

# THIRD AVENUE VILLAGE AGREEMENT AND ENCROACHMENT PERMIT FOR MAINTENANCE SERVICES BETWEEN THE CITY OF CHULA VISTA AND THE THIRD AVENUE VILLAGE ASSOCIATION

This Agreement ("Agreement") is entered into effective June 14, 2016 ("Effective Date") by and between the Third Avenue Village Association ("TAVA"), a private, non-profit corporation, and the City of Chula Vista ("City"), a California municipal chartered corporation. This Agreement shall also constitute an Encroachment Permit issued to TAVA by the City, as of the Effective Date, for all work to be performed by TAVA pursuant to this Agreement. This Agreement and Encroachment Permit are made and issued pursuant to the following facts:

## RECITALS

WHEREAS, on June 17, 1980, the City established the Towne Centre #1 Street Lighting and Landscape Maintenance District ("L&LMD"), via Council Resolution 10139, to maintain the landscape and lighting beautification project along Third Avenue; and

WHEREAS, on July 24, 2001, the City established the Downtown Chula Vista Property-Based Business Improvement District ("DTCV PBID"), via Council Resolution 2001-232, which took over the L&LMD responsibilities and expanded economic development activities; and

WHEREAS, the DTCV PBID is administered by TAVA and, *inter alia*, provides for enhanced maintenance services by TAVA within the DTCV PBID boundaries; and

WHEREAS, the DTCV PBID services the Third Avenue commercial corridor that encompasses E Street to the north, Landis Avenue to the west, Church Avenue to the East, and I Street to the south ("Third Avenue"); and

WHEREAS, the area commonly known as Third Avenue Village ("Village") which runs the length of Third Avenue, starting at the north end of the intersection at E Street and ending at the south end of the intersection at I Street is within the DTCV PBID boundaries; and

WHEREAS, on September 17, 2002, the City appropriated funding to construct the Downtown Monument Sign ("Arch sign"), via Resolution 2002-378, and the Downtown Business Association (predecessor to TAVA) agreed to cover the future electrical power, monthly maintenance and routine repair costs for the Arch sign; and

WHEREAS, on July 18, 2006, the DTCV PBID was renewed for a period of 10 years pursuant to City Resolution 2006-222/Redevelopment Agency Resolution 2006-1949; and

WHEREAS, TAVA is in the process of renewing the DTCV PBID for a new 10-year term ending December 31, 2026; and

WHEREAS, the proposed Management District Plan, including the Engineer's Report, submitted by TAVA in conjunction with the renewal of the DTCV PBID (the "Renewal Plan"), identify certain Environmental Enhancements to be provided by the DTCV PBID, generally including:

sidewalk sweeping, sidewalk pressure washing, graffiti removal, landscaping maintenance, irrigation, sidewalk maintenance, beautification, tree lighting, and other activities as set forth in the Renewal Plan; and

WHEREAS, TAVA members and property owners benefit from the previously installed and planned future enhancements along Third Avenue ("Enhancements") by improving the overall Third Avenue image and marketability, drawing potential customers into the Village; and

WHEREAS, the Enhancements include, but are not limited to, the L&LMD, the Arch sign, enhancements being made pursuant to the Third Avenue Streetscape Master Plan ("TASMP"), and the Environmental Enhancements contained in the Renewal Plan; and

WHEREAS, the City and TAVA are entering into this Agreement based on the understanding that TAVA is supportive of the Enhancements, will perform annual maintenance of, and services to, the Enhancements, and will provide funding for the same by including them in the Renewal Plan, and the annual PBID reports and budget documents prepared in accordance with California Streets and Highways Code Sections 36600, *et seq.* ("PBID Law"); and

WHEREAS, the City and TAVA acknowledge that this Agreement is dependent upon renewal of the DTCV PBID, that the TAVA Responsibilities, as described in Article I of this Agreement, are encompassed within the activities to be provided by the DTCV PBID pursuant to the Renewal Plan, and that the City will continue to provide the basic levels of service within the DTCV PBID boundaries as those provided citywide.

NOW, THEREFORE, for valuable consideration, the City and TAVA do hereby mutually agree as follows:

All of the Recitals above are incorporated into this Agreement by this reference.

## ARTICLE I. TAVA'S OBLIGATIONS

### A. GENERAL DESCRIPTION OF MAINTENANCE SERVICES.

The Enhancements to be maintained under this agreement are typically located within the DTCV PBID and TASMP boundaries. The "Maintenance Area" consists of Third Avenue, starting at north end of intersection at E Street and ending at south end of intersection at H Street. A map of the Maintenance Area subject to this Agreement is attached as Exhibit A.

TAVA agrees, at its expense using PBID funds, which TAVA will allocate in sufficient amounts to allow TAVA to perform its responsibilities under this agreement, to maintain the Enhancements, as set forth more fully in Article I, Section B, at a level as determined by TAVA no less than the generally accepted preventative maintenance standards and frequency that promotes a safe, enjoyable, and vibrant environment or streetscape experience ("TAVA's Maintenance Responsibilities"). TAVA further agrees that TAVA's Maintenance Responsibilities are encompassed within the activities contemplated to be provided by the District in the Renewal Plan and will be contained in the PBID reports and budgets which TAVA will file with the City Clerk annually, pursuant to the PBID Law.

The City agrees, at its expense, to maintain facilities as set forth more fully in Article II, Section C, at a basic level of service provided citywide.

It is understood that the maintenance, repair, and/or replacement of the Enhancements that are not the obligation of TAVA under this Agreement, are, unless otherwise agreed upon, the responsibility of the City. However, the City is not required or obligated in any manner, including this Agreement, to perform maintenance, repair, or replacement of the Enhancements. For items listed as "Street Appurtenances" in Article I, Section B.1, elements damaged beyond repair by unknown third parties, as determined by the City, will be removed by the City and not replaced. TAVA can elect to fund replacement of the "Street Appurtenances" items at their discretion.

For purposes of definition, the term "maintenance" or "maintain" shall mean typical routine maintenance activities, including but not limited to, cleaning, painting, trimming, pruning, watering, repairing and the replacement of system components of items identified in Article I, Section B of this Agreement. "Replacement of system components" applies to the Irrigation and Lighting Systems.

