal corporation, hereinafter referred to as "City," and the CITY OF EL CAJON, SOLELY IN ITS CAPACITY AS THE SUCCESSOR AGENCY TO THE EL CAJON REDEVELOPMENT AGENCY ("SUCCESSOR AGENCY"), hereinafter collectively referred to as "Applicant";

WHEREAS, the Applicant previously owned the property in the vicinity of 315-327 North Magnolia Avenue, in the City of El Cajon, also known as the Park-Ballantyne Project, and the Applicant conveyed the property to a third party in 2003, but retained responsibility for the cleanup of all existing soils and groundwater contamination in accordance with the Department of Environment Health workplan approval letter issued August 26, 2002; and

WHEREAS, SCS Engineers, on behalf of Applicant, has requested permission of City to construct, install, operate and maintain one (1) new groundwater monitoring well (identified as "MW-11R"), and two (2) existing groundwater monitoring wells (identified as "MW-10" and "MW-11") in the vicinity of 315-327 North Magnolia Avenue, in the City of El Cajon, for the purpose of determining and monitoring the presence of petroleum product contamination; and

WHEREAS, as a condition to City's consenting to Applicant's construction, installation, operation and maintenance of one (1) new groundwater monitoring well (MW-11R) and two (2) existing groundwater monitoring wells (MW-10 and MW-11), in the vicinity of 315-327 North Magnolia Avenue, City will require that it be held harmless from damage to public facilities, and from personal injury and property damage that may be sustained as a result of the construction, installation, operation and maintenance of said wells; and

WHEREAS, Applicant hereby agrees to properly abandon the monitoring wells and restore the public improvements after completion of the monitoring period, which shall not exceed five (5) years, unless the agency with appropriate jurisdiction over the monitoring wells requires additional monitoring in excess of five (5) years, and City consents to extend this Agreement accordingly; and

WHEREAS, Applicant is willing to enter into such an agreement with City.

NOW, THEREFORE, in consideration for City granting consent to Applicant for the construction, installation, operation and maintenance of one (1) new groundwater monitoring well (MW-11R) and two (2) existing groundwater monitoring wells (MW-10 and MW-11), in the vicinity of 315-327 North Magnolia Avenue, for the purpose of determining and monitoring the presence of petroleum product contamination, Applicant, for itself, its successors in interest and assigns, and City, do agree as follows:

1. Applicant agrees to construct, install, operate and maintain the Wells in a safe condition. If said Wells are not so maintained, after reasonable written notice to Applicant, City may perform the work or contract for said work, and Applicant agrees to reimburse City for any

such costs reasonably incurred.

2. Applicant agrees to abandon the Wells and restore the public improvements to City's satisfaction upon completion of the monitoring period, which shall not exceed five (5) years. Should the agency with appropriate jurisdiction require Applicant to conduct further monitoring, Applicant may request that City grant an extension of time, which request shall not be unreasonably denied.

3. Applicant agrees to comply with the terms and provisions set forth in the letter from Keith L. Etchells PG, CHg, Senior Project Geologist, SCS Engineer to the Public Works Department of the City of El Cajon under date of May 7, 2013, and its referenced attachments, attached as Exhibit "A" to this Agreement, except as modified in this Agreement. Applicant acknowledges that an encroachment permit must be obtained from City prior to commencing any work in the public right-of-way.

4. Applicant agrees to provide City with a copy of any interim and final technical reports arising from this project. Applicant also agrees to submit a traffic control plan for City approval prior to installation of the Wells.

5. During the construction, installation, operation and maintenance of the Wells, Applicant agrees that it will not use, generate, store or dispose of any Hazardous Waste (as defined herein) on, under, about or within the public right-of-way in violation of any federal, state or local law or regulation. This restriction does not prohibit Applicant from using vehicles or equipment powered by petroleum hydrocarbons in the construction, installation, operation and maintenance of the Wells; however, no such equipment or vehicle shall be stored in the public right-of-way. Applicant agrees to defend and indemnify City against any and all losses, liabilities, claims and/or costs, arising from any breach of any warranty or agreement of Applicant contained in this paragraph. As used in this Agreement, "Hazardous Waste" shall mean any substance, chemical or material that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including but not limited to petroleum and asbestos).

6. City and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to Applicant or any other person for, and Applicant shall indemnify, defend, protect and hold harmless Indemnitees from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnitees may suffer or incur or to which Indemnitees may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, or otherwise arising from or attributable to the construction, installation, operation and maintenance of the Wells, or the restoration of public improvements.

7. Applicant shall further indemnify, defend and hold harmless Indemnitees from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, administrative proceedings, damages, fines, penalties, judgments, orders, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements, arising out

of any violation, or claim of violation of the City of El Cajon Storm Water Program (El Cajon Municipal Code, Chapter 13.10 and Chapter 16.60) (as adopted and as may be amended from time to time), that City might suffer, incur, or become subject to by reason of or arising from or attributable to the construction, installation, operation and maintenance of the Wells, or the restoration of public improvements.

8. Notwithstanding the forgoing, Applicant's duty to indemnify, protect and hold harmless shall not include the proportionate amount of any liability arising from the established negligence or willful misconduct of City and Indemnitees.

9. Applicant hereby agrees to provide a Certificate of Commercial General Liability Insurance, which complies with El Cajon City Council Policy D-3 (attached hereto as Exhibit "B" and made a part of this Contract), and which names the City of El Cajon and its elected and appointed officials, officers, employees and volunteers as additional insureds in an amount not less than two million dollars (\$2,000,000). Applicant may, in lieu of such certificate, submit acceptable documentation of self-insurance naming the City of El Cajon and its elected and appointed officials, officers, employees and volunteers as additional insureds. If there is any conflict between Exhibit "B" and this section, the terms of Exhibit "B" shall apply. Such policy shall be required to be maintained until the Wells are abandoned and public improvements are restored to the City's reasonable satisfaction. Such policy shall insure against all liability of Applicant and its authorized representatives arising from or attributable to the construction, installation, operation and maintenance of the Wells, and the restoration of public improvements.

10. Applicant hereby agrees to provide City with a 24-hour emergency telephone number. Said emergency telephone number will be available to City until the Wells have been abandoned and public improvements are restored to City's reasonable satisfaction.

11. The terms, covenants, conditions and agreements herein contained shall apply to, bind and inure to the benefit of the parties hereto and their heirs, executors, administrators, legal representatives, successors and assigns, respectively.

12. This Agreement shall be governed, interpreted, construed and regulated by the laws of the State of California.

13. The person executing this Agreement on behalf of Applicant hereby represents and warrants that all necessary approvals have been obtained to authorize the acceptance and approval of this Agreement, and that this Agreement is binding on, and enforceable against, Applicant, and each and every of its partners and/or members.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

**CITY OF EL CAJON,**  
a California charter city and  
municipal corporation.

**CITY OF EL CAJON, SOLELY IN ITS  
CAPACITY AS THE SUCCESSOR  
AGENCY TO THE EL CAJON  
REDEVELOPMENT AGENCY.**

By \_\_\_\_\_  
Douglas Williford, City Manager

By \_\_\_\_\_  
Douglass Williford, Executive Director

ATTEST:

ATTEST:

\_\_\_\_\_  
Kathie J. Rutledge, CMC, City Clerk

\_\_\_\_\_  
Kathie J. Rutledge, CMC, Secretary

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Dennis Davies, Deputy Director  
Public Works Department

APPROVED AS TO FORM:

\_\_\_\_\_  
Morgan L. Foley, City Attorney

STATE OF CALIFORNIA )  
 ) SS:  
COUNTY OF SAN DIEGO )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, 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 paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature

(SEAL)

STATE OF CALIFORNIA )  
 ) SS:  
COUNTY OF SAN DIEGO )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared Douglas Williford, 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 he executed the same in his authorized capacity, and that by his 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.

\_\_\_\_\_  
Signature

(SEAL)

## SCS ENGINEERS

May 7, 2013

**SCS Project Number: 01212281.01**

City Of El Cajon  
Public Works Department  
200 Civic Center Way  
El Cajon, CA 92020-3916

**Re: Request for the Preparation of a Hold Harmless Agreement Relating to Existing and Proposed Monitoring Wells located Near the Intersection of Wells Avenue and Graves Avenue, El Cajon**

To whom it may concern:

This letter is our formal request for the City of El Cajon (City) to prepare a Hold Harmless Agreement (Agreement) for two existing groundwater monitoring wells (MW10 and MW11) and for one proposed groundwater monitoring well (MW11R) located near the intersection of Wells Avenue and Graves Avenue (Figure 1). The existing and proposed monitoring wells are related to the assessment (Assessment) of petroleum hydrocarbon-bearing groundwater that has been required by the County of San Diego Department of Environment Health (DEH). SCS has been contracted by the City to manage the Assessment which includes reinstallation of existing monitoring well MW11 with a deeper well (MW11R) approximately 5 feet to the east. A copy of the DEH letter requesting the reinstallation of MW11 is attached.

The two existing wells (MW10 and MW11) that we request to be covered under the Agreement are periodically being accessed to provide groundwater elevation measurements and groundwater samples to support the Assessment.

