

DOC # 2011-0582265



RECORDED REQUEST OF
First American Title
SUBDIVISION MAPPING DEPT.

NOV 02, 2011 8:00 AM

~~RECORDING REQUESTED BY AND~~
WHEN RECORDED RETURN TO:

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
Ernest J. Dronenburg, Jr., COUNTY RECORDER
FEES: 95.00

PAGES: 27

CITY OF CHULA VISTA
OFFICE OF THE CITY CLERK
276 FOURTH AVENUE
CHULA VISTA, CA 91910

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Above Space for Recorder's Use
CCV File No. PG-799

**INTERIM DESILTATION AND MAINTENANCE AGREEMENT FOR THE
MASS GRADING OF THE EASTERN URBAN CENTER (MILLENIA)**

This Interim Desiltation and Maintenance Agreement ("Agreement") is made by and between SLF IV/McMillin Millenia JV, LLC (referred to herein as "Company"), and the City of Chula Vista, a California municipal corporation ("City"), with reference to the following facts:

RECITALS

- 1 Company owns approximately 207 acres of land known as the "Otay Ranch Eastern Urban Center" (hereinafter referred to as the "Project") south of Birch Road and the Otay Ranch Town Center, north of the future extension of Hunte Parkway, adjacent to and east of State Route 125 (SR-125), and west of Eastlake Parkway. The property which is the subject matter of this agreement is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property").
- 2 On September 15, 2009, the City approved a Tentative Subdivision Map for the Project, Chula Vista Tract 09-03 (hereinafter referred to as the "Tentative Map"), by Resolution Number 2009-225.
- 3 Condition number 52 of the Tentative Map, as more particularly set forth on Exhibit B, requires, that prior to approval of each grading permit for the Project, the applicant shall:
 - (a) Prepare a maintenance program of all the proposed drainage and water quality treatment facilities, the channel or basin, including but not limited to naturalized channels down stream of the Project, wetlands restoration areas, detention basins, and water quality treatment facilities;

R-2011-167

- (b) Demonstrate compliance with Section 1803 of the California building code (CBC); and
 - (c) Enter into an agreement with the City wherein the applicant agrees to provide for the maintenance of all proposed drainage and water quality treatment facilities attributable to the Project, and provide security, satisfactory to the City Engineer, guaranteeing the performance of the aforementioned maintenance and siltation removal obligations. This obligation may be transferred to another property owner if approved by the City.
- 4 The City Engineer has determined that certain temporary drainage, desilting basins, and erosion/sedimentation control facilities, as shown on the Mass Grading Plans for the Project, Chula Vista Drawing Number 10044 are adequate as of the date of this Agreement to temporarily service the mass-grading proposed for the Property.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **Defined Terms.** The following defined terms shall have the meaning set forth herein, unless otherwise specifically indicated.
 - 1.1. "Temporary Private Facilities" shall mean the temporary private drainage, desilting basins, and erosion/sedimentation control facilities proposed for construction within the Project, as shown on Chula Vista Drawing No. 10044 as approved by the City Engineer.
 - 1.2. "Complete Construction" shall mean that construction of the Temporary Private Facilities has been completed to the satisfaction of the City Engineer.
 - 1.3. "Maintain" or "Maintenance" shall mean to furnish, or the furnishing of, services and materials for the ordinary and usual maintenance required for the operation of the Temporary Private Facilities as set forth in the IOMP.
 - 1.4. "Inspection, Operation, and Maintenance Plan," or "IOMP," means a description of the inspection, operation, and maintenance activities and schedules required to ensure proper operation and effectiveness of the Temporary Private Facilities, which IOMP is attached hereto as Exhibit C and incorporated herein by this reference.
2. **Condition No. 52 of Tentative Map.** In partial satisfaction of Condition No. 52 of the Tentative Map, Company agrees to the following:

- 2.1. Construction. Company, agrees to construct Temporary Private Facilities, as shown on Chula Vista Drawing No. 10044. These facilities may be phased in accordance with a phased grading plan as approved by the City Engineer. The Temporary Private Facilities shall comply with all the provisions of the National Pollutant Discharge Elimination System and the Clean Water Program. Company understands and agrees that Company is responsible for obtaining all necessary permits, approvals, and certifications, if any, from applicable federal or state agencies, including but not limited to Caltrans, the California Department of Fish and Game and/or the US Army Corps of Engineers. City shall cooperate with Company as necessary to obtain all such permits, approvals and certifications.
- 2.2. Maintenance. Company shall operate and maintain the Temporary Private Facilities in accordance with the IOMP until the responsibility for maintenance has been assumed by another owner of the Property or the City determines that the Temporary Private Facilities are no longer needed because they have been superseded by new private or public facilities approved by the City Engineer. City agrees to ensure, but shall not be liable for in any way whatsoever, that adequate securities, consistent with this Agreement, are put in place as a condition of the transfer of responsibility to another owner. Immediately upon the occurrence of any of the aforementioned events, Company's maintenance obligations shall terminate and City shall release and return to Company any and all security provided pursuant to this Agreement after adequate securities are put in place as a condition of the transfer of responsibility to another owner.
- 2.3. Fulfillment of Condition No. 52. Condition No. 52 shall be considered fully satisfied when the City Engineer makes the determination that the last grading permit for the Project has been issued; otherwise, the requirements of Condition No. 52 shall be enforced for each grading permit for the Project.
- 2.4. Securities. Company shall provide the City with maintenance securities, in accordance with paragraph 3 below, to guarantee Company-maintenance obligations herein.

