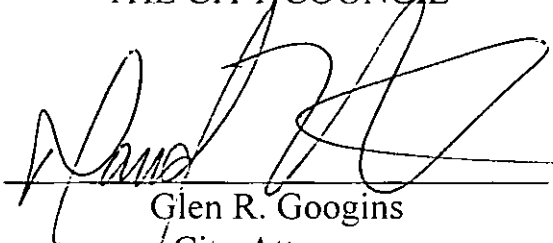


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



Glen R. Googins
City Attorney

Dated: 6/2/16

REIMBURSEMENT AGREEMENT
BETWEEN
LUTHERAN HIGH SCHOOL OF SAN DIEGO AND
CITY OF CHULA VISTA
FOR PAYMENT OF COSTS TO CONSTRUCT STREET
IMPROVEMENTS
(BIKE LANES ALONG EAST "H" STREET PROJECT

**REIMBURSEMENT AGREEMENT FOR PAYMENT OF COSTS TO
CONSTRUCT STREET IMPROVEMENTS
BY AND BETWEEN LUTHERAN HIGH SCHOOL OF SAN DIEGO
AND THE CITY OF CHULA VISTA, CALIFORNIA
(BIKE LANES ALONG EAST "H" STREET PROJECT)**

THIS REIMBURSEMENT AGREEMENT FOR THE PAYMENT OF COSTS TO CONSTRUCT STREET IMPROVEMENTS ("Agreement"), dated 4-20-2010, 2015, is entered into by and between Lutheran High School of San Diego (LHS) a private secondary education institution, and the City of Chula Vista, a municipal corporation, ("City") to establish terms and conditions pursuant to which City will bid and cause to construct certain street improvements, defined herein below, and LHS will reimburse the City for all expenses related thereto per this Agreement. LHS and the City may be referred to herein individually as "Party" and collectively as the "Parties."

RECITALS

WHEREAS, City is constructing bikeway facilities along East "H" Street from west of Buena Vista Way to the Southwestern College Driveway; such improvements include, but are not limited to roadway widening, construction/modification of curb, gutter, sidewalk, multi-purpose paths, median islands, relocation of utilities, and reconfiguration and new installation of traffic signals and street lighting ("City Improvements"); and

WHEREAS, LHS is required to construct certain street improvements, signage, and striping within the City right-of-way and street easement as shown on Exhibit "A" attached hereto in accordance with Conditional Use Permit No. PCC-13-004 approved August 13, 2014, particularly Condition No. 24 and all other conditions pertaining to improvements in the City right-of-way within the City of Chula Vista; and

WHEREAS, incorporating construction of LHS Improvements with construction of City Improvements would constitute a substantial benefit to LHS and the City, which benefits include, but are not limited to, reductions or savings in terms of time, money, public inconvenience, and construction hazards; and

WHEREAS, in order to achieve such benefits, City desires that LHS incorporate construction of LHS Improvements with the construction of City Improvements provided LHS agrees to reimburse City for the associated capital and inspection costs; and

WHEREAS, LHS is willing to do so, provided City provides complete plans and specifications for said LHS Improvements, and manages advertisement, bidding, and construction of LHS Improvements; and

WHEREAS, LHS is authorized, pursuant to applicable laws, to contract and to pay for its share of the cost of the construction of any LHS Improvements.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the Parties hereto, as follows:

ARTICLE I. DEFINITIONS

1.1 Definitions. Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Agreement and of any amendment hereto, and of any certificate, opinion, estimate or other document herein mentioned, have the meanings herein specified.

"LHS" means Lutheran High School of San Diego (LHS) a private secondary education institution.

"City" means the City of Chula Vista, California, a chartered municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California.

"City Improvements" means, collectively, the improvements to East "H" Street and between west of Buena Vista Way and Southwestern College Driveway as shown on City of Chula Vista Drawing No. 15015.

"Joint Costs" means those costs of construction and installation of the Project, which, due to their nature, cannot be attributed solely to LHS Improvements or City Improvements, yet from which both derive benefit or those costs that both Parties would have incurred had their respective facilities been constructed independently of each other (e.g. costs associated traffic control or construction staking).

"LHS Costs" means the total dollar amount of costs associated with the construction and installation of the LHS Improvements, including, but not limited to, costs of materials, labor, oversight, bidding, permits, change orders, and the fair share of Joint Costs.

"LHS Improvements" means, collectively, certain street improvements, signage, and striping within the City right-of-way and street easement as shown on Exhibit "A" attached hereto in accordance with Conditional Use Permit No. PCC-13-004 approved August 13, 2014, particularly Condition No. 24 and all other conditions pertaining to improvements in the City right-of-way.

"Project" means, collectively, the construction and installation of LHS Improvements and City Improvements.

"Project Contingency" means, an amount not to exceed five (5) percent of the total contract amount.

