

## **REIMBURSEMENT FOR THE CONSTRUCTION OF MONTECITO NEIGHBORHOOD PARK P-3**

This Reimbursement Agreement for the Construction of Montecito Neighborhood Park P-3 ("**Reimbursement Agreement**"), dated November \_\_, 2016, for reference purposes only, is made and entered into by and between The City of Chula Vista, a municipal corporation ("**City**"), and Baldwin & Sons, Inc., a California corporation ("**Baldwin**"). City and Baldwin when referenced herein collectively shall be referred to as the "**Parties**". This Agreement is entered into with reference to the following recitals:

### **RECITALS**

- A. WHEREAS, City Council approved Resolution 2014-213 approving Agreement Regarding Construction of Parks P-1, P-2, P-3, P-5 and P-6 in a Portion of Otay Ranch Village 2 dated November 4, 2014 ("**Parks Agreement**"); and
- B. WHEREAS, the provision of Montecito Neighborhood Park P-3 ("**Project**") and the reimbursement for the costs of the Project from Park Acquisition and Development ("**PAD**") fees are identified in Section 2 of the Parks Agreement; and
- C. WHEREAS, the Parks Agreement provides that, subject to the execution and approval by City Council of a separate reimbursement agreement for Neighborhood Park P-3, Baldwin shall provide Neighborhood Park P-3 in Turnkey condition in accordance with its approved Park Master Plan, and City shall reimburse Baldwin for costs expended by Baldwin for Neighborhood Park P-3 from PAD Fees; and
- D. WHEREAS, the Project is eligible for reimbursement from PAD fees; and
- E. WHEREAS, pursuant to Chula Vista Municipal Code sections 3.50.140 and 17.10 and the Parks Agreement, Baldwin has requested and is entitled to reimbursement in the event that it constructs or finances the Project; and
- F. WHEREAS, Chula Vista Municipal Code sections 3.50.140 and 17.10 requires a subdivider to enter into a reimbursement agreement with the City in order to obtain reimbursement from PAD Funds; and
- G. WHEREAS, currently, the City has sufficient funds in the PAD account to reimburse Baldwin for the design and construction of the Project; and
- H. WHEREAS, Baldwin desires to enter into this Reimbursement Agreement with the City, so that it may obtain reimbursement for the PAD eligible costs of construction of the Project.

NOW THEREFORE, in consideration of the recitals, mutual obligations of the Parties, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Baldwin agree as follows:

### **ARTICLE I DEFINITIONS**

**Approved Drawings and Specifications:** The drawings and specifications for the Project described on **Exhibit A** attached.

**CEQA:** California Environmental Quality Act.

**Calendar Day(s):** All days of the week, holidays and weekends included.

**City:** The City of Chula Vista. Unless specifically provided otherwise, whenever this Reimbursement Agreement requires an action or approval by City, that action or approval shall be performed by the City Representative designated by the Reimbursement Agreement.

**City Council:** The City Council of the City of Chula Vista.

**City's Project Administration Costs:** Charges that City incurs to: (i) review and approve the plans and specifications for the project improvements and (ii) inspect the project improvements during construction, until completion and Acceptance of the Project.

**Contract Documents:** Including, but not limited to: the Subcontract, Subcontract Exhibits and Addenda, Notice Inviting Bids, Instructions to Bidders, Bid (including documentation accompanying Bid and any post-bid documentation submitted prior to Notice of Award), the Bonds, the general conditions, permits from other agencies, the Special Provisions, the Plans, Standard Plans, Standard Specifications, Reference Specifications, and all modifications issued after the execution of the Subcontract.

**Defective Work:** All work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not substantially conform to the Approved Drawings and Specifications.

**Estimated Cost:** The estimated total cost of the Project, as estimated by preliminary engineering studies, is **\$5,351,645.00**, as shown on **Exhibit B** attached. As Estimated Cost is not initially the result of competitive bids for the actual design and construction, it is subject to change during the competitive bid process as well as during the design and construction phases, subject to approval of the Parties. As described below, the Estimated Cost is based in part on a competitive bid for a portion of the Phase 1 work, as reflected in **Exhibit B**.

**Greenbook:** The 2012 edition of the Standard Specifications for Public Works Construction.

**Hazardous Materials:** Hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). "Hazardous Materials" shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

**Holiday:** The City-observed holidays listed below (if any holiday listed falls on a Saturday, then the Saturday and the preceding Friday are both legal holidays. If the holiday should fall on a Sunday, then the Sunday and the following Monday are both legal holidays):

<u>Holiday</u>	<u>Observed On</u>
New Year's Day	January 1
Martin Luther King Day	Third Monday in January
Caesar Chavez Day	March 31
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Thanksgiving Day Friday	Friday after Thanksgiving Day
Christmas Day	December 25

**Improvements:** "Improvements" shall have the meaning given in **Section 2.1** below.

**Milestones:** Dates shown on the Project Schedule by which Baldwin shall complete major tasks either during design or construction of Project.

**NEPA:** National Environmental Policy Act.

**PAD Eligible Expenses:** Cost that the City shall reimburse Baldwin from PAD funds for work identified in Approved Drawings and Specifications, not to exceed the Estimated Costs.

**PAD Program:** Those park facilities and projects that are identified in Chula Vista Municipal Code Chapter 17.10 or any amendments thereto intended to be financed through the collection of PAD fees.

**Phases:** The Project is expected to be completed in two phases ("**Phase 1**" and "**Phase 2**", respectively; each, a "**Phase**"). Phase 1 will be completed on Lot A of Map #16094 and Phase 2 will be completed on Lot B of Map #16094.

**Reimbursable Costs:** Costs of Project that have been expended and approved by the City through approval procedures described in the Agreement.

**Standard Specifications:** Standard Specifications shall refer to the Greenbook, the local standard special provisions referenced in the Approved Drawings and Specifications, and any amendments thereto.

**Subcontractor:** A party or parties under contract with Baldwin to perform the work or provide supplies for the Project.

**Working Day(s):** Monday through Friday, excluding City holidays.

**ARTICLE II.**  
**SUBJECT OF THE AGREEMENT - GENERALLY**

The above-listed recitals are true and correct and are hereby incorporated by this reference. All attachments to this Reimbursement Agreement as Exhibits are incorporated into this Reimbursement Agreement by this reference.

