



DATE: August 18, 2010

TO: Honorable Mayor and City Council Members

FROM: Economic and Community Development Department

SUBJECT: **PURCHASE AND SALE AGREEMENT WITH THE RINCON BAND OF LUISENO MISSION INDIANS OF THE RINCON RESERVATION, CALIFORNIA TO ACQUIRE APPROXIMATELY 83 ACRES FOR \$3,154,000 AS PART OF THE SAN LUIS REY RIVER FLOOD CONTROL PROJECT**

### **SYNOPSIS**

Staff recommends that the City Council approve a Purchase and Sale Agreement with the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California for the City's acquisition of approximately 83 acres for \$3,154,000 as part of the mitigation requirements to complete the San Luis Rey River Flood Control Project; authorize the Mayor to execute the agreement; authorize the City Clerk to accept the grant deed; and authorize staff to consummate the transaction.

### **BACKGROUND**

In 1970, the San Luis Rey River Flood Control Project was authorized by the United States Congress to provide flood damage protection along the San Luis Rey River in Oceanside (the "Project"). The Project was designed to provide 5.4 miles of double levee, stone protection with a soft bottom channel, 1,330 feet of parapet walls, six interior drainage ponds, a 5-mile bike trail and 247.4 acres of habitat.

The construction of the Project began in 1987 by the United States Army Corp of Engineers ("Corps"). The Project was constructed in phases as funding was provided by Congress and the final phase of levee construction was completed in 2000.

In 1994, the U.S. Fish and Wildlife Service ("USFWS") designated the San Luis Rey River and surrounding area as critical habitat for the federally listed endangered species the "least Bell's vireo". Under the Endangered Species Act additional habitat study was mandated. This precluded the Corps from clearing vegetation that was beginning to grow in the earlier completed phases of the Project. The unmaintained vegetation developed into habitat for the least Bell's vireo, as well as another federally listed species, the "southwestern willow flycatcher".

With limited re-programmed funding and arduous negotiations with USFWS, the least Bell's vireo population grew from 8 pairs in 1987 to over 100 pairs in 2005. In addition, there were other habitat species found within the Project that were placed on the endangered species list. This placed the Project in a precarious situation inasmuch as the Corps could not clear the channel under the original operations and maintenance plan nor could the Project be turned over to the local sponsor (the City) for maintenance until the additional habitat study was completed and a new operations and maintenance plan was developed.

Years of being restricted from channel-clearing significantly reduced the flood conveyance capacity of the channel while the endangered species thrived. The flood conveyance capacity as authorized by Congress was no longer achievable due to the limited and/or no channel clearing of vegetation in the river.

A revised operations and maintenance plan was authorized to strike a balance between flood risk management and the environmental needs of the river. In 2007, another environmental impact report was completed addressing changes to the original operations and maintenance plan of the Project. The selected operations and maintenance plan ("O&M Plan") provided for a phased implementation program of vegetation management and sediment removal.

Phase 1 of the O&M Plan was completed in December of 2008, which increased the flood conveyance capacity of the channel. In order to initiate the Phase 2 vegetation removal portion of the O&M Plan additional activities are required to be completed such as the acquisition/restoration of an additional approximate 45 acres of habitat within the floodplain of the San Luis Rey River. The acquisition/restoration of additional habitat, the re-mowing of Phase 1 and the initial mowing of Phase 2, which is anticipated to occur in the fall of 2010, need to be completed in order to achieve a Project completion date of 2016.

A parcel of land owned by the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California, a federally recognized Indian Tribe ("Rincon"), located within the floodplain of the San Luis Rey River in San Diego County was identified by the USFWS as suitable habitat to satisfy the condition to acquire/restore the additional habitat. On May 4, 2010, the City and Rincon entered into a Letter of Intent ("LOI") for the acquisition of land in order to acquire/restore additional habitat. The LOI basically allowed staff to negotiate the terms and conditions of a purchase and sale agreement for approval by the City Council and Rincon's governing body.

## **ANALYSIS**

The purchase and sale agreement ("Agreement") provides for the acquisition of approximately 83 acres of land from Rincon. The Rincon property is located south of State Route 76, west of Gird Road within the floodplain of the San Luis Rey River in San Diego County, CA (the "Subject Property"). See Attachment "A" for a depiction of

the Subject Property. The Agreement for the acquisition of the Subject Property will satisfy the acquisition/restoration requirements of the O&M Plan for the Project to allow the Project to move towards completion.