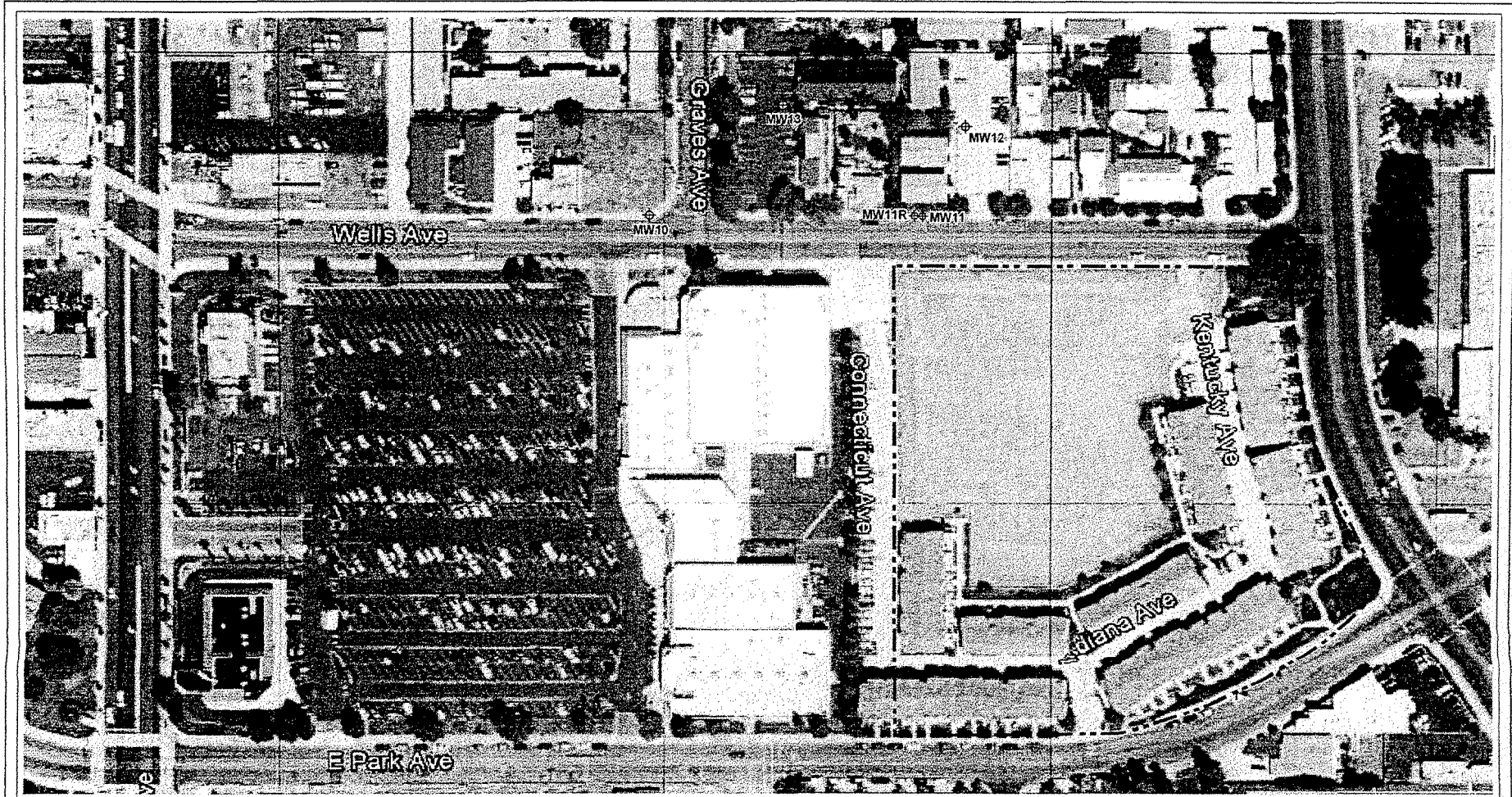
Respectfully,  
SCS ENGINEERS



Keith L. Etchells PG, CHg  
Senior Project Geologist

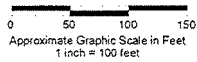
Attachments: Figure 1 and DEH Correspondence

EXHIBIT "A"



EXPLANATION

-  Approximate Site boundary
-  Groundwater monitoring well location
-  Proposed well location



Reference: Google Earth Aerial Photograph  
El Cajon, California - August 2010

Disclaimer: This figure is based on available data. Actual conditions may differ. All locations and dimensions are approximate.

**SCS ENGINEERS**  
Environmental Consultants  
8799 Balboa Avenue, Suite 290  
San Diego, California 92123

**PROPOSED GROUNDWATER MONITORING WELL LOCATIONS**  
El Cajon Redevelopment Agency  
315 North Magnolia Avenue  
El Cajon, California

Project No.:  
01212281.01

Figure 1

Date Drafted:  
6/28/12



**CITY OF EL CAJON  
CITY COUNCIL POLICY**

<b>SUBJECT:</b>	Insurance Requirements		<b>POLICY</b>
			D-3
<b>REFERENCE:</b>	Adopted 7/26/94 Amended 11/29/05	<b>EFFECTIVE</b>	<b>PAGE</b>
		11/29/05	1 of 8

**PURPOSE**

To provide a uniform City policy for liability insurance requirements and to establish procedures for its consistent application.

**BACKGROUND**

To help protect the City against liability, all individuals, contractors, agencies and organizations conducting business in association with, on behalf of, or in certain circumstances within the City of El Cajon are required to maintain adequate liability insurance coverage acceptable to the City.

Because of the differing levels of protection needed for various activities conducted within the city, the City has established policy limits and standards which directly relate to the type of activity being conducted.

**POLICY**

All individuals, contractors, agencies, and organizations conducting business either for the City of El Cajon (or the El Cajon Redevelopment Agency) or pursuant to an ordinance, resolution, agreement or policy requiring the maintenance of liability insurance shall provide proof of liability insurance in the following amounts and written on an occurrence basis (claims made coverage will be accepted only after verifying that occurrence coverage is not available):

1. A combined single limit policy with aggregate limits in the amount of \$2 million for all construction projects and for carnivals, subdivisions, and pollution coverage subject to section 5.c. under the heading "**INSURANCE STANDARDS**," with a maximum deductible or self-insurance retention ("SIR") of \$500,000; otherwise minimum limits in amounts as follows:

Bodily Injury:	\$	1,000,000	each person
	\$	1,000,000	each occurrence
	\$	2,000,000	aggregate products and completed operations
Property Damage:	\$	250,000	each occurrence
	\$	500,000	aggregate

Unless staff determines that circumstances (i.e. high risk project, etc.) require the higher limit, the \$2,000,000 limit shall be decreased to \$1,000,000 with a maximum deductible or SIR of \$150,000, when:

**EXHIBIT "B"**

**CITY OF EL CAJON  
CITY COUNCIL POLICY**

<i>SUBJECT:</i>	Insurance Requirements		<i>POLICY</i>
			D-3
<i>REFERENCE:</i>	Adopted 7/26/94 Amended 11/29/05	<i>EFFECTIVE</i>	<i>PAGE</i>
		11/29/05	2 of 8

**POLICY (continued)**

- a. The public improvements portion of a subdivision project is less than \$50,000; or
  - b. A construction project (in accordance with the Standard Specifications for Public Works Construction—and the Standard Special Provisions, the “Green Book”) is for less than \$50,000.
2. Except as otherwise provided in this policy, a combined single limit policy with aggregate limits in the amount of \$2 million for all others, including, but not limited to, athletic leagues, recreation groups, towing companies and public service agencies; otherwise minimum limits in amounts as follows:
- |                  |    |  |
|------------------|----|--|
| Bodily Injury:   | \$ | 500,000 each person  |
|                  | \$ | 1,000,000 each occurrence  |
|                  | \$ | 2,000,000 aggregate including products<br>and completed operations |
| Property Damage: | \$ | 100,000 each occurrence  |
|                  | \$ | 250,000 aggregate  |
3. A combined single limit policy with aggregate limits in the amount of \$250,000 for homeowners insurance or for comprehensive general liability insurance for small business owners, in either event only where the insurance is required for work in the public right-of-way. “Small business owners” are defined as commercial businesses, or a professional or administrative office uses, where the owners of the business work on-site as their primary calling or vocation, and having no more than two (2) employees not related by blood or marriage.
4. Selected high-risk activities that would otherwise fall under the criteria for category 2 shall be evaluated by staff on a case-by-case basis to determine whether or not the above limits are sufficient. The imposition of liability limits exceeding \$2 million for such high-risk activities is appealable to the City Council.
5. \$1,000,000 for taxicab companies.

**CITY OF EL CAJON  
CITY COUNCIL POLICY**

<b>SUBJECT:</b>	Insurance Requirements		<b>POLICY</b>  D-3
<b>REFERENCE:</b>	Adopted 7/26/94 Amended 11/29/05	<b>EFFECTIVE</b>  11/29/05	<b>PAGE</b>  3 of 8

**POLICY (continued)**

6. \$500,000 or actual value, whichever is greater, for "valuable papers" and "in transit" insurance where City records or personal property is being transported or stored outside of City property.
7. Exceptions to the above limits may be made for non-profit, charitable, political, community and religious organizations.
8. The policy or policies of insurance may be for all operations or activities of the party purchasing the policy or policies provided, however, that the City or the Agency may require a separate policy exclusively for operations of the purchaser where the City Manager (or Executive Director), in her sole discretion, determines that a single policy would be inadequate to protect the City or Agency in the event of multiple catastrophes.

**INSURANCE STANDARDS**

1. ADMITTED CARRIER / BEST'S RATING B+, CLASS VII
  - a. Insurers must be "admitted" carriers pursuant to the provisions of the California Insurance Code and in accordance with all requirements of the State Insurance Commission and must be listed in the:

"OFFICIAL PUBLICATION  
DEPARTMENT OF INSURANCE  
STATE OF CALIFORNIA  
45 Fremont Street  
San Francisco, California 94105

INSURANCE ORGANIZATIONS AUTHORIZED BY THE INSURANCE  
COMMISSION TO TRANSACT BUSINESS OF INSURANCE  
IN THE STATE OF CALIFORNIA DURING  
[the most recent year for which  
the publication is available]."

or

"California Department of Insurance Company Profile."

**CITY OF EL CAJON  
CITY COUNCIL POLICY**

<b>SUBJECT:</b>	Insurance Requirements		<b>POLICY</b>
			D-3
<b>REFERENCE:</b>	Adopted 7/26/94 Amended 11/29/05	<b>EFFECTIVE</b>	<b>PAGE</b>
		11/29/05	4 of 8

**INSURANCE STANDARDS (continued)**

- b. Insurers must have a Best's rating of B+, Class VII or higher (this rating includes those insurers with a minimum policyholder's surplus of \$50 to \$100 million). Exceptions to the Best's rating may be considered when an insurance carrier meets all other standards and can satisfy surplus amounts equivalent to a B+, Class VII rating.

**2. NON-ADMITTED CARRIER / BEST'S RATING B+, CLASS VII**

Exceptions to the "admitted" requirement may be considered when a non-admitted insurance carrier meets all other standards herein and:

- a. is listed in:

California Department of Insurance  
List of Eligible Surplus Line Insurers

**LISTING OF FILINGS**

- b. has a Best's rating of B+, Class VII or higher (this rating includes those insurers with a minimum policyholder's surplus of \$50 to \$100 million);
- c. has ten years or more experience in the business of insurance; and
- d. if applicable, the reinsurance carrier has a qualified rating.

**3. GENERAL – INSURANCE CERTIFICATES / ADDITIONAL INSURED**

All insurers (including those insuring against pollution or discharges of hazardous materials) must provide certificates of insurance and endorsements evidencing coverage prior to the start of any contract. All certificates or endorsements must include:

- Name of insurance company issuing each policy.
- All insurers must provide an original endorsement naming the City of El Cajon (and/or the El Cajon Redevelopment Agency), and its (their) elected and appointed officials, officers, employees and volunteers (for purposes of this Policy, individually and collectively, the "City Insureds") as additional insureds. This inclusion as

**CITY OF EL CAJON  
CITY COUNCIL POLICY**

<b>SUBJECT:</b>	Insurance Requirements		<b>POLICY</b>
			D-3
<b>REFERENCE:</b>	Adopted 7/26/94 Amended 11/29/05	<b>EFFECTIVE</b>	<b>PAGE</b>
		11/29/05	5 of 8

**INSURANCE STANDARDS (continued)**

additional insureds shall not be required of Workers' Compensation or professional liability policies of insurance, and may be waived for "valuable papers" coverage with the approval of the City Attorney.

- Address of named insured.
- Description of coverage, including any special coverage required by the contract.
- Policy numbers.
- Policy periods (If claims made basis, must include retroactive date and length of time allowed as extended reporting period).
- Coverage type (occurrence form vs. claims made).
- Authorized signature and date of issuance. An original signature is required: a digital signature is acceptable so long as it complies with the requirements of Government Code §16.5.
- Unless approved by the City Manager or her designee, no certificate shall be accepted that qualifies the obligation of the carrier to provide 30 days written notice of cancellation of the policy. With the approval of the City Attorney the obligation to provide notice of cancellation may be reduced to ten (10) days, but only for termination due to the non-payment of any premium.

