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REIMBURSEMENT AGREEMENT WITH FENTON LITTLE ITALY, LLC  
FOR A PUBLIC PLAZA (PIAZZA FAMIGLIA), PROJECT NO. P-13  
(DOWNTOWN PARK ACQUISITION AND DEVELOPMENT) IN THE  
DOWNTOWN COMMUNITY – REIMBUREMENT AGREEMENT NO.  
1326979

THIS REIMBURSEMENT AGREEMENT NO. 1326979 (Agreement) is made and entered into between the CITY OF SAN DIEGO, a municipal corporation (City) and FENTON LITTLE ITALY, LLC, a California limited liability company (Developer) (collectively the Parties), for reimbursement for purchase, design, and construction of a public plaza known as Piazza Famiglia, which is included in Project No. P-13, Downtown Park Acquisition and Development, in the Downtown Community Plan area in accordance with the Downtown Public Facilities Financing Plan.

RECITALS

A. Developer owns approximately 50,611 square feet of real property on both sides of West Date Street between Columbia and India Streets in the Little Italy neighborhood of the Downtown Community Plan area (Property). Developer certifies that it is developing the Property subject to the requirements and conditions of the City Council of the City of San Diego (City Council).

B. On July 14, 2014, by San Diego Resolution R-309116, City Council granted Centre City Development Permit/Planned Development Permit/Site Development Permit/Neighborhood Use Permit No. 2012-10 (Permit), and by San Diego Resolution R-309117, vacated a portion of Date Street (Vacation), to allow the construction of a seven-story mixed-use building on a 24,000 square-foot parcel located on the north side of the vacated portion of Date Street between India and Columbia Streets, a five-story mixed-use building on a 10,000 square-foot parcel located on the south side of the vacated portion of Date Street between India and Columbia Streets, an underground parking structure under both buildings and under the vacated portion of Date Street, an 11,200 square foot public plaza on the vacated portion of Date Street (Plaza), and outdoor dining areas along the north and south sides of the vacated portion of Date Street adjacent to the Plaza, as well as the relocation of a designated historical resource.

C. Permit Condition 6 requires Developer to construct the Plaza within a 56-foot wide recreation easement located within the vacated portion of Date Street (Plaza Project) that is to be designed consistent with an approved General Development Plan (GDP). On June 19, 2014, the City Park and Recreation Board recommended approval of a GDP for the Plaza Project. The Director of the City Park and Recreation Department subsequently approved the GDP. The Plaza Project is to be designed and constructed in accordance with the approved GDP, which is attached as **Exhibit A**.

D. Permit Condition 6 also requires that a park development agreement be executed between City and Developer that provides specific development criteria and specifications of the Plaza Project, project schedule, maintenance specifications, and other provisions approved by City staff, prior to the commencement of the Plaza Project.

E. Permit Condition 6 requires the negotiation of a reimbursement agreement that provides up to \$1,000,000 in development impact fees collected pursuant to the applicable Downtown Public Facilities Financing Plan. Permit Condition 6 provides that a “reimbursement agreement shall be presented to City Council for consideration prior to . . . commencing construction of the [Plaza Project] . . .” and that Developer “shall construct the [Plaza Project] even if a reimbursement agreement is not approved by the City.”

F. On June 17, 2014, by San Diego Resolution R-309070, City Council adopted the Downtown Community Public Facilities Financing Plan and Development Impact Fee Fiscal Year 2015 (Financing Plan). The Financing Plan includes Project No. P-13, Downtown Park Acquisition and Development, which anticipates funding for the acquisition, design, and construction of up to 5.7 acres of public open space and park facilities throughout the Downtown Community including plazas. City staff has determined that a maximum of One Million Dollars (\$1,000,000) is available for the Plaza Project from the Downtown Development Impact Fee (DIF) fund (Maximum Funds). Any amount in excess of the Maximum Funds may not be reimbursed through this Agreement and shall constitute a Non-Reimbursable Cost. Developer is not automatically entitled to the Maximum Funds or any other reimbursement. Developer must satisfy all terms of this Agreement to become eligible for any portion of the Maximum Funds if and as they are collected and become available for reimbursement.

G. Consistent with Permit Condition 6b, City and Developer have entered into the Park Development Agreement for a Public Plaza (Piazza Famiglia) in the Downtown Community (Park Development Agreement), on file in the Office of the City Clerk as Document No. 00-20583-1. Under the Park Development Agreement, Developer is to develop the Plaza Project consistent with the GDP. The process for the design, approval, and construction of the Plaza Project is subject to the provisions of the Park Development Agreement.

H. Developer’s Estimated Cost (as defined in Section 3.3) for the Plaza Project is One Million Five Hundred Ninety-Seven Thousand Five Hundred Ninety Dollars (\$1,597,590). The Parties acknowledge that the Estimated Cost exceeds the Maximum Funds available for a DIF credit or cash reimbursement pursuant to this Agreement.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the Parties, and for other good and valuable consideration, City and Developer agree as follows:

## ARTICLE I. SUBJECT OF THE AGREEMENT

**1.1 Design and Construction of Plaza Project.** Developer agrees to design and construct the Plaza Project fully complete and operational and suited to the purpose for which it was designed and in accordance with this Agreement, the Park Development Agreement, the Plans and Specifications, as defined in the Park Development Agreement, and the Financing Plan, and within the timeframe established in the Project Schedule as set forth in the Park Development Agreement, and for the Estimated Cost attached as **Exhibit B**.

**1.2 Acceptance and Final Completion.** Acceptance and Final Completion of the Plaza Project shall occur as described in Article XVI of the Park Development Agreement.

**1.3 Reimbursement.** City agrees to reimburse Developer for the construction of the Plaza Project subject to the terms and conditions of this Agreement.

## **ARTICLE II. PROJECT SCHEDULE**

**2.1 Project Schedule.** Developer shall comply with the Project Schedule as set forth in the Park Development Agreement, including the construction and meeting requirements set forth in the Park Development Agreement.

**2.2 Project Completion.** Developer agrees that all work on the Plaza Project will be complete and ready for operational use according to the Project Schedule and all other requirements as set forth in the Park Development Agreement.

### **2.3 Changes in Project Schedule.**

**2.3.1** Changes in the Project Schedule that increase the Estimated Cost must be approved by City in writing in accordance with Section 3.3.

**2.3.2** Changes in the Project Schedule that do not increase the Estimated Costs may be approved by the engineer designated by the City's Public Works Department (Responsible Department), which shall be responsible for review and approval of the progress of, and changes to, the Plaza Project (RE); provided, however, that the Plaza Project is still completed in accordance with the Financing Plan, all conditions of approval of the Permit, and the GDP.

**2.4 Notification of Delay.** If Developer anticipates or has reason to believe that performance of work under this Agreement will be delayed, Developer shall immediately notify the representative designated by the City's Public Works Department to manage the Plaza Project on behalf of City (Project Manager). Unless City grants Developer additional time to ascertain supporting data, a written notice of the delay must be delivered to City within thirty (30) calendar days of the initial notification and shall include an explanation of the cause of the delay, a reasonable estimate of the length of the delay, any anticipated increased costs due to the delay, all supporting data, and a written statement that the time adjustment requested is the entire time adjustment Developer needs as a result of the cause of the delay. If Developer anticipates or has reason to believe the delay will increase the Estimated Cost, Developer shall also give notice to City in accordance with Section 3.4.

**2.5 Delay.** If delay in the performance of work required under this Agreement is caused by unforeseen events beyond the control of the Parties, such delay may entitle Developer to a reasonable extension of time. Any such extension of time must be approved in writing by City, and will not be unreasonably withheld. A delay in the performance of work or any activity by City or Developer that affects a deadline to perform imposed on the other party by this Agreement will entitle the other party to the number of days City or Developer failed to complete performance of the work. The following conditions may justify such a delay depending on their actual impact on the Plaza Project: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Developer's work; concealed conditions encountered in the

completion of the Plaza Project; inability to reasonably obtain materials, equipment, labor, or additional required services; or other specific reasons mutually agreed to in writing by City and Developer. Any delay claimed to be caused by Developer's inability to obtain materials, equipment, labor, or additional required services shall not entitle Developer to an extension of time unless Developer furnishes to City, in accordance with the notification requirements in Section 2.4, documentary proof satisfactory to City of Developer's inability to reasonably obtain materials, equipment, labor, or additional required services. Notwithstanding the above, Developer shall not be entitled to any extension of time, additional costs, or expenses for any delay caused by the acts or omissions of Developer, its consultants, contractors, subcontractors, employees, or other agents (collectively, Developer's agents). A change in the Project Schedule does not automatically entitle Developer to an increase in Reimbursable Costs (as defined in Section 3.2). If City determines that the delay materially affects the Plaza Project, City may exercise its rights under Section 2.7.

**2.6 Costs of Delay.** City and Developer acknowledge construction delays may increase the cost of the Plaza Project. Unless Developer informs City pursuant to Sections 2.4 and 3.4 of cost increases due to delay and such cost increases are determined by City to be reasonable and are fully recovered through collected fees under the Financing Plan, funding will be insufficient to cover the cost increase. Therefore, Developer agrees to absorb any increase in Estimated Costs and/or interest thereon not accounted for in the Financing Plan (or future updates of the Financing Plan) because Developer failed to timely notify the City in writing as required under Sections 2.4 and 3.4.

**2.7 City's Right to Terminate for Default and Mortgagee Rights and Obligations.**

**2.7.1** If Developer fails to adequately perform any obligation required by this Agreement, Developer's failure shall constitute a default (Default). Unless within thirty (30) calendar days of receiving written notice from City specifying the nature of the Default Developer undertakes all reasonable efforts to ensure that the Default is completely remedied within a reasonable time period to the satisfaction of City, City may immediately terminate this Agreement including all rights of Developer and any person or entity claiming any rights by or through Developer under this Agreement except for a mortgagee's or beneficiary's right to cure as provided for in the Park Development Agreement. A delay shall not constitute a Default if Developer has made good faith and reasonable efforts to adhere to the Project Schedule, has provided notice of delay in accordance with Section 2.4, and such delay was caused by unforeseen events that justify the delay as set forth in Section 2.5.

**2.7.2** If City terminates the Agreement due to Developer's Default, City shall have the option to assume all of the rights of any and all contracts or subcontracts entered into by Developer or Developer's agents for the construction of the Plaza Project. Developer shall include, and require its contractors and subcontractors to include provisions in their contracts and subcontracts, that City is a third party beneficiary of the same and that City is entitled to and protected by the indemnities and warranties, whether written or express, contained therein.

**2.7.3** The rights and remedies of City enumerated in Section 2.7 are cumulative and shall not limit, waive, or deny City's rights under other provisions of this Agreement, or

waive or deny any right or remedy at law or in equity available to City against Developer, including any claims for damages against Developer that City may assert as a result of the Default.

