



DATE: February 23, 2011

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **OPTION AND PURCHASE AGREEMENT WITH SANDAG FOR THE SALE OF A PORTION OF PROPERTY TO BE ACQUIRED FROM RINCON SAN LUISENO BAND OF MISSION INDIANS FOR OFFSITE MITIGATION FOR THE SAN LUIS REY RIVER FLOOD CONTROL PROJECT AND BUDGET APPROPRIATION**

SYNOPSIS

Staff recommends that the City Council approve an option and purchase agreement with the San Diego Association of Governments for the sale of approximately 37.34 acres of the 82.84 acres, more or less, of real property located along the San Luis Rey River, south of State Route 76 and west of Gird Road in the Bonsall/Fallbrook area, comprised of Assessor Parcel Nos. 124-140-22, 23 and 24, and 124-150-26 to be acquired from the Rincon San Luiseno Band of Mission Indians, of which 45.5 acres of the total 82.84-acre site is required for offsite habitat mitigation for the San Luis Rey River Flood Control Clearing Project; approve a budget appropriation in the amount of \$2,005,987.69 from the available Unassigned Fund Balance of the SLRR Major Water Course Fund 510 (account 510.3100.0001) to the SLRR Flood Control Project expenditure account (account 905831100510.5703) for the property acquisition and flood control activities; and authorize the Mayor to execute the agreement, staff to conclude the transaction, and the execution of deeds and other instruments required to fulfill the terms of the option and purchase agreement.

BACKGROUND

The City, through a cooperative agreement with the United States Army Corp of Engineers ("USACE") has made significant improvements to channelize the San Luis Rey River to provide flood control protection for persons and property within the San Luis Rey Valley from College Boulevard to the Pacific Ocean (the "Project"). The City acquired and provided the real property necessary for the Project and contributed funds for the construction of the improvements. Properties acquired for the Project included those needed for flood control, and habitat mitigation and restoration.

Due to a delay in turning the Project over to the City for the annual maintenance of the river channel after the construction of the improvements, as allowed under the various permits issued for the Project, the riverbed became overgrown with native and exotic vegetation. This overgrowth not only reduced the projected flood control capacities of the Project, it also became populated with threatened and endangered wildlife species.

The City's inability to annually maintain the channel to provide the intended level of flood protection to persons and property within the project area has delayed the revision of the

Federal Emergency Management Agency (“FEMA”) Flood Maps. The revision to the FEMA Flood Maps would remove the properties within the project area out of the flood plain and riskier flood zone designations, thereby relieving the owners from the additional cost of carrying flood protection insurance.

In efforts to provide the designed level of flood control for property owners and persons within the project area, the City worked with the USACE, California Department of Fish and Game (“CDFG”), and the United States Fish and Wildlife Service (“FWS”) to be able to maintain the river channel as originally permitted under the Project. However, because the original permits for the project and annual channel clearing work had expired due to the delay in turning the Project over from federal jurisdiction to the City, new consultations with the regulatory agencies were required and resulted in higher levels of onsite and offsite habitat mitigation and restoration.

The recently obtained California Endangered Species Act Permit and Streambed Alteration Agreement for the Project require that approximately 164 acres is required between the within the river project between I-5 and College Boulevard be designated and set aside for habitat and that an additional 45.5 acres of offsite mitigation land be acquired and maintained to offset the impacts of the channel clearing. The total clearing project is planned in three phases; Phase 1 covers the reach between I-5 to Benet Road, Phase 2 covers Benet Road to Douglas Drive and Phase 3 from Douglas to College Boulevard.

The USACE, CDFG and FWS (collectively the “Regulatory Agencies”), have identified and designated real property owned by the Rincon San Luiseno Band of Mission Indians of the Rincon Reservation, (“Rincon”), located along the San Luis Rey River, south of State Route 76 and west of Gird Road, comprised of Assessor Parcel Nos. 124-140-22, 23 and 24, and 124-150-26 (the “Rincon Property”), as the offsite habitat mitigation land for the Project. Rincon’s total land holdings in the designated offsite mitigation area consist of approximately 82.84 acres of “non-tribal lands”, which was acquired for habitat mitigation related to tribal casino improvements that were subsequently provided for on tribal lands and no longer need for that purpose.

The acquisition of 45.5 acres of the Rincon Property will meet the City’s offsite mitigation obligations required by CDFG under California Endangered Species Act and the other Regulatory Agencies for the Project. In initial discussions and negotiations for the acquisition of the 45.5 acres to meet the offsite mitigation required for the project, Rincon indicated that it will only sell the property in its entirety at a price of \$3,154,000 or \$38,000 per acre.