**4. PUBLIC WORKS PROJECTS**

In addition to the standards set forth above, insurance policies for public works projects must also meet the following insurance requirements set out in the most recent edition of the Green Book adopted by the City Council:

- a. All insurance certificates shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration or proposed cancellation of such policy for any reason whatsoever, the City shall be notified by certified mail, return receipt requested, giving a sufficient time before the date thereof to comply with any applicable law or statute, but in no event less than thirty (30) days before expiration or cancellation is effective, the provisions of section 3 herein notwithstanding; and
- b. Compliance with Labor Code §§3700 and 3800 relating to Worker's Compensation.
- c. Requirements of the Green Book shall prevail.

**CITY OF EL CAJON  
CITY COUNCIL POLICY**

<b>SUBJECT:</b>	Insurance Requirements		<b>POLICY</b>
			D-3
<b>REFERENCE:</b>	Adopted 7/26/94 Amended 11/29/05	<b>EFFECTIVE</b>	<b>PAGE</b>
		11/29/05	6 of 8

**INSURANCE STANDARDS (continued)**

5. PUBLIC RIGHT-OF-WAY

An applicant for permit(s) to do work within the public right-of-way may establish satisfactory proof of liability insurance in the following manner:

a. CONTRACTORS

Contractors must furnish the City with a certificate of liability insurance, which meets the requirements set forth above and any other City requirements contained in this policy.

b. HOMEOWNERS / PROPERTY OWNERS

Homeowners/Property owners requesting a permit to do work within City rights-of-way or easements immediately adjacent to their respective owned or occupied property, solely for the owner's personal benefit, shall be required to furnish the City with a copy of their homeowner's/property owner's liability insurance policy, which meets the requirements set forth above, with the minimum limits described in category 3 under the heading "**POLICY**," above. The policy must be effective during the entire period of the proposed work, plus two (2) calendar years, and must provide coverage for claims arising from the work performed, or improvements owned, by the homeowner in the right-of-way or easement. If the encroachment is ongoing, annual proof of insurance shall be required. The requirement to name the City as an additional insured, and the requirement for a policy for two (2) additional calendar years, may each be waived by the City Council or the City Manager (or her designee) in cases of extreme hardship, in their discretion.

c. POLLUTION EXCLUSION

Applications for the installation of monitoring wells for the evaluation of groundwater pollution or for the discharge of formerly polluted groundwater into the City sewer system must be accompanied by a certificate of liability insurance provided by the property owner. Such liability insurance may not contain a pollution exclusion clause and must explicitly indemnify the City against all hazards which may result from either of these activities, including a worsening of

**INSURANCE STANDARDS (continued)**

**CITY OF EL CAJON  
CITY COUNCIL POLICY**

<b>SUBJECT:</b>	Insurance Requirements		<b>POLICY</b>  D-3
<b>REFERENCE:</b>	Adopted 7/26/94 Amended 11/29/05	<b>EFFECTIVE</b>  11/29/05	<b>PAGE</b>  7 of 8

pollution, either within the subsurface adjacent to the original pollution or within the City sewer system.

If the property owner is unable to provide insurance which addresses both general liability and pollution liability, the environmental company or other appropriately qualified entity contracting with the property owner for either monitoring well installation or groundwater pollution remediation, may furnish pollution liability insurance on behalf of the property owner.

Any insurance approved under this subsection c. shall be an occurrence policy, and shall otherwise comply with the provisions of this Policy.

d. **PUBLIC UTILITIES**

This policy as it relates to work in the public rights-of-way shall not be applicable to Cable TV, Helix Water District, Padre Dam Municipal Water District, SBC, San Diego Gas & Electric, or any other public utility.

e. **TRANSPORTATION / OVERSIZE LOADS – PERMITS – See Chapter 10.24 of the El Cajon Municipal Code.**

**TIME LIMITS / CANCELLATION PROVISIONS**

All liability insurance required pursuant to this policy shall provide coverage for a sufficient time period to protect the City from liability. The insurer is required to provide a minimum of thirty (30) days notice of cancellation of any policy. With the approval of the City Attorney (except as provided in section 4, herein) this obligation may be reduced to not less than ten (10) days written notice, but only for termination due to the non-payment of any premium. In no event shall a policy be accepted which terminates prior to the completion of the activity to be covered.

In certain circumstances, it may be impracticable to obtain continuing insurance coverage due to the duration of the activity or the cost of premature renewal. Under such circumstances, an exception to the coverage period may be made so long as the policy is renewed or replaced with an acceptable insurance carrier and there is no lapse in coverage. Maintenance of proper insurance coverage is a material term of any contract with the City and failure to maintain or

**TIME LIMITS / CANCELLATION PROVISIONS (continued)**

**CITY OF EL CAJON  
CITY COUNCIL POLICY**

<i>SUBJECT:</i>	Insurance Requirements		<i>POLICY</i>
			D-3
<i>REFERENCE:</i>	Adopted 7/26/94 Amended 11/29/05	<i>EFFECTIVE</i>	<i>PAGE</i>
		11/29/05	8 of 8

renew coverage or to provide evidence of renewal may be treated as a material breach of contract.

**ALTERNATIVE RISK MANAGEMENT PRACTICES; SELF-INSURANCE; RISK-POOLING**

Alternative risk management practices, such as self-insurance, risk pooling, risk retention groups, and other such programs, will be accepted in lieu of commercial insurance policies provided that the coverage meets the requirements of this Policy. Any such alternative risk management practices must meet the financial strength and surplus requirements reflected by the Best's Ratings required of commercial insurance under this Policy.



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REIMBURSEMENT AND INDEMNITY AGREEMENT

THIS REIMBURSEMENT AND INDEMNITY AGREEMENT (“AGREEMENT”) is made this 16 day of DEC, 2003, by and between the EL CAJON REDEVELOPMENT AGENCY, a public body corporate and politic (“AGENCY”) and PRIEST DEVELOPMENT CORPORATION (“DEVELOPER”).

WHEREAS, AGENCY and DEVELOPER entered into that certain DISPOSTION AND DEVELOPMENT AGREEMENT dated January 29, 2003 (“DDA”) regarding approximately 5.85 acres more particularly described as Assessor’s Parcel Number 488-040-05 (“SITE”); and

WHEREAS, a condition precedent to DEVELOPER acquiring title to the SITE, which is the subject of the DDA, is AGENCY having removed all hazardous waste or toxic substances from the SITE and obtained from the County of San Diego a “no further action letter” regarding said clean-up (“CONTAMINATION CLEAN-UP”); and

WHEREAS, AGENCY has not completed pursuant to the terms of the DDA removal of all hazardous waste or toxic substances from the SITE; and

WHEREAS, AGENCY desires to have DEVELOPER acquire the SITE prior to the completion of the CONTAMINATION CLEAN-UP whereby DEVELOPER would complete the CONTAMINATION CLEAN-UP; and

WHEREAS, DEVELOPER will agree to acquire the SITE and complete the CONTAMINATION CLEAN-UP subject to the terms and conditions in this AGREEMENT.

NOW, THEREFORE, in furtherance of this AGREEMENT, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. For the promises contained in this AGREEMENT by the parties, DEVELOPER will acquire the SITE from AGENCY pursuant to the terms of the DDA subject to the following terms:

- a. DEVELOPER will complete the CONTAMINATION CLEAN-UP subject to the full terms and conditions of this AGREEMENT.
- b. AGENCY will assign and deliver to DEVELOPER all reports, studies, correspondence and memoranda including electronic communication

regarding the CONTAMINATION CLEAN-UP completed by AGENCY prior to acquisition of SITE by DEVELOPER.

- c. DEVELOPER, in completing the CONTAMINATION CLEAN-UP shall perform such work in compliance with all state, local and federal laws, rules and regulations related to the CONTAMINATION CLEAN-UP, including the possession of all contractors' and environmental licenses as may be required by such laws.

2. AGENCY shall reimburse DEVELOPER for all costs, expenses, claims, indebtedness of every kind and nature relating to the CONTAMINATION CLEAN-UP after acquisition of the SITE by DEVELOPER from AGENCY. DEVELOPER shall on a periodic basis submit to AGENCY invoices for reimbursement the cost of the CONTAMINATION CLEAN-UP. AGENCY shall pay to DEVELOPER the amount of the invoice submitted within thirty (30) days of receipt of said invoice. In lieu of payment to DEVELOPER, AGENCY shall have the option of reducing the purchase price of the SITE under the DDA by the actual costs incurred by DEVELOPER in performing the CONTAMINATION CLEAN-UP.

3. AGENCY agrees, to the extent permitted by law, to indemnify, defend, and hold harmless, DEVELOPER as well as its officers, directors, shareholders, employees, attorneys, successors and assigns, and all other persons, firms, corporations, associations or partnerships, or any other entity connected therewith harmless from and against any and all liability, loss, cost or expense, including without limitation, attorneys' fees, expenses, costs of litigation and expenses reasonably incurred in investigating or attempting to avoid or oppose the imposition of damages or in enforcing this indemnity, of whatever kind or nature ("Losses") which DEVELOPER may sustain by reason of any suits, claims, demand, litigation, proceedings or matters arising out of, or in any manner connected with the CONTAMINATION CLEAN-UP and any hazardous waste or toxic substances on the SITE, provided, however, that the CONTAMINATION CLEAN-UP is performed in manner consistent with, and in complete accordance with, the plan approved by the County of San Diego Department of Environmental Health, *except* for those Losses arising out of the willful misconduct of DEVELOPER or its officers, directors, shareholders, employees, attorneys, agents, contractors, successors or assigns and further excepting any Losses arising out of DEVELOPER'S compaction of the soil prior to construction.

The indemnification contained in this paragraph shall be in addition to and expand upon the indemnification contained in Section 4.3 of the DDA.

4. This AGREEMENT shall be binding upon the AGENCY'S successors and assigns and shall inure to the benefit of the successors and assigns of DEVELOPER.

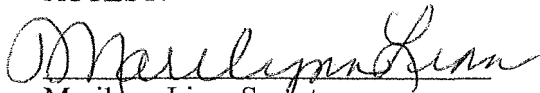
5. All time frames and construction schedules for the development of the SITE as contained in the DDA including but not limited to Section 3.5 and Attachment No. 3 entitled SCHEDULE OF PERFORMANCE shall be tolled until such time as

DEVELOPER obtains from the County of San Diego a "no further action" letter regarding the CONTAMINATION CLEAN-UP.

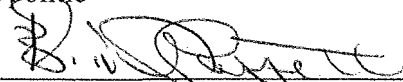
6. This AGREEMENT may be executed in several counterparts and all so executed shall constitute one agreement which shall be binding on all parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the date and year first above written.

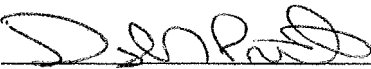
ATTEST:

  
Marilynn Linn, Secretary

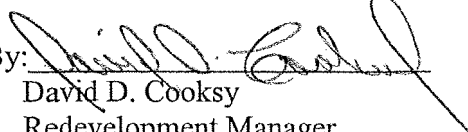
AGENCY  
EL CAJON REDEVELOPMENT  
AGENCY, a public body corporate  
and politic

By:   
Bill Garrett, Executive Director

DEVELOPER  
PRIEST DEVELOPMENT  
CORPORATION, a California  
Corporation.