ARTICLE II. PRECONSTRUCTION

- 2.1 Design and Specifications. Generally, prior to advertisement of a Request for Proposals ("RFP") for the construction and installation of Project, City shall provide designs and all associated plans and specifications (collectively "Construction Documents") for the LHS Improvements to LHS for review and approval.
 - 2.1.1 Approval. Prior to advertisement, an authorized representative of LHS and of City shall approve the Construction Documents.
 - 2.1.2 Costs. All costs associated with the design of City Improvements and LHS Improvements and the preparation of Construction Documents shall be borne by City.
 - 2.1.3 Bidding and Award. Generally, City shall be responsible for all aspects of bidding and award of a contract for the construction and installation of the Project ("Construction Agreement").
 - 2.1.3.1 Bid Package. City shall be responsible for preparing and circulation of the bid package.
 - 2.1.3.2 Meetings. City shall organize all pre-bid meetings.
 - 2.1.3.3 Selection of Lowest Responsive and Responsible Bidder. City, at its sole discretion, shall determine the lowest responsible bidder, which determination shall be binding on LHS.
 - 2.1.3.4 Execution of Construction Agreement. City shall be responsible for executing the Construction Agreement on behalf of itself for LHS and ensure that LHS is identified as a third-party beneficiary of such agreement with the same rights and remedies as the City.

ARTICLE III. CONSTRUCTION

- 3.1 Compliance with Specifications. City will include provisions in the Construction Agreement that require that all LHS Improvements furnished, constructed, and installed by City's contractor shall be in strict compliance with the approved plans and specifications for LHS Improvements. Any deviations from the approved plans and specifications for LHS Improvements that result in a change to the cost of constructing LHS Improvements shall be addressed in accordance with Section 4.7 and Article V.
 - 3.1.1 Right to Enforce. LHS shall have the right to enforce the terms of Section 3.1 against the City's contractor in the same manner as the City, and pursuant to Section 11.17 such rights shall be written into the Construction Agreement.

- 3.2 LHS Improvements Completion and Warranty. LHS Improvements shall be completed on or about July 29, 2016. LHS Improvements, however, will not be deemed completed or accepted until City has accepted the LHS Improvements. The City shall incorporate into its agreement with City's contractor a warranty provision for all work for a period of no less than one (1) year from the date of acceptance, which shall be deemed to be the date the City accepts LHS Improvements. Acceptance will be evidenced by the filing of a Notice of Completion by the City with the County of San Diego Recorder. The Construction Agreement shall include this definition of project completion and acceptance.
- 3.3 Post-Construction Maintenance. LHS is responsible for maintaining and shall maintain at its sole cost and expense all landscaping and irrigation improvements immediately adjacent to said property as shown on Exhibit "C". Prior to conducting the required maintenance on improvements within City of Chula Vista street easement and right-of-way, LHS shall obtain a Right-of-Way Encroachment Permit from the City of Chula Vista.

ARTICLE IV. REIMBURSEMENT OF COSTS

- 4.1 Deposit Account. Within ninety (90) calendar days of the Construction Agreement award, LHS shall deposit with the City an amount equal to the bid amount attributable to the construction and installation of LHS Facilities, plus a ten (10) percent contingency ("LHS Deposit") for the purpose of reimbursing the City for progress payments made by City to City's contractor for the installation of LHS Improvements.
- 4.2 Invoice. City shall invoice LHS for LHS Costs ("City Invoice") following the receipt of an invoice from City's contractor on which such LHS Costs appear. The City Invoice shall:
- 4.2.1 Include a copy of the contractor's invoice.
- 4.2.2 Identify those costs attributable to the LHS Improvements.
- 4.2.2.1 Apportionment of Joint Costs. Joint Costs will be apportioned as follows:
- a. For testing laboratory services, LHS will pay the actual costs for compaction tests in the areas associated with LHS Improvements. Failed compaction tests shall be paid by the contractor. The City shall require the testing laboratory to itemize their invoices to identify the actual location of tests in order to determine if the compaction test is associated with LHS Improvements or City Improvements.
 - b. Traffic control costs will be tracked by the City and the costs related thereto shall be divided between the City and LHS with LHS

contributing an amount proportional to the portion of costs to construct the Project represented by LHS Costs.

- c. City inspection and construction management costs related solely to the LHS Improvements (i.e., work on Buena Vista Way, LHS frontage on East "H" Street, and extension of left turn lane to northbound Buena Vista Way) will be tracked by the City and the Costs related thereto shall be reimbursed by LHS.
- d. Construction staking costs will be tracked separately by the City for the LHS Improvements and shall be reimbursed by LHS.

4.2.4 Provide a net total charge payable by LHS.

4.3 LHS Approval. LHS shall review and approve the City Invoice within ninety (90) calendar days of its receipt ("Review Period"). If LHS determines that all relevant documents have not been submitted, LHS shall inform the City of the need for additional information and specify the documents/information necessary to permit review and approval.

4.4.1 Failure to Approve. If LHS fails to approve the City Invoice or request additional information within the Review Period, the charges on the City Invoice shall be deemed approved.

4.5 Reimbursement. Following LHS approval of a City Invoice, City shall deduct the invoice amount from the LHS Deposit for the purpose of reimbursing the City for LHS Costs invoiced by and paid to City's contractor. LHS approval of a City Invoice shall be deemed LHS's authorization for such reimbursement in the amount of the City Invoice.

4.5.1 Withholding/Retention. From each payment to the contractor, City shall withhold a minimum of five (5) percent of the amount of the contractor's invoice. Payment thereof shall not be made until final approval and acceptance. A similar retention shall be withheld from the reimbursement to the City from the City Invoice.

4.6 Use of Project Contingency. The Project Contingency may be used for unforeseen changes in work; however it shall not be used for: (i) work required due to contractor's failure to perform work or services according to the terms of the Construction Agreement and/or in compliance with the Construction Documents; or (ii) uninsured losses resulting from the negligence of contractor.