However, the City only needs approximately 45 acres of the Subject Property to satisfy the acquisition/restoration requirements of the O&M Plan for the Project leaving a balance of approximately 38 acres (also depicted on Attachment "A"). Pursuant to discussions with the San Diego Association of Governments ("SANDAG"), SANGAG has expressed interest in acquiring the 38 acres not needed by the City ("Remainder Property") for completion and mitigation of the widening of State Route 76.

As a condition to consummating the Agreement with Rincon, the City and SANDAG will need to enter into a separate purchase and sale agreement for the Remainder Property at the same purchase price per acre. The purchase and sale agreement between the City and SANDAG will be negotiated and drafted during the due diligence period provided for in the Agreement as more particularly described below.

Other essential terms of the Agreement are generally described as follows:

1. The City has a 180-day feasibility period to perform its due diligence on the Subject Property, which shall include, but not be limited to:
  - a) Approval of a preliminary title report and a survey of the Subject Property.
  - b) Approval of an MAI appraisal.
  - c) Approval of the physical condition including an environmental assessment.
  - d) Obtaining approval of all applicable regulatory agencies.
2. The City will pay an earnest money deposit of \$25,000 within 10 days of the execution of the Agreement, applicable to the purchase price should the escrow close.
3. Close of escrow shall be within 15 days after the expiration of the feasibility period or waiver of all contingencies by the City.
4. Rincon shall pay the following costs in connection with the close of escrow:
  - a) All real estate excise or transfer, recording, documentary stamp or similar taxes, fees or expenses imposed in connection with the transfer of the Subject Property.
  - b) The premium associated with the issuance of a CLTA policy of title insurance in the amount of the purchase price.
  - c) Recording fees.
  - d) One-half of any escrow fees.

5. City shall pay the following costs in connection with the close of escrow:
  - a) Any additional premium associated with the issuance of an ALTA policy of title insurance.
  - b) If applicable, the cost associated with a survey pertaining to title.
  - c) One-half of any escrow fees.
6. Each party shall pay its own legal and other consultant fees incurred in connection with the transaction.
7. Rincon shall pay any and all broker's commission associated with the transaction.

### **FISCAL IMPACT**

The total purchase price to be paid to Rincon for the approximate 83-acre Subject Property is \$3,154,000. The total purchase comes out to \$38,000 per acre or approximately \$0.87 per square foot. The cost of the approximate 45 acres of the Subject Property needed by City is \$1,710,000 leaving an amount of \$1,444,000 to be paid by SANDAG to the City for the approximate 38-acre Remainder Property.

As a result of the recent sale of City-owned real property along State Route 76 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, the City received \$2,002,700. The proceeds from the sale of City-owned property along State Route 76 to Caltrans were appropriated to the Project (Account 905831100510.5703) to offset the cost to acquire the approximate 45 acres of the Subject Property.

The amount of \$1,760,000 will need to be allocated from said account (the \$1,710,000 land acquisition cost plus an additional \$50,000 for related appraisal, environmental review, survey, title insurance policy and escrow closing costs. The balance of the total purchase price in the amount of \$1,444,000 will be paid out of the proceeds of the sale of the Remainder Property to Caltrans. In the event the sale of the Remainder Property is not consummated with SANDAG, the City has the right to terminate the Agreement with Rincon.

The total cost of the Project is \$100,437,543. The \$1,760,000 needed to acquire the approximate 45 acres of the Subject Property is part of the City's share of the Project cost, which is \$25,328,157. The balance of the Project cost in the amount of \$75,109,386 is borne by the Federal government.

### **INSURANCE REQUIREMENTS**

Does not apply.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

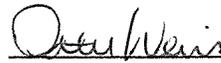
Staff recommends that the City Council approve a Purchase and Sale Agreement with the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California for the City's acquisition of approximately 83 acres for \$3,154,000 as part of the mitigation requirements to complete the San Luis Rey River Flood Control Project; authorize the Mayor to execute the agreement; authorize the City Clerk to accept the grant deed; and authorize staff to consummate the transaction.

PREPARED BY:



\_\_\_\_\_  
Douglas E. Eddow  
Real Estate Manager

SUBMITTED BY:



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Peter A. Weiss  
City Manager

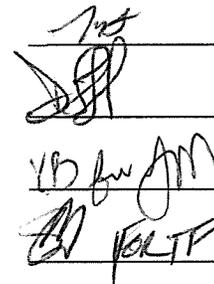
REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Don Hadley, Deputy City Manager

Jane McVey, Economic & Community Development Director

Teri Ferro, Financial Services Director



# PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of August 18, 2010 ("Effective Date"), by and between the CITY OF OCEANSIDE, a California municipal corporation, ("Buyer") and the RINCON BAND OF LUISENO MISSION INDIANS OF THE RINCON RESERVATION, CALIFORNIA, a federally recognized Indian Tribe ("Seller" or "Band"). The Effective Date shall be the date this Agreement is approved by the Oceanside City Council and signed by Seller.