In an effort to reduce the City’s costs in acquiring the required offsite mitigation area for the Clearing Project as only 45.5 acres are needed to meet the Project requirements (the “Mitigation Parcel”), the City sought assistance from other agencies that may need or have an interest in acquiring property within the San Luis Rey River Valley for mitigation or other open space needs. Contacts and discussions were held with the State Department of Transportation (“Caltrans”), San Diego County Parks Department (“County Parks”) and the San Diego Association of Governments (“SANDAG”) to assist in the acquisition of the Rincon Property.

Caltrans indicated that it couldn't assist in the acquisition because the purchase would be an advance acquisition for a phase of the State Route 76 widening project that has not been certified and such a purchase could jeopardize federal funding for the project. County Parks expressed an interest, but could not make a monetary commitment without extensive studies and approval processes that didn't meet the timing requirements set for the Project. SANDAG, not having similar restrictions in acquiring property for advance projects, has agreed to share in the cost by funding the purchase of the remaining 37.34 acres, more or less, of Rincon Property not needed for the Project (the "Remainder Parcel"), subject to an independent appraisal supporting Rincon's selling price of \$38,000 per acre.

With the verbal commitment by SANDAG, the City and Rincon entered into a purchase and sale agreement on August 18, 2010, to purchase the Rincon Property (the "Purchase Agreement") contingent upon the City formalizing the SANDAG commitment to share in the cost of the acquisition, and the verification of the actual size of the Rincon Property which has been verified by the appraiser to be 82.84 acres rather than the approximate 83 acres shown in the Purchase Agreement.

After entering into the Purchase Agreement staff and SANDAG negotiated the terms of an option and purchase agreement for SANDAG's participation in the acquisition of the Rincon Property under which SANDAG would have the ability to designate another agency(s) to which title in the Mitigation Parcel would be transferred to meet offsite mitigation requirements.

ANALYSIS

The terms of an option and purchase agreement have been reached with SANDAG for the cost-sharing in the purchase of the Rincon Property and summarized below.

Purchase Price and Cost Sharing: The escrow to purchase the Rincon Property is between the City, as Buyer, and Rincon, as Seller. The total purchase price for the Rincon Property is the adjusted amount of \$3,148,000 (the "Purchase Price"), of which the City will be paying \$1,729,000 for the Mitigation Parcel and the SANDAG contribution to be paid through escrow is the sum of \$1,419,000 for the Remainder Parcel. The Purchase Agreement provides for the adjustment of the Purchase Price based upon the determination of the actual acreage of the Rincon Property which has been determined to be 82.84 acres versus the approximate 38 acres as stated in the Agreement. The City shall invoice SANDAG for its share of the Purchase Price and direct the funds be deposited directly into escrow for the closing of the transaction.

Escrow and Title Fees: City and Rincon shall be responsible for the costs of escrow and title insurance as set forth in the Purchase Agreement and SANDAG shall not be responsible for such costs.

Title at Close of Escrow: Upon the close of escrow, title to the Rincon Parcel shall vest in the City in fee simple interest.

Division of Property: Following the close of escrow City shall cause the division of the Rincon Parcel to legally create the Mitigation Parcel and the Remainder Parcel in accordance with County of San Diego requirements and regulations.

Conveyance of Title to Remainder Parcel. Within two (2) years following the close of escrow, SANDAG shall in writing delivered to City designate the agency or agencies to which title in Remainder Parcel is to be conveyed. If the designated agency desires title insurance, the designated agency shall pay the premium for a CLTA Standard Policy of Title Insurance. City shall not be called upon or be liable for any costs related to the filing of the grant deed or title insurance for the Remainder Parcel.

Entering into the proposed option and purchase agreement with SANDAG provides the City with the opportunity to meet its offsite mitigation requirements for the Project without the need to acquire more land than needed for the project.

FISCAL IMPACT

On January 6, 2010, the City Council approved the sale of City-owned real property along State Route 76 in the amount of \$2,005,987.69 to the California Department of Transportation ("Caltrans"), which was needed for the State Route 76 widening project between Melrose Drive and Mission Road in Bonsall. As part of the January 6, 2010, action City Council appropriated the proceeds from the sale of the property to the San Luis Rey River Flood Control Clearing Project (account 905831100510.5703) to be used in part to fund the acquisition of the 45.5 acres of the Rincon Property needed to provide offsite mitigation for the Project. The \$2,005,987.69 needs to be transferred from the CIP Unassigned Fund Balance of the SLRR Major Water Course Fund 510 (account 510.3100.0001) and allocated to the SLRR Flood Control Clearing Project expenditure account (account 905831100510.5703) for the property acquisition and future upcoming channel-clearing costs.

The total Purchase Price for the Rincon Property is \$3,148,000. In the August 18, 2010, action approving the Purchase Agreement with Rincon, the City Council authorized the amount of \$1,760,000 to be used from said account for the land acquisition for the Mitigation Parcel now established at \$1,729,000 with the additional funds allocated to costs related to the needed appraisal, environmental review, survey, title insurance policy and escrow closing costs. The balance of the Purchase Price in the amount of \$1,419,000 will be paid by SANDAG under the proposed option and purchase agreement. In the event the sale of the Remainder Property is not consummated with SANDAG, the City has the right to terminate the Purchase Agreement with Rincon.