4.7 Additional Deposits.

4.7.1 Cost Increases. In the event that there is an increase in the cost of LHS Improvements, not caused by the negligence of the contractor, LHS shall

within ninety (90) calendar days of the date of a written notice from City informing LHS of the cost increase, deposit an additional amount with the City equal to the amount of the increased cost.

4.7.2 Additional Deposit for Contingency. In the event that Contingency funds decrease to half the original deposit amount due to unforeseen cost increases, LHS shall deposit an additional five (5) percent contingency within ninety (90) calendar days of receipt of a City Invoice indicating the need for such a deposit. This process shall repeat accordingly until completion of the LHS Improvements and settlement of all City Invoices.

4.8 Reconciliation. Within ninety (90) calendar days of the completion and acceptance of the LHS Improvements as defined herein, City shall conduct an audit and reconciliation of all LHS costs and provide LHS with a written copy of the reconciliation for approval by LHS identifying any amounts due to City or LHS.

4.8.1 Excess Deposit. To the extent that the audit reveals that the total LHS deposit exceeded the total LHS Cost, the City shall remit the difference to LHS within thirty (30) calendar days of LHS approval.

4.8.2 Excess Costs. To the extent that the audit reveals that the total LHS deposit was less than the total LHS Cost, LHS shall remit the difference to City within ninety (90) calendar days of receipt of City's reconciliation.

ARTICLE V. CHANGE ORDERS

5.1 Written Approval of construction changes and change orders. With the exception of Emergencies (defined in section 5.2 below), prior to the approval of a construction change or change order concerning affecting LHS Improvements, including any changes to City Improvements that might affect LHS Improvements in any way, City shall obtain the prior written consent of LHS.

5.1.1 Approval of Change Orders. LHS shall respond to a change order request within five (5) working days of the date on which the construction change or change order request is received by LHS. City shall respond to a change order request from LHS within five (5) working days of the date on which the construction change or change order request is received by City. Any changes to LHS Improvements initiated by LHS must be approved by the City, any additional costs of which shall be borne by LHS in accordance with Section 4.7.

5.1.2 Additional Costs. LHS will bear any increased costs due to an LHS delay in approving a properly submitted construction change and/or change order request. LHS shall increase the deposit with the City in an amount equal to the Additional Costs within ninety (90) calendar days from the date of written notice from the City.

- 5.2 Changes in Emergencies. City may authorize contractor to proceed with any proposed construction changes and or change orders, without consulting with LHS or obtaining LHS's prior written approval, if failure to act immediately would pose a danger to the public, as determined in the sole discretion of the City, or result in delays and cost overruns (collectively "Emergency"); however, the City shall use best efforts to immediately, or as soon as reasonably possible, inform LHS of the changes. The LHS shall be responsible for any increased costs of LHS Improvements due to an Emergency.
- 5.3 Errors and Omissions. City shall not make payment to contractor or charge LHS for any costs or expenses of a change order resulting from an error or omission for which the contractor is solely responsible.

ARTICLE VI. INSPECTION

- 6.1 Inspection Team. LHS shall delegate responsibility for inspections and approving installation of LHS Improvements to the City.
- 6.2 Inspection Stages and Obligations. City shall be responsible for verifying that all work on LHS Improvements is completed in accordance with the approved plans and specifications. The City's inspectors alone shall have the authority to enforce plans and specifications for LHS Improvements, which shall include the authority to require that any and all unacceptable materials, workmanship, and/or installation be replaced, repaired, or corrected by City's contractor without cost to LHS and/or City.
- 6.3 Inspection Costs. All inspection costs incurred by City will be apportioned by the parties as provided in Paragraph 4.2.2.1.c.
- 6.4 Notification. The Parties agree to develop mutually acceptable procedures for notification of inspections required or deemed necessary by either Party.

ARTICLE VII. BONDS, PREVAILAING WAGE AND INSURANCE

- 7.1 Contractor's Insurance. City shall ensure that its contractor provides evidence of faithful performance and laborer's and materialmen's bonding, prevailing wage payments, and insurance coverage, as required by City and LHS for the entire construction and, if applicable, warranty period. The Parties shall be named as co-obligees on all bonds required for the Project, including but not limited to the payment and performance bonds for the Project. LHS shall be included as a beneficiary of all guarantees, warrantees, and maintenance obligations, required under the City's construction contract documents. The City shall ensure that LHS and its directors, officers, employees, and agents are listed as additional insureds under all insurance policies required by contractor for the Project. Such insurance shall, at a minimum, include a comprehensive general liability policy in an amount sufficient to cover all contractual obligations of the contractor under the Construction Agreement,

and no less than \$2,000,000. The policy of insurance shall name LHS and City, and their respective employees, officers, governing body members, and agents as additional insureds, require a waiver of subrogation, and be primary insurance. Furthermore, City shall obtain evidence that the contractor maintains worker's compensation insurance in accordance with applicable requirements of law.

- 7.2 Parties' Insurance. LHS and City shall maintain insurance as customary in connection with their respective facilities.