**2.8 City's Right to Terminate for Bankruptcy or Assignment for the Benefit of Creditors.** If Developer files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to or demand upon Developer immediately terminate this Agreement, and terminate all rights of Developer and any person or entity claiming any rights by or through Developer except for a mortgagee's or beneficiary's right to cure as provided for in the Park Development Agreement. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under other provisions of this Agreement or those available at law or in equity.

### ARTICLE III. PROJECT COSTS AND CHANGE ORDERS

**3.1 Project Costs.** Project costs are Developer's reasonable costs of construction necessary for the Plaza Project as approved by the City and depicted in **Exhibit B** (Project Costs). Project Costs do not include Developer's administrative costs, which are Non-Reimbursable Costs (as defined in Section 3.2.1).

**3.2 Reimbursable Costs.** Reimbursable Costs shall consist only of the Estimated Costs reasonably expended by Developer, approved for reimbursement in the Financing Plan, and approved by City under the terms of this Agreement (Reimbursable Costs). Developer may seek DIF credits or cash reimbursement only for Reimbursable Costs in an amount not to exceed the Maximum Funds.

**3.2.1 Non-Reimbursable Costs.** Non-Reimbursable Costs include: (i) any cost in excess of the Maximum Funds; (ii) any cost in excess of the Estimated Costs not approved in accordance with Section 3.3.2; (iii) any cost identified in this Agreement as a Non-Reimbursable Cost; (iv) any cost identified in **Exhibit B** as a Non-Reimbursable cost; (v) Developer's administrative costs; (vi) any cost to remedy Defective Work (as defined in the Park Development Agreement); (vii) any cost incurred as a result of Developer's or Developer's agents' negligence, omissions, delay, or Default; (viii) any cost of substituted products, work, or services not necessary for completion of the Plaza Project, unless requested and approved by City in writing; (ix) any cost not approved by City in the manner required by this Agreement and/or the Charter of the City of San Diego (Charter) and rules, regulations, or laws promulgated thereunder; (x) any cost not supported by proper invoicing or other documentation as reasonable and necessary; (xi) with respect to a cash reimbursement, any cost in excess of DIFs actually collected by the City and available for reimbursement to Developer for the design and construction of the Plaza Project during the term of this Agreement; and (xii) any cost associated with the design of the Plaza Project. Additionally, the fair value as reasonably determined by City of any property that is destroyed, lost, stolen, or damaged rendering it undeliverable, unusable, or inoperable for City constitutes a Non-Reimbursable Cost. Refundable deposits, such as utility deposits, also constitute a Non-Reimbursable Cost.

**3.3 Estimated Cost.** Developer's Estimated Cost shall consist only of: (i) Project Costs, and (ii) the Project Contingency (as defined in Section 3.3.2). The total Estimated Cost of the Plaza Project is One Million Five Hundred Ninety-Seven Thousand Five Hundred Ninety Dollars (\$1,597,590). The Parties acknowledge that the Estimated Cost exceeds the Maximum Funds.

**3.3.1 *Project Contingency.*** A Project Contingency of Seventy Three Thousand One Hundred Eighty-Four Dollars (\$73,184) is included in the Estimated Cost. The Project Contingency shall not be available for: (i) work required due to Developer's or Developer's agents' failure to perform work or services according to the terms of this Agreement or in compliance with the Park Development Agreement; or (ii) uninsured losses resulting from the negligence of Developer or Developer's agents.

**3.3.2 *Change Orders and Adjustments to Estimated Cost.*** Estimated Costs may be increased only through properly processed and approved Change Orders in accordance with Article XII of the Park Development Agreement. The Estimated Cost may only be increased if Developer provides documentation showing that the increase is reasonable in nature and amount, and is due to causes beyond Developer's or Developer's agents control or otherwise not the result of unreasonable conduct by Developer or Developer's agents which may, based on actual impact on the Plaza Project, include: war; changes in law or government regulation; later commonly accepted or adopted higher standards and specifications of construction; labor disputes or strikes; fires; floods; adverse weather or other similar condition of the elements necessitating temporary cessation of Developer's work; concealed conditions encountered in the completion of the Plaza Project; inability to reasonably obtain materials, equipment, labor, or additional required services; inflation; actual bids received for Project Costs being greater than estimated; or other specific reasons mutually agreed to in writing by City and Developer. Developer shall not be reimbursed, and no Change Order may be approved, for costs or expenses resulting from a design error or omission (unless such a design error or omission is the direct result of a City request for such design or omission), or Developer's or Developer's agents' negligence. Developer shall not have the right to terminate, reform, or abandon this Agreement for City's refusal to approve a Change Order.

**3.4 Notification of Increased Estimated Costs.** If Developer anticipates or has reason to believe that the cost of the Plaza Project will exceed the Estimated Cost, Developer shall notify the City in writing within fourteen (14) calendar days of becoming aware of the potential increase. If Developer fails to timely notify City in writing, Developer agrees to absorb any increase in Estimated Costs and any interest thereon not accounted for in the Financing Plan. This written notification shall include an itemized cost estimate and a list of recommended revisions Developer believes will bring the construction cost to an amount within the Estimated Cost. In accordance with Section 3.3, City may approve an increase in Estimated Cost and/or delineate a project which may be constructed within the Estimated Cost. If City chooses not to pursue the above options, Developer may elect to construct the Plaza Project and forgo any reimbursement in excess of the Estimated Cost.

**ARTICLE IV. COMPETITIVE BIDDING,  
EQUAL OPPORTUNITY AND EQUAL BENEFITS**

**4.1 Compliance.** Developer shall bid and award contracts to complete the Plaza Project that are eligible for reimbursement pursuant to this Agreement in accordance with the Charter and rules, regulations, and laws promulgated thereunder, including, but not limited to, the San Diego Municipal Code (Municipal Code) and City Council resolutions and policies, as well as any expressly applicable public contract laws, rules, and regulations (Required Contracting Procedures). Required Contracting Procedures include all contracting requirements that are applicable to the City, including, but not limited to, competitive bidding, the City's small and local business program for public works contracts, and the City's Equal Benefits Ordinance. Prior to bidding the Plaza Project, Developer shall consult with City's Public Works Department. Developer shall work with City's Public Works Department to ensure that all Required Contracting Procedures are met. Developer understands that it must comply with all Required Contracting Procedures. Failure to adhere to all Required Contracting Procedures is a material breach of this Agreement, and any contract awarded not in accordance with the Required Contracting Procedures shall be ineligible for reimbursement.

**4.2 Bidding Documents.** Following City review of the Construction Documents, as that term is defined in the Park Development Agreement, Developer shall prepare final corrected Construction Documents to be submitted to City for review and approval, in accordance with City's standard review procedures prior to solicitation of bids.

**4.2.1 *Submission of Construction Documents.*** Developer shall submit bidding documents to City for approval before soliciting bids for work on the Plaza Project. The Developer may elect to prepare bidding documents requesting bids based on Lump Sum or Firm-Fixed prices or unit costs as applicable. City retains the right to notify Developer of necessary corrections and will notify Developer of corrections within fifteen (15) Working Days of submittal date.

**4.2.2 *Obtain all Permits and Approvals.*** Developer shall obtain all necessary permits, including, but not limited to, environmental, grading, building, mechanical, electrical, and plumbing. Approval of Construction Documents will be evidenced by City's issuance of a letter indicating Developer may proceed with competitive bidding.

**4.3 Solicitation of Bids.** Developer shall solicit sealed bids for construction of the Plaza Project in accordance with all Required Contracting Procedures. With notice of at least five (5) Working Days, Developer shall notify City of the time and place of each bid opening. Developer shall work with City's Public Works Department to ensure that bids are solicited in the manner required in accordance with the Required Contracting Procedures.

**4.4 Bid Opening and Award of Contract.** Developer shall open bids and award contracts in accordance with all the Required Contracting Procedures. Developer shall work with City's Public Works Department to ensure that bids are opened and contracts are awarded in the manner required in accordance with the Required Contracting Procedures. Developer shall publicly open sealed bids in the presence of City's authorized representative(s). The bidding contractors shall be permitted to be present at the bid opening. City's representative(s) shall be

provided with copies of all bids received immediately after the bid opening and with a copy of the tabulation of bid results upon Developer's completion. Contract(s) for the construction of the Plaza Project shall be awarded by Developer to the lowest responsible and reliable bidder in accordance with the Required Contracting Procedures.

**4.4.1** In the event that the lowest responsible and reliable bid exceeds the Estimated Cost, any reimbursement for such an increase shall be subject to approval by Change Order pursuant to Section 3.3.2 following award of the contract.

4.4.1.1 In the event the City Council does not approve the increased cost, at City's option:

4.4.1.1.1 City may terminate this Agreement subject to the rights granted a mortgagee as provided for in the Park Development Agreement. In the event the Agreement is terminated, Developer's obligations pursuant to this Agreement for the construction of the Plaza Project shall be released without further liability. This release shall in no way affect the obligations of Developer with respect to any terms or conditions of the Permit, the Vacation, or any other approvals and agreements with City. However, prior to termination of this Agreement, City shall reimburse Developer (at City's option with either DIF credits or cash reimbursement) for the engineering and design costs reasonably incurred and expended by Developer in accordance with this Agreement and within the Estimated Cost in accordance with Section 3.3. Developer shall provide City with copies of all executed contracts; or

4.4.1.1.2 City may work with Developer to rebid and/or redesign the Plaza Project.

4.4.1.1.3 With Developer's consent, Developer may award the bid and assume responsibility for the costs in excess of Estimated Cost.

#### **4.5 Nondiscrimination Requirements.**

**4.5.1 *Compliance with the City's Equal Opportunity Contracting Program.*** Developer shall comply with City's Equal Opportunity Contracting Program. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall ensure its consultants, contractors, and their subcontractors comply with the City's Equal Opportunity Contracting Program. Nothing in this Section shall be interpreted to hold the Developer liable for any discriminatory practice of its consultants, contractors or their subcontractors.

**4.5.2 *Nondiscrimination Ordinance.*** Developer shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of consultants, contractors, subcontractors, vendors or suppliers. Developer shall provide equal opportunity for contractors and subcontractors to participate in contracting and subcontracting opportunities. Developer understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in Agreement termination, debarment, and



other sanctions. This language shall be in contracts with respect to the Plaza Project between the Developer and any consultants, contractors, subcontractors, vendors and suppliers.