\$1,760,000 of the \$2,005,987.69 is requested to be transferred from the Unassigned Fund Balance of the SLRR Major Water Course Fund 510 (account 510.3100.0001) and allocated to the SLRR Flood Control Clearing Project expenditure account (account 905831100510.5703) for the property acquisition and related costs. The balance of the funds transferred, i.e., \$245,987.69 will be retained in the SLRR Flood Control Project (account 905831100510.5703) and used for future related Project costs.

COMMISSION OR COMMITTEE REPORT

Does not apply.

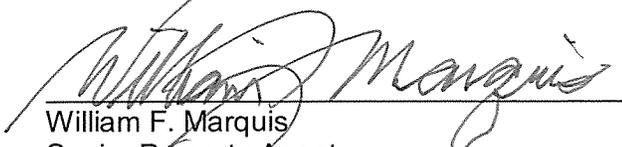
CITY ATTORNEY’S ANALYSIS

The referenced document has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council approve an option and purchase agreement with the San Diego Association of Governments for the sale of approximately 37.34 acres of the 82.84 acres, more or less, of real property located along the San Luis Rey River, south of State Route 76 and west of Gird Road in the Bonsall/Fallbrook area, comprised of Assessor Parcel Nos. 124-140-22, 23 and 24, and 124-150-26 to be acquired from the Rincon San Luiseno Band of Mission Indians, of which 45.5 acres of the total 82.84-acre site is required for offsite habitat mitigation for the San Luis Rey River Flood Control Clearing Project; approve a budget appropriation in the amount of \$2,005,987.69 from the available Unassigned Fund Balance of the SLRR Major Water Course Fund 510 (account 510.3100.0001) to the SLRR Flood Control Project expenditure account (account 905831100510.5703) for the property acquisition and flood control activities; and authorize the Mayor to execute the agreement, staff to conclude the transaction, and the execution of deeds and other instruments required to fulfill the terms of the option and purchase agreement.

PREPARED BY:



William F. Marquis
Senior Property Agent

SUBMITTED BY:



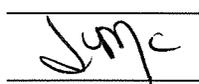
Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Donald L. Hadley, Deputy City Manager



Jane McVey, Economic and Community Development Director



Douglas E. Eddow, Real Property Manager



Teri Ferro, Financial Services Director



OPTION AND PURCHASE AGREEMENT
[and Joint Escrow Instructions]

This OPTION AND PURCHASE AGREEMENT (this "Agreement"), dated January 25, 2011 solely for identification purposes, is entered into by and between the CITY OF OCEANSIDE, a California Charter City created by its charter and California Statute ("City"), and the San Diego Association of Governments, created and existing pursuant to California Statute ("SANDAG"). The effective date of this Agreement shall be the date that this Agreement is approved by the City (the "Effective Date").

RECITALS

WHEREAS, City, in conjunction with the United States Army Corp of Engineers ("USACE") has made significant improvements to the San Luis Rey River to provide flood control protection for persons and property within the boundaries of the City of Oceanside from College Boulevard to the Pacific Ocean (the "San Luis Rey River Flood Control Project" or "SLRRFCP");

WHEREAS, in order to maintain sufficient flood protection capacity within the channel of the SLRRFCP it is necessary that the USACE and City clear vegetation and other obstructions from the channel, which portion of the project requires the acquisition of an additional 45.5 acres of habitat mitigation land to offset the loss of riparian and riparian scrub habitat due to the project;

WHEREAS, the USACE, California Department of Fish and Game ("CDFG") and United States Fish and Wildlife Service ("FWS"), have identified real property consisting of approximately 82.84 acres, more or less, owned by the Rincon San Luiseno Band of Mission Indians of the Rincon Reservation, California, a federally recognized Indian Tribe ("Rincon"), within the County of San Diego, State of California, located along the San Luis Rey River, south of State Route 76 and west of Gird Road, comprised of Assessor Parcel Nos. 124-140-22, 23 and 24, and 124-150-26 (the "Rincon Parcel" and sometimes referred to as the "Property"), as more particularly described in a legal description thereof marked Exhibit "A" and shown on plats thereof marked Exhibit "B", attached hereto and incorporated herein, as being suitable replacement habitat land;

WHEREAS, SANDAG in carrying out its responsibilities for the San Diego Regional Transportation Plan ("RTP"), Regional Transportation Improvement Program ("RTIP") and corridor studies, and that of the San Diego Regional Transportation Commission ("RTC"), works with the various public agencies within San Diego County in the planning, funding and construction of various infrastructure projects throughout the region, many of which projects will also require the acquisition of habitat mitigation land;