- 2.1 **Montecito Neighborhood P-3 Park.** Except as expressly provided in this Reimbursement Agreement, Baldwin shall cause the design and construction of the Project (Montecito Neighborhood P-3 Park) in accordance with the Park Master Plan, including any amenities, such as landscaping, restroom facilities, and ball fields (collectively "**Improvements**") described in the Approved Drawings and Specifications, in accordance with all the terms and conditions of this Reimbursement Agreement, within the timeframe described in **Section 5.1**, and for the Estimated Costs identified in **Exhibit B**.
- 2.2 **Complete and Functional Improvements.** Baldwin shall provide complete and functional Improvements meeting the standards identified herein.
- 2.3 **Maintain Until Acceptance.** Following the completion of a Phase of the Project, Baldwin shall maintain the Improvements associated with such Phase until such time as the completed Phase is accepted by the City. The maintenance period for each Phase is anticipated to be one (1) year from completion of the Phase, and the cost of the maintenance of such Phase is part of the Estimated Cost and shall be reimbursed by the City.
- 2.4 **City Payment.** City shall reimburse Baldwin, subject to the terms and conditions herein, for the PAD Eligible Expenses of design and construction of Improvements. City acknowledges and agrees that all of the Estimated Costs identified in **Exhibit B** are PAD Eligible Expenses.

**ARTICLE III.**  
**DURATION OF AGREEMENT**

- 3.1 **Term of Agreement.** This Reimbursement Agreement shall be effective on the date it is executed by the last Party to sign the Reimbursement Agreement following City Council approval by Resolution, and the term shall extend until such time as all executory terms have been completed or it is early terminated according to the termination provisions herein.

**ARTICLE IV.**  
**PROJECT COSTS**

- 4.1 **Estimated Cost.** The Estimated Cost of the Project is Five Million Three Hundred Fifty-One Thousand Six Hundred Forty-Five Dollars (**\$5,351,645.00**), as shown on **Exhibit B** attached.
- 4.2 **Adjustments to Estimated Cost.** Estimated Cost is subject to change in the methods identified below and those established elsewhere in this Reimbursement Agreement.

- 4.2.1 *Annual Adjustments to Estimated Cost.* Without further amendments to this Reimbursement Agreement, the Estimated Cost may be increased annually by the inflation rate identified in CVMC section 17.10.110 or future amendments to the PAD approved by the City Council.
- 4.2.2 *Revisions to the Estimated Cost.* In the event that the City Director of Development Services (“**DDS**”) reviews Project and determines that the cost of design and construction will exceed the then current Estimated Cost as adjusted by the inflation factor and the City Council approves an amendment to the Estimated Cost to reflect the increase in cost, the Estimated Cost shall be increased to reflect to revised estimate.
- 4.2.3 *Adjustments Based on Other Cost Increases.* The Estimated Cost may be increased due to: (i) acts of God, acts of any governmental authority, the elements, war, litigation, shortages of material, labor strikes, inflation, later commonly accepted or adopted higher standards and specifications of construction, concealed or unknown conditions encountered in the completion of Project, or other cause beyond Baldwin’s control, (ii) actual bids received being greater than estimated, or (iii) other factors not the result of unreasonable conduct by Baldwin. The Estimated Cost may be increased by the amount of such increases, subject to approval by City Council.
- 4.2.4 *Failure to Obtain Approval of Increase.* In any case where City approval is required for an increase in the Estimated Cost and such approval is not obtained, Baldwin shall have no obligation to incur costs in excess of the Estimated Cost. In such a case, the Project shall be revised through deductive changes approved by the DDS, such that the Project, as revised, can be completed for the Estimate Cost.
- 4.3 **Notification of Increased Costs.** If, at any time, Baldwin anticipates that the amount expended on the Project will exceed the Estimated Cost, Baldwin shall immediately, not more than ten (10) Working Days from becoming aware of the potential increase, notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions (e.g., deductive changes) which Baldwin believes will bring the construction cost to within the Estimated Costs. The City may either: (i) approve an increase in Estimated Cost; or (ii) delineate a project which may be constructed for the Estimated Cost; or (iii) any combination of (i) and (ii).

**ARTICLE V.  
PROJECT SCHEDULE**

- 5.1 **Project Schedule.** Baldwin shall perform and complete the work for Phase 1 of the Project by October 31, 2017. The schedule for the completion of Phase 2 shall be subject to the mutual agreement of the parties.
- 5.2 **Unavoidable Delay.** Each Party shall be entitled to an extension of the date of any performance required of such Party under this Reimbursement Agreement if the failure of the Party to duly perform was because of a cause beyond the Party’s reasonable control.

**ARTICLE VI**  
**COMPETITIVE BIDDING AND EQUAL OPPORTUNITY**

- 6.1 **Compliance.** Baldwin shall bid and award contracts to complete Project in accordance with all applicable public contract laws; rules; regulations set forth in the City of Chula Vista Charter and Municipal Code, including CVMC §3.54.040(B)(2)(c).
- 6.2 **Solicitation of Bids.** Baldwin shall solicit sealed bids for the construction of the Project. Such solicitation may be by publication in a local newspaper of choice, but must include notice in the Star News. Baldwin may also directly solicit sealed bids for the construction of Project. Bids shall be solicited from at least three (3) qualified contractors and the bidding response time shall not be less than three (3) weeks. Baldwin shall notify City of the time and place of each bid opening for the construction of Project and shall provide City with copies of all bids received.
- 6.2.1 *Proof of Advertising.* Baldwin shall provide the City with proof that it solicited the bids in accordance with **Section 6.2.**
- 6.2.2 *Prevailing Wage.* Baldwin shall advertise the Project as requiring the payment of Prevailing Wage and include all provisions in the advertisement required by the California Department of Industrial Relations.
- 6.3 **Bid Opening and Award of Contract.** Baldwin shall open sealed bids in the presence of City's authorized representative(s). The bidding contractors may be present at the bid opening. City's representative(s) shall be provided with a copy of the tabulation of bid results. Contract(s) for the construction of Project shall be awarded by Baldwin to the qualified contractor(s) submitting the lowest responsive bid(s), as mutually determined by Baldwin and City's authorized representative(s). In the event that the lowest responsive bid, combined with a reasonable amount for contingencies, and after application of the deductive alternates listed in the Approved Drawings and Specifications, exceeds the Estimated Cost, the increase in the costs must be approved by City pursuant to Article IV, Section 4.2.3 prior to awarding the contract. In the event City Council does not approve the increased cost, this Reimbursement Agreement, at the City's option, may be terminated, or Project may be rebid and/or redesigned. In the event the Reimbursement Agreement is terminated, the design costs will be reimbursed to Baldwin from the PAD fund. City shall reimburse Baldwin with cash reimbursement for the Reimbursable Costs related to engineering and design expended by Baldwin prior to termination of this Reimbursement Agreement pursuant to Article XVI. Baldwin shall provide City with copies of all executed contracts.
- 6.4 **Equal Employment Opportunities and Equal Opportunity Contracting.**
- 6.4.1 *Equal Employment Opportunity Nondiscrimination.* Baldwin shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Baldwin shall provide equal opportunity in all employment practices. Baldwin shall instruct its consultants, subconsultants, prime contractors and their subcontractors to comply with this program. Nothing in this section shall be interpreted to hold Baldwin or a prime contractor liable for any discriminatory practice of its subcontractors or any other party.
- 6.4.2 *Equal Employment Opportunity Certification.* The successful bidder submitted its signed Equal Employment Opportunity Certification with its bid package.