Water utility costs from existing and future meters servicing the landscaping along Third Avenue between E and H Street, as shown on Exhibit B, shall be a TAVA responsibility.

Electricity cost from existing and future meters servicing the electrical needs along Third Avenue between E and H Street, as shown on Exhibit B, will be proportioned between the City and TAVA. Meters that serve only the auxiliary power pedestals will be the responsibility of the City. A separate agreement will be required to provide payment and allow use of the auxiliary power pedestals. The remaining meters serve the low voltage transformer for tree (twinkle type) lights, tree accent (up type) lights, irrigation systems, special signage and pedestrian lights. These meters will be in the City's name and bills will be divided between the City and TAVA. The City will calculate the energy usage of the pedestrian lighting only, which will be the City share of the monthly bill, and invoice TAVA for the remaining amount since all other electrical components on the meter are TAVA responsibilities. The calculation for the pedestrian lighting will be:

$$\begin{aligned} &(\text{number of lights} \times \text{wattage of lights} \times \text{number of hours on}) / 1000 = \text{kilowatt hours} \\ &\text{kilowatt hours} \times \text{the rate} = \text{cost of pedestrian light energy usage} \end{aligned}$$

Any City property and/or Enhancement that is damaged by TAVA staff or their contractors during the course of fulfilling TAVA's maintenance responsibilities shall be repaired or replaced by TAVA. Repair and replacement proposals will be subject to approval of the City to ensure public safety.

The City and TAVA both acknowledge that future Enhancements may be implemented in phases. Accordingly, TAVA will be required to maintain, as set forth herein, the future Enhancements after any applicable plant establishment/warranty period has expired and they are accepted by the City. The City shall provide 30 days written notice to TAVA of the start date that TAVA is to begin its maintenance of any future Enhancements. TAVA agrees to begin its maintenance activity by the start date stated in the City's notice. This Agreement does not otherwise relieve TAVA of its required enhanced maintenance services pursuant to the DTCV PBID.

**B. MAINTENANCE RESPONSIBILITIES OF TAVA.** TAVA shall be responsible to perform the following and, will annually allocate and budget appropriate PBID funds to do so:

1. Street Appurtenances: Street appurtenances will be maintained based upon manufacturers' recommendations or general accepted practices. Examples of street appurtenances are: benches; bus shelters; trash, recycling and smoking receptacles (excluding "Big Belly" types); bicycle racks; kiosks; directional/wayfinding, signage; Third Avenue Village themed signage and banners; interpretive signs; decorative art elements; outdoor decorative clock, (at 3<sup>rd</sup> Ave. & F St.) holiday decorations. Signage shall be kept clean and internally lit signs shall be maintained in working condition.
2. Landscape Maintenance: All public landscaped areas, medians, planters and tree wells will be maintained including trash and debris removal, trimming, dead heading, root pruning, watering, fertilizing and treating for disease to promote healthy growth and enhanced visual appearances. Replacement of all plantings, except street and palm trees, that die or are damaged by unknown third parties will be funded for and at the discretion of TAVA. Street trees (consisting of existing and newly planted trees within the maintenance area) will be maintained using general standard horticultural practices proper for each particular tree. Tree branches shall be kept lifted to a minimum height of eight (8) feet for safe pedestrian movement around the trees, and shrubs will be trimmed, irrigated and fertilized per general standard practices to insure a healthy appearance and to prevent interference with walkways and pedestrians. The median palm trees are excluded and will be maintained by the City. Street tree grates will be maintained per manufacturer guidelines and frequency to ensure that the street tree grates are properly maintained for condition and appearance and to prevent interference with walkways and pedestrians.
3. Irrigation Systems: Operate, repair and replace, as needed, all irrigation system components including water and electrical utility costs. The system shall be maintained per manufacturer's guidelines and spray heads adjusted to minimize overspray into adjacent public rights of way. Damaged irrigation controllers, communication cards and antennas, enclosures, pumps, valves, backflows, irrigation lateral and main line and sprinkler heads will be repaired or replaced, including all wiring and other irrigation related electrical equipment, as soon as practical to avoid plant loss. TAVA shall maintain annual online Rainmaster IC service contracts for central control capability. Irrigation main line failures under streets or sidewalks are excluded and will be repaired by the City.
4. Lighting Systems: Operate, repair and replace, as needed, all decorative accent lighting systems and component and, associated calculated electrical energy cost as described in Article I, Section A. Accent lighting includes, but is not limited to, tree up-lighting, tree twinkle lights, themed signage lighting. Accent lighting fixtures shall be maintained per manufacturer's guidelines and kept in working order. Adjustments to lighting shall be performed as needed. Burnt out bulbs shall be replaced as soon as practical. Since portions on the electrical system are shared with the pedestrian lighting system (City), only the system components immediately accessible (for example, the bulb/light housing, the electrical outlet for tree lights, the 6-12 inches of conduit riser below ground) are to be maintained by TAVA. The remainder of the electrical system will be maintained by the City.
5. Pedestrian Areas: Clean and perform minor repairs to all pedestrian areas (concrete and brick pavers), as needed, including the removal of unsightly materials from the sidewalks,



sweeping, and power washing. Brick pavers will be cleaned per manufacturer's guidelines and frequency and retreated or resealed per manufacturer's recommendation to protect the paver surface. Pedestrian crosswalks are excluded and will be maintained by the City.