WHEREAS, Seller, is the owner of that certain vacant real property consisting of approximately 83+/- gross acres located in along the San Luis Rey River in San Diego County;

WHEREAS, Buyer, in conjunction with the United States Army Corp of Engineers ("USACE") has made significant improvements to the San Luis Rey River within the boundaries of the City of Oceanside, which project is in need of additional habitat mitigation land;

WHEREAS, Buyer desires to purchase the above referenced property for the purpose of providing habitat mitigation for the above described project;

WHEREAS, Seller and Buyer are desirous of entering into a purchase and sale agreement whereby Seller agrees to sell that certain real property owned by Seller to Buyer and Buyer agrees to purchase said certain real property in accordance with the terms and conditions as set forth herein below;

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto agree as follows:

## ARTICLE I

### RECITALS

101. Description of Property. Seller is the owner of a fee interest in that certain real property, commonly referred to as the Rincon Parcels located south of Highway 76, west of Gird Road with in the floodplain of the San Luis Rey River in San Diego County, California ("Property"), which is more particularly described in Exhibit "A" and as illustrated and delineated on a sketch thereof marked Exhibit "B", respectively incorporated herein and made a part hereof. For the purposes of this Agreement said real property and the improvements thereon are collectively referred to as the ("Property").

102. Status and Powers of Seller. Seller is a federally recognized Indian tribe organized pursuant to the Articles of Association approved by the Commissioner of Indian Affairs March 15, 1960 and the Band's federally approved Constitution and is authorized to enter into this Agreement.

103. Status and Powers of Buyer. Buyer, is authorized by the laws of the State of California to purchase the Property from Seller and perform the actions and duties of the Buyer more particularly described in this Agreement. Buyer shall have the right to appoint a designee to take title to the Property or a portion thereof.

104. Purpose of Agreement. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer on the terms and conditions as set forth in this Agreement.

105. Public Benefit. This Agreement is for the benefit of the public and is in the furtherance of the public purposes of Buyer.

## ARTICLE II

### DEFINITIONS AND GENERAL PROVISIONS

201. Agreement. For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

202. Definitions in General. The terms defined in Exhibit "C" attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them in said Exhibit "C", unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this Purchase and Sale Agreement.

203. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, shall refer to this Agreement.

## ARTICLE III

### PURCHASE AND SALE OF PROPERTY

301. Sale of Property. Seller agrees to sell and Buyer agrees to purchase the Property on the terms and conditions set forth in this Agreement.

302. Purchase Price. The purchase price of the Property is **Three Million One Hundred Fifty-Four Thousand and No/100 Dollars (\$3,154,000.00)**, based on a per acre price of \$38,000 times 83+/- gross acres, (the "Purchase Price").

## ARTICLE IV

### CONDITIONS PRECEDENT

401. Conditions Precedent to Closing. Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedent set forth in Sections 402 through 411 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII "ESCROW", if any of the Conditions Precedent has not been fulfilled within the applicable time periods or if Buyer disapproves such, pursuant to this Article IV, any matter or matters for which Buyer's approval is required, Buyer may:

- (a) Waive the condition or disapproval and close Escrow with respect to the Property in accordance with this Agreement, without adjustment or rebate in the Purchase Price;
- (b) Cure the failure of the condition or representation and reduce the Purchase Price by the amount equal to the cost to cure; or
- (c) Terminate this Agreement by written notice to Seller.

402. Title. Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by Grant Deed, free and clear of all liens and encumbrances, subject to the following: Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of the Property and the condition of title to the Property 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 Property and condition of title to the Property, except as expressly provided herein.

403. Preliminary Title Report. Upon ordering the Escrow, Seller shall request a preliminary title report for the Property ("Preliminary Report") issued by Chicago Title Company ("Title Company") containing such exceptions as the Title Company would specify in a California Land Title Association ("CLTA") Standard Policy of Title Insurance (o commitment) or an American Land Title Association policy of title insurance (or commitment) if Buyer so requests and any additional title insurance coverage (at Buyer's cost), consistent with the Preliminary Report approved by Buyer.