- 6.4.3 *Equal Opportunity Contracting Nondiscrimination.* Baldwin shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors, or suppliers. Baldwin shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Baldwin understands and agrees that violation of this Subsection shall be considered a material breach of this Reimbursement Agreement and may result in contract termination, debarment, or other sanctions. The language of this Subsection shall be inserted in contracts between Baldwin and any subcontractors, vendors, or suppliers.

**ARTICLE VII  
DESIGN AND CONSTRUCTION STANDARDS**

- 7.1 **Standard of Care.** Baldwin agrees that the services provided as part of this Reimbursement Agreement shall be performed in accordance with the standards customarily adhered to by experienced and competent professional architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.
- 7.2 **Compliance with all Laws.** Baldwin shall comply and ensure compliance by any of its contractors, subcontractors, employees, and agents with all laws, including but not limited to:
- 7.2.1 All local, City, County, State, and Federal laws, codes and regulations, ordinances, and policies, including but not limited to, Development Services Department permits, hazardous material permits, site safety, state and local Building Codes, stormwater regulations, etc.
- 7.3 **Compliance with Design and Construction Standards.** Baldwin shall comply and ensure compliance by any of its contractors, subcontractors, employees, and agents with the most current editions of Design and Construction Standards.
- 7.3.1 *Standard Specifications.* Baldwin shall comply and ensure compliance by any of its contractors, subcontractors, employees, and agents with the most current editions of the following reference specifications when designing and constructing Project, including:
- 7.3.1.1 The Greenbook, including the Regional and any local Supplement Amendments.
- 7.3.2 *City Standards.* Baldwin's professional services shall be provided in conformance with the professional standards of practice established by City. This includes all amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:
- 7.3.2.1 Chula Vista Landscape Manual as may be amended from time to time.
- 7.3.2.2 The Standard Specifications and the Approved Drawings and Specifications.
- 7.4 **Changes to Standards.** Baldwin shall be responsible for complying with all amendments or updates to standards and knowledge of all amendments or updates to standards, whether local, state, or

federal, will be imputed to Baldwin to the extent allowed by law; provided, however, that all costs of compliance with the changed or updated standards shall be PAD Eligible Expenses and the Estimated Cost shall be increased to reflect such increased costs of compliance with such changes.

- 7.5 **City Approval Not a Waiver of Obligations.** Where approval by City, the City Manager, or other representatives of City is required, it is understood to be general approval only and does not relieve Baldwin of responsibility for complying with all applicable laws, codes, and good consulting, design, or construction practices and is not an assumption of liability by the City. Nor shall City, through approval, become an insurer or surety of work associated with the approvals.

## **ARTICLE VIII. CONSTRUCTION**

- 8.1 **Site Safety, Security, and Compliance.** Baldwin shall be responsible for site safety, security, and compliance with all related laws and regulations.

8.1.1 *Persons.* Baldwin shall be fully responsible for the safety and security of its officers, agents, and employees authorized by Baldwin to access the Project site.

8.1.2 *Other.* Baldwin is responsible for Project site, materials, equipment, and all other incidentals until the completed Project has been accepted by the City pursuant to Article X.

8.1.3 *Environment.* Baldwin shall comply with all environmental laws and regulations, including the Clean Air Act of 1970, the Clean Water Act, Executive Order number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988 and any and all Best Management Practice guidelines and pollution elimination requirements as may be established by the Enforcement Official. Furthermore, Baldwin shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan [SWPPP] to be implemented by Baldwin during Project construction and maintenance. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and shall be in conformance with the City of Chula Vista BMP Design Manual and Municipal Code 14.20.

- 8.2 **Access to Project Site.** City officers, agents and employees with Project related business shall have the right to enter the Project site shall have the right to access the site at any time for Project related purposes.

- 8.3 **Public Right-of-Way.** All work, including, materials testing, special testing, and surveying to be conducted in the Public right-of-way shall be coordinated with the City.

8.3.1 *Follow all Laws, Rules, and Regulations.* Baldwin agrees to follow all City standards and regulations while working in the Public right of way, including but not limited to, utilizing proper traffic control and obtaining necessary permits.

- 8.4 **Traffic Control.** Baldwin shall address all traffic control requirements for Project including, if necessary, separate traffic control plans and/or notes.



- 8.5 **Maintenance.** Other than for landscaping and irrigation work, which shall be maintained as described in Article XIII, Baldwin shall maintain and be responsible for the Project and the Project site until acceptance pursuant to standard City practices (“**Acceptance**”) of each Phase, including on-going erosion prevention measures. Upon Acceptance of a Phase, City shall be responsible for maintenance of the Phase and that portion of the Project site.

**ARTICLE IX.**  
**REIMBURSEMENT/PAYMENT OF COSTS AND EXPENSES**

**9.1 Payment of Costs Associated with Project**

- 9.1.1 *Maximum Reimbursement Amount.* The maximum amount of reimbursement for Project shall not exceed the Estimated Cost, as it may be amended from time to time, or the amount calculated during the Final Accounting, whichever is less (“**Maximum Reimbursement Amount**”). Neither Baldwin nor Subcontractor shall be entitled to payment in excess of the Maximum Reimbursement Amount.

- 9.1.1.1 *Reductions to the Maximum Reimbursement Amount.* City’s Project Administration Costs included in the Estimated Cost as shown on Exhibit B that are not charged to Baldwin shall be deducted from the Maximum Reimbursement amount. Any anticipated increase in the total City’s Project Administration Costs identified in Exhibit B shall be handled in accordance with Section 4.2.

- 9.1.2 *Funds for Payment of Costs/Expenses.* The source of funds for the payment of costs/expenses associated with Project shall be limited as listed below. No other City fund, or monies held by, owed to, or in trust for the City, shall be used by the City or sought to be collected by Baldwin, its employees, agents, contractors or subcontractors other than those identified in **Section 9.1.2.1.**

- 9.1.2.1 *Funds for Project.* Funds for payment of costs/expenses for Project shall be limited to those PAD Fees collected by the City for park development within Otay Ranch.