3. Security for Performance.

- 3.1. Cash Deposit. At least thirty (30) days before the filing of the City of Chula Vista Form 5512 for Approval to Commence Work, Company shall provide the City with a cash deposit ("Cash

Deposit") to guarantee Company's maintenance obligations pursuant to Section 2.2 of this Agreement, in the sum set forth in Exhibit D, which represents two years of maintenance costs for the Temporary Private Facilities as estimated by the City Engineer. The Cash Deposit amount may be adjusted by the City Engineer to reflect phased grading. City shall hold the Cash Deposit for the duration of Company's maintenance obligations hereunder. City may spend money from the Cash Deposit solely as necessary to correct any default of Company in the performance of Company's maintenance obligations. Should the City spend any of the Cash Deposit to correct any default of Company in the performance of Company's maintenance obligations, Company agrees to restore the Cash Deposit to its original level within 30 days of the City's written request. Any unexpended amount of the Cash Deposit, including any interest earned, shall be released and remitted to Company upon the termination of its maintenance obligations as set forth in this Agreement. The Cash Deposit amount may be reduced upon transfer of responsibility to another party or upon replacement of the temporary facilities with permanent facilities as determined by the City Engineer.

3.2. Maintenance Bonds. Company also agrees to the following:

- (a) Bonds. At least thirty (30) days before the filing of the City of Chula Vista Form 5512 for Approval to Commence Work, Company shall provide the City with a bond for an initial term of eight (8) years ("Maintenance Bond"), in order to guarantee its maintenance obligations under Section 2.2 of this Agreement in the amounts more fully set forth in Exhibit D. The Maintenance Bond shall be issued by a surety and shall be in a form approved by the City Attorney. Company acknowledges and agrees that it shall maintain the Maintenance Bond or equivalent security as determined by the City Engineer and not let said Maintenance Bond or equivalent security lapse or expire for as long as Company has maintenance obligations pursuant to this Agreement.
- (b) Use of Maintenance Bond. Company acknowledges and agrees that if the Company fails to fulfill its maintenance obligations as set forth herein, the sum provided by said bond may be used by the City for the purpose of fulfilling such obligations as approved by the City Engineer. Company also agrees that the City may take any and all actions necessary, in order to obtain the funds necessary for the purpose of fulfilling such obligations. Company agrees to pay to the City any difference between the total cost incurred to perform the work.

including but not limited to reasonable design and administration of maintenance in substantial conformance with the IOMP (including a reasonable allocation of overhead), and any proceeds from the Maintenance Bond.

(c) Company's Costs and Expenses. It is also expressly agreed and understood by the parties hereto that in no case will the City, or any department, board or officer thereof, be liable for any portion of the costs and expenses of the work obligated herein, nor shall the City or the City's officers, sureties or bondsmen, be liable for the payment of any sum or sums for said work or any materials furnished therefor.

3.3. Company understands and agrees that the City shall not issue any grant of approval to commence work on the Property, if the Maintenance Bond has not been delivered and approved by the City as conforming to the requirements of this Agreement.

3.4. Company may request that another form of equivalent security, such as a letter of credit, or cash, acceptable to the City Engineer, be substituted for the Maintenance Bond described herein. Company acknowledges and agrees that such substitution is in the sole discretion of the City Engineer.

3.5. Reduction of Security. In the event that the annual maintenance costs are reduced, the City Engineer may review at Company's request to reduce, proportionately, the amount of the Maintenance Bond or equivalent security required by this Section. City shall not unreasonably withhold approval of such request provided however that Company's obligations are adequately secured as determined by the City Engineer in his/her sole discretion.

3.6. Municipal Code Requirements. Company understands and agrees that Company shall be subject to all the provisions of the Ordinances, Standards, and Policies of the City of Chula Vista (including Section 14.20.310 of the Municipal Code), the laws of the State of California, and federal law as applicable to said work as all may be amended from time to time.

4. Future Approvals. Company acknowledges and agrees that the performance of Company's obligations herein is required for the health and safety of the residents of the City. Therefore, the Company agrees that the City shall have the absolute and unfettered right to withhold the issuance of any grant of approval for the Property, if the Company is determined by the City not to be in compliance with the terms of this Agreement. If Company is determined by the City not to be in compliance with any term of this Agreement, the City

shall notify Company of Company's non-compliance and provide the Company with thirty (30) days to cure said non-compliance. The Company shall not be in non-compliance if, upon notification of non-compliance, Company starts immediately to work toward cure of said non-compliance and diligently pursues, as determined by the City Engineer, a course of action to achieve a cure within a reasonable time-frame.