ARTICLE VIII. INDEMNITY

- 8.1 Indemnity. Each Party hereto agrees to defend, indemnify, protect, and hold harmless ("Indemnitor") the other Party, its agents, officers, and employees ("Indemnitees") from and against any and all claims asserted or liability established for damages or injuries to any property or person, including death or dismemberment, which arise from or are caused by the negligent acts, omissions or willful misconduct of the Indemnitor's agents, officers or employees, in performing the work or services herein and all expenses of investigation and defending against same; provided, however, that each Party's duty to defend, indemnify and hold harmless the other shall not include any claims or liability arising from the sole negligence or willful misconduct of the Indemnitee, its agents, officers or employees. LHS and City agree that in the event of any joint or concurrent negligence, they will apportion any established or agreed upon liability proportionate to their respective degree of fault. For the purposes of this provision, the City's contractor shall not be considered an agent of the City or LHS. Claims related to the actions or omissions of the City's contractor shall be addressed through provisions in the Construction Contract, which provisions shall include indemnity, defense, and hold harmless provisions from the City's contractor in favor of both the City and LHS and shall include a provision acknowledging that a portion of the work to be performed under the Construction Agreement is on behalf of LHS and a provision acknowledging that LHS is an intended beneficiary under the provisions of the Construction Agreement.
- 8.2 Enforcement Costs. Each Party agrees that it shall pay the costs the other Party incurs in enforcing the indemnity and defense provisions set forth in this Article VIII in the event the enforcing Party is successful.
- 8.3 Insurance Proceeds. Indemnitor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Indemnitee, its directors, officials, officers, employees, agents, and/or volunteers.
- 8.4 Survival. The Parties' obligations under Article VIII shall survive the termination of this Agreement.

ARTICLE IX. RECORDS

- 9.1 Retention of Records. City shall require contractor to maintain data and records related to the Construction Agreement for a period of not less than three (3) years following receipt of final payment.
- 9.2 Audit of Records. City shall make available and shall require that its contractor make available to LHS for examination at reasonable locations within the County of San Diego and at any time during normal business hours and as often as LHS deems necessary, all of the data and records with respect to all matters covered by this Agreement and the Construction Agreement. City and contractor will permit LHS to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement and the Construction Agreement.

ARTICLE X. NOTICES

- 10.1 Writing. Any demand upon or notice required or permitted to be given by one Party to the other Party shall be in writing.
- 10.2 Effective Date. Except 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.
- 10.3 Recipients. All demands or notices required or permitted to be given shall be sent to all of the following:

10.3.1 LHS:

Lutheran High School
801 Buena Vista Way
Chula Vista, CA 91910
Fax: (619) 872-0974
Attention: Scott Dufresne

10.3.2 City:

City of Chula Vista, Public Works - Engineering
276 Fourth Avenue
Chula Vista, CA 91910
Fax: (619) 691-5171

Attention: City Project Manager and Director of Public Works

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

ARTICLE XI. MISCELLANEOUS

- 11.1 Headings. All article headings are for convenience only and shall not affect the interpretation of this Agreement.
- 11.2 Gender and 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.
- 11.3 Reference to Paragraphs. Each reference in this Agreement to a section refers, unless otherwise stated, to a section of this Agreement.
- 11.4 Incorporation of Recitals. All recitals herein are incorporated into this Agreement and are made a part hereof.
- 11.5 Covenants and Conditions. All provisions of this Agreement expressed as either covenants or conditions on the part of the City or LHS, shall be deemed to be both covenants and conditions.
- 11.6 Integration. This Agreement and the Exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this 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 Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.
- 11.7 Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.
- 11.8 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 Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision that is the sole responsibility of each Party. This 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 Agreement.
- 11.9 Conflicts Between Terms. If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall

control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this 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 Agreement.

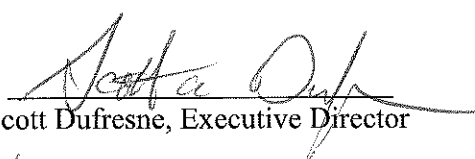
- 11.10 Prompt Performance. Time is of the essence of each covenant and condition set forth in this Agreement.
- 11.11 Good Faith Performance. The Parties shall cooperate with each other in good faith, and assist each other in the performance of the provisions of this Agreement.
- 11.12 Further Assurances. City and LHS each agree to execute and deliver such additional documents as may be required to effectuate the purposes of this Agreement.
- 11.13 Exhibits. Each of the following Exhibits is attached hereto and incorporated herein by this reference:
- Exhibit "A" – City of Chula Vista Bike Lane along East "H" Street – Lutheran High School Improvements
- Exhibit "B" – Excerpt from Bid Proposal for "Bike Lanes along East 'H' Street Project" containing only bid items and quantities pertaining to LHS Improvements to be populated with unit prices bid by lowest responsible bidder
- Exhibit "C" – Improvements to be Maintained by LHS
- 11.14 Controlling Law. The laws of the State of California shall govern and control the terms and conditions of this Agreement.
- 11.15 Jurisdiction and Venue. The venue for any suit or proceeding concerning this 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.
- 11.16 Agency/Municipal Powers. Nothing contained in this Agreement shall be construed as a limitation upon the powers of LHS or the City as a chartered city of the State of California.
- 11.17 Third Party Relationships. Nothing in this Agreement shall create a contractual relationship between City or LHS and any third party; however, the City shall ensure that LHS is an intended third party beneficiary of the Construction Agreement and shall share all of the rights and benefits of the City with respect to the contractor.