- 9.1.3 *Prerequisites to Payment.*

- 9.1.3.1 *Reimbursement Request.* Prior to reimbursement of any expenses, Baldwin shall provide the City with a reimbursement request package (“**Reimbursement Request**”) containing the following:

- a. *Invoices.* Baldwin shall provide the DDS all invoices for costs/expenses associated with Project, not previously paid by the City, immediately upon receipt thereof.
- b. *Proof of Payment.* Baldwin shall provide the DDS with proof of payment of all invoices submitted.

- c. Lien Releases/Stop Notices. The City shall not make any payment to Baldwin, unless and until, Baldwin provides the DDS with lien/stop notice releases associated with all work performed or supplies provided in a form satisfactory to the City Attorney.
- d. Certification of Payment. Baldwin shall provide the City with a written certification that all trades and soft costs for which they are seeking reimbursement have been paid.
- e. Acknowledgement by subcontractors. Baldwin shall provide the City with a letter from each firm (e.g. civil, survey, and geotechnical) acknowledging that eligible soft costs included in the relevant invoices have been paid.
- f. Time Sheets. Baldwin shall provide the City with time sheets from the construction manager to justify the project management costs.
- g. Graphics. A graphic depicting the areas within Project for which the Reimbursement Request is being submitted.
- h. Other Documents. Baldwin shall provide the DDS with any other documents that may be needed to evaluate the eligibility of the expense.

9.1.3.2 Inspection. The City shall have the right inspect the work on Project to ensure that all invoiced work has been performed and that the work meets or exceeds the City requisite standards.

9.1.3.3 City Approval. The DDS shall review each payment request and the supporting documentation. If the DDS finds that any such payment request is incomplete, improper or otherwise not suitable for reimbursement, the DDS shall inform Baldwin in writing within fifteen (15) Calendar Days after receipt thereof, the reasons for his finding. Baldwin shall have the right to respond to this finding by submitting further documentation after receipt of said finding. The DDS shall review any further documentation received from Baldwin in support of the payment request and inform Baldwin of his approval or denial of the payment request within ten (10) Calendar Days after receipt of the supplemental documentation.

9.1.4 *Time of Payment.* Within thirty (30) Calendar Days following the date on which Baldwin submits a complete Reimbursement Request (as reasonably determined by the DDS) ("**Payment Date**"), City shall reimburse Baldwin for the approved costs associated with the Reimbursement Request. If the Payment Date falls on a weekend or holiday, the Payment Date shall be extended to the next business day.

9.1.4.1 Additional Costs. Any costs that may accrue, such as interest on late payments to Baldwin's contractors, subcontractors, or suppliers, shall not be the obligation of the City if the City has not received a complete Reimbursement Request. Such additional charges shall be the obligation of Baldwin and not eligible for reimbursement.

9.1.5 *Reimbursement Amount per Reimbursement Request.* The City shall pay Baldwin approved amounts in the Reimbursement Request less any Non-Reimbursable Costs (defined in **Sections 9.1.5.2(a)** and **(b)** below) and Contested Charges (defined in **Section 9.1.5.2(c)** below) on or before the Payment Date as identified above.

9.1.5.1 *Withholding.* The Subcontract provides for a 10% withholding from each payment to the Subcontractor until the acceptance of the work by the City. The City shall not withhold any amounts from the payments to Baldwin, since the amounts in the Reimbursement Request will already reflect 10% withholding (up until the final payment under the Subcontract).

a. *Payment and Invoicing for Withholding.* Baldwin shall not pay the subcontractors the amounts withheld until (1) forty-five (45) Calendar Days from recordation of the Notice of Completion, and (2) the DDS certifies that no Stop Notices or Mechanic's Liens have been filed and not released and the following work has been completed:

- i. All water meters have been installed.
- ii. Landscaping has been installed.
- iii. As- builts for L&I have been submitted.
- iv. Form PWE106 is completed.
- v. Form 5522 and landscape turnover procedure are satisfactorily completed.
- vi. The final punch list is complete, including all items that are part of the landscape maintenance establishment period.

Where a Stop Notice or Mechanic's Lien has been filed following the recordation of the Notice of Completion, Baldwin shall continue to withhold the amount in controversy until a fully executed release of Stop Notice or Mechanic's Lien or a bond releasing the Stop Notice or Mechanic's Lien has been filed and a conformed copy delivered to the City.

9.1.5.2 *Non-reimbursable Costs.* The following costs shall not be eligible for reimbursement under this Reimbursement Agreement.

- a. *Loss During Delivery.* Baldwin shall assign risk of loss related to the delivery of project supplies and equipment to shipper as FOB Destination. Any loss incurred prior to delivery shall not be a reimbursable expense.
- b. *Costs Incurred Due to Negligence.* Baldwin shall not be entitled to payment for any cost or expenditure incurred due to negligent acts, omissions, or willful misconduct of Baldwin or the Subcontractor, or their respective employee or agents.
- c. *Unapproved Costs.* Baldwin shall not be entitled to reimbursement for any cost or expenditure that has not been approved by the City in the manner required by this Reimbursement Agreement.

d. **Contested Charges.** In the event that the City contests any charge on an invoice received, the City shall provide Baldwin written statement of contested charges, the reason that the charges are contested, and a proposed resolution.

1. **Appeal to City Manager.** Baldwin may appeal the City's determination that certain costs are not reimbursable. The appeal must be received prior to the Payment Date for the Reimbursement Request in which the non-reimbursable costs are contained. During the appeal period and as long as the charges remain disputed, Baldwin shall ensure that Baldwin proceeds with the work, and the City shall compensate Baldwin for the undisputed amounts. If following the appeal, the City Manager determines that any previously unpaid amounts are eligible for reimbursement, such amounts shall be included in the next payment to Baldwin.

9.1.6 **Cutoff for Submission of Invoices.** For each phase of the Project, Baldwin shall submit its final Reimbursement Requests within one (1) year of the date of Acceptance (including completion of the maintenance/establishment period) of such Phase ("**Cutoff Date**"). Any Reimbursement Request submitted after a Cutoff Date shall not be reviewed or included in Reimbursable Cost. The final payment by the City for a Project phase will be made only after Developer has submitted all documentation reasonably necessary to substantiate the cost of construction and completing the Improvements associated with that phase, lien free, in accordance with the Plans. Final inspection and sign-off by the City's Public Works Inspectors with associated mechanic's lien releases (or bonds releasing contested liens) shall be sufficient evidence of the lien free completion of the Improvements.

9.1.7 **Final Accounting.** Following the completion of Project, Baldwin shall submit a final accounting to the City in order to determine the cost of design, engineering, construction and related work thereto to complete the Improvements. Developer shall also submit all supporting information reasonably necessary to document expenditures on the Improvements, including specific details on the costs and work attributable to the Improvements, including third-party invoices, billings, and receipts for construction surveying, soil testing, blue printing, actual construction costs and similar expenses.