6. Electricity and Water. TAVA shall be responsible for the costs of and be required to provide water and electricity to perform the maintenance services of this Agreement, including watering of vegetation. TAVA agrees to have the bill for water placed in its name and shall take all necessary actions to do so upon request by the City. Electrical power meters will be in the City's name and the City will invoice TAVA the calculated power usage, as described above in Article I, Section A.
7. Graffiti. Graffiti (within 12 feet of the ground, excluding murals on private property) will be removed from all features within the PBID Boundary within 72 hours of being reported. Graffiti above 12 feet will be the responsibility of the property owner, Public or Private.
8. General Maintenance: Perform general miscellaneous maintenance services in the PBID Boundary area (including alleys) on a daily basis. General maintenance can include routine cleaning, trash and debris removal (excluding hazardous waste), and minor repairs to ensure a clean and aesthetically pleasing environment throughout the Village. These activities will be at the discretion of TAVA and as defined in further detail in the PBID Renewal Management Plan.
9. Permits. This Agreement will serve as the Encroachment Permit for TAVA to perform the activities described herein. For activities requiring traffic control on the city streets, a traffic control plan shall be submitted to the Traffic Engineering Section for review and approval at no cost to TAVA. Any other non-city permits that may be needed to perform the work described herein will be obtained by TAVA. Special Event permits will still be required.
10. Reporting of Hazardous Conditions. Any condition or hazardous situation to the general welfare of the public within the public right of way observed by TAVA personnel or contractors in the normal conduct of their duties under this Agreement shall be remedied, reported to the City when not within the scope of this agreement or blocked off within 48 hours of discovering or reporting of the condition. An example of a hazardous condition would be where a tree grate has been displaced from its safe and proper setting, in such a way that a pedestrian may trip. Another example would be broken irrigation systems that would flood water if the system were activated. Failure of TAVA staff or contractors to observe or appreciate hazardous conditions or situations shall not give rise to any liability by TAVA for a failure to report such conditions that are outside the scope of this Agreement to the City.

**C. STANDARD OF CARE.** TAVA expressly warrants that the work to be performed pursuant to this Agreement shall be performed in accordance with the standard of care ordinarily exercised by members of the profession currently practicing under similar conditions and in similar locations.

*No Waiver of Standard of Care.* Where approval by City is required, it is understood to be conceptual approval only and does not relieve the TAVA of responsibility for complying with all laws, codes, industry standards, and liability for damages caused by negligent acts, errors, omissions, noncompliance with industry standards, or the willful misconduct of the TAVA or its subcontractors.

**D. COMPLIANCE WITH LAWS OR REGULATIONS.** TAVA agrees it shall comply with all local, state, and federal laws or regulations in the performance of this Agreement. Should a federal or state law pre-empt a local law, or regulation, TAVA shall comply with the federal or state law and implementing regulations. No provision of this Agreement requires TAVA to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of federal, state, territorial, or local law, regulation, or ordinance. If compliance with any provision of this Agreement violates or would require the TAVA to violate any law or regulation, then TAVA agrees to notify City immediately in writing. Should this occur, the City and TAVA agree that they will make appropriate arrangements to proceed with or, if necessary, amend or terminate this Agreement, or portions of it, expeditiously.

TAVA agrees to take appropriate measures necessary to ensure that participants utilized by TAVA to complete its obligations under this Agreement, such as subcontractors, comply with applicable laws, regulations, ordinances, and policies, whether federal, state, or local, affecting Project implementation. In addition, if a subcontractor is expected to fulfill any responsibilities of TAVA under this Agreement, TAVA shall ensure that the subcontractor carries out the TAVA's responsibilities as set forth in this Agreement. The use of participants by TAVA to fulfill the terms of the Agreement does not in any form relieve TAVA of its obligations under this Agreement.

**E. TAVA INSURANCE REQUIREMENTS.** TAVA agrees that it shall acquire and maintain insurance as set forth in Exhibit C by the effective date of this Agreement or as otherwise required by the City. The City may, by written notice, change the insurance requirements in its sole and reasonable discretion and TAVA agrees to acquire and maintain such insurance as requested by the City.

**F. TAVA FUNDING.** The TAVA is entering into this Agreement based on an understanding that the City will continue to contribute fiscally to the annual special assessment obligations derived from the Property Based Improvement District (PBID) established on July 2001 and renewed in July 2006. Should the City cease to contribute fiscally (at the level of contribution as of the date of this Agreement or any subsequent increases approved by the Board of Directors) or the PBID be dissolved by the majority of the property owners, as prescribed under the Property and Business Improvement District Law of 1994, TAVA shall have the right to terminate this Agreement. Annually, TAVA shall review the maintenance operations of Third Avenue to determine efficiencies, effectiveness, contracts and other aspects of the maintenance to allocate the appropriate PBID funding for such services to be rendered under this Agreement.

## ARTICLE II. CITY OBLIGATIONS

**A. THIRD AVENUE STREETSCAPE MASTER PLAN (TASMP).**

The TASMP will be constructed in phases. Accordingly, should the City elect not to complete the TASMP, then TAVA shall solely be required to perform the maintenance services under the terms and conditions of the Agreement for Enhancements that have been completed by the City.

**B. COOPERATION-MAINTENANCE SERVICES.** The City will be responsible to operate, maintain and repair the following features to a basic level of service provided citywide:

1. Streets (including on street parking areas) from the face of curb to the face of curb (or theoretical face of curb in the plaza area)
2. Pavement markings and striping
3. Bollards
4. Regular street signs
5. Traffic signals
6. Street and Pedestrian Lighting including the calculated electrical power
7. Palm trees in the median
8. Storm water devices including but not limited to "fiteras" (excluding landscape type features)
9. Auxiliary electrical power system (use of the system will be a separate cost and require a separate agreement/permit)
10. The City will maintain a street sweeping contract, to the extent funding is available, for weekly service for Third Avenue and associated streets within the Village, which includes the Maintenance Area, set forth in Exhibit A
11. The City shall report any repairs or new construction to TAVA staff prior to proceeding to coordinate information, schedule and notification to business within the Village
12. Replacement of dead/dying street trees

### ARTICLE III. INDEMNIFICATION

**A. MUTUAL INDEMNIFICATION.** The parties agree to mutual indemnification as set forth in this Article.

1. TAVA shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of TAVA, its officials, officers, employees, agents, consultants, and contractors, arising out of or in connection with the performance of TAVA's maintenance responsibilities in the "Maintenance Area," or this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or the result from the negligent or intentional acts or omissions of TAVA, its officials, officers, employees, agents, consultants, and/or contractors. The aforementioned proportional liability shall be determined by agreement of the parties, by arbitration (if arbitration has been agreed upon by the parties), or by a court of competent jurisdiction.
2. The City shall defend, indemnify, protect and hold harmless TAVA, its officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of the City, its officials, officers, employees, agents, consultants, and contractors, arising out of or in connection with the performance of the City's maintenance responsibilities in the "Maintenance Area," or this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or the result from the negligent or intentional acts or omissions of the City, its officials, officers, employees, agents, consultants, and/or

contractors. The aforementioned proportional liability shall be determined by agreement of the parties, by arbitration (if arbitration has been agreed upon by the parties), or by a court of competent jurisdiction.