5. **Agreement Binding upon Successors.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Company as to any or all of the Property until released by the City or terminated in accordance with the terms hereof. However, City agrees to release individual properties from the obligations of this Agreement upon completion of permanent facilities approved by the City as part of a development plan for those individual properties or upon City approval of a transfer of responsibility pursuant to sections 2.1 or 2.2 of the Agreement.
6. **Agreement Running with the Land and in favor of City.** The burden of the covenants contained in this Agreement is for the benefit of the City. City is deemed the beneficiary of such covenants running with the land without regard to whether City has been, remained or are owners of any particular land or interest therein. If such covenants are breached, the City shall have the right, but not the obligation, to exercise all rights and remedies and to maintain any action or suits at law or in equity or other proper proceedings to enforce the curing of such breach to which it or any other beneficiaries of this Agreement and covenants may be entitled.
7. **Indemnification.** Company further understands and agrees that City, as indemnitee, or any officer or employee thereof, shall not be liable for any injury to person or property occasioned by reason of the acts or omissions of Company, its agents or employees, related to the construction of the Temporary Private Facilities and Company's maintenance activities. Company further agrees to protect and hold the City, its officers and employees, harmless from any and all claims, demands, causes of action, liability or loss of any sort, because of or arising out of acts or omissions of Company, its agents or employees, related to the construction of the Temporary Private Facilities and Company's maintenance activities. The approved improvement securities referred to above shall not be deemed to limit the provisions of this paragraph. Such indemnification and agreement to hold harmless shall extend to damages to adjacent or downstream properties as a result of Company's construction and maintenance activities as provided herein. It shall also extend to damages resulting from erosion or siltation, or modification of the point of discharge as the result of the construction of the Temporary Private Facilities and maintenance and/or siltation removal activities. The approval of plans for the Temporary Private Facilities and any related improvements shall not constitute the assumption by City of any responsibility for such damage or taking, nor shall City, by said approval, be

an insurer or surety for the construction of the temporary Private Facilities and any related improvements. The provisions of this paragraph shall become effective upon the execution of this Agreement and shall remain in full force and effect regardless of the City's approval of the Temporary Private Facilities. However, nothing in this paragraph shall apply to any liability or claims arising from the active negligence or willful misconduct of City or its officers or employees.

8. Miscellaneous Provisions.

- 8.1. Entire Agreement. This Agreement, together with any other written document referred to or contemplated herein, embody the entire Agreement and understanding between the parties relating to the subject matter hereof and any and all other prior or contemporaneous oral or written agreements are hereby superseded. This Agreement may be amended, but only pursuant to a written amendment properly authorized and executed by both parties hereto.
- 8.2. Compliance with Laws. In the performance of its obligations under this Agreement, Company shall comply with any and all applicable federal, state and local laws, regulations, policies, permits and approvals.
- 8.3. Recitals and Exhibits. All Recitals and attached Exhibits referred to herein are hereby incorporated hereunder.
- 8.4. Term. This Agreement shall remain in effect for so long as either party has executory obligations hereunder.
- 8.5. Recording. The parties hereto shall cause this Agreement to be recorded in the Office of the County Recorder of San Diego County.
- 8.6. Assignment. The obligations of the Company under this Agreement shall not be assigned in whole or in part without the express written consent of the City pursuant to Section 10.2.3 of the Development Agreement. City's consent shall not be withheld if the assignment and delegation is to a Merchant Builder (as defined in the Development Agreement) by private agreement and the Company remains obligated to the City. Pursuant to Section 10.2.4 of the Development Agreement, however, City shall exhaust any accepted, substitute security before making any demand on Company.

- 8.7. Authority of Signatories. Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable it to enter into this Agreement.
- 8.8. Termination. Upon the termination of this Agreement pursuant to applicable provisions hereof, at the request of Company or any successor in interest who owns any portion of the Project encumbered by this Agreement, the City will execute an instrument in recordable form prepared by Company in a form acceptable to the City Attorney which evidences the termination of this Agreement and confirms the release of the Project or applicable portion thereof from the encumbrance of this Agreement.
- 8.9. Attorney's Fees. If either party commences litigation for the judicial interpretation, reformation, enforcement or rescission hereof, the prevailing party shall be entitled to a judgment against the other for an amount equal to reasonable attorney's fees and court costs incurred. The "prevailing party" shall be deemed to be the party who is awarded substantially the relief sought.
- 8.10. Preparation of Agreement. No inference, assumption or presumption shall be drawn from the fact that a party or his/her attorney prepared and/or drafted this Agreement. It shall be conclusively presumed that both parties participated equally in the preparation and/or drafting of this Agreement.
- 8.11. Notices. Unless otherwise provided in this Agreement or by law, any and all notices required or permitted by this Agreement or by law to be served on or delivered to either party shall be in writing and shall be deemed duly served, delivered, and received when personally delivered to the party to whom it is directed, or in lieu thereof, when three (3) business days have elapsed following deposit in the U. S. Mail, certified or registered mail, return receipt requested, first-class postage pre-paid, addressed to the address indicated in this Agreement. A party may change such address for the purpose of this paragraph by giving written notice of such change to the other party.

CITY OF CHULA VISTA
276 Fourth Avenue
Chula Vista, CA 91910
Attention: City Engineer

COMPANY:
SLF IV/McMillin Millenia JV, LLC
P.O. Box 85104
San Diego, CA 82186-5104
Attention: Todd Galameau, Senior Vice President

With a copy to:

c/o The Stratford Company
5090 North 40th Street, Suite 260
Phoenix, Arizona 85018
Attn: Diane W. Belcher

- 8.12. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be original but all of which, when taken together shall constitute but one instrument.
- 8.13. Miscellaneous. The above-referenced Recitals are true and correct and are incorporated into the body of this Agreement by this reference. This Agreement supersedes and replaces in its entirety that certain Storm Water Management Facilities Maintenance Agreement with Grant of Access and Covenants (Otay Ranch Eastern Urban Center [EUC]) by and between McMillin Otay Ranch, LLC and the City.