11.18 Limitation on LHS Remedies and Waiver of Claims. LHS understands that the sole purpose of this Agreement is to establish a method to reimburse the City for obligations of LHS for payment of its share of the costs of the installation and construction of LHS Improvements, which costs would otherwise be due directly to the City's contractor. In accordance with such purpose, LHS agrees that its sole remedy for construction defects, breach by City contractor, damage to property or persons, including death, to LHS personnel or any third parties, or other claims arising out of or related to the work performed to install and/or construct LHS Improvements shall be against the City's contractor or its subcontractors and agents, and, hereby, waives any and all claims it may hereafter have against the City, arising out of the same, except for those claims arising out of the sole negligence or sole willful misconduct of the City. The City agrees to cooperate with LHS on any claims LHS may have against the City's contractor, including but not limited to granting LHS an assignment of rights under the City's contract with the City's contractor.

LHS, hereby, expressly waives all claims against the City identified to LHS in Section 11.18:

Included in this release, LHS hereby waives the provisions of section 1542 of the California Civil Code, which states:

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

LHS REPRESENTATIVE: 
Scott Dufresne, Executive Director

DATE: 4/20/2014

- 11.19 Non-Assignment. Except as relates to the Construction Agreement, the City shall not assign the obligations under this Agreement.
- 11.20 Successors in Interest. This Agreement and all rights and obligations created by this Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created, by this Agreement shall be vested and binding on any Party's successor in interest.
- 11.21 No Waiver. No failure of either the City or LHS to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this 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 Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

11.22 Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement, against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by the City in the implementation of same. Upon request by City, LHS shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement. The City will meet and confer with LHS in good faith before filing a suit or arbitration action against LHS.

11.23 Dispute Resolution. If a dispute arises out of or relates to this Agreement, or the breach thereof, the Parties, following the procedures required by Section 11.22, agree to engage in good faith negotiations to attempt to resolve the dispute. In the event of any action at law or in equity, including an action for declaratory relief, between the Parties arising out of or relating to this Agreement, then the prevailing Party in such action will be entitled to recover from the other Party a reasonable sum as attorneys' fees and costs. The prevailing Party will be determined in accordance with Civil Code Section I717 (b)(1) or any successor statute. The prevailing Party will also be entitled to its reasonable attorneys' fees and costs in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and will survive the merger of this Agreement into any judgment on this Agreement.

11.24 Administration of Contract. City hereby designates Gregory Tscherch, Senior Civil Engineer, as City Project Manager for the construction of Project and as the primary contact for all matters relating to this Agreement, including the processing, documenting, and approval of City Invoices.

LHS hereby designates Scott Dufresne, Executive Director, as LHS Project Manager for LHS Improvements and as the primary contact for all matters relating to this Agreement, including the submittal of City Invoices for reimbursement.

11.25 Signing LHS. The representative for each Party signing on behalf of such Party hereby declares that authority has been obtained to sign on behalf of the City and/or LHS, as applicable 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, City and LHS have executed this Agreement thereby indicating that they have read and understood same, and indicate their full and complete consent to its terms:


City of Chula Vista

Lutheran High School of San Diego

Dated: _____

Dated: 4/20/2016

By: _____
Mary Casillas Salas, Mayor

By: 
Scott Dufresne, Executive Director

Attest:

City Clerk

Approved as to form:

Approved as to form:

Glen R. Googins
City Attorney

Print Name, Title
for LHS

Dated: _____

Dated: _____

California All-Purpose Acknowledgement

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

State of California
County of San Diego

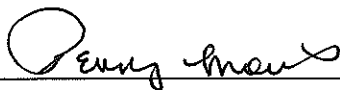
On 20 April 2010 before me, Penny Morris, Notary Public

Personally appeared Scott Robert Dufresne

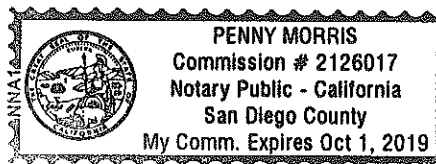
Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), & that by his/~~her~~/their signature(s) on the instrument the 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 & correct.

WITNESS my hand & official seal



Signature of Notary Public



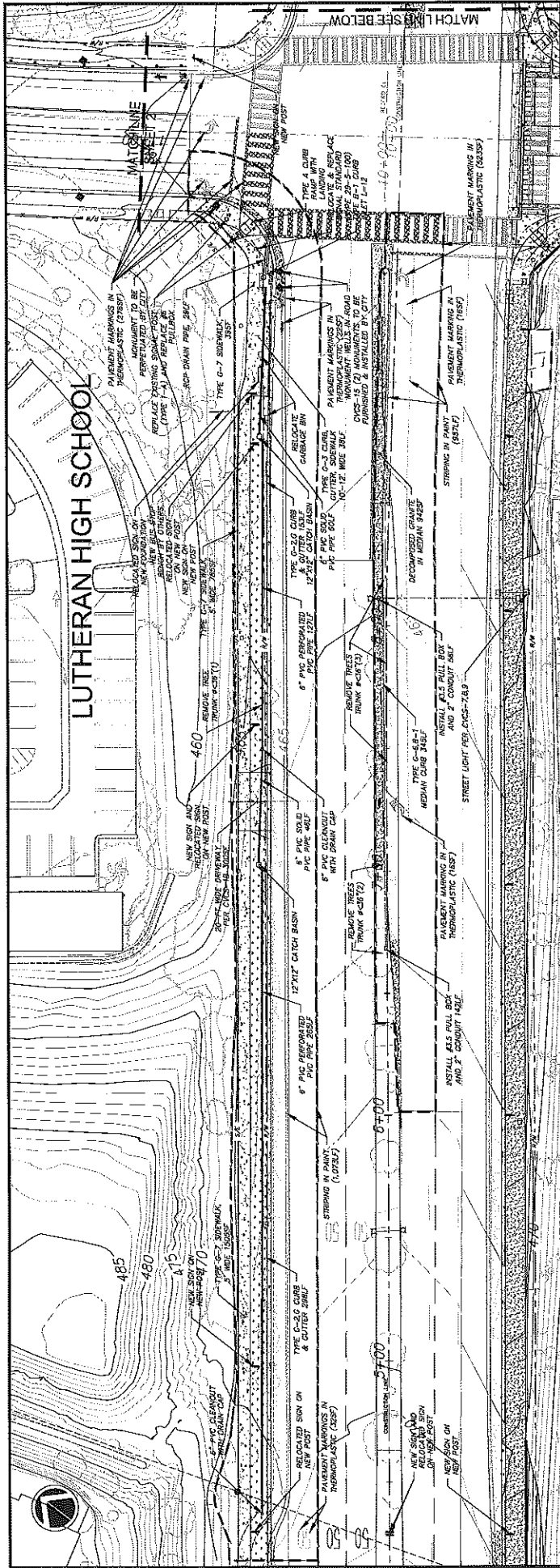
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ADDITIONAL OPTIONAL INFORMATION