**4.5.3 Compliance Investigations.** Upon City's request, Developer agrees to provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all consultants, contractors, subcontractors, vendors and suppliers Developer used in the past five years on any of its contracts undertaken within San Diego County, including the total dollar amount paid by Developer for each contract, subcontract or supply contract. The Developer further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance (Municipal Code sections 22.3501-22.3517). Developer understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in remedies being ordered against Developer up to and including Agreement termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Developer further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

**4.6 Equal Benefits.** This Agreement is with a sole source and therefore, Developer is not subject to the City's Equal Benefits Ordinance, Chapter 2, Article 2, Division 43 of the Municipal Code. However, the Equal Benefits Ordinance is applicable to contracts that Developer enters into with respect to the Plaza Project for which it seeks reimbursement under this Agreement. Therefore, Developer shall ensure that its contractor(s) and consultant(s) comply with the Equal Benefits Ordinance. For each contract that Developer seeks reimbursement from City for the Plaza Project, Developer shall include provisions: (i) stating that the contractor(s) and/or consultant(s) must comply with the Equal Benefits Ordinance; (ii) stating that failure to maintain equal benefits is a material breach of those agreements; and (iii) requiring the contractor(s) and/or consultant(s) to certify that they will maintain equal benefits for the duration of the contract. Municipal Code § 22.4304(e)-(f). In addition, Developer's contractor(s) and/or consultant(s) must comply with the requirement that they not discriminate in the provision of benefits between employees with spouses and employees with domestic partners, and that it notify employees of the equal benefits policy at the time of hire and during open enrollment periods during the performance of the contract. Municipal Code § 22.4304(a)-(b). Developer's contractor(s) and/or consultant(s) must also provide the City with access to documents and records sufficient for the City to verify compliance with the Equal Benefits Ordinance requirements. Municipal Code § 22.4304(c). Additionally, Developer's contractor(s) and/or consultant(s) may not use a separate entity to evade the requirements of the Equal Benefits Ordinance. Municipal Code § 22.4304(d). Developer shall ensure that its contractor(s) and consultant(s) complete the Equal Benefits Ordinance Certification of Compliance included as an example herein as **Exhibit C**.

## ARTICLE V. PREVAILING WAGE

**5.1 Prevailing Wage.** Prevailing wages apply to the Plaza Project. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed on the Plaza Project is subject to State prevailing wage laws, and Developer shall ensure compliance with all applicable prevailing wage laws and requirements. For construction work performed on the Plaza Project that cumulatively exceeds \$25,000 and for

alteration, demolition, repair and maintenance work performed on the Plaza Project that cumulatively exceeds \$15,000, Developer shall ensure that its contractors and subcontractors comply with State prevailing wage laws including, but not limited to, the requirements listed below.

**5.1.1 Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, Developer shall ensure that its contractors and subcontractors ensure that all workers who perform work on the Plaza Project are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. Developer shall immediately notify City of any known violations of this Article.

**5.1.1.1** Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Developer shall ensure that its contractors and subcontractors post a copy of the prevailing rate of per diem wages determination at each job site and make them available to any interested party upon request.

**5.1.1.2** The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of contract for the Plaza Project. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to the contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of the contract, each successive predetermined wage rate shall apply to the contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of the contract, such wage rate shall apply to the balance of the contract.

**5.1.2 Penalties for Violations.** Developer shall ensure that its contractor and subcontractors comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

**5.1.3 Payroll Records.** Developer shall ensure that its contractor and subcontractors comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Developer shall require its contractor to require its subcontractors to also comply with section 1776. Developer shall ensure that its contractor and subcontractors submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Developer shall ensure that its contractor ensures its subcontractors submit certified payroll records to the City.

**5.1.3.1** For contracts entered into on or after April 1, 2015, Developer shall ensure that its contractors and subcontractors furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

**5.1.4 Apprentices.** Developer shall ensure that its contractors and its subcontractors comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Developer shall ensure that its contractors are held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

**5.1.5 Working Hours.** Developer shall ensure that its contractors and subcontractors comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

**5.1.6 Required Provisions for Subcontracts.** Developer shall ensure that its contractors include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

**5.1.7 Labor Code Section 1861 Certification.** Developer shall ensure, in accordance with California Labor Code section 3700, that its contractors are required to secure the payment of compensation of its employees and by signing the contract, the contractors certify as follows: “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this [agreement or contract].”

**5.1.8 Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Equal Opportunity Contracting Department at 619-236-6000.

**5.1.9 Department of Industrial Relations Registration.** This Project is subject to compliance monitoring and enforcement by the DIR. Developer shall register with the DIR pursuant to Labor Code section 1725.5. As of March 1, 2015, no contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to California Labor Code section 1725.5. As of April 1, 2015, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work

pursuant to California Labor Code section 1725.5. Developer shall ensure that its calls for bids and contract documents include the following provisions: “No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5”; “No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5”; “This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations”; and “By submitting a bid or proposal, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with California Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City upon request.”

**5.1.9.1** A contractor’ or subcontractor’s inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

## ARTICLE VI. CONSULTANTS

**6.1** Selection of Consultant. Developer’s hiring of a consultant for the Plaza Project shall comply with the requirements set forth in Section 4.1 of the Park Development Agreement. Failure to adhere to all applicable consultant selection procedures as set forth in the Park Development Agreement is a material breach of this Agreement, and any contract awarded not in accordance with the City’s consultant selection procedures shall be ineligible for reimbursement.

**6.2** Equal Benefits and Nondiscrimination. The requirements of City’s Equal Benefits Ordinance apply to Developer’s consultant contracts for the Plaza Project as described in Section 4.6. The City’s nondiscrimination requirements apply to Developer’s consultant contracts for the Plaza Project as described in Section 4.5.

**6.3** Estimated Budget. Developer shall require its consultant to prepare an estimated budget for the Plaza Project.

## ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

**7.1** Design and Construction Standards. Developer shall comply with the design and construction standards described in Article IX of the Park Development Agreement.

## ARTICLE VIII. CONSTRUCTION AND DRUG-FREE WORKPLACE

**8.1** Compliance with Project Schedule and Construction Requirements. Developer shall commence construction of the Plaza Project in accordance with the Project Schedule, as described in Article II and the construction requirements set forth in the Park

Development Agreement and **Exhibit D**. Failure to maintain the Project Schedule constitutes a Default subject to Section 2.7. The rights and remedies of City enumerated in this Section are cumulative and shall not limit, waive, or deny any of City's rights or remedies under any other provision of this Agreement or those available at law or in equity.

**8.2 Drug-Free Workplace.** Developer agrees to comply with City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE", adopted by San Diego Resolution R-277952 and fully incorporated into this Agreement by reference. The Developer shall certify to City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace in the form and content of **Exhibit E**. Developer shall ensure that its contractors comply with the requirements of City's Council Policy 100-17.

## ARTICLE IX. PRODUCTS

**9.1 Product Submittal and Substitution.** Developer shall comply with the product submittals and substitution requirements of Article XI of the Park Development Agreement.

## ARTICLE X. EXTRA WORK

(INTENTIONALLY DELETED)

## ARTICLE XI. CHANGED CONDITIONS

(INTENTIONALLY DELTED)

## ARTICLE XII. REIMBURSEMENTS

### **12.1 Reimbursement to Developer.**

**12.1.1 Notification of Reimbursable Project.** Along with the Plaza Project's construction permit application to the City's Development Services Department, and prior to commencement of any work on the Plaza Project, Developer shall submit a "Notification of Reimbursable Project" form (attached as **Exhibit F**) to Planning Department.

**12.1.2 Type of Reimbursement.** Developer shall be entitled to cash reimbursement or DIF credits for the Reimbursable Costs expended by Developer and approved by City in accordance with this Agreement and the Financing Plan and in an amount not to exceed the Maximum Funds. The Downtown DIF fund currently has the Maximum Funds available for reimbursement beginning in or after Fiscal Year 2015. Any changes to the timing of reimbursement shall be reflected in future updates to the Financing Plan without further amendment to this Agreement. Developer shall not receive cash reimbursement unless there are sufficient funds to reimburse Developer, in whole or in part, from DIF funds available for the Plaza Project. If sufficient funds are unavailable, City shall reimburse Developer only if and as DIF funds for the Plaza Project accrue in the Downtown DIF fund. Where DIF credits are requested and approved by City, credit reimbursement shall be made. Developer acknowledges and agrees that in the event there are no additional DIFs available for collection by City to fund the Plaza Project, Developer shall not be reimbursed by City in cash for any portion of Developer's outstanding costs or expenditures, and Developer expressly agrees to fully absorb

all such outstanding costs or expenditures without any cash reimbursement from City, but Developer retains the right to request DIF credits for such outstanding cost or expenditures in an amount not to exceed the Maximum Funds.

**12.1.3 Funds for Cash Reimbursement.** Developer shall only be entitled to cash reimbursement as set forth in this Agreement and only from DIF funds collected by City in accordance with the Financing Plan, as it may be amended, in the amount set forth in this Agreement, and only as allocated for the Plaza Project, if and as such funds become available for the Plaza Project, after the appropriate deductions and expenditures are made, pursuant to the method of reimbursement described in Section 12.1.7, and in the priority of reimbursement described in Section 12.1.11.

**12.1.4 Amount of Reimbursement.** Developer shall be eligible for reimbursement for Reimbursable Costs in an amount not to exceed the Maximum Funds in accordance with Section 3.2.

**12.1.5 City's Administrative Costs.** City's Administrative Costs shall be paid prior to any reimbursement to Developer and shall consist of the costs and expenses incurred by City to: (i) implement, process, and administer the Plaza Project, (ii) review contractor/subcontractor compliance with the City's Required Contracting Procedures; (iii) approve the Plans and Specifications for the Plaza Project, (iii) inspect and approve work performed on the Plaza Project during design/construction through Final Completion of the Plaza Project, and (iv) review project documentation to verify all costs related to the Plaza Project, inclusive of construction bid tabulations, contracts, and review of any cost allocation methods (City's Administrative Costs).

**12.1.6 Interest.** Developer is not eligible to earn or receive interest on costs eligible for reimbursement under this Agreement.

**12.1.7 Method of Reimbursement.** Developer shall submit to City a written request for reimbursement for all Reimbursable Costs incurred or advanced for the Plaza Project for which Developer was not previously reimbursed or granted DIF credits (Reimbursement Request). Reimbursement Requests for projects other than those covered by this Agreement must be submitted as separate requests. The Reimbursement Request must also include all relevant documents in accordance with this Section. City shall determine whether additional documentation is needed to support the Reimbursement Request or if the Reimbursement Request is otherwise incomplete, and shall notify Developer of such deficiencies within sixty (60) calendar days of Developer's Reimbursement Request submittal. Developer shall provide additional documentation within fourteen (14) calendar days of City's notification and request. However, even if City fails to notify Developer within sixty (60) calendar days regarding Developer's Reimbursement Request, City may continue to request additional documentation to support the Reimbursement Request and shall not be obligated to reimburse Developer until City confirms receipt of all relevant documentation sufficient to support the Reimbursement Request. After all appropriate cost documentation has been received and City approves the Reimbursement Request (Reimbursement Request Approval), City shall reimburse Developer for those Reimbursable Costs within sixty (60) calendar days of the date of Reimbursement Request Approval if it is a DIF credit or ninety (90) calendar days of the date of Reimbursement Request

Approval if it is a cash reimbursement, provided that funds are available in the DIF fund for the Plaza Project

**12.1.8 Reimbursement Timing.** Subject to the limitations of Article XII, and provided that Reimbursement Requests have been approved for such amounts, Developer shall be entitled to reimbursement for Reimbursable Costs reasonably expended upon Final Completion as that term is defined in Section 16.2 of the Park Development Agreement.