**B. COST OF DEFENSE AND AWARD.** Upon receipt of an action or claim against the City or TAVA or both arising under either Party's acts or omissions as a result of this Agreement, TAVA and/or the City shall tender the action or claim to TAVA's insurance carrier for the defense against such claim. Should the tender for defense be denied by the insurance carrier, each party shall then bear their own defense costs (including reasonable attorney's fees), subject to reimbursement based in proportion to and to the extent of the parties respective liability, as provided for in Sections A.1 and A.2 of this Article, at the conclusion of the matter. If the City or TAVA bear their own defense costs as set forth above, neither the City nor TAVA waive any rights or remedies they may have against the insurance carrier to require them to pay all defense costs, including attorney's fees. The Parties shall also pay and satisfy any judgment, award or decree that may be rendered against them or their directors, officials, officers, employees, agents and/or volunteers, subject to the limitations in Sections A.1 and A.2. The aforementioned proportional liability shall be determined by agreement of the parties, by arbitration (if arbitration has been agreed upon by the parties), or by a court of competent jurisdiction.

**C. ADDITIONAL TERMS.** The parties also agree to the following:

1. Insurance Proceeds. Each Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by them, their directors, officials, officers, employees, agents, and/or volunteers.
2. Declarations. Each Party's obligations under this Article shall not be limited by any prior or subsequent declaration by them.
3. Enforcement Costs. Each Party agrees to pay any and all costs incurred by the other party enforcing the indemnity and defense provisions set forth in this Article if the other party is successful in enforcing such indemnity and defense provisions.
4. Survival. Each Party's obligations under this Article shall survive the termination of this Agreement.

#### ARTICLE IV. TERMINATION OF AGREEMENT

**A. TERMINATION FOR CAUSE.** If, through any cause, TAVA shall fail to fulfill in a timely and proper manner TAVA's obligations under this Agreement, or if TAVA shall violate any of the covenants, agreements or stipulations of this Agreement, City shall have the right to terminate this Agreement by giving written notice to TAVA of such termination, which includes the specific alleged cause or causes, and specifying the effective date thereof at least thirty (30) days before the effective date of such termination ("Termination Notice"). TAVA shall have the ability to cure such cause or causes or, if a cure is not possible within thirty (30) days, to begin such cure and diligently prosecute such cure to completion which in any event shall not exceed ninety (90) days after the receipt of such Termination Notice. TAVA hereby expressly waives any and all claims for damages or compensation as a result of termination of this Agreement.

**B. TERMINATION OF AGREEMENT FOR CONVENIENCE OF CITY.** City may terminate this Agreement at any time and for any reason, by giving specific written notice to TAVA

of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. TAVA hereby expressly waives any and all claims for damages or compensation as a result of termination of this Agreement.

#### ARTICLE V. MISCELLANEOUS PROVISIONS

**A. AGREEMENT REVIEW.** Both parties agree to meet and confer from time to time to identify changes in site conditions, problems with the maintenance services and/or the need to modify the Agreement to address same. Minor changes to the Agreement may be made at any time in writing upon mutual agreement of all parties. In addition, each of the parties may call for a meeting to discuss concerns, support, and ideas on how to make the maintenance services more successful and efficient in subsequent years.

**B. COMMUNICATIONS AND COORDINATION REPRESENTATIVES.** To provide for consistent and effective communication, both parties will appoint a principal and secondary representative to serve as its central point of contact on matters relating to this Agreement and/or the level of maintenance services in question. The principal representatives for this Agreement are listed below as follows:

For TAVA:

Executive Director  
(619) 422-1982

TAVA Board President  
353 Third Avenue  
Chula Vista, CA 91910

For City:

William Valle, Assistant Director of Engineering  
(619) 409-5976  
276 Fourth Avenue  
Chula Vista, CA 91910

**C. TERM.** The term of the Agreement shall commence on the Effective Date and shall expire on December 31, 2026, unless otherwise terminated at an earlier date. Notwithstanding the foregoing, the parties may elect to extend the Agreement by mutual written agreement for an additional period coinciding with a PBID extension of the parties.

**D. EFFECTIVE DATE.** The terms and conditions of this Agreement shall be effective as of the date this Agreement is signed by all parties on the Signature Page.

**E. ASSIGNABILITY.** The services of TAVA are personal to the City, and TAVA shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or notation), without prior written consent of City.



1. Limited Consent. City hereby provides limited consent that TAVA may assign the performance of the aforementioned "Maintenance Services" to sub-contractors, subject to City approval.

**F. INDEPENDENT CONTRACTOR.** City is interested only in the results obtained and TAVA shall perform as an independent contractor with sole control of the manner and means of performing the services required under this Agreement. City maintains the right only to reject or accept TAVA's Maintenance Services, including their quality. TAVA and any of the TAVA's agents, employees or representatives are, for all purposes under this Agreement, independent contractors and shall not be deemed to be employees of City, and none of them shall be entitled to any benefits to which City employees are entitled including but not limited to, overtime, retirement benefits, worker's compensation benefits, injury leave or other leave benefits. Therefore, City will not withhold state or federal income tax, social security tax or any other payroll tax, and TAVA shall be solely responsible for the payment of same and shall hold the City harmless with regard to them.

1. Actions on Behalf of City. Except as City may specify in writing, TAVA shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever, as an agent or otherwise. TAVA shall have no authority, express or implied, to bind City or its members, agents, or employees, to any obligation whatsoever, unless expressly provided in this Agreement.
2. No Obligations to Third Parties. In connection with this Agreement, TAVA agrees and shall require that its agents, employees, subcontractors agree that City shall not be responsible for any obligations or liabilities to any third party, including its agents, employees, subcontractors, or other person or entity that is not a party to this Agreement. Notwithstanding that City may have concurred in or approved any solicitation, sub agreement, or third party contract at any tier, City shall have no obligation or liability to any person or entity not a party to this Agreement.