WHEREAS, City and Rincon have entered into that certain Purchase and Sale Agreement, dated August 18, 2010 (the "Purchase and Sale Agreement"), under the terms of which City, as Buyer, and Rincon, as Seller, have opened escrow for the purchase and sale of the Rincon Parcel for the purpose of providing the additional 45.5 acres of habitat mitigation land needed for the SLRRFCP (the "Mitigation Parcel"), which sale is contingent upon City and SANDAG entering into an agreement whereby SANDAG agrees to buy the remaining 37.34, more or less, acres of the Rincon Parcel (the "Remainder Parcel") concurrently with the close of escrow to be used as mitigation for a project to be designated by SANDAG;

WHEREAS, City and SANDAG desire to enter into this Agreement to provide for City to grant to SANDAG and SANDAG to obtain from City, upon the terms set forth in this Agreement, an option to acquire the Remainder Parcel, and the right of SANDAG to designate the party or parties to whom the Remainder Parcel is to be conveyed to from the City; and

WHEREAS, City and SANDAG acknowledge that the purpose of this Agreement is for the fulfillment of City's obligations under California Endangered Species Act Incidental Take Permit No. 2081-2007-029-05 between City and CDFG; the Agreement Regarding Proposed Stream or Lake Alteration Notification No. 1600-2007-0173-R5 executed by City and CDFG, dated February 5, 2008; and the Post Authorization Decision Document/Supplemental Environmental Impact Statement/Environmental Impact Report/Post Authorization Change Report certified by City for the SLRRFCP, SCH 99061056, date August 15, 2007, with regard to the Mitigation Parcel; and the fulfillment of similar obligations for a project to be identified by SANDAG, with regard to the Remainder Parcel.

AGREEMENT

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and SANDAG do hereby mutually agree as follows:

1. OPTION TO ACQUIRE.

1.1 Grant of Option. Pursuant to the provisions of Section 410 of the Purchase and Sale Agreement, City hereby grants to SANDAG an option to purchase the Remainder Parcel, upon all of the terms, covenants, and conditions contained in this Agreement (the "Option").

1.2 Option Period. This Option shall commence on the Effective Date hereof and, subject to Section 1.5, shall continue until the end of the Inspection and Feasibility Period as set forth in the Purchase and Sale Agreement, i.e. February 18, 2011, or as said date may be extended by mutual agreement of City and SANDAG.

1.3 Consideration for Option. Upon its exercise of the Option, SANDAG shall pay to City **a sum that is currently estimated at One Million Four Hundred Eighteen Thousand Nine Hundred Twenty Dollars and 00/100 Dollars (\$1,418,900.00)** (the "Option Payment"), or if the appraised value is greater or less than \$38,000 per acre and City and Rincon agree to adjust the purchase price of the Rincon Parcel to the appraised value, the Option Payment shall be adjusted accordingly to be the same per acre amount to be paid for the Rincon Parcel. In no event, however, shall SANDAG pay more than 110% of the appraised value or more than \$100,000 over the appraised value, whichever is greater, for the Remainder Parcel. The Option Payment shall be part of the consideration for City's grant of the Option and shall be applicable to the purchase price for the Rincon Parcel. City shall invoice SANDAG for the amount for the Option Payment once that amount has been agreed upon by the parties.

1.4 Exercise of Option. In the event SANDAG elects to exercise the Option to purchase the Property and has performed all acts in the time and manner as required by the terms hereof, and is not in default under any provision of this Agreement, SANDAG shall exercise the Option by delivering to City, on or before 4:00 p.m. Pacific Time on the last day of the Option Period, written notice of SANDAG's election to acquire the Property.

1.5 Automatic Termination. In the event: (i) SANDAG does not exercise the Option to purchase the Remainder Parcel in the manner set forth in Section 1.4 of this Agreement prior to the expiration of the Option Period, the Option shall automatically terminate without any notice to SANDAG, and all rights of SANDAG in and to the Remainder Parcel shall then and there cease. Such termination shall not release SANDAG from its obligations pursuant to this Section 1.5 and Sections 6.1 and 6.3 hereof.

1.6 Document to Remove Cloud. This Agreement constitutes only an Option to purchase the Remainder Parcel, and although the Option granted hereby shall automatically terminate with respect to the Remainder Parcel unless exercised within the times provided for herein, or shall otherwise terminate as provided in Section 1.5, SANDAG shall execute, acknowledge and deliver to City within ten (10) days after City's request therefor, any quitclaim deed or other document(s) required by a reputable title company of City's choice, which said title company might require to remove any cloud from the title of City and/or Rincon to the Rincon Parcel that might arise as a result of the Option herein granted.