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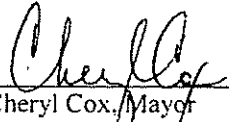
**SIGNATURE PAGE
INTERIM DESILTATION AND MAINTENANCE AGREEMENT FOR THE
MASS GRADING OF THE EASTERN URBAN CENTER (MILLENIA)**

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the 14 day of September, 2011 (the "Effective Date").

COMPANY:
SLF IV/McMillin Millenia JV, LLC
a Delaware Limited Liability Company

CITY OF CHULA VISTA

By: The Corky McMillin Real Estate Group, LLC
a Delaware Limited Liability Company
Its Managing Member

By: 
Cheryl Cox, Mayor

By: 

Its: _____

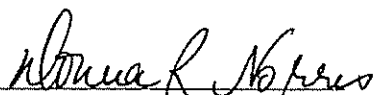
By: 

Its: 

APPROVED AS TO FORM:

By: 
Glen R. Coogler, City Attorney

ATTEST:

By: 
Donna Norris, City Clerk

*(Notary to attach acknowledgement for each signature)
(Corporate Authority required for each signatory)*

Attachments:

- Exhibit A: Legal Description of the Property
- Exhibit B: Condition No. 52 of Tentative Map from CCV Resolution No. 2009-225
- Exhibit C: Inspection, Operation, and Maintenance Plan (IOMP) titled "Sediment Basin Operation and Maintenance Plan – Millenia (EUC) Mass Grading" dated April, 2011 and prepared by Project Design Consultants
- Exhibit D: Security Requirements

CALIFORNIA ALL PURPOSE
CERTIFICATE OF ACKNOWLEDGMENT

6565

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

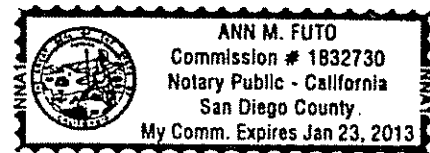
On July 12, 2011, before me, Ann M. Futo, Notary Public, personally appeared Brian J. Milich and Wade Hall, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in 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

Ann M. Futo



This area for official notarial seal

EXHIBIT "A"
Legal Description of Project Site

PARCEL A: (643-060-18-00)

PARCEL 3 OF PARCEL MAP NO. 18481, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MAY 31, 2000 AS INSTRUMENT NO. 2000-283684 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM THE LAND DESCRIBED IN THAT CERTAIN IRREVOCABLE OFFER OF DEDICATION OF FEE INTEREST RECORDED MAY 22, 2003 AS INSTRUMENT NO. 2003-0604602 AND ACCEPTED BY THAT CERTAIN ACCEPTANCE OF IRREVOCABLE OFFER OF DEDICATION OF FEE INTEREST RECORDED MAY 22, 2003 AS INSTRUMENT NO. 2003-0604603 AND CONVEYED TO THE STATE OF CALIFORNIA BY GRANT DEED RECORDED MAY 22, 2003 AS INSTRUMENT NO. 2003-0604607 ALL OF OFFICIAL RECORDS OF SAN DIEGO COUNTY, CALIFORNIA.

PARCEL B: (APN: 643-060-24)

THAT PORTION OF LAND CONVEYED TO THE STATE OF CALIFORNIA RECORDED ON MAY 22, 2003 AS INSTRUMENT NO. 2003-0604607 LYING EASTERLY AND NORTHEASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A 2" IRON PIPE WITH DISC STAMPED "R.C.E 22606" MARKING THE NORTHEAST CORNER OF LOT 23 OF RANCHO OTAY, AS SHOWN ON RECORD OF SURVEY NO. 16504, RECORDED MARCH 9TH, 2000, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SAID PIPE BEARING NORTH 7157'57" EAST 2640.41 FEET FROM A 2" IRON PIPE WITH DISC STAMPED "L.S. 5284" MARKING THE SOUTHWEST CORNER OF LOT 10 OF MAP NO. 14432, RECORDED AUGUST 30TH, 2002, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 23 SOUTH 7157'57" WEST 22.30 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 6324'16" WEST 138.24 FEET TO THE BEGINNING OF A 550.03 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2239'08" A DISTANCE OF 217.46 FEET TO THE BEGINNING OF A NON-TANGENT 433.15 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL BEARING TO SAID POINT BEARS SOUTH 4415'53" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0200'16" A DISTANCE OF 15.15 FEET; THENCE NON-TANGENT TO SAID CURVE NORTH 6045'28" WEST 30.31 FEET TO THE BEGINNING OF A NON-TANGENT 320.41

FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL BEARING TO SAID POINT BEARS SOUTH 4622'51" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0943'46" A DISTANCE OF 54.41 FEET TO THE BEGINNING OF A 3606.39 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0230'08" A DISTANCE OF 157.51 FEET TO THE BEGINNING OF A 1913.84 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0538'03" A DISTANCE OF 188.19 FEET TO THE BEGINNING OF A 6998.01 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0124'52" A DISTANCE OF 172.745 FEET TO THE BEGINNING OF A NON-TANGENT 3624.21 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 6527'01" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0314'26" A DISTANCE OF 204.98 FEET; THENCE NORTH 2118'33" WEST 204.19 FEET; THENCE NORTH 1729'08" WEST 83.50 FEET TO THE BEGINNING OF A 1407.94 FOOT RADIUS CURVE CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0837'48" A DISTANCE OF 212.07 FEET; THENCE NORTH 0837'59" WEST 232.59 FEET TO THE POINT OF TERMINUS; THENCE NORTH 0911'35" WEST 169.93 FEET; THENCE NORTH 0822'34" WEST 56.24 FEET; THENCE NORTH 0910'03" WEST 77.41 FEET TO THE BEGINNING OF A 137.26 FOOT RADIUS CURVE CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1332'35" A DISTANCE OF 32.44 FEET; THENCE NORTH 0422'32" EAST 131.80 FEET TO THE BEGINNING OF A 284.84 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1416'08" A DISTANCE OF 70.93 FEET TO THE BEGINNING OF A 121.88 FOOT RADIUS REVERSE CURVE CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1900'59" A DISTANCE OF 40.45 FEET; THENCE NORTH 0907'23" EAST 160.03 FEET TO THE BEGINNING OF A 911.54 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1439'39" A DISTANCE OF 233.25 FEET TO THE BEGINNING OF A 2155.33 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0435'30" A DISTANCE OF 172.73 FEET; THENCE NORTH 2822'31" EAST 120.32 FEET; THENCE NORTH 2632'21" EAST 169.27 FEET TO THE BEGINNING OF A 593.50 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 3333'34" A DISTANCE OF 347.62 FEET TO THE BEGINNING OF A 1262.42 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0709'41" A DISTANCE OF 157.79 FEET TO THE BEGINNING OF A 36.88 FOOT RADIUS REVERSE CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 9039'38" A DISTANCE OF 58.35 FEET; THENCE NON-

TANGENT TO SAID CURVE NORTH 0818'56" WEST 45.88 FEET; THENCE ALONG A RADIAL BEARING NORTH 0810'13" WEST 65.00 FEET TO A POINT ON A 3700.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, SAID POINT BEING ON THE SOUTHERLY LINE OF LAND DESCRIBED AS PARCEL 32019-1 CONVEYED TO THE STATE OF CALIFORNIA RECORDED ON MAY 22, 2003 AS INSTRUMENT NO. 2003-0604607; THENCE NORTHEASTERLY ALONG SAID CURVE AND SAID STATE LAND THROUGH A CENTRAL ANGLE OF 0348'57" A DISTANCE OF 246.42 FEET TO THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE IN SAID STATE LAND BEARING NORTH 0421'16" WEST 95.92 FEET.

THE ABOVE DESCRIBED LAND WAS CONVEYED TO MCMILLIN OTAY RANCH, LLC, A DELAWARE LIMITED LIABILITY COMPANY IN GRANT DEED RECORDED AUGUST 6, 2010 AS INSTRUMENT NO. 2010-0403982 OF OFFICIAL RECORDS.

PARCEL C: (APN: 643-060-23)

THAT PORTION OF LAND CONVEYED TO THE STATE OF CALIFORNIA RECORDED ON MAY 22, 2003 AS INSTRUMENT NO. 2003-0604607 LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT A 2" IRON PIPE WITH DISC STAMPED "R.C.E 22606" MARKING THE NORTHEAST CORNER OF LOT 23 OF RANCHO OTAY, AS SHOWN ON RECORD OF SURVEY NO. 16504, RECORDED MARCH 9TH, 2000, IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SAID PIPE BEARING NORTH 7157'57" EAST 2640.41 FEET FROM A 2" IRON PIPE WITH DISC STAMPED "L.S. 5284" MARKING THE SOUTHWEST CORNER OF LOT 10 OF MAP NO. 14432, RECORDED AUGUST 30TH, 2002, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 23 SOUTH 7157'57" WEST 22.30 FEET; THENCE NORTH 6324'16" WEST 138.24 FEET TO THE BEGINNING OF A 550.03 FOOT RADIUS CURVE CONCAVE, NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 2239'08" A DISTANCE OF 217.46 FEET TO THE BEGINNING OF A NON-TANGENT 433.15 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL BEARING TO SAID POINT BEARS SOUTH 4415'53" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0200'16" A DISTANCE OF 15.15 FEET; THENCE NON-TANGENT TO SAID CURVE NORTH 6045'28" WEST 30.31 FEET TO THE BEGINNING OF A NON-TANGENT 320.41 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL BEARING TO SAID POINT BEARS SOUTH 4622'51" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0943'46" A DISTANCE OF 54.41 FEET TO THE BEGINNING OF A 3606.39 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0230'08" A DISTANCE OF 157.51 FEET TO THE BEGINNING OF A 1913.84 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A