**G. ADMINISTRATIVE CLAIMS REQUIREMENTS AND PROCEDURES.** No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by City, TAVA shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

**I. NOTICES.** Notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing. Notices, demands and requests to be sent to any party shall be deemed to have been properly given or served if personally served or deposited in the United States mail, addressed to such party, postage prepaid, registered or certified, with return receipt requested, at the addresses identified in this Agreement as the places of business for each of the designated parties.

J. **INTEGRATION.** This Agreement, together with any other written document referred to or contemplated in it, embody the entire Agreement and understanding between the parties relating to the subject matter hereof. Neither this Agreement nor any provision of it may be amended, modified, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

K. **CAPACITY OF PARTIES.** Each signatory and party to this Agreement warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all necessary resolutions or other actions have been taken so as to enable it to enter into this Agreement.

L. **GOVERNING LAW/VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance under it, shall be the City of Chula Vista.

**[NEXT PAGE IS SIGNATURE PAGE]**

**SIGNATURE PAGE TO**  
**THIRD AVENUE VILLAGE AGREEMENT AND ENCROACHMENT PERMIT**  
**FOR MAINTENANCE SERVICES BETWEEN THE CITY OF CHULA VISTA**  
**AND THE THIRD AVENUE VILLAGE ASSOCIATION**

IN WITNESS WHEREOF, City and TAVA have executed this Agreement indicating that they have read and understood same, and indicate their full and complete consent to its terms:

*For Third Avenue Village Association (TAVA):*



KATHY SPARKS,  
Board President, Third Avenue Village Association

Date: 6/14/16



IAN TROTTER,  
Secretary, Third Avenue Village Association

Date: 6.14.16

*For the City of Chula Vista:*



MARY CASILLAS SALAS,  
Mayor, City of Chula Vista

Date: 6/14/16

Approved as to form:



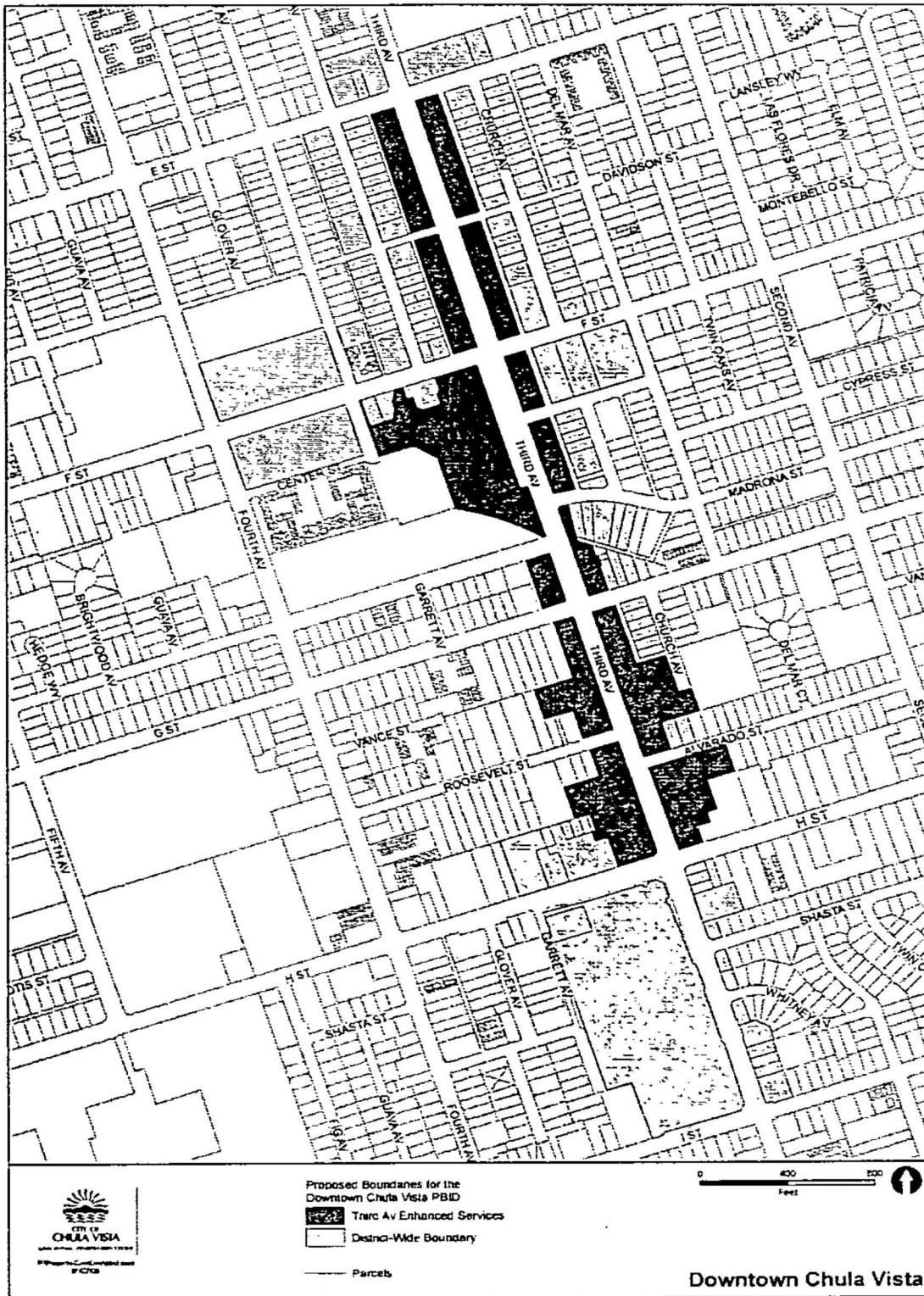
GLEN R. GOOGINS,  
City Attorney, City of Chula Vista

ATTEST:



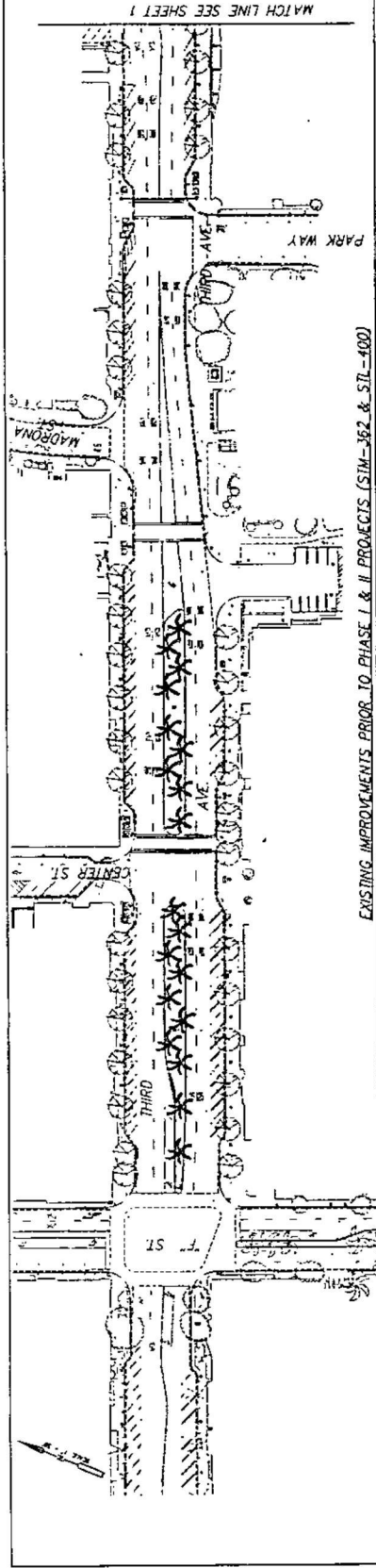
DONNA R. NORRIS, CMC  
City Clerk

# Exhibit "A" Limits of Maintenance Service Area







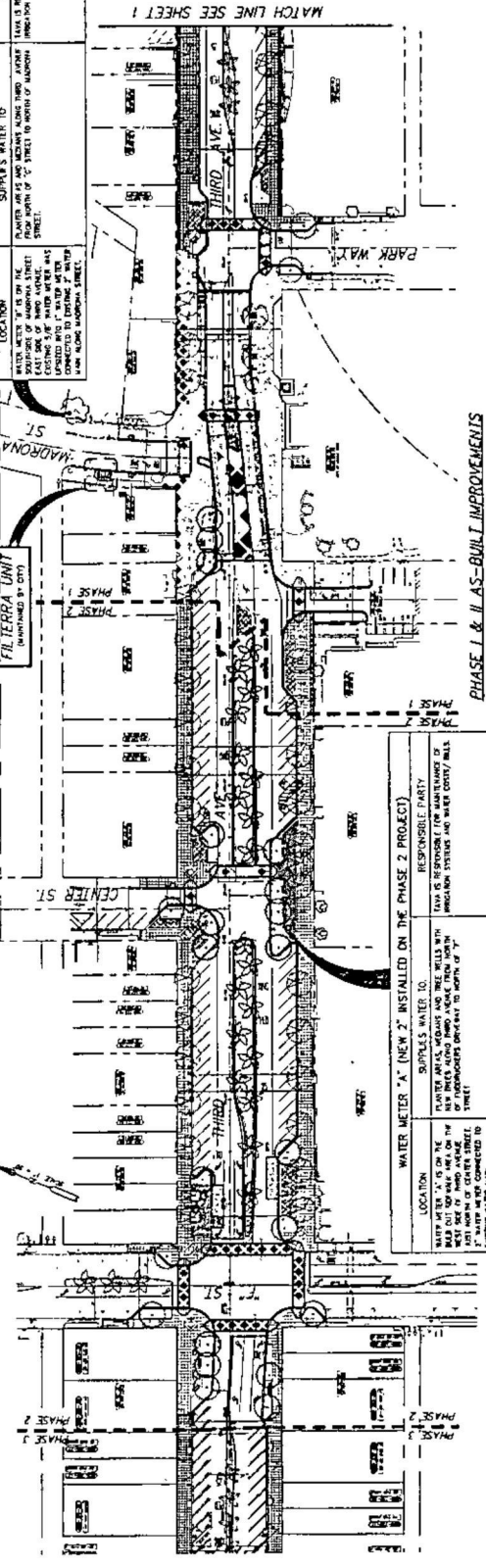


EXISTING IMPROVEMENTS PRIOR TO PHASE I & II PROJECTS (SIM-362 & ST-400)

ELECTRIC POWER METER PEDESTAL "E" (284-A CENTER STREET)		
LOCATION	SUPPLIES POWER TO	RESPONSIBLE PARTY
METER PEDESTAL "E" IS ON THE SOUTHWEST CORNER OF CENTER STREET & 1 <sup>ST</sup> STREET. IT IS A 10' X 10' CONCRETE STRUCTURE WITH A 1" WATER METER AND SUPPLYING POWER TO THE 1 <sup>ST</sup> STREET LIGHTS.	PEDESTAL LIGHTS (10' X 10') AND 1 <sup>ST</sup> STREET LIGHTS (10' X 10').	CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL PEDESTAL LIGHTS AND 1 <sup>ST</sup> STREET LIGHTS. CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL ELECTRICAL, WATER COSTS.

ELECTRIC POWER METER PEDESTAL "F" (284-B CENTER STREET)		
LOCATION	SUPPLIES POWER TO	RESPONSIBLE PARTY
METER PEDESTAL "F" IS ON THE SOUTHWEST CORNER OF CENTER STREET & 2 <sup>ND</sup> STREET. IT IS A 10' X 10' CONCRETE STRUCTURE WITH A 1" WATER METER AND SUPPLYING POWER TO THE 2 <sup>ND</sup> STREET LIGHTS.	PEDESTAL LIGHTS (10' X 10') AND 2 <sup>ND</sup> STREET LIGHTS (10' X 10').	CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL PEDESTAL LIGHTS AND 2 <sup>ND</sup> STREET LIGHTS. CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL ELECTRICAL, WATER COSTS.

WATER METER "B" (1" INSTALLED ON THE PHASE I PROJECT)		
LOCATION	SUPPLIES WATER TO	RESPONSIBLE PARTY
WATER METER "B" IS ON THE SOUTHWEST CORNER OF CENTER STREET & 1 <sup>ST</sup> STREET. IT IS A 1" WATER METER AND SUPPLYING WATER TO THE 1 <sup>ST</sup> STREET LIGHTS.	PEDESTAL LIGHTS (10' X 10') AND 1 <sup>ST</sup> STREET LIGHTS (10' X 10').	CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL PEDESTAL LIGHTS AND 1 <sup>ST</sup> STREET LIGHTS. CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL ELECTRICAL, WATER COSTS.