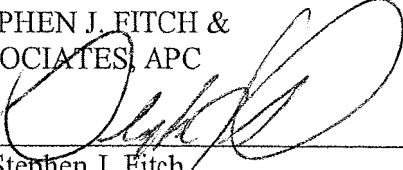
By:   
Daryl R. Priest, President

APPROVED AS TO CONTENT:

By:   
David D. Cooksy  
Redevelopment Manager

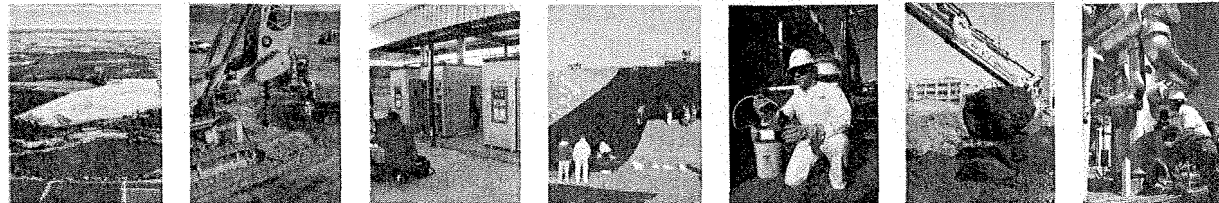
APPROVED AS TO FORM:

  
Morgan L. Foley, Agency Counsel

STEPHEN J. FITCH &  
ASSOCIATES, APC  
By:   
Stephen J. Fitch,  
Attorneys for Priest Development  
Corporation

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# SCS ENGINEERS



## Revised Workplan for Additional Site Assessment for

**315 North Magnolia Avenue  
El Cajon, California  
(DEH Case Number: H20184-001)**

Presented to:

**City of El Cajon Redevelopment Agency**

and

Ms. Ellen Beacon  
Department of Environmental Health  
County of San Diego  
P.O. Box 129261  
San Diego, California 92112-9261

Presented by:

**SCS ENGINEERS**  
8799 Balboa Avenue, Suite 290  
San Diego, California 92123  
(858) 571-5500

March 5, 2012  
Project Number 01210117.00

Offices Nationwide  
[www.scsengineers.com](http://www.scsengineers.com)

March 2, 2012  
File No. 01210117.00

Ms. Ellen Beacon  
Assessment and Mitigation Program  
Department of Environmental Health  
County of San Diego  
P.O. Box 129261  
San Diego, California 92112-9261

**Subject: Revised Workplan for Additional Site Assessment**

**DEH Case Number: H20184-001**

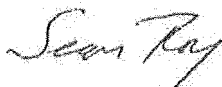
**Site: Magnolia Villas  
315 North Magnolia Avenue  
El Cajon, California**

Dear Ms. Beacon:

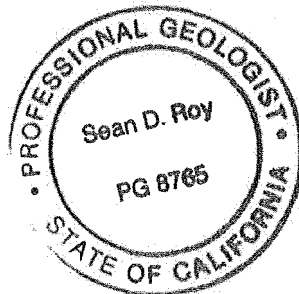
SCS Engineers (SCS) is pleased to present this revised workplan for additional site assessment (Revised Workplan) in response to your letters dated November 7, 2011, and January 23, 2012. The Revised Workplan was conducted in accordance with the consulting agreement (Contract) between SCS and El Cajon Redevelopment Agency (ECRDA) (Client), which was fully executed on June 15, 2010.

Should you have any questions regarding this Report, please do not hesitate to call the undersigned at (858) 571-5500. This Report has been prepared and reviewed by the following:

Sincerely,



Sean Roy, PG 8765  
Project Professional  
**SCS ENGINEERS**



Charles E. Houser, CHg 945  
Senior Project Professional  
**SCS ENGINEERS**

cc: Ms. Jenny Ficacci  
Redevelopment and Housing Manager  
City of El Cajon  
Redevelopment and Housing Division  
200 Civic Center Way  
El Cajon, California 92020-3916

**Table of Contents**

<b>Section</b>	<b>Page</b>
1 Background.....	1
2 Site Description Summary.....	2
3 Workplan for Additional Site Assessment.....	2
Objective.....	2
Groundwater Levels March 1, 2012 .....	3
Scope of Services.....	3
Preparation for Field Work.....	3
Preparation of Health and Safety Plan .....	3
Utility Search and Markout.....	3
Encroachment Permit Application, Traffic and Pedestrian Control, and Private Property Access Agreement.....	3
Preparation of Well Permit Application .....	4
Subcontractor Management.....	4
Drilling and Soil Sampling.....	4
Soil Sample Analysis .....	5
Groundwater Monitoring Well Installation .....	5
Well Survey... ..	6
Report Preparation/EDF Data Uploading.....	6
4 Recommendations .....	6
5 Report Usage and Future Site Conditions .....	6
6 Likelihood Statements .....	7

**List of Figures**

<b>No.</b>	
1	4-Way Site Location Map
2	Site Plan Showing Groundwater Elevations for December 2011
3	Site Plan with Proposed Groundwater Monitoring Wells

**List of Tables**

<b>No.</b>	
1	Summary of Groundwater Elevations

**Appendices**

A	DEH Letter Dated November 11, 2011
B	DEH Letter Dated January 23, 2012



## 1 BACKGROUND

The Site is approximately 5.85 acres and is located at 315 North Magnolia Avenue (referred to as 327 North Magnolia Avenue in previous reports) in a mixed land-use area in the City of El Cajon, California (Figure 1). The Site is located in the downtown core, immediately adjacent to City Hall and the East County Regional Center. The Site is partially developed with attached single-family residences (SFRs), with many of the residences presently occupied.

On October 13, 2011, SCS submitted a report describing the forensic geochemical analysis of both soil and groundwater samples. The results of the forensic geochemical groundwater samples provided no conclusive evidence to indicate the samples contain different types of gasoline. However, the results of soil samples collected from near the water table near wells MW5-2007 and MW11, C<sub>3</sub> – C<sub>10</sub> hydrocarbon distribution, strongly suggest the source of the gasoline contamination near well MW5-2007 may be different than the source of the gasoline contamination near well MW-11.

The DEH responded to SCS's *Report of Forensic Geochemical Analysis of Soil and Groundwater Samples*, in a letter, dated November 7, 2011 (Appendix A), disagreeing with the findings of the report. The DEH's comments included the following:

- The change in the fuels characteristics from the source area to the down gradient locations can be caused by a number of factors such as:
  1. Multiple releases at the site from 1962 to 1989 and
  2. Attenuation of the fuel and its components due to soil/geologic interaction, volatilization, biodegradation and chromatographic effects.

The DEH letter also requested a workplan to address downgradient delineation by February 15, 2012.

On January 13, 2012, SCS submitted a report titled *Semi-Annual Groundwater Monitoring Report December 2011 and Workplan for Additional Site Assessment for 315 North Magnolia Avenue, El Cajon, California (DEH Case Number: H20184-001)*, describing the semi-annual groundwater monitoring and sampling event conducted at the Site on December 14 and 15, 2011. This was the eighth monitoring and sampling event conducted since the completion of redevelopment activities at the Site. In addition, a workplan for additional downgradient delineation of the dissolved phase plume, pursuant to the DEH's request, was included as part of the report.

The DEH responded to the report and workplan in a letter, dated January 23, 2011 (Appendix B), and had the following comments:

- The water-level differences between may and December roughly averaged between 2.5 to 3 feet with the exception of well MW11 which had a change of 4.7 feet and was considered "dry". The water-level in MW11 must be re-measured. We cannot approve your work plan proposing to install new wells at the same depth as MW11 if they could be "dry".

- The proposed well locations must be shown on a map with a scale. We cannot approve the locations of the wells without knowing the actual distances away from MW11.
- All soil samples must be screened with a photo-ionization detector or flame-ionization detector and any samples with greater than 50 ppm volatile organic compounds must be submitted for laboratory analysis.

**Please submit the water level measurements and a revised work plan to complete the downgradient investigation by February 23, 2012.**

SCS has prepared this Revised Workplan pursuant to the DEH's request in their letter dated January 23, 2012.

## 2 SITE DESCRIPTION SUMMARY

Site Name:	Magnolia Villas (The Site has also been referred to as Former Gasoline and Service Station)
Site Owner:	Magnolia Villas Home Owner's Association and Priest Development Corporation
Site Address:	315 North Magnolia Avenue, El Cajon, California (The Site has also been identified as 327 North Magnolia Avenue)
Assessor's Parcel Numbers:	448-420-01 to 68 and 488-421-01 to 54
SAM Case No :	H20184-001
Global ID:	T0607300241

## 3 WORKPLAN FOR ADDITIONAL SITE ASSESSMENT

Typically, groundwater monitoring wells could be placed north and northeast of monitoring well MW11. However, due to the numerous buildings and limited access, ideal locations are not available. Therefore, SCS selected two locations for downgradient control where access is possible. A paved parking area on private property to the north-northeast of MW11 and the public right-of-way northwest of MW11 on Graves Avenue.

### OBJECTIVE

Provide a workplan for additional assessment of the extent and concentrations of dissolved phase petroleum hydrocarbons in groundwater downgradient of the Site and respond to the DEH's comments in their letter dated January 23, 2012.

## GROUNDWATER LEVELS MARCH 1, 2012

On March 1, 2012, groundwater monitoring wells MW10 and MW11 were monitored for depth to groundwater. Depth-to-groundwater measurements were taken using an interface probe with a manufacturer's reported accuracy of 0.01 foot and are presented below and in Table 1.

Well ID	Depth to Groundwater (Feet Below TOC)	Groundwater Elevation (Feet Above MSL)
MW10	10.86	420.94
MW11	18.88	414.02

TOC = Top of Casing  
MSL = Mean Sea Level

As can be seen from the groundwater elevations above there is a decrease of almost seven feet in groundwater elevations between wells MW10 and MW11, which are separately by a lateral distance of approximately 280 feet.

## SCOPE OF SERVICES

### Preparation for Field Work

#### Preparation of Health and Safety Plan

A health and safety plan for work conducted at the Site and workers within the "exclusion zone" is required pursuant to the regulations found in 29 Code of Federal Regulations (CFR) Part 1910.120 and California Code of Regulations (CCR), Title 8, Section 5192. Therefore, a health and safety plan will be prepared for the proposed work scope and will outline the potential chemical and physical hazards that may be encountered during groundwater monitoring and sampling activities. The appropriate personal protective equipment and emergency response procedures for the anticipated Site-specific chemical and physical hazards will be detailed in this plan. SCS and contracted personnel involved with the proposed field work will be required to sign this document in order to encourage proper health and safety practices.

#### Utility Search and Markout

SCS will notify Underground Service Alert (USA), as required by state law, and retain a private utility locator. This procedure is designed to minimize the likelihood of excavating into a subsurface utility.

#### Encroachment Permit Application, Traffic and Pedestrian Control, and Private Property Access Agreement

SCS will submit the necessary application and fee to obtain an encroachment permit to the City of El Cajon in order to allow SCS to install a groundwater monitoring well in the right-of-way on Graves Avenue. A traffic control plan will also be prepared and approved before the

encroachment permit application is submitted. In addition, negotiations with and an access agreement for the monitoring well MW12 location will be negotiated.

### **Preparation of Well Permit Application**

SCS will prepare and submit the necessary well permit application and the appropriate fees to San Diego County. The permit application will reflect appropriate drilling methods and well construction details. The application will be signed by an appropriately licensed professional.

### **Subcontractor Management**

The appropriate subcontractor services, such as concrete or asphalt cutting, drilling, sample analysis, and other required contractor services, will be obtained. This task also includes time to coordinate and manage subcontractors such as the utility locator and analytical laboratory, secure the necessary specialized equipment, and prepare for field mobilization.