Within thirty (30) calendar days after receipt of legible copies of the Preliminary Report and any supporting documents, Buyer shall give written notice to Seller of its disapproval of the Preliminary Report, any part thereof, or of any exceptions, or of the condition of title reflected in the Preliminary Report or the supporting documents. If Buyer gives written notice of disapproval as provided in this paragraph, Seller shall remove or otherwise cure, in a manner reasonably satisfactory to Buyer, the disapproved item or items at or before the Close of Escrow, as hereinafter defined. Seller may elect not to remove or cure any disapproved item or items by delivering written notice thereof to Buyer within ten (10) calendar days following the date of written notification of the disapproval. If Seller elects not to remove or cure any disapproved item or items, Buyer may terminate this Agreement by delivering a written notice of termination to Seller within ten (10) calendar days after the date that Buyer actually receives notice of Seller's election not to remove or cure any disapproved item.

This Agreement provides that Buyer will receive title free and clear of liens and encumbrances, subject to the provisions of Section 401. The parties recognize that certain encumbrances such as existing deeds of trust, tax liens, assessment liens, and the like will be discharged through Escrow as provided in this Agreement. Notwithstanding the giving of

any notice or any failure to give any notice with respect to these items, they shall be discharged through Escrow as provided in this Agreement.

From and after the effective date of the Preliminary Report, Seller shall not alter the condition of title without the express written consent of Buyer.

404. Title Policies. On or before the Close of Escrow, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium for a CLTA Standard Policy of Title Insurance in the face amount of the Purchase Price, showing title to the Property vested in the Buyer subject only to:

- (a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at Close of Escrow, except as set forth pursuant to Section 502 herein; and
- (b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement; and
- (c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by Buyer pursuant to this Agreement; and
- (d) Any lien voluntarily imposed by Buyer as of the Close of Escrow.

405. Physical Condition of the Property. Within ninety (90) calendar days after the date of this Agreement, Buyer shall, pursuant to Section 801 herein, review and approve or disapprove of the physical condition of the Property in Buyer's sole and absolute discretion. Seller shall not cause the physical condition of the Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buyer. Buyer agrees that the Property is being sold in its "AS-IS" and "WHERE-IS" condition, except as expressly provided for elsewhere herein.

406. Property Documents. Within twenty (20) calendar days after the date of this Agreement, Seller shall deliver to Buyer current copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, maintenance contracts, utility contracts, operating contracts, leases, maintenance contracts, service contracts, and other documents pertaining to the Property ("Property Documents") in the possession of Seller. Prior to the close of the Feasibility Period pursuant to Section 801 herein, Buyer shall review and approve or disapprove each Property Document. On or before the Close of Escrow, Seller shall assign to Buyer all of Seller's rights and remedies under the Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance satisfactory to Buyer. At the request of Buyer, the assignment of contracts shall exclude Seller's rights under any Property Documents designated by Buyer. At the request of Buyer, Seller shall use its good faith efforts to obtain the consent to assignment of any other parties to the Property Documents as specified by Buyer. At the request of Buyer, Seller shall terminate any Property Document designated by Buyer as authorized by the Property Document, by delivering notices to the other party

under the Property Document in sufficient time to terminate the Property Document prior to the Close of Escrow.

407. Non-foreign Affidavit. If applicable, on or before the Close of Escrow, Seller shall deliver to Buyer a non-foreign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445] executed by Seller.

408. Seller's Obligations. Seller shall have performed every material covenant, agreement, and promise pursuant to this Agreement and shall have executed the related documents executed or to be executed by Seller.

409. Seller's Representations. Seller affirms the truth and accuracy of all Seller's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement, subject to the provisions of Section 401.

410. Agreement with San Diego Association of Governments. Approximately 37.5 acres of the Property is needed in connection with the project to complete the widening of Highway 76 from Bonsall, CA to Interstate 15. As a condition to the Close of Escrow, Buyer and the San Diego Association of Governments ("SANDAG") shall have entered into a separate purchase and sale agreement ("SANDAG Agreement") for said approximate 37.5 acres for the same per acre purchase price and other pertinent terms and conditions as the Agreement, which SANDAG shall be in a position to close escrow concurrently as the Agreement. Failure of Buyer to consummate the SANDAG Agreement, for any reason whatsoever, shall give the Buyer the right to terminate the Agreement.