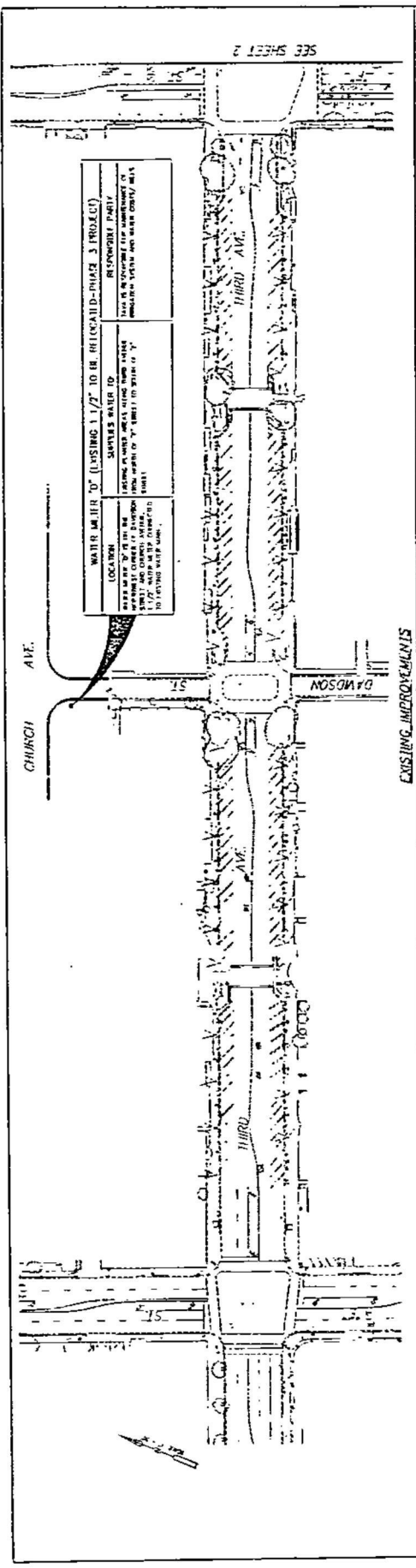


PHASE I & II AS-BUILT IMPROVEMENTS

ELECTRIC POWER METER PEDESTAL "D" (284-C CENTER STREET)		
LOCATION	SUPPLIES POWER TO	RESPONSIBLE PARTY
METER PEDESTAL "D" IS ON THE SOUTHWEST CORNER OF CENTER STREET & 3 <sup>RD</sup> STREET. IT IS A 10' X 10' CONCRETE STRUCTURE WITH A 1" WATER METER AND SUPPLYING POWER TO THE 3 <sup>RD</sup> STREET LIGHTS.	PEDESTAL LIGHTS (10' X 10') AND 3 <sup>RD</sup> STREET LIGHTS (10' X 10').	CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL PEDESTAL LIGHTS AND 3 <sup>RD</sup> STREET LIGHTS. CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL ELECTRICAL, WATER COSTS.

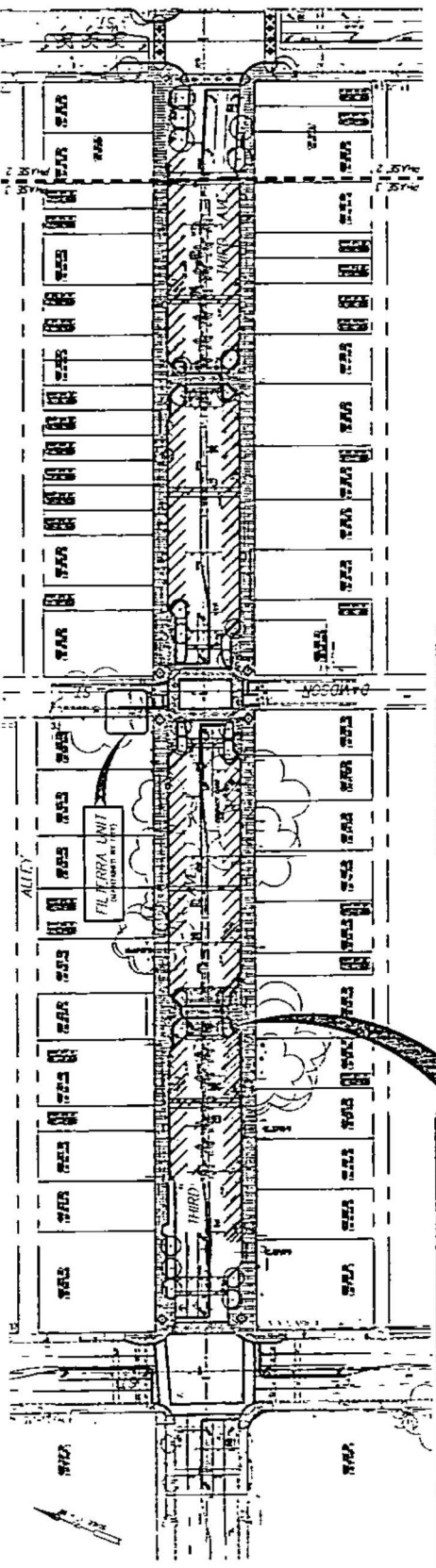
WATER METER "A" (NEW 2" INSTALLED ON THE PHASE 2 PROJECT)		
LOCATION	SUPPLIES WATER TO	RESPONSIBLE PARTY
WATER METER "A" IS ON THE SOUTHWEST CORNER OF CENTER STREET & 4 <sup>TH</sup> STREET. IT IS A 2" WATER METER AND SUPPLYING WATER TO THE 4 <sup>TH</sup> STREET LIGHTS.	PEDESTAL LIGHTS (10' X 10') AND 4 <sup>TH</sup> STREET LIGHTS (10' X 10').	CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL PEDESTAL LIGHTS AND 4 <sup>TH</sup> STREET LIGHTS. CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL ELECTRICAL, WATER COSTS.