### **Drilling and Soil Sampling**

A truck-mounted drilling rig equipped with hollow-stem augers will be used to drill two soil borings to depths of up to approximately 25 to 30 feet bgs. Please note that the actual depth of the boring will be based upon field observations and the depth to interpreted saturated zone during the drilling operations by the appropriately licensed professional geologist.

The location of the soil borings have been chosen to further assess the downgradient extent of petroleum hydrocarbon-bearing soil and groundwater impacts. The locations of the proposed soil borings/monitoring wells are depicted on Figure 3, and the following table presents the rationale for the proposed locations and depth:

<b>Proposed Soil Boring Number</b>	<b>Estimated Depth of Boring (feet bgs)</b>	<b>Proposed Location</b>	<b>Rationale</b>
MW12	25 - 30	Parking lot to the north of MW11.	To assess downgradient petroleum hydrocarbon-bearing soil and groundwater.
MW13	25 - 30	Northwest of MW11 along Graves Avenue.	

During the drilling activities, all soil samples will be screened with a photo-ionization detector and any samples with greater than 50 parts per million (ppm) will be submitted for laboratory analysis in accordance with DEH requirements. The soil samples will be collected at approximately 5-foot-depth intervals, at significant lithological changes, at the capillary fringe, and at other appropriate depths based on the professional judgment of the on-Site geologist. Based upon current and previous observations of depth-to-groundwater at the Site, it is likely that groundwater will be encountered at depths ranging from approximately 12 to 22 feet below ground surface (bgs).

As many as five samples will be collected from each soil boring, or a total of up to 10 samples will be collected. Soil samples will be described in general accordance with the Unified Soil Classification System. Rock samples will be described appropriately. Soil sampling and borehole

logging will be conducted in accordance with the soil sampling guidance presented in the current SAM Manual issued by the DEH.

As required by County of San Diego guidelines, a steam cleaner will either be on Site to steam clean the augers between soil borings, or precleaned augers will be used to minimize the likelihood of cross-contaminating a given boring and to minimize the potential for a false positive in the soil samples analyzed. The soil samples from each boring will be collected, when possible, with a split-spoon or similar type sampler. The split-spoon sampler will be cleaned between sampling events with a cleaning process consisting of a water-Alconox™ solution wash, and two tap water rinses.

Soil samples will be driven into brass or stainless steel tubes. The ends of the sample tubes will be covered with Teflon® sheeting and tightly closed with end caps for handling and transportation activities. The sample containers will be labeled and packed in ice-filled coolers for delivery to a laboratory for analysis. Chain-of-custody procedures will be implemented for sample tracking. A written analytical report will be provided by the laboratory upon completion of the sample testing. Soil cuttings will be placed in Department of Transportation (DOT)-rated 55-gallon drums.

### **Soil Sample Analysis**

An off-Site, state-accredited laboratory will be used to analyze the collected soil samples for the following:

- A minimum of two soil samples per soil boring will be analyzed for TPHg and TPH as diesel (TPHd) in general accordance with CA DHS LUFT (8015B modified) Method; and
- The sample from each boring with the highest TPHg concentration or the nearest to the field-interpreted water table will be analyzed for VOCs in general accordance with EPA Method 8260B.

### **Groundwater Monitoring Well Installation**

After the borings are drilled, a groundwater monitoring well will be installed in each boring. Monitoring wells will be constructed of 2-inch-diameter polyvinyl chloride (PVC) casing and screen. We anticipate installing fifteen feet of 0.020-inch screened casing from approximately five to seven feet above the top of the interpreted saturated zone to the total depth of the well (or eight to ten feet into the saturated zone). Blank casing will be used to complete the casing interval. An appropriately graded sand filter pack will be installed around the well screen so it extends approximately 1 foot above the screened interval. A minimum of 3 feet of bentonite seal will be placed and hydrated above the sand filter pack. The well will be completed with a trafficked road box set in a 3-foot-diameter concrete apron in accordance with current SAM Manual guidelines.

After the installation of the sand pack and before placement of the bentonite seal, the well will be surged in accordance with SAM guidelines. The well will be developed with a surge block or similar device. The process of surging and purging will be repeated several times as necessary after well completion until the well development process is judged complete. Development water will be placed in appropriate DOT-rated 55-gallon drums.

### **Well Survey**

After completion, all new Site monitoring wells will be surveyed and tied into the existing datum and well network by a licensed land surveyor to allow for an accurate estimate of groundwater elevation and gradient in accordance with State regulations.

### **Report Preparation/EDF Data Uploading**

Based on the findings of the field investigation and laboratory results from the above scope of services, a Report will be prepared in accordance with DEH guidelines. The Report will cover the various areas investigated at the Site and will include laboratory reports, chain-of-custody records, soil boring lithologic logs, figures and cross sections indicating soil boring locations and sample analytical results, tabulated analytical results, if encountered, and appropriate support documentation. The Report will be peer-reviewed and signed by the appropriately licensed professional. The work conducted at the Site will be overseen by a California state-registered Professional Geologist. The Report will be written in accordance with the guidelines presented in the current SAM Manual and the site assessment report checklist. In addition, a 60-day drilling report will be prepared and submitted as required by the DEH. Appropriate steps will be taken to adhere to the state regulations (pursuant to AB2886) by submitting the laboratory data and reports to the State Water Resources Control Board Geotracker database in electronic delivery format at the same time that the written reports are submitted to the DEH.

## **4 RECOMMENDATIONS**

Based on the data obtained during this Assessment, previous groundwater monitoring and sampling events, and our conclusions, SCS recommends:

- Continuation of semi-annual groundwater monitoring at the Site to assess concentration trends as well as downgradient CoCs.
- Implement the workplan for additional site assessment upon DEH approval.

## **5 REPORT USAGE AND FUTURE SITE CONDITIONS**

This Report is intended for the sole usage of the Client and the parties designated by SCS. Use of this Report is subject to the provisions of the fully executed Contract between the Client and SCS. Any third party usage of this Report shall be subject to the provisions of the Contract and any unauthorized misuse of or reliance upon the Report shall be without risk or liability to SCS.

The conclusions of this Report are judged to be relevant at the time the work described in this Report was conducted. Future conditions may differ and this Report should not be relied upon to

represent future Site conditions unless a qualified consultant familiar with the practice of Phase II environmental assessments in San Diego County is consulted to assess the necessity of updating this Report.

Although this Assessment has attempted to assess the likelihood that the Site has been impacted by a hazardous material/waste release, potential sources of impact may have escaped detection for reasons that include, but are not limited to: 1) inadequate or inaccurate information rightfully provided to SCS by third parties, such as public agencies and other outside sources; 2) the limited scope of this Assessment; and 3) the presence of undetected, unknown, or unreported environmental releases.

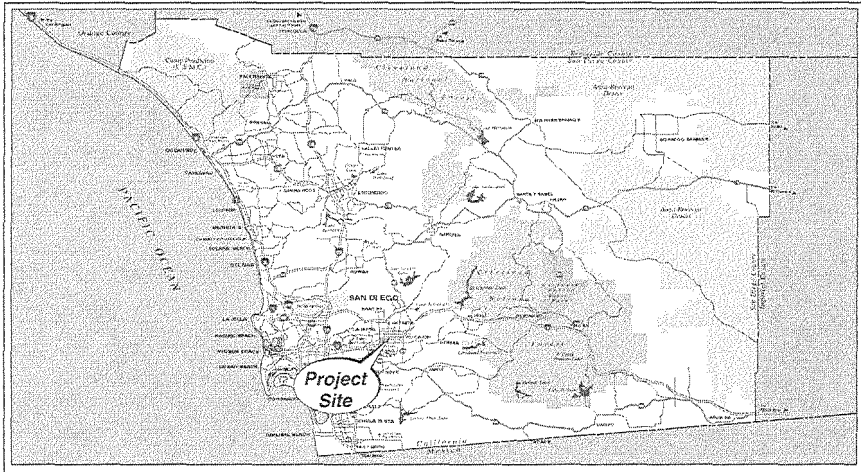
## 6 LIKELIHOOD STATEMENTS

Statements of “likelihood” have been made in this report. Likelihood statements are based on professional judgments of SCS. The term “likelihood,” as used herein, pertains to the probability of a match between the prediction for an event and its actual occurrence. The likelihood statement assigns a measure for a “degree of belief” for the match between the prediction for the event and the actual occurrence of the event.

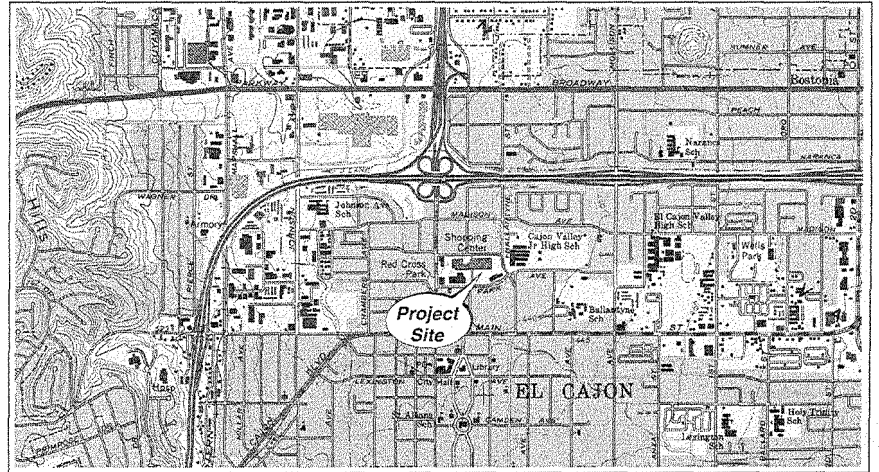
The likelihood statements in this Report are made qualitatively (expressed in words). The qualitative terms can be approximately related to quantitative percentages. The term “low likelihood” is used by SCS to approximate a range of 10 to 20 percent; the term “moderate likelihood” refers to an approximate range of 40 to 60 percent; and the term “high likelihood” refers to an approximate range of 80 to 90 percent.