Description of Attached Document:

Title or Type of Document: _____

Document Date: _____ Number of Pages _____

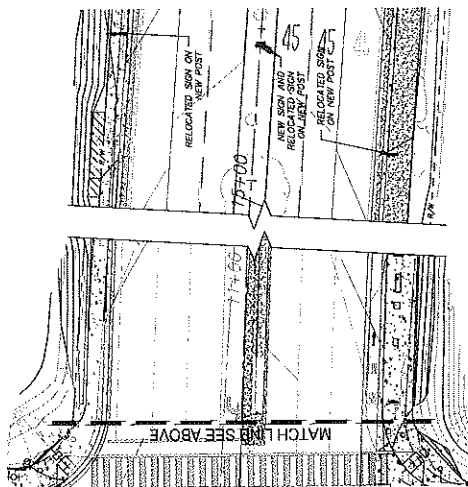


LEGEND

-  CONCRETE CURB, GUTTER, SIDEWALK, PEDESTRIAN RAMPS, & DRIVEWAYS
-

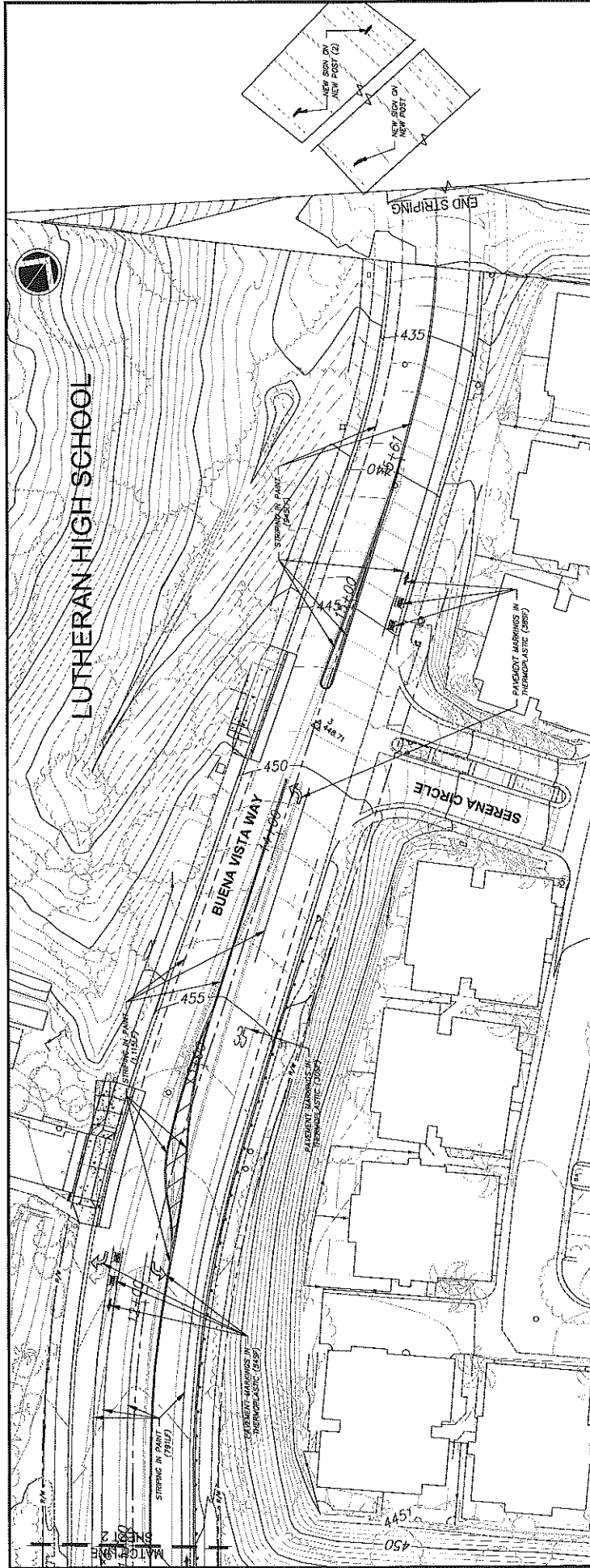
NOTES

1. 440 LF LANDSCAPED SWALE CONTAINS THE FOLLOWING:
 - 5 CURB CUTS (GAPS IN CURB FOR DRAINAGE)
 - AMENDED SOIL: 123 CY
 - AGGREGATE CHOKER COURSE: 17 CY
 - WASHED COARSE AGGREGATE: 49 CY
 - FILTER FABRIC: 2200 SF
 - IMPERMEABLE LINER: 1320 SF