THIRD AVENUE MAINTENANCE AGREEMENT EXHIBIT "B" FROM "F" STREET TO "H" STREET



FEEDING FROM WATER METER (PROPOSED)		
LOCATION	SUPPLY POWER TO	RESPONSIBLE PARTY
WATER METER (PROPOSED) AT INTERSECTION OF CHURCH AVE AND THIRD AVE	FEEDING FROM WATER METER (EXISTING) AT INTERSECTION OF CHURCH AVE AND THIRD AVE	CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL EXISTING AND PROPOSED ELECTRICAL SYSTEMS AND EQUIPMENT. THIS IS SUBJECT TO THE MAINTENANCE OF THE WATER METER SYSTEM AND THE WATER METER SYSTEM IS THE RESPONSIBILITY OF THE CITY.

EXISTING IMPROVEMENTS



WATER METER "D" (EXISTING 1 1/2" TO BE RECALIBRATED-PHASE 3 PROJECT)		
LOCATION	WATER METER ID	RESPONSIBLE PARTY
WATER METER (PROPOSED) AT INTERSECTION OF CHURCH AVE AND THIRD AVE	WATER METER (EXISTING) AT INTERSECTION OF CHURCH AVE AND THIRD AVE	CITY IS RESPONSIBLE FOR MAINTENANCE OF ALL EXISTING AND PROPOSED ELECTRICAL SYSTEMS AND EQUIPMENT. THIS IS SUBJECT TO THE MAINTENANCE OF THE WATER METER SYSTEM AND THE WATER METER SYSTEM IS THE RESPONSIBILITY OF THE CITY.

FUTURE IMPROVEMENTS PHASE III

THIRD AVENUE MAINTENANCE AGREEMENT EXHIBIT "H"  
FROM T-SHEET TO T-SHEET

## EXHIBIT C

### A. **INSURANCE.** TAVA agrees to abide by the following insurance requirements:

1. General. TAVA must procure and maintain, during the period of performance of this Agreement, and for twelve months after completion, policies of insurance from insurance companies to protect against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work under this Agreement and the results of that work by the TAVA, his agents, representatives, employees or subcontractors, and provide documentation of same prior to commencement of work.
2. Minimum Scope of Insurance. Coverage must be at least as broad as:
  - a. *CGL.* Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
    - a. *Auto.* Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
    - b. *WC.* Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
    - c. *E&O.* Professional Liability or Errors & Omissions Liability insurance appropriate to the TAVA's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.
3. Minimum Limits of Insurance. TAVA must maintain limits no less than those included in the table below:

i. General Liability: (Including operations, products and completed operations, as applicable)	\$1,000,000 per occurrence for bodily injury, personal injury, (including death), and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this Project/location or the general aggregate limit must be twice the required occurrence limit.
ii. Automobile Liability:	\$1,000,000 per accident for bodily injury, including death, and property damage.
iii. Workers' Compensation Employer's Liability:	Statutory \$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee

iv. Professional Liability or Errors & Omissions Liability:	\$1,000,000 each occurrence
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If TAVA maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by TAVA.

4. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer will reduce or eliminate such deductibles or self-insured retentions as they pertain to the City, its officers, officials, employees and volunteers; or TAVA will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
5. Other Insurance Provisions. The general liability, automobile liability, and where appropriate, the worker's compensation policies are to contain, or be endorsed to contain, the following provisions:
  - a. *Additional Insureds.* City of Chula Vista, its officers, officials, employees, agents, and volunteers are to be named as additional insureds with respect to all policies of insurance, including those with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of TAVA, where applicable, and, with respect to liability arising out of work or operations performed by or on behalf of TAVA, including providing materials, parts or equipment furnished in connection with such work or operations. The general liability additional insured coverage must be provided in the form of an endorsement to TAVA's insurance using ISO CG 2010 (11/85) or its equivalent. Specifically, the endorsement must not exclude Products/Completed Operations coverage.
  - b. *Primary Insurance.* TAVA's General Liability insurance coverage must be primary insurance as it pertains to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers is wholly separate from the insurance of TAVA and in no way relieves TAVA from its responsibility to provide insurance.
  - c. *Cancellation.* The insurance policies required by this Agreement shall not be canceled by either party, except after thirty days' prior written notice to the City by certified mail, return receipt requested. The words "will endeavor" and "but failure to mail such notice shall impose no obligation

or liability of any kind upon the company, its agents, or representatives" shall be deleted from all certificates.

- d. *Active Negligence.* Coverage shall not extend to any indemnity coverage for the active negligence of the additional insureds in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
  - e. *Waiver of Subrogation.* TAVA's insurer will provide a Waiver of Subrogation in favor of the City for each required policy providing coverage for the term required by this Agreement.
6. Claims Forms. If General Liability, Pollution and/or Asbestos Pollution Liability and/or Errors & Omissions coverage are written on a claims-made form:
- a. *Retro Date.* The "Retro Date" must be shown, and must be before the date of the Agreement or the beginning of the work required by the Agreement.
  - b. *Maintenance and Evidence.* Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work required by the Agreement.
  - c. *Cancellation.* If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, TAVA must purchase "extended reporting" coverage for a minimum of five years after completion of the work required by the Agreement.
  - d. *Copies.* A copy of the claims reporting requirements must be submitted to the City for review.
7. Acceptability of Insurers. Insurance is to be placed with licensed insurers admitted to transact business in the State of California with a current A.M. Best's rating of no less than A V. If insurance is placed with a surplus lines insurer, insurer must be listed on the State of California List of Eligible Surplus Lines Insurers (LESLI) with a current A.M. Best's rating of no less than A X. Exception may be made for the State Compensation Fund when not specifically rated.



8. Verification of Coverage. TAVA shall furnish the City with original certificates and amendatory endorsements effecting coverage required by Section I.C. of this Agreement. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the requirements of this Agreement. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.
9. Subcontractors. TAVA must include all subcontractors as insureds under its policies or furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors is subject to all of the requirements included in these specifications.
10. Not a Limitation of Other Obligations. Insurance provisions under this Article shall not be construed to limit TAVA's obligations under this Agreement, including Indemnity.