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

## ARTICLE V

### SELLER'S REPRESENTATIONS AND WARRANTIES

501. Time. The representations and warranties by Seller in this Article are made as of the date of this Agreement and as of the Close of Escrow and will survive the Close of Escrow and the recording of the Grant Deed.

502. Title. As of the date of this Agreement, Seller is or will be the legal and equitable owner of the Property, with full right to convey, subject to the provisions of Section 402. Unless this Agreement is terminated pursuant to Section 401, as of the Close of Escrow, Seller is the legal and equitable owner of a fee interest in the Property, with full right to convey said interest. Seller has not previously conveyed title to the Property to any other person. Seller 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, subject to

the provisions of Section 401. 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. Seller has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title to Buyer.

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

504. Violation of Law. To the best of Seller's knowledge, no condition on the Property violates any health, safety, fire, environment, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

505. Litigation. 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 Seller's ability to fulfill the obligations of this Agreement.

506. 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 Seller.

507. No Defaults. Seller is not in default of Seller's obligations or liabilities pertaining to the Property. There are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Seller 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 Seller's obligations or liabilities pertaining to the Property.

508. Special Studies Zone. 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).

509. Foreign Investment Real Property Tax Act. Seller is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Buyer understands and agrees that the Seller 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.

510. Disclosure. To the best of Seller's knowledge, any information that Seller has delivered to Buyer either directly or through Seller's agents or employees, is complete and accurate. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has access.

ARTICLE VI  
COVENANTS

601. Power to Enter into Agreements.

(a) Buyer is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Buyer in accordance with their terms and the terms of this Agreement.

(b) Seller is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Seller in accordance with their terms and the terms of this Agreement.

602. No Violation of Other Agreements.

(a) Buyer hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Buyer is a party or by which Buyer is bound, or constitutes a default under any of the foregoing.

(b) Seller hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing.

603. Payment of Seller's Obligations. To the extent Seller is authorized by the Property Documents, Seller shall discharge all obligations and liabilities under the Property Documents before the Close of Escrow with respect to the Property.

604. Brokers. Seller and Buyer agree that there are no brokers or real estate agents involved in this transaction that would be entitled to a fee or commission other than Kevin Knowles of Conservation Land Group ("Broker"). Seller shall pay any commissions payable to Broker in connection with this transaction pursuant to the terms of a separate agreement between Seller and Broker. Seller shall hold Buyer harmless from any claims for such fees or commissions claimed by any broker, real estate agent or other third party claiming through Seller.

605. Litigation. Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Seller has actual knowledge, which might affect the Property or any interest of Buyer with respect to the Property.

606. Indemnification. Seller shall indemnify, defend and hold Buyer harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Seller's covenants under this Agreement and any other related documents, or from Seller's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages

resulting from the sole or actual negligence or willful misconduct of Buyer or Buyer's officers or employees.

Buyer shall indemnify, defend and hold Seller harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buyer's covenants under this Agreement and any other related documents, or from Buyer's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole or actual negligence or willful misconduct of Seller or Seller's officers or employees.

The provisions of this Section 606 shall survive the Close of Escrow with respect to the Property.

## ARTICLE VII

### ESCROW

701. Establishment of Escrow. Within seven (7) business days after the date this Agreement is approved by the Oceanside City Council, Buyer and Seller shall establish an Escrow for the close of the sale of the Property with Renee Marshall, Escrow Officer in the escrow department of the Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Seller shall designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened. This Agreement shall constitute Escrow Instructions, provided however, that Escrow Agent shall prepare general instructions as may be deemed necessary by the Escrow Agent for the fulfillment of this Agreement and deliver those general instructions to Seller and Buyer. Buyer and Seller shall each execute the general instructions, or propose changes thereto, within seven (7) calendar days after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

702. Earnest Money Deposit. Within ten (10) business days following the full execution and delivery of the Agreement, Buyer shall deposit earnest money with the Escrow Agent, the sum of **Twenty-Five Thousand and No/100 Dollars (\$25,000.00)** ("Deposit"). The Deposit shall be placed in an interest bearing account with interest to accrue to Buyer's benefit. If the transaction closes, the Deposit shall be credited against the Purchase Price. If the transaction does not close for any reason other than default by Buyer, then the Deposit shall be returned to Buyer. In the event of Buyer's default under this Agreement, Seller shall have as its sole remedy the right to terminate the Agreement and retain the Deposit stated or as increased pursuant to Section 901 herein as liquidated damages.