**12.1.9 Cutoff for Submission of Reimbursement Requests.** Developer shall submit all Reimbursement Requests within six (6) months after the Final Completion (Cutoff Date). Any Reimbursement Request submitted after the Cutoff Date shall constitute a Non-Reimbursable Cost and Developer shall not be eligible or entitled to any reimbursement for those costs or expenses.

**12.1.10 Verification of Reimbursement Request.** Developer shall on a monthly basis, or as otherwise required by the City in writing, provide reasonably organized documentation to support the Reimbursement Request including, but not limited to, proof that all mechanic liens have been released, copies of invoices received and copies of cancelled checks, substitute checks, or image replacement documents showing that payment has been made in connection with the Reimbursement Request in the following manner:

12.1.10.1 Developer shall submit one (1) copy of a Reimbursement Request Form (**Exhibit G**) with supporting documentation for work completed in accordance with this Agreement and the Park Development Agreement.

12.1.10.2 Prior to the approval of the Reimbursement Request, the RE shall verify whether the materials and work for which reimbursement is being requested have been installed and performed as represented. The RE shall review the Plaza Project on-site for quality of material and assurance and adherence to the bid list, contract estimates, and the Plans and Specifications. The RE shall also review as-builts and Best Management Practices, and verify that a lien release has been prepared.

12.1.10.3 The RE shall initial the reimbursement Request, noting any disallowed costs, maintain a copy, and forward the original to the City Senior Civil Engineer or City designee for review and approval.

12.1.10.4 The City Senior Civil Engineer or City designee shall review the Reimbursement Request, as well as supporting cost documentation received from Developer, including soft costs related to the Plaza Project, as well as monitor the RE's expenses charged to the Plaza Project, and other City Administrative Costs. The City Senior Civil Engineer or City designee shall also serve as the liaison between the RE and the Facilities Financing Project Manager (FF Project Manager).

12.1.10.5 After review and approval of the Reimbursement Request, the City Senior Civil Engineer or City designee shall forward to the FF Project Manager for review and approval. Following approval, the FF Project Manager shall return the request to the Senior Civil Engineer or City designee.

12.1.10.6 The City Senior Civil Engineer or City designee shall prepare a memorandum, including a summary schedule of budgeted and actual approved costs, to the FF Project Manager recommending the reimbursement amount including all construction invoices and change orders previously approved, and soft costs incurred to date, noting any costs to be disallowed and the reason for the disallowance. A copy of the memorandum shall be forwarded to Developer.

12.1.10.7 The FF Project Manager shall verify that reimbursements are scheduled in the Financing Plan and verify cash/DIF credits are available for reimbursement.

12.1.10.8 Developer shall then submit an invoice to the City for the reimbursement amount approved by City.

**12.1.11 Priority of Cash Reimbursement.** Cash reimbursement to Developer from DIF funds for the Plaza Project will be subsequent to reimbursement of City's equipment purchases, Furniture Fixtures & Equipment (FF&E), and City's Administrative Expenses incurred in connection with the Plaza Project or Financing Plan and DIF, but takes priority over any other reimbursable project added to the Financing Plan subsequent to the Effective Date (as defined in Section 26.1) of this Agreement with the following exceptions:

12.1.11.1 Any State or Federally mandated project.

12.1.11.2 Appropriations for City administered, managed, and funded Capital Improvement Projects.

12.1.11.3 To the extent Developer failed to properly notify City in writing of any actual or anticipated increases in Estimated Costs as required under Sections 2.6 and 3.4, the reimbursement for the cost increases, if approved by City, will be subsequent in priority to those projects with agreements approved by the City Council prior to the City Council's approval of increased Estimated Costs.

12.1.11.4 The Financing Plan identifies other project(s) for funding in an earlier fiscal year than the Plaza Project prior to the Effective Date of this Agreement.

### **ARTICLE XIII. PUBLIC RELATIONS**

**13.1 Public Relations Compliance.** Developer shall comply with the public relations requirements of Article XX of the Park Development Agreement concerning the Plaza Project.

### **ARTICLE XIV. INSPECTION**

**14.1 Inspection Team.** Developer shall comply with the inspection requirements of Article XIV of the Park Development Agreement.

### **ARTICLE XV. OPERATIONAL ACCEPTANCE**

**15.1 Acceptance.** Acceptance of the Plaza Project shall be as defined in Section 16.1 of the Park Development Agreement.



## ARTICLE XVI. FINAL COMPLETION

**16.1 Final Completion.** Final Completion of the Plaza Project shall be as defined in Section 16.2 of the Park Development Agreement. In addition to the requirements set forth in the Park Development Agreement, Final Completion shall not occur prior to submittal of a capitalization form acceptable to the Facilities Financing Project Manager.

**16.2 No Waiver.** Developer's obligation to perform and complete the Plaza Project in accordance with this Agreement and the Park Development Agreement shall be absolute. Neither recommendation of any progress payment or acceptance of the work, nor any payment by City to Developer under this Agreement, nor any use or occupancy of the Plaza Project 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 in accordance with this Agreement and the Park Development Agreement.

## ARTICLE XVII. BONDS AND OTHER ACCEPTABLE SECURITIES

**17.1 Bonds and Securities.** Bonds and securities required for the Plaza Project shall be provided as described in Article XXIII of the Park Development Agreement.

## ARTICLE XVIII. INDEMNIFICATION

**18.1 Indemnification and Hold Harmless Agreement.** Developer's obligations to indemnify and hold harmless City with respect to the Plaza Project are set forth in Article XXIV of the Park Development Agreement.

## ARTICLE XIX. INSURANCE

**19.1 General.** Developer's insurance obligations are set forth in Article XXV of the Park Development Agreement.

## ARTICLE XX. WARRANTIES

**20.1 Warranties.** Developer shall require its contractors and its subcontractors and agents to provide the warranties described in Article XVIII of the Park Development Agreement.

## ARTICLE XXI. DEFECTIVE WORK

**21.1 Correction, Removal, or Replacement.** Correction, removal or replacement of Defective Work, as that term is defined in the Park Development Agreement, shall comply with the requirements set forth in Article XIX of the Park Development Agreement.

**21.2 Defects Constitute Non-Reimbursable Costs.** All costs incurred by Developer or Developer's agents to remedy Defective Work are Non-Reimbursable Costs. If City has already reimbursed Developer for 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 Developer's or the construction contractor's bond if Developer has been paid in full.

**21.3 Prior to Final Acceptance and Reimbursement to the Developer.** Where Defective Work has been identified prior to the Final Completion of the Plaza Project, Developer shall promptly, and in accordance with City's written instructions and within the reasonable time limits stated therein, either correct the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work. Costs incurred to remedy Defective Work are Non-Reimbursable Costs. Where Defective Work is not remedied, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount paid, or make a claim against the Developer's or construction contractor's bond.

## **ARTICLE XXII. MAINTENANCE OF LANDSCAPING & IRRIGATION WORK**

**22.1 Maintenance.** Developer's maintenance obligations with respect to the Plaza Project are set forth in Articles XXI and XXII of the Park Development Agreement.

## **ARTICLE XXIII. RECORDS AND AUDITS**

**23.1 Retention and Audit of Records.** Developer and Developer's agents shall retain data and records related to the Plaza Project in accordance with Article XXVI of the Park Development Agreement.

**23.1.1 Costs.** Developer and Developer'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 have been submitted under this Agreement.

## **ARTICLE XXIV. NOTICES**

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

**24.2 Effective Date of Notice.** 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 documented successful transmission of facsimile.

**24.3 Recipients.** All demands or notices required or permitted to be given to City or Developer shall be delivered to all of the following:

**24.3.1** Director, Engineering & Capital Projects Department  
City of San Diego  
City Administration Building  
202 C Street, M.S. #9B  
San Diego, California 92101  
Facsimile: (619) 533-4736

**24.3.2 Facilities Financing Manager**  
Planning Department, Facilities Financing Section  
City of San Diego  
1010 Second Avenue, Suite 600 (M.S. #606F)  
San Diego, California 92101  
Facsimile: (619) 533-3687

**24.3.3 H. G. Fenton Development Company LLC**  
7577 Mission Valley Road, Suite 200  
San Diego, California 92108  
Attention: Michael P. Neal, CEO and John LaRaia  
Telephone: (619) 400-0120  
Facsimile: (619) 400-0111

**and:** H. G. Fenton Development Company LLC  
7577 Mission Valley Road, Suite 200  
San Diego, California 92108  
Attention: Martha Guy, General Counsel  
Telephone: (619) 400-0163  
Facsimile: (619) 400-0111

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

## ARTICLE XXV. MEDIATION

**25.1 Mandatory Mediation.** If dispute arises out of, or relates to the Plaza Project or this Agreement, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, prior to the initiation of any litigation, the Parties agree to attempt to settle the dispute in an amicable manner, using mandatory mediation under the Construction Industry Mediation Rules of the American Arbitration Association (AAA) or any other neutral organization agreed upon before having recourse in a court of law.

**25.2 Mandatory Mediation Costs.** The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator (Mediator), and the cost of any proofs or expert advice produced at the direct request of the Mediator, shall be borne equally by the Parties, unless they agree otherwise.

**25.3 Selection of Mediator.** A single Mediator that is acceptable to both Parties shall be used to mediate the dispute. The Mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the AAA or any other agreed upon Mediator. To initiate mediation, the initiating Party shall serve a Request for Mediation on the opposing Party. If the Mediator is selected from a list provided by AAA, the initiating Party shall concurrently file with AAA a "Request for Mediation" along with the appropriate fees, a list of three requested Mediators marked in preference order, and a preference for available dates.

**25.3.1** If AAA is selected to coordinate the mediation (Administrator), within fourteen calendar days from the receipt of the initiating Party's Request for Mediation, the opposing Party shall file the following: a list of preferred Mediators listed in preference order after striking any Mediators to which they have any factual objection, and a preference for available dates. If the opposing Party strikes all of initiating Party's preferred Mediators, opposing Party shall submit a list of three preferred Mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred Mediators listed in preference order, after striking any Mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a Mediator.

**25.3.2** The Administrator will appoint or the Parties shall agree upon the highest, mutually preferred Mediator from the individual Parties' lists who is available to serve within the designated time frame.

**25.3.3** If the Parties agree not to use AAA, then a Mediator, date and place for the mediation shall be mutually agreed upon.