## FIGURES





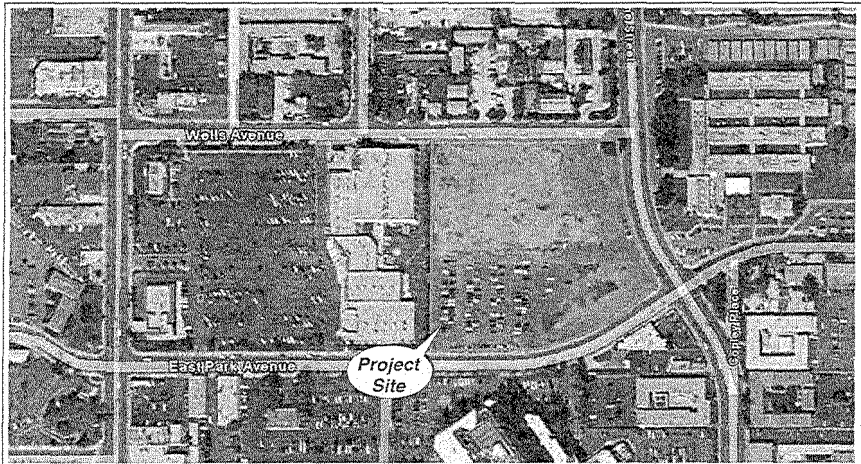
REGIONAL SITE LOCATION



2-DIMENSIONAL SITE LOCATION

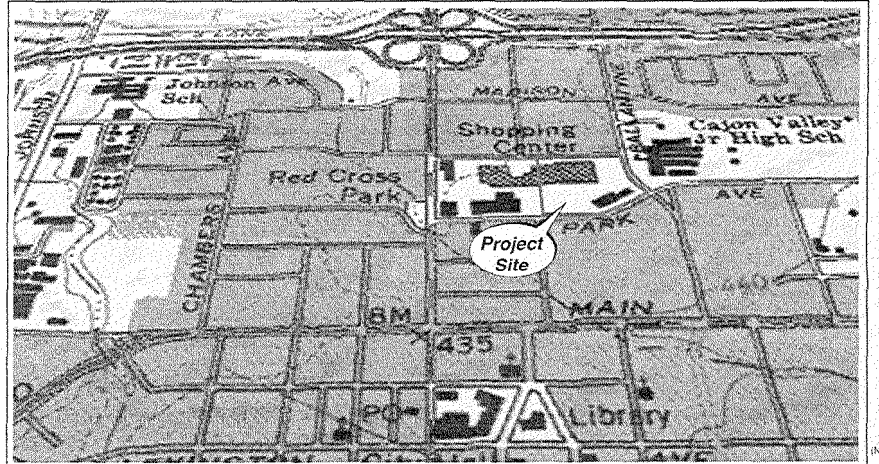
Reference:  
U.S.G.S. 7.5 Minute Quadrangle map  
El Cajon, California - 1977. Photo revised 1982.

0 1000 2000 3000  
Approximate Graphic Scale in Feet



SITE AERIAL PHOTOGRAPH

Reference:  
Google Earth Aerial Photograph  
El Cajon, California - 2009



3-DIMENSIONAL SITE LOCATION

Reference:  
U.S.G.S. 7.5 Minute Quadrangle map  
El Cajon, California - 1977. Photo revised 1982.

Disclaimer: This figure is based on available data. Actual conditions may differ. All locations and dimensions are approximate.

**SCS ENGINEERS**

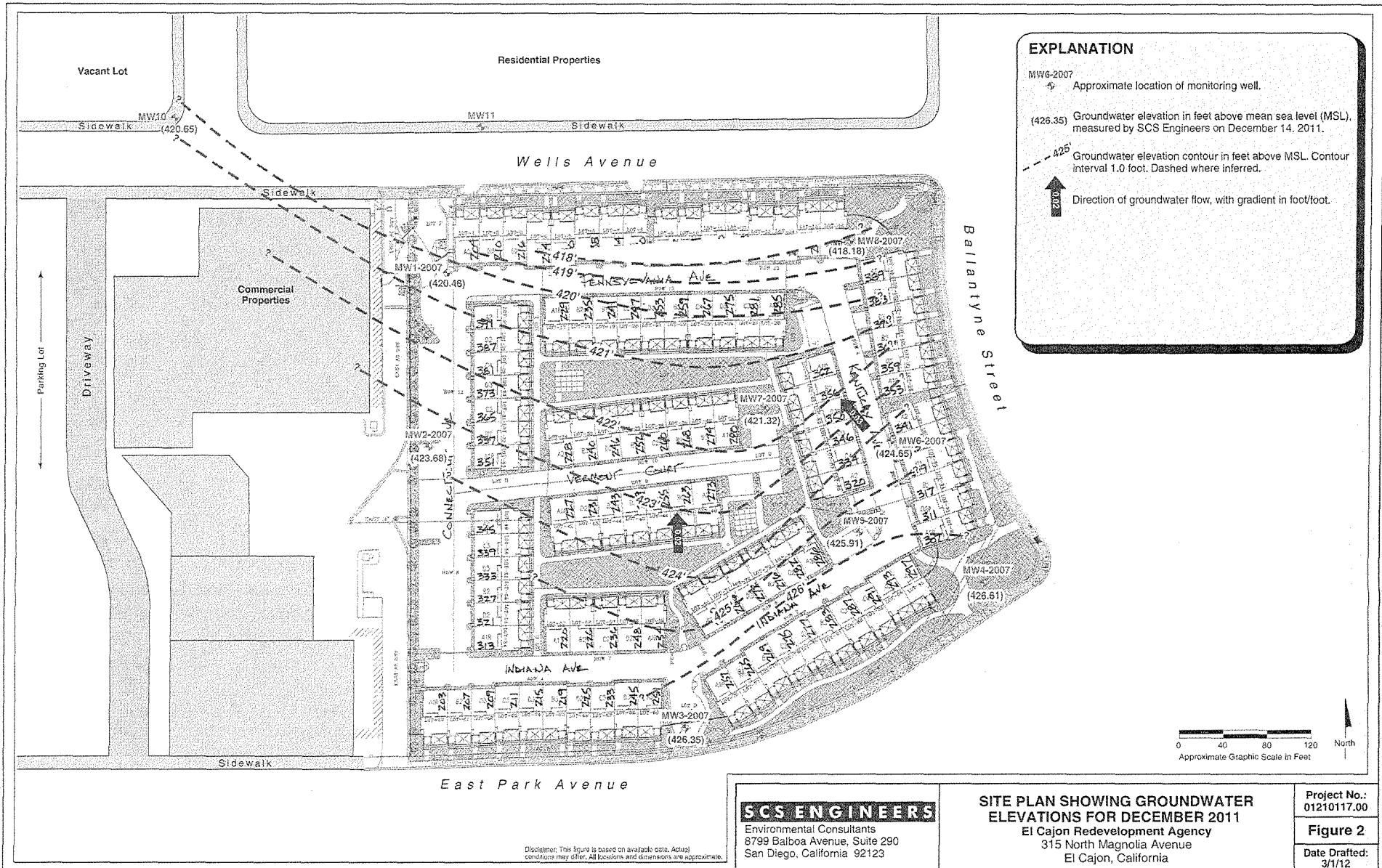
Environmental Consultants  
8799 Balboa Avenue, Suite 290  
San Diego, California 92123

**4-WAY SITE LOCATION MAP**  
El Cajon Redevelopment Agency  
315 North Magnolia Avenue  
El Cajon, California





Project No.:  
01210117.00

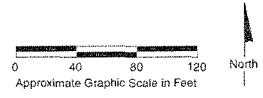
**Figure 1**

Date Drafted:  
8/19/10



**EXPLANATION**

- MW6-2007  
 Approximate location of monitoring well.
- (426.35)  
 Groundwater elevation in feet above mean sea level (MSL), measured by SCS Engineers on December 14, 2011.
- - - 425  
 Groundwater elevation contour in feet above MSL. Contour interval 1.0 foot. Dashed where inferred.
-  Direction of groundwater flow, with gradient in foot/foot.

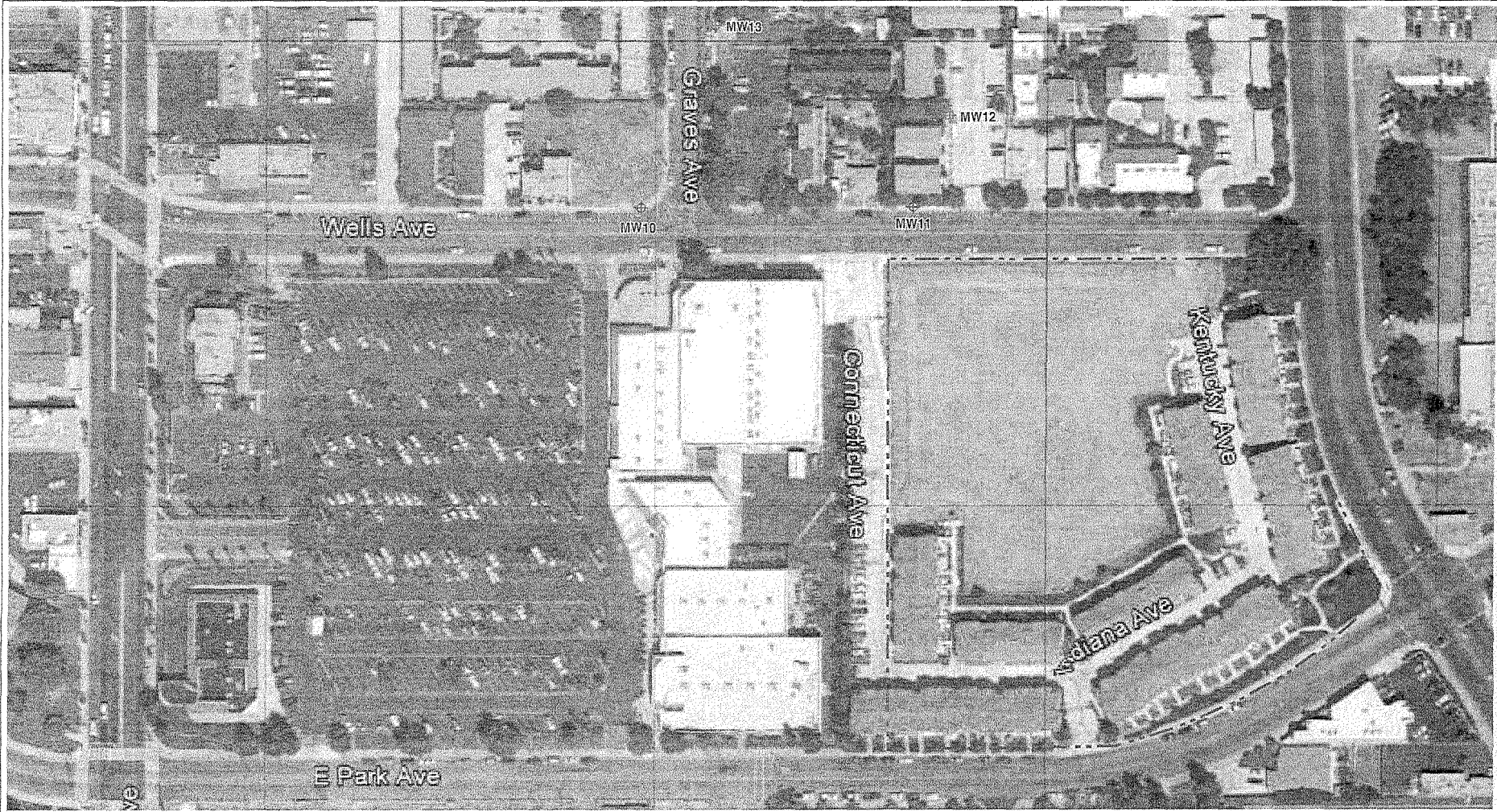


**SCS ENGINEERS**  
 Environmental Consultants  
 8799 Balboa Avenue, Suite 290  
 San Diego, California 92123

**SITE PLAN SHOWING GROUNDWATER ELEVATIONS FOR DECEMBER 2011**  
 El Cajon Redevelopment Agency  
 315 North Magnolia Avenue  
 El Cajon, California

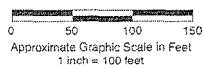
Project No.:  
 01210117.00  
**Figure 2**  
 Date Drafted:  
 3/1/12

Disclaimer: This figure is based on available data. Actual conditions may differ. All locations and dimensions are approximate.