9.1.7.1 **True-up Payments.** Following a Final Accounting, the City shall determine whether the actual payments made to Baldwin equal the audited approved expenditures. In the event that the amount of the approved expenditures exceeds the amount of the actual payments, the City shall make a true-up payment to Baldwin for the difference; however, in no event shall the true-up payment cause the total amount paid per phase to exceed the Maximum Reimbursement Amount per phase. If the Final Accounting shows that the amount of actual payments to Baldwin exceeds the amount of the approved expenditures, Baldwin shall remit or cause its Baldwin to remit the difference to the City within thirty (30) calendar days of a notice of deficiency.

**ARTICLE X.  
PROJECT ACCEPTANCE AND FINAL COMPLETION**

10.1 **Acceptance.** It is understood by City and Baldwin that there will be two (2) distinct phases, and City anticipates that it will accept each Phase at the end of the maintenance/establishment period identified in **Section 13.1** for that Phase.

10.2 **No Waiver.** Baldwin shall perform and complete the work substantially in accordance with the Approved Drawings and Specifications, as reasonably determined by the DDS. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to Baldwin under this Reimbursement Agreement, nor any use or occupancy of the Improvements or any part thereof by City, nor any act of acceptance by City, nor any failure to act, nor any review of a shop drawing or sample submittal, will constitute an acceptance of work, which is not substantially in accordance with the Approved Drawings and Specifications.

**ARTICLE XI.  
WARRANTIES**

11.1 **Enforcement of Warranties.** Baldwin shall enforce for the City's benefit all warranties provided in the Contract Documents and any other implicit or explicit warranties or guarantees required or implied by law.

*Materials and Workmanship.* Baldwin shall guarantee, and shall require its agents to guarantee, all work on each Phase of the Project against defective workmanship and materials furnished by Baldwin for a period of one (1) year from the date of Final Completion of the Phase. "**Final Completion**" shall mean date when all landscape and irrigation work in a Phase is complete, checked, approved by City, and City has given written approval to begin the maintenance period. Baldwin shall replace or repair any such defective work in a manner satisfactory to City, after notice to do so from City, and within the time specified in the notice.

11.1.2 *New Materials and Equipment.* Baldwin shall warrant and guarantee, and shall require its agents to warrant and guarantee, to City that all materials and equipment incorporated into the Project are new unless otherwise specified.

11.1.3 *Design, Construction, and Other Defects.* Baldwin shall warrant and guarantee, and shall require its agents to warrant and guarantee to City that all work is in accordance with the Plans and Specifications and is not defective in any way in design, construction or otherwise.

11.2 **Term of Warranties.** Unless otherwise specified or provided by law, warranties shall extend for a term of one (1) year from the date of Final Completion.

11.2.1 *Plants, Trees, and Shrubs.* Notwithstanding above, all trees (other than palm trees), shrubs and ground cover shall have a one (1) year warranty period and palm trees shall have a two (2) year warranty period unless otherwise stated. All plant warranties shall commence from the date of Final Completion.

**ARTICLE XII  
DEFECTIVE WORK**

- 12.1 **Correction, Removal, or Replacement.** If within the designated warranty period, or such additional period as may be required by law or regulation, the Project is discovered to contain Defective Work, Baldwin shall promptly and in accordance with the City's written instructions and within the reasonable time limits stated therein, either correct (or have corrected) the Defective Work, or if it has been rejected by City, remove it (or have it removed) from the site and replace it with non-defective and conforming work.
- 12.2 **City's Right to Correct.** If circumstances warrant, including but not limited to an emergency or Baldwin's failure to adhere to **Section 12.1**, City may correct, remove, or replace the Defective Work. In such circumstances, Baldwin or its contractors or subcontractors, as applicable, shall not recover costs associated with the Defective Work.
- 12.3 **Non-Reimbursable Costs.** All costs incurred by Baldwin or Baldwin's agents to remedy defects are non-reimbursable costs. If the City has already reimbursed Baldwin or Baldwin's contractors or subcontractors for the defective work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Baldwin's bond, if Baldwin or Baldwin's contractors or subcontractors, as applicable, has been paid in full, until the defects are remedied.
- 12.4 **Extension of Warranty.** When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, will be extended for an additional a time equal to that of the initial warranty period from the date of the satisfactory completion of the correction, removal, or replacement.
- 12.5 **No Limitation on other Remedies.** Exercise of the remedies for defects pursuant to this Article shall not limit the remedies City may pursue under this Reimbursement Agreement or law.
- 12.6 **Disputes.** If Baldwin and City are unable to reach agreement on disputed work, City may direct Baldwin to proceed with the work and compensate Baldwin for undisputed amounts. Payment of disputed amounts shall be as later determined in accordance with **Section 9.1.5.2(c)**. Baldwin shall maintain and keep all records relating to disputed work for a period of three (3) years in accordance with Article XVII.

**ARTICLE XIII  
MAINTENANCE OF LANDSCAPING & IRRIGATION WORK**

- 13.1 **Maintenance Period.** Baldwin shall provide a maintenance period of one (1) year, which shall begin on the first day after Final Completion of a Phase.
- 13.2 **Maintenance Area.** Baldwin shall maintain all involved areas of the applicable Phase of the Project.

- 13.3 **Landscape and Irrigation Inspection.** At the conclusion of the maintenance period, City shall inspect the landscaping and irrigation to determine the acceptability of the work, including maintenance. This inspection shall be scheduled with two (2) weeks' notice, a minimum of ninety (90) Calendar Days after the plant maintenance period commencement, or when Baldwin or Subcontractor notifies the City that they are ready for the final inspection, whichever comes last. The City will notify Baldwin of all deficiencies revealed by the inspection before acceptance.
- 13.4 **Extension of Maintenance Period.** Baldwin shall extend completion of the maintenance period when, in City's opinion, improper maintenance and/or possible poor or unhealthy condition of planted material, listed in the project punch list, is evident at the termination of the scheduled maintenance period. Baldwin shall be responsible for additional maintenance of the work until all of the work is completed and acceptable. Additional costs for failure to maintain landscaping during the Maintenance Period are not Reimbursable Costs.

**ARTICLE XIV.  
SECURITY FOR CONSTRUCTION**

- 14.1 **Bond.** The Contract Documents require the Subcontractor to provide a Payment Bond and a Performance Bond for the construction of the Project. The City shall be named as a co-obligee of the bonds. The bonds shall be maintained until such time as the Project is complete and accepted by the City.
- 14.2 **Insolvency or Bankruptcy.** If the surety on the above-mentioned bond is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Baldwin shall within seven (7) Calendar Days thereafter substitute or require the substitution of another bond and surety, acceptable to the City.
- 14.3 **Calling the Bond.** Baldwin acknowledges and agrees that if Baldwin's construction of the Improvements has not commenced, has not been completed in accordance with the Project Schedule, has not been performed in accordance with the Approved Drawings and Specifications, or if the Baldwin has failed to cure any defects within the time specified with a Notice of Defect, the City may use the security referenced in section 14.1 above to complete the Improvements. This remedy is not a limitation on remedies of the City and is in addition to any other remedy that the City may have at law or in equity.