703. Closing. Subject to the provisions of Section 401 herein and no later than thirty (30) calendar days ("Closing Deadline") after the completion of the Feasibility Period, the Grant Deed shall be recorded and the Property transferred from Seller to Buyer ("Close of Escrow") after Buyer has either approved or waived each Condition Precedent.

704. Closing Deposits. On or before the Close of Escrow, Seller and Buyer shall deposit with Escrow Agent the following documents and shall close Escrow as follows:

(a) Seller shall deposit with Escrow Agent the following:

- (i) The original executed and acknowledged Grant Deed conveying the Property from Seller to Buyer;
- (ii) The original Non-Foreign Affidavit executed by Seller;
- (iii) The originals of all Property Documents, except for those documents, which by law, Seller must keep in its custody;
- (iv) A certificate executed by Seller acknowledging that all conditions to the Close of Escrow that Buyer was to satisfy or perform have been satisfied and performed, and that Seller's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the Close of Escrow;
- (v) Any other documents or funds required of Seller to close Escrow in accordance with this Agreement;

(b) Buyer shall deposit with Escrow Agent the following:

- (i) The balance of the Purchase Price for the Property in cash;
- (ii) Additional cash in the amount necessary to pay Buyer's share of closing costs as set forth in this Agreement or the escrow instructions and that portion of the Title Policy in excess of the premium for a CLTA Standard Policy of Title Insurance;
- (iii) A certificate executed by Buyer acknowledging that all conditions to Close of Escrow that Seller was to satisfy or perform have been satisfied and performed, and that Buyer's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the Close of Escrow;
- (iv) Documentation evidencing the legal status of the entity taking title to the Property; and
- (iv) Any other document or funds required of Buyer to close Escrow in accordance with this Agreement.

706. Closing Costs. Buyer and Seller shall each pay one-half the premium for a CLTA Standard Policy of Title Insurance. Seller shall pay, all of the real property transfer taxes and documentary transfer taxes (if any) payable upon recordation of the Grant Deed for the Property, and any applicable sales, use or ad valorem taxes connected with the Close of Escrow for the Property. If Buyer requests additional title insurance coverage, Buyer shall pay that portion of the premium for the title policy in excess of the premium for a CLTA Standard Policy of Title Insurance. Buyer and Seller shall each pay one-half of the Escrow Agent charges. Each party shall be solely responsible for its own legal costs incurred in connection with the negotiations and the consummation of this Agreement.

707. Property Taxes and Prorations. Seller shall be solely responsible for bringing the Property's real property taxes current as of the Close of Escrow and Buyer shall have no liability for payment of taxes. It is recognized that Seller is a tax-exempt government.

708. Possession. Right to exclusive possession of the Property, or the applicable parcel, shall transfer at Close of Escrow free of all tenancies.

## ARTICLE VIII

### MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

801. Inspection and Feasibility Period. Seller hereby consents to entry upon the Property by Buyer or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests from the Effective Date of this Agreement to the Close of Escrow. Buyer shall have one hundred eighty (180) calendar days from the Effective Date of this Agreement ("Feasibility Period") in which to complete its inspections, testing and feasibility studies of the Property. Feasibility review shall include but shall not be limited to obtaining approval of the California Department of Fish and Game, the United States Fish and Wildlife Service, and USACE of the Property as mitigation land for the USACE's San Luis Rey River Project in the City of Oceanside. Other feasibility review may include inspection and examination of soils, environmental factors, Hazardous Substances, if any, and archeological information relating to the Property; and a review and investigation of the effect of any zoning, map, permits, reports, engineering data, regulations, ordinances, and laws affecting the Property. Within twenty (20) calendar days following the full execution of this Agreement, Seller shall deliver to Buyer copies of all architectural plans, surveys, specifications, and other documents pertaining to the Property that are owned by or in the possession of Seller. If Buyer disapproves of the results of the inspection and review, Buyer may elect, prior to the last day of the Feasibility Period, to terminate this Agreement by giving Seller written notification prior to the last day of the Feasibility Period and the Opening Deposits, together with all interest, if any, shall be returned to Buyer, less Escrow cancellation charges. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer 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.

Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting directly from Buyer's or its officers', employees', contractors' or agents' inspections and tests. Buyer agrees that its independent inspection of the Property is its sole basis to determine the suitability of the Property for its purposes and Buyer acknowledges that, except as otherwise provided in this Agreement, it is not relying on any representations by Seller regarding suitability of the Property and by executing this Agreement, Buyer acknowledges that it has made or will make its own independent inspection of the Property. If Buyer alters the physical conditions of the Property and Escrow does not close, Buyer shall restore the Property to the condition existing before Buyer's inspections or tests.