2. INSPECTIONS AND REVIEW.

2.1 Title Review. SANDAG hereby acknowledges that City has previously provided SANDAG with a copy of the Second Amended Preliminary Report for the Rincon Parcel issued by Chicago Title Company, dated September 1, 2010 (the "Preliminary Report"), together with legible copies of all support documents for the exceptions contained in the Preliminary Report. SANDAG's execution and delivery of this Agreement shall constitute SANDAG's approval of all the title exceptions in the Preliminary Report. In the event SANDAG elects to exercise the Option, SANDAG, for itself and its designee(s), shall be deemed to have agreed to accept title to the Remainder Parcel.

Upon the issuance of any amendment or supplement to the Preliminary Report that adds additional exceptions, City shall provide SANDAG with a copy of the amended or supplemented report together with copies of support documents for the additional exceptions.

2.2 Property Documents. City will provide SANDAG with access to all documents in its possession regarding the Rincon Parcel but makes no representations or warranties as to the accuracy or reliability thereof. City makes no representations or warranties, express or otherwise, regarding the condition of title to the Rincon Parcel or the condition of the Rincon Parcel. SANDAG is obligated to investigate, inspect and analyze the condition of the Rincon Parcel and the condition of title to the Rincon Parcel to its own satisfaction and expressly agrees that in entering into the Agreement, it is relying on its own investigation as to the condition of the Rincon Parcel and condition of title to the Rincon Parcel, except as expressly provided herein. During the Inspection and Feasibility Period set forth in the Purchase and Sale Agreement, which is incorporated herein and made a part hereof as if set forth herein in its entirety, SANDAG (as agent of the City to carry out the limited purposes of this Section 2.2), at its sole cost and expense, shall have the right to make such independent investigations, inspections, tests, reviews, studies or surveys (collectively, the "Investigations") as SANDAG deems necessary or appropriate concerning the condition or suitability of the Rincon Parcel for habitat conservation purposes by SANDAG or its designee(s), including, without limitation, any desired Investigations of the soils or groundwater conditions, including a study and determination as to the existence of any noxious, toxic or any hazardous materials or hazardous substances. SANDAG's Investigations of the Rincon Parcel shall be conducted upon no less than 48 hours notice to City. City shall have the right, but not the obligation, to accompany SANDAG during such Investigations. SANDAG shall repair any and all damage to the Rincon Parcel caused by such Investigations in a timely manner and shall

indemnify, defend and hold City harmless from and against any liability arising from SANDAG's Investigations hereunder. If SANDAG disapproves of the results of the inspection and review, SANDAG may elect, prior to the last day of the Option Period, to terminate this Agreement by giving City written notification prior to the last day of the Option Period. If SANDAG fails to properly notify City of the intent to terminate this Agreement as provided in this Section 2.2, SANDAG shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

3. CONDITIONS TO CLOSE OF ESCROW.

As a condition of the Close of Escrow, as defined in the Purchase and Sale Agreement ("Close of Escrow"), City and SANDAG shall have entered into this Agreement for the acquisition of the Remainder Parcel by SANDAG. In the event SANDAG exercises the Option, City and SANDAG hereby agree as follows:

a. On or before the Close of Escrow, SANDAG shall have deposited into Escrow the Purchase Price for the Remainder Parcel. With respect to the Purchase Price, the parties agree that the Purchase Price shall be based on a per acre price of \$38,000 times 38+/- gross acres of the Remainder Parcel, however, the Option payment may be adjusted as provided in Section 1.3, above. SANDAG shall not be responsible for paying any closing costs.

b. As a condition to the Close of Escrow, during the Feasibility Period, City, at its cost and expense, shall order an appraisal of the Rincon Parcel ("Appraisal") which Appraisal shall be performed by an MAI Appraiser. In the event that the appraised value of the Rincon Parcel as set forth in the Appraisal is less than the Purchase Price, City shall have the right to terminate the Purchase and Sale Agreement, unless Rincon is agreeable to renegotiating the Purchase Price to equal the appraised value set forth in the Appraisal. In the event that the appraised value of the Rincon Parcel as set forth in the Appraisal is more than the Purchase Price, Rincon shall have the right to terminate this Agreement, unless City and SANDAG are agreeable to renegotiating the Purchase Price to equal the appraised value set forth in the Appraisal.

c. SANDAG, or it designee, shall accept the Property in its "As-Is", "Where-Is" and "With-All-Faults" condition, except as otherwise provided in this Agreement.

4. CONVEYANCE OF TITLE.

4.1 Title at Close of Escrow. Upon the Close of Escrow, title to the Rincon Parcel shall vest in the City in fee simple interest.

4.2 Division of Property. Following the Close of Escrow City shall cause the division of the Rincon Parcel to legally create the Mitigation Parcel and the Remainder Parcel in accordance with County of San Diego requirements and regulations.