**25.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

**25.4.1** Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

**25.4.2** Any agreements resulting from mediation shall be documented in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

## **ARTICLE XXVI. MISCELLANEOUS PROVISIONS**

**26.1 Term of Agreement.** Following the adoption of the City Council resolution authorizing this Agreement and the subsequent execution of the same by the Parties, this Agreement shall be effective upon the date it is executed by the City Attorney in accordance with Charter section 40 (Effective Date). Unless otherwise terminated, the Agreement shall be effective until (i) the final reimbursement payment is made; or (ii) one year after the Warranty Bond terminates, whichever is later but not to exceed ten (10) years.

**26.2 Construction Documents.** Construction documents include, but are not limited to: construction contract, contract 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 construction contract.

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

**26.4 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.

**26.5 Reference to Paragraphs.** Each reference in this Agreement to a Section refers, unless otherwise stated, to a Section of this Agreement.

**26.6 Incorporation of Recitals.** All Recitals herein are true and correct to the Parties' best knowledge and belief, and are fully incorporated into this Agreement by reference and are made a part hereof.

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

**26.8 Integration.** This Agreement and all 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 a written amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

**26.9 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.

**26.10 Drafting Ambiguities.** The Parties acknowledge they each have been fully advised by their own counsel with respect to the negotiations, terms, and conditions of this Agreement. 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.

**26.11 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.

**26.12 Prompt Performance.** Time is of the essence of each covenant and condition set forth in this Agreement.

**26.13 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.

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

**26.15 Exhibits.** Each of the exhibits referenced and attached to this Agreement is fully incorporated herein by reference.

**26.16 Compliance with Controlling Law.** Developer shall require its consultants, contractors, subcontractors, agents, and employees to comply with all laws, statutes, resolutions, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Agreement, including California Labor Code sections 1720 through 1861 relating to the payment of prevailing wages, including, but not limited to, the design, preconstruction, and construction phases of the Plaza Project. In addition, Developer shall require its consultants, contractors, subcontractors, agents, and employees comply immediately with all directives issued by City or its authorized representatives under authority of any laws, statutes, resolutions, ordinances, rules, regulations or policies.

**26.17 Hazardous Materials.** Hazardous Materials constitute any hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601-9675), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25). Developer agrees to comply with all applicable state, federal and local laws and regulations pertaining to Hazardous Materials.

**26.18 Jurisdiction, Venue, and Choice of Law.** The venue for any suit or proceeding concerning this Agreement, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

**26.19 Municipal Powers.** Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

**26.20 Third-Party Relationships.** Nothing in this Agreement shall create a contractual relationship between City and any third-party; however, the Parties understand and agree that City, to the extent permitted by law, is an intended third-party beneficiary of all Developer's contracts, purchase orders and other contracts between Developer and third-party services. Developer shall incorporate this provision into its contracts, supply agreements and purchase orders.

**26.21 Non-Assignment.** The Developer shall not assign the obligations under this Agreement, whether by express assignment or by sale of the company, nor any monies due or to become due, without City's prior written approval. Any assignment in violation of this Section

shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of City. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

**26.22 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.

**26.23 Independent Contractors.** The Developer, any consultants, contractors, subcontractors, and any other individuals employed by Developer shall be independent contractors and not agents of City. Any provisions of this Agreement that may appear to give City any right to direct Developer concerning the details of performing the work or services under this Agreement, or to exercise any control over such performance, shall mean only that Developer shall follow the direction of City concerning the end results of the performance.

**26.24 Approval.** Where the consent or approval of a Party is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld; however, nothing in this Section shall in any way bind or limit any future action of the City Council pertaining to this Agreement or the Plaza Project.

**26.25 No Waiver.** No failure of either City or Developer 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.

**26.26 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 duly 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.

**26.27 Remedies.** Notwithstanding any other remedies available to City at law or in equity, Developer understands that its failure to comply with the insurance requirements or other obligations required by this Agreement, and/or submitting false information in response to these requirements, may result in withholding reimbursement payments until Developer complies and/or may result in suspension from participating in future city contracts as a developer, prime contractor or consultant for a period of not less than one (1) year. For additional or subsequent violations, the period of suspension may be extended for a period of up to three (3) years.

*[Signature page follows]*

IN WITNESS WHEREOF, this agreement is executed by the City of San Diego, acting by and through its Mayor, pursuant to Ordinance No. O- 20583, authorizing such execution, and by Developer.

This Agreement was approved by the City Attorney this 22nd of June, 2016, and this date shall constitute the Effective Date of this Agreement.

Dated: 6.20.16

THE CITY OF SAN DIEGO, a Municipal Corporation

By: [Signature]

Dated: 6/22/16

Approved as to form:  
JAN I. GOLDSMITH, City Attorney

By: [Signature]

Dated: 3/5/2015

FENTON LITTLE ITALY LLC, a California limited liability company

BY: H. G. FENTON COMPANY, a California corporation, Authorized Agent

By: [Signature]  
Name Michael P. Neal  
Title President and CEO

By: [Signature]  
Name Carol Whaler  
Title EVP, Residential and Mgmt



**Exhibit A**

**General Development Plan**



**PIAZZA FAMIGLIA** LITTLE ITALY, SAN DIEGO, CALIFORNIA

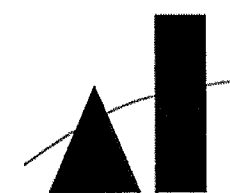
**HG FENTON COMPANY**

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

**PLAZA RENDERING**

**GILLESPIE MOODY PATTERSON**

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977



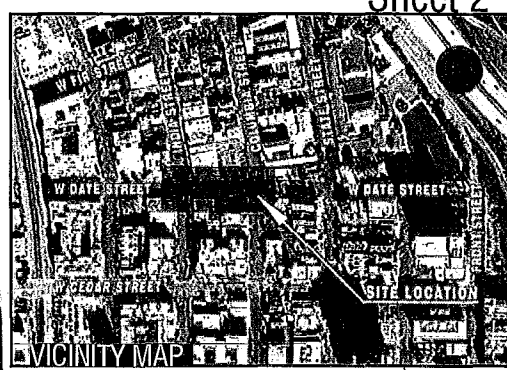
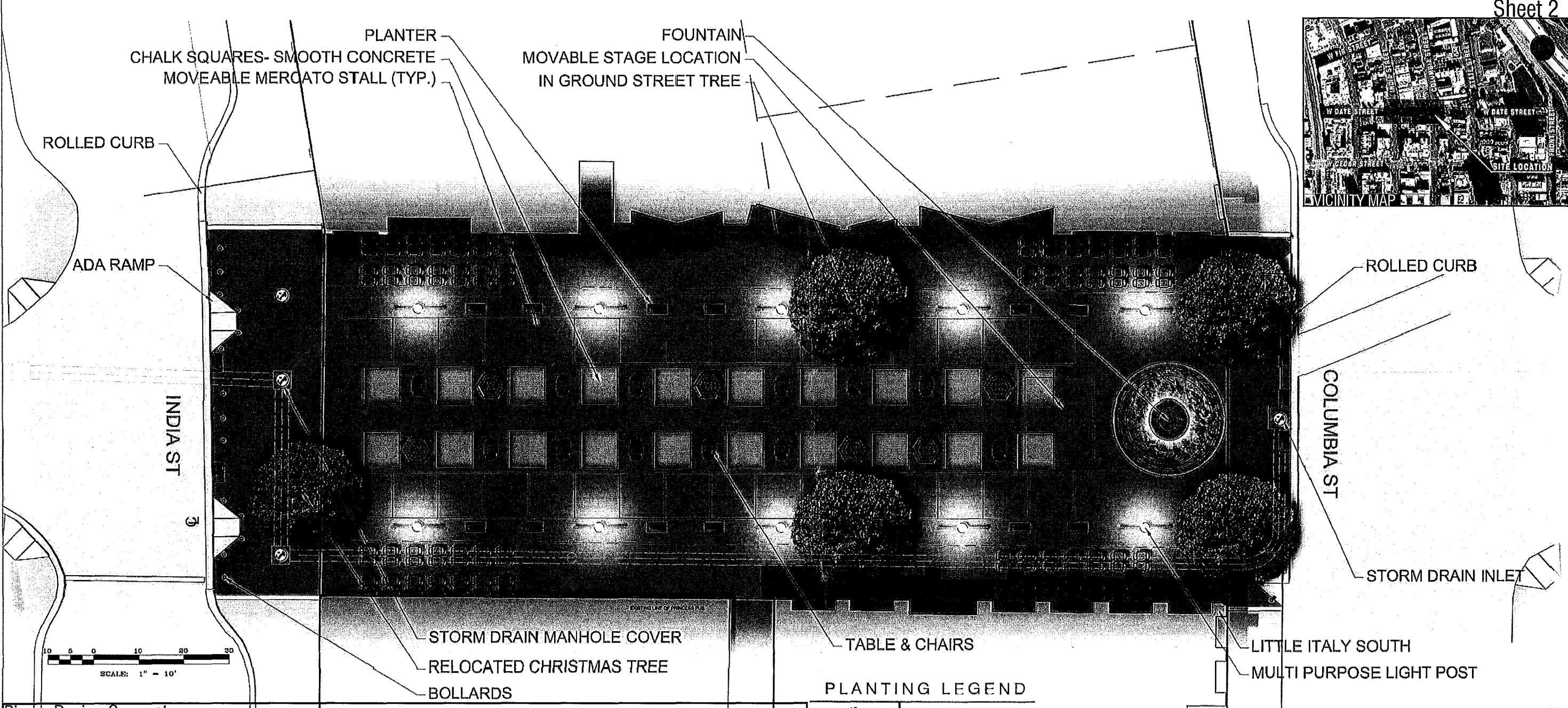
**MARTINEZ + CUTRI**  
CORPORATION

402 W Broadway, Suite 2600  
Emerald Plaza, San Diego, CA 92101  
Tel (619) 233-1857 Fax (619) 233-7417



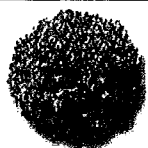
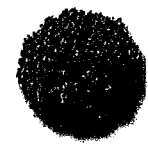

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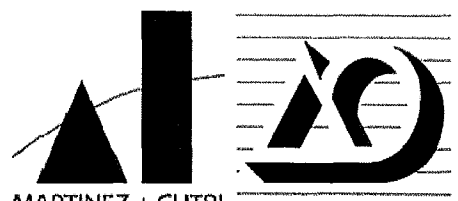




**Piazza Design Concept:**  
 Piazza Famiglia is a public plaza that is intended to create a new pedestrian friendly corridor in what is now a public roadway. The plaza has been designed to be a new focal piece of the Little Italy community, near downtown San Diego. The centrally located project is meant for multiple uses for both visitors and residents of the location. Such activities will include farmer's markets, performances, and special events. The design is open, well-lit, and linear to allow pedestrians to move comfortably throughout the space as well as allow the markets to be set up without blocking the passerby's experience. Ample seating areas have been provided for public use, along with designated spaces for movable mercato stalls and stage areas. A re-located specimen tree has been designed to fit in with additional low water use plant material. A large fountain on the east side of the site will be a primary focal point for the project entrance as well as being visible throughout the site.