NOT FOR CONSTRUCTION
REFER TO DRAWING #15015 FOR
APPROVED IMPROVEMENTS

PROJECT FILE #/STM382	
PREPARED BY: P. OBERBAUER	EXHIBIT "A"
APPROVED BY: G. TSCHERCH	CITY OF CHULA VISTA
TITLE: BIKE LANE ALONG EAST "H" STREET	LUTHERAN HIGH SCHOOL IMPROVEMENTS
DRAWN BY: P. OBERBAUER	
DATE: 4/07/16	SHEET 1 OF 2 SHTS



LEGEND

- CONCRETE CURB, GUTTER, SIDEWALK, PEDESTRIAN RAMPS, & DRIVEWAYS
- FULL PAVEMENT SECTION (5" AC OVER 13" CAB WITH GEOGRID)
- 1.5" THICK GRIND AND AC OVERLAY
- LANDSCAPED PARKWAY SWALE (NOTE 1)
- STAMPED CONCRETE
- PAVEMENT SECTION IN SLIVERS (<4" WIDE; 5" AC ON 13" 2-SACK SLURRY)
- THERMOPLASTIC LIMIT LINES AND CROSSWALKS TO BE REIMBURSED BY LHS

**NOT FOR CONSTRUCTION
REFER TO DRAWING #15015 FOR
APPROVED IMPROVEMENTS**

0 40 Feet

PROJECT FILE #STM382

EXHIBIT "A"

PREPARED BY:
P. OBERBAUER

APPROVED BY:
G. JSCHERCH

TITLE: CITY OF CHULA VISTA

BIKE LANE ALONG EAST "H" STREET

LUTHERAN HIGH SCHOOL IMPROVEMENTS

DRAWN BY:
P. OBERBAUER

DATE: 4/07/16

SHEET 2 OF 2 SHTS

EXHIBIT "B"

90% BID ITEMS

PROJECT TITLE:

BIKE LANE ALONG EAST H STREET
LUTHERAN HIGH SCHOOL IMPROVEMENTS

PROJECT NUMBER:

DATE:
PREPARED BY:
CHECKED BY:

STM-382

4/8/2016

P. OBERBAUER
G. TSCHERCH

DESCRIPTION	UNIT	UNIT PRICE	LUTHERAN HIGH SCHOOL REIMBURSEMENT	
			QUANTITY	AMOUNT
REMOVE AND DISPOSE OF EXISTING IMPROVEMENTS, CLEARING AND GRUBBING	LS		0.20	
GRADING AND EXCAVATION	CY		457	
SUBGRADE PREPARATION AND TENSAR TX7 GEOGRID (ONE LAYER)	SY		450	
COLD PLANING	SY		1,612	
ASPHALTIC CONCRETE (4-INCH THICK AND 1.5-INCH OVERLAY)	TONS		291	
CRUSHED AGGREGATE BASE, (15-INCH, 6-INCH THICK)	TONS		285	
CEMENT-SAND SLURRY BACKFILL IN SLIVERS, 2-SACK	CY		43	
DECOMPOSED GRANITE (6-INCH THICK) WITH STABILIZER	CY		18	
AGGREGATE CHOKER COURSE	CY		17	
WASHED AASHTO #57 CRUSHED STONE	CY		49	
FILTER FABRIC, NON-WOVEN 180N	SY		245	
IMPERMEABLE LINER	SY		147	
PCC CURB & GUTTER, 6-INCH PER SDRSD G-2, TYPE G	LF		434	
CURB CUT IN SDRSD G-2 CURB	EA		5	
PCC NON-CONTIGUOUS SIDEWALK PER SDRSD G-7	SF		2,309	
PCC MONOLITHIC CURB, GUTTER, & SIDEWALK, 10-FT TO 12-FT WIDE PER SDRSD G-3	LF		38	
PCC MONOLITHIC CURB, GUTTER, & SIDEWALK, 11-FT TO 15-FT WIDE PER SDRSD G-3	LF		18	
PCC MEDIAN CURB PER SDRSD G-6, TYPE B-1	LF		345	
PCC SLAB, DRIVEWAY 6-INCH THICK PER CVCS IA	SF		481	
PCC SLAB, DRIVEWAY 6-INCH THICK PER CVCS IA (MOD)	SF		456	
PCC SLAB, DRIVEWAY 6-INCH THICK PER CVCS IB	SF		300	
CURB RAMP PER SDRSD G-27 TYPE A (EAST "H" ST & BUENA VISTA WAY) WITH LANDING	EA		1	
MONUMENT WELLS IN ROAD PER CVCS-15	EA		2	
CURB INLET PER SDRSD D-2, TYPE B, L=12-FT, STENCIL PER CVCS-24	EA		1	
CATCH BASIN, 1-FT X 1-FT	EA		2	
PVC PIPE, 6-INCH, PERFORATED, WITH (INCLUDING FITTINGS AND CONNECTIONS TO DRAINAGE STRUCTURES)	LF		392	
PVC PIPE, 6-INCH, SOLID, WITH (INCLUDING CONNECTIONS TO DRAINAGE STRUCTURES)	LF		106	
PVC CLEANOUT, 6-INCH, SOLID (INCLUDING FITTINGS)	EA		2	
RCP STORM DRAIN PIPE, 18-INCH, 1500D	LF		29	