**ARTICLE XV.  
INDEMNITY & DUTY TO DEFEND**

15.1 **Defense, Indemnity, and Hold Harmless.**

- 15.1.1 *General Requirement.* Baldwin shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property, including takings claims, or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Baldwin, its officials, officers, and employees arising out of or in connection with the Project.

This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence, active negligence or willful misconduct of the City, its officers, employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of Baldwin, its employees or officers.

15.1.1.1 *Damage to Downstream or Adjacent Properties.* Such indemnification and agreement to hold harmless shall extend to damages to adjacent or downstream properties or the taking of property from owners of such adjacent or downstream properties as a result of and to the extent of negligence by Baldwin in the construction of the Improvements in accordance with the Approved Drawings and Specifications as provided herein. It shall also extend to damages resulting from diversion of waters, change in the volume of flow, modification of the velocity of the water, erosion or siltation, or the modification of the point of discharge as the result of and to the extent of negligence by Baldwin in the construction of the Improvements in accordance with the Approved Drawings and Specifications.

15.1.2 *Intentionally omitted.*

15.1.3 *Hazardous Materials.* Indemnification for Hazardous Materials. Baldwin agrees to defend, indemnify, and hold harmless, the City, its agents, officers and employees from and against any and all costs, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly, arising from or related to the release of Hazardous Materials by Baldwin, its officials, officers, and employees in association with the construction, maintenance, repair, of the Project, or any act taken or omission under the Reimbursement Agreement. Baldwin expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

15.1.3.1 *Hazardous Materials:* Hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). "Hazardous Materials" shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation

15.1.4 *Illegal Discharge to Storm Drains.* Baldwin shall defend, indemnify, protect, and hold harmless City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages or injuries to any person or property resulting from a discharge to public storm drains in violation of applicable laws to the extent arising out of the construction of the Improvements (an "Illegal Discharge") caused by Baldwin's action or failure to take



reasonable measures to prevent an Illegal Discharge. Baldwin shall also be responsible for payment of any fines or penalties assessed against City for an Illegal Discharge. Baldwin's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its agents or employees.

15.1.5 *Costs of Defense and Award.* Included in the obligations in sections 15.1.1 through 15.1.4, above, is Baldwin's obligation to defend, at Baldwin's own cost, expense and risk, any and all suits, actions or other legal proceedings that may be brought or instituted against the City, its directors, officials, officers, employees, agents and/or volunteers, subject to the limitations in sections 15.1.1 and 15.1.2. Baldwin shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents and/or volunteers, for any and all related legal expenses and costs incurred by each of them to the extent of Baldwin's actual determined negligence, subject to the limitations in **Sections 15.1.1 and 15.1.2.**

15.1.6 *Insurance Proceeds.* Baldwin's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.

15.1.7 *No Use of Security.* The security identified in Article XIV shall not be used to satisfy the obligations of Baldwin under this Article XV.

15.1.8 *Declarations.* Baldwin's obligations under Article XV shall not be limited by any prior or subsequent declaration by Baldwin.

15.1.9 *Enforcement Costs.* Baldwin agrees to pay any and all costs City incurs enforcing the indemnity and defense provisions set forth in Article XV.

15.1.10 *Survival.* Baldwin's obligations under Article XV shall survive the termination of this Reimbursement Agreement.

## **ARTICLE XVI INSURANCE**

16.1 **General.** Baldwin must procure and maintain, during the period of performance of this Reimbursement Agreement, and for twelve months after completion, policies of insurance from insurance companies to protect against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under this Reimbursement Agreement and the results of that work by Baldwin, his agents, representatives, employees or subcontractors, and provide documentation of same prior to commencement of work.

16.2 **Minimum Scope of Insurance.** Coverage must be at least as broad as:

16.2.1 *CGL.* Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).

16.2.2 *Auto.* Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).

16.2.3 *WC. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.*

16.3 **Minimum Limits of Insurance.** Baldwin must maintain or assure that the Subcontractor maintains limits no less than those included in the table below:

16.3.1 *General Liability:* (Including operations, products and completed operations, as applicable) \$5,000,000 per occurrence for bodily injury, personal injury, (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Project/location or the general aggregate limit must be twice the required occurrence limit.

16.3.2 *Automobile Liability:* \$5,000,000 per accident for bodily injury, including death, and property damage.

16.3.3 *Workers' Compensation Employer's Liability:* Statutory \$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee

16.4 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or Baldwin will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

16.5 **Other Insurance Provisions.** The general liability, automobile liability, and where appropriate, the worker's compensation policies are to contain, or be endorsed to contain, the following provisions:

16.5.1 *Additional Insureds.* City of Chula Vista, its officers, officials, employees, agents, and volunteers are to be named as additional insureds with respect to all policies of insurance, including those with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Baldwin, where applicable, and, with respect to liability arising out of work or operations performed by or on behalf of Baldwin, including providing materials, parts or equipment furnished in connection with such work or operations. The general liability additional insured coverage must be provided in the form of an endorsement to Baldwin's insurance using ISO CG 2010 (11/85) or its equivalent. Specifically, the endorsement must not exclude Products/Completed Operations coverage.

16.5.2 *Primary Insurance.* Baldwin's General Liability insurance coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance of Baldwin and in no way relieves Baldwin from its responsibility to provide insurance.

16.5.3 *Cancellation.* The insurance policies required by this Reimbursement Agreement shall not be canceled by either party, except after thirty days' prior written notice to the City by certified mail, return receipt requested. The words "will endeavor" and "but failure to mail

such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives” shall be deleted from all certificates.