**PLANTING LEGEND**

-  Sweet Bay  
*Laurus nobilis*
-  (Re Located)  
Christmas Tree
-  Tuscan Blue Rosemary  
*Rosmarinus officianalis*  
'Tuscan Blue'



**MARTINEZ + CUTRI CORPORATION**  
 402 W Broadway, Suite 2000  
 Emerald Plaza, San Diego, CA 92101  
 Tel (619) 233-4857 Fax (619) 233-7417

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**PIAZZA FAMIGLIA LITTLE ITALY, SAN DIEGO, CALIFORNIA**

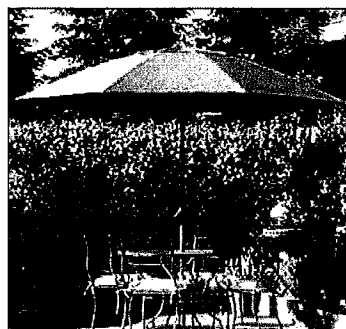
**HG FENTON COMPANY**  
 7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

**CONCEPT PLAN**

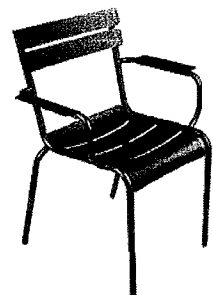
**GILLESPIE MOODY PATTERSON**  
 4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (650) 550-0977



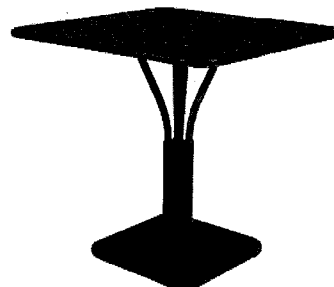
**gmp**  
 Gillespie  
 Moody  
 Patterson, Inc.  
 LANDSCAPE ARCHITECTURE  
 & PLANNING



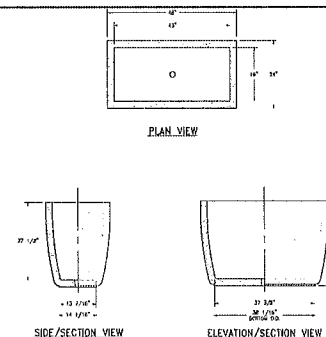
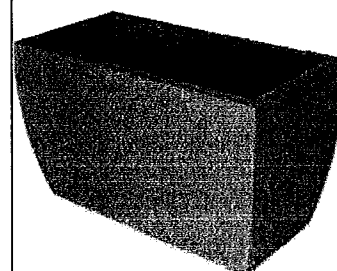
MJJ Sales: 11' Aluminum Umbrella with Crank. Color: Blue or Red  
SEATING AREA FURNISHINGS



Fermob 4102 Armchair in Cedar Green



Fermob 4134 Table 32x32 in Black



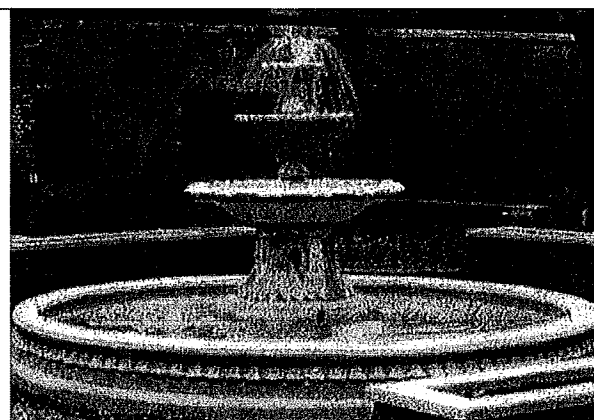
Quickcrete Cascade Planter QS-CE244830P

ON-SITE PLANTERS

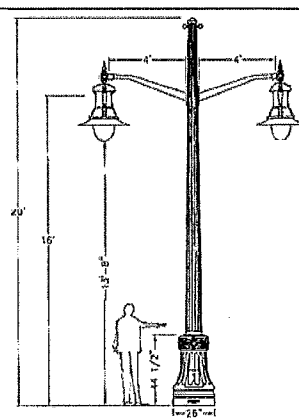


Custom Manhole Cover

SITE FOCAL ELEMENTS

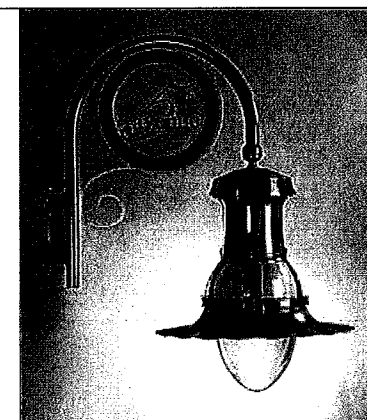


Piazza fountain example



Proposed pole base - Oxford Style

SITE LIGHTING ELEMENTS



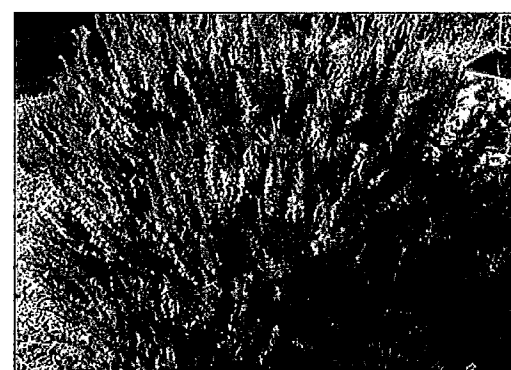
Example fixture with radial shade option



Oxford Base with Planters



Fixture with radial shade



*Rosmarinus officinalis* 'Tuscan Blue'  
Upright Rosemary

SITE PLANTING



*Rosmarinus officinalis* 'Tuscan Blue'  
Planted Upright Rosemary



Re-located Christmas Tree

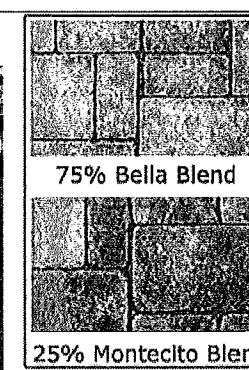


*Laurus nobilis* (standard)  
Sweet Bay



Belgard Mega-Lafitt Grana Pavers

ON-SITE PAVERS

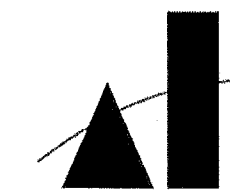


75% Bella Blend

25% Montecito Blend



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402 W Broadway, Suite 2600  
Emerald Plaza, San Diego, CA 92101  
Tel: (619) 233-4857 Fax: (619) 233-7417

**PIAZZA FAMIGLIA** LITTLE ITALY, SAN DIEGO, CALIFORNIA

**HG FENTON COMPANY**

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

**SITE FURNISHINGS + PLANTING**

**GILLESPIE MOODY PATTERSON**

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (650) 558-8977



Gillespie  
Moody  
Patterson, Inc.  
LANDSCAPE ARCHITECTURE  
& PLANNING



Luminaire Schedule						
Symbol	Qty	Label	Arrangement	Total Lamp Lumens	LLF	Description
	10	1914LEDF-A-21L45-MDL10-ND-r1m431	TWIN	N.A.	0.500	MCD to 21L with LLF.

Calculation Summary							
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min
Ground Surface	Illuminance	Fc	5.95	10.5	0.6	9.92	17.50
Vertical FC	Illuminance	Fc	0.79	3.9	0.1	7.90	39.00

NOTES:

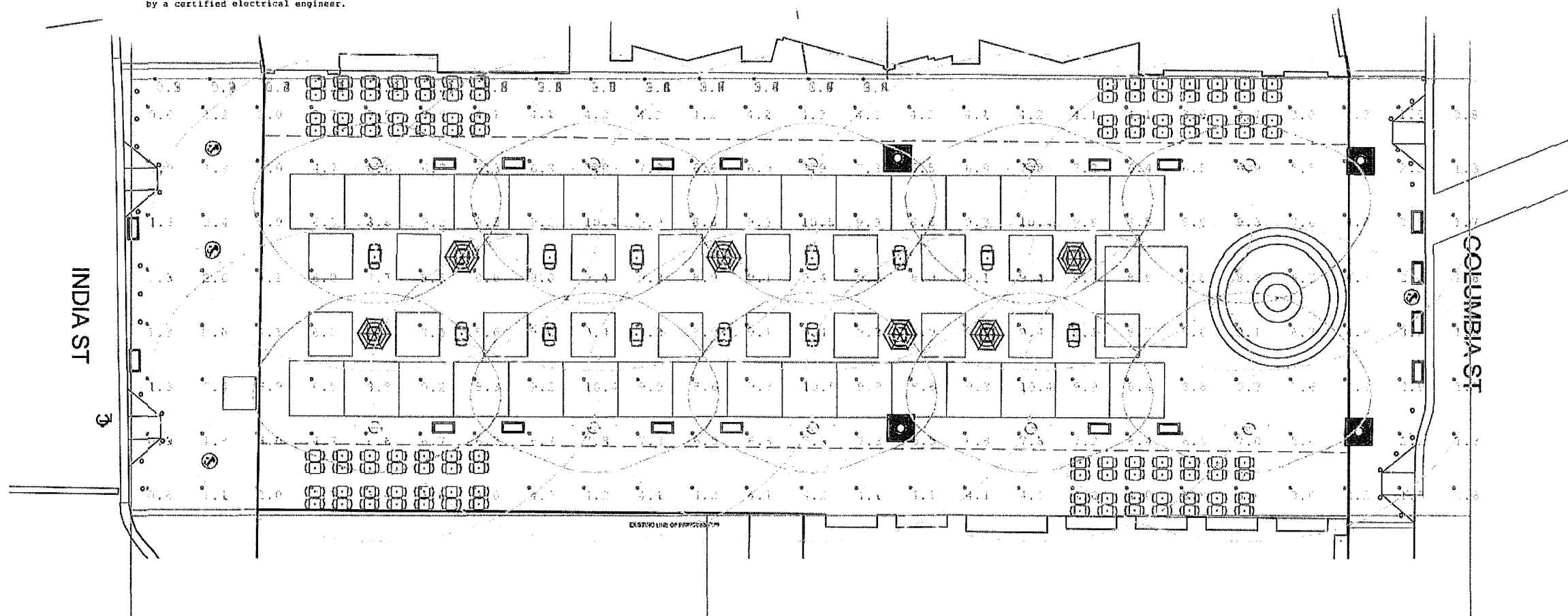
- FIXTURE MOUNTING HEIGHT: 16'-0" (15' TO LIGHT SOURCE)
- HORIZONTAL CALC PTS @ GROUND: 0'-0" A.F.G.
- VERTICAL CALC PTS @ WALL SURFACE
- REFLECTANCES:
  - VERTICAL SURFACES: 50%
  - HORIZONTAL SURFACES: 20%

Calculations have been performed according to information provided regarding room dimensions, reflectances, furniture and architectural element placement. Some differences between measured values and calculated results may occur if the real environment conditions do not match the input data.