CENTRAL ANGLE OF 0538'03" A DISTANCE OF 188.19 FEET TO THE BEGINNING OF A 6998.01 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0124'52" A DISTANCE OF 172.745 FEET TO THE BEGINNING OF A NON-TANGENT 3624.21 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 6527'01" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0314'26" A DISTANCE OF 204.98 FEET; THENCE NORTH 2118'33" WEST 204.19 FEET; THENCE NORTH 1729'08" WEST 83.50 FEET TO THE BEGINNING OF A 1407.94 FOOT RADIUS CURVE CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0837'48" A DISTANCE OF 212.07 FEET; THENCE NORTH 0837'59" WEST 232.59 FEET; THENCE NORTH 0911'35" WEST 169.93 FEET; THENCE NORTH 0822'34" WEST 56.24 FEET; THENCE NORTH 0910'03" WEST 77.41 FEET TO THE BEGINNING OF A 137.26 FOOT RADIUS CURVE CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1332'35" A DISTANCE OF 32.44 FEET; THENCE NORTH 0422'32" EAST 131.80 FEET TO THE BEGINNING OF A 284.84 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1416'08" A DISTANCE OF 70.93 FEET TO THE BEGINNING OF A 121.88 FOOT RADIUS REVERSE CURVE CONCAVE EASTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1900'59" A DISTANCE OF 40.45 FEET; THENCE NORTH 0907'23" EAST 160.03 FEET TO THE BEGINNING OF A 911.54 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1439'39" A DISTANCE OF 233.25 FEET TO THE BEGINNING OF A 2155.33 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0435'30" A DISTANCE OF 172.73 FEET; THENCE NORTH 2822'31" EAST 120.32 FEET; THENCE NORTH 2632'21" EAST 169.27 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT BEING THE BEGINNING OF A 593.50 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 3333'34" A DISTANCE OF 347.62 FEET TO THE BEGINNING OF A 1262.42 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0709'41" A DISTANCE OF 157.79 FEET TO THE BEGINNING OF A 36.88 FOOT RADIUS REVERSE CURVE CONCAVE SOUTHEASTERLY; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 9039'38" A DISTANCE OF 58.35 FEET; THENCE NON-TANGENT TO SAID CURVE NORTH 0818'56" WEST 45.88 FEET; THENCE ALONG A RADIAL BEARING NORTH 0810'15" WEST 65.00 FEET TO A POINT ON A 3700.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY, SAID POINT BEING THE POINT OF TERMINUS AND BEING ON THE SOUTHERLY LINE OF LAND DESCRIBED AS PARCEL 32019-1 CONVEYED TO THE STATE OF CALIFORNIA RECORDED ON MAY 22, 2003 AS INSTRUMENT NO. 2003-0604607; THENCE NORTHEASTERLY ALONG SAID CURVE AND SAID STATE LAND THROUGH A CENTRAL ANGLE OF 0348'57" A DISTANCE

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OF 246.42 FEET TO THE SOUTHERLY TERMINUS OF THAT CERTAIN COURSE IN SAID STATE LAND BEARING NORTH 042°1'16" WEST 95.92 FEET.

THE ABOVE DESCRIBED LAND WAS CONVEYED TO MCMILLIN OTAY RANCH, LLC, A DELAWARE LIMITED LIABILITY COMPANY IN GRANT DEED RECORDED AUGUST 6, 2010 AS INSTRUMENT NO. 2010-0403982 OF OFFICIAL RECORDS.

~~obtain city approval of a library site master plan including provisions for library parking. Should the applicant pursue construction of any portion of a building containing the required public library facility prior to the city's desired library construction timeframe or prior to the required timeframe necessary to demonstrate compliance with the CMOC threshold for libraries, the applicant shall agree to allow the city the right to utilize and/or occupy said space in a manner to its choosing including non-library purposes.~~

GRADING AND DRAINAGE

52. Prior to approval of each grading permit for the project, Applicant shall:

- a. Prepare a maintenance program of all the proposed drainage and water quality treatment facilities, the channel or basin, including but not limited to naturalized channels down stream of the project, wetlands restoration areas, detention basins, and water quality treatment facilities. The maintenance program shall include, but not be limited to: a) a manual describing the operation and maintenance of the drainage and water quality treatment facilities; b) an estimate of the cost of such operation and maintenance activities; and c) a funding mechanism and schedule for financing the maintenance program. Said maintenance program shall be subject to approval by the City Engineer. The Applicant shall be responsible for obtaining all required approvals of the maintenance program from all applicable federal and state agencies.
- b. Demonstrate compliance with Section 1803 of the California Building Code (CBC).
- c. Enter into an agreement with the City of Chula Vista, wherein Applicant agrees to:
 - i) Provide for the maintenance of all proposed drainage and water quality treatment facilities attributable to the project, and provide security, satisfactory to the City Engineer, guaranteeing the performance of the aforementioned maintenance and siltation removal obligations. This obligation may be transferred to another property owner if approved by the City. Treatment facilities including but not limited to naturalized drainage channels, wetlands restoration areas as allowed by the resource agencies, detention basins, and water quality treatment facilities shall be maintained by the Applicant until occurrence of the latter of the following: (a) maintenance of such facilities is assumed by the City, open space district or Master Homeowner's Association, or; (b) the City determines all erosion protection plantings are adequately established.
 - ii) ~~Provide for the removal of siltation attributable to the Project, from all proposed drainage and water quality treatment facilities, including but not limited to naturalized drainage channels, wetlands restoration areas, detention basins, and water quality treatment facilities until the Project is completed and all erosion protection plantings is adequately established as determined by the City Engineer.~~