4.3 Conveyance of Title to Remainder Parcel. Within two (2) years following the Close of Escrow, SANDAG shall in writing delivered to City designate the agency or agencies to which title in Remainder Parcel is to be conveyed. Within fifteen (15) days of receipt of said written designation, City shall deliver a grant deed, in recordable form, free and clear of all tenancies, liens and encumbrances to the designated agency or agencies. City shall discharge any and all obligations and liabilities for the Remainder Parcel before conveyance of the grant

deed to the designee(s). Said designee(s) shall be responsible for the filing of the grant deed with the County Recorder and for the payment of any and all real property transfer taxes and documentary transfer taxes (if any) payable upon recordation of the grant deed for the Remainder Parcel, and any sales, use or ad valorem taxes connected therewith. If the designated agency desires title insurance, the designated agency shall pay the premium for a CLTA Standard Policy of Title Insurance. City shall not be called upon or be liable for any costs related to the filing of the grant deed or title insurance for the Remainder Parcel.

4.4 Notice of Claims Affecting Remainder Parcel. During the time period of up to two years described in Section 4.3, City shall immediately notify SANDAG of any claims, lawsuits, condemnation proceedings, rezoning or other governmental order or action, or any threat thereof, of which City has actual knowledge, which might affect the Remainder Parcel or any interest of SANDAG with respect to the Remainder Parcel.

5. CITY REPRESENTATIONS AND WARRANTIES.

5.1 Time. The representations and warranties by City in this Article are made as of the date of this Agreement and, subject to Sections 1.4 and 4 herein, as of the close of Escrow and will survive the Close of Escrow and the recording of the Grant Deed conveying title in the Rincon Parcel to City.

5.2 Title. As of the date of the Close of Escrow as defined in the Purchase and Sale Agreement, City will be the legal and equitable owner of the Property, with full right to convey. City has not previously conveyed title to the Property to any other person. City has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Property. The Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the exceptions set forth in the Preliminary Report. City has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title in the Remainder Parcel to SANDAG or its designee(s).

5.3 Hazardous Substances. To the best of City's knowledge the Property is free from Hazardous Substances and is not in violation of any Environmental Laws. City has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property is or has been in violation of any Environmental Law, or informing City that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

5.4 Violation of Law. To the best of City's knowledge, no condition on the Property violates any material health, environmental, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

5.5 Litigation. To the best of City's knowledge, there is no pending or threatened litigation, administrative proceeding, or other legal or governmental action or condemnation with respect to the Property or which may adversely affect City's ability to fulfill the obligations of this Agreement.

5.6 Bankruptcy. No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to City.

5.7 No Defaults. City has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of City's obligations or liabilities pertaining to the Property.

5.8 Special Studies Zone. To the best of City's knowledge, the Property is not within a special studies zone under the Alquist-Priolo Geologic Hazard Act [Pub. Res. Code §§ 2621.9 et seq.] (which generally requires sellers to inform purchasers if property is within a special studies zone, which zones are generally near potentially or recently active earthquake faults).

5.9 Foreign Investment Real Property Tax Act. City is not a "foreign person" within the meaning of 42 USC §1445(f)(3). City understands and agrees that SANDAG may disclose the certification made in this Section to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

5.10 Disclosure. To the best of City's knowledge any information that City has delivered to SANDAG directly or through City's employees, is complete and accurate in all material respects. City has disclosed to SANDAG all material facts with respect to the Property to which City has access.

6. MISCELLANEOUS.

6.1 Attorney's Fees. If any legal action or other proceeding, including mediation, arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for the declaratory relief, suite, proceeding, or arbitration that the parties shall first attempt to resolve the dispute by submitting the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon, by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

6.2 Notices. All notices required to be delivered under this Agreement to the other party must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To City: City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attn: William F. Marquis, Senior Property Agent
Fax: (760) 435-5169

Copy to: Barbara L. Hamilton, Assistant City Attorney
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Fax: (760) 435-3970

To SANDAG: San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101-4231
Attn: Richard G. Chavez, P.E.
Fax: (619) 515-1174

Copy to: San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101-4231
Attn: Executive Director
Fax: (619) 699-1995

6.3 Broker's Fee. City and SANDAG each represents and warrants to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transactions contemplated by this Agreement. Each party agrees to indemnify and hold the other harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorney's fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay broker's commissions and/or finder's fees.

6.4 Assignment. SANDAG shall have no right to assign the Option herein granted or any right or privilege SANDAG might have in the Option, by operation of law or otherwise, without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion. Any attempt by SANDAG to make an assignment other than with the prior written consent of City shall be null and void. City's consent to an assignment by SANDAG shall not relieve SANDAG from its obligations under this Agreement. Notwithstanding the foregoing, the parties hereto contemplate SANDAG designating a third party agency(s) to which the Remainder Parcel may be conveyed and that such designation shall be considered as an assignment, but such assignment shall not be effective unless and until the assignee(s) agrees in writing to carry out and observe SANDAG's agreements hereunder.

6.5 Time of the Essence. Time is of the essence with respect to each of the terms, covenants and conditions of this Agreement.