**EXPLANATION**

- Approximate Site boundary
- ⊕ Groundwater monitoring well location
- ⊕ Proposed well location



Reference: Google Earth Aerial Photograph  
El Cajon, California - August 2010

Disclaimer: This figure is based on available data. Actual conditions may differ. All locations and dimensions are approximate.

**SCS ENGINEERS**  
Environmental Consultants  
8799 Balboa Avenue, Suite 290  
San Diego, California 92123

**PROPOSED GROUNDWATER MONITORING  
WELL LOCATIONS**  
El Cajon Redevelopment Agency  
315 North Magnolia Avenue  
El Cajon, California

Project No.:  
01210117.00

**Figure 3**

Date Drafted:  
3/5/12

TABLES

**Table 1**  
**Summary of Groundwater Elevations**  
**315 N. Magnolia Avenue, El Cajon, CA**

Well Identification (Installation Date)	Screen Interval (feet below grade)	Boring Diameter (inch)	Casing Diameter (inch)	Surveyed Well Elevation (feet above datum)	Date Measured	Depth to Water (feet below TOC)	Groundwater Elevation (feet above datum)
MW1-2007 (October 2007)	8 - 21	8	2	433.74	1/2/08	11.24	422.50
					4/1/08	9.05	424.69
					8/5/08	10.18	423.56
					12/29/08	9.36	424.38
					7/26/10	12.18	421.56
					12/29/10	10.12	423.62
					5/16/11	10.70	423.04
					12/14/11	13.28	420.46
MW2-2007 (October 2007)	8 - 21	8	2	434.60	1/2/08	10.31	424.29
					4/1/08	8.58	426.02
					8/5/08	9.49	425.11
					12/29/08	8.72	425.88
					7/26/10	11.25	423.35
					12/30/10	8.81	425.79
					5/16/11	9.44	425.16
					12/14/11	10.92	423.68
MW3-2007 (October 2007)	8 - 21	8	2	437.35	1/2/08	10.16	427.19
					4/1/08	8.88	428.47
					8/5/08	9.62	427.73
					12/29/08	8.80	428.55
					7/26/10	11.19	426.16
					12/30/10	9.84	427.51
					5/16/11	9.79	427.56
					12/14/11	11.00	426.35

**Table 1**  
**Summary of Groundwater Elevations**  
**315 N. Magnolia Avenue, El Cajon, CA**

Well Identification (Installation Date)	Screen Interval (feet below grade)	Boring Diameter (inch)	Casing Diameter (inch)	Surveyed Well Elevation (feet above datum)	Date Measured	Depth to Water (feet below TOC)	Groundwater Elevation (feet above datum)
MW4-2007 (October 2007)	8 - 21	8	2	437.48	1/2/08	9.18	428.30
					4/1/08	7.70	429.78
					8/5/08	8.53	428.95
					12/29/08	7.56	429.92
					7/26/10	10.05	427.43
					12/30/10	7.79	429.69
					5/16/11	9.16	428.32
12/14/11	10.87	426.61					
MW5-2007 (October 2007)	8 - 21	8	2	439.66	1/2/08	12.25	427.41
					4/1/08	10.79	428.87
					8/5/08	11.56	428.10
					12/29/08	12.76	426.90
					7/26/10	13.50	426.16
					12/30/10	11.79	427.87
					5/16/11	12.03	427.63
12/14/11	13.75	425.91					
MW6-2007 (October 2007)	8 - 21	8	2	438.75	1/2/08	12.10	426.65
					4/1/08	10.30	428.45
					8/5/08	11.34	427.41
					12/29/08	10.19	428.56
					7/26/10	12.85	425.90
					12/30/10	10.57	428.18
					5/16/11	11.94	426.81
12/14/11	14.10	424.65					

**Table 1**  
**Summary of Groundwater Elevations**  
**315 N. Magnolia Avenue, El Cajon, CA**

Well Identification (Installation Date)	Screen Interval (feet below grade)	Boring Diameter (inch)	Casing Diameter (inch)	Surveyed Well Elevation (feet above datum)	Date Measured	Depth to Water (feet below TOC)	Groundwater Elevation (feet above datum)
MW7-2007 (October 2007)	8 - 21	8	2	438.80	1/2/08	14.63	424.17
					4/1/08	10.33	428.47
					8/5/08	13.57	425.23
					12/29/08	12.50	426.30
					7/26/10	15.15	423.65
					12/30/10	13.65	425.15
					5/16/11	14.48	424.32
					12/14/11	17.48	421.32
MW8-2007 (October 2007)	8 - 21	8	2	437.11	1/2/08	15.00	422.11
					4/1/08	12.01	425.10
					8/5/08	13.57	423.54
					12/29/08	12.51	424.60
					7/26/10	14.92	422.19
					12/29/10	13.62	423.49
					5/16/11	14.88	422.23
					12/14/11	18.93	418.18
MW10 (March 1996)	7 - 22	10	4	429.73* 431.80^	4/26/96	8.96	422.84^
					4/24/02	10.89	420.91^
					1/21/03	11.39	420.41^
					4/1/08	NM	NA
					8/5/08	8.99	422.81^
					12/29/08	8.39	423.41
					7/26/10	10.90	420.90
					12/29/10	9.15	422.65
					5/16/11	8.83	422.97
					12/14/11	11.15	420.65
3/1/12	10.86	420.94					

**Table 1**  
**Summary of Groundwater Elevations**  
**315 N. Magnolia Avenue, El Cajon, CA**

Well Identification (Installation Date)	Screen Interval (feet below grade)	Boring Diameter (inch)	Casing Diameter (inch)	Surveyed Well Elevation (feet above datum)	Date Measured	Depth to Water (feet below TOC)	Groundwater Elevation (feet above datum)
MW11 (March 1996)	7 - 22	10	4	430.84* 432.90^	4/26/96	12.57	420.33^
					4/24/02	16.49	416.41^
					1/21/03	18.72	414.18^
					4/1/08	11.87*	421.03^
					8/5/08	14.24	418.66^
					12/29/08	12.32	420.58
					7/26/10	15.67	417.23
					12/29/10	14.50	418.40
					5/16/11	16.86	416.04
					12/14/11	21.60	411.30
					3/1/12	18.88	414.02

Notes:

Depth to Water = Depth to groundwater as measured in the field in feet below top of well casing (TOC).

Monitoring wells MW1-2007 through MW8-2007 surveyed on October 17, 2007 by RBF Consulting. Elevation in feet above datum (NAVD 88).

Well identification: MW1-2007 (After the wells were installed and surveyed, it was realized that the current well identification [MW1 through MW8] was the same as previously abandoned wells at the Site. To avoid any confusion, the well identifications for the wells installed in October 2007 will be shown as (MW1-2007 through MW8-2007).

\* Wells surveyed by Clive Hopwood on May 2, 1996.

^ Monitoring wells MW10 and MW11 surveyed by RBF Consulting on August 19, 2008. Elevation in feet above datum (NAVD 88). Previous groundwater elevations relative to new datum.

NM - Not Measured      NA - Not Applicable

On March 1, 2012, only wells MW10 and MW11 were monitored for depth to groundwater.



## APPENDICES

APPENDIX A  
DEH LETTER DATED NOVEMBER 7, 2011



# County of San Diego

JACK MILLER  
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH  
LAND AND WATER QUALITY DIVISION  
P.O. BOX 129261, SAN DIEGO, CA 92112-9261  
858-505-6700/1-800-253-9933  
[www.sdcdeh.org](http://www.sdcdeh.org)

ELIZABETH POZZEBON  
ASSISTANT DIRECTOR

November 7, 2011

Ms. Jenny Ficacci  
El Cajon Redevelopment Agency  
200 E. Main St  
El Cajon, CA 92020

Dear Ms. Ficacci:

UNAUTHORIZED RELEASE #H20184-001  
REPORT RESPONSE  
MAGNOLIA VILLAS  
327 NORTH MAGNOLIA AVENUE, EL CAJON, CA

The *Report of Forensic Geochemical Analysis of Soil and Groundwater Samples (RFGA)* for the above referenced site, prepared by SCS Engineers, dated October 13, 2011, and received by the Department of Environmental Health on October 18, 2011, has been reviewed and we have the following comments:

On February 10, 2010 this office by a letter directed the City of El Cajon Redevelopment Agency (RA) to complete additional investigation down-gradient of MW-11. In July 2010, a Past Due Notice was issued due to the lack of response to the February 2010 letter which requested the submittal of the 2<sup>nd</sup> and 4<sup>th</sup> quarter groundwater monitoring (GWM) reports of 2009. Later it became apparent that the 2009 GWM events for the 2<sup>nd</sup> and 4<sup>th</sup> quarters did not take place due to a change in the RA management and the contractual issues with your consultant.

In a meeting with you and your consultant on December 15, 2010, DEH directed you to proceed with further delineation down-gradient of MW-11 due to concerns that the dissolved plume has continued to migrate and is likely beneath the residential properties to the north of Wells Street.

In this meeting, your consultant hypothesized that the fuel impacts identified in MW-11 was from a second unidentified source. Your consultant recommended a forensic testing programs to identify whether there is a secondary source. As stated in this meeting and in our subsequent e-mail on February 3, 2011, DEH did not believe there was a secondary source, other than the site for the groundwater impacts that have been observed.

Upon completion of our review of the RFGA it is still the position of DEH that there is inadequate information to demonstrate there is another site acting as a source of the dissolved impacts at MW11.

The following is a list of some general findings:

- Your consultant has identified the subject site being owned and operated by eleven different businesses between 1962 and 1989. The site has been operated by numerous entities and their fuel sources were likely as varied. This may have contributed to the observed differences in the fuel that were observed by the laboratory.
- The release was identified at the time of the tank removal in May 1989. The date of discovery is not a conclusive indication as to when the release occurred and it is not an indication of a single or multiple releases.

*"Environmental and public health through leadership, partnership and science"*

APPENDIX B  
DEH LETTER DATED JANUARY 23, 2012



# County of San Diego

JACK MILLER  
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH  
LAND AND WATER QUALITY DIVISION  
P.O. BOX 129261, SAN DIEGO, CA 92112-9261  
858-505-6700/1-800-253-9933  
www.sdcdeh.org

ELIZABETH POZZEBON  
ASSISTANT DIRECTOR

January 23, 2012

Ms. Jenny Ficacci  
El Cajon Redevelopment Agency  
200 E. Main St  
El Cajon, CA 92020

Dear Ms. Ficacci:

UNAUTHORIZED RELEASE #H20184-001  
REPORT RESPONSE  
MAGNOLIA VILLAS  
327 NORTH MAGNOLIA AVENUE, EL CAJON, CA

The *Semi-Annual Groundwater Monitoring Report December 2011 and Workplan for Additional Assessment* for the above referenced site, prepared by SCS Engineers, dated January 13, 2012, and received by the Department of Environmental Health on January 19, 2012, has been reviewed and we have the following comments:

- The water-level differences between May and December roughly averaged between 2.5 to 3 feet with the exception of well MW11 which had a change of 4.7 feet and was considered "dry". The water-level in MW11 must be re-measured. We cannot approve your work plan proposing to install new wells at the same depth as MW11 if they could be "dry".
- The proposed well locations must be shown on a map with a scale. We cannot approve the locations of the wells without knowing the actual distances away from MW11.
- All soil samples must be screened with a photo-ionization detector or flame-ionization detector and any samples with greater than 50 ppm volatile organic compounds must be submitted for laboratory analysis. A minimum of two samples per well must be submitted for laboratory analysis.