Photometric Data used as input for these calculations is based on established IES procedures and published lamp & ballast ratings.

Field Performance will depend on actual lamp, ballast, electrical and site characteristics.

For design reference only - All calculations should be reviewed for accuracy by a certified electrical engineer.



**PIAZZA FAMIGLIA** LITTLE ITALY, SAN DIEGO, CALIFORNIA

**HG FENTON COMPANY**

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

**CONCEPT LIGHTING**

**GILLESPIE MOODY PATTERSON**

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (858) 558-8977





**PIAZZA FAMIGLIA** LITTLE ITALY, SAN DIEGO, CALIFORNIA

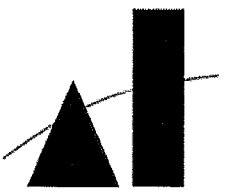
**HG FENTON COMPANY**

7577 MISSION VALLEY ROAD #200, SAN DIEGO, CA. 92108 (619) 400-0134

**LIGHT STUDY RENDERING**

**GILLESPIE MOODY PATTERSON**

4125 SORRENTO VALLEY BLVD. #D, SAN DIEGO, CALIFORNIA 92121 (658) 558-8977



**MARTINEZ + CUTRI**  
CORPORATION

402 W Broadway, Suite 2800  
Emerald Plaza, San Diego, CA 92101  
Tel (619) 233-4657 Fax (619) 233-7417



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**Gillespie  
Moody  
Patterson, Inc.**  
LANDSCAPE ARCHITECTURE  
& PLANNING

## EXHIBIT "B"

### ESTIMATED COSTS

---

#### PROJECT COSTS *(Ref Reimbursement Agreement Section 3.1)*

**Hard Costs** \$ 1,368,314

Hard costs include but are not limited to asphalt, construction, final clean-up, site improvements, earthwork, site utilities and foundation, drains, A.C. paving, landscaping, irrigation, water feature, concrete, roofing and waterproofing, building specialties and miscellaneous sub trades, Mercato stall infrastructure, and electrical including Audio/Visual/Technology equipment.

**Soft Costs** \$ 156,092

Soft costs include but are not limited to general conditions, supervision, liability insurance, course of construction insurance, fee & overhead, construction management, performance and completion bond.

**Total Project Costs** *(Hard Costs + Soft Costs)* \$ 1,524,406

**PROJECT CONTINGENCY** *(Ref Reimbursement Agreement Section 3.3.1)* \$ 73,184

**ESTIMATED COSTS** *(Ref Reimbursement Agreement Section 3.3)* \$ 1,597,590

#### OTHER COSTS

Other costs include, design fees, special testing and inspection costs, soils testing and inspection, Developer Administrative Costs, charges for City Permits & associated processing, City staff charges for review of the GDP, City staff charges for development of the Park Development and Reimbursement Agreement No. 1326979, and City Administrative Costs per Reimbursement Agreement Section 12.1.5. ***These costs are not reimbursable to the Developer.***



## Exhibit C

### Equal Benefits Ordinance Certification of Compliance

**EQUAL BENEFITS ORDINANCE  
CERTIFICATION OF COMPLIANCE**



For additional information, contact:  
**CITY OF SAN DIEGO**  
**EQUAL BENEFITS PROGRAM**  
 202 C Street, MS 9A, San Diego, CA 92101  
 Phone (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION		
Company Name:	Contact Name:	
Company Address:	Contact Phone:	
Contact Email:		
CONTRACT INFORMATION		
Contract Title:	Start Date:	
Contract Number (if no number, state location):	End Date:	
SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS		
<p>The Equal Benefits Ordinance [EBO] requires the City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:</p> <ul style="list-style-type: none"> <li>■ Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.                             <ul style="list-style-type: none"> <li>▪ Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance programs; credit union membership; or any other benefit.</li> <li>▪ Any benefit not offered to an employee with a spouse, is not required to be offered to an employee with a domestic partner.</li> </ul> </li> <li>■ Contractor shall post notice of firm's equal benefits policy in the workplace and notify employees at time of hire and during open enrollment periods.</li> <li>■ Contractor shall allow City access to records, when requested, to confirm compliance with EBO requirements.</li> <li>■ Contractor shall submit <i>EBO Certification of Compliance</i>, signed under penalty of perjury, prior to award of contract.</li> </ul> <p>NOTE: This summary is provided for convenience. Full text of the EBO and its Rules are posted at <a href="http://www.sandiego.gov/administration">www.sandiego.gov/administration</a>.</p>		
CONTRACTOR EQUAL BENEFITS ORDINANCE CERTIFICATION		
<p>Please indicate your firm's compliance status with the EBO. The City may request supporting documentation.</p> <p><input type="checkbox"/> I affirm compliance with the EBO because my firm (<i>contractor must select one reason</i>):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provides equal benefits to spouses and domestic partners.</li> <li><input type="checkbox"/> Provides no benefits to spouses or domestic partners.</li> <li><input type="checkbox"/> Has no employees.</li> <li><input type="checkbox"/> Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.</li> </ul> <p><input type="checkbox"/> I request the City's approval to pay affected employees a cash equivalent in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.</p> <p>It is unlawful for any contractor to knowingly submit any false information to the City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]</p> <p>Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by the City.</p>		
Name/Title of Signatory	Signature	Date
FOR OFFICIAL CITY USE ONLY		
Receipt Date:	EBO Analyst:	<input type="checkbox"/> Approved <input type="checkbox"/> Not Approved – Reason:

rev 02/15/2011

## Exhibit D

### Construction Requirements

1. **Site Safety, Security, and Compliance.** Developer shall be responsible for site safety, security, and compliance with all related laws and regulations.
  - A. *Persons.* Developer shall be fully responsible for the safety and security of its officers, agents, and employees, City's officers, agents, and employees, and third parties authorized by Developer to access the Project site.
  - B. *Other.* Developer is responsible for the Project, site, materials, equipment, and all other incidentals until the Project has been accepted by the City pursuant to Article I.
  - C. *Environment.* Developer shall be responsible for the environmental consequences of the Project construction and shall comply with all related laws and regulations, including, but not limited to, 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, the Developer shall prepare and incorporate into the Construction Documents a Stormwater Pollution Prevention Plan (SWPPP) to be implemented by the Developer during Project construction. 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 any municipal regulations adopted pursuant to the permits.
2. **Access to Project Site.**
  - A. *Field Office.* Developer shall provide in the construction budget a City field office (approximately 100 square feet) that allows City access to a desk, chair, two drawer locking file cabinet with key, phone, fax, computer, copy machine and paper during working hours.
  - B. *Site Access.* City officers, agents and employees have the right to enter the Project site at any time; however, City will endeavor to coordinate any entry with Developer.
  - C. *Site Tours.* Site tours may be necessary throughout completion of the Project. Developer shall allow City to conduct site tours from time to time as the City deems necessary. City will give Developer notice of a prospective tour and a mutually agreeable time shall be set. Developer is not obligated to conduct tours or allow access for tours when City fails to give prior notice.
3. **Surveying and Testing.** Developer shall coordinate, perform, and complete all surveying, materials testing, and special testing for the Project at the Project site, as otherwise required by this Agreement, and as required under the State Building Code or any other law or regulation, including:

- A. *Existing Conditions.* Developer shall obtain all necessary soils investigation and conduct agronomic testing required for design of the Project. The soils consultant shall prepare a statement that will be included in the Bidding Documents as to the nature of soils, ground water conditions and any other information concerning the existing conditions of the site.
  - B. *Utilities.* Developer shall provide all required information for the construction or relocation of public or private utility facilities that must be constructed or relocated as a result of this Project. Developer shall file all of the required documents for the approval of authorities having jurisdiction over the Project and in obtaining the services of all utilities required by the Project.
  - C. *Geotechnical Information.* Developer shall obtain all necessary geotechnical information required for the design and construction of the Project. The Project Engineering Geologist and/or Project Soils Engineer (qualified R.C.E. or R.G.E.) shall prepare a statement that will be included in the Bidding Documents, to address existing geotechnical conditions of the site that might affect construction.
4. **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.
- A. *Materials Testing.* Developer shall pay for and coordinate with City to have all material tests within the public right-of-way and any asphalt paving completed by City's Material Testing Laboratory.
  - B. *Surveying.* Developer shall pay for and coordinate with City's Survey Section all surveying required within the public right-of-way.
  - C. *Follow all Laws, Rules, and Regulations.* Developer 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.
5. **Traffic Control.** Developer shall address all traffic control requirements for the Project including, if necessary, separate traffic control plans, and/or notes.
6. **Inspections.** Developer shall coordinate any and all special inspections required for compliance with all State Building Codes as specified in the contract documents.
- A. *Reports.* Developer shall provide City all special inspection reports within seven (7) calendar days of inspection. Developer shall report all failures of special inspections to City.
  - B. *Remedies.* Remedies for compliance shall be approved by Developer, Developer's consultants, City's Development Services Department, and City representatives.
  - C. *Concealing Work.* Prior to concealing work, Developer shall obtain approval of the work from the following three entities: 1) Engineering & Capital Projects Department; 2) Development Services Department; and 3) Special Inspections - as required by all State Building Codes and as provided in this Agreement. This approval is general approval only and in no way relieves Developer of its sole responsibilities under this Agreement or any and all laws, codes, permits or regulations. Developer shall fulfill all requirements of each of these three entities.