6.6 Binding on Heirs. Subject to the limitations set forth in Section 6.4 above, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

6.7 Modification, Waivers and Entire Agreement. Any amendments or modifications to this Agreement must be in writing and executed by both parties to this Agreement. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the party shall not be construed as a waiver of any succeeding breach of the same or other

covenants, agreements, restrictions or conditions thereof. This Agreement contains the entire agreement of the parties hereto with respect to the matters covered hereby, and all negotiations and agreements, statements or promises between the parties hereto or their agents with respect to this transaction are merged in this Agreement, which alone expresses the parties' rights and obligations. No prior agreements or understandings not contained herein shall be binding or valid against either of the parties hereto.

6.8 Interpretation; Governing Law; Venue. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Article and Section titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. In the event of any litigation between the parties hereto, subject to Section 6.1, the Superior Court of the State of California in and for the County of San Diego shall have exclusive jurisdiction.

6.9 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6.10 Authority to Execute. The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

6.11 Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

6.12 No Recordation. SANDAG shall not cause or allow this Agreement, short form, memorandum or assignment hereof to become of record in any public office without City's prior written consent, which consent may be withheld in City's sole and absolute discretion.

6.13 Further Assurances. Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

6.14 No Recourse Under Agreement. All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity,

and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

**REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Next Page]**

IN WITNESS WHEREOF, the parties hereto have executed this Option and Purchase Agreement as of the day and year first above written.

"City"
CITY OF OCEANSIDE, a California Charter City

By: _____
Mayor

Dated: _____
(Effective Date)

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: *Brian Hamilton* ASST.
City Attorney

"SANDAG"
San Diego Association of Governments,
created and existing pursuant to California Statute

By: _____
Its: Executive Director

Dated: _____

APPROVED AS TO FORM:

By: _____
Its: General Counsel

Dated: _____

**SANDAG'S SIGNATURE(S) MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC
USING CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT FORM**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)ss.

On _____ before me, _____,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable for persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer – Title(s): _____
- Partner – Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

LEGAL DESCRIPTION

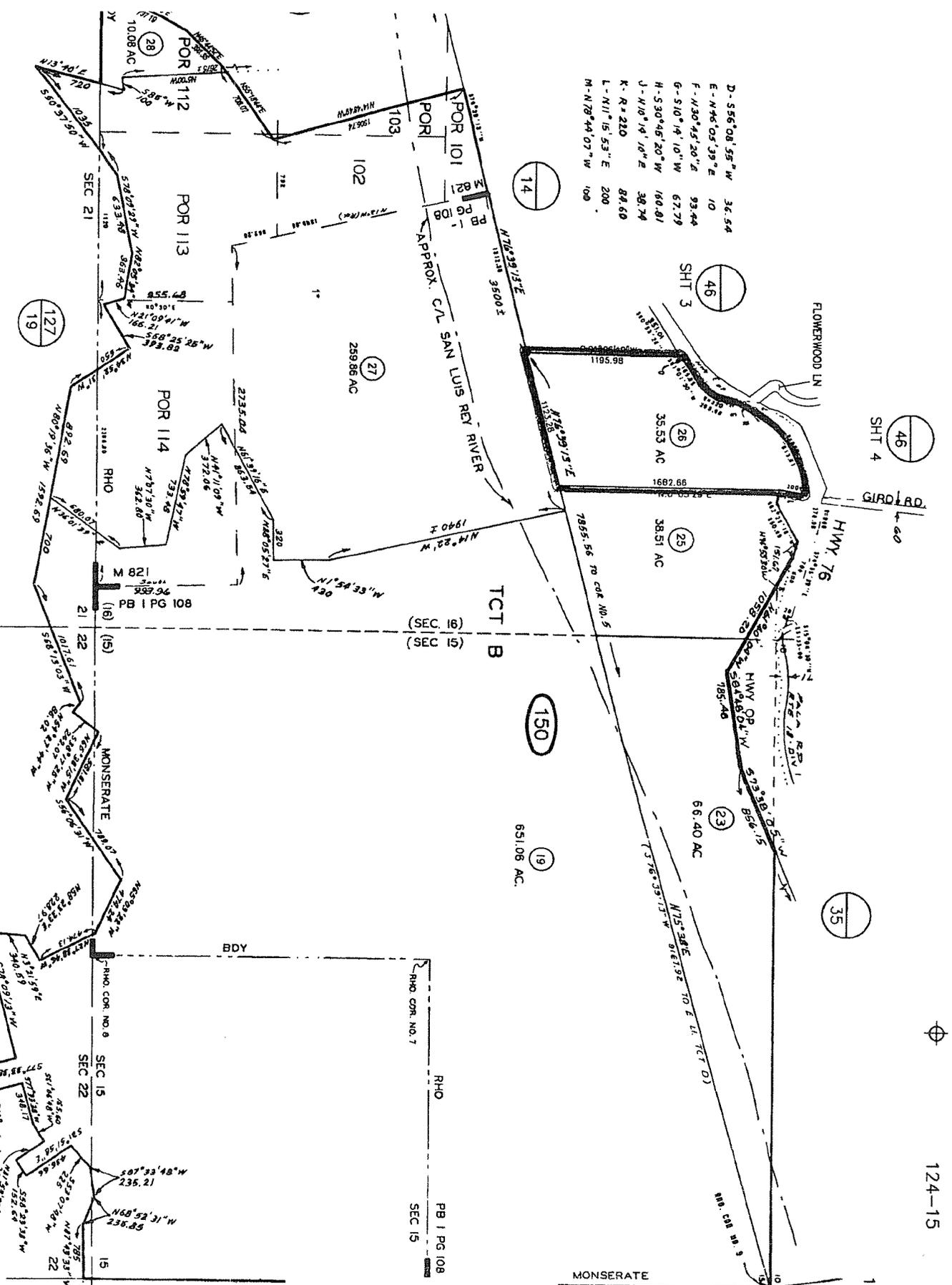
Lots 74, 75 and 76 of San Luis Rey Heights Tract, in the County of San Diego, State of California, according to Map thereof No. 2323, filed in the Office of the County Recorder of San Diego County, June 25, 1946.