802. 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.

803. Assignment. Seller shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of Buyer. Buyer shall have no right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law without Seller's prior written approval. Neither party shall unreasonably withhold approval to any assignment.

804. Preservation and Inspection of Documents. Documents received by Seller or Buyer under the provisions of this Agreement shall be retained in their respective possessions and shall be subject at all reasonable times to the inspection of the other party hereto and its assigns, agents and representatives, any of whom may make copies thereof.

805. Parties of Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than Seller and Buyer any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Seller or Buyer shall be for the sole and exclusive benefit of Seller and Buyer.

806. 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.

807. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid:

If to Buyer:

CITY OF OCEANSIDE  
Public Works Department  
ATTN: Property Management  
300 North Coast Highway  
Oceanside, CA 92054

Copy to:

City Attorney  
CITY OF OCEANSIDE  
ATTN: John Mullen  
300 North Coast Highway  
Oceanside, CA 92054

If to Seller:

RINCON BAND OF LUISENO MISSION INDIANS  
OF THE RINCON RESERVATION, CALIFORNIA  
a federally recognized Indian Tribe  
ATTN: Dick Watenpaugh,

Copy to:

Director of Tribal Administration  
33750 Valley Center Road  
Valley Center, CA 92082

The parties hereto, by notice given hereunder, may, respectively designate different addresses to which subsequent notices; certificates or other communications will be sent.

808. Binding Effect. Without waiver of Section 805, this Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer, and their respective successors and assigns.

809. Severability. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Seller or Buyer to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

810. Headings. Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

811. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the United States and applicable laws of the State of California.

812. Seller and Buyer Representatives. Whenever under the provisions of this Agreement the approval of Seller or Buyer is required, or Seller or Buyer are required to take some action at the request of the other, such approval of such request may be given for Seller by an Authorized Officer/Representative of Seller and for Buyer by an Authorized Officer of Buyer, and any party hereto shall be authorized to rely upon any such approval or request.

813. Amendment. This Agreement may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.

814. Counterpart. This Agreement may be executed in counterparts.

815. Time of the Essence. Time is of the essence in this Agreement and every provision contained in this Agreement.

816. Integration. This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or parol agreements, which are not expressly set forth in the Agreement or the related documents being executed in connection with this Agreement.

817. Waivers. No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

818. Attorney Fees, Litigation Costs and Related Matters. If any legal action or other proceeding, including 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 declaratory relief, suit, proceeding, or arbitration that the parties shall first submit 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. Any mediation costs shall be borne equally by the parties.

819. Exhibits. All exhibits referred to in this agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

820. Survival. Seller's representations and warranties, Buyer's representations and warranties, all covenants and obligations to be performed at a time or times after Close of Escrow, and indemnities shall survive the Close of Escrow and delivery and recordation of the Grant Deed.

821. Merger. All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the Close of Escrow and shall not be merged in the Grant Deed or other documents.

## ARTICLE IX

### SPECIAL PROVISIONS

901. Liquidated Damages. **IF BUYER FAILS TO COMPLETE THE PURCHASE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELEASED FROM SELLER'S OBLIGATION TO SELL THE PROPERTY TO BUYER AND MAY PROCEED AGAINST BUYER UPON ANY CLAIM OR REMEDY THAT SELLER MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION 901 BUYER AND SELLER AGREE THAT IN THE EVENT OF DEFAULT BY BUYER, (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; (B) AN AMOUNT EQUAL TO THE OPENING DEPOSITS MADE BY BUYER AND EXTENSION PERIOD PAYMENTS, IF ANY ARE MADE, SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER; (C) THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER; (D) SELLER MAY RETAIN THAT PAYMENT ON ACCOUNT OF PURCHASE PRICE FOR THE PROPERTY AS LIQUIDATED DAMAGES; AND (E) PAYMENT OF THOSE SUMS TO SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.**

\_\_\_\_\_/\_\_\_\_\_[Initials of Buyer and Seller]

Buyer and Seller acknowledge that, pursuant to the terms of this Agreement, Seller is obligated to perform, and in the event Escrow fails to close by reason of default by Seller, Buyer shall be entitled to specific performance of Seller. Notwithstanding Seller's obligation herein, in the event Seller is prevented from closing the Escrow pursuant to the happening of an event, requirement or other impediment beyond the reasonable control of Seller, Buyer shall be entitled to the return of the Opening Deposit.