7. **Property Rights.** Developer shall provide all required easement documents, including but not limited to: dedication, acquisitions, set asides, street vacations, abandonments, subordination agreements, and joint use agreements, as required by City of San Diego Real Estate Assets Department requirements. City shall not require Developer to provide any easement documents for land to which Developer does not have title; however, Developer shall not relinquish, sell or transfer title to avoid any obligation under this Section, this Agreement, the Public Facilities Financing Plans or any applicable Development Agreement or other entitlement.
8. **Permits.** The Parties acknowledge the construction work to be performed on the Project by Developer in compliance with this Agreement is subject to the prior issuance of building, land development, and/or public improvement permits paid for and obtained by Developer. In the event that City, or any other governmental agency, unreasonably refuses to issue the permit(s) necessary to authorize the work to be performed or if the permit(s) are unreasonably canceled or suspended, then Developer is relieved from its obligation to construct those improvements covered by the denial of said permit(s), and City shall reimburse Developer in accordance with the terms of the Agreement for the work completed. All plans, specifications and improvements completed to the date of the denial, suspension or cancellation of said permit(s) shall become the property of City upon reimbursement as set forth above.
9. **Maintenance.** Developer shall maintain and be responsible for the Project site until Acceptance of the Project, including ongoing erosion prevention measures. Unless stated otherwise in the Agreement, upon Acceptance of the Project, City shall be responsible for all maintenance of Project site.
10. **Drug-Free Workplace.** Developer agrees to comply with the City's requirements in Council Policy 100-17, "DRUG-FREE WORKPLACE," adopted by San Diego Resolution R-277952 and incorporated into this Agreement by this reference. Developer shall certify to the City that it will provide a drug-free workplace by submitting a Developer Certification for a Drug-Free Workplace form (**Exhibit E**).
  - A. *Developer Notice to Employees.* Developer shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the work place, and specifying the actions that will be taken against employees for violations of the prohibition.
  - B. *Drug-Free Awareness Program.* Developer shall establish a drug-free awareness program to inform employees about all of the following:
    - i. The dangers of drug abuse in the work place.
    - ii. The policy of maintaining a drug free work place.
    - iii. Available drug counseling, rehabilitation, and employee assistance programs.
    - iv. The penalties that may be imposed upon employees for drug abuse violations.
    - v. In addition to Section 10.A above, the Developer shall post the drug-free policy in a prominent place.

C. *Developer's Agreements.* Developer further certifies that each contract for consultant or contractor services for this Project shall contain language that binds the consultant or contractor to comply with the provisions of Section 10 "Drug-Free Workplace," as required by Sections 2.A(1) through (3) of Council Policy 100-17. Consultants and contractors shall be individually responsible for their own drug-free work place program.

**Exhibit E**

**Developer Certificate for a Drug-Free Workplace**

**PROJECT TITLE:** Piazza Famiglia

I hereby certify that I am familiar with the requirement of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace, and that FENTON LITTLE ITALY, LLC has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this Project contains language that indicates the Subconsultants/Subcontractors agreement to abide by the provisions of Sections 2.A(1) through (3) of Council Policy 100-17 as outlined.

FENTON LITTLE ITALY LLC, a California  
limited liability company

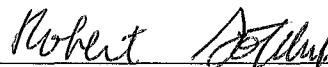
By: H.G. Fenton Company, a California  
corporation, its Authorized Agent

Signed  \_\_\_\_\_

Printed Name **Michael P. Neal** \_\_\_\_\_

Title **President and CEO** \_\_\_\_\_

Date **APR 06 2016** \_\_\_\_\_

Signed  \_\_\_\_\_

Printed Name **Robert Gottlieb** \_\_\_\_\_

Title **Chief Financial Officer** \_\_\_\_\_

Date **APR 06 2016** \_\_\_\_\_

**Exhibit F**

**Notification of Reimbursable Project**

Pursuant to Section 12.1.1 of the Reimbursement Agreement with FENTON LITTLE ITALY, LLC for Financing Plan Project No. P-13, Downtown Park Acquisition and Development – Piazza Famiglia in the Downtown Community, adopted pursuant to City Council Ordinance No. O-20583 and executed on December 16, 2015, FENTON LITTLE ITALY, LLC hereby notifies the City of San Diego that work will begin on Piazza Famiglia in the Downtown Community on or about January 2017.

This Notification of Reimbursable Project form shall be submitted with the Project's construction permit application to the City's Development Services Department prior to commencement of any work on construction Project No. 352406, Development Services Deposit Account No. 24004308.

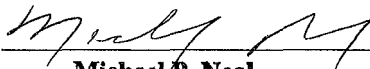
The Developer shall add the following note above the title block on the construction plan cover sheet, and on all sheets where subject to reimbursement:


**REIMBURSABLE PROJECT: Downtown Community, P-13, Downtown Park Acquisition and Development – Piazza Famiglia.**

This note is required to be submitted with the application for the Project's construction permit.

FENTON LITTLE ITALY, LLC  
a California Limited Liability Company

By: H.G. Fenton Company, a California corporation, its Authorized Agent

By:   
**Michael P. Neal**  
Title: President and CEO  
**APR 06 2016**  
Dated: \_\_\_\_\_

By:   
**Robert Gottlieb**  
Title: Chief Financial Officer  
**APR 06 2016**  
Dated: \_\_\_\_\_

## Exhibit G

### Reimbursement Request Form

Change Order Request No. \_\_\_\_\_ or  Invoice Approval Request No. \_\_\_\_\_

Project Name	PFFP Project No:
Project Manager	Date Requested
Requested by	Date Approval Requested

**Scope of Work Covered by Submittal:**

Line Item	Qty	Units	Unit Price	Cost		
				Previous	Current	Total To Date
1.						
2.						
3.						
4.						
5.						
6.						
7.						

(use separate form for additional items)  
**Total Requested for this Submittal**

**Justification for Change/Extra**  
 Impacts, Adds, Deducts, Schedule Impacts, etc

Date	Developer	Title/Signature
*I hereby certify that this information is true and accurate and is not part of a previously approved submittal		

**Approvals**

Date	Field Division	Inspector Name/Signature
------	----------------	--------------------------

*This work is within and pertains directly to the limits of the approved project and the quantity is consistent with measurements of work installed in the field.*

Comments:

Date	Consultant	Printed Name/Signature
------	------------	------------------------

*We have reviewed this request with respect to the Developer's Reimbursement Agreement and industry practices and have the following recommendations:*

Items \_\_\_\_\_ are recommended for approval

Total Recommended Amount	Previous	Current	To Date
--------------------------	----------	---------	---------

Items \_\_\_\_\_ are not recommended for approval. <Comments>

Date	Facilities Financing	Printed Name/Signature
------	----------------------	------------------------

*The reimbursement request items noted above are accepted and considered reimbursable as presented.*

Comments:

<sup>1</sup> Approval denotes the acceptability of change under the reimbursement agreement. Reimbursement is contingent upon work acceptance by City.

COMPLETED BY DEVELOPER

COMPLETED BY INSPECTOR

COMPLETED BY CONSULTANT/CITY PM

COMPLETED BY FACILITIES FINANCING



Item 57 12-8-15

(O-2016-34)

ORDINANCE NUMBER O- 20583 (NEW SERIES)

DATE OF FINAL PASSAGE DEC 16 2015

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A PARK DEVELOPMENT AGREEMENT AND REIMBURSEMENT AGREEMENT WITH FENTON LITTLE ITALY, LLC, FOR A PUBLIC PLAZA (PIAZZA FAMIGLIA), PROJECT NO. P-13, IN THE DOWNTOWN COMMUNITY.

WHEREAS, on July 14, 2014, by Resolution No. R-309116, City Council granted Centre City Development Permit/Planned Development Permit/Site Development Permit/Neighborhood Use Permit No. 2012-10 (Permit), and by San Diego Resolution No. R-309117, vacated a portion of Date Street (Vacation), to allow the construction of a seven-story mixed-use building on a 24,000 square-foot parcel located on the north side of the vacated portion of Date Street between India and Columbia Streets, a five-story mixed-use building on a 10,000 square-foot parcel located on the south side of the vacated portion of Date Street between India and Columbia Streets, an underground parking structure under both buildings and under the vacated portion of Date Street, an 11,200 square foot public plaza on the vacated portion of Date Street (Plaza), and outdoor dining areas along the north and south sides of the vacated portion of Date Street adjacent to the Plaza, as well as the relocation of a designated historical resource, all subject to certain conditions; and

WHEREAS, on June 17, 2014, by San Diego Resolution No. R-309070, City Council adopted the Downtown Community Public Facilities Financing Plan and Development Impact Fee Fiscal Year 2015 (Financing Plan). The Financing Plan includes Project No. P-13, Downtown Park Acquisition and Development, which anticipates funding for the acquisition, design, and construction of up to 5.7 acres of public open space and park facilities throughout the Downtown Community including plazas; and

WHEREAS, Developer prepared a General Development Plan (GDP) for the Plaza, which was recommended for approval by the Park and Recreation Board on June 19, 2014, and subsequently approved by the Park and Recreation Department; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor is authorized and directed to execute, for and on behalf of City, a Park Development Agreement with Fenton Little Italy LLC for the Plaza, on file in the Office of the City Clerk as Document No. OO- 20583-1 (Park Development Agreement), under the terms and conditions set forth in the Park Development Agreement.

Section 2. That the Mayor is authorized and directed to execute, for and on behalf of City, a Reimbursement Agreement with Fenton Little Italy LLC (Developer) for the Plaza, on file in the Office of the City Clerk as Document No. OO- 20583-2 (Reimbursement Agreement), under the terms and conditions set forth in the Reimbursement Agreement.

Section 3. That the consultant selection requirements of San Diego Municipal Code section 22.3202, Council Policy 300-07, and Council Policy 100-10 for the selection of Plaza design consultant services are waived.

Section 4. That the Chief Financial Officer is authorized to add CIP No. RD16000, Piazza Famiglia, to the Capital Improvements Program.

Section 5. That the Chief Financial Officer is authorized to increase the Capital Improvements Program budget in CIP No. RD16000, Piazza Famiglia, in the amount of \$1,000,000, and to appropriate and expend \$1,000,000 from Fund No. 400122 Centre City DIF-Admin, for the purpose of reimbursing the Developer for the design and construction of the Plaza consistent with the terms of the Reimbursement Agreement, contingent upon the Chief Financial

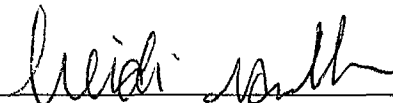
Officer furnishing one or more certificate(s) certifying that funds necessary for expenditure are, or will be, on deposit in the City Treasury.

Section 6. That the Chief Financial Officer is authorized, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves.

Section 7. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 8. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Heidi K. Vonblum  
Deputy City Attorney


HKV:nja  
10/23/15  
Or.Dept: Planning  
Doc. No.: 1156769

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of DEC 08 2015.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 12/15/15  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on DEC 08 2015, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 16 2015

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By Sty. Mead, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

NOV 10 2015

, and on

DEC 16 2015

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By Sty. Mead, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20583

Passed by the Council of The City of San Diego on December 8, 2015, by the following vote:

**YEAS:** LIGHTNER, ZAPF, GLORIA, COLE, KERSEY, CATE,  
SHERMAN, ALVAREZ, EMERALD.  
**NAYS:** NONE.  
**NOT PRESENT:** NONE.  
**RECUSED:** NONE.

AUTHENTICATED BY:

**KEVIN L. FAULCONER**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By: Jeannette I. Santos, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-20583 (New Series) of The City of San Diego, California.


I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on November 10, 2015, and on December 16, 2015.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By:  , Deputy