Together with that portion of Tract "B" of the Monserate Rancho, in the County of San Diego, State of California, according to Map there of on file in the Office of the County Recorder of San Diego, Recorded in Book 1, Page 108 of Patents, more particularly described as follows:

Beginning at a point on the Northerly line of the land conveyed by William E. Gird to C.A. Canfield by deed dated September 4, 1912 and Recorded in Book 577, Page 86 of Deeds said point of beginning being distant South 77°09'32" West (South 76°39'13" West Map 2323 & LS 460) 7855.56 feet along the Northerly line of the land so conveyed to said C. A. Canfield feet from the corner common to Sections 10, 11, 14 and 15, Township 10 South, Ranger 3 West, San Bernardino Meridian, said last mentioned point being on the east boundary line of Tract "B" of Rancho Monserate and marked "M-5" of the external survey of said Rancho; thence along said Northerly Line of the land so conveyed to C.A. Canfield, North 77°09'32" East (North 76°39'13" East Map 2323 & LS 460) 1123.28 feet; thence leaving said Northerly line, North00°03'29" East 1682.66 feet to the Southwesterly end of that course having a bearing and distance of (North 11°15'53" East 200.00 feet) of the land described in final order of condemnation in the Superior Court of San Diego Case No. 147301, a copy of which order was filed in the Office of the County Recorder of San Diego County, January 17, 1949 as Document No. 1960 in book 3072, Page 415 of Official Records, said land being a portion of Stat of California highway; thence along the boundary of the land described in said final order of condemnation the following seven courses, North 11°39'48" East 199.93 feet (North 11°15'53" East 200.00 feet) to the beginning of a non tangent 840.00 foot radius curve, concave Southeasterly, from which a radial bears South 03°21'00" East (South 03°44'07" East); thence Southwesterly along said curve through a central angle of 55°29'45" (55°30'33" an arc distance of 813.61 feet (813.81 feet); thence tangent to said curve South 31°09'15" West (South 31°39'48" West) 160.81 feet; thence south 10°38'01" West 67.82 feet (South 10°14'10" West 67.79 feet) to the beginning of a tangent 320.00 foot radius curve, concave Northwesterly; thence Southwesterly along said curve through a central angle of 50°47'20" an arc distance of 283.66 feet; thence tangent to last said curve South 61°25'21" East 165.89 feet (South 61°01'30" East 165.85 feet); thence South 56°32'46" West 41.58 feet (South 56°08'55" West 36.54 feet) to an intersection with a line that bears North 01°26'19" East (North 0°66' East Map 2323 & LS 460) from the point of beginning, said line also being the easterly line of San Luis Rey Heights Tract according to Map thereof No. 2323 on file in the Office of the County Recorder of San Diego County, thence along last said line South 01°26'19" West (South 0°56' West Map 2323 & LS 460) 1195.98 feet to the point of beginning.

END OF LEGAL DESCRIPTION

EXHIBIT "A"



- D - 56°08'55" W 36.54
- E - N46°05'39" E 10
- F - N30°44'20" E 93.44
- G - S10°14'10" W 62.79
- H - S30°46'20" W 160.01
- J - N10°14'10" E 38.74
- K - R = 220 84.60
- L - N11°15'53" E 200
- M - N78°44'07" W 100

MAP 821 - RANCHO MONSERATE
 PARTITION TCT B
 PB I PG 108 - RANCHO MONSERATE
 SEC 15, 21, 22 - T 10 S - R 3 W - POR
 ROS 8294, 8502

EXHIBIT "B"

1" = 800'

124-15