- 16.5.4 *Active Negligence.* Coverage shall not extend to any indemnity coverage for the active negligence of the additional insureds in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.
- 16.5.5 *Waiver of Subrogation.* Baldwin’s insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage for the term required by this Reimbursement Agreement.
- 16.6 **Claims Forms.** If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are written on a claims-made form:
- 16.7 **Retro Date.** The “Retro Date” must be shown, and must be before the date of the Reimbursement Agreement or the beginning of the work required by the Reimbursement Agreement.
- 16.8 **Maintenance and Evidence.** Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work required by the Reimbursement Agreement.
- 16.9 **Cancellation.** If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the effective date of the Reimbursement Agreement, Baldwin must purchase “extended reporting” coverage for a minimum of five years after completion of the work required by the Reimbursement Agreement.
- 16.10 **Copies.** A copy of the claims reporting requirements must be submitted to the City for review.
- 16.11 **Acceptability of Insurers.** Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best’s rating of no less than A V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best’s rating of no less than A X. Exception may be made for the State Compensation Fund when not specifically rated.
- 16.12 **Verification of Coverage.** Baldwin shall furnish the City with original certificates and amendatory endorsements effecting coverage required by section I.C. of this Reimbursement Agreement. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the requirements of this Reimbursement Agreement. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.
- 16.13 **Subcontractors.** Baldwin must include all subconsultants as insureds under its policies or furnish separate certificates and endorsements for each subconsultant. All coverage for subconsultants is subject to all of the requirements included in these specifications.
- 16.14 **Not a Limitation of Other Obligations.** Insurance provisions under this Article shall not be construed to limit Baldwin’s obligations under this Reimbursement Agreement, including Indemnity.

**ARTICLE XVII.  
RECORDS AND AUDITS**

17.1 **Retention of Records.** Baldwin shall maintain data and records related to this contract for a period of not less than three (3) years following receipt of final payment under this Reimbursement Agreement.

17.2 **Audit of Records.** At any time during normal business hours and as often as the City deems necessary, Baldwin and any or all Baldwin contractors and subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Reimbursement Agreement. Baldwin and all contractors and subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Reimbursement Agreement. If records are not made available within the City/County of San Diego, then Baldwin shall pay all the City's travel related costs to audit the records associated with this Reimbursement Agreement at the location where the records are maintained. Such costs will not be Reimbursable Costs.

17.2.1 *Costs.* Baldwin and Baldwin's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Reimbursement Agreement.

**ARTICLE XVIII.  
[Intentionally Omitted]**

**ARTICLE XIX.  
NOTICES**

19.1 **Writing.** Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.

19.2 **Effective Date.** Except in relation to Change Orders or as otherwise provided by law, any demand upon or notice required or permitted to be given by one Party to the other Party shall be effective: (i) on personal delivery, (ii) on the second business day after mailing by certified or registered U.S. Mail, return receipt requested, (iii) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, or (iv) upon successful transmission of facsimile.

19.3 **Recipients.** Except in relation to Change Orders, all demands or notices required or permitted to be given shall be sent to all of the following:

If to City: City of Chula Vista  
Attn: City Manager  
276 Fourth Avenue  
Chula Vista, California 91910

With a copy to: Office of the City Attorney  
Attn: City Attorney  
276 Fourth Avenue  
Chula Vista, California 91910

If to Baldwin: Baldwin & Sons, Inc.  
610 West Ash Street, #1500  
San Diego, California 92101  
Attn: Mr. Nick Lee

With a copy to: Law Offices of R. Martin Bohl  
501 West Broadway, Suite 520  
San Diego, California 92101  
Attn: R. Martin Bohl

19.4 **Change of Address(es)**. Notice of change of address shall be given in the manner set forth in this Article.

## ARTICLE XX. MISCELLANEOUS PROVISIONS

20.1 **Headings**. All article headings are for convenience only and shall not affect the interpretation of this Reimbursement Agreement.

20.2 **Gender & Number**. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine genders and (ii) the singular number includes the plural number.

20.3 **Reference to Paragraphs**. Each reference in this Reimbursement Agreement to a section refers, unless otherwise stated, to a section this Reimbursement Agreement.

20.4 **Incorporation of Recitals**. All recitals herein are incorporated into this Reimbursement Agreement and are made a part hereof.

20.5 **Covenants and Conditions**. All provisions of this Reimbursement Agreement expressed as either covenants or conditions on the part of the City or Baldwin, shall be deemed to be both covenants and conditions.

20.6 **Integration**. This Reimbursement Agreement and the Exhibits and references incorporated into this Reimbursement Agreement fully express all understandings of the Parties concerning the matters covered in this Reimbursement Agreement. No change, alteration, or modification of the terms or conditions of this Reimbursement Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in

writing by both Parties or an amendment to this Reimbursement Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Reimbursement Agreement.

20.7 **Severability.** The unenforceability, invalidity, or illegality of any provision of this Reimbursement Agreement shall not render any other provision of this Reimbursement Agreement unenforceable, invalid, or illegal.

20.8 **Drafting Ambiguities.** The Parties agree that they are aware that they have the right to be advised by counsel

with respect to the negotiations, terms and conditions of this Reimbursement Agreement, and the decision of whether or not to seek advice of counsel with respect to this Reimbursement Agreement is a decision which is the sole responsibility of each Party. This Reimbursement Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Reimbursement Agreement.

20.9 **Conflicts Between Terms.** If an apparent conflict or inconsistency exists between the main body of this

Reimbursement Agreement and the Exhibits, the main body of this Reimbursement Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Reimbursement Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Reimbursement Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Reimbursement Agreement.

20.10 **Prompt Performance.** Subject to **Section 5.2** above, time is of the essence of each covenant and condition set forth in this Reimbursement Agreement.

20.11 **Good Faith Performance.** The parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Contract.

20.12 **Further Assurances.** City and Baldwin each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Reimbursement Agreement.

20.13 **Exhibits.** Each of the following Exhibits is attached hereto and incorporated herein by this reference:

Exhibit A List of Approved Drawings and Specifications  
Exhibit B Estimated Cost

20.14 **Compliance with Controlling Law.** Baldwin shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Reimbursement Agreement, including California Labor Code Section 1720 as amended in 2000 relating to the payment of prevailing wages during the design and preconstruction phases of a project, including inspection and land surveying work. In addition, Baldwin shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Reimbursement Agreement.

- 20.15 **Jurisdiction and Venue.** The venue for any suit or proceeding concerning this Reimbursement Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.
- 20.16 **Municipal Powers.** Nothing contained in this Reimbursement Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 20.17 **Third Party Relationships.** Nothing in this Reimbursement Agreement shall create a contractual relationship between City and any third party, including Baldwin's Subcontractor; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third party beneficiary of all Baldwin's contracts, purchase orders and other contracts between Baldwin and third party services. Baldwin shall incorporate this provision into its contracts, supply agreements and purchase orders.
- 20.18 **Non-Assignment.** Baldwin shall not assign the obligations under this Reimbursement Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Reimbursement Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.
- 20.19 **Successors in Interest.** This Reimbursement Agreement and all rights and obligations created by this Reimbursement Agreement shall be in force and effect whether or not any Parties to the Reimbursement Agreement have been succeeded by another entity, and all rights and obligations created by this Reimbursement Agreement shall be vested and binding on any Party's successor in interest.
- 20.20 **Independent Contractors.** Baldwin, any consultants, contractors, subcontractors, and any other individuals employed by Baldwin shall be independent contractors and not agents of the City. Any provisions of this Reimbursement Agreement that may appear to give the City any right to direct Baldwin concerning the details or performance of the work of Project, or to exercise any control over such performance, shall mean only that Baldwin shall follow the direction of the City concerning the end results of the performance.
- 20.21 **Approval.** Where the consent or approval of a party is required or necessary under this Reimbursement Agreement, the consent or approval shall not be unreasonably withheld.
- 20.22 **No Waiver.** No failure of either the City or Baldwin to insist upon the strict performance by the other of any covenant, term or condition of this Reimbursement Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Reimbursement Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Reimbursement Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.
- 20.23 **Signing Authority.** The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained

to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, this Reimbursement Agreement is executed by the City of Chula Vista acting by and through its City Manager pursuant to Resolution No. R-2014-213, authorizing such execution, and by Baldwin & Sons, Inc.