**Please submit the water level measurements and a revised work plan to complete the down-gradient investigation by February 23, 2012.**

*Keep this letter for your records as it may be required for corrective action cost reimbursement under Senate Bill 2004 (California Health and Safety Code, Division 20, Chapter 6.75, Article 6).*

Please call me at (858) 505-6983 if you have any questions.

Sincerely,

**Ellen Beacon**  
ELLEN BEACON, P.G. 7566  
Project Manager  
Site Assessment and Mitigation Program

Digitally signed by Ellen Beacon  
DN: cn=Ellen Beacon, o=County of San Diego, ou=5AM,  
email=Ellen.Beacon@sdcounty.ca.gov, c=US  
Date: 2012.01.23 13:23:20 -08'00'

cc: Sean Roy, SCS Engineers (via e-mail)

WP/H20184-001RR11-11

*"Environmental and public health through leadership, partnership and science"*

- The change in the fuels characteristics from the source area to the down gradient locations can be caused by a number of factors such as:
  1. Multiple releases at the site from 1962 to 1989 and
  2. Attenuation of the fuel and its components due to soil/geologic interaction, volatilization, biodegradation and chromatographic effects.

In reviewing the report it was also noted that the groundwater sampling/purging method and procedures were not clearly stated. The field purge logs provided in Appendix A are missing key information regarding the procedures being used. Please have your consultant review the Well Purging/Sampling Log that is posted on our web site at:

[http://www.sdcounty.ca.gov/deh/water/sam\\_forms.html](http://www.sdcounty.ca.gov/deh/water/sam_forms.html)

They should either modify their field forms to include the key information listed on this log or they should use the log as posted on the web site.

**Please submit by February 15, 2012 a comprehensive work plan to complete the down-gradient investigation.**

*Keep this letter for your records as it may be required for corrective action cost reimbursement under Senate Bill 2004 (California Health and Safety Code, Division 20, Chapter 6.75, Article 6).*

Please call me at (858) 505-6983 if you have any questions.

Sincerely,

**Ellen Beacon**

ELLEN BEACON, P.G. 7566  
Project Manager  
Site Assessment and Mitigation Program

Digitally signed by Ellen Beacon  
DN: cn=Ellen Beacon, o=County of San Diego, ou=SAM,  
email=Ellen.Beacon@sdcounty.ca.gov, c=US  
Date: 2011.11.07 14:46:05 -08'00'

cc: Sean Roy, SCS Engineers (via e-mail)

WP/H20184-001RR11-11



# County of San Diego

JACK MILLER  
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH  
LAND AND WATER QUALITY DIVISION  
P.O. BOX 129261, SAN DIEGO, CA 92112-9261  
858-505-6648/FAX 858-505-6848/1-800-253-9933  
www.sdcdeh.org

ELIZABETH POZZEBON  
ASSISTANT DIRECTOR

July 3, 2012

Ms. Jenny Ficacci  
City of El Cajon  
200 E. Main St  
El Cajon, CA 92020

Dear Ms. Ficacci:

WORK PLAN APPROVAL  
UNAUTHORIZED RELEASE #H20184-001  
MAGNOLIA VILLAS  
327 NORTH MAGNOLIA AVENUE, EL CAJON, CA

This letter has been prepared in accordance with the requirements set forth in Title 23 (State Underground Storage Tank Regulations), Division 3, Chapter 16, Article 11, Section 2722. The purpose of this letter is to notify the Responsible Party of the status of the *Revised Work Plan for Additional Site Assessment* and the revised *Figure 3* received by the County of San Diego, Site Assessment and Mitigation Program (SAM), on March 8, 2012 and June 28, 2012, respectively.

The Work plan dated March 5, 2012, prepared by SCS Engineers covers one of the following phases of corrective action:

Preliminary Site Assessment	<input type="checkbox"/>
Soil and Water Investigation	<input checked="" type="checkbox"/>
Corrective Action Plan	<input type="checkbox"/>
Verification Monitoring	<input type="checkbox"/>
Interim Remedial Action	<input type="checkbox"/>

The Work plan and the revised Figure 3 have been:

- approved.
- disapproved-call the undersigned for further instructions.
- approved with the following changes or conditions:

This approval is valid for six months from the date of this letter. The scope of work must be completed and report submitted to this office by January 3, 2013.

Ms. Ficacci

- 2 -

July 3, 2012

*Keep this letter for your records as it may be required for corrective action cost reimbursement under Senate Bill 2004 (California Health and Safety Code, Division 20, Chapter 6.75, Article 6).*

Please call me at (858) 505-6983 if you have any questions.

Sincerely,

**Ellen Beacon**

Digitally signed by Ellen Beacon  
DN: cn=Ellen Beacon, o=County of San Diego, ou=SAM,  
email=Ellen.Beacon@sdcounty.ca.gov, c=US  
Date: 2012.07.03 09:34:11 -07'00'

ELLEN BEACON, PG #7566  
Project Manager  
Site Assessment and Mitigation Program

cc: Sean Roy, SCS Engineers (via e-mail)

WP/H20184-001WPA7-12





# County of San Diego

JACK MILLER  
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH  
LAND AND WATER QUALITY DIVISION  
P.O. BOX 129261, SAN DIEGO, CA 92112-9261  
858-505-6700/1-800-253-9933  
www.sdcdeh.org

ELIZABETH POZZEBON  
ASSISTANT DIRECTOR

March 14, 2013

Ms. Jenny Ficacci  
El Cajon Redevelopment Agency  
200 E. Main St  
El Cajon, CA 92020

Dear Ms. Ficacci:

UNAUTHORIZED RELEASE #H20184-001  
REPORT RESPONSE  
MAGNOLIA VILLAS  
327 NORTH MAGNOLIA AVENUE, EL CAJON, CA

The *Semi-Annual Groundwater Monitoring Report December 2012* for the above referenced site, prepared by SCS Engineers, dated February 27, 2013, and received by the Department of Environmental Health on March 5, 2013, has been reviewed and we have the following comments:

- The conclusion on page 14, that benzene concentrations in well MW-11 are decreasing is not accurate since groundwater samples have not been collected from the well in one year, and the last sample collected in May 2011, showed an increasing benzene concentration.
- Well MW-11 must be reconstructed in order to be functional for groundwater sample collection, since it is an important monitoring well.

**Please make arrangements to reconstruct MW-11 during the upcoming well installation mobilization.**

*Keep this letter for your records as it may be required for corrective action cost reimbursement under Senate Bill 2004 (California Health and Safety Code, Division 20, Chapter 6.75, Article 6).*

Please call me at (858) 505-6983 if you have any questions.

Sincerely,

Ellen Beacon

ELLEN BEACON, P.G. 7566  
Project Manager  
Site Assessment and Mitigation Program

Digitally signed by Ellen Beacon  
DN: cn=Ellen Beacon, o=County of San Diego, ou=5AM, email=Ellen.Beacon@sdcounty.ca.gov, c=US  
Date: 2013.03.14 07:44:32 -0700

cc: Mr. Keith Etchells, SCS Engineers (via e-mail)

WP/H20184-01RR3-13

*"Environmental and public health through leadership, partnership and science"*



REVISED

May 29, 2013

Ms. Victoria Danganan, Senior Accountant  
City of El Cajon  
200 Civic Center Way  
El Cajon, CA

Dear Ms. Danganan:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated April 18, 2013. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of El Cajon Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14A) to the California Department of Finance (Finance) on February 20, 2013, for the period of July through December 2013. Subsequently, the Agency requested a Meet and Confer session on one or more of the items denied by Finance. The Meet and Confer session was held on May 7, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific items being disputed.

- Item Nos. 15 and 16 – Purchase and Sale Agreement between the City of El Cajon and the Agency totaling \$1,254,756 is not an enforceable obligation. Finance continues to deny Item 16 and \$368,620 of Item 15. Furthermore, Finance reclassifies \$3,950 of Item 15 as an administrative cost and no longer denies the remaining \$41,521 as an enforceable obligation.

For Item 15, the Agency did not provide documentation indicating that demolition is required pursuant to an enforceable obligation that was entered into prior to June 27, 2011. Therefore, the \$368,620 associated with demolition is not an enforceable obligation. Furthermore, \$3,950 of legal services and professional/technical services should be reclassified as administrative costs. These types of costs do not fall into any of the categories that are specifically excluded from the administrative cap as defined by HSC section 34171 (b). Therefore, \$41,521 in Redevelopment Property Tax Trust Fund (RPTTF) for various property maintenance costs is approved for this item.

For Item 16, HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable, unless issued within two years of the RDA's creation date or for issuance of indebtedness to third-party investors or bondholders. This promissory note was entered into after the first two years of the former RDA's creation and is not associated with the

issuance of debt. Therefore, Item 16 is not an enforceable obligation and not eligible for RPTTF funding on the ROPS.

- Item No. 21 – Costs related to property management of Rea/Magnolia Avenues totaling \$430,247. Finance continues to deny \$367,400 of this item, reclassifies \$26,500 as administrative costs, and approves \$36,347 as an enforceable obligation. The Agency did not provide any documentation indicating that demolition of the buildings in the amount of \$367,400 is required pursuant to an enforceable obligation that was entered into prior to June 27, 2011. Therefore, the \$367,400 associated with demolition is not an enforceable obligation.

Furthermore, the \$26,500 associated with legal services and professional/technical services should be reclassified as administrative costs. These types of costs do not fall into any of the categories that are specifically excluded from the administrative cap as defined by HSC section 34171 (b). Although the reclassification of portions of Items 15 and 21 increased administrative costs to \$187,671, the administrative cost allowance has not been exceeded. Therefore, \$36,347 in RPTTF for various property maintenance costs for this item is approved.

The Agency's maximum approved RPTTF distribution for the reporting period is \$4,201,060 as summarized below:

<b>Approved RPTTF Distribution Amount</b>	
<b>For the period of July through December 2013</b>	
Total RPTTF funding requested for obligations	\$ 5,667,690
Minus: Six-month total for items denied	
Item 15*	(3,950)
Item 15	(368,620)
Item 16	(840,665)
Item 21*	(26,500)
Item 21	(367,400)
Total approved RPTTF for enforceable obligations	4,060,555
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	187,671
Minus: ROPS II prior period adjustment	(47,166)
<b>Total RPTTF approved for distribution:</b>	<b>\$ 4,201,060</b>

\*Reclassified as administrative cost

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2012 period. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the County Auditor Controller (CAC) and the State Controller. The amount of RPTTF approved in the above table includes the prior period adjustment that was self-reported by the Agency and the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment. Please refer to the worksheet used by the CAC to determine the audited prior period adjustment for the Agency:

<http://www.dof.ca.gov/redevelopment/ROPS/view.php>

Please refer to the ROPS 13-14A schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14A Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS%2013-14A%20Forms%20by%20Successor%20Agency/)

This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on this ROPS or a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (i). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

To the extent proceeds from bonds issued after December 31, 2010, exist and are not encumbered by an enforceable obligation pursuant to 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Holly Reed-Falk, Financial Operations Manager, City of El Cajon  
Mr. Juan Perez, Senior Auditor and Controller Manager, San Diego County  
Ms. Tracy Sandoval, Assistant Chief Financial Officer, San Diego County  
California State Controller's Office