- iii) Provide for the removal of any siltation resulting from all proposed drainage and water quality treatment facilities, including but not limited to the naturalized drainage channel, wetlands restoration areas as allowed by the resource agencies, detention basins, and water quality treatment facilities, attributable to the Project, for a minimum period of five years after maintenance of such facility is accepted by the City or an appropriate Maintenance District.
 - iv) Applicant shall provide security, satisfactory to the City Engineer, guaranteeing the performance of the aforementioned maintenance and siltation removal obligations.
53. Prior to installation of base paving and placement of curb and gutter form work related to approved construction plans the Applicant shall demonstrate, to the City Engineer's satisfaction, that highly expansive fill soils (with an expansion index over 90) are not within the upper five feet of any public right of way or public easement. Applicant shall selectively grade fill soils with an expansion index above 90 within the upper five feet of any public right of way or propose an alternate method to mitigate expansive soils. Said alternate method shall be subject to the approval of the City Engineer prior to placement of curb and gutter, sidewalk or aggregate base. Additionally, any formational materials within three feet of sub grade shall be tested for expansion, and replaced with soil, which has an expansion index of less than 90.

SEWER

54. Prior to approval of the first final "B" Map, the Applicant shall enter into an agreement with the City to contribute its fair share and shall thereafter participate according to the terms of such agreement in any necessary funding for implementing a Poggi Canyon sewer trunk-monitoring program, as determined by the City Engineer. The sewer trunk-monitoring program shall include an analysis of the remaining capacity of the Poggi Canyon/Date-Faivre sewer system. The analysis shall demonstrate to the satisfaction of the City Engineer that sufficient capacity exists for the number of EDUs contained in all Final Maps for the Project submitted to the City pursuant to the limits set forth in the PFFP. The analysis shall include all flows from relating to the Project, including pumped flows, entering the Poggi Canyon Trunk Sewer, not just from Eastern Urban Center, or from within the Poggi Canyon gravity basin.
55. Prior to approval of each final map, the Applicant shall enter into an agreement with the City whereby the Applicant agrees and acknowledges that all development within the Eastern Urban Center shall be consistent with the "*Eastern Urban Center Technical Sewer Study*", prepared by PBS&J (January 2008). Furthermore the Applicant shall agree that prior to design review approval and in accordance with the Intensity Transfer provisions in the EUC SPA, the Applicant shall provide an updated Technical Sewer Study with each proposed project requesting an intensity transfer. The Technical Sewer Study shall demonstrate to the satisfaction of the City Engineer that adequate capacity exists in the wastewater infrastructure to support the transfer.

**SEDIMENT BASIN OPERATION AND
MAINTENANCE PLAN**

MILLENIA (EUC) MASS GRADING

APRIL 2011

Prepared For:

SLF IV / McMillin Millenia JV, LLC
P.O. Box 85104
San Diego, CA 92186-5104

Prepared By:



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Job No. 3366.00





Debby Reece, PE RCE 56148
Registration Expires 12/31/12

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- 1. Mass Grading Plans
- 2. Operation and Maintenance Procedures & Checklists

1. INTRODUCTION AND DESCRIPTION

This Operations and Maintenance (O&M) manual was prepared as a maintenance guide for the proposed temporary sediment basins built within the Millenia (EUC) project, in the City of Chula Vista, California. The basins will be graded as part of a mass grading operation (City of Chula Vista drawing 10044) and will be located east of SR-125, south of Birch Road, and west of Eastlake Parkway. There will be four basins: the north basin, west basin, southeast basin and southwest basin. The basins will collect runoff from the disturbed mass graded area and drain into existing underground storm drain systems (north and west basins), and into existing canyons (southeast and southwest basins). Maintenance for a series of concrete ditches that will be used to help direct runoff to the basins is also included in this report. Refer to the Vicinity Map below for the project area. The proposed basins are shown on Drawings 10044-5, -6, -7, and -7 respectively, copies of which are provided in Appendix 1 for reference.

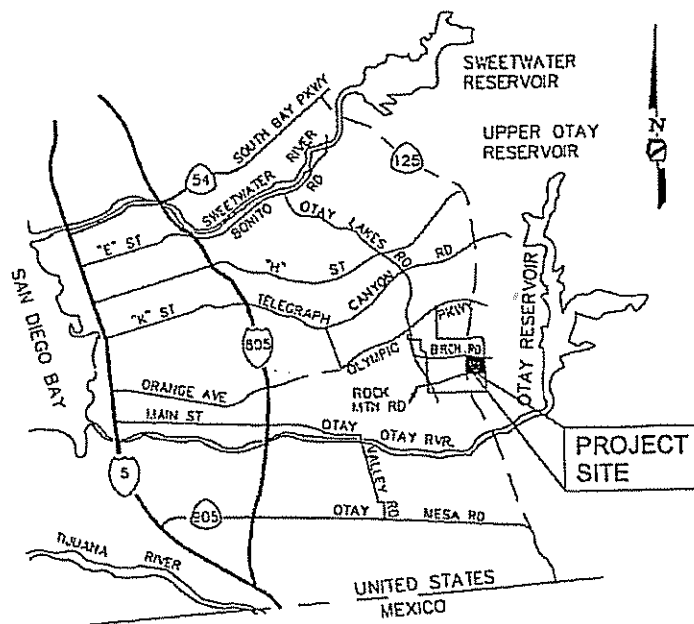


Figure 1: Project Vicinity Map

2. MAINTENANCE PROGRAM

The following section describes the maintenance procedures for the sediment basin and ditch maintenance. It is understood that maintenance will be required until the responsibility for maintenance has been assumed by another owner of part or all of the Property or the City determines that the Temporary Private Facilities are no longer needed because they have been superseded by new private or public facilities approved by the City Engineer. The designated responsible party listed below shall be solely responsible for the maintenance and operation of the sediment basins and any liability resulting there from.