STRIPING IN PAINT & RAISED MARKERS INCLUDING RED CURB & YELLOW CURB MEDIAN	LF		4,881	
PAVEMENT MARKINGS IN THERMOPLASTIC (STOP LIMIT LINE, LEGENDS, CROSSWALKS, ARROWS)	SF		996	
REMOVE EXISTING STRIPING	LF		2,826	
FURNISH & INSTALL NEW SIGNS AND POSTS	EA		13	
EXISTING SIGNS TO BE RELOCATED WITH NEW POSTS	EA		3	
RELOCATE SIGNS TO EXISTING POSTS	EA		3	
RELOCATE EXISTING BUS STOP GARBAGE BIN	EA		1	
REPLACE EXISTING BUST STOP BENCH	EA		1	
PUBLIC CONVENIENCE AND SAFETY (TRAFFIC CONTROL)	LS		0.25	
FURNISH & INSTALL STREET LIGHT STANDARD & FOUNDATION PER CVCS-6 (REUSE EXISTING LUMINAIRE) INCLUDES WIRING	EA		1	
FURNISH & INSTALL STREET LIGHT CONDUIT	LF		198	
FURNISH & INSTALL #3 1/2 PULL BOX WITH LID TRAFFIC SIGNAL INTERCONNECT	EA		2	
SUBTOTAL CIVIL WORKS				
TRAFFIC SIGNAL MODIFICATION				
EAST "H" STREET & BUENA VISTA WAY				
REMOVE & REPLACE EXISTING 28-5-70 TRAFFIC SIGNAL WITH 29-5-100, SMA=55FT, LMA=15FT AND NEW FOUNDATION	EA		1	
FURNISH & INSTALL TYPE I-A TRAFFIC SIGNAL STANDARD WITH NEW FOUNDATION	EA		1	
FURNISH AND INSTALL POLARA APS PEDESTRIAN PUSH BUTTON	EA		2	
FURNISH AND INSTALL 3-12" LED VEHICLE INDICATIONS WITH ARROW AND MOUNTING	EA		1	
FURNISH AND INSTALL 3-12" LED VEHICLE INDICATIONS WITH MOUNTING	EA		5	
FURNISH & INSTALL PEDESTRIAN SIGNAL INDICATIONS (COUNTDOWN STYLE) WITH MOUNTING	EA		2	
FURNISH & INSTALL MONO-DIRECTIONAL EVPE	EA		1	
FURNISH AND INSTALL CONDUIT	LF		200	
FURNISH AND INSTALL DOUBLE STACKED #6 PULL BOX WITH LID	EA		1	
CABLES AND WIRING OF INTERSECTION	LS		0.25	
FURNISH AND INSTALL LOOP DETECTORS	EA		9	
REINSTALLATION OF REUSED SIGNAL EQUIPMENT	LS		0.25	
SUBTOTAL TRAFFIC SIGNAL				

LANDSCAPE AND IRRIGATION			
TREE REMOVAL	EA		3
LANDSCAPE SOIL PREPARATION	SF		3,475
SOILS TESTING	EA		1
REMOTE CONTROL VALVE	EA		3
QUICK COUPLER VALVE	EA		1
ISOLATION VALVE	EA		2
TREE BUBBLERS (2 PER TREE)	EA		12
ADJUSTING EXISTING IRRIGATION	SF		500
IRRIGATION MAINLINE PIPING	LF		245
IRRIGATION LATERAL LINE	LF		665
DRIP TUBING	SF		2,975
DRIPLINE FLUSH VALVE	EA		4
DRIPLINE AIR RELIEF VALVE	EA		2
DRIP TUBING HEADER	LF		26
CONTROL WIRE	LF		220
IRRIGATION SLEEVING	LF		200
ROOT BARRIER	LF		240
TREES - 36" Box (INCLUDES STAKING OR GUYING, COMMON MATERIAL)	EA		8
SHRUBS - 5 GALLON	EA		418
BARK MULCH (3" DEEP)	CY		32
MAINTENANCE - 90 DAYS	SF		3,475
SUBTOTAL LANDSCAPE AND IRRIGATION			
NPDES/STORMWATER COMPLIANCE			
STORMWATER COMPLIANCE AND EROSION CONTROL	LS		0.10
SUBTOTAL NPDES			
			SUBTOTAL:
CONSTRUCTION INSPECTION		STANDARD PERMIT DEPOSIT \$	10,000.00
GRAND TOTAL			

NOTE: QUANTITIES CORRESPOND WITH LHS IMPROVEMENTS AS INDICATED ON EXHIBIT A AND WILL BE POPULATED WITH BID PRICES PROVIDED BY LOWEST RESPONSIVE AND RESPONSIBLE BIDDER. PERMIT DEPOSIT AMOUNT IS BASED ON THE CITY OF CHULA VISTA FEE BULLETIN 11-200, PAGE 2 IMPROVEMENT PLANS VALUED \$100,001-\$500,000. ACTUAL CONSTRUCTION INSPECTION COSTS FOR THE LHS IMPROVEMENTS TO BE FULL COST RECOVERY.