**CITY:**

CITY OF CHULA VISTA, a California charter  
City and municipal corporation

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

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

**ATTEST:**

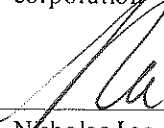
By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

**BALDWIN:**

BALDWIN & SONS, INC., a California  
corporation

By:  \_\_\_\_\_  
Nicholas Lee, Authorized Representative

Date: October 21, 2016



## EXHIBIT A

### Approved Drawings and Specifications

- MONTECITO PARK PHASE I SITE SPECIFICATION MANUAL, prepared by DeLorenzo International dated April 4, 2016,
- MONTECITO PARK PHASE I CONSTRUCTION PLANS prepared by DeLorenzo International, Drawing #15029, sheets 1 through 66 dated April 4, 2016, approved September 15, 2016.
- WATER QUALITY TECHNICAL REPORT FOR MONTECITO PARK, OTAY RANCH VILLAGE 2, prepared by BWE dated December 2015.
- Interim Report of Testing and Observation Services Performed During Site Grading, Otay Ranch Village 2, Phase I, Chula Vista, California, prepared by Geocon, dated April 26, 2012.
- Interim Report of Testing and Observation Services Performed During Site Grading, Otay Ranch Village 2, Phase I, CPF-7 Montecito Swim Club, Building Pad Only, Chula Vista, California, prepared by Geocon, dated January 13, 2015.
- Geotechnical Flatwork Recommendations, Otay Ranch, Village 2 P-3 Park Improvements, Chula Vista, California, prepared by Geocon, dated January 13, 2015.

**EXHIBIT B**

**Estimated Cost**

## MONTECITO PARK 100% ESTIMATE SUMMARY

OTAY RANCH, VILLAGE 2, PARK #3  
January 7, 2016

SITWORK	PHASE 1	PHASE 2	TOTAL
Comfort Station	\$ 290,421		\$ 290,421
Tennis Court with Lighting	\$ 190,680		\$ 190,680
Basketball Court with Lighting	\$ 126,644		\$ 126,644
Picnic Shelters	\$ 46,369	\$ 46,369	\$ 92,738
Remainder of Work	\$ 2,616,411	\$ 1,152,584	\$ 3,769,005
<b>Subtotal</b>	<b>\$ 3,270,525</b>	<b>\$ 1,198,963</b>	<b>\$ 4,469,488</b>
 <b>OWNER ALLOWANCES AND COSTS</b>			
<b>Variable Costs</b>			
Project Contingency (5% of Subtotal)	\$ 163,526	\$ 59,948	\$ 223,474
Plan Check, Permit and Inspection (4.5% of Subtotal)	\$ 147,174	\$ 53,953	\$ 201,127
<b>Fixed Costs</b>			
1 1/2" Potable Water Meter	\$ 61,420	-	\$ 61,420
{2} 2" Recycled Water Irrigation Meters	\$ 150,186	-	\$ 150,186
Chula Vista Sewer Capacity Fee (Allowance)	\$ 5,000	-	\$ 5,000
<b>TOTAL ESTIMATED COST</b>	<b>\$ 3,797,831</b>	<b>\$ 1,312,864</b>	<b>\$ 5,110,695</b>
 <b>PREFERRED DEDUCTIVE BID ALTERNATES</b>			
Reduce 5 Gal. Shrubs to 1 Gal. Shrubs	\$ (65,835)	\$ (19,771)	\$ (85,606)
Reduce 15 Gal. Shrubs to 1 Gal. Shrubs	\$ (71,199)	\$ (2,224)	\$ (73,423)
Delete Monument Gateway	\$ (28,478)	\$ (31,963)	\$ (61,447)
Substitute 24' x 24' Shelter with 16' x 19' Shelter	\$ (1,933)	\$ (2,096)	\$ (4,029)
Substitute QuickCrate Furnishing with Outdoor Creations Furnishings	\$ (18,216)	\$ (10,976)	\$ (29,192)
<b>SUBTOTAL ESTIMATED BID ALTERNATE SAVINGS</b>	<b>\$ (186,662)</b>	<b>\$ (67,030)</b>	<b>\$ (253,692)</b>
 <b>Savings to Variable Costs Through Deductive Bid Alternates</b>			
Project Contingency (5% of Subtotal)	\$ (8,333)	\$ (3,352)	\$ (12,685)
Plan Check, Permit and Inspection (4.5% of Subtotal)	\$ (8,400)	\$ (3,016)	\$ (11,416)
<b>TOTAL ESTIMATED COST LESS BID ALTERNATES</b>	<b>\$ 3,593,436</b>	<b>\$ 1,239,467</b>	<b>\$ 4,832,903</b>
 <b>OTHER DEDUCTIVE BID ALTERNATES</b>			
Delete Tennis and Basketball Court Lighting	\$ (81,229)		
Delete Basketball Court Lighting Only	\$ (26,203)		
Delete Basketball Court and Lighting, and Irrigate and Plant with Turf (\$82,445 for court and \$26,200 for lighting)	\$ (108,645)		
Delete Half Basketball Court and Lighting, and Irrigate and Plant with Turf (\$40,511 for court and \$26,200 for lighting)	\$ (66,711)		



Montecito Park, Park P-3, Otay Ranch, Village 2.

<b>Description</b>	<b>Phase 1 Cost</b>	<b>Phase 2 Cost</b>	<b>Total Cost</b>
Pre Bid Construction Cost Including contingencies*	\$3,797,831.00	\$1,312,864.00	\$5,110,695.00
Design Costs preparation of construction documents	\$ 240,950.00	-	\$ 240,950.00
<b>Total Reimbursable Amount ("Estimated Cost")</b>	-	-	<b>\$5,351,645.00</b>

\*Figures provided by DeLorenzo International, landscape consultants to Baldwin and Sons.