Designated Responsible Party: SLF IV / McMillin Millenia JV, LLC, ATTN: Todd Galameau

Inspection Frequency: The basins should be inspected prior to a 40% or greater probability of precipitation, at 24 hour intervals during extended rain events and after the conclusion of rain events greater than 0.5-inches of rainfall or greater during normal business hours defined as Monday through Friday from 7:00 a.m. to 3:30 p.m. At a minimum, basins should be inspected at least twice per year. The inspection checklist in Appendix 2 should be used to document the items inspected. The most important item to inspect is the outlet structure to ensure it is unobstructed.

Maintenance Activities: See below. Refer to maintenance checklists in Appendix 2 for maintenance task descriptions.

Sediment Basins:

- Examine basin banks for seepage and structural soundness
- Check outlet structures and spillways for any damage or obstructions. Repair damage and remove obstructions as needed.
- Check inlet and outlet area for erosion and stabilize if required.
- Remove accumulated sediment in the bottom of the basin when sediment reaches one half the designated sediment storage volume. The sediment should be managed properly and placed to preclude erosion, or disposed of accordingly. Options include: incorporating sediment into earthwork on the site (if grading operations are occurring and only if there is no risk that sediment is contaminated); or off-site export/disposal at an appropriate location (e.g., sediment characterization and disposal to an appropriate landfill).
- If basin has not drained within 96 hours after accumulation, remove standing water.

- If the basin does not drain properly due to storms that are more frequent or larger than the design storm or other unforeseen site conditions, dewatering should be conducted in accordance with appropriate dewatering procedures and in accordance with local permits.
- Remove excessive emergent and perimeter vegetation as needed or as advised by local or state vector control agencies.
- Inspect and maintain chain link fence as required to preclude entrance to the basins.

Concrete Ditches:

- Remove silt, vegetation and debris from all ditches as necessary to maintain design capacity of the ditches.
- Inspect outlet locations into the sediment basins to check for undermining and/or headcutting. Repair and/or regrade as necessary.

3. CONCLUSIONS

Routine maintenance and inspections are important to ensure proper performance of the four proposed sediment basins in the EUC. The Designated Responsible Party shall inspect the proposed basins at a minimum of twice per year, near the beginning and end of the wet season (generally circa September 1st and before May 1st of each year). Retention of records of inspections and maintenance activities is required by the State Construction General Permit. Inspection and maintenance checklists can be found in Appendix 2.

APPENDIX 1

Mass Grading Plans

For the Mass Grading Plans for the McMillin Otay Ranch (Eastern Urban Center), see City of Chula Vista Drawing Number 10044, Work Order Number PG-799, on file at the Office of the City Engineer of the City of Chula Vista

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APPENDIX 2

Operation and Maintenance Procedures & Checklists

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Checklist for Routine Sediment Basin Maintenance:

~ ORIGINAL ~ MAKE COPIES. KEEP PAST RECORDS FOR REFERENCE ~

Basin : _____		
Inspection Date: _____ Time: _____ Inspected By: _____		
Item to Inspect & Task Description	Condition	Comments/Corrective Action
Trash and Debris Removal -Inspect for presence of debris. -Inspect basin for presence of trash. -Inspect basin outlets and pipes for clogging & remove any obstructions.	<input type="checkbox"/> Satisfactory	
	<input type="checkbox"/> Needs Attention	
	<input type="checkbox"/> Not Inspected	
Erosion Repair -Make sure there are no bare soil areas that have eroded -Inspect spillway and riprap pad for damage and for presence of trash or signs of erosion.	<input type="checkbox"/> Satisfactory	
	<input type="checkbox"/> Needs Attention	
	<input type="checkbox"/> Not Inspected	
Standing Water -Inspect for mosquitoes, -Determine if any areas of basin do not have positive drainage to outlet. -Check for signs of standing water	<input type="checkbox"/> Satisfactory	
	<input type="checkbox"/> Needs Attention	
	<input type="checkbox"/> Not Inspected	
Sediment Management -Inspect level of sediment accumulation in basin with a tape measurer from the outlet. -If major cleaning is required, schedule maintenance.	<input type="checkbox"/> Satisfactory	
	<input type="checkbox"/> Needs Attention	
	<input type="checkbox"/> Not Inspected	
Concrete Ditch Maintenance -Clean out sediment and debris from ditches to maintain capacity. -Inspect outlets of ditches to sediment basins.	<input type="checkbox"/> Satisfactory	
	<input type="checkbox"/> Needs Attention	
	<input type="checkbox"/> Not Inspected	

Additional Comments:

EXHIBIT "D"

SECURITY REQUIREMENTS

Maintenance Obligations per Section 3 of this Agreement.

- Cash Deposit Cash deposit equivalent to two (2) years of maintenance cost in the amount of \$35,100.00 to be submitted thirty (30) days before the filing of the City of Chula Vista Form 5512 for Approval of Commencement of Work

- Maintenance Bond Bond for an eight-year-term in the amount of \$140,400.00 to be submitted thirty (30) days before the filing of the City of Chula Vista Form 5512 for Approval of Commencement of Work