IN WITNESS WHEREOF, this Agreement constitutes an offer to purchase the Property on the terms and conditions contained in this Agreement and the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers as of the date first above written.

Seller

Buyer

RINCON BAND OF LUISENO MISSION INDIANS OF THE RINCON RESERVATION, CALIFORNIA a federally recognized Indian Tribe

CITY OF OCEANSIDE a municipal corporation

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

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

Mayor

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM: CITY ATTORNEY'S OFFICE

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

By: *Robert Hamilton, 1857*  
City Attorney

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

APPROVED AS TO FORM: RINCON ATTORNEY GENERAL'S OFFICE

By \_\_\_\_\_  
Attorney General

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

**SELLER'S SIGNATURE(S) MUST BE NOTARIZED**

## 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 thereof 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  $77^{\circ}09'32''$  West (South  $76^{\circ}39'13''$  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  $77^{\circ}09'32''$  East (North  $76^{\circ}39'13''$  East Map 2323 & LS 460) 1123.28 feet; thence leaving said Northerly line, North  $00^{\circ}03'29''$  East 1682.66 feet to the Southwesterly end of that course having a bearing and distance of (North  $11^{\circ}15'53''$  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  $11^{\circ}39'48''$  East 199.93 feet (North  $11^{\circ}15'53''$  East 200.00 feet) to the beginning of a non tangent 840.00 foot radius curve, concave Southeasterly, from which a radial bears South  $03^{\circ}21'00''$  East (South  $03^{\circ}44'07''$  East);

thence Southwesterly along said curve through a central angle of  $55^{\circ}29'45''$  ( $55^{\circ}30'33''$  an arc distance of 813.61 feet (813.81 feet);

thence tangent to said curve South  $31^{\circ}09'15''$  West (South  $31^{\circ}39'48''$  West) 160.81 feet; thence south  $10^{\circ}38'01''$  West 67.82 feet (South  $10^{\circ}14'10''$  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  $50^{\circ}47'20''$  an arc distance of 283.66 feet:

thence tangent to last said curve South  $61^{\circ}25'21''$  East 165.89 feet (South  $61^{\circ}01'30''$  East 165.85 feet);

thence South  $56^{\circ}32'46''$  West 41.58 feet (South  $56^{\circ}08'55''$  West 36.54 feet) to an intersection with a line that bears North  $01^{\circ}26'19''$  East (North  $0^{\circ}66'$  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  $01^{\circ}26'19''$  West (South  $0^{\circ}56'$  West Map 2323 & LS 460) 1195.98 feet to the point of beginning.

END OF LEGAL DESCRIPTION

## EXHIBIT "A"





## EXHIBIT "C"

### DEFINITIONS

Buyer. The term "Buyer" means the City of Oceanside, California.

Seller. The term "Seller" means the Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California, a federally recognized Indian Tribe organized pursuant to the Articles of Association approved by the Commissioner of Indian Affairs March 15, 1960, San Diego County, California.

Authorized Officer. The term "Authorized Officer", when used with respect to Buyer, means the Mayor, City Manager or any employee designated by the City Manager of Buyer as an Authorized Officer. The term "Authorized Officer", when used with respect to Seller, means the Chairman or Vice Chairwoman of Seller or any other officer of Seller, who is designated by its Business Committee as an Authorized Officer.

Environmental Laws. The term Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, to the extent that such relate to matters on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USC § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USC § 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution control Act (FWPCA) [33 USC § 1251 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USC § 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC § 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USC § 6901 et seq.]; the Clean Air Act [42 USC § 7401 et seq.]; the Safe Drinking Water Act [42 USC § 300f et seq.]; the Surface Mining Control and Reclamation Act [30 USC § 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USC § 11001 et seq.]; the Occupational Safety and Health Act [29 USC § 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 et seq.]; the California Hazardous Substances Account Act [Health and Safety Code § 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water Code § 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to the protection of the environment as such apply to matters on, under, or about the Property.

Hazardous Substances. The term "Hazardous Substances" includes without limitation:

(a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste." or "pollutant or contaminant" in any Environmental Law;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USC § 1321 or listed pursuant to 33 USC § 1317, a hazardous substance or toxic material designated pursuant to any State Statute, a flammable explosive or a radioactive material.

Property. The term "Property" means that certain real property within the County of San Diego, California (sometimes referred to herein as the "Land"), together with the improvements located thereon (sometimes referred to herein as the "Improvements") all as more fully described in Exhibit "A" attached hereto.

State. The term "State" means the State of California.